

# **Extending the Senior Managers Regime to benchmark administrators: final rules**

**Policy Statement**

PS20/5

June 2020

## This relates to

Consultation Paper 19/31  
which is available on our website at  
[www.fca.org.uk/publications](http://www.fca.org.uk/publications)

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# 1 Summary

- 1.1** In Consultation Paper (CP) 19/31, we set out our proposals for extending the Senior Managers Regime (SMR) to benchmark administrators. This Policy Statement summarises the feedback we received and our response. It also details the final rules and guidance we are publishing following consultation.

## Who this affects

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- 1.2** This Policy Statement will affect benchmark administrators authorised in the UK that do not undertake any other regulated activities. It also affects Appointed Representatives and their principals.

## The wider context of this policy statement

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### Our consultation

- 1.3** The Senior Managers and Certification Regime (SM&CR) applies to nearly all FCA regulated firms. As benchmark administrators are a new category of authorised firms, they were granted a one-year extension from the wider roll-out of the regime in 2019.
- 1.4** Our consultation set out proposals for applying the regime to benchmark administrators that do not undertake any other regulated activities. We do not propose to introduce the Certification Regime, which requires firms to assess the fitness and propriety of certain individuals within the firm. This is because benchmark administrators are subject to the Benchmarks Regulation (BMR) which should achieve a similar outcome. As such, the SMR will come into force for benchmark administrators that do not undertake any other regulated activities on 7 December 2020.

### How it links to our objectives

- 1.5** Extending the SMR to benchmark administrators will support our consumer protection and market integrity objectives. The SMR aims to improve culture and conduct by introducing new standards of personal conduct and ensuring that firms and regulators are able to hold individuals to account. This should make it easier for us to identify misconduct and take enforcement action, which will ultimately benefit consumers who rely on products and services which reference benchmarks.

## What we are changing

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- 1.6** For benchmark administrators that do not undertake any other regulated activities, we are introducing:

- the Senior Managers Regime (SMR), and
- the Conduct Rules, which are high-level standards of behaviour expected of those working in FCA regulated firms

**1.7** We are also amending the parts of the Handbook that deal with the Approved Persons Regime (APR) so they will now apply only in relation to Appointed Representatives. Appointed Representatives remain under the APR and the SM&CR does not apply to them.

**1.8** In CP19/31, we also consulted on changes to joint FCA/PRA Handbook forms (Annex K). We stated that these amendments were subject to the Prudential Regulation Authority (PRA) consulting on and deciding to make the same amendment. The PRA's consultation was published on 26 March 2020 and is scheduled to close on 26 June 2020. We will address these changes in a future Policy Statement.

## Outcome we are seeking

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**1.9** We are seeking to reduce harm to consumers and strengthen market integrity by making employees at benchmark administrators more accountable for their conduct and competence. This should encourage employees at all levels to take personal responsibility for their actions and ensure that firms understand and can demonstrate where responsibility lies.

## Measuring success

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**1.10** As set out in CP19/31, we will evaluate the success of these reforms by comparing the outcomes against the policy's aims. The SMR is designed to:

- ensure Senior Managers clearly understand and can demonstrate where responsibility lies
- encourage employees to take responsibility for their actions and to improve conduct at all levels, and
- support and promote healthy cultures within firms, driving change across FCA regulated firms

## Summary of feedback and our response

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**1.11** We received 17 responses to CP19/31. Benchmark administrators authorised in the UK generally supported our proposals for extending the SMR to benchmark administrators and our objectives of improving conduct and governance within supervised firms. However, there was strong opposition from firms that are subject to Annex II of the BMR (Annex II firms), the majority of which are not regulated in the UK.

**1.12** Most Annex II firms recognised the FCA's statutory obligation to apply the SMR to authorised benchmark administrators, but called for further modifications to the regime for Annex II firms. These included categorising all Annex II firms as Limited Scope and restricting the application of the Conduct Rules to employees exercising 'control' over the provision of a benchmark.

- 1.13** These respondents expressed their concern that applying Conduct Rules to employees that produce both regulated commodity benchmarks and accompanying market commentary or any associated news stories would create tensions with press freedom. They argued it would be impossible to separate the gathering of inputs from market sources to inform and calculate a spot market assessment from journalistic activities of reporting on and writing about a market.
- 1.14** We would like to reassure these firms that we recognise and respect the rights and protections afforded to journalists under UK and EU law. We do not intend the Conduct Rules to interfere with firms' abilities to carry out both regulated and journalistic activities. We have listened to the feedback from the consultation and considered the alternative options put to us. However, we have concluded that these options would not achieve the objectives of the SMR or reflect the economic importance of some of the benchmarks produced by these firms.
- 1.15** As such, we intend to implement the proposals largely as consulted on, but with some changes in response to the feedback received. In particular, we will amend the draft rules to ensure a level playing field for firms administering Annex II benchmarks and firms that administer both Annex II and other benchmarks. We are also providing further material on how to apply some of the Individual Conduct Rules to clarify how the rules should be interpreted in the context of benchmark administrators' activities.
- 1.16** We have concluded that these amendments do not lead to significant changes to the costs and benefits so they do not require a further cost-benefit analysis (CBA) under section 1381(5) of the *Financial Services and Markets Act 2000* (FSMA). Our assessment of the impact of the proposed rules on mutual societies also remains unchanged.

## Equality and diversity considerations

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- 1.17** We have considered the equality and diversity issues that may arise from the proposals in this Policy Statement. Overall, we do not consider that the proposals materially affect any of the groups with protected characteristics under the Equality Act 2010.

## Next steps

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- 1.18** The SMR will come into force for benchmark administrators that do not undertake any other regulated activities on 7 December 2020.
- 1.19** Administrators should ensure they have the right individuals in the right Controlled Functions to support the conversion from the APR. Administrators should also ensure they have implemented the regime, including training relevant employees in the Conduct Rules, and preparing Statements of Responsibilities for Senior Managers. We will continue to process applications for Controlled Functions under the APR until the commencement date.

## 2 Applying the Senior Managers Regime to benchmark administrators

- 2.1** In this chapter, we summarise the feedback we received on our proposals for applying the SMR to benchmark administrators, including allocation of Senior Management Functions (SMFs) and Prescribed Responsibilities.
- 2.2** In the CP, we stated that we did not intend to apply the Certification Regime to benchmark administrators as the BMR contains requirements on administrators to ensure employees are fit and proper, which should ensure a similar result. All respondents agreed with our approach.
- 2.3** During the consultation, some firms sought clarity on the proposed scope of the SMR and how it would apply to different types of benchmark administrator. Two respondents questioned the position of third-country benchmark administrators that are not authorised in the UK but may be recognised by the FCA under the BMR or have a UK-based legal representative. Other respondents asked us to be clear about the position of benchmark administrators that also carry out other regulated activities, and that of benchmark administrators that are exempt persons as operators of a Recognised Investment Exchange.

### Our response

We will not apply the Certification Regime to benchmark administrators that do not undertake any other regulated activities. This is because provisions in the BMR, including Article 4 which outlines Governance and Conflict of Interest requirements, should ensure a similar outcome.

Article 4(7) states that administrators shall ensure that their employees have the necessary skills, knowledge and experience for the duties assigned to them and are subject to effective management and supervision. We will supervise against these requirements in our usual way.

As part of this approach, we will not require non-Certification staff who would otherwise be captured, including Executive and non-Executive Directors, to be included in our directory.

We can confirm that only benchmark administrators that are authorised in the UK will be required to comply with the SMR. As a result, third country benchmark administrators and their UK-based legal representatives will not be required to implement the regime. The rules will also not apply to exempt persons, including operators of a Recognised Investment Exchange. But they will apply to an exempt person who also has a Part 4A permission for administering a benchmark, including exempt persons operating a Recognised Investment Exchange.

Benchmark administrators that undertake any other regulated activities will already have been captured by the extension of the regime to FCA regulated firms in December 2019. The final rules in this Policy Statement will apply to benchmark administrators that do not carry out any other regulated activities.

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## Categorising benchmark administrators under the SMR

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- 2.4** In CP19/31, we said we did not expect any benchmark administrators that do not undertake any other regulated activities to meet the thresholds for Enhanced firms. Respondents agreed with this assessment.
- 2.5** We proposed that all benchmark administrators should be subject to the Core SMR regime in the first instance, with the option to move to Limited Scope using the existing waiver process. This is because benchmark administrators play an important role in financial markets and the real economy, and the benchmarks they produce are widely used to set prices and measure performance. We considered that the Core regime would reflect the scale and complexity of some of these businesses, while the waiver option would allow firms to move to Limited Scope where appropriate.
- 2.6** There was support for this approach from FCA regulated firms. However, many Annex II firms argued they should be subject to the Limited Scope regime by default. They said this would take account of the nature of commodity price reporting and be closer to IOSCO's Principles for Oil Price Reporting Agencies. They considered this would also better align with Annex II of the BMR which does not impose governance standards on Annex II administrators, and better fit Annex II firms' existing governance structures.
- 2.7** Other respondents expressed concern around the proportionality of applying the Core regime to large businesses that predominantly undertake unregulated activities. Two respondents contested the idea that all benchmark administrators provide critical financial market infrastructure, as Annex II indices are used more in physical commodity markets than in financial markets.

### Our response

We have considered the arguments made for categorising Annex II firms as Limited Scope by default. Having considered these points, our view remains that categorising all benchmark administrators as Core firms in the first instance is the most appropriate categorisation.

This is because benchmark administrators play an important role in financial markets and the real economy and the benchmarks they produce can significantly impact our ability to discharge our objectives. The Core regime will ensure that the most senior people in these firms with responsibility for benchmarks that play an important role in markets, and therefore with the greatest potential to cause harm or impact market integrity, will be approved by us before they can start their role.

Classifying all Annex II firms as Limited Scope will not achieve the objectives of the regime. Some Annex II firms produce benchmarks that have a significant economic impact and their governance requirements should be appropriate to the level of harm that mismanagement could cause. In these cases, having accountability concentrated in only one Senior Manager is unlikely to reflect how responsibility is also borne by others in the firm's senior management.

However, we agree that the Core regime will not be appropriate for all benchmark administrators, including, potentially, some Annex II firms. The waiver process will provide a clear route for these firms to move to Limited Scope if appropriate.

The fundamental requirements of the SMR will apply in the same way to both Core and Limited Scope firms. Senior Managers will be approved by the FCA and subject to the Duty of Responsibility, and the Conduct Rules will apply to almost all staff within firms. Limited Scope classification will not mean that benchmark administrators are less accountable for their regulated activities, but will offer a different model of accountability that better fits their business models.

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## Moving to Limited Scope categorisation

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- 2.8** In CP19/31, we set out a path for benchmark administrators to move to Limited Scope using the existing waiver process. We proposed that firms should be required to demonstrate that complying with the Core regime would be unduly burdensome or would otherwise not achieve the rules' purpose. We provided the criteria we would take into account when assessing this, including whether regulated activities form a small part of the firms' activities and the importance of the benchmark administered to UK-based markets. We asked whether this approach, including the factors set out, provided enough flexibility for benchmark administrators with different governance models.
- 2.9** FCA authorised firms mostly agreed with this approach. One firm suggested that allowing some firms to move to Limited Scope would create an unlevel playing field between benchmark administrators and asked us to apply the same regime to all administrators. Another respondent argued that the risks posed to the users of a benchmark and the wider market should be additional factors to those set out in the instrument when assessing whether an administrator should move to Limited Scope.
- 2.10** We received feedback that the waiver process did not offer enough legal certainty for firms and should contain clearer, more objective criteria. This should include a list of non-exhaustive examples of factors the FCA would consider when granting or removing a waiver, and further detail on the FCA's operational objectives. One respondent called for us to remove the criteria establishing whether the benchmark has no or very few appropriate market-led substitutes because Annex II firms operate in a competitive market environment.



- 2.11** Others requested a more flexible, risk-based approach. This would take into account the types of benchmark produced by the administrator and their classification under the BMR. Some expressed concerns around the process of applying for a waiver at the same time as applying for FCA authorisation.

### Our response

We will proceed with the waiver process set out in the consultation.

In our view, creating fully exhaustive and detailed waiver criteria would be inflexible and could prevent us from assessing each application on its own merits. It would also not be consistent with the FCA's power to grant waivers and modifications under section 138A of FSMA.

We have decided not to elaborate in the Handbook instrument on the factors we will consider when assessing waiver applications for Limited Scope. In addition, CP19/31 provides two examples of the type of firm we envisage will be eligible for the waiver.

A potential benchmark waiver firm is unlikely to meet the criteria for granting a waiver if any of the benchmarks it administers is important (see SYSC 23 Annex 1 6.16). We consider that a firm's benchmark is likely to be important if it is defined as Critical under the BMR. SYSC 23 Annex 1 6.20 explains that when assessing the importance of a non-Critical benchmark, we could take into account whether it has no or very few appropriate market-led substitutes and whether it is used extensively in particular markets or sectors. Removing the criteria around market-led substitutes creates a risk that the waiver would be denied to a firm even though its benchmarks are not sufficiently important to justify applying the Core regime.

Our operational objectives are defined by FSMA. You can find further information on these in our Handbook.

Firms applying for FCA authorisation will be able to discuss their Limited Scope waiver application with the relevant authorisation team as part of their application. This should streamline the process and ease the procedural concerns raised in response to the consultation.

## Senior Management Functions and Prescribed Responsibilities for benchmark administrators

- 2.12** In CP19/31, we proposed requiring Core benchmark administrators to apply 4 Governing SMFs depending on the firm's governance structure: Chair, Partner, CEO and Executive Directors. However, we did not propose to apply SMF16 – Compliance Oversight – or SMF17 – Money Laundering Reporting Officer functions to Core firms, due to the overlap with the BMR. We noted that these four functions would only apply if a firm already has someone doing these jobs. For Limited Scope benchmark administrators, we proposed that one SMF should apply; SMF29 – Limited Scope Function.

- 2.13** We proposed that benchmark administrators should be required to confirm at least annually that the Senior Managers in their firms are fit and proper, and to request and provide regulatory references when required. They will also be obliged to undertake criminal records checks when appointing Senior Managers and Non-Executive Directors in the firm.
- 2.14** We proposed that Core benchmark administrators would be required to allocate 3 Prescribed Responsibilities to the Senior Manager who is the most senior person responsible for that activity or area:
- (a) performance by the firm of its obligations under the SMR, including implementation and oversight
  - (b-1) performance by the firm of its obligations in respect of notifications and training of the Conduct Rules, and
  - (d) responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime
- 2.15** Most regulated firms agreed with our proposals for applying SMFs and Prescribed Responsibilities to Core benchmark administrators. However, one respondent was concerned that imposing SMFs would duplicate the Oversight Function requirements in the BMR. They argued that the Oversight Function would be a more effective method to ensure accountability and oversight of the administrator.
- 2.16** Another respondent said that Prescribed Responsibility d – responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime – should not be applied to benchmark administrators. They considered that this responsibility would be disproportionate for administrators to implement and could mean hiring new staff to adequately perform this role.
- 2.17** Some Annex II firms emphasised that the BMR does not require Annex II administrators to implement any governance structures. They said the SMFs and Prescribed Responsibilities in the Core regime would be disproportionate and unworkable for Annex II firms to implement and called for us to apply one Governing Function - SMF29 – Limited Scope Function as an alternative.

### Our response

We do not agree that the Governing SMFs duplicate the Oversight Function in the BMR. Where we consider the SMR overlaps with the BMR, including in the application of SMF16 and SMF17, we have disapplied these functions for benchmark administrators that do not undertake any other regulated activities.

We acknowledge the feedback we received on implementing Prescribed Responsibility d – responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime. We prescribe these responsibilities to make sure a Senior Manager is accountable for key conduct and prudential risks and consider that Prescribed Responsibility d will be important in lowering the risk of financial crime within benchmark administrators.

We consider that the SMFs in the Core regime are proportionate and reflect the risk of harm to the market posed by Core firms. We will categorise benchmark administrators that can demonstrate that compliance with the Core regime would be unduly burdensome or would otherwise not achieve the rules' purpose as Limited Scope and require them to implement SMF29 only.

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## 3 Applying the Conduct Rules to benchmark administrators

- 3.1** In this chapter, we summarise the feedback we received on our proposed rules and guidance for applying the Conduct Rules to benchmark administrators and our response.

### Scope of the Conduct Rules

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- 3.2** In CP19/31, we stated that making individuals more accountable for their conduct was an important part of improving culture and governance within benchmark administrators. Given the role benchmark administrators play in financial markets and the real economy, we noted that high standards of personal conduct would be important in preventing harm to markets and consumers.
- 3.3** We proposed to apply the Conduct Rules to all employees in benchmark administrators that undertake both regulated and unregulated financial services activities, in line with our approach for other FCA regulated firms. This would not include ancillary staff within benchmark administrators, such as cleaners and Information Technology Support.
- 3.4** We proposed to tailor the application of the Conduct Rules for Annex II firms in line with how our Principles for Business (PRIN) are applied to these firms. Under this approach, all the individual conduct rules, and the Senior Manager Conduct Rule requiring disclosure of information to authorities, would be restricted to Annex II firms' regulated benchmark activities only. The other Senior Manager Conduct rules would apply to these activities but also to any activities that might reasonably be regarded as having a negative effect on the integrity of the UK financial system or a firm's financial resources.
- 3.5** Most FCA regulated firms agreed that the Conduct Rules should apply widely to all employees within benchmark administrators. One respondent requested further guidance on the meaning of 'financial services activities' and 'dealing with UK clients' in relation to benchmark administration activity.
- 3.6** Some Annex II firms suggested we should further amend the scope of the Conduct Rules to capture only those individuals who exercise 'control' over the provision of a benchmark, instead of all staff involved in the 'provision' of a benchmark. They said, without this amendment, the rules would cut across firms' whole editorial operations and capture journalists. This could create issues around press freedom, particularly on disclosing sources. Some argued it was unnecessary to capture journalists in the scope of the Conduct Rules as they are already subject to independent editorial standards.
- 3.7** Annex II firms also argued that the rules as drafted would go beyond the approach in IOSCO's PRA Principles and Annex II of the BMR. This could impact the willingness of contributors to participate in the price assessment process, particularly for benchmarks in illiquid markets. There was also concern that using the term 'financial services activities' to describe the activities undertaken by Annex II firms was inappropriate and could disincentive contributors.

- 3.8** We received feedback that applying the Conduct Rules to all staff involved in the provision of a benchmark would be disproportionate for smaller Annex II firms to implement. They said this would add significant costs which could force smaller competitors out of the market.
- 3.9** Some respondents were concerned that the proposed amendments for Annex II firms would only be available to firms that administer only Annex II benchmarks. They argued that this would place administrators that provide both financial and Annex II benchmarks at a commercial disadvantage. This could mean that contributors would be less willing to participate in the price assessment process and retain staff.

### Our response

We note the objections expressed by some respondents to the application of the Conduct Rules. We consider, however, that further easing the rules for Annex II firms would undermine their objectives.

How staff within benchmark administrators source and use information, and how this is overseen, are both fundamental to ensuring that a benchmark is robust. Restricting the scope of the Conduct Rules to individuals with 'control' responsibilities over the provision of a benchmark would leave most individuals providing the inputs to the benchmark out of scope. This would not enable us to deliver our market integrity and consumer protection objectives.

We do not agree that existing voluntary editorial standards are equivalent to provisions that ensure the integrity of a benchmark or the fitness and propriety of an individual providing it. However, the Conduct Rules should not prevent employees from undertaking both regulated and journalistic activities.

In response to feedback received during the consultation, we will apply the tailoring of the Conduct Rules for Annex II firms to any individuals contributing to Annex II benchmarks only. This will ensure that employees within 'mixed model' firms that provide both Annex II and non-Annex II benchmarks receive parity of treatment. This will create a level playing field amongst firms administering Annex II benchmarks. If individuals working on Annex II benchmarks later begin work on other regulated benchmarks or on another regulated activity, the full Conduct Rules will be applied to them from the point they start that work.

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## Applying the Individual Conduct Rules to benchmark administrators

- 3.10** We proposed that benchmark administrators should apply 5 Individual Conduct Rules and 4 Senior Manager Conduct Rules to all employees working on regulated and unregulated financial services activities, with an amended scope for Annex II firms detailed in paragraph 3.4.

- 3.11** We received feedback on the practical application of some of the Individual Conduct Rules. Some respondents sought clarity on how Individual Conduct Rules 4 and 5 should be understood within the context of benchmark administrators' operations.
- 3.12** Some respondents were concerned that Individual Conduct Rule 4 - You must pay due regard to the interests of customers and treat them fairly – would introduce a conflict of interest by obliging benchmark administrators to pay regard to the commercial interests of users of benchmarks. They argued this could compromise integrity as employees may feel incentivised to manipulate the benchmark in the interests of their customers. Participants also requested clarity on how 'customer' should be understood in the context of benchmark administrators' activities.
- 3.13** We also received feedback that it was not clear how to apply Individual Conduct Rule 5 – You must observe proper standards of market conduct. These respondents sought clarity on how this rule should apply to benchmark administrators, arguing that they do not participate in any market.
- 3.14** Some respondents argued that Individual Conduct Rule 3 – You must be open and cooperative with the FCA, PRA and other regulators – created a conflict with freedom of expression. They said sometimes journalists working at Annex II administrators must protect confidential sources and other proprietary information. They argued that Individual Conduct Rule 3 should not be applied to journalists working at Annex II firms.

### Our response

The Individual Conduct Rules are designed to be interpreted in the context of the regulatory system relevant to the firm. COCON 3.1 provides a non-exhaustive list of factors that we would expect to take into account when assessing whether a breach of the Conduct Rules has occurred. This includes the precise circumstances of the individual case and the characteristics of the particular function performed by the individual.

We do not agree that Conduct Rule 4 creates an incentive to manipulate the benchmark. Manipulation of the benchmark is of course prohibited. We will provide further guidance on Individual Conduct Rules 4 and 5. This will clarify that in general, customers of benchmark administrators are the users of the benchmark, except where the user neither requires a license to use it nor has made an agreement with the benchmark administrator. Guidance on Individual Conduct Rule 5 will confirm that benchmark administrators can meet their requirement to observe proper standards of market conduct through compliance with existing obligations under the BMR and other relevant legislation.

We considered the case for exempting journalists working within Annex II administrators from Individual Conduct Rule 3. We consider that this option could compromise our ability to request information and would not meet the objectives of the Conduct Rules.

The FCA retains the right to request information on the inputs to benchmarks where this is reasonably required. However, we respect the rights and protections afforded to journalists under UK and EU law,

in particular the European Convention on Human Rights. We would not expect journalists to disclose information to us under the individual conduct rules when we could not require them to do so.

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## Training staff in the Conduct Rules

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- 3.15** In line with the extension of the SM&CR to other FCA regulated firms, we proposed that benchmark administrators should have 12 months to train staff that are not Senior Managers on applying the Conduct Rules. We also underlined the need for firms to tailor their application of the Conduct Rules to their business models.
- 3.16** Most respondents agreed with this approach. However, some felt the 12-month period should start from the point of authorisation by the FCA, should this fall after 7 December 2021.

### Our response

We do not agree that the 12-month period for firms to train staff who are not Senior Managers should start one year from the date the benchmark administrator receives full authorisation if this is later than 7 December 2021.

This is because once a new class of firms has been brought into regulation and any initial transitional period has come to an end, all new firms should be ready to comply with their FSMA obligations when they are authorised, including the Conduct Rules. Where we have introduced further transitional provisions, for example for Claims Management Companies entering the SM&CR, this has been due to the statutory timetable for these firms to come under FCA regulation.

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## Annex 1

### List of non-confidential respondents

MSCI

Cboe Europe

New Change Currency Consultants Ltd

CMCE (Commodity Markets Council Europe)

London Metal Exchange



## Annex 2

### Abbreviations used in this paper

<b>APR</b>	Approved Persons Regime
<b>BMR</b>	EU Benchmarks Regulation
<b>CP</b>	Consultation Paper
<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Services and Markets Act
<b>PRA</b>	Prudential Regulation Authority
<b>PRIN</b>	Principles of Business
<b>SM&amp;CR</b>	Senior Managers & Certification Regime
<b>SMF</b>	Senior Manager Functions
<b>SMR</b>	Senior Managers Regime



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# Appendix 1

## Made rules (legal instrument)

## INDIVIDUAL ACCOUNTABILITY (FCA-AUTHORISED BENCHMARK FIRMS) INSTRUMENT 2020

### Powers exercised

A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (1) section 55U (Applications under this Part);
- (2) section 59 (Approval for particular arrangements);
- (3) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
- (4) section 60 (Applications for approval);
- (5) section 60A (Vetting candidates by authorised persons);
- (6) section 61 (Determination of applications);
- (7) section 62A (Changes to responsibilities of senior managers);
- (8) section 63ZA (Variation of senior manager’s approval at request of authorised person);
- (9) section 63ZD (Statement of policy relating to conditional approval and variation);
- (10) section 63C (Statement of policy);
- (11) section 63E (Certification of employees by authorised persons);
- (12) section 63F (Issuing of certificates);
- (13) section 64A (Rules of conduct);
- (14) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
- (15) section 69 (Statement of policy);
- (16) section 137A (The FCA’s general rules);
- (17) section 137T (General supplementary powers);
- (18) section 138D (Action for damages);
- (19) section 139A (Power of the FCA to give guidance);
- (20) section 347 (The record of authorised persons etc);
- (21) section 395 (The FCA’s and PRA’s procedures);
- (22) paragraph 23 of Schedule 1ZA (Fees); and
- (23) regulations 5 and 6 of the Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) Regulations 2019 (S.I. 2019/1136).

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 December 2020 except as follows:

Annex	Date comes into force
Part 1 of Annex B	3 June 2020
Part 1 of Annex H	3 June 2020

Annex I	3 June 2020
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### Amendments to the Handbook

- D. The FCA's Handbook of rules and guidance is amended in accordance with paragraph E of this instrument.
- E. 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
Code of Conduct sourcebook (COCON)	Annex C
Threshold Conditions sourcebook (COND)	Annex D
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex E
Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)	Annex F
Market Conduct sourcebook (MAR)	Annex G
Supervision manual (SUP)	Annex H
Professional Firms sourcebook (PROF)	Annex I

### Amendments to material outside the Handbook

- F. The General guidance on Benchmark Administration, Contribution and Use is amended in accordance with Annex J to this instrument.

### Citation

- G. This instrument may be cited as the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.

By order of the Board  
21 May 2020

## 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 definitions in the appropriate alphabetical position. The text is not underlined.

<i>APER employer</i>	<p>(in relation to an <i>approved person</i> whose approval is given under SUP 10A (FCA Approved Persons in Appointed Representatives)):</p> <p>(a) the <i>appointed representative</i> in relation to which that <i>approved person</i> performs the <i>controlled function</i> in SUP 10A; and</p> <p>(b) the <i>authorised approved person employer</i>.</p> <p>[Note: In accordance with APER 3.1.10R, for the purposes of <i>Statements of Principle</i> 5 to 7, an <i>APER employer</i> only includes (a).]</p>
<i>limited scope SMCR benchmark firm</i>	has the meaning in SYSC 23 Annex 1 6.12R, and in summary means a <i>pure benchmark SMCR firm</i> that is subject to a <i>waiver</i> that treats the <i>firm</i> as a <i>limited scope SMCR firm</i> .
<i>pure benchmark SMCR firm</i>	has the meaning in SYSC 23 Annex 1 6.13R(1)(b), and in summary means an <i>SMCR firm</i> that has <i>permission</i> to carry on the <i>regulated activity</i> of <i>administering a benchmark</i> but no other <i>regulated activity</i> .

Amend the following definitions as shown.

<i>accountable functions</i>	<p>(in relation to an <i>approved person</i>) the functions described in APER 1.1A.2R, which are in summary:</p> <p>(a) <i>FCA controlled functions</i> under SUP 10A (FCA Approved persons <u>in Appointed Representatives</u>); and</p> <p>...</p>
<i>advising on</i>	<p>(1) (except in SUP 10A (FCA Approved Persons <u>in Appointed Representatives</u>), SYSC 27 (Senior managers and</p>

<i>investments</i>	<p>certification regime: Certification regime), <i>APER</i> and <i>CONRED 2</i>) the <i>regulated activities</i>, specified in article 53(1) to (1D) and article 53(2) of the <i>Regulated Activities Order</i> (Advising on investments), which are:</p> <ul style="list-style-type: none"> <li>(a) <i>advising on investments (except P2P agreements);</i> and</li> <li>(b) <i>advising on P2P agreements.</i></li> </ul> <p>(2) (in <i>SUP 10A</i> (FCA Approved Persons <u>in Appointed Representatives</u>), <i>SYSC 27</i> (Senior managers and certification regime: Certification regime) and <i>APER</i>) the <i>regulated activities</i> specified in article 53(1) to (1D) and 53(2) (Advising on investments) of the <i>Regulated Activities Order</i>. For these purposes, <i>advising on investments</i> includes any activities that would be included but for the exclusion in article 72AA (Managers of UCITS and AIFs) of the <i>Regulated Activities Order</i>.</p> <p>...</p>
<i>certification employee</i>	<p>...</p> <p>(3) (in relation to an <i>SMCR firm</i> that is an <i>FCA-authorised person</i> <u>other than a pure benchmark SMCR firm and any other SMCR firm to which SYSC 27 (Senior managers and certification regime: Certification regime) does not apply</u>) and subject to <i>SYSC TP 8</i> (Bank of England and Financial Services Act 2016: Application to claims management companies)) an employee (as defined in section 63E of the <i>Act</i>) of an <i>SMCR firm</i> who performs a <i>certification function</i> under an arrangement entered into by the <i>SMCR firm</i> in relation to the carrying on by the <i>SMCR firm</i> of a <i>regulated activity</i>, even though the obligation of the <i>SMCR firm</i> to issue a certificate under section 63F of the <i>Act</i> has not yet come into force.</p> <p>[Note: Paragraph (3) of this definition applies until 9 December 2020.]</p>
<i>chief executive function</i>	<p>(1) ...</p> <p>(2) <del>(for other firms and</del> in relation to an <i>appointed representative</i>) <i>FCA controlled function CF3</i> <u>in the table of FCA controlled functions</u>, described more fully in <i>SUP 10A.6.17R</i>.</p>
<i>controlled function</i>	a function, relating to the carrying on of a <i>regulated activity</i> by a <i>firm</i> , which is specified by:

	(a) either the <i>FCA</i> in:
	(i) (for <i>SMCR firms</i> ) the <i>table of FCA-designated senior management functions</i> ; or
	(ii) ( <del>for other firms and</del> in relation to <i>appointed representatives</i> ) the <i>table of FCA controlled functions</i> ; or
	...
<i>director</i>	(1) ...
	(c) (in <i>SYSC</i> , <i>APER</i> , <i>COCON</i> , <i>MIPRU</i> 2 (Responsibility for insurance distribution and <i>MCD</i> credit intermediation activity), <i>SUP</i> 10A (FCA Approved persons in <u>Appointed Representatives</u> ) and <i>SUP</i> 10C (FCA senior managers regime for approved persons in <i>SMCR firms</i> ) a <i>partnership</i> ;
	(d) (in <i>SYSC</i> , <i>SUP</i> 10A (FCA Approved persons in <u>Appointed Representatives</u> ) and <i>SUP</i> 10C (FCA senior managers regime for approved persons in <i>SMCR firms</i> ) a <i>sole trader</i> ;
	...
	...
<i>FCA controlled function</i>	a <i>controlled function</i> which is specified by the <i>FCA</i> under section 59 of the <i>Act</i> (Approval for particular arrangements) in:
	(a) (for <i>SMCR firms</i> ) the <i>table of FCA-designated senior management functions</i> ; or
	(b) ( <del>for other firms and</del> in relation to <i>appointed representatives</i> ) the <i>table of FCA controlled functions</i> .
<i>FCA significant-influence functions</i>	any of the <i>FCA controlled functions</i> <del>1 to 29 in Part 1 or Part 2 of</del> <u>labelled as an FCA significant-influence function in the table of FCA controlled functions</u> .
<i>partner function</i>	(1) ...
	(2) ( <del>for other firms and</del> in relation to <i>appointed representatives</i> ) <i>FCA controlled function</i> CF4 in the <i>table of FCA controlled functions</i> , described more fully in <i>SUP</i> 10A.6.23R to <i>SUP</i> 10A.6.27R.
<i>proprietary trader</i>	(in <i>SYSC</i> 27 (Senior managers and certification regime: Certification regime), <del><i>SUP</i> 10A (FCA Approved Persons)</del> , and <del><i>COCON</i> and <i>APER</i></del> ) a <i>person</i> (A) whose responsibilities include

committing another *person* (B) as part of B's *proprietary trading*.

*proprietary trading*

(in SYSC 27 (Senior managers and certification regime: Certification regime), ~~SUP 10A (FCA Approved Persons)~~, and ~~COCON and APER~~) *dealing in investments as principal* as part of a business of trading in *specified investments*. ...

*significant-influence function*

has the meaning in SUP 10A.5.3R (Definition of FCA significant-influence function), which in summary defines it as (for the purposes of *controlled functions* specified in the *table of FCA controlled functions* and in relation to the carrying on of a *regulated activity* by an ~~authorised person~~ appointed representative) a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the ~~authorised person's~~ appointed representative's affairs, so far as relating to the activity.

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

*significant management function*

*FCA controlled function* CF29 in the *table of FCA controlled functions*, described more fully in SUP 10A.9.9R.



## 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.

#### Part 1: Comes into force 3 June 2020

## 22 Regulatory references

### 22.1 Application

General application

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

...

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

...

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

...

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

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
...	...	...
The senior managers regime: Parts that only apply to a limited range of firms		
...	...	...
<i>Firms</i> should report changes to their <i>management body</i> when members who are not <i>SMF managers</i> leave or join it.	...	...
<u>A firm is required to maintain a clear</u>	<u>SYSC 4.4</u>	<u>Applies to a</u>

<u>and appropriate apportionment of significant responsibilities among its directors and senior managers</u>	<u>(Apportionment of responsibilities)</u>	<u>limited scope SMCR firm.</u> <u>Does not apply to most core SMCR firms.</u> <u>Does not apply to an enhanced scope SMCR firm.</u>
...	...	...
The certification regime		
...	...	Applies to all solo-regulated firms except for internally managed AIFs and certain firms that only carry out benchmark activities. <u>The certification regime does not apply to benchmark activities.</u>
...	...	...

## Part 2: Comes into force 7 December 2020

### 4 General organisational requirements

#### 4.1 General requirements

...

Apportionment of responsibilities: the role of the non-executive director

- 4.1.14 G The role undertaken by a *non-executive director* will vary from one firm to another. ~~Where a non-executive director is an approved person, for example where the firm is a body corporate, his responsibility and therefore liability will be limited by the role that he undertakes.~~

...

#### 4.4 Apportionment of responsibilities

Application

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

(a) a *limited scope SMCR firm* ~~other than~~ :

(i) a *firm* in SUP 10C Annex 1 7.10R (Table: Limited scope SMCR firms to which no controlled functions apply) ~~);~~ and

(ii) a *limited scope SMCR benchmark firm*; and

...

...

...

## 22 Regulatory references

### 22.1 Application

General application

...

22.1.1A G ~~SYSC TP 7.4.8R and SYSC TP 8.5.1R apply~~ applies this chapter to certain claims management ~~and benchmark~~ *firms* that are not *SMCR firms*.

...

### 22.7 Getting references: additional rules and guidance

Who should be asked to give a reference

...

22.7.4 G (1) ~~SYSC 22.2.1R (Obligation of an SMCR firm to try to obtain a reference) applies even if the ex-employer is not a firm.~~

...

...

### 22.8 Policies and appointed representatives

...

22.8.4A R (1) The *approved person's authorised approved person employer* is responsible for compliance with SYSC 22.8.3R in the case of a

requirement:

- (a) to give a reference about an *approved person* whose approval is under ~~SUP 10A.1.15R to SUP 10A.1.16BR~~ SUP 10A (FCA Approved Persons in Appointed representatives Representatives); and

...

...

- 22.8.5 G One effect of SYSC 22.8.4R is that when an *appointed representative* appoints an *approved person* under ~~SUP 10A.1.16BR~~ (appointed representatives of an SMCR firm) SUP 10A (FCA Approved Persons in Appointed Representatives) there is no requirement for the *appointed representative* or its principal to request a reference.

...

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

...

### 23.2 Definitions and types of firms

...

- 23.2.3 G Broadly speaking, *firms* covered by the senior managers and certification regime that are regulated by the *FCA* are divided into three categories:

...

- (3) *Firms* whose business is limited to certain types. These are called “*limited scope SMCR firms*”. A large number of *firms* will be in this category. The main examples are:

...

- (d) *firms* whose main business is not regulated and whose regulated business is (with limited exceptions) restricted to *insurance distribution activity* in relation to *non-investment insurance contracts*; and

- (e) a *firm* that only has *regulated claims management activities* in its *permission*; and

- (f) a *firm* that only has *permission* for benchmark activities and has the benefit of a *waiver* treating it as a *limited scope SMCR firm* as described in SYSC 23 Annex 1 6.12R (Benchmark firms: Waiver applying limited scope status).

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

...

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

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
...	...	...
The senior managers regime: Parts that only apply to a limited range of firms		
...	...	...
A <i>firm</i> is required to maintain a clear and appropriate apportionment of significant responsibilities among its <i>directors</i> and <i>senior managers</i>	...	Applies to a <i>limited scope SMCR firm</i> , except for a <i>limited scope SMCR benchmark firm</i> . ...
<u>A <i>limited scope SMCR benchmark firm</i> is required to report to the FCA certain changes in the split of its revenue between <i>regulated activities</i> and <i>unregulated activities</i></u>	<u>SUP 15.17 (Notification of regulated income by limited scope SMCR benchmark firm)</u>	<u>Only applies to a <i>limited scope SMCR benchmark firm</i>.</u>  <u>Does not apply to any other <i>limited scope SMCR firm</i>.</u>  <u>Does not apply to a <i>core SMCR firm</i> or an <i>enhanced scope SMCR firm</i>.</u>
...	...	...
The certification regime		
A <i>firm</i> should not permit an <i>employee</i> to carry out certain	...	Applies to all solo-regulated

functions ( <i>certification functions</i> ) unless it has issued them with a certificate. ...		<i>firms</i> except for internally managed AIFs and <u><i>pure benchmark SMCR firms</i></u> . ...
...		
A <i>firm</i> must report information to the FCA about its <i>Directory persons</i> , including its <i>certification employees</i> .	SUP 16.26 (Reporting of information about Directory persons)	Applies to all <i>solo-regulated firms</i> except <u><i>pure benchmark SMCR firms</i></u>
...		

...

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

### Part One: Flow diagram and other basic provisions

...

#### 1.2 R Flow diagram: Types of SMCR firm

...

#### Note to the flow diagram

The categorisation in this flow diagram is subject to SYSC 23 Annex 1 2.1R and SYSC 23 Annex 1 6.25R.

...

### Part Three: Definition of exempt firm

...

#### 3.7 R ~~A firm that has permission to carry on the regulated activity of administering a benchmark or administering a specified benchmark but no other regulated activity is an exempt firm. [deleted]~~

...

## Part Six: Definition of limited scope SMCR firm

Introduction

6.1 R ...

Opting up

6.2 G ...

Specialised activities

6.3 R ...

...

Sole trader

6.6 R ...

Limited permission consumer credit firms

6.7 R ...

...

Authorised professional firms

6.9 R ...

Internally managed AIFs

6.10 R ...

Claims management

6.11 R ...

Benchmark firms: Waiver applying limited scope status

6.12 R A firm is a limited scope SMCR firm (and a limited scope SMCR benchmark firm) if:

- (1) it is subject to a waiver that applies this rule to the firm; and
- (2) it meets the conditions in SYSC 23 Annex 1 6.13R.

6.13 R (1) The conditions referred to in SYSC 23 Annex 1 6.12R(2) are that the firm:

- (a) is capable of being a *limited scope SMCR firm* under the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm);
- (b) has *permission* to carry on the *regulated activity* of *administering a benchmark* but no other *regulated activity* (a *pure benchmark SMCR firm*); and
- (c) is an *FCA-authorised person*.

(2) A *firm* that meets the conditions in this *rule* is referred to in this Annex as a “potential benchmark waiver firm”.

- 6.14      G      (1) If, after the *waiver* in SYSC 23 Annex 1 6.12R(1) comes into force, a *firm* ceases to be a potential benchmark waiver firm it immediately ceases to be:
- (a) a *limited scope SMCR benchmark firm*; and
  - (b) a *limited scope SMCR firm* (unless it qualifies as one for another reason).
- (2) (1) applies even if the *firm* subsequently becomes a potential benchmark waiver firm again.
- (3) If (2) applies, it may become a *limited scope SMCR benchmark firm* again if it applies for and obtains a new *waiver*.

Benchmark firms: When the waiver is likely to be available

- 6.15      G      (1) The *FCA* considers that treating a potential benchmark waiver firm (as defined in SYSC 23 Annex 1 6.13R(2)) as a *core SMCR firm* may be unduly burdensome as contemplated by section 138A(4)(a) of the *Act* (Modification or waiver of rules).
- (2) The *FCA* considers that deciding whether this is the case involves balancing the factors in (3) and (4).
- (3) The directors of a potential benchmark waiver firm who would require approval for performing one of the *FCA governing functions* if it was a *core SMCR firm* may spend very little of their time managing the *firm’s regulated activities*. In a big *firm* they may also be distant from those activities. It may therefore be more proportionate to require approval for someone who is closer to the day-to-day management of the *firm’s regulated activities*.
- (4) On the other hand, applying the *Act* and the *FCA’s* requirements directly to a *firm’s* most senior management will make it more likely that they will take steps and put in place systems that will increase the likelihood that the *firm’s* staff will meet the requirements of the senior managers and certification regime and



that the values represented by those requirements will be absorbed into the *firm's* culture. It also helps to ensure that the *firm's* leaders have sufficient knowledge of, and skills in, the *firm's regulated activities*.

(5) The approach in SYSC 23 Annex 1 6.16G is designed to weigh the factors in (3) and (4) against each other.

6.16 G (1) SYSC 23 Annex 1 6.16G summarises the approach the FCA anticipates it will take in deciding whether to grant the waiver. SYSC 23 Annex 1 6.17G to SYSC 23 Annex 1 6.22G then give more detail.

(2) Subject to (3), the FCA considers that a potential benchmark waiver firm (as defined in SYSC 23 Annex 1 6.13R(2)) is likely to meet the criteria for the granting of a waiver in section 138A(4)(a) of the Act (Modification or waiver of rules) if *regulated activities* form a small part of its activities, measured in the way described in SYSC 23 Annex 1 6.17G.

(3) The FCA considers that a potential benchmark waiver firm meeting the conditions in (2) is nevertheless unlikely to meet the criteria for the granting of a waiver in section 138A(4) of the Act if:

(a) any of the benchmarks it administers are important; or

(b) the *firm* or the person who would be performing the *limited scope function* would not meet the requirements of MAR 8.5.2R (Responsibility for benchmark activities: regulated benchmark administrators).

(4) In particular, under (3)(b):

(a) the person who would be performing the *limited scope function* should be sufficiently senior (see MAR 8.5.3AG); and

(b) the responsibilities in MAR 8.5.2R should not be split between several people (see MAR 8.5.3G).

(5) SYSC 23 Annex 1 6.18G to SYSC 23 Annex 1 6.20G describe what important means in (3)(a).

(6) SYSC 23 Annex 1 6.22G gives more detail about (3)(b).

(7) The waiver would be available to *firms* of any size.

6.17 G (1) SYSC 23 Annex 1 6.17G describes how the FCA anticipates that it would decide whether *regulated activities* form a small part of a *firm's* activities for the purpose of SYSC 23 Annex 1 6.16G(2).

- (2) The FCA anticipates that it would consider that:
  - (a) a firm would meet the criterion in (1) if revenue from regulated activities represents less than 20% of its overall revenue; and
  - (b) a firm would not meet the criterion in (1) if revenue from regulated activities were 20% or more.
- (3) The FCA anticipates that it would measure those figures over a reasonable period and not just a single accounting period.
- (4) The FCA anticipates that it would measure revenue from regulated activities and overall revenue in the way described in SUP 15.17.5R to SUP 15.17.7R (Obligation to make calculations).
- (5) The FCA anticipates that it would adjust the calculation if there were good reason to think that past revenue is unlikely to be representative of the future. For instance:
  - (a) the firm's past revenue may be distorted by extraordinary items; or
  - (b) the firm may recently have carried out a major reorganisation of its business involving, for example, the disposal of all its activities other than benchmark activities or the acquisition of a business carrying out activities other than benchmark activities.

- 6.18      G      The FCA anticipates that, in deciding whether a benchmark is important for the purposes in SYSC 23 Annex 1 6.16G, it will take into account whether there could be a significant and adverse impact on the United Kingdom's economy or financial system if the benchmark:
- (1) stops being provided; or
  - (2) is provided in a way that significantly breaches or falls short of the requirements and standards of the benchmarks regulation.
- 6.19      G      The FCA considers that a firm's benchmark is likely to be important for the purposes in SYSC 23 Annex 1 6.16G(3) and to meet the criteria in SYSC 23 Annex 1 6.18G if the benchmark is recognised as critical under the benchmarks regulation.
- 6.20      G      In making the assessment of the importance of a benchmark that is not recognised as critical as described in SYSC 23 Annex 1 6.19G, the FCA anticipates that it will take into account factors that include the following:
- (1) whether the benchmark has no or very few appropriate market-led substitutes; and

- (2) whether the benchmark is used extensively in particular markets or sectors.
- 6.21 G (1) One reason for taking into account the importance of a benchmark is that if it is important, the factors in SYSC 23 Annex 1 6.15G(4) outweigh the factors in SYSC 23 Annex 1 6.15G(3).
- (2) Another reason is that, under section 138A(4)(b) of the Act (Modification or waiver of rules), the FCA may not grant a waiver if doing so would adversely affect the advancement of any of its operational objectives. Granting the waiver where a benchmark is important is likely to be inconsistent with section 138A(4)(b) because:
- (a) the occurrence of the situation in SYSC 23 Annex 1 6.18G(1) or (2) is likely in particular to prejudice the integrity operational objective; and
- (b) for the reasons in SYSC 23 Annex 1 6.15G(4), the FCA considers that applying the regime for core SMCR firms to benchmark firms will reduce the risk of that happening.
- 6.22 G The FCA anticipates that if a firm has a complicated management structure, that may mean that the firm does not meet the conditions in SYSC 23 Annex 1 6.16G(3)(b). In particular this may be the case if:
- (1) there are several managers involved in managing the firm's regulated activities who have different reporting lines; or
- (2) the person managing the firm's regulated activities has different reporting lines for different aspects of the role that give them different levels of autonomy.

Benchmark firms: Ceasing to meet waiver criteria

- 6.23 G If a limited scope SMCR benchmark firm ceases to meet the criterion in SYSC 23 Annex 1 6.17G, it is likely to be inappropriate for the waiver to continue. The mechanism for ensuring that this is the case might include one or more of the following:
- (1) building those criteria into the waiver;
- (2) revocation of the waiver; or
- (3) granting the waiver subject to a time limit and re-examining the criteria if the firm applies for a renewal.
- 6.24 G The FCA anticipates that the mechanisms in SYSC 23 Annex 1 6.23G will generally provide for a period of time between the firm ceasing to meet the criterion in SYSC 23 Annex 1 6.17G and the firm ceasing to be a limited scope SMCR firm.

Benchmark firms: Opting to be a core or enhanced scope firm

- 6.25 R (1) A limited scope SMCR benchmark firm may opt to be an enhanced scope SMCR firm in accordance with this Annex.
- (2) A limited scope SMCR benchmark firm may not opt to be a core SMCR firm under this Annex.
- 6.26 G If a limited scope SMCR benchmark firm opts to be an enhanced scope SMCR firm and it subsequently revokes that election after it comes into effect, the firm will become a core SMCR firm. If it wants to be a limited scope SMCR benchmark firm again it will need to apply for a new waiver.
- 6.27 G A limited scope SMCR benchmark firm that wishes to become a core SMCR firm again should request the FCA to revoke the waiver in SYSC 23 Annex 1 6.12R.

...

Part Twelve: Opting up and opting back down

...

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

...

**25.2 Management responsibilities maps: Main rules**

...

## Specific requirements

...

- 25.2.4 R SYSC 25.2.3R(1) does not require the firm to include the names of approved persons under ~~SUP 10A.1.16BR (Appointed representatives)~~ SUP 10A (FCA Approved Persons in Appointed Representatives).

...

**27 Senior managers and certification regime: Certification regime****27.1 Application and purpose**

- 27.1.1 R This chapter applies to an SMCR firm, except those excluded from this chapter by SYSC 27.6 (Other exclusions).

...

**27.6 Other exclusions**

...

## Benchmarks

- 27.6.4 R (1) This chapter does not apply to a *firm* in relation to *benchmark activities*.
- (2) In particular, this chapter does not apply to a *pure benchmark SMCR firm*.

...

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

**7.1 Application and purpose**

...

- 7.1.2 R Table: Application of SYSC TP 7

Type of firm	Parts of SYSC TP 7 that apply
...	...
<i>A core SMCR firm, an enhanced scope SMCR firm and a limited scope SMCR firm other than a <u>pure benchmark SMCR firm</u></i>	All applies, subject to the adjustments in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies).
<del><i>A firm in SYSC TP 7.4.8R</i></del>	<del>Does not apply, except as follows:</del> <del><i>SYSC TP 7.4.6R, SYSC TP 7.4.7G, SYSC TP 7.4.8R and SYSC TP 7.6</i></del> apply.
<u><i>A pure benchmark SMCR firm</i></u>	<u>All applies, except that SYSC TP 7.2, SYSC TP 7.3, SYSC TP 7.4.1R and SYSC TP 7.7.3G to SYSC TP 7.7.6G do not apply.</u>
...	...

- 7.1.3 G SYSC TP 7:

...

- (3) has certain other transitional provisions relating to the amendments made to the *FCA Handbook* by the Individual Accountability (Dual-Regulated Firms) Instrument 2018 ~~and~~ the Individual Accountability (FCA-Authorised Firms) Instrument 2019 and the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020; and

...

...

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

...

Part Two: Dates			
(1) Defined term	(2) Meaning: Insurers	(3) Meaning: Others	(4) <u>Meaning: Benchmark firms</u>
<b>certification transitional period</b>	...	...	<u>Does not apply</u>
<b>general commencement date</b>	...	...	<u>7 December 2020 (as referred to in regulation 2(5) of the <b>solo firms commencement SI</b>)</u>
...			
Note (2): Column (3) (Others) applies to a <i>core SMCR firm</i> , an <i>enhanced scope SMCR firm</i> and a <i>limited scope SMCR firm</i> <u>but not to a <i>pure benchmark SMCR firm</i>.</u>			
<u>Note (3): Column (4) (Benchmark firms) applies to a <i>pure benchmark SMCR firm</i>.</u>			

...

## 7.4 Transitional provisions about regulatory references

...

7.4.8 R (1) ~~SYSC 22 (Regulatory references) applies to a *firm* that is excluded from being an *SMCR firm* by SYSC 23 Annex 1 3.7R (benchmark *firms*) as it applies to an *SMCR firm*.~~

- (2) ~~However, the provisions listed in SYSC 22.8.4R do not apply.~~  
~~[deleted]~~

...

**TP 8 Bank of England and Financial Services Act 2016: Application to claims management companies**

...

**8.4 Application of SYSC TP 7**

...

- 8.4.5 G ~~SYSC TP 7.4.8R (Transitional provisions about regulatory references) and SYSC TP 7.5 (Transitional provisions about benchmarks and the certification regime) are~~ is not relevant.

...

## Annex C

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

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

# 1 Application and purpose

## 1.1 Application

...

To what conduct does it apply?

...

1.1.7A R ...

(2) ...

(3) This rule does not apply where COCON 1.1.7BR applies.

1.1.7B R (1) Where a member (M) of the *conduct rules staff* of Firm A as described in COCON 1.1.6R to COCON 1.1.7R meets the condition in (c) and Firm A meets the conditions in (a) and (b), the application of COCON to the conduct of M in relation to Firm A is further restricted by this rule:

(a) the firm is a pure benchmark SMCR firm;

(b) the firm is an Annex II benchmark administrator (whether or not it also administers other benchmarks); and

(c) M does not perform any functions described in COCON 1.1.6R to COCON 1.1.7R in relation to Firm A with respect to any benchmark that the firm administers except a benchmark that is subject to Annex II to the benchmarks regulation.

(2) (a) The only conduct to which the following rules apply is the conduct described in (2)(b):

(i) the rules in COCON 2.1 (Individual conduct rules); and

(ii) rule SC4 in COCON 2.2 (You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice).

(b) The rules in (2)(a) apply only to any of the following:



- (i) the performance of a function by M in relation to the carrying on of a *regulated activity* by Firm A;
  - (ii) (if M is an *SMF manager*) the performance by M of a *controlled function* in relation to Firm A (whether or not approval has been sought and granted).
- (3) Rules SC1 to SC3 in COCON 2.2 (Senior manager conduct rules) apply only to conduct:
  - (a) that comes within (2)(b); or
  - (b) that comes within COCON 1.1.7AR, but this paragraph (3)(b) only applies in a *prudential context*.
- 1.1.8 G (1) More than one of COCON 1.1.6R to ~~COCON 1.1.7AR~~ COCON 1.1.7BR may apply to the same individual performing several roles.
- ...
- 1.1.8A R (1) This *rule* applies to a person (P):
  - (a) who is an *approved person* approved to perform a *controlled function* under ~~SUP 10A.1.15R to SUP 10A.1.16BR~~ (appointed representatives) SUP 10A (FCA Approved Persons in Appointed Representatives);
- ...
- ...

## 4 Specific guidance on individual conduct rules

### 4.1 Specific guidance on individual conduct rules

...

Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators

...

#### 4.1.12 G

- 4.1.12A G The FCA only expects a member of the *conduct rules staff* of an *Annex II benchmark administrator* when the *firm* is acting as such to disclose information under rule 3 which is relevant to the *firm's* compliance with its obligations under the *benchmarks regulation*.

Rule 4: You must pay due regard to the interests of customers and treat them

fairly.

...

4.1.14 G

4.1.14A G In general, the *customers* of a *benchmark administrator* are the users of the *benchmark* (as defined in the *benchmarks regulation*). A user of a *benchmark* will not however be a *customer* if the user does not have a licence to use it and the user has not made an agreement with the *benchmark administrator* about the way the *benchmark administrator* carries on the activities included in the *regulated activity of administering a benchmark*.

...

Rule 5: You must observe proper standards of market conduct.

...

4.1.17 G

4.1.18 G For the purposes of *rule 5* and the *regulated activity of administering a benchmark*, proper standards of market conduct means compliance with the *benchmarks regulation* and other requirements of the *regulatory system* or of legislation applicable to *administering a benchmark*. In the case of *administering a benchmark* there are no additional standards of market conduct for the purposes of *rule 5*.

...

## 4.2 Specific guidance on senior manager conduct rules

...

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

...

4.2.29 G ...

4.2.30 G The *FCA* only expects a *senior conduct rules staff member* of an *Annex II benchmark administrator* when the *firm* is acting as such to disclose information under *rule SC4* which is relevant to the *firm's* compliance with its obligations under the *benchmarks regulation*.

...

---

## TP 1 Transitional provisions: Miscellaneous

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
...					
2	...	...	...	...	...
<u>3</u>	<u>Row (6) of the table in COCON 1.1.2R (Table: To whom does COCON apply?)</u>	<u>R</u>	<u>Row (6) does not apply to an <i>employee</i> of a <i>pure benchmark SMCR firm</i>.</u>	<u>Between 7 December 2020 and 7 December 2021</u>	<u>The <i>rule</i> in column (2) applies from the end of the period defined in column (5).</u>
<u>4</u>	<u>Row (6) of the table in COCON 1.1.2R (Table: To whom does COCON apply?)</u>	<u>G</u>	<u>The effect of COCON TP 1.3R is that an <i>employee</i> described in column (1) of row (6) of the table in COCON 1.1.2R is not subject to COCON until 7 December 2021.</u>	<u>As stated in COCON TP 1.3R.</u>	<u>As stated in COCON TP 1.3R.</u>

## Annex D

### Amendments to the Threshold Conditions sourcebook (COND)

In this Annex, underlining indicates new text.

## 2            **The threshold conditions**

...

### 2.5        **Suitability**

...

Paragraph 3D to Schedule 6 of the Act

...

- 2.5.3      G      (1) The emphasis of the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 of the *Act* is on the suitability of the *firm* itself. The suitability of each *person* who performs a *controlled function* will be assessed by the *FCA* and/or the *PRA*, as appropriate, under the *approved persons* regime (in relation to an *FCA-approved person*, see *SUP 10A* (FCA Approved Persons in Appointed Representatives), *SUP 10C* (FCA senior managers regime for approved persons in SMCR firms) and *FIT*). In certain circumstances, however, the *FCA* may consider that the *firm* is not suitable because of doubts over the individual or collective suitability of persons connected with the *firm*.

...

## Annex E

## Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

### 1 Application and purpose

#### 1.1A Application

Who?

1.1A.1 R *APER* applies to *FCA-approved persons* who are ~~either:~~

- (1) ~~*approved persons of firms that are not SMCR firms; or*~~
- (2) ~~*approved persons*~~ approved to perform a *controlled function* in *SUP 10A.1.15R to SUP 10A.1.16BR* (appointed representatives) *SUP 10A (FCA Approved Persons in Appointed Representatives)*.

1.1A.1A G (1) ~~*APER does not apply to FCA-approved persons of SMCR firms. COCON applies instead.*~~

(2) ~~*However, APER applies to approved persons approved to perform a controlled function under SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives) even if the appointed representative's principal is an SMCR firm. [deleted]*~~

What?

1.1A.2 R (1) *APER* applies to the performance by an *approved person* of *FCA controlled functions* in *SUP 10A (FCA Approved Persons in Appointed Representatives)* (whether or not approval has been sought and granted).

...

- (5) *APER does not apply to conduct unless it is within the scope of section 64A of the Act (Rules of conduct).*

...

Where?

1.1A.5 G The territorial scope of the *approved persons* regime and its application to *incoming EEA firms* is set out in *SUP 10A.1* (~~see *SUP 10A.1.11R* and *SUP 10A.1.13R*.~~

## Coverage of APER

- 1.1A.6 G ~~APER 1.1A.7G gives examples of the effect of APER 1.1A.1R and APER 1.1A.2R. The first column says whether the example involves an FCA-approved person in relation to one or two firms. The second column explains what functions APER covers in the scenario set out in the first column. [deleted]~~

- 1.1A.7 Table: Examples of what activities APER covers

FCA approved	Coverage of APER
(1) Yes, in relation to <i>firm A</i>	Applies to the <i>FCA controlled function</i> . Also applies to any other function performed for <i>firm A</i> in relation to the carrying on by <i>firm A</i> of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .
(2) Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	In relation to <i>firm A</i> , the answer is the same as for scenario (1). However, APER does not apply to any function that the <i>approved person</i> carries on in relation to <i>firm B</i> even if that function relates to <i>regulated activities</i> carried out by <i>firm B</i> . However, if the function that they perform in relation to <i>firm B</i> is a <i>controlled function</i> the <i>approved person</i> and <i>firm B</i> may be subject to legal sanctions (see SUP 10A.13.1G to SUP 10A.13.2G).

- 1.1A.8 G (1) ~~A person may be an approved person in relation to more than one firm. When that is the case, APER applies in relation to all those firms.~~
- (2) ~~APER does not apply if the firm is an SMCR firm, except for approved persons of an appointed representative of an SMCR firm.~~
- (3) ~~If a person is an approved person of a firm (A) that is not an SMCR firm and also of another firm (B) that is an SMCR firm, the result is:~~
- (a) ~~APER applies to the approved person in relation to firm A; and~~
- (b) ~~COCOA applies to the approved person in relation to firm B. [deleted]~~
- 1.1A.9 G (1) ~~APER 1.1A refers to an approved person's firm. This means their authorised approved person employer.~~
- (2) ~~Under section 59 of the Act (Approval for particular arrangements) there are two kinds of approved person.~~

- (3) ~~Section 59(1) of the Act describes the first. It covers a person who performs a controlled function under an arrangement entered into by an authorised person (“A”). In this case, the authorised approved person employer is A.~~
- (4) ~~Section 59(2) of the Act describes the second. It covers a person who performs a controlled function under an arrangement entered into by a contractor (“B”) of an authorised person (“A”). In this case, the authorised approved person employer is A (and not B). [deleted]~~

...

Replace the defined term “firm” (and derivatives thereof) wherever it appears in APER 2, APER 3 and APER 4 with the defined term “APER employer” (or derivatives thereof as appropriate). This does not apply to those provisions of APER in the following portion of this annex, which are instead amended as shown.

### 3 Code of Practice for Approved Persons: general

#### 3.1 Introduction

...

3.1.7A G ...

3.1.7B G (1) Statements of Principle 1 to 4 apply to an approved person’s conduct in relation to:

- (a) the appointed representative for which they work; and
- (b) things directly done for their authorised approved person employer.

(2) Statements of Principle 5 to 7 only apply to an approved person’s conduct in relation to the appointed representative for which they perform their accountable higher management function.

...

3.1.9 G (1) ~~UK domestic firms~~ An APER employer that has its registered office (or, if it has no registered office, its head office) in the United Kingdom with a premium listing ~~are~~ is subject to the UK Corporate Governance Code, whose internal control Provisions are amplified in the publication entitled ‘Guidance on Risk Management, Internal Control and Related Financial and Business Reporting (September 2014)’ issued by the Financial Reporting Council. ~~Firms regulated by the FCA~~ An APER employer in this category will be subject to that code as well as to the requirements and standards of the

*regulatory system.*

- (2) ~~In~~ Where (1) applies, in forming an opinion whether *approved persons* have complied with ~~its~~ the requirements of the regulatory system, the *FCA* will give due credit for their following corresponding Provisions in the *UK Corporate Governance Code* and related *guidance*.

3.1.10 R (1) ~~In the case of an approved person approved to perform a controlled function in SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives), a reference in in APER 2 to APER 4 to a firm is a reference to:~~

(a) ~~the appointed representative in relation to which that approved person performs the controlled function in SUP 10A.1.15R to SUP 10A.1.16BR; and~~

(b) ~~their authorised approved person employer.~~

- (2) For the purposes of *Statements of Principle 5 to 7*, ~~a~~ the reference to an APER employer only includes a person coming within paragraph is only to (a) of the definition of APER employer (the appointed representative in relation to which the approved person performs the controlled function in SUP 10A).



## Annex F

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

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

### 1 General

#### 1.1 Application and purpose

1.1.1 G *FIT* applies to:

- (1) ~~a firm (including an SMCR firm);~~
- (2) an applicant for *Part 4A permission* that will be an SMCR firm if the application succeeds;
- (3) an *EEA firm* or a *Treaty firm* that wishes to establish a *branch* into the *United Kingdom* using *EEA rights* or *Treaty rights*; or apply for a *top-up permission* if the firm will be an SMCR firm;

...

...

1.1.3 G ~~The table in *FIT* 1.1.4G summarises the situations to which *FIT* applies.~~  
[deleted]

1.1.4 G ~~Table: Situations to which *FIT* applies~~ [deleted]

What FIT applies to	Does it apply to <i>SMCR firms</i> ?	Does it apply to <i>firms that are not SMCR firms</i> ?	Comment
(1) A <i>firm</i> assessing the fitness and propriety of a <i>candidate</i> whom the <i>firm</i> is proposing to put forward for approval	Yes	No	However, the answer to Question 11 in <i>SUP</i> 10A Annex 1 (Frequently asked questions) says that the <i>FCA</i> 's approval process is not a substitute for the checks that a <i>firm</i> should be carrying out on its prospective recruits.

			<i>FIT</i> may be a useful guide to matters that a <i>firm</i> that is not an <i>SMCR firm</i> should take into account.
(2) A <i>firm</i> assessing the continuing fitness and propriety of an <i>approved person</i>	Yes	No	However, a <i>firm</i> should employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (SYSC 5.1). <i>FIT</i> may be a useful guide to matters which a <i>firm</i> should take into account if it is not an <i>SMCR firm</i> .
(3) The <i>FCA</i> assessing the fitness and propriety of a <i>candidate</i> for approval as an <i>approved person</i>	Yes	Yes	
(4) The <i>FCA</i> assessing the continuing fitness and propriety of an <i>approved person</i>	Yes	Yes	
(5) A <i>firm</i> assessing the fitness and propriety of a <i>person</i> whom a <i>firm</i> is proposing to certify to perform an <i>FCA certification function</i>	Yes	No	<i>FCA certification functions</i> do not apply to a <i>firm</i> that is not an <i>SMCR firm</i> .  However, see the comment on row (2).
(6) A <i>firm</i> assessing the continuing fitness and propriety of a <i>person</i> whom a <i>firm</i> has certified to perform an <i>FCA certification</i>	Yes	No	<i>FCA certification functions</i> do not apply to a <i>firm</i> that is not an <i>SMCR firm</i> .  However, see the comment on row (2).

<i>function</i>			
-----------------	--	--	--

## 1.2 Introduction

- 1.2.-1 G Under section 60A(1) of the *Act*, before ~~an SMCR~~ a firm may make an application for the *FCA*'s approval of a *controlled function* the *firm* must be satisfied that the *person* for whom the application is made is a fit and proper *person* to perform that function.

...

- 1.2.1A G Under section 63F of the *Act*, ~~an SMCR~~ a firm may issue a certificate to a person to perform a *certification function* only if it is satisfied that the *person* is a fit and proper *person* to perform that function.

- 1.2.1B G Under sections 60A and 63F of the *Act*, in assessing whether a *person* is a fit and proper person to perform an *FCA designated senior management function* or an *FCA certification function*, ~~an SMCR~~ a firm must have particular regard to whether that *person*:

...

...

- 1.2.4A G ...

(2) ...

- (c) matters within the responsibility of the *FCA* as the *Host State regulator*, for example *money laundering* responsibilities (see the *money laundering reporting function* (~~CF11 and SMF17~~)) or (3) below;

...

...

## 1.3 Assessing fitness and propriety

...

- 1.3.2A G ~~An SMCR~~ A firm assessing the fitness and propriety of *staff being assessed under FIT* should consider:

...

- 1.3.2B G ~~An SMCR~~ A firm is reminded that, in assessing a *candidate* for a position within the *management body* of the *firm*, SYSC 4.3A.3R(3) requires the *firm* to ensure that the management body, as a collective, possesses adequate knowledge, skills and experience to understand the *firm's* activities.

- 1.3.3 G The criteria listed in *FIT* 2.1 to *FIT* 2.3 are *guidance* and will be applied in general terms when the *FCA* is determining a *person's* fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination. ~~An *SMCR* *A* firm~~ assessing the fitness and propriety of *staff being assessed under FIT* should be guided by substantially the same criteria in *FIT* 2.1 to *FIT* 2.3 (to the extent applicable to the *firm*), recognising that this is not intended to be a definitive list of matters to be considered.
- 1.3.4 G If a matter comes to the *FCA's* attention which suggests that the *person* might not be fit and proper, the *FCA* will take into account how relevant and how important it is. In the same way, if a matter comes to the attention of ~~an *SMCR* *A* firm~~ which suggests that any *staff being assessed under FIT* might not be fit and proper, the *firm* should take into account how relevant and how important that matter is.
- 1.3.4A G ~~An *SMCR* *A* firm~~ assessing the continuing fitness and propriety of an *approved person* is required to notify the *FCA* under section 63(2A) of the *Act* if it forms the opinion that there are grounds on which the *FCA* could withdraw its approval (see *SUP* 10C.14.24R). In discharging its obligation to notify the *FCA*, ~~an *SMCR* *A* firm~~ should take into account how relevant and how important the matter is that comes to its attention which suggests an *approved person* might not be fit and proper before determining that a notification should be made.
- 1.3.4B G ~~An *SMCR* *A* firm~~ assessing the continuing fitness and propriety of *staff being assessed under FIT* should assess the role that the individual is actually performing at the time the assessment is done. For this purpose, the assessor(s) should be provided with an up-to-date job description for that individual in advance of the assessment.

...

## 2 Main assessment criteria

### 2.1 Honesty, integrity and reputation

...

- 2.1.1A G ~~An *SMCR* *A* firm~~ determining the honesty, integrity and reputation of *staff being assessed under FIT*, should consider all relevant matters, including those set out in *FIT* 2.1.3G, which may have arisen either in the *United Kingdom* or elsewhere. *Firms* should inform themselves of relevant matters, including checking for convictions for criminal offences (where possible) and contacting previous employers who have employed that *candidate* or *person*. If any *staff being assessed under FIT* has a conviction for a criminal offence, the *firm* should consider the seriousness of and circumstances surrounding the offence, the explanation offered by that *person*, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

...

- 2.1.2A G In considering the reputation of *staff being assessed under FIT 2.1.1AG* ~~an~~ *SMCR a firm* should have regard to whether that *person's* reputation might have an adverse impact upon the *firm* for which the function is to be performed and the *person's* responsibilities.

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

...

## 2.2 Competence and capability

...

- 2.2.1A G In determining a *person's* competence and capability to perform an *FCA designated senior management function* or an *FCA certification function*, ~~an~~ *SMCR a firm*, in accordance with *FIT 1.1.2G*, should have regard to all relevant matters including but not limited to:

...

...

- 2.2.2A G The *FCA* would expect ~~an~~ *SMCR a firm* determining the competence and capability of *staff being assessed under FIT* to consider convictions, dismissals and suspensions from employment for drug or alcohol abuses or other abusive acts only in relation to a *person's* continuing ability to perform the particular *FCA designated senior management function* or an *FCA certification function* for which the *person* is, or is to be, employed.

## 2.3 Financial soundness

- 2.3.1 G In determining a *person's* financial soundness, the *FCA* will have regard, and ~~an~~ *SMCR a firm* should also have regard, to any factors including, but not limited to:

...

- 2.3.2 G The *FCA* will not normally require a *candidate* to supply a statement of assets or liabilities. The fact that a *person* may be of limited financial means will not, in itself, affect their suitability to perform a controlled function. The *FCA* would expect ~~an~~ *SMCR a firm* to take a similar view in assessing whether *staff being assessed under FIT*, are fit and proper.

...

## Annex G

## Amendments to the Market Conduct sourcebook (MAR)

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

## 8 Benchmarks

...

### 8.5 Regulated benchmark administrators

...

Responsibility for benchmark activities: regulated benchmark administrators

- 8.5.2 R (1) This *rule* applies to a *regulated benchmark administrator* other than:
- (a) an *Annex II benchmark administrator*;
  - (b) ~~an SMCR firm~~ a PRA-authorised person.
- (2) A *regulated benchmark administrator* must allocate the responsibility described in (3) to a *director* or *senior manager* ~~who is performing~~ other than a non-executive director.
- (a) ~~an FCA governing function other than the non-executive director function; or~~
  - (b) ~~the significant management function (where applicable)~~.
- (2A) In the case of a limited scope SMCR benchmark firm, the director or senior manager in (2) must be sufficiently senior for the function of performing that responsibility to meet the definition of a senior management function.
- ...
- 8.5.3 G ~~The rule in MAR 8.5.2R does not apply to a regulated benchmark administrator which is an SMCR firm. That is because:~~
- (1) ~~Most UK SMCR firms are already subject to the requirement to allocate overall responsibility for each of the activities, business areas and management functions of the firm in SYSC 26.3 (Main rules) (the table in SYSC 25 Annex 1G (Examples of the business activities and functions of a relevant authorised person an SMCR firm) refers to administering a benchmark); and A firm may allocate the responsibility in MAR 8.5.2R to more than one person.~~

- (2) ~~overseas SMCR firms do not require authorisation to carry out the activity of administering a benchmark unless they are located in the UK. That is because that regulated activity gives effect to article 34 of the benchmarks regulation and, for these purposes, the requirements of article 34 only apply to administrators which are located in the UK. If the firm does so, it should not divide the responsibility between them. Instead each person should be responsible for all aspects of the role.~~
- (3) For example, the role could be allocated to more than one person:
- (a) as part of a job share; or
  - (b) where departing and incoming senior managers work together temporarily as part of a handover.

- 8.5.3A      G      (1) The FCA expects that a person who has the responsibility in MAR 8.5.2R will:
- (a) be sufficiently senior and credible; and
  - (b) have sufficient resources and authority;
- to be able to exercise their management and oversight responsibilities effectively.
- (2) One element of a manager's seniority is the degree to which they can and do make decisions without prior approval and exercise judgment and discretion.

...

- 8.5.6      G      ~~An Annex II benchmark administrator which is an SMCR firm~~ A firm may comply with the requirement in MAR 8.5.2R(4) or MAR 8.5.4R(2) to notify the FCA of the identity of the ~~most senior~~ manager(s) responsible for implementing the requirements of the benchmarks regulation concerned by including that responsibility in that *person's statement of responsibilities*.

...

## Annex H

### Amendments to the Supervision manual (SUP)

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

#### Part 1: Comes into force 3 June 2020

#### 10A FCA Approved Persons

...

SUP 10A Annex 10D (MiFID Article 4 APER Information Form) is deleted in its entirety. The deleted text is not shown but the Annex is marked [deleted], as shown below.

#### 10A Annex 10D MiFID Article 4 APER Information Form [deleted]

Amend the following as shown.

#### TP 11A Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms

##### 11A.1 Application, purpose and definitions

11A.1.1 R (1) ...

(2) ...

(3) SUP TP 11A applies to a **pure benchmark SMCR firm** subject to the modifications in SUP TP 11A.25A.

11A.1.2 G (1) *SUP TP 11A has transitional provisions relating to the introduction of the senior managers and certification regime for *FCA-~~authorised persons~~* by Part 2 of the Bank of England and Financial Services Act 2016, ~~and the Individual Accountability (FCA-Authorised Firms) Instrument 2019~~ and the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.*

...

11A.1.3 G (1) The main time period for which *SUP TP 11A* operates is 2019. For a **pure benchmark SMCR firm** the main period in which it operates



is 2020.

(2) ...

11A.1.4 G ...

11A.1.5 R (1) The terms in the first column of the table in *SUP* TP 11A.1.5R, where they appear in bold in *SUP* TP 11A, have the meanings in the corresponding entry in column 2 for the purposes of *SUP* TP 11A.

(2) For a **pure benchmark SMCR firm** the table is modified by *SUP* TP 11A.25A.3R.

Part One: General	
Defined term	Meaning
...	...
<b>firm specific date</b>	...
<b><u>limited scope SMCR benchmark firm</u></b>	<u>has the meaning set out in the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.</u>
...	...
<b>pre-implementation controlled function</b>	...
<b><u>pure benchmark SMCR firm</u></b>	<u>has the meaning set out in the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.</u>
...	...

#### 11A.4 Lapse of existing approvals and special provisions about appointed representatives

...

11A.4.2 R (1) *SUP* TP 11A does not apply to a **pre-implementation approval** that has effect under ~~*SUP* 10A.1.15R to *SUP* 10A.1.16AR (appointed representatives)~~ *SUP* 10A (FCA Approved Persons in Appointed Representatives).

...

...

Insert a new section, SUP TP 11A.25A, after SUP TP 11A.25.2R. The text is not underlined.

11A.25.2 R ...

**11A.25A Pure benchmark firms**

11A.25A. R SUP TP 11A.25A applies to a **pure benchmark SMCR firm**.

1

11A.25A. G SUP TP 11A.25A explains how SUP TP 11A applies to a **pure benchmark SMCR firm**.

2

11A.25A. R The definitions and dates in the table in SUP TP 11A.1.5R are amended as follows:

3

- (1) the definition of a term in column one of Part One of the table in this *rule* replaces the corresponding definition in Part One of the table in SUP TP 11A.1.5R; and
- (2) Part Two of the table in this *rule* replaces Part Two of the table in SUP TP 11A.1.5R.

Part One: General	
Defined term in main table of definitions	Adjusted meaning
core SMCR firm, enhanced scope SMCR firm, limited scope SMCR firm, overseas SMCR firm	have the meaning set out in the <i>Glossary</i> and are subject to the amendments to be made by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.  This is subject to SUP TP 11A.23.

Part Two: Fixed dates	
Defined term in main table of definitions	New meaning

<b>first notification date</b>	7 September 2020
<b>final notification date</b>	4 December 2020
<b>commencement date</b>	7 December 2020
<b>Form O start date</b>	9 June 2020
<b>enhanced firm cut-off date</b>	N/A
Note: If a <i>firm</i> becomes a <b>pure benchmark SMCR firm</b> between the <b>final notification date</b> and the <b>commencement date</b> , the <b>final notification date</b> for it is the date it becomes a <b>pure benchmark SMCR firm</b> .	

- 11A.25A. 4 R (1) This *rule* makes some adjustments about how certain references to the Individual Accountability (FCA-Authorised Firms) Instrument 2019 in *SUP* 11A apply to a **pure benchmark SMCR firm**.
- (2) Note (1) to the table in *SUP* 11A.2.5R (Mapping table: Potential conversion of approval for existing controlled functions into approval for designated senior management functions) is amended so that a reference to a new FCA-designated senior management function is to the *FCA-designated senior management function* with the same name taking into account amendments made by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.
- (3) *SUP* 11A.23.1R is adjusted so that the *firm's* categorisation is determined in accordance with *SYSC* 23 Annex 1 as adjusted by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.
- (4) *SUP* 11A.23.5R(1) is adjusted so that the *rules* for making an election to become an *enhanced scope SMCR firm* that it modifies are the ones in *SYSC* 23 Annex 1 as adjusted by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.
- 11A.25A. 5 G The material in *SUP* TP 11A about **enhanced scope SMCR firms** is likely to be irrelevant to a **pure benchmark SMCR firm** as it does not meet most of the qualification conditions for this category. However, *SUP* TP 11A.25A does not disapply those provisions as it is possible that a **pure benchmark SMCR firm** may choose to opt into that category.
- 11A.25A. 6 G (1) The table in *SUP* TP 11A.25A.7G explains how each section of *SUP* TP 11A applies to a **pure benchmark SMCR firm**.

- (2) It assumes that the *firm* has not elected to be an **enhanced scope SMCR firm**. If it does elect to be one, many of the parts of *SUP TP 11A* that the table shows as not applying will apply and a few parts that the table shows as applying will not apply.

11A.25A. G Table: How *SUP TP 11A* applies to a pure benchmark SMCR firm

7

Section	Title	How it applies
11A.1	Application, purpose and definitions	This applies. The definitions in <i>SUP TP 11A.1.5R</i> are amended by <i>SUP TP 11A.25A.3R</i> .
11A.2	Conversion of existing approvals	This applies. However many of the <b>pre-implementation controlled functions</b> will not apply. Part Two of the table in <i>SUP TP 11A.2.5R</i> does not apply. <i>SUP TP 11A.2.8G</i> does not apply. <i>SUP TP 11A.2.9R</i> to <i>SUP TP 11A.2.11G</i> will generally not apply. They will only apply if the <i>firm</i> has to submit a Form K. The entry in this table for <i>SUP TP 11A.5</i> explains when this is the case.
11A.3	Effect of conversion	This applies.
11A.4	Lapse of existing approvals and special provisions about appointed representatives	This applies. However, the material about <i>appointed representatives</i> in <i>SUP TP 11A.4.2R</i> and <i>SUP TP 11A.4.3G</i> does not apply as a <b>pure benchmark SMCR firm</b> is not a <i>firm</i> with a <i>limited permission</i> and is unlikely to have or be an <i>appointed representative</i> .
11A.5	Notification to the FCA: Initial notification	<i>SUP TP 11A.5</i> (including the requirement to submit a Form K) does not apply to:  (a) a <b>limited scope SMCR benchmark firm</b> ; or  (b) any other <b>pure benchmark SMCR firm</b> unless the <i>chair of the governing body function</i> will apply.  Even if it does apply, the material about the <i>customer function</i> does not apply as that function does not apply to a <b>pure benchmark SMCR firm</b> .
11A.6	Notification to the FCA: Revision of	In general, this does not apply. It only applies if the <i>firm</i> has submitted a Form K under <i>SUP TP 11A.5</i> .

	initial notice	
11A.7	In-flight applications: Conversion	This applies.
11A.8	In-flight applications: Notification requirements	In general, this does not apply. It only applies if the <i>firm</i> has to submit a Form K (for which, please see the entry in this table for <i>SUP</i> TP 11A.5).
11A.9	In-flight applications: Supplemental material	This applies.
11A.10	Procedure for notification	In general, this does not apply. It only applies if the <i>firm</i> has to submit a Form K (for which, please see the entry in this table for <i>SUP</i> TP 11A.5).
11A.11	Statements of responsibilities	This applies.  A <i>firm</i> does not have to send the <i>FCA</i> its <b>statements of responsibilities</b> for its <b>transitioned SMF managers</b> .
11A.12	Management responsibilities maps	This does not apply.
11A.13	Supplemental material about statements of responsibilities and management responsibilities maps	The material in this section about <b>statements of responsibilities</b> applies. The material about <b>management responsibilities maps</b> does not.
11A.14	Criminal record checks and employment references	This applies.
11A.15	Applications of approved persons to take effect from the commencement date	This applies.
11A.16	Application of ongoing	This applies. However, the material about <b>management responsibilities maps</b> does not apply.

	requirements to converted approvals and conversion documents	
11A.17	Making sure that the Financial Services Register is accurate	This applies. However, the material about the <i>customer function</i> does not apply as that function does not apply to a <b>pure benchmark SMCR firm</b> .
11A.18	The 12-week rule	This applies.
11A.19	Application for permission	This applies to someone applying to be a <b>pure benchmark SMCR firm</b> .
11A.20	Prohibition orders	This applies.
11A.21	Reporting under SUP 15.11	This will generally not apply as for the most part it relates to <i>certification employees</i> . It applies to a <i>board director</i> .
11A.22	Calculations for retail intermediaries	This does not apply.
11A.23	Deciding which category a firm is in	<p><i>SUP</i> TP 11A.23.1R applies. <i>SUP</i> TP 11A.25A.4R adjusts the reference to the Individual Accountability (FCA-Authorised Firms) Instrument 2019) in this <i>rule</i>.</p> <p>The effect of <i>SUP</i> TP 11A.23.1R is that if a <i>firm</i> acquires <i>permission</i> for any <i>regulated activities</i> other than benchmark activities before 7 December 2020:</p> <ul style="list-style-type: none"> <li>(a) the conversion arrangements in <i>SUP</i> TP 11A will not apply to it;</li> <li>(b) <i>SUP</i> TP 11A.15 and <i>SUP</i> TP 11A.23.2G will not apply;</li> <li>(c) the <i>firm</i> will become an <i>SMCR firm</i>; and</li> <li>(d) the <i>firm</i> will need to apply for and obtain new approvals under <i>SUP</i> 10C (FCA senior managers regime for approved persons in <i>SMCR firms</i>) before its change of <i>permission</i> takes effect.</li> </ul> <p>Most of the rest of <i>SUP</i> TP 11A.23 does not apply as it relates to <b>enhanced scope SMCR firms</b> or opting to be a <b>core SMCR firm</b>. <i>SUP</i> TP 11A.23.10G applies.</p> <p>The <i>waiver</i> referred to in SYSC 23 Annex 1 6.12R (as set out the Individual Accountability (FCA-Authorised Benchmark</p>

		Firms) Instrument 2020) may be given before the <b>commencement date</b> . If it is, the <i>firm</i> is a <b>limited scope SMCR benchmark firm</b> for the purpose of <i>SUP</i> TP 11A unless the <i>waiver</i> says otherwise.
11A.24	Claims management firms	Does not apply.
11A.25	Forms	In general, this does not apply. It only applies if the <i>firm</i> has to submit a Form K (for which, please see the entry in this table for <i>SUP</i> TP 11A.5).

## Part 2: Comes into force 7 December 2020

### 6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirement

...

### 6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

...

How a variation of permission may affect the firm's approved persons

- 6.3.8 G (1) Where a *firm* is submitting an application for variation of *Part 4A permission* which would lead to a change in the *controlled functions* of its *approved persons*, it should, at the same time and as appropriate:
- (a) make an application for an internal transfer of an *approved person*, Form E (Internal transfer of a person performing a controlled function), or make an application for an individual to perform additional *controlled functions*, the relevant Form A (Application to perform ~~controlled~~ senior management functions); see:
    - (i) *SUP* 10A.13.3D to *SUP* 10A.13.5G (for a *firm* that is ~~not an SMCR firm~~ has appointed representatives);
    - ...
  - (b) notify the *FCA* or *PRA* of any *approved person* who has ceased to perform a *controlled function* specified by that regulator, Form C (Notice of ceasing to perform controlled functions (including senior management

functions)); see:

- (i) *SUP 10A.14* (for a *firm* that ~~is not an *SMCR firm*~~ has appointed representatives);

...

- (2) If the *firm* intends to recruit new individuals to perform *controlled functions*, it should apply for approval of the individuals as *approved persons* as soon as possible using Form A (Application to perform ~~controlled~~ senior management functions); see:

- (a) *SUP 10A.13* (for a *firm* that ~~is not an *SMCR firm*~~ has appointed representatives);

...

#### SMCR firm status

- 6.3.9 G A variation of a *firm's Part 4A permission* may mean that it becomes an *SMCR firm* or that it changes from one type of *SMCR firm* to another. This would have a number of significant consequences, which include:

- (1) the application of the special powers in relation to misconduct by *approved persons* (see *DEPP 6.2.9-AG*);
- (2) the ~~*approved persons*~~ senior managers regime ~~switches from *SUP 10A* to in *SUP 10C*~~ applies;
- (3) *COCON* applies ~~in place of *APER*~~ to its staff; and
- (4) the other elements of the regime for *SMCR firms* described in *SYSC 23.4* (Overview of the senior managers and certification regime) apply (which differ depending on the type of *SMCR firm*).

...

## 6.4 Applications for cancellation of permission

...

#### Approved persons

- 6.4.18 G (1) A *firm* which is applying for cancellation of *Part 4A permission* and which is not otherwise *authorised* by, or under, the *Act* should, at the same time:
- (a) comply with:



- (i) *SUP 10A.14.8R (for a firm that is not an SMCR firm has appointed representatives);*

...

...

...

...

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

### **10A.1 Application**

#### General

10A.1.1 R This chapter applies to every ÷

- (1) *~~firm that is not an SMCR firm; and~~*
- (2) *SMCR firm, but only to the extent required by SUP 10A.1.16BR (Appointed representatives) with respect to their appointed representatives.*

*other than a firm which has ~~permission to carry on only regulated claims management activities.~~*

...

10A.1.2 G This chapter is also relevant to ~~every FCA-approved person:~~

- (1) *~~of a firm that is not an SMCR firm~~ FCA-approved person of an appointed representative of an SMCR firm; and*
- (2) *~~of any appointed representative, including of an appointed representative of an SMCR firm.~~*

...

#### Overseas ~~firms~~ appointed representatives: UK services

- 10A.1.5 R
- (1) This chapter does not apply in relation to an ~~overseas firm~~ overseas appointed representative in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by it or its ~~appointed representative principal~~ in the United Kingdom.
  - (2) An overseas appointed representative means an appointed representative which has its registered office (or, if it has no registered office, its head office) outside the United Kingdom.

Overseas ~~firms~~ appointed representatives: UK establishments

- 10A.1.6 R -(1) Only the following *FCA ~~controlled~~ governing functions* (as modified by this rule) apply in relation to an ~~overseas firm~~ overseas appointed representative which maintains (or whose principal maintains) an establishment in the *United Kingdom* from which *regulated activities* are carried on:
- (a) the director function;
  - (b) the non-executive director function; and
  - (c) the chief executive function.
- (1) ~~the~~ The director function where only applies to the extent that the person performing that function:
- (a) has responsibility for the *regulated activities* of a the UK branch establishment which are likely to enable ~~him~~ them to exercise significant influence over that ~~branch~~ establishment; or
  - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that ~~branch~~ establishment.
- (2) ~~the~~ The non-executive director function where only applies to the extent that the person performing one of those functions that function:
- (a) has responsibility for the *regulated activities* of a the UK branch establishment which is likely to enable ~~him~~ them to exercise significant influence over that ~~branch~~ establishment; or
  - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that ~~branch~~ establishment.
- (3) ~~the chief executive function;~~ [deleted]
- (4) ~~the FCA required functions;~~ [deleted]
- (5) ~~the systems and controls function;~~ [deleted]
- (6) ~~the significant management function in so far as the function relates to:~~
- (a) ~~designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or~~

(b) ~~processing confirmations, payments, settlements, insurance claims, *client money* and similar matters in so far as this relates to *designated investment business*; and~~  
[deleted]

(7) ~~the *customer function*.~~ [deleted]

(8) An overseas appointed representative has the same meaning as in SUP 10A.1.5R.

Incoming EEA firms; and incoming Treaty firms ~~and UCITS qualifiers~~

10A.1.7 R This chapter does not apply in relation to the appointed representative of:

(1) an *incoming EEA firm*; or

(2) an *incoming Treaty firm*; ~~or~~

(3) ~~a UCITS qualifier;~~ [deleted]

if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved, under any of the *Single Market Directives*, the *Treaty*, ~~the UCITS Directive~~, the *auction regulation* or the *benchmarks regulation*, to an authority in a country or territory outside the *United Kingdom*.

10A.1.8 G SUP 10A.1.7R reflects the provisions of section 59(8) of the *Act* and, in relation to an incoming *Treaty firm* ~~and a UCITS qualifier~~, the *Treaty* ~~and the UCITS Directive~~. It preserves the principle of *Home State* prudential regulation. In relation to an *incoming EEA firm* exercising an *EEA right*, or an *incoming Treaty firm* exercising a *Treaty right*, the effect is to reserve to the *Home State regulator* the assessment of the fitness and propriety of a *person* performing a function in the exercise of that right. ~~A member of the governing body, or the notified UK branch manager, of an incoming EEA firm, acting in that capacity, will not therefore have to be approved by the FCA under the Act.~~

10A.1.9 G ~~Notwithstanding SUP 10A.1.8G, an incoming EEA firm or incoming Treaty firm will have had to consider the impact of the Host State rules with which it is required to comply when carrying on a passported activity or Treaty activity through a branch in the United Kingdom. An incoming EEA firm will have been notified of those provisions under Part II of Schedule 3 to the Act in the course of satisfying the conditions for authorisation in the United Kingdom.~~ [deleted]

10A.1.10 G ~~An incoming EEA firm will have to consider, for example, the position of a branch manager based in the United Kingdom who may also be performing a function in relation to the carrying on of a regulated activity not covered by the EEA right of the firm. In so far as the function is within the description of an FCA controlled function, the~~

~~firm will need to seek approval for that person to perform that FCA controlled function. [deleted]~~

Incoming EEA firms: ~~passport activities from a branch~~

10A.1.11 R ~~Only the following FCA controlled functions apply to an incoming EEA firm with respect to its passported activities carried on from a branch in the United Kingdom:~~

- ~~(1) the money laundering reporting function;~~
- ~~(2) the significant management function, in so far as the function relates to:~~
  - ~~(a) designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or~~
  - ~~(b) processing confirmations, payments, settlements, insurance claims, client money and similar matters, in so far as this relates to designated investment business; and~~
  - ~~(c) [deleted]~~
- ~~(3) the customer function other than where this relates to the function in SUP 10A.10.7R(4) and (7). [deleted]~~

...

Incoming EEA firms etc with top up permission activities from a UK branch

10A.1.13 R ~~In relation to the activities of a firm for which it has a top up permission, only the following FCA controlled functions apply:~~

- ~~(1) the FCA required functions, other than the apportionment and oversight function and the compliance oversight function;~~
- ~~(2) the significant management function, in so far as it relates to:~~
  - ~~(a) designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or~~
  - ~~(b) processing confirmations, payments, settlements, insurance claims, client money and similar matters, in so far as this relates to designated investment business; and~~
  - ~~(c) [deleted]~~
- ~~(3) the customer function. [deleted]~~

10A.1.14 R ~~A person does not perform the significant management function for a~~

~~firm under SUP 10A.1.11R or SUP 10A.1.13R if that person would not have been treated as performing any FCA controlled function for that firm if that firm had been a UK firm. [deleted]~~

~~Appointed representatives~~ Exclusions and modifications

10A.1.15 R ~~The descriptions of the following FCA controlled functions apply to an appointed representative of a firm, except This chapter does not apply in relation to CBTL business or to an introducer appointed representative, as they apply to an FCA authorised person: .~~

10A.1.15A (1) ~~the The FCA governing functions, subject to SUP 10A.1.16R and except for do not apply to a tied agent of an EEA MiFID investment firm; and .~~

(2) ~~the customer function other than in relation to acting in the capacity of an investment manager (see SUP 10A.10.7R(6)).~~

10A.1.16 R (1) ~~SUP 10A.1.15R~~ This chapter is modified in relation to an appointed representative meeting the conditions in (2) so that only one of the following FCA governing functions:

(a) *director function; or*

(b) *chief executive function; or*

(c) *partner function; or*

(d) *director of unincorporated association function;*

*applies, as appropriate, to an individual within that appointed representative who will be required to be an FCA-approved person.*

(2) ...

10A.1.16A R (-1) ~~This~~ The customer function is the only controlled function in this chapter that applies to an appointed representative that is an SMCR firm and has a limited permission to carry on a regulated activity prescribed for the purposes of section 39(1E)(a) of the Act as follows: .

(1) ~~FCA controlled functions apply to the appointed representative as set out in SUP 10A.1.15R and SUP 10A.1.16R in relation to the carrying on of the regulated activity, for which it does not have permission, comprised in the business for which its principal has accepted responsibility; [deleted]~~

(2) (a) ~~unless it is a not-for-profit debt advice body, the apportionment and oversight function applies in relation to the carrying on of the regulated activity for which it~~

~~has limited permission;~~

- (b) ~~if it is a not-for-profit debt advice body and a CASS large debt management firm, the CASS operational oversight function applies in relation to the carrying on of debt management activity.~~

The customer function applies to the appointed representative in relation to the carrying on of the regulated activity, for which it does not have permission, comprised in the business for which its principal has accepted responsibility.

10A.1.16B R ~~SUP 10A.1.15R and SUP 10A.1.16R apply to the appointed representative of an SMCR firm. [deleted]~~

- 10A.1.16C G (1) ~~References in this chapter to a firm include an SMCR firm, but only to the extent required by SUP 10A.1.16BR. Certain additional controlled functions apply to a firm in SUP 10A.1.16AR under SUP 10C (FCA senior managers regime for approved persons in SMCR firms).~~
- (2) ~~References in SUP 10A.1.15R and SUP 10A.1.16R to FCA governing functions and other controlled functions are to controlled functions in this chapter, not in SUP 10C (FCA senior managers regime for approved persons in SMCR firms).~~

#### Senior management functions

- 10A.1.16D G ...
- (2) Generally, the FCA does not think that a person performing a function in ~~SUP 10A.1.16BR~~ this chapter will have sufficient responsibility for managing the affairs of the appointed representative's principal (as opposed to managing the affairs of the appointed representative itself) to perform a senior management function.
- (3) Therefore:
- (a) the FCA has not designated any of the functions in ~~SUP 10A.1.16BR~~ this chapter as a senior management function; and
- (b) none of the functions in ~~SUP 10A.1.16BR~~ this chapter are designated senior management functions.

...

...

#### Members of a profession

...

**Benchmark activities**

- 10A.1.21A G (1) ~~{deleted}~~
- (2) ~~{deleted}~~
- (3) ~~{deleted}~~
- (4) ~~The *customer function* involves performing various types of activity none of which would be performed by a *firm* which does not carry on any *regulated activities* other than *administering a benchmark*. Therefore the *customer function* does not apply to such a *firm*. [deleted]~~

...

**Obligations on firms**

- 10A.1.33 G (1) The requirements in this chapter about notifications and applications are addressed to *firms*. ~~Where this chapter applies in relation to an *appointed representative*, this~~ This means it applies ~~they are addressed~~ to the *appointed representative's* principal.

...

**10A.2 Purpose**

- 10A.2.1 G The immediate purpose of *SUP* 10A.3 to *SUP* 10A.11 is to specify, under section 59 of the *Act*, descriptions of the *FCA controlled function* which are listed in *SUP* 10A.4.4R. The underlying purpose is to establish, and mark the boundaries of, the “FCA-approved persons regime” for *appointed representatives*.

**10A.3 Provisions related to the Act**

...

- 10A.3.3 G *Arrangement* is defined in section 59(10) of the *Act* as any kind of arrangement for the performance of a function which is entered into by a *firm* or any of its contractors with another *person* and includes the appointment of a *person* to an office, ~~his~~ their becoming a *partner*, or ~~his~~ their employment (whether under a contract of service or otherwise). ~~For the provisions in this chapter relating to outsourcing, see *SUP* 10A.13.5G and *SUP* 10A.13.6G.~~
- 10A.3.4 G ~~If, however, a *firm* is a member of a group, and the *arrangements* for the performance of an *FCA controlled function* of the *firm* are made by, for instance, the *holding company*, the *person* performing the function will only require approval if there is an arrangement (under section~~

59(1)) or a contract (under section 59(2)) between the *firm* and *holding company* permitting this. This need not be a written contract but could arise, for example, by conduct, custom and practice. [deleted]

...

#### 10A.4 Specification of functions

...

10A.4.2 R ~~The table of FCA controlled functions applies in relation to an FCA-  
authorised person. It also applies in relation to an appointed  
representative for the purposes of SUP 10A.1.15R to SUP 10A.1.16BR  
(Appointed representatives) whether its principal is an FCA authorised  
person or a PRA authorised person. [deleted]~~

...

10A.4.4 R FCA controlled functions

(FCA controlled functions for FCA authorised persons and appointed representatives)		
Type	CF	Description of FCA controlled function
...	..	...
<del>Significant management function*</del>	29	<del>Significant management function</del>
...	...	...
...		

#### 10A.5 Significant-influence functions

What are the FCA significant-influence functions?

10A.5.1 G The *FCA significant-influence functions*, which are specified in SUP 10A.4.1R, comprise the *FCA governing functions* (SUP 10A.6) ~~and the significant management function (SUP 10A.9)~~. SUP 10A.5 applies to each of the *FCA significant-influence functions*.

Definition of FCA significant-influence function



...

- 10A.5.3 R A *significant-influence function*, in relation to the carrying on of a regulated activity by ~~a firm~~ an appointed representative, means a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the ~~firm's~~ appointed representative's affairs, so far as relating to the activity.

...

- 10A.5.5 G Whether an *FCA controlled function* is likely to result in the *person* responsible for its performance exercising significant influence ~~on the conduct of the firm's affairs~~ is a question of fact in each case. ~~The FCA has identified the FCA significant-influence functions as satisfying this condition.~~

- 10A.5.5A G A function is not a *significant-influence function* unless it also meets the requirements of SUP 10A.3.1R (Provisions related to the Act).

Periods of less than 12 weeks

- 10A.5.6 R If:
- (1) a *firm* or its *appointed representative* appoints an individual to perform a function which, but for this *rule*, would be an *FCA significant-influence function*;

...

- 10A.5.7 G SUP 10A.5.6R enables cover to be given for, as an example, holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy. However, as soon as it becomes apparent that a *person* will be performing an *FCA controlled function* for more than 12 weeks, the ~~firm~~ authorised approved person employer of the approved person in question should apply for approval.

## 10A.6 FCA governing functions

Introduction

- 10A.6.1 G Every ~~firm~~ appointed representative will have one or more *persons* responsible for directing its affairs. These *persons* will be performing the *FCA governing functions* and will be required to be *FCA-approved persons* unless the application provisions in SUP 10A.1, or the particular description of an *FCA controlled function*, provide otherwise. For example, each *director* of a *company* incorporated under the Companies Acts will perform an *FCA governing function*.

...

What the FCA governing functions include

- 10A.6.3 R Each of the *FCA governing functions* includes:
- (1) ~~(where apportioned under SYSC 4.3.1R and SYSC 4.4.3R (or, for a full scope UK AIFM apportioned under article 60(1) of the AIFMD level 2 regulation))~~
    - (a) ~~the systems and controls function~~ (if it applies to the *firm*); and
    - (b) ~~the significant management function~~;
  - (2) ~~(in respect of bidding in emissions auctions) that part of the customer function specified in SUP 10A.10.7R(7) (bidder's representative).~~
- ~~This does not apply to the non-executive director function or the function described in SUP 10A.6.8R. [deleted]~~
- 10A.6.4 G (1) ~~The effect of SUP 10A.6.3R is that a person who is approved to perform an FCA governing function will not have to be specifically FCA approved to perform the systems and controls function or the significant management function or the part of the customer function specified in SUP 10A.10.7R(7). However, a person who is approved to perform an FCA governing function will have to be additionally FCA approved before he can perform any of the FCA required functions or the customer function (except the part specified in SUP 10A.10.7R(7)).~~
- (2) ~~SUP 10A.6.3R does not apply to the non-executive director function. It does not apply to the director function if the only part of that function that the FCA approved person is performing is the function described in SUP 10A.6.8R. [deleted]~~
- 10A.6.5 G ~~See MIPRU 2.2 for how the FCA's approved persons regime is adjusted for a firm carrying on insurance distribution activity. [deleted]~~
- Director function (CF1)
- 10A.6.7 R If ~~a firm~~ an appointed representative is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of a *director* (other than *non-executive director*) of that ~~firm~~ appointed representative.
- 10A.6.8 R (1) If ~~a firm~~ an appointed representative is a *body corporate* (other than a *limited liability partnership*), the *director function* is also the function of acting in the capacity of a *person*:

- (a) who is a *director*, partner, officer, member (if the *parent undertaking* or *holding company* is a *limited liability partnership*), *senior manager*, or employee of a *parent undertaking* or *holding company* of the ~~firm~~ appointed representative; and
  - (b) whose decisions or actions are regularly taken into account by the *governing body* of the ~~firm~~ appointed representative.
- (2) (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
  - (3) (1) does not apply to the function falling into *SUP 10A.6.13R* (*non-executive director* of the *parent undertaking* or *holding company*).

- 10A.6.9      G      ~~Examples of where *SUP 10A.6.8R* might apply include (but are not limited to):~~
- (1) ~~a chairman of an audit committee of a *parent undertaking* or *holding company* of a *UK firm* where that audit committee is working for that *UK firm* (that is, functioning as the audit committee for the group); or~~
  - (2) ~~a *director* (other than a *non-executive director*) of a *parent undertaking* or *holding company* of a *UK firm* exercising significant influence by way of his involvement in taking decisions for that *UK firm*; or~~
  - (3) ~~an individual (such as a *senior manager*) of a *parent undertaking* or *holding company* of a *UK firm* who is responsible for and/or has significant influence in setting the objectives for and the remuneration of executive *directors* of that *UK firm*; or~~
  - (4) ~~an individual who is a *director* (other than a *non-executive director*) or a *senior manager* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influencing the operations of that *UK firm*, and acts in a manner in which it can reasonably be expected that an executive *director* or *senior manager* of that *UK firm* would act; or~~
  - (5) ~~an individual of an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on, where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*. [deleted]~~

...

## Non-executive director function (CF2)

- 10A.6.12 R If a ~~firm~~ an appointed representative is a body corporate, the *non-executive director function* is the function of acting in the capacity of a *non-executive director* of that ~~firm~~ appointed representative.
- 10A.6.13 R (1) If a ~~firm~~ an appointed representative is a body corporate, the *non-executive director function* is also the function of acting in the capacity of a person:
- (a) who is a *non-executive director* of a parent undertaking or holding company; and
  - (b) whose decisions or actions are regularly taken into account by the governing body of the ~~firm~~ appointed representative.
- (2) However, (1) does not apply if that parent undertaking or holding company has a Part 4A permission or is regulated by an EEA regulator.
- 10A.6.14 G Examples of where ~~SUP 10A.6.13R~~ might apply include (but are not limited to):
- (1) ~~an individual who is a non-executive director of a parent undertaking or holding company who takes an active role in the running of the business of a UK firm, for example, as a member of a board or committee (on audit or remuneration) of that firm; or~~
  - (2) ~~an individual who is a non-executive director of a parent undertaking or holding company having significant influence in setting and monitoring the business strategy of the UK firm; or~~
  - (3) ~~an individual who is a non-executive director of a parent undertaking or holding company of a UK firm involved in carrying out responsibilities such as scrutinising the approach of executive management, performance, or standards of conduct of the UK firm; or~~
  - (4) ~~an individual who is a non-executive director of a parent undertaking or holding company of a UK firm who is accustomed to influence the operations of the UK firm, and acts in a way in which it can reasonably be expected that a non-executive director of the UK firm would act; or~~
  - (5) ~~an individual who is a non-executive director of an overseas firm which maintains a branch in the United Kingdom from which regulated activities are carried on where that individual~~

~~has responsibilities for those regulated activities which are likely to enable him to exercise significant influence over the UK branch.~~ [deleted]

Guidance on persons in a parent undertaking or holding company exercising significant influence

- 10A.6.16 G (1) The explanation in SUP 10C.5B.2G of the basis on which the *group entity senior manager function* is included as a *controlled function* for an *SMCR firm* is also relevant to the basis on which the *director function* and the *non-executive director function* are applied to persons who have a position with the ~~firm's~~ appointed representative's parent undertaking or holding company under SUP 10A.6.8R or SUP 10A.6.13R.
- (2) The guidance in SUP 10C.5B.3G to SUP 10C.5B.5G about when the *group entity senior manager function* applies to an *SMCR firm* is also relevant to when those who have a position with a ~~firm's~~ an appointed representative's parent undertaking or holding company may be performing a *controlled function* under SUP 10A.6.8R or SUP 10A.6.13R.

Chief executive function (CF3)

- 10A.6.17 R The *chief executive function* is the function of acting in the capacity of a *chief executive* of a ~~firm~~ an appointed representative.
- 10A.6.18 G This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the *governing body*:
- (1) for the conduct of the whole of the business (or relevant activities); or
- (2) in the case of a ~~branch~~ branch in the *United Kingdom* of an ~~overseas firm~~ a non-UK appointed representative, for the conduct of all of the activities subject to the *UK regulatory system*.
- 10A.6.19 G For a ~~branch~~ branch in the *United Kingdom* of an ~~overseas firm~~ a non-UK appointed representative, the FCA would not normally expect the overseas *chief executive* of the ~~firm~~ appointed representative as a whole to be FCA-approved for this function where there is a *senior manager* under ~~him~~ them with specific responsibility for those activities of the ~~branch~~ branch which are subject to the *UK regulatory system*. In some circumstances, the person within the ~~firm~~ appointed representative responsible for *UK operations* may, if the function is likely to enable ~~him~~ them to exercise significant influence over the ~~branch~~ branch, also perform the *chief executive function* (see SUP 10A.7.4G).

...

## Partner function (CF4)

- 10A.6.23 R (1) If ~~a firm~~ an appointed representative is a *partnership*, the *partner function* is the function of acting in the capacity of a *partner* in that ~~firm~~ appointed representative.
- (2) If the principal purpose of the ~~firm~~ appointed representative is to carry on one or more *regulated activities*, each *partner* performs the *partner function*.
- (3) If the principal purpose of the ~~firm~~ appointed representative is other than to carry on *regulated activities*:
- (a) a *partner* performs the *partner function* to the extent only that ~~he has~~ they have responsibility for a *regulated activity*; and
- (b) a *partner* in a ~~firm~~ an appointed representative will be taken to have responsibility for each *regulated activity* except where the *partnership* has apportioned responsibility to another *partner* or group of *partners*.
- 10A.6.26 R If ~~a firm~~ an appointed representative is a *limited liability partnership*, the *partner function* extends to the ~~firm~~ appointed representative as if the ~~firm~~ appointed representative were a *partnership* and a member of the ~~firm~~ appointed representative were a *partner*.

...

## Director of unincorporated association function (CF5)

- 10A.6.29 R If ~~a firm~~ an appointed representative is an unincorporated association, the *director of unincorporated association function* is the function of acting in the capacity of a *director* of the unincorporated association.

...

~~Small friendly society function (CF6)~~

SUP 10A.9 (Significant management functions) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted], as shown below.

## 10A.9 Significant management functions [deleted]

Amend the following as shown.

**10A.10 Customer-dealing functions**

## Introduction

- 10A.10.1 R *SUP 10A.10 applies with respect to activities carried on from an establishment maintained by the ~~firm~~ (or by its appointed representative) or its principal in the United Kingdom.*

...

## The basic rule about the customer function

...

- 10A.10.5 R The customer-dealing function, in relation to ~~the carrying on of a regulated activity by a firm~~ an appointed representative ("A"), means a function that will involve the *person* performing it in dealing with:

...

- 10A.10.5A R In *SUP 10A.10.5R*, customer, in relation to ~~a firm~~ an appointed representative, means a person who is using, or who is or may be contemplating using, any of the services provided by the ~~firm~~ appointed representative.

- 10A.10.5B G A function is not included in the customer function unless it also meets the requirements of *SUP 10A.3.1R* (Provisions related to the Act).

...

- 10A.10.9 G The *FCA* would expect an individual from overseas to be accompanied on a visit to a *customer*. *TC 2.1.9R(2)* (where it applies) provides that the *firm* will have to be satisfied that the individual has at least three years of up-to-date, relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of *TC 2.1.9R(2)* are disapplied in these circumstances (except for an individual who gives advice to *retail clients* on *retail investment products*, gives advice on *P2P agreements* to *retail clients* or is a *broker fund adviser*). The effect of this is that such individuals need not attain the relevant regulatory module of an appropriate qualification (see *TC 2.1.9R(2)*).

...

**10A.12 Procedures relating to FCA-approved persons**

## Forms

- 10A.12.1 G The forms listed in *SUP 10A.12.2G* are referred to in *SUP 10A.12* (Procedures relating to FCA-approved persons) to ~~*SUP 10A.17* (Further questions)~~ *SUP 10A.16* (How to apply for approval and give notifications).

## 10A.12.2 G Table: FCA-approved persons forms

Form		Purpose	Handbook requirement
the relevant Form A	<del>The relevant online form on the FCA and PRA's online notification and application system or the form in SUP 10A Annex 4D (See Note) SUP 10C Annex 3D</del>	Application to perform controlled functions under the approved persons regime	SUP 10A.13.3D
...			
Form E	<del>The relevant online form on the FCA and PRA's online notification and application system system or the form in SUP 10A Annex 8D (See Note) SUP 10C Annex 7D</del>	Internal transfer of an <i>approved person</i>	SUP 10A.14.4D
Note (1) [deleted]			
Note (2): Where <del>SUP 10A.1.16BR</del> (appointed representative of an SMCR firm) applies, the version of the form to be used is the one required by SUP 10C (FCA senior managers regime for approved persons in SMCR firms).			

10A.12.3 G ~~A summary of the forms and their purposes is in SUP 10A Annex 2. [deleted]~~

10A.12.4 G Unless the context otherwise requires, in SUP 10A.12 (Procedures relating to FCA-approved persons) to ~~SUP 10A.17 (Further questions)~~ SUP 10A.16 (How to apply for approval and give notifications) where reference is made to a *firm*, this also includes an applicant for *Part 4A permission*, and other *persons* seeking to carry on *regulated activities* as an *authorised person*.

...



## 10A.13 Application for approval and withdrawing an application for approval

...

How to apply for approval

...

10A.13.3A D If a *firm* must make an application using Form A, it must use Form A (shortened form) if:

(1) the *candidate*:

(a) has *current approved person approval* to perform:

(i) an *FCA controlled function* that is a ~~*significant influence function*~~ *significant-influence function*; or

...

...

...

...

Who should make the application?

10A.13.5 G (1) In accordance with section 60 of the *Act* (Applications for approval), applications must be submitted by, or on behalf of, the *firm* itself, not by:

(a) the *FCA candidate*; or

(b) ~~(where the *FCA candidate* works for the *firm's parent undertaking or holding company*) by the *firm's parent undertaking or holding company*~~ the appointed representative.

(2) Usually this will be the *firm* that is employing the *FCA candidate* to perform the *FCA controlled function*. Where a *firm* has outsourced the performance of an *FCA controlled function*, the details of the outsourcing determine where responsibility lies and whom the *FCA* anticipates will submit *FCA-approved persons* application forms. SUP 10A.13.6G describes some common situations. The *firm* which is outsourcing is referred to as “A” and the *person* to whom the performance of the *FCA controlled function* has been outsourced, or which makes the arrangement for the *FCA controlled function* to be performed, is referred to as “B”. In each situation, A must take reasonable care to ensure that, in accordance with section 59(2) of the *Act*,

~~no person performs an FCA controlled function under an arrangement entered into by its contractor in relation to the carrying on by A of a regulated activity, without approval from the FCA. See also SYSC 8.1.1R. [deleted]~~

10A.13.6 G Outsourcing arrangements [deleted]

Outsourcing arrangements		Submitting form
<i>Firm A to firm B</i>	The FCA will consider A to have taken reasonable care if it enters into a contract with B under which B is responsible for ensuring that the relevant FCA controlled functions are performed by <del>FCA approved persons</del> , and that it is reasonable for A to rely on this	<i>Firm B submits FCA-approved persons forms on behalf of firm A</i>
Outsourcing by A to B (both being a member of the same <i>United Kingdom</i> group and each having its registered office in the <i>United Kingdom</i> )	See <del>SUP</del> 10A.3.4G	See <del>SUP</del> 15.7.8G
(i) A to B, where B is a non-authorised person not part of the same group as A (ii) A to B, where A is a <i>branch</i> of an <i>overseas firm</i> in the <i>United Kingdom</i> , and B is an overseas undertaking of the same group (iii) A to B, where A is a UK authorised subsidiary of an <i>overseas firm</i> and B is an overseas undertaking of the	Responsibility for (as opposed to the performance of) any activity outsourced to B will remain with A. See SYSC 8	A ensures that an individual approved by the FCA under a controlled function that is a <i>significant-influence function</i> has responsibility for the outsourced arrangement and A submits a form in relation to that individual

same group		
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...

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

Moving within a firm

...

- 10A.14.2 G If ~~an FCA approved person or a PRA approved person~~
- (1) a firm is applying for approval for someone to perform a controlled function under this chapter; and
- (2) that person is also ceasing to perform FCA controlled functions or a PRA controlled function, as well as applying for approval in respect of FCA controlled functions within in relation to the same firm or in relation to a firm in the same group ;
- the ~~firm~~ firm should generally use Form E. Further details can be found in SUP 10A.14.4D.
- 10A.14.3 G If a *person* is to perform an *FCA controlled function* ~~for~~ under this chapter in relation to a firm for which they already perform an FCA controlled function as an approved person (whether under this chapter or SUP 10C (FCA senior managers regime for approved persons in SMCR firms)) but they are not at the same time ceasing to perform an *FCA controlled function* or *PRA controlled function* for the *firm* or a *firm* in the same group, a *firm* should use Form A. See SUP 10A.13.3D and SUP 10A.13.3AD for further details.
- 10A.14.3A G See SUP 10A.14.23G for circumstances in which a firm should use Form D rather than Form A or E.
- 10A.14.4 D (1) A *firm* must use Form E where an *approved person* is both ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *FCA controlled functions* ~~within in relation to~~ the same firm or in relation to a firm in the same group.
- (2) A *firm* must not use Form E if:
- ...
- (c) any of the following apply (where applicable):
- ...
- (ii) ...

in relation to any:

(iii) ...

... (iv) *controlled function* that they are continuing to perform ~~for~~ in relation to that *firm* or to a firm in the same *group*.

...

...

#### Moving between firms

10A.14.6 G If it is proposed that an *FCA-approved person* will no longer be performing an *FCA controlled function* under an *arrangement* entered into by ~~one firm or one of its contractors~~ the appointed representative of one principal, but will be performing the same or a different *FCA controlled function* under an *arrangement* entered into by ~~a new firm or one of its contractors~~ the appointed representative of a new principal (whether or not the new firm is in the same group as the old firm), the new ~~firm~~ principal will be required to make a fresh application for the performance of the *FCA controlled function* by that *person*. This applies even if the new principal is in the same group as the old principal or the appointed representative is the same.

#### Ceasing to perform an FCA controlled function

10A.14.8 R ...

(2) If:

(a) the *firm* is also making an application for approval for that *approved person* to perform a *controlled function* ~~within~~ in relation to the same firm or to a firm in the same group; and

...

...

10A.14.10 R ...

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

(a) relates to the fact that the *firm* or the appointed representative has dismissed, or suspended, the *FCA-approved person* from its employment; or

(b) relates to the resignation by the *FCA-approved person* while under investigation by the *firm*, the appointed

representative, the *FCA* or any other *regulatory body*; or

...

...

#### Changes to an approved person's personal details

- 10A.14.15 R If an *FCA-approved person's* title, name or national insurance number changes, the *firm* for which the *person* performs an *FCA-controlled function* ~~authorised approved person employer~~ must notify the *FCA* on Form D (*SUP 10C Annex 6R*) of that change within seven *business days* of the *firm* becoming aware of the matter.

...

- 10A.14.21 G (1) If, in relation to a *firm* which has completed the relevant Form A (~~*SUP 10A Annex 4D*~~) (*SUP 10C Annex 3D*), any of the details relating to arrangements and *FCA controlled functions* are to change, the *firm* must notify the *FCA* on Form D (*SUP 10C Annex 6R*).

...

...

### 10A.15 References and accurate information

#### References

- 10A.15.1 G (1) *SYSC 22* (Regulatory references) says that if a *firm* (A):
- (a) is considering appointing a *person* (P) to perform any *controlled function* or certain other functions;
  - (b) requests a reference from a *firm* (B) that is P's current or former *employer*; and
  - (c) indicates to B the purpose of the request;
- B should, as soon as reasonably practicable, give a reference to A.
- (2) ~~This applies even if A is a *firm* to which *SUP 10C* (FCA senior managers regime for approved persons in SMCR firms)) applies rather than this chapter.~~ *SYSC 22.8.3R* and *SYSC 22.8.4R* (Appointed representatives) say that this applies to B's appointed representatives as well as to B.

...

#### The need for complete and accurate information

- 10A.15.4 G The obligations to supply information to the *FCA* under either *SUP* 10A.14.8R or *SUP* 10A.14.10R 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* or its appointed representative and an *employee* upon termination of the *employee*’s employment. A *firm* should not (and should ensure that its appointed representatives do not) enter into any such arrangements or agreements that could conflict with its obligations under this section.

...

## 10A.16 How to apply for approval and give notifications

- 10A.16.1 D (1) This direction applies to an application under Form A or Form E.
- (2) An application ~~by a firm~~ must be made by submitting the Form ~~online at fca.org.uk using the form specified on the FCA’s and PRA’s online notification and application system~~ in accordance with the requirements in *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) about the submission of those Forms.

...

- (4) ~~Where a firm is obliged to submit an application online under (2), if the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a firm must use the form in *SUP* 10A Annex 4D or *SUP* 10A Annex 8D and submit it in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).~~ [deleted]
- (5) ~~An application by a firm in relation to a controlled function to which *SUP* 10A.1.16BR (appointed representative of an SMCR firm) applies must be made in accordance with *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) and not this section.~~ [deleted]

- 10A.16.2 R (1) This *rule* applies to a notification under Form B, Form C or Form D.
- (2) A notification must be made in accordance with *SUP* 10A.16.1D, ~~except that the annexes in which the forms are to be found are *SUP* 10C Annex 5R or *SUP* 10C Annex 6R, rather than the Annexes mentioned in *SUP* 10A.16.1D~~ the requirements in *SUP* 10C.15 (Forms and other documents and how to submit them to the FCA) about the submission of those Forms.

- (3) ~~A notification by a firm in relation to a controlled function to which SUP 10A.1.16BR (appointed representative of an SMCR firm) applies must be made in accordance with SUP 10C.15 (Forms and other documents and how to submit them to the FCA) and not this section. [deleted]~~
- 10A.16.2A R ~~SUP 10A.16.2R(3) rule also applies to Form B in relation to a controlled function to which SUP 10A.1.16BR (appointed representative of an SMCR firm) applies. [deleted]~~
- 10A.16.3 G ~~If the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, the FCA and PRA will endeavour to publish a notice on their websites confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 10A.16.1D(4) and SUP 15.7.4R to SUP 15.7.9G (Form and method of notification) should be used. [deleted]~~
- 10A.16.4 G ~~Where SUP 10A.16.1D(4) or the equivalent situation under SUP 10A.16.2R applies to a firm, GEN 1.3.2R (Emergency) does not apply. [deleted]~~

SUP 10A.17 (Further questions) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted], as shown below.

#### **10A.17 Further questions [deleted]**

Delete the following Annexes. The deleted text of each Annex is not shown but they are marked [deleted] as shown below.

#### **10A Annex 1G Frequently asked questions [deleted]**

#### **10A Annex 2G Approved persons regime: summary of forms and their use for applications for approval to perform an FCA-controlled function [deleted]**

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

#### **10A Annex 8D Form E: Internal transfer of an approved person [deleted]**

Amend the following as shown.

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

### **10C.1 Application**

#### General

...

10C.1.2A G *SUP* 10C Annex 1 (What functions apply to what type of firm) sets out:

- (1) ...
- (2) the *SMCR firms* to which no controlled functions in this chapter ~~does not~~ apply.

...

#### Appointed representatives

10C.1.7 R This chapter does not deal with an *approved person* who is approved under ~~*SUP* 10A.1.16BR (Appointed representatives)~~ *SUP* 10A (FCA Approved Persons in Appointed Representatives).

10C.1.8 G (1) ~~*SUP* 10A.1.15R to *SUP* 10A.1.16DG (Appointed representatives) deal~~ *SUP* 10A (FCA Approved Persons in Appointed Representatives) deals with the *approved persons* regime for *appointed representatives* of *SMCR firms*.

...

...

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

...

#### Types of controlled function

...

10C.3.4 G The *FCA* has (in *SUP* 10A (FCA Approved Persons in Appointed Representatives)) specified *controlled functions* for *SMCR firms* that are not *designated senior management functions*. ~~(See *SUP* 10C.1.7R to *SUP* 10C.1.8G (Appointed representatives)).~~

...



**10C.4 Specification of functions**

...

- 10C.4.4 G As described in *SUP* 10C.1.7R to *SUP* 10C.1.8G (Appointed representatives), *SUP* 10A (FCA Approved Persons in Appointed Representatives) specifies certain other *controlled functions* for *SMCR firms*.

...

**10C.4A FCA governing functions: General**

...

Sole traders

- 10C.4A.2 G (1) An individual *sole trader* themselves will not need approval to perform any of the FCA governing functions. Therefore the FCA governing functions do not apply to a *sole trader* with no employees.
- (2) It is possible, although perhaps not likely in practice, that the FCA governing functions could apply to staff working for the *sole trader*.

...

...

**10C.6 ~~FCA required functions~~ FCA required functions**

...

Limited scope function (SMF29)

- 10C.6.5 R The *limited scope function* is the function of acting in the capacity of a *person*;
- (1) responsible for the apportionment function and/or the oversight function set out in *SYSC* 4.4.5R<sub>2</sub>;
- (2) who has the responsibility allocated under *MAR* 8.5.2R (Responsibility for benchmark activities: regulated benchmark administrators); or
- (3) performing the role of the senior manager described in *MAR* 8.5.4R(2) (Responsibility for benchmark activities: regulated benchmark administrators).

10C.6.6 G ~~The fact that there is a *person* performing the *limited scope function*, and who has responsibility for activities subject to regulation by the *FCA*, may have a bearing on whether a manager who is based overseas will be performing an *FCA controlled function*. It is a factor to take into account when assessing the likely influence of the overseas manager.~~  
[deleted]

...

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

...

The chief operations function (SMF24)

10C.6B.2 R (1) ...  
(2) ...  
(b) the matters to which any of the *FCA required functions* relate; or

...

...

...

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

...

Definition

...

10C.7.3 G

Example	Comments
...	...
(9) 'A' is appointed to a role for Firm X that comes within the <i>PRA's</i> Head of Key Business Area <i>designated senior management function</i> . It is also a potential <i>other overall responsibility function</i> . Later, the <i>firm</i> reorganises—A's role stays	... The relevant <i>PRA</i> rules can be found in Chapter 2 of the part of the <i>PRA Rulebook</i> titled 'Senior Management Functions', Chapter 2 of the part of the <i>PRA Rulebook</i> titled 'Insurance - Senior Management Functions' and Chapter 2 of the part of the <i>PRA Rulebook</i> titled 'Large Non-Solvency

the same but now it falls outside the <i>PRA's</i> Head of Key Business Area <i>designated senior management function</i> .	<u>II Firms – Senior Management Functions</u> .  <del>This example only applies if Firm X is an <i>SMCR banking firm</i>. If Firm X is an insurer it will need to obtain <i>FCA</i> approval before the reorganisation takes effect as the relevant <i>PRA</i> insurance rules are different from the ones for <i>SMCR banking firms</i>.</del>
...	

...

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

...

### How to apply for approval

...

- 10C.10.8A D If a *firm* must make an application using Form A, it must use Form A (shortened form) if:
- (1) the *candidate*:
    - (a) has *current approved person approval* to perform:
      - (i) an *FCA controlled function* that is a ~~*significant influence function*~~ *significant-influence function*;
      - or

...

...

...

...

- 10C.10.9 D (1) ...
- (2) A *firm* must not use Form E if the *approved person* has never before been approved to perform for any *firm*:
    - (a) an *FCA controlled function* that is a ~~*significant influence function*~~ *significant-influence function*; or

...

- (3) A *firm* must not use Form E if the *approved person* has not been subject to a *current approved person approval* from the *FCA* or *PRA* to perform for any *firm* for more than six months:

- (a) an *FCA controlled function* that is a ~~*significant influence function*~~ *significant-influence function*; or

...

...

...

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

Purpose

...

10C.12.2 G ...

- (3) The *FCA* has (in *SUP* 10A (FCA Approved Persons in Appointed Representatives)) specified *controlled functions* for *SMCR firms* that are not *designated senior management functions*. ~~See *SUP* 10C.1.7R to *SUP* 10C.1.8G (Appointed representatives) for more about this.~~

...

...

## 10C.15 Forms and other documents and how to submit them to the FCA

...

Forms and documents

...

10C.15.3 G Table: FCA approved persons forms and other documents

Form or other document		Purpose	Handbook requirement
...	...	...	...
Form B	<i>SUP</i> 10C Annex 4R	Notice to withdraw an application to	<i>SUP</i> 10C.10.36R

		perform <i>controlled functions</i> under the <del>approved</del> <u>persons</u> <u>senior managers</u> regime	
		...	...
...	...	...	...
Annex III template	...	...	...
[Note: Some of these forms are also used for the purposes of <i>SUP</i> 10A (FCA Approved Persons in Appointed Representatives)]			

...

## 10C.16 References and accurate information

### References

- 10C.16.1 R (4) SYSC 22 (Regulatory references) says that if a *firm* (A):
- (1) (a) is considering appointing a *person* (P) to perform any *controlled function* or certain other functions;
  - (2) (b) requests a reference from a *firm* (B) that is P's current or former *employer*; and
  - (3) (c) indicates to B the purpose of the request;
- B should, as soon as reasonably practicable, give a reference to A.
- (2) ~~This applies even if A is a *firm* to which SUP 10A (FCA Approved Persons) applies rather than this chapter.~~

...

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

### Part One: Introduction

...

1.3 G ...

(3) Another reason would be if the *rules* defining the *FCA controlled function* refer to a *rule* elsewhere in the *FCA Handbook* and the latter only applies to certain types of *firm*. For example  $\tau$  :

(a) *SYSC 1 Annex 1 (Detailed application of SYSC) cuts back the application of some of the FCA required functions*;

(b) see the entry for this chapter in the table in *BENCH 2.1.2G* (Parts of the Handbook applicable to the regulated activity of administering a benchmark) for an example relating to *FCA required functions*.

...

...

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

7.1 R *Limited scope SMCR firms* are divided into the following categories for the purposes of *SUP 10C Annex 1*:

(1) a *firm* falling within the table in *SYSC 23 Annex 1 6.4R* that does not come within (2) to (4A) or (8) to (9);

...

(4) ...

(4A) a limited scope SMCR benchmark firm;

(5) a *sole trader* who does not come within (1) to (4A), (8) or (9);

(6) an *authorised professional firm* that does not come within (1) to (4A), (8) or (9);

...

...

7.3 R (1) The table in *SUP 10C Annex 1 7.4R* sets out which *FCA controlled functions* apply to a *limited scope SMCR firm* covered by *SUP 10C Annex 1 7.1R*(1), (2), (3), (4), (4A), (8) or (9).

...

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

Part 1.1 (UK and non-EEA firms)						
(1) Brief description of function	(2) Function number	(3) General	(4) Insurance distribution firms	(5) Credit firms	(6) Consumer credit appointed representatives	(7) <u>Benchmark firms</u>
Governing functions						
The <i>governing functions</i> that apply to <i>core SMCR firms</i>	Various	...	...	...	...	×
Required functions						
<i>Compliance oversight function</i>	SMF 16	...	...	...	...	×
<i>Money laundering reporting function</i>	SMF 17	...	...	...	...	×
<i>Limited scope function</i>	SMF 29	...	...	...	...	✓

...

Notes to the table
<p>Note (1): The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> at SUP 10C Annex 1 7.1R. Therefore:</p> <p>...</p> <p>(4) column six of Parts 1.1 and 1.2 of the table (Consumer credit appointed representatives) refers to SUP 10C Annex 1 7.1R(4);</p> <p>(5) column seven of Part 1.1 of the table (Benchmark firms) refers to SUP 10C Annex 1 7.1R(4A);</p> <p>(4 6) column three of Part 2 of the table (Class 1 claims management firms) refers to SUP 10C</p>

Annex 1 7.1R(8); and

(§ 7) column four of Part 2 of the table (Other Claims management firms) refers to *SUP 10C Annex 1 7.1R(9)*.

...

7.5 R (1) ...

(2) The *FCA required functions* apply in relation to the carrying on of the *regulated activity* for which it has *limited permission*.

(3) The *FCA governing functions* apply in relation to the carrying on of the *regulated activity*, for which it does not have *permission*, comprised in the business for which its *principal* has accepted responsibility.

(4) If the *appointed representative* meets the conditions in *SUP 10A.1.16R(2)*, only one of the *FCA governing functions* applies under (3), as appropriate, to an individual within that *appointed representative* who will be required to be an *FCA-approved person*.

...

7.11 G (1) ...

(2) ...

(a) In practice it is unlikely that the *FCA governing functions* will apply to a sole trader (see *SUP 10C.4A.2G*).

...

...

## 10C Summary of forms and their use in the senior managers regime

### Annex

### 2G

Function	Form	Submission
...	...	...
(2) The <i>candidate</i> is to perform an <i>FCA-designated senior management function</i> and either: (a) has current approval to perform an <i>FCA</i>	...	...



<p><i>controlled function that is a <del>significant influence function</del> <u>significant-influence function</u>, an FCA-designated senior management function, or a PRA controlled function; or</i></p> <p>(b) ...</p>		
...	...	...
<p>(4) Either:</p> <p>(a) <i>candidate</i> is seeking to perform an FCA-designated senior management function for the first time and has never been approved to perform an FCA controlled function that is a <del>significant influence function</del> <u>significant-influence function</u> or a PRA controlled function before; or</p> <p>(b) <i>candidate</i> ceased to have approval from the FCA or PRA to perform an FCA controlled function that is a <del>significant influence function</del> <u>significant-influence function</u>, an FCA-designated senior management function or a PRA controlled function more than six months ago.</p>	...	...
...	...	...
<p>(18) <i>Person (P)</i> has approval to perform a <u>an FCA governing function</u> under SUP 10A (<u>FCA Approved Persons in Appointed Representatives</u>) for an <i>appointed representative</i> of an <i>SMCR firm (F)</i>. P then takes up an FCA-designated senior management function position with F itself and gives up their role with the <i>appointed representative</i>.</p>	E	<p>Submitted by F to the FCA before changes take place.</p> <p>F should use a Form E because the function P performs for the <u>appointed representative</u> is treated as <del>performing</del> <u>being performed</u> in relation to F and so P is applying for approval to <u>perform</u> an FCA-designated senior management function <del>for</del> <u>in relation to</u> the same firm (F).</p>

...

## 12 Appointed representatives

...

### 12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

Obligations of firms under the approved persons and senior managers regime

- 12.6.8 G (1) ~~Some of the controlled functions, as set out in SUP 10A.4.1R, SUP 10A apply~~ applies certain controlled functions to an *appointed representative of a firm, other than an introducer appointed representative, just as they apply to a firm (see SUP 10A.1.15R).* ~~These are the governing functions and the customer function.~~ In the case of an *appointed representative* that also has a *limited permission*, ~~an FCA designated senior management function may apply to it and SUP 10C may apply in addition to SUP 10A.~~
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]

...

### 13A Qualifying for authorisation under the Act

...

### 13A Application of the Handbook to Incoming EEA Firms Annex 1G

...

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of a firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...	...	...
APER	APER applies to approved persons of <del>firms other than</del> <u>appointed representatives of SMCR firms</u> . See below under SUP 10A as to whether <del>controlled functions are performed, and approval</del>	Not relevant because SUP 10A does not apply

	<del>therefore required.</del>	
...	...	...
<i>SUP</i>	...	...
	<b>SUP 10A (<u>FCA</u> Approved persons <u>in Appointed Representatives</u>)</b> Applies to an <i>EEA firm</i> that is <del>not</del> an <i>SMCR firm</i> , <del>but the applicable controlled functions are limited. See SUP 10A.1 (Application) for more detailed guidance and has appointed representatives.</del>	<b>SUP 10A (<u>FCA</u> Approved persons <u>in Appointed Representatives</u>)</b> Does not apply ( <del><i>SUP</i> 10A.1.6R</del> ).
	...	...
...	...	...

...

## 15 Notifications to the FCA

### 15.1 Application

...

SMCR firms

15.1.7 R The following apply only to *SMCR firms*:

- (1) *SUP* 15.2.5G (Purpose);
- (2) *SUP* 15.11 (Notification of COCON breaches and disciplinary action);
- (3) *SUP* 15.15 (Enhanced scope SMCR firm retail intermediaries); ~~and~~
- (4) *SUP* 15.16 (Notification of changes in the management body); and
- (5) *SUP* 15.17 (Notification by limited scope SMCR benchmark firm).

...

### 15.3 General notification requirements

...

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

...

- 15.3.14A G (1) Some matters that need to be notified under *SUP* 15.3.11R may also have to be notified under *SUP* 10A.14 or *SUP* 10C.14 (Changes to an FCA-approved person's details).

...

...

Insert a new section, *SUP* 15.17, after *SUP* 15.16 (Notification of changes in the management body). The text is not underlined.

**15.17 Notification of regulated income by limited scope SMCR benchmark firm**

## Application

- 15.17.1 R This section of the *FCA Handbook* applies to a *limited scope SMCR benchmark firm*.

## Purpose

- 15.17.2 G (1) As explained in *SYSC* 23 Annex 1 6.12R, the *FCA* may grant a *waiver* to certain benchmark *firms* that treats them as a *limited scope SMCR firm*.
- (2) One of the eligibility conditions that the *FCA* anticipates it will apply is that the *firm's* income from benchmark activities is below 20% of its total income.
- (3) The purpose of this section of the *FCA Handbook* is to allow the *FCA* to monitor whether a *firm* continues to meet that condition after it has received the *waiver*.
- (4) The *waiver* may modify or replace this section to be consistent with the basis on which a *firm* receives the *waiver* if the *firm* receives the *waiver*:
- (a) on a different basis from the one described in (2);
  - (b) on the basis of an adjusted calculation of revenue as contemplated by *SYSC* 23 Annex 1 6.17G(5) (Benchmark firms: When the waiver is likely to be available); or
  - (c) on some other basis inconsistent with this section.

## Definitions

- 15.17.3 R In this section of the *FCA Handbook*:
- (1) a *firm's* reporting year means the annual period in respect of which it prepares its *annual financial statements*;
  - (2) reporting date is defined in SUP 15.17.9R;
  - (3) annual regulated income is defined in SUP 15.17.6R;
  - (4) annual income is defined in SUP 15.17.5R.

#### Obligation to make calculations

- 15.17.4 R A *firm* must calculate, for each reporting year, whether or not its annual regulated income is less than 20% of its annual income.
- 15.17.5 R A *firm's* annual income for a reporting year is the gross inflow of economic benefits (i.e. cash, receivables and other assets) recognised in the *firm's* *annual financial statements* for that reporting year.
- 15.17.6 R A *firm's* annual regulated income is its annual income in respect of, or in relation to, activities in the *United Kingdom* that comprise a necessary part of its business as a *regulated benchmark administrator*.
- 15.17.7 R
- (1) Where the sales and marketing of a benchmark are undertaken by a separate legal entity, the *firm* is responsible for identifying the relevant income and treating it as its own income.
  - (2) To avoid double counting, the *firm* must include only the income from sales and exclude any amount paid to it from that income to pay for its expenses as a *regulated benchmark administrator*.
- 15.17.8 R A *firm* must calculate its annual regulated income fairly, consistently and in accordance with generally accepted accounting practice.
- 15.17.9 R
- (1) A *firm* must complete the calculation in SUP 15.17.4R no later than 80 *business days* after the *accounting reference date* for the applicable reporting year.
  - (2) This section of the *FCA Handbook* refers to the date in this *rule* as the 'reporting date'.

#### Obligation to notify the FCA

- 15.17.10 R A *firm* must notify the *FCA* if its annual regulated income is 20% or more of its annual income for a reporting year if, in the previous reporting year, its annual regulated income was less than 20% of its annual income or it had no annual income.
- 15.17.11 R A *firm* must notify the *FCA* if its annual regulated income is less than 20% of its annual income for a reporting year if, in the previous reporting year, its

annual regulated income was 20% or more of its annual income.

- 15.17.12 R A *firm* must make the notification in SUP 15.7.10R or SUP 15.17.11R no later than the reporting date for the reporting year in question.
- 15.17.13 G The notification obligations in this section apply whether this is the first time the relevant event has occurred or whether it has happened before.
- 15.17.14 G A *firm* need not include the amount of its annual regulated income or annual income in a notification under this section.
- 15.17.15 G A *firm's* reporting year may start or end before it became a *firm* or a *limited scope SMCR benchmark firm*.
- 15.17.16 G A *firm* should make the notification in SUP 15.7.10R even if it had no annual regulated income in the previous reporting year because, for example, it has only recently started its benchmark activities.
- 15.17.17 G (1) This section of the *FCA Handbook* does not require a *firm* regularly to notify the *FCA* whether its annual regulated income is 20% or more of its annual income or less than 20%.
- (2) Instead this section only requires a *firm* to notify the *FCA* when its annual regulated income crosses (upwards or downwards) the 20% mark.
- (3) So, for example, if the *firm's* annual regulated income stays below the 20% mark it will never need to notify the *FCA* under this section.

#### How to submit notifications

- 15.17.18 R A *firm* does not have to use the form in SUP 15 Annex 4R (Notification form) to make a notification under this section of the *FCA Handbook* but must include the details required by Section A of that form (Personal Details).
- 15.17.19 G Subject to SUP 15.17.18R, SUP 15.7 (Form and method of notification) applies to notifications under this section of the *FCA Handbook*.

Amend the following as shown.

#### **15 Annex 1R Application of SUP 15 to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions**

1.	<i>SUP 15 applies in full to an incoming EEA firm, or incoming Treaty firm, which has a top-up permission. However, SUP 15.16 does SUP 15.15 to SUP 15.17 do not apply to such firms.</i>
----	---

...					
-----	--	--	--	--	--

Applicable sections		Application
...	...	...
<i>SUP 15.14</i>	...	...
<u><i>SUP 15.15</i></u>	<b><u>Notification by retail intermediaries of qualification as an enhanced scope SMCR firm</u></b>	<b><u>Does not apply</u></b>
<i>SUP 15.16</i>	...	...
<u><i>SUP 15.17</i></u>	<b><u>Notification of regulated income by limited scope SMCR benchmark firm</u></b>	<b><u>Does not apply</u></b>

...

## 16 Reporting requirements

...

### 16.26 Reporting of information about Directory persons

#### Application

- 16.26.1 R This section of the *FCA Handbook* applies to an *SMCR firm* but it does not apply to a pure benchmark SMCR firm.

...

## Annex I

### Amendments to Professional Firms sourcebook (PROF)

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

#### 5 Non-mainstream regulated activities

...

#### 5.3 Reference to other sourcebooks and manuals

...

Supervision manual

- 5.3.5 G ~~SUP 10A.1.17R~~ SUP 10C Annex 1 2.1R provides that ~~SUP 10A (Approved persons)~~ SUP 10C (FCA senior managers regime for approved persons in SMCR firms) does not apply (except in respect of the FCA required functions) to an *authorised professional firm* in respect of its *non-mainstream regulated activities*. So a person such as a *partner*, whose only *regulated activities* are incidental to ~~his~~ their professional services, in an *authorised professional firm* whose principal purpose is to carry on activities other than *regulated activities*, need not be an *approved person*.

...



## Annex J

## Amendments to General guidance on Benchmark Administration, Contribution and Use (BENCH)

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

### 2            **Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors**

...

### 2.1          **Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors**

...

#### 2.1.2        G    Parts of the *Handbook* applicable to the *regulated activity* of *administering a benchmark*.

	Part of the Handbook	Applicability to the <i>regulated activity</i> of <i>administering a benchmark</i>
High Level Standards	...	...
	Senior Management Arrangements, Systems and Controls (SYSC)	The detailed application of this is set out in SYSC 1 Annex 1. However, in general, only the following parts of SYSC will be relevant to a <i>firm</i> which only has <i>permission</i> to carry on the <i>regulated activity</i> of <i>administering a benchmark</i> :  (a) SYSC 1; (b) SYSC 18.3.9G; (c) SYSC 22 <u>to SYSC 26</u> .
	Statements of Principle and Code of Practice for Approved Persons (APER)	This <del>applies to an approved person of a firm that is not an SMCR firm</del> <u>does not apply</u>
	Code of Conduct sourcebook (COCON)	This applies to <u>a firm's conduct rules</u> <del>staff of SMCR firms</del> .

...	...	...
Regulatory processes	Supervision manual (SUP)	<p>This applies subject to the following qualifications:</p> <p>(a) In general only the following parts of <i>SUP</i> will be relevant to a <i>firm</i> which only has <i>permission</i> to carry on the <i>regulated activity</i> of <i>administering a benchmark</i>: <i>SUP</i> 1-2, <i>SUP</i> 5-8, <i>SUP</i> 9-10A, <u><i>SUP</i> 10C</u>, <i>SUP</i> 15-15B, <i>SUP</i> 16.1-16.3 and <i>SUP</i> 16.10.</p> <p>(b) <del><i>SUP</i> 10A only applies to a regulated benchmark administrator which is not an SMCR firm (but not all controlled functions apply to a firm which only has permission to carry on the regulated activity of administering a benchmark).</del> [deleted]</p> <p>(c) <del><i>SUP</i> 10C only applies to a</del> <u>A regulated benchmark administrator which is an SMCR firm and so <i>SUP</i> 10C applies to it. That chapter deals with the designated senior management functions that apply to a regulated benchmark administrator and other SMCR firms.</u></p> <p><u>If a regulated benchmark administrator is a core SMCR firm, the following FCA-designated senior management functions, which normally apply to a core SMCR firm, do not apply:</u></p> <p>(i) <u>the compliance oversight function; and</u></p> <p>(ii) <u>the money laundering reporting function.</u></p> <p><u>That is because those FCA-designated senior management functions are specified by incorporation of requirements in SYSC and the relevant parts of SYSC do not apply in relation to benchmark activities (which includes administering a benchmark).</u></p>
	...	...
...	...	...

