

Chapter 10C

FCA senior managers regime
for approved persons in
SMCR firms

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

Purpose

10C.10.1 **G** This section explains how a *firm* should apply for approval for a *person* to perform an *FCA-designated senior management function*.

10C.10.2 **R** Unless the context otherwise requires, in **■ SUP 10C.10** (Application for approval and withdrawing an application for approval) to **■ SUP 10C.15** (Forms and other documents and how to submit them to the FCA), where reference is made to a *firm*, this includes an applicant for *Part 4A permission* and other *persons* seeking to carry on *regulated activities* as an *SMCR firm*.

10C.10.2A **D** **■ SUP 10C.10.2R** applies to every direction in **■ SUP 10C.10** to **■ SUP 10C.15**.

When to apply for approval

10C.10.3 **G** (1) Section 59 of the *Act* (Approval for particular arrangements) says that a *firm* must take reasonable care to ensure that no one performs an *FCA controlled function* (including an *FCA-designated senior management function*) unless that *person* is acting in accordance with an approval given by the *FCA*.

(2) That means that where a *candidate* will be performing one or more *FCA-designated senior management functions*, a *firm* must take reasonable care to ensure that the *candidate* does not perform these functions unless they have prior approval from the *FCA*.

Failure to apply for approval

10C.10.4 **G** (1) If a *person* performs an *FCA controlled function* (including an *FCA-designated senior management function*) without approval, it is not only the *firm* that is accountable. Under section 63A of the *Act* (Power to impose penalties), if the *FCA* is satisfied that:

- (a) a *person* ('P') has at any time performed an *FCA controlled function* without approval; and
- (b) at that time P knew, or could reasonably be expected to have known, that P was performing an *FCA controlled function* without approval;

it may impose a penalty on P of such amount as it considers appropriate.

- (2) A person performs a controlled function without approval for these purposes if that person is not acting in accordance with an approval given under section 59 (Approval for particular arrangements).

Who should make the application?

10C.10.5 G 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:

- (1) the FCA candidate; or
- (2) (where the FCA candidate works for the firm's parent undertaking or holding company) by the firm's parent undertaking or holding company.

10C.10.6 G (1) The firm that is employing the FCA candidate to perform the FCA-designated senior management function will usually make the submission itself.

(■ SUP 10C.10.7G describes some common situations.)

- (2) Where a firm has outsourced the performance of an FCA-designated senior management function, the details of the outsourcing determines whom the FCA anticipates will submit the FCA-approved persons application forms.

- (3) The firm which is outsourcing is referred to as 'A' and the person to whom the performance of the FCA-designated senior management function has been outsourced, or which makes the arrangement for the FCA-designated senior management 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-designated senior management 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.

10C.10.7 G Outsourcing arrangements

Outsourcing arrangements	Explanation	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-designated senior management functions are performed by FCA-approved SMF managers, 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 arrangements	Explanation	Submitting form
Outsourcing by A to B (both being a member of the same <i>United Kingdom group</i> and each having its registered office in the <i>United Kingdom</i>)	See SUP 10C.3.9G	Either A or B may submit <i>FCA-approved persons</i> forms on behalf of <i>firms</i> in the group (see SUP 15.7.8G).
(i) A to B, where B: (a) is not an <i>authorised person</i> ; and (b) is not part of the same <i>group</i> as A; or (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 <i>overseas undertaking</i> of the same <i>group</i> ; or (iii) A to B, where A is a <i>UK authorised subsidiary</i> of an <i>overseas firm</i> and B is an <i>overseas undertaking</i> of the same <i>group</i> .	Responsibility for (as opposed to the performance of) any activity <i>outsourced</i> to B will remain with A. See SYSC 8.	A ensures that an individual approved by the <i>FCA</i> or the <i>PRA</i> to perform a <i>designated senior management function</i> has responsibility for the <i>outsourced arrangement</i> and A submits a form in relation to that individual.

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How to apply for approval

10C.10.8 D

- (1) An application by a *firm* for the *FCA's* approval under section 59 of the *Act* (Approval for particular arrangements) for the performance of an *FCA-designated senior management function* must be made by completing Form A (■ SUP 10C Annex 3D), except where ■ SUP 10C.10.9D requires Form E.
- (2) If a *firm* must make an application using Form A, it must use Form A (shortened form) in the circumstances described in ■ SUP 10C.10.8AD.

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*; or
 - (ii) an *FCA-designated senior management function*; or
 - (iii) a *PRA controlled function*; or
 - (b) has had *current approved person approval* of the type described in (a) within the previous six *months*; and
- (2) there have been no matters arising in relation to the fitness and propriety of the *person* to whom the application relates which mean that the information provided to the *FCA* or the *PRA* regarding

fitness and propriety in connection with the *current approved person approval* in (1)(a) or (b) may have changed since the application for that *current approved person approval* was made.

10C.10.8B D A *firm* must not use Form A (shortened form) if:

- (1) the *firm* is a *MiFID investment firm* (except a *credit institution*); and
- (2) ■ SUP 10C.10.9BD applies to that application.

10C.10.9 D

- (1) A *firm* must use Form E (■ SUP 10C Annex 7D) where an *approved person*:
 - (a) is both permanently ceasing to perform one or more *controlled functions*; and
 - (b) needs to be approved in relation to one or more *FCA-designated senior management function*; within the same *firm* or *group*.
- (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*;
 - (b) an *FCA-designated senior management function*; or
 - (c) a *PRA controlled function*.
- (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*;
 - (b) an *FCA-designated senior management function*; or
 - (c) a *PRA controlled function*.
- (4) A *firm* must not use Form E if:
 - (a) a notification has been made or should be made:
 - (i) to the *FCA* under ■ SUP 10C.14.18R (Changes in fitness to be notified under Form D); or
 - (ii) (if the *firm* is a *PRA-authorised person*) to the *PRA* under any equivalent *PRA* rule;
 - (iii) to the *FCA* under ■ SUP 10A.14.17R (the equivalent to (i) in ■ SUP 10A);(whichever is applicable);
 - (b) a notification has been made or should be made to the *FCA* or (if the *firm* is a *PRA-authorised person*) *PRA* under any of the following:
 - (i) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or
 - (ii) [deleted]

- (iii) section 64C of the Act (Requirement for relevant authorised persons to notify regulator of disciplinary action); or
 - (c) (if the *firm* is a *PRA-authorised person*) a notification has been made or should be made to the *PRA* under any provision of the *PRA Rulebook* corresponding to the requirements in (b); or
 - (d) any of the circumstances in ■ SUP 10C.14.7R (Qualified Form C) apply;
- in relation to any:
- (e) *controlled functions* which that *person* is ceasing to perform (as referred to in (1)); or
 - (f) any *controlled function* that they are continuing to perform for that *firm* or a *firm* in the same *group*.

10C.10.9A G

- (1) The *MiFID authorisation and management body change notification ITS* requires that *MiFID investment firms* (except *credit institutions*) submit the Annex III information on a specified template (which is based on one prepared by *ESMA* and which is available at <https://www.fca.org.uk/publication/forms/mifid-changes-management-body-form.docx> ('Annex III template')) where there is a change to a member of the *management body* or a *person* who effectively directs the business.
- (2) *MiFID investment firms* (except *credit institutions*) need to submit this Annex III template within ten *business days* of the change in the *online notification and application system* (also known as Connect).
- (3) ■ SUP 10C.10.9BD explains how this requirement fits in with the requirement to submit a Form A or Form E.
- (4) [deleted]

10C.10.9AA G

- (1) The *MiFID authorisation and management body change notification ITS* requires that a *person* applying to be a *MiFID investment firm* (except a *credit institution*) should notify the *appropriate regulator* of information about members of its *management body* by filling in the template set out in Annex II of the appropriate part of the *MiFID authorisation and management body change notification ITS*.
- (2) This applies whether:
 - (a) the *person* is applying for *authorisation*; or
 - (b) the *person* is a *firm* applying for a variation of its *permission* that would turn it into a *MiFID investment firm*.
- (3) There is no requirement to fill in the MiFID Article 4 SMR Information Form referred to in ■ SUP 10C.10.9BD along with a Form A or Form E.

10C.10.9B G

Where:

- (1) there is a change to a member of the *management body* or *person* who directs the business of a *MiFID investment firm* (except a *credit institution*) that the *firm* must notify to the *appropriate regulator*

under Annex III of the appropriate part of the *MiFID authorisation and management body change notification ITS*; and

- (2) that change also requires the *firm* to apply for approval for that member or *person* to perform an *FCA-designated senior management function*;

the *firm* must submit to the *FCA* the completed form found in ■ SUP 10C Annex 11D (MiFID Article 4 SMR Information Form) at the same time as submitting the Form A or Form E about the *candidate*.

10C.10.9C **G** *MiFID investment firms (except credit institutions) who submit:*

- (1) Form A or Form E; and
- (2) the MiFID Article 4 SMR Information Form;

about a *candidate* can complete the Annex III template outlined in ■ SUP 10C.10.9AG by cross-referring to any information required by the template that has been included in the relevant Form A or Form E. The template should be annexed to the relevant Form A or Form E.

10C.10.10 **G** ■ SUP 10C.15 (Forms and other documents and how to submit them to the *FCA*) explains how applications should be submitted.

- 10C.10.10A** **G**
- (1) A *firm* should only use a Form E (■ SUP 10C Annex 7D) when the *candidate* is ceasing to perform a *controlled function* in a way that means that the *candidate* will cease to be approved for that *controlled function*.
 - (2) See ■ SUP 10C.14.5AG to ■ SUP 10C.14.5DG for the difference between temporarily ceasing to perform a *controlled function* (which means that approval for the performance of that *controlled function* continues) and permanently ceasing to perform a *controlled function* (which means that approval for the performance of that *controlled function* lapses).
 - (3) (1) and (2) are the reason that ■ SUP 10C.10.9D refers to permanently ceasing to perform a *controlled function*.

Statements of responsibilities

10C.10.11 **G** An application by a *firm* for the *FCA*'s approval under section 59 of the *Act* (Approval for particular arrangements) for the performance of an *FCA-designated senior management function* should be accompanied by a *statement of responsibilities* about the *candidate*.

10C.10.12 **G** ■ SUP 10C.11 (Statements of responsibilities) contains more material about *statements of responsibilities*, including (in particular) about a *statement of responsibilities* submitted under an application under ■ SUP 10C.10.

Other material to be included in an application

10C.10.13 **G** A *firm* to which **■** SYSC 25.9 (Handover procedures and material) applies should include in an application a reasonable summary of:

- (1) any handover certificate; and
- (2) any other handover material;

referred to in **■** SYSC 25.9 that relates to the responsibilities that the *candidate* is to perform.

10C.10.13A **D** A *firm* to which **■** SYSC 25.2 (Management responsibilities maps: Main rules) applies must include in an application for the FCA's approval under section 59 of the Act (Approval for particular arrangements) for the performance of an *FCA-designated senior management function* the latest version of the *firm's management responsibilities map*.

Vetting of candidates by the firm

10C.10.14 **G** Under section 60A of the Act, before a *firm* makes an application for approval, it should be satisfied that the *candidate* is a fit and proper person to perform the function to which the application relates. In deciding that question, the *firm* should have particular regard to whether the *candidate*, or any *person* who may perform a function on the *candidate's* behalf:

- (1) has obtained a qualification;
- (2) has undergone, or is undergoing, training;
- (3) possesses a level of competence; or
- (4) has the personal characteristics;

required by *FCA rules* in relation to *persons* performing functions of the kind to which the application relates.

10C.10.15 **G** For *guidance* on criteria that a *firm* should use for assessing whether an *FCA candidate* is fit and proper (including the *FCA rules* referred to in **■** SUP 10C.10.14G), see *FIT*.

Criminal records checks and verifying fitness and propriety

- 10C.10.16 **R**
- (1) This *rule* applies to an application by a *firm* for the FCA's approval under section 59 of the Act (Approval for particular arrangements) for the performance of an *FCA-designated senior management function*.
 - (2) A *firm* must (as part of its assessment of whether a *candidate* is a fit and proper person to perform an *FCA-designated senior management function* and to verify the information contained in the application to carry out the *FCA-designated senior management function*) obtain the fullest information that it is lawfully able to obtain about the *candidate* under Part V of the Police Act 1997 (Certificates of Criminal

- Records, &c) and related subordinated legislation of the *UK* or any part of the *UK* before making the application.
- (3) This *rule* does not apply to a *firm* that is a *sole trader* if the *candidate* is the *sole trader* themselves.
- 10C.10.17** G (1) In England and Wales a *firm* should get an application form from the Disclosure and Barring Service (DBS) or an umbrella body (a registered body that gives access to DBS checks).
- (2) The *firm* should ask the *candidate* to fill in and return the form to the *firm*. The *firm* should then send the completed application form to the DBS or the *firm's* umbrella body.
- (3) The *firm* should then ask the *candidate* to show the *firm* the certificate when the *candidate* receives it from the DBS.
- (4) There is an equivalent procedure in Scotland (involving Disclosure Scotland) and Northern Ireland (involving AccessNI).
- 10C.10.18** G The *firm* should not send a copy of the certificate to the *FCA* unless required to do so under ■ SUP 10C.10.18AG or ■ SUP 10C.10.28G (requests for additional information).
- 10C.10.18A** G *MiFID investment firms* (except *credit institutions*) should provide a copy of the certificate to the *FCA* in cases where they disclose, in accordance with the *MiFID authorisation and management body change notification ITS*, the existence of a criminal conviction in response to the questions in:
- (a) Long Form A; or
- (b) the MiFID Article 4 SMR Information Form.
- 10C.10.19** G If the *candidate* is employed by a contractor, the *firm* may ask the contractor to obtain the certificate.
- 10C.10.20** G A *firm* should also check the *Financial Services Register* as part of its assessment of whether a *candidate* is fit and proper and to verify the information contained in the application for approval.
- 10C.10.21** G If appropriate, a *firm* should:
- (1) carry out a criminal record check; and
- (2) check any equivalent of the *Financial Services Register*;
- in a jurisdiction outside the *UK*. This may be appropriate if the *candidate* has spent time working or living in that jurisdiction.
- 10C.10.22** G A *firm* should consider whether it should take additional steps to verify any information contained in an application to carry out an *FCA-designated*

senior management function or that it takes into account in its assessment of whether a *candidate* is a fit and proper person.

10C.10.23 **G** Please see ■ SYSC 22 (Regulatory references) about the requirement for a *firm* to ask for references from previous employers.

10C.10.23A **G** (1) ■ SUP 10C.10.16R (Criminal records checks) does not require a *firm* to carry out a criminal records check for the purposes of its annual assessment of the fitness and propriety of its *SMF managers* under section 63(2A) of the Act.

(2) The requirement in section 63(2A) of the Act is summarised in ■ SUP 10C.14.24G (Table: Explanation of the sections of the Act mentioned in SUP 10C.14.22R).

Processing an application

10C.10.24 **G** The Act sets out the time that the FCA has to consider an application and come to a decision.

10C.10.25 **G** In any case where the application for approval is made by a *person* applying for a *Part 4A permission*, the FCA has until the end of whichever of the following periods ends last:

(1) the period within which an application for that *permission* must be determined; and

the period of three months from the time it receives a properly completed application.

10C.10.26 **G** In any other case, it is the period of three months from the time it receives a properly completed application.

10C.10.27 **G** The FCA will deal with cases more quickly than this whenever circumstances allow and will try to meet the standard response times published on the website and in its Annual Report. However, the processing time will be longer than the published standard response times if:

(1) an application is incomplete when received; or

(2) the FCA has knowledge that, or reason to believe that, the information is incomplete.

10C.10.28 **G** Before making a decision to grant the application or give a *warning notice*, the FCA may ask the *firm* for more information about the *FCA candidate*. If it does this, the three-month period in which the FCA must determine a completed application:

(1) will stop on the day the FCA requests the information; and

- (2) will start running again on the day on which the *FCA* finally receives all the requested information.

10C.10.29 **G** If there is a delay in processing the application within the standard response time, the *FCA* will tell the *firm* making the application as soon as this becomes apparent.

- 10C.10.30** **G**
- (1) Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form.
 - (2) If forms are not completed fully and honestly, applications will be subject to investigation and the *FCA candidate's* suitability to be approved to undertake an *FCA controlled function* will be called into question.
 - (3) A *person* who provides information to the *FCA* that is false or misleading may commit a criminal offence and could face prosecution under section 398 of the *Act*, regardless of the status of their application.

10C.10.31 **G** The *FCA* may grant an application only if it is satisfied that the *FCA candidate* is a fit and proper *person* to perform the *FCA-designated senior management function* stated in the application form. Responsibility lies with the *firm* making the application to satisfy the *FCA* that the *FCA candidate* is fit and proper to perform the *FCA-designated senior management function* applied for.

10C.10.32 **G** For further *guidance* on criteria for assessing whether an *FCA candidate* is fit and proper for the purposes of **■ SUP 10C.10.31G**, see *FIT*.

Decisions on applications

10C.10.33 **G** The *FCA* must:

- (1) grant the application;
- (2) grant the application subject to conditions or limitations (see **■ SUP 10C.12** for more information); or
- (3) refuse the application.

10C.10.34 **G** Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.

10C.10.35 **G** If the *FCA* proposes to take the steps in **■ SUP 10C.10.33G(2)** or **■ SUP 10C.10.33G(3)** in relation to one or more *FCA-designated senior management functions*, it must follow the procedures for issuing *warning* and *decision notices* to all *interested parties*. The requirements relating to *warning* and *decision notices* are in **■ DEPP 2**.

Withdrawing an application for approval

- 10C.10.36** **R** A *firm* notifying the *FCA* of its withdrawal of an application for approval must use Form B (■ SUP 10C Annex 4R).
- 10C.10.37** **G** Under section 61(5) of the *Act* (Determination of applications), the *firm* may withdraw an application only if it also has the consent of:
- (1) the *candidate*; and
 - (2) the *person* by whom the *candidate* is or would have been employed, if this is not the *firm* making the application.
- 10C.10.38** **G** ■ SUP 10C.15 (Forms and other documents and how to submit them to the *FCA*) explains how a notice of withdrawal should be submitted.