

Chapter 10C

FCA senior managers regime
for approved persons in
SMCR firms



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

Purpose

10C.3.1 **G** This section has general provisions that apply to the definition of all *controlled functions*.

Types of controlled function

10C.3.2 **G** There are two types of *FCA controlled function* under the *Act*:

- (1) an *FCA-designated senior management function*; and
- (2) an *FCA controlled function* that is not a *designated senior management function*.

10C.3.3 **G** All the *controlled functions* that the *FCA* has specified in this chapter are *designated senior management functions*. The *FCA* has not, in this chapter, used its power to specify *controlled functions* that are not *designated senior management functions*.

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*.

10C.3.5 **G**

- (1) Except as described in ■ SUP 10C.3.4G, in this chapter, *FCA controlled function* and *FCA-designated senior management function* cover the same functions.
- (2) Therefore, a function is only covered by ■ SUP 10C.4.3R (Table of FCA-designated senior management functions) if that function meets both the following sets of requirements:
 - (a) the requirements of ■ SUP 10C.3.6R (Definition of FCA controlled function: arrangements); and
 - (b) the requirements of ■ SUP 10C.3.10R (Definition of FCA-designated senior management function).

Definition of FCA controlled function: arrangements

10C.3.6 **R** In accordance with section 59 of the *Act* (Approval for particular arrangements), a function specified in this chapter is an *FCA controlled*

function only to the extent that it is performed under an *arrangement* entered into by:

- (1) a *firm*; or
- (2) a contractor of the *firm*;

in relation to the carrying on by the *firm* of a *regulated activity*.

10C.3.7 G Section 59(1) and (2) of the *Act* provide that approval is necessary for an *FCA controlled function* which is performed under an *arrangement* entered into by a *firm*, or its contractor (typically an *appointed representative*), in relation to a *regulated activity*.

10C.3.8 G

- (1) *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*.
- (2) *Arrangement* includes the appointment of a *person* to an office, a *person* becoming a *partner*, or a *person's* employment (whether under a contract of service or otherwise).
- (3) An *arrangement* need not be a written contract but could arise by conduct, custom and practice.

10C.3.9 G If a *firm* is a member of a group, a *person* employed elsewhere in the *group* (for example, by the *holding company*) who carries out a function in relation to the *firm* will only perform an *FCA controlled function*:

- (1) if the function is performed under an *arrangement* entered into by the *firm* (under section 59(1)); or
- (2) if:
 - (a) there is a contract (under section 59(2)) between the *firm* and the relevant *group* member permitting this; and
 - (b) the function is performed under an *arrangement* entered into by the contractor.

Definition of FCA-designated senior management function.....

10C.3.10 R Each *FCA-designated senior management function* is one which comes within the definition of a *senior management function*.

10C.3.11 G Section 59ZA(2) of the *Act* says that a function is a 'senior management function', in relation to the carrying on of a *regulated activity* by a *firm*, if:

- (1) the function will require the *person* performing it to be responsible for managing one or more aspects of the *firm's* affairs, so far as relating to the activity; and
- (2) those aspects involve, or might involve, a risk of serious consequences:

- (a) for the *firm*; or
- (b) for business or other interests in the *United Kingdom*.

10C.3.12 G Section 59ZA(3) of the *Act* says that ‘managing’ includes, for these purposes, taking decisions, or participating in the taking of decisions, about how one or more aspects of the *firm*'s affairs should be carried on.

The 12-week rule

10C.3.13 R If:

- (1) a *firm* appoints an individual to perform a function which, but for this *rule*, would be an *FCA-designated senior management function*;
- (2) the appointment is to provide cover for an *SMF manager* whose absence is:
 - (a) temporary; or
 - (b) reasonably unforeseen; and
- (3) the appointment is for less than 12 weeks in a consecutive 12-month period;

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

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

10C.3.15 G See ■ SUP 10C.12.7G to ■ SUP 10C.12.14G (time-limited approvals) for procedures for temporary appointments longer than 12 weeks.

10C.3.16 G

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

10C

10C.3.17 **G**

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