

Chapter 27

Senior managers and certification regime: Certification regime



27.1 Application and purpose

Application

- 27.1.1
- R
- This chapter applies to an *SMCR firm*, except those excluded from this chapter by ■ SYSC 27.6 (Other exclusions).
- 27.1.2
- G
- This chapter is also relevant to *employees* of *SMCR firms* performing functions specified as *FCA certification functions*.

Purpose

- 27.1.3
- G
- (1) This chapter is about the *FCA's* certification regime.

(2) Under this regime, a *firm* should ensure that its employees only perform an *FCA certification function* if they have a certificate issued by that *firm* to perform that function.

(3) The purpose of this chapter is to specify '*FCA certification functions*' and to give *guidance* on the *FCA's* certification regime.



27.2 Requirements of the certification regime

General

- 27.2.1
- G
- Most of the requirements of the certification regime are in the *Act*. This section summarises and gives *guidance* on them.
- 27.2.2
- G
- SYSC TP 5, ■ SYSC TP 7 and ■ SYSC TP 8 contain transitional material about the certification regime. This includes material about the fact that:

(1)

the requirement in ■ SYSC 27.2.3G did not come into force at the same time as the rest of the certification regime; and

(2)

the certification regime came into force at different times for different types of *firm*.

Basic requirements

- 27.2.3
- G
- Under section 63E(1) of the *Act*, a *firm* must take reasonable care to ensure that no *employee* of the *firm* performs an *FCA certification function* under an arrangement entered into by the *firm* in relation to the carrying on by that *firm* of a *regulated activity*, unless the *employee* has a valid certificate issued by that *firm* to perform the function to which the certificate relates.

Fitness to act

- 27.2.4
- G
- Under section 63F of the *Act*, a *firm* may issue a certificate to a *person* only if the *firm* is satisfied that the *person* is a fit and proper *person* to perform the *FCA certification function* to which the certificate relates.
- 27.2.5
- G
- Under section 63F of the *Act*, in assessing if a *person* is fit and proper to perform an *FCA certification function*, a *firm* must have regard, in particular, to whether that person:

(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 general *rules* made by the *FCA*.

- 27.2.6** G ■ FIT 1.3 provides guidance to *firms* about the criteria that the *FCA* would expect the *firm* to consider in assessing if a *person* is fit and proper to perform an *FCA certification function*.
- 27.2.7** G ■ SYSC 22 (Regulatory references) deals with obtaining references from a previous *employer* when a *firm* is planning to appoint someone to perform a *certification function* as part of its assessment of whether that *person* is fit and proper.
- 27.2.8** G
- (1) A *person* seconded from a contractor may fall into the certification regime. The material in ■ SYSC 27.4.1G is relevant to when this is the case.
 - (2) In deciding whether a *person* seconded from a contractor is fit and proper, the *firm* may take into account information and references from the contractor.
 - (3) In deciding how much reliance to put on the contractor, the *firm* should take into account:
 - (a) the familiarity of the contractor with the obligations of *firms* under this chapter, the corresponding *PRA* requirements (if the *firm* is a *PRA-authorised person*) and the requirements of the *Act* described in this chapter;
 - (b) whether any reference directly addresses the criteria in *FIT*; and
 - (c) the degree to which the *firm* believes it can rely on the contractor's judgement about the secondee's fitness and properness and the grounds for that belief.
- Issuing and renewing certificates**
- 27.2.9** G Under section 63F of the *Act*, a certificate issued by a *firm* to a *person* must:
- (1) state that the *firm* is satisfied that the *person* is fit and proper to perform the function to which the certificate relates; and
 - (2) set out the aspects of the affairs of the *firm* in which the *person* will be involved in performing the function.
- 27.2.10** G
- (1) The *Act* says that a certificate is valid for a period of 12 months, beginning with the day on which it is issued.
 - (2) The *FCA* believes that the *Act* allows a *firm* to draft a certificate to expire after fewer than 12 months. The *FCA* interprets the *Act* in this way because to require a *firm* to make a certificate last longer than the *firm* thinks best is likely to make it harder for the *firm* to ensure the fitness of its *certification employees*. That would undermine the purpose of the certification regime in the *Act*.
 - (3) A certificate cannot be drafted to last more than 12 months.
- 27.2.11** G Under section 63F of the *Act*, if, after having considered if a *person* is fit and proper to perform an *FCA certification function*, a *firm* decides not to issue a

certificate to that *person*, the *firm* must give the *person* a notice in writing stating:

- (1) what steps (if any) the *firm* proposes to take in relation to the *person* as a result of the decision; and
- (2) the reasons for proposing to take those steps.

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

27.2.13 G Under section 63F of the *Act*, a *firm* must maintain a record of every *employee* who has a valid certificate issued by it.

27.2.14 G

- (1) A *firm* need not issue multiple certificates for one of its *employees* even if they perform several *FCA certification functions* as part of the same job.
- (2) Similarly, a *firm* need not issue multiple certificates for one of its *employees* who performs an *FCA certification function* that is made up of a number of different functions.
- (3) An example of an *FCA certification function* in (2) is the material risk taker *FCA certification function* described in ■ **SYSC 27.8.14R**. ■ **SYSC 27.8.14R** says that each function carried out by someone who is covered by that *rule* is an *FCA certification function*.
- (4) Rather than having to issue multiple certificates, a *firm* may, in a single certificate, describe the *employee's* functions that involve an *FCA certification function* in broad terms, and without listing all the activities that the function may involve.
- (5) A *firm* should assess whether the *employee* is fit and proper to perform all aspects of the *employee's* functions that involve an *FCA certification function* as described by a certificate.
- (6) Although a *firm* does not need to issue multiple certificates for an *employee* who performs several different *certification functions*, under the requirements in ■ **SUP 16.26** (Reporting of Directory persons) the *firm* will need to specify each of the *certification functions* which the *employee* has been assessed as fit and proper to perform and for which the *employee* has a certificate at the time of the report.

27.2.15 G

- (1) In cases where a *certification employee's* role changes to involve a new *FCA certification function* part way through the 12-month period for which their certificate is valid, the *firm* may need to reissue the certificate.
- (2) If that new function has different requirements relating to:
 - (a) personal characteristics;

- (b) the level of competence, knowledge and experience;
 - (c) qualifications; or
 - (d) training;
- the *FCA* would expect the *firm* to assess whether the *employee* is fit and proper to perform that new function before they start it.

- (3) In such a case, the *firm* should not wait until the point of annual reassessment to determine whether the *employee* is fit and proper for the new function.
- (4) A *firm* may not need to issue a new certificate if:
 - (a) applying the conditions in paragraph (2), the *firm* concludes that no re-assessment is required; and
 - (b) the certificate is drafted broadly enough to cover the new *FCA certification function*.
- (5) Paragraphs (1) to (4) also apply if a *certification employee's* role changes part way through the 12-month period without the new role involving a new *FCA certification function*.

27.2.16

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- (1) This paragraph gives further *guidance* on the flexibility a *firm* has in drafting its certificates.
- (2) A certificate may cover functions that a *certification employee* is not currently performing, as long as the *firm* has assessed the *employee's* fitness for these additional functions. This is subject to (3).
- (3) When a *firm* is deciding what a certificate can cover beyond the functions that the *certification employee* is currently performing, it should take the factors in ■ SYSC 27.2.15G(2) into account. A certificate should not normally cover an additional function if ■ SYSC 27.2.15G(2) would require the *firm* to consider the *employee's* fitness before allowing them to perform it.
- (4) A *firm* may, if it wishes, restrict a certificate to the functions that the *certification employee* is currently performing rather than drafting the certificate more widely as described in (2) and (3).
- (5) ■ SYSC 27.2.10G deals with the flexibility a *firm* has in choosing the period for which a certificate lasts.

27.3 Territorial scope

- 27.3.1** **R** (1) A function is an *FCA certification function* for a *UK SMCR firm* only to the extent:
- (a) it is performed by a *person* from an establishment of the *firm* (or its *appointed representative*) in the *United Kingdom*; or
 - (b) the *person* performing that function is dealing with a *client* of the *firm* in the *United Kingdom* from an establishment of the *firm* (or its *appointed representative*) overseas.
- (2) A function is an *FCA certification function* for an *overseas SMCR firm* only to the extent that it is performed by a *person* from an establishment of the *firm* (or its *appointed representative*) in the *United Kingdom*.
- (3) Paragraph (1) does not apply to *FCA certification function* (6) (material risk takers). For a *UK SMCR firm*, *FCA certification function* (6) applies without any territorial limitation.
- 27.3.2** **G** The *FCA* interprets the phrase 'dealing with' in **SYSC 27.3.1R** as including having contact with *clients* and extending beyond 'dealing' as used in the phrase 'dealing in investments'. 'Dealing in' is used in Schedule 2 to the Act to describe in general terms the *regulated activities* which are specified in Part II of the *Regulated Activities Order*.
- 27.3.3** **G** The *FCA* interprets the phrase 'a *client* of the *firm* in the *United Kingdom*' in **SYSC 27.3.1R** as referring to:
- (1) for a *client* which is a body corporate, its office or *branch* in the *United Kingdom*; or
 - (2) for a *client* who is an individual, a *client* who is in the *United Kingdom* at the time of the dealing.
- 27.3.4** **G** (1) The *Regulated Activities Order* has an effect on the territorial scope of this chapter.
- (2) As explained in **SYSC 27.7.1R** (General requirements), a function is only an *FCA certification function* if it is connected to *regulated activities*.

27.3.5

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- (3) Therefore where overseas activities are excluded from being *regulated activities* by the *Regulated Activities Order*, that will have an effect on the certification regime.
- (1) An example of ■ SYSC 27.3.4G is the territorial restriction relating to *regulated claims management activities*.
- (2) As explained in ■ PERG 2.4A (Link between regulated claims management activities and Great Britain), a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.
- (3) The result is that a claims management activity specified in the *Regulated Activities Order* carried on outside *Great Britain* is an *unregulated activity* for the purposes of this chapter and the *FCA certification functions*.
- (4) This restriction:
 - (a) applies to the *FCA certification function* in ■ SYSC 27.3.1R(3) as well as to the other *FCA certification functions*; and
 - (b) applies in addition to the restriction in ■ SYSC 27.3.1R.



27.4 General material about the scope of the certification regime

Employees

- 27.4.1
- G
- (1) The certification regime only applies to an *employee*.

(2) This definition includes a *person* who:

(a) personally provides, or is under an obligation personally to provide, services to the *firm* in question under an arrangement made between the *firm* and the *person* providing the services or another *person*; and

(b) is subject to (or to the right of) supervision, direction or control by the *firm* as to the manner in which those services are provided.
- 27.4.2
- G
- (1) A *person* who works for an *appointed representative* of a *firm* may fall into the certification regime. In practice, however, they may not meet the conditions for the certification regime to apply.

(2) One condition for the certification regime to apply to a *person* is that the *person* performs a *certification function* under an arrangement entered into by the *firm* (see ■ SYSC 27.2.3G). However, unlike the equivalent parts of the *Act* for the *approved persons* regime, the *Act* does not say that the certification regime applies if the function is performed under an arrangement entered into by the employee with a contractor of the *firm* instead of the *firm*.

(3) The certification regime only applies if the *person* concerned is an *employee*. This is defined in ■ SYSC 27.4.1G. In many cases, a *person* working for an *appointed representative* will not fall into this definition as they may not:

(a) provide services to the *firm*; or

(b) be subject to (or to the right of) supervision, direction or control by the *firm*.

(4) If none of these limitations on the scope of the certification regime apply, a *person* working for an *appointed representative* will be subject to the certification regime, as long as the other conditions in this chapter are met.

27.4.3

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Effect of PRA requirements

A function does not cease to be an *FCA certification function* if that function is also a *PRA certification function*.



27.5 Exclusions for emergency and temporary appointments

Emergency appointments

27.5.1

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- (1) If:
 - (a) a *firm* appoints an individual to perform a function which, but for this *rule*, would be an *FCA certification function*;
 - (b) the appointment is to provide cover for a *certification employee* whose absence is reasonably unforeseen; and
 - (c) the appointment is for less than four weeks;then the performance by that individual of such function does not constitute an *FCA certification function*.
- (2) This *rule* does not apply to *FCA certification function* (4) (functions requiring qualifications).

27.5.2

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- SYSC 27.5.1R does not apply to *FCA certification function* (4) (functions requiring qualifications). Where there is an unforeseen absence of an *employee* performing a function for which there is a qualification requirement:
 - (1) the *firm* should take reasonable care to ensure that no *employee* of that *firm* performs that function without a valid certificate; and
 - (2) the certificate should be issued before the *person* starts to perform the function.

Temporary UK role (the 30-day rule)

27.5.3

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- (1) None of the *FCA certification functions* extend to an individual ("*P*") in relation to a *firm* if:
 - (a) *P* is based outside the *United Kingdom* for the *firm*; and
 - (b) in a 12-*month* period, *P* spends no more than 30 days performing what would otherwise be an *FCA certification function* for that *firm* within the territorial scope of this chapter as described in ■ SYSC 27.3.1R.
- (2) Paragraph (1) only applies to the extent that *P* is appropriately supervised by:
 - (a) one of the *firm's SMF managers*; or

		<p>(b) one of the <i>firm's certification employees</i> whose certificate covers the <i>FCA certification function</i> that is to be disapplied under (1).</p> <p>(3) This <i>rule</i> does not apply to any <i>FCA certification function</i> to the extent that it involves:</p> <p>(a) giving advice or performing related activities in connection with <i>pension transfers, pension conversions or pension opt-outs for retail clients</i>; or</p> <p>(b) giving advice to a <i>person</i> to become, or continue or cease to be, a member of a particular Lloyd's syndicate.</p> <p>(4) In the case of a <i>UK SMCR firm</i>, this <i>rule</i> does not apply to <i>FCA certification function</i> (6) (material risk takers).</p>
27.5.4	G	■ SYSC 27 Annex 1G gives examples of how ■ SYSC 27.5.3R works.
27.5.5	G	The <i>FCA</i> would expect an individual from overseas using the temporary <i>UK role rule</i> in ■ SYSC 27.5.3R to be accompanied on a visit to a <i>customer</i> in the <i>United Kingdom</i> .
27.5.6	G	An individual benefiting from the temporary <i>UK role rule</i> in ■ SYSC 27.5.3R may still be subject to the requirements of <i>TC</i> (Training and competence). However, ■ TC 2.1.9R gives an exemption from certain qualification requirements in <i>TC</i> to an individual benefiting from the temporary <i>UK role rule</i> .



27.6 Other exclusions

Single Market Directives

27.6.1 **G** Under section 63E(7) of the Act (to the extent that it continues in force under the standstill direction), this chapter does not apply to an arrangement which allows an *employee* to perform a function if the question of whether the *employee* is fit and proper to perform the function is reserved under certain European legislation to an authority in a country or territory outside the *United Kingdom*. The standstill direction means the standstill direction as defined in the direction made by the FCA under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on *IP completion day* and is titled “FCA Transitional Direction”.

Insolvency

27.6.2 **R** This chapter does not apply to a function performed by a *person* acting as:

- (1) an insolvency practitioner under section 388 of the Insolvency Act 1986;
- (2) a nominee in relation to a voluntary arrangement under Part I (Company Voluntary Arrangements) of the Insolvency Act 1986;
- (3) an insolvency practitioner under article 3 of the Insolvency (Northern Ireland) Order 1989; or
- (4) a nominee in relation to a voluntary arrangement under Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

Non-executive directors

27.6.3 **R** A function performed by a *non-executive director* of a *firm* acting as such is not an *FCA certification function* for that *firm*.

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*.

27.6.5 G Some benchmark activities are within the certification regime under ■ SYSC TP 7.5 (Transitional provisions about benchmarks and the certification regime).

Overall responsibility

27.6.6 R Performing any of the following is not an *FCA certification function*:

- (1) a responsibility allocated to an *SMF manager* under ■ SYSC 26.3 (Main rules); or
- (2) a responsibility allocated to someone under ■ SYSC 26.4.6R (Exclusion where the 12-week rule applies).

27.6.7 R ■ SYSC 27.6.6R does not apply to having overall or local responsibility for the *SMCR legal function*.

Administrators

27.6.8 R A function in paragraph (A) of row (6) of the table in ■ COCON 1.1.2R (Table: To whom does COCON apply?) is not an *FCA certification function*.

Exclusions: Sole traders

27.6.9 G

- (1) An individual *sole trader* will not themselves be a *certification employee*.
- (2) However members of a *sole trader's* staff may be.
- (3) Therefore the certification regime does not apply to a *sole trader* with no *employees*.

Exclusions: Internally managed AIFs

27.6.10 R This chapter does not apply to a *firm* that meets the following conditions:

- (1) it is an *internally managed AIF*;
- (2) it is a *body corporate*; and
- (3) it is not a *collective investment scheme*.



27.7 Specification of functions

General requirements

- 27.7.1
- R
- In accordance with section 63E of the Act (Certification of employees by authorised persons), a function is an *FCA certification function* only if, in relation to the carrying on of a *regulated activity* by a *firm*, that function:

(1) is not a *controlled function* in relation to the carrying on of that *regulated activity* by that *firm*; and

(2) will require the *person* performing it to be involved in one or more aspects of the *firm's* affairs, so far as relating to that *regulated activity*.

Scope: FCA certification functions

- 27.7.2
- R
- In accordance with section 63E(3) of the Act, the functions in the table in ■ SYSC 27.7.3R are *FCA certification functions*.

- 27.7.3
- R
- Table: FCA certification functions

Function	Where defined
(1) CASS oversight	SYSC 27.8.1R
(2) Proprietary trader	SYSC 27.8.3R
(3) Significant management	SYSC 27.8.4R
(4) Functions requiring qualifications	SYSC 27.8.10R
(5) Managers of certification employees	SYSC 27.8.13R
(6) Material risk takers	SYSC 27.8.14R
(7) Client-dealing	SYSC 27.8.18R
(8) Algorithmic trading	SYSC 27.8.23R

- 27.7.4
- G
- (1) If a function falls into more than one of the *FCA certification functions* in the table in ■ SYSC 27.7.3R, all of those *FCA certification functions* apply to it.

(2) For example, if a *person's* job involves both *FCA certification function* (4) (functions requiring qualifications) and (6) (material risk takers), the emergency appointments rule (■ SYSC 27.5.1R) does not apply to that job.

- (3) Another example is the *rule* about the territorial scope of this section (■ SYSC 27.3.1R)) for a *UK SMCR firm*. For example, if a *person's* job involves both *FCA certification function* (4) (functions requiring qualifications) and (6) (material risk takers), the territorial restriction in that *rule* does not apply to that job. Instead, this chapter applies without any territorial limitation.
- (4) The reason for (3) is that ■ SYSC 27.3.1R(3) says that there is no territorial limitation on *FCA certification function* (6) for a *UK SMCR firm*. As explained in (1), it does not matter that the job also involves *FCA certification function* (4), to which the territorial limitation does apply.

Overlap with designated senior management functions

27.7.5

G

- (1) ■ SYSC 27.7.1R(1) means that an *FCA-designated senior management function* cannot also be an *FCA certification function* at the same time.
- (2) So an *SMF manager* performing an activity that forms part of their *FCA-designated senior management function* is not, by performing that activity, also performing an *FCA certification function*.
- (3) But if an *FCA-designated senior management function* does not apply to a *firm*, performing the function described in the definition of that *FCA-designated senior management function* can be an *FCA certification function*.
- (4) See ■ SYSC 27.8.7AG for an example of this.



27.8 Definitions of the FCA certification functions

CASS oversight function

- 27.8.1
- R
- (1) Each of the following is an *FCA certification function*:

(a) in relation to a *CASS medium firm* and a *CASS large firm* (other than a *CASS large debt management firm*), the function of acting in the capacity of a *person* who is allocated the function in ■ CASS 1A.3.1AR (oversight of operational effectiveness);

(b) in relation to a *CASS large debt management firm*, the function of acting in the capacity of a *person* who is allocated the function in ■ CASS 11.3.4R (oversight of operational effectiveness);

(c) in relation to a *CASS small firm*, the function of acting in the capacity of a *person* who is allocated the function in ■ CASS 1A.3.1R (oversight of operational effectiveness);

(d) in relation to a *firm* to which ■ CASS 13 (Claims management: client money) applies, the function of acting in the capacity of a *person* who is allocated the function in ■ CASS 13.2.3R (Organisational requirements and responsibility for CASS operational oversight).

(2) A function in (1) is not an *FCA certification function* for that *firm* if it is performed by an *SMF manager* of that *firm*.
- 27.8.2

G

■ SYSC 27.8.1R(1) only applies to a *firm* to the extent that CASS applies to that *firm*.
- Proprietary trader function
- 27.8.3

R

The function of acting as a *proprietary trader* whose activity involves, or might involve, a risk of significant harm to the *firm* or any of its *customers* is an *FCA certification function*.
- Significant management function
- 27.8.4

R

(1) The function of acting as a *senior manager*, with significant responsibility for a significant business unit, is an *FCA certification function*.

(2) For an *overseas SMCR firm's branch* in the *United Kingdom*, the significant management function is limited to business units of the *branch*.
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SYSC 27/17
- 27

- 27.8.5** G A senior manager carrying on the significant management *FCA certification function* under ■ SYSC 27.8.4R could, for example, be:
- (1) the head of a unit carrying on the activities of:
 - (a) retail banking;
 - (b) personal lending;
 - (c) corporate lending;
 - (d) salvage or loan recovery;
 - (e) *proprietary trading*;
 - (f) *designated investment business*;
 - (g) *effecting contracts of insurance*;
 - (h) *credit-related regulated activity*;
 - (i) making material decisions on the commitment of the *firm's* financial resources, its financial commitments, its assets acquisitions, its liability management or its overall cash and capital planning;
 - (j) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters;
 - (k) administration of *contracts of insurance*;
 - (l) complaints handling; or
 - (m) determining whether an applicant should be accepted for *credit* (including lending) and on what terms; or
 - (2) a member of a committee (that is, a *person* who, together with others, has authority to commit the *firm*) making decisions in these functions.
- 27.8.6** G The examples in ■ SYSC 27.8.5G are illustrative only. They are not intended to be exhaustive.
- 27.8.7** G A business unit is not limited to one that carries on commercial activities with customers and third parties or that earns revenue. A business unit can be an internal support department that has no contact with people outside the *firm*. It may include, for example, human resources, the legal department, operations or information technology.
- 27.8.7A** G (1) An example of ■ SYSC 27.7.5G is that a person performs the significant management *FCA certification function* if:
- (a) the person performs a role coming within the definition of one of the following roles:
 - (i) an *FCA-designated senior management function* described in ■ SUP 10C.6A (Systems and controls functions: Finance, risk and internal audit); or
 - (ii) the *chief operations function*; and
 - (b) that *FCA-designated senior management function* does not apply to the *firm*.

- (2) For example, if a *core SMCR firm* has a chief risk officer, the chief risk officer will not be performing the *chief risk officer function* because the *chief risk officer function* does not apply to *core SMCR firms*. Instead that person will perform the significant management *FCA certification function*.
- (3) (2) does not apply if the chief risk officer performs that role as part of their job as an executive director. The *executive director function* applies to *core SMCR firms* and so that person will be performing the *executive director function* rather than the significant management *FCA certification function*.

27.8.8

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For the purposes of the definition of the significant management *FCA certification function*, the following additional factors about the *firm* should be considered:

- (1) the size and significance of the *firm's* business in the *United Kingdom* – for example, a *firm* carrying on *designated investment business* may have a large number of *certification employees* (for example, in excess of 100 individuals); or a *firm* carrying on general insurance business may have gross written *premiums* in excess of £100m;
- (2) the number of *regulated activities* carried on, or proposed to be carried on, by the *firm* and (if relevant) other members of the *group*;
- (3) its *group* structure (if it is a member of a *group*);
- (4) its management structure (for example, matrix management); and
- (5) the size and significance of its international operations, if any.

27.8.9

G

When considering whether a business unit is significant for the purposes of ■ SYSC 27.8.4R, the *firm* should take into account all relevant factors in the light of the *firm's* current circumstances and its plans for the future, including:

- (1) the risk profile of the unit;
- (2) its use or commitment of the *firm's* capital;
- (3) its contribution to the profit and loss account;
- (4) the number of *employees*, *certification employees* or *SMF managers* in the unit;
- (5) the number of *customers* of the unit; and
- (6) any other factor which makes the unit significant to the conduct of the *firm's* affairs so far as relating to the *regulated activity*.

Functions requiring qualifications

27.8.10 **R**

- (1) Each function involving an activity for which there is a qualification requirement as specified in **TC App 1.1.1R** (Activities and Products/ Sectors to which TC applies) is an *FCA certification function*.
- (2) For an *overseas SMCR firm*, each function involving an activity for which there would have been a qualification requirement, as specified in (1) if the *firm* had been a *UK SMCR firm*, is an *FCA certification function*.
- (3) A *person* performs the *FCA certification function* in this rule even if:
 - (a) the time period within which the *person* must have obtained the qualification requirement has not yet expired; or
 - (b) the *person* is exempt from the qualification requirement.

27.8.11 **G**

- (1) **SYSC 27.8.10R** (Functions requiring qualifications) may still apply to an *SMCR firm* where one of the exclusions in **TC App 3.1** (Circumstances in which TC does not apply) or elsewhere in TC applies.
- (2) **SYSC 27.8.10R** applies to an *overseas SMCR firm* irrespective of whether the function in **TC App 1.1.1R** (Activities and Products/Sectors to which TC applies) applies to *EEA PTV firms* or *overseas firms* for the purposes of TC.
- (3) The territorial scope of qualification requirements as specified in **TC App 2.1.1R** (Territorial Scope subject to the limitation in TC Appendix 3) does not apply to the *FCA certification function* in **SYSC 27.8.10R**. However **SYSC 27.3.1R** (Territorial scope) restricts the scope of this chapter outside the *United Kingdom*.

27.8.12 **G**

- SYSC 27.8.10R(3)** means that a *person* performs the *FCA certification function* in **SYSC 27.8.10R** even if for example they are:
- (1) still in training and do not yet need to have the qualification; or
 - (2) exempt under **TC 2.1.9R** (Exemption from appropriate qualification requirements).

Managers of certification employees

27.8.13 **R**

- (1) The function of managing or supervising a *certification employee*, directly or indirectly, is an *FCA certification function*.
- (2) A function in (1) is not an *FCA certification function* for that *firm* if it is performed by an *SMF manager* of that *firm*.

Material risk takers

27.8.14 **R**

Each function performed by a *person* in column (2) of the table in **SYSC 27.8.15R** is an *FCA certification function* with respect to a *firm* in the corresponding entry in column (1).

27.8.15 **R** Table: Definition of material risk taker

Type of SMCR firm	Employees included
(1) An <i>SMCR banking firm</i> , including an <i>EEA SMCR banking firm</i>	Each member of the <i>dual-regulated firms Remuneration Code staff</i> of the <i>firm</i> in column (1) of this row (1).
(2) [deleted]	
(3) A <i>Solvency II firm</i>	<i>Persons</i> referred to in articles 275.1(c) and (d) of <i>Solvency II Regulation</i> 2015/35 (key functions and staff with a material impact).
(4) A <i>firm</i> subject to SYSC 19G.5 (application of remuneration requirements to material risk takers) including an overseas <i>SMCR firm</i>	Each staff member identified as a <i>material risk taker</i> of the <i>firm</i> in column (1).
(5) [deleted]	
(6) A <i>firm</i> falling within SYSC 19B.1 (application provisions for the remuneration code for a fullscope UK AIFM)	Each member of the <i>AIFM Remuneration Code staff</i> of the <i>firm</i> in column (1).
(7) An <i>above-threshold non-UK AIFM</i>	In relation to a <i>firm</i> in column (1), the definition of <i>AIFM Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of <i>firm</i> in the same way as it includes <i>employees</i> of <i>firms</i> in row (6) of this table.
(8) [deleted]	
(9) [deleted]	
(10) A <i>firm</i> falling within SYSC 19E.1 (application provisions for remuneration code for UCITS management companies)	Each member of the <i>UCITS Remuneration Code staff</i> of the <i>firm</i> in column (1).
(11) [deleted]	
<p>Note: The definition of the <i>persons</i> included in column (2) applies in relation to an <i>EEA SMCR firm</i> in one of the rows of column (1) in the same way as it does to other <i>overseas SMCR firms</i> in that row. The definitions of <i>dual-regulated firms Remuneration Code staff</i>, and <i>AIFM Remuneration Code staff</i> apply accordingly.</p> <p>Where an <i>overseas SMCR firm</i> would be subject to SYSC 19G.5 if it were a <i>UK SMCR firm</i>, row (4) applies in the same way as it applies to <i>UK SMCR firms</i>, and the definition of <i>material risk taker</i> in column (2) applies accordingly.</p>	

27.8.16 **G** If the definitions or requirements in the ‘Employees included’ column of the table in ■ SYSC 27.8.15R (as adjusted) do not apply to a *firm* in the corresponding entry in the ‘Type of SMCR firm’ column, that row of the table does not apply to the *firm*.

27.8.17 **G** One example of ■ SYSC 27.8.16G is that a *credit union* is excluded from the table in ■ SYSC 27.8.15R. Therefore the material risk taker *FCA certification function* does not apply to a *credit union*. However, it is subject to equivalent *PRA* requirements.

Client-dealing function

27.8.18 R A person ("P") performs the client-dealing FCA certification function for a firm if:

- (1) P is carrying out any of the activities in the table in SYSC 27.8.19R; and
- (2) those activities will involve P dealing with:
 - (a) a person with or for whom those activities are carried out; or
 - (b) the property of any such person;in a manner substantially connected with the carrying on of regulated activities by the firm.

27.8.19 R Table: Activities covered by the client-dealing FCA certification function

Activity	Comments
(1) The following activities: (a)advising on investments other than a non-investment insurance contract; or	(a) does not include advising on investments in the course of carrying on the activity of giving basic advice on a stakeholder product.

		Activity	Comments
		(b)performing other functions related to this, such as <i>dealing, arranging</i> and (where the product is a contract) entering into and carrying it out.	
		(2) The following activities:	
		(a)giving advice in connection with <i>corporate finance business</i> ; or	
		(b)performing other functions related to this.	
		(3) If the <i>firm</i> does any of the following activities:	(a) and (b) do not include <i>dealing or arranging (bringing about) deals in investments in a non-investment insurance contract</i> .
		(a) <i>dealing</i> , as principal or as agent;	For the activity in this row (3), SYSC 27.8.18R(2)(a) and (b) are expanded to cover also:
		(b) <i>arranging (bringing about) deals in investments</i> ; or	(a)a <i>person</i> in connection with whom the activities in the first column of this row are carried out; and
		(c) <i>funeral plan distribution</i> (but not <i>advising on investments</i>) or a <i>funeral plan provision activity</i> ;	(b)the property of any such <i>person</i> .
		taking part in those activities is included.	
		(4) If the <i>firm</i> is acting in the capacity of an <i>investment manager</i> the following are included:	
		(a)taking part in that activity; and	
		(b)carrying on functions connected to this.	
		(5) Acting as a 'bidder's representative' in relation to <i>bidding in emissions auctions</i> .	Acting as a 'bidder's representative' has the meaning in regulation 5(5) of the <i>UK auctioning regulations</i> .
27.8.20	G	■ SYSC 27.3.2G (the FCA interprets the phrase 'dealing with' as including having contact with and extending beyond 'dealing' as used in 'dealing in investments') applies to ■ SYSC 27.8.18R.	
27.8.21	G	The client-dealing <i>FCA certification function</i> generally involves dealing with any <i>person</i> with or for whom the activities in the table in ■ SYSC 27.8.19R are carried out (or their property). That <i>person</i> need not be a <i>client</i> of the <i>firm</i> .	
27.8.22	G	The restrictions in ■ SYSC 27.7.1R (<i>FCA certification function</i> should require the <i>person</i> performing it to be involved in one or more aspects of the <i>firm's</i> affairs so far as they relate to <i>regulated activities</i>) also applies to the client-dealing <i>FCA certification function</i> .	
27.8.22A	R	(1) This <i>rule</i> qualifies rows (3) and (4) of the table in ■ SYSC 27.8.19R (Table: Activities covered by the client-dealing FCA certification function).	

27.8.22B **G**

- (2) A *person* does not perform a function in (1) if their only activities that would otherwise come within the client-dealing *FCA certification function* do not require them to exercise a significant amount of discretion, judgment or technical skill.
- (1) The client-dealing *FCA certification function* does not apply to purely administrative roles even though they involve customer contact.
- (2) ■ SYSC 27.8.22AR excludes someone who has no scope to choose, decide or reach a judgement on what should be done in a given situation, and whose tasks do not require them to exercise significant technical skill.
- (3) ■ SYSC 27.8.22AR is likely to exclude a role that is simple or largely automated.
- (4) There is no need to apply ■ SYSC 27.8.22AR to row (1)(b) or (2)(b) of the table in ■ SYSC 27.8.19R, because a person must also be carrying out the functions in row (1)(a) or (2)(a) for the client-dealing *FCA certification function* to apply and the functions in row (1)(a) or (2)(a) require judgment and skill.

Algorithmic trading function

27.8.23 **R**

- (1) Each of the following is an *FCA certification function*:
- (a) approving the deployment of:
 - (i) a trading algorithm or a part of one; or
 - (ii) an amendment to a trading algorithm or a part of one; or
 - (iii) a combination of trading algorithms; and
 - (b) each of the following functions:
 - (i) having significant responsibility for the management of monitoring whether or not a trading algorithm; and
 - (ii) deciding whether or not a trading algorithm; is, or remains, compliant with the *firm's* obligations.
- (2) The *firm's* obligations in (1)(b) include:
- (a) the *firm's* regulatory obligations; and
 - (b) the rules and requirements of the *trading venues* to which the *firm's* trading systems are connected.

27.8.24 **R**

A trading algorithm means a computer algorithm used in *algorithmic trading*.

27.8.25 **G**

Algorithmic trading is not limited to high-frequency algorithmic trading.

27.8.26 **G**

Deploying a trading algorithm includes deploying one on a *trading venue* on which the *firm* has not traded before where the *firm* is already using that trading algorithm on another *trading venue*.

- 27.8.27** **G** ■ SYSC 27.8.23R(1)(b) (monitoring or deciding whether or not a trading algorithm is compliant) includes testing, such as validation and stress testing.
- 27.8.28** **G**
- (1) Sometimes an approval or a decision involves sign-off from different people about different aspects of the decision or approval.
 - (2) If this is the case, all will have given the approval or decision for the purposes of ■ SYSC 27.8.23R.
- 27.8.29** **G**
- (1) Sometimes an approval or decision involves sign-off by a number of people of different levels of seniority about the same aspects of the decision.
 - (2) If this is the case, only the most senior decision-taker gives the approval or decision for the purposes of ■ SYSC 27.8.23R.
 - (3) Where the *firm's* procedures do not require the more senior person to carry out a detailed review of the decision of the more junior, both the junior and the senior person will give the approval or decision.
- 27.8.30** **G** A *firm* may have deployed an algorithm even though:
- (1) it has not yet actually been used in the generation or acceptance of orders; or
 - (2) it is not actually being used in the generation or acceptance of orders at the moment; or
 - (3) it is not currently being used in the generation or acceptance of orders because the circumstances have not arisen for it to start doing so.
- 27.8.31** **G** In the examples in ■ SYSC 27.8.30G the algorithm is capable of being used in the generation or acceptance of orders but is not actually generating or accepting them at the moment. However, a *firm* does not deploy an algorithm if the algorithm is not yet capable of generating or accepting orders because, for example, it is still in development.
- 27.8.32** **G** The algorithmic trading *FCA certification function* applies whether the *firm* develops the algorithm itself or buys one from a third party.



27.9 Material relating to several FCA
certification functions

Legal function

27.9.1

G

A *person* performing the function described in ■ SYSC 26.4.9R (Exclusion of the legal function) will perform the significant management or the material risk taker *FCA certification function*, or both.

Examples of how the temporary UK role rule in SYSC 27.5.3R (the 30-day rule) works

	Example	How the temporary UK role rule applies
(1)	A spends 20 days in the <i>UK</i> performing the proprietary trader <i>FCA certification function</i> for Firm X and wishes to spend another 20 days in the <i>UK</i> performing the significant management <i>FCA certification function</i> for Firm X.	The <i>rule</i> does not allow this. There is a single 30-day allowance, not a separate 30-day allowance for each <i>FCA certification function</i> .
(2)	A spends 20 days in the <i>UK</i> performing an <i>FCA certification function</i> for Firm X (which is a <i>UK SMCR firm</i>) and wishes to spend another 20 days dealing with Firm X's <i>clients</i> in the <i>UK</i> from the overseas office of Firm X in which A is based.	The <i>rule</i> does not allow this. There is a single 30-day limit for both types of contact with the <i>UK</i> .
(3)	A wishes to spend 40 days dealing with Firm X's <i>clients</i> in the <i>UK</i> from the overseas office of Firm X (which is a <i>UK SMCR firm</i>) in which A is based. However the total time spent doing that will only be a few hours overall.	The <i>rule</i> does not allow this. If A deals with a <i>UK client</i> on one day, that uses up one day of the 30-day allowance, however short the time for which the contact lasts.
(4)	A spends 25 days in calendar year one for Firm X in the <i>UK</i> and 25 days in calendar year two. However A spends 40 days in the <i>UK</i> for Firm X between June in calendar year 1 and June in calendar year 2.	The <i>rule</i> does not allow this. This is because the 30-day annual allowance relates to any 12-month period and not just a calendar year.
(5)	Firm X is an overseas <i>SMCR firm</i> . A is employed by Firm X and is based in one of its offices outside the <i>UK</i> . A wants to work in the <i>UK branch</i> for 10 days.	The <i>rule</i> applies to overseas <i>SMCR firms</i> . It does not matter that A is not employed by the <i>UK branch</i> and instead is employed by another part of Firm X. It does not make a difference whether A is based in an office of Firm X in its home state or one in a third country.
(6)	A is based in one of Firm X's overseas offices. Firm X then decides to relocate A to the <i>UK</i> , where A will be certified to perform an <i>FCA certification function</i> for Firm X. Firm X wants to rely on the temporary <i>UK role rule</i> for the first 30 days while Firm X goes through the certification process for A.	The <i>rule</i> does not allow this. A is no longer based in an overseas office and so the <i>rule</i> does not apply.
(7)	A is based in the overseas branch of a <i>UK SMCR firm</i> . A is to be promoted, so that A will be performing the material risk taker <i>FCA certification function</i> . Firm X wants to rely on the temporary <i>UK role rule</i> for the first 30 days while Firm X goes through the certification process for A.	The <i>rule</i> does not allow this because it does not apply to the material risk taker <i>FCA certification function</i> when it is performed for a <i>UK SMCR firm</i> .

Example	How the temporary UK role rule applies
A reference in this table to an <i>FCA certification function</i> is to a function that would have been an <i>FCA certification function</i> but for SYSC 27.5.3R (temporary UK role).	