

Senior managers and certification regime: Certification regime

## Chapter 27

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## 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*.

**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**

**G**

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 2015/35</i> (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 <i>overseas 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><b>Note:</b> 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) <i>advising on investments</i> other than a <i>non-investment insurance contract</i> ; or (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 firm does any of the following activities: (a) <i>dealing</i> , as principal or as agent; (b) <i>arranging (bringing about) deals in investments</i> ; or (c) <i>funeral plan distribution</i> (but not <i>advising on investments</i> ) or a <i>funeral plan provision activity</i> ; taking part in those activities is included. (4) If the firm 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> .	(a) does not include <i>advising on investments</i> in the course of carrying on the activity of giving <i>basic advice</i> on a <i>stakeholder product</i> .  (a) and (b) do not include <i>dealing or arranging (bringing about) deals in investments</i> in a <i>non-investment insurance contract</i> . For the activity in this row (3), SYSC 27.8.18R(2)(a) and (b) are expanded to cover also: (a) a person in connection with whom the activities in the first column of this row are carried out; and (b) the property of any such person.  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 *FCA certification function* generally involves dealing with any *person* with or for whom the activities in the table in ■ SYSC 27.8.19R are carried out (or their property). That *person* need not be a *client* of the *firm*.
- 27.8.22** **G** The restrictions in ■ SYSC 27.7.1R (*FCA certification function* should require the *person* performing it to be involved in one or more aspects of the *firm’s* affairs so far as they relate to *regulated activities*) also applies to the client-dealing *FCA certification function*.
- 27.8.22A** **R**
- (1) This *rule* qualifies rows (3) and (4) of the table in ■ SYSC 27.8.19R (Table: Activities covered by the client-dealing *FCA certification function*).
  - (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.
- 27.8.22B** **G**
- (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.