

## Chapter 27

# Senior managers and certification regime: Certification regime

		<div>27.8</div> <div>Definitions of the FCA certification functions</div>
		<div>CASS oversight function</div>
27.8.1	R	<div><div>(1) Each of the following is an <i>FCA certification function</i>:</div><div><div>(a) in relation to a <i>CASS medium firm</i> and a <i>CASS large firm</i> (other than a <i>CASS large debt management firm</i>), the function of acting in the capacity of a <i>person</i> who is allocated the function in ■ CASS 1A.3.1AR (oversight of operational effectiveness);</div><div>(b) in relation to a <i>CASS large debt management firm</i>, the function of acting in the capacity of a <i>person</i> who is allocated the function in ■ CASS 11.3.4R (oversight of operational effectiveness);</div><div>(c) in relation to a <i>CASS small firm</i>, the function of acting in the capacity of a <i>person</i> who is allocated the function in ■ CASS 1A.3.1R (oversight of operational effectiveness);</div><div>(d) in relation to a <i>firm</i> to which ■ CASS 13 (Claims management: client money) applies, the function of acting in the capacity of a <i>person</i> who is allocated the function in ■ CASS 13.2.3R (Organisational requirements and responsibility for CASS operational oversight).</div></div><div>(2) A function in (1) is not an <i>FCA certification function</i> for that <i>firm</i> if it is performed by an <i>SMF manager</i> of that <i>firm</i>.</div></div>
27.8.2	G	■ SYSC 27.8.1R(1) only applies to a <i>firm</i> to the extent that CASS applies to that <i>firm</i> .
		<div>Proprietary trader function</div>
27.8.3	R	The function of acting as a <i>proprietary trader</i> whose activity involves, or might involve, a risk of significant harm to the <i>firm</i> or any of its <i>customers</i> is an <i>FCA certification function</i> .
		<div>Significant management function</div>
27.8.4	R	<div>(1) The function of acting as a <i>senior manager</i>, with significant responsibility for a significant business unit, is an <i>FCA certification function</i>.</div> <div>(2) For an <i>overseas SMCR firm's branch</i> in the <i>United Kingdom</i>, the significant management function is limited to business units of the <i>branch</i>.</div>

**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**

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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

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(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

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■ 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

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(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

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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).
- Release 37 ● Jun 2024

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**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><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 overseas <i>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 overseas <i>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
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- 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: <div>(a)advising on investments other than a non-investment insurance contract; or</div> <div>(b)performing other functions related to this, such as dealing, arranging and (where the product is a contract) entering into and carrying it out.</div>	(a) does not include advising on investments in the course of carrying on the activity of giving basic advice on a stakeholder product.
(2) The following activities: <div>(a)giving advice in connection with corporate finance business; or</div> <div>(b)performing other functions related to this.</div>	
(3) If the firm does any of the following activities: <div>(a)dealing, as principal or as agent;</div> <div>(b)arranging (bringing about) deals in investments; or</div> <div>(c)funeral plan distribution (but not advising on investments) or a funeral plan provision activity;</div> taking part in those activities is included.	(a) and (b) do not include dealing or arranging (bringing about) deals in investments in a non-investment insurance contract.  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.
(4) If the firm is acting in the capacity of an investment manager the following are included: <div>(a)taking part in that activity; and</div> <div>(b)carrying on functions connected to this.</div>	
(5) Acting as a 'bidder's representative' in relation to bidding in emissions auctions.	Acting as a 'bidder's representative' has the meaning in regulation 5(5) of the UK auctioning regulations.

27.8.20	<b>G</b>	■ 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	<b>G</b>	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	<b>G</b>	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	<b>R</b>	<p>(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).</p> <p>(2) A <i>person</i> does not perform a function in (1) if their only activities that would otherwise come within the client-dealing <i>FCA certification function</i> do not require them to exercise a significant amount of discretion, judgment or technical skill.</p>
27.8.22B	<b>G</b>	<p>(1) The client-dealing <i>FCA certification function</i> does not apply to purely administrative roles even though they involve customer contact.</p> <p>(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.</p> <p>(3) ■ SYSC 27.8.22AR is likely to exclude a role that is simple or largely automated.</p> <p>(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 <i>person</i> must also be carrying out the functions in row (1)(a) or (2)(a) for the client-dealing <i>FCA certification function</i> to apply and the functions in row (1)(a) or (2)(a) require judgment and skill.</p>
<b>Algorithmic trading function</b>		
27.8.23	<b>R</b>	<p>(1) Each of the following is an <i>FCA certification function</i>:</p> <p>(a) approving the deployment of:</p> <p>(i) a trading algorithm or a part of one; or</p> <p>(ii) an amendment to a trading algorithm or a part of one; or</p> <p>(iii) a combination of trading algorithms; and</p> <p>(b) each of the following functions:</p> <p>(i) having significant responsibility for the management of monitoring whether or not a trading algorithm; and</p> <p>(ii) deciding whether or not a trading algorithm;</p>

		is, or remains, compliant with the <i>firm's</i> obligations.
		(2) The <i>firm's</i> obligations in (1)(b) include: <ul style="list-style-type: none"> <li>(a) the <i>firm's</i> regulatory obligations; and</li> <li>(b) the rules and requirements of the <i>trading venues</i> to which the <i>firm's</i> trading systems are connected.</li> </ul>
27.8.24	<b>R</b>	A trading algorithm means a computer algorithm used in <i>algorithmic trading</i> .
27.8.25	<b>G</b>	<i>Algorithmic trading</i> is not limited to high-frequency algorithmic trading.
27.8.26	<b>G</b>	Deploying a trading algorithm includes deploying one on a <i>trading venue</i> on which the <i>firm</i> has not traded before where the <i>firm</i> is already using that trading algorithm on another <i>trading venue</i> .
27.8.27	<b>G</b>	■ 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	<b>G</b>	<ul style="list-style-type: none"> <li>(1) Sometimes an approval or a decision involves sign-off from different people about different aspects of the decision or approval.</li> <li>(2) If this is the case, all will have given the approval or decision for the purposes of ■ SYSC 27.8.23R.</li> </ul>
27.8.29	<b>G</b>	<ul style="list-style-type: none"> <li>(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.</li> <li>(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.</li> <li>(3) Where the <i>firm's</i> 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.</li> </ul>
27.8.30	<b>G</b>	<p>A <i>firm</i> may have deployed an algorithm even though:</p> <ul style="list-style-type: none"> <li>(1) it has not yet actually been used in the generation or acceptance of orders; or</li> <li>(2) it is not actually being used in the generation or acceptance of orders at the moment; or</li> <li>(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.</li> </ul>

- 27.8.31

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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

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The algorithmic trading *FCA certification function* applies whether the *firm* develops the algorithm itself or buys one from a third party.