

**LEGAL CUTOVER (APPROVED PERSONS) INSTRUMENT 2013**

**WHEREAS:**

- A. The Authority has, in accordance with Article 5 of the Designation Order, appointed persons to exercise functions referred to in Article 5(1) of the Designation Order, which include the function of the Financial Conduct Authority of designating or modifying a Relevant Instrument and the functions of making rules and issuing guidance, directions, statements of principle and codes of practice.
- B. By virtue of Article 5(3)(a) of the Designation Order the persons appointed may discharge the relevant functions as if they were the governing body of the Financial Conduct Authority.
- C. By virtue of Article 7(1) of the Designation Order this Instrument shall be treated as if it had been made by the Financial Conduct Authority acting through its governing body.
- D. Article 2(1)(c) of the Early Commencement Order commenced certain the Financial Conduct Authority's rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.
- E. Article 2(1)(c) of the Early Commencement Order commenced the Prudential Regulation Authority's rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.
- F. The Financial Conduct Authority and the Prudential Regulation Authority wish to replace chapter 10 of the Supervision Manual in the Handbook and so that chapter is not being designated by either of them and will cease to have effect on the 1 April 2013. It will be replaced by a new Chapter 10A in the case of the Financial Conduct Authority and a new Chapter 10B in the case of the Prudential Regulation Authority.

**Interpretation**

1 In this Instrument (including the Recitals):

- (1) "Designation Order" means the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (SI 2013/161);
- (2) "Early Commencement Order" means the Financial Services Act 2012 (Commencement No. 1) Order 2013 (SI 2013/113);
- (3) "the 2000 Act" means the Financial Services and Markets Act 2000;
- (4) "the 2012 Act" means the Financial Services Act 2012;
- (5) "the Authority" means the Financial Services Authority;
- (6) "Financial Conduct Authority" means the body corporate referred to in section 1A of the 2000 Act as amended by section 6 of the 2012 Act;
- (7) "Prudential Regulation Authority" means the body corporate referred to in section 2A(1) of the 2000 Act as amended by section 6 of the 2012 Act;

- (8) “Handbook” means the Authority’s Handbook of Rules and Guidance (and including for this purpose the Handbook Guides and Regulatory Guides published by the Authority alongside the Handbook of Rules and Guidance) in each case as published on the Authority’s Handbook website at 11h59 pm on 27 February 2013;
- (9) “Relevant Instrument” has the meaning in section 119(6)(b) of the 2012 Act;
- (10) “FSA Instrument” means an instrument published by the Authority, by which the Authority made, issued, gave, imposed or amended a Relevant Instrument;
- (11) “FCA Relevant Instrument” means a Relevant Instrument designated by the Financial Conduct Authority under paragraph 2; and
- (12) “PRA Relevant Instrument” means a Relevant Instrument designated by the Prudential Regulation Authority Limited under paragraph 14 and excludes any Relevant Instrument falling within paragraph 15.

**Designation of rules etc. by the Financial Conduct Authority**

- 2 In accordance with Article 3(1) of the Designation Order, the Financial Conduct Authority designates the guidance, statements of principle and codes of practice, set out in each FSA Instrument (or part of such instrument) by which the Authority made, issued, gave, imposed or amended each part or provision of the Handbook, identified as:
  - (1) “Designated” in Column 2 of Annex A to this Instrument; and
  - (2) “FCA” or “FCA/PRA” in Column 3 of Annex A to this Instrument.
- 3 As required by Article 3(1)(c) and (d) of the Designation Order, the Financial Conduct Authority specifies that:
  - (1) The FCA Relevant Instruments were made, issued, given or imposed by the Authority under the provisions set out in the relevant FSA Instrument;
  - (2) The FCA Relevant Instruments collectively were made, issued, given or imposed by the Authority under the provisions set out in column 1 of Parts 1 to 3 of Schedule A to this Instrument; and
  - (3) The FCA Relevant instruments collectively are treated as made, issued, given or imposed by the Financial Conduct Authority under the corresponding provisions set out in column 2 of Parts 1 to 3 of Schedule A to this Instrument.
- 4 In accordance with Article 2(2)(a) of the Designation Order, each FCA Relevant Instrument is treated as having been made, issued, given or imposed by the Financial Conduct Authority.

**Modification and amendment of rules etc. by the Financial Conduct Authority**

- 5 The Financial Conduct Authority:
  - (1) in accordance with Article 3(1) of the Designation Order, modifies each FCA Relevant Instrument (or part of such instrument); and

- (2) in accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9 and to the extent not covered by paragraph 5(1) of this Instrument, amends each FCA Relevant Instrument (or part thereof);

as specified in Annex E to this Instrument, except for those provisions dealt with by paragraph 6 of this Instrument.

### **Rules etc. made, given or amended by the Financial Conduct Authority**

- 6 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9, the Financial Conduct Authority makes, issues, gives, or imposes each provision in Annex E to this Instrument that meets all of the conditions in paragraph 7.
- 7 The conditions referred to in paragraph 6 are that a provision is:
- (1) Identified as “Made” in Column 2 of Annex A to this Instrument; and
  - (2) Identified as “FCA” or “FCA/PRA” in Column 3 of Annex A to this Instrument.
- 8 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9, the Financial Conduct Authority makes, issues, gives, or imposes:
- (1) each provision in Annex B to this Instrument; and
  - (2) each provision in Annex D to this Instrument identified as “FCA” or “FCA/PRA” in that Annex.
- 9 The Financial Conduct Authority makes, issues, gives amends or imposes the provisions in paragraphs 5(2), 6 and 8 in exercise of the following powers and related provisions (which are powers and related provisions of the 2000 Act, as amended by the 2012 Act, unless otherwise stated):
- (1) Section 59 (Approval for particular arrangements);
  - (2) Section 60 (Applications for approval);
  - (3) Section 64 (Conduct: statements and codes);
  - (4) Section 137A (The FCA’s general rules);
  - (5) Section 137T (General supplementary powers);
  - (6) Article 13 of the Financial Services Act 2012 (Transitional Provisions) (Permission and Approval) Order 2013; and
  - (7) Section 139A (Power of the FCA to give guidance).
- 10 The rule-making powers in paragraph 9 are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.

### **Commencement: Financial Conduct Authority**

- 11 As required by Article 3(1) of the Designation Order, the Financial Conduct Authority specifies that the designation (in paragraph 2) and the modification (in paragraph 5(1)) of each FCA Relevant Instrument comes into effect on the 1 April 2013.
- 12 The Financial Conduct Authority directs that paragraphs 5(2) and 6 of this Instrument come into force immediately after the coming into force of the designations in paragraph 2 and the modifications in paragraph 5(1).

13 The Financial Conduct Authority directs that paragraphs 5(2), 6 and 8 of this Instrument come into force on the 1 April 2013..

**Designation of rules etc. by the Prudential Regulation Authority**

14 In accordance with Article 3(1) of the Designation Order, the Prudential Regulation Authority designates the statements of principle and codes of practice, set out in each FSA Instrument (or part of such instrument) by which the Authority made, gave or amended the part or provision of the Handbook identified as:

- (1) “Designated” in Column 2 of Annex A to this Instrument; and
- (2) “PRA” or “FCA/PRA” in Column 3 of Annex A to this Instrument.

15 The designation by the Prudential Regulation Authority in paragraph 14 excludes any provision designated as guidance in an FSA Instrument.

16 As required by Article 3(1)(c) and (d) of the Designation Order, the Prudential Regulation Authority specifies that:

- (1) The PRA Relevant Instruments were made, issued, given or imposed by the Authority under the provisions set out in the relevant FSA Instrument;
- (2) The PRA Relevant Instruments collectively were made, issued, given or imposed by the Authority under the provisions set out in column 1 of Parts 1 to 3 of Schedule A to this Instrument; and
- (3) The PRA Relevant instruments collectively are treated as made, issued, given or imposed by the Prudential Regulation Authority under the corresponding provisions set out in column 3 of Parts 1 to 3 of Schedule A to this Instrument.

17 In accordance with Article 2(2)(a) of the Designation Order, each PRA Relevant Instrument is treated as having been made, issued, given or imposed by the Prudential Regulation Authority.

**Modification and amendment of rules etc. by the Prudential Regulation Authority**

18 The Prudential Regulation Authority:

- (1) in accordance with Article 3(1) of the Designation Order, modifies each PRA Relevant Instrument (or part of such instrument); and
- (2) in accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9 and to the extent not covered by paragraph 23(1) of this Instrument, amends each PRA Relevant Instrument (or part thereof);

as specified in Annex E to this Instrument, except for those provisions dealt with by paragraph 19 of this Instrument.

**Rules etc. made, given or amended by the Prudential Regulation Authority**

19 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 21(1), the Prudential Regulation

Authority makes, issues, gives, or imposes each provision in Annex E to this Instrument that meets all of the conditions in paragraph 20.

- 20 The conditions referred to in paragraph 19 are that a provision is:
- (1) Identified as “Made” in Column 2 of Annex A to this Instrument;
  - (2) Identified as “PRA” or “FCA/PRA” in Column 3 of Annex A to this Instrument; and
  - (3) Not identified as guidance in Column 1 of Annex A to this Instrument.
- 21 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph(1), the Prudential Regulation Authority makes, issues, gives, or imposes:
- (1) each provision in Annex C to this Instrument; and
  - (2) each provision in Annex D to this Instrument identified as “PRA” or “FCA/PRA” in that Annex;  
except for any provision identified as guidance in the relevant Annex.
- 22 The Prudential Regulation Authority makes, gives, issues, amends or imposes the provisions in paragraphs 18(2), 19 and 21 in exercise of the following powers and related provisions (which are powers and related provisions of the 2000 Act, as amended by the 2012 Act, unless otherwise stated):
- (1) Section 59 (Approval for particular arrangements);
  - (2) Section 60 (Applications for approval);
  - (3) Section 64 (Conduct: statements and codes);
  - (4) Section 137G (The PRA’s general rules);
  - (5) Section 137T (General supplementary powers);
  - (6) Section 138D (Actions for damages); and
  - (7) Article 13 of the Financial Services Act 2012 (Transitional Provisions) (Permission and Approval) Order 2013.
- 23 The rule-making powers in paragraph 21(1) are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.
- 24 The Prudential Regulation Authority gives:
- (1) each provision in Annex A to this Instrument identified as “PRA” or “FCA/PRA” in Column 3 of Annex A that is marked with a G in Column 1 of Annex A to this Instrument;
  - (2) each provision in Annex C to this Instrument that is marked (in that Annex) with a G; and
  - (3) each provision in Annex D to this Instrument identified as “PRA” or “FCA/PRA” in Annex D that is marked (in that Annex) with a G;  
as guidance.

**Commencement: Prudential Regulation Authority**

- 25 As required by Article 3(1) of the Designation Order, the Prudential Regulation Authority specifies that the designation (in paragraph 144) and the modification (in paragraph 188(1)) of each PRA Relevant Instrument comes into effect on the 1 April 2013.
- 26 The Prudential Regulation Authority directs that paragraphs 18(2) and 19 of this Instrument come into force immediately after the coming into force of the designations in paragraph 144 and the modifications in paragraph 18(1).

27 The Prudential Regulation Authority directs that paragraph 18(2), 19 and 21 of this Instrument come into force on the 1 April 2013..

28 The Prudential Regulation Authority directs that:

(1) paragraph 24(1) of this Instrument comes into force at the time specified by paragraph 25 of this Instrument except in the case of provisions identified as “Made” in Column 2 of Annex A to this Instrument, in which case they come into force at the time specified by paragraph 26 of this Instrument; and

(2) paragraphs 24(2) and 24(3) of this Instrument come into force at the time specified by paragraph 25 of this Instrument.

#### **Amendments to the Handbooks**

29 The modules of the FCA’s and PRA’s Handbooks of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this Instrument listed in column (2).

(1)	(2)
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex B
Supervision manual (SUP)	Annex C

#### **Citation**

30 This Instrument may be cited as the Legal Cutover (Approved Persons) Instrument 2013.

**By order of the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body**

19 March 2013

**By order of the Board of the Prudential Regulation Authority**

22 March 2013

**Annex A**

**Designation of the Statements of Principle and Code of Practice for Approved Persons (APER)**

In addition to identifying provisions Designated or Made by this Instrument, Column 2 also identifies, for convenience and without operative effect, those provisions of the Handbook that will no longer have effect after “legal cutover”.

(1)	(2)	(3)
<b>Handbook Provision</b>	<b>Made, designated or no longer in force after legal cutover</b>	<b>Relevant regulator</b>
APER 1.1.1G	No longer in force after legal cutover	
APER 1.1.2G	No longer in force after legal cutover	
APER 1.1.3G	No longer in force after legal cutover	
APER 1.1.4G	No longer in force after legal cutover	
APER 1.1.5G	No longer in force after legal cutover	
APER 1.1A.1P	Made	FCA
APER 1.1A.2P	Made	FCA
APER 1.1A.3G	Made	FCA
APER 1.1A.4G	Made	FCA
APER 1.1A.5G	Made	FCA
APER 1.1A.6G	Made	FCA
APER 1.1A.7G	Made	FCA
APER 1.1A.8G	Made	FCA
APER 1.1A.9G	Made	FCA
APER 1.1A.10E	Made	FCA

APER 1.1A.11G	Made	FCA
APER 1.1B.1P	Made	PRA
APER 1.1B.2P	Made	PRA
APER 1.1B.3G	Made	PRA
APER 1.1B.4G	Made	PRA
APER 1.1B.5G	Made	PRA
APER 1.1B.6G	Made	PRA
APER 1.1B.7G	Made	PRA
APER 1.1B.8G	Made	PRA
APER 1.1B.9G	Made	PRA
APER 1.1B.10E	Made	PRA
APER 1.1B.11G	Made	PRA
APER 1.2.1	No longer in force after legal cutover	
APER 1.2.1AG	Made	FCA
APER 1.2.1BG	Made	PRA
APER 1.2.2G	Designated	FCA/PRA
APER 1.2.3G	Designated	FCA
APER 1.2.3AG	Made	PRA
APER 1.2.4G	No longer in force after legal cutover	
APER 1.2.5G	Designated	FCA
APER 1.2.6G	No longer in force after legal cutover	
APER 1.2.7G	No longer in force after legal cutover	
APER 1.2.8G	No longer in force after legal cutover	

APER 1.2.9G	No longer in force after legal cutover	
GEN 2.1.1G	No longer in force after legal cutover	
APER 2.1.1AP	No longer in force after legal cutover	
APER 2.1.2P	No longer in force after legal cutover	
APER 2.1A.1G	Made	FCA
APER 2.1A.2P	Made	FCA
APER 2.1A.3P	Made	FCA
APER 2.1B.1G	Made	PRA
APER 2.1B.2P	Made	PRA
APER 2.1B.3P	Made	PRA
APER 3.1.1G	No longer in force after legal cutover	
APER 3.1.1AG	Made	FCA
APER 3.1.1BG	Made	PRA
APER 3.1.2G	Designated	FCA/PRA
APER 3.1.3G	Designated	FCA/PRA
APER 3.1.4G	Designated	FCA
APER 3.1.4AG	Made	PRA
APER 3.1.5G	Designated	FCA/PRA
APER 3.1.6G	Designated	FCA/PRA
APER 3.1.7G	No longer in force after legal cutover	
APER 3.1.7AG	Made	FCA
APER 3.1.7BG	Made	PRA
APER 3.1.8G	No longer in force after	

	legal cutover	
APER 3.1.8AG	Made	FCA
APER 3.1.8BG	Made	PRA
APER 3.1.9G	Designated	FCA/PRA
APER 3.2.1E	Designated	FCA/PRA
APER 3.3.1E	Designated	FCA
APER 3.3.2E	Made	PRA
APER 4.1.1G	No longer in force after legal cutover	
APER 4.1.1AG	Made	FCA
APER 4.1.1BG	Made	PRA
APER 4.1.2E	Designated	FCA/PRA
APER 4.1.3E	Designated	FCA/PRA
APER 4.1.4E	Designated	FCA/PRA
APER 4.1.5E	Designated	FCA/PRA
APER 4.1.6E	Designated	FCA/PRA
APER 4.1.7E	Designated	FCA/PRA
APER 4.1.8E	Designated	FCA/PRA
APER 4.1.9E	Designated	FCA/PRA
APER 4.1.10E	Designated	FCA/PRA
APER 4.1.11E	Designated	FCA/PRA
APER 4.1.12E	Designated	FCA/PRA
APER 4.1.13E	Designated	FCA/PRA
APER 4.1.14E	Designated	FCA/PRA
APER 4.1.15E	Designated	FCA/PRA
APER 4.2.1G	No longer in force after legal cutover	

APER 4.2.1AG	Made	FCA
APER 4.2.1BG	Made	PRA
APER 4.2.2E	Designated	FCA/PRA
APER 4.2.2AE	Made	FCA
APER 4.2.3E	Designated	FCA/PRA
APER 4.2.4E	Designated	FCA/PRA
APER 4.2.5E	Designated	FCA/PRA
APER 4.2.6E	Designated	FCA/PRA
APER 4.2.7E	Designated	FCA/PRA
APER 4.2.8E	Designated	FCA/PRA
APER 4.2.9E	Designated	FCA/PRA
APER 4.2.10E	Designated	FCA/PRA
APER 4.2.11E	Designated	FCA/PRA
APER 4.2.12E	Designated	FCA/PRA
APER 4.2.13E	Designated	FCA
APER 4.2.14E	Designated	FCA/PRA
APER 4.3.1G	Designated	FCA/PRA
APER 4.3.2G	No longer in force after legal cutover	
APER 4.3.3E	Designated	FCA
APER 4.3.4E	Designated	FCA
APER 4.4.1G	No longer in force after legal cutover	
APER 4.4.1AG	Made	FCA
APER 4.4.1BG	Made	PRA
APER 4.4.2G	No longer in force after legal cutover	

APER 4.4.2AG	Made	FCA
APER 4.4.2BG	Made	PRA
APER 4.4.3E	Designated	FCA/PRA
APER 4.4.4E	Designated	FCA/PRA
APER 4.4.5G	Designated	FCA/PRA
APER 4.4.6E	Designated	FCA/PRA
APER 4.4.7E	Designated	FCA/PRA
APER 4.4.8E	Designated	FCA/PRA
APER 4.4.9E	Designated	FCA/PRA
APER 4.5.1G	No longer in force after legal cutover	
APER 4.5.1AG	Made	FCA
APER 4.5.1BG	Made	PRA
APER 4.5.2E	Designated	FCA/PRA
APER 4.5.3E	Designated	FCA/PRA
APER 4.5.4E	Designated	FCA/PRA
APER 4.5.5E	Designated	FCA/PRA
APER 4.5.6E	Designated	FCA/PRA
APER 4.5.7E	Designated	FCA/PRA
APER 4.5.8E	Designated	FCA/PRA
APER 4.5.9E	Designated	FCA/PRA
APER 4.5.10G	Designated	FCA/PRA
APER 4.5.11G	Designated	FCA/PRA
APER 4.5.12G	Designated	FCA/PRA
APER 4.5.13G	Designated	FCA/PRA
APER 4.5.13AG	Designated	FCA/PRA

APER 4.5.14G	Designated	FCA/PRA
APER 4.5.15G	Designated	FCA/PRA
APER 4.6.1G	No longer in force after legal cutover	
APER 4.6.1AG	Made	FCA
APER 4.6.1BG	Made	PRA
APER 4.6.2E	Designated	FCA/PRA
APER 4.6.3E	Designated	FCA/PRA
APER 4.6.4E	Designated	FCA/PRA
APER 4.6.5E	Designated	FCA/PRA
APER 4.6.6E	Designated	FCA/PRA
APER 4.6.7E	Designated	FCA/PRA
APER 4.6.8E	Designated	FCA/PRA
APER 4.6.9E	Designated	FCA/PRA
APER 4.6.10E	Designated	FCA/PRA
APER 4.6.11G	Designated	FCA/PRA
APER 4.6.12G	Designated	FCA/PRA
APER 4.6.13G	Designated	FCA/PRA
APER 4.6.14G	Designated	FCA/PRA
APER 4.7.1G	No longer in force after legal cutover	
APER 4.7.1AG	Made	FCA
APER 4.7.1BG	Made	PRA
APER 4.7.2E	Designated	FCA/PRA
APER 4.7.2AE	Made	FCA
APER 4.7.3E	Designated	FCA/PRA
APER 4.7.4E	Designated	FCA/PRA

APER 4.7.5E	Designated	FCA/PRA
APER 4.7.6E	Designated	FCA/PRA
APER 4.7.7E	Designated	FCA/PRA
APER 4.7.8E	Designated	FCA/PRA
APER 4.7.9E	Designated	FCA
APER 4.7.10E	Designated	FCA
APER 4.7.11G	Designated	FCA/PRA
APER 4.7.11AE	Designated	FCA
APER 4.7.12G	Designated	FCA/PRA
APER 4.7.13G	Designated	FCA/PRA
APER 4.7.14G	Designated	FCA/PRA
APER TP 1.1 (Note: marked as a rule in the FSA's Handbook)	Made as guidance	FCA/PRA
APER Sch 1.1G	Designated	FCA/PRA
APER Sch 2.1G	Designated	FCA/PRA
APER Sch 2.2G	Designated	FCA/PRA
APER Sch 2.3G	Designated	FCA
APER Sch 2.4	Made	PRA
APER Sch 3.1	Designated	FCA/PRA
APER Sch 4G	No longer in force after legal cutover	
APER Sch 5.1G	Designated	FCA
APER Sch 6.1G	Designated	FCA/PRA

## Annex B

### New Chapter 10A of the Supervision manual (SUP)

After SUP 10 (deleted) insert the following new section. The text is not underlined.

#### 10A FCA Approved Persons

##### 10A.1 Application

###### General

- 10A.1.1 R This chapter applies to every *firm*.
- 10A.1.2 G This chapter is also relevant to every *FCA-approved person*.
- 10A.1.3 G The *rules* in this chapter specify descriptions of *FCA controlled functions* under section 59 of the *Act* (Approval for particular arrangements).
- 10A.1.4 G The directions in this chapter relate to the manner in which a *firm* must apply for the *FCA's* approval under section 59 of the *Act* and other procedures.

###### Overseas firms: UK services

- 10A.1.5 R This chapter does not apply to an *overseas firm* in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.

###### Overseas firms: UK establishments

- 10A.1.6 R Only the following *FCA controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:
- (1) the *director function* where the *person* performing that function:
    - (a) has responsibility for the *regulated activities* of a *UK branch* which are likely to enable him to exercise significant influence over that *branch*; or
    - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that *branch*;
  - (2) the *non-executive director function* where the *person* performing one of those functions:

- (a) has responsibility for the *regulated activities* of a *UK branch* which is likely to enable him to exercise significant influence over that *branch*; or
  - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that *branch*;
- (3) the *chief executive function*;
  - (4) the *FCA required functions*;
  - (5) the *systems and controls function*;
  - (6) the *significant management function* in so far as the function relates to:
    - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
    - (b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters in so far as this relates to *designated investment business*; and
  - (7) the *customer function*.

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

10A.1.7 R This chapter does not apply to:

- (1) an *incoming EEA firm*; or
- (2) an *incoming Treaty firm*; or
- (3) a *UCITS qualifier*;

if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved, under any of the *Single Market Directives*, the *Treaty*, the *UCITS Directive* or the *auction regulation*, to an authority in a country or territory outside the *United Kingdom*.

- 10A.1.8 G *SUP* 10A.1.7R reflects the provisions of section 59(8) of the *Act* and, in relation to an incoming *Treaty firm* and a *UCITS qualifier*, the *Treaty* and the *UCITS Directive*. It preserves the principle of *Home State* prudential regulation. In relation to an incoming *EEA firm* exercising an *EEA right*, or an incoming *Treaty firm* exercising a *Treaty right*, the effect is to reserve to the *Home State regulator* the assessment of the fitness and propriety of a *person* performing a function in the exercise of that right. A member of the *governing body*, or the notified *UK branch manager*, of an incoming *EEA firm*, acting in that capacity, will not therefore have to be approved by the *FCA* under the *Act*.
- 10A.1.9 G Notwithstanding *SUP* 10A.1.8G, an incoming *EEA firm* (other than an *EEA pure reinsurer*) or incoming *Treaty firm* will have had to consider the impact of the *Host State* rules with which it is required to comply when carrying on a *passport activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An incoming *EEA firm* (other than an *EEA pure reinsurer*) will have been notified of those provisions under Part II of Schedule 3 to the *Act* in the course of satisfying the conditions for *authorisation* in the *United Kingdom*.
- 10A.1.10 G An incoming *EEA firm* will have to consider, for example, the position of a *branch manager* based in the *United Kingdom* who may also be performing a function in relation to the carrying on of a *regulated activity* not covered by the *EEA right* of the *firm*. In so far as the function is within the description of an *FCA controlled function*, the *firm* will need to seek approval for that *person* to perform that *FCA controlled function*.

Incoming EEA firms: passported activities from a branch

- 10A.1.11 R Only the following *FCA controlled functions* apply to an incoming *EEA firm* with respect to its *passport activities* carried on from a *branch* in the *United Kingdom*:
- (1) the *money laundering reporting function*;
  - (2) the *significant management function*, in so far as the function relates to:
    - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
    - (b) processing confirmations, payments, settlements, insurance claims, client money and similar matters, in so far as this relates to *designated investment business*; or
    - (c) the activity of *accepting deposits* from *banking customers* and activities substantially connected to that activity to the extent that it does not fall within (a) or (b); and

- (3) the *customer function* other than where this relates to the function in SUP 10A.10.7R(4) and (7).

10A.1.12 R If an *incoming EEA firm* is an *EEA pure reinsurer*, then SUP 10A.1.11R does not apply. Instead, none of the *FCA controlled functions* apply with respect to its *passport activities* carried on from a *branch* in the *United Kingdom*.

Incoming EEA firms etc with top-up permission activities from a UK branch

10A.1.13 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *FCA controlled functions* apply:

- (1) the *FCA required functions*, other than the *apportionment and oversight function* and the *compliance oversight function*;
- (2) the *significant management function*, in so far as it relates to:
  - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
  - (b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters, in so far as this relates to *designated investment business*; or
  - (c) the activity of *accepting deposits* from *banking customers* and activities substantially connected to that activity to the extent that it does not fall within (a) or (b); and
- (3) the *customer function*.

10A.1.14 R A *person* does not perform the *significant management function* for a *firm* under SUP 10A.1.11R or SUP 10A.1.13R if that *person* would not have been treated as performing any *FCA controlled function* for that *firm* if that *firm* had been a *UK firm*.

Appointed representatives

10A.1.15 R The descriptions of the following *FCA controlled functions* apply to an *appointed representative* of a *firm*, except an *introducer appointed representative*, as they apply to an *FCA-authorised person*:

- (1) the *FCA governing functions*, subject to SUP 10A.1.16R and except for a *tied agent* of an *EEA MiFID investment firm*; and
- (2) the *customer function* other than in relation to acting in the capacity of an *investment manager* (see SUP 10A.10.7R(6)).

- 10A.1.16 R (1) *SUP* 10A.1.15R is modified in relation to an *appointed representative* meeting the conditions in (2) so that only one of the following *FCA-governing functions*:
- (a) *director function*; or
  - (b) *chief executive function*; or
  - (c) *partner function*; or
  - (d) *director of unincorporated association function*;
- applies, as appropriate, to an individual within that *appointed representative* who will be required to be an *FCA-approved person*.
- (2) The conditions are that:
- (a) the scope of appointment of the *appointed representative* includes *insurance mediation activity* in relation to *non-investment insurance contracts*, but no other *regulated activity*; and
  - (b) the principal purpose of the *appointed representative* is to carry on activities other than *regulated activities*.

Members of a profession

- 10A.1.17 R (1) This chapter, except in respect of the *FCA required functions*, does not apply to an *authorised professional firm* in respect of its *non-mainstream regulated activities*, subject to (2).
- (2) Where the *authorised professional firm* has appointed *FCA-approved persons* to perform the *FCA governing functions* with equivalent responsibilities for the *firm's non-mainstream regulated activities* and other *regulated activities*, for the *firm's non-mainstream regulated activities* this chapter applies with respect to the *FCA governing functions* and the *FCA required functions* (other than the *apportionment and oversight function*) only.

Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords and insurance intermediaries.

- 10A.1.18 R The descriptions of *FCA significant-influence functions*, other than the *FCA required functions*, and, if the *firm* is a *MiFID investment firm*, the *FCA governing functions* do not extend to activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:
- (1) an *oil market participant*; or

- (2) a *service company*; or
- (3) an *energy market participant*; or
- (4) a wholly owned *subsidiary* of:
  - (a) a local authority; or
  - (b) a registered social landlord; or
- (5) a *firm* with *permission* to carry on *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity*.

10A.1.19 G It will be a matter of fact in each case whether, having regard to all the circumstances, including in particular where the balance of the business lies, a *firm's* principal purpose is to carry on activities other than *regulated activities*. If a *firm* wishes to rely on SUP 10A.1.18R, it should be in a position to demonstrate that its principal purpose is to carry on activities other than *regulated activities*.

#### Insolvency practitioners

- 10A.1.20 R This chapter does not apply to a function performed by:
- (1) a *person* acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or
  - (2) a *person* acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986; or
  - (3) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or
  - (4) a *person* acting as a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

#### Bidders in emissions auctions

- 10A.1.21 G For a *firm* that is exempt from *MiFID* under article 2(1)(i) and whose only *permission* is *bidding in emissions auctions*, the only *FCA controlled functions* that apply to it are:
- (1) the *FCA governing functions*;
  - (2) the *money laundering reporting function*;
  - (3) the *customer function*; and

- (4) (where it has exercised an opt-in to CASS in accordance with CASS 1.4.9R and is a *CASS medium firm* or a *CASS large firm*) the *CASS operational oversight function*.

This is because the *FCA approved persons* regime specifies a number of functions by incorporation of requirements in SYSC; however, a *firm* carrying on *auction regulation bidding* is only subject to SYSC to a limited extent in relation to that activity. This means that the *FCA required functions* do not apply to *auction regulation bidding*, except for the *money laundering reporting function*. Similarly, the *significant management function* does not apply in relation to *auction regulation bidding* because, in carrying on that activity, a *firm* is not subject to SYSC 2.1.1R or SYSC 4.1.1R and is not undertaking *proprietary trading*.

## 10A.2 Purpose

- 10A.2.1 G The immediate purpose of SUP 10A.3 to SUP 10A.11 is to specify, under section 59 of the *Act*, descriptions of the *FCA controlled functions* which are listed in SUP 10A.4.4R. The underlying purpose is to establish, and mark the boundaries of, the "FCA-approved persons regime".
- 10A.2.2 G SUP 10A does not deal with the *PRA's approved persons* regime.
- 10A.2.3 G The *FCA* has certain powers in relation to *PRA-approved persons*, such as the requirement to give its consent in certain cases to the *PRA* granting approval for the performance of a *PRA controlled function*. SUP 10A does not deal with these.

## 10.3 Provisions related to the Act

- 10A.3.1 R A function 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*.
- 10A.3.2 G Sections 59(1) and (2) of the *Act* provide that approval is necessary in respect of 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*.

- 10A.3.3 G *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* and includes the appointment of a *person* to an office, his becoming a *partner*, or his employment (whether under a contract of service or otherwise). For the provisions in this chapter relating to outsourcing, see *SUP* 10A.13.5G and *SUP* 10A.13.6G.
- 10A.3.4 G If, however, a *firm* is a member of a group, and the *arrangements* for the performance of an *FCA controlled function* of the *firm* are made by, for instance, the *holding company*, the *person* performing the function will only require approval if there is an arrangement (under section 59(1)) or a contract (under section 59(2)) between the *firm* and *holding company* permitting this. This need not be a written contract but could arise, for example, by conduct, custom and practice.
- 10A.3.5 G The *arrangement* must be “in relation to” the carrying on of a *regulated activity*. *Regulated activities* are defined in the *Glossary* by reference to the *Regulated Activities Order*. This order prescribes the activities which are *regulated activities* for the purposes of the *Act*.

#### 10A.4 Specification of functions

- 10A.4.1 R Each of the functions described in *SUP* 10A.4.4R (the table of FCA controlled functions) is an *FCA controlled function*.
- 10A.4.2 R Part 1 of the table of *FCA controlled functions* applies in relation to an *FCA-authorised person*. It also applies in relation to an *appointed representative* for the purposes of *SUP* 10A.1.15R (Appointed representatives) whether its *principal* is an *FCA-authorised person* or a *PRA-authorised person*. Part 2 applies in relation to a *PRA-authorised person*.
- 10A.4.3 G The fact that a *person* may be *FCA*-approved for one purpose does not have the effect of bringing all his activities within that *FCA controlled function*.
- 10A.4.4 R FCA controlled functions

<b>Part 1 (FCA controlled functions for FCA-authorised persons and appointed representatives)</b>		
<b>Type</b>	<b>CF</b>	<b>Description of FCA controlled function</b>
<i>FCA governing functions*</i>	1	<i>Director function</i>
	2	<i>Non-executive director function</i>
	3	<i>Chief executive function</i>

	4	<i>Partner function</i>
	5	<i>Director of unincorporated association function</i>
	6	<i>Small friendly society function</i>
<i>FCA required functions*</i>	8	<i>Apportionment and oversight function</i>
	10	<i>Compliance oversight function</i>
	10A	<i>CASS operational oversight function</i>
	11	<i>Money laundering reporting function</i>
<i>Systems and controls function*</i>	28	<i>Systems and controls function</i>
<i>Significant management function*</i>	29	<i>Significant management function</i>
<i>Customer-dealing functions</i>	30	<i>Customer function</i>
<i>*FCA significant-influence functions</i>		

<b>Part 2 (FCA controlled functions for PRA-authorised persons)</b>		
<b>Type</b>	<b>CF</b>	<b>Description of FCA controlled function</b>
<i>FCA required functions*</i>	8	<i>Apportionment and oversight function</i>
	10	<i>Compliance oversight function</i>
	10A	<i>CASS operational oversight function</i>
	11	<i>Money laundering reporting function</i>
<i>Significant management function*</i>	29	<i>Significant management function</i>
<i>Customer-dealing functions</i>	30	<i>Customer function</i>
<i>*FCA significant-influence functions</i>		

## 10A.5 Significant-influence functions

What are the FCA significant-influence functions?

- 10A.5.1 G The *FCA significant-influence functions*, which are specified in SUP 10A.4.1R, comprise the *FCA governing functions* (SUP 10A.6), the *FCA required functions* (SUP 10A.7), the *systems and controls function* (SUP 10A.8) and the *significant management function* (SUP 10A.9). SUP 10A.5 applies to each of the *FCA significant influence functions*.

Definition of FCA significant-influence function

- 10A.5.2 R Each *FCA significant-influence function* is one which comes within the definition of a *significant-influence function*.
- 10A.5.3 G Section 59(7B) of the *Act* says that a *significant-influence function*, in relation to the carrying on of a *regulated activity* by a *firm*, means a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *firm's* affairs, so far as relating to the activity.
- 10A.5.4 G SUP 10A.5.2R gives effect to section 59(5)(b) of the *Act*.
- 10A.5.5 G Whether an *FCA controlled function* is likely to result in the *person* responsible for its performance exercising significant influence on the conduct of the *firm's* affairs is a question of fact in each case. The *FCA* has identified the *FCA significant influence functions* as satisfying this condition.

Periods of less than 12 weeks

- 10A.5.6 R If:
- (1) a *firm* appoints an individual to perform a function which, but for this *rule*, would be an *FCA significant influence function*;
  - (2) the appointment is to provide cover for an *approved person* 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 significant influence function* does not relate to those activities of that individual.

- 10A.5.7 G *SUP* 10A.5.6R 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 controlled function* for more than 12 weeks, the *firm* should apply for approval.

## 10A.6 FCA governing functions

### Introduction

- 10A.6.1 G Every *firm* will have one or more *persons* responsible for directing its affairs. These *persons* will be performing the *FCA governing functions* and will be required to be *FCA-approved persons* unless the application provisions in *SUP* 10A.1, or the particular description of an *FCA controlled function*, provide otherwise. For example, each *director* of a *company* incorporated under the Companies Acts will perform an *FCA governing function*. However, if the *firm* is a *PRA-authorized person*, the *governing functions* do not apply. Instead, those *persons* will be performing the *PRA governing functions* and will be required to be *PRA-approved persons* instead.

- 10A.6.2 G A *sole trader* does not fall within the description of the *governing functions*.

### What the FCA governing functions include

- 10A.6.3 R Each of the *FCA governing functions* includes:
- (1) (where apportioned under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R):
    - (a) the *systems and controls function* (if it applies to the *firm*);  
and
    - (b) the *significant management function*;
  - (2) (in respect of *bidding in emissions auctions*) that part of the *customer function* specified in *SUP* 10A.10.7R(7) (bidder's representative).

This does not apply to the *non-executive director function* or the function described in *SUP* 10A.6.8R.

- 10A.6.4 G (1) The effect of SUP 10A.6.3R is that a *person* who is approved to perform an *FCA governing function* will not have to be specifically *FCA*-approved to perform the *systems and controls function* or the *significant management function* or the part of the *customer function* specified in SUP 10A.10.7R(7). However, a *person* who is approved to perform an *FCA governing function* will have to be additionally *FCA*-approved before he can perform any of the *FCA required functions* or the *customer function* (except the part specified in SUP 10A.10.7R(7)).
- (2) SUP 10A.6.3R does not apply to the *non-executive director function*. It does not apply to the *director function* if the only part of that function that the *FCA-approved person* is performing is the function described in SUP 10A.6.8R.
- 10A.6.5 G A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* (MIPRU 2.2.1R). MIPRU 2.2.2R(1) provides that the *firm* may allocate this responsibility to one or more of the *persons* performing an *FCA governing function* (other than the *non-executive director function*).
- 10A.6.6 G Where a *person* performing a *governing function* is also responsible for the *firm's insurance mediation activity*, the words “(insurance mediation)” will be inserted after the relevant *FCA controlled function* (see MIPRU 2.2.5G).
- Director function (CF1)
- 10A.6.7 R If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of a *director* (other than *non-executive director*) of that *firm*.
- 10A.6.8 R (1) If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is also the function of acting in the capacity of a *person*:
- (a) who is a *director*, partner, officer, member (if the *parent undertaking* or *holding company* is a *limited liability partnership*), *senior manager*, or employee of a *parent undertaking* or *holding company* of the *firm*; and
- (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.
- (2) (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
- (3) (1) does not apply to the function falling into SUP 10A.6.13R (*non-executive director* of the *parent undertaking* or *holding company*).

- 10A.6.9 G Examples of where *SUP* 10A.6.8R might apply include (but are not limited to):
- (1) a chairman of an audit committee of a *parent undertaking* or *holding company* of a *UK firm* where that audit committee is working for that *UK firm* (that is, functioning as the audit committee for the *group*);  
or
  - (2) a *director* (other than a *non-executive director*) of a *parent undertaking* or *holding company* of a *UK firm* exercising significant influence by way of his involvement in taking decisions for that *UK firm*; or
  - (3) an individual (such as a *senior manager*) of a *parent undertaking* or *holding company* of a *UK firm* who is responsible for and/or has significant influence in setting the objectives for and the remuneration of executive *directors* of that *UK firm*; or
  - (4) an individual who is a *director* (other than a *non-executive director*) or a *senior manager* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influencing the operations of that *UK firm*, and acts in a manner in which it can reasonably be expected that an executive *director* or *senior manager* of that *UK firm* would act; or
  - (5) an individual of an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on, where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*.

10A.6.10 G A *director* can be a *body corporate* and may accordingly require approval as an *FCA-approved person* in the same way as a natural *person* may require approval.

10A.6.11 G The *director function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead.

Non-executive director function (CF2)

10A.6.12 R If a *firm* is a *body corporate*, the *non-executive director function* is the function of acting in the capacity of a *non-executive director* of that *firm*.

- 10.A.6.13 R (1) If a *firm* is a *body corporate*, the *non-executive director function* is also the function of acting in the capacity of a *person*:
- (a) who is a *non-executive director* of a *parent undertaking* or *holding company*; and
  - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.

- (2) However, (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.

10A.6.14 G Examples of where *SUP 10A.6.13R* might apply include (but are not limited to):

- (1) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* who takes an active role in the running of the business of a *UK firm*, for example, as a member of a board or committee (on audit or remuneration) of that *firm*; or
- (2) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* having significant influence in setting and monitoring the business strategy of the *UK firm*; or
- (3) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* of a *UK firm* involved in carrying out responsibilities such as scrutinising the approach of executive management, performance, or standards of conduct of the *UK firm*; or
- (4) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influence the operations of the *UK firm*, and acts in a way in which it can reasonably be expected that a *non-executive director* of the *UK firm* would act; or
- (5) an individual who is a *non-executive director* of an *overseas firm* which maintains a *branch* in the *United Kingdom* from which *regulated activities* are carried on where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*.

10A.6.15 G The *non-executive director function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead.

Guidance on persons in a parent undertaking or holding company exercising significant influence

10A.6.16 G (1) This paragraph explains the basis on which the *director function* and the *non-executive director function* are applied to *persons* who have a position with the *firm's parent undertaking* or *holding company* under *SUP 10A.6.8R* or *SUP 10A.6.13R*.

- (2) The basic position is set out in *SUP* 10A.3.4G. As is the case with all *controlled functions*, *SUP* 10A.6.8R and *SUP* 10A.6.13R are subject to the overriding provisions in *SUP* 10A.3.1R, which sets out the requirements of section 59(1) and (2) of the *Act*. This means that unless the *firm* has an *arrangement* permitting the performance of these roles by the *persons* concerned, these *persons* will not be performing these *controlled functions*. Therefore, the *FCA* accepts that there will be cases in which a *person* performing these roles will not require approval. However where there is such an *arrangement* the function may apply.

#### Chief executive function (CF3)

- 10A.6.17 R The *chief executive function* is the function of acting in the capacity of a *chief executive* of a *firm*.
- 10A.6.18 G This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the *governing body*: ,
- (1) for the conduct of the whole of the business (or relevant activities);  
or
- (2) in the case of a *branch* in the *United Kingdom* of an *overseas firm*, for the conduct of all of the activities subject to the *UK regulatory system*.
- 10A.6.19 G For a *branch* in the *United Kingdom* of an *overseas firm*, the *FCA* would not normally expect the overseas *chief executive* of the *firm* as a whole to be *FCA*-approved for this function where there is a *senior manager* under him with specific responsibility for those activities of the *branch* which are subject to the *UK regulatory system*. In some circumstances, the *person* within the *firm* responsible for *UK* operations may, if the function is likely to enable him to exercise significant influence over the *branch*, also perform the *chief executive function* (see *SUP* 10A.7.4G).
- 10A.6.20 G A *person* performing the *chief executive function* may be a member of the *governing body* but need not be. If the chairman of the *governing body* is also the *chief executive*, he will be discharging this function. If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*. But if that responsibility is discharged jointly by more than one *person*, each of those *persons* will be performing the *chief executive function*.
- 10A.6.21 G Note that a *body corporate* may be a *chief executive*. If so, it will need to be approved (if the *firm* in question is an *FCA*-authorised *person*) to perform the *chief executive function*.
- 10A.6.22 G The *chief executive function* does not apply in relation to a *PRA*-authorised *person*. *PRA* approval is required instead.

#### Partner function (CF4)

- 10A.6.23 R (1) If a *firm* is a *partnership*, the *partner function* is the function of acting in the capacity of a *partner* in that *firm*.
- (2) If the principal purpose of the *firm* is to carry on one or more *regulated activities*, each *partner* performs the *partner function*.
- (3) If the principal purpose of the *firm* is other than to carry on *regulated activities*:
- (a) a *partner* performs the *partner function* to the extent only that he has responsibility for a *regulated activity*; and
- (b) a *partner* in a *firm* will be taken to have responsibility for each *regulated activity* except where the *partnership* has apportioned responsibility to another *partner* or group of *partners*.
- 10A.6.24 G Any apportionment referred to in SUP 10A.6.23R(3)(b) will have taken place under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R. The FCA may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see SYSC 2.2).
- 10A.6.25 G The effect of SUP 10A.1.17R is that *regulated activity* in SUP 10A.6.23R (and elsewhere) is to be taken as not including an activity that is a *non-mainstream regulated activity*. Therefore, a *partner* whose only *regulated activities* are incidental to his professional services, in a *partnership* whose principal purpose is to carry on other than *regulated activities*, need not be an FCA-approved person. What amounts to the principal purpose of the *firm* is a matter of fact in each case having regard to all the circumstances, including the activities of the *firm* as a whole. Any *regulated activities* which such a partner carries on are not within the description of the *partner function*.
- 10A.6.26 R If a *firm* is a *limited liability partnership*, the *partner function* extends to the *firm* as if the *firm* were a *partnership* and a member of the *firm* were a *partner*.
- 10A.6.27 R If a *partnership* is registered under the Limited Partnership Act 1907, the *partner function* does not extend to any function performed by a limited partner.
- 10A.6.28 G The *partner function* does not apply in relation to a PRA-*authorised person*. PRA approval is required instead.

Director of unincorporated association function (CF5)

- 10A.6.29 R If a *firm* is an unincorporated association, the *director of unincorporated association function* is the function of acting in the capacity of a *director* of the unincorporated association.

10A.6.30 G The *director of unincorporated association function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead.

Small friendly society function (CF6)

10A.6.31 R (1) If a *firm* is a *non-directive friendly society*, the *small friendly society function* is the function of directing its affairs, either alone or jointly with others.

(2) If the principal purpose of the *firm* is to carry on *regulated activities*, each *person* with responsibility for directing its affairs performs the *FCA controlled function*.

(3) If the principal purpose of the *firm* is other than to carry on *regulated activities*, a *person* performs the *small friendly society function* only to the extent that he has responsibility for a *regulated activity*.

10A.6.32 R (1) Each *person* on the *non-directive friendly society's governing body* will be taken to have responsibility for its *regulated activities*, unless the *firm* has apportioned this responsibility to one particular individual to whom it is reasonable to give this responsibility.

(2) The individual need not be a member of the *governing body*.

10A.6.33 G Typically a *non-directive friendly Society* will appoint a “committee of management” to direct its affairs. However, the governing arrangements may be informal and flexible. If this is the case, the *FCA* would expect the society to resolve to give responsibility for the carrying on of *regulated activities* to one individual who is appropriate in all the circumstances. That individual may, for example, have the title of *chief executive* or similar. The individual would have to be an *FCA-approved person* under *SUP* 10A.6.31R.

10A.6.34 G In practice, the *FCA* expects that most *non-directive friendly societies* will be *PRA-authorised persons*. Where that is the case, the *small friendly society function* will not apply. *PRA* approval is required instead.

## 10A.7 FCA required functions

Apportionment and oversight function (CF8)

10A.7.1 R The *apportionment and oversight function* is the function of acting in the capacity of a *director* or *senior manager* responsible for either or both of the apportionment function and the oversight function set out in *SYSC* 2.1.3R or *SYSC* 4.4.5R.

- 10A.7.2 G In requiring someone to apportion responsibility, a *common platform firm* should not apply for that *person* or *persons* to be *FCA*-approved to perform the *apportionment and oversight function* (see *SUP* 10A.7.1R, *SYSC* 2.1.3R and *SYSC* 1 Annex 1).
- 10A.7.3 G The fact that there is a *person* performing the *apportionment and oversight function*, and who has responsibility for activities subject to regulation by the *FCA*, may have a bearing on whether a manager who is based overseas will be performing an *FCA controlled function*. It is a factor to take into account when assessing the likely influence of the overseas manager.
- 10A.7.4 G Generally, in relation to a *UK* establishment of an *overseas firm* or a *firm* which is part of an overseas *group*, where an overseas manager's responsibilities in relation to the *United Kingdom* are strategic only, he will not need to be an *FCA-approved person*. However, where, in accordance with *SYSC* 3 or *SYSC* 4 to *SYSC* 10, he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing an *FCA controlled function* for example, the *chief executive function* or a *PRA controlled function*.
- 10A.7.5 G A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* (*MIPRU* 2.2.1R). *MIPRU* 2.2.2R(2) provides that the *firm* may allocate this responsibility to the *person* performing the *apportionment and oversight function*.
- 10A.7.6 G Where the *person* performing the *apportionment and oversight function* is also responsible for the *firm's insurance mediation activity*, the words "(insurance mediation)" will be inserted after this *FCA controlled function* (see *MIPRU* 2.2.5G).
- 10A.7.7 G As explained in *SUP* 10A.11 (Minimising overlap with the *PRA* approved persons regime), the application of the *apportionment and oversight function* is sometimes disapplied for a *PRA-authorised person*.

Compliance oversight function (CF10)

- 10A.7.8 R The *compliance oversight function* is the function of acting in the capacity of a *director* or *senior manager* who is allocated the function set out in *SYSC* 3.2.8R or *SYSC* 6.1.4R(2).

CASS operational oversight function (CF10a)

- 10A.7.9 R In relation to a *CASS medium firm* and a *CASS large firm*, the *CASS operational oversight function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in *CASS* 1A.3.1AR.

Money laundering reporting function (CF11)

- 10A.7.10 R The *money laundering reporting function* is the function of acting in the capacity of the *money laundering reporting officer* of a *firm*.
- 10A.7.11 G A *firm's* obligations in respect of its *money laundering reporting officer* are set out elsewhere in the *Handbook* (see SYSC 3.2.6IR and SYSC 6.3.9R and for their scope, see the application provisions in SYSC 1 Annex 1).

## 10A.8 Systems and controls functions

Systems and controls function (CF28)

- 10A.8.1 R The *systems and controls function* is the function of acting in the capacity of an *employee* of the *firm* with responsibility for reporting to the *governing body* of a *firm*, or the audit committee (or its equivalent) in relation to:
- (1) its financial affairs;
  - (2) setting and controlling its risk exposure (see SYSC 3.2.10G and SYSC 7.1.6R);
  - (3) adherence to internal systems and controls, procedures and policies (see SYSC 3.2.16G and SYSC 6.2).
- 10A.8.2 R The *systems and controls function* does not apply in relation to *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(i).
- 10A.8.3 G The *systems and controls function* does not apply in relation to a *PRA-authorized person*. *PRA* approval is required instead.
- 10A.8.4 G Where an *employee* performs the *systems and controls function* the *FCA* would expect the *firm* to ensure that the *employee* had sufficient expertise and authority to perform that function effectively. A *director* or *senior manager* would meet this expectation.

## 10A.9 Significant management functions

Application

- 10A.9.1 R *SUP* 10A.9 applies only to a *firm* which:
- (1) under SYSC 2.1.1R or, SYSC 4.1.1R, apportions a significant responsibility, within the description of the *significant management function*, to a *senior manager* of a significant business unit; or
  - (2) undertakes *proprietary trading*; or

- (3) (in the case of an *EEA firm*) undertakes the activity of *accepting deposits* from *banking customers* and activities connected with this.
- 10A.9.2 G The *FCA* anticipates that there will be only a few *firms* needing to seek approval for an individual to perform the *significant management function* set out in *SUP* 10A.9.1R(1). In most *firms*, those approved for the *FCA governing functions*, *FCA required functions* and, where appropriate, the *systems and controls function* or the equivalent *PRA controlled functions*, are likely to exercise all the significant influence at senior management level.
- 10A.9.3 G A *proprietary trader* undertakes activities with the *firm's money* and has the ability to commit the *firm*. By virtue of this role, all *proprietary traders* have potential to be able to exercise significant influence on the *firm* for the purposes of the definition of *significant-influence function*. Therefore, it is the *FCA's* expectation that all *firms* will assess all their *proprietary traders* to ascertain the ones for whom approval is required.
- 10A.9.4 G The scale, nature and complexity of the *firm's* business may be such that a *firm* apportions, under *SUP* 10A.9.1R(1), a significant responsibility to an individual who is not approved to perform the *FCA governing functions*, *FCA required functions* or, where appropriate, the *systems and controls function* or the equivalent *PRA controlled functions*. If so, the *firm* should consider whether the functions of that individual fall within the *significant management function*. For the purposes of the description of the *significant management functions*, 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 *approved persons* (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.
- 10A.9.5 G When considering whether a business unit is significant, 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; or
  - (2) its use or commitment of a *firm's* capital; or

- (3) its contribution to the profit and loss account; or
  - (4) the number of *employees* or *approved persons* in the unit; or
  - (5) the number of *customers* of the unit; or
  - (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*.
- 10A.9.6 G The question may arise whether a manager who is based overseas will be performing the *significant management function* under SUP 10A.9.9R and should, therefore, be an *FCA-approved person*. This is especially true where the *firm* operates matrix management. The fact there is a *person* performing the *apportionment and oversight function*, and who has responsibility for activities subject to regulation by the *FCA*, may have a bearing on this. It is a factor to take into account when assessing the likely influence of the overseas manager.
- 10A.9.7 G Generally, in relation to a *branch* of a *firm*, or a *firm* which is part of an overseas *group*, where an overseas *manager* is responsible for strategy, he will not need to be approved for the *significant management function*. However, where he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing that *FCA controlled function*.
- 10A.9.8 G See also SUP 10A.7.3G to SUP 10A.7.6G in relation to matrix management.
- Significant management function (CF29)
- 10A.9.9 R The *significant management function* is the function of acting as a *senior manager* with significant responsibility for a significant business unit that:
- (1) carries on *designated investment business* or other activities not falling within (2) to (4);
  - (2) *effects contracts of insurance* (other than *contractually based investments*);
  - (3) makes material decisions on the commitment of a *firm's* financial resources, its financial commitments, its assets acquisitions, its liability management and its overall cash and capital planning;
  - (4) processes confirmations, payments, settlements, insurance claims, *client money* and similar matters;
  - (5) (in the case of an *EEA firm*) undertakes the activity of *accepting deposits* from *banking customers* and activities connected with this.
- 10A.9.10 R The *significant management function* also includes the function of acting as a *proprietary trader*.

- 10A.9.11 R The *significant management function* does not include any of the activities described in any other *FCA controlled function* or *PRA controlled function* if that other *controlled function* applies to the *firm*.
- 10A.9.12 G A *senior manager* carrying on the *significant management function* under SUP 10A.9.9R with significant responsibility for a significant business unit that carries on activities other than *designated investment business* for the purposes of SUP 10A.9.9R(1) could, for example, be the head of a unit carrying on the activities of: retail banking, personal lending, corporate lending, salvage or loan recovery, or *proprietary trading*, or a member of a committee (that is, a *person* who, together with others, has authority to commit the *firm*) making decisions in these functions.
- 10A.9.13 G A *proprietary trader* also undertakes activities which may have a significant influence on the *firm*. Such activities may require approval for CF29 under SUP 10A.9.10R.
- 10A.9.14 G A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* (MIPRU 2.2.1R). MIPRU 2.2.2R(3) provides that the *firm* may allocate this responsibility to the *person* performing the *significant management function*.
- 10A.9.15 G Where the *person* performing the *significant management function* is also responsible for the *firm's insurance mediation activity*, the words “(insurance mediation)” will be inserted after this *FCA controlled function* (see MIPRU 2.2.5G).

## 10A.10 Customer-dealing functions

### Introduction

- 10A.10.1 R SUP 10A.10 applies with respect to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*.
- 10A.10.2 G Without SUP 10A.10.1R, the description of the *customer function* would extend to this function wherever it was performed. The effect of SUP 10A.10.1R is that the description is limited, in relation to *regulated activities* with an overseas element, in a manner which is broadly consistent with the scope of conduct of business regulation.
- 10A.10.3 G The *customer function* has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; it has no application to banking business such as deposit taking and lending, nor to *general insurance business*.

The basic rule about the customer function

- 10A.10.4 R The *customer function* is one which comes within the definition of a *customer-dealing function*.
- 10A.10.5 G Section 59(7A) of the *Act* (Approval for particular arrangements) says that the customer-dealing function, in relation to the carrying on of a *regulated activity* by a *firm* (“A”), means a function that will involve the *person* performing it in dealing with:
- (1) customers of A; or
  - (2) property of customers of A;
- in a manner substantially connected with the carrying on of the activity.
- 10A.10.6 G The *FCA* interprets the phrase “dealing with” as including having contact with *customers* 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*.

Customer function (CF 30)

- 10A.10.7 R The *customer function* is the function of:
- (1) *advising on investments* other than a *non-investment insurance contract* (but not where this is *advising on investments* in the course of carrying on the activity of giving *basic advice* on a *stakeholder product*) and performing other functions related to this such as *dealing* and *arranging*;
  - (2) giving advice to *clients* solely in connection with *corporate finance business* and performing other functions related to this;
  - (3) giving advice or performing related activities in connection with *pension transfers* or opt-outs for *retail clients*;
  - (4) giving advice to a *person* to become, or continue or cease to be, a member of a particular *Lloyd’s syndicate*;
  - (5) *dealing*, as principal or as agent, and *arranging (bringing about) deals in investments* other than a *non-investment insurance contract* with, for, or in connection with *customers* where the *dealing* or *arranging deals* is governed by *COBS 11 (Dealing and managing)*;
  - (6) acting in the capacity of an *investment manager* and carrying on functions connected to this;
  - (7) in relation to *bidding in emissions auctions*, acting as a ‘bidder’s representative’ within the meaning of subparagraph 3 of article 6(3) of the *auction regulation*.

- 10A.10.8 R The *customer function* does not extend to an individual who is performing the functions in SUP 10A.10.7R(1) to (2) or SUP 10A.10.7R(5) to (7) and who is based overseas and who, in a 12-month period, spends no more than 30 days in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function.
- 10A.10.9 G The *FCA* would expect an individual from overseas to be accompanied on a visit to a *customer*. TC 2.1.9R(2) provides that the *firm* will have to be satisfied that the individual has at least three years of up-to-date, relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of TC 2.1.9R(2) are disapplied in these circumstances (except for an individual who gives advice to *retail clients* on *retail investment products* or is a *broker fund adviser*). The effect of this is that such individuals need not attain the relevant regulatory module of an appropriate qualification (see TC 2.1.9R(2)).
- 10A.10.10 G The *customer function* in SUP 10A.10.7R(5) does not extend to the individual who, on the instructions of the *customer*, simply inputs the *customer's* instructions into an automatic execution system where no discretion is or may be exercised by the individual performing the activity. Nor does it extend to merely introducing a *customer* to a *firm* or distributing advertisements.
- 10A.10.11 G An individual may *advise on investments* prior to being assessed as competent in accordance with the *rules* in the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) and, where relevant, the Training and Competence sourcebook (*TC*). The *firm* should record when that *person* subsequently becomes competent.

## 10A.11 Minimising overlap with the PRA approved persons regime

### Introduction

- 10A.11.1 G SUP 10A.11 deals with how the *FCA's approved persons* regime applies to *PRA-authorised persons*. SUP 10A.11 therefore only applies if the *firm* in question is a *PRA-authorised person*.
- 10A.11.2 G Both the *FCA* and the *PRA* may specify a function as a *controlled function* in relation to a *PRA-authorised person*. However, only the *FCA* has power to specify a *customer-dealing function* as a *controlled function*.
- 10A.11.3 G Therefore, if a *person's* job for a *firm* involves:
- (1) an *FCA controlled function*, the *firm* should apply to the *FCA* for approval;
  - (2) a *PRA controlled function*, the *firm* should apply to the *PRA* for approval;

(3) both an *FCA controlled function* and a *PRA controlled function*, the *firm* should apply to both the *FCA* and the *PRA* for approval (the purpose of *SUP* 10A.11 is to cut down the need for this sort of dual approval).

10A.11.4 G The *PRA* cannot give its approval for the performance of a *PRA controlled function* without the consent of the *FCA*. The *firm* does not need to apply to the *FCA* for that consent. The *PRA* must as soon as practicable notify the *FCA* of the receipt or withdrawal of an application to the *PRA*.

10A.11.5 G Under section 59B of the *Act* (Role of *FCA* in relation to *PRA* decisions) the *FCA* may arrange with the *PRA* that in agreed cases the *PRA* may give approval without obtaining the consent of the *FCA*. No such arrangements are currently in force.

10A.11.6 G The *FCA* and *PRA* have coordinated their *approved persons* regime to reduce the amount of overlap. These arrangements relate to *significant-influence functions* only.

10A.11.7 G The *FCA* is under a duty under section 59A of the *Act* (Specifying functions as controlled functions: supplementary) to exercise the power to specify any *significant-influence function* as an *FCA controlled function* in a way that it considers will minimise the likelihood that approvals fall to be given by both the *FCA* and the *PRA* in respect of the performance by a *person* of *significant-influence functions* in relation to the same *PRA-authorised person*.

Guidance on how *SUP* 10A.11 works

10A.11.8 G *SUP* 10A.11 disapplies the *apportionment and oversight function* for a *person* who is the subject of an application for approval to perform a *PRA governing function*, subject to certain conditions set out in *SUP* 10A.11.11R. Where this is the case the *apportionment and oversight function* is included in the *PRA governing function* for which the *person* has approval. *SUP* 10B.7 of the *PRA's Handbook* deals with this.

10A.11.9 G *SUP* 10A.11.10G gives some examples of how *SUP* 10A.11 works.

10A.11.10 G Table: Examples of how the need for dual *FCA* and *PRA* approval in relation to *PRA-authorised persons* is reduced

Example	Whether <i>FCA</i> approval required	Whether <i>PRA</i> approval required	Comments
(1) A is being appointed <i>chief executive</i> and the <i>person</i> performing the <i>apportionment</i>	No.	Yes	The <i>PRA chief executive function</i> is expanded to include the <i>apportionment and</i>

<i>and oversight function.</i>			<i>oversight function.</i> To avoid the need for <i>FCA</i> approval, A's appointment as the <i>person</i> performing the <i>apportionment and oversight function</i> should not take effect before <i>PRA</i> approval for the <i>chief executive</i> role.
(2) Same as (1) but the application to the <i>PRA</i> does not mention that it is also intended that A is perform what would otherwise be the <i>apportionment and oversight function</i>	Yes	Yes	<i>SUP</i> 10A.11 does not apply if the application for <i>PRA</i> approval does not say that A will also be performing what would otherwise be the <i>apportionment and oversight function</i> .
(3) A is appointed as <i>chief executive</i> . Later, he is appointed to perform the <i>apportionment and oversight function</i> while carrying on as <i>chief executive</i> .	Yes, when he is appointed to perform the <i>apportionment and oversight function</i>	Yes, when he takes up the <i>chief executive</i> role	
(4) A is appointed to perform the <i>apportionment and oversight function</i> . He later becomes the <i>chief executive</i> .	Yes, when he is appointed to perform the <i>apportionment and oversight function</i> .	Yes, when he becomes the <i>chief executive</i>	When A is appointed as <i>chief executive</i> he retains his status as an <i>FCA-approved person</i> .
(5) A is being appointed as <i>director</i> and as the <i>person</i> performing the <i>apportionment and oversight function</i> . Later, he becomes <i>chief</i>	On being appointed <i>director</i> , see the answers to (1) and (2). No <i>FCA</i> approval is needed when A becomes <i>chief</i>	Yes	

<p><i>executive</i> (but carries on with the <i>apportionment and oversight function</i>).</p>	<p><i>executive</i>; the <i>apportionment and oversight function</i> remains switched off when A takes up the role of <i>chief executive</i>. The application to the <i>PRA</i> should say that A is performing what would otherwise be the <i>apportionment and oversight function</i>.</p>		
<p>(6) A is appointed as <i>chief executive</i> and to perform the <i>apportionment and oversight function</i> at the same time. Later, A gives up his role as <i>chief executive</i> but carries on performing the <i>apportionment and oversight function</i> role.</p>	<p>On A's first appointment, No. But when A gives up the role as <i>chief executive</i>, <i>FCA</i> approval is needed to perform the <i>apportionment and oversight function</i>. Form E should be used. The application should state that it is being made as a result of ceasing to perform a <i>PRA controlled function</i> when the rule in <i>SUP</i> 10B.7.4R of the <i>PRA's Handbook</i> applies.</p> <p>Form A should be used if there have been changes in</p>	<p>On his first appointment, Yes.</p>	<p>Performing the <i>apportionment and oversight function</i> requires <i>FCA</i> approval. A does not have that approval because A did not need it when he was first appointed. The combined effect of <i>SUP</i> 10A.11 and <i>SUP</i> 10B.7 of the <i>PRA's Handbook</i> is that the <i>firm</i> has three months to secure approval by the <i>FCA</i> for A's performance of the <i>apportionment and oversight function</i>. During that interim period, A keeps his status as a <i>PRA-approved person</i> performing the <i>apportionment and oversight element</i> of the <i>PRA chief executive function</i> which is included in that function</p>

	<p>fitness of the <i>approved person</i> (<i>SUP</i> 10A.14.4D(3)).</p>		<p>under <i>SUP</i> 10B.7 of the <i>PRA</i>'s Handbook. This is because <i>SUP</i> 10B.7.4R in the <i>PRA</i>'s Handbook says that during this transitional period he is still treated as performing the <i>PRA chief executive function</i> and <i>SUP</i> 10A.11 says that for as long as he is performing a <i>PRA governing function</i> he does not perform the <i>apportionment and oversight function</i>.</p>
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The main rule

- 10A.11.11 R A *person* (referred to as A in this *rule*) is not performing the *apportionment and oversight function* in relation to a *PRA-authorized person* (referred to as B in this *rule*), at a particular time, if:
- (1) A has been approved by the *PRA* to perform any *PRA governing function* in relation to B;
  - (2) throughout the whole of the period between the time of the *PRA* approval in (1) and the time in question A has been the subject of a *current PRA approved person approval* to perform a *PRA governing function* in relation to B;
  - (3) at the time of the *PRA* approval referred to in (1), A was not subject to a *current FCA approved person approval* to perform the *apportionment and oversight function* in relation to B; and
  - (4) at the time of the *PRA* approval referred to in (1), A had not started to perform what would otherwise have been the *apportionment and oversight function* (the *FCA* function) and, as part of the application for the *PRA* approval referred to in (1), B notified the *PRA* that A would start to perform the *FCA* function at or around the time of the *PRA* approval in (1).

**10A.12 Procedures relating to FCA-approved persons**

Forms

10A.12.1 G The forms listed in *SUP* 10A.12.2G are referred to in *SUP* 10A.12 (Procedures relating to FCA-approved persons) to *SUP* 10A.17 (Further questions).

10A.12.2 G Table: FCA-approved persons forms

Form		Purpose	Handbook requirement
the relevant Form A	The relevant online form on the <i>FCA</i> and <i>PRA</i> 's ONA system or the form in <i>SUP</i> 10A Annex 4D (See Note)	Application to perform controlled functions under the approved persons regime	<i>SUP</i> 10A.13.3D
Form B	<i>SUP</i> 10A Annex 5R	Notice to withdraw an application to perform controlled functions under the approved persons regime	<i>SUP</i> 10A.13.19R
Form C	<i>SUP</i> 10A Annex 6R	Notice of ceasing to perform controlled functions	<i>SUP</i> 10A.14.8R
Form D	<i>SUP</i> 10A Annex 7R	Notification of changes in personal information or application details	<i>SUP</i> 10A.14.15R

Form E	The relevant online form on the <i>FCA</i> and <i>PRA</i> 's ONA system or the form in <i>SUP</i> 10A Annex 8D (See Note)	Internal transfer of an <i>approved person</i>	<i>SUP</i> 10A.14.4D
Note: The form in the <i>SUP</i> annex shown is to be used by <i>credit unions</i> , and by other <i>firms</i> only in the event of a failure of the information technology systems used by the <i>FCA</i> . See the relevant "Handbook requirement"			

10A.12.3 G A summary of the forms and their purposes is in *SUP* 10A Annex 2G.

10A.12.4 G Unless the context otherwise requires, in *SUP* 10A.12 (Procedures relating to *FCA*-approved persons) to *SUP* 10A.17 (Further questions) where reference is made to a *firm*, this also includes an applicant for *Part 4A permission*, and other *persons* seeking to carry on *regulated activities* as an *authorised person*.

10A.12.5 G Forms B, C, D and E can only be submitted in respect of an *FCA-approved person* by the *firm* that submitted an *FCA-approved person's* original application (the relevant Form A).

10A.12.6 G Copies of Forms A, B, C, D and E may be obtained from the *FCA* website. *Credit unions* can obtain copies from the *FCA's* Firm Contact Centre. To contact the *FCA's* Customer Contact Centre for *approved persons* enquiries:

- (1) telephone 0845 606 9966; or
- (2) e-mail [fcc@fca.org.uk](mailto:fcc@fca.org.uk); or
- (3) fax 020 7066 0017; or
- (4) write to:

Customer Contact Centre  
The Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
LONDON E14 5HS.

## 10A.13 Application for approval and withdrawing an application for approval

When to apply for approval

- 10A.13.1 G In accordance with section 59 of the *Act* (Approval for particular arrangements), where a *candidate* will be performing one or more *FCA controlled functions*, a *firm* must take reasonable care to ensure that the *candidate* does not perform these functions unless he has prior approval from the *FCA*.

Failure to apply for approval

- 10A.13.2 G If a *person* performs an *FCA controlled 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:
- (1) a *person* (“P”) has at any time performed an *FCA controlled function* without approval; and
  - (2) 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.

How to apply for approval

- 10A.13.3 D An application by a *firm* for the *FCA*'s approval under section 59 of the *Act* (Approval for particular arrangements) must be made by completing Form A (except where *SUP* 10A.14.4D requires a Form E).
- 10A.13.4 G *SUP* 10A.16.1D explains how applications should be submitted.

Who should make the application?

- 10A.13.5 G (1) 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:
- (a) the *FCA candidate*; or
  - (b) (where the *FCA candidate* works for the *firm*'s parent undertaking or holding company) by the *firm*'s parent undertaking or holding company.

- (2) Usually this will be the *firm* that is employing the *FCA candidate* to perform the *FCA controlled function*. Where a *firm* has outsourced the performance of an *FCA controlled function*, the details of the outsourcing determine where responsibility lies and whom the *FCA* anticipates will submit *FCA-approved persons* application forms. *SUP 10A.13.6G* describes some common situations. The *firm* which is outsourcing is referred to as "A" and the *person* to whom the performance of the *FCA controlled function* has been outsourced, or which makes the arrangement for the *FCA controlled 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 controlled 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*. See also *SYSC 3.2.4G* and *SYSC 8.1.1R*, and *SYSC 13.9* for *insurers*.

10A.13.6 G Outsourcing arrangements

<b>Outsourcing arrangements</b>		<b>Submitting form</b>
<i>Firm A to firm B</i>	The <i>FCA</i> 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 <i>FCA controlled functions</i> are performed by <i>FCA-approved persons</i> , and that it is reasonable for A to rely on this	<i>Firm B</i> submits <i>FCA-approved persons</i> forms on behalf of <i>firm A</i>
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 <i>SUP 10A.3.4G</i>	See <i>SUP 15.7.8G</i>

<p>(i) A to B, where B is a non-<i>authorised person</i> not part of the same <i>group</i> as A  (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>  (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></p>	<p>Responsibility for (as opposed to the performance of) any activity <i>outsourced</i> to B will remain with A. See <i>SYSC 3.2.4G</i> and <i>SYSC 8</i></p>	<p>A ensures that an individual approved by the <i>FCA</i> or the <i>PRA</i> under a <i>controlled function</i> that is a <i>significant-influence function</i> has responsibility for the <i>outsourced arrangement</i> and A submits a form in relation to that individual</p>
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- 10A.13.7 G Where the notification of an *appointed representative* (*SUP 12.7.1R*) is linked to an application for approval (*SUP 10A.13* (Applications for approval and withdrawing an application for approval)), any delay in receiving the notification under *SUP 12.7.1R* may delay the *FCA*'s approval of the individuals employed by that *appointed representative* who will be performing *FCA controlled functions* for the *firm*.

Processing an application

- 10A.13.8 G The *Act* sets out the time that the *FCA* has to consider an application and come to a decision.
- 10A.13.9 G In any case where the application for approval is made by a *person* applying for *permission* under Part 4A of the *Act*, 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
  - (2) the period of three months from the time it receives a properly completed application.
- 10A.13.10 G In any other case it is the period of three months from the time it receives a properly completed application.

- 10A.13.11 G The *FCA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice* (see *DEPP 2*). 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, if an application is incomplete when received, or the *FCA* has knowledge that, or reason to believe that, the information is incomplete, then the processing time will be longer than the published standard response times.
- 10A.13.12 G Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. 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. 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.
- 10A.13.13 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.
- 10A.13.14 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.
- 10A.13.15 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 controlled 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 controlled function* applied for.
- 10A.13.16 G For further *guidance* on criteria for assessing whether a *FCA candidate* is fit and proper, see *FIT*.

#### Decisions on applications

- 10A.13.17 G Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.
- 10A.13.18 G If the *FCA* proposes to refuse an application in relation to one or more *FCA controlled 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

- 10A.13.19 R A *firm* applying to withdraw an application for approval must notify the *FCA*, using Form B, in the form set out in *SUP* 10A Annex 5R.
- 10A.13.20 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 the *candidate* and the *person* by whom the *candidate* is or would have been employed, if this is not the *firm* making the application.

### 10A.14 Changes to an FCA-approved person's details

#### Moving within a firm

- 10A.14.1 G An *FCA-approved person's* job may change from time to time as a result, for instance, of a change in personal job responsibilities or a *firm's regulated activities*. Where the changes will involve the *person* performing one or more *FCA controlled functions* different from those for which approval has already been granted, then an application must be made to the *FCA* for approval for the *person* to perform those *FCA controlled functions*. The *firm* must take reasonable care to ensure that an individual does not begin performing an *FCA controlled function* until the *FCA* has granted *FCA-approved person* status to that individual in respect of that *FCA controlled function*. Similarly, a *firm* must get the *FCA's* approval if a *person* is to start performing an *FCA controlled function* in relation to that *firm* when he already has the *PRA's* approval to perform a *PRA controlled function* in relation to that *firm*.
- 10A.14.2 G If an *FCA-approved person* or a *PRA-approved person* is ceasing to perform *FCA controlled functions* or *PRA controlled functions*, as well as applying for approval in respect of *FCA controlled functions*, *SUP* 10A.14.4D generally applies. Further details can be found in *SUP* 10A Annex 2G.
- 10A.14.3 G If a *person* is to perform an *FCA controlled function* for a *firm* for which he already performs a *PRA controlled function* or *FCA controlled function* as an *approved person* but he is not at the same time ceasing to perform an *FCA controlled function* or *PRA controlled function*, a *firm* should use Form A. It is not mandatory to complete all parts of the form. See the notes relevant to each form for full details.
- 10A.14.4 D (1) A *firm* must use Form E where an *approved person* is both ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *FCA controlled functions* 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 a *significant-influence function* for any *firm* or has not been subject to a *current approved person approval* from the *FCA* or *PRA* to perform a *significant-influence function* in relation to any *firm* for more than six months.
- (3) A *firm* must not use Form E if a notification has been made or should be made under *SUP* 10A.14.17R (Changes in fitness to be notified under Form D) or *SUP* 10B.12.18R (the equivalent *PRA rule*) in relation to any *controlled functions* that that *person* is ceasing to perform (as referred to in (1)) or any *controlled function* that he is continuing to perform in relation to that *firm* or a *firm* in the same *group*.

10A.14.5 G *SUP* 10A.16.1D explains how applications should be submitted.

#### Moving between firms

10A.14.6 G If it is proposed that an *FCA-approved person* will no longer be performing an *FCA controlled function* under an *arrangement* entered into by one *firm* or one of its contractors, but will be performing the same or a different *FCA controlled function* under an *arrangement* entered into by a new *firm* or one of its contractors (whether or not the new *firm* is in the same *group* as the old *firm*), the new *firm* will be required to make a fresh application for the performance of the *FCA controlled function* by that *person*.

10A.14.7 G In certain circumstances, when the *FCA* already has the information it would usually require, a shortened version of the relevant Form A may be completed. See the notes relevant to each form for full details.

#### Ceasing to perform an FCA controlled function

10A.14.8 R A *firm* must submit to the *FCA* a completed Form C, in the form set out in *SUP* 10A Annex 6R, no later than seven *business days* after an *FCA-approved person* ceases to perform an *FCA controlled function*. This does not apply if the *firm* has already notified the *FCA* of the proposal to do that using Form E in accordance with this chapter or has notified the *PRA* of the proposal to do that using the *PRA's* Form E in accordance with *SUP* 10B of the *PRA's* Handbook.

10A.14.9 G *SUP* 10A.16.2R explains how notifications should be submitted.

- 10A.14.10 R
- (1) A *firm* must notify the *FCA* as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of an *FCA-approved person*.
  - (2) Form C is qualified if the information it contains:
    - (a) relates to the fact that the *firm* has dismissed, or suspended, the *FCA-approved person* from its employment; or

- (b) relates to the resignation by the *FCA-approved person* while under investigation by the *firm*, the *FCA* or any other *regulatory body*; or
  - (c) otherwise reasonably suggests that it may affect the *FCA*'s assessment of the *FCA-approved person*'s fitness and propriety.
- 10A.14.11 G Notification under *SUP* 10A.14.10R may be made by telephone, email or fax and should be made, where possible, within one *business day* of the *firm* becoming aware of the information. If the *firm* does not submit Form C, it should inform the *FCA* in due course of the reason. This could be done using Form D, if appropriate.
- 10A.14.12 G A *firm* is responsible for notifying the *FCA* if any *FCA-approved person* has ceased to perform an *FCA controlled function* under an arrangement entered into by its *appointed representative* or former *appointed representative*
- 10A.14.13 G A *firm* can submit Form C or Form E to the *FCA* in advance of the cessation date. When a *person* ceases the arrangement under which he performs an *FCA controlled function*, he will automatically cease to be an *FCA-approved person* in relation to that *FCA controlled function*. A *person* can only be an *FCA-approved person* in relation to a specific *FCA controlled function*. Therefore, a *person* is not an *FCA-approved person* during any period between ceasing to perform one *FCA controlled function* (when he is performing no other *FCA controlled function*) and being approved in respect of another *FCA controlled function*.
- 10A.14.14 G Sending forms promptly will help to ensure that any fresh application can be processed within the standard response times.

Changes to an approved person's personal details

- 10A.14.15 R If an *FCA-approved person*'s title, name or national insurance number changes, the *firm* for which the *person* performs an *FCA controlled function* must notify the *FCA* on Form D, in the form set out in *SUP* 10A Annex 7R, of that change within seven *business days* of the *firm* becoming aware of the matter.
- 10A.14.16 G The duty to notify in *SUP* 10A.14.15R does not apply to changes to an *FCA-approved person*'s private address.
- 10A.14.17 R If a *firm* becomes aware of information which would reasonably be material to the assessment of an *FCA-approved person*'s, or a *FCA candidate*'s, fitness and propriety (see *FIT*), it must inform the *FCA* on Form D, or (if it is more practical to do so and with the prior agreement of the *FCA*) by e-mail or fax, as soon as practicable.
- 10A.14.18 G *SUP* 10A.16.2R applies to the submission of Form D.

- 10A.14.19 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.
- 10A.14.20 G The duty to notify in *SUP* 10A.14.17R extends to any circumstances that would normally be declared when giving the information required for section 5 of Form A or matters considered in *FIT* 2.
- 10A.14.21 R (1) If, in relation to a *firm* which has completed the relevant Form A (*SUP* 10A Annex 4D), any of the details relating to arrangements and *FCA controlled functions* are to change, the *firm* must notify the *FCA* on Form D (*SUP* 10A Annex 7R).
- (2) The notification under (1) must be made as soon as reasonably practicable after the *firm* becomes aware of the proposed change.
- (3) This also applies in relation to an *FCA controlled function* for which an application was made using Form E.
- (4) This *rule* also applies to a *firm* in respect of an *approved person*, to whom the grandfathering arrangements relating to the coming into force of the *Act* applied as if the *firm* had completed the relevant Form A for that *person*.
- 10A.14.22 G *SUP* 10A.16.2R also applies to the submission of Form D under *SUP* 10A.14.21R.
- 10A.14.23 G An example of where a *firm* should use Form D is when an individual who is appointed by one *appointed representative* becomes employed by another *appointed representative* but continues to perform the *customer function* for the *firm*. The *firm* should notify the *FCA* by completing Section 1.07 of Form D.

#### Ongoing alerts for retail adviser complaints

- 10A.14.24 R (1) A *firm* must notify the *FCA*, in the form set out in *SUP* 10 Annex 9R, where:
- (a) in any twelve-month period, it has upheld three *complaints* about matters relating to the *retail investment activities* carried out by any one *retail investment adviser*; or
- (b) it has upheld a *complaint* about matters relating to the *retail investment activities* carried out by a *retail investment adviser*, where the redress paid exceeds £50,000.
- (2) (a) Notifications made under (1)(a) must be made by the end of the period of 20 *business days*, beginning on the day in which the *firm* has upheld the third complaint.

- (b) Notifications made under (1)(b) must be made by the end of the period of 20 *business days*, beginning on the day in which the *firm* has upheld the complaint.

10A.14.25 G For the purpose of *SUP* 10A.14.24R:

- (1) when calculating the number of *complaints* in *SUP* 10A.14.24R(1)(a), the *firm* should exclude complaints previously notified to the *FCA* under this *rule*;
- (2) redress, under *SUP* 10A.14.24R(1)(b), should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
  - (a) amounts paid for distress and inconvenience;
  - (b) a free transfer out to another provider which transfer would normally be paid for;
  - (c) goodwill payments and goodwill gestures;
  - (d) interest on delayed settlements;
  - (e) waiver of an excess on an insurance policy; and
  - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred; and
- (3) if a *firm* reports on the amount of redress paid under *SUP* 10A.14.24R(1)(b), the redress should not include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy); the refund of the overcharge would not count as redress.

[**Note:** See *DISP* 1.10.2AR for the duty to notify *complaints* under the *complaints reporting rules*]

10A.14.26 R Notifications under *SUP* 10A.14.24R must be made electronically using a method of notification prescribed by the *FCA*.

## **10A.15 References and accurate information**

### References

10A.15.1 R (1) If a *firm* (A):

- (a) is considering appointing a *person* to perform any *FCA controlled function*;
- (b) requests another *firm* (B), as a current or former employer of that *person*, for a reference or other information in connection with that appointment; and
- (c) indicates to B the purpose of the request;

B must, as soon as reasonably practicable, give to A all relevant information of which it is aware.

- (2) When giving the information to A under (1), B must have regard to the purpose of the request and, in particular, to:
  - (a) any outstanding liabilities of that *person* from commission payments;
  - (b) any relevant outstanding or upheld complaint from an *eligible complainant* against that *person*;
  - (c) section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime);
  - (d) FIT 2 (Main assessment criteria); and
  - (e) if SUP 16.8.1G(1) (Persistency reports from insurers) applies to B, the persistency of any *life policies* sold by that *person*.

10A.15.2 G The requirement in SUP 10A.15.1R(1) for *firm* (B) to give to *firm* (A) all relevant information of which it is aware concerning a *person* *firm* A is considering appointing to perform any of the *FCA controlled functions*, also applies where *firm* A has outsourced the collection of that information to another (unregulated) third party, where *firm* B has been made aware that the unregulated third party is acting on behalf of *firm* A.

10A.15.3 G A *firm* supplying a reference in accordance with SUP 10A.15.1R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based.

The need for complete and accurate information

10A.15.4 G The obligations to supply information to:

- (1) the *FCA* under either SUP 10A.14.8R or SUP 10A.14.10R;

(2) another *firm* under SUP 10A.15.1R;

apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment. A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

10A.15.5 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the Act.

## 10.16 How to apply for approval and give notifications

- 10A.16.1 D (1) This direction applies to an application under Form A or Form E.
- (2) An application by a *firm* other than a *credit union* must be made by submitting the Form online at [fca.org.uk](http://fca.org.uk) using the form specified on the *FCA's* and *PRA's* ONA system.
- (3) An application by a *credit union* must be made using the form in SUP 10A Annex 4D or SUP 10A Annex 8D and must be submitted in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).
- (4) Where a *firm* is obliged to submit an application online under (2), if the information technology systems used by the *FCA* fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must use the form in SUP 10A Annex 4D or SUP 10A Annex 8D and submit it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).
- 10A.16.2 R (1) This rule applies to a notification under Form C or Form D.
- (2) A notification must be made in accordance with SUP 10A.16.1D, except that the annexes to SUP 10A in which the forms are to be found are SUP 10A Annex 6R or SUP 10A Annex 7R, rather than the Annexes mentioned in SUP 10A.16.1D.
- 10A.16.3 G If the information technology systems used by the *FCA* fail and online submission is unavailable for 24 hours or more, the *FCA* and *PRA* will endeavour to publish a notice on their websites confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 10A.16.1D(4) and SUP 15.7.4R to SUP 15.7.9G (Form and method of notification) should be used.
- 10A.16.4 G Where SUP 10A.16.1D(4) or the equivalent situation under SUP 10A.16.2R applies to a *firm*, GEN 1.3.2R (Emergency) does not apply.

**10A.17 Further questions**

- 10A.17.1 G A list of frequently asked questions and answers is at *SUP* 10A Annex 1.
- 10A.17.2 G If the *firm* or its advisers have further questions, they should contact the *FCA's* Contact Centre (see *SUP* 10A.12.6G).

**10A Annex 1G Frequently asked questions**

	<b>Question</b>	<b>Answer</b>
	<b>Requirements of the regime</b>	
1	Does pre-approval apply to individuals taking up a new <i>FCA controlled function</i> within the same <i>firm</i> ?	Yes. Pre-approval applies in all circumstances (see section 59 of the <i>Act</i> (Approval for particular arrangements)) except under the temporary (12 weeks) provision. See <i>SUP</i> 10A.5.6R and question 2.
2	What are the procedures for 'emergency situations'?	Individuals may perform an <i>FCA significant-influence function</i> for up to 12 weeks in any consecutive 12-month period without requiring approval. When it becomes clear that a <i>person</i> will be performing the function on a permanent basis, then an application for approval should be made. However, there is no provision for individuals to perform the <i>customer function</i> on a continuing basis without approval ( <i>SUP</i> 10A.5.6R).
3	Can a <i>person</i> be approved for more than one <i>FCA controlled function</i> ?	Yes. A <i>firm</i> will need to seek approval in respect of each <i>FCA controlled function</i> a <i>person</i> is to perform.

4	Do the <i>FCA controlled functions</i> apply to an <i>incoming EEA firm</i> that is providing <i>cross border services</i> into the <i>United Kingdom</i> ?	No. The <i>FCA-approved persons</i> regime does not apply to <i>cross border services</i> ( <i>SUP 10A.1.5R</i> ).
5	May any activity be outsourced by a <i>firm</i> ?	Yes. But if that activity constitutes a <i>regulated activity</i> , the <i>person</i> to whom it is outsourced will itself need permission.
6	Can an <i>FCA significant-influence function</i> be outsourced?	It is a question of fact in each case as to who is performing an <i>FCA significant-influence function</i> . These functions are mostly described at a high level of responsibility, for example, the <i>director</i> of a <i>company</i> or a <i>partner</i> in a <i>partnership</i> . The <i>persons</i> performing these functions cannot avoid their ultimate responsibility and, therefore, the need for approval. However, some of the <i>FCA significant-influence functions</i> may be performed by a <i>person</i> who is specifically brought in to do the job, for example the <i>chief executive function</i> (where it is to be performed by a <i>body corporate</i> ).
7	Do Lloyd's underwriting agents still require registration with Lloyd's?	Yes. Approval for a <i>controlled function</i> is not sufficient.
8	What should a <i>firm</i> do if it is unsure whether an individual needs approval?	The <i>firm</i> should contact the <i>FCA's</i> Customer Contact Centre. See <i>SUP 10A.12.6G</i> .
	<b>Submitting an application</b>	
9	Who applies for approval?	The <i>firm</i> . See section 60 of the <i>Act</i> (Applications for approval).

10	What is the role of the <i>FCA candidate</i> in the application process?	Before the <i>firm</i> submits the relevant Form A or Form E, it must verify the information contained in it. As part of this verification, the Form provides for the <i>FCA candidate</i> to confirm the accuracy of the information given by the <i>firm</i> so far as it relates to him.
11	What checks should a <i>firm</i> make on a <i>FCA candidate</i> before submitting an application for approval from the <i>FCA</i> ?	The <i>FCA</i> expects <i>firms</i> to perform due and diligent enquiries into their <i>FCA candidates</i> before they submit an application to the <i>FCA</i> for approval. The <i>FCA</i> 's approval process is not a substitute for the checks that a <i>firm</i> should be carrying out on its prospective recruits. It is for the <i>firm</i> to determine what checks are appropriate but, in making its decision, a <i>firm</i> should have regard to the <i>FCA controlled function</i> to which the application relates. <i>Firms</i> ' enquiries should include checks to verify relevant qualifications and previous employment. Note also the provisions of <i>EG 6</i> .
12	Should these checks include a check of criminal records?	It is for senior management to decide what checks should be made. In deciding if it is necessary to carry out a check of criminal records, the <i>firm</i> should consider that the <i>FCA</i> does not routinely carry out these checks during the approval process. By virtue of the <i>rehabilitation exceptions orders</i> , the <i>FCA</i> and the industry also have a right to ask about the spent criminal convictions specified in those Orders, as well as any unspent criminal convictions, in order to assess the suitability of <i>FCA candidates</i> for <i>approved person</i> status (see section 5 of the relevant Form A (Application to perform controlled functions under the approved persons regime)). Note also the provisions of <i>EG 6</i> (Publicity).
13	What is the "fit and proper" test for approval?	Section 61(1) of the <i>Act</i> (Determination of applications) provides that the <i>FCA</i> may grant an application only if it is satisfied that the <i>FCA candidate</i> is a fit and proper <i>person</i> to perform the relevant function. In determining this question, the <i>Act</i> sets out the matters to which the <i>FCA</i> may have regard (section 61(2)) and the <i>FCA</i> has given guidance on this in <i>FIT</i> .

14	If a <i>firm</i> is unsure whether or not something may have an impact upon an individual's fitness and propriety, should it be disclosed?	Yes, always. The deliberate non-disclosure of material facts is taken very seriously by the <i>FCA</i> as it is seen as possible evidence of current dishonesty. Therefore, if in doubt, disclose.
15	What happens if adverse information comes to light after the application form has been submitted or after the individual has been <i>FCA</i> -approved?	The <i>firm</i> must inform the <i>FCA</i> at the earliest opportunity. See <i>SUP</i> 10A.14.17R.
16	Will the <i>FCA</i> consider an application in respect of a <i>FCA candidate</i> who has not yet signed a contract with the <i>firm</i> ?	Yes, as the <i>FCA</i> will consider the arrangement under which the <i>FCA candidate</i> will perform the function. However, the <i>FCA</i> will not consider speculative or provisional applications - such as for the <i>FCA candidates</i> in an election to a mutual society Board. The <i>FCA</i> must be informed immediately of any material changes to the information provided on the application form which arises before the application has been determined. All changes must be communicated to the <i>FCA</i> by the <i>firm</i> making the application (see <i>SUP</i> 15.6.4R). Failure to notify the <i>FCA</i> may result in a delay in processing or rejection or both.
17	How can <i>credit unions</i> get a supply of application forms (Forms A to F)?	These can be ordered from the <i>FCA</i> 's Customer Contact Centre. There is no charge for an application form.

18	Is there a separate fee for making an application for <i>FCA-approved person</i> status?	No.
19	Must all gaps in previous employment be explained?	Yes.
	<b>FCA procedure</b>	
20	Does the <i>FCA</i> verify the information provided to it?	Yes, as far as possible, information is verified.
21	Will the <i>FCA</i> handle information confidentially?	Yes. The <i>FCA</i> is obliged to handle all information confidentially and is subject to the provisions of the Data Protection Act 1998.
22	How long will the <i>FCA</i> take to process an application for <i>FCA-approved person</i> status?	The length of time taken to process the application will vary as it is dependent upon the application under consideration. The <i>FCA</i> publishes standard response times on its website at <a href="http://www.fca.org.uk">www.fca.org.uk</a> setting out how long the application process is expected to take in practice. From time to time, the <i>FCA</i> also publishes its performance against these times. However, if, for example, information is missing from the application, or the information provided gives the <i>FCA</i> cause for concern, or the <i>FCA</i> already has in its possession relevant information which gives rise to concerns, processing time will almost always be longer. In each case, the <i>FCA</i> will notify the <i>firm</i> of any extension to the processing times.
23	Will the <i>firm</i> and individual be notified if there is a delay in processing the application form?	Yes. The <i>FCA</i> will contact the <i>firm</i> explaining the position and, where appropriate, giving the reasons for delay. It will then be the responsibility of the <i>firm</i> to keep the <i>FCA candidate</i> and any other <i>interested party</i> informed.

24	How are non-routine cases handled?	Refer to <i>DEPP 2</i> .
25	Can the <i>FCA</i> apply conditions to an <i>FCA-approved person</i> ?	No. The application can either be granted or refused. The <i>Act</i> provides no equivalent to the limitations or requirements which may be included in <i>permissions</i> . If the application is refused, the <i>firm</i> may re-apply in respect of the same individual but a different <i>FCA controlled function</i> . If it is considering doing this, the <i>firm</i> is encouraged to discuss the matter with the <i>FCA</i> . Where there are reasonable grounds for doing so, the <i>FCA</i> may require a <i>firm</i> to provide information about an <i>FCA-approved person</i> (see section 165 of the <i>Act</i> (Power to require information)).
26	Will the <i>firm</i> be issued with confirmation of approval?	Yes. The <i>firm</i> will be sent a letter setting out the effective date of approval together with the <i>FCA controlled function</i> for which the individual has been <i>FCA-approved</i> . It will then be the <i>firm's</i> responsibility to inform the individual and any other <i>interested party</i> , for example any <i>appointed representative</i> .
	<b>Withdrawing an application</b>	
27	Can a <i>firm</i> withdraw its application?	Yes, but only with the consent of the <i>FCA candidate</i> . See section 61(5) of the <i>Act</i> (Determination of applications).
28	What happens if the individual refuses to consent to the withdrawal of the application?	The <i>FCA</i> will consider with all <i>interested parties</i> what to do. If it proposes to refuse the application, it will give a <i>warning notice</i> to all <i>interested parties</i> . See section 62 of the <i>Act</i> (Applications for approval: procedure and right to refer to the Tribunal).
29	Can the <i>firm</i> withdraw only part of an application – for instance, in relation to a specific <i>FCA controlled function</i> ?	The <i>FCA</i> will allow the <i>firm</i> to amend its application at any time before determination with the consent of all other <i>interested parties</i> . Whether the amendment will have the effect of amounting to a fresh application will be considered on a case by case basis.

	<b>Conduct of FCA-approved persons</b>	
30	How and when must the <i>firm</i> report to the <i>FCA</i> potentially adverse information about an <i>FCA-approved person's</i> fitness and propriety?	Normally, the <i>firm</i> should report such matters to the <i>FCA</i> on Form D once it is reasonably satisfied as to the information's validity ( <i>SUP</i> 10A.14.17R). (See also, Chapter 11 of the Principle for Businesses sourcebook ( <i>PRIN</i> ) and Statement of Principle 4 in Chapter 2 of the Statements of Principle and Code of Practice for Approved Persons ( <i>APER</i> .) However, if an <i>FCA-approved person</i> is dismissed, is suspended, or resigns while under investigation by the <i>firm</i> , the <i>FCA</i> or another <i>regulatory body</i> , or there are any other matters that might affect the individual's fitness and propriety to perform an <i>FCA controlled function</i> , the <i>firm</i> should inform the <i>FCA</i> ( <i>SUP</i> 10A.14.10R) that it will be submitting a Form C containing adverse information. Full details must then be provided within seven business days, on the Form C ( <i>SUP</i> 10A.14.8R).
31	For how long are individuals accountable to the <i>FCA</i> after ceasing to be an <i>FCA-approved person</i> ?	A <i>person</i> is guilty of misconduct if, while an <i>FCA-approved person</i> , he fails to comply with a <i>Statement of Principle</i> or is knowingly concerned in the contravention by a <i>firm</i> of a requirement in the <i>Act</i> or the <i>Handbook</i> or certain other requirements. But the <i>FCA</i> may not bring proceedings after three years from when it first knew of the misconduct.

<b>How does the customer function relate to the training and competence requirements?</b>			
<b>Activity</b>	<b>Products/sectors in TC Appendix 1</b>	<b>FCA controlled function</b>	<b>SUP</b>
Advising only,	2-9	<i>customer function</i> (CF 30)	10A.10.4R
Undertaking an activity	10-11		
Advising and dealing	12-13		

Managing investments	14		
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**10A Annex 2 Approved person regime: summary of forms and their use for applications for approval to perform an FCA-controlled function**

<b>Function</b>	<b>Form</b>	<b>Submission</b>
<i>Person</i> about to perform an <i>FCA controlled function</i> if he has never been approved by the <i>FCA</i> or <i>PRA</i> before.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> is to perform an <i>FCA significant-influence function</i> and either has current approval to perform an <i>FCA significant-influence function</i> or a <i>PRA controlled function</i> , or has had such an approval within the previous six <i>months</i> .	Shortened Form A if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> is to perform the <i>customer function</i> and is either an <i>FCA-approved person</i> or a <i>PRA-approved person</i> , or was one within the previous six <i>months</i> .	Shortened Form A if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> ceased to be an <i>approved person</i> more than six months ago.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> is seeking to perform a <i>significant-influence function</i> for the first time or ceased to have approval from the <i>FCA</i> or <i>PRA</i> to perform such function more than six <i>months</i> ago.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Firm</i> applying for an outstanding application to perform an <i>FCA controlled function</i> to be withdrawn.	B	Submitted by the <i>firm</i> : signed by all <i>interested parties</i> .
<i>Person</i> ceasing to perform an <i>FCA controlled function</i> .	C (unless it should be notified under Form E)	Submitted by the <i>firm</i> within seven <i>business days</i> of <i>approved person</i> ceasing to perform <i>controlled function(s)</i> .

<p>If an <i>FCA-approved person's</i> title, name or national insurance number changes, or there is information which may be material to the continuing assessment of an <i>approved person's</i> fitness and propriety.</p>	<p>D</p>	<p>Submitted by <i>firm</i> within seven <i>business days</i> of the firm becoming aware of the matter.</p>
<p><i>Person</i> remaining with the same <i>firm</i> but changing <i>FCA controlled functions</i> (excluding where the <i>person</i> is changing from a <i>customer function</i> to a <i>significant-influence function</i>).</p>	<p>E</p>	<p>Submitted by <i>firm</i> to the <i>FCA</i> before changes take place.</p>
<p><i>Person</i> remaining with the same <i>firm</i> but changing from a <i>customer function</i> to an <i>FCA significant-influence function</i>.</p>	<p>A</p>	<p>See examples in this table relating to the use of Form A</p>
<p><i>Person</i> remaining with the same <i>firm</i> but giving up a <i>PRA controlled function</i> and taking up an <i>FCA controlled function</i>.</p>	<p>E</p>	<p>Submitted by <i>firm</i> to the <i>FCA</i> before changes take place.</p>
<p><i>Person</i> remaining with the same <i>firm</i> in the circumstances described in Example 6 in the table in SUP 10A.11.10G (giving up a <i>PRA controlled function</i> triggering need for <i>FCA</i> approval).</p>	<p>E</p>	<p>Submitted by <i>firm</i> to the <i>FCA</i> in hard copy in advance of giving up the <i>PRA governing function</i>.</p>
<p><i>Person</i> remaining with the same <i>firm</i> but giving up an <i>FCA significant-influence function</i> and taking up a <i>PRA controlled function</i>.</p>	<p>E</p>	<p>Submitted by <i>firm</i> to the <i>PRA</i> before changes take place (see the <i>PRA's Handbook</i>).</p>

## Annex C

### New Chapter 10B of the Supervision manual (SUP)

Insert the following new chapter in the appropriate place in the Supervision manual. The text is not underlined.

#### **10B PRA Approved Persons**

##### **10B.1 Application**

General

- 10B.1.1 R This chapter applies to every *PRA-authorised person*.
- 10B.1.2 G This chapter is also relevant to every *PRA-approved person*.
- 10B.1.3 G The *rules* in this chapter specify descriptions of *PRA controlled functions* under section 59 of the *Act* (Approval for particular arrangements).
- 10B.1.4 G The directions in this chapter relate to the manner in which a *firm* must apply for the *PRA's* approval under section 59 of the *Act* and other procedures.

Overseas firms: UK services

- 10B.1.5 R This chapter does not apply to an *overseas firm* in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.

Overseas firms: UK establishments

- 10B.1.6 R Only the following *PRA controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:
- (1) the *director function* where the *person* performing that function:
    - (a) has responsibility for the *regulated activities* of a *UK branch* which are likely to enable him to exercise significant influence over that branch; or
    - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that branch;
  - (2) the *non-executive director function* where the *person* performing that function:

- (a) has responsibility for the *regulated activities* of a *UK branch* which is likely to enable him to exercise significant influence over that branch; or
- (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that *branch*;
- (3) the *chief executive function*;
- (4) the *PRA required functions*;
- (5) the *systems and controls function*.

Incoming EEA firms and incoming Treaty firms

10B.1.7 R This chapter does not apply to:

- (1) an *incoming EEA firm*; or
- (2) an *incoming Treaty firm*;

if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved, under any of the *Single Market Directives*, the *Treaty* or the *auction regulation*, to an authority in a country or territory outside the *United Kingdom*.

10B.1.8 G *SUP 10B.1.7R* reflects the provisions of section 59(8) of the *Act* and, in relation to an *incoming Treaty firm* the *Treaty*. It preserves the principle of *Home State* prudential regulation. In relation to an *incoming EEA firm* exercising an *EEA right*, or an *incoming Treaty firm* exercising a *Treaty right*, the effect is to reserve to the *Home State regulator* the assessment of the fitness and propriety of a *person* performing a function in the exercise of that right. A member of the *governing body*, or the notified UK branch manager, of an *incoming EEA firm*, acting in that capacity, will not therefore have to be approved by the *PRA* under the *Act*.

10B.1.9 G Notwithstanding *SUP 10B.1.8G*, an *incoming EEA firm* (other than an *EEA pure reinsurer*) or *incoming Treaty firm* will have had to consider the impact of the *Host State* rules with which it is required to comply when carrying on a *passport activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An *incoming EEA firm* (other than an *EEA pure reinsurer*) will have been notified of those provisions under Part II of Schedule 3 to the *Act* in the course of satisfying the conditions for *authorisation* in the *United Kingdom*.

10B.1.10 G An *incoming EEA firm* will have to consider, for example, the position of a *branch manager* based in the *United Kingdom* who may also be performing a function in relation to the carrying on of a *regulated activity* not covered by the *EEA right* of the *firm*. In so far as the function is within the description of a *PRA controlled function*, the *firm* will need to seek approval for that *person* to perform that *PRA controlled function*.

Incoming EEA firms: passported activities from a branch

- 10B.1.11 R None of the *PRA controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*.

Incoming EEA firms etc with top-up permission activities from a UK branch

- 10B.1.12 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the *PRA required functions* apply.

Committees of the Society of Lloyd's

- 10B.1.13 R For the purpose of *SUP* 10B.6.1R (the *director function*), "director" includes an executive member of a committee to which the *Council* of the *Society of Lloyd's* directly delegates authority to carry out the *Society's* regulatory functions.

- 10B.1.14 R For the purpose of *SUP* 10B.6.3R (the non-executive director function), "*non-executive director*" includes a non-executive member of a committee to which the *Council* of the *Society of Lloyd's* directly delegates authority to carry out the *Society's* regulatory functions.

Insolvency practitioners

- 10B.1.15 R This chapter does not apply to a function performed by:
- (1) a *person* acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or
  - (2) a *person* acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986; or
  - (3) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or
  - (4) a *person* acting as a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

Appointed representatives

- 10B.1.16 G The *PRA* has no special *rule* relating to *appointed representatives*. Therefore, *SUP* 10B applies to an *appointed representative* of a *firm* in the same way as it does to any other contractor of the *firm* (see *SUP* 10B.3.1R). In practice in *SUP* 10B the main application to *appointed representatives* of a *firm* will be to people seconded by the *appointed representative* to the *firm*.

## 10.2 Purpose

- 10B.2.1 G The immediate purpose of *SUP* 10B.3 to *SUP* 10B.9 is to specify, under section 59 of the *Act*, descriptions of the *PRA controlled functions* which are listed in *SUP* 10B.4.3R. The underlying purpose is to establish, and mark the boundaries of, the *PRA's* "approved persons regime".

## 10.3 Basic rules for all PRA controlled functions

The need for an arrangement

- 10B.3.1 R A function is a *PRA 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*.
- 10B.3.2 G Sections 59(1) and (2) of the *Act* provide that approval is necessary in respect of a *PRA 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*.
- 10B.3.3 G *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* and includes the appointment of a *person* to an office, his becoming a *partner*, or his employment (whether under a contract of service or otherwise). For the provisions in this chapter relating to outsourcing, see *SUP* 10B.11.6G and *SUP* 10B.11.7G.
- 10B.3.4 G If, however, a *firm* is a member of a group, and the *arrangements* for the performance of a *PRA controlled function* of the *firm* are made by, say, the *holding company*, the *person* performing the function will only require approval if there is an arrangement (under section 59(1)) or a contract (under section 59(2)) between the *firm* and *holding company* permitting this. This need not be a written contract but could arise, for example, by conduct, custom and practice.
- 10B.3.5 G The *arrangement* must be "in relation to" the carrying on of a *regulated activity*. *Regulated activities* are defined in the *Glossary* by reference to the *Regulated Activities Order*. This order prescribes the activities which are *regulated activities* for the purposes of the *Act*.

Significant-influence functions

- 10B.3.6 R Each *PRA controlled function* is one which comes within the definition of a *significant-influence function*.
- 10B.3.7 G Section 59(6) of the *Act* says that the *PRA* may specify a description of function as a *PRA controlled function* only if, in relation to the carrying on of a *regulated activity* by a *firm*, it is satisfied that the function is a *significant-influence function*.
- 10B.3.8 G Section 59(7B) of the *Act* says that a significant-influence function, in relation to the carrying on of a *regulated activity* by a *firm*, means a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *firm's* affairs, so far as relating to the activity.
- 10B.3.9 G *SUP* 10B.3.6R gives effect to sections 59(6) and 59(7B) of the *Act*.
- 10B.3.10 G Whether a function is likely to result in the *person* responsible for its performance exercising significant influence on the conduct of the *firm's* affairs is a question of fact in each case. The *PRA* has identified the *PRA controlled functions* as satisfying this condition.

#### Actions for damages

- 10B.3.11 R A contravention of the *rules* in *SUP* 10B (other than *SUP* 10B.1 to *SUP* 10B.9) gives rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(1) of the *Act* as a provision giving rise to such a right of action).

#### 10.4 Specification of functions

- 10B.4.1 R Each of the functions described in *SUP* 10B.4.3R (the table of *PRA controlled functions*) is a *PRA controlled function*.
- 10B.4.2 G The fact that a *person* may be approved for one purpose does not have the effect of bringing all his activities within that *PRA controlled function*.
- 10B.4.3 R *PRA controlled functions*

Type	CF	Description of <i>PRA controlled function</i>
<i>PRA governing functions</i>	1	<i>Director function</i>
	2	<i>Non-executive director function</i>
	3	<i>Chief executive function</i>

	4	<i>Partner function</i>
	5	<i>Director of unincorporated association function</i>
	6	<i>Small friendly society function</i>
<i>PRA required functions</i>	12	<i>Actuarial function</i>
	12A	<i>With-profits actuary function</i>
	12B	<i>Lloyd's actuary function</i>
<i>Systems and controls function</i>	28	<i>Systems and controls function</i>

## 10.5 Temporary vacancies

### 10B.5.1 R If:

- (1) a *firm* appoints an individual to perform a function which, but for this *rule*, would be a *PRA controlled function*;
- (2) the appointment is to provide cover for an *approved person* 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 *PRA controlled function* does not relate to those activities of that individual.

- ### 10B.5.2 G
- SUP* 10B.5.1R enables cover to be given for 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 a *PRA controlled function* for more than 12 weeks, the *firm* should apply for approval.

## 10B.6 PRA governing functions

Director function (CF1)

- 10B.6.1 R If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of a *director* (other than *non-executive director*) of that *firm*.
- 10B.6.2 R (1) If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is also the function of acting in the capacity of a *person*:
- (a) who is a *director*, partner, officer, member (if the *parent undertaking* or *holding company* is a *limited liability partnership*), *senior manager*, or employee of a *parent undertaking* or *holding company* of the *firm*; and
  - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.
- (2) (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
- (3) (1) does not apply to the function falling into SUP 10B.6.4R (*non-executive director* of the *parent undertaking* or *holding company*).

#### Non-executive director function

- 10B.6.3 R If a *firm* is a *body corporate*, the *non-executive director function* is the function of acting in the capacity of a *non-executive director* of that *firm*.
- 10B.6.4 R (1) If a *firm* is a *body corporate*, the *non-executive director function* is also the function of acting in the capacity of a *person*:
- (a) who is a *non-executive director* of a *parent undertaking* or *holding company*; and
  - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.
- (2) However, (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
- 10B.6.5 R If a *firm* is a *long-term insurer*, the *non-executive director function* is also the function of acting in the capacity of an individual who, as a member of a committee having the purpose of a *with-profits committee*, has responsibility in relation to governance arrangements for *with-profits business* under COBS 20.3 (Principles and Practices of Financial Management). This does not apply to an individual performing the *director function*.
- 10B.6.6 G A *firm* should notify the *PRA* if a *person* moves between certain roles making up the *non-executive director function* (SUP 10B.12.6R).

#### Chief executive function (CF3)

- 10B.6.7 R The *chief executive function* is the function of acting in the capacity of a *chief executive* of a *firm*.
- 10B.6.8 G This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the *governing body*:
- (1) for the conduct of the whole of the business (or relevant activities); or
  - (2) in the case of a *branch* in the *United Kingdom* of an *overseas firm*, for the conduct of all of the activities subject to the *UK regulatory system*.
- 10B.6.9 G For a *branch* in the *United Kingdom* of an *overseas firm*, the *PRA* would not normally expect the overseas *chief executive* of the *firm* as a whole to be approved for this function where there is a *senior manager* under him with specific responsibility for those activities of the *branch* which are subject to the *UK regulatory system*. In some circumstances, the *person* within the *firm* responsible for *UK* operations may, if the function is likely to enable him to exercise significant influence over the *branch*, also perform the *chief executive function*.
- 10B.6.10 G A *person* performing the *chief executive function* may be a member of the *governing body* but need not be. If the chairman of the *governing body* is also the *chief executive*, he will be discharging this function. If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*. But if that responsibility is discharged jointly by more than one *person*, each of those *persons* will be performing the *chief executive function*.
- 10B.6.11 G Note that a *body corporate* may be a *chief executive*. If so, it will need to be approved to perform the *chief executive function*.

Partner function (CF4)

- 10B.6.12 R If a *firm* is a *partnership*, the *partner function* is the function of acting in the capacity of a *partner* in that *firm*.
- 10B.6.13 R If a *firm* is a *limited liability partnership*, the *partner function* extends to the *firm* as if the *firm* were a *partnership* and a member of the *firm* were a *partner*.
- 10B.6.14 R If a *partnership* is registered under the Limited Partnership Act 1907, the *partner function* does not extend to any function performed by a limited partner.

Director of unincorporated association function (CF5)

- 10B.6.15 R If a *firm* is an unincorporated association, the *director of unincorporated association function* is the function of acting in the capacity of a *director* of the unincorporated association.

Small friendly society function (CF6)

- 10B.6.16 R (1) If a *firm* is a *non-directive friendly society*, the *small friendly society function* is the function of directing its affairs, either alone or jointly with others.
- (2) If the principal purpose of the *firm* is to carry on *regulated activities*, each *person* with responsibility for directing its affairs performs the *PRA controlled function*.
- (3) If the principal purpose of the *firm* is other than to carry on *regulated activities*, a *person* performs the *small friendly society function* only to the extent that he has responsibility for a *regulated activity*.
- 10B.6.17 R (1) Each *person* on the *non-directive friendly society's governing body* will be taken to have responsibility for its *regulated activities*, unless the *firm* has apportioned this responsibility to one particular individual to whom it is reasonable to give this responsibility.
- (2) The individual need not be a member of the *governing body*.
- 10B.6.18 G (1) Typically a *non-directive friendly society* will appoint a “committee of management” to direct its affairs. However, the governing arrangements may be informal and flexible. If this is the case, the *PRA* would expect the society to resolve to give responsibility for the carrying on of *regulated activities* to one individual who is appropriate in all the circumstances. That individual may, for example, have the title of *chief executive* or similar. The individual would have to be a *PRA-approved person* under *SUP* 10B.6.16R.
- (2) The *PRA* expects that any apportionment of responsibilities will have taken place under *SYSC* 2.1.1R. The *PRA* may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see *SYSC* 2.2).

Insurance mediation

- 10B.6.19 G A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* (*MIPRU* 2.2.1R). *MIPRU* 2.2.2R(1) provides that the *firm* may allocate this responsibility to one or more of the *persons* performing a *governing function* (other than the *non-executive director function*).
- 10B.6.20 G Where a *person* performing a *governing function* is also responsible for the *firm's insurance mediation activity*, the words “(insurance mediation)” will be inserted after the relevant *PRA controlled function* (see *MIPRU* 2.2.5G).

**10B.7 Other functions included in the governing functions**

Systems and controls function

10B.7.1 R Each of the *PRA governing functions* includes, where apportioned under *SYSC 2.1.1R*, *SYSC 4.3.1R* or *SYSC 4.4.3R*, the *systems and controls function*. This does not apply to the *non-executive director function* or the function described in *SUP 10B.6.2R*.

10B.7.2 G The effect of *SUP 10B.7.1R* is that a *person* who is approved to perform a *PRA governing function* (other than the *non-executive director function* or the function described in *SUP 10B.6.2R*) will not have to be specifically approved to perform the *systems and controls function*. A *person* who is approved to perform a *PRA governing function* will have to be additionally approved before he can perform any of the *PRA required functions*.

The FCA's apportionment and oversight function (CF8)

10B.7.3 R If:

- (1) a *person* has been approved to perform a *PRA governing function* in relation to a *firm* and that approval is still in force;
- (2) that *person* is also performing a function that falls within the *apportionment and oversight function* in relation to that *firm* (or would do so except for *SUP 10A.11.11R* (*FCA rule* disapplying the *apportionment and oversight function* in relation to a *person* approved by the *PRA* to perform a *governing function*)); and
- (3) that *person* is not the subject of a *current FCA approved person approval* for the *apportionment and oversight function* in relation to that *firm*;

that *PRA governing function* includes the *apportionment and oversight function* (or, if there is more than one such *PRA governing function*, each them does).

10B.7.4 R If in relation to a *firm*:

- (1) *SUP 10B.7.3R* has applied to a *PRA-approved person*;
- (2) that *person* has ceased to perform any *PRA governing function* (ignoring the expansion of that function by *SUP 10B.7.3R*); and
- (3) that *person* is still performing what would otherwise be the *apportionment and oversight function*;

*SUP 10B.7.3R* continues to apply for three months after that *PRA-approved person* would otherwise have ceased to perform the *PRA controlled function* or, if sooner, until the *FCA* has approved the performance by that *person* of the *apportionment and oversight function* in relation to the *firm*.

- 10B.7.5 G An example of the way SUP 10B.7.4R works is this. Say that a *person* (A) is appointed as *director* and the *person* who performs the *apportionment and oversight function*. A will be performing the *director function* but will not be performing the *apportionment and oversight function*. Say that later A gives up his role as *director* but remains as the *person* who performs *apportionment and oversight function*. If SUP 10B.7.4R (and the corresponding parts of the FCA's Handbook) did not apply the result would be that A would cease to perform a *PRA controlled function* but would start performing the *apportionment and oversight function* before A had a chance to apply to the FCA for approval. The combined effect of SUP 10B.7.4R and SUP 10A.11 of the FCA's Handbook is that the *firm* has three months to secure approval by the FCA for A's performance of the *apportionment and oversight function* and during that interim period A keeps his status as a *PRA-approved person*.
- 10B.7.6 G Further details of how SUP 10B.7.3R and SUP 10B.7.4R work can be found in SUP 10A.11 of the FCA's Handbook.

## 10B.8 PRA required functions

Actuarial function (CF12)

- 10B.8.1 R The *actuarial function* is the function of acting in the capacity of an *actuary* appointed by a *firm* under SUP 4.3.1R to perform the duties set out in SUP 4.3.13R.

With-profits actuary function (CF12A)

- 10B.8.2 R The *with-profits actuary function* is the function of acting in the capacity of an *actuary* appointed by a *firm* under SUP 4.3.1R to perform the duties set out in SUP 4.3.16AR.

Lloyd's actuary function (CF12B)

- 10B.8.3 R The *Lloyd's actuary function* is the function of acting in the capacity of the *actuary* appointed under SUP 4.6.1R to perform the duties set out in SUP 4.6.7R.

## 10B.9 Systems and controls function

Systems and controls function (CF28)

- 10B.9.1 R The *systems and controls function* is the function of acting in the capacity of an *employee* of the *firm* with responsibility for reporting to the *governing body* of a *firm*, or the audit committee (or its equivalent) in relation to:

- (1) its financial affairs;
- (2) setting and controlling its risk exposure (see SYSC 3.2.10G and SYSC 7.1.6R); and
- (3) adherence to internal systems and controls, procedures and policies (see SYSC 3.2.16G and SYSC 6.2).

10B.9.2 R The *systems and controls function* does not apply in relation to *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(i).

10B.9.3 G Where an *employee* performs the *systems and controls function* the *PRA* would expect the *firm* to ensure that the *employee* had sufficient expertise and authority to perform that function effectively. A *director* or *senior manager* would meet this expectation.

## 10B.10 Procedures relating to PRA-approved persons

### Forms

10B.10.1 G The forms listed in SUP 10B.10.2G are referred to in SUP 10B.11 (Application for approval and withdrawing an application for approval) to SUP 10B.14 (How to apply for approval and give notifications).

10B.10.2 G Table PRA-approved persons forms

Form		Purpose	Handbook requirement
the relevant Form A	The relevant online form on the FCA's and PRA's ONA system or the form in SUP 10B Annex 4D (See Note)	Application to perform controlled functions under the approved persons regime	SUP 10B.11.4D

Form B	SUP 10B Annex 5R	Notice to withdraw an application to perform controlled functions under the approved persons regime	SUP 10B.11.20R
Form C	SUP 10B Annex 6R	Notice of ceasing to perform controlled functions	SUP 10B.12.10R
Form D	SUP 10B Annex 7R	Notification of changes in personal information or application details	SUP 10B.12.16R
Form E	The relevant online form on the FCA's and PRA's ONA system or the form in SUP 10B Annex 8D (See Note)	Internal transfer of an approved person	SUP 10B.12.4D
<p>Note: The form in the SUP annex shown is to be used by <i>credit unions</i>, and by other <i>firms</i> only in the event of a failure of the information technology systems used by the PRA. See the relevant "Handbook requirement".</p>			

- 10B.10.3 G A summary of the forms and their purposes is in SUP 10B Annex 2G.
- 10B.10.4 G Unless the context otherwise requires, in SUP 10B.10 (Procedures relating to PRA-approved persons) to SUP 10B.14 (How to apply for approval and give notifications) where reference is made to a *firm*, this also includes an applicant for *Part 4A permission*, and other *persons* seeking to carry on *regulated activities* as an *authorised person*.
- 10B.10.5 G Forms B, C, D and E can only be submitted in respect of a *PRA-approved person* by the *firm* that submitted a *PRA-approved person's* original application (the relevant Form A).

10B.10.6 G Copies of Forms A, B, C, D and E may be obtained from the *PRA*'s website. *Credit unions* can obtain copies by email at PRA-ApprovedPersons@bankofengland.co.uk. To contact the *PRA* for general *approved persons* enquiries please contact PRA Firm Enquiries:

(1) telephone: +44 (0) 20 3461 7000; or

(2) write to:

PRA Firm Enquiries

Prudential Regulation Authority

20 Moorgate

London EC2R 6DA; or

(3) e-mail: PRA-ApprovedPersons@bankofengland.co.uk.

## 10B.11 Application for approval and withdrawing an application for approval

When to apply for approval

10B.11.1 G In accordance with section 59 of the *Act* (Approval for particular arrangements), where a *candidate* will be performing one or more *PRA controlled functions*, a *firm* must take reasonable care to ensure that the *candidate* does not perform these functions unless he has prior approval from the *PRA* with the consent of the *FCA*.

10B.11.2 G Under section 59B of the *Act* (Role of *FCA* in relation to *PRA* decisions) the *FCA* may arrange with the *PRA* that in agreed kinds of cases there is no need for the consent of the *FCA*. There are currently no such arrangements in place.

Failure to apply for approval

10B.11.3 G If a *person* performs a *PRA controlled function* without approval it is not only the *firm* that is accountable. Under section 63A of the *Act* (Power to impose penalties) if the *PRA* is satisfied that:

(1) a *person* (“P”) has at any time performed a *PRA controlled function* without approval; and

(2) at that time P knew, or could reasonably be expected to have known, that P was performing a *PRA controlled function* without approval;

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

How to apply for approval

10B.11.4 D An application by a *firm* for the *PRA*'s approval under section 59 of the *Act* (Approval for particular arrangements) must be made by completing Form A (except where *SUP* 10B.12.4D requires a Form E).

10B.11.5 G *SUP* 10B.14.1D explains how applications should be submitted.

Who should make the application?

10B.11.6 G (1) 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:

(a) the *PRA candidate*; or

(b) (where the *PRA candidate* works for the *firm's parent undertaking* or *holding company*) by the *firm's parent undertaking* or *holding company*.

(2) Usually this will be the *firm* that is employing the *PRA candidate* to perform the *PRA controlled function*. Where a *firm* has outsourced the performance of a *PRA controlled function*, the details of the outsourcing determine where responsibility lies and whom the *PRA* anticipates will submit *PRA-approved persons* application forms. *SUP* 10B.11.7G describes some common situations. The *firm* which is outsourcing is referred to as "A" and the *person* to whom the performance of the *PRA controlled function* has been outsourced, or which makes the arrangement for the *PRA controlled 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 a *PRA controlled 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 *PRA*. See also *SYSC* 3.2.4G and *SYSC* 8.1.1R, and *SYSC* 13.9 for *insurers*.

10B.11.7 G Outsourcing arrangements

<b>Outsourcing arrangements</b>		<b>Submitting form</b>
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<p><i>Firm A to firm B</i></p>	<p>The <i>PRA</i> 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 <i>PRA controlled functions</i> are performed by <i>PRA-approved persons</i>, and that it is reasonable for A to rely on this</p>	<p><i>Firm B</i> submits <i>PRA-approved persons</i> forms on behalf of <i>firm A</i></p>
<p>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>)</p>	<p>See <i>SUP</i> 10B.3.4G</p>	<p>See <i>SUP</i> 15.7.8G</p>
<p>(i) A to B, where B is a non-<i>authorised person</i> not part of the same group as A (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 group (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 group</p>	<p>Responsibility for (as opposed to the performance of) any activity <i>outsourced</i> to B will remain with A. See <i>SYSC</i> 3.2.4G and <i>SYSC</i> 8</p>	<p>A ensures that an individual approved under one of the <i>PRA controlled functions</i> has responsibility for the <i>outsourced arrangement</i> and A submits a form in relation to that individual</p>

Processing an application

- 10B.11.8 G The *Act* sets out the time that the *PRA* has to consider an application and come to a decision.
- 10B.11.9 G In any case where the application for approval is made by a *person* applying for *permission* under Part 4A of the *Act* the *PRA* 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
  - (2) the period of three months from the time it receives a properly completed application.
- 10B.11.10 G In any other case it is the period of three months from the time it receives a properly completed application.
- 10B.11.11 G Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. If forms are not completed fully and honestly, applications will be subject to investigation and the *PRA candidate's* suitability to be approved to undertake a *PRA controlled function* will be called into question. A *person* who provides information to the *PRA* 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.
- 10B.11.12 G The *PRA* will as soon as practicable notify the *FCA* of the receipt of an application to the *PRA*. There is no need for the *firm* to copy the application to the *FCA*.
- 10B.11.13 G Before making a decision to grant the application or give a *warning notice*, the *PRA* may ask the *firm* for more information about the *PRA candidate*. If it does this, the period in which the *PRA* must determine a completed application:
- (1) will stop on the day the *PRA* requests the information; and
  - (2) will start running again on the day on which the *PRA* finally receives all the requested information.
- 10B.11.14 G The *FCA* may also ask the *firm* for more information about the *PRA candidate*. If it does this, the period in which the *PRA* must determine a completed application is extended in the same way as it is if the *PRA* asks for the information.
- 10B.11.15 G The *PRA* may only grant an application (and the *FCA* may only give its consent) if it is satisfied that the *PRA candidate* is a fit and proper *person* to perform the *PRA controlled function* stated in the application form. Responsibility lies with the *firm* making the application to satisfy the *PRA* and the *FCA* that the *PRA candidate* is fit and proper to perform the *PRA controlled function* applied for.
- 10B.11.16 G For further *guidance* on criteria for assessing whether a *PRA candidate* is fit and proper, see *FIT*.

#### Decisions on applications

- 10B.11.17 G The *PRA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice*.

- 10B.11.18 G Whenever it grants an application, the *PRA* will confirm this in writing to all *interested parties*.
- 10B.11.19 G If the *PRA* proposes to refuse an application in relation to one or more *PRA controlled functions*, it must follow the procedures for issuing *warning* and *decision notices*.

#### Withdrawing an application for approval

- 10B.11.20 R A *firm* applying to withdraw an application for approval must notify the *PRA*, using Form B, in the form set out in *SUP* 10B Annex 5R.
- 10B.11.21 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 the *PRA candidate* and the *person* by whom the *PRA candidate* is or would have been employed, if this is not the *firm* making the application.
- 10B.11.22 G The *PRA* will as soon as practicable notify the *FCA* of the receipt of a notice of withdrawal. There is no need for the *firm* to copy the notice to the *FCA*.

## 10B.12 Changes to a PRA-approved person's details

### Moving within a firm

- 10B.12.1 G A *PRA-approved person's* job may change from time to time as a result, for instance, of a change in personal job responsibilities or a *firm's regulated activities*. Where the changes will involve the *person* performing one or more *PRA controlled functions* different from those for which approval has already been granted, then an application must be made to the *PRA* for approval for the *person* to perform those *PRA controlled functions*. The *firm* must take reasonable care to ensure that an individual does not begin performing a *PRA controlled function* until the *PRA* has granted *approved person* status to that individual in respect of that *PRA controlled function*. Similarly, a *firm* must get the *PRA's* approval if a *person* is to start performing a *PRA controlled function* in relation to that *firm* when he already has the *FCA's* approval to perform an *FCA controlled function* in relation to that *firm*.
- 10B.12.2 G If an *FCA-approved person* or a *PRA-approved person* is ceasing to perform *FCA controlled functions* or *PRA controlled functions*, as well as applying for approval in respect of *PRA controlled functions*, *SUP* 10B.12.4D generally applies. Further details can be found in *SUP* 10B Annex 2G.

- 10B.12.3 G If a *person* is to perform a *PRA controlled function* for a *firm* for which he already performs a *PRA controlled function* or *FCA controlled function* as an *approved person* but he is not at the same time ceasing to perform an *FCA controlled function* or *PRA controlled function*, a *firm* should use Form A rather than Form E. It is not mandatory to complete all parts of the form. See the notes relevant to each form for full details.
- 10B.12.4 D (1) A *firm* must use Form E where an *approved person* is both ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *PRA controlled functions* 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 a *significant influence function* for any *firm* or has not been the subject of a *current approved person approval* from the *FCA* or *PRA* to perform a *significant influence function* in relation to any *firm* for more than six months.
- (3) A *firm* must not use Form E if a notification has been made or should be made under *SUP* 10B.12.18R (Changes in fitness to be notified under Form D) or *SUP* 10A.14.17R (the equivalent *FCA rule*) in relation to any *controlled functions* that, that *person* is ceasing to perform (as referred to in (1)) or any *controlled function* that he is continuing to perform in relation to that *firm* or a *firm* in the same *group*.
- 10B.12.5 G *SUP* 10B.14.1D explains how applications should be submitted.
- 10B.12.6 R If a *person* is performing the *non-executive director function* in relation to a *firm*, the *firm* must notify the *PRA* as soon as possible if that *person* begins to perform or ceases to perform any of the following functions:
- (1) the function of acting in the capacity of the chairman of the *governing body* of the *firm*; or
- (2) the function of acting as a *non-executive director* who has been appointed by the *non-executive directors* to act as the senior independent director of that *firm*; or
- (3) the function of acting in the capacity of the chairman of the *governing body* risk committee of the *firm* (if there is such a committee). For these purposes, the *governing body* risk committee means the committee described in *SYSC* 21.1.5G; or
- (4) the function of acting in the capacity of the chairman of the audit committee of the *governing body* of the *firm* (if there is such a committee); or
- (5) the function of acting in the capacity of the chairman of the remuneration committee of the *governing body* of the *firm* (if there is such a committee).

Any such notification must be e-mailed to the *PRA's approved persons* mailbox at PRA-ApprovedPersons@bankofengland.co.uk

- 10B.12.7 G So for example if a *non-executive director* moves from being chair of the audit committee to chair of the risk committee or adds the role of chair of the audit committee to his existing role as chair of the risk committee he does not require approval from the *PRA*. However, the *firm* should notify the *PRA* of that change as soon as possible. If a *person* stops performing the *non-executive director function* altogether, *SUP* 10B.12.4D or *SUP* 10B.12.10R apply instead.

#### Moving between firms

- 10B.12.8 G If it is proposed that a *PRA-approved person* will no longer be performing a *PRA controlled function* under an *arrangement* entered into by one *firm* or one of its contractors, but will be performing the same or a different *PRA controlled function* under an *arrangement* entered into by a new *firm* or one of its contractors (whether or not the new *firm* is in the same *group* as the old *firm*), the new *firm* will be required to make a fresh application for the performance of the *PRA controlled function* by that *person*.
- 10B.12.9 G In certain circumstances, when the *PRA* already has the information it would usually require, a shortened version of the relevant Form A may be completed. See the notes relevant to each form for full details.

#### Ceasing to perform a PRA controlled function

- 10B.12.10 R A *firm* must submit to the *PRA* a completed Form C, in the form set out in *SUP* 10B Annex 6R no later than seven *business days* after a *PRA-approved person* ceases to perform a *PRA controlled function*. This does not apply if the *firm* has already notified the *PRA* of the proposal to do that using Form E in accordance with this chapter or has notified the *FCA* of the proposal to do using the *FCA's* Form E in accordance with *SUP* 10A of the *FCA's* Handbook.
- 10B.12.11 G *SUP* 10B.14.2R explains how notifications should be submitted.
- 10B.12.12 R (1) A *firm* must notify the *PRA* as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of a *PRA-approved person*.
- (2) Form C is qualified if the information it contains:
- (a) relates to the fact that the *firm* has dismissed, or suspended, the *PRA-approved person* from its employment; or
  - (b) relates to the resignation by the *PRA-approved person* while under investigation by the *firm*, the *PRA* or any other *regulatory body*; or

- (c) otherwise reasonably suggests that it may affect the *PRA's* assessment of the *PRA-approved person's* fitness and propriety.
- 10B.12.13 G Notification under *SUP* 10B.12.12R may be made by telephone, fax or email and should be made, where possible, within one *business day* of the *firm* becoming aware of the information. If the *firm* does not submit Form C, it should inform the *PRA* in due course of the reason. This could be done using Form D, if appropriate.
- 10B.12.14 G A *firm* is responsible for notifying the *PRA* if any *PRA-approved person* has ceased to perform a *PRA controlled function* under an arrangement entered into by its *appointed representative* or former *appointed representative*.
- 10B.12.15 G A *firm* can submit Form C or Form E to the *PRA* in advance of the cessation date. When a *person* ceases the arrangement under which he performs a *PRA controlled function*, he will automatically cease to be a *PRA-approved person* in relation to that *PRA controlled function*. A *person* can only be a *PRA-approved person* in relation to a specific *PRA controlled function*. Therefore, a *person* is not a *PRA-approved person* during any period between ceasing to perform one *PRA controlled function* (when he is performing no other *PRA controlled function*) and being approved in respect of another *PRA controlled function*.

#### Changes to a *PRA-approved person's* personal details

- 10B.12.16 R If a *PRA-approved person's* title, name or national insurance number changes, the *firm* for which the *person* performs a *PRA controlled function* must notify the *PRA* on Form D, in the form set out in *SUP* 10B Annex 7R, of that change within seven *business days* of the *firm* becoming aware of the matter.
- 10B.12.17 G The duty to notify in *SUP* 10B.12.16R does not apply to changes to a *PRA-approved person's* private address.
- 10B.12.18 R If a *firm* becomes aware of information which would reasonably be material to the assessment of a *PRA-approved person's*, or a *PRA-candidate's*, fitness and propriety (see *FIT*), it must inform the *PRA* on Form D, or (if it is more practical to do so and with the prior agreement of the *PRA*) by fax or e-mail, as soon as practicable.
- 10B.12.19 G *SUP* 10B.14.2R applies to the submission of Form D.
- 10B.12.20 G Failing to disclose relevant information to the *PRA* may be a criminal offence under section 398 of the *Act*.
- 10B.12.21 G The duty to notify in *SUP* 10B.12.18R extends to any circumstances that would normally be declared when giving the information required for section 5 of Form A or matters considered in *FIT* 2.

- 10B.12.22 R (1) If, in relation to a *firm* which has completed the relevant Form A (*SUP* 10B Annex 4D), any of the details relating to arrangements and *PRA controlled functions* are to change, the *firm* must notify the *PRA* on Form D (*SUP* 10B Annex 7R).
- (2) The notification under (1) must be made as soon as reasonably practicable after the *firm* becomes aware of the proposed change.
- (3) This also applies in relation to a *PRA controlled function* for which an application was made using Form E.
- (4) This *rule* also applies to a *firm* in respect of an *approved person*, to whom the grandfathering arrangements relating to the coming into force of the *Act* applied as if the *firm* had completed the relevant Form A for that *person*.

### 10B.13 References and accurate information

#### References

- 10B.13.1 R (1) If a *firm* (A):
- (a) is considering appointing a *person* to perform any *PRA controlled function*;
- (b) requests another *firm* (B), as a current or former employer of that *person*, for a reference or other information in connection with that appointment; and
- (c) indicates to B the purpose of the request;
- B must, as soon as reasonably practicable, give to A all relevant information of which it is aware.
- (2) When giving the information to A under (1), B must have regard to the purpose of the request and in particular to:
- (a) any outstanding liabilities of that *person* from commission payments;
- (b) any relevant outstanding or upheld complaint from an *eligible complainant* against that *person*;
- (c) section 5 of the relevant Form A in *SUP* 10B Annex 4 (Application to perform controlled functions under approved persons regime);
- (d) *FIT* 2 (Main assessment criteria); and

- (e) if *SUP* 16.8.1G(1) (Persistency reports from insurers and data reports on stakeholder pensions) applies to B, the persistency of any *life policies* sold by that *person*.

- 10B.13.2 G The requirement in *SUP* 10B.13.1R(1) for *firm* (B) to give to *firm* (A) all relevant information of which it is aware concerning a *person* *firm* A is considering appointing to perform any of the *PRA controlled functions*, also applies where *firm* A has outsourced the collection of that information to another (unregulated) third party, where *firm* B has been made aware that the unregulated third party is acting on behalf of *firm* A.
- 10B.13.3 G A *firm* supplying a reference in accordance with *SUP* 10B.13.1R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based.

The need for complete and accurate information

- 10B.13.4 G The obligations to supply information to:
- (1) the *PRA* under either *SUP* 10B.12.10R or *SUP* 10B.12.12R; or
  - (2) another *firm* under *SUP* 10B.13.1R;
- apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment. A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.
- 10B.13.5 G Failing to disclose relevant information to the *PRA* may be a criminal offence under section 398 of the Act.

## 10.14 How to apply for approval and give notifications

- 10B.14.1 D
- (1) This direction applies to an application under Form A or Form E.
  - (2) An application by a *firm* other than a *credit union* must be made by submitting the Form online at [www.pra.org.uk](http://www.pra.org.uk) using the form specified on the *FCA's* and *PRA's* ONA system.
  - (3) An application by a *credit union* must be made using the form in *SUP* 10B Annex 4D or *SUP* 10B Annex 8D and must be submitted in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).

- (4) Where a *firm* is obliged to submit an application online under (2), if the information technology systems used by the *PRA* fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must use the form in *SUP* 10B Annex 4D or *SUP* 10B Annex 8D and submit it in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).
- 10B.14.2 R (1) This rule applies to a notification under Form C or Form D.
- (2) A notification must be made in accordance with *SUP* 10B.14.1D except that the annexes to *SUP* 10B in which the forms are to be found are *SUP* 10B Annex 6R or *SUP* 10B Annex 7R rather than the Annexes mentioned in *SUP* 10B.14.1D.
- 10B.14.3 G If the information technology systems used by the *PRA* fail and online submission is unavailable for 24 hours or more, the *FCA* and *PRA* will endeavour to publish a notice on their websites confirming that online submission is unavailable and that the alternative methods of submission set out in *SUP* 10B.14.1D(4) and *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification) should be used.
- 10B.14.4 G Where *SUP* 10B.14.1D(4) or the equivalent situation under *SUP* 10B.14.2R applies to a *firm*, *GEN* 1.3.2R (Emergency) does not apply.

SUP 10B Annex 1 [Not used]

**SUP 10B Annex 2 Approved person regime: summary of forms and their use for applications for approval to perform a PRA-controlled function**

Function	Form	Submission
<i>Person about to perform a PRA controlled function if he has never been approved by the FCA or PRA before.</i>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate is to perform a PRA controlled function and either has current approval to perform an FCA significant-influence function or a PRA controlled function or has had such an approval within the previous six months.</i>	Shortened Form  A  if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate ceased to be an approved person more than six months ago.</i>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate is seeking to perform a significant-influence function for the first time or ceased to have approval from the FCA or PRA to perform such a function more than six months ago.</i>	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Firm applying for an outstanding application to perform a PRA controlled function to be withdrawn.</i>	B	Submitted by the <i>firm</i> : signed by all <i>interested parties</i> .
<i>Person ceasing to perform a PRA controlled function.</i>	C (unless it should be notified under Form E)	Submitted by the <i>firm</i> within seven <i>business days</i> of <i>approved person</i> ceasing to perform <i>controlled function(s)</i> .
<i>If a PRA-approved person's title, name or national insurance number changes, or there is information which may be material to the continuing assessment of an approved person's fitness and propriety.</i>	D	Submitted by <i>firm</i> within seven <i>business days</i> of the firm becoming aware of the matter.

<i>Person remaining with the same firm but changing PRA controlled functions.</i>	E	Submitted by <i>firm</i> to the <i>PRA</i> before changes take place.
<i>Person remaining with the same firm but giving up an FCA significant-influence function and taking up a PRA controlled function.</i>	E	Submitted by <i>firm</i> to the <i>PRA</i> before changes take place.
<i>Person remaining with the same firm in the circumstances described in SUP 10B.7.4R (giving up a PRA controlled function triggering need for FCA approval).</i>	E	Submitted by <i>firm</i> to the <i>FCA</i> in hard copy in advance of giving up the <i>PRA governing function</i> .
<i>Person remaining with the same firm but giving up a PRA controlled function and taking up an FCA significant-influence function.</i>	E	Submitted by <i>firm</i> to the <i>FCA</i> before changes take place (see the <i>FCA's Handbook</i> ).
<i>Person being appointed to a PRA governing function role who is about to start a function that would otherwise have come within the apportionment and oversight function.</i>	A or E as appropriate	The form should mention that the <i>person</i> is to perform what would otherwise have been the <i>apportionment and oversight function</i> . See SUP 10A.11.10G (table in the <i>FCA's Handbook</i> of examples of how the need for dual <i>FCA</i> and <i>PRA</i> approval in relation to <i>PRA-authorised persons</i> is reduced).
<i>Person moving from one PRA governing function role to another while continuing to perform a function that would otherwise have come within the apportionment and oversight function.</i>	See previous row	See previous row.

**Annex D**

**Amendments to the Transitional Provisions of the Supervision manual (SUP)**

Insert the following new section after SUP TP 2. The text is not underlined.

**TP 3 Transitional provisions relating to SUP 10A and SUP 10B: Transition from the FSA to the FCA and PRA**

**TP 3.1 Transition to the FCA**

3.1.1 [FCA] R An *approved person* who was, as at *cutover*, approved by the *FSA* to perform a *controlled function* specified by the *FSA* set out in column 1 of the table in *SUP* TP 3.1.2R in relation to a *firm*, is deemed to continue to be approved by the *FCA* to perform the *FCA-controlled function* in the same row of column 2 in that table in relation to that *firm*. Column 3 states whether this applies in relation to all *firms* or just *FCA-authorised persons*.

3.1.2 [FCA] R Table: FSA controlled functions transitioned to the FCA

<b>FSA controlled function</b>	<b>FCA controlled function into which approved person transitioned</b>	<b>Firms to which transitional relates</b>
Director function (CF1)	<i>Director function (CF1)</i>	<i>FCA-authorised persons only</i>
Non-executive director function (CF2)	<i>Non-executive director function (CF2)</i>	<i>FCA-authorised persons only</i>
Chief executive function (CF3)	<i>Chief executive function (CF3)</i>	<i>FCA-authorised persons only</i>
Partner function (CF4)	<i>Partner function (CF4)</i>	<i>FCA-authorised persons only</i>
Director of unincorporated association function (CF5)	<i>Director of unincorporated association function (CF5)</i>	<i>FCA-authorised persons only</i>
Small friendly society function (CF6)	<i>Small friendly society function (CF6)</i>	<i>FCA-authorised persons only</i>
Apportionment and oversight function (CF8)	<i>Apportionment and oversight function (CF8)</i>	<i>All firms</i>
Compliance oversight function (CF10)	<i>Compliance oversight function (CF10)</i>	<i>All firms</i>

CASS operational oversight function (CF10A)	<i>CASS operational oversight function (CF10A)</i>	All firms
Money laundering reporting function (CF11)	<i>Money laundering reporting function (CF11)</i>	All firms
Systems and controls function (CF28)	<i>Systems and controls function (CF28)</i>	FCA-authorised persons only
Significant management function (CF29)	<i>Significant management function (CF29)</i>	All firms
Customer function (CF30)	<i>Customer function (CF30)</i>	All firms

### TP 3.2 Transition to the PRA

3.2.1 [PRA] R An *approved person* who was, as at *cutover*, approved by the FSA to perform, in relation to a *PRA-authorised person*, a *controlled function* specified by the FSA set out in column 1 of the table in SUP TP 3.2.2R is deemed to be approved by the PRA to perform the *PRA-controlled function* in the same row of column 2 in that table in relation to that *firm*.

3.2.2 [PRA] R Table: FSA controlled functions transitioned to the PRA

<b>FSA controlled function</b>	<b>PRA controlled function</b>
Director function (CF1)	<i>Director function (CF1)</i>
Non-executive director function (CF2)	<i>Non-executive director function (CF2)</i>
Chief executive function (CF3)	<i>Chief executive function (CF3)</i>
Partner function (CF4)	<i>Partner function (CF4)</i>
Director of unincorporated association function (CF5)	<i>Director of unincorporated association function (CF5)</i>
Small friendly society function (CF6)	<i>Small friendly society function (CF6)</i>
Actuarial function (CF12)	<i>Actuarial function (CF12)</i>
With-profits actuary function (CF12A)	<i>With-profits actuary function (CF12A)</i>

Lloyd's actuary function (CF12B)	<i>Lloyd's actuary function (CF12B)</i>
Systems and controls function (CF28)	<i>Systems and controls function (CF28)</i>

### TP 3.3 Amalgamation of functions

- 3.3.1 [FCA] G In the case of an *FCA-authorised person*, if *SUP 10.6.2R* (each of the *FSA's* governing functions includes the *FSA's* systems and controls function and significant management function) applied immediately before *cutover*, *SUP 10A.6.3R* (the equivalent *FCA rule*) applies to the same extent following *cutover*.
- 3.3.2 [PRA] G In the case of a *PRA-authorised person*, if *SUP 10.6.2R* (each of the *FSA's* governing functions includes the *FSA's* systems and controls function and significant management function) applied immediately before *cutover*, *SUP 10B.7.1R* (the equivalent *PRA rule*) applies following *cutover* in relation to the *systems and controls function*.
- 3.3.3 [FCA/  
PRA] G In the case of a *PRA-authorised person*, if a *person* was approved by the *FSA* to perform one of the *FSA's* governing functions and the *FSA's* apportionment and oversight function in relation to a *firm*, the effect of *SUP TP 3* is that he will be deemed to be approved by the *FCA* for the *apportionment and oversight function* and by the *PRA* for the appropriate *governing function* in relation to that *firm*. *SUP 10A.11.11R* (disapplication of the *apportionment and oversight function* if approved for a *PRA governing function*) and *SUP 10B.7.3R* (functions making up the *apportionment and oversight function* if approved for a *PRA governing function*) do not apply.

### TP 3.4 Changes to approved persons details

- 3.4.1 [FCA] G *Firms* are reminded that an effect of the transitional provisions in *SUP TP 2.2* is that *SUP 10A.14.15R* to *SUP 10A.14.21R* (notifications relating to changes to the details relating to *approved persons* and *candidates* and new information relating to them) apply to changes and new information as compared to the position before *cutover*.
- 3.4.2 [PRA] G *Firms* are reminded that an effect of the transitional provisions in *SUP TP 2.2* is that *SUP 10B.14.16R* to *SUP 10B.14.22R* (notifications relating to changes to the details relating to *approved persons* and *candidates* and new information relating to them) apply to changes and new information as compared to the position before *cutover*.

### TP 3.5 Transitional provisions relating to bidding in emissions auctions

- 3.5.1 [FCA] R SUP TP 3.5 deals with an *approved person* in relation to a *PRA-authorised person* who:
- (1) immediately before *cutover*, fell within SUP 10.6.2AR (*FSA's* governing functions include certain functions relating to *bidding in emissions auctions*); and
  - (2) immediately before *cutover* was not approved to perform the *FSA's* customer controlled function in relation to that *firm*.
- 3.5.2 [FCA] R SUP 10A.10.7R(7) does not apply in relation to that *person* and that *firm* until that *person* stops performing that function.
- 3.5.3 [FCA] G Under the *FSA's approved persons* regime a *person* acting as a bidder's representative within the meaning of subparagraph 3 of article 6(3) of the *auction regulation* did not require approval to perform the *FSA's* customer controlled function if that *person* had approval for one of the *FSA's* governing functions. If a *person* was in this position immediately before *cutover*, acting as a bidder's representative is not included in the *customer function* following *cutover*. It is not included in any *PRA controlled function* either. This only applies in relation to the *firm* for which that *person* was performing that role immediately before *cutover*. Furthermore if that *person* stops performing that role and later takes it up again for the same *firm* he will require approval.
- 3.5.4 [FCA] G This transitional does not apply in relation to an *FCA-authorised person*.

### TP 3.6 General

- 3.6.1 [FCA/PRA] G References in SUP TP 3 to a *person* being approved for the purposes of section 59 of the *Act* (approval for particular arrangements) or being an *approved person* includes someone being taken to be approved for the purposes of that section by virtue of an order made under the *Act* relating to transitional matters, such as one relating to the bringing into force of the *Act*.

## Annex E

### Amendments to the Statement of Principle and Code of Practice for Approved Persons (APER)

In this Annex, underlining indicates new text and striking through indicates deleted text.

APER 1.1 is deleted in its entirety. The deleted text is not shown.

After APER 1.1 (deleted) insert the following new sections. The text is not underlined.

#### 1.1A Application

Who?

1.1A.1 P *APER* applies to *FCA-approved persons* and *PRA-approved persons*.  
[FCA]

What?

1.1A.2 P (1) *APER* applies to the performance by an *approved person* of:  
[FCA]

(a) *FCA controlled functions* (whether or not approval has been sought and granted); and

(b) *PRA controlled functions* (whether or not approval has been sought and granted);

in relation to the *authorised persons* in relation to which that *person* is an *approved person*.

(2) *APER* also applies to the performance by an *approved person* of any other functions in relation to the carrying on of a *regulated activity* by the *authorised persons* referred to in (1).

1.1A.3 G The functions described in *APER* 1.1A.2P are called *accountable functions*.  
[FCA]

1.1A.4 G The relevance of *MiFID* to the *Statements of Principle* will depend on the extent to which the corresponding requirement imposed on *firms* under *MiFID* is reserved to a *Home State regulator* or has been disapplied under *MiFID* (see *APER* 2.1A.2P and *FIT* 1.2.4AG. See also *COBS* 1 Annex 1, Part 2, 1.1R (EEA territorial scope rule: compatibility with European law)).  
[FCA]

Where?

1.1A.5 G The territorial scope of the *approved persons* regime and its application to *incoming EEA firms* is set out in *SUP* 10A.1 (see *SUP* 10A.1.11R and *SUP* 10A.1.13R).  
[FCA]

Coverage of APER

1.1A.6 [FCA] G APER 1.1A.7G gives examples of the effect of APER 1.1A.1P and APER 1.1A.2P. The first column says whether the example involves an *FCA-approved person* and the second column says whether the example involves a *PRA-approved person*. So for example if there is a “Yes” in both columns that means that the example concerns a *person* who has been approved both by the *FCA* and by the *PRA*. The third column explains what functions APER covers in the scenario set out in the first two columns. The table is divided between cases in which the *person* performs the *controlled function* for an *FCA-authorized person* and ones where the *person* does so for a *PRA-authorized person*.

1.1A.7 [FCA] G Table: Examples of what activities APER covers

FCA approved	PRA approved	Coverage of APER
FCA-authorized person		
(1) Yes, in relation to <i>firm A</i>	Not applicable	Applies to the <i>FCA controlled function</i> . Also applies to any other function performed for <i>firm A</i> in relation to the carrying on by <i>firm A</i> of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .
(2) Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	Not applicable	In relation to <i>firm A</i> , the answer is the same as for scenario (1). However, APER does not apply to any function that the <i>approved person</i> carries on in relation to <i>firm B</i> even if that function relates to <i>regulated activities</i> carried out by <i>firm B</i> . However, if the function that he performs in relation to <i>firm B</i> is a <i>controlled function</i> the <i>approved person</i> and <i>firm B</i> may be subject to legal sanctions (see SUP 10A.13.1G to SUP 10A.13.2G).
PRA-authorized person		
(3) Yes, in relation to <i>firm A</i>	No	The answer is the same as for scenario (1).

(4) No	Yes, in relation to <i>firm A</i>	Applies to <i>PRA controlled function</i> . Also applies to any other function performed for <i>firm A</i> in relation to the carrying on by <i>firm A</i> of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .
(5) Yes, in relation to <i>firm A</i>	Yes, in relation to <i>firm A</i>	Applies to <i>FCA controlled function</i> and <i>PRA controlled function</i> . Also applies to any other function performed for <i>firm A</i> in relation to the carrying on by <i>firm A</i> of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .
(6) Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	In relation to <i>firm A</i> , the answer is the same as for scenario (5). However, <i>APER</i> does not apply to any function that the <i>approved person</i> carries on in relation to <i>firm B</i> even if that function relates to <i>regulated activities</i> carried out by <i>firm B</i> . However, if the function that he performs in relation to <i>firm B</i> is a <i>controlled function</i> the <i>approved person</i> and <i>firm B</i> may be subject to legal sanctions (see <i>SUP 10A.13.1G</i> to <i>SUP 10A.13.21G</i> ).

- 1.1A.8 [FCA] G A *person* may be an *approved person* in relation to more than one *firm*. When that is the case, *APER* applies in relation to all those *firms*.
- 1.1A.9 [FCA] G (1) *APER* 1.1A.2P refers to the *authorised person* in relation to which a *person* is an *approved person*.
- (2) Under section 59 of the *Act* (Approval for particular arrangements) there are two kinds of *approved person*.
- (3) Section 59(1) of the *Act* describes the first. It covers a *person* who performs a *controlled function* under an *arrangement* entered into by an *authorised person* (“A”). In this case, *APER* 1.1A.2P refers to A.
- (4) Section 59(2) of the *Act* describes the second. It covers a *person* who performs a *controlled function* under an *arrangement* entered into by a contractor (“B”) of an *authorised person* (“A”). In this case, *APER* 1.1A.2P refers to A (and not B).

Rule in GEN about provisions shared between the FCA and PRA

1.1A.10 E GEN 2.2.23R (Cutover: Application of provisions made by both the FCA  
[FCA] and the PRA) does not apply to any provision of *APER* marked with an “E”  
in the margin.

1.1A.11 G GEN 2.2.23R does not apply to any of *APER*. It does not apply to any part  
[FCA] of *APER* that is not shared as GEN 2.2.23R only applies to *Handbook*  
provisions made by both the *FCA* and the *PRA*. Hence GEN 2.2.23R does  
not apply to the *Statements of Principle*. *APER* 1.1A.10E means that GEN  
2.2.23R does not apply to shared provisions marked with an “E” in the  
margin. GEN 2.2.23R does not apply to shared *guidance* in *APER* because  
the *guidance* is about material to which GEN 2.2.23R does not apply.

## 1.1B Application

Who?

1.1B.1 P *APER* applies to:  
[PRA]

- (1) *PRA-approved persons*; and
- (2) *FCA-approved persons* in relation to whom the *FCA* has given its approval under section 59 of the *Act* in respect of the performance by them of *significant-influence functions* in relation to the carrying on by *PRA-authorised persons* of *regulated activities*.

What?

1.1B.2 P (1) *APER* applies to the performance by an *approved person* of:  
[PRA]

- (a) *PRA controlled functions* (whether or not approval has been sought and granted); and
- (b) *FCA controlled functions* that are *significant-influence functions* (whether or not approval has been sought and granted);

in relation to the *PRA-authorised persons* in relation to which that *person* is an *approved person*.

- (2) *APER* also applies to the performance by an *approved person* of any other *significant-influence functions* in relation to the *PRA-authorised persons* referred to in (1).

1.1B.3 G The functions described in *APER* 1.1B.2P are called *accountable functions*.  
[PRA]

1.1B.4 [PRA] G The relevance of *MiFID* to the *Statements of Principle* will depend on the extent to which the corresponding requirement imposed on *firms* under *MiFID* is reserved to a *Home State regulator* or has been disapplied under *MiFID* (see *APER* 2.1B.2P and *FIT* 1.2.4AG).

Where?

1.1B.5 [PRA] G The territorial scope of the *approved persons* regime and its application to *incoming EEA firms* is set out in *SUP* 10B.1 (see *SUP* 10B.1.11R and *SUP* 10B.1.12R).

Coverage of *APER*

1.1B.6 [PRA] G *APER* 1.1B.7G gives examples of the effect of *APER* 1.1B.1P and *APER* 1.1B.2P. The first column says whether the example involves an *FCA-approved person* and the second column says whether the example involves a *PRA-approved person*. So, for example, if there is a “Yes” in both columns that means that the example concerns a *person* who has been approved both by the *FCA* and by the *PRA*. The third column explains what functions *APER* covers in the scenario set out in the first two columns. The table is divided between cases in which the *person* performs the *controlled function* for an *FCA-authorised person*, and ones where the *person* does so for a *PRA-authorised person*.

1.1B.7 [PRA] G Table: Examples of what activities *APER* covers

FCA approved	PRA approved	Coverage of <i>APER</i>
FCA-authorised person		
(1) Yes, in relation to <i>firm A</i>	Not applicable	Does not apply
PRA-authorised person		
(2) No	Yes, in relation to <i>firm A</i>	Applies to <i>PRA controlled function</i> . Also applies to any other <i>significant-influence functions</i> performed for <i>firm A</i> , even if they are not <i>controlled functions</i> .
(3) Yes, in relation to <i>firm A</i> (for a <i>significant-influence function</i> )	No	Applies to <i>FCA controlled function</i> . Also applies to any other <i>significant-influence functions</i> performed for <i>firm A</i> , even if they are not <i>controlled functions</i> .

(4) Yes, in relation to <i>firm A</i> (for a <i>customer-dealing function</i> )	No	Does not apply. If he is also performing a <i>significant-influence function</i> that is not a <i>controlled function</i> , <i>APER</i> does not apply to that function either.
(5) Yes, in relation to <i>firm A</i> (for a <i>customer-dealing function</i> )	Yes, in relation to <i>firm A</i>	Applies to <i>PRA controlled function</i> . Does not apply to <i>customer-dealing function</i> . Also applies to any other <i>significant-influence functions</i> performed for <i>firm A</i> , even if they are not <i>controlled functions</i> .
(6) Yes, in relation to <i>firm A</i> (for a <i>significant-influence function</i> )	Yes, in relation to <i>firm A</i>	Applies to <i>FCA controlled function</i> and <i>PRA controlled function</i> . Also applies to any other <i>significant-influence functions</i> performed for <i>firm A</i> , even if they are not <i>controlled functions</i> .
(7) Yes, in relation to <i>firm A</i> (for a <i>significant-influence function</i> and <i>customer-dealing function</i> )	Yes, in relation to <i>firm A</i>	The answer is the same as for scenario (6). Does not apply to <i>customer-dealing function</i> .
(8) Yes, in relation to <i>firm A</i> (for a <i>significant-influence function</i> ). No, in relation to <i>firm B</i> ,	Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	In relation to <i>firm A</i> , the answer is the same as for scenario (6). However, <i>APER</i> does not apply to any function that the <i>approved person</i> carries on in relation to <i>firm B</i> , even if that function is a <i>significant-influence function</i> . However, if the function that he performs in relation to <i>firm B</i> is a <i>controlled function</i> , the <i>approved person</i> and <i>firm B</i> may be subject to legal sanctions (see <i>SUP 10B.11.1G</i> and <i>SUP 10B.11.3G</i> ).

1.1B.8 [PRA] G A person may be an *approved person* in relation to more than one *PRA-authorized person*. When that is the case, *APER* applies in relation to all those *firms*.

1.1B.9 [PRA] G (1) *APER* 1.1B.2P refers to the *PRA-authorized person* in relation to which a person is an *approved person*.

- (2) Under section 59 of the *Act* (Approval for particular arrangements) there are two kinds of *approved person*.
- (3) Section 59(1) of the *Act* describes the first. It covers a *person* who performs a *controlled function* under an *arrangement* entered into by an *authorised person* (“A”). In this case, *APER* 1.1B.2P refers to A.
- (4) Section 59(2) of the *Act* describes the second. It covers a *person* who performs a *controlled function* under an *arrangement* entered into by a contractor (“B”) of an *authorised person* (“A”). In this case, *APER* 1.1B.2P refers to A (and not B).

Rule in GEN about provisions shared between the FCA and PRA

- 1.1B.10 [PRA] E *GEN* 2.2.23R (Cutover: Application of provisions made by both the FCA and the PRA) does not apply to any provision of *APER* marked with an “E” in the margin.
- 1.1B.11 [PRA] G *GEN* 2.2.23R does not apply to any of *APER*. It does not apply to any part of *APER* that is not shared, as *GEN* 2.2.23R only applies to *Handbook* provisions made by both the *FCA* and the *PRA*. Hence *GEN* 2.2.23R does not apply to the *Statements of Principle*. *APER* 1.1A.10E means that *GEN* 2.2.23R does not apply to shared provisions marked with an “E” in the margin. *GEN* 2.2.23R does not apply to shared *guidance* in *APER* because the *guidance* is about material to which *GEN* 2.2.23R does not apply.

Amend the following as shown.

## 1.2 Purpose

- 1.2.1 G ~~The *Statements of Principle* contained in *APER* 2 are issued under section 64(1) of the *Act* (Conduct: statements and codes). [deleted]~~
- 1.2.1A [FCA] G *The *Statements of Principle* contained in *APER* 2 are issued under section 64(1) of the *Act* (Conduct: statements and codes). The paragraphs of the application section in *APER* 1.1A labelled “P” also form part of the *Statements of Principle*.*
- 1.2.1B [PRA] G *The *Statements of Principle* contained in *APER* 2 are issued under section 64(1A) of the *Act* (Conduct: statements and codes). The paragraphs of the application section in *APER* 1.1B labelled “P” also form part of the *Statements of Principle*.*

- 1.2.2 [FCA/PRA] G Section 64(2) of the *Act* states that if ~~the FSA~~ an appropriate regulator issues *Statements of Principle* it must also issue a code of practice for the purpose of helping to determine whether or not a *person's* conduct complies with the *Statements of Principle*. The *Code of Practice for Approved Persons* in *APER 3* and *APER 4* fulfils this requirement.
- 1.2.3 [FCA] G The *Code of Practice for Approved Persons* sets out descriptions of conduct which, in the opinion of the ~~FSA~~ FCA, do not comply with a *Statement of Principle* and, in the case of *Statement of Principle 3*, conduct which tends to show compliance within that statement. The *Code of Practice for Approved Persons* also sets out, in certain cases, factors which, in the opinion of the ~~FSA~~ FCA, are to be taken into account in determining whether or not an *approved person's* conduct complies with a *Statement of Principle*. The guidance set out in *APER 3* and *APER 4* does not form part of the *Code of Practice for Approved Persons*.
- 1.2.3A [PRA] G The *Code of Practice for Approved Persons* sets out descriptions of conduct which, in the opinion of the PRA, do not comply with a *Statement of Principle*. The *Code of Practice for Approved Persons* also sets out, in certain cases, factors which, in the opinion of the PRA, are to be taken into account in determining whether or not an *approved person's* conduct complies with a *Statement of Principle*. The guidance set out in *APER 3* and *APER 4* does not form part of the *Code of Practice for Approved Persons*.
- ...
- 1.2.5 [FCA] G As set out in ~~SUP 10.3.1R (Arrangements and regulated activities)~~ 10A.3.1R (Provisions related to the Act), a function is a *controlled function* only to the extent that it is performed under an *arrangement* entered into by:
- ...
- 1.2.6 G ~~The *Statements of Principle* apply only to the performance of a *controlled function* (that is, to the activities carried on under the arrangement described in the *firm's* application for approval). [deleted]~~
- 1.2.7 G ~~The *FSA* recognises that an *approved person* may be performing functions which are unrelated to *regulated activities* or are otherwise outside the description of a *controlled function*. The fact that a *person* may be approved for one purpose does not have the effect of bringing all his functions within the *controlled function*, nor of making those functions subject to the *Statements of Principle*. [deleted]~~
- 1.2.8 G ~~The territorial scope of the *approved persons* regime is set out in *SUP 10.1 (Application)*. [deleted]~~

- 1.2.9 G ~~The *Statements of Principle* apply only to the extent that a *person* is performing a *controlled function* for which approval has been sought and granted. [deleted]~~

APER 2.1 is deleted in its entirety. The deleted text is not shown.

After APER 2.1 (deleted) insert the following new sections. The text is not underlined.

**2.1A The Statements of Principle**

- 2.1A.1 G *APER 2.1A.3P* sets out the *Statements of Principle* issued by the *FCA* to which *APER 1.2.1AG* refers and to which the provisions of the *Code of Practice for Approved Persons* and guidance in *APER 3* and *APER 4* apply. The paragraphs of *APER 1.1A* labelled “P” also form part of the *Statements of Principle*.
- 2.1A.2 P An *approved person* will not be subject to a *Statement of Principle* to the extent that it would be contrary to the UK's obligations under a *Single Market Directive* or the *auction regulation*.
- 2.1A.3 P Statements of Principle issued under section 64 of the Act

<p>Statement of Principle 1</p> <p>An <i>approved person</i> must act with integrity in carrying out his <i>accountable functions</i>.</p>
<p>Statement of Principle 2</p> <p>An <i>approved person</i> must act with due skill, care and diligence in carrying out his <i>accountable functions</i>.</p>
<p>Statement of Principle 3</p> <p>An <i>approved person</i> must observe proper standards of market conduct in carrying out his <i>accountable functions</i>.</p>
<p>Statement of Principle 4</p> <p>An <i>approved person</i> must deal with the <i>FCA</i>, the <i>PRA</i> and other regulators in an open and cooperative way and must disclose appropriately any information of which the <i>FCA</i> or the <i>PRA</i> would reasonably expect notice.</p>

<p>Statement of Principle 5</p> <p><i>An approved person performing an accountable significant-influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function is organised so that it can be controlled effectively.</i></p>
<p>Statement of Principle 6</p> <p><i>An approved person performing an accountable significant-influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function.</i></p>
<p>Statement of Principle 7</p> <p><i>An approved person performing an accountable significant-influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function complies with the relevant requirements and standards of the regulatory system.</i></p>

## 2.1B The Statements of Principle

- 2.1B.1 [PRA] G *APER 2.1B.3P sets out the Statements of Principle issued by the PRA to which APER 1.2.1BG refers and to which the provisions of the Code of Practice for Approved Persons and guidance in APER 3 and APER 4 apply. The paragraphs of APER 1.1B labelled “P” also form part of the Statements of Principle.*
- 2.1B.2 [PRA] P *An approved person will not be subject to a Statement of Principle to the extent that it would be contrary to the UK's obligations under a Single Market Directive or the auction regulation.*
- 2.1B.3 [PRA] P Statements of Principle issued under section 64 of the Act

<p>Statement of Principle 1</p> <p><i>An approved person must act with integrity in carrying out his accountable functions.</i></p>
<p>Statement of Principle 2</p> <p><i>An approved person must act with due skill, care and diligence in carrying out his accountable functions.</i></p>
<p>Statement of Principle 3</p> <p>[Not used]</p>

<p>Statement of Principle 4</p> <p>An <i>approved person</i> must deal with the <i>FCA</i>, the <i>PRA</i> and other regulators in an open and cooperative way and must disclose appropriately any information of which the <i>FCA</i> or the <i>PRA</i> would reasonably expect notice.</p>
<p>Statement of Principle 5</p> <p>An <i>approved person</i> performing an <i>accountable function</i> must take reasonable steps to ensure that the business of the <i>firm</i> for which he is responsible in his <i>accountable function</i> is organised so that it can be controlled effectively.</p>
<p>Statement of Principle 6</p> <p>An <i>approved person</i> performing an <i>accountable function</i> must exercise due skill, care and diligence in managing the business of the <i>firm</i> for which he is responsible in his <i>accountable function</i>.</p>
<p>Statement of Principle 7</p> <p>An <i>approved person</i> performing an <i>accountable function</i> must take reasonable steps to ensure that the business of the <i>firm</i> for which he is responsible in his <i>accountable function</i> complies with the relevant requirements and standards of the <i>regulatory system</i>.</p>

Amend the following as shown.

### **3 Code of Practice for Approved Persons: general**

#### **3.1 Introduction**

- 3.1.1 G This *Code of Practice for Approved Persons* is issued under section 64 of the *Act* (~~Conduct: statements and codes~~) for the purpose of helping to determine whether or not an *approved person's* conduct complies with a *Statement of Principle*. The code sets out descriptions of conduct which, in the *FSA's* opinion, do not comply with the relevant *Statements of Principle*. The code also sets out certain factors which, in the opinion of the *FSA*, are to be taken into account in determining whether an *approved person's* conduct complies with a particular *Statement of Principle*. The description of conduct, the factors and related provisions are identified in the text by the letter 'E' as explained in chapter 6 of the *Reader's Guide*. ~~[deleted]~~

- 3.1.1A [FCA ] G This Code of Practice for Approved Persons is issued under section 64 of the Act (Conduct: statements and codes) for the purpose of helping to determine whether or not an approved person's conduct complies with a Statement of Principle. The code sets out descriptions of conduct which, in the FCA's opinion, do not comply with the relevant Statements of Principle. The code also sets out certain factors which, in the opinion of the FCA, are to be taken into account in determining whether an approved person's conduct complies with a particular Statement of Principle. The description of conduct, the factors and related provisions are identified in the text by the letter 'E' as explained in chapter 6 of the Reader's Guide.
- 3.1.1B [PRA] G This Code of Practice for Approved Persons is issued under section 64 of the Act (Conduct: statements and codes) for the purpose of helping to determine whether or not an approved person's conduct complies with a Statement of Principle. The code sets out descriptions of conduct which, in the PRA's opinion, do not comply with the relevant Statements of Principle. The code also sets out certain factors which, in the opinion of the PRA, are to be taken into account in determining whether an approved person's conduct complies with a particular Statement of Principle. The description of conduct, the factors and related provisions are identified in the text by the letter 'E' as explained in the Reader's Guide.
- ...
- 3.1.3 [FCA/ PRA] G The significance of conduct identified in the *Code of Practice for Approved Persons* as tending to establish compliance with or a breach of a *Statement of Principle* will be assessed only after all the circumstances of a particular case have been considered. Account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular *controlled accountable function* and the behaviour to be expected in that function.
- ...
- 3.1.4A [PRA] G (1) An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.
- (2) For the avoidance of doubt, the Statements of Principle do not extend the duties of approved persons beyond those which the firm owes in its dealings with customers or others.
- 3.1.5 [FCA/ PRA] G In particular, in determining whether or not an *approved person's* conduct complies with a *Statement of Principle*, the *FSA appropriate regulator* will take into account the extent to which an *approved person* has acted in a way that is stated to be in breach of a *Statement of Principle*.

- 3.1.6 [FCA/PRA] G The *Code of Practice for Approved Persons* (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the *Statements of Principle*. The purpose of the code is to help determine whether or not a *person's* conduct complies with a *Statement of Principle*. The code may be supplemented from time to time. The *FSA appropriate regulator* will amend the code if there is a risk that unacceptable practice may become prevalent, so as to make clear what conduct falls below the standards expected of *approved persons* by the *Statements of Principle*.
- 3.1.7 G ~~*Statements of Principle 1 to 4 apply to all approved persons. In the Statements of Principle and in the Code of Practice for Approved Persons, a reference to "his controlled function" is a reference to the controlled function to which the approval relates. A person performing a significant influence function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that controlled function. Those responsible under SYSC 2.1.3R or SYSC 4.4.5R (Apportionment of responsibilities) for the firm's apportionment obligation will be specifically subject to Statement of Principle 5 (and see in particular APER 4.5.6E). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see in particular APER 4.7.3E). [deleted]*~~
- 3.1.7A [FCA] G *Statements of Principle 1 to 4 apply to all approved persons. A person performing an accountable significant-influence function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that accountable function. Those responsible under SYSC 2.1.3R or SYSC 4.4.5R (Apportionment of responsibilities) for the firm's apportionment obligation will be specifically subject to Statement of Principle 5 (and see, in particular, APER 4.5.6E). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see, in particular, APER 4.7.3E).*
- 3.1.7B [PRA] G *Those responsible under SYSC 2.1.3R or SYSC 4.4.5R (Apportionment of responsibilities) for the firm's apportionment obligation will be specifically subject to Statement of Principle 5 (and see, in particular, APER 4.5.6E). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see, in particular, APER 4.7.3E).*
- 3.1.8 G ~~*In applying Statements of Principle 5 to 7, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be. The FSA will be of the opinion that an individual performing a significant influence function may have breached Statements of Principle 5 to 7 only if his conduct was below the standard which would be reasonable in all the circumstances. (See also*~~

APER 3.3.1E(3) to (5): [deleted]

- 3.1.8A [FCA] G In applying *Statements of Principle 5 to 7*, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing an *accountable significant-influence function* within the *firm* will be relevant in assessing whether an *approved person's* conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be. The *FCA* will be of the opinion that an individual performing an *accountable significant-influence function* may have breached *Statements of Principle 5 to 7* only if his conduct was below the standard which would be reasonable in all the circumstances. (See also *APER 3.3.1E(3) to (5)*.)
- 3.1.8B [PRA] G In applying *Statements of Principle 5 to 7*, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing an *accountable function* within the *firm* will be relevant in assessing whether an *approved person's* conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be. The *PRA* will be of the opinion that an individual performing an *accountable function* may have breached *Statements of Principle 5 to 7* only if his conduct was below the standard which would be reasonable in all the circumstances. (See also *APER 3.3.1E(3) to (5)*.)
- 3.1.9 [FCA/ PRA] G *UK domestic firms* listed on the London Stock Exchange are subject to the *UK Corporate Governance Code*, whose *internal control* provisions are amplified in the publication entitled "Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)" issued by the Financial Reporting Council. ~~*FSA-regulated firms*~~ *Firms regulated by the appropriate regulator* in this category will thus be subject to that code as well as to the requirements and standards of the *regulatory system*. In forming an opinion whether *approved persons* have complied with its requirements, the ~~*FSA*~~ *appropriate regulator* will give due credit for their following corresponding provisions in the *UK Corporate Governance Code* and related *guidance*.

### 3.2 Factors relating to all Statements of Principle

- 3.2.1 [FCA/ PRA] E In determining whether or not the particular conduct of an *approved person* within his ~~*controlled*~~ *accountable function* complies with the *Statements of Principle*, the following are factors which, in the opinion of the ~~*FSA*~~ *appropriate regulator*, are to be taken into account:

...

### 3.3 Factors relating to Statements of Principle 5 to 7

3.3.1 E In determining whether or not the conduct of an *approved person*  
[FCA] performing a an *accountable significant-influence function* complies with *Statements of Principle 5 to 7*, the following are factors which, in the opinion of the ~~FSA~~ FCA, are to be taken into account:

...

(4) his role and responsibility as an *approved person* performing a an *accountable significant-influence function*;

...

3.3.2 E In determining whether or not the conduct of an *approved person*  
[PRA] performing an *accountable function* complies with *Statements of Principle 5 to 7*, the following are factors which, in the opinion of the PRA, are to be taken into account:

(1) whether he exercised reasonable care when considering the information available to him;

(2) whether he reached a reasonable conclusion which he acted on;

(3) the nature, scale and complexity of the *firm's* business;

(4) his role and responsibility as an *approved person* performing an *accountable function*;

(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

## 4 Code of Practice for Approved Persons: specific

### 4.1 Statement of Principle 1

4.1.1 G ~~The *Statement of Principle 1* (see *APER 2.1.2P*) is in the following terms:  
"An *approved person* must act with integrity in carrying out his *controlled function*." [deleted]~~

4.1.1A G The *Statement of Principle 1* (see *APER 2.1A.3P*) is in the following terms:  
[FCA] "An *approved person* must act with integrity in carrying out his *accountable functions*."

4.1.1B G The *Statement of Principle 1* (see *APER 2.1B.3P*) is in the following terms:  
[PRA] "An *approved person* must act with integrity in carrying out his *accountable functions*."

4.1.2 E In the opinion of the ~~FSA~~ appropriate regulator, conduct of the type  
[FCA/ described in *APER* 4.1.3E, *APER* 4.1.5E, *APER* 4.1.6E, *APER* 4.1.8E, *APER*  
PRA] 4.1.10E, *APER* 4.1.12E, *APER* 4.1.13E, *APER* 4.1.14E or *APER* 4.1.15E  
does not comply with *Statement of Principle 1* (~~*APER* 2.1.2P~~).

4.1.3 E Deliberately misleading (or attempting to mislead) by act or omission:  
[FCA/ ...  
PRA] (3) the ~~FSA~~ FCA or the PRA;  
falls within *APER* 4.1.2E.

4.1.4 E Behaviour of the type referred to in *APER* 4.1.3E includes, but is not limited  
[FCA/ to, deliberately:  
PRA] ...

(11) providing false or inaccurate information to the ~~FSA~~ FCA or the  
PRA;

(12) destroying, or causing the destruction of, *documents* (including false  
documentation), or tapes or their contents, relevant to misleading (or  
attempting to mislead) a *client*, his *firm*, the FCA or the ~~FSA~~ PRA;

...

...

4.1.6 E Deliberately failing to inform, without reasonable cause:  
[FCA/ ...  
PRA] ...

(3) the ~~FSA~~ FCA or the PRA;

of the fact that their understanding of a material issue is incorrect, despite  
being aware of their misunderstanding, falls within *APER* 4.1.2E.

...

4.1.8 E Deliberately preparing inaccurate or inappropriate records or returns in  
[FCA/ connection with a ~~an~~ controlled accountable function, falls within *APER*  
PRA] 4.1.2E.

...

## 4.2 Statement of Principle 2

- 4.2.1 G The *Statement of Principle 2* (see *APER 2.1.2P*) is in the following terms: "An *approved person* must act with due skill, care and diligence in carrying out his *controlled function*." [deleted]
- 4.2.1A [FCA] G The *Statement of Principle 2* (see *APER 2.1A.3P*) is in the following terms: "An *approved person* must act with due skill, care and diligence in carrying out his *accountable functions*."
- 4.2.1B [PRA] G The *Statement of Principle 2* (see *APER 2.1B.3P*) is in the following terms: "An *approved person* must act with due skill, care and diligence in carrying out his *accountable functions*."
- 4.2.2 [FCA/PRA] E In the opinion of the *FSA appropriate regulator*, conduct of the type described in *APER 4.2.3E*, *APER 4.2.5E*, *APER 4.2.6E*, *APER 4.2.8E*, *APER 4.2.10E*, *APER 4.2.11E*, ~~*APER 4.2.13E*~~ or *APER 4.2.14E* does not comply with *Statement of Principle 2* (~~*APER 2.1.2P*~~).
- 4.2.2A [FCA] E In the opinion of the *FCA*, conduct of the type described in *APER 4.2.13E* does not comply with *Statement of Principle 2*.

...

- 4.2.13 [FCA] E Continuing to perform a *controlled function* despite having failed to meet the standards of knowledge and skill set out in the Training and Competence sourcebook (*TC*) for that *controlled function* falls within ~~*APER 4.2.2E*~~ *APER 4.2.2AE*.

...

### 4.3 Statement of Principle 3

- 4.3.1 [FCA] G The *Statement of Principle 3* (see ~~*APER 2.1.2P*~~ *APER 2.1A.3P*) is in the following terms: "An *approved person* must observe proper standards of market conduct in carrying out his ~~*controlled function*~~ *accountable functions*."

...

- 4.3.3 [FCA] E A factor to be taken into account in determining whether or not an *approved person's* conduct complies with this *Statement of Principle* ~~*APER 2.1.2P*~~ is whether he, or his *firm*, has complied with the *Code of Market Conduct* (*MAR 1*) or relevant market codes and exchange rules.

- 4.3.4 [FCA] E Compliance with the code or *rules* described in *APER 4.3.3E* will tend to show compliance with this *Statement of Principle* (~~*APER 2.1.2P*~~).

### 4.4 Statement of Principle 4

- 4.4.1 G ~~The *Statement of Principle 4* (see *APER 2.1.2 P*) is in the following terms: "An *approved person* must deal with the *FSA* and with other regulators in an open and cooperative way and must disclose appropriately any information of which the *FSA* would reasonably expect notice." [deleted]~~
- 4.4.1A [FCA] G The *Statement of Principle 4* (see *APER 2.1A.3P*) is in the following terms: "An *approved person* must deal with the *FCA*, the *PRA* and other regulators in an open and cooperative way and must disclose appropriately any information of which the *FCA* or the *PRA* would reasonably expect notice."
- 4.4.1B [PRA] G The *Statement of Principle 4* (see *APER 2.1B.3P*) is in the following terms: "An *approved person* must deal with the *FCA*, the *PRA* and other regulators in an open and cooperative way and must disclose appropriately any information of which the *FCA* or the *PRA* would reasonably expect notice."
- 4.4.2 G ~~For the purpose of this *Statement of Principle* (*APER 2.1.2 P*), regulators in addition to the *FSA* are those which have recognised jurisdiction in relation to *regulated activities* and a power to call for information from the *approved person* in connection with his *controlled function* or (in the case of an individual performing a *significant influence function*) in connection with the business for which he is responsible. This may include an exchange or an *overseas regulator*. [deleted]~~
- 4.4.2A [FCA] G For the purpose of this *Statement of Principle*, regulators in addition to the *FCA* and the *PRA* are those which have recognised jurisdiction in relation to *regulated activities* and a power to call for information from the *approved person* in connection with his *accountable function* or (in the case of an individual performing an *accountable significant-influence function*) in connection with the business for which he is responsible. This may include an exchange or an *overseas regulator*.
- 4.4.2B [PRA] G For the purpose of this *Statement of Principle*, regulators in addition to the *FCA* and the *PRA* are those which have recognised jurisdiction in relation to *regulated activities* and a power to call for information from the *approved person* in connection with his *accountable function* or in connection with the business for which he is responsible. This may include an exchange or an *overseas regulator*.
- 4.4.3 [FCA/ PRA] E In the opinion of the *FSA appropriate regulator*, conduct of the type described in *APER 4.4.4E*, *APER 4.4.7E*, or *APER 4.4.9E* does not comply with *Statement of Principle 4* (~~*APER 2.1.2P*~~).
- 4.4.4 [FCA/ PRA] E Failing to report promptly in accordance with his *firm's* internal procedures (or if none exist direct to the ~~*FSA regulator concerned*~~), information which it would be reasonable to assume would be of material significance to the ~~*FSA regulator concerned*~~, whether in response to questions or otherwise, falls within *APER 4.4.3E*. The regulator concerned is:
- (1) the *FCA* if it would be reasonable to assume that it would be of material significance to it;

- (2) the PRA if it would be reasonable to assume that it would be of material significance to it;
- (3) both the FCA and the PRA if it would be reasonable to assume that it would be of material significance to both of them.

4.4.5 [FCA/  
PRA] G There is no duty on an *approved person* to report such information directly to the FSA regulator concerned unless he is one of the *approved persons* responsible within the *firm* for reporting matters to the FSA regulator concerned. However, if an *approved person* takes steps to influence the decision so as not to report to the FSA regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the FSA regulator concerned, then the FSA appropriate regulator will, in respect of that information, view him as being one of those within the *firm* who has taken on responsibility for deciding whether to report that matter to the FSA regulator concerned.

4.4.6 [FCA/  
PRA] E In determining whether or not an *approved person's* conduct under *APER* 4.4.4E complies with *Statement of Principle 4*, the following are factors which, in the opinion of the FSA appropriate regulator, are to be taken into account:

- (1) the likely significance to the regulator concerned (as defined in APER 4.4.4E) ~~FSA~~ of the information which it was reasonable for the individual to assume;

...

4.4.7 [FCA/  
PRA] E Where the *approved person* is, or is one of the *approved persons* who is, responsible within the *firm* for reporting matters to the FSA regulator concerned (as defined in APER 4.4.4E), failing promptly to inform the FSA regulator concerned of information of which he is aware and which it would be reasonable to assume would be of material significance to the FSA regulator concerned, whether in response to questions or otherwise, falls within *APER* 4.4.3E.

4.4.8 [FCA/  
PRA] E In determining whether or not an *approved person's* conduct under *APER* 4.4.7E complies with *Statement of Principle 4* (~~*APER 2.1.2P*~~), the following are factors which, in the opinion of the FSA appropriate regulator, are to be taken into account:

- (1) the likely significance of the information to the FSA regulator concerned (as defined in APER 4.4.4E) which it was reasonable for the *approved person* to assume;
- (2) whether any decision not to inform the FSA regulator concerned (as defined in APER 4.4.4E) was taken after reasonable enquiry and analysis of the situation.

...

## 4.5 Statement of Principle 5

4.5.1 G ~~The *Statement of Principle 5* (see *APER 2.1.2P*) is in the following terms: "An *approved person* performing a *significant influence function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *controlled function* is organised so that it can be controlled effectively."~~ [deleted]

4.5.1A G The *Statement of Principle 5* (see *APER 2.1A.3P*) is in the following terms: "An *approved person* performing an *accountable significant-influence function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *accountable function* is organised so that it can be controlled effectively." References in *APER 4.5* to a *significant-influence function* are to an *accountable function* to which *Statement of Principle 5* applies.

4.5.1B G The *Statement of Principle 5* (see *APER 2.1B.3P*) is in the following terms: "An *approved person* performing an *accountable function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *accountable function* is organised so that it can be controlled effectively." References in *APER 4.5* to a *significant-influence function* are to an *accountable function* to which *Statement of Principle 5* applies.

4.5.2 E In the opinion of the ~~*FSA*~~ *appropriate regulator*, conduct of the type described in *APER 4.5.3E*, *APER 4.5.4E*, *APER 4.5.6E* or *APER 4.5.8E* does not comply with *Statement of Principle 5* (~~*APER 2.1.2P*~~).

...

4.5.7 E Behaviour of the type referred to in *APER 4.5.6E* includes, but is not limited to:

(1) failing to review regularly the significant responsibilities which the *firm* is required to apportion ~~under *APER 2.1.1G*~~;

...

...

## 4.6 Statement of Principle 6

4.6.1 G ~~The *Statement of Principle 6* (see *APER 2.1.2P*) is in the following terms: "An *approved person* performing a *significant influence function* must exercise due skill, care and diligence in managing the business of the *firm* for which he is responsible in his *controlled function*."~~ [deleted]

4.6.1A [FCA] G The Statement of Principle 6 (see APER 2.1A.3P) is in the following terms: "An approved person performing an accountable significant-influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function." References in APER 4.6 to a significant-influence function are to an accountable significant-influence function to which Statement of Principle 6 applies.

4.6.1B [PRA] G The Statement of Principle 6 (see APER 2.1B.3P) is in the following terms: "An approved person performing an accountable function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function." References in APER 4.6 to a significant-influence function are to an accountable function to which Statement of Principle 6 applies.

4.6.2 [FCA/ PRA] E In the opinion of the *FSA appropriate regulator*, conduct of the type described in APER 4.6.3E, APER 4.6.5E, APER 4.6.6E or APER 4.6.8E does not comply with *Statement of Principle 6 (APER 2.1.2P)*.

...

4.6.10 [FCA/ PRA] E In determining whether or not the conduct of an *approved person* performing a *significant\_influence function* under APER 4.6.5E, APER 4.6.6E and APER 4.6.8E complies with *Statement of Principle 6 (see APER 2.1.2P)*, the following are factors which, in the opinion of the *FSA appropriate regulator*, are to be taken into account:

...

4.6.11 [FCA/ PRA] G An *approved person* performing a *significant-influence function* will not always manage the business on a day-to-day basis himself. The extent to which he does so will depend on a number of factors, including the nature, scale and complexity of the business and his position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines. The *FSA appropriate regulator* will look to the *approved person* performing a *significant-influence function* to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to his attention, he should deal with them in an appropriate way.

...

Delegation

4.6.13 [FCA/ PRA] G ...

- (4) The ~~FSA recognises~~ FCA and PRA recognise that the *approved person* performing a *significant-influence function* will have to exercise his own judgment in deciding how issues are dealt with, and that in some cases that judgment will, with the benefit of hindsight, be shown to have been wrong. He will not be in breach of *Statement of Principle 6* unless he fails to exercise due and reasonable consideration before he delegates the resolution of an issue or authority for dealing with a part of the business and fails to reach a reasonable conclusion. If he is in doubt about how to deal with an issue or the seriousness of a particular compliance problem, then, although he cannot delegate to the ~~FSA appropriate regulator~~ the responsibility for dealing with the problem or issue, he can speak to the ~~FSA appropriate regulator~~ to discuss his approach (see *APER 4.6.5E*).

...

#### 4.7 Statement of Principle 7

- 4.7.1 G ~~The *Statement of Principle 7* (see *APER 2.1.2P*) is in the following terms: "An *approved person* performing a *significant-influence function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *controlled function* complies with the relevant requirements and standards of the *regulatory system*."~~ [deleted]
- 4.7.1A [FCA] G The *Statement of Principle 7* (see *APER 2.1A.3P*) is in the following terms: "An *approved person* performing an *accountable significant-influence function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *accountable function* complies with the relevant requirements and standards of the *regulatory system*." References in *APER 4.7* to a *significant-influence function* are to an *accountable significant-influence function* to which *Statement of Principle 7* applies.
- 4.7.1B [PRA] G The *Statement of Principle 7* (see *APER 2.1B.3P*) is in the following terms: "An *approved person* performing an *accountable function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *accountable function* complies with the relevant requirements and standards of the *regulatory system*." References in *APER 4.7* to a *significant-influence function* are to an *accountable function* to which *Statement of Principle 7* applies.
- 4.7.2 [FCA/ PRA] E In the opinion of the ~~FSA appropriate regulator~~, conduct of the type described in ~~*APER 4.7.3E*, *APER 4.7.4E*, *APER 4.7.5E*, or *APER 4.7.7E*, *APER 4.7.9E*, *APER 4.7.10E* or *APER 4.7.11AE*~~ does not comply with *Statement of Principle 7* (~~*APER 2.1.2P*~~).

- 4.7.2A [FCA] E In the opinion of the FCA, conduct of the type described in APER 4.7.9E, APER 4.7.10E or APER 4.7.11AE does not comply with Statement of Principle 7.
- 4.7.3 [FCA/ PRA] E Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the *regulatory system* in respect of ~~its~~ the regulated activities of the firm in question (as referred to in Statement of Principle 7) falls within APER 4.7.2E. In the case of an *approved person* who is responsible, under SYSC 2.1.3R(2) or SYSC 4.4.5R(2), with overseeing the *firm's* obligation under SYSC 3.1.1R or SYSC 4.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2E.
- 4.7.4 [FCA/ PRA] E Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the *regulatory system* in respect of ~~its~~ the regulated activities of the firm in question (as referred to in Statement of Principle 7) falls within APER 4.7.2E (see APER 4.7.12G).
- 4.7.5 [FCA/ PRA] E Failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the *regulatory system* in respect of ~~its~~ the regulated activities of the firm in question (as referred to in Statement of Principle 7) may have arisen (taking account of the systems and procedures in place) falls within APER 4.7.2E.
- ...
- 4.7.7 [FCA/ PRA] E Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the *regulatory system* relating to ~~its~~ the regulated activities of the firm in question (as referred to in Statement of Principle 7), falls within APER 4.7.2E (see APER 4.7.13G and APER 4.7.14G).
- ...
- 4.7.9 [FCA] E In the case of the *money laundering reporting officer*, failing to discharge the responsibilities imposed on him by the *firm* in accordance with SYSC 3.2.6IR or SYSC 6.3.9R falls within ~~APER 4.7.2E~~ APER 4.7.2AE.
- 4.7.10 [FCA] E In the case of an *approved person* performing a *significant-influence function* responsible for compliance under SYSC 3.2.8R, SYSC 6.1.4R or SYSC 6.1.4AR, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within ~~APER 4.7.2E~~ APER 4.7.2AE (see APER 4.7.13G and APER 4.7.14G).

- 4.7.11 [FCA/PRA] G The ~~FSA~~ appropriate regulator expects an *approved person* performing a *significant\_influence function* to take reasonable steps both to ensure his *firm's* compliance with the relevant requirements and standards of the *regulatory system* and to ensure that all staff are aware of the need for compliance.
- 4.7.11A [FCA] E Where the *approved person* is a *proprietary trader* under ~~SUP 10A.9.10R~~ SUP 10A.9.10R(1A), failing to maintain and comply with appropriate systems and controls in relation to that activity falls within ~~APER 4.7.2E~~ APER 4.7.2AE.

...

## TP 1 Transitional Provisions

TP 1.1  
[FCA/  
PRA]

In addition to the transitional provision below, *GEN* contains some technical transitional provisions that apply throughout the *Handbook*.

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1.	<i>APER</i> 3.1.9G	<del>R</del> <u>G</u>	References to provisions in the UK Corporate Governance Code are to be read as references to the equivalent provisions in the Combined Code for accounting periods beginning before 29 June 2010.	From 29 June 2010 to 28 December 2011	6 August 2010

## Sch 1 Record keeping requirements

Sch 1.1 There are no record keeping requirements in APER.

[FCA/  
PRA]

**Sch 2.1 Record keeping requirements**

....

Sch 2.3

[FCA/  
PRA]

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>Statement of Principle 4 (APER 2.1.2P 2.1A.3P)</i>	Any information of which the FSA <u>FCA</u> or the <u>PRA</u> would reasonably expect notice	Appropriate disclosure	Any information of which the FSA <u>FCA</u> or the <u>PRA</u> would reasonably expect notice	Appropriate

Sch 2.4

[PRA]

<u>Handbook reference</u>	<u>Matter to be notified</u>	<u>Contents of notification</u>	<u>Trigger event</u>	<u>Time allowed</u>
<u><i>Statement of Principle 4 (APER 2.1B.3P)</i></u>	<u>Any information of which the <u>FCA</u> or the <u>PRA</u> would reasonably expect notice</u>	<u>Appropriate disclosure</u>	<u>Any information of which the <u>FCA</u> or the <u>PRA</u> would reasonably expect notice</u>	<u>Appropriate</u>

...

Schedule 4 of APER is deleted in its entirety. The deleted text is not shown.

**SCHEDULE A**

**Part 1**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions of the 2000 Act under which the Authority issued codes</b>	<b>Corresponding provisions: Financial Conduct Authority</b>	<b>Corresponding provisions: Prudential Regulation Authority</b>
Section 64 (Conduct: statements and codes)	Section 64	Section 64

**SCHEDULE A**

**Part 2**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions of the 2000 Act under which the Authority issued statements</b>	<b>Corresponding provisions: Financial Conduct Authority</b>	<b>Corresponding provisions: Prudential Regulation Authority</b>
Section 64 (Conduct: statements and codes)	Section 64	Section 64

**SCHEDULE A**

**Part 3**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions of the 2000 Act under which the Authority gave guidance</b>	<b>Corresponding provisions: Financial Conduct Authority</b>	<b>Corresponding provisions: Prudential Regulation Authority</b>
Section 157 (Guidance)	Section 139A	None