

**EXITING THE EUROPEAN UNION: SMCR AND APR (AMENDMENTS)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
  - (3) section 60 (Applications for approval);
  - (4) section 60A (Vetting candidates by authorised persons);
  - (5) section 61 (Determination of applications);
  - (6) section 63E (Certification of employees by authorised persons);
  - (7) section 63F (Issuing of certificates);
  - (8) section 64A (Rules of conduct);
  - (9) section 137A (The FCA’s general rules);
  - (10) section 137T (General supplementary powers); and
  - (11) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018 except for Part 2 of Annex E, which comes into force on 27 September 2019 or on exit day as defined in the European Union (Withdrawal) Act 2018, whichever date is the later.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Code of Conduct (COCON)	Annex B
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex C
Fit and Proper test for Employees and Senior Personnel (FIT)	Annex D
Supervision manual (SUP)	Annex E

**Citation**

- E. This instrument may be cited as the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019.

By order of the Board  
28 March 2019

## Annex A

## Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

### 1 Application and purpose

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#### 1 Annex Detailed application of SYSC

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<b>Part 3</b>	<b>Tables summarising the application of the common platform requirements to different types of firm</b>
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**Table A: Application of the common platform requirements in SYSC 4 to SYSC 10**

Provision SYSC 4	COLUMN A ...	COLUMN A+ ...	COLUMN A++ ...	COLUMN B ...
...	...	...	...	...
SYSC 4.4.1AR	Not applicable	Not applicable	Not applicable	<p><del>Rule applies this section only to:</del></p> <p><del>(1) an authorised professional firm in respect of its non-mainstream regulated activities unless the firm is also conducting other regulated activities and has appointed approved persons to perform the governing functions with equivalent responsibilities for the firm's non-mainstream regulated activities and other regulated activities;</del></p> <p><del>(2) activities carried on by a firm whose principal purpose is to carry on</del></p>

				<p>activities other than <i>regulated activities</i> and which is:</p> <p>(a) <del>an oil market participant;</del></p> <p>(b) <del>a service company;</del></p> <p>(c) <del>an energy market participant;</del></p> <p>(d) a wholly owned subsidiary of:</p> <p>(i) a local authority;</p> <p>(ii) a registered social landlord;</p> <p>(e) <del>a firm with permission to carry on insurance distribution activity in relation to non-investment insurance contracts but no other regulated activity except advising on P2P agreements;</del></p> <p>(2A) <del>a credit firm which holds a limited permission (other than a not for profit debt advice body) with respect to the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has limited permission;</del></p> <p>(3) <del>an incoming Treaty firm, an incoming EEA firm and a UCITS qualifier, (but only SYSC 4.4.5R(2) applies for these firms);</del> and</p> <p>(4) <del>a sole trader, but only if he employs any person who is required to be approved under section 59 of the Act (Approval for particular arrangements).</del></p> <p><u>As specified in SYSC 4.4.1AR</u></p>
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#### 4 General organisational requirements

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#### 4.4 Apportionment of responsibilities

Application

4.4.1A R This section applies to:

...

(4) ~~an incoming Treaty firm, an incoming EEA firm~~ an EEA PTV firm or a ~~UCITS-qualifier~~ TP UCITS qualifier (but only SYSC 4.4.5R(2) applies for these firms); and

...

...

Allocating functions of apportionment and oversight

4.4.5 R A firm must appropriately allocate to one or more individuals, in accordance with the following table, the functions of:

...

1: Firm type	2: Allocation of both functions must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:
...	...	...
(2) <del>An incoming EEA firm or incoming Treaty firm</del> <u>An EEA PTV firm</u> (note: only the functions in SYSC 4.4.5R(2) must be allocated)	...	...
...	...	...

## 4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
...	...	...
11	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>overseas firm</i> which is not an <i>incoming EEA firm</i> , <i>incoming Treaty firm</i> , an <i>EEA PTV firm</i> or <i>UCITS qualifier</i> <i>TP UCITS qualifier</i> ?	...
12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <u>an <i>EEA PTV firm</i></u> <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	<del>SYSC 1 Annex 1.1.1R(2) and SYSC 1 Annex 1.1.8R restrict the application of SYSC 4.4.5R for such a <i>firm</i>. Accordingly:</del>
		(1) Such a <i>firm</i> is not required to allocate the function of dealing with apportionment in SYSC 4.4.5R(1).
		(2) Such a <i>firm</i> is required to allocate the function of oversight in SYSC 4.4.5R(2). <del>However, the systems and controls that must be overseen are those relating to matters which the <i>appropriate regulator</i>, as <i>Host State regulator</i>, is entitled to regulate (there is <i>guidance</i> on this in SUP 13A Annex 2). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the <i>firm's</i> activities carried on from its <i>UK branch</i>.</del>
		(3) Such a <i>firm</i> need not allocate the function of oversight to its <i>chief executive</i> ; it must allocate it to one or more <i>directors</i> and <i>senior managers</i> of the <i>firm</i> or the <i>firm's</i> group under SYSC 4.4.5R, row (2).
		(4) <del>An <i>incoming EEA firm</i> which has provision only for <i>cross border services</i> is not required to allocate either function if it does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>; for example if they</del>

		<del>fall within the overseas persons exclusions in article 72 of the <i>Regulated Activities Order</i>. [deleted]</del> See also <del>Questions Question 1 and 15</del> .
...	...	...
15	<del>What about <i>incoming electronic commerce activities</i> carried on from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i>?</del>	<del><i>SYSC</i> does not apply to an <i>incoming ECA provider</i> acting as such. [deleted]</del>

...

## 22.1 Application

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Territorial scope and overseas firms

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22.1.5 R This chapter does not apply to:

- (1) an *overseas firm* that does not have an establishment in the *United Kingdom*;
- (2) a ~~*UCITS qualifier* (see section 266 of the Act (Disapplication of rules))~~ *TP UCITS qualifier*;
- (3) an ~~*AIFM qualifier*~~ a *TP AIFM qualifier*; or
- (4) an ~~*incoming EEA firm*~~ an *EEA PTV firm* that is an ~~*EEA*~~ a *pure reinsurer*.

22.1.6 R For an ~~*incoming firm*~~ or any other *overseas firm*, *SYSC 22.2.2R* (Obligation to give references) only applies if the current or former *employee* in question (defined as “P” in *SYSC 22.2.2R*) is or was an *employee* of its *branch* in the *United Kingdom* and only relates to their activities as such.

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## 23 Senior managers and certification regime: Introduction and classification

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## 23 Definition of SMCR firm and different types of SMCR firms

### Annex 1

## Part One: Flow diagram and other basic provisions

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1.2 R ...

1.3 R (1) A Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an EEA PTV firm for the purposes of deciding into which category of SMCR firm it falls. In particular, it is to be treated as an EEA SMCR firm.

(2) (1) is without prejudice to the generality of GEN 2.3.

...

## Part Three: Definition of exempt firm

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3.3 R ~~An incoming EEA firm~~ An EEA PTV firm that is ~~an EEA~~ a pure reinsurer is an exempt firm.

## Part Four: Definition of banking sector

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4.4 R A firm is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is a non-UK institution other than ~~an incoming firm~~ an EEA PTV firm that meets the following conditions:

...

4.5 R An SMCR banking firm in SYSC 23 Annex 1 4.4R is ~~a third country~~ an overseas SMCR banking firm.

4.6 R A firm is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is ~~an incoming EEA firm or incoming Treaty firm~~ an EEA PTV firm that meets the following conditions:

- (1) it has a branch in the United Kingdom;
- (2) it is not an institution authorised under the Act to carry on the regulated activity of effecting contracts of insurance or carrying out contracts of insurance; and
- (3) it meets one of the following conditions:
  - (a) it is a credit institution which has a permission under Part 4A, ~~Schedule 3 or Schedule 4~~ of the Act that includes accepting deposits; or
  - (b) it meets all the following conditions:



- (i) the institution is an *investment firm*;
- (ii) it has a *permission* under Part 4A, ~~Schedule 3 or Schedule 4~~ of the *Act* that covers *dealing in investments as principal*; and
- (iii) when carried on by it, that activity is a *PRA-regulated activity*.

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**24 Senior managers and certification regime: Allocation of prescribed responsibilities**

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**24.3 Who prescribed responsibilities should be allocated to**

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Dividing and sharing management functions between different people

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24.3.10 G ...

- (2) The *firm* should make the judgement:

...

- (e) article 21 of the *MiFID Org Regulation* (General organisational requirements) or other similar relevant ~~and directly applicable EU legislation~~ onshored regulations.

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**24 Annex 1 Which FCA-prescribed senior management responsibilities apply to which kind of firm**

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Banking sector firms

2.1 R ...

- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

...

(c) ~~a third-country~~ an overseas SMCR banking firm.

...

2.3 R Table: FCA-prescribed senior management responsibilities applying to banking sector firms

Brief description of responsibility	Reference letter of responsibility	UK firm	Small UK firm	<del>Third-country</del> <u>Overseas</u> firm
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...

...

...

...

...

**Note (1):** the categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SYSC 24 Annex 1 2.1R. Therefore:

...

(c) column five (~~Third-country~~ Overseas firm) refers to SYSC 24 Annex 1 2.1R(2)(c).

...

Insurance sector firms

3.1 R ...

(2) SMCR firms in (1) are divided into the following categories for the purposes in (1):

...

(b) a firm falling within paragraph (b) of the definition of *Solvency II firm* (~~third-country branch~~ undertaking that would require Part 4A permission as an insurance or reinsurance undertaking if its head office were situated in the United Kingdom);

...

...

...

3.3 R Table: FCA-prescribed senior management responsibility applying to insurance sector firms

Brief description of responsibility	Reference letter of responsibility	Solvency II firm	<del>Third-country</del> <u>Overseas</u> branches	Other insurance sector	ISPV
-------------------------------------	------------------------------------	------------------	---	------------------------	------

...	...	...	...	...	...
<p><b>Note:</b> The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in SYSC 24 Annex 1 3.1R. Therefore:</p> <p>...</p> <p>(2) <del>Third country</del> <u>Overseas</u> branches (column four) refers to SYSC 24 Annex 1 3.1R(2)(b);</p> <p>...</p>					

...

## 25 Senior managers and certification regime: Management responsibilities maps and handover procedures and material

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### 25.6 Management responsibilities maps: Material only relevant to EEA SMCR firms

Application

25.6.1 R ...

Purpose

25.6.2 G (1) ~~The *management responsibilities map* is an important support to the FCA's functions as *Host State competent authority*. [deleted]~~

(2) ~~Having requirements and powers that apply directly to individuals helps to make the requirements on *firms* that the FCA is required or entitled to impose as *Host State competent authority* more effective.~~

(3) ~~As explained in SYSC 25.1.6G (Purpose), the *management responsibilities map* also helps the FCA to operate its powers and requirements for individuals.~~

(4) ~~By helping the FCA to better understand how the *branch* is structured, the *management responsibilities map* also helps the FCA to carry out more effective supervision of conduct of business, money laundering and other *Host State* responsibilities.~~

25.6.3 G ~~This chapter is not intended to extend the application of the *common platform requirements* or other parts of SYSC to matters which are reserved by an EU instrument to the *firm's Home State regulator* in relation to EEA SMCR firms. [deleted]~~

...

Leaving out information already supplied

25.6.5 R An EEA SMCR firm may exclude from its *management responsibilities map*:

- (1) ~~any information contained in its *requisite details* that it has, before *exit day*, excluded under; or~~
- (2) ~~(in the case of a *firm* that became an *SMCR firm* after *exit day*) any information contained in any notice of changes to its *requisite details* under the *EEA Passport Rights Regulations* that it would have been entitled to exclude if had been subject to this chapter immediately before *exit day* under; and~~
- (3) ~~any other information that has been supplied by the *firm* to the *FCA* or the *PRA* (including through the *firm's Home State competent authority*) if:~~
  - (a) ~~that information was supplied to the *FCA* or the *PRA* as a *Host State competent authority*; and~~
  - (b) ~~the *Single Market Directives* or any other *EU* legislation provides for the supply of that information to the *FCA* or the *PRA* as described in (a).~~

~~this section in the form this section was in immediately before *exit day*.~~

- 25.6.6 G ~~Information contained in SYSC 25.6.5R(1) and (2) covers: [deleted]~~
- (1) ~~details about the *branch* contained in the notice given by the *firm's Home State competent authority* as part of the process for establishing the *branch* in the *United Kingdom*; and~~
  - (2) ~~any updates to that information under the *EEA Passport Rights Regulations*.~~
- 25.6.7 G ~~The *management responsibilities map* of an *EEA SMCR firm* may therefore consist of information: [deleted]~~
- (1) ~~that has changed since its *requisite details* were supplied or were last changed; or~~
  - (2) ~~that is not covered in the *firm's Home State competent authority's* passport notification.~~
- 25.6.8 G ~~The If an *EEA SMCR firm* excludes information from its *management responsibilities map* under SYSC 25.6.5R it should take into account the *guidance* in this section in the form this section was in immediately before *exit day*. In particular, the *FCA* expects that an *EEA SMCR firm* that excludes information from its *management responsibilities map* under SYSC 25.6.5R will identify in its *management responsibilities map* the documents supplied to the *FCA* or the *PRA* where the omitted information can be found.~~
- 25.6.9 G ~~In practice an *EEA SMCR firm* may find it easier to prepare its *management responsibilities map* without omitting any information under SYSC 25.6.5R so that all the information referred to in SYSC 25.2 (Management~~

responsibilities maps: Main rules) can be found in a single integrated document. [deleted]

- 25.6.10 G ~~SYSC 25.4 (Guidance about what should be in a management responsibilities map) does not take into account the right of a firm to omit information under SYSC 25.6.5R. It assumes that the firm will prepare a single document under SYSC 25.6.9G. However SYSC 25.4 is not intended to take away the right to omit information under SYSC 25.6.5R. [deleted]~~

...

## 25.9 Handover procedures and material

Application

- 25.9.1 R This section applies to a *firm* that meets the following conditions:
- (1) it falls within SYSC 25.1.1R (Application and purpose); and
  - (2) it falls within one of the following categories:
    - (a) it is a *UK SMCR firm*; or
    - (b) it is a ~~third country~~ an overseas SMCR banking firm.
- 25.9.2 R For ~~third country~~ overseas SMCR banking firms, references in this section to an *SMF manager* are references to the *SMF manager* when acting as an *SMF manager* for the *firm's branch* in the *United Kingdom*.

...

## 25 Annex Examples of the business activities and functions of an SMCR firm 1G

Business areas and management functions	Explanation
...	...
(10) Market making	This has the same meaning as it does in <i>MIFID</i> (see the definition of market maker in article 4.1(7)) <u>the Glossary definition of market maker</u> .
...	...

## 26 Senior managers and certification regime: Overall and local responsibility

### 26.1 Application

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Territorial scope

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26.1.7 R Table: Application of this chapter to ~~a third-country~~ an overseas SMCR firm

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## 26.6 Meaning of local and overall responsibility: General

UK firms

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- 26.6.2 G (1) Certain ~~EU legislation requires~~ requirements of the regulatory system say that the governing body of a firm to certain firms should have ultimate responsibility for, and the prime and leading role in, managing the firm.
- (2) In particular this is the case under:
- (a) ~~article 88 of the CRD (Governance arrangements)~~ SYSC 4.3A.1R (Management body); and
  - (b) ~~article 9 of MiFID (management body); and [deleted]~~
  - (c) ~~article 40 of the Solvency II Directive (Responsibility of the administrative, management or supervisory body)~~ rule 2.1 in the Part of the PRA Rulebook called Conditions Governing Business (General Governance Requirements).

...

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## 27 Senior managers and certification regime: Certification regime

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### 27.6 Other exclusions

Single Market Directives

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

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**27.8 Definitions of the FCA certification functions**

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...

Functions requiring qualifications

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27.8.11 G ...

(2) SYSC 27.8.10R applies to an *overseas SMCR firm* irrespective of whether the function in TC App 1.1.1R (Activities and Products/Sectors to which TC applies) applies to ~~incoming EEA firms~~ EEA PTV firms or *overseas firms* for the purposes of TC.

...

...

Material risk takers

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27.8.15 R Table: Definition of material risk taker

Type of SMCR firm	Employees included
<p>(1) <del>A UK</del> <u>An</u> SMCR banking firm <del>A third-country SMCR banking firm</del></p>	<p>Each member of the <i>dual-regulated firms Remuneration Code staff</i> of the firm in column (1) of this row (1).  This includes any <i>person</i> who meets any of the criteria set out in articles 3 to 5 of <del>Commission Delegated Regulation (EU) No 604/2014</del> the <i>Material Risk Takers Regulation</i> (criteria to identify categories of staff whose professional activities have a material impact on an institution’s risk profile).</p>
<p>(2) <del>An EEA SMCR banking firm</del> For these purposes, sub-paragraphs (i) and (ii) in SYSC 19D.1.1R(1)(d) (application of the dual-regulated firms Remuneration Code) do not apply. <del>[deleted]</del></p>	<p>In relation to a firm in column (1) of this row (2), the definition of <i>dual-regulated firms Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of firm in the same way as it includes <i>employees</i> of a <i>third-country SMCR banking firm</i>.</p>

...	...
<p><b>Note:</b> The definition of the <i>persons</i> included in column (2) applies in relation to an <i>EEA PTV firm</i> in one of the rows of column (1) in the same way as it does to other <i>overseas SMCR firms</i> in that row. The definition of <i>dual-regulated firms Remuneration Code staff</i> applies accordingly.</p>	

...

Client-dealing function

...

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

Activity	Comments
...	...
(5) Acting as a 'bidder's representative' in relation to <i>bidding in emissions auctions</i> . [deleted]	Acting as a 'bidder's representative' has the meaning in sub-paragraph 3 of article 6(3) of the <i>auction regulation</i> .

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## Annex B

### Amendments to the Code of Conduct sourcebook (COCON)

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

#### 1 Application and purpose

##### 1.1 Application

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Where does it apply?

...

- 1.1.12 R A *person* will not be subject to *COCON* to the extent that ~~it~~ this would be contrary to the ~~UK's obligations under a *Single Market Directive*, the *auction regulation* or the *benchmarks regulation*~~ requirements of an *EU* measure passed or made before *exit day*, to the extent that those requirements continue to have effect after *exit day* under the *EUWA*.

...

## Annex C

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

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

### 1 Application and purpose

#### 1.1A Application

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What?

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- 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.2R* and *FIT 1.2.4AG*. See also *COBS 1 Annex 1, Part 2, 1.1R* (EEA territorial scope rule: compatibility with European law)).~~  
[deleted]

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*).

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### 2 The Statements of Principle for Approved Persons

#### 2.1A The Statements of Principle

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- 2.1A.2 R An *approved person* will not be subject to a *Statement of Principle* to the extent that ~~it~~ this would be contrary to the *UK's obligations under a Single Market Directive, the auction regulation or the benchmarks regulation requirements of an EU measure passed or made before exit day, to the extent that those requirements continue to have effect after exit day under the EUWA.*

...

## Annex D

## Amendments to the Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)

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

### 1 General

#### 1.1 Application and purpose

1.1.1 G *FIT* applies to:

...

- (3) ~~an *EEA firm* or a *Treaty firm* that wishes to establish a *branch* into the *United Kingdom* using *EEA rights* or *Treaty rights*; or apply for a top-up permission; [deleted]~~

...

...

#### 1.2 Introduction

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1.2.4A G (1) ~~Under Article 21(1)(d) of the *MiFID Org Regulation* and articles 34 and 35 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of: [deleted]~~

(a) ~~a *person* to perform a *controlled function*; or~~

(b) ~~a *certification employee*;~~

~~solely in relation to the *MiFID business* of an *incoming EEA firm*, the *FCA* will not have regard to that *person's* competence and capability.~~

(2) ~~Where the function relates to:~~

(a) ~~matters outside the scope of *MiFID*; or~~

(b) ~~business outside the scope of the *MiFID business* of an *incoming EEA firm*, for example *insurance distribution activities* in relation to *life policies*; or~~

- (e) ~~matters within the responsibility of the FCA as the Host State regulator, for example money laundering responsibilities (see the money laundering reporting function (CF11 and SMF17)) or (3) below;~~

~~the FCA will have regard to a person's competence and capability as well as their honesty, integrity, reputation and financial soundness.~~

- (3) ~~The FCA will have regard to a natural person's competence and capability to the extent they give a personal recommendation or information about financial instruments, structured deposits, investment services or ancillary services on behalf of a UK branch of:~~
- ~~(a) an investment firm authorised under MiFID;~~
  - ~~(b) an AIFM investment firm carrying out activities under article 6(4) of the AIFMD (provision of additional services);~~
  - ~~(c) a UCITS investment firm carrying out activities under article 6(3) of the UCITS Directive (provision of additional services); or~~
  - ~~(d) a credit institution.~~
- (4) ~~(3) is the result of the combined effect of articles 25(1) (Assessment of suitability and appropriateness and reporting to clients) and 35(8) (Establishment of a branch) of MiFID.~~
- (5) ~~(1) to (4) are also relevant to the matters an EEA SMCR firm should take into account when assessing any staff being assessed under FIT. Where, under (1) to (4):~~
- ~~(a) the FCA will have regard to a person's competence and capability, so should a firm when assessing any staff being assessed under FIT; and~~
  - ~~(b) the FCA will not have regard to a person's competence and capability, a firm need not do so either when assessing any staff being assessed under FIT.~~

...

- 1.2.4C G Under article 10(1) and (2) of the *IDD* appropriate knowledge and ability is reserved to the firm's Home State (see *SUP 13A Annex 2G*). ~~[deleted]~~
- 1.2.5 G For as long as the standstill direction referred to in *SYSC 27.6.1G*, *SUP 10A.1.7R* and *SUP 10C.1.4R* is in force, the guidance in *FIT 1.2.4AG* and *FIT 1.2.4AG* in the version of the *Handbook* that was in force immediately before *exit day* is still relevant.

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## Annex E

## Amendments to the Supervision manual (SUP)

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

**Part 1: Comes into force on** exit day as defined in the European Union (Withdrawal) Act 2018

## 10A FCA Approved Persons

### 10A.1 Application

...

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

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

- (1) an ~~incoming EEA~~ EEA PTV firm; or
- (2) an ~~incoming Treaty firm~~; or ~~[deleted]~~
- (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 or the benchmarks regulation~~ as contemplated by section 59(8) of the Act, to an authority in a country or territory outside the United Kingdom. This rule has effect to the extent that, and for as long as, section 59(8) remains in effect under the standstill direction as defined in the direction made by the FCA under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on exit day and is titled "FCA Transitional Direction".

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. [deleted]~~

- 10A.1.9 G ~~Notwithstanding SUP 10A.1.8G, an incoming EEA firm 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 passported activity or Treaty activity through a branch in the United Kingdom. An incoming EEA firm 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. [deleted]~~
- 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. [deleted]~~

Incoming EEA firms: passported activities from a branch

- 10A.1.11 R (1) Only the following FCA controlled functions apply to ~~an incoming EEA firm~~ an EEA PTV firm with respect to its ~~passported activities~~ passported activities (as defined in (2) and (3)) carried on from a branch in the United Kingdom:
- (a) the money laundering reporting function;
  - ~~(1)~~
  - (b) the significant management function, in so far as the function relates to:
    - (i) ~~designated investment business~~ other than ~~dealing in investments as principal~~, disregarding ~~article 15 of the Regulated Activities Order~~; or
    - ~~(a)~~
    - (ii) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters, in so far as this relates to *designated investment business*; and
    - ~~(b)~~
  - (c) the customer function other than where this relates to the function in SUP 10A.10.7R(4) and (7).
  - ~~(3)~~
- (2) For the purposes of this rule, “passported activities” of an EEA PTV firm means regulated activities that meet the following conditions:
- (a) they are included in the permission of the EEA PTV firm under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018; and

(b) the firm was entitled to carry them on in the United Kingdom immediately before exit day by virtue of section 31(1)(b) or (c) of the Act as it was in force immediately before exit day.

(3) For the purposes of this rule, “passport activities” of an EEA PTV firm also mean regulated activities that were subject to an EEA right applicable to the category of firm into which the EEA PTV firm falls. For these purposes EEA right has the meaning that it did in Schedule 3 of the Act as it was in force immediately before exit day.

...

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

10A.1.13 R In relation to the ~~activities~~ regulated activities of a an EEA PTV firm ~~for which it has a top-up permission~~ that are not passport activities (as defined in SUP 10A.1.11R), only the following *FCA controlled functions* apply:

...

...

Appointed representatives

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

(1) the *FCA governing functions*, subject to SUP 10A.1.16R and except for a *tier 1 agent* of ~~an~~ a firm that is both an EEA MiFID investment firm and an EEA PTV firm; and

...

...

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* or an EEA MiFID investment firm that is an EEA PTV 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:

...

...

#### Bidders in emissions auctions

10A.1.21 G ~~For a *firm* that is exempt from *MiFID* under article 2(1)(j) and whose only permission is *bidding in emissions auctions*, the only *FCA controlled functions* that apply to it are: [deleted]~~

- ~~(1) the *FCA governing functions*;~~
- ~~(2) the *money laundering reporting function*; and~~
- ~~(3) the *customer function*.~~

~~This is because the *FCA approved person* 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.1.27 G ...

#### Gibraltar firms

10A.1.28 R (1) A Gibraltar-based firm (as defined in *GEN 2.3 (General saving of the Handbook for Gibraltar)*) is treated as an *EEA PTV firm* for the purposes of deciding into which categories of *firm* in this chapter it falls.

- (2) (1) is without prejudice to the generality of *GEN 2.3*.

...

#### 10A.6 FCA governing functions

...

What the *FCA governing functions* include

10A.6.3 R Each of the *FCA governing functions* includes:

(1) (where apportioned under SYSC 4.3.1R and SYSC 4.4.3R (or, for a full-scope ~~UK AIFM~~ UK AIFM apportioned under article 60(1) of the ~~AIFMD level 2 regulation~~ AIFMD level 2 regulation))

(a) ...

(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).~~ [deleted]

...

...

## 10A.8 Systems and controls functions

Systems and controls function (CF28)

...

10A.8.2 R The *systems and controls function* does not apply in relation to:

(1) ~~*bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(j); or~~ [deleted]

...

...

Full scope UK AIFM

10A.8.5 G For a full-scope UK AIFM, the requirement to have an *employee* responsible for reporting to the *governing body* of the *firm* or the audit committee for matters in SUP 10A.8.1R(2) and SUP 10A.8.1R(3) is derived from the ~~AIFMD level 2 regulation~~ AIFMD level 2 regulation, which imposes obligations on such *firms* to have a permanent risk management function and, where appropriate and proportionate for their business, an internal audit function.

...

## 10A.10 Customer-dealing functions

...

Customer function (CF 30)

10A.10.7 R The *customer function* is the function of:

...

- (6) acting in the capacity of an *investment manager* and carrying on functions connected to this; <sub>2</sub>
- (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*. [deleted]~~

...

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

### Moving within a firm

...

- 10A.14.4A G (1) The *MiFID authorisation and management body change notification ITS* requires that *MiFID investment firms* (except *credit institutions*) submit the Annex III information on ~~the ESMA~~ a specified template (which is based on one prepared by ESMA and which is available at <https://www.fca.org.uk/publication/forms/mifid-changes-management-body-form.docx> ('Annex III template')) where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

### Ceasing to perform an FCA controlled function

...

- 10A.14.9A G (1) The *MiFID authorisation and management body change notification ITS* requires that a *MiFID investment firm* (except a *credit institution*) submit the information in Annex III of the *MiFID authorisation and management body change notification ITS* on the ~~ESMA~~ Annex III template referred to in SUP 10A.14.4AG where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

## 10A Annex 1G Frequently asked questions

	Question	Answer
...	...	...
	<b>Requirements of the regime</b>	
...	...	...
4	Do the <i>FCA controlled functions</i> apply to an <i>incoming EEA firm overseas firm</i> that is providing <del><i>cross-border services</i></del> <u>cross-border services</u> into the <i>United Kingdom</i> <u>from an overseas establishment</u> ?	No. The <i>FCA-approved persons regime</i> does not apply to <del><i>cross-border services</i></del> <u>cross-border services</u> ( <i>SUP 10A.1.5R</i> ).
...	...	...

...

## 10C FCA senior managers regime for approved persons in SMCR firms

### 10C.1 Application

...

...

EEA firms: general application

10C.1.4 R This chapter does not apply to an *SMCR 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 to an authority in a country or territory outside the *United Kingdom* ~~under~~: as contemplated by section 59(8) of the Act. This rule has effect to the extent that, and for as long as, section 59(8) remains in effect under the standstill direction as defined in the direction made by the *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on *exit day* and is titled “FCA Transitional Direction”.

(1) ~~the *Single Market Directives*;~~

(2) ~~the *Treaty*;~~

(3) ~~the *auction regulation*;~~

(4) ~~the *benchmarks regulation*.~~

10C.1.5 G (1) ~~*SUP 10C.1.4R* reflects the provisions of section 59(8) of the Act~~

and, where relevant, the *Treaty*. [deleted]

- (2) It preserves the principle of *Home State* prudential regulation.
- (3) For an *EEA SMCR firm*, the effect is to reserve to the *Home State regulator* the assessment of fitness and propriety of a *person* performing a function in the exercise of an *EEA right*. A member of the *governing body*, or the notified *UK branch manager*, of an *EEA SMCR firm*, acting in that capacity, will not, therefore, have to be approved by the *FCA* under the *Act*.
- (3A) For example, *persons* in *Solvency II firms* which are *incoming EEA firms* are not expected to be carrying out *FCA* functions to the extent that the *person* will be regarded as effectively running the *firm* or responsible for a *Solvency II Directive* ‘key function’.
- (4) Aside from (1) to (3A) an *EEA SMCR firm* should have:
- (a) considered the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or a *Treaty activity* through a *branch* in the *United Kingdom*;
  - (b) 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*; and
  - (c) considered, 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*.

...

10C.1.12 G ...

Gibraltar firms

10C.1.13 G *SYSC 23 Annex 1 1.3R* says that a Gibraltar-based firm (as defined in *GEN 2.3 (General saving of the Handbook for Gibraltar)*) is treated as an *EEA PTV firm* for the purposes of deciding into which categories of *SMCR firm* it falls.

10C.1.14 G In particular, this means that it is to be treated as an *EEA SMCR firm*.

...

**10C.8A EEA branch senior manager function (SMF21)**

...

10C.8A.2 R ...

- (4) Paragraph (2)(d) only applies in relation to the ~~activities~~ regulated activities of a firm ~~for which it has a top-up permission~~ that are not passported activities as defined in (5) and (6).
- (5) For the purposes of this rule, “passported activities” of an EEA PTV firm means regulated activities that meet the following conditions:
- (a) they are included in the permission of the EEA PTV firm under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018; and
- (b) the firm was entitled to carry them on in the United Kingdom immediately before exit day by virtue of section 31(1)(b) or (c) of the Act as it was in force immediately before exit day.
- (6) For the purposes of this rule, “passported activities” of an EEA PTV firm also mean regulated activities that were subject to an EEA right applicable to the category of firm into which the EEA PTV firm falls. For these purposes EEA right has the meaning that it did in Schedule 3 of the Act as it was in force immediately before exit day.

...

**10C.10 Application for approval and withdrawing an application for approval**

...

How to apply for approval

...

- 10C.10.9A G (1) The *MiFID* authorisation and management body change notification ITS requires that *MiFID* investment firms (except credit institutions) submit the Annex III information on ~~the ESMA~~ a specified template (which is based on one prepared by ESMA and which is available at <https://www.fca.org.uk/publication/forms/mifid-changes-management-body-form.doc> (‘Annex III template’)) where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

**10C.14 Changes to an FCA-approved person’s details**

...

Ceasing to perform an FCA-designated senior management function

...

10C.14.6A G (1) The *MiFID authorisation and management body change notification ITS* requires that a *MiFID investment firm* (except a *credit institution*) submit the information in Annex III of the *MiFID authorisation and management body change notification ITS* on the ~~ESMA Annex III~~ template referred to in SUP 10C.10.9AG where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

**10C Annex 1 What functions apply to what type of firm**

...

...

Part Three: Functions applying to banking sector firms

3.1 R ...

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

...

(c) ~~a third country~~ an overseas SMCR banking firm.

3.2 R Table: Controlled functions applying to banking firms

(1) Brief description of function	(2) Function number	(3) UK firm	(4) EEA firm	(5) <del>Third-country</del> <u>Overseas</u> firm
...				

Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SUP 10C Annex 1 3.1R. Therefore:

...

(3) column five (~~Third country~~ Overseas firm) refers to SUP 10C Annex 1 3.1R(2)(c).

Part Four: Functions applying to insurance sector firms

4.1 R ...

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

(a) a *Solvency II firm* not within any other paragraph of this rule;

(b) a *Solvency II firm* ~~within paragraph (c) of the Glossary definition of *Solvency II firm* (EEA branch)~~ that is an EEA PTV firm;

(c) a *Solvency II firm* that:

(i) is within paragraph (b) of the Glossary definition of *Solvency II firm* (third country branch undertaking that would require Part 4A permission as an insurance or reinsurance undertaking if its head office were situated in the United Kingdom); and

(ii) does not fall within SUP 10C Annex 1 4.1R(2)(b);

...

...

...

4.3 R Table: Controlled functions applying to insurance sector firms

(1) Brief description of function	(2) Function number	(3) Solvency II and large NDF	(4) EEA branches	(5) <del>Third country</del> <u>Overseas</u> branches	(6) Small NDF and other	(7) ISPV
--------------------------------------	------------------------	----------------------------------	---------------------	--	----------------------------	-------------

...

Note 1: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* at SUP 10C Annex 1 4.1R. Therefore:



...

(c) column five (~~Third country~~ Overseas branches) refers to *SUP* 10C Annex 1 4.1R(2)(c);

...

## TP 6 Financial Services (Banking Reform) Act 2013: Approved persons

Note to the reader

6.1.1-2 G (1) *SUP* TP 6 has not been amended to reflect changes in the *FCA Handbook* and *Glossary* since the beginning of 2018 (except for some changes to *SUP* TP 6.1.1-1G made in 2019). This is because it is made up of transitional provisions that mostly expired before then.

...

6.1.1-1 G Table: Meaning of superseded Glossary terms

Term in SYSC TP 5	Term that has replaced it
EEA relevant authorised person	<i>EEA SMCR banking firm</i>
non-UK relevant authorised person	an <i>EEA SMCR banking firm</i> or a <del>third-country</del> <u><i>SMCR banking firm</i> an overseas <i>SMCR banking firm</i></u>
...	...
third-country relevant authorised person	<del>third-country</del> <u>overseas <i>SMCR banking firm</i> but not an <i>EEA SMCR banking firm</i></u>
...	...

...

**Part 2: Comes into force on 27 September 2019** or on exit day as defined in the European Union (Withdrawal) Act 2018, whichever date is the later.

## 10A FCA Approved Persons

...

### 10A.6 FCA governing functions

...

Director function (CF1)

...

10A.6.8 R ...

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

...

...

Non-executive director function (CF2)

...

10A.6.13 R ...

(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~~.

...