

Chapter 10A

FCA Approved Persons in Appointed Representatives

10A.1 Application

General

10A.1.1 **R** This chapter applies to *SMCR firm* with respect to their *appointed representatives*.

10A.1.1A **G** ■ SUP 10C deals with the *approved persons* regime for *SMCR firms* themselves.

10A.1.2 **G** This chapter is also relevant to:

- (1) *FCA-approved person* of an *appointed representative* of an *SMCR firm*; and
- (2) an *appointed representative* of an *SMCR firm*.

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 appointed representatives: UK services

10A.1.5 **R**

- (1) This chapter does not apply in relation to an overseas *appointed representative* in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by it or its *principal* in the *United Kingdom*.
- (2) An overseas *appointed representative* means an *appointed representative* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom*.

Overseas appointed representatives: UK establishments

10A.1.6 **R**

- (-1) Only the following *FCA governing functions* (as modified by this *rule*) apply in relation to an overseas *appointed representative* which maintains (or whose *principal* maintains) an establishment in the *United Kingdom* from which *regulated activities* are carried on:
 - (a) the *director function*;
 - (b) the *non-executive director function*; and
 - (c) the *chief executive function*.
- (1) The *director function* only applies to the extent that the *person* performing that function:

- (a) has responsibility for the *regulated activities* of the *UK establishment* which are likely to enable them to exercise significant influence over that establishment; or
 - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that establishment.
- (2) The *non-executive director function* only applies to the extent that the *person* performing that function:
- (a) has responsibility for the *regulated activities* of the *UK establishment* which is likely to enable them to exercise significant influence over that establishment; or
 - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that establishment.
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) [deleted]
- (7) [deleted]
- (8) An overseas *appointed representative* has the same meaning as in
■ SUP 10A.1.5R.

EEA firms

10A.1.7 R This chapter does not apply in relation to the *appointed representative* of: an *EEA 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* 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) of the *Act* remains in effect under the standstill direction (as it relates to that section) as defined in the direction made by the *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on *IP completion day* and is titled “Main FCA Transitional Directions”.

10A.1.8 G [deleted]

10A.1.9 G [deleted]

10A.1.10 G [deleted]

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 *passported activities* carried on from a *branch* in the *United Kingdom*:

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

10A.1.12 R [deleted]

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*; and
 - (c) [deleted]
- (3) the *customer function*.

10A.1.14 R [deleted]

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-authorised person*:

- (1) the *FCA governing functions*, subject to ■ SUP 10A.1.16 R and except for a *tiered 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) This chapter 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 distribution activity* in relation to *non-investment insurance contracts* or *credit-related regulated activity*, but no other *regulated activity*; and
 - (b) the principal purpose of the *appointed representative* is to carry on activities other than *regulated activities*.

10A.1.16A **R**

- (-1) The *customer function* is the only *controlled function* in this chapter that applies to an *appointed representative* that is an *SMCR firm* and has a *limited permission* to carry on a *regulated activity* prescribed for the purposes of section 39(1E)(a) of the *Act*.

(1) [deleted]

- (2) The *customer function* applies to the *appointed representative* in relation to the carrying on of the *regulated activity*, for which it does not have *permission*, comprised in the business for which its *principal* has accepted responsibility.

10A.1.16B **R**

[deleted]

10A.1.16C **G**

Certain additional *controlled functions* apply to a *firm* in **SUP 10A.1.16AR** under **SUP 10C** (FCA senior managers regime for approved persons in SMCR firms).

Senior management functions
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10A.1.16D **G**

- (1) Under section 59(6A) of the *Act*, if the *FCA* is satisfied that, in relation to the carrying on of a *regulated activity* by an *SMCR firm*, a *controlled function* is a *senior management function*, the *FCA* must designate the function in its *rules* as a *senior management function*.
- (2) Generally, the *FCA* does not think that a *person* performing a function in this chapter will have sufficient responsibility for managing the affairs of the *appointed representative's principal* (as opposed to managing the affairs of the *appointed representative* itself) to perform a *senior management function*.
- (3) Therefore:
 - (a) the *FCA* has not designated any of the functions in this chapter as a *senior management function*; and
 - (b) none of the functions in this chapter are *designated senior management functions*.
- (4) **SUP 10C.1.8G** (Appointed representatives) explains that it is unlikely that **SUP 10C** (FCA senior managers regime for approved persons in *SMCR firms*) will apply to *approved persons* working in *appointed representatives* of an *SMCR firm* in addition to this chapter.

10A.1.17 **R**

[deleted]

10A.1.18 **R** [deleted]

10A.1.19 **G** [deleted]

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.

10A.1.21 **G** [deleted]

10A.1.21A **G** [deleted]

10A.1.22 **R** [deleted]

10A.1.23 **G** [deleted]

10A.1.24 **G** [deleted]

10A.1.25 **R** [deleted]

10A.1.26 **R** [deleted]

10A.1.27 **G** [deleted]

10A.1.28 **R** [deleted]

10A.1.29 **R** [deleted]

10A.1.30 **R** [deleted]

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10A.1.31 **G** [deleted]

10A.1.32 **G** [deleted]

Obligations on firms

- 10A.1.33 **G**
- (1) The requirements in this chapter about notifications and applications are addressed to *firms*. This means they are addressed to the *appointed representative's principal*.
 - (2) If an *appointed representative* has more than one *principal*, the requirements in (1) are addressed to the *authorised approved person employer* of the *approved person* in question.

Gibraltar firms

- 10A.1.34 **R**
- (1) A *firm* that is a Gibraltar-based firm (as defined in ■ GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an *EEA firm* for the purposes of this chapter.
 - (2) (1) is without prejudice to the generality of ■ GEN 2.3.



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 function* which are listed in ■ SUP 10A.4.4 R. The underlying purpose is to establish, and mark the boundaries of, the "FCA-approved persons regime" for *appointed representatives*.
- 10A.2.2** G [deleted]
- 10A.2.3** G [deleted]

10A.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, their becoming a *partner*, or their employment (whether under a contract of service or otherwise).
- 10A.3.4** **G** [deleted]
- 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.4.4 R (the table of FCA controlled function) is an *FCA controlled function*.

10A.4.2 **R** [deleted]

10A.4.2A **G** [deleted]

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

(FCA controlled functions for appointed representatives)		
Type	CF	Description of FCA controlled function
<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>
<i>Customer-dealing function</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.4.1 R, comprise the *FCA governing functions* (■ SUP 10A.6). ■ 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 **R** A *significant-influence function*, in relation to the carrying on of a *regulated activity* by an *appointed representative*, means a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *appointed representative's* affairs, so far as relating to the activity.

10A.5.4 **G** [deleted]

10A.5.5 **G** Whether an *FCA controlled function* is likely to result in the *person* responsible for its performance exercising significant influence is a question of fact in each case.

10A.5.5A **G** A function is not a *significant-influence function* unless it also meets the requirements of ■ SUP 10A.3.1R (Provisions related to the Act).

Periods of less than 12 weeks

10A.5.6 **R** If:

- (1) a *firm* or its *appointed representative* 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

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■ SUP 10A.5.6 R 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 *authorised approved person employer* of the *approved person* in question should apply for approval.



10A.6 FCA governing functions

Introduction

- 10A.6.1 **G** (1) Every *appointed representative* 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*.
- (2) [deleted]
- (3) [deleted]

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

10A.6.2A **G** [deleted]

10A.6.3 **R** [deleted]

10A.6.4 **G** [deleted]

10A.6.5 **G** [deleted]

10A.6.6 **G** [deleted]

Director function (CF1)

10A.6.7 **R** If an *appointed representative* 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 *appointed representative*.

10A.6.8 **R** (1) If an *appointed representative* 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 *appointed representative*; and
 - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *appointed representative*.
- (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.6.13 R (*non-executive director* of the *parent undertaking* or *holding company*).

10A.6.9 G [deleted]

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 [deleted]

10A.6.11A R [deleted]

Non-executive director function (CF2)

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

10A.6.13 R

- (1) If an *appointed representative* 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 *appointed representative*.
- (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 [deleted]

10A.6.15 G [deleted]

10A.6.15A R [deleted]

10A.6.15B **R** [deleted]

10A.6.15C **G** [deleted]

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

- 10A.6.16 **G**
- (1) The explanation in **■ SUP 10C.5B.2G** of the basis on which the *group entity senior manager function* is included as a *controlled function* for an *SMCR firm* is also relevant to the basis on which the *director function* and the *non-executive director function* are applied to persons who have a position with the *appointed representative's parent undertaking or holding company* under **■ SUP 10A.6.8 R** or **■ SUP 10A.6.13 R**.
 - (2) The *guidance* in **■ SUP 10C.5B.3G** to **■ SUP 10C.5B.5G** about when the *group entity senior manager function* applies to an *SMCR firm* is also relevant to when those who have a position with an *appointed representative's parent undertaking or holding company* may be performing a *controlled function* under **■ SUP 10A.6.8 R** or **■ SUP 10A.6.13 R**.

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 an *appointed representative*.

- 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 a non-UK *appointed representative*, 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 a non-UK *appointed representative*, the *FCA* would not normally expect the overseas *chief executive* of the *appointed representative* as a whole to be *FCA*-approved for this function where there is a *senior manager* under them with specific responsibility for those activities of the branch which are subject to the *UK regulatory system*. In some circumstances, the *person* within the *appointed representative* responsible for *UK* operations may, if the function is likely to enable them to exercise significant influence over the branch, also perform the *chief executive function*.

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

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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 to perform the *chief executive function*.

10A.6.22 **G** [deleted]

Partner function (CF4)

10A.6.23 **R**

- (1) If an *appointed representative* is a *partnership*, the *partner function* is the function of acting in the capacity of a *partner* in that *appointed representative*.
- (2) If the principal purpose of the *appointed representative* is to carry on one or more *regulated activities*, each *partner* performs the *partner function*.
- (3) If the principal purpose of the *appointed representative* is other than to carry on *regulated activities*:
 - (a) a *partner* performs the *partner function* to the extent only that they have responsibility for a *regulated activity*; and
 - (b) a *partner* in an *appointed representative* 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** [deleted]

10A.6.25 **G** [deleted]

10A.6.26 **R** If an *appointed representative* is a *limited liability partnership*, the *partner function* extends to the *appointed representative* as if the *appointed representative* were a *partnership* and a member of the *appointed representative* 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** [deleted]

Director of unincorporated association function (CF5)

10A.6.29 **R** If an *appointed representative* 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** [deleted]

10A.6.31 **R** [deleted]

10A.6.32 **R** [deleted]

10A.6.33 **G** [deleted]

10A.6.34 **G** [deleted]



10A.7 FCA required functions

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10A.8 Systems and controls functions

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**Significant management functions
[deleted]**

[deleted]

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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 *appointed representative* or its *principal* in the *United Kingdom*.

10A.10.2 **G** Without ■ SUP 10A.10.1 R, the description of the *customer function* would extend to this function wherever it was performed. The effect of ■ SUP 10A.10.1 R 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* or *credit-related regulated activity*.

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 **R** The customer-dealing function, in relation to an *appointed representative* ("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;

10A.10.5A **R** In ■ SUP 10A.10.5R, *customer*, in relation to an *appointed representative*, means a *person* who is using, or who is or may be contemplating using, any of the services provided by the *appointed representative*.

10A.10.5B **G** A function is not included in the *customer function* unless it also meets the requirements of ■ SUP 10A.3.1R (Provisions related to the Act).

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* or a *funeral plan* (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*, *pension conversions* or *pension 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) [deleted]
- (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 **SUP 10A.10.7R** (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 2.1.9 R** (2) (where it applies) 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 2.1.9 R** (2) are disapplied in these circumstances (except for an individual who gives advice to *retail clients* on *retail investment products*, gives advice on *P2P agreements* to *retail clients* 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 2.1.9 R** (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.12 **Procedures relating to FCA-
approved persons**

Forms

10A.12.1 G The forms listed in ■ SUP 10A.12.2 G are referred to in ■ SUP 10A.12 (Procedures relating to FCA-approved persons) to ■ SUP 10A.16 (How to apply for approval and give notifications).

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

Form		Purpose	Handbook requirement
the relevant Form A	SUP 10C Annex 3D	Application to perform controlled functions under the approved persons regime	SUP 10A.13.3 D
Form B	SUP 10C Annex 4R	Notice to withdraw an application to perform controlled functions under the approved persons regime	SUP 10A.13.19 R
Form C	SUP 10C Annex 5R	Notice of ceasing to perform controlled functions	SUP 10A.14.8 R
Form D	SUP 10C Annex 6R	Notification of changes in personal information or application details	SUP 10A.14.15 R
Form E	SUP 10C Annex 7D	Internal transfer of an <i>approved person</i>	SUP 10A.14.4 D

10A.12.3 G [deleted]

10A.12.4 G Unless the context otherwise requires, in ■ SUP 10A.12 (Procedures relating to FCA-approved persons) to ■ SUP 10A.16 (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*.

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* Supervision Hub. To contact the *FCA's* Supervision Hub for *approved persons* enquiries:

- (1) telephone 0300 500 0597; or
- (2) e-mail firm.queries@fca.org.uk; or
- (3) fax 020 7066 0017; or
- (4) write to:
Supervision Hub
The Financial Conduct Authority
12 Endeavour Square
London
E20 1JN.



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.14.4 D** requires a Form E).

- 10A.13.3A **D** If a *firm* must make an application using Form A, it must use Form A (shortened form) if:

- (1) the *candidate*:
 - (a) has *current approved person approval* to perform:
 - (i) an *FCA controlled function* that is a *significant-influence function*; or
 - (ii) an *FCA-designated senior management function*; or
 - (iii) a *PRA controlled function*; or

(b) has had *current approved person approval* of the type described in (a) within the previous six *months*; and

(2) there have been no matters arising in relation to the fitness and propriety of the *person* to whom the application relates which mean that the information provided to the *FCA* or the *PRA* regarding fitness and propriety in connection with the *current approved person approval* in (1)(a) or (b) may have changed since the application for that *current approved person approval* was made.

10A.13.3B **D** [deleted]

10A.13.4 **G** ■ SUP 10A.16.1 D explains how applications should be submitted.

10A.13.4A **G** [deleted]

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) the *appointed representative*.

(2) [deleted]

10A.13.6 **G** Outsourcing arrangements [deleted]

10A.13.7 **G** Where the notification of an *appointed representative* (■ SUP 12.7.1 R) 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 12.7.1 R 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*.
- 10A.13.17** **G** Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.

Decisions on applications

10A

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* notifying the *FCA* of its withdrawal of an application for approval must notify the *FCA* using Form B (■ SUP 10C Annex 4R).

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*.

10A.14.2 **G** If:

- (1) a *firm* is applying for approval for someone to perform a *controlled function* under this chapter; and
- (2) that person is also ceasing to perform *FCA controlled functions* or a *PRA controlled function* in relation to the same *firm* or in relation to a *firm* in the same group;

the *firm* should generally use Form E. Further details can be found in **SUP 10A.14.4D**.

10A.14.3 **G** If a *person* is to perform an *FCA controlled function* under this chapter in relation to a *firm* for which they already perform an *FCA controlled function* as an *approved person* (whether under this chapter or **SUP 10C** (FCA senior managers regime for approved persons in SMCR firms)) but they are not at the same time ceasing to perform an *FCA controlled function* or *PRA controlled function* for the *firm* or a *firm* in the same group, a *firm* should use Form A. See **SUP 10A.13.3D** and **SUP 10A.13.3AD** for further details.

10A.14.3A **G** See **SUP 10A.14.23G** for circumstances in which a *firm* should use Form D rather than Form A or E.

10A.14.4 **D**

- (1) A *firm* must use Form E where an *approved person* is both permanently ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *FCA controlled functions* in relation to the same *firm* or in relation to a *firm* in the same group.

- (2) A *firm* must not use Form E if:
- (a) the *approved person* has never before been approved to perform for any *firm*:
 - (i) an *FCA controlled function* that is a *significant-influence function*; or
 - (ii) an *FCA-designated senior management function*; or
 - (iii) a *PRA controlled function*;
 - (b) the *approved person* has not been subject to a *current approved person approval* from the *FCA* or *PRA* to perform:
 - (i) an *FCA controlled function* that is a *significant-influence function*; or
 - (ii) an *FCA-designated senior management function*; or
 - (iii) a *PRA controlled function*;in relation to any *firm* for more than six months; or
 - (c) any of the following apply (where applicable):
 - (i) a notification referred to in ■ SUP 10C.10.9D(4)(b) or (c) (notification obligations under the *Act* applying to *SMCR firms*) has been made or should be made; or
 - (ii) any of the circumstances in ■ SUP 10A.14.10R (Qualified Form C) apply;in relation to any:
 - (iii) *controlled functions* which that *person* is ceasing to perform (as referred to in (1)); or
 - (iv) *controlled function* that they are continuing to perform in relation to that *firm* or to a *firm* in the same *group*.
- (3) A *firm* must not use Form E if a notification has been made or should be made under:
- (a) ■ SUP 10A.14.17R (Changes in fitness to be notified under Form D);
 - (b) ■ SUP 10C.14.18R (the corresponding requirement for *SMCR firms*); or
 - (c) the corresponding *PRA* requirements to (a).
- (whichever is applicable) 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.14.4A G [deleted]

(4) [deleted]

10A.14.4AA G [deleted]

- 10A.14.4AB** **G** (1) A *firm* should only use a Form E when the *candidate* is ceasing to perform a *controlled function* in a way that means that the *candidate* will cease to be approved for that *controlled function*.
- (2) See ■ SUP 10A.14.8AG to ■ SUP 10A.14.8DG for the difference between temporarily ceasing to perform a *controlled function* (which means that approval for the performance of that *controlled function* continues) and permanently ceasing to perform a *controlled function* (which means that approval for the performance of that *controlled function* lapses).
- (3) (1) and (2) are the reason that ■ SUP 10A.14.4D refers to permanently ceasing to perform a *controlled function*.

10A.14.4B **G** [deleted]

10A.14.4C **G** [deleted]

10A.14.5 **G** ■ SUP 10A.16.1 D 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 the *appointed representative* of one *principal*, but will be performing the same or a different *FCA controlled function* under an *arrangement* entered into by the *appointed representative* of a new *principal*, the new *principal* will be required to make a fresh application for the performance of the *FCA controlled function* by that *person*. This applies even if the new *principal* is in the same *group* as the old *principal* or the *appointed representative* is the same.

10A.14.7 **G** [deleted]

Ceasing to perform an FCA controlled function

- 10A.14.8** **R** (1) A *firm* must submit to the *FCA* a completed Form C (■ SUP 10C Annex 5R) no later than ten business days after an *FCA-approved person* permanently ceases to perform an *FCA controlled function*.
- (2) If:
- (a) the *firm* is also making an application for approval for that *approved person* to perform a *controlled function* in relation to the same *firm* or to a *firm* in the same *group*; and
 - (b) ceasing to perform the *FCA controlled function* in (1) has triggered a requirement to make that application for approval:
 - (i) to the *FCA* using Form E (rather than a Form A) under ■ SUP 10A or ■ SUP 10C; or

- (ii) to the *PRA* using the *PRA's* Form E in accordance with the corresponding *PRA* requirements;
it must make the notification under (1) using that Form E.

10A.14.8A **G** Permanently ceasing to perform an *FCA controlled function* means that that *person* no longer has approval to perform that function. Permanent cessation does not mean that that *person* cannot return to perform that function, rather that if they do, they will need fresh approval.

10A.14.8B **G** Examples of when an *FCA-approved person* will have permanently ceased to perform an *FCA controlled function* include moving within a *firm* (see **■** SUP 10A.14.1G to **■** SUP 10A.14.5G), moving between *firms* (see **■** SUP 10A.14.6G), resignation, dismissal, retirement, and death.

10A.14.8C **G** In cases of temporary absence (for example sick leave or parental leave) where the *firm* is keeping the same role open for an *FCA-approved person*, approval to perform the relevant *FCA controlled function* will continue and therefore the *firm* will not be required to submit a Form C. See **■** SUP 10A.14.8HG for *guidance* on interim appointments.

10A.14.8D **G** As a result, an *FCA-approved person* who returns to perform the same *FCA controlled function* following such a temporary absence will not need fresh approval.

- 10A.14.8E** **R**
- (1) If an *FCA-approved person* has been absent for more than 12 weeks, the *firm* must notify the *FCA* on Form D (**■** SUP 10C Annex 6R) within seven *business days* of the end of the 12-week period.
 - (2) The *firm* must also notify the *FCA* on Form D (**■** SUP 10C Annex 6R) within seven *business days* of the *FCA-approved persons* return.

10A.14.8F **G** Where a *firm* is aware that an *FCA-approved person* will be absent for more than 12 weeks that *firm* can notify the *FCA* prior to the end of the 12-week period.

10A.14.8G **G** The duty to notify in **■** SUP 10A.14.17R continues to apply during a temporary absence.

- 10A.14.8H** **G**
- (1) Where an *FCA-approved person* is temporarily absent (see **■** SUP 10A.14.8CG) a *firm* may decide to appoint another *person* to perform that *FCA-controlled function* during the interim period.
 - (2) Unless **■** SUP 10A.5.6R (The 12-week rule) applies, the *firm* will be required to make a fresh application for the performance of the *FCA-controlled function* by a *person* who has been appointed for the interim period (see **■** SUP 10A.13 (Application for approval and withdrawing an application for approval) for details).

- (3) The *firm* will be required to notify the *FCA* under ■ SUP 10A.14.8R when the *person* who was appointed for the interim period gives up the role on the return of the *person* who was temporarily absent.

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

10A.14.9A **G** [deleted]

- 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* or the *appointed representative* 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 *appointed representative*, 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.14.10 R 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 permanently ceased to perform an *FCA controlled function* under an arrangement entered into by its *appointed representative* or former *appointed representative* or where any such *FCA-approved person* is temporarily absent.

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 they perform an *FCA controlled function*, they 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 they are 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 *authorised approved person employer* must notify the *FCA* on Form D (**■** SUP 10C Annex 6R) 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.14.15 R 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.16.2 R 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 **R** The duty to notify in **■** SUP 10A.14.17 R 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 **G**
- (1) If, in relation to a *firm* which has completed the relevant Form A (**■** SUP 10C Annex 3D), any of the details relating to arrangements and *FCA controlled functions* are to change, the *firm* must notify the *FCA* on Form D (**■** SUP 10C Annex 6R).
 - (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.16.2 R also applies to the submission of Form D under **■** SUP 10A.14.21 G.
- 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.

10A.14.24 **R** [deleted]

10A.14.25 **G** [deleted]

10A.14.26 **R** [deleted]

10A



10A.15 References and accurate information

References

- 10A.15.1 **G** (1) ■ SYSC 22 (Regulatory references) says that if a *firm* (A):
- is considering appointing a *person* (P) to perform any *controlled function* or certain other functions;
 - (b) requests a reference from a *firm* (B) that is P's current or former employer; and
 - (c) indicates to B the purpose of the request;
- B should, as soon as reasonably practicable, give a reference to A.
- (2) ■ SYSC 22.8.3R and ■ SYSC 22.8.4R (Appointed representatives) say that this applies to B's *appointed representatives* as well as to B.
- (3) [deleted]

10A.15.2 **G** [deleted]

10A.15.3 **G** [deleted]

10A.15.3A **G** [deleted]

The need for complete and accurate information

- 10A.15.4 **G** The obligations to supply information to the *FCA* under either ■ SUP 10A.14.8R or ■ SUP 10A.14.10R 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* or its *appointed representative* and an *employee* upon termination of the *employee's* employment. A *firm* should not (and should ensure that its *appointed representatives* do 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*.



10A.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 must be made by submitting the Form in accordance with the requirements in **SUP 10C.15** (Forms and other documents and how to submit them to the FCA) about the submission of those Forms.
 - (2A) [deleted]
 - (3) [deleted]
 - (4) [deleted]
 - (5) [deleted]
- 10A.16.2** **R**
- (1) This *rule* applies to a notification under Form B, Form C or Form D.
 - (2) A notification must be made in accordance with the requirements in **SUP 10C.15** (Forms and other documents and how to submit them to the FCA) about the submission of those Forms.
 - (3) [deleted]
- 10A.16.2A** **R** [deleted]
- 10A.16.3** **G** [deleted]
- 10A.16.4** **G** [deleted]



10A.17 Further questions [deleted]

[deleted]

Frequently asked questions [deleted]

[deleted]

**Approved persons regime: summary of forms and their use for
applications for approval to perform an FCA-controlled function
[deleted]**

[deleted]

[Not used]

[Not used]

**Form A: Application to perform controlled functions under the
approved person regime [deleted]**

[deleted]

**Form B: Notice to withdraw an application to perform controlled
functions (including senior management functions) [deleted]**

Form C: Notice of ceasing to perform controlled functions (including senior management functions) [deleted]

Form D: Notification of changes in personal information or application details and conduct breaches/disciplinary action related to conduct [deleted]

Form E: Internal transfer of an approved person [deleted]

[deleted]

Form G: The Retail Investment Adviser Complaints Alerts Form

[deleted]

MiFID Article 4 APER Information Form [deleted]

[deleted]

