Chapter 10A

FCA Approved Persons
10A.1  Application

General

10A.1.1  
This chapter applies to every:

(1) firm that is not an SMCR firm; and

(2) SMCR firm, but only to the extent required by SUP 10A.1.16BR (Appointed representatives).

other than a firm which has permission to carry on only regulated claims management activities.

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

10A.1.2  
This chapter is also relevant to every FCA-approved person:

(1) of a firm that is not an SMCR firm; and

(2) of any appointed representative, including of an appointed representative of an SMCR firm.

10A.1.3  
The rules in this chapter specify descriptions of FCA controlled functions under section 59 of the Act (Approval for particular arrangements).

10A.1.4  
The directions in this chapter relate to the manner in which a firm must apply for the FCA’s approval under section 59 of the Act and other procedures.

Overseas firms: UK services

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

Overseas firms: UK establishments

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

(2) the non-executive director function where the person performing one of those functions:
   (a) has responsibility for the regulated activities of a UK branch which is likely to enable him to exercise significant influence over that branch; or
   (b) is someone whose decisions or actions are regularly taken into account by the governing body of that branch;

(3) the chief executive function;

(4) the FCA required functions;

(5) the systems and controls function;

(6) the significant management function in so far as the function relates to:
   (a) designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or
   (b) processing confirmations, payments, settlements, insurance claims, client money and similar matters in so far as this relates to designated investment business; and

(7) the customer function.

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

This chapter does not apply to:

(1) an incoming EEA firm; or

(2) an incoming Treaty firm; or

(3) a UCITS qualifier;

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

SUP 10A.1.7 R 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.

(2) [deleted]

10A.9 G Notwithstanding G10A.1.8, 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.

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

Incoming EEA firms: passported activities from a branch

10A.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:

(1) the money laundering reporting function;

(2) the significant management function, in so far as the function relates to:
   (a) designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or
   (b) processing confirmations, payments, settlements, insurance claims, client money and similar matters, in so far as this relates to designated investment business; and
   (c) [deleted]

(3) the customer function other than where this relates to the function in G10A.10.7R (4) and G10A.7.

10A.12 R [deleted]

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

10A.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:

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(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

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

Appointed representatives

10A.1.15

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 tied agent of an EEA MiFID investment firm; and

(2) the customer function other than in relation to acting in the capacity of an investment manager (see SUP 10A.10.7 R (6)).

10A.1.16

(1) SUP 10A.1.15 R 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.
This chapter applies to an appointed representative that has a limited permission to carry on a regulated activity prescribed for the purposes of section 39(1E) of the Act as follows:

(1) FCA controlled functions apply to the appointed representative as set out in SUP 10A.1.15R and SUP 10A.1.16R 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;

(2) (a) unless it is a not-for-profit debt advice body, the apportionment and oversight function applies in relation to the carrying on of the regulated activity for which it has limited permission;

(b) if it is a not-for-profit debt advice body and a CASS large debt management firm, the CASS operational oversight function applies in relation to the carrying on of debt management activity.

SUP 10A.1.16B [R]  
SUP 10A.1.15R and SUP 10A.1.16R apply to the appointed representative of an SMCR firm.

10A.1.16C [G]  
(1) References in this chapter to a firm include an SMCR firm, but only to the extent required by SUP 10A.1.16R.

(2) References in SUP 10A.1.15R and SUP 10A.1.16R to FCA governing functions and other controlled functions are to controlled functions in this chapter, not in SUP 10C (FCA senior managers regime for approved persons in SMCR firms).

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 SUP 10A.1.16BR 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 SUP 10A.1.16R as a senior management function; and

(b) none of the functions in SUP 10A.1.16R 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.
Members of a profession

10A.1.17 R
(1) This chapter, except in respect of the FCA required functions, does not apply to an authorised professional firm in respect of its non-mainstream regulated activities, subject to (2).

(2) Where the authorised professional firm has appointed FCA-approved persons to perform the FCA governing functions with equivalent responsibilities for the firm's non-mainstream regulated activities and other regulated activities, for the firm's non-mainstream regulated activities this chapter applies with respect to the FCA governing functions and the FCA required functions (other than the apportionment and oversight function) only.

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

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

(1) an oil market participant; or
(2) a service company; or
(3) an energy market participant; or
(4) a wholly owned subsidiary of:
   (a) a local authority; or
   (b) a registered social landlord; or
(5) a firm with permission to carry on insurance distribution activity in relation to non-investment insurance contracts but no other regulated activity (except advising on P2P agreements).

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

Insolvency practitioners

10A.1.20 R
This chapter does not apply to a function performed by:

(1) a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or
(2) a person acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986.
(3) a person acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or

(4) a person acting as a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

Bidders in emissions auctions

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:

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

(4) [deleted]

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 4.1.1 R and is not undertaking proprietary trading.

Benchmark activities

(1) For a firm which only has a permission for administering a benchmark, the following FCA controlled functions do not apply:
   (a) the apportionment and oversight function;
   (b) the compliance oversight function;
   (c) the money laundering reporting function; and
   (d) the systems and controls function.

(2) That is because:
   (a) the FCA controlled functions in (a) to (c) above do not apply because those functions are specified by incorporation of requirements in SYSC and the relevant parts of SYSC do not apply in relation to benchmark activities (which includes administering a benchmark);
   (b) the FCA controlled function in (d) above does not apply in relation to benchmark activities (see SUP 10A.8.2R).

(3) The functions in (a) to (d) still apply to a firm which administers a benchmark as well as carrying on other regulated activities. However, they do not apply in respect of its activities as a regulated benchmark administrator.
(4) Various other *FCA controlled functions* are only relevant to *firms* which carry on particular types of activity and will not be relevant to a *firm* (F) which does not carry on any *regulated activities* other than administering a benchmark. For instance:

(a) the *CASS operational oversight function* will not be relevant to F because that function is only relevant to *CASS medium firms* *CASS large firms* and *CASS large debt management firms*; F will not hold *client money* and will therefore not be a *CASS medium firm*, a *CASS large firm* or a *CASS large debt management firm*;

(b) the *customer function* involves performing various types of activity none of which would be performed by a *firm* which does not carry on any *regulated activities* other than administering a benchmark;

(c) the *small friendly society function* will only be relevant to certain *firms*.

(5) The functions in §SUP 10A.1.21AG(1)(a) to (d) do not apply to a *benchmark contributor* in relation to its *contribution of input data* to a *BMR benchmark administrator*.

(6) That is because:

(a) the functions in §SUP 10A.1.21AG(1)(a) to (c) are specified by incorporation of requirements in SYSC and the relevant parts of SYSC do not apply in relation to *benchmark activities* (which includes *contributing input data* to a *BMR benchmark administrator*); and

(b) the *FCA controlled function* in §SUP 10A.1.21AG(1)(d) above does not apply in relation to *benchmark activities* (see §SUP 10A.8.2R).

10A.1.22 R [deleted]

10A.1.23 G [deleted]

**Internally managed corporate AIFs**

10A.1.24 G In accordance with section 59(7C) of the Act this chapter does not apply to an *internally managed AIF* which is a *body corporate* and not a *collective investment scheme*.

**Credit firms with limited permission**

10A.1.25 R (1) Subject to (2) and (3), this chapter, except in respect of the *apportionment and oversight function*, does not apply to a *firm* that has *limited permission* in relation to the carrying on of the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has *limited permission*.

(2) Subject to (3), this chapter does not apply to a *not-for-profit debt advice body*. 
(3) This chapter applies to a not-for-profit debt advice body that is a CASS large debt management firm with respect to the CASS operational oversight function only.

### Claims management exclusions

10A.1.28 A function performed by a person (A) in relation to a firm (B), whose permission includes a regulated claims management activity, is not a controlled function when performed by A in relation to B if:

1. A is not the subject of a current FCA approved person approval for that controlled function in relation to B;
2. that function would otherwise have been a controlled function but for this rule; and
3. that function would not have been a controlled function in relation to A and B if articles 89G to 89M of the Regulated Activities Order (regulated claims management activities) were not in the Regulated Activities Order.

10A.1.30 also applies to a firm whose permission only includes regulated claims management activities and relevant credit activities.

10A.1.31 to 10A.1.30R mean a firm whose permission includes a regulated claims management activity will not need to seek additional approved person approvals, because those activities became regulated activities in April 2019.

10A.1.32 to 10A.1.30R are not relevant to a firm which has permission to carry on only regulated claims management activities because 10A.1.1R excludes it from this chapter altogether.