

Chapter 10C

FCA senior managers regime
for approved persons in
SMCR firms

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

Moving within a firm

10C.14.1 G

- (1) An *FCA-approved SMF manager'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*.
- (2) Where the changes will involve the *SMF manager* performing one or more *FCA-designated senior management functions* different from those for which approval has already been granted, an application must be made to the *FCA* for approval for the *SMF manager* to perform those *FCA-designated senior management functions*.

The *firm* must take reasonable care to ensure that an individual does not begin performing an *FCA-designated senior management function* until the *FCA* has granted *FCA-approved SMF manager* status to that individual for that *FCA-designated senior management function*.

- (4) Similarly (in the case of a *PRA-authorised person*), a *firm* must get the *FCA's* approval if an individual is to start performing an *FCA-designated senior management function* in relation to that *firm* when they already have the *PRA's* approval to perform a *PRA-designated senior management function* in relation to that *firm*.

10C.14.2 G

- (1) A *firm* should generally use Form E where an *approved person* is both ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *FCA-designated senior management functions* within the same *firm* or *group*.
- (2) In certain cases, a *firm* should use Form A.
- (2A) When a *MiFID investment firm* (except a *credit institution*) notifies the *FCA* of a change using Form A or Form E, it may also have to submit the MiFID Article 4 SMR Information Form (see ■ SUP 10C.10.9BD).
- (3) The details can be found in ■ SUP 10C.10.8D to ■ SUP 10C.10.9CG.

Moving between firms

10C.14.3 **G**

If it is proposed that an *FCA-approved SMF manager*:

- (1) will no longer be performing an *FCA-designated senior management function* under an *arrangement* entered into by one *firm* or one of its contractors; but
- (2) will be performing the same or a different *FCA-designated senior management function* under an *arrangement* entered into by a new *firm* or one of its contractors (whether or not the new *firm* is in the same *group* as the old *firm*);

the new *firm* will be required to make a fresh application for the performance of the *FCA-designated senior management function* by that *person* (see ■ SUP 10C.10 (Application for approval and withdrawing an application for approval) for details).

10C.14.4 **G**

In certain circumstances, when the *FCA* already has the information it would usually require, a shortened version of the relevant Form A may be completed. See ■ SUP 10C.10.8D to ■ SUP 10C.10.8BD for full details.

Ceasing to perform an FCA-designated senior management function

10C.14.5 **R**

- (1) A *firm* must notify the *FCA* no later than ten *business days* after an *FCA-approved SMF manager* permanently ceases to perform an *FCA-designated senior management function*.
- (2) It must make that notification by submitting to the *FCA* a completed Form C (■ SUP 10C Annex 5R).
- (3) If:
 - (a) the *firm* is also making an application for approval for that *approved person* to perform a *controlled function* within the same *firm* or *group*; and
 - (b) ceasing to perform the *FCA-designated senior management 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 10C.10.9D; or
 - (ii) to the *FCA* using Form E (rather than a Form A) under ■ SUP 10A; or
 - (iii) (in the case of a *PRA-authorised person*) 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.

10C.14.5A **G**

Permanently ceasing to perform an *FCA-designated senior management 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.

- 10C.14.5B** **G** Examples of when an *FCA-approved SMF manager* will have permanently ceased to perform an *FCA-designated senior management function* include moving within a *firm* (see **■ SUP 10C.14.1G** to **■ SUP 10C.14.2G**), moving between *firms* (see **■ SUP 10C.14.3G** to **■ SUP 10C.14.4G**), resignation, dismissal, retirement, and death.
- 10C.14.5C** **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 SMF manager*, approval to perform the relevant *FCA-designated senior management function* will continue and therefore the *firm* will not be required to submit a Form C (**■ SUP 10C Annex 5R**). See **■ SUP 10C.14.5IG** for guidance on interim appointments.
- 10C.14.5D** **G** As a result, an *FCA-approved SMF manager* who returns to perform the same *FCA-designated senior management function* following such a temporary absence will not need fresh approval.
- 10C.14.5E** **R**
- (1) If an *FCA-approved SMF manager* 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) It must also notify the *FCA* on Form D (**■ SUP 10C Annex 6R**) within seven *business days* of their return.
- 10C.14.5F** **G** Where a *firm* is aware that an *FCA-approved SMF manager* will be absent for more than 12 weeks, that *firm* can notify the *FCA* prior to the end of the 12-week period.
- 10C.14.5G** **G**
- (1) The duty to notify in **■ SUP 10C.14.18R** and the sections of the *Act* listed in **■ SUP 10C.14.22R** continue to apply during a temporary absence.
 - (2) Where it would not be appropriate for a *firm* to require an *FCA-approved SMF manager* to participate in the assessment required under section 63(2A) of the *Act* during a temporary absence, it will not be necessary for that *person* to participate in that assessment in order for the *firm* to comply with this requirement.
 - (3) Notwithstanding the *guidance* at (2), on an *FCA-approved SMF manager's* return to a *firm*, the *firm* should consider whether it may be necessary to refresh any aspects of the assessment taking into account that the relevant *person* is now able to participate.
- 10C.14.5H** **G**
- (1) Under section 62A of the *Act*, a *firm* must provide the *FCA* with a revised *statement of responsibilities* if there has been any significant change in the responsibilities of an *FCA-approved SMF manager*.
 - (2) **■ SUP 10C.11.6G(6B)** explains when a *firm* should submit a revised *statement of responsibilities* for an *FCA-approved SMF manager* who is temporarily absent and that the *firm* should also submit a revised *statement of responsibilities* on their return.

- (3) The requirement to submit a revised *statement of responsibilities* is in addition to the requirement to submit a Form D (■ SUP 10C Annex 6R).
- 10C.14.5I **G**
- (1) Where an *FCA-approved SMF manager* is temporarily absent (see ■ SUP 10C.14.5CG), a *firm* may decide to appoint another *person* to perform that *FCA-designated senior management function* during the interim period.
- (2) Where the *FCA-approved SMF manager* was performing a *FCA required function*, the *firm* will be required to make an interim appointment.
- (3) Unless ■ SUP 10C.3.13R (The 12-week rule) applies, the *firm* will be required to make a fresh application for the performance of the *FCA-designated senior management function* by the *person* who has been appointed for the interim period (see ■ SUP 10C.10 (Application for approval and withdrawing an application for approval)). It may be appropriate for the appointment to be time limited (see ■ SUP 10C.12.7G to ■ SUP 10C.12.14G (time-limited approvals) for details)).
- (4) The *firm* will be required to notify the *FCA* under ■ SUP 10C.14.5R when the *person* who was appointed for the interim period gives up the role on the return of the *person* who was temporarily absent.
- (5) A *firm* should consider what steps it should take in respect of handover procedures in relation to any interim appointment and the return of a *person* who is temporarily absent (see ■ SYSC 25.9 (Handover procedures and material)).
- 10C.14.5J **G**
- If a *firm* is required to have a *management responsibilities map*, the map should be revised where appropriate to reflect any change in its management and governance arrangements as a result of a temporary absence described in ■ SUP 10C.14.5CG to ■ SUP 10C.14.5IG. In particular, a *firm* should update the map to take into account any temporary absence required to be notified under ■ SUP 10C.14.5ER or ■ SUP 10C.14.5FG, any interim appointment described in ■ SUP 10C.14.5IG or any return from temporary absence described in ■ SUP 10C.14.5ER (see ■ SYSC 25.2 (Management responsibilities maps: Main rules)).
- 10C.14.6 **G**
- SUP 10C.15 (Forms and other documents and how to submit them to the FCA) explains how notifications should be submitted.
- 10C.14.6A **G**
- 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 appropriate part of the *MiFID authorisation and management body change notification ITS* on the 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.
- This means that a *MiFID investment firm* required to notify the *FCA* under (1) may also need to submit the Annex III information along with the Form C or Form E.

See ■ SUP 10C.10.9AAG to ■ SUP 10C.10.9CG for more about these notification requirements in a case in which the *firm* is applying for approval under section 59 of the Act (Approval for particular arrangements).

10C.14.7 **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 for an *FCA-approved SMF manager*.
- (2) Form C is qualified if the information it contains:
 - (a) relates to the fact that the *firm* has dismissed, or suspended, the *FCA-approved SMF manager* from its employment;
 - (b) relates to the resignation by the *FCA-approved SMF manager* while under investigation by the *firm*, the FCA or any other *regulatory body*;
 - (c) otherwise reasonably suggests that it may affect the FCA's assessment of the *FCA-approved SMF manager's* fitness and propriety; or
 - (d) includes a notification about the *FCA-approved SMF manager* under one of the provisions of the Act listed in ■ SUP 10C.14.22R (notification of grounds for withdrawal of approval and disciplinary action).

10C.14.8 **G**

- (1) Notification under ■ SUP 10C.14.7R 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.
- (2) Oral notifications should be given directly to the *firm's* usual supervisory contact at the FCA. An oral notification left with another *person* or left on a voicemail, or other automatic messaging service, is unlikely to have been given appropriately.

10C.14.9 **G**

A *firm* is responsible for notifying the FCA if any *FCA-approved SMF manager* has permanently ceased to perform an *FCA-designated senior management function* under an arrangement entered into by its contractor or where any such *FCA-approved SMF manager* is temporarily absent.

10C.14.10 **G**

- (1) A *firm* can submit Form C or Form E (and any MiFID Article 4 SMR Information Form required by ■ SUP 10C.10.9BD) to the FCA in advance of the cessation date.
- (2) If the actual cessation date turns out to be different from the one notified in advance, the *firm* should notify the FCA.
- (3) If the *firm*:
 - does not submit Form C (including a qualified one) following notification under ■ SUP 10C.14.7R; or
 - submits a form in advance under (1) but it turns out that there is no requirement to have done so (because for example the *approved person* is staying in post);

it should inform the *FCA* in due course of the reason. This could be done using Form D, if appropriate.

- 10C.14.11 **G**
- (1) When a *person* ceases the arrangement under which they perform an *FCA-designated senior management function*, they will automatically cease to be an *FCA-approved SMF manager* in relation to that *FCA-designated senior management function*.
 - (2) A *person* can only be an *FCA-approved SMF manager* in relation to a specific *FCA-designated senior management function*. Therefore, a *person* is not an *FCA-approved SMF manager* during any period between ceasing to perform one *FCA-designated senior management function* (when they are performing no other *FCA-designated senior management function*) and being approved for another *FCA-designated senior management function*.

10C.14.12 **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

10C.14.13 **R** If an *FCA-approved SMF manager's* title, name or national insurance number changes, the *firm* for which the *person* performs an *FCA-designated senior management function* 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.

10C.14.14 **G** The duty to notify in ■ SUP 10C.14.13R does not apply to changes to an *FCA-approved SMF manager's* private address.

Changes to arrangements

10C.14.15 **R** If any of the details relating to:

- the arrangements in relation to any of a *firm's FCA-approved SMF managers*; or
- any *FCA-designated senior management functions* of one of its *FCA-approved SMF managers*;

are to change, the *firm* must notify the *FCA* on Form D (■ SUP 10C Annex 6R).

The notification under (1) must be made as soon as reasonably practicable after the *firm* becomes aware of the proposed change.

This *rule* does not apply to anything required to be notified under section 62A of the *Act* (Changes in responsibilities of senior managers) or ■ SUP 10C.11 (Statements of responsibilities).

10C.14.16 **G** ■ SUP 10C.15 (Forms and other documents and how to submit them to the *FCA*) explains how notifications should be submitted.

Revised statements of responsibilities

- 10C.14.17 **G** (1) Under section 62A of the *Act*, a *firm* should provide the *FCA* with a revised *statement of responsibilities* if there has been any significant change in the responsibilities of an *FCA-approved SMF manager*.
- (2) Details can be found in ■ SUP 10C.11 (Statements of responsibilities).

Notifications about fitness, disciplinary action and breaches of COCON

- 10C.14.18 **R** (1) If a *firm* becomes aware of information which would reasonably be material to the assessment of the fitness and propriety of an *FCA-approved SMF manager*, or of *candidate* to be one (see *FIT*), it must inform the *FCA* either:
- (a) on Form D; or
 - (b) if it is more practical to do so and with the prior agreement of the *FCA*, by email or fax;
- as soon as practicable and, in any case, within seven *business days*.
- (2) This *rule* does not apply to anything required to be notified under ■ SUP 10C.14.5R (Form C) or ■ SUP 10C.14.7R (Qualified Form C).

- 10C.14.19 **G** ■ SUP 10C.15 (Forms and other documents and how to submit them to the *FCA*) applies to the submission of Form D.

- 10C.14.20 **G** Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

- 10C.14.21 **G** The duty to notify in ■ SUP 10C.14.18R extends to any circumstances that would normally be declared when giving the information required for section 5 of Form A or matters considered in ■ FIT 2.

- 10C.14.22 **R** If a *firm* is required to notify the *FCA* about an *FCA-approved SMF manager* under any of the following:

- (1) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or
- (2) [deleted]
- (3) section 64C of the *Act* (Requirement for authorised persons to notify regulator of disciplinary action);

it must give that notification:

- (4) under ■ SUP 10C.14.5R (Form C) if that *rule* applies;
- (5) under ■ SUP 10C.14.7R (Qualified Form C) if that *rule* applies; or
- (6) (in any other case) in accordance with ■ SUP 10C.14.18R (Form D);

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and in accordance with the requirements of this chapter about submission of those forms.

10C.14.23 **G** The table in **■ SUP 10C.14.24G** summarises what the relevant parts of the sections of the Act listed in **■ SUP 10C.14.22R** say.

10C.14.24 **G** Table: Explanation of the sections of the Act mentioned in **■ SUP 10C.14.22R**

Section	Summary of relevant parts	Other Handbook material	Comments
Section 63(2A) (Duty to notify regulator of grounds for withdrawal of approval)	At least once a year, each <i>firm</i> must, in relation to every <i>SMF manager</i> for whom an approval has been given on the application of that <i>firm</i> : (a) consider whether there are any grounds on which the <i>FCA</i> could withdraw the approval; and (b) if the <i>firm</i> is of the opinion that there are such grounds, notify the <i>FCA</i> of those grounds.		<i>FIT</i> sets out guidance on the factors a <i>firm</i> should take into account when assessing the fitness and propriety of an <i>approved person</i> .
Section 64C of the Act (Requirement for authorised persons to notify regulator of disciplinary action)	If: (a) a <i>firm</i> takes disciplinary action in relation to an <i>SMF manager</i> ; and (b) the reason, or one of the reasons, for taking that action is a reason specified in SUP 15.11.6R; the <i>firm</i> should notify the <i>FCA</i> of that fact.	SUP 15.11 (Notification of COCON breaches and disciplinary action)	An example of when a notification should be made using Form C rather than Form D is when a <i>firm</i> is required to notify the <i>FCA</i> under section 64C of the Act that it has dismissed an <i>SMF manager</i> .

10C.14.25 **G** (1) When considering how to notify the *FCA* under **■ SUP 10C.14.18R** or **■ SUP 10C.14.22R**, a *firm* should have regard to the urgency and significance of a matter. If appropriate, the *firm* should also notify its

usual supervisory contact at the *FCA* by telephone or by other prompt means of communication, before submitting a written notification.

- (2) Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another *person* or left on a voicemail, or other automatic messaging service, is unlikely to have been given appropriately.

The need for complete and accurate information

10C.14.26 **G**

- (1) The obligations to supply information to the *FCA* under:

(a) ■ SUP 10C; or

(b) the sections of the *Act* listed in ■ SUP 10C.14.22R;

apply notwithstanding any agreement (for example, a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment.

- (2) A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section or the *Act*.

10C.14.27 **G**

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

Application of this section to PRA-approved persons

10C.14.28 **R**

This section also applies to a notification to the *FCA* about a *PRA-approved SMF manager* who is not an *FCA-approved SMF manager* required by any of the provisions of the *Act* listed in ■ SUP 10C.14.22R.

10C.14.29 **R**

The *PRA's rules* determine how a notification under ■ SUP 10C.14.28R is to be made.

10C.14.30 **G**

If a *firm* is required to notify the *FCA* about a *PRA-approved SMF manager* who is not an *FCA-approved SMF manager* under one of the sections of the *Act* referred to in ■ SUP 10C.14.28R, it should make a single notification under the *PRA's* requirements. There is no need for a separate notification to the *FCA*.