Chapter 10C

FCA senior managers regime for approved persons in SMCR firms
Moving within a firm

### 10C.14.1

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, 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

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 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 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 (1) A firm must notify the FCA no later than ten business days after an FCA-approved SMF manager 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) 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.14.6 § SUP 10C.15 (Forms and other documents and how to submit them to the FCA) explains how notifications should be submitted.

10C.14.6A The MiFID authorisation and management body change notification ITS requires that a MiFID investment firm (except a credit institution)
submit the information in Annex III of the MiFID authorisation and management body change notification ITS on the ESMA template 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 ceased to perform an FCA-designated senior management function under an arrangement entered into by its contractor.

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

(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

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

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

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

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

10C.14.21 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);

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


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

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

(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.

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

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.

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

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.