

Supervision

Chapter 3

Auditors

3.1 Application

- 3.1.1** **R** (1) Except as provided for in (2), this chapter applies to:
- every *firm* within a category listed in column (1) of the table in **■ SUP 3.1.2 R**; and
 - the external auditor of such a *firm* (if appointed under **■ SUP 3.3** or appointed under or as a result of a statutory provision other than in the Act);
- (2) This chapter does not apply in relation to a *firm's benchmark activities*.

- 3.1.1A** **G** For the avoidance of doubt, this chapter does not apply to the following *firms* if they do not hold *client money* or client assets and do not appoint an auditor under or as a result of a statutory provision other than in the Act:
- (1) *authorised professional firms*;
 - (2) *energy market participants*, including *oil market participants* to whom **■ IPRU(INV) 3** does not apply;
 - (3) *exempt insurance intermediaries*;
 - (4) *insurance intermediaries* not subject to **■ SUP 3.1.2 R(10)**;
 - (5) *investment management firms*;
 - (6) *home finance administrators*;
 - (7) *home finance intermediaries*;
 - (8) *home finance providers*;
 - (9) *personal investment firms*, including *small personal investment firms*;
 - (10) *securities and futures firms*; and
 - (11) *service companies*.

- 3.1.2** **R** Applicable sections (see **■ SUP 3.1.1 R**)
- This table and the provisions in SUP 3 should be read in conjunction with GEN 2.2.23 R to GEN 2.2.25 G. In particular, the PRA does not apply any of the

provisions in SUP 3 in respect of *FCA-authorized persons*. SUP 3.10 and SUP 3.11 are applied by the FCA only.

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(1) <i>Authorised professional firm</i> which is required by <i>IPRU(INV)</i> 2.1.2R to comply with chapters 3, 5 or 13 of <i>IPRU(INV)</i> and which has an auditor appointed under or as a result of a statutory provision other than in the Act (Notes 1 and 6)	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(2) <i>Authorised professional firm</i> not within (1) to which the <i>custody chapter</i> or <i>client money chapter</i> applies	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(3) <i>Authorised professional firm</i> not within (1) or (2) which has an auditor appointed under or as a result of a statutory provision other than in the Act	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(4) <i>Bank, building society or dormant account fund operator</i> which in each case carries on <i>designated investment business</i> (Notes 2A and 6)	SUP 3.1-SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(5) <i>Bank, building society or a dormant account fund operator</i> which in each case does not carry on <i>designated investment business</i> (Note 2A)	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(5A) <i>Credit union</i>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(5B) <i>CASS debt management firm</i> unless subject to a <i>requirement</i> imposed under section 55L of the Act stating that it must not hold <i>client money</i> or such a <i>requirement</i> to the same effect	SUP 3.1 SUP 3.10 SUP 3.11	SUP 3.1 SUP 3.10
(5C) <i>CASS 7 loan-based crowdfunding firm</i>	SUP 3.1-3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(5D) A <i>CASS 13 claims management firm</i>	SUP 3.1-3.7, 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(6) <i>Insurer, the Society of Lloyd's, underwriting agent or members' adviser, UK ISPV (Note 5)</i>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(7) <i>Investment management firm, (other than an exempt CAD firm), personal investment firm (other than a small personal investment firm or exempt CAD firm), securities and futures firm (other than an exempt CAD firm or an exempt BIPRU commodities firm) or collective portfolio management firm that is an external AIFM which, in each case, has an auditor appointed under or as a result of a statutory provision other than in the Act (Notes 3 and 6)</i>	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(7A) <i>Investment management firm (other than an exempt CAD firm), personal investment firm (other than a small personal investment firm or exempt CAD firm), securities and futures firm (other than an exempt CAD firm or an exempt BIPRU commodities firm) or collective portfolio management firm that is an external AIFM not within (7) to which the custody chapter or client money chapter applies</i>	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(7B) <i>Collective portfolio management firm that is a UCITS firm or an internally managed AIF (Note 6)</i>	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(7C)	<i>UK MiFID investment firm</i> , which has an auditor appointed under or as a result of a statutory provision other than in the Act (Notes 3B and 6)	SUP 3.1 - 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(7D)	<i>Sole trader or partnership</i> that is a <i>UK MiFID investment firm</i> (other than an <i>exempt CAD firm</i>) (Notes 3C and 6)	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(8)	<i>Small personal investment firm</i> or <i>service company</i> which, in either case, has an auditor appointed under or as a result of a statutory provision other than in the Act	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(9)	<i>Home finance provider</i> which has an auditor appointed under or as a result of a statutory provision other than in the Act	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(10)	<i>Insurance intermediary</i> (other than an <i>exempt insurance intermediary</i>) to which the <i>insurance client money chapter</i> (except for CASS 5.2 (Holding money as agent)) applies (see Note 4)	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(11)	<i>Exempt insurance intermediary</i> and <i>insurance intermediary</i> not subject to SUP 3.1.2 R(10) which has an auditor appointed under or as a result of a statutory provision other than in the Act	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(12)	<i>Home finance intermediary</i> or <i>home finance administrator</i> which has an auditor appointed under or as a result of a statutory provision other than in the Act.	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
Note 1 = This chapter applies to an <i>authorised professional firm</i> in row (1)			

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(and its auditor) as if the <i>firm</i> were of the relevant type in the right-hand column of <i>IPRU(INV) 2.1.4R</i> .		
Note 2 [deleted]		
<p>Note 2A = For this purpose, <i>designated investment business</i> does not include either or both:</p> <p>(a) <i>dealing</i> which falls within the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc) (or agreeing to do so); and</p> <p>(b) <i>dealing in investments as principal</i> (or agreeing to do so):</p> <p>(i) by a <i>firm</i> whose <i>permission to deal in investments as principal</i> is subject to a <i>limitation</i> to the effect that the <i>firm</i>, in carrying on this <i>regulated activity</i>, is limited to entering into transactions in a manner which, if the <i>firm</i> was an <i>unauthorised person</i>, would come within article 16 of the <i>Regulated Activities Order</i> (Dealing in contractually based investments); and</p> <p>(ii) in a manner which comes within that <i>limitation</i>;</p> <p>having regard to article 4(4) of the <i>Regulated Activities Order</i> (Specified activities: general).</p>		
<p>Note 3 = This note applies in relation to an <i>oil market participant</i> to which <i>IPRU(INV) 3</i> does not apply and in relation to an <i>energy market participant</i> to which <i>IPRU(INV) 3</i> does not apply. In SUP 3:</p> <p>(a) only SUP 3.1, SUP 3.2 and SUP 3.7 are applicable to such a <i>firm</i>; and</p> <p>(b) only SUP 3.1, SUP 3.2 and SUP 3.8 are applicable to its auditor;</p> <p>and, in each case, only if it has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i>.</p>		
Note 3A [deleted]		
<p>Note 3B = <i>UK MiFID investment firms</i> include <i>exempt CAD firms</i>. An <i>exempt CAD firm</i> that has opted into <i>MiFID</i> can benefit from the audit exemption for small companies in the Companies Act legislation if it meets is an exempt investment firm as defined by article 8 of the <i>MiFI Regulations</i>. If a <i>firm</i> does so benefit then SUP 3 will not apply to it. For further details about <i>exempt CAD firms</i>, see PERG 13, Q58.</p>		
<p>Note 3C = A <i>sole trader</i> or a <i>partnership</i> that is a <i>UK MiFID investment firm</i> to which the <i>custody chapter</i> or <i>client money chapter</i> applies must have its annual accounts audited.</p>		
<p>Note 4 = The <i>client money</i> audit requirement in SUP 3.1.2 R(10) therefore applies to all <i>insurance intermediaries</i> except:</p> <ul style="list-style-type: none"> • those which do not hold <i>client money</i> or other client assets in relation to <i>insurance distribution activities</i>; or • those which only hold up to, but not exceeding, £30,000 of <i>client money</i> under a statutory trust arising under CASS 5.3. <p><i>Insurance intermediaries</i> which, in relation to <i>insurance distribution activities</i>, hold no more than that amount of <i>client money</i> only on a statutory trust are <i>exempt insurance intermediaries</i>.</p>		
Note (5) = In row (6):		
(a)	SUP 3.1 - SUP 3.7 applies to a <i>managing agent</i> in respect of its own business and in respect of the <i>insurance business</i> of each <i>syndicate</i> which it manages; and	

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(b)	SUP 3.1, SUP 3.2 and SUP 3.8 apply to the auditors of a <i>managing agent</i> and the auditors of the <i>insurance business</i> of each <i>syndicate</i> which the <i>managing agent</i> manages.	
Note 6 = Where SUP 3.11 applies to a <i>firm</i> , and SUP 3.10 applies to the auditor of that <i>firm</i> , those sections apply whether or not that <i>firm's permission</i> prevents it from holding <i>client money</i> or <i>custody assets</i> and whether or not it holds <i>client money</i> or <i>custody assets</i> . A <i>collective portfolio management firm</i> that is an <i>internally managed AIF</i> is required to appoint an auditor under FUND 3.3.6R (2) (Annual report of an AIF) because the <i>AIFM</i> is also an <i>AIF</i> .		

3.1.2A **G** If a *firm* falls within more than one row in column (1) of the table in ■ SUP 3.1.2 R, ■ SUP 3.1.1 R requires the *firm* and its external auditor to comply with all the sections referred to in column (2) or (3).

Incoming firms

3.1.3 **R** This chapter applies to an *incoming EEA firm* (and the auditor of such a *firm*) only if it has a *top-up permission*.

3.1.4 **G** The application of ■ SUP 3.10 to the auditor of an *incoming EEA firm* with a *top-up permission* is qualified in ■ SUP 3.10.3 R.

3.1.5 **R** This chapter does not apply to an *incoming Treaty firm*, which:

- (1) does not have a *top-up permission*; and
- (2) is not required to comply with the *client asset rules*.

3.1.6 **G** The application of ■ SUP 3.7 to an *incoming Treaty firm* or an auditor of such a *firm* is further qualified in ■ SUP 3.7.1 G.

Auditors of lead regulated firms

3.1.7 **G** The application of ■ SUP 3.10 to the auditor of a *lead regulated firm* is qualified in ■ SUP 3.10.3 R.

3.1.8 **G** [deleted]

Material elsewhere in the Handbook

3.1.9 **G** A *firm* which is mentioned in ■ SUP 3.1.10 G should see the Prudential Standards part of the *Handbook* for further provisions on auditors as set out in ■ SUP 3.1.10 G.

3.1.10

G

Other relevant sections of the Handbook (see ■ SUP 3.1.9 G)

<i>Friendly society</i>	<i>IPRU(FSOC)</i>
<i>Insurer (other than a Solvency II firm or a friendly society)</i>	<i>IPRU(INS)</i>
<i>Investment management firm, personal investment firm, securities and futures firm and collective portfolio management firm (other than IFPRU investment firms and BI-PRU firms)</i>	<i>IPRU(INV)</i>
<i>Society of Lloyd's and Lloyd's managing agents</i>	<i>IPRU(INS)</i>



3.2 Purpose

Purpose: general

3.2.1 **G** This chapter sets out *rules* and *guidance* on the role auditors play in the *appropriate regulator's* monitoring of *firms'* compliance with the requirements and standards under the *regulatory system*. In determining whether a *firm* satisfies the *threshold conditions*, the *appropriate regulator* has regard to whether the *firm* has appointed auditors with sufficient experience in the areas of business to be conducted by the *firm*. Auditors act as a source of information for the *appropriate regulator* in its supervision. They report, where required, on the financial resources of the *firm*, the accuracy of its reports to the *appropriate regulator* and its compliance with particular *rules*, such as the *Client asset rules*.

3.2.2 **G** The *Act*, together with other legislation such as the Companies Acts 1985, 1989 and 2006, the Building Societies Act 1986 and the Friendly Societies Act 1992, provides the statutory framework for *firms'* and auditors' obligations.

3.2.3 **G** [deleted]

3.2.4 **G** [deleted]

Insurance intermediaries and their auditors

3.2.5 **G** It is the responsibility of an *insurance intermediary's* senior management to determine, on a continuing basis, whether the *insurance intermediary* is an *exempt insurance intermediary* and to appoint an auditor if management determines the *firm* is no longer exempt. ■ SUP 3.7 (amplified by ■ SUP 15) sets out what a *firm* should consider when deciding whether it should notify the *FCA* of matters raised by its auditor.

Rights and duties of auditors

3.2.6 **G** The rights and duties of auditors are set out in ■ SUP 3.8 (Rights and duties of all auditors) and ■ SUP 3.10 (Duties of auditors: notification and report on client assets). ■ SUP 3.8.10 **G** includes the auditor's statutory duty to report certain matters to the *FCA* imposed by regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (information given by auditor or actuary to a *regulator*). An auditor should bear these rights and duties in mind when carrying out *client asset* report work, including whether anything should be notified to the *FCA* immediately.

3.3 Appointment of auditors

Purpose

- 3.3.1 **G** This section requires a *firm* to appoint an auditor and supply the appropriate regulator with information about its auditor. The *appropriate regulator* requires such information to ensure that the *firm* has an auditor.

Appointment by firms

- 3.3.2 **R** A *firm* to which this section applies (see ■ SUP 3.1) must:
- (1) appoint an auditor;
 - (2) notify the *appropriate regulator*, without delay, on the form in ■ SUP 15 Ann 3 (Notification to amend firm details form), in accordance with the instructions on the form, when it is aware that a vacancy in the office of auditor will arise or has arisen, giving the reason for the vacancy;
 - (3) appoint an auditor to fill any vacancy in the office of auditor which has arisen;
 - (4) ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable after that; and
 - (5) notify the *appropriate regulator* of the appointment of an auditor, on the form in ■ SUP 15 Ann 3 (Notification to amend firm details form), in accordance with the instructions on the form, advising the *appropriate regulator* of the name and business address of the auditor appointed and the date from which the appointment has effect.

- 3.3.3A **G** ■ SUP 3.3.2 R applies to every *firm* to which this section applies. That includes a *firm* which is under an obligation to appoint an auditor under an enactment other than the *Act*, such as the Companies Act 1985 or the Companies Act 2006, as appropriate. Such a *firm* is expected to wish to have a single auditor who is appointed to fulfil both obligations. ■ SUP 3.3.2 R is made under section 137A of the *Act* (The *FCA's* general rules), in relation to such *firms*, and under section 340(1) (Appointment) in relation to other *firms*.

- 3.3.4 **D** [deleted]

3.3.5 **R** [deleted]

3.3.6 **G** [deleted]

Appointment by the appropriate regulator

3.3.7 **R** (1) Paragraph (2) applies to a *firm* which is not under an obligation to appoint an auditor imposed by an enactment other than the *Act*.

(2) If a *firm* fails to appoint an auditor within 28 days of a vacancy arising, the *appropriate regulator* may appoint an auditor for it on the following terms:

(a) the auditor to be remunerated by the *firm* on the basis agreed between the auditor and *firm* or, in the absence of agreement, on a reasonable basis; and

(b) the auditor to hold office until he resigns or the *firm* appoints another auditor.

3.3.9 **G** ■ SUP 3.3.7 R allows but does not require the appropriate regulator to appoint an auditor if the *firm* has failed to do so within the 28 day period. When it considers whether to use this power, the *appropriate regulator* will take into account the likely delay until the *firm* can make an appointment and the urgency of any pending duties of the appointed auditor.

3.3.10 **R** A *firm* must comply with and is bound by the terms on which an auditor has been appointed by the *appropriate regulator*, whether under ■ SUP 3.3.7 R, the Building Societies Act 1986 or the Friendly Societies Act 1992.

3.4 Auditors' qualifications

Purpose

- 3.4.1 **G** The *appropriate regulator* is concerned to ensure that the auditor of a *firm* has the necessary skill and experience to audit the business of the *firm* to which he has been appointed. This section sets out the *appropriate regulator's rules* and *guidance* aimed at achieving this.

Qualifications

- 3.4.2 **R** Before a *firm*, to which **■ SUP 3.3.2 R** applies, appoints an auditor, it must take reasonable steps to ensure that the auditor has the required skill, resources and experience to perform his functions under the *regulatory system* and that the auditor:
- (1) is eligible for appointment as an auditor under Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990 (Eligibility for appointment) where applicable, otherwise Chapters 1, 2 and 6 of Part 42 of the Companies Act 2006 ; or
 - (2) if appointed under an obligation in another enactment, is eligible for appointment as an auditor under that enactment; or
 - (3) in the case of an *overseas firm*, is eligible for appointment as an auditor under any applicable equivalent laws of that country or territory.

- 3.4.4 **G** An auditor which a *firm* proposes to appoint should have skills, resources and experience commensurate with the nature, scale and complexity of the *firm's* business and the requirements and standards under the *regulatory system* to which it is subject. A *firm* should have regard to whether its proposed auditor has expertise in the relevant requirements and standards (which may involve access to *UK* expertise) and possesses or has access to appropriate specialist skill, for example actuarial expertise in carrying out audits of insurance companies or *friendly societies* where appropriate. The *firm* should seek confirmation of this from the auditor concerned as appropriate.

Disqualified auditors

- 3.4.5 **R** A *firm* must not appoint as auditor a *person* who is disqualified under Part XXII of the *Act* (Auditors and Actuaries) from acting as an auditor either for that *firm* or for a relevant class of *firm*.

3.4.6 **G** If it appears to the *appropriate regulator* that an auditor of a *firm* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A, respectively, of the *Act*. A list of *persons* who are disqualified may be found on the *FCA's* website (www.fca.org.uk).

Requests for information on qualifications by the appropriate regulator

3.4.7 **R** A *firm* must take reasonable steps to ensure that an auditor, which it is planning to appoint or has appointed, provides information to the *appropriate regulator* about the auditor's qualifications, skills, experience and independence in accordance with the reasonable requests of the *appropriate regulator*.

3.4.8 **G** To enable it to assess the ability of an auditor to audit a *firm*, the *appropriate regulator* may seek information about the auditor's relevant experience and skill. The *appropriate regulator* will normally seek information by letter from an auditor who has not previously audited any *firm*. The *firm* should instruct the auditor to reply fully to the letter (and should not appoint an auditor who does not reply to the *appropriate regulator*). The *appropriate regulator* may also seek further information on a continuing basis from the auditor of a *firm* (see also the auditor's duty to cooperate under ■ SUP 3.8.2 R).

3.5 Auditors' independence

Purpose

- 3.5.1 **G** If an auditor is to carry out his duties properly, he needs to be independent of the *firm* he is auditing, so that he is not subject to conflicts of interest. Many *firms* are also subject to requirements under the Companies Act 1989, or the Companies Act 2006, the Building Societies Act 1986 or the Friendly Societies Act 1992 on auditor's independence.

Independence

- 3.5.2 **R** A *firm* must take reasonable steps to ensure that the auditor which it appoints is independent of the *firm*.
- 3.5.3 **R** If a *firm* becomes aware at any time that its auditor is not independent of the *firm*, it must take reasonable steps to ensure that it has an auditor independent of the *firm*. The *firm* must notify the *FCA* and the *PRA* (if it is a *PRA-authorised firm*) or the *FCA* (in all other cases) if independence is not achieved within a reasonable time.
- 3.5.4 **G** The *appropriate regulator* will regard an auditor as independent if his appointment or retention does not breach the ethical guidance in current issue from the auditor's recognised supervisory body on the appointment of an auditor in circumstances which could give rise to conflicts of interest.



3.6 Firms' cooperation with their auditors

3.6.1 **R** A firm must cooperate with its auditor in the discharge of his duties under this chapter.

Auditor's access to accounting records

3.6.2 **G** In complying with **■** SUP 3.6.1 R, a firm should give a right of access at all times to the firm's accounting and other records, in whatever form they are held, and documents relating to its business. A firm should allow its auditor to copy documents or other material on the premises of the firm and to remove copies or hold them elsewhere, or give him such copies on request.

3.6.3 **G** Section 341 of the Act (Access to books etc.) provides that an auditor of a firm appointed under **■** SUP 3.3.2 R:

- (1) has a right of access at all times to the firm's books, accounts and vouchers; and
- (2) is entitled to require from the firm's officers such information and explanations as he reasonably considers necessary for the performance of his duties as auditor.

3.6.4 **G** Section 389A of the Companies Act 1985 where applicable, otherwise sections 499 and 500 of the Companies Act 2006, section 79 of the Building Societies Act 1986 and section 75 of the Friendly Societies Act 1992 give similar rights to auditors of companies, building societies and friendly societies respectively.

3.6.5 **G** Section 413 (Protected items), under which no person may be required under the Act to produce, disclose or permit the inspection of protected items, is relevant to **■** SUP 3.6.1 R and **■** SUP 3.6.3 G.

Access and cooperation: appointed representatives, material outsourcing, employees

3.6.6 **G** In complying with **■** SUP 3.6.1 R, a firm should take reasonable steps to ensure that each of its appointed representatives or, where applicable, tied agents gives the firm's auditor the same rights of access to the books, accounts and vouchers of the appointed representative or tied agent and entitlement to information and explanations from the appointed representative's or tied

agent's officers as are given in respect of the *firm* by section 341 of the *Act* (see also ■ SUP 12.5.5 R (3)).

3.6.7 G In complying with ■ SUP 3.6.1 R, a *firm* should take reasonable steps to ensure that each of its suppliers under a *material outsourcing* arrangement gives the *firm's* auditor the same rights of access to the books, accounts and vouchers of the *firm* held by the supplier, and entitlement to information and explanations from the supplier's officers as are given in respect of the *firm* by section 341 of the *Act*.

3.6.8 G In complying with ■ SUP 3.6.1 R, a *firm* should take reasonable steps to ensure that all its employees cooperate with its auditor in the discharge of his duties under this chapter.

Provision of false or misleading information to auditors.....

3.6.9 G *Firms* and their officers, *managers* and *controllers* are reminded that, under section 346 of the *Act* (Provision of false or misleading information to auditor or actuary), knowingly or recklessly giving false information to an auditor appointed under ■ SUP 3.3.2 R constitutes an offence in certain circumstances, which could render them liable to prosecution. This applies even when an auditor is also appointed under an obligation in another enactment.



3.7 Notification of matters raised by auditor

Application

3.7.1 **G** ■ SUP 3.7 does not apply to an *incoming Treaty firm* which does not have a *top-up permission*.

Notification

3.7.2 **G** A *firm* should consider whether it should notify the *FCA* and the *PRA* (if it is a *PRA-authorised firm*) or the *FCA* (in all other cases) under *Principle 11* if:

- (1) the *firm* expects or knows its auditor will qualify his report on the audited annual financial statements or add an explanatory paragraph; or
- (2) the *firm* receives a written communication from its auditor commenting on *internal controls* (see also ■ SUP 15.3).

3.7.3 **G** [deleted]

3.8 Rights and duties of auditors

Purpose

- 3.8.1 **G** The auditor of a *firm* has various rights and duties to obtain information from the *firm* and both to enable and to require him to pass information to the *appropriate regulator* in specified circumstances. This section imposes or gives *guidance* on those rights and duties.

Cooperation with the appropriate regulator

- 3.8.2 **R** An auditor of a *firm* must cooperate with the *appropriate regulator* in the discharge of its functions under the *Act*.
- 3.8.3 **G** The *appropriate regulator* may ask the auditor to attend meetings and to supply it with information about the *firm*. In complying with **■ SUP 3.8.2 R**, the auditor should attend such meetings as the *appropriate regulator* requests and supply it with any information the *appropriate regulator* may reasonably request about the *firm* to enable the *appropriate regulator* to discharge its functions under the *Act*.
- 3.8.4 **R** An auditor of a *firm* must give any *skilled person* appointed by the *firm* or appointed by the *appropriate regulator* all assistance that person reasonably requires (see **■ SUP 5** and section 166(5) of the *Act* (Reports by skilled persons)).

Auditor's independence

- 3.8.5 **R** An auditor of a *firm* must be independent of the *firm* in performing his duties in respect of that *firm*.
- 3.8.6 **R** An auditor of a *firm* must take reasonable steps to satisfy himself that he is free from any conflict of interest in respect of that *firm* from which bias may reasonably be inferred. He must take appropriate action where this is not the case.
- 3.8.7 **G** **■ SUP 3.5.4 G** explains that an auditor whose appointment does not breach the ethical guidance in current issue from the auditor's recognised supervisory body will be regarded as independent by the *appropriate regulator*.

- 3.8.8** **G** **Auditors' rights to information**
 ■ SUP 3.6.1 R requires a *firm* to cooperate with its auditor. ■ SUP 3.6.3 G refers to the rights to information which an auditor is granted by the *Act*.
 ■ SUP 3.6.4 G refers to similar rights granted by the Companies Act 1985 or where applicable, the Companies Act 2006, the Building Societies Act 1986 and the Friendly Societies Act 1992.
- 3.8.9** **G** **Communication between the appropriate regulator, the firm and the auditor**
 Within the legal constraints that apply, the *appropriate regulator* may pass on to an auditor any information which it considers relevant to his function. An auditor is bound by the confidentiality provisions set out in Part XXIII of the *Act* (Public record, disclosure of information and cooperation) in respect of confidential information he receives from the *appropriate regulator*. An auditor may not pass on such confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates.
- 3.8.10** **G** **Auditors' statutory duty to report**
 (1) Auditors are subject to regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (Information given by auditor or actuary to a regulator). Section 343 and the regulations also apply to an auditor of an *authorised person* in his capacity as an auditor of a *person* who has *close links* with the *authorised person*.
 (2) These regulations oblige auditors to report certain matters to the *appropriate regulator*. Sections 342(3) and 343(3) of the *Act* provide that an auditor does not contravene any duty by giving information or expressing an opinion to the *appropriate regulator*, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the *appropriate regulator*. These provisions continue to have effect after the end of the auditor's term of appointment.
 In relation to Lloyd's, an effect of the *insurance market direction* set out at ■ SUP 3.1.13 D is that sections 342(5) and 343(5) of the *Act* (Information given by an auditor or actuary to a regulator) apply also to auditors appointed to report on the *insurance business* of *members*.
- 3.8.11** **R** **Termination of term of office, disqualification**
 An auditor must notify the *appropriate regulator* without delay if he:
 (1) is removed from office by a *firm*; or
 (2) resigns before his term of office expires; or
 (3) is not re-appointed by a *firm*.

- 3.8.12** **R** If an auditor ceases to be, or is formally notified that he will cease to be, the auditor of a *firm*, he must notify the *appropriate regulator* without delay:
- (1) of any matter connected with his so ceasing which he thinks ought to be drawn to the *appropriate regulator's* attention; or
 - (2) that there is no such matter.
- 3.8.13** **R** [deleted]
- 3.8.14** **G** [deleted]

3.10 Duties of auditors: notification and report on client assets

Application

- 3.10.1** **R** [deleted]
- 3.10.2** **R** An auditor of an *authorised professional firm* need not report under this section in relation to that *firm's* compliance with the *client money rules* in the *client money chapter* or the *debt management client money rules* if:
- (1) that *firm* is regulated by:
 - (a) the Law Society (England and Wales); or
 - (b) the Law Society of Scotland; or
 - (c) the Law Society of Northern Ireland; and
 - (2) that *firm* is subject to the rules of its *designated professional body* as specified in ■ CASS 7.10.28R (2) or ■ CASS 11.1.6 R (2) with respect to its *regulated activities*.
- 3.10.3** **R** ■ SUP 3.10.5 R(3) does not apply to an auditor of a *lead regulated firm* or an *incoming EEA firm*.

Client assets report: content

- 3.10.4** **R** An auditor of a *firm* must submit a client assets report addressed to the FCA which:
- (1) (a) states the matters set out in ■ SUP 3.10.5 R; and
 - (b) specifies the matters to which ■ SUP 3.10.9 R and ■ SUP 3.10.9A R refer; or
 - (2) if the *firm* claims not to hold *client money* or *custody assets*, states whether anything has come to the auditor's attention that causes him to believe that the *firm* held *client money* or *custody assets* during the period covered by the report.
- 3.10.4A** **R**
- (1) For the purpose of ■ SUP 3.10.4 R (1), an auditor must ensure that the report is prepared in accordance with the terms of a *reasonable assurance engagement*.
 - (2) For the purpose of ■ SUP 3.10.4 R (2), an auditor must ensure that the report is prepared in accordance with the terms of a *limited assurance engagement*.

3.10.5 **R** Client assets report

Whether in the auditor's opinion					
(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the <i>custody rules</i> (except CASS 6.7), the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> , the <i>claims management client money rules</i> and the <i>mandate rules</i> throughout the period ;				
(2)	the <i>firm</i> was in compliance with the <i>custody rules</i> (except CASS 6.7), the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> , the <i>claims management client money rules</i> and the <i>mandate rules</i> , at the date as at which the report has been made;				
(3)	in the case of an <i>investment management firm</i> , <i>personal investment firm</i> , a <i>UCITS firm</i> , <i>securities and futures firm</i> , firm acting as trustee or depositary of an AIF, firm acting as trustee or depositary of a UCITS or IFPRU investment firm or BIPRU firm, when a <i>subsidiary</i> of the <i>firm</i> is during the period a <i>nominee company</i> in whose name <i>custody assets</i> of the <i>firm</i> are registered during the period, that <i>nominee company</i> has maintained throughout the period systems for the custody, identification and control of <i>custody assets</i> which: <table border="1" data-bbox="654 996 1388 1220"> <tbody> <tr> <td>(a)</td> <td>were adequate; and</td> </tr> <tr> <td>(b)</td> <td>included reconciliations at appropriate intervals between the records maintained (whether by the <i>firm</i> or the <i>nominee company</i>) and statements or confirmations from <i>custodians</i> or from the <i>person</i> who maintained the record of legal entitlement; and</td> </tr> </tbody> </table>	(a)	were adequate; and	(b)	included reconciliations at appropriate intervals between the records maintained (whether by the <i>firm</i> or the <i>nominee company</i>) and statements or confirmations from <i>custodians</i> or from the <i>person</i> who maintained the record of legal entitlement; and
(a)	were adequate; and				
(b)	included reconciliations at appropriate intervals between the records maintained (whether by the <i>firm</i> or the <i>nominee company</i>) and statements or confirmations from <i>custodians</i> or from the <i>person</i> who maintained the record of legal entitlement; and				
(4)	if there has been a <i>secondary pooling event</i> during the period, the <i>firm</i> has complied with the <i>rules</i> in CASS 5.6 and CASS 7A (Client money distribution), CASS 11.13 (<i>debt management client money distribution rules</i>) and CASS 13.11 (claims management client money distribution rules) in relation to that pooling event.				

3.10.5A **R** In relation to a client assets report provided in accordance with **R** SUP 3.10.4 R, an auditor must ensure that it:

- (1) is submitted in the form prescribed by **R** SUP 3 Annex 1 R; and
- (2) is signed on behalf of the audit firm by the individual with primary responsibility for a *firm's* client assets report and in that individual's own name.

3.10.5B **G** **R** SUP 3.10.4 R provides that an auditor must ensure that a client assets report is prepared in accordance with the terms of, as the case may be, a *reasonable assurance engagement* or a *limited assurance engagement*. However, the FCA also expects an auditor to have regard, where relevant, to material published by the Financial Reporting Council that deals specifically with the client assets report which the auditor is required to submit to the

FCA. In the FCA's view, a client assets report that is prepared in accordance with that material is likely to comply with ■ SUP 3.10.4 R and ■ SUP 3.10.5 R where that report is prepared for a firm within the scope of the material in question.

- 3.10.5C **R** (1) An auditor must ensure that the information provided to it by a firm in accordance with ■ SUP 3.11.1 G is included in the client assets report.
- (2) If by the date at which the report is due for submission in accordance with ■ SUP 3.10.7 R or ■ SUP 3.10.8A R an auditor has not received the information prescribed in ■ SUP 3.11.1 G it must submit the report without that information, together with an explanation for its absence.

Client assets report: period covered

- 3.10.6 **R** The period covered by a report under ■ SUP 3.10.4 R must end not more than 53 weeks after the period covered by the previous report on such matters, or, if none, after the firm is authorised or becomes subject to ■ SUP 3.11 and its auditor becomes subject to ■ SUP 3.10.

Client assets report: timing of submission

- 3.10.7 **R** An auditor must deliver a client assets report under ■ SUP 3.10.4 R to the FCA within four months from the end of each period covered, unless it is the auditor of a firm falling within category (10) of ■ SUP 3.1.2 R.

[Note: article 8 of the MiFID Delegated Directive]

- 3.10.7A **G** [deleted]

- 3.10.8 **R** (1) If an auditor expects that it will fail to comply with ■ SUP 3.10.7 R, it must no later than the end of the four month period in question:
 - (a) notify the FCA that it expects that it will be unable to deliver a client assets report by the end of that period; and
 - (b) ensure that the notification in (a) is accompanied by a full account of the reasons for its expected failure to comply with ■ SUP 3.10.7 R.
- (2) If an auditor fails to comply with ■ SUP 3.10.7 R, it must promptly:
 - (a) notify the FCA of that failure; and
 - (b) ensure that the notification in (a) is accompanied by a full account of the reasons for its failure to comply with ■ SUP 3.10.7 R.

- 3.10.8A **R** The auditor of a firm falling within category (10) of ■ SUP 3.1.2 R must deliver a report under ■ SUP 3.10.4 R:

- (1) to the firm so as to be received within four months of the end of each period covered; and

(2) to the *FCA* upon request within six years of the end of the period covered.

3.10.8B **G** The rights and duties of auditors are set out in **■ SUP 3.8** (Rights and duties of all auditors) and **■ SUP 3.10** (Duties of auditors: notification and report on client assets). **■ SUP 3.8.10 G** also refers to the auditor's statutory duty to report certain matters to the *FCA* imposed by regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (information given by auditor or actuary to a regulator). An auditor should bear these rights and duties in mind when carrying out *client* asset report work, including whether anything should be notified to the *FCA* immediately.

3.10.8C **G** It is the responsibility of an *insurance intermediary's* senior management to determine, on a continuing basis, whether the *firm* is an *exempt insurance intermediary* for the purposes of this requirement and to appoint an auditor if management determines the *firm* is no longer exempt. **■ SUP 3.7** (amplified by **■ SUP 15**) sets out what a firm should consider when deciding whether it should notify the *FCA* of matters raised by its auditor.

3.10.8D **R** An auditor must:

- (1) deliver to a *firm* a draft of its client assets report such that the *firm* has an adequate period of time to consider the auditor's findings and to provide the auditor with comments of the kind to which **■ SUP 3.11.1 G** refers; and
- (2) unless it is the auditor of a *firm* falling within category (10) of **■ SUP 3.1.2 R**, deliver to the *firm* a copy of the final report at the same time as it delivers that report to the *FCA* in accordance with **■ SUP 3.10.7 R**.

Client assets report: requirements not met or inability to form opinion

3.10.9 **R** If the client assets report under **■ SUP 3.10.4 R** states that one or more of the applicable requirements described in **■ SUP 3.10.5 R(1)** to **■ (4)** has or have not been met, the auditor must specify in the report each of those requirements and the respects in which it has or they have not been met.

3.10.9A **R**

- (1) Whether or not an auditor concludes that one or more of the requirements specified in **■ SUP 3.10.5 R(1)** to **■ (4)** has or have been met, the auditor must ensure that the client assets report identifies each individual *rule* in respect of which a breach has been identified.
- (2) If an auditor does not identify a breach of any individual *rule*, it must include a statement to that effect in the client assets report.

3.10.9B **R** For the purpose of **■ SUP 3.10.9 R** and **■ SUP 3.10.9A R**, an auditor must ensure that the information prescribed under those *rules* is submitted using,

respectively, Part 1 (Auditor’s Opinion) and Part 2 (Breaches Schedule) of ■ SUP 3 Annex 1 R.

- 3.10.9C **G**
 - (1) The FCA expects that the list of breaches will include every breach of a *rule* in CASS insofar as that *rule* is within the scope of the client assets report and is identified in the course of the auditor’s review of the period covered by the report, whether identified by the auditor or disclosed to it by the *firm*, or by any third party.
 - (2) For the purpose of determining whether to qualify its opinion or express an adverse opinion, the FCA would expect an auditor to exercise its professional judgment as to the significance of a *rule* breach, as well as to its context, duration and incidence of repetition. The FCA would expect an auditor to consider the aggregate effect of any breaches when judging whether a *firm* had failed to comply with the requirements described in ■ SUP 3.10.5 R (1) to ■ (4).

3.10.10 **R** If an auditor is unable to form an opinion as to whether one or more of the applicable requirements described in ■ SUP 3.10.5 R have been met, the auditor must specify in the report under ■ SUP 3.10.4 R those requirements and the reasons why the auditor has been unable to form an opinion.

3.10.11 **G** [deleted]

Method of submission of reports

3.10.12 **R** An auditor of a *firm* must submit a report under ■ SUP 3.10.4 R in accordance with the rules in ■ SUP 16.3.6 R to ■ SUP 16.3.13 R as if those *rules* applied directly to the auditor.

Service of Notice Regulations

3.10.13 **G** The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) contain provisions relating to the service of documents on the FCA. They do not apply to reports required by ■ SUP 3.10 because of the specific provisions in ■ SUP 3.10.12 R.

3.11 Review of auditor's client assets report

- 3.11.1** **G** A *firm* should ensure that:
- (1) it considers the draft client assets report provided to the *firm* by its auditor in accordance with ■ SUP 3.10.8DR (1) in order to provide an explanation of:
 - (a) the circumstances that gave rise to each of the breaches identified in the draft report; and
 - (b) any remedial actions that it has undertaken or plans to undertake to correct those breaches; and
 - (2) the explanation provided in accordance with (1):
 - (a) is submitted to its auditor in a timely fashion and in any event before the auditor is required to deliver a report to the *FCA* in accordance with ■ SUP 3.10.7 R or to the *firm* in accordance with ■ SUP 3.10.8A R as the case may be; and
 - (b) is recorded in the relevant field in the draft report submitted to it by its auditor.
- 3.11.2** **R** A *firm* must ensure that the final client assets report delivered to it in accordance with ■ SUP 3.10.8A R or ■ SUP 3.10.8DR (2) is reported to that *firm's* governing body.
- 3.11.3** **G** The *FCA* expects a *firm* to use the client assets report as a tool to evaluate the effectiveness of the systems that it has in place for the purpose of complying with requirements to which ■ SUP 3.10.5 R refers. Accordingly, a *firm* should ensure that the report is integrated into its risk management framework and decision-making.
- 3.11.4** **G** ■ SUP 3.4.2 R provides that a *firm* must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its functions. The *FCA* expects a *firm* to keep under review the adequacy of the skill, resources and experience of its auditor and should critically assess the content of the client assets report as part of that ongoing review.

SUP 3 Annex 1

Auditor's client assets report - SUP 3 Annex 1

