

Supervision

SUP TP 7 Financial Services (Banking Reform) Act 2013: Approved persons in Solvency II firms

Purpose of SUP TP 7

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| 7.1.1 | G | <p>SUP TP 7 has transitional and grandfathering provisions relating to the changes to the <i>approved persons</i> regime made by Part Four of the Financial Services (Banking Reform) Act 2013. The Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015 (as amended):</p> <ol style="list-style-type: none"> (1) requires all <i>Solvency II firms</i> before 8 February 2016 to give a notice to the <i>appropriate regulator</i> in respect of each <i>person</i> for whom that regulator has granted a pre-implementation approval in relation to the <i>firm</i>. The notice must specify the post-implementation functions that the <i>person</i> will perform on and after 7 March 2016, and each of these notified functions must be an equivalent function to a pre-implementation function which the person has approval to perform; (2) allows the <i>FCA</i> to specify classes of persons in respect of whom a notice is not required to be given to the <i>FCA</i> and in SUP TP 7.2.1R the <i>FCA</i> specifies that class of persons; (3) allows the <i>FCA</i> to make rules specifying the post-implementation <i>controlled functions</i> which are to be treated as equivalent to a pre-implementation <i>controlled function</i> for the purposes of that Order. In SUP TP 7.2.2R the <i>FCA</i> specifies the post-implementation <i>FCA</i> functions which are equivalent to <i>PRA</i> functions pre-implementation. The <i>PRA</i> has separately, in <i>PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions</i>, rule 6, specified equivalent post-implementation <i>PRA</i> functions; (4) provides that the pre-implementation approval has effect after 7 March 2016, without the need for re-application, if the notice in (1) is given before 7 March 2016 (whether or not that notice was given before 8 February 2016) and certain conditions in article 3 of the Order are met; and (5) applies to <i>large non-directive insurers</i>. <i>Large non-directive insurers</i> are treated as, and included within the definition of, <i>Solvency II firms</i> by the <i>FCA</i> for SUP TP 7. Therefore <i>large non-directive insurers</i> must follow the requirements set out in SUP TP 7. (6) applies to <i>Swiss general insurers</i>. <i>Swiss general insurers</i> are in the <i>large non-directive insurers</i> sector of the <i>PRA Rulebook</i> and the <i>PRA</i> applies to them, in relation to their <i>controlled functions</i>, provisions equivalent to those applying to third country branches in the <i>Solvency II firms</i> sector of the <i>PRA Rulebook</i>. The <i>FCA</i> includes them as third country undertakings of <i>Solvency II firms</i> and so they must follow the requirements for <i>Solvency II firms</i> set out in SUP TP 7. |
| 7.1.2 | R | <p>SUP TP 7 applies to:</p> <ol style="list-style-type: none"> (1) <i>Solvency II firms</i>; and (2) <i>approved persons</i> of <i>Solvency II firms</i>. |

7.1.3	G	There is a glossary of terms in SUP TP 7.6.1. Those terms are not defined in the <i>Glossary</i> .
		Grandfathering of approved persons: requirement to give notice and equivalence of old and new functions
7.2.1	R	(1) A <i>Solvency II firm</i> is not required to give notice to the <i>FCA</i> for the purposes of article 2(1) of the Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015 in relation to any <i>approved person</i> for whom the <i>FCA</i> granted a pre-implementation approval in relation to that <i>firm</i> and whose role will not change post-implementation.
		(2) The exception to (1) is <i>approved persons</i> : (a) for whom the <i>FCA</i> granted a pre-implementation approval to perform the <i>significant management function</i> (CF29); and (b) who are proposing to perform one of the <i>PRA</i> “senior insurance management functions” in column 2 of any of the rows relating to senior management functions (CF29) in the Table of Functions for Grandfathering in <i>PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions</i> , rule 6, in relation to whom a <i>Solvency II firm</i> is required to give notice to the <i>FCA</i> for the purposes of article 2(1). [Note: See article 2(2) of the Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015 (SI 2015/492)]
7.2.2	R	Each pre-implementation controlled function in the first column of the table in SUP TP 7.2.3R is specified as an equivalent function to the <i>FCA controlled functions</i> listed in column two of the same row of that table. [Note: See article 17(1)(a) of the Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015 (SI 2015/492)]
7.2.3	R	Table: Old <i>PRA</i> controlled functions mapped onto new <i>FCA</i> ones

Part 1: Solvency II firms other than insurance special purpose vehicles and third-country insurance and reinsurance undertakings

Current controlled function	New FCA controlled function
PRA Director function (CF1)	FCA Director function (CF1) (see Note 1)
PRA Director of unincorporated association (CF5)	FCA Director of unincorporated association (CF5) (see Note 1) (executive only) Chair of the nomination committee function (CF 2a) (see Note 2) Chair of the with-profits committee function (CF 2b) (see Note 2)
PRA Small friendly society function (CF6)	FCA Small friendly society function (CF6) (see Note 1) (executive only) Chair of the nomination committee function (CF2a) (see Note 2) Chair of the with-profits committee function (CF2b) (see Note 2)
PRA Non-Executive Director function (CF2)	Chair of the nomination committee function (CF 2a) (see Note 2)
PRA Non-Executive Director function (CF2)	Chair of the with-profits committee function (CF 2b) (see Note 2)

Note 1: FCA controlled functions CF1, CF5 and (for *large non-directive insurers*) CF 6, above, apply only where the person is not otherwise grandfathered to perform any post-implementation PRA function, as set out in the Table of Equivalent Functions for Grandfathering in the PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions, rule 6.

Note 2: FCA controlled functions CF2a and CF2b apply only where the person is not otherwise grandfathered to perform a post-implementation PRA function which is equivalent to the pre-implementation PRA CF2 function, as set out in the Table of Equivalent Functions for Grandfathering in the PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions, rule 6.

Part 2: Insurance special purpose vehicles

Current controlled function	New FCA controlled function
PRA Director function (CF1)	FCA Director function (CF1) (see Note 1)
PRA Non-Executive Director function (CF2)	Chair of the nomination committee function (CF 2a) (see Note 2)
PRA Non-Executive Director function (CF2)	Chair of the with-profits committee function (CF 2b) (see Note 2)
PRA Systems and Controls function (CF 28)	FCA systems and controls function (CF 28) (conduct perspective only) (see Note 3)

Note 1: FCA controlled function CF1, above, applies only where the person is not otherwise grandfathered to perform any post-implementation PRA function, as set out in the Table of Equivalent Functions for Grandfathering in the PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions, rule 6.

Note 2: FCA controlled functions CF2a and CF2b apply only where the person is not otherwise grandfathered to perform a post-implementation PRA function which is equivalent to the pre-implementation PRA CF2 function, as set out in the Table of Equivalent Functions for Grandfathering in the PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions, rule 6.

Note 3: FCA controlled function CF28, applies only where the person is not otherwise grandfathered to perform any post-implementation PRA function, as set out in the Table of Equivalent Functions for Grandfathering in the PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions, rule 6.

Part 3: Third-country insurance and reinsurance undertakings

Note 1: FCA controlled function CF1, below, applies only where the person is not otherwise grandfathered to perform any post-implementation PRA function, as set out in the Table of Equivalent Functions for Grandfathering in the PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions, rule 6.

Note 2: There are no CF2a or CF2b functions in third country undertakings.

Note 3: FCA controlled functions CF28 and CF51 apply only where the person is not otherwise grandfathered to perform any post-implementation PRA function, as set out in the Table of Equivalent Functions for Grandfathering in the PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions, rule 6.

Current controlled function	New FCA controlled function
PRA Director function (CF1)	FCA Director function (CF1) (See Note 1)
PRA Actuary function holder (CF 12)	Actuarial conduct function (third country) (CF 51) (conduct perspective only) (see Note 3)
PRA Systems and Controls function (CF 28)	FCA systems and controls function (CF 28) (conduct perspective only) (see Note 3)

7.2.4	G	In TP 7.2.3R, where a <i>person</i> is grandfathered to perform a post-implementation <i>PRA controlled function</i> , as set out in the Table of Equivalent Functions for Grandfathering in PRA Rulebook: Solvency II firms: Senior Insurance Managers Regime Transitional Provisions, rule 6, (or in relation to FCA functions CF2a or 2b, a <i>PRA</i> function equivalent to the pre-implementation PRA CF2
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		function) then, if they would also be performing an <i>FCA</i> function referred to in column 2 of the Table in TP 7.2.3R, the <i>FCA</i> function is disapplied and instead absorbed into that <i>PRA</i> function. This absorption happens by virtue of its inclusion in <i>PRA</i> Rulebook: Solvency II firms: Senior Insurance Managers Regime – Transitional Provisions 6, and the <i>firm</i> is required to identify the absorbed function on the person's scope of responsibilities document described in SYSC 2.2.4R, when that record is produced. The exception to this is CF28 and CF51 <i>FCA</i> post-implementation functions which are not absorbed into <i>PRA controlled functions</i> .
7.2.5	R	<i>Large non-directive firms</i> must read references to the 'Solvency II Firms' part of the <i>PRA</i> Rulebook as if they were references to the corresponding part of the <i>PRA</i> Rulebook applicable to <i>large non-directive insurers</i> .
7.2.5A	R	<i>Swiss general insurers</i> must read references to the 'Solvency II firms' part of the <i>PRA</i> Rulebook as if they were references to the corresponding part of the <i>PRA</i> Rulebook applicable to <i>large non-directive insurers</i> .
		Grandfathering of approved persons: forms
7.3.1	D	This section (SUP TP 7.3) applies to a notification by a <i>firm</i> under the articles of the Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015 listed in the table in SUP TP 7.3.2D.
7.3.2	D	Table: Grandfathering notifications

Purpose of notification	Article of Order
(1) Notification of pre-implementation approval	Article 2(1), article 5
(2) Amendments to grandfathering notification in (1)	Article 6
(3) Notification of applications for approval	Article 11
(4) Amendment to grandfathering notification in (1) to add a new <i>candidate</i>	Article 14
(5) Any other amendment to grandfathering notification in (1)	Article 14

7.3.3	D	(1) A <i>firm</i> must make any notification in row (1) and (3) of the table in SUP TP 7.3.2D in accordance with SUP 10A.16 (How to apply for approval and give notifications) as applicable to <i>insurers</i> .
		(2) A <i>firm</i> must use the version of the grandfathering notification form made available online at fca.org.uk on the <i>FCA</i> and <i>PRA</i> 's <i>ONA</i> electronic system (known as Connect) and which is based on the version found in SUP TP 7.7.1D.
		(3) If the online version is not yet available, a <i>firm</i> is not required to submit the notification form but, if it chooses to do so, it must use the version found in SUP TP 7.7.1D and submit it in accordance with SUP 15.7.4R to SUP 15.7.9G.
		(4) A <i>firm</i> must make any notification in rows (2), (4) and (5) by updating the notification form online at fca.org.uk on the <i>FCA</i> and <i>PRA</i> 's <i>ONA</i> electronic system (known as Connect).
		(5) For <i>approved persons</i> in <i>firms</i> which are carrying out <i>PRA controlled function</i> CF1 pre-implementation and who will continue to carry out <i>FCA controlled function</i> CF1 post-implementation (and no <i>PRA controlled functions</i>), and there are no other changes to the functions they carry out, notification and relevant information in relation to the <i>FCA</i> CF1 function is deemed to have been given to the <i>FCA</i> , unless the <i>firm</i> has submitted a Form C.
		(6) <i>Large non-directive insurers</i> must follow the directions for notification set out in SUP TP 8.3.3D instead of SUP TP 7.3.3D, as if SUP TP 8.3.3D applied to <i>large non-directive insurers</i> .

		(7)	<i>Swiss general insurers</i> must follow the directions for notification set out in SUP TP 8.3.3D instead of SUP 7.3.3D, as if SUP TP 8.3.3D applied to <i>Swiss general insurers</i> .
7.3.4	G		If a <i>firm</i> notifies an application for approval and that application is refused before the commencement date, the <i>firm</i> should update the notification under row (5) of the table in SUP TP 7.3.2D.
7.3.5	G		If a <i>firm</i> gives a grandfathering notification for an <i>approved person</i> and that <i>approved person</i> leaves the <i>firm</i> or gives up performing some of their <i>controlled functions</i> , the <i>firm</i> should notify the <i>appropriate regulator</i> using Form C as well as under SUP TP 7.
Applications of approved persons to take effect from the 7 March 2016			
7.4.1	D	(1)	A <i>firm</i> may apply for the FCA's approval under section 59 of the Act (Approval for particular arrangements) for the performance of a <i>controlled function</i> which comes into force on 7 March 2016.
		(2)	Any application must be made between the 1 January 2016 and the day before 7 March 2016.
		(3)	Any such application is made on the basis that it is treated as being made on the 7 March 2016.
		(4)	The application must be made using the version of Form A or Form E applicable from 7 March 2016 and in accordance with the other requirements to be in effect on that date.
7.4.2	G		The Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015 will not apply to an application under SUP TP 7.4.1D.
7.4.3	G		A <i>firm</i> does not have to make an application under SUP TP 7.4.1D. It can make an application between the rule-making date and the 7 March 2016 under the <i>rules</i> and directions in force at the time of the application. The Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015 will apply to such applications.
Application of ongoing requirements to documents submitted as part of grandfathering			
7.5	R	(1)	The requirements of SUP 10A apply to approvals that are continued in force by the Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015, as they do to applications made after the commencement date.
		(2)	The requirements of SUP 10A apply to an application for approval that is grandfathered under the Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015 and has not been finally determined before the 7 March 2016, as they do to applications made after the commencement date.
		(3)	This paragraph is subject to the other provisions of SUP TP 7.
7.6.1	R		Glossary of terms used in SUP TP 7
pre-implementation controlled functions			an <i>FCA controlled function</i> or a <i>PRA controlled function</i> in force immediately before the 7 March 2016
rule-making date			in accordance with The Financial Services (Banking Reform) Act 2013 Transitional and Savings Provisions Order 2015, the date both regulators make rules under article 17 of the Order or, if made on different days, the last day on which the rules are made. Under the Order the rule making date for <i>large non-directive insurers</i> is the same as that for <i>small non-directive insurers</i> .
<i>Solvency II firm</i>			a <i>firm</i> which is any of:
		(a)	a "UK Solvency II firm" as described in chapter 2 of the PRA Rulebook: Solvency II Firms: Insurance General Application;

- (b) a third-country insurance or reinsurance undertaking, namely an undertaking that would require authorisation as an insurance or reinsurance undertaking under article 14 of the *Solvency II Directive* if its head office was situated in the *EEA*;
 - (c) an undertaking authorised in accordance with a non-UK *EEA State's* measures which implement article 14 of the *Solvency II Directive*;
 - (d) the *Society* and, separately, a *managing agent*;
 - (e) an *insurance special purpose vehicle*; and
 - (f) a *large non-directive insurer*;
- but excluding any *firm* to the extent that rule 2 of the PRA Rulebook: Solvency II Firms: Transitional Measures disappplies relevant rules implementing the *Solvency II Directive*.

[Note: References to rules in SYSC and SUP 10A are to those rules as they will be in force on the 7 March 2016.

7.7.1 D Form K: Grandfathering notification

Solvency II firms (not including Swiss general insurers):

Large non-directive insurers and Swiss general insurers: *Swiss general insurers* must use the forms for *large non-directive insurers* not the form for *Solvency II firms*