Senior management arrangements, Systems and Controls
Senior management arrangements, Systems and Controls

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  19C.1 General application and purpose
  19C.2 General requirement
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  19D.1 Application and purpose
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  19E.1 Application
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  19F.1 MiFID remuneration incentives
  19F.2 IDD remuneration incentives

SYSC 20  Reverse stress testing
  20.1 Application and purpose
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SYSC 21  Risk control: additional guidance
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SYSC 22  Regulatory references
  22.1 Application
  22.2 Getting, giving and updating references: the main rules
  22.3 Drafting the reference and the request for a reference
  22.4 Drafting the reference: detailed requirements for full scope regulatory reference firms
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**SYSC 23** Senior managers and certification regime: Introduction and classification

- **23.1** Purpose
- **23.2** Definitions and types of firms
- **23.3** Overview of the senior managers and certification regime
- **23 Annex 1** Definition of SMCR firm and different types of SMCR firms

**SYSC 24** Senior managers and certification regime: Allocation of prescribed responsibilities

- **24.1** Application
- **24.2** Allocation of FCA-prescribed senior management responsibilities: Main allocation rules
- **24.3** Who prescribed responsibilities should be allocated to
- **24 Annex 1** Which FCA-prescribed senior management responsibilities apply to which kind of firm

**SYSC 25** Senior managers and certification regime: Management responsibilities maps and handover procedures and material

- **25.1** Application and purpose
- **25.2** Management responsibilities maps: Main rules
- **25.3** [This part has been left blank deliberately]
- **25.4** Guidance about what should be in a management responsibilities map
- **25.5** Management responsibilities map should be a single document
- **25.6** Management responsibilities maps: Material only relevant to EEA SMCR firms
- **25.7** Guidance about SYSC 25 Annex 1G
- **25.8** Management responsibilities maps: Records
- **25.9** Handover procedures and material
- **25 Annex 1** Examples of the business activities and functions of an SMCR firm

**SYSC 26** Senior managers and certification regime: Overall and local responsibility

- **26.1** Application
- **26.2** Purpose
- **26.3** Main rules
- **26.4** Exclusions
- **26.5** Guidance on territorial scope
- **26.6** Meaning of local and overall responsibility: General
- **26.7** Meaning of local and overall responsibility: Reporting to the governing body
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26.8 Meaning of local and overall responsibility: Not reporting to the governing body
26.9 Who functions should be allocated to
26.10 Group management arrangements and outsourcing
26.11 Link between this chapter and other parts of the senior managers regime

SYSC 27 Senior managers and certification regime: Certification regime

27.1 Application and purpose
27.2 Requirements of the certification regime
27.3 Territorial scope
27.4 General material about the scope of the certification regime
27.5 Exclusions for emergency and temporary appointments
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27.7 Specification of functions
27.8 Definitions of the FCA certification functions
27.9 Material relating to several FCA certification functions
27.10 Annex 1 Examples of how the temporary UK role rule in SYSC 27.5.3R (the 30-day rule) works

SYSC 28 Insurance distribution: specific knowledge, ability and good repute requirements

28.1 Minimum knowledge, ability and good repute requirements for carrying out insurance distribution activities
28.2 Knowledge and ability requirements
28.3 Good repute
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28.5 Other requirements to consider

Transitional provisions and Schedules

TP 2 Firms other than common platform firms, insurers, managing agents and the Society
TP 3 Remuneration codes
TP 5 Financial Services (Banking Reform) Act 2013: Certification and regulatory references
TP 6 Transitional Provision 6
TP 7 Bank of England and Financial Services Act 2016: Certification and regulatory references
Sch 1 Record keeping requirements
Sch 2 Notification requirements
Sch 3 Fees and other required payments
Sch 4 Powers exercised
Sch 5 Rights of action for damages
Sch 6 Rules that can be waived
Chapter 1

Application and purpose
[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering:


The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in ▼ SYSC 1 Annex 1 and in the text of each chapter.

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable chapters</th>
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<tbody>
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<td><strong>Insurer, UK ISPV</strong></td>
<td>Chapters 2, 3, 12 to 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28</td>
</tr>
<tr>
<td><strong>Managing agent</strong></td>
<td>Chapters 2, 3, 11, 12, 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28</td>
</tr>
<tr>
<td><strong>Society</strong></td>
<td>Chapters 2, 3, 12, 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28</td>
</tr>
<tr>
<td><strong>Any other SMCR firm</strong></td>
<td>Chapters 4 to 12, 18, 19D, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28</td>
</tr>
<tr>
<td><strong>Every other firm</strong></td>
<td>Chapters 4 to 12, 18, 19D, 19F.2, 21, 22, 28</td>
</tr>
</tbody>
</table>

Firms that ▼ SYSC 19D applies to should also refer to the Remuneration part of the PRA Rulebook.

The application of this sourcebook to specific firms that are not PRA-authorised persons is summarised at a high level in the following table. The detailed application is cut back in ▼ SYSC 1 Annex 1 and in the text of each chapter.

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable chapters</th>
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<td><strong>Full-scope UK AIFM</strong></td>
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<tr>
<td><strong>BIPRU firm (including a third-country BIPRU firm)</strong></td>
<td>Chapters 4 to 10, 12, 18, 19C, 19F.2, 20, 21, 22, 28</td>
</tr>
<tr>
<td><strong>IFPRU investment firm (including an overseas firm that would have been an IFPRU invest</strong></td>
<td>Chapters 4 to 10, 12, 18, 19A, 19F.2, 20, 21, 22, 28</td>
</tr>
</tbody>
</table>
The provisions in SYSC should be read in conjunction with GEN 2.2.23 R to GEN 2.2.25 G. In particular:

(1) [deleted]

(2) Provisions made by the FCA, and by the PRA in the PRA Rulebook, may be applied by both regulators to PRA-authorised persons. Such provisions are applied by each regulator to the extent of its powers and regulatory responsibilities.

(3) For Solvency II firms, the FCA considers that the requirements and guidance in Chapters 2, 3, 12 to 18, 19F.2, 21, 22 and 28 of SYSC are not inconsistent with:

(a) the parts of the PRA Rulebook implementing the governance provisions in the Solvency II Directive (articles 40 to 49);

(b) the Solvency II Regulation (EU) 2015/35 of 10 October 2014 (articles 258 to 275), or

(c) EIOPA guidelines on systems of governance dated 28 January 2015.

In most cases, there is no direct overlap with those provisions because the SYSC requirements are directed at FCA conduct requirements not expressly covered by or under the Solvency II Directive. Where there is a direct overlap with SYSC rules and guidance, the FCA will take the Solvency II Directive derived requirements and guidelines into account and will interpret the SYSC rules and guidance in a way that avoids inconsistency. The definition of Solvency II firm includes (for SYSC) large non-directive insurers because the PRA have applied certain Solvency II derived requirements to those firms. Where SYSC refers to the PRA Rulebook applicable to Solvency II firms, large non-directive insurers should read those references as if they were references to the corresponding part of the PRA Rulebook applicable to large non-directive insurers.
1.2 Purpose

The purposes of SYSC are:

(1) to encourage firms' directors and senior managers to take appropriate practical responsibility for their firms' arrangements on matters likely to be of interest to the FCA because they impinge on the FCA's functions under the Act;

(2) to increase certainty by amplifying Principle 3, under which a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;

(3) to encourage firms to vest responsibility for effective and responsible organisation in specific directors and senior managers; and

(4) to create a common platform of organisational and systems and controls requirements for all firms.

(5) [deleted]
1.4 Application of SYSC 11 to 28

What?

1.4.1 The application of each of chapters ■ SYSC 11 to ■ SYSC 21 is set out in those chapters and in ■ SYSC 1.4.1A R.

1.4.1-A The application of each of the chapters ■ SYSC 19F.2, ■ SYSC 22 to ■ SYSC 28 is set out in those chapters.

1.4.1A ■ SYSC 12, ■ SYSC 19A, ■ SYSC 19D, ■ SYSC 20 and ■ SYSC 21 do not apply to a firm in relation to its carrying on of auction regulation bidding.

1.4.1B Apart from ■ SYSC 12, ■ SYSC 19A, ■ SYSC 19D, ■ SYSC 20 and ■ SYSC 21 which are disapplied by ■ SYSC 1.4.1A R, the other chapters of ■ SYSC 11 to ■ SYSC 17 do not apply in relation to a firm’s carrying on of auction regulation bidding because they only apply to an insurer. ■ SYSC 18 provides guidance on the Public Interest Disclosure Act.

Actions for damages

1.4.2 A contravention of a rule in ■ SYSC 11 to ■ SYSC 21, ■ SYSC 22.8.1R, ■ SYSC 22.9.1R or ■ SYSC 23 to ■ SYSC 28 does not give rise to a right of action by a private person under section 138D of the Act (and each of those rules is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).
### Detailed application of SYSC

<table>
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<tr>
<td>1.1</td>
<td><strong>Who?</strong> SySC 2 and SYSC 3 only apply to an insurer, a UK ISPV, a managing agent and the Society except that:</td>
</tr>
<tr>
<td></td>
<td>(1) for an <em>incoming EEA firm</em> or an <em>incoming Treaty firm</em>:</td>
</tr>
<tr>
<td></td>
<td>(a) SySC 2.1.1 R and SySC 2.1.2 G do not apply;</td>
</tr>
<tr>
<td></td>
<td>(b) SySC 2.1.3 R to SySC 2.2.3 G apply, but only in relation to allocation of the function in SYSC 2.1.3 R (2) and only in so far as responsibility for the matter in question is not reserved by an EU instrument to the firm’s Home State regulator; and</td>
</tr>
<tr>
<td></td>
<td>(c) SySC 3 applies, but only in so far as responsibility for the matter in question is not reserved by an EU instrument to the firm’s Home State regulator;</td>
</tr>
<tr>
<td></td>
<td>(2) for an <em>incoming EEA firm</em> which has permission only for cross border services and which does not carry on regulated activities in the United Kingdom, SySC 2 and SySC 3 do not apply;</td>
</tr>
<tr>
<td></td>
<td>(3) for an <em>incoming Treaty firm</em> which has permission only for cross border services and which does not carry on regulated activities in the United Kingdom, SySC 3.2.6A R to SySC 3.2.6J G do not apply;</td>
</tr>
<tr>
<td></td>
<td>(4) for a sole trader:</td>
</tr>
<tr>
<td></td>
<td>(a) SySC 2 applies but only if he employs any person who is required to be approved under section 59 of the Act (Approval for particular arrangements);</td>
</tr>
<tr>
<td></td>
<td>(b) SySC 3.2.6I R does not apply if he has no employees; and</td>
</tr>
<tr>
<td></td>
<td>(5) SySC 2 and SySC 3 do not apply to an <em>incoming ECA provider</em> acting as such.</td>
</tr>
<tr>
<td></td>
<td>(6) Except as provided for in (7), SySC 2 and SySC 3 do not apply to a firm in relation to benchmark activities.</td>
</tr>
<tr>
<td></td>
<td>(7) SySC 2 and SySC 3 continue to apply to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.</td>
</tr>
<tr>
<td>1.1A G</td>
<td>(1) As a consequence of the <em>benchmarks regulation</em>, the <em>regulated activity</em> referred to in SySC 1 Annex 1.1R(7) will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances).</td>
</tr>
<tr>
<td></td>
<td>(2) The effect of SySC 1 Annex 1.1R(7) is that SYSC 2 and SYSC 3 continue to apply to firms which still have permission to carry on the <em>regulated activity</em> in SySC 1 Annex 1.1R(7) when carrying on that activity.</td>
</tr>
<tr>
<td>1.2 G</td>
<td>(1) Question 12 in SySC 2.1.6 G contains guidance on SySC 1 Annex 1.1.1R(1)(b) and SySC 1 Annex 1.1.1R(1)(c).</td>
</tr>
</tbody>
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## SYSC 1 : Application and purpose

### Part 1: Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society

<table>
<thead>
<tr>
<th>What?</th>
<th>SYSC 2 and SYSC 3 apply with respect to the carrying on of:</th>
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<tr>
<td>1.3 R</td>
<td>regulated activities;</td>
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<td>activities that constitute dealing in investments as principal, disregarding the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc);</td>
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<tr>
<td></td>
<td>ancillary activities in relation to designated investment business, home finance activity and insurance distribution activity; and</td>
</tr>
<tr>
<td></td>
<td>activities directly arising from insurance risk transformation;</td>
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</tbody>
</table>

### SYSC 1 Annex 1.1R further restricts the territorial application of SYSC 2 and SYSC 3 for an incoming EEA firm or an incoming Treaty firm.

### SYSC 1 Annex 1.1R(3) puts an incoming EEA firm on an equal footing with unauthorised overseas persons who utilise the overseas persons exclusions in article 72 of the Regulated Activities Order.

### Further guidance on which matters are reserved to a firm's Home State regulator can be found at SUP 13A Annex 2.

### SYSC 3.3 only applies in relation to the carrying on of insurance distribution activities.

### SYSC 3.2.6A R to SYSC 3.2.6J G do not apply as described in SYSC 1 Annex 1.3R and SYSC 3.2.6A R to SYSC 3.2.6J G do not apply as described in SYSC 1 Annex 1.4R.

### SYSC 3.2.6A R to SYSC 3.2.6J G do not apply:

1. with respect to the activities described in SYSC 1 Annex 1.3R(2) and SYSC 1 Annex 1.3R(3); or
2. in relation to the following regulated activities:
   - general insurance business;
   - insurance risk transformation;
   - insurance distribution activity in relation to a general insurance contract or pure protection contract;
   - long-term insurance business which is outside the Solvency II Directive (unless it is otherwise one of the regulated activities specified in this rule);
   - business relating to contracts which are within the Regulated Activities Order only because they fall within paragraph (e) of the definition of “contract of insurance” in article 3 of that Order;
   - arranging, by the Society, of deals in general insurance contracts written at Lloyd’s; and
   - managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s;
   - home finance mediation activity and administering a home finance transaction; and
   - reversion activity; or
3. to a pure reinsurer; or
4. in relation to activities directly arising from insurance risk transformation.
## Part 1

### Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Part 1 Society

1.5 **R** SYSC 2 and SYSC 3, except SYSC 3.2.6A R to SYSC 3.2.6J G, also apply with respect to the communication and approval of financial promotions which:

1. **if communicated by an unauthorised person** without approval would contravene section 21(1) of the Act (Restrictions on financial promotion); and

2. **may be communicated by a firm** without contravening section 238(1) of the Act (Restrictions on promotion of collective investment schemes).

1.6 **R** SYSC 2 and SYSC 3, except SYSC 3.2.6A R to SYSC 3.2.6J G, also:

1. apply with respect to the carrying on of unregulated activities in a prudential context; and

2. take into account any activity of other members of a group of which the firm is a member.

1.7 **G** SYSC 1 Annex 1.1.6R(2) does not mean that inadequacy of a group member’s systems and controls will automatically lead to a firm contravening, for example, SYSC 3.1.1 R. Rather, the potential impact of a group member’s activities, including its systems and controls, and any systems and controls that operate on a group basis, will be relevant in determining the appropriateness of the firm’s own systems and controls.

### Where?

1.8 **R** SYSC 2 and SYSC 3 apply with respect to activities carried on from an establishment maintained by the firm (or its appointed representative or, where applicable, its tied agent) in the United Kingdom unless another applicable rule which is relevant to the activity has a wider territorial scope, in which case SYSC 2 and SYSC 3 apply with that wider scope in relation to the activity described in that rule.

1.8A **R** (1) SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, and

2. for a UK domestic firm, SYSC 2;

also apply in a prudential context with respect to activities wherever they are carried on.

1.9 **R** SYSC 2 and SYSC 3, except SYSC 3.2.6A R to SYSC 3.2.6J G, also apply in a prudential context to a UK domestic firm with respect to activities wherever they are carried on.

1.10 **R** SYSC 3, except SYSC 3.2.6A R to SYSC 3.2.6J G, also applies in a prudential context to an overseas firm (other than an incoming EEA firm or an incoming Treaty firm) with respect to activities wherever they are carried on.

1.11 **G** (1) In considering whether to take regulatory action under SYSC 2 or SYSC 3 in relation to activities carried on outside the United Kingdom, the appropriate regulator will take into account the standards expected in the market in which the firm is operating.

2. Most of the rules in SYSC 3 are linked to other requirements and standards under the regulatory system which have their own territorial limitations so that those SYSC rules are similarly limited in scope.

### Actions for damages

1.12 **R** A contravention of the rules in SYSC 2 and SYSC 3 does not give rise to a right of action by a private person under section 138D of the Act (and each of those rules is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).

## Part 2

### Application of the common platform requirements

### Who?
## Part 2 Application of the common platform requirements

<table>
<thead>
<tr>
<th>Section</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 R</td>
<td>The common platform requirements apply to every firm apart from an insurer, a UK ISPV, a managing agent and the Society unless provided otherwise in a specific rule.</td>
</tr>
<tr>
<td>2.2 R</td>
<td>For an incoming EEA firm or an incoming Treaty firm:</td>
</tr>
<tr>
<td></td>
<td>(1) the rule on responsibility of senior personnel (SYSC 4.3) does not apply;</td>
</tr>
<tr>
<td></td>
<td>(2) the common platform requirements apply only in so far as responsibility for the matter in question is not reserved by an EU instrument to the firm's Home State regulator;</td>
</tr>
<tr>
<td></td>
<td>(3) for an incoming EEA firm which has permission only for cross-border services and which does not carry on regulated activities in the United Kingdom, the common platform requirements do not apply;</td>
</tr>
<tr>
<td></td>
<td>(4) for an incoming Treaty firm which has permission only for cross-border services and which does not carry on regulated activities in the United Kingdom, the common platform requirements on financial crime do not apply.</td>
</tr>
<tr>
<td>2.3 R</td>
<td>For a sole trader:</td>
</tr>
<tr>
<td></td>
<td>(1) SYSC 4.3 and 4.4 do not apply as long as he does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements);</td>
</tr>
<tr>
<td></td>
<td>(2) SYSC 4.1.4 R and SYSC 6.3.9 R do not apply if he has no employees.</td>
</tr>
<tr>
<td>2.4 R</td>
<td>For a UCITS qualifier:</td>
</tr>
<tr>
<td></td>
<td>(1) the rule on responsibility of senior personnel (SYSC 4.3) does not apply; and</td>
</tr>
<tr>
<td></td>
<td>(2) the common platform requirements apply in relation to the communication and approval of financial promotions only as set out in SYSC 1 Annex 1, 2.12R.</td>
</tr>
<tr>
<td>2.4A R</td>
<td>For an AIFM qualifier:</td>
</tr>
<tr>
<td></td>
<td>(1) the rule on responsibility of senior personnel (SYSC 4.3) does not apply; and</td>
</tr>
<tr>
<td></td>
<td>(2) the common platform requirements apply in relation to the communication and approval of financial promotions only as set out in SYSC 1 Annex 1, 2.12R.</td>
</tr>
<tr>
<td>2.5 R</td>
<td>For an authorised professional firm when carrying on non-mainstream regulated activities, the common platform requirements on financial crime, conflicts of interest and Chinese walls do not apply.</td>
</tr>
<tr>
<td>2.5A R</td>
<td>The common platform requirements on financial crime do not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</td>
</tr>
<tr>
<td>2.6 R</td>
<td>The common platform requirements do not apply to an incoming ECA provider acting as such.</td>
</tr>
<tr>
<td>2.6A R</td>
<td>The common platform requirements do not apply to a firm (including an incoming EEA firm) in relation to its carrying on of auction regulation bidding, except for:</td>
</tr>
<tr>
<td></td>
<td>(1) SYSC 6.1.1 R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the firm (including its managers, employees and appointed representatives) might be used to further financial crime; and</td>
</tr>
</tbody>
</table>
## Part 2 Application of the common platform requirements

<table>
<thead>
<tr>
<th>2.6B</th>
<th>R</th>
<th>Subject to SYSC 1 Annex 1 2.6CR, the common platform requirements do not apply to a full-scope UK AIFM of an unauthorised AIF except for:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(1) SYSC 4.1.1 R to SYSC 4.1.2 R and SYSC 4.1.2B R to SYSC 4.1.2D R;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) SYSC 4.2.1 R, SYSC 4.2.1B R, SYSC 4.2.2 R to SYSC 4.2.5 G, SYSC 4.2.7 R and SYSC 4.2.8 G;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3) SYSC 6.1.1 R, which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the firm (including its managers and employees) might be used to further financial crime;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4) SYSC 6.1.48 G</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(5) SYSC 6.3;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(6) SYSC 7.1.7BA G</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(7) SYSC 10.1.1 R and SYSC 10.1.22 R to SYSC 10.1.26 R; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(8) SYSC 10.2.</td>
</tr>
</tbody>
</table>

### 2.6C R

The common platform requirements apply to an AIFM investment firm which is a full-scope UK AIFM in respect of its MiFID business in line with Column A in Table A of Part 3.

### 2.6D R

The common platform requirements apply to a full-scope UK AIFM of an authorised AIF in line with Column A++ in Table A of Part 3.

### 2.6E G

The common platform requirements apply to a small authorised UK AIFM in line with Column B in Table A of Part 3 (unless such a firm is also a common platform firm, in which case they must comply with Column A).

### 2.6F R

The common platform requirements do not apply to an incoming EEA AIFM branch in respect of its management of a UK AIF, except for:

1. those common platform requirements which are AIFMD host state requirements;
2. SYSC 6.1.1 R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the firm (including its managers and employees) might be used to further financial crime; and
3. SYSC 6.3.

### 2.6G R

1. Except as provided for in (2), the common platform requirements do not apply to a firm in relation to benchmark activities.
2. The common platform requirements continue to apply to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.

### 2.6H G

1. As a consequence of the benchmarks regulation, the regulated activity referred to in SYSC 1 Annex 1 2.6GR(2) will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances).
2. The effect of SYSC 1 Annex 1 2.6GR(2) is that the common platform requirements continue to apply to firms which still have permission to carry on the regulated activity in SYSC 1 Annex 1 2.6GR(2) when carrying on that activity.

### 2.7 G

EEA MiFID investment firms are reminded in particular that they must comply with the common platform record-keeping requirements in relation to a branch in the United Kingdom.
2.7A   G  EEA UCITS management companies are also reminded that they must comply with:

(1)  the common platform requirements indicated in Column A+ (Application to a management company) in Table A in Part 3 of this Annex;

(2)  the common platform record-keeping requirements; and

(3)  the common platform requirements on financial crime;

in relation to activities carried on from a branch in the United Kingdom. Where the common platform requirement addresses matters within the scope of article 12 of the UCITS Directive, an EEA UCITS management company should note that those matters may also be subject to the rules of its Home State regulator.

[Note: articles 12(1)(b), 14(1)(c),14(1)(d), 17(4), 18(3) and 19(1) of the UCITS Directive and articles 4(1)(e), 10(1), 10(2) and 10(3) of the UCITS implementing Directive]

What?

2.8   R  The common platform organisational requirements apply with respect to the carrying on of the following (unless provided otherwise within a specific rule):

(1)  regulated activities;

(2)  activities that constitute dealing in investments as principal, disregarding the exclusion in Article 15 of the Regulated Activities Order (Absence of holding out etc);

(3)  ancillary activities;

(4)  in relation to MiFID business, ancillary services; and

(5)  collective portfolio management.

2.8A   R  (1) Subject to (2), (3) and (5), in SYSC 1 Annex 1 2.8R, articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation (including any relevant definitions in MiFID, MiFIR and the MiFID Org Regulation) apply as if they were rules or guidance in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a firm’s carrying on of the business set out in SYSC 1 Annex 1 2.8R which is not MiFID business or a structured deposits regulated activity.

(1A) Subject to (2), (3) and (6), articles 33 to 35 of the MiFID Org Regulation (including any relevant definitions in MiFID, MiFIR and the MiFID Org Regulation) apply as if they were rules or guidance in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a firm’s carrying on of the business set out in SYSC 10.1.1R which is not MiFID business or a structured deposits regulated activity.

(2) References in Column (1) to a word or phrase used in the MiFID Org Regulation for the purpose of (1) have the meaning indicated in Column (2) of the table below:

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“ancillary services”</td>
<td>ancillary services or ancillary activities associated with the firm’s regulated activities</td>
</tr>
<tr>
<td>“client” and “potential client”</td>
<td>client</td>
</tr>
<tr>
<td>“competent authority”</td>
<td>FCA</td>
</tr>
</tbody>
</table>
Part 2  Application of the common platform requirements

| “investment firm” | “firm” |
| “investment service” | designated investment business |
| “portfolio management” | managing investments |
| “Directive 2014/65/EU”; “Regulation (EU) No 600/2014”; “Directive 2014/57/EU” and “Regulation (EU) No 596/2014” and their implementing measures | regulatory system, except where the reference is to a specific provision of a Directive or Regulation in Column (1) in which case the reference must be read as referring to such specific provision |

(3) Any references within the MiFID Org Regulation for the purpose of (1) to other provisions of EU law must be interpreted in light of this rule.

(4) This rule does not apply to a collective portfolio management investment firm in relation to the firm’s business other than its MiFID business.

(5) The requirements in article 72 of the MiFID Org Regulation do not apply to a firm to the extent that article 19 of the IDD Regulation applies to the firm.

(6) SYSC 1 Annex 1.2.8AR(1A) does not apply to a firm to the extent that articles 3 – 7 of the IDD Regulation are directly applicable to the firm (see SYSC 1 Annex 1.3.1AG).

[Note: The MiFID Org Regulation can be found at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN].

2.8B  G  The purpose of SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR is that the common platform organisational requirements and the common platform requirements on conflicts of interest also apply when carrying on any of the activities listed in SYSC 1 Annex 1.2.8R or SYSC 10.1.1R respectively even where they do not involve investment services and/or activities and, where relevant, ancillary services (unless provided otherwise within a specific rule).

2.8C  G  SYSC 1 Annex 1.2.8AR(3) has the effect that, where the requirement in the MiFID Org Regulation that is a common platform organisational requirement or a common platform requirement on conflicts of interest includes a reference or cross reference to another part of the MiFID Org Regulation, that reference or cross reference is given the same meaning as for the purposes of SYSC 1 Annex 1.2.8AR.

2.8D  G  For the purpose of SYSC 1 Annex 1.2.8AR, a firm should apply any guidance published by the FCA that assists with interpreting the definitions in MiFID, MiFIR and the MiFID Org Regulation.

2.9  G  The application of the provisions on the conflicts of interest in SYSC 10 is set out in SYSC 10.1.4G to SYSC 10.1.1AR and SYSC 10.2.1R

2.10  R  The provisions on record-keeping in SYSC 9 and articles 21 and 72 of the MiFID Org Regulation apply as set out in SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR, except that they only apply to the carrying on of ancillary activities that are performed in relation to:

(1) designated investment business;
(2) home finance activity;
Part 2 Application of the common platform requirements

(3) *insurance distribution activity*;
(4) *credit-related regulated activity*.

2.11 R The *common platform requirements on financial crime* apply as set out in SYSC 1 Annex 1 2.8R, except that they do not apply:

(1) with respect to:
   (a) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
   (b) *ancillary activities*; or

(2) in relation to the following *regulated activities*:
   (a) *general insurance business*;
   (b) *insurance distribution activity in relation to a general insurance contract or pure protection contract*;
   (c) *long-term insurance business* which is outside the *Solvency II Directive* (unless it is otherwise one of the *regulated activities* specified in this *rule*);
   (d) business relating to contracts which are within the *Regulated Activities Order* only because they fall within paragraph (e) of the definition of "contract of insurance" in article 3 of that Order;
   (e) (i) arranging by the *Society* of deals in *general insurance contracts* written at Lloyd’s; and
       (ii) managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s;
   (f) *home finance mediation activity* and *administering a home finance transaction*;
   (g) *reversion activity*; and
   (h) *meeting of repayment claims and managing dormant account funds* (including the investment of such funds).

2.12 R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also apply with respect to the *communication and approval of financial promotions* which:

(1) if *communicated* by an *unauthorised person* without approval would contravene section 21(1) of the Act (Restrictions on financial promotion); and

(2) *may be communicated* by a *firm* without contravening section 238(1) of the Act (Restrictions on promotion of collective investment schemes).

2.13 R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also:

(1) apply with respect to the carrying on of *unregulated activities* in a *prudential context*; and

(2) take into account any activity of other members of a *group* of which the *firm* is a member.
### Part 2 Application of the common platform requirements

| 2.13A | R | SYSC 6.3 only applies to a firm in relation to carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, to which the Money Laundering Regulations also apply. |
| 2.13B | R | SYSC 6.3.8 R and SYSC 6.3.9 R do not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. |
| 2.13C | G | The persons to whom the Money Laundering Regulations apply are set out in regulation 10 of the Money Laundering Regulations. The persons include credit institutions (for example, banks) and financial institutions (for example, persons who carry on regulated activities which consist of or include entering into regulated credit agreements as lender). These expressions are defined in regulation 10 of those Regulations. |

| 2.14 | G | SYSC 1 Annex 1.2.13R(2) does not mean that inadequacy of a group member’s systems and controls will automatically lead to a firm contravening any of the common platform organisational requirements. Rather, the potential impact of a group member’s activities, including its systems and controls, and any systems and controls that operate on a group basis, will be relevant in determining the appropriateness of the firm’s own systems and controls. |
| 2.14A | G | The systems and control requirements in article 17 of MiFID for the following are in chapter 7A of the Market Conduct sourcebook (MAR): (1) algorithmic trading; (2) direct electronic access to a trading venue; and (3) acting as a general clearing member of a trading venue. |
| 2.14B | G | Firms should refer to articles 38 to 42 of the MiFID Org Regulation for additional organisational requirements for underwriting and placing. |

### Where?

| 2.15 | R | The common platform requirements, except the common platform record-keeping requirements, apply to a firm in relation to activities which: (1) (except for regulated claims management activities and ancillary activities) are carried on by it from an establishment in the United Kingdom; or (2) are, or are ancillary to, regulated claims management activities. |
| 2.16 | R | The common platform requirements, except the common platform requirements on financial crime and the common platform record-keeping requirements, apply to a firm that is not a UK UCITS management company in relation to passported activities carried on by it from a branch in another EEA State. |

| 2.16A | R | (1) The common platform requirements referred to in Column A+ in Table A of Part 3 (below) apply to a UK UCITS management company in relation to passported activities carried on by it from a branch in another EEA State. (2) Any other common platform requirement applies to a UK UCITS management company in relation to passported activities carried on by it from a branch in another EEA State to the extent that the requirement addresses matters within the scope of article 12 of the UCITS Directive. |
| 2.16B | G | The matters referred to in paragraph 2.16AR of this Annex may also be subject to the rules of the UK UCITS management company’s Host State regulator. |
### Application of the common platform requirements

<table>
<thead>
<tr>
<th>Part 2</th>
<th>Application of the common platform requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.16C</td>
<td>R The <em>common platform requirements</em> apply to a <em>full-scope UK AIFM</em> in respect of its management of an <em>AIF</em> where carried on from an establishment in the <em>UK</em>.</td>
</tr>
<tr>
<td>2.16D</td>
<td>R The <em>common platform requirements</em>, except those which are <em>AIFMD host state requirements</em>, apply to a <em>full-scope UK AIFM</em> in respect of its management of an <em>EEA AIF</em> from a <em>branch</em> in another <em>EEA State</em>.</td>
</tr>
<tr>
<td>2.16E</td>
<td>R The <em>common platform requirements</em> apply to an <em>AIFM investment firm</em> which is a <em>full-scope UK AIFM</em> in respect of its <em>MiFID business</em> where carried on from an establishment in the <em>UK</em>.</td>
</tr>
<tr>
<td>2.16F</td>
<td>R The <em>common platform requirements</em>, except the <em>common platform requirements on financial crime</em> and the <em>common platform record-keeping requirements</em>, apply to an <em>AIFM investment firm</em> in respect of its <em>MiFID business</em> where carried on from a <em>branch</em> in another <em>EEA State</em>.</td>
</tr>
<tr>
<td>2.17</td>
<td>R The <em>common platform record-keeping requirements</em> apply to activities which:</td>
</tr>
<tr>
<td></td>
<td>(1) (except for <em>regulated claims management activities</em> and ancillary activities) are carried on by it from an establishment in the <em>United Kingdom</em>; or</td>
</tr>
<tr>
<td></td>
<td>(2) are, or are ancillary to, <em>regulated claims management activities</em>.</td>
</tr>
<tr>
<td></td>
<td>If, however, another applicable <em>rule</em> which is relevant to the activity has a wider territorial scope, the <em>common platform record-keeping requirements</em> apply with that wider scope in relation to the activity described in that <em>rule</em>.</td>
</tr>
<tr>
<td></td>
<td><strong>[Note: article16(11) first paragraph of MiFID]</strong></td>
</tr>
<tr>
<td>2.17A</td>
<td>G For an activity to amount to a <em>regulated claims management activity</em> it must be carried on in <em>Great Britain</em> (see PERG 2.4A). Subject to the exception for <em>common platform record-keeping requirements</em> in paragraph 2.17R of this Annex, the application of the <em>common platform requirements</em> to <em>firms</em> which carry on <em>regulated claims management activities</em> (and ancillary activities) depends on whether the activity is carried on in <em>Great Britain</em> rather than whether it is carried on from an establishment maintained in the <em>United Kingdom</em>.</td>
</tr>
<tr>
<td></td>
<td>The <em>common platform organisational requirements</em>, except the <em>common platform requirements on financial crime</em>, also apply in a prudential context to a <em>UK domestic firm</em> and to an <em>overseas firm</em> (other than an <em>incoming EEA firm</em> or an <em>Incoming Treaty firm</em>) with respect to activities wherever they are carried on.</td>
</tr>
<tr>
<td>2.18A</td>
<td>G SYSC6.1.1R on systems and controls for countering the risk that a <em>firm</em> might be used to further <em>financial crime</em> is:</td>
</tr>
<tr>
<td></td>
<td>(1) a <em>common platform organisational requirement</em>, not a <em>common platform requirement on financial crime</em>; and</td>
</tr>
<tr>
<td></td>
<td>(2) subject to the application, amongst other provisions, of SYSC 1 Annex 1 2.13R, SYSC 1 Annex 1 2.16R and SYSC 1 Annex 1 2.18R.</td>
</tr>
<tr>
<td>2.19</td>
<td>R A contravention of a <em>rule</em> in the <em>common platform requirements</em> does not give rise to a right of action by a <em>private person</em> under section 138D of the <em>Act</em> (and each of those <em>rules</em> is specified under section 138D(3) of the <em>Act</em> as a provision giving rise to no such right of action).</td>
</tr>
</tbody>
</table>
### Tables summarising the application of the common platform requirements to different types of firm

<table>
<thead>
<tr>
<th>Part 3</th>
<th>G</th>
<th>Type of firm</th>
<th>Common platform requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>G</td>
<td>Common platform firm</td>
<td>SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Management company</td>
<td>SYSC 1 Annex 1 3.2AG</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Full-scope UK AIFM of an authorised AIF</td>
<td>SYSC 1 Annex 1 3.2BR</td>
</tr>
<tr>
<td></td>
<td></td>
<td>MiFID optional exemption firm</td>
<td>SYSC 1 Annex 1 3.2CR</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Third country firm</td>
<td>SYSC 1 Annex 1 3.2CR</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms)</td>
<td>SYSC 1 Annex 1 3.1.3R</td>
</tr>
</tbody>
</table>

#### 3.1A G

The **IDD Regulation** is directly applicable to a firm when carrying on insurance distribution in relation to insurance-based investment products. Articles 3 to 7 of the **IDD Regulation** are reproduced in SYSC 10.1A for information for these firms.

**Common platform firm**

#### 3.2 G

For a **common platform firm** (other than a dormant account fund operator not subject to **MiFID**):

1. SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and
2. articles 1(2), 21 to 25, 30 to 35 and 72 of the **MiFID Org Regulation** are directly applicable to the firm.

**3.2-A R**

For a **common platform firm** (other than a dormant account fund operator not subject to **MiFID**), articles 1(2), 21 to 25, 30 to 35 and 72 of the **MiFID Org Regulation** apply to the firm’s business other than **MiFID** business or structured deposits regulated activities as if the **MiFID Org Regulation** applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.

**3.2-B R**

For a **common platform firm** that is a dormant account fund operator and is not subject to **MiFID**:

1. SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and
2. articles 1(2), 21 to 25, 30 to 35 and 72 of the **MiFID Org Regulation** apply as if the **MiFID Org Regulation** applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.

**Management company**

#### 3.2A G

For a **management company**, the **common platform requirements** in SYSC 4 to SYSC 10 apply in accordance with Column A+ in Table A below.

**Full-scope UK AIFM of an authorised AIF**
### Tables summarising the application of the common platform requirements to different types of firm

<table>
<thead>
<tr>
<th>Part 3</th>
<th>Type of Firm</th>
<th>SYSC 4 to SYSC 10 Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.2B R</td>
<td>For a <strong>full-scope UK AIFM of an authorised AIF</strong>, the common platform requirements apply in accordance with Column A++ in Table A below.</td>
<td></td>
</tr>
</tbody>
</table>

**MiFID optional exemption firm and a third country firm**

<table>
<thead>
<tr>
<th>3.2C R</th>
<th>For a <strong>MiFID optional exemption firm and a third country firm</strong>:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>SYSC 4 to SYSC 10 apply as <strong>rules</strong> or as <strong>guidance</strong> in accordance with Table B below in the following way:</td>
</tr>
<tr>
<td>(a)</td>
<td>where a rule is shown modified as 'Guidance', it should be read as guidance (as if &quot;should&quot; appeared in that rule instead of &quot;must&quot;); and</td>
</tr>
<tr>
<td>(b)</td>
<td>the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm’s business; and</td>
</tr>
<tr>
<td>(2)</td>
<td>articles 1(2), 21 to 25, 30 to 32 and 72 of the <strong>MiFID Org Regulation</strong> apply as if the MiFID Org Regulation applied to the firm as rules (in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR) or as guidance in accordance with Part 1 of Table C below. Part 2 of Table C sets out those articles of the <strong>MiFID Org Regulation</strong>.</td>
</tr>
</tbody>
</table>

**3.2D R**

| (1)    | Subject to (2), SYSC 4.3A.6R, SYSC 4.3A.8R and SYSC 7.1.18R apply to a **MiFID optional exemption firm** that is ‘significant’ as a rule or as guidance in accordance with SYSC 1 Annex 1 3.2CR. |
| (2)    | In (1), ‘significant’ means a MiFID optional exemption firm that meets one of more of the conditions in paragraphs (1) to (5) of ifPRU 1.2.3R and related rules and guidance. |

**Other firms**

<table>
<thead>
<tr>
<th>3.2E R</th>
<th>SYSC 1 Annex 1 3.3R does not apply to the following:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td><strong>insurers and UK ISPVs</strong>;</td>
</tr>
<tr>
<td>(2)</td>
<td><strong>managing agents</strong>;</td>
</tr>
<tr>
<td>(3)</td>
<td><strong>the Society</strong>;</td>
</tr>
<tr>
<td>(4)</td>
<td><strong>full-scope UK AIFMs of unauthorised AIFs</strong>;</td>
</tr>
<tr>
<td>(5)</td>
<td><strong>MiFID optional exemption firms</strong>; and</td>
</tr>
<tr>
<td>(6)</td>
<td><strong>third country firms</strong>.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3.3 R</th>
<th>For all other firms:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>SYSC 4 to SYSC 10 apply as <strong>rules</strong> or as <strong>guidance</strong> in accordance with Column B in Table A below in the following way:</td>
</tr>
<tr>
<td>(a)</td>
<td>where a rule is shown modified in Column B as 'Guidance', it should be read as guidance (as if &quot;should&quot; appeared in that rule instead of &quot;must&quot;); and</td>
</tr>
<tr>
<td>(b)</td>
<td>the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm’s business; and</td>
</tr>
</tbody>
</table>
Tables summarising the application of the common platform requirements to different types of firm

(2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation do not apply.

<table>
<thead>
<tr>
<th>Provision</th>
<th>SYSC 4</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
<th>COLUMN A++</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 4.1-2G</td>
<td>Guidance</td>
<td>Not applicable save in relation to a UCITS investment firm and its MiFID business</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.1-1G</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.1.1 R</td>
<td>Rule</td>
<td>Rule</td>
<td>Rule</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC 4.1.1A R</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC 4.1.1B R</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Rule</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC 4.1.1C R</td>
<td>Rule for a BIPRU firm</td>
<td>Rule</td>
<td>Rule</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC 4.1.1DR</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.1.1ER</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.1.1FG</td>
<td>Not applicable</td>
<td>Guidance</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.1.2 R</td>
<td>Rule</td>
<td>Rule for a UCITS investment firm; otherwise guidance</td>
<td>Rule</td>
<td>Guidance</td>
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<tr>
<td>SYSC 4.1.2DR</td>
<td>Not applicable</td>
<td>Guidance for a UCITS firm; not applicable to a UCITS investment firm</td>
<td>Not applicable</td>
<td>Guidance</td>
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<tr>
<td>SYSC 4.1.2AA R</td>
<td>Rule for a BIPRU firm</td>
<td>Rule for a BIPRU firm that is a UCITS investment firm</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.1.2B R</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Rule</td>
<td>Not applicable</td>
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<tr>
<td>SYSC 4.1.2C R</td>
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<td>COLUMN A++</td>
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<tr>
<td>SYSC 4.1.4 R</td>
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<td>Rule</td>
<td>Not applicable</td>
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<tr>
<td>SYSC 4.1.4A G</td>
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<td>Not applicable</td>
<td>Not applicable</td>
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<td>SYSC 4.1.5 R</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td>SYSC 4.1.6 R</td>
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<td>Rule for a UCITS investment firm; otherwise guidance</td>
<td>Guidance</td>
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<tr>
<td>SYSC 4.1.7 R</td>
<td>Rule CRR firm for a only</td>
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<td></td>
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<tr>
<td>SYSC 4.1.7A G</td>
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<td>Guidance</td>
<td></td>
</tr>
<tr>
<td>SYSC 4.1.8 G</td>
<td>Guidance</td>
<td>Guidance</td>
<td>Guidance</td>
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<tr>
<td>SYSC 4.1.9 R</td>
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<td>Rule</td>
<td>Not applicable</td>
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<td>SYSC 4.2.6 R</td>
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<td>Rule for a UCITS investment firm;</td>
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<td>COLUMN A+</td>
<td>COLUMN A++</td>
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<tr>
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<td>Not applicable</td>
<td>Rule</td>
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<td>Rule</td>
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<td>SYSC 4.3.2A G</td>
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<td>Not applicable</td>
<td>Not applicable</td>
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</tr>
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<td>SYSC 4.3.3 G</td>
<td>Guidance</td>
<td>Guidance</td>
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<td></td>
</tr>
<tr>
<td>SYSC 4.3A.-1 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td>SYSC 4.3A.1 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
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<tr>
<td>SYSC 4.3A.1AR</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
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<tr>
<td>SYSC 4.3A.2 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UC-</td>
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</tr>
<tr>
<td>Provision</td>
<td>COLUMN A</td>
<td>COLUMN A+</td>
<td>COLUMN B</td>
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</tr>
<tr>
<td>SYSC 4</td>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
<td>ITS investment firm</td>
<td>Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi-FID optional exemption firms and third country firms</td>
<td></td>
</tr>
<tr>
<td>SYSC 4.3A.2AG</td>
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<td>Guidance for a CRR firm that is a UCITS investment firm</td>
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<td>Not applicable</td>
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<tr>
<td>SYSC 4.3A.3 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
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<td>Not applicable</td>
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<tr>
<td>SYSC 4.3A.4 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
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<td>Not applicable</td>
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<tr>
<td>SYSC 4.3A.5 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.3A.6 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.3A.7 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
<td>Not applicable</td>
<td>Not applicable</td>
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<tr>
<td>SYSC 4.3A.8 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
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<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.3A.9 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
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<td>Not applicable</td>
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<tr>
<td>SYSC 4.3A.10 R</td>
<td>Rule (except for an AIFM investment firm that is not a CRR firm)</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.3A.11 R</td>
<td>Rule applicable to CRR firms</td>
<td>Rule for a CRR firm that is a UCITS investment firm</td>
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<td>Not applicable</td>
</tr>
</tbody>
</table>
### SYSC 1 : Application and Annex 1

**Purpose**

<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
<th>COLUMN A++</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 4.1 R</td>
<td>[deleted]</td>
<td>[deleted]</td>
<td>[deleted]</td>
</tr>
<tr>
<td>SYSC 4.1A R</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

Rule applies this section only to:

1. an *authorised professional firm* in respect of its *non-mainstream regulated activities* unless the firm is also conducting other *regulated activities* and has appointed *approved persons* to perform the *governing functions* with equivalent responsibilities for the firm's *non-mainstream regulated activities* and other *regulated activities*;

2. activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:
   - (a) an *oil market participant*;
   - (b) a *service company*;
   - (c) an *energy market participant*;
   - (d) a wholly-owned subsidiary of:
     - (i) a local authority;
<table>
<thead>
<tr>
<th>Provision</th>
<th>SYSC 4</th>
<th>COLUMN A</th>
<th>Application to a common platform firm other than to a UCITS investment firm</th>
<th>COLUMN A+</th>
<th>Application to a UCITS management company</th>
<th>COLUMN A++</th>
<th>Application to a full-scope UK AIFM of an authorised AIF</th>
</tr>
</thead>
</table>

(ii) a registered social landlord;
(e) a firm with permission to carry on insurance distribution activity in relation to non-investment insurance contracts but no other regulated activity except advising on P2P agreements;

(2A) a credit firm which holds a limited permission (other than a not-for-profit debt advice body) with respect to the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has limited permission;

(3) an incoming Treaty firm, an incoming EEA firm and a UCITS qualifier, (but only SYSC 4.4.5R (2) applies for these firms); and

(4) a sole trader, but only if he employs any person who is required to be approved under section 59 of the Act.
<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
<th>COLUMN A++</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 4</td>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
<td>Application to a UCITS management company</td>
<td>Application to a full-scope UK AIFM of an authorised AIF</td>
</tr>
</tbody>
</table>

| COLUMN B | Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms |

| SYSC 4.4.2 G | Not applicable | Not applicable | Not applicable |
| SYSC 4.4.3 R | Not applicable | Not applicable | Not applicable |
| SYSC 4.4.4 G | Not applicable | Not applicable | Not applicable |
| SYSC 4.4.5 R | Not applicable | Not applicable | Not applicable |
| SYSC 4.4.6 G | Not applicable | Not applicable | Not applicable |

| SYSC 5    | Guidance | Not applicable | Not applicable |

| COLUMN B | Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms |

<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
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</tr>
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<tr>
<td>SYSC 5</td>
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<td>Application to a UCITS management company</td>
<td>Application to a full-scope UK AIFM of an authorised AIF</td>
</tr>
</tbody>
</table>

| COLUMN B | Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms |

| SYSC 5.1.-2G | Guidance | Not applicable | Not applicable |

<p>| COLUMN B | Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms |</p>
<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
<th>COLUMN A++</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 5.1.-1G</td>
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<td>Not applicable</td>
<td>Not applicable</td>
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<tr>
<td>SYSC 5.1.1 R</td>
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<td>Rule</td>
</tr>
<tr>
<td>SYSC 5.1.2 G</td>
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<td>SYSC 5.1.3AG</td>
<td>Guidance</td>
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<tr>
<td>SYSC 5.1.4 G</td>
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**COLUMNB**
- Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms.
<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
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**COLUMNS**

**COLUMN B**
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- Application to a platform other than to a UCITS investment firm.
- Application to a UCITS management company.
- Application to a full-scope UK AIFM of an authorised AIF.
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## SYSC 1 : Application and purpose

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### SYSC 6.1.2G
- Guidance
- Not applicable save in relation to a UCITS investment firm and its MiFID business

### SYSC 6.1.1 R
- Rule
- Not applicable

### SYSC 6.1.1A G
- Guidance
- Not applicable

### SYSC 6.1.2 R
- Not applicable

### SYSC 6.1.2A G
- Not applicable

### SYSC 6.1.3 R
- Not applicable

This provision shall be read with the following additional sentence at the start:

*Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. Where a firm has a separate compliance function, the firm should also take into account SYSC 6.1.3R and SYSC 6.1.4 R.*
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<td>Rule</td>
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</table>

**COLUMNS B**

Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms.

6.1.4R as guidance."

- Rule for firms which carry on designated investment business with or for retail clients or professional clients.
- Guidance for all other firms.

Rule for firms which carry on designated investment business with or for retail clients or professional clients.

- Guidance for debt management firms and credit repair firms.
- "investment services and activities" shall be read as "financial services and activities"
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**COLUMNS B**

- Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
- Provision applies to relevant authorised persons only
- Guidance
- Rule

**SYSC 6.2.2 G**

For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)

**SYSC 6.3.2 G**

For firms carrying on a credit-related regulated activity or regulated claims management activity,
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<td>Rule</td>
<td>Rule</td>
<td>Rule</td>
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For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the
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**SYSC 6.3.4 G**

**Guidance**

For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)

**SYSC 6.3.5 G**

**Guidance**

For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to
## COLUMN A
Application to a common platform firm other than to a UCITS investment firm

## COLUMN A+
Application to a UCITS management company

## COLUMN A++
Application to a full-scope UK AIFM of an authorised AIF

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<td>SYSC 6.3.6 G</td>
<td>the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</td>
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**GUIDANCE**

For **firms** carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)

**RULE**

For **firms** carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm with a lim-
### SYSC 1 : Application and purpose

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**SYSC 6.3.9 R**

**Rule**

For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
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the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only) Guidance

For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only) Guidance

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where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)

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SYSC 7.1.-2G Guidance Not applicable Not applicable

SYSC 7.1.-1G Not applicable Guidance Not applicable

SYSC 7.1.1 G Guidance Not applicable Not applicable

SYSC 7.1.2 R Not applicable Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance Not applicable Guidance

SYSC 7.1.2A G Not applicable Not applicable to a UCITS invest Not applicable Guidance
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**COLUMNS B**

Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms.
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**COLUMNS B**

- Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
- Applicable to credit institutions only, not including incoming EEA firms which have permission for cross border services only and which do not carry on regulated activities in the United Kingdom.

- Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
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Otherwise, not applicable

production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) in relation to insurance distribution activities

Production or arrangement of insurance distribution activities.

Rule in relation to insurance distribution activities.

Rule

Rule

Rule

Rule

Rule in relation to insurance distribution activities.

Rule in relation to insurance distribution activities.

Rule in relation to insurance distribution activities.
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**SYSC 1 : Application and purpose**

*Annex 1*
### Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

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### SYSC 1: Application and purpose

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Part 2: Articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation

**EU Article 1 - Subject-matter and scope**

2 References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation.

**EU Article 21 - General organisational requirements**

1 Investment firms shall comply with the following organisational requirements:

(a) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;

(b) ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

(c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;

(d) employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;

(e) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;

(f) maintain adequate and orderly records of their business and internal organisation;
(g) ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.

When complying with the requirements set out in the this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

2 Investment firms shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

3 Investment firms shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.

4 Investment firms shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5 Investment firms shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and take appropriate measures to address any deficiencies.

EU Article 22 - Compliance

1 Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under Directive 2014/65/EU, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive.

Investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

2 Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(a) to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies
In the firm’s compliance with its obligations;

(b) to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm’s obligations under Directive 2014/65/EU;

(c) to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken;

(d) to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities.

In order to comply with points (a) and (b) of this paragraph, the compliance function shall conduct an assessment on the basis of which it shall establish a risk-based monitoring programme that takes into consideration all areas of the investment firm’s investment services, activities and any relevant ancillary services, including relevant information gathered in relation to the monitoring of complaints handling. The monitoring programme shall establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.

3 In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, investment firms shall ensure that the following conditions are satisfied:

(a) the compliance function has the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer is appointed and replaced by the management body and is responsible for the compliance function and for any reporting as to compliance required by Directive 2014/65/EU and Article 25(2) of this Regulation;

(c) the compliance function reports on an ad-hoc basis directly to the management body where it detects a significant risk of failure by the firm to comply with its obligations under Directive 2014/65/EU;

(d) the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor;

(e) the method of determining the remuneration of the relevant persons involved in the compliance function
4 An investment firm shall not be required to comply with point (d) or point (e) of paragraph 3 where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirements under point (d) or (e) are not proportionate and that its compliance function continues to be effective. In that case, the investment firm shall assess whether the effectiveness of the compliance function is compromised. The assessment shall be reviewed on a regular basis.

EU Article 23 - Risk management

1 Investment firms shall take the following actions relating to risk management:

(a) establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm’s activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm;

(b) adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm’s activities, processes and systems, in light of that level of risk tolerance;

(c) monitor the following:

(i) the adequacy and effectiveness of the investment firm’s risk management policies and procedures;

(ii) the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b);

(iii) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes
2 Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:

(a) implementation of the policy and procedures referred to in paragraph 1;

(b) provision of reports and advice to senior management in accordance with Article 25(2).

Where an investment firm does not establish and maintain a risk management function under the first sub-paragraph, it shall be able to demonstrate upon request that the policies and procedures which it has adopted in accordance with paragraph 1 satisfy the requirements therein.

EU Article 24 - Internal audit

Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities:

(a) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm’s systems, internal control mechanisms and arrangements;

(b) issue recommendations based on the result of work carried out in accordance with point (a) and verify compliance with those recommendations;

(c) report in relation to internal audit matters in accordance with Article 25(2).

EU Article 25 - Responsibility of senior management

1 Investment firms shall, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations under Directive 2014/65/EU. In particular, senior management and, where applicable, the supervisory function shall be required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under Directive 2014/65/EU and to take appropriate measures to address any deficiencies.

The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm’s organisational requirements. Records of the allocation of significant functions shall be kept up-to-date.
2. Investment firms shall ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

3. Investment firms shall ensure that where there is a supervisory function, it receives written reports on the matters covered by Articles 22, 23 and 24 on a regular basis.

4. For the purposes of this Article, the supervisory function shall be the function within an investment firm responsible for the supervision of its senior management.

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**EU Article 30 - Scope of critical and important operational functions**

1. For the purposes of the first subparagraph of Article 16(5) of Directive 2014/65/EU, an operational function shall be regarded as critical or important where a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under Directive 2014/65/EU, or its financial performance, or the soundness or the continuity of its investment services and activities.

2. Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph 1:

   (a) the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;

   (b) the purchase of standardised services, including market information services and the provision of price feeds.

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**EU Article 31 - Outsourcing critical or important operational functions**

1. Investment firms outsourcing critical or important operational functions shall remain fully responsible for discharging all of their obligations under Directive 2014/65/EU and shall comply with the following conditions:

   (a) the outsourcing does not result in the delegation by senior management of its responsibility;

   (b) the relationship and obligations of the investment firm towards its clients under the terms of Directive 2014/65/EU is not altered;

   (c) the conditions with which the investment firm must comply in order to be authorised in accordance with Article 5 of Directive 2014/65/EU, and to remain so, are not undermined;

   (d) none of the other conditions subject to which the firm’s authorisation was granted is removed or modified.
2. Investment firms shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions and shall take the necessary steps to ensure that the following conditions are satisfied:

(a) the service provider has the ability, capacity, sufficient resources, appropriate organisational structure supporting the performance of the outsourced functions, and any authorisation required by law to perform the outsourced functions, reliably and professionally;

(b) the service provider carries out the outsourced services effectively and in compliance with applicable law and regulatory requirements, and to this end the firm has established methods and procedures for assessing the standard of performance of the service provider and for reviewing on an ongoing basis the services provided by the service provider;

(c) the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;

(d) appropriate action is taken where it appears that the service provider may not be carrying out the functions effectively or in compliance with applicable laws and regulatory requirements;

(e) the investment firm effectively supervises the outsourced functions or services and manage the risks associated with the outsourcing and to this end the firm retains the necessary expertise and resources to supervise the outsourced functions effectively and manage those risks;

(f) the service provider has disclosed to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;

(g) the investment firm is able to terminate the arrangement for outsourcing where necessary, with immediate effect when this is in the interests of its clients, without detriment to the continuity and quality of its provision of services to clients;
(h) the service provider cooperates with the competent authorities of the investment firm in connection with the outsourced functions;

(i) the investment firm, its auditors and the relevant competent authorities have effective access to data related to the outsourced functions, as well as to the relevant business premises of the service provider, where necessary for the purpose of effective oversight in accordance with this article, and the competent authorities are able to exercise those rights of access;

(j) the service provider protects any confidential information relating to the investment firm and its clients;

(k) the investment firm and the service provider have established, implemented and maintained a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;

(l) the investment firm has ensured that the continuity and quality of the outsourced functions or services are maintained also in the event of termination of the outsourcing either by transferring the outsourced functions or services to another third party or by performing them itself.

3 The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement. In particular, the investment firm shall keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall ensure that outsourcing by the service provider only takes place with the consent, in writing, of the investment firm.

4 Where the investment firm and the service provider are members of the same group, the investment firm may, for the purposes of complying with this Article and Article 32, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.

5 Investment firms shall make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced functions with the requirements of Directive 2014/65/EU and its implementing measures.

EU Article 32 - Service providers located in third countries

1 In addition to the requirements set out in Article 31, where an investment firm outsources functions related to the investment service of portfolio management provided to clients to a service provider located in a third country, that investment firm ensures that the following conditions are satisfied:
(a) the service provider is authorised or registered in its home country to provide that service and is effectively supervised by a competent authority in that third country;

(b) there is an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.

2 The cooperation agreement referred to in point (b) of paragraph 1 shall ensure that the competent authorities of the investment firm are able, at least, to:

(a) obtain on request the information necessary to carry out their supervisory tasks pursuant to Directive 2014/65/EU and Regulation (EU) No 600/2014;

(b) obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;

(c) receive information from the supervisory authority in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements of Directive 2014/65/EU and its implementing measures and Regulation (EU) No 600/2014;

(d) cooperate with regard to enforcement, in accordance with the national and international law applicable to the supervisory authority of the third country and the competent authorities in the Union in cases of breach of the requirements of Directive 2014/65/EU and its implementing measures and relevant national law.

3 Competent authorities shall publish on their website a list of the supervisory authorities in third countries with which they have a cooperation agreement referred to in point (b) of paragraph 1.

Competent authorities shall update cooperation agreements concluded before the date of entry into application of this Regulation within six months from that date.

EU Article 72 - Retention of records

1 The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met:

(a) the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;

(b) it is possible for any corrections or other amendments, and the contents of the records prior to such corrections
or amendments, to be easily ascertained;

(c) it is not possible for the records otherwise to be manipulated or altered;

(d) it allows IT or any other efficient exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and

(e) the firm’s arrangements comply with the record keeping requirements irrespective of the technology used.

2 Investment firms shall keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities.

The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.


Competent authorities may require investment firms to keep additional records to the list identified in Annex I to this Regulation.
Senior management arrangements, Systems and Controls

Chapter 2

Senior management arrangements
2.1 Apportionment of Responsibilities

2.1.1 R A firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers in such a way that:

(1) it is clear who has which of those responsibilities; and

(2) the business and affairs of the firm can be adequately monitored and controlled by the directors, relevant senior managers and governing body of the firm.

2.1.1A G Firms should also consider the additional guidance on risk-centric governance arrangements for effective risk management contained in SYSC 2.1.

2.1.2 G The role undertaken by a non-executive director will vary from one firm to another. For example, the role of a non-executive director in a friendly society may be more extensive than in other firms. Where a non-executive director is an approved person, for example where the firm is a body corporate, his responsibility and therefore liability will be limited by the role that he undertakes.

2.1.3 R [deleted]

2.1.3A R [deleted]
Insurance distribution activities

2.1.6A R A firm carrying on insurance distribution activities must allocate to a senior manager the function of ensuring the proper implementation of the policies and procedures approved in accordance with SYSC 3.1.11R.

[Note: second paragraph of article 10(8) of the IDD]
2.2 Recording the apportionment

2.2.1 [R] (1) A firm must make a record of the arrangements it has made to satisfy SYSC 2.1.1 R (apportionment) and take reasonable care to keep this up to date.

(2) This record must be retained for six years from the date on which it was superseded by a more up-to-date record.

2.2.1A [R] SYSC 2.2.1R does not apply to a firm to whom PRA Rulebook: Solvency II firms: Insurance – Allocation of Responsibilities, 5.1 and 5.2 or PRA Rulebook: Large Non-Solvency II firms – Allocation of Responsibilities, 5.1 and 5.2, applies nor to a large non-directive insurer.

2.2.2 [G] (1) A firm will be able to comply with SYSC 2.2.1 R by means of records which it keeps for its own purposes provided these records satisfy the requirements of SYSC 2.2.1 R and provided the firm takes reasonable care to keep them up to date. Appropriate records might, for this purpose, include organisational charts and diagrams, project management documents, job descriptions, committee constitutions and terms of reference provided they show a clear description of the firm’s major functions.

(2) Firms should record any material change to the arrangements described in SYSC 2.2.1 R as soon as reasonably practicable after that change has been made.

2.2.3 [G] Where responsibilities have been allocated to more than one individual, the firm's record should show clearly how those responsibilities are shared or divided between the individuals concerned.

2.2.4 [R] [deleted]

2.2.5 [G] [deleted]

2.2.6 [R] [deleted]

2.2.7 [G] [deleted]
3.1 Systems and controls

3.1.1 A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

3.1.1A [deleted]

3.1.2 (1) The nature and extent of the systems and controls which a firm will need to maintain under SYSC 3.1.1 R will depend upon a variety of factors including:
   (a) the nature, scale and complexity of its business;
   (b) the diversity of its operations, including geographical diversity;
   (c) the volume and size of its transactions; and
   (d) the degree of risk associated with each area of its operation.

   (2) To enable it to comply with its obligation to maintain appropriate systems and controls, a firm should carry out a regular review of them.

   (3) The areas typically covered by the systems and controls referred to in SYSC 3.1.1 R are those identified in SYSC 3.2. Detailed requirements regarding systems and controls relevant to particular business areas or particular types of firm are covered elsewhere in the Handbook.

3.1.2A Firms should also consider the additional guidance on risk-centric governance arrangements for effective risk management contained in SYSC 21.

3.1.3 Where the UK Corporate Governance Code is relevant to a firm, the appropriate regulator, in considering whether the firm's obligations under SYSC 3.1.1 R have been met, will give it due credit for following corresponding provisions in the code and related guidance.

3.1.4 A firm has specific responsibilities regarding its appointed representatives or, where applicable, its tied agents (see SUP 12).

3.1.5 SYSC 2.1.3 R (2) prescribes how a firm must allocate the function of overseeing the establishment and maintenance of systems and controls described in SYSC 3.1.1 R.
### Competent employees rule

3.1.6 **R** A firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

3.1.7 **R** When complying with the competent employees rules, a firm must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.

3.1.7A **G** SYSC 28 contains rules and guidance relating to the minimum knowledge and competence requirements in relation to insurance distribution activities undertaken by a firm.

3.1.8 **G** The Training and Competence sourcebook (TC) contains additional rules and guidance relating to specified retail activities undertaken by a firm.

3.1.9 **G** Firms which are carrying on activities that are not subject to TC may nevertheless wish to take TC into account in complying with the competence requirements in SYSC.

3.1.10 **G** If a firm requires employees who are not subject to a qualification requirement in TC to pass a relevant examination from the list of appropriate qualifications maintained by the FCA, the appropriate regulator will take that into account when assessing whether the firm has ensured that the employee satisfies the knowledge component of the competent employees rule.

### Insurance distribution activities

3.1.11 **R** A firm carrying on insurance distribution activities must approve, implement and regularly review its internal policies and procedures in respect of its obligations under SYSC 28.

[Note: first paragraph of article 10(8) of the IDD]

3.1.12 **G** SYSC 2.1.6AR prescribes how a firm must allocate the function of ensuring the proper implementation of the policies and procedures approved in accordance with SYSC 3.1.11R.
### 3.2 Areas covered by systems and controls

#### Introduction

This section covers some of the main issues which a firm is expected to consider in establishing and maintaining the systems and controls appropriate to its business, as required by SYSC 3.1.1 R.

#### Organisation

A firm's reporting lines should be clear and appropriate having regard to the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, should be communicated as appropriate within the firm.

1. A firm's governing body is likely to delegate many functions and tasks for the purpose of carrying out its business. When functions or tasks are delegated, either to employees or to appointed representatives or, where applicable, its tied agents, appropriate safeguards should be put in place.

2. When there is delegation, a firm should assess whether the recipient is suitable to carry out the delegated function or task, taking into account the degree of responsibility involved.

3. The extent and limits of any delegation should be made clear to those concerned.

4. There should be arrangements to supervise delegation, and to monitor the discharge of delegates functions or tasks.

5. If cause for concern arises through supervision and monitoring or otherwise, there should be appropriate follow-up action at an appropriate level of seniority within the firm.

6. The guidance relevant to delegation within the firm is also relevant to external delegation ('outsourcing'). A firm cannot contract out its regulatory obligations. So, for example, under Principle 3 a firm should take reasonable care to supervise the discharge of outsourced functions by its contractor.

7. A firm should take steps to obtain sufficient information from its contractor to enable it to assess the impact of outsourcing on its systems and controls.
Where it is made possible and appropriate by the nature, scale and complexity of its business, a firm should segregate the duties of individuals and departments in such a way as to reduce opportunities for financial crime or contravention of requirements and standards under the regulatory system. For example, the duties of front-office and back-office staff should be segregated so as to prevent a single individual initiating, processing and controlling transactions.

Systems and controls in relation to compliance, financial crime and money laundering

A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime.

A firm must ensure that these systems and controls:

1. enable it to identify, assess, monitor and manage money laundering risk; and
2. are comprehensive and proportionate to the nature, scale and complexity of its activities.

"Money laundering risk" is the risk that a firm may be used to further money laundering. Failure by a firm to manage this risk effectively will increase the risk to society of crime and terrorism.

A firm must carry out regular assessments of the adequacy of these systems and controls to ensure that it continues to comply with SYSC 3.2.6A R.

A firm may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, Proceeds of Crime Act 2002 and the Money Laundering Regulations. SYSC 3.2.6 R to SYSC 3.2.6 J G are not relevant for the purposes of regulation 76(6) or 86(2) of the Money Laundering Regulations, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.

The FCA, when considering whether a breach of its rules on systems and controls against money laundering has occurred, will have regard to whether a firm has followed relevant provisions in the guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.
In identifying its money laundering risk and in establishing the nature of these systems and controls, a firm should consider a range of factors, including:

1. its customer, product and activity profiles;
2. its distribution channels;
3. the complexity and volume of its transactions;
4. its processes and systems; and
5. its operating environment.

A firm should ensure that the systems and controls include:

1. appropriate training for its employees in relation to money laundering;
2. appropriate provision of information to its governing body and senior management, including a report at least annually by that firm’s money laundering reporting officer (MLRO) on the operation and effectiveness of those systems and controls;
3. appropriate documentation of its risk management policies and risk profile in relation to money laundering, including documentation of its application of those policies (see SYSC 3.2.20 R to SYSC 3.2.22 G);
4. appropriate measures to ensure that money laundering risk is taken into account in its day-to-day operation, including in relation to:
   a. the development of new products;
   b. the taking-on of new customers; and
   c. changes in its business profile; and
5. appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to its services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.

A firm must allocate to a director or senior manager (who may also be the money laundering reporting officer) overall responsibility within the firm for the establishment and maintenance of effective anti-money laundering systems and controls.

The money laundering reporting officer

A firm must:

1. appoint an individual as MLRO, with responsibility for oversight of its compliance with the FCA’s rules on systems and controls against money laundering; and
(2) ensure that its MLRO has a level of authority and independence within the firm and access to resources and information sufficient to enable him to carry out that responsibility.

3.2.6J The job of the MLRO within a firm is to act as the focal point for all activity within the firm relating to anti-money laundering. The FCA expects that a firm’s MLRO will be based in the United Kingdom.

Financial crime guidance

3.2.6K The FCA provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime in FCG (Financial Crime Guide: A firm’s guide to countering financial crime risks) and FCTR (Financial Crime Thematic Reviews).

The compliance function

3.2.7 (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. The organisation and responsibilities of a compliance function should be documented. A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. It should be adequately resourced and should have unrestricted access to the firm’s relevant records as well as ultimate recourse to its governing body.

(2) [deleted]

(3) [deleted]

3.2.8 (1) A firm must allocate to a director or senior manager the function of:

(a) having responsibility for oversight of the firm's compliance; and

(b) reporting to the governing body in respect of that responsibility.

(2) In (1) "compliance" means compliance with the firm's obligations under the regulatory system in relation to which the FCA has responsibility.

3.2.9 ■ SUP 10C.6.1R uses ■ SYSC 3.2.8R to describe the controlled function, known as the compliance oversight function, of acting in the capacity of a director or senior manager to whom this function is allocated.

Conduct risk oversight (Lloyd’s) function

3.2.9A In relation to business done at Lloyd’s, the Society must allocate to a director or senior manager the function of having responsibility for overseeing the conduct of business standards required of managing agents for which the Society has responsibility.
### Risk assessment

#### 3.2.10

1. Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate risk assessment function responsible for assessing the risks that the firm faces and advising the governing body and senior managers on them.

2. The organisation and responsibilities of a risk assessment function should be documented. The function should be adequately resourced and staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively.

3. The term ‘risk assessment function’ refers to the generally understood concept of risk assessment within a firm, that is, the function of setting and controlling risk exposure. The risk assessment function is not an FCA controlled function itself, but firms it may fall under the PRA chief risk officer controlled function.

4. Paragraphs (1) and (3) do not apply to a Solvency II firm and (2) only applies as if the term ‘risk assessment function’ was replaced by ‘risk management function’.

5. Solvency II firms are subject to requirements for an effective risk management system in PRA Rulebook: Solvency II firms: Conditions Governing Business 3.

6. Also, PRA Rulebook: Solvency II firms: Insurance Senior Management Functions makes the chief risk function a PRA controlled function. The chief risk function is the function of having responsibility for overall management of the risk management system, as specified in PRA Rulebook: Solvency II firms: Conditions Governing Business 3.

7. The FCA will take the requirements in (5) and (6) into account.

### Management information

#### 3.2.11

1. [deleted]

2. [deleted]

#### 3.2.11A

1. A firm’s arrangements should be such as to furnish its governing body with the information it needs to play its part in identifying, measuring, managing and controlling risks of regulatory concern. Three factors will be the relevance, reliability and timeliness of that information.

2. Risks of regulatory concern are those risks which relate to the fair treatment of the firm’s customers, to the protection of consumers, to effective competition and to the integrity of the UK financial system. Risks which are relevant to the integrity of the UK financial system include risks which relate to its soundness, stability and resilience and to the use of the system in connection with financial crime.
It is the responsibility of the firm to decide what information is required, when, and for whom, so that it can organise and control its activities and can comply with its regulatory obligations. The detail and extent of information required will depend on the nature, scale and complexity of the business.

Employees and agents

A firm’s systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it.

(1) SYSC 3.2.13 G includes assessing an individual’s honesty, and competence. This assessment should normally be made at the point of recruitment. An individual’s honesty need not normally be revisited unless something happens to make a fresh look appropriate.

(2) Any assessment of an individual’s suitability should take into account the level of responsibility that the individual will assume within the firm. The nature of this assessment will generally differ depending upon whether it takes place at the start of the individual’s recruitment, at the end of the probationary period (if there is one) or subsequently.

(3) [deleted]

(4) The requirements on firms with respect to approved persons are in Part V of the Act (Performance of regulated activities) and SUP 10C and the Senior Insurance Management Functions parts of the PRA Rulebook

Audit committee

Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to form an audit committee. An audit committee could typically examine management’s process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the regulatory system, oversee the functioning of the internal audit function (if applicable - see SYSC 3.2.16 G) and provide an interface between management and the external auditors. It should have an appropriate number of non-executive directors and it should have formal terms of reference.

Internal audit

(1) Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to delegate much of the task of monitoring the appropriateness and effectiveness of its systems and controls to an internal audit function. An internal audit function should have clear responsibilities and reporting lines to an audit committee or appropriate senior manager, be adequately resourced and staffed by competent individuals, be independent of the day-to-day activities of the firm and have appropriate access to a firm’s records.
(2) The term ‘internal audit function’ refers to the generally understood concept of internal audit within a firm, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not an FCA controlled function itself, but for certain firms it may fall under the PRA chief risk officer controlled function.

(3) Paragraph (1) does not apply to Solvency II firms.

(4) Solvency II firms are subject to a requirement in PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 5 to have an effective internal audit function.

(5) Also, the PRA Rulebook: Solvency II firms: Insurance Senior Management Functions makes the chief internal audit function a PRA controlled function. The chief internal audit function is the function of having responsibility for management of the internal audit function specified in PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 5.

(6) The FCA will take the requirements in (4) and (5) into account.

### Business strategy

3.2.17 G

A firm should plan its business appropriately so that it is able to identify, measure, manage and control risks of regulatory concern (see SYSC 3.2.11 G (2)). In some firms, depending on the nature, scale and complexity of their business, it may be appropriate to have business plans or strategy plans documented and updated on a regular basis to take account of changes in the business environment.

### Remuneration policies

3.2.18 G

It is possible that firms’ remuneration policies will from time to time lead to tensions between the ability of the firm to meet the requirements and standards under the regulatory system and the personal advantage of those who act for it. Where tensions exist, these should be appropriately managed. See also Solvency II Regulation (EU) 2015/35 of 10 October 2014 (Article 275) and EIOPA Guidelines on system of governance dated 28 January 2015 (Guidelines 9 and 10).

### Business continuity

3.2.19 G

A firm, other than a Solvency II firm, should have in place appropriate arrangements, having regard to the nature, scale and complexity of its business, to ensure that it can continue to function and meet its regulatory obligations in the event of unforeseen interruption. These arrangements should be regularly updated and tested to ensure their effectiveness. Solvency II firms are subject to the business continuity requirements in PRA Rulebook: Solvency II firms: Conditions Governing Business, 2.6, and the FCA will take those requirements into account.

### Records

3.2.20 R

(1) A firm must take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which
are the subject of requirements and standards under the regulatory system.

(2) Subject to (3) and to any other record-keeping rule in the Handbook, the records required by (1) or by such other rule must be capable of being reproduced in the English language on paper.

(3) If a firm's records relate to business carried on from an establishment in a country or territory outside the United Kingdom, an official language of that country or territory may be used instead of the English language as required by (2).

3.2.21 A firm should have appropriate systems and controls in place to fulfil the firm's regulatory and statutory obligations with respect to adequacy, access, periods of retention and security of records. The general principle is that records should be retained for as long as is relevant for the purposes for which they are made.

3.2.21A SYSC 28 contains rules and guidance relating to knowledge and competence record keeping requirements in relation to insurance distribution activities undertaken by a firm.

3.2.22 Detailed record-keeping requirements for different types of firm are to be found elsewhere in the Handbook. Schedule 1 to the Handbook is a consolidated schedule of these requirements.
| 3.2.33 | R | [deleted] |
| 3.2.34 | R | [deleted] |
| 3.2.35 | R | [deleted] |
| 3.2.36 | R | [deleted] |
3.3 Additional requirements for insurance distribution

Application

3.3.1 SYSC 3.3 applies to an insurer in the course of it carrying on any insurance distribution activities.

Effect of provisions marked “EU”

3.3.2 The IDD Regulation is directly applicable to an insurer when carrying on insurance distribution in relation to insurance-based investment products. Some of the articles of the IDD Regulation (see the provisions marked with the status letters “EU”) are reproduced in this section for those insurers for information only.

3.3.3 (1) To the extent that the IDD Regulation does not directly apply, provisions in this section marked with the status letters ‘EU’ apply to the insurer as if they were rules.

(2) References in Column (1) to a word or phrase used in the IDD Regulation have, for the purpose of SYSC 3.3.3R(1) above, the meaning indicated in Column (2) of the table below:

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“article 27”</td>
<td>SYSC 3.3.8R and SYSC 3.3.9R</td>
</tr>
<tr>
<td>“article 28”</td>
<td>SYSC 3.3.5R and SYSC 3.3.13R</td>
</tr>
<tr>
<td>“competent authority”</td>
<td>FCA</td>
</tr>
<tr>
<td>“customer”</td>
<td>Client</td>
</tr>
<tr>
<td>“Directive (EU) 2016/97”</td>
<td>IDD</td>
</tr>
<tr>
<td>“insurance-based investment products”</td>
<td>Policies</td>
</tr>
<tr>
<td>“insurance distribution activities”</td>
<td>insurance distribution activities</td>
</tr>
<tr>
<td>“insurance intermediary”</td>
<td>insurance intermediary</td>
</tr>
<tr>
<td>“insurance undertakings”</td>
<td>Insurer</td>
</tr>
<tr>
<td>“relevant person”</td>
<td>any of the following:</td>
</tr>
</tbody>
</table>
(a) a director, partner or equivalent, or manager of the insurance intermediary or insurer;

(b) an employee of the insurance intermediary or insurer, as well as any other natural person whose services are placed at the disposal and under the control of the insurance intermediary or insurer and who is involved in the insurance distribution activities; and

(c) a natural person who is directly involved in the provision of services to the insurance intermediary or insurer under an outsourcing agreement for the purpose of the carrying on by the insurance intermediary or insurer of insurance distribution activities.

“remuneration” Remuneration
“shall” Must

3.3.4 The effect of SYSC 3.3.3R is that:

(1) the provisions marked “EU” apply as rules to an insurer when carrying on insurance distribution activities other than insurance distribution in relation to insurance-based investment products;

(2) where SYSC 3.3.3R applies, an insurer is required to read the provisions marked “EU” as though the application of those provisions (and articles 27 and 28 of the IDD) is not limited to the distribution of insurance-based investment products; and

(3) the scope of the application of the IDD Regulation is extended from insurance distribution to insurance distribution activities.

Identifying conflicts

3.3.5 A firm must take all appropriate steps to identify conflicts of interest that arise between:

(1) the firm, including its managers, employees and appointed representatives (or where applicable, tied agents), or any person directly or indirectly linked to them by control, and a client of the firm; or

(2) one client of the firm and another client.

[Note: article 28(1) of the IDD]

3.3.6 3(1) For the purposes of identifying, in accordance with Article 28 of Directive (EU) 2016/97, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related
to insurance-based investment products and which entail a risk of
damage to the interests of a customer, insurance intermediaries and
insurance undertakings shall assess whether they, a relevant person
or any person directly or indirectly linked to them by control, have
an interest in the outcome of the insurance distribution activities,
which meets the following criteria:

- it is distinct from the customer’s or potential customer’s interest
  in the outcome of the insurance distribution activities;
- it has the potential to influence the outcome of the distribution
  activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in
the same way for the purposes of identifying conflicts of interest
between one customer and another.

3(2) For the purposes of the assessment pursuant to paragraph 1,
insurance intermediaries and insurance undertakings shall take into
account, by way of minimum criteria, the following situations:

- the insurance intermediary or insurance undertaking, a relevant
  person or any person directly or indirectly linked to them by
  control is likely to make a financial gain, or avoid a financial loss,
  to the potential detriment of the customer;
- the insurance intermediary or insurance undertaking, a relevant
  person or any person directly or indirectly linked to them by
  control has a financial or other incentive to favour the interest
  of another customer or group of customers over the interest of
  the customer;
- the insurance intermediary or insurance undertaking, a relevant
  person or any person directly or indirectly linked by control to an
  insurance intermediary or an insurance undertaking is
  substantially involved in the management or development of
  insurance-based investment products, in particular where such a
  person has an influence on the pricing of those products or their
distribution costs.

[Note: article 3 of the IDD Regulation]

Managing conflicts

A firm must maintain and operate effective organisational and
administrative arrangements with a view to taking all reasonable steps
designed to prevent conflicts of interest identified under ■SYSC 3.3.5R from
adversely affecting the interests of its clients.

[Note: article 27 of the IDD]

Proportionality

The arrangements in ■SYSC 3.3.8R must be proportionate to the activities
performed, the policies sold and the type of insurance distributor the firm is
or uses.

[Note: article 27 of the IDD]
Conflicts policy

3.3.10 EU

4(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 4(1) of the IDD Regulation]

Contents of policy

3.3.11 EU

4(2) The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

- with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;

- procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the customer.

[Note: article 4(2) of the IDD Regulation]

5(1) The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.

The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include, where appropriate, the following:

- effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers;

- the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;

- the removal of any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance distribution activities are carried out by the insurance intermediary or insurance undertaking or their managers or employees or any person directly or indirectly linked to them by control;

measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest;

a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

5(2) Where insurance intermediaries and insurance undertakings can demonstrate that the measures and procedures referred to in paragraph 1 are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interest of the customer and are not biased due to conflicting interests of the insurance intermediary, the insurance undertaking or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.

[Note: article 5 of the IDD Regulation]

Disclosure of conflicts

3.3.13  R (1) If arrangements made under § SYSC 3.3.8R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must:

(a) clearly disclose to the client the general nature or sources of the conflicts of interest (or both); and

(b) include sufficient detail in the disclosure, taking into account the nature of the client, to enable that client to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

(2) The disclosure must be made:

(a) in a durable medium; and

(b) in good time before the conclusion of the contract of insurance.

[Note: article 28(2) and (3) of the IDD]

3.3.14  EU 6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to Article 28(2) of Directive (EU) 2016/97, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with Article 27 of Directive (EU) 2016/97 are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.
6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:

- provide a specific description of the conflict of interest in question;
- explain the general nature and sources of the conflict of interest;
- explain the risks to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
- clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

[Note: article 6 of the IDD Regulation]

**Review of conflicts policy**

3.3.15 EU

7(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the IDD Regulation]

**Record keeping**

3.3.16 EU

7(2) Insurance intermediaries and insurance undertakings shall keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a customer has arisen or, in the case of an ongoing service or activity may arise.

Senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on the situations referred to in the first subparagraph.

[Note: article 7(2) of the IDD Regulation]

3.3.17 R

A firm carrying on insurance distribution activities in relation to insurance-based investment products must retain its records relating to:

1. suitability (COBS 9A); and
2. appropriateness (COBS 10A),

for a period of at least five years.

3.3.18 G

1. COBS 9A.4 and COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) reproduce certain record keeping requirements of the IDD Regulation (and apply these
requirements to firms not in scope of the IDD Regulation). They specify information which should be recorded by firms carrying on insurance distribution in relation to insurance-based investment products and for how long the records must be retained.

(2) For the purposes of ►SYSC 3.3.17R, a firm will need to consider whether the requirement in article 19 of the IDD Regulation (or in ►COBS 9A.4.3EU or ►10A.7.2EU for any firm to whom the IDD Regulation is not directly applicable) means that a record needs to be retained for longer than five years.

19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority. The competent authority shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the IDD Regulation]
3.4 SRD requirements

Application

3.4.1 R This section applies to:

- a UK insurer; and
- a UK pure reinsurer,

doing long-term insurance business.

3.4.2 R The rules in this section apply to the extent that a firm is investing (or has invested), directly or through an SRD asset manager, in shares traded on a regulated market.

3.4.3 G The defined term regulated market has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the EEA.

Engagement policy and disclosure of information

3.4.4 R A firm must either:

1. (a) develop and publicly disclose an engagement policy that meets the requirements of SYSC 3.4.5R (an "engagement policy"); and
   (b) publicly disclose on an annual basis how its engagement policy has been implemented, in a way that meets the requirements of SYSC 3.4.6R; or

2. publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).

[Note: article 3g(1) and (1)(a) of SRD]

3.4.5 R The engagement policy must describe how the firm:

1. integrates shareholder engagement in its investment strategy;
2. monitors investee companies on relevant matters, including:
   (a) strategy;
   (b) financial and non-financial performance and risk;
(c) capital structure; and
(d) social and environmental impact and corporate governance;
(3) conducts dialogues with investee companies;
(4) exercises voting rights and other rights attached to shares;
(5) cooperates with other shareholders;
(6) communicates with relevant stakeholders of the investee companies; and
(7) manages actual and potential conflicts of interests in relation to the firm’s engagement.

[Note: article 3g(1)(a) of SRD]

3.4.6 R

(1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and the use of the services of proxy advisors.

(2) (a) Subject to (b), a firm must publicly disclose how it has cast votes in the general meetings of companies in which it holds shares.

(b) A firm is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[Note: article 3g(1)(b) of SRD]

3.4.7 R

(1) The applicable disclosures or information referred to in SYSC 3.4.4R to SYSC 3.4.6R must be made available free of charge on the firm’s website.

(2) Where an SRD asset manager implements the engagement policy, including voting, on behalf of a firm, the firm must make a reference as to where such voting information has been published by the SRD asset manager.

[Note: article 3g(2) of SRD]

Investment strategy and arrangements with SRD asset managers

A firm must disclose publicly how the main elements of its equity investment strategy are consistent with the profile and duration of its liabilities, in particular long-term liabilities, and how they contribute to the medium- to long-term performance of its assets.

[Note: article 3h(1) of SRD]

3.4.9 R

(1) Where an SRD asset manager invests on behalf of a firm, whether on a discretionary client-by-client basis or through a collective investment undertaking, the firm must publicly disclose the following information regarding its arrangement with the SRD asset manager:
(a) how the arrangement with the **SRD asset manager** incentivises the **SRD asset manager** to align its investment strategy and decisions with the profile and duration of the liabilities of the **firm**, in particular long-term liabilities;

(b) how that arrangement incentivises the **SRD asset manager** to make investment decisions based on assessments of medium- to long-term financial and non-financial performance of the investee company, and to engage with investee companies in order to improve their performance in the medium- to long-term;

(c) how the method and time horizon of the evaluation of the **SRD asset manager**’s performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the **firm**, in particular its long-term liabilities, taking into account its absolute long-term performance;

(d) how the **firm** monitors portfolio turnover costs incurred by the **SRD asset manager** and how it defines and monitors a targeted portfolio turnover or turnover range; and

(e) the duration of the arrangement with the **SRD asset manager**.

(2) Where the arrangement with the **SRD asset manager** does not contain one or more such elements, the **firm** must give a clear and reasoned explanation why this is the case.

**Note:** article 3h(2) of **SRD**

3.4.10 **R**

The information referred to in **SYSC 3.4.8R** and **SYSC 3.4.9R** must:

(1) be made available, free of charge, on the **firm**’s website; and

(2) be updated annually, unless there is no material change.

**Note:** article 3h(3), first paragraph of **SRD**
Chapter 4

General organisational requirements
4.1 General requirements

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements.]

Application to a common platform firm

4.1-2 For a common platform firm:

(1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and

(2) the rules and guidance apply as set out in the table below:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>General requirements</td>
<td>SYSC 4.1.1R, SYSC 4.1.1CR, SYSC 4.1.2R, SYSC 4.1.2AAR</td>
</tr>
<tr>
<td>Business continuity</td>
<td>SYSC 4.1.6R, SYSC 4.1.7R, SYSC 4.1.8G</td>
</tr>
<tr>
<td>Audit committee</td>
<td>SYSC 4.1.11G, SYSC 4.1.13G, SYSC 4.1.14G</td>
</tr>
<tr>
<td>Persons who effectively direct the business</td>
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Application to a MiFID optional exemption firm and to a third country firm

(1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and

(2) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

General requirements

(1) A firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

(2) [deleted]

[Note: article 74 (1) of CRD, article 16(5) second paragraph of MiFID, article 12(1)(a) of the UCITS Directive, and article 18(1) of AIFMD]

(3) Without prejudice to the ability of the FCA or any other relevant competent authority to require access to communications in accordance with MiFID and MiFIR, a common platform firm must have sound security mechanisms in place for the following, while maintaining the confidentiality of the data at all times:

(a) to guarantee the security and authentication of the means of transfer of information;

(b) to minimise the risk of data corruption and unauthorised access; and

(c) to prevent information leakage.

[Note: article 16(5) third paragraph of MiFID]

A full-scope UK AIFM must comply with the AIFM Remuneration Code.  
[Note: article 13(1) of AIFMD]

A full-scope UK AIFM must, in particular:

(1) have rules for personal transactions by its employees or for the holding or management of investments it invests on its own account;

(2) ensure that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and
(3) ensure that the assets of the AIFs managed by the AIFM are invested in accordance with the instrument constituting the fund and the legal provisions in force.

[Note: article 18(1) second paragraph of AIFMD]

4.1.1C R A BIPRU firm and a third country BIPRU firm must comply with the BIPRU Remuneration Code.

4.1.1D R A UK UCITS management company must comply with the UCITS Remuneration Code if it:

(1) manages a UCITS scheme; or

(2) manages an EEA UCITS scheme.

[Note: article 14a(1) of the UCITS Directive]

4.1.1E R A UK UCITS management company must have appropriate procedures for its employees to report potential or actual breaches of national provisions transposing the UCITS Directive internally through a specific, independent and autonomous channel.

[Note: article 99d(5) of the UCITS Directive]

4.1.1F G ■ SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further guidance on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between firms and the FCA.

4.1.2 R For a common platform firm, the arrangements, processes and mechanisms referred to in ■ SYSC 4.1.1 R must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the common platform firm’s activities and must take into account the specific technical criteria described in article 21(3) of the MiFID Org Regulation, ■ SYSC 5.1.7 R, ■ SYSC 7 and whichever of the following as applicable:

(for a firm to which ■ SYSC 19A applies) ■ SYSC 19A (IFPRU Remuneration Code);

(for a full-scope UK AIFM) ■ SYSC 19B (AIFM Remuneration Code);

(for a firm to which ■ SYSC 19C applies) ■ SYSC 19C (BIPRU Remuneration Code);

(for a firm to which ■ SYSC 19D applies) ■ SYSC 19D (Dual-regulated firms Remuneration Code); or

(for a firm to which the remuneration part of the PRA Rulebook applies) the remuneration part of the PRA Rulebook.

[Note: article 74 (2) of CRD]
Other firms should take account of the comprehensiveness and proportionality rule (SYSC 4.1.2 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1 3.3 R(1).

Where SYSC 4.1.2 R applies to a BIPRU firm, it must take into account the specific technical criteria described in SYSC 19C.

For a management company or a full-scope UK AIFM, the arrangements, processes and mechanisms referred to in SYSC 4.1.1 R and SYSC 4.1.1A R must also take account of the UCITS schemes and EEA UCITS schemes managed by the management company or the AIFs managed by the full-scope UK AIFM.

[Note: article 12(1) second paragraph of the UCITS Directive and article 18(1) second paragraph of AIFMD]

Resources for management companies and AIFMs

A management company, a full-scope UK AIFM and an incoming EEA AIFM branch must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.

[Note: articles 12(1)(a) and 14(1)(c) of the UCITS Directive and article 12(1)(c) of AIFMD]

A full-scope UK AIFM must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs.

[Note: article 18(1) first paragraph of AIFMD]

Subordinate measures relating to provisions implementing article 12(1) of AIFMD

Articles 16 to 29 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions of article 12(1) of AIFMD, articles 57 to 66 of the AIFMD level 2 regulation provide detailed rules supplementing articles 12 and 18 of AIFMD.

Mechanisms and procedures for a firm

A firm (with the exception of a common platform firm and a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the firm, and the nature and range of the financial services, claims management services and other activities undertaken in the course of that business:

(1) (if it is a management company) establish, implement and maintain decision-making procedures and an organisational structure which
clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

(2) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the *firm*;

(3) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*; and

(4) (if it is a *management company*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *management company* as well as effective information flows with any third party involved.

[Note: articles 4(1) final paragraph, 4(1)(a), 4(1)(c) and 4(1)(d) of the UCITS implementing Directive]

**4.1.4A**

A *firm* that is not a *common platform firm* or a *management company* should take into account the decision-making procedures and effective internal reporting *rules* (■ SYSC 4.1.4R (1), ■ (3) and ■ (4)) as if they were *guidance* (and as if "should" appeared in those *rules* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

**4.1.5**

A *management company* must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[Note: article 4(2) of the UCITS implementing Directive]

**Business continuity**

**4.1.6**

A *common platform firm* must take reasonable steps to ensure continuity and regularity in the performance of its *regulated activities*. To this end the *common platform firm* must employ appropriate and proportionate systems, resources and procedures.

[Note: article 16(4) of MiFID]

**4.1.7**

A *CRR firm* and a *management company* must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its *regulated activities*, or, in the case of a *management company*, its *collective portfolio management* activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities.

[Note: article 4(3) of the UCITS implementing Directive and article 85(2) of CRD]

**4.1.7A**

Other *firms* should take account of the business continuity *rules* (■ SYSC 4.1.6 R and ■ 4.1.7 R) as if they were *guidance* (and as if "should"
The matters dealt with in a business continuity policy should include:

1. resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;

2. the recovery priorities for the firm's operations;

3. communication arrangements for internal and external concerned parties (including the FCA, clients and the press);

4. escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;

5. processes to validate the integrity of information affected by the disruption; and

6. regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with SYSC 4.1.10R and for a common platform firm with article 21(5) of the MiFID Org Regulation.

Operators of electronic systems in relation to lending: arrangements to administer loans in the event of platform failure

An operator of an electronic system in relation to lending must take reasonable steps to ensure that arrangements are in place to ensure that P2P agreements facilitated by it will continue to be managed and administered, in accordance with the contract terms, if at any time it ceases to carry on the activity of operating an electronic system in relation to lending.

Any arrangements made under SYSC 4.1.8A R must be notified to lenders under P2P agreements:

1. when such arrangements are made; or

2. if later, when the lender first becomes a lender under a P2P agreement with that operator; or

3. if the arrangements are changed, when that change is made; and

4. if the arrangement involves another firm taking over the management and administration of P2P agreements if the operator ceases to operate the electronic system in relation to lending, the notification to lenders must inform lenders of the identity of the firm with which the arrangements have been made and how that firm will hold the lenders' money.

Arrangements to ensure P2P agreements facilitated by the firm continue to be managed and administered may include:
(1) entering into an arrangement with another firm to take over the management and administration of P2P agreements if the operator ceases to operate the electronic system in relation to lending; or

(2) holding sufficient collateral in a segregated account to cover the cost of management and administration while the loan book is wound down; or

(3) entering into an arrangement for another firm to act as guarantor for the P2P agreements which includes a legally enforceable arrangement to meet the costs of the guarantee in full; or

(4) managing the loan book in a way that ensures that income from P2P agreements facilitated by the firm is sufficient to cover the costs of managing and administering those agreements during the winding down process, taking into account the reduction of the loan pool and fee income from it.

When designing its arrangements, a firm should take into account insolvency law to ensure that the insolvency of the firm does not prejudice the operation of arrangements that the firm has put in place.

Operators of electronic systems in relation to lending: title transfer

(1) An operator of an electronic system in relation to lending must not accept, take, or receive the transfer of full ownership of money relating to P2P agreements.

(2) If an operator of an electronic system in relation to lending has made a client money election under CASS 7.10.7AR, when it is operating an electronic system in relation to non-P2P agreements it must also not accept, take, or receive the transfer of full ownership of money relating to non-P2P agreements.

Accounting policies: management company

A management company must establish, implement and maintain accounting policies and procedures that enable it, at the request of the FCA, to deliver in a timely manner to the FCA financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

[Note: article 4(4) of the UCITS implementing Directive]

Regular monitoring: management company

A management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with SYSC 4.1.4 R to SYSC 4.1.9 R and take appropriate measures to address any deficiencies.

[Note: article 4(5) of the UCITS implementing Directive]
4.1.10A Regular monitoring: other firms

Other firms should take account of the regular monitoring rule (§ SYSC 4.1.10 R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in § SYSC 1 Annex 1 3.3 R(1), but ignoring the cross-reference to § SYSC 4.1.5 R and § SYSC 4.1.9R.

4.1.11 Audit committee

Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to form an audit committee. An audit committee could typically examine management’s process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the regulatory system, oversee the functioning of the internal audit function (if applicable) and provide an interface between management and external auditors. It should have an appropriate number of non-executive directors and it should have formal terms of reference.

4.1.12 [deleted]

4.1.13 Risk control: additional guidance

Firms should also consider the additional guidance on risk-centric governance arrangements for effective risk management contained in § SYSC 21.

4.1.14 Apportionment of responsibilities: the role of the non-executive director

The role undertaken by a non-executive director will vary from one firm to another. Where a non-executive director is an approved person, for example where the firm is a body corporate, his responsibility and therefore liability will be limited by the role that he undertakes.
4.2 Persons who effectively direct the business

General requirement

4.2.1 R The senior personnel of a common platform firm, a management company, a full-scope UK AIFM, or of the UK branch of a non-EEA bank must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the firm.

[Note: article 9(1)(4) of MiFID, article 7(1)(b) of the UCITS Directive, article 8(1)(c) of AIFMD and article 91(1) of CRD]

4.2.1A G Other firms should take account of the senior personnel rule (§ SYSC 4.2.1 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in § SYSC 1 Annex 1 3.3 R(1).

Responsibility of senior personnel of an AIFM

4.2.1B R For a full-scope UK AIFM, the senior personnel must, in complying with § SYSC 4.2.1 R, be sufficiently experienced in relation to the investment strategies pursued by the AIFs it manages.

[Note: article 8(1)(c) of AIFMD]

Composition of management

4.2.2 R A common platform firm, a management company, a full-scope UK AIFM and the UK branch of a non-EEA bank must ensure that its management is undertaken by at least two persons meeting the requirements laid down in § SYSC 4.2.1 R and:

(a) for a full-scope UK AIFM, § SYSC 4.2.7R; or

(b) for a common platform firm, § SYSC 4.3A.3R.

[Note: article 9(6) first paragraph of MiFID, article 7(1)(b) of the UCITS Directive, article 8(1)(c) of AIFMD and article 13(1) of CRD]

4.2.3 G In the case of a body corporate, the persons referred to in SYSC 4.2.2 R should either be executive directors or persons granted executive powers by, and reporting immediately to, the governing body. In the case of a partnership, they should be active partners.
At least two independent minds should be applied to the formulation and implementation of the policies of a common platform firm, a management company, a full-scope UK AIFM and the UK branch of a third country firm. Where a firm nominates just two individuals to direct its business, the FCA will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence on, the way in which strategy is being implemented through day-to-day policy.

Where there are more than two individuals directing the business of a common platform firm, a management company, a full-scope UK AIFM or the UK branch of a third country firm, the FCA does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. However, at least two individuals should be involved in all such decisions. Both individuals' judgement should be engaged so that major errors leading to difficulties for the firm are less likely to occur. Similarly, each individual should have sufficient experience and knowledge of the business and the necessary personal qualities and skills to detect and resist any imprudence, dishonesty or other irregularities by the other individual. Where a single individual, whether a chief executive, managing director or otherwise, is particularly dominant in such a firm this will raise doubts about whether SYSC 4.2.2 R is met.

Alternative arrangements

If a common platform firm, (other than a credit institution or AIFM investment firm) or the UK branch of a third country firm, is:

(1) a natural person; or

(2) a legal person managed by a single natural person;

then:

(3) it must have alternative arrangements in place which ensure:

(a) sound and prudent management of the firm; and

(b) adequate consideration of the interests of clients and the integrity of the market; and

(4) the natural persons concerned must be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

it must have alternative arrangements in place which ensure sound and prudent management of the firm.

[Note: article 9(6) second paragraph of MiFID]
4.2.7 R A full-scope UK AIFM must notify the FCA of the names of the senior personnel of the firm and of every person succeeding them in office.

[Note: article 8(1)(c) of AIFMD]

4.2.8 G Where the senior personnel of a full-scope UK AIFM will carry out a FCA governing function and the firm has applied for the FCA’s approval under Section 59 of the Act, this will be considered sufficient to comply with SYSC 4.2.7 R.
4.3 Responsibility of senior personnel

4.3.1 A firm (with the exception of a common platform firm and a sole trader who does not employ any person who is required to be approved under section 59 of the Act ( Approval for particular arrangements)), when allocating functions internally, must ensure that senior personnel and, where appropriate, the supervisory function, are responsible for ensuring that the firm complies with its obligations under the regulatory system. In particular, senior personnel and, where appropriate, the supervisory function must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the firm’s obligations under the regulatory system and take appropriate measures to address any deficiencies.

[Note: articles 9(1) and 9(3) of the UCITS implementing Directive]

4.3.2 A management company, must ensure that:

(1) its senior personnel receive on a frequent basis, and at least annually, written reports on the matters covered by SYSC 6.1.2 R to SYSC 6.1.5 R, SYSC 6.2.1 R, SYSC 7.1.2 R, SYSC 7.1.3 R and SYSC 7.1.5 R to SYSC 7.1.7 R, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies; and

(2) the supervisory function, if any, receives on a regular basis written reports on the same matters.

[Note: articles 9(4) and 9(6) of the UCITS implementing Directive]

4.3.2A Other firms should take account of the written reports rule (SYSC 4.3.2 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1 3.3 R(1).

4.3.3 The supervisory function does not include a general meeting of the shareholders of a firm, or equivalent bodies, but could involve, for example, a separate supervisory board within a two-tier board structure or the establishment of a non-executive committee of a single-tier board structure.

4.3.4 [deleted]
4.3A Management body and nomination committee

Management body

4.3A.1 R In SYSC 4.3A.6 R and SYSC 4.3A.8 R a common platform firm that is significant means a significant IFPRU firm.

A common platform firm must ensure that the management body defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the firm, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interests of clients. The firm must ensure that the management body:

1. has overall responsibility for the firm;

2. approves and oversees implementation of the firm’s strategic objectives, risk strategy and internal governance;

3. ensures the integrity of the firm’s accounting and financial reporting systems, including financial and operational controls and compliance with the regulatory system.

4. oversees the process of disclosure and communications;

5. has responsibility for providing effective oversight of senior management;

6. monitors and periodically assesses:
   a. the adequacy and the implementation of the firm’s strategic objectives in the provision of investment services and/or activities and ancillary services;
   b. the effectiveness of the firm’s governance arrangements; and
   c. the adequacy of the policies relating to the provision of services to clients, and takes appropriate steps to address any deficiencies; and

7. has adequate access to information and documents which are needed to oversee and monitor management decision-making.

[Note: article 88(1) of CRD and articles 9(1) and 9(3) of MiFID]
Without prejudice to SYSC 4.3A.1R, a common platform firm must ensure that the management body defines, approves and oversees:

1. the organisation of the firm for the provision of investment services and/or activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with;

2. a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the firm and the characteristics and needs of the firm’s clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate; and

3. a remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients.

[Note: article 9(3) of MiFID]

A common platform firm must ensure that the chairman of the firm’s management body does not exercise simultaneously the PRA’s Chief Executive function (controlled function SMF1) or chief executive function within the same firm.

[Note: article 88(1)(e) of CRD and article 9(1) of MiFID]

A firm may apply to the FCA under section 138A of the Act to waive SYSC 4.3A.2R.

A common platform firm must ensure that the members of the management body of the firm:

1. are of sufficiently good repute;

2. possess sufficient knowledge, skills and experience to perform their duties;

3. possess adequate collective knowledge, skills and experience to understand the firm’s activities, including the main risks;

4. reflect an adequately broad range of experiences;

5. commit sufficient time to perform their functions in the firm; and

6. act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of senior management where necessary and to effectively oversee and monitor management decision-making.

[Note: article 91(1)-(2) and (7)-(8) of CRD and article 9(1) and 9(4) of MiFID]
4.3A.4 R A common platform firm must devote adequate human and financial resources to the induction and training of members of the management body.

[Note: article 91(9) of CRD and article 9(1) of MiFID]

4.3A.5 R A common platform firm must ensure that the members of the management body of the firm do not hold more directorships than is appropriate taking into account individual circumstances and the nature, scale and complexity of the firm's activities.

[Note: article 91(3) of CRD and article 9(1) of MiFID]

4.3A.6 R (1) A common platform firm that is significant must ensure that the members of the management body of the firm do not hold more than one of the following combinations of directorship in any organisation at the same time:

(a) one executive directorship with two non-executive directorships; and

(b) four non-executive directorships.

(2) Paragraph (1) does not apply to members of the management body that represent the United Kingdom.

[Note: article 91(3) of CRD and article 9(1) of MiFID]

4.3A.6A G

4.3A.6B G

4.3A.7 R For the purposes of SYSC 4.3A.5 R and SYSC 4.3A.6 R:

(1) directorships in organisations which do not pursue predominantly commercial objectives shall not count; and

(2) the following shall count as a single directorship:

(a) executive or non-executive directorships held within the same group; or

(b) executive or non-executive directorships held within:

(i) firms that are members of the same institutional protection scheme provided that the conditions set out in article 113(7) of the EU CRR are fulfilled; or

(ii) undertakings (including non-financial entities) in which the firm holds a qualifying holding.

[Note: article 91(4) and (5) of CRD and article 9(1) of MiFID]
Nomination Committee

4.3A.8 R

A common platform firm that is significant must:

1. establish a nomination committee composed of members of the management body who do not perform any executive function in the firm;

2. ensure that the nomination committee is able to use any forms of resources the nomination committee deems appropriate, including external advice; and

3. ensure that the nomination committee receives appropriate funding.

[Note: article 88(2) of CRD and article 9(1) of MiFID]

4.3A.8A G

4.3A.9 R

A common platform firm that has a nomination committee must ensure that the nomination committee:

1. engages a broad set of qualities and competences when recruiting members to the management body and for that purpose puts in place a policy promoting diversity on the management body;

2. identifies and recommends for approval, by the management body or by general meeting, candidates to fill management body vacancies, having evaluated the balance of knowledge, skills, diversity and experience of the management body;

3. prepares a description of the roles and capabilities for a particular appointment, and assesses the time commitment required;

4. decides on a target for the representation of the underrepresented gender in the management body and prepares a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target;

5. periodically, and at least annually, assesses the structure, size, composition and performance of the management body and makes recommendations to the management body with regard to any changes;

6. periodically, and at least annually, assesses the knowledge, skills and experience of individual members of the management body and of the management body collectively, and reports this to the management body;

7. periodically reviews the policy of the management body for selection and appointment of senior management and makes recommendations to the management body; and

8. in performing its duties, and to the extent possible, on an ongoing basis, takes account of the need to ensure that the management body’s decision making is not dominated by any one individual or...
small group of individuals in a manner that is detrimental to the interest of the firm as a whole.

[Note: article 88(2) and article 91(10) of CRD and article 9(1) of MiFID]

4.3A.10 R

A common platform firm that does not have a nomination committee must engage a broad set of qualities and competences when recruiting members to the management body. For that purpose a common platform firm that does not have a nomination committee must put in place a policy promoting diversity on the management body.

[Note: article 91(10) of CRD and article 9(1) of MiFID]

Website

4.3A.11 R

A CRR firm that maintains a website must explain on the website how it complies with the requirements of SYSC 4.3A.1 R to SYSC 4.3A.3 R and SYSC 4.3A.4 R to SYSC 4.3A.11 R.

[Note: article 96 of CRD]
4.4 Apportionment of responsibilities

Application

4.4.1 R

This section applies to:

1. an authorised professional firm in respect of its non-mainstream regulated activities unless the firm is also conducting other regulated activities and has appointed approved persons to perform the FCA governing functions with equivalent responsibilities for the firm’s non-mainstream regulated activities and other regulated activities;

2. activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:
   a. an oil market participant; or
   b. a service company; or
   c. an energy market participant; or
   d. a wholly-owned subsidiary of:
      i. a local authority; or
      ii. a registered social landlord; or
   e. a firm with permission to carry on insurance distribution activity in relation to non-investment insurance contracts but no other regulated activity (except advising on P2P agreements);

3. a credit firm which holds only a limited permission (other than a not-for-profit debt advice body) with respect to the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has limited permission;

4. an incoming Treaty firm, an incoming EEA firm or a UCITS qualifier (but only § SYSC 4.4.5R (2) applies for these firms); and

5. a sole trader, but only if he employs any person who is required to be approved under section 59 of the Act (Approval for particular arrangements).

4.4.2 G

This section does not apply to a common platform firm.

4.4.2A R

For the purposes of this section, a regulated claims management activity is treated as an unregulated activity.
Maintaining a clear and appropriate apportionment

**4.4.3 R**

A **firm** must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its **directors** and **senior managers** in such a way that:

1. it is clear who has which of those responsibilities; and
2. the business and affairs of the **firm** can be adequately monitored and controlled by the **directors**, relevant **senior managers** and **governing body** of the **firm**.

Allocating functions of apportionment and oversight

**4.4.5 R**

A **firm** must appropriately allocate to one or more individuals, in accordance with the following table, the functions of:

1. dealing with the apportionment of responsibilities under [deleted]
2. overseeing the establishment and maintenance of systems and controls under [deleted].

<table>
<thead>
<tr>
<th>1: Firm type</th>
<th>2: Allocation of both functions must be to the following individual, if any (see Note):</th>
<th>3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:</th>
</tr>
</thead>
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<tr>
<td>(1) A <strong>firm</strong> which is a <strong>body corporate</strong> and is a member of a <strong>group</strong>, other than a <strong>firm</strong> in row (2)</td>
<td>(1) the <strong>firm's chief executive</strong> (and all of them jointly, if more than one); <strong>or</strong> (2) a <strong>director or senior manager</strong> responsible for the overall management of: (a) the <strong>group</strong>; or (b) a <strong>group division</strong> within which some or all of the <strong>firm's regulated activities</strong> fall</td>
<td>the <strong>firm's and its group's</strong>: (1) <strong>directors</strong>; <strong>and</strong> (2) <strong>senior managers</strong></td>
</tr>
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<td>(2) An <strong>incoming EEA firm</strong> or <strong>incoming Treaty firm</strong> (note: only the functions in SYSC 4.4.5R (2) must be allocated)</td>
<td>(not applicable)</td>
<td>the <strong>firm's and its group's</strong>: (1) <strong>directors</strong>; <strong>and</strong> (2) <strong>senior managers</strong></td>
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<tr>
<td>(3) Any other <strong>firm</strong></td>
<td>the <strong>firm's chief executive</strong> (and all of them jointly, if more than one)</td>
<td>the <strong>firm's and its group's</strong>: (1) <strong>directors</strong>; <strong>and</strong> (2) <strong>senior managers</strong></td>
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</table>
Section 4.4: Apportionment of responsibilities

1: Firm type

2: Allocation of both functions must be to the following individual, if any (see Note):

3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:

Note: Column 2 does not require the involvement of the chief executive or other executive director or senior manager in an aspect of corporate governance if that would be contrary to generally accepted principles of good corporate governance.

4.4.6 Frequently asked questions about allocation of functions in § SYSC 4.4.5 R

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>1 Does an individual to whom a function is allocated under SYSC 4.4.5 R need to be an approved person?</td>
<td>An individual to whom a function is allocated under SYSC 4.4.5 R will be performing the apportionment and oversight function (CF 8, see SUP 10A.7.1 R) and an application must be made under section 59 of the Act for approval of the individual before the function is performed. There are exceptions from this in SUP 10A.1 (Approved persons - Application).</td>
</tr>
<tr>
<td>2 If the allocation is to more than one individual, can they perform the functions, or aspects of the functions, separately?</td>
<td>If the functions are allocated to joint chief executives under SYSC 4.4.5 R, column 2, they are expected to act jointly. If the functions are allocated to an individual under SYSC 4.4.5 R, column 2, in addition to individuals under SYSC 4.4.5 R, column 3, the former may normally be expected to perform a leading role in relation to the functions that reflects his position. Otherwise, yes.</td>
</tr>
<tr>
<td>3 What is meant by &quot;appropriately allocate&quot; in this context?</td>
<td>The allocation of functions should be compatible with delivering compliance with Principle 3, SYSC 4.4.3 R and SYSC 4.1.1 R. The FCA considers that allocation to one or two individuals is likely to be appropriate for most firms.</td>
</tr>
<tr>
<td>4 If a committee of management governs a firm or group, can the functions be allocated to every member of that committee?</td>
<td>Yes, as long as the allocation remains appropriate (see Question 3). If the firm also has an individual as chief executive, then the functions must be allocated to that individual as well under SYSC 4.4.5 R, column 2 (see Question 7).</td>
</tr>
<tr>
<td>5 Does the definition of chief executive include the possessor of equivalent responsibilities with another title, such as a managing director or managing partner?</td>
<td>Yes.</td>
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### Question Answer

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<th>Question</th>
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<tr>
<td>6  Is it possible for a firm to have more than one individual as its chief executive?</td>
<td>Although unusual, some firms may wish the responsibility of a chief executive to be held jointly by more than one individual. In that case, each of them will be a chief executive and the functions must be allocated to all of them under SYSC.4.4.5.R, column 2 (see also Questions 2 and 7).</td>
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<td>7  If a firm has an individual as chief executive, must the functions be allocated to that individual?</td>
<td>Normally, yes, under SYSC.4.4.5.R, column 2. But if the firm is a body corporate and a member of a group, the functions may, instead of being allocated to the firm's chief executive, be allocated to a director or senior manager from the group responsible for the overall management of the group or of a relevant group division, so long as this is appropriate (see Question 3). Such individuals may nevertheless require approval under section 59 (see Question 1). If the firm chooses to allocate the functions to a director or senior manager responsible for the overall management of a relevant group division, the FCA would expect that individual to be of a seniority equivalent to or greater than a chief executive of the firm for the allocation to be appropriate. See also Question 14.</td>
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### Question Answer

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<tr>
<td>8  If a firm has a chief executive, can the functions be allocated to</td>
<td>Yes. SYSC 4.4.5 R, column 3, permits a firm to allocate the functions, additionally, to the firm’s (or where applicable the group’s)</td>
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<td>other individuals in addition to the chief executive?</td>
<td>directors and senior managers as long as this is appropriate (see Question 3).</td>
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<td>9  What if a firm does not have a chief executive?</td>
<td>Normally, the functions must be allocated to one or more individuals selected from the firm’s (or where applicable the group’s)</td>
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<td>directors and senior managers under SYSC 4.4.5 R, column 3.</td>
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<td>But if the firm:</td>
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<td>(1) is a body corporate and a member of a group; and</td>
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<td></td>
<td>(2) the group has a director or senior manager responsible for the overall management of the group or of a relevant group division;</td>
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<td></td>
<td>then the functions must be allocated to that individual (together, optionally, with individuals from column 3 if appropriate) under</td>
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<td>SYSC 4.4.5 R, column 2.</td>
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<td>10 What do you mean by “group division within which some or all of the</td>
<td>A “division” in this context should be interpreted by reference to geographical operations, product lines or any other method by which</td>
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<td>firm’s regulated activities fall”?</td>
<td>the group’s business is divided.</td>
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<td>If the firm’s regulated activities fall within more than one division and the firm does not wish to allocate the functions to its chief</td>
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<td>executive, the allocation must, under SYSC 4.4.5 R, be to:</td>
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<td>(1) a director or senior manager responsible for the overall management of the group; or (2) a director or senior manager re-</td>
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<td></td>
<td>sponsible for the overall management of one of those divisions;</td>
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<td></td>
<td>together, optionally, with individuals from column 3 if appropriate. (See also Questions 7 and 9.)</td>
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| 11 How does the requirement to allocate the functions in SYSC 4.4.5 R apply to an overseas firm which is not an incoming EEA firm, incoming Treaty firm or UCITS qualifier? | The firm must appropriately allocate those functions to one or more individuals, in accordance with SYSC 4.4.5 R, but:  
   (1) The responsibilities that must be apportioned and the systems and controls that must be overseen are those relating to activities carried on from a UK establishment with certain exceptions (see SYSC 1 Annex 1.1.8R). Note that SYSC 1 Annex 1.1.10R does not extend the territorial scope of SYSC 4.4 for an overseas firm.  
   (2) The chief executive of an overseas firm is the person responsible for the conduct of the firm’s business within the United Kingdom (see the definition of “chief executive”). This might, for example, be the manager of the firm’s UK establishment, or it might be the chief executive of the firm as a whole, if he has that responsibility. |
| 12 How does the requirement to allocate the functions in SYSC 4.4.5 R apply to an incoming EEA firm or incoming Treaty firm? | (1) Such a firm is not required to allocate the function of dealing with apportionment in SYSC 4.4.5R (1).  
(2) Such a firm is required to allocate the function of oversight in SYSC 4.4.5R (2). However, the systems and controls that must be overseen are those relating to matters which the FCA, as Host State regulator, is entitled to regulate (there is guidance on this in SUP 13A Annex 2). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the firm’s activities carried on from its UK branch.  
(3) Such a firm need not allocate the function of oversight to its  

<table>
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<th>Question</th>
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<tr>
<td>What about a <em>firm</em> that is a partnership or a limited liability partnership?</td>
<td><em>chief executive</em>; it must allocate it to one or more <em>directors</em> and <em>senior managers</em> of the <em>firm</em> or the <em>firm’s group</em> under SYSC 4.4.5 R, row (2). (4)</td>
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<td></td>
<td>An incoming EEA firm which has provision only for cross border services is not required to allocate either function if it does not carry on regulated activities in the United Kingdom; for example if they fall within the overseas persons exclusions in <em>article 72</em> of the <em>Regulated Activities Order</em>. See also Questions 1 and 15. The FCA envisages that most if not all <em>partners</em> or members will be either <em>directors</em> or <em>senior managers</em>, but this will depend on the constitution of the <em>partnership</em> (particularly in the case of a <em>limited partnership</em>) or <em>limited liability partnership</em>. A <em>partnership</em> or <em>limited liability partnership</em> may also have a <em>chief executive</em> (see Question 5). A <em>limited liability partnership</em> is a <em>body corporate</em> and, if a member of a <em>group</em>, will fall within SYSC 4.4.5 R, row (1) or (2). The Note to SYSC 4.4.5 R provides that the <em>chief executive</em> or other executive director or <em>senior manager</em> need not be involved in such circumstances. For example, the <em>UK Corporate Governance Code</em> recommends that the board of a listed company should establish an audit committee of independent, non-executive directors to be responsible (among other things) for overseeing the effectiveness of the audit process and the objectivity and independence of the external auditor. That aspect of the oversight function may therefore be allocated to the members of such a committee without involving the <em>chief executive</em>. Such individuals may require approval under section 59 in relation to that function (see Question 1).</td>
</tr>
<tr>
<td>What if generally accepted principles of good corporate governance recommend that the <em>chief executive</em> should not be involved in an aspect of corporate governance?</td>
<td>SYSC does not apply to an incoming <em>ECA provider</em> acting as such.</td>
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<td><strong>EEA State with or for a person in the United Kingdom?</strong></td>
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4.5.1  R  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.1.1R]

4.5.2  R  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.1.3R]

4.5.3  R  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.1.2R]

4.5.4  R  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.2.1R]

4.5.5  R  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.2.2R]

4.5.6  G  (1)  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.1.6G(1)]

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4.5.7  R  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.2.3R]

4.5.8  R  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.2.4R]

4.5.9  G  (1)  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.4.1G]

(2)  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.4.2G]

4.5.10  G  [deleted]  [Editor’s note: The text of this provision has been moved to SYSC 25.4.3G]
### 4.5.11 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.4G]

### 4.5.12

1. [deleted]
2. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.5G]
3. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.6G]
4. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.7G]
5. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.8G]
6. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.11G]
7. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.9G]
8. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.10G]
9. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.12G]

### 4.5.13

1. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.4.14G(1)]
2. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 24.3.5G]

### 4.5.14 [deleted] Editor’s note: The text of this provision has been moved to SYSC 25.5.1R]

### 4.5.15

1. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.5.2G(1)]
2. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.5.2G(2)]
3. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.5.2G(3)]
4. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.5.2G(4)]
5. [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.5.3G]
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(2) [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.7.2G(1)]

(3) [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.7.2G(1)]

(4) [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.7.4G]

(5) [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.7.3G]

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4.5.18  [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.7.6G]

4.5.19  [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.7.7G]

4.5.20  [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.7.8G]

4.5.21  [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.8.1G]

4.5.22  [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.8.2G]
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4.6.1 [deleted] [Editor's note: The text of this provision has been moved to SYSC 25.1.4R]

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<th>Section 4.6: General organisational requirements</th>
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4.7.1 [deleted] Editor's note: The text of this provision has been moved to SYSC 24.1.1R.

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4.7.3 [deleted] Editor's note: The text of this provision has been moved to SYSC 24.1.2R.

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4.7.5 R (1) [deleted] Editor's note: The text of this provision has been moved to SYSC 24.2.1R.

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(5) [deleted] Editor's note: The text of this provision has been moved to SYSC 24.2.3R(1).

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(7) [deleted] Editor's note: The text of this provision has been moved to SYSC 24.2.4R.

4.7.6 R [deleted] Editor's note: The text of this provision has been moved to SYSC 24.2.5R.

4.7.7 R [deleted] Editor's note: The text of this provision has been moved to SYSC 24.2.6R.

4.7.8 R (1) [deleted] Editor's note: The text of this provision has been moved to SYSC 26.3.1R.
Section 4.7: General organisational requirements

(2) [deleted] Editor's note: The text of this provision has been moved to SYSC 26.4.2R

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4.7.11 [deleted] Editor's note: The text of this provision has been moved to SYSC 26.7.2G

4.7.12 [deleted] Editor's note: The text of this provision has been moved to SYSC 26.6.7G

4.7.13 [deleted] Editor's note: The text of this provision has been moved to SYSC 26.7.4G

4.7.14 [deleted] Editor's note: The text of this provision has been moved to SYSC 26.7.5G

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| 4.7.24 | G | (1) [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.2G |
|        |   | (2) [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.3G |
|        |   | (3) [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.1G |
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| 4.7.25 | G | (1) [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.7G |
|        |   | (2) [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.8G |
| 4.7.26 | G | [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.9G |
| 4.7.27 | G | [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.10G |
| 4.7.28 | G | [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.11G |
| 4.7.29 | G | [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.12G |
| 4.7.30 | G | [deleted] Editor’s note: The text of this provision has been moved to SYSC 24.3.13G |
| 4.7.31 | G | [deleted] Editor’s note: The text of this provision has been moved to SYSC 26.10.1G |
| 4.7.32 | G | [deleted] Editor’s note: The text of this provision has been moved to SYSC 26.10.3G |
| 4.7.33 | G | [deleted] |
4.7.34 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.10.2G]

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4.7.36 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.11.1G(1) to (3)]

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4.7.38 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.11.3G]
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4.8.3 [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.1.4R]

4.8.4 [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.1.2R]

4.8.5 [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.2.1G]

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4.8.8 [deleted] [Editor's note: The text of this provision has been moved to SYSC 24.3.14G]

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4.8.10 (1) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.3.2R(1)]

(2) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.3.2R(2)]

(3) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.3.2R(3)]

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(6) [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.4.3R]

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(2) [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.6.4G(1)]

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4.8.17  [G]

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(1) [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.8.1G]

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Section 4.8: General organisational requirements

4.8.21 [deleted]

4.8.22 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.8.2G]

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4.8.26 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.8.4G]

4.8.27 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.8.3G]

4.8.28 (1) [deleted]

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(5) [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.9.5G]

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4.8.30 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 26.5.3G]

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(2) [deleted] *Editor’s note: The text of this provision has been moved to SYSC 26.11.1G(4)*

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4.9.1 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.9.1R]

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4.9.4 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.9.4R]

4.9.5 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.9.5R]

4.9.6 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.9.6G]

4.9.7 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.9.7G]

4.9.8 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.9.8G]

4.9.9 [deleted] [Editor’s note: The text of this provision has been moved to SYSC 25.9.9G]
[Editor's note: The text of this provision has been moved to SYSC 25 Annex 1G]
Chapter 5

Employees, agents and other relevant persons
5.1 Skills, knowledge and expertise

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements.]

Application to a common platform firm

For a common platform firm:

(1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and

(2) the rules and guidance apply as set out in the table below:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competent employees rule, knowledge and competence and</td>
<td>SYSC 5.1.2G to SYSC 5.1.5AG, SYSC 5.1.5AAR, SYSC 5.1.5ABR, SYSC</td>
</tr>
<tr>
<td>segregation of functions</td>
<td>5.1.5ACG to SYSC 5.1.5AEG, SYSC 5.1.7R, SYSC 5.1.8G to SYSC 5.1.11G</td>
</tr>
<tr>
<td>Certification regime</td>
<td>SYSC 5.2</td>
</tr>
</tbody>
</table>

Application to an MiFID optional exemption firm and to a third country firm

For a MiFID optional exemption firm and a third country firm:

(a) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and

(b) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and SYSC 1 Annex 1 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

Competent employees rule

A firm (other than a common platform firm) must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

[Note: articles 12(1)(a) and 14(1)(c) of the UCITS Directive and article 5(1) of the UCITS implementing Directive]

A firm’s systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it. This includes assessing an individual’s
honesty and competence. This assessment should normally be made at the point of recruitment. An individual’s honesty need not normally be revisited unless something happens to make a fresh look appropriate.

5.1.3 Any assessment of an individual’s suitability should take into account the level of responsibility that the individual will assume within the firm. The nature of this assessment will generally differ depending upon whether it takes place at the start of the individual’s recruitment, at the end of the probationary period (if there is one) or subsequently.

5.1.3A SYSC 28 contains rules and guidance relating to the minimum knowledge and competence requirements in relation to insurance distribution activities undertaken by a firm.

5.1.4 The Training and Competence sourcebook (TC) contains additional rules and guidance relating to specified retail activities undertaken by a firm.

5.1.4A Firms which are carrying on activities that are not subject to TC may nevertheless wish to take TC into account in complying with the competence requirements in SYSC.

5.1.5 The requirements on firms with respect to approved persons are in Part V of the Act (Performance of regulated activities) and SUP 10A, SUP 10C and in the corresponding parts of the PRA’s Rulebook.

5.1.5A If a firm requires employees who are not subject to a qualification requirement in TC to pass a relevant examination from the list of appropriate qualifications maintained by the FCA, or for the purposes of meeting its obligations under SYSC 5.1.5ABR, the FCA will take that into account when assessing whether the employee satisfies the knowledge component of the competent employees rule.

Knowledge and competence

5.1.5AA SYSC 5.1.5ABR applies to a common platform firm and a third country firm:

(1) in relation to its MiFID or equivalent third country business;

(2) in respect of any natural persons (“relevant individuals”) who, on behalf of the firm:

(a) make personal recommendations to clients in relation to financial instruments or structured deposits; or

(b) provide information to retail clients or professional clients about financial instruments, structured deposits, investment services or ancillary services; or

who are otherwise responsible for the supervision of a relevant individual who has not acquired the necessary knowledge and competence to act in a capacity prescribed in (a) or (b).

[Note: article 25(1) of MiFID]
5.1.5AB  
A firm must ensure, and be able to demonstrate to the FCA, at the FCA’s request, that any relevant individuals possess the necessary knowledge and competence so as to ensure that the firm is able to meet its obligations under:

1. those rules which implement articles 24 and 25 of MiFID (including those rules which implement related provisions under the MiFID Delegated Directive); and

2. related provisions of the MiFID Org Regulation.

[Note: article 25(1) of MiFID]

5.1.5AC  
The rules which implement articles 24 and 25 of MiFID can be found in COBS and PROD and are identified with a ‘Note’.

5.1.5AD  
ESMA has issued guidelines specifying the criteria for the assessment of knowledge and competence for the purposes of SYSC 5.1.5AB. The ESMA guidelines can be found at [https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence](https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence).

5.1.5AE  
1. The FCA expects a firm to act consistently with the ESMA guidelines referred to in SYSC 5.1.5ADG in relation to its MiFID or equivalent third country business.

2. The FCA is required to publish various information on its website in relation to firms’ assessment of relevant individuals’ knowledge and competence. That information can be found at [https://www.fca.org.uk/firms/training-competence](https://www.fca.org.uk/firms/training-competence).

3. A firm to which the Training and Competence sourcebook (TC) applies may satisfy its knowledge and competence obligations under SYSC 5.1.5ABR in relation to a relevant individual by way of compliance with its obligations in TC.

5.1.5B  
When complying with the competent employees rule, a firm must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.

Segregation of functions

5.1.6  
A management company must ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally.

[Note: article 5(3) of the UCITS implementing Directive]
The senior personnel of a common platform firm must define arrangements concerning the segregation of duties within the firm and the prevention of conflicts of interest.

[Note: article 88 of CRD and article 9(1) of MiFID]

Other firms should take account of the segregation of functions rules (SYSC 5.1.6 R and SYSC 5.1.7 R) as if they were guidance (and as if "should" appeared in those rules instead of "must") as explained in SYSC 1 Annex 1 3.3 R(1).

The effective segregation of duties is an important element in the internal controls of a firm in the prudential context. In particular, it helps to ensure that no one individual is completely free to commit a firm's assets or incur liabilities on its behalf. Segregation can also help to ensure that a firm's governing body receives objective and accurate information on financial performance, the risks faced by the firm and the adequacy of its systems.

Segregation of functions: additional guidance

A firm should normally ensure that no single individual has unrestricted authority to do all of the following:

1. initiate a transaction;
2. bind the firm;
3. make payments; and
4. account for it.

Where a firm is unable to ensure the complete segregation of duties (for example, because it has a limited number of staff), it should ensure that there are adequate compensating controls in place (for example, frequent review of an area by relevant senior managers).

Where a firm outsources its internal audit function, it should take reasonable steps to ensure that every individual involved in the performance of this service is independent from the individuals who perform its external audit. This should not prevent services from being undertaken by a firm's external auditors provided that:

1. the work is carried out under the supervision and management of the firm's own internal staff; and
2. potential conflicts of interest between the provision of external audit services and the provision of internal audit are properly managed.
Awareness of procedures: management company

5.1.12 R

A management company must ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities.

[Note: article 4(1)(b) of the UCITS implementing Directive]

Awareness of procedures: other firms

5.1.12A G

Other firms should take account of the rule concerning awareness of procedures (■SYSC 5.1.12 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in ■SYSC 1 Annex 1 3.3 R(1).

General

5.1.13 R

The systems, internal control mechanisms and arrangements established by a firm (other than a common platform firm) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services, claims management services and other activities undertaken in the course of that business.

[Note: articles 4(1) final paragraph and 5(4) of the UCITS implementing Directive]

5.1.14 R

A management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter, and take appropriate measures to address any deficiencies.

[Note: article 4(5) of the UCITS implementing Directive]

5.1.15 G

Other firms should take account of the rule requiring monitoring and evaluation of the adequacy and effectiveness of systems (■SYSC 5.1.14 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in ■SYSC 1 Annex 1 3.3 R(1).
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SYSC 5 : Employees, agents and other relevant persons

Section 5.2 :
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Chapter 6

Compliance, internal audit and financial crime
6.1 Compliance

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements.]

Application to a common platform firm

For a common platform firm:

1. the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and

2. the rules and guidance apply as set out in the table below:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
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</thead>
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<td>Adequate policy and procedures</td>
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<td>Compliance function</td>
<td>SYSC 6.1.4-AG, SYSC 6.1.7R</td>
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<td>Internal audit</td>
<td>SYSC 6.2.2G</td>
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<tr>
<td>Financial crime</td>
<td>SYSC 6.3.1R to SYSC 6.3.11G</td>
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</tbody>
</table>

Application to an MiFID optional exemption firm and to a third country firm

For a MiFID optional exemption firm and a third country firm:

1. the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and

2. those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

Adequate policy and procedures

A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.

[Note: article 16(2) of MiFID and article 12(1)(a) of the UCITS Directive]
Section 6.1 : Compliance

6.1.1A G The FCA provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime in FCG (Financial Crime Guide: A firm's guide to countering financial crime risks) and FCTR (Financial Crime Thematic Reviews).

6.1.2 R A management company must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under the regulatory system, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the FCA to exercise its powers effectively under the regulatory system and to enable any other competent authority to exercise its powers effectively under the UCITS Directive.

[Note: article 10(1) of the UCITS implementing Directive]

6.1.2A G Other firms should take account of the adequate policies and procedures rule (■ SYSC 6.1.2 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).

Compliance function

6.1.3 R A management company must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with ■ SYSC 6.1.2 R, and the actions taken to address any deficiencies in the firm’s compliance with its obligations; and

(2) to advise and assist the relevant persons responsible for carrying out regulated activities to comply with the firm’s obligations under the regulatory system.

[Note: article 10(2) of the UCITS implementing Directive]

6.1.3A G (1) Other firms should take account of the compliance function rule (■ SYSC 6.1.3 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).

(2) Notwithstanding ■ SYSC 6.1.3 R, as it applies under (1), depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. Where a firm has a separate compliance function the firm should also take into account ■ SYSC 6.1.3 R and ■ SYSC 6.1.4 R as guidance.

6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a management company must ensure that the following conditions are satisfied:
(1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by SYSC 4.3.2 R;

(3) the relevant persons involved in the compliance functions must not be involved in the performance of the services or activities they monitor;

(4) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

[Note: article 10(3) of the UCITS implementing Directive]

6.1.4-A G

In setting the method of determining the remuneration of relevant persons involved in the compliance function:

(1) firms that SYSC 19A applies to will also need to comply with the Remuneration Code;

(2) firms that SYSC 19C applies to will also need to comply with the BIPRU Remuneration Code;

(3) firms that SYSC 19D applies to will also need to comply with the dual-regulated firms Remuneration Code; and

(4) firms that the remuneration part of the PRA Rulebook applies to will also need to comply with it.

6.1.4A R

(1) A firm which is not a common platform firm or management company and which carries on designated investment business with or for retail clients or professional clients must allocate to a director or senior manager the function of:
   (a) having responsibility for oversight of the firm’s compliance; and
   (b) reporting to the governing body in respect of that responsibility.

(2) In SYSC 6.1.4A R (1) compliance means compliance with the rules in:
   (a) COBS (Conduct of Business sourcebook);
   (b) COLL (Collective Investment Schemes sourcebook);
   (c) CASS (Client Assets sourcebook); and
   (d) ICOBS (Insurance: Conduct of Business sourcebook).

6.1.4-B G

In setting the method of determining the remuneration of relevant persons involved in the compliance function, full-scope UK AIFMs will need to comply with the AIFM Remuneration Code.

6.1.4C G

A debt management firm and a credit repair firm must appoint a compliance officer to be responsible for ensuring the firm meets its obligations under SYSC 6.1.1R for any compliance function the firm has and for any reporting as to compliance which may be made under SYSC 4.3.2R.
6.1.4-C  

(1) This guidance is relevant to an SMCR firm required to appoint a compliance officer under SYSC 6.1.4 or article 22(3) of the MiFID Org Regulation as applicable.

(2) Taking account of the nature, scale and complexity of its activities, the firm should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the compliance officer does not undermine the independence of the compliance function.

(3) In the FCA’s view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the compliance officer to require the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.

6.1.5  

A management company need not comply with SYSC 6.1.4 R (3) or SYSC 6.1.4 R (4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of financial services and activities, the requirements under those rules are not proportionate and that its compliance function continues to be effective.

[Note: article 10(3) second paragraph of the UCITS implementing Directive]

6.1.6  

Other firms should take account of the proportionality rule (SYSC 6.1.5 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in SYSC 1 Annex 1 3.3R(1).

6.1.7  

(1) This rule applies to a common platform firm conducting investment services and activities from a branch in another EEA State.

(2) References to the regulatory system in SYSC 6.1.1R, SYSC 6.1.2 R and SYSC 6.1.3 R apply in respect of a firm’s branch as if regulatory system includes a Host State’s requirements under MiFID and the MiFID Org Regulation which are applicable to the investment services and activities conducted from the firm’s branch.

[Note: article 16 of MiFID]
6.2 Internal audit

6.2.1 R A management company must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of its financial services and activities, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the firm and which has the following responsibilities:

1. to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the firm's systems, internal control mechanisms and arrangements;

2. to issue recommendations based on the result of work carried out in accordance with (1);

3. to verify compliance with those recommendations;

4. to report in relation to internal audit matters in accordance with SYSC 4.3.2 R.

[Note: article 11 of the UCITS implementing Directive]

6.2.1A G Other firms should take account of the internal audit rule (SYSC 6.2.1 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in SYSC 1 Annex 1 3.3 R(1).

6.2.1B G (1) This guidance is relevant to an SMCR firm required to establish and maintain an internal audit function under article 24 of the MiFID Org Regulation.

(2) Taking account of the nature, scale and complexity of its activities, the firm should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the head of the internal audit function does not undermine the independence of the internal audit function.

(3) In the FCA's view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the head of the internal audit function to require the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.
6.2.2 (1) The term 'internal audit function' in SYSC 6.2.1R (and SYSC 4.1.11G), and for a common platform firm in article 24 of the MiFID Org Regulation, refers to the generally understood concept of internal audit within a firm, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies.

(2) For a firm that is not an SMCR firm, the internal audit function is not a controlled function itself, but is part of the systems and controls function (CF28).

(3) For an SMCR firm, the internal audit function is a PRA controlled function (SMF5).
6.3 Financial crime

6.3.1 A firm must ensure the policies and procedures established under SYSC 6.1.1 R include systems and controls that:

(1) enable it to identify, assess, monitor and manage money laundering risk; and

(2) are comprehensive and proportionate to the nature, scale and complexity of its activities.

6.3.2 “Money laundering risk” is the risk that a firm may be used to further money laundering. Failure by a firm to manage this risk effectively will increase the risk to society of crime and terrorism.

6.3.3 A firm must carry out a regular assessment of the adequacy of these systems and controls to ensure that they continue to comply with SYSC 6.3.1 R.

6.3.4 A firm may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the Money Laundering Regulations. SYSC 6.1.1 R and SYSC 6.3.1 R to SYSC 6.3.10 G are not relevant for the purposes of regulation 76(6) or 86(2) of the Money Laundering Regulations, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.

6.3.5 The FCA, when considering whether a breach of its rules on systems and controls against money laundering has occurred, will have regard to whether a firm has followed relevant provisions in the guidance for the United Kingdom financial sector issued by the Joint Money Laundering Steering Group.

6.3.6 In identifying its money laundering risk and in establishing the nature of these systems and controls, a firm should consider a range of factors, including:

(1) its customer, product and activity profiles;

(2) its distribution channels;

(3) the complexity and volume of its transactions;
(4) its processes and systems; and
(5) its operating environment.

6.3.7 G A firm should ensure that the systems and controls include:

(1) appropriate training for its employees in relation to money laundering;
(2) appropriate provision of information to its governing body and senior management, including a report at least annually by that firm’s money laundering reporting officer (MLRO) on the operation and effectiveness of those systems and controls;
(3) appropriate documentation of its risk management policies and risk profile in relation to money laundering, including documentation of its application of those policies (see SYSC 9);
(4) appropriate measures to ensure that money laundering risk is taken into account in its day-to-day operation, including in relation to:
   (a) the development of new products;
   (b) the taking-on of new customers; and
   (c) changes in its business profile; and
(5) appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to its services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.

6.3.8 R (1) A firm must allocate to a director or senior manager (who may also be the money laundering reporting officer) overall responsibility within the firm for the establishment and maintenance of effective anti-money laundering systems and controls.

(2) A firm may not allocate overall responsibility under (1) to a person who is approved to perform the other overall responsibility function.

The money laundering reporting officer

6.3.9 R A firm (with the exception of a sole trader who has no employees) must:

(1) appoint an individual as MLRO, with responsibility for oversight of its compliance with the FCA’s rules on systems and controls against money laundering; and
(2) ensure that its MLRO has a level of authority and independence within the firm and access to resources and information sufficient to enable him to carry out that responsibility.

6.3.10 G The job of the MLRO within a firm is to act as the focal point for all activity within the firm relating to anti-money laundering. The FCA expects that a firm’s MLRO will be based in the United Kingdom.
The FCA provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime in FCG (Financial Crime Guide: A firm’s guide to countering financial crime risks) and FCTR (Financial Crime Thematic Reviews).
7.1 Risk control

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements.]

Application to a common platform firm

For a common platform firm:

(1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and

(2) the rules and guidance apply as set out in the table below:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk assessment</td>
<td>SYSC 7.1.1G</td>
</tr>
<tr>
<td>Risk management</td>
<td>SYSC 7.1.4R, SYSC 7.1.4AG</td>
</tr>
<tr>
<td>Risk control: remuneration</td>
<td>SYSC 7.1.7BG, SYSC 7.1.7BBG</td>
</tr>
<tr>
<td>Risk control: additional</td>
<td>SYSC 7.1.7CG, SYSC 7.1.8G, SYSC</td>
</tr>
<tr>
<td>provisions</td>
<td>7.1.9R to SYSC 7.1.16R</td>
</tr>
<tr>
<td>Additional rules for CCR firms</td>
<td>SYSC 7.1.16CR to SYSC 7.1.122R</td>
</tr>
</tbody>
</table>

Application to an MiFID optional exemption firm and to a third country firm

For a MiFID optional exemption firm and a third country firm:

(1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and

(2) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

Risk assessment

■ SYSC 4.1.1 R requires a firm to have effective processes to identify, manage, monitor and report the risks it is or might be exposed to.

A UCITS investment firm must establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identify the risks relating to the firm's activities,
processes and systems, and where appropriate, set the level of risk tolerated by the firm.

7.1.2A G Other firms should take account of the risk management policies and procedures rule (§ SYSC 7.1.2 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in § SYSC 1 Annex 1 3.3 R(1).

7.1.2B G A management company should be aware that § COLL 6.11 contains requirements implementing article 12 of the UCITS implementing Directive in relation to risk control and internal reporting that will apply to it.

7.1.2C G Full-scope UK AIFMs should be aware that § FUND 3.7 and articles 38 to 47 of the AIFMD level 2 regulation contain further requirements in relation to risk management.

Risk management

7.1.3 R A UCITS investment firm must adopt effective arrangements, processes and mechanisms to manage the risk relating to the firm's activities, processes and systems, in light of that level of risk tolerance.

7.1.4 R The management body of a common platform firm must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the firm is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

[Note: article 76(1) of CRD]

7.1.4A G For a common platform firm included within the scope of § SYSC 20 (Reverse stress testing), the strategies, policies and procedures for identifying, taking up, managing, monitoring and mitigating the risks to which the firm is or might be exposed include conducting reverse stress testing in accordance with § SYSC 20. A common platform firm which falls outside the scope of § SYSC 20 should consider conducting reverse stress tests on its business plan as well. This would further senior personnel's understanding of the firm's vulnerabilities and would help them design measures to prevent or mitigate the risk of business failure.

7.1.4B G Other firms should take account of the risk management rules (§ SYSC 7.1.3 R and § SYSC 7.1.4 R) as if they were guidance (and as if "should" appeared in those rules instead of "must") as explained in § SYSC 1 Annex 1 3.3 R(1).

7.1.5 R A UCITS investment firm must monitor the following:

(1) the adequacy and effectiveness of the firm's risk management policies and procedures;
(2) the level of compliance by the firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with SYSC 7.1.3 R;

(3) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements or processes and mechanisms or follow such policies and procedures.

7.1.6 A UCITS investment firm must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:

(1) implementation of the policies and procedures referred to in SYSC 7.1.2 R to SYSC 7.1.5 R; and

(2) provision of reports and advice to senior personnel in accordance with SYSC 4.3.2 R.

7.1.7 Where a UCITS investment firm is not required under SYSC 7.1.6 R to maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with SYSC 7.1.2 R to SYSC 7.1.5 R satisfy the requirements of those rules and are consistently effective.

7.1.7A Other firms should take account of the risk management rules (SYSC 7.1.5 R to SYSC 7.1.7 R) as if they were guidance (and as if should appeared in those rules instead of must) as explained in SYSC 1 Annex 1 3.3 R(1).

7.1.7B In setting the method of determining the remuneration of employees involved in the risk management function:

(1) firms that SYSC 19D applies to will also need to comply with the dual-regulated firms Remuneration Code; and

(2) firms that the remuneration part of the PRA Rulebook applies to will also need to comply with it.

7.1.7BA In setting the method of determining the remuneration of employees involved in the risk management function full-scope UK AIFMs will need to comply with the AIFM Remuneration Code.

7.1.7BB In setting the method of determining the remuneration of employees involved in the risk management function, BIPRU firms will also need to comply with the BIPRU Remuneration Code.
In setting the method of determining the *remuneration* of employees involved in the risk management function, *firms* that Section 19A applies to will also need to comply with the *Remuneration Code*.

**Risk control: additional provisions**

Firms should also consider the additional *guidance* on risk-centric governance arrangements for effective risk management contained in Section 21.

1. [deleted]
2. The term ‘risk management function’ in Section 1.6 and Section 1.7, and for a common platform firm in article 23(2) of the MiFID Org Regulation, refers to the generally understood concept of risk assessment within a firm, that is, the function of setting and controlling risk exposure.
3. For a firm that is not an SMCR firm, the risk management function is not a controlled function itself, but is part of the systems and controls function or the PRA’s systems and controls controlled function (CF28).
4. For an SMCR firm, the risk management function is a PRA controlled function (SMF4).

A firm must base credit-granting on sound and well-defined criteria and clearly establish the process for approving, amending, renewing, and re-financing credits.

A BIPRU firm must operate through effective systems the ongoing administration and monitoring of its various credit risk-bearing portfolios and exposures, including for identifying and managing problem credits and for making adequate value adjustments and provisions.

A BIPRU firm must adequately diversify credit portfolios given its target market and overall credit strategy.

The documentation maintained by a BIPRU firm under Section 4.1.3 should include its policy for credit risk, including its risk appetite and provisioning policy and should describe how it measures, monitors and controls that risk. This should include descriptions of the systems used to ensure that the policy is correctly implemented.

A BIPRU firm must address and control by means of written policies and procedures the risk that recognised credit risk mitigation techniques used by it prove less effective than expected.
Market risk

7.1.14  
A BIPRU firm must implement policies and processes for the measurement and management of all material sources and effects of market risks.

Interest rate risk

7.1.15  
A BIPRU firm must implement systems to evaluate and manage the risk arising from potential changes in interest rates as they affect a BIPRU firm's non-trading activities.

Operational risk

7.1.16  
A BIPRU firm must implement policies and processes to evaluate and manage the exposure to operational risk, including to low-frequency high severity events. Without prejudice to the definition of operational risk, BIPRU firms must articulate what constitutes operational risk for the purposes of those policies and procedures.

Additional rules for CRR firms

7.1.16C  
In SYSC 7.1.18 R a 'CRR firm' that is significant' means a significant IFPRU firm.

7.1.17  
(1) The management body of a CRR firm has overall responsibility for risk management. It must devote sufficient time to the consideration of risk issues.

(2) The management body of a CRR firm must be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in the rules implementing the CRD and in the EU CRR as well as in the valuation of assets, the use of external ratings and internal models related to those risks.

(3) A CRR firm must establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

[Note: article 76(2) of CRD]

7.1.18  
(1) A CRR firm that is significant must establish a risk committee composed of members of the management body who do not perform any executive function in the firm. Members of the risk committee must have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the firm.
(2) The risk committee must advise the management body on the institution’s overall current and future risk appetite and assist the management body in overseeing the implementation of that strategy by senior management.

(3) The risk committee must review whether prices of liabilities and assets offered to clients take fully into account the firm’s business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the risk committee must present a remedy plan to the management body.

[Note: article 76(3) of CRD]

7.1.18A

7.1.18AA

A CRR firm which is not a significant IFPRU firm may combine the risk committee with the audit committee.

[Note: article 76(3) of CRD]

7.1.18B

Members of the combined risk and audit committee must have the knowledge, skills and expertise required for both committees.

[Note: article 76(3) of CRD]

7.1.19

(1) A CRR firm must ensure that the management body in its supervisory function and, where a risk committee has been established, the risk committee have adequate access to information on the risk profile of the firm and, if necessary and appropriate, to the risk management function and to external expert advice.

(2) The management body in its supervisory function and, where one has been established, the risk committee must determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

[Note: article 76(4) of CRD]

7.1.20

In order to assist in the establishment of sound remuneration policies and practices, the risk committee must, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

[Note: article 76(4) of CRD]

7.1.21

(1) A CRR firm’s risk management function (article 23 of the MiFID Org Regulation) must be independent from the operational functions and have sufficient authority, stature, resources and access to the management body.
(2) The risk management function must ensure that all material risks are identified, measured and properly reported. It must be actively involved in elaborating the firm’s risk strategy and in all material risk management decisions and it must be able to deliver a complete view of the whole range of risks of the firm.

(3) A CRR firm must ensure that the risk management function is able to report directly to the management body in its supervisory function, independent from senior management and that it can raise concerns and warn the management body, where appropriate, where specific risk developments affect or may affect the firm, without prejudice to the responsibilities of the management body in its supervisory and/or managerial functions pursuant to the CRD and the EU CRR.

[Note: article 76(5) of CRD]

7.1.22 The head of the risk management function must be an independent senior manager with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the CRR firm do not justify a specially appointed person, another senior person within the firm may fulfil that function, provided there is no conflict of interest. The head of the risk management function must not be removed without prior approval of the management body and must be able to have direct access to the management body where necessary.

[Note: article 76(5) of CRD]

7.1.23 (1) This guidance is relevant to an SMCR banking firm that has appointed a head of the risk management function.

(2) Taking account of the nature, scale and complexity of its activities, the firm should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the head of the risk management function does not undermine the independence of the risk management function.

(3) It will be appropriate, in many cases, for the procedures in (2) to include that any approval for the removal of the head of the risk management function requires the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.

(4) It will also be appropriate, in many cases, for any other disciplinary sanctioning of the head of the risk management function to require the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.
Chapter 8
Outsourcing
8.1 General outsourcing requirements

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements.]

Application to a common platform firm

For a common platform firm:

1. the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and

2. the rules and guidance apply as set out in the table below:

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<thead>
<tr>
<th>Subject</th>
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</tr>
</thead>
<tbody>
<tr>
<td>General requirements</td>
<td>SYSC 8.1.1R, SYSC 8.1.2G, SYSC 8.1.3G, SYSC 8.1.12G</td>
</tr>
</tbody>
</table>

Application to an MiFID optional exemption firm and to a third country firm

For a MiFID optional exemption firm and a third country firm:

1. the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and

2. those articles of the MiFID Org Regulation in SYSC 1 Annex 1 3.2AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

General requirements

A common platform firm must:

1. when relying on a third party for the performance of operational functions which are critical for the performance of regulated activities, listed activities or ancillary services (in this chapter "relevant services and activities") on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk; and

2. not undertake the outsourcing of important operational functions in such a way as to impair materially:
   (a) the quality of its internal control; and
(b) the ability of the FCA to monitor the firm's compliance with all obligations under the regulatory system and, if different, of a competent authority to monitor the firm's compliance with all obligations under MiFID.

[Note: article 16(5) first paragraph of MiFID]

8.1.1A G Other firms should take account of the outsourcing rule (SYSC 8.1.1 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in SYSC 1 Annex 1 3.3R(1).

8.1.2 G The application of SYSC 8 to relevant services and activities (see SYSC 8.1.1 R (1)) is limited by SYSC 1 Annex 1 (Part 2) (Application of the common platform requirements).

8.1.3 G SYSC 4.1.1 R requires a firm to have effective processes to identify, manage, monitor and report risks and internal control mechanisms. Except in relation to those functions described in SYSC 8.1.5R and (for a common platform firm in article 30(2) of the MiFID Org Regulation), where a firm relies on a third party for the performance of operational functions which are not critical or important for the performance of relevant services and activities (see SYSC 8.1.1 R (1)) on a continuous and satisfactory basis, it should take into account, in a manner that is proportionate given the nature, scale and complexity of the outsourcing, the rules in this section in complying with that requirement.

8.1.4 R For the purposes of this chapter an operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a firm (other than a common platform firm) with the conditions and obligations of its authorisation or its other obligations under the regulatory system, or its financial performance, or the soundness or the continuity of its relevant services and activities.

8.1.5 R For a UCITS investment firm and without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:

1. the provision to the firm of advisory services, and other services which do not form part of the relevant services and activities of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;

2. the purchase of standardised services, including market information services and the provision of price feeds;

3. the recording and retention of relevant telephone conversations or electronic communications subject to SYSC 10A.

8.1.5A G Other firms should take account of the critical functions rules (SYSC 8.1.4 R and SYSC 8.1.5 R) as if they were guidance (and as if should appeared in those rules instead of must) as explained in SYSC 1 Annex 1 3.3R(1).
If a firm (other than a common platform firm) outsources critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the regulatory system and must comply, in particular, with the following conditions:

1. the outsourcing must not result in the delegation by senior personnel of their responsibility;
2. the relationship and obligations of the firm towards its clients under the regulatory system must not be altered;
3. the conditions with which the firm must comply in order to be authorised, and to remain so, must not be undermined;
4. none of the other conditions subject to which the firm's authorisation was granted must be removed or modified.

A UCITS investment firm should take account of the provisions that apply to a common platform firm in relation to its MiFID business in accordance with SYSC 8.1.-2G.

A UCITS investment firm must exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any relevant services and activities.

A UCITS investment firm must in particular take the necessary steps to ensure that the following conditions are satisfied:

1. the service provider must have the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;
2. the service provider must carry out the outsourced services effectively, and to this end the firm must establish methods for assessing the standard of performance of the service provider;
3. the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
4. appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
5. the firm must retain the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing, and must supervise those functions and manage those risks;
6. the service provider must disclose to the firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
(7) the *firm* must be able to terminate the arrangement for the *outsourcing* where necessary without detriment to the continuity and quality of its provision of services to *clients*;

(8) the service provider must co-operate with the FCA and any other relevant *competent authority* in connection with the *outsourced* activities;

(9) the *firm*, its auditors, the FCA and any other relevant *competent authority* must have effective access to data related to the *outsourced* activities, as well as to the business premises of the service provider; and the FCA and any other relevant *competent authority* must be able to exercise those rights of access;

(10) the service provider must protect any confidential information relating to the *firm* and its *clients*;

(11) the *firm* and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary having regard to the function, service or activity that has been *outsourced*.

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**8.1.9**

A *UCITS investment firm* must ensure that the respective rights and obligations of the *firm* and of the service provider are clearly allocated and set out in a written agreement.

**8.1.10**

If a *UCITS investment firm* and the service provider are members of the same *group*, the *firm* may, for the purpose of complying with ★SYSC 8.1.7 R to ★SYSC 8.1.11 R and ★SYSC 8.2 and ★SYSC 8.3, take into account the extent to which the *UCITS investment firm controls* the service provider or has the ability to influence its actions.

**8.1.11**

A *firm* (other than a *common platform firm*) must make available on request to the FCA and any other relevant *competent authority* all information necessary to enable the FCA and any other relevant *competent authority* to supervise the compliance of the performance of the *outsourced* activities with the requirements of the *regulatory system*.

**8.1.11A**

Other *firms* should take account of the outsourcing of important operational functions *rules* (★SYSC 8.1.7 R to ★SYSC 8.1.11 R) as if they were *guidance* (and as if should appeared in those *rules* instead of must) as explained in ★SYSC 1 Annex 1 3.3R(1).

**8.1.12**

As ★SUP 15.3.8 G explains, a *firm* should notify the FCA when it intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities on a continuous and satisfactory basis.

[Note: recital 44 to the *MiFID Org Regulation*]
8.1.13 **R** Additional requirements for a management company

A management company must retain the necessary resources and expertise so as to monitor effectively the activities carried out by third parties on the basis of an arrangement with the firm, especially with regard to the management of the risk associated with those arrangements.

[Note: article 5(2) of the UCITS implementing Directive]

8.1.14 **G** Additional requirements for a management company

A management company should be aware that SUP 15.8.6 R (Delegation by UCITS management companies) and COLL 6.6.15A R (Committees and delegations) contain requirements implementing article 13 of the UCITS Directive in relation to delegation that will apply to it.
Chapter 9

Record-keeping
9.1 General rules on record-keeping

Application to a common platform firm

For a common platform firm:

1. the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and

2. the rules and guidance apply as set out in the table below:

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<tbody>
<tr>
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<td>SYSC 9.1.1AR</td>
</tr>
<tr>
<td>Specific requirements for insurance distribution</td>
<td>SYSC 9.1.2AR, SYSC 9.1.2DR</td>
</tr>
</tbody>
</table>

Application to an MiFID optional exemption firm and to a third country firm

For a MiFID optional exemption firm and a third country firm:

1. the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and

2. those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

General requirements

A firm (other than a common platform firm) must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the FCA or any other relevant competent authority under the UCITS Directive to monitor the firm’s compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients.

[Note: article 12(1)(a) of the UCITS Directive and article 4(1)(e) of the UCITS implementing Directive]

9.1.1A (1) A common platform firm must arrange for records to be kept of all services, activities and transactions undertaken by it.
(2) The records in (1) must be sufficient to enable the FCA to fulfil its supervisory tasks and to perform the enforcement actions under the regulatory system including MiFID, MiFIR and the Market Abuse Regulation, and in particular to ascertain that the common platform firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.

[Note: article 16(6) of MiFID]

9.1.2 A common platform firm must retain all records kept by it under this chapter in relation to its MiFID business for a period of at least five years.

Specific requirements for the distribution of insurance-based investment products

9.1.2A A firm carrying on insurance distribution activities in relation to insurance-based investment products must retain its records relating to:

(1) suitability (COBS 9A); and

(2) appropriateness (COBS 10A),

for a period of at least five years.

9.1.2B (1) COBS 9A.4 and COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) reproduce certain record keeping requirements of the IDD Regulation (and apply these requirements to firms not in scope of the IDD Regulation). They specify information which should be recorded by firms carrying on insurance distribution in relation to insurance-based investment products and for how long the records must be retained.

(2) For the purposes of SYSC 9.1.2AR, a firm will need to consider whether the requirement in article 19 of the IDD Regulation (or in COBS 9A.4.3EU or COBS 10A.7.2EU for any firm to whom the IDD Regulation is not directly applicable) means that a record needs to be retained for longer than five years.

9.1.2C 19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority. The competent authority shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the IDD Regulation]

9.1.2D (1) SYSC 9.1.2CEU applies as if it was a rule to firms doing insurance distribution activities to which the IDD Regulation does not apply, in relation to the records for an insurance-based investment product required in COBS 9A.4 and COBS 10A.7.
(2) Firms to whom (1) applies must read references in SYSC 9.1.2 to “the competent authority” as meaning “the FCA”.

9.1.3 [deleted]

Guidance on record-keeping

9.1.4 Subject to any other record-keeping rule in the Handbook, the records required under the Handbook should be capable of being reproduced in the English language on paper. Where a firm is required to retain a record of a communication that was not made in the English language, it may retain it in that language. However, it should be able to provide a translation on request. If a firm’s records relate to business carried on from an establishment in a country or territory outside the United Kingdom, an official language of that country or territory may be used instead of the English language.

9.1.5 In relation to the retention of records for non-MiFID business, a firm should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the firm may fulfil its regulatory and statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made.

9.1.6 Schedule 1 to each module of the Handbook sets out a list summarising the record-keeping requirements of that module. A common platform firm should also refer to the record-keeping requirements in the MiFID Org Regulation.

9.1.6A SYSC 28 contains rules and guidance relating to knowledge and competence record keeping requirements in relation to insurance distribution activities undertaken by the firm.

9.1.7 [deleted]
9.2 Credit institutions providing account information services or payment initiation services

9.2.1 A credit institution must keep records of any account information services and payment initiation services it provides.

9.2.2 A UK firm must keep the records required by SYSC 9.2.1R in respect of account information services and payment initiation services provided anywhere in the EEA. The records must make clear in which EEA State those services were provided.

9.2.3 An EEA firm must keep the records required by SYSC 9.2.1R in respect of account information services and payment initiation services provided in the UK.

9.2.4 The records required by SYSC 9.2.1R must be sufficient to enable the credit institution to provide to the FCA, upon request, the following information:

1. The number of different payment accounts that the credit institution has accessed for the purposes of providing account information services.

2. The number of payment service users who have used the account information services provided by the credit institution.

3. The number of different payment accounts that the credit institution has accessed for the purposes of providing payment initiation services.

4. The number of payment transactions the credit institution has initiated when providing payment initiation services.

9.2.5 The records required by SYSC 9.2.1R must be sufficient to enable the credit institution to provide the FCA with the information specified in SYSC 9.2.4R for each calendar year in the previous five years, except that there is no requirement to record this information for any period prior to 13 January 2018.

9.2.6 (1) When keeping records in accordance with SYSC 9.2.4R (1) and (3), credit institutions should count each individual payment account once, even where it has been accessed multiple times.
(2) When keeping records in accordance with § SYSC 9.2.4R (2), credit institutions should count each customer once (including where the customer has used the account information services multiple times).

9.2.7 Credit institutions providing account information services and payment initiation services are also required to notify the FCA in accordance with § SUP 15.8.12R.
Chapter 10

Conflicts of interest
10.1 Application

Application to insurance intermediaries

10.1.-4

(1) Subject to SYSC 10.1.-3R, this section applies to a firm carrying on insurance distribution activities in accordance with the tables in Part 3 of SYSC 1 Annex 1. Certain rules are disapplied where the firm is subject to directly applicable provisions in the IDD Regulation (see SYSC 10.1.-3R).

(2) Where a provision in this section applies to an insurance intermediary, it applies in relation to the carrying on of insurance distribution activities.

10.1.-3

The rules and guidance in the table below do not apply to a firm when carrying on insurance distribution in relation to insurance-based investment products (see SYSC 10.1A for the provisions of the IDD Regulation on conflicts of interest).

<table>
<thead>
<tr>
<th>Subject</th>
<th>Rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Types of conflict</td>
<td>SYSC 10.1.4R, SYSC 10.1.4AG, SYSC 10.1.4BR, SYSC 10.1.4CR(1), (2) and (5) and SYSC 10.1.5G.</td>
</tr>
<tr>
<td>Record of conflicts</td>
<td>SYSC 10.1.6R, SYSC 10.1.6AG, SYSC 10.1.6AAR and SYSC 10.1.6BG</td>
</tr>
<tr>
<td>Disclosure of conflicts</td>
<td>SYSC 10.1.8R(1)(b), (2)(b) to (2)(d) and SYSC 10.1.9AR</td>
</tr>
<tr>
<td>Conflicts policy</td>
<td>SYSC 10.1.10R</td>
</tr>
<tr>
<td>Contents of policy</td>
<td>SYSC 10.1.11R, SYSC 10.1.11AG, SYSC 10.1.11AAR and SYSC 10.1.11BG</td>
</tr>
</tbody>
</table>

Application to a common platform firm

10.1.-2

For a common platform firm:

(1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and

(2) the rules and guidance in the table below apply:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision of services</td>
<td>SYSC 10.1.2G</td>
</tr>
<tr>
<td>Identifying conflicts</td>
<td>SYSC 10.1.3R</td>
</tr>
<tr>
<td>Types of conflicts</td>
<td>SYSC 10.1.5G</td>
</tr>
</tbody>
</table>
Subject | Applicable rule or guidance
--- | ---
Managing conflicts | SYSC 10.1.7R
Conflicts policy | SYSC 10.1.12G

(3) SYSC 10.1.7AR (Proportionality – insurance distribution activities), SYSC 10.1.8R (Disclosure of conflicts) and SYSC 10.1.11ABR (Contents of policy) also apply in relation to the carrying on of insurance distribution activities.

Application to a MiFID optional exemption firm and to a third-country firm

For a MiFID optional exemption firm and a third country firm, the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1).

General application

(1) This section applies to a firm which provides services to its clients in the course of carrying on regulated activities or ancillary activities or providing ancillary services (but only where the ancillary services constitute MiFID business).

(2) This section also applies to a management company.

[Note: The provisions in SYSC 10.1 also implement articles 27 and 28 of the IDD, articles 74(1) and 88 of CRD and as applied under the discretion in the third paragraph of article 95(2) of the EU CRR, BCD article 22 and BCD Annex V paragraph 1]

This section also applies to:

(1) a full-scope UK AIFM of:
   (a) a UK AIF;
   (b) an EEA AIF managed or marketed from an establishment in the UK; and
   (c) a non-EEA AIF; and

(2) an incoming EEA AIFM branch which manages or markets a UK AIF.

Requirements only apply if a service is provided

(1) The requirements in this section only apply where a service is provided by a firm. The status of the client to whom the service is provided (as a retail client, professional client or eligible counterparty) is irrelevant for this purpose.

[Note: recital 46 to the MiFID Org Regulation]

For the avoidance of doubt, a reference to “service” in this section includes all insurance distribution activities.
SRD requirements

10.1.2A R
The requirements in this section apply to an SRD asset manager with regard to its engagement activities covered by the SRD.

[Note: article 3g(3) of SRD]

Identifying conflicts

10.1.3 R
A firm must take all appropriate steps to identify and to prevent or manage conflicts of interest between:

(1) the firm, including its managers, employees and appointed representatives (or where applicable, tied agents), or any person directly or indirectly linked to them by control, and a client of the firm; or

(2) one client of the firm and another client;

that arise or may arise in the course of the firm providing any service referred to in SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the firm's own remuneration and other incentive structures.

[Note: article 23(1) of MiFID and articles 27 and 28(1) of the IDD]

Types of conflicts

10.1.4 R
For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may damage the interests of a client, a management company must take into account, as a minimum, whether the firm or a relevant person, or a person directly or indirectly linked by control to the firm:

(1) is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

(2) has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;

(2A) in the case of a management company providing collective portfolio management services for a UCITS scheme, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a client other than the UCITS scheme;

(3) has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;

(4) carries on the same business as the client; or in the case of a management company, carries on the same activities for the UCITS scheme and for another client or clients which are not UCITS schemes; or

(5) receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

The conflict of interest may result from the firm or person providing a service referred to in SYSC 10.1.1 R or engaging in any other activity or, in the case of a management company, whether as a result of providing collective portfolio management services or otherwise.

[Note: article 17(1) of the UCITS implementing Directive]
10.1.4A **G** Other firms (except common platform firms, UCITS management companies and insurance intermediaries) should take account of the rule on the types of conflicts (see § SYSC 10.1.4 R) in accordance with § SYSC 1 Annex 1 3.3R.

10.1.4B **R** For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of carrying on insurance distribution activities and whose existence may damage the interests of a client (“A”), a firm must assess whether:

1. the firm or a relevant person, or a person directly or indirectly linked by control to the firm; or
2. (in the case of conflicts between A and another client) the other client,

has an interest in the outcome of the insurance distribution activities, which meets the following criteria:

1. it is distinct from A’s interest in the outcome of the insurance distribution activities; and
2. it has the potential to influence the outcome of the activities to the detriment of A.

10.1.4C **R** For the purpose of carrying out the assessment in § SYSC 10.1.4BR, a firm must take into account, as a minimum, whether the firm or a relevant person, or a person directly or indirectly linked by control to the firm:

1. is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
2. has a financial or other incentive to favour the interest of another client or group of clients over the interest of the client;
3. carries on the same business as the client;
4. receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service; or
5. is substantially involved in the management or development of policies, in particular where such a person has an influence on the pricing of those policies or their distribution costs.

10.1.5 **G** The circumstances which should be treated as giving rise to a conflict of interest cover cases where there is a conflict between the interests of the firm or certain persons connected to the firm or the firm’s group and the duty the firm owes to a client; or between the differing interests of two or more of its clients, to whom the firm owes in each case a duty. It is not enough that the firm may gain a benefit if there is not also a possible disadvantage to a client, or that one client to whom the firm owes a duty
may make a gain or avoid a loss without there being a concomitant possible loss to another such client.

[Note: recital 45 to the MiFID Org Regulation]

**Record of conflicts**

A management company and an insurance intermediary must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

[Note: article 20(1) of the UCITS implementing Directive]

**Recording conflicts**

A management company and an insurance intermediary must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

[Note: article 20(1) of the UCITS implementing Directive]

**Managing conflicts**

A firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in §SYSC 10.1.3 R from adversely affecting the interests of its clients.

[Note: article 16(3) of MiFID and article 27 of the IDD]

**Proportionality – insurance distribution activities**

Where a firm carries on insurance distribution activities, the arrangements in §SYSC 10.1.7 R must be proportionate to the activities performed, the policies sold and the type of insurance distributor the firm is or uses.

[Note: article 27 of the IDD]

**Disclosure of conflicts**

(1) If arrangements made by a firm under §SYSC 10.1.7 R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must clearly disclose the following to the client before undertaking business for the client:

(a) the general nature or sources of conflicts of interest, or both; and

(b) the steps taken to mitigate those risks.
(2) The disclosure must:
   (a) be made in a durable medium;
   (b) clearly state that the organisational and administrative arrangements established by the firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented;
   (c) include specific description of the conflicts of interest that arise in the provision of insurance distribution activities, investment services or ancillary services;
   (d) explain the risks to the client that arise as a result of the conflicts of interest; and
   (e) include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

(3) This rule does not apply to the extent that SYSC 10.1.21 R applies.

[Note: 23(2) and (3) of MiFID and article 28(2) and (3) of the IDD]

10.1.8A [deleted]

10.1.9 Firms should aim to identify and manage the conflicts of interest arising in relation to their various business lines and their group's activities under a comprehensive conflicts of interest policy. In particular, the disclosure of conflicts of interest by a firm should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements under SYSC 10.1.7 R. While disclosure of specific conflicts of interest is required by SYSC 10.1.8 R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

10.1.9A A firm must treat disclosure of conflicts pursuant to SYSC 10.1.8R as a measure of last resort to be used only where the effective organisational and administrative arrangements established by the firm to prevent or manage its conflicts of interest in accordance with SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented.

Conflicts policy

10.1.10 (1) A management company and an insurance intermediary must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and is appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.

(2) Where the management company or insurance intermediary is a member of a group, the policy must also take into account any circumstances, of which the firm is or should be aware, which may
give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 18(1) of the UCITS implementing Directive]

Contents of policy

10.1.11 The conflicts of interest policy must include the following content:

(a) it must identify in accordance with SYSC 10.1.3 R, SYSC 10.1.4 R, SYSC 10.1.4BR and SYSC 10.1.4CR (as applicable), by reference to the specific services and activities carried out by or on behalf of the management company or insurance intermediary, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients; and

(b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

(2) The procedures and measures provided for in paragraph (1)(b) must:

(a) be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of clients;

(aa) (for an insurance intermediary) be designed to ensure that the insurance distribution activities are carried out in accordance with the best interests of the client and are not biased due to conflicting interests of the insurance intermediary or another client; and

(b) include, for an insurance intermediary, where appropriate, the following, and for a management company, such of the following as are necessary and appropriate for the management company to ensure the requisite degree of independence:

(i) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(ii) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;

(iii) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
(iv) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out services or activities;

(v) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate services or activities where such involvement may impair the proper management of conflicts of interest; and

(vi) (for insurance intermediaries) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

(3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a management company must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

(4) If one or more of the measures and procedures in paragraph (2) is not appropriate for the purposes of paragraph (2)(aa), an insurance intermediary must adopt such alternative measures and procedures as are necessary and appropriate.

(5) The procedures and measures provided for in paragraph (1)(b) must be appropriate to an insurance intermediary's size and activities, the group to which it may belong and to the risk of damage to the interests of the client.

[Note: articles 18(2), 19(1) and 19(2) of the UCITS implementing Directive]

10.11A G

Other firms (except common platform firms, UCITS management companies and insurance intermediaries) should take account of the rules relating to conflicts of interest policies (see SYSC 10.1.10 R and SYSC 10.1.11 R) in accordance with SYSC 1 Annex 1.3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.

10.11AA R

An insurance intermediary must assess and periodically review, on at least an annual basis, the conflicts of interest policy established in accordance with SYSC 10.1.10R and SYSC 10.1.11R and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).

10.11AB R

A common platform firm, in relation to its insurance distribution activities, must:

- take into account the factors set out in SYSC 10.1.4BR(4) and SYSC 10.1.4CR(5) when complying with article 33 of the MiFID Org Regulation (as applied as a rule by SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)); and

- include the measure set out in SYSC 10.1.11R(2)(b)(vi) in the list of measures to be adopted, where necessary, when complying with article 34 (3) of the MiFID Org Regulation (as applied as a rule by SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)).
10.1.11B A firm (other than a common platform firm and an insurance intermediary) should read § SYSC 10.1.11AAR as if “should” appeared in that rule instead of “must”.

10.1.12 In drawing up a conflicts of interest policy which identifies circumstances which constitute or may give rise to a conflict of interest, a firm should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the firm or a person directly or indirectly linked by control to the firm performs a combination of two or more of those activities.

[Note: recital 47 to the MiFID Org Regulation]

10.1.13 [deleted]

10.1.14 [deleted]

10.1.15 [deleted]

Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research

The rules relating to:

1. types of conflict (see § SYSC 10.1.4 R);
2. records of conflicts (see § SYSC 10.1.6 R); and
3. conflicts of interest policies (see § SYSC 10.1.10 R and § SYSC 10.1.11 R);

also apply to a firm which is not a common platform firm when it produces, or arranges for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public, and when it produces or disseminates non-independent research, in accordance with § COBS 12.2.

Additional requirements for a management company

A management company, when identifying the types of conflict of interests for the purposes of § SYSC 10.1.4 R, must take into account:

1. the interests of the firm, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the firm towards the UCITS scheme or EEA UCITS scheme it manages; and
2. where it manages two or more UCITS schemes or EEA UCITS schemes, the interests of all of them.

[Note: article 17(2) of the UCITS implementing Directive]
For a management company, references to client in SYSC 10.1.4 R and in the other rules in this section should be construed as referring to any UCITS scheme or EEA UCITS scheme managed by that firm or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

**Structure and organisation of a management company**

A management company must be structured and organised in such a way as to minimise the risk of a UCITS scheme's, EEA UCITS scheme's or client's interests being prejudiced by conflicts of interest between the management company and its clients, between two of its clients, between one of its clients and a UCITS scheme or an EEA UCITS scheme, or between two such schemes.

[Note: articles 12(1)(b) and 14(1)(d) of the UCITS Directive]

**Avoidance of conflicts of interest for a management company**

A management company must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS schemes and EEA UCITS schemes it manages are fairly treated.

[Note: articles 12(1)(b) and 14(1)(d) of the UCITS Directive]

**Disclosure of conflicts of interest for a management company**

(1) Where the organisational or administrative arrangements made by a management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the UCITS scheme or EEA UCITS scheme it manages or of its Unitholders will be prevented, the senior personnel or other competent internal body of the firm must be promptly informed in order for them to take any necessary decision to ensure that in all cases the firm acts in the best interests of the scheme and of its Unitholders.

(2) A management company must report situations referred to in (1) to the Unitholders of the UCITS scheme or EEA UCITS scheme it manages by any appropriate durable medium and give reasons for its decision.

[Note: articles 20(2) and 20(3) of the UCITS implementing Directive]

**Collective portfolio management investment firms**

A collective portfolio management investment firm which manages investments other than for an AIF or UCITS for which it has been appointed as manager, must obtain approval from its client before it invests all or part of the client's portfolio in units or shares of an AIF or UCITS it manages.

[Note: article 12(2)(a) of the UCITS Directive and article 12(2)(a) of AIFMD]

**Additional requirements for an AIFM**

An AIFM must take all reasonable steps to identify conflicts of interest that arise, in the course of managing AIFs, between:
(1) the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and an AIF managed by the AIFM or the investors in that AIF; or

(2) an AIF or the investors in that AIF, and another AIF or the investors in that AIF; or

(3) an AIF or the investors in that AIF, and another client of the AIFM; or

(4) an AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS; or

(5) two clients of the AIFM.

[Note: article 14(1) first paragraph of AIFMD]

An AIFM must take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, manage, monitor and (where applicable) disclose those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors, and to ensure that the AIFs it manages are fairly treated.

[Note: article 12(1)d of AIFMD]

An AIFM must:

(1) maintain and operate effective organisational and administrative arrangements, with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors;

(2) segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest; and

(3) assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the AIF’s investors.

[Note: article 14(1) second and third paragraphs of AIFMD]

If the organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors’ interests will be prevented, the AIFM must:

(1) clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf; and

(2) develop appropriate policies and procedures.

[Note: article 14(2) of AIFMD]
Subordinate measures for alternative investment fund managers

10.1.27 Articles 30 to 37 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions of article 14 of AIFMD.
10.1A IDD Regulation – Conflicts of interest

Application

3(1) For the purposes of identifying, in accordance with Article 28 of Directive (EU) 2016/97, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

- it is distinct from the customer's or potential customer's interest in the outcome of the insurance distribution activities;
- it has the potential to influence the outcome of the distribution activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in the same way for the purposes of identifying conflicts of interest between one customer and another.

3(2) For the purposes of the assessment pursuant to paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, the following situations:

- the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the customer;
- the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control has a financial or other incentive to favour the interest of another customer or group of customers over the interest of the customer;
- the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked by control to an insurance intermediary or an insurance undertaking is
substantially involved in the management or development of insurance-based investment products, in particular where such a person has an influence on the pricing of those products or their distribution costs.

[Note: article 3 of the IDD Regulation]

Conflicts policy

4(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 4(1) of the IDD Regulation]

Contents of policy

4(2) The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

- with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;
- procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the customer.

[Note: article 4(2) of the IDD Regulation]

The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.

The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include, where appropriate, the following:

- effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers;
- the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;
the removal of any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance distribution activities are carried out by the insurance intermediary or insurance undertaking or their managers or employees or any person directly or indirectly linked to them by control;

measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest;

a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

5(2) Where insurance intermediaries and insurance undertakings can demonstrate that the measures and procedures referred to in paragraph 1 are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interest of the customer and are not biased due to conflicting interests of the insurance intermediary, the insurance undertaking or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.

[Note: article 5 of the IDD Regulation]

Disclosure of conflicts

6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to Article 28(2) of Directive (EU) 2016/97, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with Article 27 of Directive (EU) 2016/97 are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:

- provide a specific description of the conflict of interest in question;
- explain the general nature and sources of the conflict of interest;
- explain the risks to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

[Note: article 6 of the IDD Regulation]

Review of conflicts policy

10.1A.7 EU

7(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the IDD Regulation]

Record keeping

10.1A.8 EU

7(2) Insurance intermediaries and insurance undertakings shall keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a customer has arisen or, in the case of an ongoing service or activity may arise.

Senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on the situations referred to in the first subparagraph.

[Note: article 7(2) of the IDD Regulation]
10.2 Chinese walls

Application

10.2.1 This section applies to any firm.

Control of information

10.2.2 (1) When a firm establishes and maintains a Chinese wall (that is, an arrangement that requires information held by a person in the course of carrying on one part of the business to be withheld from, or not to be used for, persons with or for whom it acts in the course of carrying on another part of its business) it may:

(a) withhold or not use the information held; and

(b) for that purpose, permit persons employed in the first part of its business to withhold the information held from those employed in that other part of the business;

but only to the extent that the business of one of those parts involves the carrying on of regulated activities, ancillary activities or, in the case of MiFID business, the provision of ancillary services.

(2) Information may also be withheld or not used by a firm when this is required by an established arrangement maintained between different parts of the business (of any kind) in the same group. This provision does not affect any requirement to transmit or use information that may arise apart from the rules in COBS.

(3) For the purpose of this rule, "maintains" includes taking reasonable steps to ensure that the arrangements remain effective and are adequately monitored, and must be interpreted accordingly.

(4) [deleted]

Effect of rules

10.2.3 [SYSC 10.2.2 R is made under section 137P of the Act (Control of information rules). It has the following effect:

(1) acting in conformity with [SYSC 10.2.2 R (1) provides a defence against proceedings brought under sections 89(2), 90(1) and 91(1) of the Financial Services Act 2012 (Misleading statements, Misleading impressions and Misleading statements etc. in relation to benchmarks) - see sections 89(3)(b), 90(9)(c) and 91(3)(b); and

(2) [deleted]
(3) acting in conformity with SYSC 10.2.2 R (1) provides a defence for a firm against FCA enforcement action, or an action for damages under section 138D of the Act, based on a breach of a relevant requirement to disclose or use this information.

**Attribution of knowledge**

### 10.2.4

When any of the rules of COBS or CASS apply to a firm that acts with knowledge, the firm will not be taken to act with knowledge for the purposes of that rule if none of the relevant individuals involved on behalf of the firm acts with that knowledge as a result of arrangements established under SYSC 10.2.2 R.

### 10.2.5

When a firm manages a conflict of interest using the arrangements in SYSC 10.2.2 R which take the form of a Chinese wall, individuals on the other side of the wall will not be regarded as being in possession of knowledge denied to them as a result of the Chinese wall.
Chapter 10A

Recording telephone conversations and electronic communications
10A.1 Application

Subject to the exemptions in SYSC 10A.1.4R, this chapter applies to a firm:

1. that is a:
   a. UK MiFID investment firm; or
   b. full-scope UK AIFM; or
   c. small authorised UK AIFM or residual CIS operator; or
   d. incoming EEA AIFM; or
   e. UCITS management company; or
   f. MiFID optional exemption firm, performing activities covered by the exemption; or
   g. EEA MiFID investment firm; or
   h. third country investment firm; or
   i. that carries on activities referred to in the general application rule related to:
      i. commodity futures; or
      ii. commodity options; or
      iii. contracts for differences related to an underlying commodity; or
   iv. other futures or contracts for differences which are not related to commodities, financial instruments or cash, which are not MiFID or equivalent third country business and energy market activity or oil market activity, but excluding the following firms:
      v. a depositary when acting as such; and
      vi. an authorised professional firm with respect to its non-mainstream regulated activities; or
   j. that carries on energy market activity or oil market activity; or
(k) is an **OPS firm**; and

(2) that carries out any of the following activities, in **investments** that are **financial instruments**:

(a) arranging (bringing about) deals in investments;
(b) dealing in investments as agent;
(c) dealing in investments as principal;
(d) managing investments;
(e) managing a **UCITS** to the extent that this comprises the function of investment management referred to in Annex II of the **UCITS Directive**;
(f) managing an **AIF** to the extent that this comprises the function of portfolio management referred to in Annex I of the **AIFMD**;
(g) establishing, operating or winding up a collective investment scheme to the extent that this comprises scheme management activity,

only with respect to a **firm**'s activities carried on from an establishment (including a **branch**) maintained by the **firm** in the United Kingdom.

[Note: article 16(7) and 16(11) of **MiFID**]

**10A.1.2** Where this chapter applies to a **third country investment firm**, it applies in conjunction with ■ GEN 2.2.22AR, to ensure that such **firms** are not treated in a more favourable way than an **EEA firm**.

**10A.1.3** For a **firm** in ■ SYSC 10A.1.1R(1) (other than a **MiFID investment firm** or a **third country investment firm**) **MiFIR**, and any **EU Regulation** adopted under **MiFIR** or **MiFID**, apply to the extent relevant to the subject matter of this chapter as if it were a **MiFID investment firm** providing **investment services** or performing **investment activities** in accordance with article 16(7) of **MiFID**.

**10A.1.4** This chapter does not apply to the carrying on of:

(1) activities between operators and **depositaries**, of the same fund (when acting in that capacity); or

(2) **energy market activity** and **oil market activity** which is not **MiFID** or **equivalent third country business** but which, if the **firm** carrying it on were not authorised, would not be a **regulated activity** because of article 16 of the **Regulated Activities Order** (Dealing in contractually based investments) or article 22 of the **Regulated Activities Order** (Deals with or through authorised persons etc.); or

(3) any activity referred to in ■ SYSC 10A.1.1R(2), to the extent that it is carried out by a **firm** that is not a **MiFID investment firm**, **MiFID optional exemption firm** or **third country investment firm**, in **financial instruments** that are not:

(a) admitted to trading on a **trading venue**; or
(b) traded on a **trading venue**; or
(c) instruments for which a request has been made for admission to trading on a trading venue; or

(d) instruments covered by paragraph (a), (b) or (c), but the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in those paragraphs; or

(3A) the activities referred to in SYSC 10A.1.1R(2)(d) to (g), to the extent that they are carried out by a MiFID investment firm or third country investment firm in financial instruments that are not:

(a) admitted to trading on a trading venue; or

(b) traded on a trading venue; or

(c) instruments for which a request has been made for admission to trading on a trading venue; or

(d) instruments covered by paragraph (a), (b) or (c), but the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in those paragraphs; or

activities which comprise:

(a) underwriting of financial instruments on a firm commitment basis; or

(b) placing of financial instruments with or without a firm commitment basis,

within the meaning of section A(6) or A(7) of Annex 1 of MiFID.

ancillary services.

Firms should refer to article 76 of the MiFID Org Regulation, which contains additional requirements on recording of telephone conversations or electronic communications, in addition to this chapter.

Obligations for telephone and electronic communications

A firm must take all reasonable steps to record telephone conversations, and keep a copy of electronic communications, that relate to the activities in financial instruments referred to in SYSC 10A.1.1R(2) (and that are not excluded by SYSC 10A.1.4R), and that are made with, sent from, or received on, equipment:

(1) provided by the firm to an employee or contractor; or

(2) the use of which by an employee or contractor has been accepted or permitted by the firm.

[Note: article 16(7) of MiFID, third subparagraph]

A firm must take all reasonable steps to prevent an employee or contractor from making, sending, or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the firm is unable to record or copy.

[Note: article 16(7) of MiFID, eighth subparagraph]
The telephone conversations and electronic communications referred to in SYSC 10A.1.6R include those that are intended to result in the performance of the activities in financial instruments referred to in SYSC 10A.1.1R(2), even if those conversations or communications do not in fact result in the performance of such activities.

[Note: article 16(7) of MiFID, second subparagraph]

A MiFID optional exemption firm that provides services solely or mainly to retail clients is not required to comply with the requirements of SYSC 10A.1.6R, SYSC 10A.1.7R and SYSC 10A.1.11R in relation to telephone conversations, subject to compliance with the following requirements:

1. A telephone conversation that would be subject to SYSC 10A.1.6R must be recorded instead using a written minute or note; and
2. The minute or note must include all relevant, and at least the following, information:
   - date and time of the conversation;
   - identity of the individual participants in the conversation;
   - initiator of the conversation; and
   - relevant information about the client order, including the price, volume, type of order and when it will be transmitted or executed.

A MiFID optional exemption firm that chooses to take advantage of the provisions in SYSC 10A.1.9R should set out its decision in its recording policy. Further, any minute or note made in accordance with SYSC 10A.1.9R should contain all relevant substantive details of the conversation, as well as the information set out in SYSC 10A.1.9R(4)(a)-(d). MiFID optional exemption firms should note that the effect of SYSC 10A.1.3R is to require their compliance, as relevant, with article 76 of the MiFID Org Regulation, including that records must be:

1. stored in a durable medium which allows them to be replayed or copied; and
2. retained in a format that does not allow the original record to be altered or deleted.

A firm must notify new and existing clients that telephone communications or conversations between the firm and its clients that result or may result in activities in financial instruments referred to in SYSC 10A.1.1R(2) (and that are not excluded by SYSC 10A.1.4R) will be recorded. The notification must be made before the provision of any investment services to new and existing clients.

[Note: article 16(7) of MiFID, fourth subparagraph]

A notification referred to in SYSC 10A.1.11R is only required to be made by the firm once, at the following times:
(1) to a new client prior to the provision of any investment services; and

(2) to an existing client prior to the provision of any investment services following:
   (a) the commencement of these rules; or
   (b) the firm otherwise becoming subject to these rules, after the date of commencement.

[Note: article 16(7) of MiFID, fifth subparagraph]

Obligation for other communications

Client instructions given otherwise than by telephone must be made in a durable medium such as by mail, faxes, emails or documentation of client instructions issued at meetings. In particular, the content of relevant face-to-face conversations with a client may be recorded by using written minutes or notes.

[Note: article 16(7) of MiFID, seventh subparagraph]

Record-keeping

The records kept in accordance with this chapter must be:

(1) provided by the firm to the client involved upon request; and

(2) kept for a period of five years and, where requested by the FCA, for a period of up to seven years.

[Note: article 16(7) of MiFID, ninth subparagraph]
Chapter 11

Liquidity risk systems and controls
11.1 Application

11.1.2 [deleted]

11.1.3 [deleted]

11.1.4 [deleted]

11.1.5  
(1) [deleted]
(2) [deleted]

Purpose

11.1.10 [deleted]

11.1.11 [deleted]

11.1.12 [deleted]

11.1.14 [deleted]

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Chapter 12

Group risk systems and controls requirements
12.1 Application

Subject to SYSC 12.1.2 R to SYSC 12.1.4 R, this section applies to each of the following which is a member of a group:

(1) a firm that falls into any one or more of the following categories:
   (a) a regulated entity that is:
      (i) an investment firm, except a designated investment firm unless (ii) applies; or
      (ii) a credit institution or designated investment firm that is a subsidiary undertaking of a parent institution in a Member State that is an IFPRU investment firm;
   (b) [deleted]
   (c) an insurer;
   (ca) a UK ISPV;
   (d) a BIPRU firm;
   (e) a parent financial holding company in a Member State that is a member of one of the following:
      (i) a UK consolidation group; or
      (ii) an FCA consolidation group; and
   (f) a firm subject to the rules in IPRU(INV) Chapter 14.

(2) a UCITS firm, but only if its group contains a firm falling into (1); and

(3) the Society.

Except as set out in SYSC 12.1.4 R, this section applies with respect to different types of group as follows:

(1) SYSC 12.1.8 R and SYSC 12.1.10 R apply with respect to all groups, including UK-regulated EEA financial conglomerates, other financial conglomerates and groups dealt with in SYSC 12.1.13 R to SYSC 12.1.15 R;

(2) the additional requirements set out in SYSC 12.1.11 R and SYSC 12.1.12 R only apply with respect to UK-regulated EEA financial conglomerates; and

(3) the additional requirements set out in SYSC 12.1.13 R to SYSC 12.1.15 R only apply with respect to groups of the kind dealt with by whichever of those rules apply.
This section does not apply to:

1. an incoming EEA firm; or
2. an incoming Treaty firm; or
3. a UCITS qualifier; or
4. an ICVC; or
5. an incoming ECA provider acting as such.

(1) This rule applies in respect of the following rules:
   (a) SYSC 12.1.8R (2);
   (b) SYSC 12.1.10R (1), so far as it relates to SYSC 12.1.8R (2);
   (c) SYSC 12.1.10R (2); and
   (d) SYSC 12.1.11 R to SYSC 12.1.15 R.

(2) The rules referred to in (1):
   (a) only apply with respect to a financial conglomerate if it is a UK-regulated EEA financial conglomerate;
   (b) (so far as they apply with respect to a group that is not a financial conglomerate) do not apply with respect to a group for which a competent authority in another EEA state is lead regulator;
   (c) (so far as they apply with respect to a financial conglomerate) do not apply to a firm with respect to a financial conglomerate of which it is a member if the interest of the financial conglomerate in that firm is no more than a participation;
   (d) (so far as they apply with respect to other groups) do not apply to a firm with respect to a group of which it is a member if the only relationship of the kind set out in paragraph (3) of the definition of group between it and the other members of the group is nothing more than a participation; and
   (e) do not apply with respect to a third-country group.

For the purpose of this section, a group is defined in the Glossary, and includes the whole of a firm’s group, including financial and non-financial undertakings. It also covers undertakings with other links to group members if their omission from the scope of group risk systems and controls would be misleading. The scope of the group systems and controls requirements may therefore differ from the scope of the quantitative requirements for groups.

The purpose of this chapter is to set out how the systems and control requirements imposed by SYSC (Senior Management Arrangements, Systems and Controls) apply where a firm is part of a group. If a firm is a member of a group, it should be able to assess the potential impact of risks arising from other parts of its group as well as from its own activities.
This section implements article 109(2) of the CRD and article 9 of the Financial Groups Directive (Internal control mechanisms and risk management processes).

General rules

A firm must:

1. have adequate, sound and appropriate risk management processes and internal control mechanisms for the purpose of assessing and managing its own exposure to group risk, including sound administrative and accounting procedures; and

2. ensure that its group has adequate, sound and appropriate risk management processes and internal control mechanisms at the level of the group, including sound administrative and accounting procedures.

For the purposes of SYSC 12.8, the question of whether the risk management processes and internal control mechanisms are adequate, sound and appropriate should be judged in the light of the nature, scale and complexity of the group’s business and of the risks that the group bears. Risk management processes must include the stress testing and scenario analysis required by the PRA Rulebook.

The internal control mechanisms referred to in SYSC 12.8 must include:

1. mechanisms that are adequate for the purpose of producing any data and information which would be relevant for the purpose of monitoring compliance with any prudential requirements (including any reporting requirements and any requirements relating to capital adequacy, solvency, systems and controls and large exposures):
   a. to which the firm is subject with respect to its membership of a group; or
   b. that apply to or with respect to that group or part of it; and

2. mechanisms that are adequate to monitor funding within the group.

SYSC 1.A.2.G sets out the general principle that the FCA will apply provisions to the extent of its powers and regulatory responsibilities. SYSC 12.10 R will, therefore, have limited application to a Solvency II firm.

Financial conglomerates

Where this section applies with respect to a financial conglomerate, the risk management processes referred to in SYSC 12.8 (2) or, for a Solvency II firm, the risk management system referred to in the PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3, must include:

1. sound governance and management processes, which must include the approval and periodic review by the appropriate managing bodies within the financial conglomerate of the strategies and policies of the financial conglomerate in respect of all the risks
assumed by the *financial conglomerate*, such review and approval being carried out at the level of the *financial conglomerate*;

(2) adequate capital adequacy policies at the level of the *financial conglomerate*, one of the purposes of which must be to anticipate the impact of the business strategy of the *financial conglomerate* on its risk profile and on the capital adequacy requirements to which it and its members are subject;

(3) adequate procedures for the purpose of ensuring that the risk monitoring systems of the *financial conglomerate* and its members are well integrated into their organisation;

(4) adequate procedures for the purpose of ensuring that the systems and controls of the members of the *financial conglomerate* are consistent and that the risks can be measured, monitored and controlled at the level of the *financial conglomerate*; and

(5) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans; a *firm* must update these arrangements regularly.

[Note: article 9(2) of the Financial Groups Directive]

Where this section applies with respect to a *financial conglomerate*, the internal control mechanisms referred to in §SYSC 12.1.8R (2) or, for a *Solvency II firm*, the internal control system referred to in the PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3, must include:

(1) mechanisms that are adequate to identify and measure all material risks incurred by members of the *financial conglomerate* and appropriately relate capital in the *financial conglomerate* to risks; and

(2) sound reporting and accounting procedures for the purpose of identifying, measuring, monitoring and controlling *intra-group transactions* and *risk concentrations*.

CRR firms and non-CRR firms that are parent financial holding companies in a Member State

If this rule applies under §SYSC 12.1.14 R to a *firm*, the *firm* must:

(1) comply with §SYSC 12.1.8R (2) in relation to any *UK consolidation group* or non-EEA sub-group of which it is a member, as well as in relation to its *group*; and

(2) ensure that the risk management processes and internal control mechanisms at the level of any *consolidation group* or non-EEA sub-group of which it is a member comply with the obligations set out in the following provisions on a consolidated (or sub-consolidated) basis:

(a) §SYSC 4.1.1 R and §SYSC 4.1.2 R;

(b) §SYSC 4.1.7 R;

(bA) §SYSC 4.3A;

(c) §SYSC 5.1.7 R;
(d) SYSC 7;

(dA) the Remuneration Code; or the dual-regulated firms Remuneration Code, whichever is applicable;

(e) BIPRU 12.3.4 R, BIPRU 12.3.5 R, BIPRU 12.3.7 A R, BIPRU 12.3.8 R, BIPRU 12.3.22 A R, BIPRU 12.3.22 B R, BIPRU 12.3.27 R, BIPRU 12.4.-2 R, BIPRU 12.4.-1 R, BIPRU 12.4.5 A R, BIPRU 12.4.10 R, BIPRU 12.4.11 R and BIPRU 12.4.11 A R;

(f) [deleted];

(g) [deleted];

(h) [deleted];

[Note: article 109(2) of CRD]

(3) ensure that compliance with the obligations in (2) enables the consolidation group or the non-EEA sub-group to have arrangements, processes and mechanisms that are consistent and well integrated and that any data relevant to the purpose of supervision can be produced.

[Note: article 109(2) of CRD]

12.1.14 R

SYSC 12.1.13 R applies to a firm that is:

(1) [deleted]

(2) a CRR firm; or

(3) an anon-CRR firm that is a parent financial holding company in a Member State and is a member of a UK consolidation group.

12.1.15 R

In the case of a firm that:

(1) is a CRR firm; and

(2) has a mixed-activity holding company as a parent undertaking;

the risk management processes and internal control mechanisms referred to in SYSC 12.1.8 R must include sound reporting and accounting procedures and other mechanisms that are adequate to identify, measure, monitor and control transactions between the firm’s parent undertaking mixed-activity holding company and any of the mixed-activity holding company’s subsidiary undertakings.

12.1.15A R

SYSC 12.1.13 R applies to a BIPRU firm as if it were a CRR firm but the reference to Remuneration Code is to the BIPRU Remuneration Code.

Nature and extent of requirements and allocation of responsibilities within the group

12.1.18 G

Assessment of the adequacy of a group’s systems and controls required by this section will form part of the FCA’s risk management process.
The nature and extent of the systems and controls necessary under SYSC 12.1.8R (1) to address group risk will vary according to the materiality of those risks to the firm and the position of the firm within the group.

In some cases the management of the systems and controls used to address the risks described in SYSC 12.1.8R (1) may be organised on a group-wide basis. If the firm is not carrying out those functions itself, it should delegate them to the group members that are carrying them out. However, this does not relieve the firm of responsibility for complying with its obligations under SYSC 12.1.8R (1). A firm cannot absolve itself of such a responsibility by claiming that any breach of that rule is caused by the actions of another member of the group to whom the firm has delegated tasks. The risk management arrangements are still those of the firm, even though personnel elsewhere in the firm’s group are carrying out these functions on its behalf.

■ SYSC 12.1.8R (1) deals with the systems and controls that a firm should have in respect of the exposure it has to the rest of the group. On the other hand, the purpose of SYSC 12.1.8R (2) and the rules in this section that amplify it is to require groups to have adequate systems and controls. However, a group is not a single legal entity on which obligations can be imposed. Therefore the obligations have to be placed on individual firms. The purpose of imposing the obligations on each firm in the group is to make sure that the FCA can take supervisory action against any firm in a group whose systems and controls do not meet the standards in this section. Thus responsibility for compliance with the rules for group systems and controls is a joint one.

If both a firm and its parent undertaking are subject to SYSC 12.1.8R (2), the FCA would not expect systems and controls to be duplicated. In this case, the firm should assess whether and to what extent it can rely on its parent’s group risk systems and controls.
Chapter 13

Operational risk: systems and controls for insurers
13.1 Application

13.1.1 SYSC 13 applies to an insurer unless it is:

(1) a non-directive friendly society; or
(2) an incoming EEA firm; or
(3) an incoming Treaty firm.

13.1.2 SYSC 13 applies to:

(1) an EEA-deposit insurer; and
(2) a Swiss general insurer;

only in respect of the activities of the firm carried on from a branch in the United Kingdom.

13.1.3 SYSC 13 applies to a UK ISPV.

13.1.4 SYSC 13 does not apply to an incoming ECA provider acting as such.
13.2 Purpose

13.2.1 SYSC 13 provides guidance on how to interpret SYSC 3.1.1 R and SYSC 3.2.6 R, which deal with the establishment and maintenance of systems and controls, in relation to the management of operational risk. Operational risk has been described by the Basel Committee on Banking Supervision as “the risk of loss, resulting from inadequate or failed internal processes, people and systems, or from external events”. This chapter covers systems and controls for managing risks concerning any of a firm’s operations, such as its IT systems and outsourcing arrangements. It does not cover systems and controls for managing credit, market, liquidity and insurance risk.

13.2.2 Operational risk is a concept that can have a different application for different firms. A firm should assess the appropriateness of the guidance in this chapter in the light of the scale, nature and complexity of its activities as well as its obligations as set out in Principle 3, to organise and control its affairs responsibly and effectively.

13.2.3 A firm should take steps to understand the types of operational risk that are relevant to its particular circumstances, and the operational losses to which they expose the firm. This should include considering the potential sources of operational risk addressed in this chapter: people; processes and systems; external events.

13.2.4 [deleted]

13.2.4A Operational risk can, amongst other things, lead to unfair treatment of consumers or lead to financial crime. A firm should consider all operational risk events that may affect these matters in establishing and maintaining its systems and controls.

13.2.4B
13.3 Other related Handbook sections

The following is a non-exhaustive list of rules and guidance in the Handbook that are relevant to a firm's management of operational risk:

(1) COBS contains rules and guidance that can relate to the management of operational risk; for example,
- COBS 2 (Conduct of business obligations),
- COBS 4 (Communicating with clients, including financial promotions),
- COBS 6 (Information about the firm, its services and remuneration),
- COBS 7 (Insurance distribution),
- COBS 9 (Suitability (including basic advice)(other than MiFID and insurance-based investment products)),
- COBS 9A (Suitability (MiFID and insurance-based investment products provisions),
- COBS 10A (Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions),
- COBS 11 (Dealing and managing),
- COBS 12 (Investment research),
- COBS 14 (Providing product information to clients) and
- COBS 19 (Pensions: supplementary provisions).
13.4 Requirements to notify the appropriate regulator

13.4.1 Under Principle 11 and SUP 15.3.1 R, a firm must notify the FCA immediately of any operational risk matter of which the FCA would reasonably expect notice. SUP 15.3.8 G provides guidance on the occurrences that this requirement covers, which include a significant failure in systems and controls and a significant operational loss.

13.4.2 Regarding operational risk, matters of which the FCA would expect notice under Principle 11 include:

(1) any significant operational exposures that a firm has identified;

(2) the firm’s invocation of a business continuity plan; and

(3) any other significant change to a firm’s organisation, infrastructure or business operating environment.
13.5 Risk management terms

13.5.1 In this chapter, the following interpretations of risk management terms apply:

(1) a firm's risk culture encompasses the general awareness, attitude and behaviour of its employees and appointed representatives or, where applicable, its tied agents, to risk and the management of risk within the organisation;

(2) operational exposure means the degree of operational risk faced by a firm and is usually expressed in terms of the likelihood and impact of a particular type of operational loss occurring (for example, fraud, damage to physical assets);

(3) a firm's operational risk profile describes the types of operational risks that it faces, including those operational risks within a firm that may have an adverse impact upon the quality of service afforded to its clients, and its exposure to these risks.
13.6 People

**13.6.1** A firm should consult SYSC 3.2.2 G to SYSC 3.2.5 G for guidance on reporting lines and delegation of functions within a firm and SYSC 3.2.13 G to SYSC 3.2.14 G for guidance on the suitability of employees and appointed representatives or, where applicable, its tied agents. This section provides additional guidance on management of employees and other human resources in the context of operational risk.

**13.6.2** A firm should establish and maintain appropriate systems and controls for the management of operational risks that can arise from employees. In doing so, a firm should have regard to:

1. its operational risk culture, and any variations in this or its human resource management practices, across its operations (including, for example, the extent to which the compliance culture is extended to in-house IT staff);

2. whether the way employees are remunerated exposes the firm to the risk that it will not be able to meet its regulatory obligations (see SYSC 3.2.18 G). For example, a firm should consider how well remuneration and performance indicators reflect the firm’s tolerance for operational risk, and the adequacy of these indicators for measuring performance;

3. whether inadequate or inappropriate training of client-facing services exposes clients to risk of loss or unfair treatment including by not enabling effective communication with the firm;

4. the extent of its compliance with applicable regulatory and other requirements that relate to the welfare and conduct of employees;

5. its arrangements for the continuity of operations in the event of employee unavailability or loss;

6. the relationship between indicators of ‘people risk’ (such as overtime, sickness, and employee turnover levels) and exposure to operational losses; and

7. the relevance of all the above to employees of a third party supplier who are involved in performing an outsourcing arrangement. As necessary, a firm should review and consider the adequacy of the staffing arrangements and policies of a service provider.
13.6.3 **Employee responsibilities**

A firm should ensure that all employees are capable of performing, and aware of, their operational risk management responsibilities, including by establishing and maintaining:

1. appropriate segregation of employees’ duties and appropriate supervision of employees in the performance of their responsibilities (see ■ SYSC 3.2.5 G);

2. appropriate recruitment and subsequent processes to review the fitness and propriety of employees (see ■ SYSC 3.2.13 G and ■ SYSC 3.2.14 G);

3. clear policy statements and appropriate systems and procedures manuals that are effectively communicated to employees and available for employees to refer to as required. These should cover, for example, compliance, IT security and health and safety issues;

4. training processes that enable employees to attain and maintain appropriate competence; and

5. appropriate and properly enforced disciplinary and employment termination policies and procedures.

13.6.4 A firm should have regard to ■ SYSC 13.6.3 G in relation to approved persons, people occupying positions of high personal trust (for example, security administration, payment and settlement functions); and people occupying positions requiring significant technical competence (for example, derivatives trading and technical security administration). A firm should also consider the rules and guidance for approved persons in other parts of the Handbook (including APER, COCON and SUP) and the rules and guidance on senior manager responsibilities in ■ SYSC 2.1 (Apportionment of Responsibilities).
13.7 Processes and systems

A firm should establish and maintain appropriate systems and controls for managing operational risks that can arise from inadequacies or failures in its processes and systems (and, as appropriate, the systems and processes of third party suppliers, agents and others). In doing so a firm should have regard to:

1. the importance and complexity of processes and systems used in the end-to-end operating cycle for products and activities (for example, the level of integration of systems);
2. controls that will help it to prevent system and process failures or identify them to permit prompt rectification (including pre-approval or reconciliation processes);
3. whether the design and use of its processes and systems allow it to comply adequately with regulatory and other requirements;
4. its arrangements for the continuity of operations in the event that a significant process or system becomes unavailable or is destroyed; and
5. the importance of monitoring indicators of process or system risk (including reconciliation exceptions, compensation payments for client losses and documentation errors) and experience of operational losses and exposures.

Internal documentation

Internal documentation may enhance understanding and aid continuity of operations, so a firm should ensure the adequacy of its internal documentation of processes and systems (including how documentation is developed, maintained and distributed) in managing operational risk.

External documentation

A firm may use external documentation (including contracts, transaction statements or advertising brochures) to define or clarify terms and conditions for its products or activities, its business strategy (for example, including through press statements), or its brand. Inappropriate or inaccurate information in external documents can lead to significant operational exposure.

A firm should ensure the adequacy of its processes and systems to review external documentation prior to issue (including review by its compliance,
legal and marketing departments or by appropriately qualified external advisers). In doing so, a firm should have regard to:

(1) compliance with applicable regulatory and other requirements;
(2) the extent to which its documentation uses standard terms (that are widely recognised, and have been tested in the courts) or non-standard terms (whose meaning may not yet be settled or whose effectiveness may be uncertain);
(3) the manner in which its documentation is issued; and
(4) the extent to which confirmation of acceptance is required (including by customer signature or counterparty confirmation).

**IT systems**

13.7.5 IT systems include the computer systems and infrastructure required for the automation of processes, such as application and operating system software; network infrastructure; and desktop, server, and mainframe hardware. Automation may reduce a firm’s exposure to some ‘people risks’ (including by reducing human errors or controlling access rights to enable segregation of duties), but will increase its dependency on the reliability of its IT systems.

13.7.6 A firm should establish and maintain appropriate systems and controls for the management of its IT system risks, having regard to:

(1) its organisation and reporting structure for technology operations (including the adequacy of senior management oversight);
(2) the extent to which technology requirements are addressed in its business strategy;
(3) the appropriateness of its systems acquisition, development and maintenance activities (including the allocation of responsibilities between IT development and operational areas, processes for embedding security requirements into systems); and
(4) the appropriateness of its activities supporting the operation of IT systems (including the allocation of responsibilities between business and technology areas).

**Information security**

13.7.7 Failures in processing information (whether physical, electronic or known by employees but not recorded) or of the security of the systems that maintain it can lead to significant operational losses. A firm should establish and maintain appropriate systems and controls to manage its information security risks. In doing so, a firm should have regard to:

(1) confidentiality: information should be accessible only to persons or systems with appropriate authority, which may require firewalls within a system, as well as entry restrictions;
(2) integrity: safeguarding the accuracy and completeness of information and its processing;
(3) availability and authentication: ensuring that appropriately authorised persons or systems have access to the information when required and that their identity is verified;

(4) non-repudiation and accountability: ensuring that the person or system that processed the information cannot deny their actions.

13.7.8 G A firm should ensure the adequacy of the systems and controls used to protect the processing and security of its information, and should have regard to established security standards such as ISO17799 (Information Security Management).

Geographic location

13.7.9 G Operating processes and systems at separate geographic locations may alter a firm's operational risk profile (including by allowing alternative sites for the continuity of operations). A firm should understand the effect of any differences in processes and systems at each of its locations, particularly if they are in different countries, having regard to:

(1) the business operating environment of each country (for example, the likelihood and impact of political disruptions or cultural differences on the provision of services);

(2) relevant local regulatory and other requirements regarding data protection and transfer;

(3) the extent to which local regulatory and other requirements may restrict its ability to meet regulatory obligations in the United Kingdom (for example, access to information by the FCA and local restrictions on internal or external audit); and

(4) the timeliness of information flows to and from its headquarters and whether the level of delegated authority and the risk management structures of the overseas operation are compatible with the firm's head office arrangements.
13.8 External events and other changes

13.8.1 A firm should establish and maintain appropriate systems and controls for the management of the risks involved in expected changes, such as by ensuring:

(1) the adequacy of its organisation and reporting structure for managing the change (including the adequacy of senior management oversight);

(2) the adequacy of the management processes and systems for managing the change (including planning, approval, implementation and review processes); and

(3) the adequacy of its strategy for communicating changes in systems and controls to its employees.

13.8.2 Unexpected changes and business continuity management

13.8.3 ■ SYSC 3.2.19 G provides high level guidance on business continuity. This section provides additional guidance on managing business continuity in the context of operational risk.
The high level requirement for appropriate systems and controls at SYSC 3.1.1 R applies at all times, including when a business continuity plan is invoked. However, the FCA recognises that, in an emergency, a firm may be unable to comply with a particular rule and the conditions for relief are outlined in GEN 1.3 (Emergency).

A firm should consider the likelihood and impact of a disruption to the continuity of its operations from unexpected events. This should include assessing the disruptions to which it is particularly susceptible (and the likely timescale of those disruptions) including through:

1. loss or failure of internal and external resources (such as people, systems and other assets);
2. the loss or corruption of its information; and
3. external events (such as vandalism, war and "acts of God").

A firm should implement appropriate arrangements to maintain the continuity of its operations. A firm should act to reduce both the likelihood of a disruption (including by succession planning, systems resilience and dual processing); and the impact of a disruption (including by contingency arrangements and insurance).

A firm should document its strategy for maintaining continuity of its operations, and its plans for communicating and regularly testing the adequacy and effectiveness of this strategy. A firm should establish:

1. formal business continuity plans that outline arrangements to reduce the impact of a short, medium or long-term disruption, including:
   a. resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;
   b. the recovery priorities for the firm's operations; and
   c. communication arrangements for internal and external concerned parties (including the FCA, clients and the press);
2. escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;
3. processes to validate the integrity of information affected by the disruption; and
4. processes to review and update (1) to (3) following changes to the firm's operations or risk profile (including changes identified through testing).

The use of an alternative site for recovery of operations is common practice in business continuity management. A firm that uses an alternative site should assess the appropriateness of the site, particularly for location, speed of recovery and adequacy of resources. Where a site is shared, a firm should
evaluate the risk of multiple calls on shared resources and adjust its plans accordingly.
As SYSC 3.2.4 G explains, a firm cannot contract out its regulatory obligations and should take reasonable care to supervise the discharge of outsourced functions. This section provides additional guidance on managing outsourcing arrangements (and will be relevant, to some extent, to other forms of third party dependency) in relation to operational risk. Outsourcing may affect a firm’s exposure to operational risk through significant changes to, and reduced control over, people, processes and systems used in outsourced activities.

Firms should take particular care to manage material outsourcing arrangements and, as SUP 15.3.8 G (1)(e) explains, a firm should notify the FCA when it intends to enter into a material outsourcing arrangement.

A firm should not assume that because a service provider is either a regulated firm or an intra-group entity an outsourcing arrangement with that provider will, in itself, necessarily imply a reduction in operational risk.

Before entering into, or significantly changing, an outsourcing arrangement, a firm should:

1. analyse how the arrangement will fit with its organisation and reporting structure; business strategy; overall risk profile; and ability to meet its regulatory obligations;
2. consider whether the agreements establishing the arrangement will allow it to monitor and control its operational risk exposure relating to the outsourcing;
3. conduct appropriate due diligence of the service provider’s financial stability and expertise;
4. consider how it will ensure a smooth transition of its operations from its current arrangements to a new or changed outsourcing arrangement (including what will happen on the termination of the contract); and
5. consider any concentration risk implications such as the business continuity implications that may arise if a single service provider is used by several firms.
13.9.5 In negotiating its contract with a service provider, a firm should have regard to:

1. reporting or notification requirements it may wish to impose on the service provider;
2. whether sufficient access will be available to its internal auditors, external auditors or actuaries (see section 341 of the Act) and to the FCA (see SUP 2.3.5 R (Access to premises) and SUP 2.3.7 R (Suppliers under material outsourcing arrangements));
3. information ownership rights, confidentiality agreements and Chinese walls to protect client and other information (including arrangements at the termination of the contract);
4. the adequacy of any guarantees and indemnities;
5. the extent to which the service provider must comply with the firm’s policies and procedures (covering, for example, information security);
6. the extent to which a service provider will provide business continuity for outsourced operations, and whether exclusive access to its resources is agreed;
7. the need for continued availability of software following difficulty at a third party supplier;
8. the processes for making changes to the outsourcing arrangement (for example, changes in processing volumes, activities and other contractual terms) and the conditions under which the firm or service provider can choose to change or terminate the outsourcing arrangement, such as where there is:
   a. a change of ownership or control (including insolvency or receivership) of the service provider or firm; or
   b. significant change in the business operations (including subcontracting) of the service provider or firm; or
   c. inadequate provision of services that may lead to the firm being unable to meet its regulatory obligations.

13.9.6 In implementing a relationship management framework, and drafting the service level agreement with the service provider, a firm should have regard to:

1. the identification of qualitative and quantitative performance targets to assess the adequacy of service provision, to both the firm and its clients, where appropriate;
2. the evaluation of performance through service delivery reports and periodic self certification or independent review by internal or external auditors; and
3. remedial action and escalation processes for dealing with inadequate performance.
In some circumstances, a *firm* may find it beneficial to use externally validated reports commissioned by the service provider, to seek comfort as to the adequacy and effectiveness of its systems and controls. The use of such reports does not absolve the *firm* of responsibility to maintain other oversight. In addition, the *firm* should not normally have to forfeit its right to access, for itself or its agents, to the service provider’s premises.

A *firm* should ensure that it has appropriate contingency arrangements to allow business continuity in the event of a significant loss of services from the service provider. Particular issues to consider include a significant loss of resources at, or financial failure of, the service provider, and unexpected termination of the outsourcing arrangement.

(1) Parts of the guidance in SYSC 13.9 do not apply to a *Solvency II firm*. They are SYSC 13.9.3G, SYSC 13.9.4G(1), (2), (4) and (5) and SYSC 13.9.5G(6).

(2) A *Solvency II firm* is subject to the outsourcing requirements in PRA Rulebook: Solvency II firms: Conditions Governing Business 7.

(3) The *Solvency II Regulation* (EU) 2015/35 of 10 October 2014 (article 274) also imposes specific requirements on *firms* which outsource, or propose to outsource, functions or insurance activities.

(4) EIOPA guidelines on systems of governance dated 28 January 2015 include guidelines on, or relating to, outsourcing.

(5) The FCA will take the requirements and guidelines in (2) to (4) into account when considering a *firm’s* outsourcing arrangements.
13.10 Insurance

13.10.1 Whilst a firm may take out insurance with the aim of reducing the monetary impact of operational risk events, non-monetary impacts may remain (including impact on the firm's reputation). A firm should not assume that insurance alone can replace robust systems and controls.

13.10.2 When considering utilising insurance, a firm should consider:

(1) the time taken for the insurer to pay claims (including the potential time taken in disputing cover) and the firm's funding of operations whilst awaiting payment of claims;

(2) the financial strength of the insurer, which may determine its ability to pay claims, particularly where large or numerous small claims are made at the same time; and

(3) the effect of any limiting conditions and exclusion clauses that may restrict cover to a small number of specific operational losses and may exclude larger or hard to quantify indirect losses (such as lost business or reputational costs).
Chapter 14

Risk management and associated systems and controls for insurers
14.1 Application

14.1.1 This section applies to an insurer unless it is:

(1) a non-directive friendly society; or
(2) an incoming EEA firm; or
(3) an incoming Treaty firm.

14.1.2 This section applies to:

(1) an EEA-deposit insurer; and
(2) a Swiss general insurer;

only in respect of the activities of the firm carried on from a branch in the United Kingdom.

14.1.2A This section does not apply to:

(1) an incoming ECA provider acting as such; or
(2) a firm in relation to benchmark activities.

14.1.2AA This section applies to a UK ISPV.

Internal controls: introduction

A firm must take reasonable steps to establish and maintain adequate internal controls.

The precise role and organisation of internal controls can vary from firm to firm. However, a firm’s internal controls should normally be concerned with assisting its governing body and relevant senior managers to participate in ensuring that it meets the following objectives:

(1) safeguarding both the assets of the firm and its customers, as well as identifying and managing liabilities;
(2) maintaining the efficiency and effectiveness of its operations;
(3) ensuring the reliability and completeness of all accounting, financial and management information; and
(4) ensuring compliance with its internal policies and procedures as well as all applicable laws and regulations.
When determining the adequacy of its *internal controls*, a *firm* should consider both the potential risks that might hinder the achievement of the objectives listed in ■ SYSC 14.1.28 G, and the extent to which it needs to control these risks. More specifically, this should normally include consideration of:

1. The appropriateness of its reporting and communication lines (see ■ SYSC 3.2.2 G);

2. How the delegation or contracting of functions or activities to employees, appointed representatives or, where applicable, its tied agents or other third parties (for example outsourcing) is to be monitored and controlled (see ■ SYSC 3.2.3 G to ■ SYSC 3.2.4 G and the additional guidance on the management of outsourcing arrangements is also provided in ■ SYSC 13.9);

3. The risk that a firm’s employees or contractors might accidentally or deliberately breach a firm’s policies and procedures (see ■ SYSC 13.6.3 G);

4. The need for adequate segregation of duties (see ■ SYSC 3.2.5 G);

5. The establishment and control of risk management committees;

6. The need for risk assessment and the establishment of a risk assessment function (see ■ SYSC 3.2.10 G);

7. The need for internal audit and the establishment of an internal audit function and audit committee (see ■ SYSC 3.2.15 G to ■ SYSC 3.2.16 G).

1. ■ SYSC 14.1.29G(6) does not apply to a Solvency II firm.

2. ■ SYSC 14.1.29G(7) does not apply to a Solvency II firm, but only in relation to references to the internal audit function. It does apply to a Solvency II firm in relation to references to the internal audit committee.

3. For Solvency II firms, the PRA has made rules implementing the governance provisions of the Solvency II Directive relating to internal controls (article 46), see PRA Rulebook: Solvency II firms: Conditions Governing Business.

4. The Solvency II Regulation (EU) 2015/35 of 10 October 2014 also imposes specific requirements (see articles 266, 267 and 270).

5. The FCA will take the rules and requirements in (3) and (4) into account when considering a Solvency II firm’s internal controls.
Senior arrangements, Systems and Controls

Chapter 15

Credit risk management systems and controls for insurers
Chapter 16

Market risk management systems and controls for insurers
Chapter 17

Insurance risk systems and controls
Chapter 18

Whistleblowing
18.1 Application and purpose

Application

18.1.1

This chapter applies to:

(1) a firm;

(2) in relation to the guidance in SYSC 18.3.9G, every firm;

(3) in relation to SYSC 18.3.6R and SYSC 18.3.10R, EEA SMCR banking firms and third-country SMCR banking firms only in relation to a branch maintained by them in the United Kingdom; and

(4) in relation to SYSC 18.6.1R to SYSC 18.6.3G (Whistleblowing obligations under MiFID):
   (a) a UK MiFID investment firm, except a collective portfolio management firm; and
   (b) a third country investment firm; and

(5) in relation to SYSC 18.6.4G to SYSC 18.6.5G (Whistleblowing obligations under other EU legislation), a person within the scope of the identified EU sectoral and cross-sectoral legislation.

18.1.1A

Firms are reminded that for the purpose of SYSC 18 (except for SYSC 18.3.9G) “firm” has the specific meaning set out in paragraph (8) of that definition in the Glossary, namely:

(a) “(8) (in SYSC 18, with the exception of the guidance in SYSC 18.3.9G):”
   (a) a UK SMCR banking firm except a small deposit taker; and

(b) a firm as referred to in Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing Instrument 2015.”

18.1.1B

In this chapter, a reference to a provision of the Employment Rights Act 1996 includes a reference to the corresponding provision of the Employment Rights (Northern Ireland) Order 1996.
A firm not referred to in [SYSC 18.1.1AR] may adopt the rules and guidance in this chapter as best practice. If so, it may tailor its approach in a manner that reflects its size, structure and headcount.

Purpose

(1) The purposes of this chapter are to:

(a) set out the requirements on firms in relation to the adoption, and communication to UK-based employees, of appropriate internal procedures for handling reportable concerns made by whistleblowers as part of an effective risk management system (SYSC 18.3);

(b) set out the role of the whistleblowers’ champion (SYSC 18.4);

(c) require firms to ensure that settlement agreements expressly state that workers may make protected disclosures (SYSC 18.5) and do not include warranties related to protected disclosures;

(ca) implement the whistleblowing obligation under article 73(2) of MiFID, which requires MiFID investment firms (except collective portfolio management firms) to have in place appropriate procedures for their employees to report potential or actual infringements of MiFID and MiFIR (SYSC 18.6);

(cb) outline other EU-derived whistleblowing obligations similar to those in article 73(2) of MiFID, some of which may also be applicable to MiFID investment firms (SYSC 18.6);

(d) outline best practice for firms which are not required to apply the measures set out in this chapter but which wish to do so; and

(e) outline the link between effective whistleblowing measures and fitness and propriety.

(2) [deleted]
18.3 Internal arrangements

Arrangements to be appropriate and effective

18.3.1 A firm must establish, implement and maintain appropriate and effective arrangements for the disclosure of reportable concerns by whistleblowers.

(2) The arrangements in (1) must at least:

(a) be able effectively to handle disclosures of reportable concerns including:
   (i) where the whistleblower has requested confidentiality or has chosen not to reveal their identity; and
   (ii) allowing for disclosures to be made through a range of communication methods;

(b) ensure the effective assessment and escalation of reportable concerns by whistleblowers where appropriate, including to the FCA or PRA;

(c) include reasonable measures to ensure that if a reportable concern is made by a whistleblower no person under the control of the firm engages in victimisation of that whistleblower;

(d) provide feedback to a whistleblower about a reportable concern made to the firm by that whistleblower, where this is feasible and appropriate;

(e) include the preparation and maintenance of:
   (i) appropriate records of reportable concerns made by whistleblowers and the firm’s treatment of these reports including the outcome; and
   (ii) up-to-date written procedures that are readily available to the firm’s UK-based employees outlining the firm’s processes for complying with this chapter;

(f) include the preparation of the following reports:
   (i) a report made at least annually to the firm’s governing body on the operation and effectiveness of its systems and controls in relation to whistleblowing (see SYSC 18.3.1R); this report must maintain the confidentiality of individual whistleblowers; and
   (ii) prompt reports to the FCA about each case the firm contested but lost before an employment tribunal where the claimant successfully based all or part of their claim on either detriment suffered as a result of making a protected
(g) include appropriate training for:

(i) UK-based employees;

(ii) managers of UK-based employees wherever the manager is based; and

(iii) employees responsible for operating the firms’ internal arrangements.

18.3.2 When establishing internal arrangements in line with SYSC 18.3.1R a firm may:

(a) draw upon relevant resources prepared by whistleblowing charities or other recognised standards setting organisations; and

(b) consult with its UK-based employees or those representing these employees.

In considering if a firm has complied with SYSC 18.3.1R the FCA will take into account whether the firm has applied the measures in (1).

A firm may wish to clarify in its written procedures for the purposes of SYSC 18.3.1R(2)(e)(ii), that:

(a) there may be other appropriate routes for some issues, such as employee grievances or consumer complaints, but internal arrangements as set out in SYSC 18.3.1R(2) can be used to blow the whistle after alternative routes have been exhausted, in relation to the effectiveness or efficiency of the routes; and

(b) nothing prevents firms taking action against those who have made false and malicious disclosures.

18.3.3 A firm may wish to operate its arrangements under SYSC 18.3.1R internally, within its group or through a third party.

Firms will have to consider how to manage any conflicts of interest.

If the firm uses another member of its group or a third party to operate its arrangements under SYSC 18.3.1R it will continue to be responsible for complying with that rule.

Training and development

A firm’s training and development in line with SYSC 18.3.1R(2)(g) should include:

(1) for all UK-based employees:

(a) a statement that the firm takes the making of reportable concerns seriously;

(b) a reference to the ability to report reportable concerns to the firm and the methods for doing so;
(c) examples of events that might prompt the making of a reportable concern;
(d) examples of action that might be taken by the firm after receiving a reportable concern by a whistleblower, including measures to protect the whistleblower’s confidentiality; and information about sources of external support such as whistleblowing charities;

(2) for all managers of UK-based employees wherever the manager is based:
(a) how to recognise when there has been a disclosure of a reportable concern by a whistleblower;
(b) how to protect whistleblowers and ensure their confidentiality is preserved;
(c) how to provide feedback to a whistleblower, where appropriate;
(d) steps to ensure fair treatment of any person accused of wrongdoing by a whistleblower; and
(e) sources of internal and external advice and support on the matters referred to in (a) to (d);

(3) all employees of the firm, wherever they are based, responsible for operating the firm’s arrangements under SYSC 18.3.1R, how to:
(a) protect a whistleblower’s confidentiality;
(b) assess and grade the significance of information provided by whistleblowers; and
(c) assist the whistleblowers’ champion (see SYSC 18.4) when asked to do so.

18.3.5 Where a firm operates its arrangements under SYSC 18.3.1R through another member of its group or a third party it should consider providing the training referred to in SYSC 18.3.4G(3) to the persons operating the arrangements by the group member or third party.

18.3.6 This rule applies to an EEA SMCR banking firm and a third-country SMCR banking firm.

(1) A person subject to this rule (‘P’) must, in the manner described in (2), communicate to its UK-based employees that they may disclose reportable concerns to the PRA or the FCA and the methods for doing so. P must make clear that:
(a) reporting to the PRA or to the FCA is not conditional on a report first being made using P’s internal arrangements;
(b) it is possible to report using P’s internal arrangements and also to the PRA or FCA; these routes may be used simultaneously or consecutively; and
(c) it is not necessary for a disclosure to be made to P in the first instance.

(2) The communication in (1) must be included in the firm’s employee handbook or other equivalent document.
18.3.6 A   

**For the purposes of SYSC 18.3.6R(1) the possibility for P's employees to disclose reportable concerns to the PRA or to the FCA does not override any obligation of P or its employees to report breaches to P's Home State regulator of matters reserved by an EU instrument to that regulator.**

18.3.7   

**Firms must ensure that their appointed representatives or, where applicable, their tied agents, inform any of their UK-based employees who are workers that, as workers, they may make protected disclosures to the FCA.**

### Appointed representatives and tied agents

18.3.8   

**Firms are encouraged to invite their appointed representatives or, where applicable, their tied agents to consider adopting appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the FCA or PRA.**

### Link to fitness and propriety

18.3.9   

**The FCA would regard as a serious matter any evidence that a firm had acted to the detriment of a whistleblower. Such evidence could call into question the fitness and propriety of the firm or relevant members of its staff, and could therefore, if relevant, affect the firm's continuing satisfaction of threshold condition 5 (Suitability) or, for an approved person or a certification employee, their status as such.**

### Additional rules for UK branches

18.3.10   

(1) **This rule applies where an EEA SMCR banking firm or a third-country SMCR banking firm has:**

(a) a branch in the United Kingdom; and

(b) a group entity which is a UK SMCR banking firm.

(2) **An EEA SMCR banking firm and a third-country SMCR banking firm must, in the manner described in (3), communicate to the UK-based employees of its UK branch:**

(a) the whistleblowing arrangements of the group entity that is a UK SMCR banking firm; and

(b) indicate that these arrangements may be used by employees of its UK branch.

(3) **The communication in (2) must be included in the branch's employee handbook or other equivalent document.**
18.4 The whistleblowers’ champion

18.4.1 (1) A UK SMCR banking firm is required under SYSC.24.2.1R to allocate the FCA-prescribed senior management responsibility for acting as the firm’s whistleblowers’ champion.

(2) SYSC.18.4.2R requires the appointment by an insurer of a director or senior manager as its whistleblowers’ champion.

(3) This section sets out the role of the whistleblowers’ champion.

(4) The FCA expects that a firm will appoint a non-executive director as its whistleblowers’ champion. A firm that does not have a non-executive director would not be expected to appoint one just for this purpose.

18.4.2 An insurer must appoint a director or senior manager as its whistleblowers’ champion.

18.4.3 A firm must assign the responsibilities set out in SYSC.18.4.4R to its whistleblowers’ champion.

18.4.4 A firm must allocate to the whistleblowers’ champion the responsibility for ensuring and overseeing the integrity, independence and effectiveness of the firm’s policies and procedures on whistleblowing (see SYSC.18.3 (Internal Arrangements)) including those policies and procedures intended to protect whistleblowers from being victimised because they have disclosed reportable concerns.

18.4.5 The whistleblowers’ champion:

(1) should have a level of authority and independence within the firm and access to resources (including access to independent legal advice and training) and information sufficient to enable him to carry out that responsibility;

(2) need not have a day-to-day operational role handling disclosures from whistleblowers; and

(3) may be based anywhere provided he can perform his function effectively.
The role of a whistleblowers’ champion, before the introduction of his or her responsibilities under those provisions of SYSC 18 which are to come into force on 7 September 2016, includes oversight of the firm’s transition to its new arrangements for whistleblowing.
**18.5 Settlement agreements with workers**

**18.5.1** **R** A *firm* must include a term in any *settlement agreement* with a *worker* that makes clear that nothing in such an agreement prevents a *worker* from making a *protected disclosure*.

**18.5.2** **E**

1. *Firms* may use the following wording, or alternative wording which has substantively the same meaning, in any *settlement agreement*:

   “For the avoidance of doubt, nothing precludes [name of worker] from making a “protected disclosure” within the meaning of Part 4A (Protected Disclosures) of the [Employment Rights Act 1996](https://www.legislation.gov.uk/ukpga/1996/18/contents). This includes protected disclosures made about matters previously disclosed to another recipient.”

2. Compliance with (1) may be relied on as tending to establish compliance with ■SYSC 18.5.1R.

**18.5.3** **R**

1. *Firms* must not request that *workers* enter into warranties which require them to disclose to the *firm* that:

   (a) they have made a *protected disclosure*; or

   (b) they know of no information which could form the basis of a *protected disclosure*.

2. *Firms* must not use measures intended to prevent *workers* from making *protected disclosures*. 
18.6 Whistleblowing obligations under MiFID and other EU legislation

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**Whistleblowing obligations under MiFID**

18.6.1

(1) **A UK MiFID investment firm** (except a collective portfolio management investment firm) must have appropriate procedures in place for its employees to report a potential or actual breach of:

(a) any rule implementing MiFID; or

(b) a requirement imposed by MiFIR or any EU regulation adopted under MiFID or MiFIR.

(2) The procedures in (1) must enable employees to report internally through a specific, independent and autonomous channel.

(3) The channel referred to in (2) may be provided through arrangements made by social partners, subject to the Public Interest Disclosure Act 1998 and the Employment Rights Act 1996 to the extent that they apply.

[Note: article 73(2) of MiFID]

18.6.2

SYSC 18.6.1R applies to a third country investment firm as if it were a UK MiFID investment firm (unless it is a collective portfolio management investment firm) when the following conditions are met:

(1) it carries on MiFID or equivalent third country business; and

(2) it carries on the business in (1) from an establishment in the United Kingdom.

18.6.3

When considering what procedures may be appropriate for the purposes of SYSC 18.6.1R(1), a UK MiFID investment firm or a third country investment firm may wish to consider the arrangements in SYSC 18.3.1R(2).

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**Whistleblowing obligations under other EU legislation**

18.6.4

In addition to obligations under MiFID, similar whistleblowing obligations apply to miscellaneous persons subject to regulation by the FCA under the following non-exhaustive list of EU legislation:

(1) article 32(3) of the Market Abuse Regulation, as implemented in section 131AA of the Act;
(2) article 71(3) of the CRD (see ■ IFPRU 2.4.1R in respect of IFPRU investment firms);

(3) article 99d(5) of the UCITS Directive (see ■ SYSC 4.1.1ER in respect of UK UCITS management companies, and ■ COLL 6.6B.30R in respect of depositaries);

(4) article 24(3) of the securities financing transactions regulation; and

(5) article 41(4) of the Prospectus Regulation, as implemented in section 97A of the Act.

18.6.5 Depending on the nature of its business, in addition to ■ SYSC 18.6.1R, a MiFID investment firm may, for example, be subject to one or more of the requirements in ■ SYSC 18.6.4G.
Senior Management Arrangements, Systems and Controls

Chapter 19A

IFPRU Remuneration Code
19A. 1 General application and purpose

Who? What? Where?

19A.1 General application and purpose

(1) The Remuneration Code applies to:

(a) [deleted]

(b) [deleted]

(c) an IFPRU investment firm; and

(d) an overseas firm that:

(i) is not an EEA firm;

(ii) has its head office outside the EEA; and

(iii) would be an IFPRU investment firm if it had been a UK domestic firm, had carried on all its business in the UK and had obtained whatever authorisations for doing so as are required under the Act.

(2) In relation to a firm that falls under (1)(d), the Remuneration Code applies only in relation to activities carried on from an establishment in the United Kingdom.

(3) Otherwise, the Remuneration Code applies to a firm within (1) in the same way as SYSC 4.1.1 R (General Requirements).

19A.1.1A

Part 2 of SYSC 1 Annex 1 provides for the application of SYSC 4.1.1 R (General Requirements). In particular, and subject to the provisions on group risk systems and controls requirements in SYSC 12, this means that:

(1) in relation to what the Remuneration Code applies to, it:

(a) applies in relation to regulated activities, activities that constitute dealing in investments as principal (disregarding the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc)), ancillary activities and (in relation to MiFID business) ancillary services;

(b) applies with respect to the carrying on of unregulated activities in a prudential context; and

(c) takes into account activities of other group members; and
(2) in relation to where the Remuneration Code applies, it applies in relation to:

(a) a firm's UK activities;
(b) a firm's passported activities carried on from a branch in another EEA State; and
(c) a UK domestic firm's activities wherever they are carried on, in a prudential context.

When?

19A.1.3  R

(1) A firm must apply the remuneration requirements in SYSC 19A.3 other than SYSC 19A.3.44 R (3) and SYSC 19A.3.44A R in relation to:

(a) remuneration awarded, whether pursuant to a contract or otherwise, on or after 1 January 2011;
(b) remuneration due on the basis of contracts concluded before 1 January 2011 which is awarded or paid on or after 1 January 2011; and
(c) remuneration awarded, but not yet paid, before 1 January 2011, for services provided in 2010.

[Note: article 3(2) of the Third Capital Requirements Directive (Directive 2010/76/EU)]

(2) A firm must apply the remuneration requirements in SYSC 19A.3.44 R (3) and SYSC 19A.3.44A R in relation to remuneration awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before, on or after 31 December 2013.

[Note: article 162(3) of CRD]

19A.1.4  G

Subject to the requirements of SYSC 19A.1.5 R, in the FCA's view SYSC 19A.1.3 R does not require a firm to breach requirements of applicable contract or employment law.

[Note: recital 69 of the CRD]

19A.1.5  R

(1) This rule applies to a firm that is unable to comply with the Remuneration Code because of an obligation it owes to a Remuneration Code staff member under a provision of an agreement made on or before 29 July 2010 (the "provision").

(2) A firm must take reasonable steps to amend or terminate the provision referred to in (1) in a way that enables it to comply with the Remuneration Code at the earliest opportunity.

(3) Until the provision referred to in (1) ceases to prevent the firm from complying with the Remuneration Code, the firm must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the provision.
Purpose

19A.1.6

(1) The aim of the Remuneration Code is to ensure that firms have risk-focused remuneration policies, which are consistent with and promote effective risk management and do not expose them to excessive risk. It expands upon the general organisational requirements in SYSC 4.

(2) The Remuneration Code implements the main provisions of the CRD which relate to remuneration. In applying the Remuneration Code, firms should comply with the Guidelines published by the EBA on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the CRD and on disclosures under article 450 of the EU CRR. The Guidelines can be found at: [http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b](http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b)

(3) [deleted]

Notifications to the FCA

19A.1.7

(1) In addition to the notification requirements in the Remuneration Code general circumstances in which the FCA expects to be notified by firms of matters relating to their compliance with requirements under the regulatory system are set out in SUP 15.3 (General notification requirements).

(2) In particular, in relation to remuneration matters such circumstances should take into account unregulated activities as well as regulated activities and the activities of other members of a group and would include each of the following:

(a) significant breaches of the Remuneration Code, including any breach of a rule to which the detailed provisions on voiding and recovery in SYSC 19A Annex 1 apply;

(b) any proposed remuneration policies, procedures or practices which could:
(i) have a significant adverse impact on the firms reputation; or
(ii) affect the firms ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm; or
(iii) result in serious financial consequences to the financial system or to other firms;
(c) any proposed changes to remuneration policies, practices or procedures which could have a significant impact on the firms risk profile or resources;
(d) fraud, errors and other irregularities described in SUP 15.3.17 R which may suggest weaknesses in, or be motivated by, the firms remuneration policies, procedures or practices.

(3) Such notifications should be made immediately the firm becomes aware, or has information which reasonably suggests such circumstances have occurred, may have occurred or may occur in the foreseeable future.

Individual guidance

The FCA’s policy on individual guidance is set out in SUP 9. Firms should in particular note the policy on what the FCA considers to be a reasonable request for guidance (see SUP 9.2.5 G). For example, where a firm is seeking guidance on a proposed remuneration structure the FCA will expect the firm to provide a detailed analysis of how the structure complies with the Remuneration Code, including the general requirement for remuneration policies, procedures and practices to be consistent with and promote sound and effective risk management.
19A.2 General requirement

Remuneration policies must promote effective risk management

19A.2.1 R

A firm must establish, implement and maintain remuneration policies, procedures and practices that are consistent with and promote sound and effective risk management.

[Note: article 74(1) of CRD]

19A.2.2 G

(1) [deleted]

(2) The Remuneration Code covers all aspects of remuneration that could have a bearing on effective risk management including salaries, bonuses, long-term incentive plans, options, hiring bonuses, severance packages and pension arrangements.

(3) As with other aspects of a firm's systems and controls, in accordance with SYSC 4.1.2 R remuneration policies, procedures and practices must be comprehensive and proportionate to the nature, scale and complexity of the common platform firm's activities. What a firm must do in order to comply with the Remuneration Code will therefore vary. For example, while the Remuneration Code refers to a firm's remuneration committee and risk management function, it may be appropriate for the governing body of a smaller firm to act as the remuneration committee, and for the firm not to have a separate risk management function.

(4) [deleted]

(5) The FCA may also ask remuneration committees to provide evidence of how well the firm's remuneration policies meet the Remuneration Code's principles, together with plans for improvement where there is a shortfall. The FCA also expects relevant firms to use the principles.
in assessing their exposure to risks arising from their remuneration policies as part of the internal capital adequacy assessment process (ICAAP).

(6) [deleted]

19A.2.3

(1) [deleted]

(2) [deleted]

(3) The FCA would also expect firms to apply, on a firm-wide basis, at least the principles relating to:

(a) risk management and risk tolerance (Remuneration Principle 1);

(b) supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2);

(c) conflicts of interest (Remuneration Principle 3);

(d) governance (Remuneration Principle 4);

(e) risk adjustment (Remuneration Principle 8);

(f) pension policy (Remuneration Principle 9);

(g) personal investment strategies (Remuneration Principle 10);

(h) payments related to early termination (Remuneration Principle 12(e)); and

(i) deferral (Remuneration Principle 12(g))

Record-keeping

In line with the record-keeping requirements in SYSC 9, a firm should ensure that its remuneration policies, practices and procedures are clear and documented. Such policies, practices and procedures would include performance appraisal processes and decisions.

Interpretation of references to remuneration

(1) In this chapter references to remuneration include remuneration paid, provided or awarded by any person to the extent that it is paid, provided or awarded in connection with employment by a firm.

(2) Paragraph (1) is without prejudice to the meaning of remuneration elsewhere in the Handbook.

Remuneration includes, for example, payments made by a seconding organisation which is not subject to the Remuneration Code to a secondee in respect of their employment by a firm which is subject to the Remuneration Code.
19A.3 Remuneration principles for IFPRU investment firms

Application: groups

19A.3.1 R
(1) A firm must apply the requirements of this section at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established in a country or territory which is not an EEA State.

(2) Paragraph (1) does not limit SYSC 12.1.13 R (2)(dA) (which relates to the application of the Remuneration Code within UK consolidation groups and non-EEA sub-groups).

[Note: article 92(1) of CRD]

19A.3.2 G
SYSC 12.1.13 R (2)(dA) requires the firm to ensure that the risk management processes and internal control mechanisms at the level of any UK consolidation group or non-EEA sub-group of which a firm is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis. In the FCA’s view, the application of this section at group, parent undertaking and subsidiary undertaking levels in SYSC 19A.3.1R(1) is in line with article 109(2) of CRD on the application of systems and controls requirements to groups (as in SYSC 12.1.13 R).

Application: categories of staff and proportionality

19A.3.3 R
(1) This section applies in relation to Remuneration Code staff, except as set out in (3).

(2) When establishing and applying the total remuneration policies for Remuneration Code staff, a firm must comply with this section in a way and to the extent that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities (the remuneration principles proportionality rule).

(3) Paragraphs (1) and (2) do not apply to the requirement for significant firms to have a remuneration committee (SYSC 19A.3.12 R).

[Note: article 92(2) of CRD]

[Note: In addition to the guidance in this section which relates to the remuneration principles proportionality rule, the FCA provides guidance on the division of firms into categories for the purpose of providing a framework for the operation of the remuneration principles proportionality rule. This...]

19A.3.4 Remuneration Code staff comprises:

(a) an employee of an IFPRU investment firm whose professional activities have a material impact on the firm’s risk profile, including any employee who is deemed to have a material impact on the firm’s risk profile in accordance with Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers); or

(b) subject to (2) and (3), an employee of an overseas firm in SYSC 19A1.1.1R(1)(d) (i.e., an overseas firm that would have been an IFPRU investment firm if it had been a UK domestic firm) whose professional activities have a material impact on the firm’s risk profile, including any employee who would meet any of the criteria set out in articles 3 or 4(1) of Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers) if it had applied to him.

(2) An overseas firm in SYSC 19A1.1.1R(1)(d) (i.e., an overseas firm that would have been an IFPRU investment firm if it had been a UK domestic firm) may deem an employee not to be Remuneration Code staff where:

(a) the employee:
   (i) would meet the criteria in article 4(1) of Regulation (EU) No 604/2014 of 4 March 2014;
   (ii) would not meet any of the criteria in article 3 of Regulation (EU) No 604/2014 of 4 March 2014; and
   (iii) was awarded total remuneration of less than €750,000 in the previous year; and

(b) the overseas firm determines that the professional activities of the employee do not have a material impact on its risk profile on the grounds described in article 4(2) of Regulation (EU) 604/2014 of 4 March 2014.

(3) Where the overseas firm deems an employee not to be Remuneration Code staff as set out in (2), it must notify the FCA, applying the approach described in article 4(4) of Regulation (EU) 604/2014 of 4 March 2014.

[Note: article 92(2) of CRD and articles 3 and 4 of Regulation (EU) No 604/2014 of 4 March 2014.]

19A.3.4A Where an overseas firm in SYSC 19A1.1.1R(1)(d) (i.e., an overseas firm that would have been a IFPRU investment firm if it had been a UK domestic firm) wishes to deem an employee who earns more than €750,000 not to be Remuneration Code staff, the overseas firm may apply for a waiver of the requirement in SYSC 19A.3.4R in respect of that employee.
19A.3.5  R  A firm must:

(1) maintain a record of its Remuneration Code staff in accordance with the general record-keeping requirements (■ SYSC 9); and

(2) take reasonable steps to ensure that its Remuneration Code staff understand the implications of their status as such, including the potential for remuneration which does not comply with certain requirements of the Remuneration Code to be rendered void and recoverable by the firm.

19A.3.6  G  [deleted]

Remuneration Principle 1: Risk management and risk tolerance

A firm must ensure that its remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the firm.

[Note: article 92(2)(a) of CRD]

Remuneration Principle 2: Supporting business strategy, objectives, values and long-term interests of the firm

A firm must ensure that its remuneration policy is in line with the business strategy, objectives, values and long-term interests of the firm.

[Note: article 92(2)(b) of CRD]

Remuneration Principle 3: Avoiding conflicts of interest

A firm must ensure that its remuneration policy includes measures to avoid conflicts of interest.

[Note: article 92(2)(b) of CRD]

Remuneration Principle 4: Governance

A firm must ensure that its management body in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing its implementation.

[Note: article 92(2)(c) of CRD and Standard 1 of the FSB Compensation Standards]

A firm must ensure that the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function.

[Note: article 92(2)(d) of CRD and Standard 1 of the FSB Compensation Standards]
19A.3.12 R

(1) A firm that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a remuneration committee.

(2) The remuneration committee must be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

(3) The chairman and the members of the remuneration committee must be members of the management body who do not perform any executive function in the firm.

(4) The remuneration committee must be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the firm and which are to be taken by the management body.

(5) When preparing such decisions, the remuneration committee must take into account the long-term interests of shareholders, investors and other stakeholders in the firm and the public interest.

[Note: article 95 of CRD and Standard 1 of the FSB Compensation Standards]

19A.3.12A R

A firm that maintains a website must explain on the website how it complies with the Remuneration Code.

[Note: article 96 of CRD]

19A.3.12B R

In a firm that is significant' means a significant IFPRU firm.

19A.3.13 G

(1) A firm should be able to demonstrate that its decisions are consistent with an assessment of its financial condition and future prospects. In particular, practices by which remuneration is paid for potential future revenues whose timing and likelihood remain uncertain should be evaluated carefully and the governing body or remuneration committee (or both) should work closely with the firm's risk function in evaluating the incentives created by its remuneration system.

(2) The governing body and any remuneration committee are responsible for ensuring that the firm's remuneration policy complies with the Remuneration Code and where relevant should take into account relevant guidance, such as that issued by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO).

(3) [deleted]

(4) Guidance on what the supervisory function might involve is set out in SYSC 4.3.3 G.
Remuneration Principle 5: Control functions

19A.3.14 R

A firm must ensure that employees engaged in control functions:

(1) are independent from the business units they oversee;
(2) have appropriate authority; and
(3) are remunerated:
   (a) adequately to attract qualified and experienced staff; and
   (b) in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[Note: article 92(2)(e) of CRD and Standard 2 of the FSB Compensation Standards]

19A.3.15 E

(1) A firm’s risk management and compliance functions should have appropriate input into setting the remuneration policy for other business areas. The procedures for setting remuneration should allow risk and compliance functions to have significant input into the setting of individual remuneration awards where those functions have concerns about the behaviour of the individuals concerned or the riskiness of the business undertaken.

(2) Contravention of (1) may be relied on as tending to establish contravention of the rule on employees engaged in control functions having appropriate authority (■ SYSC 19A.3.14 R (2)).

19A.3.16 R

A firm must ensure that the remuneration of the senior officers in risk management and compliance functions is directly overseen by the remuneration committee referred to in ■ SYSC 19A.3.12 R, or, if such a committee has not been established, by the governing body in its supervisory function.

[Note: article 92(2)(f) of CRD]

19A.3.17 G

(1) This Remuneration Principle is designed to manage the conflicts of interest which might arise if other business areas had undue influence over the remuneration of employees within control functions. Conflicts of interest can easily arise when employees are involved in the determination of remuneration for their own business area. Where these could arise they need to be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. It is good practice to seek input from a firm’s human resources function when setting remuneration for other business areas.

(2) [deleted]

(3) [deleted]
Remuneration Principle 6: Remuneration and capital

19A.3.18 R  A firm must ensure that total variable remuneration does not limit the firm’s ability to strengthen its capital base.

[Note: article 94(1)(c) of CRD and Standard 3 of the FSB Compensation Standards]

Remuneration Principle 7: Exceptional government intervention

19A.3.20 R  A firm that benefits from exceptional government intervention must ensure that:

1. variable remuneration is strictly limited as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

2. it restructures remuneration in a manner aligned with sound risk management and long-term growth, including when appropriate establishing limits to the remuneration of members of its management body; and

3. no variable remuneration is paid to members of its management body unless this is justified.

[Note: article 93 of CRD and Standard 10 of the FSB Compensation Standards]

19A.3.21 G  The FCA would normally expect it to be appropriate for the ban on paying variable remuneration to members of the management body of a firm that benefits from exceptional government intervention to apply only in relation to members of the management body who were in office at the time that the intervention was required.

Remuneration Principle 8: Profit-based measurement and risk adjustment

19A.3.22 R  (1) A firm must ensure that any measurement of performance used to calculate variable remuneration components or pools of variable remuneration components:

(a) includes adjustments for all types of current and future risks and takes into account the cost and quantity of the capital and the liquidity required; and

(b) takes into account the need for consistency with the timing and likelihood of the firm receiving potential future revenues incorporated into current earnings.

(2) A firm must ensure that the allocation of variable remuneration components within the firm also takes into account all types of current and future risks.

[Note: article 94(a)(j) and (k) of CRD and Standard 4 of the FSB Compensation Standards]
19A.3.23 G (1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance within that process of applying judgement and common sense. The FCA expects a firm to apply qualitative judgements and common sense in the final decision about the performance-related components of variable remuneration pools.

(2) A number of risk-adjustment techniques and measures are available, and a firm should choose those most appropriate to its circumstances. The FCA considers good practice for this Principle to be represented by firms who provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered including non-financial risks such as reputation, conduct, client outcomes, values and strategy.

(3) The FCA expects a firm to be able to provide it with details of all adjustments that the firm has made through application of formulae or the exercise of discretion. This will enable the FCA to consider if the firm’s risk adjustment framework is sufficiently robust. Where discretion has been applied, the firm should be able to provide a clear explanation for, and quantification of, such adjustments.

(4) A firm should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the governing body or remuneration committee for this purpose.

19A.3.24 G [deleted]

19A.3.25 R A firm must base assessments of financial performance used to calculate variable remuneration components or pools of variable remuneration components principally on profits.

19A.3.26 G [deleted]

19A.3.27 R A firm must ensure that its total variable remuneration is generally considerably contracted where subdued or negative financial performance of the firm occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: article 94(1)(n) of CRD and Standard 5 of the FSB Compensation Standards]

19A.3.28 G [deleted]
Remuneration Principle 9: Pension policy

R19A.3.29 A firm must ensure that:

(1) its pension policy is in line with its business strategy, objectives, values and long-term interests;

(2) when an employee leaves the firm before retirement, any discretionary pension benefits are held by the firm for a period of five years in the form of instruments referred to in SYSC 19A.3.47 R (1); and

(3) when an employee reaches retirement, discretionary pension benefits are paid to the employee in the form of instruments referred to in SYSC 19A.3.47 R (1) and subject to a five-year retention period.

[Note: article 94(1)(o) of CRD]

Remuneration Principle 10: Personal investment strategies

R19A.3.30 (1) A firm must ensure that its employees undertake not to use personal hedging strategies or remuneration- or liability-related contracts of insurance to undermine the risk alignment effects embedded in their remuneration arrangements.

(2) A firm must maintain effective arrangements designed to ensure that employees comply with their undertaking.

[Note: article 94(1)(p) of CRD and Standard 14 of the FSB Compensation Standards]

Remuneration Principle 11: Non-compliance with the Remuneration Code

R19A.3.32 A firm must ensure that variable remuneration is not paid through vehicles or methods that facilitate non-compliance with the Remuneration Code, the EU CRR or CRD.

[Note: article 94(1)(q) of CRD]

Remuneration Principle 12: Remuneration structures - introduction

G19A.3.33 Remuneration Principle 12 consists of a series of rules, evidential provisions and guidance relating to remuneration structures.

G19A.3.34 (1) Taking account of the remuneration principles proportionality rule, the appropriate regulator does not generally consider it necessary for
A firm to apply the rules referred to in (2) where, in relation to an individual ("X"), both the following conditions are satisfied:

(a) Condition 1 is that X's variable remuneration is no more than 33% of total remuneration; and
(b) Condition 2 is that X's total remuneration is no more than 500,000.

(2) The rules referred to in (1) are those relating to:

(a) guaranteed variable remuneration (SYSC 19A.3.40 R);
(b) retained shares or other instruments (SYSC 19A.3.47 R);
(c) deferral (SYSC 19A.3.49 R); and
(d) performance adjustment (SYSC 19A.3.51 R).

[Note: The FCA provides guidance on the application of certain rules on remuneration structures in relation to individuals who are Remuneration Code staff for only part of a given performance year. This guidance is available in the FCA website at www.fca.org.uk/your-fca/documents/finalised-guidance/remuneration-code.]

**Remuneration Principle 12(a): Remuneration structures - general requirement**

19A.3.35 A firm must ensure that the structure of an employee's remuneration is consistent with and promotes effective risk management.

19A.3.35A A firm must ensure that the remuneration policy makes a clear distinction between criteria for setting:

(1) basic fixed remuneration that primarily reflects an employee's professional experience and organisational responsibility as set out in the employee's job description and terms of employment; and

(2) variable remuneration that reflects performance in excess of that required to fulfil the employee's job description and terms of employment and that is subject to performance adjustment in accordance with the Remuneration Code.

[Note: article 92(2)(g) of CRD]

**Remuneration Principle 12(b): Remuneration structures - assessment of performance**

19A.3.36 A firm must ensure that where remuneration is performance-related:

(1) the total amount of remuneration is based on a combination of the assessment of the performance of:
   (a) the individual;
   (b) the business unit concerned; and
   (c) the overall results of the firm; and

(2) when assessing individual performance, financial as well as non-financial criteria are taken into account.
(1) The non-financial criteria in § SYSC 19A.3.36R(2) should include:

   (a) the extent of the employee’s adherence to effective risk management, and compliance with the regulatory system and with relevant overseas regulatory requirements; and

   (b) metrics relating to conduct, which should comprise a substantial portion of the non-financial criteria.

(2) Poor performance, such as poor risk management or other behaviours contrary to firm values, can pose significant risks for a firm and non-financial metrics should override metrics of financial performance where appropriate.

(3) Aligning variable awards to sustainable financial performance requires firms to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance measures commonly used (such as earnings per share (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer-term risk factors and have a tendency to incentivise highly leveraged activities.

A firm must ensure that the assessment of performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the firm and its business risks.

A firm should note that the requirement in § SYSC 19A.3.36R(2) for financial and non-financial criteria to be taken into account applies wherever remuneration is performance-related including within any assessment of future performance.

Remuneration Principle 12(c): Remuneration structures - guaranteed variable remuneration, buy-outs and retention awards

A firm must ensure that guaranteed variable remuneration is not part of prospective remuneration plans. A firm must not award, pay or provide guaranteed variable remuneration unless:

   (1) it is exceptional;

   (2) it occurs in the context of hiring new Remuneration Code staff;

   (3) the firm has a sound and strong capital base; and

   (4) it is limited to the first year of service.
A firm must ensure that remuneration packages relating to compensation for, or buy out from, an employee's contracts in previous employment align with the long term interests of the firm and are subject to appropriate retention, deferral and performance and clawback arrangements.

Note: article 94(1)(d) of CRD and Standard 11 of the FSB Compensation Standards

Guaranteed variable remuneration should be subject to the same requirements applicable to variable remuneration awarded by the firm including deferral, malus and clawback.

The FCA expects that guaranteed variable awards and retention awards should not be common practice for Remuneration Code staff and should be limited to rare, infrequent occurrences.

Remuneration Principle 12(d): Remuneration structures - ratios between fixed and variable components of total remuneration

A firm must set an appropriate ratio between the fixed and variable components of total remuneration and ensure that:

1. fixed and variable components of total remuneration are appropriately balanced;

2. the level of the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component; and
subject to ■SYSC 19A.3.44AR, the level of the variable component of total remuneration must not exceed 100% of the fixed component of total remuneration for each Remuneration Code staff.

[Note: article 94(1)(f) and 94(1)(g)(i) of the CRD]

19A.3.44AR

A firm may set a higher maximum level of the ratio between the fixed and variable components of total remuneration provided:

(1) the overall level of the variable component does not exceed 200% of the fixed component of the total remuneration for each Remuneration Code staff; and

(2) is approved by the shareholders or owners or members of the firm in accordance with ■SYSC 19A.3.44B R.

[Note: article 94(1)(g)(ii) of CRD]

19A.3.44BR

A firm must ensure that any approval by the its shareholders or owners or members for the purposes of ■SYSC 19A.3.44AR is carried out in accordance with the following procedure:

(1) the firm must give reasonable notice to all its shareholders or owners or members of its intention to seek approval of the proposed higher ratio;

(2) the firm must make a detailed recommendation to all its shareholders or owners or members that includes:
   (a) the reasons for, and the scope of, the approval sought;
   (b) the number of staff affected and their functions; and
   (c) the expected impact on the requirement to maintain a sound capital base;

(3) the firm must:
   (a) without delay, inform the FCA of the recommendation to its shareholders or owners or members, including the proposed higher ratio and the reasons therefor; and
   (b) demonstrate to the FCA that the proposed higher ratio does not conflict with its obligations under the CRD and the EU CRR, having particular regard to the firm's own funds obligations;

(4) the firm must ensure that employees who have an interest in the proposed higher ratio are not allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the firm in respect of the approval sought; and

(5) the higher ratio is approved by a majority of:
   (a) at least 66% of the shares or equivalent ownership rights represented, if at least 50% of the shares or equivalent ownership rights in the firm are represented; or
(b) at least 75% of the shares or equivalent ownership rights represented, if less than 50% of the shares or equivalent ownership rights in the *firm* are represented.

[Note: article 94(1)(g)(ii) of CRD]

**19A.3.44C**  
A *firm* must notify without delay the FCA of the decisions taken by its shareholders or members or owners including any approved higher maximum ratio.

[Note: article 94(1)(g)(ii) of CRD]

**19A.3.44D**  
A *firm* may apply a discount rate to a maximum of 25% of an employee's total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

[Note: article 94(1)(g)(iii) of CRD]

**19A.3.44E**  
In applying the discount rate in ■SYSC 19A.3.44DR, a *firm* must apply the EBA Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014.


**Remuneration Principle 12(e): Remuneration structures - payments related to early termination**

**19A.3.45**  
A *firm* must ensure that payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure or misconduct.

[Note: article 94(1)(h) of CRD and Standard 12 of the FSB Compensation Standards]

**19A.3.46**  
[deleted]

**Remuneration Principle 12(f): Remuneration structures - retained shares or other instruments**

**19A.3.47**  
(1) A *firm* must ensure that a substantial portion, which is at least 50%, of any variable remuneration consists of an appropriate balance of:

(a) shares or equivalent ownership interests, subject to the legal structure of the *firm* concerned, or share-linked instruments or equivalent non-cash instruments in the case of a non-listed *firm*; and

(b) where possible other instruments which are eligible as Additional Tier 1 instruments or are eligible as Tier 2 instruments or other instruments that can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect
the credit quality of the firm as a going concern and are appropriate for use as variable remuneration.

(2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the firm.

(3) This rule applies to both the portion of the variable remuneration component deferred in accordance with SYSC 19A.3.49 R and the portion not deferred.

[Note: article 94(1)(l) of CRD and Standard 8 of the FSB Compensation Standards]

19A.3.48 [deleted]

Remuneration Principle 12(g): Remuneration structures - deferral

19A.3.49

(1) A firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than three to five years.

(2) Remuneration under (1) must vest no faster than on a pro-rata basis.

(3) In the case of a variable remuneration component:
   (a) of £500,000 or more; or
   (b) payable to a director of a firm that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities;
       at least 60% of the amount must be deferred.

(4) [deleted]

(5) The length of the deferral period must be established in accordance with the business cycle, the nature of the business, its risks and the activities of the employee in question.

[Note: article 94(1)(m) of CRD and Standards 6 and 7 of the FSB Compensation Standards]

(6) [deleted]

(7) [deleted]

19A.3.50 [G]

(1) Deferred remuneration paid in:
   (a) shares or share-linked instruments should be made under a scheme which meets appropriate criteria, including risk adjustment of the performance measure used to determine the initial allocation of shares; and
   (b) cash should also be subject to performance criteria.
(2) The FCA would generally expect a firm to have a firm-wide policy (and group-wide policy, where appropriate) on deferral. The proportion deferred should generally rise with the ratio of variable remuneration to fixed remuneration and with the amount of variable remuneration. While any variable remuneration component of £500,000 or more paid to Remuneration Code staff must be subject to 60% deferral, firms should also consider whether lesser amounts should be considered to be 'particularly high' taking account, for example, of whether there are significant differences within Remuneration Code staff in the levels of variable remuneration paid.

Remuneration Principle 12(h): Remuneration structures - performance adjustment, etc.

A firm must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the firm as a whole, and justified on the basis of the performance of the firm, the business unit and the individual concerned.

[Note: article 94(1)(n) of CRD]

A firm must:

1. Ensure that any of the total variable remuneration is subject to malus or clawback arrangements;
2. Set specific criteria for the application of malus and clawback; and
3. Ensure that the criteria for the application of malus and clawback in particular cover situations where the employee:
   a. Participated in or was responsible for conduct which resulted in significant losses to the firm;
   b. Failed to meet appropriate standards of fitness and propriety.

[Note: article 94(1)(n) of CRD]

A firm should reduce unvested deferred variable remuneration when, as a minimum:
1. There is reasonable evidence of employee misbehaviour or material error; or
2. The firm or the relevant business unit suffers a material downturn in its financial performance; or
3. The firm or the relevant business unit suffers a material failure of risk management.

For performance adjustment purposes, awards of deferred variable remuneration made in shares or other non-cash instruments should provide the ability for the firm to reduce the number of shares or other non-cash instruments.
(3) Contravention of (1) or (2) may be relied on as tending to establish contravention of the rule on performance adjustment (§ SYSC 19A.3.51 R).

19A.3.53 G

(1) [deleted]

(2) The governing body (or, where appropriate, the remuneration committee) should approve performance adjustment policies, including the triggers under which adjustment would take place. The FCA may ask firms to provide a copy of their policies and expects firms to make adequate records of material decisions to operate the adjustments.

Effect of breaches of the Remuneration Principles

19A.3.53A R

§ SYSC 19A Annex 1 makes provision about voiding and recovery.

19A.3.54 R

(1) Subject to (1A) to (3), the rules in § SYSC 19A Annex 1.1R to 1.4R apply in relation to the prohibitions on Remuneration Code staff being remunerated in the ways specified in:

(a) § SYSC 19A.3.40 R (guaranteed variable remuneration);
(b) § SYSC 19A.3.49 R (deferred variable remuneration); and
(c) (replacing payments recovered or property transferred).

(1A) Paragraph (1) applies only to those prohibitions as they apply in relation to a firm that satisfies at least one of the conditions set out in (1B) and (1D).

(1B) Condition 1 is that the firm is a relevant IFPRU 730k firm that has relevant total assets exceeding £50 billion.

(1C) [deleted]

(1D) Condition 2 is that the firm:

(a) is a relevant IFPRU 730k firm or a relevant third country IFPRU 730k firm; and
(b) is part of a group containing a firm that has relevant total assets exceeding £50 billion and that is a relevant IFPRU 730k firm.

(1E) In this rule:

(a) a “relevant IFPRU 730k firm” is any IFPRU 730k firm that is not a limited activity firm or a limited licence firm;
(b) a “relevant third country IFPRU 730k firm” is any third country IFPRU 730k firm that is not a limited activity firm or a limited licence firm; and
(c) “relevant total assets” means the arithmetic mean of the firm’s total assets as set out in its balance sheet on its last three accounting reference dates.

(2) This rule does not apply in relation to the prohibition on Remuneration Code staff being remunerated in the way specified in
SYSC 19A : IFPRU Remuneration
Code

Section 19A.3 : Remuneration principles for IFPRU investment firms

SYSC 19A.3.40 R (guaranteed variable remuneration) if both the conditions in paragraphs (2) and (3) of that rule are met.

(3) This rule does not apply in relation to Remuneration Code staff (X) in respect of whom both the following conditions are satisfied:

(a) Condition 1 is that Xs variable remuneration is no more than 33% of total remuneration; and

(b) Condition 2 is that Xs total remuneration is no more than 500,000.

(4) In relation to (3):

(a) references to remuneration are to remuneration awarded or paid in respect of the relevant performance year;

(b) the amount of any remuneration is:

(i) if it is money, its amount when awarded;

(ii) otherwise, whichever of the following is greatest: its value to the recipient when awarded; its market value when awarded; and the cost of providing it;

(c) where remuneration is, when awarded, subject to any condition, restriction or other similar provision which causes the amount of the remuneration to be less than it otherwise would be, that condition, restriction or provision is to be ignored in arriving at its value; and

(d) it is to be assumed that the member of Remuneration Code staff will remain so for the duration of the relevant performance year.

19A.3.55 G

(1) Sections 137H and 137I of the Act enables the FCA to make rules that render void any provision of an agreement that contravenes specified prohibitions in the Remuneration Code, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision. SYSC 19A.3.53A R and SYSC 19A.3.54 R (together with SYSC 19A Annex 1) are such rules and render void provisions of an agreement that contravene the specified prohibitions on guaranteed variable remuneration, non-deferred variable remuneration and replacing payments recovered or property transferred. This is an exception to the general position set out in section 138E(2) of the Act that a contravention of a rule does not make any transaction void or unenforceable.

(2) [deleted]
Detailed provisions on voiding and recovery (SYSC 19A.3.53AR and SYSC 19A.3.54R)

Rendering contravening provisions of agreements void

1 R Any provision of an agreement that contravenes a prohibition on persons being remunerated in a way specified in a rule to which this rule applies (a “contravening provision”) is void.

1A R A contravening provision does not cease to be void because:
(1) the firm concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54R (1B) to (1D); or
(2) the member of Remuneration Code staff concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).

2 R A contravening provision that, at the time a rule to which this rule applies was made, is contained in an agreement made before that time is not rendered void by 1R unless it is subsequently amended so as to contravene such a rule.

3 G The effect of 2R, in accordance with sections 137H and 137I of the Act, is to prevent contravening provisions being rendered void retrospectively. Contravening provisions may however be rendered void if they are contained in an agreement made after the rule containing the prohibition is made by the FCA but before the rule comes into effect.

3A R (1) A pre-existing provision is not rendered void by 1R.
(2) In this Annex a pre-existing provision is any provision of an agreement that would (but for this rule) be rendered void by 1R that was agreed at a time when either:
(a) the firm concerned did not satisfy any of the conditions set out in SYSC 19A.3.54R (1B) to (1D); or
(b) the member of Remuneration Code staff concerned satisfied both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).

(3) But an amendment to, or in relation to, a pre-existing provision is not to be treated as a pre-existing provision where the amendment is agreed at a time when both:
(a) the firm concerned satisfies at least one of the conditions set out in SYSC 19A.3.54R (1B) to (1D); and
(b) the member of Remuneration Code staff concerned does not satisfy both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).

4 R For the purposes of this chapter it is immaterial whether the law which (apart from this annex) governs a contravening provision is the law of the United Kingdom, or of a part of the United Kingdom.

Recovery of payments made or property transferred pursuant to a void contravening provision

5 R In relation to any payment made or other property transferred in pursuance of a contravening provision other than a pre-existing provision, a firm must take reasonable steps to:
(1) recover any such payment made or other property transferred by the firm; and
(2) ensure that any other person (“P”) recovers any such payment made or other property transferred by that person.
<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>5AR</strong></td>
<td>Paragraph 5R continues to apply in one or both of the following cases:</td>
</tr>
<tr>
<td>(1)</td>
<td>the <em>firm</em> concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54R (1B) to (1D);</td>
</tr>
<tr>
<td>(2)</td>
<td>the member of <em>Remuneration Code</em> staff concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).</td>
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<tr>
<td><strong>6G</strong></td>
<td>The <em>rule</em> in 5R(2) would, for example, apply in the context of a secondment. Where a <em>group</em> member seconds an individual to a <em>firm</em> and continues to be responsible for the individual’s <em>remuneration</em> in respect of services provided to the <em>firm</em>, the <em>firm</em> would need to take reasonable steps to ensure that the <em>group</em> member recovers from the secondee any <em>remuneration</em> paid in pursuance of a contravening provision.</td>
</tr>
<tr>
<td><strong>7R</strong></td>
<td>(1) A <em>firm</em> must not award, pay or provide variable <em>remuneration</em> to a <em>person</em> who has received <em>remuneration</em> in pursuance of a contravening provision other than a pre-existing provision (the &quot;contravening <em>remuneration</em>&quot;) unless the <em>firm</em> has obtained a legal opinion stating that the award, payment or provision of the <em>remuneration</em> complies with the <em>Remuneration Code</em>.</td>
</tr>
<tr>
<td>(2)</td>
<td>This <em>rule</em> applies only to variable <em>remuneration</em> relating to a performance year to which the contravening <em>remuneration</em> related.</td>
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<td>(3)</td>
<td>The legal opinion in (1) must be properly reasoned and be provided by an appropriately qualified independent individual.</td>
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<td>(4)</td>
<td>Paragraph (1) continues to apply in one or both of the following cases:</td>
</tr>
<tr>
<td>(a)</td>
<td>the <em>firm</em> concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54R (1B) to (1D);</td>
</tr>
<tr>
<td>(b)</td>
<td>the member of <em>Remuneration Code</em> staff concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).</td>
</tr>
<tr>
<td><strong>8G</strong></td>
<td>The <em>FCA</em> considers any breach of a <em>rule</em> to which this annex applies to be a significant breach which should be notified to it in accordance with SUP 15.3.11 R (Breaches of rules and other requirements in or under the Act). Such a notification should include information on the steps which a <em>firm</em> or other <em>person</em> has taken or intends to take to recover payments or property in accordance with 5R.</td>
</tr>
</tbody>
</table>
19B.1 Application

19B.1.1 The AIFM Remuneration Code applies to a full-scope UK AIF of:

1. a UK AIF;
2. an EEA AIF; and
3. a non-EEA AIF.

19B.1.1A (1) Full-scope UK AIFMs are advised that ESMA published Guidelines on sound remuneration policies under the AIFMD on 3 July 2013, which full-scope UK AIFMs should comply with in applying the rules in this section. The Guidelines can be found at: [http://www.esma.europa.eu/system/files/2013-232_aifmd_guidelines_on_remuneration_-_en.pdf]

(2) The FCA has provided additional guidance on the application of principles of proportionality to remuneration policies of AIFM. The guidance also addresses several other aspects of the AIFM Remuneration Code and the Guidelines. The guidance can be found at: [http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg14-02]

Remuneration policies and practices

19B.2 An AIFM must establish, implement and maintain remuneration policies and practices for AIFM Remuneration Code staff that are consistent with, and promote, sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profile of the instrument constituting the fund of the AIFs it manages.

[Note: article 13(1) of AIFMD]

19B.3 AIFM Remuneration Code staff comprise those categories of staff whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs the AIFM manages. This includes senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers.

[Note: article 13(1) of AIFMD]

19B.4 (1) When establishing and applying the total remuneration policies for AIFM Remuneration Code staff (inclusive of salaries and discretionary
pension benefits), an AIFM must comply with the *AIFM remuneration principles* in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities.

(2) Paragraph (1) does not apply to the requirement for significant AIFMs to have a *remuneration* committee (SYSC 19B.1.9 R).

(3) The *AIFM remuneration principles* apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including *carried interest*, and to any transfer of *units or shares* of the AIF made to the benefits of AIFM Remuneration Code staff.

[Note: paragraph 1 and 2 of Annex II of AIFMD]

**AIFM Remuneration Principle 1: Risk management**

19B.1.5 R

An AIFM must ensure that its *remuneration* policy is consistent with, and promotes, sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles of the *instrument constituting the fund* of the AIFs it manages.

[Note: paragraph 1(a) of Annex II of AIFMD]

**AIFM Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interest**

19B.1.6 R

An AIFM must ensure that its *remuneration* policy is in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and includes measures to avoid conflicts of interest.

[Note: paragraph 1(b) of Annex II of AIFMD]

**AIFM Remuneration Principle 3: Governance**

19B.1.7 R

An AIFM must ensure that the *governing body* of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the *remuneration* policy and is responsible for its implementation.

[Note: paragraph 1(c) of Annex II of AIFMD]

19B.1.8 R

An AIFM must ensure the implementation of the *remuneration* policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *governing body* in its supervisory function.

[Note: paragraph 1(d) of Annex II of AIFMD]

19B.1.9 R

(1) An AIFM that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a *remuneration* committee.

(2) The *remuneration* committee must be constituted in a way that enables it to exercise competent and independent judgment on
remuneration policies and practices, and the incentives created for managing risk.

(3) The chairman and the members of the remuneration committee must be members of the governing body who do not perform any executive function in the AIFM.

(4) The remuneration committee must be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are taken by the governing body in its supervisory function.

[Note: paragraph 3 of Annex II of AIFMD]

**AIFM Remuneration Principle 4: Control functions**

19B.10 An AIFM must ensure that employees engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[Note: paragraph 1(e) of Annex II of AIFMD]

19B.11 An AIFM must ensure the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee, or, if such a committee has not been established, by the governing body in its supervisory function.

[Note: paragraph 1(f) of Annex II of AIFMD]

**AIFM Remuneration Principle 5(a): Remuneration structures - assessment of performance**

19B.12 An AIFM must ensure that, where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM. When assessing individual performance, financial and non-financial criteria are taken into account.

[Note: paragraph 1(g) of Annex II of AIFMD]

19B.13 An AIFM must ensure that the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the AIFs managed by the AIFM to ensure that:

(1) the assessment process is based on longer term performance; and

(2) the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks.

[Note: paragraph 1(h) of Annex II of AIFMD]
(1) Taking account of the remuneration principles proportionality rule in SYSC 19B.1.4 R, the FCA does not generally consider it necessary for a firm to apply the rules referred to in (2) where, in relation to an individual (“X”), both of the following conditions are satisfied:

(a) Condition 1 is that X's variable remuneration is no more than 33% of total remuneration; and

(b) Condition 2 is that X's total remuneration is no more than £500,000.

(2) The rules referred to in (1) are those relating to:

(a) guaranteed variable remuneration (SYSC 19B.1.14 R);

(b) retained units, shares or other instruments (SYSC 19B.1.17 R);

(c) deferral (SYSC 19B.1.18 R); and

(d) performance adjustment (SYSC 19B.1.19 R).

AIFM Remuneration Principle 5(b): Remuneration structures - guaranteed variable remuneration

An AIFM must not award, pay or provide guaranteed variable remuneration unless it:

(1) is exceptional;

(2) occurs only in the context of hiring new staff; and

(3) is limited to the first year of service.

[Note: paragraph 1(i) of Annex II of AIFMD]

AIFM Remuneration Principle 5(c): Remuneration structures - fixed and variable components of total remuneration

An AIFM must ensure that:

(1) fixed and variable components of total remuneration are appropriately balanced; and

(2) the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component.

[Note: paragraph 1(j) of Annex II of AIFMD]

AIFM Remuneration Principle 5(d): Remuneration structures - payments related to early termination

An AIFM must ensure that payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

[Note: paragraph 1(k) of Annex II of AIFMD]
AIFM Remuneration Principle 5(e): Remuneration structures - retained units, shares or other instruments

19B.1.17 R

(1) Subject to the legal structure of the AIF and the instrument constituting the fund, an AIFM must ensure that a substantial portion, and in any event at least 50% of any variable remuneration, consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments. However, if the management of AIFs accounts for less than 50% of the total portfolio managed by the AIFM, the minimum of 50% does not apply.

(2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the long-term interests of the AIFM and the AIFs it manages and the investors of such AIFs.

(3) This rule applies to the portion of the variable remuneration component deferred in line with SYSC 19B.1.18R (1) and the portion not deferred.

[Note: paragraph 1(m) of Annex II of AIFMD]

AIFM Remuneration Principle 5(f): Remuneration structures - deferral

19B.1.18 R

(1) An AIFM must not award, pay or provide a variable remuneration component unless a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question.

(2) The period referred to in (1) must be at least three to five years, unless the life cycle of the AIF concerned is shorter.

(3) Remuneration payable under (1) must vest no faster than on a pro-rata basis.

(4) In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount must be deferred.

[Note: paragraph 1(n) of Annex II of AIFMD]

19B.1.18A G

(1) £500,000 is a particularly high amount for the purpose of SYSC 19B.1.18R (4).

(2) Paragraph (1) is without prejudice to the possibility of lower sums being considered a particularly high amount.

(3) Whilst any variable remuneration component of £500,000 or more paid to AIFM Remuneration Code staff should be subject to 60% deferral, firms should also consider whether lesser amounts should be considered to be ‘particularly high’, taking account, for example, of whether there are significant differences within AIFM Remuneration Code staff in the levels of variable remuneration paid.
AIFM Remuneration Principle 5(g): Remuneration structures - performance adjustment, etc.

19B.1.19 R An AIFM must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole and justified according to the performance of the AIF, the business unit and the individual concerned.

[Note: paragraph 1(o) first sub-paragraph of Annex II of AIFMD]

19B.1.20 G The total variable remuneration should generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: paragraph 1(o) second sub-paragraph of Annex II of AIFMD]

AIFM Remuneration Principle 6: Measurement of performance

19B.1.21 R An AIFM must ensure the measurement of performance used to calculate variable remuneration components, or pools of variable remuneration components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.

[Note: paragraph 1(l) of Annex II of AIFMD]

AIFM Remuneration Principle 7: Pension policy

19B.1.22 R An AIFM must ensure that:

(1) its pension policy is in line with its business strategy, objectives, values and long-term interests of the AIFs it manages;

(2) when an employee leaves the firm before retirement, any discretionary pension benefits are held by the firm for a period of five years in the form of instruments in SYSC 19B.1.17R (1); and

(3) in the case of an employee reaching retirement, discretionary pension benefits are paid to the employee in the form of instruments referred to in SYSC 19B.1.17R (1) and subject to a five-year retention period.

[Note: paragraph 1(p) of Annex II of AIFMD]

AIFM Remuneration Principle 8: Personal investment strategies

19B.1.23 R An AIFM must ensure that its employees undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements.

[Note: paragraph 1(q) of Annex II of AIFMD]
AIFM Remuneration Principle 9: Avoidance of the remuneration code

An AIFM must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the AIFM Remuneration Code.

[Note: paragraph 1(r) of Annex II of AIFMD]
Chapter 19C

BIPRU Remuneration Code
19C.1 General application and purpose

Who? What? Where?

19C.1.1  R  (1) The BIPRU Remuneration Code applies to a BIPRU firm and a third country BIPRU firm.

(2) In relation to a third country BIPRU firm, the BIPRU Remuneration Code applies only in relation to activities carried on from an establishment in the United Kingdom.

19C.1.1A G  The AIFM Remuneration Code (SYSC 19B) also applies to a BIPRU firm which is a full-scope UK AIFM (ie, a full-scope UK AIFM that is an AIFM investment firm subject to BIPRU). Such a full-scope UK AIFM that complies with SYSC 19B will also comply with SYSC 19C. In such cases, the FCA will not require the full-scope UK AIFM to demonstrate compliance with SYSC 19C.

19C.1.1B G  (1) The UCITS Remuneration Code (SYSC 19E) also applies to a BIPRU firm that is a UK UCITS management company (that is, a UK UCITS management company that is a UCITS investment firm subject to BIPRU).

(2) A BIPRU firm that is a UK UCITS management company will meet its obligations under SYSC 19C and SYSC 19E by complying with SYSC 19E.

(3) Under (1) and (2), the FCA will not require the UK UCITS management company to demonstrate compliance with SYSC 19C.

19C.1.2 G  Part 2 of SYSC 1 Annex 1 provides for the application of SYSC 4.1.1 R and SYSC 4.1.1C R (General Requirements). In particular, and subject to the provisions on group risk systems and controls requirements in SYSC 12, this means that:

(1) the BIPRU Remuneration Code:

   (a) applies to regulated activities, ancillary activities and applicable ancillary services;

   (b) applies to the carrying on of unregulated activities in a prudential context; and

   (c) takes into account activities of other group members; and

(2) where the BIPRU Remuneration Code applies, it applies to:
(a) a firm’s UK activities;
(b) a firm’s passported activities carried on from a branch in another EEA State; and
(c) a UK domestic firm’s activities wherever they are carried on, in a prudential context.

When?

A firm must apply the remuneration requirements in SYSC 19C.3 to:

1. remuneration awarded, whether under a contract or otherwise, on or after 1 January 2014;

2. remuneration due on the basis of contracts concluded before 1 January 2014 which is awarded or paid on or after 1 January 2014; and

3. remuneration awarded, but not yet paid, before 1 January 2014, for services provided in 2013.

Subject to the requirements of SYSC 19C.1.5 R, in the FCA’s view, SYSC 19C.1.3 R does not require a firm to breach requirements of applicable contract or employment law.

(1) This rule applies to a firm that is unable to comply with the BIPRU Remuneration Code because of an obligation it owes to a BIPRU Remuneration Code staff member under a provision of an agreement made on or before 29 July 2010.

(2) A firm must take reasonable steps to amend or terminate the provision in (1) in a way that enables it to comply with the BIPRU Remuneration Code at the earliest opportunity.

(3) Until the provision in (1) ceases to prevent the firm from complying with the BIPRU Remuneration Code, the firm must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the provision.

Purpose

The aim of the BIPRU Remuneration Code is to ensure that firms have risk-focused remuneration policies, which are consistent with and promote effective risk management and do not expose them to excessive risk. It expands upon the general organisational requirements in SYSC 4.

Notifications to the FCA

(1) The BIPRU Remuneration Code does not contain specific notification requirements. However, general circumstances in which the FCA expects to be notified by firms of matters relating to their compliance with requirements under the regulatory system are set out in SUP 15.3 (General notification requirements).
(2) In particular, in relation to remuneration matters, such circumstances should take into account unregulated activities as well as regulated activities and the activities of other members of a group and would include each of the following:

(a) significant breaches of the BIPRU Remuneration Code;
(b) any proposed remuneration policies, procedures or practices which could:
   (i) have a significant adverse impact on the firm's reputation; or
   (ii) affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm; or
   (iii) result in serious financial consequences to the financial system or to other firms;
(c) any proposed changes to remuneration policies, practices or procedures which could have a significant impact on the firm's risk profile or resources; and
(d) fraud, errors and other irregularities described in SUP 15.3.17 R which may suggest weaknesses in, or be motivated by, the firm's remuneration policies, procedures or practices.

(3) Such notifications should be made immediately the firm becomes aware of those circumstances, or has information which reasonably suggests that those circumstances have, or may have, occurred or may occur in the foreseeable future.

Individual guidance

The FCA's policy on individual guidance is set out in SUP 9. Firms should particularly note the policy on what the FCA considers to be a reasonable request for guidance (see SUP 9.2.5 G). For example, where a firm is seeking guidance on a proposed remuneration structure, the FCA will expect the firm to provide a detailed analysis of how the structure complies with the BIPRU Remuneration Code, including the general requirement for remuneration policies, procedures and practices to be consistent with and promote sound and effective risk management.
19C.2 General requirement

Remuneration policies must promote effective risk management

19C.2.1 A firm must establish, implement and maintain remuneration policies, procedures and practices that are consistent with and promote sound and effective risk management.

19C.2.2

(1) If a firm's remuneration policy is not aligned with effective risk management, it is likely that employees will have incentives to act in ways that might undermine effective risk management.

(2) The BIPRU Remuneration Code covers all aspects of remuneration that could have a bearing on effective risk management including salaries, bonuses, long-term incentive plans, options, hiring bonuses, severance packages and pension arrangements. In applying the BIPRU Remuneration Code, a firm should have regard to applicable good practice on remuneration and corporate governance, such as guidelines on executive contracts and severance produced by the Association of British Insurers (ABI) and the National Association of Pension Funds (NAPF). In considering the risks arising from its remuneration policies, a firm will also need to take into account its statutory duties in relation to equal pay and non-discrimination.

(3) As with other aspects of a firm’s systems and controls, in line with SYSC 4.1.2 R and SYSC 4.1.2AA R, remuneration policies, procedures and practices must be comprehensive and proportionate to the nature, scale and complexity of the firm’s activities. Therefore, what a firm must do to comply with the BIPRU Remuneration Code will vary. For example, while the BIPRU Remuneration Code refers to a firm’s remuneration committee and risk management function, it may be appropriate for the governing body of a smaller firm to act as the remuneration committee, and for the firm not to have a separate risk management function.

(4) The principles in the BIPRU Remuneration Code are used by the FCA to assess the quality of a firm's remuneration policies and whether they encourage excessive risk-taking by a firm's employees.

(5) The FCA may also ask remuneration committees to provide the FCA with evidence of how well the firm's remuneration policies meet the BIPRU Remuneration Code’s principles, together with plans for improvement where there is a shortfall. The FCA also expects relevant firms to use the principles in assessing their exposure to risks arising...
from their remuneration policies as part of the internal capital adequacy assessment process (ICAAP).

(6) The BIPRU Remuneration Code is principally concerned with the risks created by the way remuneration arrangements are structured, not with the absolute amount of remuneration, which is generally a matter for firms’ remuneration committees.

19C.2.3  

(1) The specific remuneration requirements in this chapter may apply only to certain categories of employee. However, the FCA expects firms, in complying with the BIPRU Remuneration Code general requirement, to apply certain principles on a firm-wide basis.

(2) In particular, the FCA considers that firms should apply the principle relating to guaranteed variable remuneration on a firm-wide basis (Remuneration Principle 12(c); § SYSC 19C.3.40 R to § SYSC 19C.3.43 G.

(3) The FCA also expects firms to apply, as a minimum, the principles relating to risk management and risk tolerance (Remuneration Principle 1); supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2); conflicts of interest (Remuneration Principle 3); governance (Remuneration Principle 4); risk adjustment (Remuneration Principle 8); pension policy (Remuneration Principle 9); personal investment strategies (Remuneration Principle 10); payments related to early termination (Remuneration Principle 12(e)) and deferral (Remuneration Principle 12(g)) on a firm-wide basis.

Record-keeping

19C.4  

In line with the record-keeping requirements in § SYSC 9, a firm should ensure that its remuneration policies, practices and procedures are clear and documented. Such policies, practices and procedures would include performance appraisal processes and decisions.

Interpretation of references to remuneration

19C.5  

(1) In this chapter, references to remuneration include remuneration paid, provided or awarded by any person to the extent that it is paid, provided or awarded in connection with employment by a firm.

(2) Paragraph (1) is without prejudice to the meaning of remuneration elsewhere in the Handbook.

19C.6  

Remuneration includes, for example, payments made by a seconding organisation which is not subject to the BIPRU Remuneration Code to a secondee in respect of their employment by a firm which is subject to the BIPRU Remuneration Code.
19C.3 Remuneration principles

Application: groups

19C.3.1 (1) A firm must apply the requirements of this section at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established in a country or territory which is not an EEA State.

(2) Paragraph (1) does not limit SYSC 12.1.13 R and SYSC 12.1.15 R (which relate to the application of the BIPRU Remuneration Code within UK consolidation groups and non-EEA sub-groups).

19C.3.2 The effect of SYSC 12.1.13 R (2)(dA) and SYSC 12.1.15 R is that the firm is required to ensure that the risk management processes and internal control mechanisms at the level of any consolidation group or non-EEA sub-group of which a firm is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis.

Application: categories of staff and proportionality

19C.3.3 (1) This section applies to BIPRU Remuneration Code staff, except as set out in (3).

(2) When establishing and applying the total remuneration policies for BIPRU Remuneration Code staff, a firm must comply with this section in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities (the BIPRU remuneration principles proportionality rule).

(3) Paragraphs (1) and (2) do not apply to the requirement for significant firms to have a remuneration committee (SYSC 19C.3.12 R).

[Note: In addition to the guidance in this section which relates to the BIPRU remuneration principles proportionality rule, the FCA has published guidance on the operation of the BIPRU remuneration principles proportionality rule. This guidance is available at www.fca.org.uk/firms/remuneration.]

19C.3.4 BIPRU Remuneration Code staff comprises categories of staff including senior management, risk-takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk-takers, whose professional activities have a material impact on the firm’s risk profile.
19C.3.5  A firm must:

(1) maintain a record of its BIPRU Remuneration Code staff in line with the general record-keeping requirements (■ SYSC 9); and

(2) take reasonable steps to ensure that its BIPRU Remuneration Code staff understand the implications of their status, including the potential for remuneration which does not comply with certain requirements of the BIPRU Remuneration Code to be rendered void and recoverable by the firm.

19C.3.6  (1) In the FCA’s view:

(a) a firm’s staff includes its employees;

(b) a person who performs a significant influence function for, or is a senior manager of, a firm would normally be expected to be part of the firm’s BIPRU Remuneration Code staff;

(c) the table in (2) provides a non-exhaustive list of examples of key positions that should, subject to (d), be within a firm’s definition of staff who are risk takers;

(d) firms should consider how the examples in the table in (2) apply to their own organisational structure;

(e) firms may find it useful to set their own metrics to identify their risk takers based, for example, on trading limits; and

(f) a firm should treat a person as being BIPRU Remuneration Code staff in relation to remuneration in respect of a given performance year if they were BIPRU Remuneration Code staff for any part of that year.

[Note: The FCA has published guidance on the application of particular rules on remuneration structures in relation to individuals who are BIPRU Remuneration Code staff for only part of a given performance year. This guidance is available at www.fca.org.uk/firms/remuneration].

(2) High-level category | Suggested business lines
--- | ---
Heads of significant business lines (including regional heads) and any individuals or groups within their control who have a material impact on the firm’s risk profile | Fixed income
 | Foreign exchange
 | Commodities
 | Securitisation
 | Sales areas
 | Investment banking (including mergers and acquisitions advisory)
 | Commercial banking
 | Equities
 | Structured finance
 | Lending quality
 | Trading areas
**(2) High-level category** | **Suggested business lines**
---|---
Heads of support and control functions and other individuals within their control who have a material impact on the *firm’s* risk profile | Research
Credit/market/operational risk
Legal
Treasury controls
Human resources
Compliance
Internal audit

Remuneration Principle 1: Risk management and risk tolerance

**19C.3.7** A *firm* must ensure that its *remuneration* policy is consistent with and promotes sound and effective risk management, and does not encourage risk-taking that exceeds the level of tolerated risk of the *firm*.

Remuneration Principle 2: Supporting business strategy, objectives, values and long-term interests of the firm

**19C.3.8** A *firm* must ensure that its *remuneration* policy is in line with the business strategy, objectives, values and long-term interests of the *firm*.

Remuneration Principle 3: Avoiding conflicts of interest

**19C.3.9** A *firm* must ensure that its *remuneration* policy includes measures to avoid conflicts of interest.

Remuneration Principle 4: Governance

**19C.3.10** A *firm* must ensure that its *governing body*, in its *supervisory function*, adopts and periodically reviews the general principles of the *remuneration* policy and is responsible for its implementation.

**19C.3.11** A *firm* must ensure that the implementation of the *remuneration* policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *governing body* in its *supervisory function*.

**19C.3.12**

1. A *firm* that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities must establish a *remuneration* committee.

2. The *remuneration* committee must be constituted in a way that enables it to exercise competent and independent judgment on *remuneration* policies and practices and the incentives created for managing risk, capital and liquidity.

3. The chairman and the members of the *remuneration* committee must be members of the *governing body* who do not perform any executive function in the *firm*. 
(4) The *remuneration* committee must be responsible for the preparation of decisions regarding *remuneration*, including those which have implications for the risk and risk management of the *firm* and which are to be taken by the *governing body* in its *supervisory function*.

(5) When preparing such decisions, the *remuneration* committee must take into account the long-term interests of shareholders, investors and other stakeholders in the *firm*.

[Note: The *guidance* referred to in the note to ▶ SYSC 19C.3.3 R also gives *guidance* on proportionality in relation to *remuneration* committees]

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19C.3.13 G

(1) A *firm* should be able to demonstrate that its decisions are consistent with an assessment of its financial condition and future prospects. In particular, practices by which *remuneration* is paid for potential future revenues whose timing and likelihood remain uncertain should be evaluated carefully and the *governing body* or *remuneration* committee (or both) should work closely with the *firm*’s *risk function* in evaluating the incentives created by its *remuneration* system.

(2) The *governing body* and any *remuneration* committee are responsible for ensuring that the *firm*’s *remuneration* policy complies with the *BIPRU Remuneration Code* and, where relevant, should take into account relevant guidance, such as that issued by the International Organization of Securities Commissions (IOSCO).

(3) The periodic review of the implementation of the *remuneration* policy should assess compliance with the *BIPRU Remuneration Code*.

(4) Guidance on what the *supervisory function* might involve is set out in ▶ SYSC 4.3.3 G.

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**Remuneration Principle 5: Control functions**

19C.3.14 R

A *firm* must ensure that employees engaged in control functions:

(1) are independent from the business units they oversee;

(2) have appropriate authority; and

(3) are *remunerated*:

(a) adequately to attract qualified and experienced staff; and

(b) in line with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

19C.3.15 E

(1) A *firm*’s risk management and compliance functions should have appropriate input into setting the *remuneration* policy for other business areas. The procedures for setting *remuneration* should allow risk and compliance functions to have significant input into the setting of individual *remuneration* awards where those functions have concerns about the behaviour of the individuals concerned or the riskiness of the business undertaken.
(2) Contravention of (1) may be relied on as tending to establish contravention of the rule on employees engaged in control functions having appropriate authority (SYSC 19C.3.14R (2)).

19C.3.16 A firm must ensure that the remuneration of the senior officers in risk management and compliance functions is directly overseen by the remuneration committee referred to in SYSC 19C.3.12 R, or, if such a committee has not been established, by the governing body in its supervisory function.

19C.3.17 (1) This Remuneration Principle is designed to manage the conflicts of interest which might arise if other business areas had undue influence over the remuneration of employees within control functions. Conflicts of interest can easily arise when employees are involved in the determination of remuneration for their own business area. Where these do arise they need to be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. It is good practice to seek input from a firm’s human resources function when setting remuneration for other business areas.

(2) The need to avoid undue influence is particularly important where employees from the control functions are embedded in other business areas. This Remuneration Principle does not prevent the views of other business areas being sought as an appropriate part of the assessment process.

(3) The FCA generally expects the ratio of the potential variable component of remuneration to the fixed component of remuneration to be significantly lower for employees in risk management and compliance functions than for employees in other business areas whose potential bonus is a significant proportion of their remuneration. Firms should nevertheless ensure that the total remuneration package offered to those employees is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the remuneration of relevant persons involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see SYSC 6.1.4 R (4) article 22(3) of the MiFID Org Regulation).

Remuneration Principle 6: Remuneration and capital

19C.3.18 A firm must ensure that total variable remuneration does not limit the firm’s ability to strengthen its capital base.

19C.3.19 This Remuneration Principle underlines the link between a firm’s variable remuneration costs and the need to manage its capital base, including forward-looking capital planning measures. Where a firm needs to strengthen its capital base, its variable remuneration arrangements should be sufficiently flexible to allow it to direct the necessary resources towards capital building.
Remuneration Principle 7: Exceptional government intervention

19C.3.20 R

A firm that benefits from exceptional government intervention must ensure that:

(1) variable remuneration is strictly limited as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

(2) it restructures remuneration in alignment with sound risk management and long-term growth, including when appropriate establishing limits to the remuneration of senior personnel; and

(3) no variable remuneration is paid to its senior personnel unless justified.

19C.3.21 G

The FCA would normally expect it to be appropriate for the ban on paying variable remuneration to senior personnel of a firm that benefits from exceptional government intervention to apply only in relation to senior personnel who were in office at the time that the intervention was required.

Remuneration Principle 8: Profit-based measurement and risk adjustment

19C.3.22 R

(1) A firm must ensure that any measurement of performance used to calculate variable remuneration components or pools of variable remuneration components:

   (a) includes adjustments for all types of current and future risks, taking into account the cost and quantity of the capital and the liquidity required; and

   (b) takes into account the need for consistency with the timing and likelihood of the firm receiving potential future revenues incorporated into current earnings.

(2) A firm must ensure that the allocation of variable remuneration components within the firm also takes into account all types of current and future risks.

19C.3.23 G

(1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance of applying judgment and common sense. A firm should ask the risk management function to validate and assess risk-adjustment techniques and to attend a meeting of the governing body or remuneration committee for this purpose.

(2) A number of risk-adjustment techniques and measures are available, and a firm should choose those that are most appropriate to its circumstances. Common measures include those that are based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered. The FCA expects a firm to be able to provide it with details of all adjustments that the firm has made under a formulaic approach.
(3) The FCA expects a firm to apply qualitative judgments and common sense in the final decision about the performance-related components of variable remuneration pools.

(4) A firm’s governing body (or remuneration committee, where appropriate) should take the lead in determining the measures to be used. It should offer the appropriate checks and balances to prevent inappropriate manipulation of the measures used. It should consult closely and frequently with the firm’s risk management functions, in particular those relating to operational, market, credit and liquidity risk.

19C.3.24 G

(1) Long-term incentive plans should be treated as pools of variable remuneration. Many common measures of performance for long-term incentive plans, such as earnings per share (EPS), are not adjusted for longer-term risk factors. Total shareholder return (TSR) includes dividend distributions in its measurement, which can also be based on unadjusted earnings data. If incentive plans mature within a two- to four-year period and are based on EPS or TSR, strategies can be devised to boost EPS or TSR during the life of the plan, to the detriment of the longer-term health of a firm. For example, increasing leverage is a technique which can be used to boost EPS and TSR. Firms should take account of these factors when developing risk-adjustment methods.

(2) Firms that have long-term incentive plans should structure them with vesting, subject to appropriate performance conditions, and at least half of the award vesting after not less than five years and the remainder after not less than three years.

(3) Long-term incentive plan awards may be included in the calculation of the deferred portion of variable remuneration only if upside incentives are adequately balanced by downside adjustments. The valuation of the award should be based on its value when the award is granted, and determined using an appropriate technique.

19C.3.25 R

Assessments of financial performance used to calculate variable remuneration components or pools of variable remuneration components must be based principally on profits.

19C.3.26 G

(1) Performance measures based primarily on revenues or turnover are unlikely to pay sufficient regard to the quality of business undertaken or services provided. Profits are a better measure provided they are adjusted for risk, including future risks not adequately captured by accounting profits.

(2) Management accounts should provide profit data at such levels within the firm’s structure as to enable a firm to see as accurate a picture of contributions of relevant staff to a firm’s performance, as reasonably practicable. If revenue or turnover is used as a component in performance assessment, processes should be in place to ensure that the quality of business undertaken or services provided and their appropriateness for clients are taken into account.
19C.3.27 A firm must ensure that its total variable remuneration is generally considerably contracted where subdued or negative financial performance of the firm occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned.

[Note: Standard 5 of the FSB Compensation Standards]

19C.3.28 Where a firm makes a loss, the FCA generally expects no variable remuneration to be awarded. Variable remuneration may nevertheless be justified, for example to incentivise employees involved in new business ventures which could be loss-making in their early stages.

Remuneration Principle 9: Pension policy

19C.3.29 A firm must ensure that:

(1) its pension policy is in line with its business strategy, objectives, values and long-term interests;

(2) when an employee leaves the firm before retirement, any discretionary pension benefits are held by the firm for a period of five years in the form of instruments referred to in SYSC 19C.3.47R (1); and

(3) when employees reach retirement, discretionary pension benefits are paid to the employee in the form of instruments in SYSC 19C.3.47R (1) and subject to a five-year retention period.

Remuneration Principle 10: Personal investment strategies

19C.3.30 (1) A firm must ensure that its employees undertake not to use personal hedging strategies or remuneration- or liability-related contracts of insurance to undermine the risk-alignment effects embedded in their remuneration arrangements.

(2) A firm must maintain effective arrangements designed to ensure that employees comply with their undertaking.

19C.3.31 Circumstances in which a person will be using a personal hedging strategy include entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to that person linked to, or commensurate with, the amounts by which the person’s remuneration is subject to reductions.

Remuneration Principle 11: Avoidance of the Remuneration Code

19C.3.32 A firm must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the BIPRU Remuneration Code.
Remuneration Principle 12: Remuneration structures - introduction

**19C.3.33**

This Remuneration Principle consists of a series of rules, evidential provisions and guidance relating to remuneration structures.

**19C.3.34**

(1) Taking account of the BIPRU remuneration principles proportionality rule, the FCA does not generally consider it necessary for a firm to apply the rules in (2) where, in relation to an individual (“X”), both the following conditions are satisfied:

(a) condition 1 requires that X's variable remuneration is no more than 33% of total remuneration; and

(b) condition 2 requires that X's total remuneration is no more than 500,000.

(2) The rules referred to in (1) relate to:

(a) guaranteed variable remuneration ( examiner );

(b) retained shares or other instruments ( examiner );

(c) deferral ( examiner ); and

(d) performance adjustment ( examiner ).

[Note: The FCA has published guidance on the application of certain rules on remuneration structures in relation to individuals who are BIPRU Remuneration Code staff for only part of a given performance year. This guidance is available at www.fca.org.uk/firms/remuneration.]

Remuneration Principle 12(a): Remuneration structures - general requirement

**19C.3.35**

A firm must ensure that the structure of an employee's remuneration is consistent with, and promotes, effective risk management.

Remuneration Principle 12(b): Remuneration structures - assessment of performance

**19C.3.36**

A firm must ensure that where remuneration is performance-related:

(1) the total amount of remuneration is based on a combination of the assessment of the performance of:

(a) the individual;

(b) the business unit concerned; and

(c) the overall results of the firm; and

(2) when assessing individual performance, financial as well as non-financial criteria are taken into account.

**19C.3.37**

Non-financial performance metrics should form a significant part of the performance assessment process and should include adherence to effective risk management and compliance with the regulatory system and with relevant overseas regulatory requirements. Poor performance as assessed by non-financial metrics, such as poor risk management or other behaviours
contrary to firm values, can pose significant risks for a firm and should, as appropriate, override metrics of financial performance. The performance assessment process and the importance of non-financial assessment factors in the process should be clearly explained to relevant employees and implemented. A balanced scorecard can be a good technique.

19C.3.38 R

A firm must ensure that the assessment of performance is set in a multi-year framework, to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the firm and its business risks.

19C.3.39 G

The requirement for assessment of performance to be in a multi-year framework reflects the fact that profits from a firm’s activities can be volatile and subject to cycles. The financial performance of firms and individual employees can be exaggerated as a result. Performance assessment on a moving average of results can be a good way of meeting this requirement. However, other techniques, such as good quality risk adjustment and deferral of a sufficiently large proportion of remuneration, may also be useful.

Remuneration Principle 12(c): Remuneration structures - guaranteed variable remuneration

19C.3.40 R

A firm must not award, pay or provide guaranteed variable remuneration unless it:

(1) is exceptional;

(2) occurs in the context of hiring new BIPRU Remuneration Code staff; and

(3) is limited to the first year of service.

19C.3.41 E

(1) A firm should not award, pay or provide guaranteed variable remuneration in hiring new BIPRU Remuneration Code staff (X) unless:

(a) it has taken reasonable steps to ensure that the remuneration is not more generous in its amount or terms (including any deferral or retention periods) than the variable remuneration awarded or offered by X’s previous employer; and

(b) it is subject to appropriate performance adjustment requirements.

(2) Contravention of (1) may be relied on as tending to establish contravention of the rule on guaranteed variable remuneration (SYSC 19C.3.40 R).

19C.3.42 G

Guaranteed variable remuneration should be subject to the same deferral criteria as other forms of variable remuneration awarded by the firm.
Variable remuneration can be awarded to BIPRU Remuneration Code staff in the form of retention awards where it is compatible with the BIPRU Remuneration Code general requirement to do so. The FCA considers this is likely to be the case only where a firm is undergoing a major restructuring and a good case can be made for retention of particular key staff members on prudential grounds. Proposals to give retention awards should form part of any notice of the restructuring proposals required in accordance with Principle 11 and the general notification requirements in SUP 15.3.

Remuneration Principle 12(d): Remuneration structures - ratios between fixed and variable components of total remuneration

A firm must set appropriate ratios between the fixed and variable components of total remuneration and ensure that:

1. fixed and variable components of total remuneration are appropriately balanced; and
2. the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component.

Remuneration Principle 12(e): Remuneration structures - payments related to early termination

A firm must ensure that payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

Firms should review existing contractual payments related to termination of employment with a view to ensuring that these are payable only where there is a clear basis for concluding that they are consistent with the BIPRU Remuneration Code general requirement.

[Note: Standard 12 of the FSB Compensation Standards]

Remuneration Principle 12(f): Remuneration structures - retained shares or other instruments

(1) A firm must ensure that a substantial portion, at least 50%, of any variable remuneration consists of an appropriate balance of:

(a) shares or equivalent ownership interests, subject to the legal structure of the firm concerned, or share-linked instruments or equivalent non-cash instruments for a non-listed firm; and

(b) where appropriate, capital instruments which are eligible for inclusion at stage B1 of the calculation in the capital resources table, where applicable, adequately reflect the credit quality of the firm as a going concern.

(2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the firm.
(3) This rule applies to the portion of the variable remuneration component deferred, and not deferred, in line with SYSC 19C.3.49 R.

[Note: Standard 8 of the FSB Compensation Standards]

19C.3.48 G

(1) Regarding SYSC 19C.3.47R (3), the 50% minimum threshold for instruments must be applied equally to the non-deferred and the deferred components; in other words, firms must apply the same chosen ratio between instruments and cash for their total variable remuneration to both the upfront and deferred components.

(2) This simplified example illustrates the operation of (1). The variable remuneration of a material risk taker (X) is 100, and by SYSC 19C.3.49R (3) X is required to defer 60%. X's upfront component is 40 and X's deferred component is 60. At least 20 of X's upfront component, and at least 30 of X's deferred component, must be in instruments referred to in SYSC 19C.3.47R (1).

Remuneration Principle 12(g): Remuneration structures - deferral

19C.3.49 R

(1) A firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period of not less than three to five years.

(2) Remuneration under (1) must vest no faster than on a pro-rata basis.

(3) In the case of a variable remuneration component:
(a) of a particularly high amount; or
(b) payable to a director of a firm that is significant in its size, internal organisation and the nature, scope and complexity of its activities; at least 60% of the amount must be deferred.

(4) Paragraph (3)(b) does not apply to a non-executive director.

(5) The length of the deferral period must be established in line with the business cycle, the nature of the business, its risks and the activities of the employee in question.

[Note: Standards 6 and 7 of the FSB Compensation Standards]

(6) 500,000 is a particularly high amount for the purpose of (3)(a).

(7) Paragraph (6) is without prejudice to the possibility of lower sums being considered a particularly high amount.

19C.3.50 G

(1) Deferred remuneration paid in shares or share-linked instruments should be made under a scheme which meets appropriate criteria, including risk adjustment of the performance measure used to determine the initial allocation of shares. Deferred remuneration paid in cash should also be subject to performance criteria.

(2) The FCA generally expects a firm to have a firm-wide policy (and group-wide policy, where appropriate) on deferral. The proportion
deferred should generally rise with the ratio of variable remuneration to fixed remuneration and with the amount of variable remuneration. While any variable remuneration component of 500,000 or more paid to BIPRU Remuneration Code staff must be subject to 60% deferral, firms should also consider whether lesser amounts should be considered to be 'particularly high' taking account, for example, of whether there are significant differences within BIPRU Remuneration Code staff in the levels of variable remuneration paid.

Remuneration Principle 12(h): Remuneration structures - performance adjustment, etc.

19C.3.51 R
A firm must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the firm as a whole, and justified according to the performance of the firm, the business unit and the individual concerned.

[Note: Standards 6 and 9 of the FSB Compensation Standards]

19C.3.52 E
(1) A firm should reduce unvested deferred variable remuneration when, as a minimum:
   (a) there is reasonable evidence of employee misbehaviour or material error; or
   (b) the firm or the relevant business unit suffers a material downturn in its financial performance; or
   (c) the firm or the relevant business unit suffers a material failure of risk management.

(2) For performance adjustment purposes, awards of deferred variable remuneration made in shares or other non-cash instruments should provide the ability for the firm to reduce the number of shares or other non-cash instruments.

(3) Contravention of (1) or (2) may be relied on as tending to establish contravention of the rule on performance adjustment (■ SYSC 19C.3.51 R).

19C.3.53 G
(1) Variable remuneration may be justified, for example, to incentivise employees involved in new business ventures which could be loss-making in their early stages.

(2) The governing body (or, where appropriate, the remuneration committee) should approve performance adjustment policies, including the triggers under which adjustment would take place. The FCA may ask firms to provide a copy of their policies and expects firms to make adequate records of material decisions to operate the adjustments.
Chapter 19D

Dual-regulated firms
Remuneration Code
19D.1 Application and purpose

Who? What? Where?

19D.1.1 The dual-regulated firms Remuneration Code applies to:

(a) a building society;
(b) a UK bank;
(c) a UK designated investment firm;
(d) an overseas firm that;
   (i) is not an EEA firm;
   (ii) has its head office outside the EEA; and
   (iii) would be a firm in (a), (b) or (c) if it had been a UK domestic firm, had carried on all of its business in the United Kingdom and had obtained whatever authorisations for doing so as are required under the Act.

(2) For a firm which falls under (1)(a), (1)(b) or (1)(c), the dual-regulated firms Remuneration Code applies in relation to:

(a) its UK activities;
(b) its passported activities carried on from a branch in another EEA State; and
(c) a UK domestic firm’s activities wherever they are carried on.

For a firm that falls under (1)(d), the dual-regulated firms Remuneration Code applies only in relation to activities carried on from an establishment in the United Kingdom.

(4) Otherwise, the dual-regulated firms Remuneration Code applies to a firm within (1) in the same way as SYSC 4.1.1R (General requirements).

19D.1.1A SYSC 19D.1.1R(2) is applied to the extent of the FCA’s powers and regulatory responsibilities.

19D.1.2 Under Part 2 of SYSC 1 Annex 1 in relation to SYSC 4.1.1R (General requirements), and subject to the provisions on group risk systems and controls requirements in SYSC 12 (Group risk systems and controls requirements), the dual-regulated firms Remuneration Code:

(1) applies in relation to regulated activities, activities that constitute dealing in investments as principal (disregarding the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc)), ancillary activities and (in relation to MiFID business) ancillary services;
(2) applies in relation to the carrying on of unregulated activities in a prudential context; and

(3) takes into account activities of other group members.

When?

Except as set out in (2) and (3), a firm must apply the remuneration requirements in SYSC 19D.3 (Remuneration principles) in relation to:

(a) remuneration awarded, whether pursuant to a contract or otherwise, on or after 1 January 2011;

(b) remuneration due on the basis of contracts concluded before 1 January 2011 which is awarded or paid on or after 1 January 2011; and

(c) remuneration awarded, but not yet paid, before 1 January 2011, for services provided in 2010.

[Note: article 3(2) of Directive 2010/76/EU]

(2) A firm must apply the remuneration requirements in SYSC 19D.3.48R(3) (1:1 ratio of variable to fixed components) and SYSC 19D.3.49R (1:2 ratio of fixed to variable components) in relation to remuneration awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before, on or after 31 December 2013.

[Note: article 162(3) of CRD]


Subject to SYSC 19D.1.5R, SYSC 19D.1.3R does not require a firm to breach requirements of applicable contract or employment law.

[Note: recital 14 of Directive 2010/76/EU]

Conflict with other obligations

(1) Where a firm is unable to comply with the dual-regulated firms Remuneration Code because to do so would breach a provision of a prior contract (including a provision in a contract with a dual-regulated firms Remuneration Code staff member), it must take reasonable steps to amend or to terminate the provision in question in a way which enables it to comply with the dual-regulated firms Remuneration Code at the earliest opportunity.

(2) Until the provision in (1) ceases to prevent the firm from complying with the dual-regulated firms Remuneration Code, it must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the provision.
Purpose

19D.1.6 The aim of the dual-regulated firms Remuneration Code is to ensure that firms have risk-focused remuneration policies, which are consistent with and promote effective risk management and do not expose them to excessive risk. It expands upon the general organisational requirements in SYSC 4.

2 The dual-regulated firms Remuneration Code implements the main provisions of the CRD which relate to remuneration. In applying the rules in the dual-regulated firms Remuneration Code, firms should comply with Guidelines published by the EBA on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the CRD and on disclosures under article 450 of the EU CRR. The Guidelines can be found at: http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b

Notifications to the FCA

19D.1.7 In addition to the notification requirements in the dual-regulated firms Remuneration Code, general circumstances in which the FCA expects to be notified by firms of matters relating to their compliance with requirements under the regulatory system are set out in SUP 15.3 (General notification requirements).

2 For remuneration matters in particular, those circumstances should take into account unregulated activities, as well as regulated activities and the activities of other members of a group, and would include each of the following:

(a) significant breaches of the dual-regulated firms Remuneration Code, including any breach of a rule to which the provisions on voiding and recovery in SYSC 19D Annex 1 apply;

(b) any proposed remuneration policies, procedures or practices which could:

(i) have a significant adverse impact on the firm’s reputation; or

(ii) affect the firm’s ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm; or

(iii) result in serious financial consequences to the financial system or to other firms;

(c) any proposed changes to remuneration policies, practices or procedures which could have a significant impact on the firm’s risk profile or resources;

(d) fraud, errors and other irregularities described in SUP 15.3.17R (notification of fraud, errors and other irregularities) which may suggest weaknesses in, or be motivated by, the firm’s remuneration policies, procedures or practices.
(3) Notifications should be made immediately as the firm becomes aware or has information which reasonably suggests that those circumstances have occurred, may have occurred or may occur in the foreseeable future.

Individual guidance

19D.1.8 The FCA’s policy on individual guidance is set out in SUP 9. Firms should particularly note the policy on what the FCA considers to be a reasonable request for guidance (see SUP 9.2.5G). For example, where a firm is seeking guidance on a proposed remuneration structure, the FCA will expect the firm to provide a detailed analysis of how the structure complies with the dual-regulated firms Remuneration Code, including the general requirement for remuneration policies, procedures and practices to be consistent with, and promote, sound and effective risk management.

Interpretation

19D.1.9 Except as provided in the Glossary, any expression used in, or for the purpose of, this chapter which is defined or used in EU CRR has the meaning given by, or used in, those Regulations.
19D.2 General requirement

Remuneration policies must promote effective risk management

19D.2.1 A firm must establish, implement and maintain remuneration policies, procedures and practices that are consistent with, and promote, sound and effective risk management.

[Note: article 74(1) of CRD]

19D.2.2 (1) The dual-regulated firms Remuneration Code covers all aspects of remuneration that could have a bearing on effective risk management, including salaries, bonuses, long-term incentive plans, options, hiring bonuses, severance packages and pension arrangements.

(2) As with other aspects of a firm’s systems and controls, in accordance with SYSC 4.1.2R (general organisational requirements) remuneration policies, procedures and practices must be comprehensive and proportionate to the nature, scale and complexity of the common platform firm’s activities. What a firm must do in order to comply with the dual-regulated firms Remuneration Code will therefore vary. For example, while the dual-regulated firms Remuneration Code refers to a firm’s remuneration committee and risk management function, it may be appropriate for the governing body of a smaller firm to act as the remuneration committee and for the firm not to have a separate risk management function.

(3) The FCA may also ask remuneration committees to provide it with evidence of how well the firm’s remuneration policies meet the dual-regulated firms Remuneration Code’s principles, together with plans for improvement where there is a shortfall. The FCA also expects relevant firms to use the principles in assessing their exposure to risks arising from their remuneration policies as part of the internal capital adequacy assessment process (ICAAP).

(4) The FCA would also expect firms to apply, on a firm-wide basis, at least the following principles relating to:

(a) risk management and risk tolerance (Remuneration Principle 1);
(b) supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2);
(c) avoiding conflicts of interest (Remuneration Principle 3);
(d) governance (Remuneration Principle 4);
(e) risk adjustment (Remuneration Principle 8);
(f) pension policy (Remuneration Principle 9);
(g) personal investment strategies (Remuneration Principle 10);
(h) payments related to early termination (Remuneration Principle 12(e)); and
(i) deferral (Remuneration Principle 12(g)).

Record keeping

19D.2.3 In line with the record-keeping requirements in SYSC 9, a firm must ensure that its remuneration policies, practices and procedures, including performance appraisals processes and decisions, are clear and documented.

Interpretation of references to remuneration

19D.2.4 (1) In this chapter, references to remuneration include remuneration paid, provided or awarded by any person to the extent that it is paid, provided or awarded in connection with employment by a firm.

(2) Paragraph (1) is without prejudice to the meaning of remuneration elsewhere in the Handbook.

19D.2.5 For example, remuneration includes payments made by a seconding organisation which is not subject to the dual-regulated firms Remuneration Code to a secondee in respect of their employment by a firm which is subject to the dual-regulated firms Remuneration Code.
19D.3 Remuneration principles

Application: groups

19D.3.1 R
(1) A firm must apply the requirements of this section at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established in a country or territory which is not an EEA State.

(2) Paragraph (1) does not limit SYSC 12.1.13R(2)(dA) (which relates to the application of the dual-regulated firms Remuneration Code within UK consolidation groups and non-EEA sub-groups).

[Note: article 92(1) of CRD]

19D.3.2 G
SYSC 12.1.13R(2)(dA) requires the firm to ensure that the risk management processes and internal control mechanisms at the level of any UK consolidation group or non-EEA sub-group of which a firm is a member, comply with the obligations in this section on a consolidated basis (or sub-consolidated basis). In the FCA’s view, the application of this section at group, parent undertaking and subsidiary undertaking levels in SYSC 19D.3.1R(1) is in line with article 109(2) of the CRD on the application of systems and controls requirements to groups (as in SYSC 19D.1.13R).

Application: categories of staff and proportionality

19D.3.3 R
(1) This section applies in relation to dual-regulated firms Remuneration Code staff, except as set out in (3).

(2) When establishing and applying the total remuneration policies for dual-regulated firms Remuneration Code staff, a firm must comply with this section in a way, and to the extent, that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities (the dual-regulated firms remuneration principles proportionality rule).

(3) Paragraphs (1) and (2) do not apply to the requirement for significant firms to have a remuneration committee (SYSC 19D.3.12R).

[Note: article 92(2) of CRD]

[Note: In addition to the guidance in this section about the dual-regulated firms remuneration principles proportionality rule, the FCA provides guidance on the division of firms into categories for the purpose of providing a framework for the operation of the dual-regulated firms remuneration principles proportionality rule. This guidance is available on the FCA website at https://www.fca.org.uk/firms/being-regulated/remuneration-codes].
19D.3.4 **Dual-regulated firms Remuneration Code staff comprises:**

(a) an employee of a dual-regulated firm whose professional activities have a material impact on the firm's risk profile, including any employee who is deemed to have a material impact on the firm's risk profile in accordance with Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers); or

(b) subject to (2) and (3), an employee of an overseas firm in SYSC 19D.1.1R(1)(d) (i.e., an overseas firm that would have been a UK bank, building society or UK designated investment firm if it had been a UK domestic firm) whose professional activities have a material impact on the firm's risk profile, including any employee who would meet any of the criteria set out in articles 3 or 4(1) of Regulation (EU) 604/2014 of 4 March 2014 if it had applied to him.

(2) An overseas firm in SYSC 19D.1.1R(1)(d) (i.e., an overseas firm that would have been a dual-regulated firm if it had been a UK domestic firm) may deem an employee not to be dual-regulated firms Remuneration Code staff where:

(a) the employee:

(i) would meet the criteria in article 4(1) of Regulation (EU) No 604/2014 of 4 March 2014;

(ii) would not meet any of the criteria in article 3 of Regulation (EU) No 604/2014 of 4 March 2014; and

(iii) was awarded total remuneration of less than €750,000 in the previous year; and

(b) the overseas firm determines that the professional activities of the employee do not have a material impact on its risk profile on the grounds described in article 4(2) of Regulation (EU) 604/2014 of 4 March 2014.

(3) Where the overseas firm deems an employee not to be dual-regulated firms Remuneration Code staff as set out in (2), it must notify the FCA, applying the approach described in article 4(4) of Regulation (EU) 604/2014 of 4 March 2014.

[Note: article 92(2) of CRD and articles 3 and 4 of Regulation (EU) No 604/2014 of 4 March 2014.]

19D.3.5 Where an overseas firm in SYSC 19D.1.1R(1)(d) (i.e., an overseas firm that would have been a dual-regulated firm if it had been a UK domestic firm) wishes to deem an employee who earns more than €750,000 not to be dual-regulated firms Remuneration Code staff, the overseas firm may apply for a waiver of the requirement in SYSC 19D.3.4R in respect of that employee.

19D.3.6 A firm must:

(1) maintain a record of its dual-regulated firms Remuneration Code staff under the general record-keeping requirements (SYSC 9); and
(2) take reasonable steps to ensure that its dual-regulated firms Remuneration Code staff understand the implications of their status as such, including the potential for remuneration which does not comply with certain requirements of the dual-regulated firms Remuneration Code to be rendered void and recoverable by the firm.

Remuneration Principle 1: Risk management and risk tolerance

19D.3.7 A firm must ensure that its remuneration policy is consistent with, and promotes, sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the firm.

[Note: article 92(2)(a) of CRD]

Remuneration Principle 2: Supporting business strategy, objectives, values and long-term interests of the firm

19D.3.8 A firm must ensure that its remuneration policy is in line with the business strategy, objectives, values and long-term interests of the firm.

[Note: article 92(2)(b) of CRD]

Remuneration Principle 3: Avoiding conflicts of interest

19D.3.9 A firm must ensure that its remuneration policy includes measures to avoid conflicts of interest.

[Note: article 92(2)(b) of CRD]

Remuneration Principle 4: Governance

19D.3.10 A firm must ensure that its management body in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing its implementation.

[Note: article 92(2)(c) of CRD and Standard 1 of the FSB Compensation Standards]

19D.3.11 A firm must ensure that the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function.

[Note: article 92(2)(d) of CRD and Standard 1 of the FSB Compensation Standards]

19D.3.12 (1) A firm that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a remuneration committee.

(2) A firm in (1) must ensure that:

(a) the remuneration committee is constituted in a way that enables it to exercise competent and independent judgement on remuneration policies and practices and the incentives created for managing risk, capital and liquidity;
(b) the chairman and the members of the **remuneration committee** must be members of the **management body** who do not perform any executive function in the **firm**;

(c) the **remuneration committee** is responsible for the preparation of decisions regarding **remuneration**, including those which have implications for the risk and risk management of the **firm** and which are to be taken by the **management body**; and

(d) when preparing those decisions, the **remuneration committee** must take into account the long-term interests of shareholders, investors and other stakeholders in the **firm** and the public interest.

**[Note: article 95 of CRD and Standard 1 of the FSB Compensation Standards]**

A **firm** that maintains a website must explain on the website how it complies with the **dual-regulated firms Remuneration Code**.

**[Note: article 96 of the CRD]**

1. A **firm** should be able to demonstrate that its decisions are consistent with an assessment of its financial condition and future prospects. In particular, practices by which **remuneration** is paid for potential future revenues whose timing and likelihood remain uncertain should be evaluated carefully and the **governing body** or **remuneration committee** (or both) should work closely with the **firm's risk function** in evaluating the incentives created by its **remuneration system**.

2. The **governing body** and any **remuneration committee** are responsible for ensuring that the **firm's remuneration policy** complies with the **dual-regulated firms Remuneration Code** and, where relevant, should take into account relevant guidance, such as that issued by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO).

3. Guidance on what the **supervisory function** might involve is set out in **SYSC 4.3.3G** (responsibility of senior personnel, in particular, the **supervisory function**).

**Remuneration Principle 5: Control functions**

A **firm** must ensure that **employees** engaged in control functions:

1. are independent from the business units they oversee;

2. have appropriate authority; and

3. are **remunerated**:
   
   (a) adequately to attract qualified and experienced **employees**; and
   
   (b) in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

**[Note: article 92(2)(e) of CRD and Standard 2 of the FSB Compensation Standards]**
19D.3.16  
(1) A firm’s risk management and compliance functions should have appropriate input into setting the remuneration policy for other business areas. The procedures for setting remuneration should allow risk and compliance functions to have significant input into the setting of individual remuneration awards where those functions have concerns about the behaviour of the individuals concerned or the riskiness of the business undertaken.

(2) Contravention of (1) may be relied on as tending to establish contravention of the rule on employees engaged in control functions having appropriate authority (SYSC 19D.3.15R(2)).

19D.3.17  
A firm must ensure that the remuneration of the senior officers in risk management and compliance functions is directly overseen by the remuneration committee referred to in SYSC 19D.3.12R or, if such a committee has not been established, by the governing body in its supervisory function.

[Note: article 92(2)(f) of CRD]

19D.3.18  
(1) This Remuneration Principle is designed to manage the conflicts of interest which might arise if other business areas had undue influence over the remuneration of employees within control functions. Conflicts of interest can easily arise when employees are involved in the determination of remuneration for their own business area. Where these could arise, they need to be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. It is good practice to seek input from a firm’s human resources function when setting remuneration for other business areas.

(2) [deleted]

(3) [deleted]

Remuneration Principle 6: Remuneration and capital

19D.3.19  
A firm must ensure that total variable remuneration does not limit the firm’s ability to strengthen its capital base.
Remuneration Principle 7: Exceptional government intervention

19D.3.21 A firm that benefits from exceptional government intervention must ensure that:

1. variable remuneration is strictly limited as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

2. it restructures remuneration in a manner aligned with sound risk management and long-term growth, including (when appropriate) establishing limits to the remuneration of members of its management body; and

3. no variable or discretionary remuneration of any kind is paid to members of its management body unless this is justified.

Remuneration Principle 8: Profit-based measurement and risk adjustment

19D.3.23 (1) A firm must ensure that any measurement of performance used to calculate variable remuneration components or pools of variable remuneration components:

   a. includes adjustments for all types of current and future risks and takes into account the cost and quantity of the capital and the liquidity required; and

   b. takes into account the need for consistency with the timing and likelihood of the firm receiving potential future revenues incorporated into current earnings.

   (2) A firm must ensure that the allocation of variable remuneration components within the firm also takes into account all types of current and future risks.

[Note: article 94(1)(j), (k) of the CRD and Standard 4 of the FSB Compensation Standards]
(1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance within that process of applying judgment and common sense. The FCA expects that a firm will apply qualitative judgements and common sense in the final decision about the performance-related components of variable remuneration pools.

(2) [deleted]

(3) We consider good practice in this area to be represented by those firms who provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered, including non-financial risks such as reputation, conduct, client outcomes, values and strategy.

(4) The FCA expects a firm to be able to provide it with details of all adjustments that the firm has made whether through application of formulae or the exercise of discretion. This will enable the FCA to consider whether the firm's risk adjustment framework is sufficiently robust. Where discretion has been applied, the firm should be able to provide a clear explanation for, and quantification of such adjustments.

(5) A firm should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the governing body or remuneration committee for this purpose.

19D.3.25 R A firm must have a clear and verifiable mechanism for measuring performance, with risk adjustment applied thereafter in a clear and transparent manner.

19D.3.26 G A firm may apply discretionary factors to the extent that is appropriate and consistent with the overall aims of the risk adjustment exercise. Where such further adjustments have been made, firms should provide clear quantification and explanation to ensure their risk adjustment frameworks are sufficiently transparent.

19D.3.27 R A firm must base assessments of financial performance used to calculate variable remuneration components or pools of variable remuneration components principally on profits.

19D.3.28 G (1) Performance measures based primarily on revenues or turnover are unlikely to pay sufficient regard to the quality of business undertaken or services provided. Profits are a better measure provided they are adjusted for risk, including future risks not adequately captured by accounting profits.

(2) [deleted]
19D.3.29  
(1) A firm's risk-adjustment approach must reflect both ex-ante adjustment (which adjusts remuneration for intrinsic risks that are inherent in its business activities) and ex-post adjustment (which adjusts remuneration for crystallisation of specific risks events).

(2) A firm must ensure that its total variable remuneration is generally considerably contracted where subdued or negative financial performance of the firm occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: article 94(1)(n) of CRD and Standard 5 of the FSB Compensation Standards]

19D.3.30 [deleted]

Remuneration Principle 9: Pension policy

A firm must ensure that:

(1) its pension policy is in line with its business strategy, objectives, values and long-term interests;

(2) when an employee leaves the firm before retirement, any discretionary pension benefits are held by the firm for a period of five years in the form of instruments referred to in SYSC 19D.3.56R(1); and

(3) when an employee reaches retirement, discretionary pension benefits are paid to the employee in the form of instruments referred to in SYSC 19D.3.56R(1) and subject to a five-year retention period.

[Note: article 94(1)(o) of the CRD]

Remuneration Principle 10: Personal investment strategies

(1) A firm must ensure that its employees undertake not to use personal hedging strategies to undermine the risk alignment effects embedded in their remuneration arrangements.

(2) A firm must ensure that its employees do not use remuneration- or liability-related contracts of insurance to undermine the risk alignment effects embedded in their remuneration arrangements.

(3) A firm must maintain effective arrangements designed to ensure that employees comply with their undertaking.

[Note: article 94(1)(p) of the CRD and Standard 14 of the FSB Compensation Standards]

19D.3.33  
In the FCA's view, circumstances in which a person will be using a personal hedging strategy include (and are not limited to) entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to that person that are linked to or
commensurate with the amounts by which the person's remuneration is subject to reductions.

Remuneration Principle 11: Non-compliance with the dual-regulated firms Remuneration Code

A firm must ensure that variable remuneration is not paid through vehicles or methods that facilitate non-compliance with obligations arising from the Remuneration Code, the EU CRR or the CRD.

[Note: article 94(1)(q) of the CRD]

Remuneration Principle 12: Remuneration structures - introduction

(1) Taking account of the dual-regulated firms remuneration principles proportionality rule, the FCA does not generally consider it necessary for a firm to apply the rules in (2) where, in relation to an individual (X), both the following conditions are satisfied:

(a) Condition 1 is that X's variable remuneration is no more than 33% of total remuneration; and

(b) Condition 2 is that X's total remuneration is no more than £500,000.

(2) The rules referred to in (1) are those relating to:

(a) guaranteed variable remuneration (■ SYSC 19D.3.44R);

(b) retained shares or other instruments (■ SYSC 19D.3.56R);
Remuneration Principle 12(a): Remuneration structures - general requirement

A firm must ensure that the structure of an employee's remuneration is consistent with, and promotes, effective risk management.

A firm must ensure that the remuneration policy makes a clear distinction between criteria for setting:

1. basic fixed remuneration that primarily reflects an employee's professional experience and organisational responsibility, as set out in the employee's job description and terms of employment; and
2. variable remuneration that reflects performance in excess of that required to fulfil the employee's job description and terms of employment and that is subject to performance adjustment in accordance with the dual-regulated firms Remuneration Code.

[Note: article 92(2)(g) of the CRD]

A firm must not award variable remuneration to a non-executive director acting as such.

Remuneration Principle 12(b): Remuneration structures - assessment of performance

A firm must ensure that where remuneration is performance-related:

1. the total amount of remuneration is based on a combination of the assessment of the performance of:
   (i) the individual;
   (ii) the business unit concerned; and
   (iii) the overall results of the firm; and
2. when assessing individual performance, financial as well as non-financial criteria are taken into account.

[Note: article 94(1)(a) of the CRD and Standard 6 of the FSB Compensation Standards]

The non-financial criteria in §SYSC 19D.3.39R(1)(b) should include:

1. the extent of the employee's adherence to effective risk management, and compliance with the regulatory system and with relevant overseas regulatory requirements; and
2. metrics relating to conduct, which should comprise a substantial portion of the non-financial criteria.

(2) Aligning variable awards to sustainable financial performance requires firms to make appropriate ex-ante adjustments to take...
account of the potential for future unexpected losses. Performance measures commonly used (such as earnings per share (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer-term risk factors and have a tendency to incentivise highly leveraged activities.

19D.3.41 G Poor performance, such as poor risk management or other behaviours contrary to firm values, can pose significant risks for a firm and non-financial metrics should override metrics of financial performance where appropriate.

19D.3.41A G A firm should note that the requirement in SYSC 19D.3.39R(1)(b) for financial and non-financial criteria to be taken into account applies wherever remuneration is performance-related including within any assessment of future performance.

19D.3.42 R A firm must clearly explain the performance assessment process in SYSC 19D.3.39R to relevant employees.

19D.3.43 R A firm must ensure that the assessment of performance is set in a multi-year framework in order to ensure that:

(1) the assessment process is based on longer-term performance; and

(2) the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the firm and its business risks.

[Note: article 94(1)(b) of CRD]

Remuneration Principle 12(c): Remuneration structures - guaranteed variable remuneration, buy-outs and retention awards

19D.3.44 R (1) A firm must ensure that guaranteed variable remuneration is not part of prospective remuneration plans.

(2) A firm must not award, pay or provide guaranteed variable remuneration unless:

(a) it is exceptional;

(b) it occurs in the context of hiring new dual-regulated firms Remuneration Code staff;

(c) the firm has a sound and strong capital base; and

(d) it is limited to the first year of service.

[Note: article 94(1)(d) and (e) of the CRD and Standard 11 of the FSB Compensation Standards]

19D.3.45 R A firm must ensure that remuneration packages relating to compensation for, or buy out from, an employee's contracts in previous employment align...
with its long-term interests including appropriate retention, deferral and performance and clawback arrangements.

[Note: article 94(1)(i) of CRD]

19D.3.46 (1) Guaranteed variable *remuneration* should be subject to the same requirements applicable to variable *remuneration* awarded by the firm including deferral, malus and clawback.

(2) The FCA expects that guaranteed variable awards and retention awards should not be common practice for *dual-regulated firms Remuneration Code* staff and should be limited to rare, infrequent occurrences. The FCA expects a firm to provide prior notification to the FCA of any proposed retention awards.

19D.3.47 Retention awards should form part of variable *remuneration* for the purpose of ▶ SYSC 19D.3.48R.

**Remuneration Principle 12(d): Remuneration structures - ratios between fixed and variable components of total remuneration**

A firm must set an appropriate ratio between the fixed and variable components of total *remuneration* and ensure that:

(1) fixed and variable components of total *remuneration* are appropriately balanced;

(2) the level of the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component; and

(3) subject to ▶ SYSC 19D.3.49R, the level of the variable component of total *remuneration* must not exceed 100% of the fixed component of total *remuneration* for each *dual-regulated firms Remuneration Code* staff.

[Note: article 94(1)(f) and 94(1)(g)(i) of the CRD]

19D.3.49 A firm may set a higher maximum level of the ratio between the fixed and variable components of total *remuneration* provided:

(1) the overall level of the variable component does not exceed 200% of the fixed component of the total *remuneration* for each *dual-regulated firms Remuneration Code* staff; and

(2) is approved by the shareholders or owners or members of the firm in accordance with ▶ SYSC 19D.3.50R.

[Note: article 94(1)(g)(ii) of CRD]
A firm must ensure that any approval by its shareholders or owners or members, for the purposes of \footnotesize{SYSC 19D.3.49R}, is carried out in accordance with the following procedure:

1. The firm must give reasonable notice to all its shareholders or owners or members of its intention to seek approval of the proposed higher ratio;

2. The firm must make a detailed recommendation to all its shareholders or owners or members that includes:
   a. The reasons for, and the scope of, the approval sought;
   b. The number of staff affected and their functions; and
   c. The expected impact on the requirement to maintain a sound capital base;

3. The firm must:
   a. Without delay, inform the FCA of the recommendation to its shareholders or owners or members, including the proposed higher ratio and the reasons therefor; and
   b. Demonstrate to the FCA that the proposed higher ratio does not conflict with its obligations under the CRD and the EU CRR, having particular regard to the firm's own funds obligations;

4. The firm must ensure that employees who have an interest in the proposed higher ratio are not allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the firm in respect of the approval sought; and

5. The higher ratio is approved by a majority of:
   a. At least 66% of the shares or equivalent ownership rights represented, if at least 50% of the shares or equivalent ownership rights in the firm are represented; or
   b. At least 75% of the shares or equivalent ownership rights represented, if less than 50% of the shares or equivalent ownership rights in the firm are represented.

\textbf{Note:} article 94(1)(g)(ii) of the CRD

A firm must notify the FCA without delay of the decisions taken by its shareholders or members or owners including any approved higher maximum ratio.

\textbf{Note:} article 94(1)(g)(ii) of the CRD

A firm may apply a discount rate to a maximum of 25% of an employee's total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

\textbf{Note:} article 94(1)(g)(iii) of the CRD

In applying the discount rate in \footnotesize{SYSC 19D.3.52R}, a firm must apply the EBA Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014.
Remuneration Principle 12(e): Remuneration structures - payments related to early termination

A firm must ensure that payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure or misconduct.

[Note: article 94(1)(h) of the CRD and Standard 12 of the FSB Compensation Standards]

Remuneration Principle 12(f): Remuneration structures - retained shares or other instruments

(1) A firm must ensure that a substantial portion, which is at least 50%, of any variable remuneration consists of an appropriate balance of:

(a) shares or equivalent ownership interests, subject to the legal structure of the firm concerned, or share-linked instruments or equivalent non-cash instruments in the case of a non-listed firm; and

(b) where possible, other instruments that in each case adequately reflect the credit quality of the firm as a going concern and are appropriate for use as variable remuneration, such as:

(i) those which are eligible as additional tier 1 instruments or tier 2 instruments; or

(ii) those that can be fully converted to common equity tier 1 instruments or written down;

(where the expressions in italics are defined, with the conditions for eligibility, in the Definition of the Capital part of the PRA Rulebook).

(2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the firm.

(3) This rule applies to both the portion of the variable remuneration component deferred in accordance with SYSC 19D.3.59R and the portion not deferred.

[Note: article 94(1)(l) of the CRD and Standard 8 of the FSB Compensation Standards]
Remuneration Principle 12(g): Remuneration structures - deferral

19D.3.59 R

(1) A firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:

(a) for dual-regulated firms Remuneration Code staff who do not perform a PRA-designated senior management function, three to five years, with no vesting taking place until one year after the award, and vesting no faster than on a pro-rata basis.

(b) for dual-regulated firms Remuneration Code staff who perform a PRA-designated senior management function, seven years, with no vesting taking place until three years after the award, and vesting no faster than on a pro-rata basis.

(2) In the case of a variable remuneration component:

(a) of £500,000 or more, or

(b) payable to a director of a firm that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities;

at least 60% of the amount must be deferred on the basis set out in SYSC 19D.3.59R(1).

(3) Subject to (1), the length of the deferral period must be established in accordance with the business cycle, the nature of the business, its risks and the activities of the employee in question.

[Note: article 94(1)(m) of the CRD and Standards 6 and 7 of the FSB Compensation Standards]

19D.3.60 G

(1) Deferred remuneration paid in:

(a) shares or share-linked instruments should be made under a scheme which meets appropriate criteria, including risk adjustment of the performance measure used to determine the initial allocation of shares;
(b) cash should also be subject to performance criteria.

(2) The FCA would generally expect a firm to have a firm-wide policy (and group-wide policy, where appropriate) on deferral. The proportion deferred should generally rise with the ratio of variable remuneration to fixed remuneration and with the amount of variable remuneration. While any variable remuneration component of £500,000 or more paid to dual-regulated firms Remuneration Code staff must be subject to 60% deferral, firms should also consider whether lesser amounts should be considered to be ‘particularly high’ taking account, for example, of whether there are significant differences within dual-regulated firms Remuneration Code staff in the levels of variable remuneration paid.

**Remuneration Principle 12(h): Remuneration structures - performance adjustment (affordability, malus, clawback)**

A firm must ensure that:

1. any variable remuneration, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the firm as a whole, and justified on the basis of the performance of the firm, the business unit and the individual concerned;

2. any variable remuneration is subject to clawback, such that it is only awarded if an amount corresponding to it can be recovered from the individual by the firm if the recovery is justified on the basis of the circumstances described in SYSC 19D.3.62R(2) and SYSC 19D.3.64R;

3. any variable remuneration is subject to clawback for a period of at least seven years from the date on which the variable remuneration is awarded; and

4. for dual-regulated firms Remuneration Code staff who perform a PRA-designated senior management function, it can, by notice to the employee to be given no later than seven years after the variable remuneration was awarded, extend the period during which variable remuneration is subject to clawback to at least ten years from the date on which the variable remuneration is awarded, where:
   
   a. the firm has commenced an investigation into facts or events which it considers could potentially lead to the application of clawback were it not for the expiry of the clawback period; or
   
   b. the firm has been notified by a regulatory authority (including an overseas regulatory authority) that an investigation has been commenced into facts or events which the firm considers could potentially lead to the application of clawback by the firm were it not for the expiry of the clawback period; and

5. it considers on an ongoing basis whether to use the power in (4).

[Note: article 94(1)(n) of the CRD and Standards 6 and 9 of the FSB Compensation Standards]
A firm must:

(1) set specific criteria for the application of malus and clawback; and

(2) ensure that the criteria for the application of malus and clawback in particular cover situations where the employee:

(a) participated in, or was responsible for, conduct which resulted in significant losses to the firm; or

(b) failed to meet appropriate standards of fitness and propriety.

**Note:** article 94(1)(n) of the CRD and Standards 6 and 9 of the FSB Compensation Standards

**Note:** The FSA also gave guidance on the application of the requirements on risk adjustments. This guidance is available on the FCA website at [https://www.fca.org.uk/firms/being-regulated/remuneration-codes](https://www.fca.org.uk/firms/being-regulated/remuneration-codes).

(1) A firm should reduce unvested deferred variable remuneration when, as a minimum:

(a) there is reasonable evidence of employee misbehaviour or material error; or

(b) the firm or the relevant business unit suffers a material downturn in its financial performance; or

(c) the firm or the relevant business unit suffers a material failure of risk management.

(2) For performance adjustment purposes, awards of deferred variable remuneration made in shares or other non-cash instruments should provide the ability for the firm to reduce the number of shares or other non-cash instruments.

(3) Contravention of any of (1) or (2) may be relied on as tending to establish contravention of §SYSC 19D.3.61R(1) on performance adjustment.

(1) A firm must make all reasonable efforts to recover an appropriate amount corresponding to some or all vested variable remuneration where either of the following circumstances arise during the period in which clawback applies (including any part of such period occurring after the relevant employment has ceased):

(a) there is reasonable evidence of employee misbehaviour or material error; or

(b) the firm or the relevant business unit suffers a material failure of risk management.

(2) A firm must take into account all relevant factors (including, where the circumstances described in (1)(b) arise, the proximity of the employee to the failure of risk-management in question and the employee’s level of responsibility) in deciding whether, and to what extent it is reasonable, to seek recovery of any or all of their vested variable remuneration.
19D.3.65 The governing body (or, where appropriate, the remuneration committee) should approve performance adjustment policies, including the triggers under which adjustment would take place. The FCA may ask firms to provide a copy of their policies and expects firms to make adequate records of material decisions to operate the adjustments.

Effect of breaches of the Remuneration Principles

19D.3.66 SYSC 19D Annex 1 makes provision about voiding and recovery.

19D.3.67 (1) Subject to (2) to (7), the rules in SYSC 19D Annex 1.1R to 1.6R apply in relation to the prohibitions on dual-regulated firms Remuneration Code staff being remunerated in the ways specified in:

(a) SYSC 19D.3.44R (guaranteed variable remuneration);
(b) SYSC 19D.3.59R (deferred variable remuneration);
(c) SYSC 19D.3.61R(2) (performance adjustment – clawback); and
(d) SYSC 19D Annex 1.10R (replacing payments recovered or property transferred).

(2) Paragraph (1) applies only to those prohibitions as they apply in relation to a firm that satisfies either Condition 1 or Condition 2 as set out in (3) and (4).

(3) Condition 1 is that the firm is a UK bank, a building society, or a UK designated investment firm, that has relevant total assets exceeding £50 billion.

(4) Condition 2 is that the firm:

(a) is either a full credit institution or a UK designated investment firm; and
(b) is part of a group containing a firm that has relevant total assets exceeding £50 billion and that is a UK bank, a building society or a UK designated investment firm.

(5) For the purposes of this rule, ‘relevant total assets’ means the arithmetic mean of the firm’s total assets as set out in its balance sheet on its last three accounting reference dates.

(6) This rule does not apply in relation to the prohibition on dual-regulated firms Remuneration Code staff being remunerated in the way specified in SYSC 19D.3.44R (guaranteed variable remuneration) if both the conditions in paragraphs (2)(b) and (2)(c) of that rule are met.

(7) This rule does not apply in relation to dual-regulated firms Remuneration Code staff (X) in respect of whom both the following conditions are satisfied:

(a) Condition 1 is that X’s variable remuneration is no more than 33% of total remuneration; and
(b) Condition 2 is that X’s total remuneration is no more than £500,000.
(8) In relation to (7):

(a) references to remuneration are to remuneration awarded or paid in respect of the relevant performance year;

(b) the amount of any remuneration is:

(i) if it is money, its amount when awarded;

(ii) otherwise, whichever of the following is greatest:

(A) its value to the recipient when awarded;

(B) its market value when awarded; and

(C) the cost of providing it;

() where remuneration is, when awarded, subject to any condition, restriction or other similar provision which causes the amount of the remuneration to be less than it otherwise would be, that condition, restriction or provision is to be ignored in arriving at its value; and

() it is to be assumed that the member of dual-regulated firms Remuneration Code staff will remain so for the duration of the relevant performance year.

19D.3.68

(1) Sections 137H and 137I of the Act enable the FCA to make rules that render void any provision of an agreement that contravenes specified prohibitions in the dual-regulated firms Remuneration Code, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision.

(2) SYSC 19D.3.66R and SYSC 19D.3.67R (together with SYSC 19D Annex 1) are:

(a) rules referred to in (1) that render void provisions of an agreement that contravene the specified prohibitions on guaranteed variable remuneration, non-deferred variable remuneration and replacing payments recovered or property transferred; and

(b) the exception to the general position set out in section 138E(2) of the Act that a contravention of a rule does not make any transaction void or unenforceable.
### Rendering contravening provisions of agreements void

1. **R** Any provision of an agreement that contravenes a prohibition on persons being remunerated in a way specified in a rule to which this rule applies (a ‘contravening provision’) is void.

2. **R** A contravening provision does not cease to be void because:
   1. the firm concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); or
   2. the member of dual-regulated firms Remuneration Code staff concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).

3. **R** A contravening provision that, at the time a rule to which this rule applies was first made (including any previous rules in the FCA Handbook), is contained in an agreement made before that time is not rendered void by SYSC 19D Annex 1.1R, unless it is subsequently amended so as to contravene such a rule.

4. **G** The effect of SYSC 19D Annex 1.3R, in accordance with sections 137H and 137I of the Act, is to prevent contravening provisions being rendered void retrospectively. However, contravening provisions may be rendered void if they are contained in an agreement made after the rule containing the prohibition is made by the FCA but before the rule comes into effect.

5. **R** (1) A pre-existing provision is not rendered void by SYSC 19D Annex 1.1R.
   (2) In this Annex, a pre-existing provision is any provision of an agreement that would (but for this rule) be rendered void by SYSC 19D Annex 1.1R that was agreed at a time when either:
      a. the firm concerned did not satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); or
      b. the member of dual-regulated firms Remuneration Code staff concerned satisfied both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).
   (3) But an amendment to, or in relation to, a pre-existing provision is not to be treated as a pre-existing provision where the amendment is agreed at a time when both:
      a. the firm concerned satisfies at least one of the conditions set out in SYSC 19D.3.67R(3) to (4); and
      b. the member of dual-regulated firms Remuneration Code staff concerned does not satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).

6. **R** For the purposes of this chapter, it is immaterial whether the law which (apart from this annex) governs a contravening provision is the law of the United Kingdom, or of a part of the United Kingdom.

### Recovery of payments made or property transferred pursuant to a void contravening provision
## Rendering contravening provisions of agreements void

<table>
<thead>
<tr>
<th>7</th>
<th>R</th>
<th>In relation to any payment made or other property transferred in pursuance of a contravening provision other than a pre-existing provision, a firm must take reasonable steps to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>recover any such payment made or other property transferred by the firm; and</td>
<td></td>
</tr>
<tr>
<td>(2)</td>
<td>ensure that any other person (P) recovers any such payment made or other property transferred by that person.</td>
<td></td>
</tr>
</tbody>
</table>

### SYSC 19D Annex 1.7R continues to apply in one or both of the following cases:

- The firm concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4);
- The member of dual-regulated firms Remuneration Code staff concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).

### Replacing payments recovered or property transferred

<table>
<thead>
<tr>
<th>10</th>
<th>R</th>
<th>A firm must not award, pay or provide variable remuneration to a person who has received remuneration in pursuance of a contravening provision other than a pre-existing provision (the ‘contravening remuneration’) unless the firm has obtained a legal opinion stating that the award, payment or provision of the remuneration complies with the dual-regulated firms Remuneration Code.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2)</td>
<td>This rule applies only to variable remuneration relating to a performance year to which the contravening remuneration related.</td>
<td></td>
</tr>
<tr>
<td>(3)</td>
<td>The legal opinion in (1) must be properly reasoned and be provided by an appropriately qualified independent individual.</td>
<td></td>
</tr>
<tr>
<td>(4)</td>
<td>Paragraph (1) continues to apply in one or both of the following cases:</td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>the firm concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4);</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>the member of dual-regulated firms Remuneration Code staff concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).</td>
<td></td>
</tr>
</tbody>
</table>

## Notification to the FCA

| 11 | G | The FCA considers any breach of a rule to which this annex applies to be a significant breach which should be notified to the FCA in accordance with SUP 15.3.11R (Breaches of rules and other requirements in or under the Act). Such a notification should include information on the steps which a firm or other person has taken or intends to take to recover payments or property in pursuance of a contravening provision. |
19E.1 Application

19E.1.1 R (1) The UCITS Remuneration Code applies to a UK UCITS management company that:
(a) manages a UCITS scheme; or
(b) manages an EEA UCITS scheme.

(2) This section does not apply to an EEA UCITS management company that manages a UCITS scheme.

(3) In this section, a firm under (1)(a) or (1)(b) above, is referred to as a management company.

19E.1.2 R (1) This chapter applies to a UK UCITS management company in relation to remuneration paid, provided or awarded by any person to the extent that it is paid, provided or awarded in connection with employment by a management company.

(2) Paragraph (1) is without prejudice to the meaning of remuneration elsewhere in the Handbook.

19E.1.3 G Remuneration includes payments made by a seconding organisation, which is not subject to the UCITS Remuneration Code, to a secondee in respect of their employment by a management company which is subject to the UCITS Remuneration Code.
19E.2 Remuneration policies and practices

A management company must establish and apply remuneration policies and practices for UCITS Remuneration Code staff that:

1. are consistent with and promote sound and effective risk management;
2. do not encourage risk taking which is inconsistent with the risk profiles or the instrument constituting the fund or the prospectus, as applicable, of the UCITS it manages;
3. do not impair the management company’s compliance with its duty to act in the best interests of the UCITS it manages; and
4. include fixed and variable components of remuneration, including salaries and discretionary pension benefits.

[Note: article 14a(1) and (2) of the UCITS Directive]

19E.2.1

19E.2.2

(1) UCITS Remuneration Code staff comprise those categories of staff whose professional activities have a material impact on the risk profiles of:

(a) the management company; or
(b) the UCITS that the management company manages.

(2) UCITS Remuneration Code staff must comprise:

(a) senior management;
(b) risk takers;
(c) staff engaged in control functions; and
(d) any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers.

[Note: article 14a(3) of the UCITS Directive]

19E.2.3

A management company need not treat a person in SYSC 19E.2.2R(2) as UCITS Remuneration Code staff if it can demonstrate that the person’s professional activities do not have a material impact on the risk profiles of:
(1) the management company; or
(2) the UCITS that the management company manages.

Proportionality

19E.2.4 R

(1) When establishing and applying the remuneration policies for UCITS Remuneration Code staff, a management company must comply with the UCITS remuneration principles in a way and to the extent that is appropriate to:
(a) its size;
(b) internal organisation; and
(c) the nature, scope and complexity of its activities.

(2) Paragraph (1) does not apply to the requirement for significant management companies to have a remuneration committee (SYSC 19E.2.9R).

(3) The UCITS remuneration principles apply to:
(a) any benefit of any type paid by the management company;
(b) any amount paid directly by the UCITS itself, including performance fees, for the benefit of UCITS Remuneration Code staff; and
(c) any transfer of units or shares of the UCITS made for the benefit of UCITS Remuneration Code staff.

[Note: article 14b(1), (3) and (4) of the UCITS Directive]

UCITS Remuneration Principle 1: Risk management

19E.2.5 R

A management company must ensure that its remuneration policy:

(1) is consistent with, and promotes sound and effective risk management; and

(2) does not encourage risk taking which is inconsistent with the risk profiles or the instrument constituting the fund of the UCITS it manages.

[Note: article 14b(1)(a) of the UCITS Directive]

UCITS Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interests

19E.2.6 R

A management company must ensure that its remuneration policy:

(1) is in line with the business strategy, objectives, values and interests of:
(a) the management company;
(b) the UCITS it manages; and
(c) the investors in such UCITS; and
(2) includes measures to avoid conflicts of interest.

[Note: article 14b(1)(b) of the UCITS Directive]

UCITS Remuneration Principle 3: Governance

19E.2.7

(1) A management company must ensure that its management body in its supervisory function:

(a) adopts and reviews at least annually the general principles of the remuneration policy; and

(b) is responsible for the implementation of the general principles of the remuneration policy.

(2) The tasks in (1) must be undertaken only by members of the management body who:

(a) do not perform any executive functions in the management company concerned; and

(b) have expertise in risk management and remuneration.

[Note: article 14b(1)(c) of the UCITS Directive]

19E.2.8

A management company must ensure the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function.

[Note: article 14b(1)(d) of the UCITS Directive]

19E.2.9

(1) A management company must establish a remuneration committee if it is significant in terms of:

(a) its size, or the size of the UCITS that it manages;

(b) [deleted]

(c) the complexity of its internal organisation; and

(d) the nature, the scope and the complexity of its activities.

(2) The remuneration committee must be constituted in a way that enables it to exercise competent and independent judgment on:

(a) remuneration policies and practices; and

(b) the incentives created for managing risk.

(3) The remuneration committee must be responsible for the preparation of decisions regarding remuneration, including those which:

(a) have implications for the risk and risk management of the management company or the UCITS concerned; and

(b) are taken by the management body in its supervisory function.

(4) The chairman and the members of the remuneration committee must be members of the management body who do not perform any executive function in the management company.
(5) When preparing its decisions, the *remuneration* committee must take into account the long-term interest of investors and other stakeholders and the public interest.

**[Note: article 14b(4) of the UCITS Directive]**

**UCITS Remuneration Principle 4: Control functions**

**19E.2.10**

A *management company* must ensure that employees engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas that are within their remit.

**[Note: article 14b(1)(e) of the UCITS Directive]**

**19E.2.11**

A *management company* must ensure the *remuneration* of the senior officers in the risk management and compliance functions is directly overseen by:

1. the *remuneration* committee; or
2. if such a committee has not been established, the *management body in its supervisory function*.

**[Note: article 14b(1)(f) of the UCITS Directive]**

**UCITS Remuneration Principle 5(a): Remuneration structures – assessment of performance**

**19E.2.12**

1. A *management company* must ensure that, where *remuneration* is performance related, the total amount of *remuneration* is based on a combination of:
   a. the assessment of the performance of the individual and of the business unit or *UCITS* concerned, and of their risks; and
   b. the overall results of the *management company*.

2. When assessing individual performance, financial and non-financial criteria must be taken into account.

**[Note: article 14b(1)(g) of the UCITS Directive]**

**19E.2.13**

A *management company* must ensure that the assessment of performance is set in a multi-year framework appropriate to any holding period recommended to the investors of the *UCITS* managed by the *management company* to ensure that the:

1. assessment process is based on the long-term performance of the *UCITS* and its investment risks; and
2. actual payment of the performance-based components of *remuneration* is spread over the same period.

**[Note: article 14b(1)(h) of the UCITS Directive]**
UCITS Remuneration Principle 5(b): Remuneration structures – guaranteed variable remuneration

19E.2.14  A management company must not award, pay or provide guaranteed variable remuneration unless it:

(1) is exceptional;

(2) occurs only in the context of hiring new staff; and

(3) is limited to the first year of engagement.

[Note: article 14b(1)(i) of the UCITS Directive]

UCITS Remuneration Principle 5(c): Remuneration structures – fixed and variable components of total remuneration

19E.2.15  A management company must ensure that:

(1) fixed and variable components of total remuneration are appropriately balanced; and

(2) the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component.

[Note: article 14b(1)(j) of the UCITS Directive]

UCITS Remuneration Principle 5(d): Remuneration structures – payments related to early termination

19E.2.16  A management company must ensure that payments related to the early termination of a contract:

(1) reflect performance achieved over time; and

(2) are designed in a way that does not reward failure.

[Note: article 14b(1)(k) of the UCITS Directive]

19E.2.17  (1) Taking account of the remuneration principles proportionality rule in SYSC 19E.2.4R, the FCA does not generally consider it necessary for a management company to apply the rules referred to in (2) where, in relation to an individual ("X"), both the following conditions are satisfied:

(a) Condition 1 is that X's variable remuneration is no more than 33% of total remuneration; and

(b) Condition 2 is that X's total remuneration is no more than £500,000.

(2) The rules to which (1) applies are those relating to:

(a) retained units, shares or other instruments (SYSC 19E.2.18R);
(b) deferral (SYSC 19E.2.20R); and
(c) performance adjustment (SYSC 19E.2.22R).

**UCITS Remuneration Principle 5(e): Remuneration structures – retained units, shares or other instruments**

(1) Subject to the legal structure of the UCITS and the instrument constituting the fund, a management company must ensure that a substantial portion, and in any event at least 50%, of any variable remuneration component consists of:

(a) units or shares of the UCITS concerned; or
(b) equivalent ownership interests in the UCITS concerned; or
(c) share-linked instruments relating to the UCITS concerned; or
(d) equivalent non-cash instruments relating to the UCITS concerned with incentives that are equally as effective as any of the instruments referred to in (a) to (c).

(2) However, if the management of UCITS accounts for less than 50% of the total portfolio managed by the management company, the minimum of 50% does not apply.

(3) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives for the UCITS Remuneration Code staff with the long-term interests of:

(a) the management company;
(b) the UCITS it manages; and
(c) the investors of such UCITS.

(4) This rule applies to:

(a) the portion of the variable remuneration component deferred in line with SYSC 19E.2.20R(1); and
(b) the portion not deferred.

[Note: article 14b(1)(m) of the UCITS Directive]

(1) If the management of UCITS accounts for less than 50% of the total portfolio managed by the management company, the minimum of 50% in SYSC 19E.2.18R(1) does not apply.

(2) However, in the circumstances in (1) the management company is still required to ensure that a substantial portion of any variable remuneration component consists of the instruments in SYSC 19E.2.18R(1) and appropriately reflects the extent of the management of UCITS by the management company.

(3) In the circumstances in (1), the management company may consider the additional use of instruments other than those in SYSC 19E.2.18R(1) that achieve the alignment of interest referred to in SYSC 19E.2.18R(3).
UCITS Remuneration Principle 5(f): Remuneration structures – deferral

19E.2.20 R

A management company must not award, pay or provide a variable remuneration component unless a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is:

(a) appropriate in view of any holding period recommended to the investors of the UCITS concerned; and

(b) correctly aligned with the nature of the risks of the UCITS in question.

(2) The period referred to in (1) must be at least three years.

(3) Remuneration payable under (1) must vest no faster than on a pro-rata basis.

(4) For a variable remuneration component of a particularly high amount, at least 60% of the amount must be deferred.

[Note: article 14b(1)(n) of the UCITS Directive]

19E.2.21 G

(1) £500,000 should be considered a particularly high amount for the purpose of SYSC 19E.2.20R(4).

(2) While any variable remuneration component of £500,000 or more paid to UCITS Remuneration code staff should be subject to 60% deferral, management companies should also consider whether lesser amounts should be considered to be ‘particularly high’.

(3) Management companies should take into account, for example, whether there are significant differences within UCITS Remuneration Code staff in the levels of variable remuneration paid.

UCITS Remuneration Principle 5(g): Remuneration structures – performance adjustment, etc.

19E.2.22 R

A management company must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is:

(1) sustainable according to the financial situation of the management company as a whole; and

(2) justified according to the performance of:

(a) the UCITS;

(b) the business unit; and

(c) the individual concerned.

[Note: first sub-paragraph of article 14b(1)(o) of the UCITS Directive]

19E.2.23 G

(1) The total variable remuneration should generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs.
(2) When considering (1), management companies should take into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: second sub-paragraph of article 14b(1)(o) of the UCITS Directive]

UCITS Remuneration Principle 6: Measurement of performance

A management company must ensure that the measurement of performance used to calculate variable remuneration components, or pools of variable remuneration components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.

[Note: article 14b(1)(l) of the UCITS Directive]

UCITS Remuneration Principle 7: Pension Policy

A management company must ensure that:

(1) its pension policy is in line with the business strategy, objectives, values and long-term interests of:
   (a) the management company; and
   (b) the UCITS it manages;

(2) when an employee leaves the management company before retirement, any discretionary pension benefits are held by the management company for a period of five years in the form of the instruments referred to in § SYSC 19E.2.18R(1); and

(3) for an employee reaching retirement, discretionary pension benefits are:
   (a) paid to the employee in the form of instruments referred to in § SYSC 19E.2.18R(1); and
   (b) subject to a five-year retention period.

[Note: article 14b(1)(p) of the UCITS Directive]

UCITS Remuneration Principle 8: Personal investment strategies

A management company must ensure that its employees undertake not to use any of the following to undermine the risk alignment effects embedded in their remuneration arrangements:

(1) personal hedging strategies; or

(2) remuneration-related insurance; or

(3) liability-related insurance.

[Note: article 14b(1)(q) of the UCITS Directive]
A management company must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the UCITS Remuneration Code.

[Note: article 14b(1)(r) of the UCITS Directive]
SYSC 19F : Remuneration and performance management

Section 19F.1 : MiFID remuneration incentives

19F.1 MiFID remuneration incentives

Application

19F.1.1 (1) SYSC 19F.1 applies to:

(a) a common platform firm, unless it is a collective portfolio management investment firm;
(b) a MiFID optional exemption firm;
(c) a third country firm; and
(d) a UK branch of an EEA MiFID investment firm, unless it is a UCITS investment firm or an AIFM investment firm.

(2) In relation to a firm that falls under (1)(c), SYSC 19F.1 applies only in relation to activities carried on from an establishment in the United Kingdom.

Purpose

19F.2 This chapter contains rules implementing article 24(10) of MiFID and on remuneration policies and practices.

MiFID requirement on remuneration incentives

19F.3 A firm which provides investment services to clients must ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular, a firm must not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the firm could offer a different financial instrument which would better meet that client’s needs.

[Note: article 24(10) of MiFID]

Remuneration policies and practices

19F.4 (1) A dormant account fund operator in respect of its investment services and ancillary services, a MiFID optional exemption firm in respect of its investment services and ancillary services and a third country firm in respect of its MiFID or equivalent third country business must:

(a) define and implement remuneration policies and practices under appropriate internal procedures taking into account the interests of all the clients of the firm, with a view to ensuring that clients are treated fairly and their interests are not impaired by the remuneration practices adopted by the firm in the short, medium
or long term. Remuneration policies and practices must be designed in such a way so as not to create a conflict of interest or incentive that may lead relevant persons to favour their own interests or the firm’s interests to the potential detriment of any client;

(b) ensure that their remuneration policies and practices apply to all relevant persons with an impact, directly or indirectly, on investment services and ancillary services provided by the firm or on its corporate behaviour, regardless of the type of clients, to the extent that the remuneration of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the firm’s clients; and

(c) ensure that its management body approves, after taking advice from the compliance function, the firm’s remuneration policy. The senior management of the firm must be responsible for the day-to-day implementation of the remuneration policy and the monitoring of compliance risks related to the policy.

(2) (a) Remuneration and similar incentives must not be solely or predominantly based on quantitative commercial criteria, and must take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of clients and the quality of services provided to clients.

(b) A balance between fixed and variable components of remuneration must be maintained at all times, so that the remuneration structure does not favour the interests of the firm or its relevant persons against the interests of any client.

A firm should also be aware of:

(1) in the case of a common platform firm (but excluding a collective portfolio management investment firm), the requirements on remuneration in article 27 of the MiFID Org Regulation applying to it;

(2) the requirements in relation to remuneration policies (SYSC 4.3A.1AR) and conflicts of interest (SYSC 10.1.7R);

(3) the Finalised Guidance 13/01 entitled ‘Risks to customers from financial incentives’ published in January 2013; and

(4) the Finalised Guidance 15/10 entitled ‘Risks to customers from performance management at firms’ published in July 2015.
19.2 IDD remuneration incentives

Application

19.2.1 This section applies to insurance distributors carrying on insurance distribution activities from an establishment maintained by it, or its appointed representative, in the United Kingdom.

[Note: article 7(2) of the IDD]

19.2.1A This section does not apply to an authorised professional firm with respect to its non-mainstream regulated activities if:

   (1) the firm’s designated professional body has made rules which implement article 17(3) of the IDD;

   (2) those rules have been approved by the FCA under section 332(5) of the Act; and

   (3) the firm is subject to the rules in the form in which they were approved.

Remuneration and the customer’s best interests

19.2.2 (1) Insurance distributors must not:

   (a) be remunerated; or

   (b) remunerate or assess the performance of their employees, in a way that conflicts with their duty to comply with the customer’s best interests rules (ICOBS 2.5.-1R, in relation to a non-investment insurance contract, or COBS 2.1.1R, in relation to a life policy).

   (2) In particular, an insurance distributor must not make any arrangements by way of remuneration, sales target or otherwise that could provide an incentive to itself or its employees to recommend a particular contract of insurance to a customer when the insurance distributor could offer a different insurance contract which would better meet the customer’s needs.

[Note: article 17(3) of the IDD]
Chapter 20

Reverse stress testing
20.1 Application and purpose

Application

20.1.1 R

(1) SYSC 20 applies to:

(a) an IFPRU investment firm; and
(b) a BIPRU firm which meets any of the criteria in (2) on an individual basis, or in (3) on a consolidated basis.

(2) Subject to (4), SYSC 20 applies to a BIPRU firm if:

(a) it has assets under management or administration of at least £10 billion (or the equivalent amount in foreign currency); or
(b) the total annual fee and commission arising from regulated activities is at least £250 million (or the equivalent amount in foreign currency); or
(c) it has assets or liabilities of at least £2 billion (or the equivalent amount in foreign currency).

(3) Subject to (4), where all of the BIPRU firms within the same UK consolidation group or non-EEA sub-group, taken together, as if they were one firm, meet any of the criteria in (2), SYSC 20 applies to each of those BIPRU firms as if it individually met the criteria in (2).

(4) Any BIPRU firm which is included within the scope of SYSC 20 in accordance with (2) or (3) in any given year will continue to be subject to SYSC 20 for the following two years, irrespective of whether or not it continues to meet the inclusion criteria in any of those subsequent years.

Purpose

20.1.2 G

This chapter amplifies Principle 2, under which a firm must conduct its business with due skill, care and diligence, and Principle 3, under which a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

20.1.3 G

This chapter contains rules on reverse stress testing, which require a firm to identify and assess events and circumstances that would cause its business model to become unviable. This chapter also requires the firm’s senior management or governing body to review and approve the results of the
reverse stress testing exercise. This should help the firm’s senior management to identify the firm’s vulnerabilities and design a strategy to prevent or mitigate the risk of business failure.

20.1.4A The reverse stress testing requirements are an integral component of a firm’s business planning and risk management under SYSC. For IFPRU investment firms as referred to in SYSC 20.1.1AR (1)(a), this chapter amplifies SYSC 7.1.1 G to SYSC 7.1.8 G on risk control.
20.2 Reverse stress testing requirements

20.2.1 R As part of its business planning and risk management obligations under SYSC, a firm must reverse stress test its business plan; that is, it must carry out stress tests and scenario analyses that test its business plan to failure. To that end, the firm must:

(1) identify a range of adverse circumstances which would cause its business plan to become unviable and assess the likelihood that such events could crystallise; and

(2) where those tests reveal a risk of business failure that is unacceptably high when considered against the firm’s risk appetite or tolerance, adopt effective arrangements, processes, systems or other measures to prevent or mitigate that risk.

20.2.2 R Where the firm is a member of:

(1) [deleted]

(2) a UK consolidation group; or

(3) a non-EEA sub-group;

it must conduct the reverse stress test on a solo basis as well as on a consolidated basis in relation to the UK consolidation group or the non-EEA sub-group, as the case may be.

20.2.3 R The design and results of a firm’s reverse stress test must be documented and reviewed and approved at least annually by the firm’s senior management or governing body. A firm must update its reverse stress test more frequently if it is appropriate to do so in the light of substantial changes in the market or in macroeconomic conditions.

20.2.4 G (1) Business plan failure in the context of reverse stress testing should be understood as the point at which the market loses confidence in a firm and this results in the firm no longer being able to carry out its business activities. Examples of this would be the point at which all or a substantial portion of the firm’s counterparties are unwilling to continue transacting with it or seek to terminate their contracts, or the point at which the firm’s existing shareholders are unwilling to
provide new capital. Such a point may be reached well before the firm's financial resources are exhausted.

(2) The appropriate regulator may request a firm to quantify the level of financial resources which, in the firm's view, would place it in a situation of business failure should the identified adverse circumstances crystallise.

(3) In carrying out the stress tests and scenario analyses required by ■SYSC 20.2.1 R, a firm should at least take into account each of the sources of risk identified in accordance with ■GENPRU 1.2.30R (2).

20.2.5 G Reverse stress testing should be appropriate to the nature, size and complexity of the firm's business and of the risks it bears. Where reverse stress testing reveals that a firm's risk of business failure is unacceptably high, the firm should devise realistic measures to prevent or mitigate the risk of business failure, taking into account the time that the firm would have to react to these events and implement those measures. As part of these measures, a firm should consider if changes to its business plan are appropriate. These measures, including any changes to the firm's business plan, should be documented as part of the results referred to in ■SYSC 20.2.3 R.

20.2.6 G In carrying out its reverse stress testing, a firm should consider scenarios in which the failure of one or more of its major counterparties or a significant market disruption arising from the failure of a major market participant, whether or not combined, would cause the firm's business to fail.

20.2.7 G (1) The appropriate regulator may request a firm to submit the design and results of its reverse stress tests and any subsequent updates as part of its risk assessment.

(2) In the light of the results of a firm's reverse stress tests, the appropriate regulator may require the firm to implement specific measures to prevent or mitigate the risk of business failure where that risk is not sufficiently mitigated by the measures adopted by the firm in accordance with ■SYSC 20.2.1 R, and the firm's potential failure poses an unacceptable risk to the appropriate regulator's statutory objectives.

(3) The appropriate regulator recognises that not every business failure is driven by lack of financial resources and will take this into account when reviewing a firm's reverse stress test design and results.
Chapter 21

Risk control: additional guidance
21.1 Risk control: guidance on governance arrangements

Additional guidance on governance arrangements

1. This chapter provides additional guidance on risk-centric governance arrangements for effective risk management. It expands upon the general organisational requirements in SYSC 2, SYSC 3, SYSC 4, SYSC 7 and FUND 3.7, and so applies to the same extent as SYSC 3.1.1 R (for insurers, managing agents and the Society), SYSC 4.1.1 R (for every other firm) and FUND 3.7 (for a full-scope UK AIFM of an authorised AIF).

2. Firms should, taking account of their size, nature and complexity, consider whether in order to fulfil the general organisational requirements in SYSC 2, SYSC 3, SYSC 4, SYSC 7 and (for a full-scope UK AIFM of an authorised AIF) FUND 3.7 their risk control arrangements should include:

   (a) appointing a Chief Risk Officer; and

   (b) establishing a governing body risk committee.

   The functions of a Chief Risk Officer and governing body risk committee are explained further in this section.

3. The FCA considers that banks and insurers that are included in the FTSE 100 Index are examples of the types of firm that should structure their risk control arrangements in this way. However, this guidance will also be relevant to some similar sized firms (whether or not listed) and some smaller firms, by virtue of their risk profile or complexity.

4. For Solvency II firms, the PRA Rulebook: Solvency II firms: Senior Insurance Management Functions makes the chief risk function a PRA controlled function.

5. The chief risk function is having responsibility for overall management of the risk management system specified in PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3.

6. Solvency II firms may read references to Chief Risk Officer in SYSC 21 as if it were a reference to the risk management function in the PRA Rulebook.
Chief Risk Officer

21.1.2

(1) A Chief Risk Officer should:

(a) be accountable to the firm’s governing body for oversight of firm-wide risk management;
(b) be fully independent of a firm’s individual business units;
(c) have sufficient authority, stature and resources for the effective execution of his responsibilities;
(d) have unfettered access to any parts of the firm’s business capable of having an impact on the firm’s risk profile;
(e) ensure that the data used by the firm to assess its risks are fit for purpose in terms of quality, quantity and breadth;
(f) provide oversight and challenge of the firm’s systems and controls in respect of risk management;
(g) provide oversight and validation of the firm’s external reporting of risk;
(h) ensure the adequacy of risk information, risk analysis and risk training provided to members of the firm’s governing body;
(i) report to the firm’s governing body on the firm’s risk exposures relative to its risk appetite and tolerance, and the extent to which the risks inherent in any proposed business strategy and plans are consistent with the governing body’s risk appetite and tolerance. The Chief Risk Officer should also alert the firm’s governing body to and provide challenge on, any business strategy or plans that exceed the firm’s risk appetite and tolerance;
(j) provide risk-focused advice and information into the setting and individual application of the firm’s remuneration policy (Where the Remuneration Code applies, see in particular ■SYSC 19A.3.15 E. Where the BIPRU Remuneration Code applies, see in particular ■SYSC 19C.3.15 E. Where the dual-regulated firms Remuneration Code applies, see in particular ■SYSC 19D.3.16 E. Where the remuneration part of the PRA Rulebook applies, see the PRA’s Supervisory Statement on Remuneration).

[Note: The PRA’s Supervisory Statement on remuneration is available on the PRA website at http://www.bankofengland.co.uk/pra/Pages/default.aspx]

(2) Firms will need to seek the appropriate regulator’s approval for a Chief Risk Officer to perform:

(a) (for an SMCR firm) the PRA’s Chief Risk Function controlled function; or
(b) (for any other firm) the systems and controls function (see ■SUP 10A (FCA approved persons))

(3) The FCA expects that where a firm is part of a group it will structure its arrangements so that a Chief Risk Officer at an appropriate level within the group will exercise functions in (1) taking into account group-wide risks.
**Reporting lines of Chief Risk Officer**

21.1.3  
(1) The Chief Risk Officer should be accountable to a firm’s governing body.

(2) The FCA recognises that in addition to the Chief Risk Officer’s primary accountability to the governing body, an executive reporting line will be necessary for operational purposes. Accordingly, to the extent necessary for effective operational management, the Chief Risk Officer should report into a very senior executive level in the firm. In practice, the FCA expects this will be to the chief executive, the chief finance officer or to another executive director.

**Appointment of Chief Risk Officer**

21.1.4  
(1) Firms should ensure that a Chief Risk Officer’s remuneration is subject to approval by the firm’s governing body, or an appropriate sub-committee.

(2) Firms should also ensure that the Chief Risk Officer may not be removed from that role without the approval of the firm’s governing body.

21.1.4A  
(1) This guidance is relevant to an SMCR banking firm that has appointed a chief risk officer.

(2) Taking account of the nature, scale and complexity of its activities, the firm should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the chief risk officer does not undermine the independence of the chief risk officer.

(3) It will be appropriate, in many cases, for the procedures in (2) to include that any approval for the removal of the chief risk officer requires the approval of a majority of the governing body, including at least a majority of its members who do not perform any executive function in the firm.

(4) Similarly, it will also be appropriate, in many cases, for any other disciplinary sanctioning of the chief risk officer to require the approval of a majority of the governing body, including at least a majority of its members who do not perform any executive function in the firm.

**Governing body risk committee**

21.5  
(1) The FCA considers that, while the firm’s governing body is ultimately responsible for risk governance throughout the business, firms should consider establishing a governing body risk committee to provide focused support and advice on risk governance.

(2) Where a firm has established a governing body risk committee, its responsibilities will typically include:

(a) providing advice to the firm’s governing body on risk strategy, including the oversight of current risk exposures of the firm, with particular, but not exclusive, emphasis on prudential risks;
(b) development of proposals for consideration by the governing body in respect of overall risk appetite and tolerance, as well as the metrics to be used to monitor the firm's risk management performance;

(c) oversight and challenge of the design and execution of stress and scenario testing;

(d) oversight and challenge of the day-to-day risk management and oversight arrangements of the executive;

(e) oversight and challenge of due diligence on risk issues relating to material transactions and strategic proposals that are subject to approval by the governing body;

(f) provide advice to the firm's remuneration committee on risk weightings to be applied to performance objectives incorporated in the incentive structure for the executive;

(g) providing advice, oversight and challenge necessary to embed and maintain a supportive risk culture throughout the firm.

(3) Where a governing body risk committee is established, its chairman should be a non-executive director, and while its membership should predominantly be non-executive it may be appropriate to include senior executives such as the chief finance officer.

21.1.6 In carrying out their risk governance responsibilities, a firm's governing body and governing body risk committee should have regard to any relevant advice from its audit committee or internal audit function concerning the effectiveness of its current control framework. In addition, they should remain alert to the possible need for expert advice and support on any risk issue, taking action to ensure that they receive such advice and support as may be necessary to meet their responsibilities effectively.
Chapter 22

Regulatory references
22.1 Application

General application

22.1.1 G This chapter applies to all firms (subject to SYSC 22.1.5R).

Activities covered

22.1.2 R This chapter is not limited to regulated activities or other specific types of activities.

Territorial scope and overseas firms

22.1.3 R There is no territorial limitation on the application of this chapter, subject to SYSC 22.1.5R and SYSC 22.1.6R.

22.1.4 G One effect of SYSC 22.1.3R is that the obligation to provide a reference can apply even if the employee worked in an overseas office of the employer.

22.1.5 R This chapter does not apply to:

1. an overseas firm that does not have an establishment in the United Kingdom;
2. a UCITS qualifier (see section 266 of the Act (Disapplication of rules));
3. an AIFM qualifier; or
4. an incoming EEA firm that is an EEA pure reinsurer.

22.1.6 R For an incoming firm or any other overseas firm, SYSC 22.2.2R (Obligation to give references) only applies if the current or former employee in question (defined as "P" in SYSC 22.2.2R) is or was an employee of its branch in the United Kingdom and only relates to their activities as such.

22.1.7 R (1) In order to decide whether someone is an employee of a branch, the Glossary definition of employee is applied to the branch as if the branch and the firm of which it forms part were separate firms.

2. For the purpose of (1), paragraph (4A)(c) of the definition of employee (someone employed elsewhere in the group) does not apply.
22.2 Getting, giving and updating references: the main rules

Obligation to obtain references (applicable to SMCR firms)

22.2.1 If an SMCR firm (A) is considering:

(a) permitting or appointing someone (P) to perform a \textit{controlled function}; or
(b) issuing a certificate under the certification regime for P;

(as explained in more detail in rows (A) and (B) of the table in Section 22.2.3). A must take reasonable steps to obtain appropriate references from:

(c) P’s current \textit{employer}; and
(d) anyone who has been P’s \textit{employer} in the past six years.

(2) A must take reasonable steps to obtain the reference before the time in column two of the applicable row in the table in Section 22.2.3. If A does not obtain it within that time it must take reasonable steps to obtain it as soon as possible thereafter.

(3) A must in particular request:

(a) the information in Section 22.2.2R(1) to (3); and
(b) (if P’s current or previous \textit{employer} is also an SMCR firm) the information in Section 22.2.2R(4) (questions (A) to (F) of Part One of Section 22 Annex 1).

(4) When deciding what information to request under (1), A must have regard to the factors in Section 22.2.2R(5) (Factors set out in Section 22 Annex 2).

Obligation to give references

22.2.2 A firm (B) must provide a reference to another firm (A) as soon as reasonably practicable if:

(a) A is considering:

(i) permitting or appointing someone (P) to perform a \textit{controlled function}; or
(ii) issuing a certificate under the certification regime for P; or
(iii) appointing P to another position in the table in Section 22.2.3;

(as explained in more detail in the table in Section 22.2.3).
(b) A makes a request, for a reference or other information in respect of P from B, in B’s capacity as P’s current or former employer;

(c) B:
   (i) is P’s current employer; or
   (ii) has been P’s employer at any time in the six year period preceding the request in (1)(b); and

(d) A indicates to B the purpose of the request.

(2) B must disclose to A in the reference all information of which B is aware that B reasonably considers to be relevant to A’s assessment of whether P is fit and proper.

(3) B is only required to disclose under (1) and (2) something that occurred or existed:
   (a) in the six years before the request for a reference; or
   (b) between the date of the request for the reference and the date B gives the reference; or
   (c) (in the case of serious misconduct) at any time.

[Note: See SYSC 22.5.10G and SYSC 22.5.11G for guidance on the meaning of serious misconduct]

(4) Where B is an SMCR firm:
   (a) B must in addition disclose the information in questions (A) to (F) of Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements); and
   (b) B must disclose the information in (a) whether or not A is an SMCR firm.

(5) When deciding what information to give to A under (1) to (3), B must have regard to the factors in SYSC 22 Annex 2R (Factors to take into account when asking for and giving regulatory references).

### Table: What positions need a reference

<table>
<thead>
<tr>
<th>Position</th>
<th>When to obtain reference</th>
<th>Comments</th>
</tr>
</thead>
</table>
| (A) Permitting or appointing someone to perform an FCA controlled function or a PRA controlled function. | One month before the end of the application period | Where a request for a reference would require:
   (a) the firm requesting the reference;  
   (b) the employer giving the reference; or  
   (c) any other person; |
### WHEN TO OBTAIN REFERENCE

<table>
<thead>
<tr>
<th>Position</th>
<th>When to obtain reference</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(B) Issuing a certificate under section 63F of the Act</td>
<td>Before the certificate is</td>
<td>This includes renewing an existing certificate.</td>
</tr>
<tr>
<td>(C) Appointing someone to any of the following positions (as defined in the PRA Rulebook):</td>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td>(a) a notified non-executive director;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) a credit union non-executive director;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) a key function holder.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note 1:** Mandatory disclosure means an obligation in any applicable laws, regulations or rules to declare or disclose information to the public.

**Note 2:** P refers to the employee or ex-employee about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.

**Note 3:** The application period means the period for consideration referred to in section 61 of the Act (Determination of application).

### Obligation to revise references: The main rule (applicable to SMCR firms)

**22.2.4 R** If at any time:

1. an SMCR firm (B) has given a reference under SYSC 22.2.2R to another firm (A) about an employee or ex-employee of B (P);
2. B was also an SMCR firm when it gave the reference in (1);
3. either of the following applies:
   1. B is aware of matters or circumstances that mean that if B had been aware of them when giving that reference, this chapter would have required B to draft the reference differently; or
   2. the following applies:
      1. B has since giving the reference reached conclusions of the type described in question (E) of Part One of SYSC 22 Annex 1R or taken disciplinary action of the type described in question (F) of Part One of SYSC 22 Annex 1R; and
(ii) if B had taken or reached those conclusions or actions within the six year period referred to in Part One of SYSC 22 Annex 1R, this chapter would have required B to draft the reference differently; and

(4) it would be reasonable to consider the differences in (3) to be significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must:

(5) make reasonable inquiries as to the identity of P’s current employer;

and

(6) give A details of those differences in writing as soon as reasonably practicable, unless SYSC 22.2.5R says that B does not have to do so.

22.2.5 R B does not need to update A if:

(1) A is no longer a firm;

(2) P has not yet been employed by A (because, for example, P is still working their notice period with B) and it is no longer intended for A to employ P;

(3) A is no longer P’s employer; or

(4) despite making reasonable enquiries under SYSC 22.2.4R, B does not know whether P is still employed by A.

22.2.6 R This rule sets out time limits about the obligation to update a reference in SYSC 22.2.4R.

(1) If B still employs P, SYSC 22.2.4R applies throughout the period B remains employed.

(2) If B no longer employs P, the obligation to update ends six years after P ceased to be employed by B.

(3) If B no longer employs P and the matters or circumstances are not serious misconduct by P, B does not have to disclose something if it did not occur or exist in the six year period ending on the date B gave the original reference. This limitation applies in addition to the one in (2).

[Note: See SYSC 22.5.10G and SYSC 22.5.11G for guidance on the meaning of serious misconduct]
Obligation to revise references: Finding out who the current employer is (all firms)

If at any time:

1. an SMCR firm (B) has given a reference under SYSC 22.2.2R to another firm (A) about an employee or ex-employee of B (P);
2. B asks A whether P is still an employee of A; and
3. B gave A the reference no more than six years ago;

A must answer that question as soon as reasonably practicable, even if B does not tell A why it wants to know that information.
### 22.3 Drafting the reference and the request for a reference

#### How to draft the reference

**22.3.1** There are no requirements about the form in which a *firm* that is not an *SMCR firm* should give a reference.

**22.3.2** [SYSC 22.4](#) has requirements about the form in which an *SMCR firm* should give a reference.

#### How to draft the request for a reference

**22.3.3**

1. A *firm* (A) asking another *firm* (B) for a reference should give B sufficient information to let B know that the requirements in this chapter apply to the reference it is being asked to give and which requirements apply.

2. As long as it complies with (1), A does not have to set out specifically the information this chapter requires it to obtain. This is because B should include that information even though B is not specifically asked to include it.

**22.3.4** A *firm* asking for a reference under this chapter from a current or former *employer* that is not a *firm* will normally need to specify what information it would like.

#### Inclusion of additional material

**22.3.5**

1. This chapter sets out minimum requirements for a reference. It does not prevent a *firm* from including more than is required by this chapter.

2. If a *firm* does disclose more than is required by this chapter the reference should still meet its duties under general law to its former *employee* and the recipient (see [SYSC 22.5.3G](#) to [SYSC 22.5.5G](#)).

**22.3.6** Nothing in this chapter prevents a *firm* from disclosing material outside the time limits under this chapter.
22.4 Drafting the reference: detailed requirements for full scope regulatory reference firms

Purpose of SYSC 22 Annex 1R

22.4.1 SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) has two purposes:

(1) to set out what information an SMCR firm should disclose under SYSC 22.2.2R(4); and

(2) to provide a template that an SMCR firm should use when giving a reference under this chapter.

How to draft the reference

22.4.2 (1) An SMCR firm must use the template in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) when giving a reference under this chapter to another firm (A).

(2) A firm may make minor changes to the format of the template in Part One of SYSC 22 Annex 1R when giving a reference under this chapter, provided that the reference includes all the information required by SYSC 22 Annex 1R.

(3) This rule applies even if A is not an SMCR firm.

22.4.3 (1) SYSC 22.4.2R does not stop an SMCR firm including matters in the reference not required by the template in SYSC 22 Annex 1R.

(2) An SMCR firm may include the material required by the template and additional material in the same document.

(3) Any additional material should not alter the scope of any of the questions in the templates.

22.4.4 An SMCR firm should use the template in SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) even if the firm asking for the reference does not specifically ask it to.
22.4.5 **PRA requirements**

B may combine in a single reference what the PRA’s rules require and what this chapter requires.
22.5 Giving references: additional rules and guidance for all firms

Verification

22.5.1 R This chapter does not require a firm to disclose information that has not been properly verified.

22.5.2 G (1) For example, this chapter does not necessarily require a firm to include in a reference the fact that an ex-employee left while disciplinary proceedings were pending or had started. Including such information is likely to imply that there is cause for concern about the ex-employee but the firm may not have established that the ex-employee was actually responsible for misconduct.

(2) However, a firm may include such information in a reference if it wishes to (see SYSC 22.3.5G).

Accuracy

22.5.3 G A firm should, when giving a reference under this chapter, provide as complete a picture of an employee’s conduct record as possible to new employers.

Fairness

22.5.4 G (1) A firm supplying a reference in accordance with this chapter owes a duty under the general law to its former employee and the recipient firm to exercise due skill and care in the preparation of the reference.

(2) The firm may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed.

(3) References should be true, accurate, fair and based on documented fact.

22.5.5 G (1) An example of the general duty described in SYSC 22.5.4G is that fairness will normally require a firm to have given an employee an opportunity to comment on information in a reference. The firm might do this through, for example, disciplinary proceedings.
Paragraph (1) does not mean that the firm should provide an opportunity to comment on the reference itself, as opposed to the allegations on which it is based.

A firm may have given the employee an opportunity to comment on allegations that are later included in a reference even though, at the time that the firm is giving that opportunity, no reference is being contemplated. That may mean that the firm gives the employee their opportunity to comment on the allegations some time before the reference is prepared.

Paragraph (1) does not mean that a firm will be unable to include an allegation in a reference if it has offered the employee an opportunity to comment on the allegation but the employee has unreasonably refused to do so.

Where a firm should have given an employee an opportunity to comment on an allegation if the allegation is to be included in a reference, this chapter requires the firm to give the employee that opportunity rather than merely to leave the allegation out of the reference.

Paragraph (5) may mean that where the firm has not given its employee an opportunity to comment on a matter at the time it first arose, it will have to give the employee the opportunity around the time that the firm is preparing the reference.

The obligation to give an employee an opportunity to comment does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see SYSC 22.5.18G).

This chapter does not require the employee’s views to be included in the reference. Instead the firm should take those views into account so far as appropriate when deciding whether something should be disclosed and how the disclosure is drafted.

Outsourcing

The requirements in this chapter for a firm (B) to give a firm (A) a reference also apply where A has outsourced the collection of that information to another (unregulated) third party, where B has been made aware that the unregulated third party is acting on behalf of A.

Circumstances in which the ex-employee left

The obligation to give a reference for an employee or ex-employee applies however the employment ended or is going to end. For example, it applies whether it ended through resignation, redundancy, dismissal or fixed term work, a secondment or temporary work coming to an end.

Missing or incomplete information

If a firm’s records do not cover the maximum periods contemplated by SYSC 22.2.2R or SYSC 22 Annex 1R (Template for regulatory
references given by SMCR firms and disclosure requirements), the firm should note that in the reference.

(2) A firm should not include a warning of the type described in (1) as a matter of routine. It should only be included if there is a genuine need to include it.

All relevant information: Calculation of six year period for disclosure

22.5.9  G

(1) In general there is a six year limit on what should be disclosed under SYSC 22.2.2R(1) to (3).

(2) Where the matter to be disclosed consists of a single course of conduct (such as market manipulation) the six year period does not begin until that course of conduct has come to an end. This means that individual events that occurred more than six years ago may still be within the six year limit.

(3) This guidance is also relevant to the six year time limits for updating references in SYSC 22.2.6R.

All relevant information: Removal of six year period

22.5.10  G

(1) SYSC 22.2.2R(1) to (3) normally has a six year time limit. SYSC 22.2.2R(3)(c) removes that time limit for serious matters. This paragraph (SYSC 22.5.10G) and SYSC 22.5.11G have guidance about this. This guidance is also relevant to the time limits for updating references in SYSC 22.2.6R.

(2) The removal of the time limit does not mean that the time that has elapsed since the matter occurred is irrelevant. The length of time that has elapsed is relevant to deciding whether the matter is serious. In general, the longer ago the matter occurred, the less likely it is still to be serious for these purposes.

(3) In determining whether something is serious for these purposes, the key question is how important the information still is for the requesting firm’s assessment of the employee’s fitness for the function that they are going to perform.

(4) In considering what is relevant, a firm should, in particular, have regard to SYSC 22.5.4G (Fairness).

(5) The table in SYSC 22.5.11G provides guidance on some of the factors which a firm should take into account when determining whether a matter is serious.

(6) The guidance in this paragraph and in the table in SYSC 22.5.11G is only designed for the purposes of this chapter. It does not, for example, apply for the purposes of SUP 15 (Notifications to the FCA), DEPP or EG.

Table: Examples of factors to take into account when deciding whether old misconduct is sufficiently serious to disclose
## Factors to take into account

<table>
<thead>
<tr>
<th>(A) Whether P has committed a serious breach of individual conduct requirements.</th>
<th>Individual conduct requirements has the same meaning as in Part Two of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements). Factors to take into account in deciding whether the breach is serious include the following. (1) The extent to which the conduct was deliberate or reckless. (2) The extent to which the conduct was dishonest. (3) Whether the breaches are frequent or whether they have continued over a long period of time. The fact that breaches were frequent or repeated may increase the likelihood that they should be disclosed since the breaches may show a pattern of non-compliance. (4) The extent of loss, or risk of loss, caused to existing, past or potential investors, depositors, policyholders or other counterparties or customers. (5) The reasons for the breach. For example, where the breach was caused by lack of experience which has been remedied by training or further experience, it is less likely that the breach will still be relevant.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(B) Whether the conduct caused B to breach requirements of the regulatory system or P was concerned in a contravention of such a requirement by B and, in each case, whether P’s conduct was itself serious.</td>
<td>(1) The factors in (A) are relevant to whether P’s conduct was serious. (2) The seriousness of the breach by B is relevant. The factors in (A) are also relevant to this. (3) A breach by B of certain requirements is always likely to be serious under (2). Breach of the threshold conditions is an example. However that does not mean that P’s involvement will automatically be serious. Dishonesty is an important factor but it is not automatically decisive in every case. For instance, a small one-off case of dishonesty many years ago may not be sufficiently serious to require disclosure.</td>
</tr>
<tr>
<td>(C) Whether P’s conduct involved dishonesty (whether or not also involving a criminal act).</td>
<td></td>
</tr>
<tr>
<td>(D) Whether the conduct would have resulted in B’s dismissing P, had P still been working for B, based on B’s disciplinary policies and the requirements of the law about unfair dismissal.</td>
<td></td>
</tr>
</tbody>
</table>
Factors to take into account

<table>
<thead>
<tr>
<th>(E) Whether the conduct was such that, if B was considering P for a role today and became aware of the historical conduct, B would not employ P today notwithstanding the time that has passed.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Note 1:</strong> P refers to the employee about whom the reference is being written.</td>
</tr>
<tr>
<td><strong>Note 2:</strong> B refers to the firm giving the reference.</td>
</tr>
</tbody>
</table>

**Breach of APER**

22.5.12

(1) An example of information that may be relevant under SYSC 22.2.2R(1) to (3) is the fact that the employee has breached a requirement in APER.

(2) This means that any firm (not just one that is an SMCR firm) should consider whether it needs to disclose a breach of individual conduct requirements (as defined in Part Two of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)) when giving a reference under this chapter.

**Agreements not to disclose information**

22.5.13

A firm must not enter into any arrangements or agreements with any person that limit its ability to disclose information under this chapter.

22.5.14

SYSC 22.5.13R covers all types of agreements and arrangements. For example:

(1) it is not limited to an agreement or arrangement entered into when the employee leaves;

(2) it applies however the employment ends (see SYSC 22.5.7G); and

(3) it covers a “COT 3” Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS).

22.5.15

A firm should not give any undertakings to suppress or omit relevant information in order to secure a negotiated release.

22.5.16

The obligation to supply information to another firm under this chapter will apply notwithstanding any agreement prohibited by SYSC 22.5.13R.

**Time in which to respond to reference requests**

22.5.17

The FCA expects that normally a firm should issue a reference under this chapter within six weeks of being asked to.
Duty to investigate allegations

22.5.18  A firm should, wherever feasible, conclude investigative procedures before the employee departs.

(2) However, this chapter does not create a duty to investigate alleged misconduct by an employee or former employee.

(3) There are several reasons why a firm may find it appropriate to investigate potential misconduct by an employee or former employee, including:

(a) assessing the actual and potential damage resulting from misconduct;

(b) identifying other individuals potentially culpable or accountable for the breach;

(c) satisfying itself that the SMF manager responsible for the areas where the misconduct occurred took reasonable steps to prevent or stop it; and

(d) (where the employee has remuneration susceptible to malus or clawback) enabling it to consider whether any adjustments are justified.

Criminal record checks

22.5.19  A firm giving a reference need not include information from a criminal records check it has carried out under Part V of the Police Act 1997 (Certificates of Criminal Records, &). The recruiting firm should carry out a criminal records check itself if necessary. SUP 10C.10.16R requires an SMCR firm to carry out such a check when appointing an SMF manager.
22.6 Giving and updating references: additional rules and guidance for SMCR firms

Omitting or supplementing mandatory disclosures

22.6.1 (1) A firm may have concluded that an employee is unfit or has breached COCON or APER (as described in questions (E) to (F) of Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)). The firm may later become aware of facts or matters causing it to revise its original conclusions.

(2) If so, the firm may decide not to disclose in a reference its conclusion or may qualify its conclusion with supplementary information.

22.6.2 (1) A firm may have concluded that an employee is unfit or has breached COCON or APER (as described in questions (E) to (F) of Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)). However the firm may consider that the disclosure is incomplete without including mitigating circumstances.

(2) For example, if the firm is reporting a breach of COCON it may consider that the breach is very uncharacteristic of the employee and that they have had an exemplary record since then. In that case, the firm should include those views.

Requirement to consider whether there has been a conduct breach

22.6.3 (1) If a firm has taken disciplinary action of the type referred to in question (F) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) against an employee and is asked to give a reference about that employee, the firm should (if it has not already done so) consider whether the basis on which it took that action amounts to a breach of any individual conduct requirements covered by question (F).

(2) If the firm decides that the basis on which it took that action does amount to a breach of those requirements, it should include that disciplinary action in the reference under question (F).

(3) Paragraph (2) applies even if the grounds of the disciplinary action did not include such a breach of individual conduct requirements.
(4) The requirement in (1) is disapplied for disciplinary action taken before certain specified dates, where a firm’s records do not record whether previous conduct subject to disciplinary action amounted to a breach. The date differs between different types of SMCR firms. SYSC TP 5 and SYSC TP 7 set out those specified dates and other details.

(5) The obligation to consider whether there was a conduct breach does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see SYSC 22.5.18G).

All relevant information: Interaction with mandatory disclosures

22.6.4

(1) SYSC 22.2.2R(1) to (3) may require an SMCR firm to disclose information that goes beyond the mandatory minimum information in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).

(2) This may mean, for instance, that a firm should in some cases disclose a conclusion that an employee or former employee has breached COCON or APER where that conclusion was reached outside the time limits in Part One of SYSC 22 Annex 1R.

Updating references fairly

22.6.5

(1) SYSC 22.5.1R to SYSC 22.5.5G (Verification, accuracy and fairness) also apply to updating a reference under SYSC 22.2.4R.

(2) Therefore fairness may require a firm to have given an employee an opportunity to comment on an allegation if it is included in an update to a reference.
22.7  Getting references: additional rules and guidance for SMCR firms

Intra-group transfers

22.7.1  R

(1) This rule applies when:

(a) an SMCR firm (A) would otherwise have to ask another person (B) for a reference under ■ SYSC 22.2.1R; and

(b) A and B are in the same group.

(2) A need not ask for a reference from B if there are adequate arrangements in place under which A has access to the same information sources as B to the extent that they are relevant to things A has to ask B under ■ SYSC 22.2.1R (Obligation to obtain references).

(3) If A only has access to some of the information sources in (2), A may ask for a reference that only covers the sources to which A does not have such access.

(4) If A, in accordance with this rule, does not ask for a reference or a full reference it must access the information resources referred to in this rule and get the relevant information within the time specified by ■ SYSC 22.2.3R.

22.7.2  G

(1) ■ SYSC 22.7.1R means that a firm recruiting someone from another member of its group is not required to request a reference from the other where the group has centralised records or alternative measures in place to ensure sharing of relevant information between its members.

(2) The recruiting firm should be satisfied that the centralised or alternative measures ensure relevant information is made available as part of the fit and proper assessment of the recruit.

Who should be asked to give a reference

22.7.3  G

The Glossary definition of employer covers more than just a conventional employer and so it may not always be obvious who a person’s employer is. Therefore an SMCR firm appointing someone to a position that requires a reference may have to get the employee’s help in identifying their previous employers.
(1) SYSC 22.2.1R (Obligation of an SMCR firm to try to obtain a reference) applies even if the ex-employer is not a firm.

(2) An SMCR firm should take all reasonable steps to try to obtain the reference in these circumstances. However, the FCA accepts that the previous employer may not be willing to give sufficient information.

### Asking for a reference to be updated

(1) SYSC 22.2.1R (Obligation of an SMCR firm to try to obtain a reference) applies even if the employer has already got a reference for the employee. For example:

   (a) an SMCR firm should have a reference whenever it renews the certificate of a certification employee; and

   (b) changing jobs within the same SMCR firm may require a reference.

(2) However, the SMCR firm does not necessarily need to obtain a new reference each time (a) or (b) above occurs. That is because an existing reference will very often still be appropriate for the purpose (see SYSC 22.7.6G to SYSC 22.7.8G).

If an SMCR firm (A):

(1) appoints someone (P) to a certification function position;

(2) obtains a reference from an ex-employer; and

(3) later wishes to renew P’s certificate under the certification regime;

it is unlikely that A will need to ask for another reference from that ex-employer or ask for it to be reissued unless there is a change in P’s role of the type described in SYSC 27.2.15G (major changes in role).

(1) If an SMCR firm (A):

   (a) appoints someone (P) to a certification function or an approved person position;

   (b) obtains a reference from an ex-employer (B); and

   (c) later wishes to:

      (i) appoint P to another certification function or approved person position; or

      (ii) keep P in the same certification function but make a change in P’s role of the type described in SYSC 27.2.15G (major changes in role), whether that change is made at a time when the certificate has not yet come up for renewal or at the time it is being reissued; or

      (iii) move P from a certification function to an approved person position or vice versa;
A should consider whether to ask B to reissue or amend its reference.

(2) A may decide that it is not necessary to ask B to reissue or amend its reference. For example, A may decide that:
(a) the existing reference already covers everything necessary; or
(b) (where B is not a firm) B will not give any further information.

22.7.8 If:
(1) a firm (A) appoints someone (P) to a certification function or approved person position;
(2) A obtains a reference from an ex-employer (B);
(3) later P transfers to a certification function or an approved person position with an SMCR firm in A’s group (C);
(4) B’s reference is:
   (a) addressed to all firms in A’s group; or
   (b) otherwise drafted so that it is clear that C may rely on it; and
(5) C does not need to ask for the reference to be reissued or amended, taking account of ■SYSC 22.7.6G and ■SYSC 22.7.7G;

C may be able to rely on that reference without asking B to give another one.

When references are to be obtained

22.7.9 If an SMCR firm is unable to obtain a reference by the time in column two of the table in ■SYSC 22.2.3R, it should still try to obtain the reference as soon as possible afterwards.

22.7.10 (1) Where an SMCR firm needs to fill a vacancy for a certification function which could not have reasonably been foreseen, the FCA recognises that it may not be reasonable to expect the SMCR firm to obtain references prior to issuing a certificate.
(2) In such cases, the SMCR firm should take up the reference as soon as reasonably possible.
(3) If a reference obtained later raises concerns about the person’s fitness and propriety, the SMCR firm should revisit its decision to issue the person with a certificate.

22.7.11 (1) Although this chapter (see ■SYSC 22.2.3R) only requires an SMCR firm to try to get a reference for a person it is recruiting to perform an FCA controlled function or a PRA controlled function towards the end of the application process, the FCA would normally expect a firm to have obtained the reference before the application for approval is made.
(2) The main examples of circumstances in which it would be reasonable for a firm to delay getting a reference are where asking for a reference earlier will create a serious risk of:

(a) breaching the confidentiality of a wider commercial or corporate transaction;

(b) prematurely triggering the need for a public announcement; or

(c) the candidate not applying for the position in the first place because it would reveal to the candidate’s current employer the proposed move too soon.

(3) The FCA may consider that it needs to see the information in a reference before it reaches a decision. If so, it may formally ask for that information and extend the time period in which it has to make its decision until it gets the reference. SUP 10C.10.28G gives additional details about requests for further information and the effect they have on the period of time the FCA has to make a decision about an application.

(4) SMCR firm are reminded that the Act itself requires a firm to be satisfied that a candidate is fit and proper before it makes an application for approval (see SUP 10C.10.14G for more detail). SYSC 22.7.11G(2) does not affect that obligation.
22.8 Policies and appointed representatives

Policies and procedures

22.8.1 R A firm must establish, implement and maintain policies and procedures that are adequate for the purpose of complying with the obligations in this chapter.

22.8.2 G (1) SYSC 22.8.1R does not require a firm to create or keep records that are not required under SYSC 22.9.1R (General record keeping rules) or another rule.

(2) (1) applies to a firm whether or not SYSC 22.9.1R applies to it.

Appointed representatives

22.8.3 R This chapter applies to a firm’s appointed representatives as well as to the firm.

22.8.4 R When SYSC 22.8.3R applies to an SMCR firm, the requirements of this chapter for firms that are not SMCR firms apply in place of the requirements that only apply to SMCR firms. In particular, the following requirements do not apply in relation to an appointed representative:

(1) SYSC 22.2.1R (Obligation to obtain references);

(2) SYSC 22.2.2R(4) (Obligation to give references);

(3) SYSC 22.2.4R to SYSC 22.2.6R (Obligation to revise references);

(4) SYSC 22.4.2R (How to draft the reference);

(5) SYSC 22.7.1R (Intra-group transfers); and

(6) SYSC 22.9.1R (General record keeping rules).

22.8.4A R (1) The approved person’s authorised approved person employer is responsible for compliance with SYSC 22.8.3R in the case of a requirement:

(a) to give a reference about an approved person whose approval is under SUP 10A.1.15R to SUP 10A.1.16BR (Appointed representatives); and
22.8.5  
One effect of SYSC 22.8.4R is that when an appointed representative appoints an approved person under SUP 10A.1.16BR (appointed representatives of an SMCR firm) there is no requirement for the appointed representative or its principal to request a reference.

22.8.6  
(1) A firm should ensure that its appointed representative gives a reference when another firm (or its appointed representative) asks that appointed representative to give a reference in accordance with this chapter.

(2) A firm is not responsible for its appointed representative’s giving references if another principal has accepted responsibility for this.

(3) The appointed representative need not give the reference using the template in SYSC 22 Annex 1 (Template for regulatory references given by SMCR firms and disclosure requirements).

22.8.6A  
If an appointed representative asks a firm for a reference, the firm should give one. The requirements of this chapter apply to the firm in the same way as they would if the appointed representative were a firm.

Getting and giving a reference where the employee has worked in a group or on secondment

22.8.7  
If:

(1) a firm (A) is thinking of employing someone (P);

(2) P is employed by a group services company (D) that is not a firm;

(3) P (in their capacity as an employee of D) performs a function or service for a firm (B) in the same group as D such that P is also an employee of B; and

(4) A intends to appoint (P) to a position that entitles A to obtain a reference from B;

then:

(5) (if A is an SMCR firm) A should ask both B and D for a reference;

(6) B is obliged to give the reference if A asks it to (whether or not A is an SMCR firm);
(7) B should ask D to provide it with the information needed to provide a reference in accordance with this chapter;

(8) D may give a reference but (as it is not a firm) it is not obliged to; and

(9) D and B may give a single joint reference.

22.8.8 G SYSC 22.8.7G also applies where:

(1) D is not in the same group but has seconded P to B; and

(2) P (in their capacity as an employee of D) performed any function or services for B such that P was also an employee of B.

22.8.9 G If:

(1) a firm (A) is thinking of appointing someone (P) to a position that entitles A to obtain a reference from another firm (B); and

(2) P was an employee of other members of B’s group as well as of B;

then:

(3) (if A is an SMCR firm) A should ask all the group members that employed P for a reference;

(4) B should give a reference if A asks it to (whether or not A is an SMCR firm);

(5) P’s employers in that group (including any that are not firms) may give a single joint reference; and

(6) if the reference is being provided on a consolidated group basis, it should be clear what information is relevant to which employer within the group.
22.9 Records

General record keeping rules (applicable to SMCR firms)

22.9.1 [R] (1) An SMCR firm must arrange for orderly records to be created and kept that are sufficient to enable it to comply with the requirements of this chapter.

(2) This rule only applies to records in relation to the following questions in Part One of [SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)]:

(a) question (E) (fit and proper); and

(b) question (F) (disciplinary action).

Time limit for records to be kept (applicable to SMCR firms)

22.9.2 [G] [SYSC 22.9.1R does not have an express time limit for which a firm should retain the records as its effect is that those time limits are the same as the time limits in [SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)].

Reduction in disclosure obligations where there are limited record keeping requirements (all firms)

22.9.3 [R] A firm does not breach the requirements of this chapter by failing to include information in a reference that it would otherwise have to include if:

(1) the reason for the omission is that the firm does not have the necessary records; and

(2) neither [SYSC 22.9.1R nor any other requirement of or under the regulatory system requires the firm to have those records.

22.9.4 [G] If a firm is asked to give a reference in circumstances where the record keeping requirements in [SYSC 22.9.1R do not apply:

(1) it is still required to give the reference;

(2) it should give the reference based on the records it does have; and

(3) it will not breach the requirements of this chapter by failing to include information in a reference if the reason for this is that it does
not have the necessary records, as long as it is not required to have those records by some other requirement in the Handbook outside this chapter or some other requirement of or under the regulatory system.

Effect of previous record keeping requirements (applicable to SMCR firms)

22.9.5  

(1) SYSC 22.9.1R applies to keeping records created before the date this chapter came into force as well as ones created afterwards.

(2) An SMCR firm does not breach the requirements of this chapter by failing to include something in a reference or by failing to have records because it destroyed the relevant records before the date this chapter came into force in accordance with the record keeping requirements applicable to it at the time of destruction.

(3) (1) also applies to records created before this chapter (or the relevant provision of this chapter) first applied to the firm.

(4) (2) also applies if the firm destroyed the records before this chapter (or the relevant provision of this chapter) first applied to it.
Template for regulatory references given by SMCR firms and disclosure requirements

Part One: Form of Template

Guide to using this template:
Each question must be answered. Where there is nothing to disclose, this should be confirmed by ticking the “No” box for the relevant question.

In this template:
• “we” / “our firm” refers to the firm or firms giving the reference (as set out in either 1A or 1B below);
• “individual” refers to the subject of the reference (as set out in 2 below); and
• “your” refers to the firm requesting the reference (as set out in 3 below).

<table>
<thead>
<tr>
<th>Information requested</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A Name, contact details and firm reference number of firm providing reference; or</td>
<td></td>
</tr>
<tr>
<td>1B Names, contact details and firm reference numbers (where applicable) of group firms providing a joint reference</td>
<td></td>
</tr>
<tr>
<td>2 Individual’s name (i.e. the subject of the reference)</td>
<td></td>
</tr>
<tr>
<td>3 Name, contact details and firm reference number of firm requesting the reference</td>
<td></td>
</tr>
<tr>
<td>4 Date of request for reference</td>
<td></td>
</tr>
<tr>
<td>5 Date of reference</td>
<td></td>
</tr>
</tbody>
</table>

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference.

Question A
Has the individual:
(1) performed a certification function for our firm; or
(2) been an approved person for our firm.
Answer:
Yes
No

Question B:
Has the individual performed one or more of the following roles in relation to our firm:
The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference.

(1) notified non-executive director;
(2) credit union non-executive director; or
(3) key function holder (other than a controlled function).

**Answer:**
Yes
No

**Question C:**
If we have answered ‘yes’ to either Question A or B above, we set out the details of each position held below, including:

(1) what the controlled function, certification function or key function holder role is or was;
(2) (in the case of a controlled function) whether the approval is or was subject to a condition, suspension, limitation, restriction or time limit;
(3) whether any potential FCA governing function is or was included in a PRA controlled function; and
(4) the dates during which the individual held the position.

**Answer:**

**Question D:**
Has the individual performed a role for our firm other than the roles referred to in Questions A and B above:

**Answer:**
Yes
No

If ‘yes’, we have provided summary details of the other role(s), e.g. job title, department and business unit, below.

**Question E:**
Have we concluded that the individual was not fit and proper to perform a function:

**Answer:**
Yes
No

If ‘yes’ and associated disciplinary action was taken as a result, please refer to Question F below.
If ‘yes’, and no associated disciplinary action was taken as a result, we have set out below the facts which led to our conclusion.

**Question F:**
We have taken disciplinary action against the individual that:

(1) relates to an action, failure to act, or circumstances, that amounts to a breach of any individual conduct requirements that:

   (a) apply or applied to the individual; or
   (b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under PRA rules (including if applicable, PRA rules in force before 7 March 2016); or

(2) relates to the individual not being fit and proper to perform a function.
The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference.

Answer:
Yes
No

If ‘yes’, we have provided below a description of the breaches (including dates of when they occurred) and the basis for, and outcome of, the subsequent disciplinary action.

Question G:
Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper? This disclosure is made on the basis that we shall only disclose something that:

1. occurred or existed:
   (a) in the six years before your request for a reference; or
   (b) between the date of your request for the reference and the date of this reference; or

2. is serious misconduct.

Answer:
Yes
No

If ‘yes’, we have provided the relevant information below.

Part Two: Definitions used in Part One

Section One of Part Two of this annex defines terms used in this annex.

Section Two of Part Two of this annex modifies the meaning of certain requirements in Part One and has material about completing the template.

<table>
<thead>
<tr>
<th>Defined term or phrase</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>B refers to the employer or ex-employer giving the reference as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.</td>
</tr>
<tr>
<td>P</td>
<td>P refers to the employee or ex-employee about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.</td>
</tr>
<tr>
<td>A finding or conclusion by B that P was not fit and proper to perform a function (see questions (E) to (F) of the template)</td>
<td>This means a finding or conclusion by B where: (a)B assesses the continuing fitness and propriety of P as an approved person in accordance with the requirements of the regulatory system, including when carrying out this assessment under section 63(2A) of the Act (annual assessment of approved persons by an SMCR firm); or (b)B assesses the fitness and propriety of P when B is proposing to issue a certificate under section 63F of the Act (Certification of employees by SMCR firms) for P. Paragraph (b) applies whether the certificate is being issued for the first time or is being renewed.</td>
</tr>
<tr>
<td>Individual conduct requirements</td>
<td>Individual conduct requirements mean any of the following: (a)COCON;</td>
</tr>
</tbody>
</table>
## Section One: Meaning of certain terms and phrases

<table>
<thead>
<tr>
<th>Defined term or phrase</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) APER;</td>
<td>(c) the PRA’s Individual Conduct Standards or Senior Manager Conduct Standards in:</td>
</tr>
<tr>
<td></td>
<td>(i) Chapter 3 of the Part of the PRA Rulebook called Insurance – Conduct Standards;</td>
</tr>
<tr>
<td></td>
<td>(ii) Chapter 3 of the Part of the PRA Rulebook called Large Non-Solvency II Firms – Conduct Standards; and</td>
</tr>
<tr>
<td></td>
<td>(iii) Chapter 2 of the Part of the PRA Rulebook called Non-Solvency II firms - Conduct Standards; or</td>
</tr>
<tr>
<td></td>
<td>(d) the PRA’s Individual Conduct Rules or Senior Manager Conduct Rules in:</td>
</tr>
<tr>
<td></td>
<td>(i) Chapters 2 and 3 of the Part of the PRA Rulebook called CRR Firms: Conduct Rules; and</td>
</tr>
<tr>
<td></td>
<td>(ii) Chapters 2 and 3 of the Part of the PRA Rulebook called Non-CRR Firms: Conduct Rules.</td>
</tr>
<tr>
<td>Function (as referred to in questions (E) to (F))</td>
<td>A function means a function as an approved person or certification employee.</td>
</tr>
<tr>
<td>Disciplinary action</td>
<td>Disciplinary action has the same meaning as in section 64C(2) of the Act (Requirement for authorised persons to notify regulatory of disciplinary action), which is:</td>
</tr>
<tr>
<td></td>
<td>(a) the issue of a formal written warning; or</td>
</tr>
<tr>
<td></td>
<td>(b) the suspension or dismissal of P; or</td>
</tr>
<tr>
<td></td>
<td>(c) the reduction or recovery of any of P’s remuneration.</td>
</tr>
<tr>
<td></td>
<td>This definition applies even if B is not an SMCR firm.</td>
</tr>
<tr>
<td>Notified non-executive director, credit union non-executive director and key function holder</td>
<td>These terms have the same meaning as they do in the PRA Rulebook.</td>
</tr>
<tr>
<td>Certification function, approved person, controlled function and PRA controlled function</td>
<td>These terms have the same meaning as they do in the Glossary.</td>
</tr>
<tr>
<td>Potential FCA governing function</td>
<td>Potential FCA governing function means a function:</td>
</tr>
<tr>
<td></td>
<td>(a) that would have been an FCA controlled function but for:</td>
</tr>
<tr>
<td></td>
<td>(i) SUP 10A.11 (Minimising overlap with the PRA approved persons regime) (when that section was in force); or</td>
</tr>
<tr>
<td></td>
<td>(ii) SUP 10C.9 (Minimising overlap with the PRA approved persons regime);</td>
</tr>
<tr>
<td></td>
<td>(b) but instead is included in a PRA controlled function under the parts of the PRA Rulebook listed in SUP 10C.9.6G.</td>
</tr>
</tbody>
</table>

## Section Two: Supplementary requirements

| Item of template for which supplemental requirements apply | Supplemental requirements |
### Section One: Meaning of certain terms and phrases

<table>
<thead>
<tr>
<th>Defined term or phrase</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Questions (E) and (F)</td>
<td>If:</td>
</tr>
<tr>
<td></td>
<td>(a) the finding or disciplinary action was reached or taken by another member of B’s <em>group</em> with the authority to do so; and</td>
</tr>
<tr>
<td></td>
<td>(b) the finding or disciplinary action relates to conduct by P relating to the carrying on of activities (whether or not <em>regulated activities</em>) by B;</td>
</tr>
<tr>
<td></td>
<td>this question applies to such finding or disciplinary action in the same way as it does to findings or disciplinary action made or taken by the <em>firm</em> itself.</td>
</tr>
<tr>
<td>Question (F)</td>
<td>This question is subject to SYSC TP 5.4.5R and SYSC TP 7.4.4R (where there is no need to disclose disciplinary action that took place before certain dates if the <em>firm</em>’s records do not show whether there was a breach of individual conduct requirements).</td>
</tr>
<tr>
<td>The whole of Part One of this annex</td>
<td>The template to be used by a <em>firm</em> in giving a reference consists of everything in Part One of this annex except for the “Guide to using this template” paragraph.</td>
</tr>
</tbody>
</table>
Factors to take into account when asking for and giving regulatory references

<table>
<thead>
<tr>
<th>Matters to take into account</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A)Any outstanding liabilities of that person from commission payments</td>
<td></td>
</tr>
<tr>
<td>(B)Any relevant outstanding or upheld complaint from an eligible complainant against P</td>
<td></td>
</tr>
<tr>
<td>(C)Section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime) or SUP 10C Annex 3 (Application to perform senior management functions)</td>
<td></td>
</tr>
<tr>
<td>(D)FIT 2 (Main assessment criteria)</td>
<td></td>
</tr>
<tr>
<td>(E)The persistency of any life policies sold by P</td>
<td>This only applies if SUP 16.8.1G(1) (Persistency reports from insurers) applies to B</td>
</tr>
</tbody>
</table>

**Note:** P refers to the employee or ex-employee about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.
Chapter 23

Senior managers and certification regime: Introduction and classification
The purpose of this chapter is to:

1. explain what the senior managers and certification regime is and where to find the main FCA Handbook provisions;
2. define which firms the regime applies to; and
3. define the different kinds of SMCR firm.
23.2 Definitions and types of firms

23.2.1 SYSC 23 Annex 1R (Definition of SMCR firm and different types of SMCR firms) defines:

(1) what an SMCR firm is; and

(2) what the different types of SMCR firm are.
23.3 Overview of the senior managers and certification regime

There are three main elements to the regime:

1. the senior managers regime;
2. the certification regime; and
3. conduct rules that apply directly to a firm’s workforce.

The table in SYSC 23.3.3G gives more details about each of those three elements.

### Table: Summary of the senior managers and certification regime

<table>
<thead>
<tr>
<th>Description of component of the regime</th>
<th>Handbook provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>The senior managers regime: Parts that apply to all firms</td>
<td></td>
</tr>
<tr>
<td>Pre-approval by the FCA of senior management (the FCA Handbook calls senior management subject to pre-approval SMF managers)</td>
<td>SUP 10C</td>
</tr>
<tr>
<td><strong>Firm</strong> to be satisfied that a person is fit and proper before applying for them to be approved as an <strong>SMF manager</strong> by the FCA or PRA</td>
<td>This requirement is in section 60A of the Act. There is guidance on it in SUP 10C.10.14G (Vetting of candidates by the firm).</td>
</tr>
<tr>
<td>Annual assessment of fitness and propriety by the <strong>SMF managers’ firms</strong></td>
<td>This requirement is in section 63(2A) of the Act. There is guidance and related notification obligations in SUP 10C.14.18R to SUP 10C.14.25G (Notifications about fitness, disciplinary action and breaches of COCON).</td>
</tr>
<tr>
<td>A <strong>firm</strong> should carry out criminal records checks before applying for someone to be approved as an <strong>SMF manager</strong>.</td>
<td>SUP 10C.10.16R (Criminal records checks and verifying fitness and properness)</td>
</tr>
<tr>
<td>A <strong>firm</strong> should ask for a regulatory reference before appointing someone to be an <strong>SMF manager</strong>, or to certain other senior management positions, and give one if asked to by another <strong>firm</strong> doing so.</td>
<td>SYSC 22 (Regulatory references)</td>
</tr>
</tbody>
</table>
**Description of component of the regime**

<table>
<thead>
<tr>
<th>Component</th>
<th>Handbook provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Statements of responsibilities</strong></td>
<td>SUP 10C.11 (Statements of responsibilities). Many of the requirements are in the Act itself but they are summarised in SUP 10C.11. SUP 10C.11 also adds some further requirements, particularly about there being one statement of responsibilities per SMF manager per firm.</td>
</tr>
<tr>
<td><strong>Duty of responsibility</strong></td>
<td>This is dealt with in section 66A(5) of the Act. There is guidance on this in DEPP 6.2.9-AG to DEPP 6.2.9-FG.</td>
</tr>
<tr>
<td><strong>The senior managers regime: Parts that apply to many firms</strong></td>
<td>A firm should allocate certain specified management responsibilities among its SMF managers. The FCA Handbook calls them FCA-prescribed senior management responsibilities.</td>
</tr>
<tr>
<td>A firm should maintain a comprehensive and up-to-date document (called the management responsibilities map) that describes its management and governance arrangements.</td>
<td>SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities)</td>
</tr>
<tr>
<td>A firm should ensure that, at all times, one or more of its SMF managers have overall responsibility for each of the activities, business areas and functions of the firm.</td>
<td>SYSC 25 (Senior managers and certification regime: Management responsibilities maps and handover procedures and material)</td>
</tr>
<tr>
<td>A firm should ensure that a person becoming an SMF manager has all the information and material that they could reasonably expect to have to perform their responsibilities.</td>
<td>SYSC 26 (Senior managers and certification regime: Overall and local responsibility)</td>
</tr>
<tr>
<td><strong>The senior managers regime: Parts outside the Handbook</strong></td>
<td>This is contained in section 36 of the Financial Services (Banking Reform) Act 2013.</td>
</tr>
</tbody>
</table>
| **Criminal offence relating to a decision that causes a financial institution to fail** | It applies to a UK SMCR banking firm but does not apply to a credit union. It does not apply to any firm that is not a UK SMCR banking firm. The certification regime A firm should not permit an employee to carry out certain functions. | Most of the requirements of this regime are in sections 63E (Certifica-
<table>
<thead>
<tr>
<th>Description of component of the regime</th>
<th>Handbook provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>(certification functions) unless it has issued them with a certificate. The certificate is only valid for a year. The firm will have to renew it if the employee is to carry on performing the function. A firm may not issue or renew a certificate unless it is satisfied that the person is fit and proper. Certification does not involve pre-approval by the FCA or PRA. A firm should ask for a regulatory reference before appointing someone to perform an FCA certification function (or a PRA equivalent) and give one if asked to by another firm doing so. A firm must report information to the FCA about its Directory persons, including its certification employees. Conduct rules (applies to all firms) Rules of conduct that apply directly to a firm’s workforce other than ancillary staff. A firm should report breaches of COCON to the FCA. A firm should: (a) ensure that all persons subject to COCON are notified of the rules that apply to them; and (b) take all reasonable steps to ensure that they understand how COCON applies to them.</td>
<td>(certification functions) unless it has issued them with a certificate. The certificate is only valid for a year. The firm will have to renew it if the employee is to carry on performing the function. A firm may not issue or renew a certificate unless it is satisfied that the person is fit and proper. Certification does not involve pre-approval by the FCA or PRA. A firm should ask for a regulatory reference before appointing someone to perform an FCA certification function (or a PRA equivalent) and give one if asked to by another firm doing so. A firm must report information to the FCA about its Directory persons, including its certification employees. Conduct rules (applies to all firms) Rules of conduct that apply directly to a firm’s workforce other than ancillary staff. A firm should report breaches of COCON to the FCA. A firm should: (a) ensure that all persons subject to COCON are notified of the rules that apply to them; and (b) take all reasonable steps to ensure that they understand how COCON applies to them.</td>
</tr>
</tbody>
</table>

The PRA has requirements corresponding to the senior managers and certification regime that apply to PRA-authorised persons. The FCA and PRAs’ regimes are designed to work together and complement each other. A PRA-authorised person will therefore need to consider the PRA’s requirements to get a complete picture of the requirements that apply to it (and its workforce) in the area covered by the senior managers and certification regime and the requirements in the Act on which it is based.
Definition of SMCR firm and different types of SMCR firms

Part One: Flow diagram and other basic provisions

1.1 R The flow diagram in SYSC 23 Annex 1 1.2R defines:
(1) an SMCR firm; and
(2) the different categories of SMCR firm.

1.2 R Flow diagram: Types of SMCR firm

Are you a firm?

No

Yes

Are you an exempt firm (see Part 3 of this annex)?

Yes

No

Are you in the banking sector as defined in Part 4 of this annex?

Yes

You are an SMCR firm and an SMCR banking firm.

No

Are you in the insurance sector as defined in Part 5 of this annex?

Yes

You are an SMCR firm and an SMCR insurance firm.

No

You are not an SMCR firm

Note to the decision tree
The categorisation in this decision tree is subject to SYSC 23 Annex 1 2.1R.
Part Two: Changing category

2.1 R If a firm is subject to a requirement that it must comply with the rules in the FCA Handbook applicable to one of the categories of SMCR firm set out in this Annex, it is to be treated as falling into that category of SMCR firm for all purposes.

Part Three: Definition of exempt firm

3.1 R This part defines an exempt firm for the purposes of the flow diagram in Part One of this Annex.

3.2 R An overseas firm is an exempt firm if it:

1. does not have; and
2. does not have an appointed representative that has;

an establishment in the United Kingdom.

3.3 R An incoming EEA firm that is an EEA pure reinsurer is an exempt firm.

3.4 R An incoming ECA provider acting as such is an exempt firm.

Part Four: Definition of banking sector

4.1 R A firm is in the banking sector for the purposes of the flow diagram in Part One of this Annex if the firm meets the conditions in SYSC 23 Annex 1 4.2R, SYSC 23 Annex 1 4.4R or SYSC 23 Annex 1 4.6R.

4.2 R A firm is in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is an institution that meets the following conditions:

1. it is incorporated in, or formed under the law of any part of, the United Kingdom;
2. it is not an institution authorised under the Act to carry on the regulated activity of effecting contracts of insurance or carrying out contracts of insurance; and
3. it meets one of the following conditions:
   a. its Part 4A permission includes accepting deposits; or:
   b. it meets all the following conditions:
      i. the institution is an investment firm;
      ii. its Part 4A permission covers dealing in investments as principal; and
      iii. when carried on by it, that activity is a PRA-regulated activity.

4.3 R An SMCR banking firm in SYSC 23 Annex 1 4.2R is a UK SMCR banking firm.

4.4 R A firm is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is a non-UK institution other than an incoming firm that meets the following conditions:

1. it has a branch in the United Kingdom;
2. it is not an institution authorised under the Act to carry on the regulated activity of effecting contracts of insurance or carrying out contracts of insurance; and
3. it meets one of the following conditions:
   a. it is a credit institution which has a Part 4A permission that includes accepting deposits; or
   b. it meets all the following conditions:
      i. the institution is an investment firm;
      ii. its Part 4A permission covers dealing in investments as principal; and
      iii. when carried on by it, that activity is a PRA-regulated activity.

4.5 R An SMCR banking firm in SYSC 23 Annex 1 4.4R is a third-country SMCR banking firm.
4.6 R A **firm** is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is an **incoming EEA firm** or **incoming Treaty firm** that meets the following conditions:

(1) it has a **branch** in the **United Kingdom**;
(2) it is not an institution authorised under the **Act** to carry on the regulated activity of **effecting contracts of insurance** or **carrying out contracts of insurance**; and
(3) it meets one of the following conditions:
   (a) it is a **credit institution** which has a **permission** under Part 4A, Schedule 3 or Schedule 4 of the **Act** that includes **accepting deposits**; or
   (b) it meets all the following conditions:
      (i) the institution is an **investment firm**;
      (ii) it has a **permission** under Part 4A, Schedule 3 or Schedule 4 of the **Act** that covers **dealing in investments as principal**; and
      (iii) when carried on by it, that activity is a **PRA-regulated activity**.

4.7 R An **SMCR banking firm** in SYSC 23 Annex 1 4.6R is an **EEA SMCR banking firm**.

Part Five: Definition of insurance sector

5.1 R A **firm** is in the insurance sector for the purposes of the flow diagram in Part One of this Annex if the **firm** is:

(1) a **Solvency II firm** (including a **large non-directive insurer**); or
(2) a **small non-directive insurer**.

5.2 R (1) A **firm** from which the Solvency II rules (as defined by the part of the **PRA Rulebook** described in this paragraph (1)) are disappplied by chapter 2 of the Solvency II Firms: Transitional Measures part of the **PRA Rulebook** is in the insurance sector for the purposes of the flow diagram in Part One of this Annex.

(2) A **firm** defined as a **small run-off firm** in the Glossary part of the **PRA Rulebook** is in the insurance sector for the purposes of the flow diagram in Part One of this Annex.
Chapter 24

Senior managers and certification regime: Allocation of prescribed responsibilities
24.1 Application

Main application rules

24.1.1 This chapter applies to an SMCR firm, except to the extent that this chapter applies a narrower scope to a particular provision. However, this chapter does not apply to an EEA SMCR firm.

24.1.2 This chapter is not limited to regulated activities or other specific types of activities.

Territorial scope

24.1.3 There is no territorial limitation on the application of this chapter, subject to SYSC 24.1.4R.

24.1.4 When this chapter applies to an overseas SMCR firm, it applies in relation to the activities of the firm’s branch in the United Kingdom.
24.2 Allocation of FCA-prescribed senior management responsibilities: Main allocation rules

Allocation of FCA-prescribed senior management responsibilities

24.2.1 A firm must allocate each of the FCA-prescribed senior management responsibilities in the table in Section 24.2.6 that apply to it to one or more SMF managers of the firm.

24.2.2 (1) Subject to (2), Section 24 Annex 1 (Which prescribed responsibilities apply to which kind of firm) sets out which FCA-prescribed senior management responsibilities apply to which kind of SMCR firm.

(2) In some cases, an FCA-prescribed senior management responsibility is subject to further restrictions on the types of firm and circumstances to which it applies, as set out in the table in Section 24.2.6 (Table: FCA-prescribed senior management responsibilities).

24.2.3 (1) A firm may not allocate an FCA-prescribed senior management responsibility to an SMF manager who is only approved to perform the other overall responsibility function or the other local responsibility function for that firm, subject to (2).

(2) A firm may allocate FCA-prescribed senior management responsibility (z) in the table in Section 24.2.6 (functions in relation to CASS) to an SMF manager who is only approved to perform the other overall responsibility function or the other local responsibility function.

24.2.4 A firm must make the allocations of FCA-prescribed senior management responsibilities in this chapter in such a way that it is clear who has which of those responsibilities.

What the FCA-prescribed senior management responsibilities are

24.2.5 The FCA-prescribed senior management responsibilities are set out in the table in Section 24.2.6.
### Table: FCA-preserved senior management responsibilities

<table>
<thead>
<tr>
<th>FCA-preserved senior management responsibility</th>
<th>Explanation</th>
<th>Reference letter</th>
</tr>
</thead>
</table>
| (1) Responsibility for the firm's performance of its obligations under the senior managers regime | The senior managers regime means the requirements of the regulatory system applying to SMCR firms insofar as they relate to SMF managers performing designated senior management functions, including SUP 10C (FCA senior managers regime for approved persons). This responsibility includes:  
(1) compliance with conditions and time limits on approval;  
(2) compliance with the requirements about the statements of responsibilities (but not the allocation of responsibilities recorded in them);  
(3) compliance by the firm with its obligations under section 60A of the Act (Vetting of candidates by authorised persons); and  
(4) compliance by the firm with the requirements in SYSC 22 (Regulatory references) (and the corresponding PRA requirements) so far as they relate to the senior managers regime, including the giving of references to another firm about an SMF manager or former SMF manager. | (a) |
| (2) Responsibility for the firm's performance of its obligations under the certification regime | The certification regime means the requirements of sections 63E and 63F of the Act (Certification of employees) and all other requirements of the regulatory system about the matters dealt with in or relating to those sections, including:  
(1) SYSC 27 (Senior managers and certification regime: Certification Regime);  
(2) the requirements in SYSC 22 (Regulatory references) so far as they relate to the certification regime, including the giving of references to another firm about a certification employee or former certification employee; | (b) |
<table>
<thead>
<tr>
<th>FCA-prescribed senior management responsibility</th>
<th>Explanation</th>
<th>Reference letter</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) Responsibility for the firm’s policies and procedures for countering the risk that the firm might be used to further financial crime</td>
<td>(3) the corresponding PRA requirements; and (4) the requirements in SUP 16.26 (Reporting of information about Directory persons), which require a firm to report information to the FCA about its Directory persons.</td>
<td>(d)</td>
</tr>
<tr>
<td>(2) Responsibility for the firm’s obligations for: (a) conduct rules training; and (b) conduct rules reporting.</td>
<td>(1) This includes: (a) responsibility for the firm’s policies and procedures in relation to the matters in SYSC 3.2.6R (Systems and controls in relation to compliance, financial crime and money laundering); (b) the functions in SYSC 3.2.6HR or SYSC 6.3.8R (firm must allocate to a director or senior manager overall responsibility within the firm for the establishment and maintenance of effective anti-money laundering systems and controls); if any of those rules apply to the firm. (2) The firm may allocate this FCA-prescribed senior management responsibility to the MLRO but does not have to. (3) If the firm does not allocate this FCA-prescribed senior management responsibility to the MLRO, this FCA-prescribed senior management responsibility includes responsibility for supervision of the MLRO.</td>
<td>(b-1)</td>
</tr>
<tr>
<td>(5) Responsibility for:</td>
<td>(1) The firm’s obligations for conduct rules training means its obligations under section 64B of the Act (Rules of conduct: responsibilities of authorised persons). (2) The firm’s obligations for conduct rules reporting means its obligations under section 64C of the Act (Requirement for authorised persons to notify regulator of disciplinary action).</td>
<td>(f)</td>
</tr>
<tr>
<td>FCA-prescribed senior management responsibility</td>
<td>Explanation</td>
<td>Reference letter</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>-------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>(a) leading the development of; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) monitoring the effective implementation of; policies and procedures for the induction, training and professional development of all members of the firm’s governing body.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6) Responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all the firm’s:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) SMF managers; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) key function holders; other than members of the firm’s governing body.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(7) Responsibility for:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) safeguarding the independence of; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) oversight of the performance of; the internal audit function, in accordance with the internal audit requirements for SMCR firms and the PRA requirements referred to in column (2) of this row</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Key function holder has the same meaning as it does in the Glossary Part of the PRA Rulebook.</td>
<td></td>
<td>(g)</td>
</tr>
<tr>
<td>(2) Paragraph (b) of column (1) of this row (6) only applies to a firm if and to the extent that the PRA’s requirements about key function holders apply to it.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) This responsibility includes responsibility for:</td>
<td></td>
<td>(j)</td>
</tr>
<tr>
<td>(a) safeguarding the independence of; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) oversight of the performance of; a person approved to perform the Head of Internal Audit function for the firm if that function applies to the firm.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) This responsibility only applies if and to the extent that:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) the internal audit requirements for SMCR firms; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) any requirements of the PRA about the matters in paragraph (1) of this column of this row (7); apply to the firm.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FCA-prescribed senior management responsibility</td>
<td>Explanation</td>
<td>Reference letter</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>(8) Responsibility for:</td>
<td>(1) This responsibility includes responsibility for:</td>
<td>(k)</td>
</tr>
<tr>
<td>(a) safeguarding the independence of; and</td>
<td>(a) safeguarding the independence of;</td>
<td></td>
</tr>
<tr>
<td>(b) oversight of the performance of;</td>
<td>(b) oversight of the performance of;</td>
<td></td>
</tr>
<tr>
<td>the compliance function in accordance with the</td>
<td>the person performing the compliance oversight function for the firm.</td>
<td></td>
</tr>
<tr>
<td>compliance requirements for SMCR firms.</td>
<td>(2) This responsibility only applies if and to the extent that the compliance requirements for SMCR firms apply to the firm.</td>
<td></td>
</tr>
<tr>
<td>(3) “Independence” means independence to the extent it is required by the compliance requirements for SMCR firms.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(9) Responsibility for:</td>
<td>(1) This responsibility includes responsibility for:</td>
<td>(l)</td>
</tr>
<tr>
<td>(a) safeguarding the independence of; and</td>
<td>(a) safeguarding the independence of;</td>
<td></td>
</tr>
<tr>
<td>(b) oversight of the performance of;</td>
<td>(b) oversight of the performance of;</td>
<td></td>
</tr>
<tr>
<td>the risk function, in accordance with the risk control requirements for SMCR firms and the PRA requirements referred to in column (2) of this row (9).</td>
<td>a person approved to perform the Chief Risk function for the firm if that function applies to the firm.</td>
<td></td>
</tr>
<tr>
<td>(2) This responsibility only applies if and to the extent that:</td>
<td>(a) the risk control requirements for SMCR firms; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) any requirements of the PRA about the matters in paragraph (1) of this column of this row (9);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>apply to the firm.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3) “Independence” means independence to the extent it is required by the require-</td>
<td></td>
</tr>
<tr>
<td>FCA-prescribed senior management responsibility</td>
<td>Explanation</td>
<td>Reference letter</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>-------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>(10) Responsibility for overseeing the development of and implementation of the firm’s remuneration policies and practices in accordance with SYSC 19D (Remuneration Code)</td>
<td>This responsibility does not apply to a firm to which SYSC 19D does not apply.</td>
<td>(m)</td>
</tr>
<tr>
<td>(11) Responsibility for the firm’s compliance with CASS</td>
<td>(1) This responsibility only applies to a firm to which CASS applies.</td>
<td>(z)</td>
</tr>
<tr>
<td></td>
<td>(2) A firm may include in this FCA-prescribed senior management responsibility whichever of the following functions apply to the firm:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) CASS 1A.3.1R (certain CASS compliance functions for a CASS small firm);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) CASS 1A.3.1AR (certain CASS compliance functions for a CASS medium firm or a CASS large firm);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) CASS 11.3.1R (certain CASS compliance functions for certain CASS small debt management firms); or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(d) CASS 11.3.4R (certain CASS compliance functions for a CASS large debt management firm);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>but it does not have to.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3) If the firm does not include the functions in paragraph (2) of this column of this row (11) in this FCA-prescribed senior management responsibility, this FCA-prescribed senior management responsibility includes responsibility for supervision of the person performing the functions in paragraph (2) of this column of this row (11) that apply to the firm.</td>
<td></td>
</tr>
<tr>
<td>FCA-prescribed senior management responsibility</td>
<td>Explanation</td>
<td>Reference letter</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>(12) Responsibility for compliance with the requirements of the regulatory system about the management responsibilities map</td>
<td>(1) This responsibility does not include allocating responsibilities recorded in the management responsibilities map.</td>
<td>(c)</td>
</tr>
<tr>
<td>(13) Acting as the firm’s whistleblowers’ champion</td>
<td>(1) The whistleblowers’ champion’s allocated responsibilities are set out in SYSC 18.4.4R.</td>
<td>(n)</td>
</tr>
<tr>
<td>(14) Responsibility for: (a) providing for an effective internal audit function in accordance with one of the sections of the PRA Rulebook listed in paragraph (2) of column (2) of this row (14); and (b) overseeing the performance of the internal audit function.</td>
<td>(1) Only applies to a firm: (a) that outsources its internal audit function to an external third party service provider; and (b) to which one of the following internal audit PRA-prescribed senior management responsibilities applies: (i) the responsibility in rule 3.3(1) in the Insurance – Allocation of Responsibilities Part of the PRA Rulebook; or (ii) the responsibility in rule 3.2(1) in the Large Non-Solvency II Firms – Allocation of Responsibilities Part of the PRA Rulebook.</td>
<td>(j-2)</td>
</tr>
</tbody>
</table>

(2) The parts of the PRA Rulebook referred to in column (1) of this row (14) are: (a) Solvency II firms - Conditions Governing Business 5; and (b) Non-Solvency II Firms – Governance 9.2.

(3) Terms used in column (1) of this row (14) have the same meaning as they do for the corresponding PRA-prescribed senior management responsibility described in
<table>
<thead>
<tr>
<th>FCA-prescribed senior management responsibility</th>
<th>Explanation</th>
<th>Reference letter</th>
</tr>
</thead>
<tbody>
<tr>
<td>(15) Responsibility for management of the firm’s risk management processes in the UK</td>
<td>paragraph (1) of this column of this row (14).</td>
<td>(aa)</td>
</tr>
<tr>
<td>(16) Responsibility for the firm’s compliance with the UK regulatory system applicable to the firm</td>
<td>(ff)</td>
<td></td>
</tr>
<tr>
<td>(17) Responsibility for the escalation of correspondence from the PRA, FCA and other regulators in respect of the firm to each of the governing body or the management body of the firm and, as appropriate, of the firm’s parent undertaking and the ultimate parent undertaking of the firm’s group</td>
<td>This includes taking steps to ensure that the senior management of the firm and, where applicable, the group, are made aware of any views expressed by the regulatory bodies and any steps taken by them in relation to the branch, firm or group.</td>
<td>(ee)</td>
</tr>
</tbody>
</table>
24.3 Who prescribed responsibilities should be allocated to

**Seniority and authority**

24.3.1 The FCA expects that a person who has responsibility for an FCA-prescribed senior management responsibility:

(1) will generally (in the case of the FCA-prescribed senior management responsibilities in §SYSC 24.3.3G) be the most senior employee or officer responsible for managing that area (or the most senior below the chief executive); and

(2) will:

(i) be sufficiently senior and credible; and

(ii) have sufficient resources and authority; to be able to exercise their management and oversight responsibilities effectively.

**Executive or non-executive**

24.3.2 The FCA expects that normally a firm will allocate the FCA-prescribed senior management responsibility with the following FCA reference letters (see column three of the table in §SYSC 24.2.6R) to an SMF manager who is a non-executive director of the firm (or, in the case of a partnership, a partner without management responsibilities):

1. (f) (development of members of governing body);
2. (j) (internal audit oversight);
3. (k) (compliance oversight);
4. (l) (risk control oversight);
5. (m) (remuneration code oversight); and
6. (n) (whistleblowers’ champion).

24.3.3 The FCA expects that normally a firm will allocate the other FCA-prescribed senior management responsibilities to an SMF manager who performs executive functions for the firm.
Exceptions for small non-complex firms

24.3.4 The FCA accepts that it may not be practical for a small non-complex firm to comply with the parts of SYSC 24.3.1G(1), SYSC 24.3.2G and SYSC 24.3.3G that would otherwise apply to it.

24.3.5 (1) A UK SMCR banking firm is likely to be small for the purposes in SYSC 24.3.4G if it is:
   (a) a small CRR firm as defined in the part of the PRA Rulebook called “Allocation of responsibilities”; or
   (b) a credit union that meets the PRA’s size requirements for small CRR firms as defined.

   (2) A firm is likely to be non-complex for these purposes if:
      (a) it conducts a limited number of simple business lines;
      (b) it does not rely on group governance arrangements; and
      (c) (in the case of a branch) it does not rely on governance arrangements for other parts of the firm.

Not assigning too many responsibilities to one person

24.3.6 When deciding how to allocate FCA-prescribed senior management responsibilities, a firm should avoid assigning such a wide range of responsibilities to a particular SMF manager that they are not able to carry out those responsibilities effectively.

Dividing and sharing management functions between different people

24.3.7 The FCA expects that a firm will not normally split an FCA-prescribed senior management responsibility between several SMF managers, with each only having responsibility for part.

24.3.8 The FCA expects that a firm will not normally allocate responsibility for an FCA-prescribed senior management responsibility to two or more SMF managers jointly.

24.3.9 (1) Although the norm should be for a firm to have a single individual performing each FCA-prescribed senior management responsibility, there may be circumstances in which responsibilities can be divided or shared (see (2)).

   (2) A firm should only divide or share a responsibility where this is appropriate and can be justified.

   (3) For example, it would be justified to share a responsibility if that is done:
      (a) as part of a job share; or
      (b) where departing and incoming senior managers work together temporarily as part of a handover.
(4) A firm may have co-heads of a department or business unit if this can be justified under (1) to (3).

24.3.10

(1) The FCA expects a firm to divide and allocate responsibilities under this chapter between its SMF managers so that responsibilities are grouped together appropriately.

(2) The firm should make the judgement:
   (a) in (1); and
   (b) about whether and how responsibilities should be shared; under:
      (c) SYSC 4.1.1R (robust governance arrangements);
      (d) any other applicable Handbook requirements, including:
         (i) SYSC 2 (Apportionment of Responsibilities);
         (ii) SYSC 24.3.7G to SYSC 24.3.9G; and
      (e) article 21 of the MiFID Org Regulation (General organisational requirements) or other similar relevant and directly applicable EU legislation.

(3) The firm should take into account the way it is organised, the business it carries out and the need not to allocate too many responsibilities to one individual (SYSC 24.3.6G).

(4) The FCA expects a firm to allocate FCA-prescribed senior management responsibilities to the SMF managers they are most closely linked to.

24.3.11

SUP 10C.11.31G to SUP 10C.11.33G (What statements of responsibilities should contain: dividing and splitting responsibilities) contains material about:

(1) how to prepare statements of responsibilities where a responsibility is shared or divided between several SMF managers; and

(2) dividing and sharing responsibilities.

24.3.12

(1) A firm may allocate more than one FCA-prescribed senior management responsibility to the same SMF manager.

(2) This is subject to:
   (a) SYSC 24.3.6G (should not give too many responsibilities to one person); and
   (b) SYSC 24.3.10G (what responsibilities should be grouped together).

Allocation of responsibilities and territorial scope.

24.3.13

(1) As explained in SYSC 24.1.3R, there is no territorial limitation to the application of this chapter.
(2) This means that a firm should allocate the FCA-prescribed senior management responsibilities so that they cover activities, transactions, business areas and management functions that are located or take place wholly or partly outside, as well as ones in, the United Kingdom.

24.3.14 In the case of an overseas SMCR firm, the FCA-prescribed senior management responsibilities relate to the activities of the firm’s branch in the United Kingdom (see SYSC 24.1.4R).
Which FCA-prescribed senior management responsibilities apply to which kind of firm

Introduction and exclusions

1.1 G This annex sets out which *FCA-prescribed senior management responsibilities* apply to which type of *SMCR firm*.

1.2 R In this annex:

(1) a ✔ means that the *FCA-prescribed senior management responsibility* does apply;

(2) a × means that the *FCA-prescribed senior management responsibility* does not apply; and

(3) a reference letter refers to the reference letters in column (3) of the table in SYSC 24.2.6R (Table: FCA-prescribed senior management responsibilities).

1.3 G If an *FCA-prescribed senior management responsibility* is not included in the table for a particular class of *firm*, that *FCA-prescribed senior management responsibility* does not apply to any *firm* in that class.

Banking sector firms

2.1 R (1) The table in SYSC 24 Annex 1.2.3R sets out which *FCA-prescribed senior management responsibilities* apply to which type of *SMCR banking firm*.

(2) SMCR firms in (1) are divided into the following categories for the purposes in (1):

(a) a UK SMCR banking firm (excluding firms in (b));

(b) a small UK SMCR banking firm; and

(c) a third-country SMCR banking firm.

2.2 R A small UK SMCR banking firm means a UK SMCR banking firm that is:

(1) a small CRR firm as defined in the part of the PRA Rulebook called "Allocation of responsibilities"; or

(2) a credit union.

2.3 R Table: FCA-prescribed senior management responsibilities applying to banking sector firms

<table>
<thead>
<tr>
<th>Brief description of responsibility</th>
<th>Reference letter of responsibility</th>
<th>UK firm</th>
<th>Small UK firm</th>
<th>Third-country firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsibility for the firm's performance of its obligations under the senior managers regime</td>
<td>(a)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Responsibility for the firm's performance of its obligations under the employee certification regime</td>
<td>(b)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Financial crime</td>
<td>(d)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>COCON</td>
<td>(b-1)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Training governing body</td>
<td>(f)</td>
<td>✔</td>
<td>×</td>
<td>×</td>
</tr>
</tbody>
</table>
### SVSC 24: Senior managers and certification regime: Allocation of prescribed responsibilities

<table>
<thead>
<tr>
<th>Brief description of responsibility</th>
<th>Reference letter of responsibility</th>
<th>UK firm</th>
<th>Small UK firm</th>
<th>Third-country firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training of staff performing designated senior management responsibilities</td>
<td>(g)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Management responsibilities maps</td>
<td>(c)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Whistleblowers’ champion</td>
<td>(n)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Internal audit oversight</td>
<td>(j)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Compliance oversight</td>
<td>(k)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Risk oversight</td>
<td>(l)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Remuneration</td>
<td>(m)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>CASS</td>
<td>(z)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>UK risk management</td>
<td>(aa)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Compliance with UK regulatory system</td>
<td>(ff)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Escalation of correspondence</td>
<td>(ee)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
</tbody>
</table>

**Note (1):** The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SYSC 24 Annex 1 2.1R. Therefore:

(a) column three (UK firm) refers to SYSC 24 Annex 1 2.1R(2)(a);
(b) column four (Small UK firm) refers to SYSC 24 Annex 1 2.1R(2)(b); and
(c) column five (Third-country firm) refers to SYSC 24 Annex 1 2.1R(2)(c).

**Note (2):** Paragraph (b) of this FCA-prescribed senior management responsibility (key function holder) does not apply to any *firm* in this table.

### Insurance sector firms

#### 3.1 R (1)

The table in SYSC 24 Annex 1 3.2R sets out which FCA-prescribed senior management responsibilities apply to which type of SMCR insurance firm.

(2) **SMCR firms** in (1) are divided into the following categories for the purposes in (1):

(a) a Solvency II firm (excluding *firms* in any other paragraph);
(b) a *firm* falling within paragraph (b) of the definition of Solvency II firm (third country branch);
(c) a small non-directive insurer;
(d) a *firm* in SYSC 23 Annex 1 5.2R (*firms* in run-off); and
(e) an insurance special purpose vehicle.

(3) An insurance special purpose vehicle only falls into paragraph (2)(e). Subject to that, a *firm* in (2)(d) does not fall into any other paragraph.

#### 3.2 G

References to a Solvency II firm include a large non-directive insurer.

#### 3.3 R

Table: FCA-prescribed senior management responsibility applying to insurance sector firms
### SYSC 24: Senior managers and certification regime: Allocation of prescribed responsibilities

<table>
<thead>
<tr>
<th>Brief description of responsibility</th>
<th>Reference letter of responsibility</th>
<th>Solvency II firm</th>
<th>Third country branches</th>
<th>Other insurance sector</th>
<th>ISPV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsibility for the firm’s performance of its obligations under the senior managers regime</td>
<td>(a)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Responsibility for the firm’s performance of its obligations under the employee certification regime</td>
<td>(b)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Financial crime</td>
<td>(d)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>COCON</td>
<td>(b-1)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Training governing body</td>
<td>(f)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Training of staff performing designated senior management responsibilities</td>
<td>(g)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Management responsibilities maps</td>
<td>(c)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Whistleblowers’ champion</td>
<td>(n)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>CASS</td>
<td>(z)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Internal audit for non-significant insurers</td>
<td>(j-2)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Compliance with UK regulatory system</td>
<td>(ff)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Escalation of correspondence</td>
<td>(ee)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
</tbody>
</table>

**Note:** The categories of firm in the column headings of this table are to be interpreted in accordance with the classification of firms in SYSC 24 Annex 1 3.1R. Therefore:

1. Solvency II firm (column three) refers to SYSC 24 Annex 1 3.1R(2)(a);
2. Third country branches (column four) refers to SYSC 24 Annex 1 3.1R(2)(b);
3. Other insurance sector (column five) refers to SYSC 24 Annex 1 3.1R(2)(c) and (d); and
4. ISPV (column six) refers to SYSC 24 Annex 1 3.1R(2)(e).
Chapter 25

Senior managers and certification regime:
Management responsibilities
maps and handover procedures and material
25.1 Application and purpose

Main application rules

25.1.1 R This chapter applies to:

(1) an SMCR banking firm; and

(2) an SMCR insurance firm that is a Solvency II firm (including a large non-directive insurer) but excluding:

(a) an insurance special purpose vehicle; and

(b) a firm in SYSC 23 Annex 1 5.2R (firms in run-off);

except to the extent that this chapter applies a narrower scope to a particular provision.

25.1.2 R This chapter is not limited to regulated activities or other specific types of activities.

Territorial scope

25.1.3 R Subject to SYSC 25.1.4R, there is no territorial limitation on the application of this chapter.

25.1.4 R This chapter applies to an overseas SMCR firm in relation to the activities of a branch maintained by the firm in the United Kingdom.

How this chapter applies to overseas SMCR firms

25.1.5 R Unless the context requires otherwise, the following terms in this chapter are modified as follows in relation to an overseas SMCR firm:

<table>
<thead>
<tr>
<th>Reference in this chapter</th>
<th>Modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>firm</td>
<td>treated as a reference to the branch</td>
</tr>
<tr>
<td>governing body, management body, senior management and senior personnel</td>
<td>(a) treated as a reference to the branch’s governing body, management body, senior management or senior personnel; (b) the Glossary definitions of these terms are adjusted so as to refer to the branch rather than the firm as a whole</td>
</tr>
</tbody>
</table>
Purpose

(1) One purpose of the *management responsibilities map* is to help the *firm* and the *FCA* satisfy themselves that the *firm* has a clear organisational structure (as required by the *regulatory system*).

(2) It also helps the *FCA* to identify who it needs to speak to about particular issues.

(3) The *management responsibilities map* helps the *FCA* to operate its powers and requirements for individuals. For example it helps the *FCA*:

   (a) to identify who is accountable if something goes wrong;

   (b) to understand the role of the *approved person* (or *candidate*) in the *firm* and therefore to judge how to use its powers under the regime for *SMCR firms*, such as the power to grant or refuse approval of an *SMF manager* or to amend or impose conditions.
25.2 Management responsibilities maps: Main rules

General rule

25.2.1 (R) (1) A UK SMCR firm must, at all times, have a comprehensive and up-to-date document (the management responsibilities map) that describes its management and governance arrangements.

(2) An overseas SMCR firm must, at all times, have a comprehensive and up-to-date document (the management responsibilities map) that describes the management and governance arrangements for any branch it maintains in the United Kingdom.

(3) A management responsibilities map must include:
   (a) details of the reporting lines and the lines of responsibility; and
   (b) reasonable details about:
       (i) the persons who are part of those arrangements; and
       (ii) their responsibilities.

   (See further requirements in □ SYSC 25.2.3R.)

25.2.2 (R) The firm’s management responsibilities map must show clearly how any responsibilities covered by a firm’s management responsibilities map are shared or divided between different persons.

Specific requirements

25.2.3 (R) A management responsibilities map must include:

   (1) (a) the names of all the firm’s:
       (i) approved persons (including PRA approved persons);
       (ii) members of its governing body and (if different) management body who are not approved persons;
       (iii) senior management;
       (iv) senior personnel; and
   (b) details of the responsibilities which they hold;

   (2) all responsibilities described in any current statement of responsibilities;
(3) details of the management and governance arrangements relating to:
   (a) the FCA-prescribed senior management responsibilities; and
   (b) the PRA-prescribed senior management responsibilities;
   including the identity of the persons to whom those functions are allocated;

(4) the reasons why (if it has done any of these things) the firm:
   (a) allocates responsibility for an FCA-prescribed senior management responsibility to more than one person jointly; or
   (b) divides responsibility for an FCA-prescribed senior management responsibility between different persons;

(5) details about the functions allocated under, SYSC 26 (Senior managers and certification regime: Overall and local responsibility), including:
   (a) what the activities, business areas and management functions allocated under that chapter are;
   (b) the management and governance arrangements relating to them;
   (c) [deleted]
   (d) the reasons why (if it has done this) the firm allocates responsibility for any such function to more than one person jointly; and
   (e) the identity of the persons to whom those functions are allocated;

(6) matters reserved to the governing body (including the terms of reference of its committees) and, if different, the management body;

(7) details of how the firm’s management and governance arrangements fit together with:
   (a) its group; and
   (b) any other person in (8);

(8) details of the extent to which the firm’s management and governance arrangements are provided by, or shared with, other members of its group or others;

(9) details of the reporting lines and the lines of responsibility (if any) between the firm and those who carry out functions in relation to it and:
   (a) other members of its group or other third parties;
   (b) persons acting as employees or officers of, or otherwise acting for, anyone in (a); or
   (c) committees or other bodies of anyone in (a);

(10) reasonable information about the persons described or identified in the management responsibilities map, including:
   (a) whether they are employees of the firm and, if not, by whom they are employed;
(b) if they are certification employees of the firm; and
(c) the responsibilities they have in relation to other group members or any other person in (8); and

(11) details of how (1) to (10) fit together and fit into the firm’s management and governance arrangements as a whole.

25.2.4 ■ SYSC 25.2.3R(1) does not require the firm to include the names of approved persons under ■ SUP 10A.1.168R (Appointed representatives).
Section 25.3: [This part has been left blank deliberately]
25.4 Guidance about what should be in a management responsibilities map

Material applicable to all firms

25.4.1 The management responsibilities map should be consistent with the statements of responsibilities.

25.4.2 The statements of responsibilities and the management responsibilities map should all be prepared in a way that makes it simple to see how the responsibilities allocated in a particular statement of responsibilities fit into the overall system of management and governance of the firm.

25.4.3 The management responsibilities map should include functions that are:

1. included in a PRA controlled function under the PRA rules complementing SUP 10C.9 (Minimising overlap with the PRA approved persons regime) (as listed in SUP 10C.9.6G(2));

2. excluded from the other overall responsibility function under SUP 10C.7.1R(2) (Exclusion for approved person with approval to perform other designated senior management functions); or

3. excluded from the other local responsibility function under SUP 10C.8.1R(2) (Exclusion for approved person with approval to perform other designated senior management functions).

25.4.4 A firm’s management responsibilities map should demonstrate that there are no gaps in the allocation of responsibilities among its management.

25.4.5 A firm need only include summary details of the persons in SYSC 25.2.3R(1).

25.4.6 A firm’s SMF managers and members of its governing body may overlap with its senior management and senior personnel. If so, the firm does not have to give the same details twice.

25.4.7 A firm should include details about individuals in addition to the details in SYSC 25.2.3R(1), (3) and (5) if they are needed to make the management responsibilities map clear. For example, if the same individual has
responsibilities in a number of different areas of the firm it may be necessary
to make this clear.

25.4.8 A firm should only include summary details about statements of
responsibilities under SYSC 25.2.3R(2). There is no need to duplicate the
statements of responsibilities. The main aim of including statements of responsibilities in the management responsibilities map is to show how that material:

(1) fits into the firm’s overall governance structure; and

(2) for each statement of responsibilities, fits with the others.

25.4.9 A management responsibilities map should include a checklist confirming
that all FCA-prescribed senior management responsibilities have been
allocated or, if some have not been allocated, the reason why.

25.4.10 If:

(1) any designated senior management function is performed by; or

(2) any FCA-prescribed senior management responsibility is allocated to;

more than one person, a firm’s management responsibilities map should give
details of how the performance or discharge of the responsibilities is to be
carried out by those persons.

25.4.11 The executive director function, the other local responsibility function, the
partner function and the other overall responsibility function are defined
generally and generically and can be performed by several people.
Therefore, there is no need to explain why several people perform one of
the functions.

25.4.12 The material in SUP 10C.11.31G and SUP 10C.11.32G (recording sharing and
splitting of responsibilities in statements of responsibilities) also applies to a
management responsibilities map.

Branches of overseas firms

25.4.13 One effect of SYSC 25.1.5R is that an overseas SMCR firm should draw up its
management responsibilities map as if the rest of the firm outside the UK
branch were a separate company in its group. This means, for example, that
the map should include:

(1) details of how the branch’s management and governance
arrangements fit together with the wider firm;

(2) details of the extent to which the branch’s management and
governance arrangements are provided by, or shared with, the wider
firm; and
SYSC 25: Senior managers and certification regime: Management responsibilities...

(3) details of the reporting lines and the lines of responsibility between the *branch* and those who carry out functions in relation to it and the wider *firm* and *persons* acting for it.

**Small firms**

(1) The FCA expects that the *management responsibilities map* of a small and non-complex *firm* is likely to be simple and short. It may be no more than a single sheet of paper.

(2) See ■SYSC 24.3.5G for what small and non-complex mean.
25.5 Management responsibilities map should be a single document

25.5.1 R A management responsibilities map must be a single document.

25.5.2 G (1) The requirement for a management responsibilities map to be a single document does not mean that it has to be a single sheet of paper or must be capable of being reproduced as one.

(2) A management responsibilities map may be made up of a folder with several files or items in it. The folder may be electronic.

(3) However, a firm that creates a management responsibilities map in this way should ensure that its approach is compatible with it being a single document. In particular:

(a) there should be a single item that identifies every item making up the management responsibilities map and shows where each item can be found;

(b) for example, this could be a contents list of the items making up the management responsibilities map with electronic links to each of them;

(c) the management responsibilities map should be complete by itself and should not refer to documents not forming part of it;

(d) every item in the management responsibilities map should only contain material about the matters required by this chapter to be included in management responsibilities maps;

(e) for example, if there is relevant material in the firm’s report and accounts, the folder should only contain the relevant parts or a link to those parts.

(4) The folder and its contents should be easily identifiable as the firm’s management responsibilities map.

25.5.3 G Although a management responsibilities map can be large and complex, SYSC 25.4.14G explains that, for small non-complex firms, it may be small and simple.
25.6 Management responsibilities maps: Material only relevant to EEA SMCR firms

Application

This section applies to an *EEA SMCR firm*.

Purpose

(1) The *management responsibilities map* is an important support to the FCA’s functions as Host State competent authority.

(2) Having requirements and powers that apply directly to individuals helps to make the requirements on *firms* that the FCA is required or entitled to impose as Host State competent authority more effective.

(3) As explained in [SYSC 25.1.6G (Purpose)], the *management responsibilities map* also helps the FCA to operate its powers and requirements for individuals.

(4) By helping the FCA to better understand how the *branch* is structured, the *management responsibilities map* also helps the FCA to carry out more effective supervision of conduct of business, money laundering and other Host State responsibilities.

This chapter is not intended to extend the application of the *common* platform requirements or other parts of SYSC to matters which are reserved by an *EU* instrument to the *firm’s Home State regulator* in relation to *EEA SMCR firms*.

FCA-prescribed senior management responsibilities

[SYSC 25.2.3R (Specific requirements)] requires a *management responsibilities map* to cover the allocation of FCA-prescribed senior management responsibilities. This is not relevant to an *EEA SMCR firm* as FCA-prescribed senior management responsibilities do not apply to it.

Leaving out information already supplied

An *EEA SMCR firm* may exclude from its *management responsibilities map*:

(1) any information contained in its *requisite details*;
(2) any information contained in any notice of changes to its requisite details under the EEA Passport Rights Regulations; and

(3) any other information that has been supplied by the firm to the FCA or the PRA (including through the firm’s Home State competent authority) if:

(a) that information was supplied to the FCA or the PRA as a Host State competent authority; and

(b) the Single Market Directives or any other EU legislation provides for the supply of that information to the FCA or the PRA as described in (a).

25.6.6 Information contained in SYSC 25.6.5R(1) and (2) covers:

(1) details about the branch contained in the notice given by the firm’s Home State competent authority as part of the process for establishing the branch in the United Kingdom; and

(2) any updates to that information under the EEA Passport Rights Regulations.

25.6.7 The management responsibilities map of an EEA SMCR firm may therefore consist of information:

(1) that has changed since its requisite details were supplied or were last changed; or

(2) that is not covered in the firm’s Home State competent authority’s passport notification.

25.6.8 The FCA expects that an EEA SMCR firm that excludes information from its management responsibilities map under SYSC 25.6.5R will identify in its management responsibilities map the documents supplied to the FCA or the PRA where the omitted information can be found.

25.6.9 In practice an EEA SMCR firm may find it easier to prepare its management responsibilities map without omitting any information under SYSC 25.6.5R so that all the information referred to in SYSC 25.2 (Management responsibilities maps: Main rules) can be found in a single integrated document.

25.6.10 SYSC 25.4 (Guidance about what should be in a management responsibilities map) does not take into account the right of a firm to omit information under SYSC 25.6.5R. It assumes that the firm will prepare a single document under SYSC 25.6.9G. However SYSC 25.4 is not intended to take away the right to omit information under SYSC 25.6.5R.
This section gives guidance about SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm).

**Purpose of SYSC 25 Annex 1G**

1. A firm may use SYSC 25 Annex 1G as a prompt to see whether its management responsibilities map covers all its business activities.

2. A firm may wish to prepare its management responsibilities map using the same split of activities, where this is appropriate.

As mentioned in SYSC 26.11.2G, a firm may also use SYSC 25 Annex 1G as a prompt when allocating responsibilities under SYSC 26 (Senior managers and certification regime: Overall and local responsibility).

If a firm uses SYSC 25 Annex 1G to help it prepare its management responsibilities map or when allocating responsibilities under SYSC 26 (Senior managers and certification regime: Overall and local responsibility), it should bear in mind that it is not comprehensive and that there may be other business activities and functions that are relevant to that firm but that are not included in SYSC 25 Annex 1G (see SYSC 25.7.8G).

The purpose of SYSC 25 Annex 1G is not say how an SMCR firm should:

1. prepare its management responsibilities map;

2. allocate responsibilities amongst its senior management; or

3. organise itself.

**Contents of SYSC 25 Annex 1G**

SYSC 25 Annex 1G sets out examples of the business activities and functions that the FCA thinks could be relevant to most large or complex firms, although the FCA does not require firms (large or small, complex or non-complex) to organise themselves in this way.

Most or all of these activities and functions will normally apply to a complex firm. Many of them may not apply to a non-complex firm.
25.7.8 SYSC 25 Annex 1G is not comprehensive. While it is intended to cover most front-line business activities of an SMCR firm, it does not cover all internal oversight and monitoring functions.

(2) For example, it does not cover compliance or internal audit or the firm's governing body or its committees.
25.8 Management responsibilities maps: Records

25.8.1 A firm should consider past versions of its management responsibilities map as an important part of its records and as an important resource for the FCA in supervising the firm.

25.8.2 Past versions of a firm’s management responsibilities map form part of its records under the regulatory system.

25.8.3

1) This rule applies to a Solvency II firm (including a large non-directive insurer) to which SYSC 25.1.1R(2) (Main application rules) applies.

2) A firm must retain each version of its management responsibilities map for:
   a) (in the case of a large non-directive insurer) six years; or
   b) (in any other case) ten years;
   from the date on which it was superseded by a more up-to-date version.

3) A firm must be prepared to provide each version to the FCA on request for as long as the firm is required to retain it.
25.9 Handover procedures and material

Application

25.9.1 This section applies to a firm that meets the following conditions:

(1) it falls within SYSC 25.1.1R (Application and purpose); and

(2) it falls within one of the following categories:

(a) it is a UK SMCR firm; or

(b) it is a third-country SMCR banking firm.

25.9.2 For third-country SMCR banking firms, references in this section to an SMF manager are references to the SMF manager when acting as an SMF manager for the firm's branch in the United Kingdom.

25.9.3 [This has been left blank deliberately]

Rules about handover material

25.9.4 A firm must take all reasonable steps to ensure that:

(1) a person who is becoming an SMF manager;

(2) an SMF manager:

(a) taking on a new job or new responsibilities; or

(b) whose responsibilities or job are being changed; and

(3) anyone who has management or supervisory responsibilities for the SMF manager in (1) or (2);

has, when the SMF manager starts to perform their new or revised responsibilities or job, all information and material that a person in (1) to (3) could reasonably expect to have to perform those responsibilities or that job effectively and in accordance with the requirements of the regulatory system.

25.9.5 (1) A firm must have a policy about how it complies with SYSC 25.9.4R, including the systems and controls it uses.

(2) A firm must make and maintain adequate records of the steps taken to comply with SYSC 25.9.4R.
The information and material in SYSC 25.9.4R that should be made available includes details:

1. about unresolved or possible breaches of the requirements of the regulatory system; and

2. of any unresolved concerns expressed by the FCA, the PRA or another regulatory body.

The main purpose of SYSC 25.9.4R is to help the SMF manager with their new or revised responsibilities or job and to help the managers of SMF managers.

The information and material should be practical and helpful and not just a record.

The material should include an assessment of what issues should be prioritised.

The information and material should include judgement and opinion, not just facts and figures.

Where the responsibilities or job in SYSC 25.9.4R are being taken over from another person, the firm should have arrangements for an orderly transition.

As part of these arrangements, the firm should take reasonable steps to ensure that the predecessor contributes to the information and material in SYSC 25.9.4R all that would be reasonable to expect the predecessor to know and consider relevant, including the predecessor’s opinions.

One way of doing this could be for the predecessor to prepare a handover certificate.

However, the FCA accepts that there will be cases in which it will be impractical to ask the predecessor to prepare a handover certificate.

A firm should consider whether to apply the procedures in this section to other parts of its management.
### Examples of the business activities and functions of an SMCR firm

<table>
<thead>
<tr>
<th>Business areas and management functions</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Payment services</td>
<td>This means:</td>
</tr>
<tr>
<td></td>
<td>(1) payment services;</td>
</tr>
<tr>
<td></td>
<td>(2) issuing and administering other means of payment (for example, cheques and bankers' drafts);</td>
</tr>
<tr>
<td></td>
<td>(3) issuing electronic money; and</td>
</tr>
<tr>
<td></td>
<td>(4) current accounts.</td>
</tr>
<tr>
<td>(2) Settlement</td>
<td>This means clearing and settlement of any transactions described in rows (3) and (6) to (9) of this annex, in relation to the assets covered by (9).</td>
</tr>
<tr>
<td></td>
<td>It also includes clearing and settlement of any transactions described in row (10).</td>
</tr>
<tr>
<td>(3) Investment management</td>
<td>This has the same meaning as managing investments with the following adjustments:</td>
</tr>
<tr>
<td></td>
<td>(a) it covers all types of assets; and</td>
</tr>
<tr>
<td></td>
<td>(b) the exclusions in the Regulated Activities Order do not apply.</td>
</tr>
<tr>
<td></td>
<td>It also covers fund management.</td>
</tr>
<tr>
<td>(4) Financial or investment advice</td>
<td>This includes advising on investments.</td>
</tr>
<tr>
<td>(5) Mortgage advice</td>
<td>This has the same meaning as advising on regulated mortgage contracts but is expanded to cover land anywhere in the world and to cover security of any kind over land.</td>
</tr>
<tr>
<td>(6) Corporate investments</td>
<td>This means acquiring, holding, managing and disposing a firm's investments made for its own account.</td>
</tr>
<tr>
<td>(7) Wholesale sales</td>
<td>This means the selling of any investment to a person other than a retail customer.</td>
</tr>
<tr>
<td></td>
<td>It does not include the activities in (1).</td>
</tr>
<tr>
<td>(8) Retail sales</td>
<td>This means the selling of any investment to a retail customer.</td>
</tr>
<tr>
<td></td>
<td>It includes savings accounts. It does not include the activities in (1).</td>
</tr>
<tr>
<td>(9) Trading for clients</td>
<td>This means dealing in investments as agent and execution of orders on behalf of clients but the list of products also includes money market instruments and foreign exchange.</td>
</tr>
<tr>
<td>(10) Market making</td>
<td>This has the same meaning as it does in MIFID (see the definition of market maker in article 4.1 (7)).</td>
</tr>
<tr>
<td>(11) Investment research</td>
<td>Origination and syndication include:</td>
</tr>
<tr>
<td>(12) Origination/syndication and underwriting</td>
<td>(1) entering into or acquiring (directly or indirectly) any commitment or investment with a view to transferring some or</td>
</tr>
</tbody>
</table>
## Business areas and management functions

<table>
<thead>
<tr>
<th>Business areas and management functions</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>all of it to others, or with a view to others investing in the same transaction; (2) sub-participation; and (3) any transaction described in the Glossary definition of originator. Underwriting includes underwriting that is not on a firm commitment basis. A commitment or investment includes an economic interest in some or all of it. This activity also includes the provision of services relating to such transactions.</td>
<td></td>
</tr>
<tr>
<td>Retail lending decisions</td>
<td>Deciding whether, and on what terms, to lend to retail customers. Lending includes granting credit, leasing and hire (including finance leasing).</td>
</tr>
<tr>
<td>Wholesale lending decisions</td>
<td>Deciding whether, and on what terms, to lend to persons who are not retail customers. Lending includes granting credit, leasing and hire (including finance leasing).</td>
</tr>
<tr>
<td>Design and manufacturing of products intended for wholesale customers</td>
<td>Wholesale customers mean persons who are not retail customers.</td>
</tr>
<tr>
<td>Design and manufacture of products intended for retail customers</td>
<td>This includes financial promotions.</td>
</tr>
<tr>
<td>Production and distribution of marketing materials and communications</td>
<td>This means dealing with clients after the point of sale, including queries and fulfilment of client requests. This includes the firm’s compliance with DISP. It also includes: (1) any similar procedures relating to activities that do not come under the jurisdiction of the Financial Ombudsman Service; (2) activities that take place outside the UK; and (3) activities that are not subject to any ombudsman service.</td>
</tr>
<tr>
<td>Customer service</td>
<td>‘Customer’ means any person falling into any of the definitions of client in the Glossary so far as they apply to the FCA’s Handbook. The definition is extended to cover all services provided by the firm and not just those that are provided in the course of carrying on a regulated activity or an ancillary service.</td>
</tr>
<tr>
<td>Collection and recovering amounts owed to a firm by its customers</td>
<td>This means risk management and controls in relation to, and accounting for, transactions in securities or derivatives.</td>
</tr>
<tr>
<td>Middle office</td>
<td>This includes cybersecurity.</td>
</tr>
<tr>
<td>The firm’s information technology</td>
<td>If SYSC 4.1.6R and SYSC 4.1.7R (Business continuity) apply to the firm, this includes the systems and policies used to comply with those rules.</td>
</tr>
</tbody>
</table>
### Business areas and management functions

<table>
<thead>
<tr>
<th>Business areas and functions</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(24) Human resources</td>
<td>This business area of function includes operational continuity, resilience and strategy.</td>
</tr>
<tr>
<td>(25) Incentive schemes for the firm’s staff</td>
<td>This includes recruitment, training and competence and performance monitoring.</td>
</tr>
<tr>
<td>(26) Contributing input data to a BMR benchmark administrator (other than an Annex II benchmark administrator)</td>
<td>This is not limited to schemes based on sales.</td>
</tr>
<tr>
<td>(27) Administering a benchmark</td>
<td>This means the activity described in SYSC 27.8.5G(1)(k) (examples of what the significant management FCA certification function can cover).</td>
</tr>
<tr>
<td>(28) Administration of insurance</td>
<td>This means the activity described in SYSC 27.8.5G(1)(i) (examples of what the significant management FCA certification function can cover).</td>
</tr>
<tr>
<td>(29) Issuing commitments</td>
<td>This means the activity described in SYSC 27.8.5G(1)(j) (examples of what the significant management FCA certification function can cover).</td>
</tr>
<tr>
<td>(30) Processing</td>
<td>This means the activity described in SYSC 27.8.5G(1)(j) (examples of what the significant management FCA certification function can cover).</td>
</tr>
</tbody>
</table>

(31) Outsourcing, procurement and vendor management
Management of services shared with other group members

(32) Internal operations

(33) The firm’s legal department

**Note (1):** The purpose of this annex is explained in SYSC 25.7 (Guidance about SYSC 25 Annex 1G) and SYSC 26.11.2G.

**Note (2):** A firm does not have to use the split of example activities in this annex for the purposes in Note (1). If a firm does decide to use it, the firm should adapt it to suit the firm’s management arrangements better.

For example, a firm may find the split of activities into retail and wholesale activities unsuitable. If so, the firm might:

(a) treat retail and wholesale activities together; or
(b) use its own definition of retail and wholesale activities.
SYSC 25: Senior managers and certification regime: Management responsibilities...
Senior managers and certification regime: Overall and local responsibility

Chapter 26

Senior managers and certification regime: Overall and local responsibility
Main application rules

26.1.1 This chapter applies to:

1. an SMCR banking firm; and
2. an SMCR insurance firm that is a Solvency II firm (including a large non-directive insurer) but excluding:
   1. an insurance special purpose vehicle; and
   2. a firm in SYSC 23 Annex 1 5.2R (firms in run-off);
except to the extent that this chapter applies a narrower scope to a particular provision.

26.1.2 This chapter is not limited to regulated activities or other specific types of activities.

Exclusions

26.1.3 This chapter does not apply to an EEA SMCR firm.

Territorial scope

26.1.4 There is no territorial limitation on the application of this chapter, save as set out in SYSC 26.1.5R.

26.1.5 When this chapter applies to an overseas SMCR firm, it applies in relation to the firm’s branch in the United Kingdom.

26.1.6 Unless the context requires otherwise, the terms in the first column of the table in SYSC 26.1.7R are modified as described in the second column of that table in relation to an overseas SMCR firm.

26.1.7 Table: Application of this chapter to a third-country SMCR firm

<table>
<thead>
<tr>
<th>Reference in this chapter</th>
<th>Modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>firm</td>
<td>treated as a reference to the branch</td>
</tr>
<tr>
<td>Reference in this chapter</td>
<td>Modification</td>
</tr>
<tr>
<td>--------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>governing body</td>
<td>(a) treated as a reference to the branch’s governing body;</td>
</tr>
<tr>
<td></td>
<td>(b) the Glossary definition of this term is adjusted so as to refer to the branch rather than the firm as a whole</td>
</tr>
<tr>
<td>group</td>
<td>treated as including the rest of the firm</td>
</tr>
<tr>
<td>chief executive</td>
<td>branch manager or the person performing the PRA’s Head of Overseas Branch designated senior management function</td>
</tr>
</tbody>
</table>
26.2 Purpose

26.2.1 The purpose of this chapter is to ensure, together with the equivalent PRA requirements and the requirements about FCA-prescribed senior management responsibilities in SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities), that:

1. an SMF manager is responsible and accountable for every area of a firm’s activities;
2. the allocation of responsibilities is done systematically and explicitly; and
3. the process of allocation of responsibilities under this chapter covers every part of a firm’s activities, business areas and management functions (subject to the exclusions in SYSC 26.4 (Exclusions)) without any gaps in what is allocated in this process.

26.2.2 The purpose of this chapter is not primarily to ensure that formal responsibility for everything a firm does is allocated amongst its senior management. Even without the requirements of this chapter, responsibilities that have not been allocated explicitly would fall to the chief executive by default. However, one of the purposes of this chapter is to avoid responsibilities being allocated by implication or by default.

26.2.3 The allocation of responsibilities under this chapter does not replace the responsibilities of the chief executive.

2. If a firm allocates responsibilities under this chapter to an SMF manager other than the chief executive, the chief executive will be responsible for managing that person’s performance of those responsibilities in the same way that the chief executive manages that person’s other responsibilities.

3. A firm may allocate responsibilities under this chapter to the chief executive.
26.3 Main rules

26.3.1 A UK SMCR firm must ensure that, at all times, one or more of its SMF managers have overall responsibility for each of the activities, business areas and management functions of the firm.

26.3.2 (1) An overseas SMCR firm must ensure that, at all times, one or more of its SMF managers has overall responsibility (subject to the branch’s governing body) for each of the activities, business areas and management functions of the branch that are under the management of the branch’s governing body.

(2) An overseas SMCR firm must ensure that, at all times, one or more of its SMF managers has responsibility for each of the activities, business areas and management functions of the branch not covered by (1).

(3) An SMF manager in (2) must be directly involved in the management of the activity, business area or management function for which they have responsibility under (2).

26.3.3 An SMF manager who has responsibility for an activity, business area or management function under this section:

(1) (in the case of a UK SMCR firm) has “overall responsibility”;

(2) (in the case of an overseas SMCR firm) has “local responsibility”;

for that activity, business area or management function.

26.3.4 A firm must make the allocations of responsibilities in this chapter in such a way that it is clear who has which of those responsibilities.
26.4 Exclusions

Exclusions where other requirements apply

26.4.1 R [SYSC 26.3 (Main rules)] does not require a firm to ensure that SMF managers have local or overall responsibility for any activity, business area or management function that is included in an FCA-prescribed senior management responsibility that applies to the firm.

26.4.2 R [SYSC 26.3 (Main rules)] does not require a firm to ensure that SMF managers have local or overall responsibility for any activity, business area or management function that is:

1. included in a PRA-prescribed senior management responsibility that applies to the firm; or
2. managed (as part of the PRA-designated senior management function concerned) by any of the firm’s SMF managers approved to perform any of the following PRA-designated senior management functions for the firm:
   a. the Chief Finance function;
   b. the Chief Risk function;
   c. the Head of Internal Audit function;
   d. the Head of Key Business Area function;
   e. the Chief Operations function; or
   f. the Group Entity Senior Manager function or the Group Entity Senior Insurance Manager function.

Exclusion of the governing body and non-executive directors

26.4.3 R [SYSC 26.3 (Main rules)] does not require a firm to allocate overall or local responsibility for the running of the firm’s governing body.

26.4.4 G [SYSC 26.4.3R] means that a person does not have overall or local responsibility for a function under this chapter just by being a member of a firm’s governing body or equivalent.

26.4.5 G (1) A person who just provides oversight of a function does not have overall or local responsibility for that function under this chapter.
(2) Paragraph (1) and SYSC 26.4.4G mean that a non-executive director acting as such does not have overall or local responsibility for a function under SYSC 26.3 or perform the other overall responsibility function or the other local responsibility function.

(3) Paragraph (1) and SYSC 26.4.4G mean that a non-executive director:

(a) providing oversight of a function; or
(b) being responsible for the independence of a function;

does not have overall or local responsibility for that function under this chapter or perform the other overall responsibility function or the other local responsibility function.

Exclusion where the 12-week rule applies

26.4.6 This rule applies where:

(a) a firm appoints someone to perform a function in order to provide cover as described in SUP 10C.3.13R(1) (The 12-week rule) or the PRA equivalent; and

(b) the firm has allocated any responsibilities (the “Responsibilities”) under SYSC 26.3 (Main rules) to the SMF manager (the absent manager) who is absent as described in SUP 10C.3.13R(2) or the PRA equivalent.

While the disapplication of the designated senior management function provided for in SUP 10C.3.13R or the PRA equivalent is still in force the firm may allocate the Responsibilities to an employee who is not an SMF manager.

(3) For the purposes of this rule, the PRA equivalent of:

(a) SUP 10C.3.13R is the following parts of the PRA Rulebook:

(i) rule 2.3 in “Senior Management Functions”;
(ii) rule 2.4 in “Insurance - Senior Management Functions”; and
(iii) rule 2.4 in “Large Non-Solvency II Firms – Senior Management Functions”.

(b) SUP 10C.3.13R(1) and (2) is the following parts of the PRA Rulebook:

(i) rules 2.3(1) and (2) in “Senior Management Functions”;
(ii) rules 2.4(1) and (2) in “Insurance - Senior Management Functions”; and
(iii) rules 2.4(1) and (2) in “Large Non-Solvency II Firms – Senior Management Functions”.

26.4.7 A firm need not allocate the Responsibilities referred to in SYSC 26.4.6R(1)(b) to the person who is providing cover for the absent SMF manager.

26.4.8 SYSC 26.4.6R and SUP 10C.3.13R apply to a person performing the other overall responsibility function or the other local responsibility function as well as to a person performing one of the other designated senior management functions.
### Exclusion of the legal function

#### 26.4.9

1. **SYSC 26.3** (Main rules) applies to the *SMCR legal function* as modified by (2).

2. A firm may allocate local or overall responsibility for the *SMCR legal function* to someone who is not an SMF manager.

#### 26.4.10

1. The *SMCR legal function* of a firm means an activity of the firm that consists of one or more of the following:
   - the provision of legal advice or assistance to the firm or any member of its group in connection with the application of the law or with any form of resolution of legal disputes;
   - the provision of representation for the firm or any member of its group in connection with any matter concerning the application of the law or any form of resolution of legal disputes;
   - a reserved legal activity as defined in section 12 of the Legal Services Act 2007 (Meaning of "reserved legal activity" and "legal activity") when carried out for the firm or any member of its group; or
   - any of the activities set out in section 32(1) of the Solicitors (Scotland) Act 1980 (Offence for unqualified persons to prepare certain documents) when carried out for the firm or any member of its group.

2. For the purposes of the definition of the *SMCR legal function*, legal dispute includes a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any person’s legal rights or liabilities.

#### 26.4.11

1. If a firm allocates the functions in (2) to the same person as the one to whom it allocates responsibility for activities in **SYSC 26.4.10R**, the functions in (2) also form part of the *SMCR legal function*. As a result the exclusion in **SYSC 26.4.9R(2)** also applies.

2. A function is covered by this rule to the extent that it directly supports the activities in **SYSC 26.4.10R**.

#### 26.4.12

1. The purpose of **SYSC 26.4.11R** is to treat support services for the legal function as part of the legal function where responsibility for the support services is allocated to the person with overall responsibility for the legal function.

2. A support service is one that is directly related, but subordinate, to the legal services described in **SYSC 26.4.10R**. It should be necessary for the successful or better functioning of the main legal services and be an integral part of them.

3. One example of a support service is human resources services for the legal staff. This includes recruitment, training, continuing professional development, appraisal and discipline.
(4) The effect of SYSC 26.4.11R is that if the person with overall responsibility for the legal function also has overall responsibility for human resources services for the staff of the legal function, those services are covered by the exclusion in SYSC 26.4.9R(2). However, they are not excluded if those services are provided by a separate human resources department.

26.4.13 (1) A firm may divide its legal function into different parts and appoint a different person to have overall responsibility for each.

(2) If it does, SYSC 26.4.9R and SYSC 26.4.11R still apply.

(3) So for example, if the firm has two legal departments, one headed by A (for which A has overall responsibility) and one headed by B (for which B has overall responsibility):
   (a) neither A nor B need be an SMF manager; and
   (b) the firm may allocate overall responsibility for the human resources function for A’s department to A and overall responsibility for the human resources function for B’s department to B even though neither A nor B is an SMF manager.

26.4.14 SUP 10C.7.1R and SUP 10C.8.1R exclude the person with overall responsibility for the legal function from the other overall responsibility function (SMF18) and the other local responsibility function (SMF22).

26.4.15 The exclusions in SYSC 26.4.9R(2), SYSC 26.4.11R and SYSC 26.4.14G do not affect the scope of the following or the obligation to appoint an SMF manager to carry them out:

(1) any FCA-designated senior management function other than the ones in SYSC 26.4.14G; or

(2) any of the FCA-prescribed responsibilities.
26.5 Guidance on territorial scope

Allocation of responsibilities and territorial scope

26.5.1 SYSC 26.1.4R (territorial scope) means that a firm should allocate overall responsibilities under this chapter so that they cover activities, transactions, business areas and functions that are located or take place wholly or partly outside, as well as ones in, the United Kingdom.

Allocation of responsibility for transactions in branches

26.5.2 There is an exception to SYSC 26.5.1G for an overseas SMCR firm. This is that SYSC 26.1.5R limits this chapter to the activities of its UK branch.

26.5.3 (1) It is common for a branch to carry out only part of a transaction. For instance, a transaction may be booked in a branch but negotiated and arranged elsewhere or vice versa.

(2) When allocating responsibility to an SMF manager for activities in relation to transactions under SYSC 26.3 (Main rules), a firm should not exclude a transaction which is arranged, booked or negotiated in the branch merely because other elements of the transaction occur outside the United Kingdom.
26.6 Meaning of local and overall responsibility: General

UK firms

26.6.1 | The meaning in practice of overall responsibility for a function of a UK SMCR firm depends on whether that function is under the management of the firm’s governing body or not.

26.6.2 | (1) Certain EU legislation requires the governing body of a firm to have ultimate responsibility for, and the prime and leading role in, managing the firm.

(2) In particular this is the case under:
   (a) article 88 of the CRD (Governance arrangements);
   (b) article 9 of MiFID (management body); and
   (c) article 40 of the Solvency II Directive (Responsibility of the administrative, management or supervisory body).

(3) This means that the governing body of a UK SMCR firm subject to these requirements will manage the conduct of the whole of the business of the firm. In turn that means that the parts of this chapter dealing with a function that is not managed by the firm’s governing body will not be relevant to it.

26.6.3 | The FCA recognises that for some UK SMCR firms not subject to the requirements in ▪ SYSC 26.6.2G, some activities, business areas and functions of a firm may not be under the management of its governing body. This may be the case where, for example:

   (1) the firm does not have a governing body; or

   (2) the firm’s shareholders play a key role in managing it through, for example, a group management committee.

Branches of overseas firms

26.6.4 | (1) ▪ SYSC 26.3.2R(1) refers to the activities, business areas and management functions of the branch that are under the management of the branch’s governing body. However, the FCA recognises that for some branches, some activities, business areas and functions of the branches may not be under the management of the branch’s governing body. This may be the case where the branch does
not have its own governing body or where it is organised in such a way that certain functions are under the management of a person or body outside the branch's management structure. In those circumstances, it would not be appropriate to require the firm to allocate overall responsibility for that matter to a person who is part of the management structure of the branch.

(2) The requirements to allocate responsibility for activities, business areas and functions of a branch under SYSC 26.3.2R(1) and (2) respectively are intended to allow for the difference described in (1). In particular:

(a) SYSC 26.3.2R(1) is intended to cater for the situation where a particular activity, business area or function of the branch is under the management of the branch's governing body. In that situation, the firm should allocate responsibility for that matter under SYSC 26.3.2R(1); and

(b) SYSC 26.3.2R(2) is intended to cater for the situation where a particular activity, business area or function of the branch is not under the management of branch's governing body. In that situation, the firm should allocate responsibility for that matter under SYSC 26.3.2R(2).

Further guidance

26.6.5 [G] SYSC 26.7 gives guidance on the effect of SYSC 26.3 (Main rules) when a function is under the governing body's management. SYSC 26.8 gives guidance on the effect of SYSC 26.3 when the function is not.

Day-to-day or ultimate control

26.6.6 [G] Having overall or local responsibility under this chapter for a matter does not necessarily mean:

(1) having ultimate authority over it; or

(2) having day-to-day management control of that function.

26.6.7 [G] In particular, the ultimate decision-making body of many UK SMCR firms is their governing body, acting collectively.
26.7 Meaning of local and overall responsibility: Reporting to the governing body

26.7.1 This section gives guidance on what overall and local responsibility for a function means when the governing body manages the function in question under SYSC 26.3 (Main rules).

26.7.2 When this chapter refers to a person having overall or local responsibility for a function as described in SYSC 26.7.1G, it means a person who has:

(1) ultimate responsibility (under the governing body and the chief executive) for managing or supervising that function; and

(2) primary and direct responsibility for:

(a) briefing and reporting to the governing body about that function; and

(b) putting matters for decision about that function to the governing body.

26.7.3 In general, the FCA expects that a person to whom overall responsibility for a function is allocated as described in SYSC 26.7.1G will be the most senior employee or officer responsible for managing or supervising that function under the management of the governing body.

26.7.4 (1) A person with overall or local responsibility for a matter will either be a member of the governing body or will report directly to the governing body for that matter.

(2) For example, a firm appoints A to be head of sales. A is not on the governing body. A reports to an executive director (B) and B reports to the governing body about the sales function. In this example B, rather than A, has overall responsibility for sales.

26.7.5 (1) A person who reports to another, or is subject to oversight by another, may still have overall or local responsibility for a function.

(2) For example, a head of compliance may report direct to the governing body but be subject to performance appraisal by the chief executive. In this example, the head of compliance will still have overall responsibility for compliance.
(3) If a person (A):
   (a) reports directly to the firm’s governing body about a particular matter; but
   (b) is not a member of the governing body; and
   (c) reports to a member of the governing body (B) about that matter, who also reports to the governing body about that matter;
   B has overall or local responsibility for that matter.

(4) If:
   (a) a person (A) reports directly to the firm’s governing body about a particular matter;
   (b) A also reports to another person (B) about that matter;
   (c) neither A nor B is a member of the governing body; and
   (d) B also reports directly to the firm’s governing body about that matter;
   B has overall responsibility for that matter.

(5) A member of the governing body who reports to the chief executive may still have overall or local responsibility for a function.

(6) If:
   (a) a person (A) reports directly to the firm’s governing body about a particular matter; and
   (b) A’s function is subject to oversight by a non-executive director (B) or by a committee of the firm’s governing body chaired by B;
   A (not B) has overall or local responsibility for that matter.

26.7.6 A person may have local responsibility for a function for a branch of an overseas SMCR firm even though that person also reports to a person outside the branch.
### 26.8 Meaning of local and overall responsibility: Not reporting to the governing body

#### Scope of this section

**26.8.1** This section relates to the allocation of overall or local responsibility for any activities, business areas and functions of the firm which are not under the management of its governing body (see Section SYSC 26.3 (Main rules)).

#### Branches: Responsibility held outside the management structure of branch

**26.8.2** A person having local responsibility for a function for a branch does not need to be part of the management structure of the branch in order to have local responsibility for the function.

#### Branches: Setting overall strategy for a branch

**26.8.3**

1. Generally, where a an overseas SMCR firm allocates responsibility as described in Section SYSC 26.8.1G to one of the firm's SMF managers who is not based in the branch the FCA would expect:
   
   (a) that the responsibility would not be allocated to a manager whose responsibilities for the branch are limited to setting overall strategy for the branch; and
   
   (b) that, instead, the firm would allocate it to a manager who is the most senior person responsible for implementing the strategy for the branch.

2. See Section SUP 10C.1.5AG for more about how the difference between strategic and implementing responsibilities affects the FCA senior managers regime for approved persons in overseas SMCR firms.

#### Branches: Seniority

**26.8.4**

1. In some cases, a person who has local responsibility for a particular function may be very senior within the firm as a whole.

2. For instance, in some branches, an individual with local responsibility for a function may also be the head of the firm's Europe and Middle East division for a business line and may be more senior within the firm as a whole than the person performing the PRA's Head of Overseas Branch designated senior management function.
Having overall responsibility for a function as described in §SYSC 26.8.1G for a UK SMCR firm means being the most senior employee or officer (under the chief executive if there is one) responsible for managing or supervising that function.
26.9 Who functions should be allocated to

Seniority

The FCA expects that anyone who has overall or local responsibility for a matter:

(1) will be sufficiently senior and credible; and
(2) will have sufficient resources and authority;

to be able to exercise their management and oversight responsibilities effectively.

(1) The FCA would not consider it unusual if a person who has overall or local responsibility for a particular function was not a member of the firm’s governing body or equivalent.

(2) For example, in some firms, the head of compliance may report directly to the firm’s governing body even though the head of compliance is not a member of the governing body.

Other parts of this chapter dealing with seniority are:

(1) SYSC 26.7.3G (seniority of someone with overall responsibility for a function under the management of a firm’s governing body);

(2) SYSC 26.8.3G and SYSC 26.8.4G (seniority of someone from elsewhere in the firm having local responsibility in a branch); and

(3) SYSC 26.8.5G (seniority of someone within a UK SMCR firm with overall responsibility for a function not under the management of a firm’s governing body).

Not giving too much responsibility to one individual

(1) It will be common for a small non-complex firm to divide overall or local responsibility for its activities under the management of its governing body between members of its governing body and not to assign overall or local responsibility for any activity to someone who is not a member.

(2) However, when deciding how to divide up overall or local responsibility for its activities, a firm should avoid assigning such a
wide range of responsibilities to a particular person that the person is not able to carry out those responsibilities effectively.

(3) Therefore, in a large or complex firm, the FCA expects overall or local responsibility for some functions to be assigned to persons in the layer of management below the governing body. Anyone in that layer having overall or local responsibility for an activity will be performing a designated senior management function.

26.9.5 SYSC 26.9.4G(2) also applies to allocating responsibility for functions that are not under the management of the firm’s or branch’s governing body.

Dividing and sharing management functions between different people

26.9.6 The following provisions of SYSC 24.3 (Who prescribed responsibilities should be allocated to) also apply to allocations under this chapter so far as those provisions deal with sharing responsibilities:

(1) SYSC 24.3.8G (responsibilities should generally not be shared);

(2) SYSC 24.3.9G (when responsibilities may be shared); and

(3) SYSC 24.3.11G (statements of responsibilities);

26.9.7 (1) The material in SYSC 24.3 (Who prescribed responsibilities should be allocated to) about splitting of responsibilities is not directly relevant to this chapter. This is because SYSC 24 deals with functions that have been defined in the FCA Handbook whereas this chapter does not define the areas into which a firm’s activities should be divided when allocating responsibilities to its SMF managers.

(2) However SYSC 24.3.10G (responsibilities should be grouped together appropriately) is also relevant for deciding whether responsibility for a particular set of matters should be allocated to one SMF manager or allocated between several.
26.10 Group management arrangements and outsourcing

26.10.1

(1) This chapter requires overall or local responsibility for various aspects of a firm’s affairs to be allocated to an SMF manager.

(2) This requirement does not prevent a firm from relying on an employee of a company in the same group to perform the function.

(3) A firm has two main choices about how to fit such arrangements into the senior managers regime for SMCR firms.

   (a) The group employee is appointed by the firm (usually by its governing body if it has one) to perform the function. This means that the firm will have entered into an arrangement with that person. As explained in SUP 10C.3.9G, an arrangement with the firm is one of the factors that makes the senior managers regime for SMCR firms apply. The result is that the group official will be performing a controlled function and will need to be approved as an SMF manager.

   (b) The firm appoints someone (A) to supervise what the group employee does (so far as it concerns the firm) and allocates responsibility for the function to A, leaving day-to-day activities to the group employee. A will need to be approved as an SMF manager.

26.10.2

SYSC 26.10.1G also applies to a firm that outsources functions to a third party and is relying on an individual from the outsourced services provider to carry out the functions in those paragraphs.

26.10.3

(1) This chapter does not cover responsibility for an aspect of a firm’s affairs managed by an individual approved to perform the Group Entity Senior Manager or the Group Entity Senior Insurance Manager PRA-designated senior management function (see SYSC 26.4.2R (Exclusions where other requirements apply)).

(2) Where a responsibility is held by someone approved to perform one of those PRA-designated senior management functions for the firm, there is no need to appoint that person under this chapter and apply the arrangements in SYSC 26.10.1G.

(3) (a) The statement of responsibilities for the individual performing the PRA-designated senior management function; and

(b) the firm’s management responsibilities map;
should clearly show what responsibilities are held by that individual.
26.11 Link between this chapter and other parts of the senior managers regime

Link between designated senior management functions and this chapter

26.11.1

(1) Having overall or local responsibility for an activity under this chapter requires approval as an SMF manager. This is because a person who has overall or local responsibility for an activity will be:

(a) performing the other overall responsibility function or the other local responsibility function; or

(b) approved to perform another designated senior management function.

(2) The other overall responsibility function applies because this is the effect of SUP 10C.7.1R (definition of other overall responsibility function).

(3) SUP 10C.7.1R(2) says that the other overall responsibility function does not apply to a person who is approved to perform another designated senior management function.

(4) The other local responsibility function applies because this is the effect of SUP 10C.8.1R (Definition of the other local responsibility function (SMF22)).

(5) SUP 10C.8.1R(2) says that the other local responsibility function does not apply to a person who is approved to perform another designated senior management function in relation to the branch.

Link between SYSC 25 Annex 1G and this chapter

26.11.2

(1) The purpose of SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm) is to help a firm to prepare its management responsibilities map (see SYSC 25.7.2G).

(2) There is no direct link between SYSC 25 Annex 1G and this chapter.

(3) However, a firm may find SYSC 25 Annex 1G useful as a prompt to help it make sure that it has not failed to allocate overall or local responsibility under this chapter for a particular activity of the firm.
(4) If a *firm* uses SYSC 25 Annex 1G as a prompt when it allocates overall or local responsibility as described in (3), it should bear in mind that it is not comprehensive (see SYSC 25.7.8G).

26.11.3 The FCA does not require:

(1) there to be a separate *person* with overall responsibility for each individual business area in SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm); or

a *firm* to allocate functions under this chapter using the same split of business areas as in SYSC 25 Annex 1G.
Senior managers and certification regime: Certification regime

Chapter 27

Senior managers and certification regime: Certification regime
27.1 Application and purpose

Application

27.1.1 R This chapter applies to an SMCR firm.

27.1.2 G This chapter is also relevant to employees of SMCR firms performing functions specified as FCA certification functions.

Purpose

27.1.3 G (1) This chapter is about the FCA’s certification regime.

(2) Under this regime, a firm should ensure that its employees only perform an FCA certification function if they have a certificate issued by that firm to perform that function.

(3) The purpose of this chapter is to specify ‘FCA certification functions’ and to give guidance on the FCA’s certification regime.
27.2 Requirements of the certification regime

General

27.2.1 Most of the requirements of the certification regime are in the Act. This section summarises and gives guidance on them.

27.2.2 ■ SYSC TP 5 and ■ SYSC TP 7 contain transitional material about the certification regime. This includes material about the fact that:

1) the requirement in ■ SYSC 27.2.3G did not come into force at the same time as the rest of the certification regime; and

2) the certification regime came into force at different times for different types of firm.

Basic requirements

27.2.3 Under section 63E(1) of the Act, a firm must take reasonable care to ensure that no employee of the firm performs an FCA certification function under an arrangement entered into by the firm in relation to the carrying on by that firm of a regulated activity, unless the employee has a valid certificate issued by that firm to perform the function to which the certificate relates.

Fitness to act

27.2.4 Under section 63F of the Act, a firm may issue a certificate to a person only if the firm is satisfied that the person is a fit and proper person to perform the FCA certification function to which the certificate relates.

27.2.5 Under section 63F of the Act, in assessing if a person is fit and proper to perform an FCA certification function, a firm must have regard, in particular, to whether that person:

1) has obtained a qualification;

2) has undergone, or is undergoing, training;

3) possesses a level of competence; or

4) has the personal characteristics, required by general rules made by the FCA.
### Issuing and renewing certificates

Under section 63F of the Act, a certificate issued by a firm to a person must:

1. State that the firm is satisfied that the person is fit and proper to perform the function to which the certificate relates; and
2. Set out the aspects of the affairs of the firm in which the person will be involved in performing the function.

The Act says that a certificate is valid for a period of 12 months, beginning with the day on which it is issued.

The FCA believes that the Act allows a firm to draft a certificate to expire after fewer than 12 months. The FCA interprets the Act in this way because to require a firm to make a certificate last longer than the firm thinks best is likely to make it harder for the firm to ensure the fitness of its certification employees. That would undermine the purpose of the certification regime in the Act.

A certificate cannot be drafted to last more than 12 months.
27.2.12 If, after having considered whether a person is fit and proper to perform an FCA certification function, a firm decides not to issue a certificate to that person, it should consider if the circumstances warrant making a notification to the FCA for a breach of the rules in COCON pursuant to SUP 15.3.11R (Breaches of rules and other requirements in or under the Act or the CCA).

27.2.13 Under section 63F of the Act, a firm must maintain a record of every employee who has a valid certificate issued by it.

27.2.14 (1) A firm need not issue multiple certificates for one of its employees even if they perform several FCA certification functions as part of the same job.

(2) Similarly, a firm need not issue multiple certificates for one of its employees who performs an FCA certification function that is made up of a number of different functions.

(3) An example of an FCA certification function in (2) is the material risk taker FCA certification function described in SYSC 27.8.14R. SYSC 27.8.14R says that each function carried out by someone who is covered by that rule is an FCA certification function.

(4) Rather than having to issue multiple certificates, a firm may, in a single certificate, describe the employee’s functions that involve an FCA certification function in broad terms, and without listing all the activities that the function may involve.

(5) A firm should assess whether the employee is fit and proper to perform all aspects of the employee’s functions that involve an FCA certification function as described by a certificate.

(6) Although a firm does not need to issue multiple certificates for an employee who performs several different certification functions, under the requirements in SUP 16.26 (Reporting of Directory persons) the firm will need to specify each of the certification functions which the employee has been assessed as fit and proper to perform and for which the employee has a certificate at the time of the report.

27.2.15 (1) In cases where a certification employee’s role changes to involve a new FCA certification function part way through the 12-month period for which their certificate is valid, the firm may need to reissue the certificate.

(2) If that new function has different requirements relating to:
   (a) personal characteristics;
(b) the level of competence, knowledge and experience;
(c) qualifications; or
(d) training;

the FCA would expect the firm to assess whether the employee is fit and proper to perform that new function before they start it.

(3) In such a case, the firm should not wait until the point of annual reassessment to determine whether the employee is fit and proper for the new function.

(4) A firm may not need to issue a new certificate if:
(a) applying the conditions in paragraph (2), the firm concludes that no re-assessment is required; and
(b) the certificate is drafted broadly enough to cover the new FCA certification function.

(5) Paragraphs (1) to (4) also apply if a certification employee’s role changes part way through the 12-month period without the new role involving a new FCA certification function.

27.2.16 G

(1) This paragraph gives further guidance on the flexibility a firm has in drafting its certificates.

(2) A certificate may cover functions that a certification employee is not currently performing, as long as the firm has assessed the employee’s fitness for these additional functions. This is subject to (3).

(3) When a firm is deciding what a certificate can cover beyond the functions that the certification employee is currently performing, it should take the factors in SYSC 27.2.15G(2) into account. A certificate should not normally cover an additional function if SYSC 27.2.15G(2) would require the firm to consider the employee’s fitness before allowing them to perform it.

(4) A firm may, if it wishes, restrict a certificate to the functions that the certification employee is currently performing rather than drafting the certificate more widely as described in (2) and (3).

(5) SYSC 27.2.10G deals with the flexibility a firm has in choosing the period for which a certificate lasts.
27.3 Territorial scope

27.3.1 A function is an FCA certification function for a UK SMCR firm only to the extent:

(a) it is performed by a person from an establishment of the firm (or its appointed representative) in the United Kingdom; or

(b) the person performing that function is dealing with a client of the firm in the United Kingdom from an establishment of the firm (or its appointed representative) overseas.

27.3.2 A function is an FCA certification function for an overseas SMCR firm only to the extent that it is performed by a person from an establishment of the firm (or its appointed representative) in the United Kingdom.

27.3.3 Paragraph (1) does not apply to FCA certification function (6) (material risk takers). For a UK SMCR firm, FCA certification function (6) applies without any territorial limitation.

The FCA interprets the phrase ‘dealing with’ in SYSC 27.3.1R as including having contact with clients and extending beyond ‘dealing’ as used in the phrase ‘dealing in investments’. ‘Dealing in’ is used in Schedule 2 to the Act to describe in general terms the regulated activities which are specified in Part II of the Regulated Activities Order.

The FCA interprets the phrase ‘a client of the firm in the United Kingdom’ in SYSC 27.3.1R as referring to:

(1) for a client which is a body corporate, its office or branch in the United Kingdom; or

(2) for a client who is an individual, a client who is in the United Kingdom at the time of the dealing.
27.4 General material about the scope of the certification regime

Employees

27.4.1  
(1) The certification regime only applies to an employee.

(2) This definition includes a person who:
   (a) personally provides, or is under an obligation personally to provide, services to the firm in question under an arrangement made between the firm and the person providing the services or another person; and
   (b) is subject to (or to the right of) supervision, direction or control by the firm as to the manner in which those services are provided.

27.4.2  
(1) A person who works for an appointed representative of a firm may fall into the certification regime. In practice, however, they may not meet the conditions for the certification regime to apply.

(2) One condition for the certification regime to apply to a person is that the person performs a certification function under an arrangement entered into by the firm (see SYSC 27.2.3G). However, unlike the equivalent parts of the Act for the approved persons regime, the Act does not say that the certification regime applies if the function is performed under an arrangement entered into by the employee with a contractor of the firm instead of the firm.

(3) The certification regime only applies if the person concerned is an employee. This is defined in SYSC 27.4.1G. In many cases, a person working for an appointed representative will not fall into this definition as they may not:
   (a) provide services to the firm; or
   (b) be subject to (or to the right of) supervision, direction or control by the firm.

(4) If none of these limitations on the scope of the certification regime apply, a person working for an appointed representative will be
subject to the certification regime, as long as the other conditions in this chapter are met.

**Effect of PRA requirements**

27.4.3 A function does not cease to be an *FCA certification function* if that function is also a *PRA certification function*. 
27.5 Exclusions for emergency and temporary appointments

Emergency appointments

27.5.1 R

(1) If:

(a) a firm appoints an individual to perform a function which, but for this rule, would be an FCA certification function;

(b) the appointment is to provide cover for a certification employee whose absence is reasonably unforeseen; and

(c) the appointment is for less than four weeks;

then the performance by that individual of such function does not constitute an FCA certification function.

(2) This rule does not apply to FCA certification function (4) (functions requiring qualifications).

27.5.2 G

SYSC 27.5.1R does not apply to FCA certification function (4) (functions requiring qualifications). Where there is an unforeseen absence of an employee performing a function for which there is a qualification requirement:

(1) the firm should take reasonable care to ensure that no employee of that firm performs that function without a valid certificate; and

(2) the certificate should be issued before the person starts to perform the function.

Temporary UK role (the 30-day rule)

27.5.3 R

(1) None of the FCA certification functions extend to an individual ("P") in relation to a firm if:

(a) P is based outside the United Kingdom for the firm; and

(b) in a 12-month period, P spends no more than 30 days performing what would otherwise be an FCA certification function for that firm within the territorial scope of this chapter as described in SYSC 27.3.1R.

(2) Paragraph (1) only applies to the extent that P is appropriately supervised by:

(a) one of the firm’s SMF managers; or
(b) one of the firm’s certification employees whose certificate covers the FCA certification function that is to be disapplied under (1).

(3) This rule does not apply to any FCA certification function to the extent that it involves:

(a) giving advice or performing related activities in connection with pension transfers, pension conversions or pension opt-outs for retail clients; or

(b) giving advice to a person to become, or continue or cease to be, a member of a particular Lloyd’s syndicate.

(4) In the case of a UK SMCR firm, this rule does not apply to FCA certification function (6) (material risk takers).

27.5.4 SYSC 27 Annex 1G gives examples of how SYSC 27.5.3R works.

27.5.5 The FCA would expect an individual from overseas using the temporary UK role rule in SYSC 27.5.3R to be accompanied on a visit to a customer in the United Kingdom.

27.5.6 An individual benefiting from the temporary UK role rule in SYSC 27.5.3R may still be subject to the requirements of TC (Training and competence). However, TC 2.1.9R gives an exemption from certain qualification requirements in TC to an individual benefiting from the temporary UK role rule.
27.6 Other exclusions

Single Market Directives

27.6.1 Under section 63E(7) of the Act, this chapter does not apply to an arrangement which allows an employee to perform a function if the question of whether the employee is fit and proper to perform the function is reserved under any of the Single Market Directives or the auction regulation to an authority in a country or territory outside the United Kingdom.

Insolvency

27.6.2 This chapter does not apply to a function performed by a person acting as:

1. an insolvency practitioner under section 388 of the Insolvency Act 1986;

2. a nominee in relation to a voluntary arrangement under Part I (Company Voluntary Arrangements) of the Insolvency Act 1986;

3. an insolvency practitioner under article 3 of the Insolvency (Northern Ireland) Order 1989; or

4. a nominee in relation to a voluntary arrangement under Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

Non-executive directors

27.6.3 A function performed by a non-executive director of a firm acting as such is not an FCA certification function for that firm.

Benchmarks

27.6.4 This chapter does not apply to a firm in relation to benchmark activities.

27.6.5 Some benchmark activities are within the certification regime under ■ SYSC TP 7.5 (Transitional provisions about benchmarks and the certification regime).
Overall responsibility

27.6.6  
Performing any of the following is not an FCA certification function:

(1) a responsibility allocated to an SMF manager under SYSC 26.3 (Main rules); or

(2) a responsibility allocated to someone under SYSC 26.4.6R (Exclusion where the 12-week rule applies).

27.6.7  
SYSC 27.6.6R does not apply to having overall or local responsibility for the SMCR legal function.

Administrators

27.6.8  
A function in paragraph (A) of row (6) of the table in COCON 1.1.2R (Table: To whom does COCON apply?) is not an FCA certification function.
27.7 Specification of functions

General requirements

27.7.1 In accordance with section 63E of the Act (Certification of employees by authorised persons), a function is an FCA certification function only if, in relation to the carrying on of a regulated activity by a firm, that function:

(1) is not a controlled function in relation to the carrying on of that regulated activity by that firm; and

(2) will require the person performing it to be involved in one or more aspects of the firm’s affairs, so far as relating to that regulated activity.

Scope: FCA certification functions

27.7.2 In accordance with section 63E(3) of the Act, the functions in the table in ▼SYSC 27.7.3R are FCA certification functions.

27.7.3 Table: FCA certification functions

<table>
<thead>
<tr>
<th>Function</th>
<th>Where defined</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) CASS oversight</td>
<td>SYSC 27.8.1R</td>
</tr>
<tr>
<td>(2) Proprietary trader</td>
<td>SYSC 27.8.3R</td>
</tr>
<tr>
<td>(3) Significant management</td>
<td>SYSC 27.8.4R</td>
</tr>
<tr>
<td>(4) Functions requiring qualifications</td>
<td>SYSC 27.8.10R</td>
</tr>
<tr>
<td>(5) Managers of certification employees</td>
<td>SYSC 27.8.13R</td>
</tr>
<tr>
<td>(6) Material risk takers</td>
<td>SYSC 27.8.14R</td>
</tr>
<tr>
<td>(7) Client-dealing</td>
<td>SYSC 27.8.18R</td>
</tr>
<tr>
<td>(8) Algorithmic trading</td>
<td>SYSC 27.8.23R</td>
</tr>
</tbody>
</table>

27.7.4 (1) If a function falls into more than one of the FCA certification functions in the table in ▼SYSC 27.7.3R, all of those FCA certification functions apply to it.

(2) For example, if a person’s job involves both FCA certification function (4) (functions requiring qualifications) and (6) (material risk takers), the emergency appointments rule (▼ SYSC 27.5.1R) does not apply to that job.
(3) Another example is the rule about the territorial scope of this section (SYSC 27.3.1R) for a UK SMCR firm. For example, if a person’s job involves both FCA certification function (4) (functions requiring qualifications) and (6) (material risk takers), the territorial restriction in that rule does not apply to that job. Instead, this chapter applies without any territorial limitation.

(4) The reason for (3) is that SYSC 27.3.1R(3) says that there is no territorial limitation on FCA certification function (6) for a UK SMCR firm. As explained in (1), it does not matter that the job also involves FCA certification function (4), to which the territorial limitation does apply.

Overlap with designated senior management functions

(1) SYSC 27.7.1R(1) means that an FCA-designated senior management function cannot also be an FCA certification function at the same time.

(2) So an SMF manager performing an activity that forms part of their FCA-designated senior management function is not, by performing that activity, also performing an FCA certification function.

(3) But if an FCA-designated senior management function does not apply to a firm, performing the function described in the definition of that FCA-designated senior management function can be an FCA certification function.
27.8 Definitions of the FCA certification functions

CASS oversight function

27.8.1 (1) Each of the following is an FCA certification function:
   (a) in relation to a CASS medium firm and a CASS large firm (other than a CASS large debt management firm), the function of acting in the capacity of a person who is allocated the function in CASS 1A.3.1AR (oversight of operational effectiveness);
   (b) in relation to a CASS large debt management firm, the function of acting in the capacity of a person who is allocated the function in CASS 11.3.4R (oversight of operational effectiveness).

   (2) A function in (1) is not an FCA certification function for that firm if it is performed by an SMF manager of that firm.

27.8.2 SYSC 27.8.1R(1) only applies to a firm to the extent that CASS applies to that firm.

Proprietary trader function

27.8.3 The function of acting as a proprietary trader whose activity involves, or might involve, a risk of significant harm to the firm or any of its customers is an FCA certification function.

Significant management function

27.8.4 (1) The function of acting as a senior manager, with significant responsibility for a significant business unit, is an FCA certification function.

   (2) For an overseas SMCR firm’s branch in the United Kingdom, the significant management function is limited to business units of the branch.

27.8.5 A senior manager carrying on the significant management FCA certification function under SYSC 27.8.4R could, for example, be:

   (1) the head of a unit carrying on the activities of:
      (a) retail banking;
      (b) personal lending;

(c) corporate lending;
(d) salvage or loan recovery;
(e) proprietary trading;
(f) designated investment business;
(g) effecting contracts of insurance;
(h) credit-related regulated activity;
(i) making material decisions on the commitment of the firm’s financial resources, its financial commitments, its assets acquisitions, its liability management or its overall cash and capital planning;
(j) processing confirmations, payments, settlements, insurance claims, client money and similar matters;
(k) administration of contracts of insurance;
(l) complaints handling; or
(m) determining whether an applicant should be accepted for credit (including lending) and on what terms; or

(2) a member of a committee (that is, a person who, together with others, has authority to commit the firm) making decisions in these functions.

27.8.6 The examples in SYSC27.8.5G are illustrative only. They are not intended to be exhaustive.

27.8.7 A business unit is not limited to one that carries on commercial activities with customers and third parties or that earns revenue. A business unit can be an internal support department that has no contact with people outside the firm. It may include, for example, human resources, the legal department, operations or information technology.

27.8.8 For the purposes of the definition of the significant management FCA certification function, the following additional factors about the firm should be considered:

(1) the size and significance of the firm’s business in the United Kingdom – for example, a firm carrying on designated investment business may have a large number of certification employees (for example, in excess of 100 individuals); or a firm carrying on general insurance business may have gross written premiums in excess of £100m;

(2) the number of regulated activities carried on, or proposed to be carried on, by the firm and (if relevant) other members of the group;

(3) its group structure (if it is a member of a group);

(4) its management structure (for example, matrix management); and

(5) the size and significance of its international operations, if any.
When considering whether a business unit is significant for the purposes of SYSC 27.8.4R, the firm should take into account all relevant factors in the light of the firm’s current circumstances and its plans for the future, including:

1. the risk profile of the unit;
2. its use or commitment of the firm’s capital;
3. its contribution to the profit and loss account;
4. the number of employees, certification employees or SMF managers in the unit;
5. the number of customers of the unit; and
6. any other factor which makes the unit significant to the conduct of the firm’s affairs so far as relating to the regulated activity.

**Functions requiring qualifications**

1. Each function involving an activity for which there is a qualification requirement as specified in TC App 1.1.1R (Activities and Products/Sectors to which TC applies) is an FCA certification function.

2. For an overseas SMCR firm, each function involving an activity for which there would have been a qualification requirement, as specified in (1) if the firm had been a UK SMCR firm, is an FCA certification function.

3. A person performs the FCA certification function in this rule even if:
   a. the time period within which the person must have obtained the qualification requirement has not yet expired; or
   b. the person is exempt from the qualification requirement.

1. SYSC 27.8.10R (Functions requiring qualifications) may still apply to an SMCR firm where one of the exclusions in TC App 3.1 (Circumstances in which TC does not apply) or elsewhere in TC applies.

2. SYSC 27.8.10R applies to an overseas SMCR firm irrespective of whether the function in TC App 1.1.1R (Activities and Products/Sectors to which TC applies) applies to incoming EEA firms or overseas firms for the purposes of TC.

3. The territorial scope of qualification requirements as specified in TC App 2.1.1R (Territorial Scope subject to the limitation in TC Appendix 3) does not apply to the FCA certification function in SYSC 27.8.10R. However, SYSC 27.3.1R (Territorial scope) restricts the scope of this chapter outside the United Kingdom.

27.8.12 SYSC 27.8.10R(3) means that a person performs the FCA certification function in SYSC 27.8.10R even if for example they are:
(1) still in training and do not yet need to have the qualification; or

(2) exempt under ■ TC 2.1.9R (Exemption from appropriate qualification requirements).

Managers of certification employees

27.8.13 R

(1) The function of managing or supervising a certification employee, directly or indirectly, is an FCA certification function.

(2) A function in (1) is not an FCA certification function for that firm if it is performed by an SMF manager of that firm.

Material risk takers

27.8.14 R

Each function performed by a person in column (2) of the table in ■ SYSC 27.8.15R is an FCA certification function with respect to a firm in the corresponding entry in column (1).

27.8.15 R

Table: Definition of material risk taker

<table>
<thead>
<tr>
<th>Type of SMCR firm</th>
<th>Employees included</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A UK SMCR banking firm A third-country SMCR banking firm</td>
<td>Each member of the dual-regulated firms Remuneration Code staff of the firm in column (1) of this row (1). This includes any person who meets any of the criteria set out in articles 3 to 5 of Commission Delegated Regulation (EU) No 604/2014 (criteria to identify categories of staff whose professional activities have a material impact on an institution’s risk profile).</td>
</tr>
<tr>
<td>(2) An EEA SMCR banking firm</td>
<td>In relation to a firm in column (1) of this row (2), the definition of dual-regulated firms Remuneration Code staff is extended so that it includes employees of this kind of firm in the same way as it includes employees of a third-country SMCR banking firm.</td>
</tr>
<tr>
<td>(3) A Solvency II firm</td>
<td>Persons referred to in articles 275.1(c) and (d) of Solvency II Regulation 2015/35 (key functions and staff with a material impact).</td>
</tr>
</tbody>
</table>

27.8.16 G

If the definitions or requirements in the ‘Employees included’ column of the table in ■ SYSC 27.8.15R (as adjusted) do not apply to a firm in the corresponding entry in the ‘Type of SMCR firm’ column, that row of the table does not apply to the firm.

27.8.17 G

One example of ■ SYSC 27.8.16G is that a credit union is excluded from the table in ■ SYSC 27.8.15R. Therefore the material risk taker FCA certification
function does not apply to a credit union. However, it is subject to equivalent PRA requirements.

**Client-dealing function**

27.8.18 A person ("P") performs the client-dealing FCA certification function for a firm if:

1. P is carrying out any of the activities in the table in §SYSC 27.8.19R; and
2. those activities will involve P dealing with:
   - a person with or for whom those activities are carried out; or
   - the property of any such person;
   in a manner substantially connected with the carrying on of regulated activities by the firm.

27.8.19 Table: Activities covered by the client-dealing FCA certification function

<table>
<thead>
<tr>
<th>Activity</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The following activities:</td>
<td>(a) does not include advising on investments in the course of giving basic advice on a stakeholder product.</td>
</tr>
<tr>
<td>(a) advising on investments other than a non-investment insurance contract; or</td>
<td></td>
</tr>
<tr>
<td>(b) performing other functions related to this, such as dealing and arranging.</td>
<td></td>
</tr>
<tr>
<td>(2) The following activities:</td>
<td></td>
</tr>
<tr>
<td>(a) giving advice in connection with corporate finance business; or</td>
<td></td>
</tr>
<tr>
<td>(b) performing other functions related to this.</td>
<td></td>
</tr>
<tr>
<td>(3) If the firm does any of the following activities:</td>
<td>(a) and (b) do not include dealing or arranging (bringing about) deals in investments in a non-investment insurance contract.</td>
</tr>
<tr>
<td>(a) dealing, as principal or as agent; or</td>
<td></td>
</tr>
<tr>
<td>(b) arranging (bringing about) deals in investments;</td>
<td>For the activity in this row (3), §SYSC 27.8.18R(2)(a) and (b) are expanded to cover also:</td>
</tr>
<tr>
<td>taking part in those activities is included.</td>
<td>(a) a person in connection with whom the activities in the first column of this row are carried out; and</td>
</tr>
<tr>
<td></td>
<td>(b) the property of any such person.</td>
</tr>
<tr>
<td>(4) If the firm is acting in the capacity of an investment manager the following are included:</td>
<td></td>
</tr>
<tr>
<td>(a) taking part in that activity; and</td>
<td></td>
</tr>
<tr>
<td>(b) carrying on functions connected to this.</td>
<td></td>
</tr>
<tr>
<td>(5) Acting as a ‘bidder’s representative’</td>
<td>Acting as a ‘bidder’s representative’</td>
</tr>
<tr>
<td>Activity</td>
<td>Comments</td>
</tr>
<tr>
<td>----------</td>
<td>----------</td>
</tr>
<tr>
<td>'ive' in relation to bidding in emissions auctions.</td>
<td>has the meaning in sub-paragraph 3 of article 6(3) of the auction regulation.</td>
</tr>
</tbody>
</table>

### 27.8.20

SYSC 27.3.2G (the FCA interprets the phrase ‘dealing with’ as including having contact with and extending beyond ‘dealing’ as used in ‘dealing in investments’) applies to SYSC 27.8.18R.

### 27.8.21

The client-dealing FCA certification function generally involves dealing with any person with or for whom the activities in the table in SYSC 27.8.19R are carried out (or their property). That person need not be a client of the firm.

### 27.8.22

The restrictions in SYSC 27.7.1R (FCA certification function should require the person performing it to be involved in one or more aspects of the firm’s affairs so far as they relate to regulated activities) also applies to the client-dealing FCA certification function.

### 27.8.22A

(1) This rule qualifies rows (3) and (4) of the table in SYSC 27.8.19R (Table: Activities covered by the client-dealing FCA certification function).

(2) A person does not perform a function in (1) if their only activities that would otherwise come within the client-dealing FCA certification function do not require them to exercise a significant amount of discretion, judgment or technical skill.

### 27.8.22B

(1) The client-dealing FCA certification function does not apply to purely administrative roles even though they involve customer contact.

(2) SYSC 27.8.22AR excludes someone who has no scope to choose, decide or reach a judgement on what should be done in a given situation, and whose tasks do not require them to exercise significant technical skill.

(3) SYSC 27.8.22AR is likely to exclude a role that is simple or largely automated.

(4) There is no need to apply SYSC 27.8.22AR to row (1)(b) or (2)(b) of the table in SYSC 27.8.19R, because a person must also be carrying out the functions in row (1)(a) or (2)(a) for the client-dealing FCA certification function to apply and the functions in row (1)(a) or (2)(a) require judgment and skill.

### Algorithmic trading function

### 27.8.23

(1) Each of the following is an FCA certification function:

(a) approving the deployment of:

   (i) a trading algorithm or a part of one; or

   (ii) an amendment to a trading algorithm or a part of one; or
(iii) a combination of trading algorithms; and

(b) each of the following functions:

(i) having significant responsibility for the management of monitoring whether or not a trading algorithm; and

(ii) deciding whether or not a trading algorithm;

is, or remains, compliant with the firm’s obligations.

(2) The firm’s obligations in (1)(b) include:

(a) the firm’s regulatory obligations; and

(b) the rules and requirements of the trading venues to which the firm’s trading systems are connected.

27.8.24 R A trading algorithm means a computer algorithm used in algorithmic trading.

27.8.25 G Algorithmic trading is not limited to high-frequency algorithmic trading.

27.8.26 G Deploying a trading algorithm includes deploying one on a trading venue on which the firm has not traded before where the firm is already using that trading algorithm on another trading venue.

27.8.27 G SYSC 27.8.23R(1)(b) (monitoring or deciding whether or not a trading algorithm is compliant) includes testing, such as validation and stress testing.

27.8.28 G (1) Sometimes an approval or a decision involves sign-off from different people about different aspects of the decision or approval.

(2) If this is the case, all will have given the approval or decision for the purposes of SYSC 27.8.23R.

27.8.29 G (1) Sometimes an approval or decision involves sign-off by a number of people of different levels of seniority about the same aspects of the decision.

(2) If this is the case, only the most senior decision-taker gives the approval or decision for the purposes of SYSC 27.8.23R.

(3) Where the firm’s procedures do not require the more senior person to carry out a detailed review of the decision of the more junior, both the junior and the senior person will give the approval or decision.

27.8.30 G A firm may have deployed an algorithm even though:

(1) it has not yet actually been used in the generation or acceptance of orders; or

(2) it is not actually being used in the generation or acceptance of orders at the moment; or
(3) it is not currently being used in the generation or acceptance of orders because the circumstances have not arisen for it to start doing so.

27.8.31 In the examples in SYSC 27.8.30G the algorithm is capable of being used in the generation or acceptance of orders but is not actually generating or accepting them at the moment. However, a firm does not deploy an algorithm if the algorithm is not yet capable of generating or accepting orders because, for example, it is still in development.

27.8.32 The algorithmic trading FCA certification function applies whether the firm develops the algorithm itself or buys one from a third party.
Legal function

27.9.1 A person performing the function described in SYSC 26.4.9R (Exclusion of the legal function) will perform the significant management or the material risk taker FCA certification function, or both.
Examples of how the temporary UK role rule in SYSC 27.5.3R (the 30-day rule) works

<table>
<thead>
<tr>
<th>Example</th>
<th>How the temporary UK role rule applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A spends 20 days in the UK performing the proprietary trader FCA certification function for Firm X and wishes to spend another 20 days in the UK performing the significant management FCA certification function for Firm X.</td>
<td>The rule does not allow this. There is a single 30-day allowance, not a separate 30-day allowance for each FCA certification function.</td>
</tr>
<tr>
<td>(2) A spends 20 days in the UK performing an FCA certification function for Firm X (which is a UK SMCR firm) and wishes to spend another 20 days dealing with Firm X's clients in the UK from the overseas office of Firm X in which A is based.</td>
<td>The rule does not allow this. There is a single 30-day limit for both types of contact with the UK.</td>
</tr>
<tr>
<td>(3) A wishes to spend 40 days dealing with Firm X's clients in the UK from the overseas office of Firm X (which is a UK SMCR firm) in which A is based. However the total time spent doing that will only be a few hours overall.</td>
<td>The rule does not allow this. If A deals with a UK client on one day, that uses up one day of the 30-day allowance, however short the time for which the contact lasts.</td>
</tr>
<tr>
<td>(4) A spends 25 days in calendar year one for Firm X in the UK and 25 days in calendar year two. However A spends 40 days in the UK for Firm X between June in calendar year 1 and June in calendar year 2.</td>
<td>The rule does not allow this. This is because the 30-day annual allowance relates to any 12-month period and not just a calendar year.</td>
</tr>
<tr>
<td>(5) Firm X is an overseas SMCR firm. A is employed by Firm X and is based in one of its offices outside the UK. A wants to work in the UK branch for 10 days.</td>
<td>The rule applies to overseas SMCR firms. It does not matter that A is not employed by the UK branch and instead is employed by another part of Firm X. It does not make a difference whether A is based in an office of Firm X in its home state or one in a third country.</td>
</tr>
<tr>
<td>(6) A is based in one of Firm X's overseas offices. Firm X then decides to relocate A to the UK, where A will be certified to perform an FCA certification function for Firm X. Firm X wants to rely on the temporary UK role rule for the first 30 days while Firm X goes through the certification process for A.</td>
<td>The rule does not allow this. A is no longer based in an overseas office and so the rule does not apply.</td>
</tr>
<tr>
<td>(7) A is based in the overseas branch of a UK SMCR firm. A is to be promoted, so that A will be performing the material risk taker FCA certification function. Firm X wants to rely on the temporary UK role rule for the first 30 days while Firm X goes through the certification process for A.</td>
<td>The rule does not allow this because it does not apply to the material risk taker FCA certification function when it is performed for a UK SMCR firm.</td>
</tr>
<tr>
<td>Example</td>
<td>How the temporary UK role rule applies</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>A reference in this table to an <em>FCA certification function</em> is to a function that would have been an <em>FCA certification function</em> but for SYSC 27.5.3R (temporary UK role).</td>
<td></td>
</tr>
</tbody>
</table>
Chapter 28

Insurance distribution: specific knowledge, ability and good repute requirements
28.1 Minimum knowledge, ability and good repute requirements for carrying out insurance distribution activities

Application

28.1.1
(1) This chapter applies to a firm with Part 4A permission to carry on insurance distribution activities.

(2) SYSC 28.2 (except SYSC 28.2.1R(1)) does not apply to an authorised professional firm with respect to its non-mainstream regulated activities.

28.1.2
In this chapter, relevant employees are employees or other persons:

(1) directly involved in the carrying on of the firm's insurance distribution activities; or

(2) within the management structure responsible for the firm's insurance distribution activities; or

(3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).

[Note: article 10(1) and the fifth paragraph of article 10(2) of the IDD]

28.1.3
In this chapter 'employee':

(1) is not restricted to an individual working under a contract of employment; and

(2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the firm, under an arrangement between the firm and a third party; and

(3) also includes appointed representatives and their employees.

28.1.4
Rules specified in sections SYSC 28.2 (knowledge and ability), SYSC 28.4 (record-keeping) and SYSC 28.5 (other requirements to consider) relate to the requirements in:

SYSC 3.1.6R;
Section 28.1: Minimum knowledge, ability and good repute requirements for carrying out insurance distribution activities

- SYSC 5.1.1R;
- SYSC 3.2.20R, SYSC 9.1.1R and SYSC 9.1.1AR;
- TC 4.2 (Specified requirements for firms carrying on insurance distribution activities); and
- article 22 of the AIFMD level 2 regulation.
28.2 Knowledge and ability requirements

Knowledge and ability requirements

R28.2.1

(1) A firm must ensure that it and each relevant employee possesses appropriate knowledge and ability in order to complete their tasks and perform their duties adequately.

(2) A firm must ensure that it and each relevant employee complies with continued professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market.

(3) A firm must ensure that each relevant employee completes a minimum of 15 hours of professional training or development in each 12 month period.

(4) For the purposes of (3), a firm must take into account the:
   (a) role and activity carried out by the relevant employee within the firm; and
   (b) type of distribution and the nature of the products sold.

[Note: article 10(1) and the first, second and fourth paragraphs of article 10(2) of the IDD]

28.2.2 G

Training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.[Note: recital 29 to the IDD]

28.2.3 R

A firm must, including in relation to the relevant employee, demonstrate compliance with the following professional knowledge and competence requirements:

(1) for general insurance contracts:
   (a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks covered by such policies;
   (b) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
   (c) minimum necessary knowledge of claims handling;
   (d) minimum necessary knowledge of complaints handling;
(e) minimum necessary knowledge of assessing customer needs;
(f) minimum necessary knowledge of the insurance market;
(g) minimum necessary knowledge of business ethics standards; and
(h) minimum necessary financial competence;

(2) for insurance-based investment products as defined at article 2(1)(17) of the IDD (which in summary says that it is an insurance product which offers a maturity or surrender value, and where the maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations. This excludes products such as non-investment insurance and certain life insurance):

(a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
(b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;
(c) minimum necessary knowledge of financial risks borne by policyholders;
(d) minimum necessary knowledge of policies covering life risks and other savings products;
(e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;
(f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;
(g) minimum necessary knowledge of the insurance market and the saving products market;
(h) minimum necessary knowledge of complaints handling;
(i) minimum necessary knowledge of assessing customer needs;
(j) conflict of interest management;
(k) minimum necessary knowledge of business ethics standards; and
(l) minimum necessary financial competence; and

(3) for long-term insurance contracts:

(a) minimum necessary knowledge of policies including the terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
(b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;
(c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, relevant tax law and relevant social and labour law;
(d) minimum necessary knowledge of insurance and other relevant financial services markets;
(e) minimum necessary knowledge of complaints handling;
(f) minimum necessary knowledge of assessing consumer needs;
(g) conflict of interest management;
(h) minimum necessary knowledge of business ethics standards; and
(i) minimum necessary financial competence.

[Note: article 10(2) last paragraph and annex I of the IDD]
28.3 Good repute

**Good repute requirements**

28.3.1 A firm must ensure that all the persons in its management structure and any staff directly involved in insurance distribution activities are of good repute. [Note: article 10(3) paragraphs 1 to 3 of the IDD]

28.3.2 This includes but is not limited to those natural persons:

1. that are directly involved in insurance distribution activities; or
2. within the management structure responsible for insurance distribution activities; or
3. within the management structure responsible for any staff directly involved in insurance distribution activities.

[Note: article 10(3) paragraphs 1 and 3 of the IDD]

28.3.3 An IDD ancillary insurance intermediary must ensure that natural persons working in the firm, responsible for ancillary insurance distribution activities, are of good repute.

[Note: article 10(3) paragraph 4 of the IDD]

28.3.4 In considering a person’s repute the firm must at a minimum ensure that the person:

1. has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
2. has not previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

[Note: article 10(3) paragraph 1 of the IDD]

28.3.5 (1) In the United Kingdom the following persons will be considered to have been rehabilitated:
(a) in relation to a serious criminal offence, where the conviction is considered ‘spent’ under the Rehabilitation of Offenders Act 1974.

(b) in relation to bankruptcy, where the bankruptcy has been discharged.

(2) References to “serious criminal offences” are not restricted to offences considered to have been committed in or under the law of the United Kingdom.

(3) A firm should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.

28.3.6 A firm’s systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (see SYSC 3.2.13G and SYSC 5.1.2G). This includes, among other things, the assessment of an individual’s honesty.
28.4 Record-keeping requirements

**Record-keeping requirements**

**28.4.1** A firm must:

1. establish, maintain and keep appropriate records to demonstrate compliance with this chapter; and

2. be in a position to provide to the FCA, on request, the name of the person responsible for the record-keeping requirement in (1).

[Note: article 10(8) last paragraph of the IDD]

**28.4.2** A firm must:

1. make an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 month period;

2. retain that record for not less than 3 years after the relevant employee stops carrying on the activity; and

3. be in a position to provide any version of the record to the FCA on request.

[Note: article 10(2) second paragraph of the IDD]

**28.4.3** A firm must not prevent a relevant employee from obtaining a copy of the records relating to that relevant employee which are maintained by the firm for the purposes of SYSC 28.4.1R and SYSC 28.4.2R.
28.5 Other requirements to consider

28.5.1 In addition to the requirements in SYSC 28:

(1) firms may have to take into account and comply with the requirements in the Training and Competence sourcebook (TC);

(2) article 22 of the AIFMD level 2 regulation and the competent employees rules (SYSC 3.1.6R and SYSC 5.1.1R) set out a high-level competence requirement which every firm has to comply with; and

(3) it may be that the effect of the rules referred to in (1) and (2) is that firms have to meet requirements additional to those in SYSC 28.
# Senior management arrangements, Systems and Controls

## SYSC TP 2

**Firms other than common platform firms, insurers, managing agents and the Society**

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbooks provisions: Coming into force</td>
<td></td>
</tr>
<tr>
<td>[FCA] [PRA]</td>
<td>SYSC.8.1</td>
<td>R</td>
<td>If a firm other than a common platform firm, insurer, managing agent or the Society has in force on 1 April 2009 outsourcing arrangements which would be covered by SYSC.8.1 it need not amend those contracts to comply with these provisions but should comply with the new rules and guidance in respect of any outsourcing contracts which are entered into, or materially amended, on or after 1 April 2009.</td>
<td>1 April 2009 indefinitely</td>
<td>1 April 2009</td>
</tr>
</tbody>
</table>

2.2 The changes to SYSC set out in Annex D of the Alternative Investment Fund Managers Dir-

[expired]
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.3</td>
<td>SYSC 4.2.2 R to SYSC 4.2.5 G, SYSC 9.1.2 R and SYSC 9.1.3 R</td>
<td>R</td>
<td>[expired]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td>SYSC 4.1.8A R to SYSC 4.1.8E R and 4.1.9AR</td>
<td>R</td>
<td>[expired]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Firms other than common platform firms, insurers, managing agents and the Society
## SYSC TP 3
### Remuneration codes

### Part A

<table>
<thead>
<tr>
<th></th>
<th>IFPRU Remuneration Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>R [deleted]</td>
</tr>
<tr>
<td>2</td>
<td>R [deleted]</td>
</tr>
<tr>
<td>3</td>
<td>R [deleted]</td>
</tr>
<tr>
<td>4</td>
<td>G [deleted]</td>
</tr>
<tr>
<td>5</td>
<td>G [deleted]</td>
</tr>
<tr>
<td>6</td>
<td>R [expired]</td>
</tr>
</tbody>
</table>
| 6A | R (1) Paragraph (2) applies in relation to a firm that was not subject to the version of the Remuneration Code that applied before 1 January 2011 but satisfies at least one of the conditions set out in SYSC 19A.3.54 R (1B) to SYSC 19A.3.54 R (1D).
|   | (2) Where this paragraph applies, a contravening provision that is contained in an agreement made before 3 November 2011 is not rendered void by SYSC 19A Annex 1.1R unless it is subsequently amended so as to contravene a rule to which SYSC 19A Annex 1.1R applies. |
| 6B | G The effect of 6R is to limit the provisions on voiding and recovery to firms which were subject to the version of the Remuneration Code which applied before 1 January 2011. That transitional provision comes to an end on 1 January 2012. A new limit providing for voiding to apply only in relation to certain types of firm is provided in SYSC 19A.3.54 R (1B) to SYSC 19A.3.54 R (1D). Paragraph 6AR applies to firms which become subject to the provisions on voiding after the transitional provision in 6R comes to an end. It prevents certain contravening provisions which predate the making of the new rules limiting the application of voiding from becoming void. |
| 7 | G [expired]             |

### Part B

<table>
<thead>
<tr>
<th></th>
<th>UCITS Remuneration Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>R A management company need not apply the UCITS remuneration principles to any awards of variable remuneration until it commences its first full performance year starting on or after 18 March 2016.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>(2) Material to which the transitional provision applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The UCITS remuneration principles</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>(3) Transitional provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(4) Transitional provision: date in force</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>(5) Handbook provisions: coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>From 18 March 2016 until 18 March 2017</td>
</tr>
</tbody>
</table>

18 March 2016
Senior Management Arrangements, Systems and Controls

SYSC TP 5

Financial Services (Banking Reform) Act 2013: Certification and regulatory references

Note to the reader

5.1.1-2 G (1) SYSC TP 5 has not been amended to reflect changes in the FCA Handbook and Glossary since the beginning of 2018. This is because it is made up of transitional provisions that mostly expired before then.

(2) A small number of provisions may have effect beyond that date. To help the reader, the table in SYSC TP 5.1.1-1G explains how superseded Glossary terms in SYSC TP 5 should be interpreted.

5.1.1-1 G Table: meaning of superseded Glossary terms

<table>
<thead>
<tr>
<th>Term in SYSC TP 5</th>
<th>Term that has replaced it</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>FCA specified significant-harm function</td>
<td>FCA certification function</td>
<td></td>
</tr>
<tr>
<td>full scope regulatory reference firm</td>
<td>Any of the following:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) an SMCR banking firm;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) a Solvency II firm; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) a large non-directive insurer.</td>
<td></td>
</tr>
<tr>
<td>relevant authorised person specified</td>
<td>SMCR banking firm</td>
<td></td>
</tr>
<tr>
<td>significant-harm function</td>
<td>certification function</td>
<td></td>
</tr>
</tbody>
</table>

Purpose of SYSC TP 5

SYSC 5.1.1 G SYSC TP 5:

(1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and

(2) has certain transitional provisions dealing with SYSC 22 (Regulatory references).

5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017.

Application

SYSC 5.2.1 G (1) All of SYSC TP 5 applies to relevant authorised persons.

(2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all firms.

Certification: The transitional period
<table>
<thead>
<tr>
<th>Provision in the Act or the Handbook</th>
<th>What that provision is about</th>
<th>How it applies in the transitional period</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 27.2.3G to SYSC 5.2.17G</td>
<td>Guidance about issuing certificates and fitness</td>
<td>Does not apply</td>
</tr>
<tr>
<td>SYSC 27.6.1R to SYSC 27.8.31G</td>
<td>Definition of who falls into the certification regime</td>
<td>Applies for the purpose of those parts of the Handbook and the Act that are in force as described in this table.</td>
</tr>
<tr>
<td>The parts of SYSC 4.5 dealing with the management responsibilities map</td>
<td>SYSC 4.5 says that the management responsibilities map should say if persons described or identified in the management responsibilities map are certification employees</td>
<td>Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.</td>
</tr>
<tr>
<td>COCON</td>
<td>Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.</td>
<td>This applies even if they have not been notified that: (a) COCON applies to them; or (b) of the rules that apply to them.</td>
</tr>
<tr>
<td>Section 64B of the Act</td>
<td>Firm should ensure that all persons subject to COCON are notified.</td>
<td>Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.</td>
</tr>
<tr>
<td>Provision in the Act or the Handbook</td>
<td>What that provision is about</td>
<td>How it applies in the transitional period</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>-----------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Definition of certification employee</td>
<td>During the transitional period, the Glossary definition of certification employee covers everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.</td>
<td></td>
</tr>
<tr>
<td>The parts of SUP 15.3 that deal with COCON breaches</td>
<td>Notifying a significant breach of COCON to the FCA</td>
<td>Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.</td>
</tr>
<tr>
<td>Section 64C of the Act and SUP 15.11</td>
<td>Notifying the FCA of disciplinary action</td>
<td>Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.</td>
</tr>
</tbody>
</table>

**Transitional provisions about regulatory references: Full scope regulatory reference firms**

**SYSC 5.4.1**

(1) If on 7 March 2017 an employee (P) is already performing a specified significant-harm function for a relevant authorised person (A), the obligation under SYSC 22 (Regulatory references) for A to obtain a reference when issuing a certificate for P for that significant-harm function does not apply.

(2) Paragraph (1) ceases to apply if there has been a significant change in P’s responsibilities forming part of that specified significant-harm function as compared to the position on 7 March 2017.

**SYSC 5.4.2**

(1) SYSC 22.2.1R (Obligation to obtain a regulatory reference) does not apply to an application for approval as an approved person that is made before 7 March 2017 but that has not yet been finally determined by that date.

(2) SYSC 22.7.5G to SYSC 22.7.8G (Asking for a reference to be updated) deal with a full scope regulatory reference firm (A) that is obliged to get a reference from an ex-employer (B) and wants to rely on one that B has already given A.

(3) The SYSC material referred to in (1) can apply where the reference was given before 7 March 2017.

(4) One relevant factor is whether B is a full scope regulatory reference firm. This is because the FCA requirements about firms asked to give regulatory references that applied to firms that are not full scope regulatory reference firms before 7 March 2017 were similar to those in SYSC 22. As such, the existing reference may already be sufficient.

(5) The main difference between the requirements for a firm that is not a full scope regulatory reference firm before and after 7 March 2017 is that the range of functions for which A is entitled to ask for a reference was widened. For example, there was no obligation to supply a reference for a certification employee before then.

**SYSC 5.4.4**

SYSC 22.2.4R (Obligation to revise references) does not apply to references given before 7 March 2017.

**SYSC 5.4.5**

Question (F) (disciplinary action) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements) does not require disclosure of breaches of individual conduct requirements referred to in question (F) if the disciplinary action referred to in that item took place before:

(1) (in the case of a relevant authorised person) 7 March 2016; or

(2) (in the case of any other full scope regulatory reference firm) 7 March 2017;
if the firm's records do not show whether the conduct that was subject to disciplinary action amounted to a breach of those individual conduct requirements.

Transitional provisions about regulatory references: All firms

| SYSC 5.5.1 | R | If a firm (A) asks another firm (B) for a reference before 7 March 2017, SYSC 22 (Regulatory references) applies to B if B gives the reference after that date. |
| SYSC 5.5.2 | G | SYSC 22 applies to a reference requested or given after 7 March 2017 even if the matters covered by the reference occurred before then. |
Senior Management Arrangements, Systems and Controls

**SYSC TP 6**
Transitional Provision 6

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>SYSC 2.2.4</td>
<td>R</td>
<td>[expired]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>SYSC 2.1.3A</td>
<td>R</td>
<td>[expired]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>SYSC 2.2.6</td>
<td></td>
<td>[expired]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>SYSC 2.1.3C</td>
<td>R</td>
<td>[expired]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>SYSC 2.2.1R and SYSC 2.2.1AR</td>
<td>R</td>
<td>A <em>firm</em> must continue to retain the records it was required to make and retain under SYSC 2.2.1R before its disapplication to the <em>firm</em> under SYSC 2.2.1AR, for as long as SYSC 2.2.1R required before its disapplication.</td>
<td>From 1 January 2016 until the date that the records are no longer required to be retained.</td>
<td>1 January 2016</td>
</tr>
<tr>
<td>6.</td>
<td>SYSC 27.7.3R (row 2) and SYSC 5.2.33R</td>
<td>R</td>
<td>[deleted]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>SYSC 14.1.2AR</td>
<td>R</td>
<td>The <em>rule</em> in column 2, as it was in force on 28 June 2018, continues to apply to a benchmark administrator, until that administrator becomes authorised or registered under the benchmarks regulation, or ceases to be authorised for administering a specified benchmark.</td>
<td>From 29 June 2018</td>
<td>Already in force</td>
</tr>
</tbody>
</table>
# SYSC TP 7

## Bank of England and Financial Services Act 2016: Certification and regulatory references

### 7.1 Application, purpose and definitions

<table>
<thead>
<tr>
<th></th>
<th>Application, purpose and definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1.1</td>
<td>SYSC TP 7 applies as set out in the table in SYSC TP 7.1.2R.</td>
</tr>
<tr>
<td>7.1.2</td>
<td><strong>Type of firm</strong>&lt;br&gt;Parts of SYSC TP 7 that apply&lt;br&gt;&lt;br&gt;<strong>An SMCR insurance firm except one in the following row</strong>&lt;br&gt;All applies&lt;br&gt;&lt;br&gt;<strong>An SMCR insurance firm that is a Solvency II firm (including a large non-directive insurer)</strong>&lt;br&gt;All applies except as follows:&lt;br&gt;1. SYSC TP 7.4.2R to SYSC TP 7.4.3G do not apply.&lt;br&gt;2. Subject to (3), SYSC TP 7.4.4R and SYSC TP 7.4.5G do not apply.&lt;br&gt;3. SYSC TP 7.4.4R and SYSC TP 7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification).&lt;br&gt;&lt;br&gt;<strong>All other firms</strong>&lt;br&gt;Does not apply, except as follows.&lt;br&gt;SYSC TP 7.4.6R, SYSC TP 7.4.7G and SYSC TP 7.6 apply.&lt;br&gt;SYSC TP 7.5 applies to the firms specified in SYSC TP 7.5.</td>
</tr>
</tbody>
</table>

### 7.1.3 SYSC TP 7:

1. **SYSC TP 7:**<br>(1) explains how the certification regime described in SYSC 27 applies during the certification transitional period described in SYSC TP 7.2.1G;<br>(2) has certain transitional provisions dealing with SYSC 22 (Regulatory references) and with benchmark activities; and<br>(3) has certain other transitional provisions relating to the amendments made to the FCA Handbook by the Individual Accountability (Dual-Regulated Firms) Instrument 2018.

### 7.1.4 SYSC TP 7:

1. The main time period for which SYSC TP 7 operates is 2018 to 2019.<br>2. There are transitional provisions that can apply beyond that period. They are based on events occurring during that period.

### 7.1.5 SYSC TP 7:

The terms in the first column of the table in SYSC TP 7.1.6R, where they appear in bold in SYSC TP 7, have the meaning in the corresponding row of column 2 for the purposes of SYSC TP 7.

### 7.1.6 Table: glossary of bespoke terms used in SYSC TP 7

**Part One: General**
### Defined term Meaning

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>commencement SI</td>
<td>[deleted]</td>
</tr>
</tbody>
</table>

### Part Two: Dates

<table>
<thead>
<tr>
<th>Defined term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>certification</td>
<td>The one year period beginning on 10 December 2018 and ending on 10 December 2019 referred to in regulation 2 of the insurance firms commencement SI (Appointed days for the coming into force of section 21 and Schedule 4 for insurers)</td>
</tr>
<tr>
<td>transitional period</td>
<td></td>
</tr>
<tr>
<td>general commencement</td>
<td>10 December 2018</td>
</tr>
<tr>
<td>date</td>
<td></td>
</tr>
</tbody>
</table>

### 7.2 Certification: The certification transitional period

7.2.1 Under the insurance firms commencement SI, the obligation in section 63E(1) of the Act for an SMCR firm to take reasonable care to ensure that no employee of the firm performs an FCA certification function, unless the firm has issued the employee with a valid certificate, does not apply until the end of the certification transitional period.

7.2.2 However, other parts of the FCA Handbook and the Act about certification employees apply in the certification transitional period.

7.2.3 The table in SYSC TP 7.2.4G explains how the requirements of the FCA Handbook and the Act about certification employees apply in the certification transitional period.

### Table: How the certification regime applies in the certification transitional period

<table>
<thead>
<tr>
<th>Provision in the Act or the Handbook</th>
<th>What that provision is about</th>
<th>How it applies in the certification transitional period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary definition of certification employee</td>
<td>During the certification transitional period, the Glossary definition of certification employee covers everyone who would need a certificate to perform their job if the obligation to issue certificates were in force</td>
<td></td>
</tr>
<tr>
<td>SYSC 27.2 and the parts of the Act on which it gives guidance</td>
<td>Issuing certificates and fitness</td>
<td>Does not apply</td>
</tr>
<tr>
<td>SYSC 27.3</td>
<td>Territorial scope of the certification regime</td>
<td></td>
</tr>
<tr>
<td>SYSC 27.4</td>
<td>General material about the scope of the certification regime</td>
<td></td>
</tr>
<tr>
<td>SYSC 27.5</td>
<td>Exclusions for emergency and temporary appointments</td>
<td>Applies for the purpose of those parts of the FCA Handbook and the Act that are in force as described in this table</td>
</tr>
<tr>
<td>SYSC 27.6</td>
<td>Other exclusions</td>
<td></td>
</tr>
<tr>
<td>SYSC 27.7</td>
<td>Specification of functions</td>
<td></td>
</tr>
<tr>
<td>SYSC 27.8</td>
<td>Definitions of the FCA certification functions</td>
<td></td>
</tr>
</tbody>
</table>
### Table: How the certification regime applies in the certification transitional period

<table>
<thead>
<tr>
<th>Provision in the Act or the Handbook</th>
<th>What that provision is about</th>
<th>How it applies in the certification transitional period</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 27.9</td>
<td>Material relating to several FCA certification functions</td>
<td>Obligation to obtain a reference does not apply because the obligation to get a reference is triggered by issuing a certificate. SYSC TP 7.4 has exemptions that apply after the certification transitional period.</td>
</tr>
<tr>
<td>SYSC 22</td>
<td>Regulatory references</td>
<td></td>
</tr>
<tr>
<td>SYSC 25</td>
<td>SYSC 25 says that the management responsibilities map should say whether persons described or identified in the management responsibilities map are certification employees</td>
<td>Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force. This applies even if they have not been notified: (a) that COCON applies to them; or (b) of the rules that apply to them. COCON also applies to those who would have been excluded from the certification regime by SYSC 27.5.1R (Emergency appointments) or SYSC 27.5.3R (Temporary UK role).</td>
</tr>
<tr>
<td>COCON</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 64B of the Act</td>
<td><em>Firm</em> should ensure that all persons subject to COCON are notified.</td>
<td>Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.</td>
</tr>
<tr>
<td>The parts of SUP 15.3 that deal with COCON breaches</td>
<td><em>Firm</em> should take reasonable steps to ensure that those persons understand how COCON applies to them.</td>
<td></td>
</tr>
<tr>
<td>Section 64C of the Act and SUP 15.11</td>
<td>Notifying a significant breach of COCON to the FCA</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Notifying the FCA of disciplinary action</td>
<td></td>
</tr>
</tbody>
</table>

### 7.3 General material about certification

- *Firm* should ensure that all persons subject to COCON are notified.
- *Firm* should take reasonable steps to ensure that those persons understand how COCON applies to them.
- Notifying a significant breach of COCON to the FCA.
- Notifying the FCA of disciplinary action.
### 7.3.1 G

1. **SYSC 27.5.1R (Emergency appointments)** allows a firm to appoint someone (P) to perform a function which would normally be an **FCA certification function** without P becoming a **certification employee**. There is a maximum period for which the appointment can last.

2. When calculating the maximum time period in (1), the firm need not take into account any time spent by P before the **general commencement date** performing what will become the **FCA certification function** in (1).

3. When a firm, after the end of the **certification transitional period**, is calculating the maximum time period in (1), the firm should take into account any time spent by P during the **certification transitional period** performing the **FCA certification function** in (1).

### 7.3.2 G

1. **SYSC 27.5.1R** only applies where P (as referred to in SYSTP 7.3.1G) is providing **cover for a certification employee** whose absence is reasonably unforeseen.

2. **SYSC 27.5.1R** may still apply if the absence referred to in (1) began before the **general commencement date** or during the **certification transitional period**.

### 7.3.3 G

1. Some **FCA certification functions** only apply where the place of performance of the function has a connection with the **United Kingdom** (for example, it is carried on there).

2. **SYSC 27.5.3R** (Temporary UK role (the 30-day rule)) allows a person (P) to carry on a function for a firm that would normally be an **FCA certification function** because of its connection with the **United Kingdom** without P becoming a **certification employee**. There is a time limit on how long the firm can allow P to do this.

3. When calculating the time limit in (2), the firm need not take into account any time spent by P before the **general commencement date** performing functions with a **United Kingdom connection**.

4. When a firm, after the end of the **certification transitional period**, is calculating the maximum time period in (1), the firm should take into account any time spent by P during the **certification transitional period** performing functions with a **United Kingdom connection**.

### 7.4 Transitional provisions about regulatory references

#### 7.4.1 R

1. If on the **general commencement date** an employee (P) is already performing an **FCA certification function** for an SMCR firm (A), the obligation under **SYSC 22** (Regulatory references) for A to obtain a reference when issuing a certificate (including reissuing a certificate) for P for that **FCA certification function** does not apply either on or after the end of the **certification transitional period**.

2. If there has been a significant change in P's responsibilities forming part of that **FCA certification function** as compared to the position on the **general commencement date**, paragraph (1) ceases to apply from that time.

#### 7.4.2 R

1. **SYSC 22.2.1R** (Obligation to obtain a regulatory reference) does not apply to an application for approval as an approved person that:
   - is made before the **general commencement date** and is continued in force by SUP TP 11.7 (In-flight applications: Conversion); or
   - is made under SUP TP 11.15 (Applications of approved persons to take effect from the commencement date).

#### 7.4.3 G

1. **SYSC 22.2.4R** (Obligation to revise references) does not apply to references given before the **general commencement date**.

#### 7.4.4 R

1. Question (F) (disciplinary action) in Part One of **SYSC 22 Annex 1R** (Template for regulatory references given by SMCR firms and disclosure requirements) does not require disclosure of breaches of individual conduct requirements referred to in question (F) if:
   - the disciplinary action referred to in that item took place before the **general commencement date**; and
(2) the firm’s records do not show whether the conduct that was subject to disciplinary action amounted to a breach of those individual conduct requirements.

7.4.5 G The term individual conduct requirements in SYSC TP 7.4.4R is defined in Section One of Part Two of SYSC 22 Annex 1R.

7.4.6 R If:

(1) a firm (A) asks another firm (B) for a reference before the general commencement date; but

(2) B gives the reference after that date;

SYSC 22 (Regulatory references) in the form it is in at the time in (2) applies to B.

7.4.7 G SYSC 22 in the form it is in after the general commencement date applies to a reference requested or given after the general commencement date even if the matters covered by the reference occurred before then.

7.5 Transitional provisions about benchmarks and the certification regime

7.5.1 G SYSC 27.6.4R excludes benchmark activities from the certification regime. SYSC TP 7.5 brings certain activities in relation to benchmarks back into the certification regime.

7.5.2 R SYSC 27 (Senior managers and certification regime: Certification regime) applies to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.

7.5.3 G As a consequence of the benchmarks regulation, the regulated activities referred to in SYSC TP 7.5.2R will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances).

7.5.4 G The effect of SYSC TP 7.5.2R is that SYSC 27 continues to apply to firms which still have permission to carry on the regulated activity in SYSC TP 7.5.2R when carrying on that activity.

7.6 Miscellaneous

Common platform requirements

7.6.1 G The Individual Accountability (Dual-Regulated Firms) Instrument 2018 renumbered material that used to be in SYSC 4 and SYSC 5 so that it now appears in SYSC 24 to SYSC 27. That instrument updated FCA Handbook cross-references accordingly.

7.6.2 G The requirements of chapters SYSC 24 to SYSC 27 no longer form part of the common platform organisational requirements and a reference to anything in SYSC 4 or SYSC 5 does not include any material referred to in SYSC TP 7.6.1G.
## Senior management arrangements, Systems and Controls

### Schedule 1
#### Record keeping requirements

**Sch 1.1 G**

The aim of the guidance in the following table is to give the reader a quick over-all view of the relevant record keeping requirements. It is not a complete statement of those requirements and should not be relied on as if it were.

**Sch 1.2 G**

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 2.2.1 R</td>
<td>Arrangements made to satisfy SYSC 2.1.1 R(apportionment) and SYSC 2.1.3 R(allocation)</td>
<td>Those arrangements</td>
<td>On making the arrangements and when they are updated</td>
<td>6 years from the date on which the record is superseded by a more up-to-date record</td>
</tr>
<tr>
<td>SYSC 3.2.2 R</td>
<td>Matters and dealings (including accounting records) which are the subject of requirements and standards under the regulatory system</td>
<td>Adequate</td>
<td>Adequate time</td>
<td>Adequate</td>
</tr>
<tr>
<td>SYSC 9.1.1 R</td>
<td>Business and internal organisation</td>
<td>Details of the firm’s orderly records of services and transactions undertaken</td>
<td>Within a reasonable time</td>
<td>Adequate</td>
</tr>
<tr>
<td>SYSC 9.1.1AR</td>
<td>Business and internal organisation</td>
<td>Details of the firm’s orderly records of services and transactions undertaken</td>
<td>Within a reasonable time</td>
<td>Adequate</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
</tr>
<tr>
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</tr>
<tr>
<td>SYSC 9.1.2AR, SYSC 3.3.6R</td>
<td>Suitability or appropriateness in relation to an insurance-based investment product</td>
<td>(1) In relation to suitability: (a) why the recommendation is considered suitable; and (b) client information for suitability report and suitability report.</td>
<td>(1) From the date of: (a) recommendation; and (b) suitability report.</td>
<td>5 years</td>
</tr>
<tr>
<td>SYSC 10.1.6 R</td>
<td>Conflict of interest</td>
<td>Kinds of service or activity carried out by or on behalf of</td>
<td>Not specified</td>
<td>5 years</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
</tr>
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</tr>
<tr>
<td>SYSC 10A.1.6R</td>
<td>Telephone convers-</td>
<td>Those activities in financial instruments</td>
<td>At the time of the conversation or communication</td>
<td>Five years from the date of the conversation or communication unless the FCA requests a period of seven years</td>
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<td>sations and elec-</td>
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<td>cations in rela-</td>
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<td>tion to stipulated activ-</td>
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<tr>
<td></td>
<td>ities in financial instruments (see SYSC 10A.1.1R)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SYSC 14.1.53 R</td>
<td>Prudential risk management and systems and controls</td>
<td>Accounting and other records that are sufficient to enable the firm to demonstrate to the PRA: (1) that the firm is financially sound and has appropriate systems and controls; (2) the firm’s financial position and exposure to risk (to a reasonable degree of accuracy); (3) the firm’s compliance with the rules in GENPRU, INSPRU and SYSC.</td>
<td>Not specified</td>
<td>3 years, or longer as appropriate</td>
</tr>
<tr>
<td>SYSC 22.9.1R</td>
<td>Employment history of employees</td>
<td>As specified in the rule in column 1</td>
<td>Not specified</td>
<td>As specified in SYSC 22.9.2G</td>
</tr>
<tr>
<td>SYSC 25.8.1G</td>
<td>Past versions of a firm’s management responsibilities maps</td>
<td>Past versions of a firm’s management responsibilities maps</td>
<td>SYSC 25.8.1G does not itself impose requirements but says that past versions of a firm’s management responsibilities maps are an important part of its records</td>
<td>SYSC 25.8.1G does not itself impose requirements but says that past versions of a firm’s management responsibilities maps are an important part of its records</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
</tr>
<tr>
<td>---------------------</td>
<td>------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------</td>
<td>---------------------------</td>
<td>-------------------------------------------------------</td>
</tr>
<tr>
<td>SYSC 25.8.3R</td>
<td>Past versions of a firm’s management responsibilities maps</td>
<td>Past versions of a firm’s management responsibilities maps</td>
<td>None specified</td>
<td>10 years from the date superseded, or 6 years for large non-directive insurers</td>
</tr>
<tr>
<td>SYSC 25.9.5R</td>
<td>Steps taken to comply with SYSC 25.9.4R (Information to be made available to new manager)</td>
<td>Adequate</td>
<td>Adequate time</td>
<td>None specified</td>
</tr>
<tr>
<td>SYSC 28.4.1R</td>
<td>Arrangements made to demonstrate compliance with knowledge, ability and good repute requirements in relation to the carrying out of insurance distribution activities.</td>
<td>As required to demonstrate compliance.</td>
<td>As required to demonstrate compliance.</td>
<td>As required to demonstrate compliance.</td>
</tr>
<tr>
<td>SYSC 28.4.2R</td>
<td>Matters dealing with knowledge and competence and completed continued professional training and development in relation to the carrying out of insurance distribution activities.</td>
<td>The firm must record the professional training or development completed by each relevant employee in each 12 month period.</td>
<td>As required to demonstrate compliance.</td>
<td>As required to demonstrate compliance but at least 3 years after the relevant employee stops carrying on the activity.</td>
</tr>
</tbody>
</table>
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Schedule 2
Notification requirements

Sch 2.1 G

(1) The aim of the guidance in the following table is to give the reader a quick overall view of the relevant notification requirements.

(2) It is not a complete statement of those requirements and should not be relied on as if it were.

(3) Table

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Content of the notification</th>
<th>Trigger event</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 19A.3.4R(3)</td>
<td>Where an overseas firm deems an employee not to be Remuneration Code staff</td>
<td>Matter described in SYSC 19A.3.4R(3)</td>
<td>Matter described in SYSC 19A.3.4R(3)</td>
</tr>
<tr>
<td>SYSC 19A.3.44CR</td>
<td>The decision by the shareholders, members or owners of the firm to approve a higher maximum ratio between the fixed and variable components of total remuneration</td>
<td>Matter as described in SYSC 19A.3.44CR</td>
<td>Matter as described in SYSC 19A.3.44CR</td>
</tr>
<tr>
<td>SYSC 19D.3.4R(3)</td>
<td>Where an overseas firm deems an employee not to be dual-regulated firms Remuneration Code staff</td>
<td>Matter described in SYSC 19D.3.4R(3)</td>
<td>Matter described in SYSC 19D.3.4R(3)</td>
</tr>
<tr>
<td>SYSC 19D.3.51R</td>
<td>The decision by the shareholders, members or owners of the firm to approve a higher maximum ratio between the fixed and variable components of total remuneration</td>
<td>Matter as described in SYSC 19D.3.51R</td>
<td>Matter as described in SYSC 19D.3.51R</td>
</tr>
</tbody>
</table>
Senior management arrangements, Systems and Controls

Schedule 3
Fees and other required payments

Sch 3.1 G

There are no requirement for fees or other payments in SYSC.
Senior management arrangements, Systems and Controls

Schedule 4
Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]
### Senior management arrangements, Systems and Controls

**Schedule 5**  
Rights of action for damages

**Sch 5.1 G**

The table below sets out the rules in SYSC contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

**Sch 5.2 G**

If a ‘Yes’ appears in the column headed ‘For private person’, the rule may be actionable by a ‘private person’ under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A ‘Yes’ in the column headed ‘Removed’ indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the rule in which it is removed is also given.

**Sch 5.3 G**

The column headed ‘For other person’ indicates whether the rule may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the rule may be actionable is given.

**Sch 5.4 G**

<table>
<thead>
<tr>
<th>Chapter/Appendix</th>
<th>Section/Annex</th>
<th>Paragraph</th>
<th>Right of action under section 138D</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>For private person?</td>
</tr>
<tr>
<td>SYSC 2 and SYSC 3</td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>SYSC 4 to SYSC 10</td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>SYSC 11 to SYSC 19A, and SYSC 19D</td>
<td></td>
<td>No</td>
<td>Yes SYSC 1.4.2 R</td>
</tr>
<tr>
<td>SYSC 22</td>
<td>Yes (apart from SYSC 22.8.1R and SYSC 22.9.1R)</td>
<td>No (apart from SYSC 22.8.1R and SYSC 22.9.1R)</td>
<td>No</td>
</tr>
<tr>
<td>SYSC 23 to SYSC 27</td>
<td></td>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>
Senior management arrangements,
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Schedule 6
Rules that can be waived

Sch 6.1 G
[deleted]

Sch 6.1A G
As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its rules, other than rules made under section 64A (rules of conduct), 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the Act. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FCA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.