

## Chapter 22

# Regulatory references

## 22.6 Giving and updating references: additional rules and guidance for SMCR firms

### Omitting or supplementing mandatory disclosures

- 22.6.1 G
- (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 G
- (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 G
- (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

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- (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

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- (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.