

Senior managers and certification regime: Introduction and classification

## Chapter 23

# Senior managers and certification regime: Introduction and classification



## 23.1 Purpose

### 23.1.1

**G**

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;
- (3) define the different kinds of *SMCR firm*; and
- (4) require certain *firms* to carry out criminal record checks before appointing certain *board directors*.

## 23.2 Definitions and types of firms

- 23.2.1** **R** ■ 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.
- 23.2.2** **G** Broadly speaking, *firms* covered by the senior managers and certification regime that are dual-regulated by the *FCA* and the *PRA* are divided into two categories:
- (1) Banks and deposit-takers. They are called *SMCR banking firms*.
  - (2) Insurers. They are called *SMCR insurance firms*.
- 23.2.3** **G** Broadly speaking, *firms* covered by the senior managers and certification regime that are regulated by the *FCA* are divided into three categories:
- (1) *Firms* regulated by the *FCA* that do not fall into (2) or (3). They are called *core SMCR firms*. A large number of *firms* will be in this category.
  - (2) Certain large *firms*. These are called *enhanced scope SMCR firms*. Relatively few *firms* fall into this category.
  - (3) *Firms* whose business is limited to certain types. These are called "*limited scope SMCR firms*". A large number of *firms* will be in this category. The main examples are:
    - (a) *limited permission consumer credit firms*;
    - (b) an *authorised professional firm* whose only regulated activities are *non-mainstream regulated activities*;
    - (c) internally managed *AIFs*;
    - (d) *firms* whose main business is not regulated and whose regulated business is (with limited exceptions) restricted to *insurance distribution activity* in relation to *non-investment insurance contracts*;
    - (e) a *firm* that only has *regulated claims management activities* in its *permission*;
    - (f) a *firm* that only has *permission* for benchmark activities and has the benefit of a *waiver* treating it as a *limited scope SMCR firm* as

- described in ■ SYSC 23 Annex 1 6.12R (Benchmark firms: Waiver applying limited scope status); and
- (G) a *firm* that only has *permission for funeral plan distribution*.



**23.3 Overview of the senior managers and certification regime**

**23.3.1** **G** 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.

**23.3.2** **G** The table in ■ SYSC 23.3.3G gives more details about each of those three elements. The first two columns of the table apply to all *firms*. The third column only covers *firms* that are not regulated by the *PRA*.

**23.3.3** **G** Table: Summary of the senior managers and certification regime

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
The senior managers regime: Parts that apply to all firms		
Pre-approval by the <i>FCA</i> of senior management (the <i>FCA Handbook</i> calls senior management subject to pre-approval <i>SMF managers</i> )	SUP 10C	Applies to all solo-regulated <i>firms</i>
<i>Firm</i> to be satisfied that a person is fit and proper before applying for them to be approved as an <i>SMF manager</i> by the <i>FCA</i> or <i>PRA</i>	This requirement is in section 60A of the <i>Act</i> . There is <i>guidance</i> on it in SUP 10C.10.14G (Vetting of candidates by the firm).	Applies to all solo-regulated <i>firms</i>
Annual assessment of fitness and propriety by the <i>SMF managers' firms</i>	This requirement is in section 63(2A) of the <i>Act</i> . There is <i>guidance</i> and related notification obligations in SUP 10C.14.18R to SUP 10C.14.25G (Notifications about fitness, disciplinary action and breaches of COCON).	Applies to all solo-regulated <i>firms</i>
A <i>firm</i> should carry out	SUP 10C.10.16R (Criminal	Applies to all solo-regu-

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
criminal records checks before applying for someone to be approved as an <i>SMF manager</i>	records checks and verifying fitness and properness)	lated <i>firms</i> except for a <i>sole trader</i> without employees
A <i>firm</i> should ask for a regulatory reference before appointing someone to be an <i>SMF manager</i> , or to certain other senior management positions, and give one if asked to by another <i>firm</i> doing so	SYSC 22 (Regulatory references)	Obligation to give a reference applies to all solo-regulated <i>firms</i> .  Obligation to ask for one applies to all solo-regulated <i>firms</i> except for a <i>sole trader</i> without employees.
<i>Statements of responsibilities</i>	SUP 10C.11 (Statements of responsibilities).	Applies to all solo-regulated <i>firms</i>
This is a document that sets out the responsibilities that an <i>SMF manager</i> performs as part of their <i>designated senior management function</i> . It is prepared as part of the <i>firm's</i> application to the <i>FCA</i> or (if the <i>firm</i> is a <i>PRA-authorised person</i> ) <i>PRA</i> for them to be approved as an <i>SMF manager</i> . It should be updated after approval when there has been any significant change in the responsibilities of the <i>SMF manager</i>	Many of the requirements are in the <i>Act</i> itself but they are summarised in SUP 10C.11.  SUP 10C.11 also adds some further requirements, particularly about there being one <i>statement of responsibilities per SMF manager per firm</i> .	
Duty of responsibility This applies to <i>SMF managers</i> in all types of <i>firm</i> .	This is dealt with in section 66A(5) of the <i>Act</i> .  There is <i>guidance</i> on this in DEPP 6.2.9-AG to DEPP 6.2.9-FG.	Applies to all solo-regulated <i>firms</i>
The senior managers regime: Parts that apply to many firms		
A <i>firm</i> should allocate certain specified management responsibilities among its <i>SMF managers</i>	SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities)	Does not apply to a <i>limited scope SMCR firm</i> .  Applies to a <i>core SMCR firm</i> and an <i>enhanced scope SMCR firm</i> .
The <i>FCA Handbook</i> calls them <i>FCA-prescribed senior management responsibilities</i>		

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
<p>A <i>firm</i> solo-regulated by the <i>FCA</i> should carry out criminal records checks before appointing a <i>board director</i> who is not an <i>SMF manager</i></p> <p>The senior managers regime: Parts that only apply to a limited range of firms</p>	<p>SYSC 23.4 (Criminal records checks for non-executive directors)</p>	<p>Does not apply to a <i>limited scope SMCR firm</i>.</p> <p>Applies to a <i>core SMCR firm</i> and an <i>enhanced scope SMCR firm</i>.</p>
<p>A <i>firm</i> should maintain a comprehensive and up-to-date <i>document</i> (called the <i>management responsibilities map</i>) that describes its management and governance arrangements</p>	<p>SYSC 25 (Senior managers and certification regime: Management responsibilities maps and handover procedures and material)</p>	<p>Does not apply to a <i>limited scope SMCR firm</i> or a <i>core SMCR firm</i>.</p> <p>Applies to an <i>enhanced scope SMCR firm</i>.</p>
<p>A <i>firm</i> should ensure that, at all times, one or more of its <i>SMF managers</i> have overall responsibility for each of the activities, business areas and functions of the <i>firm</i>.</p>	<p>SYSC 26 (Senior managers and certification regime: Overall and local responsibility)</p>	<p>Does not apply to a <i>limited scope SMCR firm</i> or a <i>core SMCR firm</i>.</p> <p>Applies to an <i>enhanced scope SMCR firm</i>.</p>
<p>A <i>firm</i> should ensure that a person becoming an <i>SMF manager</i> has all the information and material that they could reasonably expect to have to perform their responsibilities</p>	<p>SYSC 25.9 (Handover procedures and material)</p>	<p>Does not apply to a <i>limited scope SMCR firm</i> or a <i>core SMCR firm</i>.</p> <p>Applies to an <i>enhanced scope SMCR firm</i>.</p>
<p>A retail intermediary <i>firm</i> should check whether it meets the financial criteria for being an <i>enhanced scope SMCR firm</i> and report to the <i>FCA</i> when it meets those criteria for the first time or ceases to meet them.</p>	<p>SUP 15.15 (Notification by retail intermediaries of qualifying as an enhanced scope SMCR firm)</p>	<p>Only applies to certain <i>UK</i> retail intermediaries. The full details of who this covers are in SUP 15.15.</p>
<p><i>Firms</i> should report changes to their <i>management body</i> when members who are not <i>SMF managers</i> leave or join it.</p>	<p>SUP 15.16 (Notification of changes in the management body)</p>	<p>Only applies to a <i>MiFID investment firm</i> or a <i>MiFID optional exemption firm</i>.</p>
<p>A <i>firm</i> is required to maintain a clear and appropriate apportionment of significant responsibilities among</p>	<p>SYSC 4.4 (Apportionment of responsibilities)</p>	<p>Applies to a <i>limited scope SMCR firm</i>, except for a <i>limited scope SMCR benchmark firm</i></p>

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
<p>its <i>directors</i> and <i>senior managers</i></p> <p>A <i>limited scope SMCR benchmark firm</i> is required to report to the <i>FCA</i> certain changes in the split of its revenue between <i>regulated activities</i> and <i>unregulated activities</i></p>	<p>SUP 15.17 (Notification of regulated income by limited scope SMCR benchmark firm)</p>	<p>Does not apply to most <i>core SMCR firms</i>.</p> <p>Does not apply to an <i>enhanced scope SMCR firm</i>.</p> <p>Only applies to a <i>limited scope SMCR benchmark firm</i>.</p> <p>Does not apply to any other <i>limited scope SMCR firm</i>.</p> <p>Does not apply to a <i>core SMCR firm</i> or an <i>enhanced scope SMCR firm</i>.</p>
<p>The senior managers regime: Parts outside the Handbook</p>		
<p>Criminal offence relating to a decision that causes a financial institution to fail.</p> <p>It applies to a <i>UK SMCR banking firm</i> but does not apply to a <i>credit union</i>.</p> <p>It does not apply to any <i>firm</i> that is not a <i>UK SMCR banking firm</i>.</p>	<p>This is contained in section 36 of the Financial Services (Banking Reform) Act 2013</p>	<p>Does not apply to any solo-regulated <i>firm</i></p>
<p>The certification regime</p>		
<p>A <i>firm</i> should not permit an <i>employee</i> to carry out certain functions (<i>certification functions</i>) unless it has issued them with a certificate.</p> <p>The certificate is only valid for a year. The <i>firm</i> will have to renew it if the <i>employee</i> is to carry on performing the function.</p> <p>A <i>firm</i> may not issue or renew a certificate unless it is satisfied that the <i>person</i> is fit and proper.</p> <p>Certification does not involve pre-approval by the <i>FCA</i> or <i>PRA</i>.</p>	<p>Most of the requirements of this regime are in sections 63E (Certification of employees by authorised persons) and 63F (Issuing of certificates) of the <i>Act</i>.</p> <p>SYSC 27 (Senior managers and certification regime: Certification regime) describes the regime and explains which <i>employees</i> are covered.</p>	<p>Applies to all solo-regulated <i>firms</i> except for internally managed <i>AIFs</i> and <i>pure benchmark SMCR firms</i>.</p> <p>The certification regime does not apply to <i>benchmark activities</i>.</p>



(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
A firm should ask for a regulatory reference before appointing someone to perform an <i>FCA certification function</i> (or a <i>PRA equivalent</i> ) and give one if asked to by another firm doing so.	SYSC 22 (Regulatory references)	Applies to all solo-regulated firms
A firm must report information to the FCA about its <i>Directory persons</i> , including its <i>certification employees</i> .	SUP 16.26 (Reporting of information about Directory persons)	Applies to all solo-regulated firms except pure benchmark SMCR firms
Conduct rules (applies to all firms)		
Rules of conduct that apply directly to a firm's workforce other than ancillary staff	COCON	Applies to all solo-regulated firms
A firm should report breaches of COCON to the FCA	Section 64C of the Act (Requirement for authorised persons to notify regulator of disciplinary action) and SUP 15.11 (Notification of COCON breaches and disciplinary action)	Applies to all solo-regulated firms
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	These obligations are in section 64B of the Act (Rules of conduct: responsibilities of authorised persons).  There is guidance in COCON 2.3 (Firms: Training and breaches).	Applies to all solo-regulated firms

23.3.4

G

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.



## 23.4 Criminal record checks for certain directors

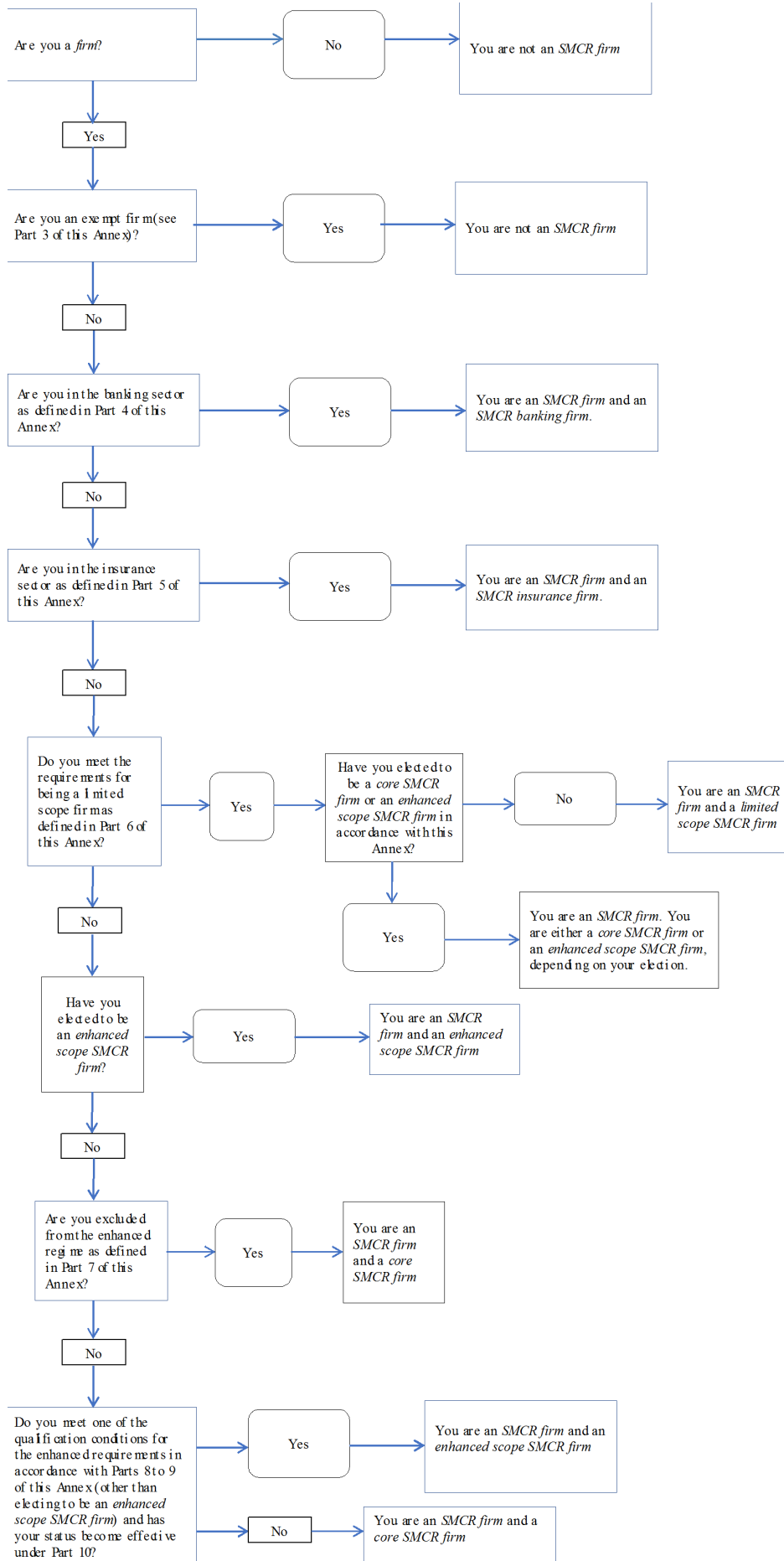
- 23.4.1** **R** This section applies to a *UK SMCR firm* that is:

  - (1) an *enhanced scope SMCR firm*; or
  - (2) a *core SMCR firm*.
  
- 23.4.2** **R** A *firm* must (as part of its assessment of the fitness and propriety of any of its *non-SMF board directors subject to competence requirements (P)*) obtain the fullest information that it is lawfully able to obtain about P under Part V of the Police Act 1997 (Certificates of Criminal Records, &c) and related subordinated legislation of the *United Kingdom* or any part of the *United Kingdom* before P's appointment as a *board director*.
  
- 23.4.3** **G** The *guidance* in ■ SUP 10C.10.17G, ■ SUP 10C.10.18G and ■ SUP 10C.10.21G about criminal record checks for *candidates* to be an *SMF manager* applies to criminal record checks under this section.

## 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:<br>(1) an <i>SMCR firm</i> ; and<br>(2) the different categories of <i>SMCR firm</i> .   |
| 1.2 | R | Flow diagram: Types of SMCR firm   |
| 1.3 | R | (1) A Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an <i>EEA PTV firm</i> for the purposes of deciding into which category of <i>SMCR firm</i> it falls. In particular, it is to be treated as an <i>EEA SMCR firm</i> .<br><br>(2) (1) is without prejudice to the generality of GEN 2.3.  |
| 1.4 | R | (1) A Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an <i>EEA PTV firm</i> for the purposes of deciding whether it is an <i>SMCR firm</i> and into which category of <i>SMCR firm</i> it falls. In particular, if it is an <i>SMCR firm</i> , it is to be treated as an <i>EEA SMCR firm</i> .<br><br>(2) (1) is without prejudice to the generality of GEN 2.3. |



## Note to the flow diagram

The categorisation in this flow diagram is subject to ■ SYSC 23 Annex 1 2.1R and ■ SYSC 23 Annex 1 6.25R.

- 1.3 R A reference in this Annex to a *firm* having permission to carry on a particular *regulated activity* but no other *regulated activity* includes that *firm* also having *permission for agreeing to carry on a regulated activity* in respect of that first *regulated activity*.

## 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.
- 2.2 G (1) The *FCA* may, on a case-by-case basis, require a *limited scope SMCR firm* or a *core SMCR firm* to comply with the requirements that apply to an *enhanced scope SMCR firm* if the *FCA* considers it appropriate to do so to advance one or more of its operational objectives under the *Act*.
- (2) The most common example of a *requirement* described in SYSC 23 Annex 1 2.1R is likely to be one of the kind described in (1).
- (3) One effect of SYSC 23 Annex 1 2.1R is that if a *firm* is moved from the *limited scope SMCR firm* or *core SMCR firm* category to the *enhanced scope SMCR firm* category, the *FCA-designated senior management functions* that will apply to it are the ones for *enhanced scope SMCR firms*.
- 2.3 G (1) In practice, it is unlikely that the procedure described in SYSC 23 Annex 1 2.1R will be used to move a *firm* from a category applicable to *PRA-authorised persons* to one applicable to *FCA-authorised persons* or vice versa.
- (2) This is because the *FCA's* regime for *PRA-authorised persons* is designed on the basis that the *PRA's* regime also applies to those *firms* while the regime for *FCA-authorised persons* is designed on the basis that no *PRA* requirements apply.
- 2.4 G (1) Where a *firm* becomes or stops being an *enhanced scope SMCR firm* under the procedure described in SYSC 23 Annex 1 2.1R, the material in Parts 10 and 11 of this Annex about when the change of status becomes effective will not apply. Instead the timing will be dealt with in the variation of *permission*.
- (2) If the variation does not specify the timing of the change, the change is likely to take effect when the variation does.

## 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 *EEA PTV firm* that is a *pure reinsurer* is an exempt firm.
- 3.4 R [deleted]
- 3.5 R A *TP UCITS qualifier* is an exempt firm.
- 3.6 R [deleted]
- 3.7 R [deleted]
- 3.8 G As explained in SYSC TP 8.2.1R, certain claims management *firms* are excluded from being *SMCR firms* and treated as exempt under this Part.

## 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.

- 23
- 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:
      - ⓐ the institution is an *investment firm*;
      - ⓑ its *Part 4A permission* covers *dealing in investments as principal*; and
      - ⓒ 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 *EEA PTV 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:
      - ⓐ the institution is an *investment firm*;
      - ⓑ its *Part 4A permission* covers *dealing in investments as principal*; and
      - ⓒ 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 an *overseas 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 *EEA PTV 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 of the *Act* that includes *accepting deposits*; or
    - (b) it meets all the following conditions:
      - ⓐ the institution is an *investment firm*;
      - ⓑ it has a *permission* under Part 4A of the *Act* that covers *dealing in investments as principal*; and
      - ⓒ 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 disapplied 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.

Part Six: Definition of limited scope SMCR firm

Introduction

6.1 R (1) This Part sets out the requirements for being a *limited scope SMCR firm* referred to in the flow diagram in Part One of this Annex.

- (2) Where this Part says that a *firm* is a *limited scope SMCR firm*, that means that the *firm* meets those requirements.

Opting up

6.2 G Part 12 of this Annex sets out a procedure for a *firm* that would otherwise have been a *limited scope SMCR firm* to elect to be a *core SMCR firm* or an *enhanced scope SMCR firm* and to reverse that election.

Specialised activities

6.3 R (1) A *firm* listed in the table in SYSC 23 Annex 1 6.4R is a *limited scope SMCR firm* if:

- (a) its principal purpose is to carry on activities other than *regulated activities*; and
- (b) it is not a *MiFID investment firm* or an *EEA MiFID investment firm* that is an *EEA PTV firm*.

- (2) In the case of a *firm* in SYSC 23 Annex 1 6.4R(5), *regulated claims management activities* are treated as *unregulated activities* for the purpose of deciding what the *firm's* principal purpose is under (1).

6.4 R Table: List of limited scope SMCR firms referred to in SYSC 23 Annex 1 6.3R

(1) *Oil market participant*

(2) *Service company*

(3) *Energy market participant*

(4) A wholly owned *subsidiary* of:

(a) a *local authority*; or

(b) a registered social landlord.

(5) A *firm* that meets the following conditions:

(a) it has *permission* to carry on *insurance distribution activity* in relation to *non-investment insurance contracts*; and

(b) it:

(i) either does not have *permission* to carry on any other *regulated activity*; or

(ii) has *permission* to carry on no other *regulated activity* except one or more of the following:

(A) *advising on P2P agreements*; or

(B) *regulated claims management activities*.

(6) A *firm* that meets the following conditions:



- (a) it has *permission* for any activity constituting *funeral plan distribution*; and
- (b) it does not have *permission* to carry on any other *regulated activity*.

6.5 G It will be a matter of fact in each case whether, having regard to all the circumstances, including in particular where the balance of the business lies, a *firm's* principal purpose is to carry on activities other than *regulated activities*. If a *firm* wishes to rely on SYSC 23 Annex 1 6.3R, it should be in a position to demonstrate that its principal purpose is to carry on activities other than *regulated activities*.

Sole trader

6.6 R A *sole trader* is a *limited scope SMCR firm*.

Limited permission consumer credit firms

6.7 R A *firm* whose *permission* is limited to the carrying on of a relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) (a *limited permission*) is a *limited scope SMCR firm*, excluding a *firm* in SYSC 23 Annex 1 6.8R.

6.8 R A *not-for-profit debt advice body* is a *limited scope SMCR firm*.

Authorised professional firms

6.9 R An *authorised professional firm* whose only *regulated activities* are *non-mainstream regulated activities* is a *limited scope SMCR firm*.

Internally managed AIFs

6.10 R A *firm* is a *limited scope SMCR firm* if it meets the following conditions:

- (1) it is an *internally managed AIF*;
- (2) it is a *body corporate*; and
- (3) it is not a *collective investment scheme*.

Claims management

6.11 R (1) A *firm* is a *limited scope SMCR firm* if it meets the following conditions:

- (a) it has *permission* to carry on *regulated claims management activities*; and
- (b) it:
  - ⓐ either does not have *permission* to carry on any other *regulated activity*; or
  - ⓑ has *permission* to carry on no other *regulated activity* except a *relevant credit activity*.

(2) A *firm* in SYSC 23 Annex 1 6.7R or SYSC 23 Annex 1 6.8R does not fall within this *rule*.

Benchmark firms: Waiver applying limited scope status

6.12 R A *firm* is a *limited scope SMCR firm* (and a *limited scope SMCR benchmark firm*) if:

- (1) it is subject to a *waiver* that applies this *rule* to the *firm*; and
- (2) it meets the conditions in SYSC 23 Annex 1 6.13R.

6.13 R (1) The conditions referred to in SYSC 23 Annex 1 6.12R(2) are that the *firm*:

- (a) is capable of being a *limited scope SMCR firm* under the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm);
- (b) has *permission* to carry on the *regulated activity* of *administering a benchmark* but no other *regulated activity* (a *pure benchmark SMCR firm*); and
- (c) is an *FCA-authorised person*.

(2) A *firm* that meets the conditions in this *rule* is referred to in this Annex as a “potential benchmark waiver firm”.



- 6.14 G (1) If, after the *waiver* in SYSC 23 Annex 1 6.12R(1) comes into force, a *firm* ceases to be a potential benchmark waiver firm it immediately ceases to be:
- (a) a *limited scope SMCR benchmark firm*; and
  - (b) a *limited scope SMCR firm* (unless it qualifies as one for another reason).
- (2) (1) applies even if the *firm* subsequently becomes a potential benchmark waiver firm again.
- (3) If (2) applies, it may become a *limited scope SMCR benchmark firm* again if it applies for and obtains a new *waiver*.

Benchmark firms: When the waiver is likely to be available

- (1) The FCA considers that treating a potential benchmark waiver firm (as defined in SYSC 23 Annex 1 6.13R(2)) as a *core SMCR firm* may be unduly burdensome as contemplated by section 138A(4)(a) of the Act (Modification or waiver of rules).
  - (2) The FCA considers that deciding whether this is the case involves balancing the factors in (3) and (4).
  - (3) The directors of a potential benchmark waiver firm who would require approval for performing one of the FCA governing functions if it was a *core SMCR firm* may spend very little of their time managing the *firm's regulated activities*. In a big *firm* they may also be distant from those activities. It may therefore be more proportionate to require approval for someone who is closer to the day-to-day management of the *firm's regulated activities*.
  - (4) On the other hand, applying the Act and the FCA's requirements directly to a *firm's* most senior management will make it more likely that they will take steps and put in place systems that will increase the likelihood that the *firm's* staff will meet the requirements of the senior managers and certification regime and that the values represented by those requirements will be absorbed into the *firm's* culture. It also helps to ensure that the *firm's* leaders have sufficient knowledge of, and skills in, the *firm's regulated activities*.
  - (5) The approach in SYSC 23 Annex 1 6.16G is designed to weigh the factors in (3) and (4) against each other.
- 6.16 G (1) SYSC 23 Annex 1 6.16G summarises the approach the FCA anticipates it will take in deciding whether to grant the waiver. SYSC 23 Annex 1 6.17G to SYSC 23 Annex 1 6.22G then give more detail.
- (2) Subject to (3), the FCA considers that a potential benchmark waiver firm (as defined in SYSC 23 Annex 1 6.13R(2)) is likely to meet the criteria for the granting of a *waiver* in section 138A(4)(a) of the Act (Modification or waiver of rules) if *regulated activities* form a small part of its activities, measured in the way described in SYSC 23 Annex 1 6.17G.
  - (3) The FCA considers that a potential benchmark waiver firm meeting the conditions in (2) is nevertheless unlikely to meet the criteria for the granting of a *waiver* in section 138A(4) of the Act if:
    - (a) any of the benchmarks it administers are important; or
    - (b) the *firm* or the person who would be performing the *limited scope function* would not meet the requirements of MAR 8.5.2R (Responsibility for benchmark activities: regulated benchmark administrators).
  - (4) In particular, under (3)(b):
    - (a) the person who would be performing the *limited scope function* should be sufficiently senior (see MAR 8.5.3AG); and
    - (b) the responsibilities in MAR 8.5.2R should not be split between several people (see MAR 8.5.3G).
  - (5) SYSC 23 Annex 1 6.18G to SYSC 23 Annex 1 6.20G describe what important means in (3)(a).
  - (6) SYSC 23 Annex 1 6.22G gives more detail about (3)(b).
  - (7) The *waiver* would be available to *firms* of any size.

- 23
- 6.17 G (1) SYSC 23 Annex 1 6.17G describes how the *FCA* anticipates that it would decide whether *regulated activities* form a small part of a *firm's* activities for the purpose of SYSC 23 Annex 1 6.16G(2).
- (2) The *FCA* anticipates that it would consider that:
- (a) a *firm* would meet the criterion in (1) if revenue from *regulated activities* represents less than 20% of its overall revenue; and
- (b) a *firm* would not meet the criterion in (1) if revenue from *regulated activities* were 20% or more.
- (3) The *FCA* anticipates that it would measure those figures over a reasonable period and not just a single accounting period.
- (4) The *FCA* anticipates that it would measure revenue from *regulated activities* and overall revenue in the way described in SUP 15.17.5R to SUP 15.17.7R (Obligation to make calculations).
- (5) The *FCA* anticipates that it would adjust the calculation if there were good reason to think that past revenue is unlikely to be representative of the future. For instance:
- (a) the *firm's* past revenue may be distorted by extraordinary items; or
- (b) the *firm* may recently have carried out a major reorganisation of its business involving, for example, the disposal of all its activities other than benchmark activities or the acquisition of a business carrying out activities other than benchmark activities.
- 6.18 G The *FCA* anticipates that, in deciding whether a benchmark is important for the purposes in SYSC 23 Annex 1 6.16G, it will take into account whether there could be a significant and adverse impact on the *United Kingdom's* economy or financial system if the benchmark:
- (1) stops being provided; or
- (2) is provided in a way that significantly breaches or falls short of the requirements and standards of the *benchmarks regulation*.
- 6.19 G The *FCA* considers that a *firm's* benchmark is likely to be important for the purposes in SYSC 23 Annex 1 6.16G(3) and to meet the criteria in SYSC 23 Annex 1 6.18G if the benchmark is recognised as critical under the *benchmarks regulation*.
- 6.20 G In making the assessment of the importance of a benchmark that is not recognised as critical as described in SYSC 23 Annex 1 6.19G, the *FCA* anticipates that it will take into account factors that include the following:
- (1) whether the benchmark has no or very few appropriate market-led substitutes; and
- (2) whether the benchmark is used extensively in particular markets or sectors.
- 6.21 G (1) One reason for taking into account the importance of a benchmark is that if it is important, the factors in SYSC 23 Annex 1 6.15G(4) outweigh the factors in SYSC 23 Annex 1 6.15G(3).
- (2) Another reason is that, under section 138A(4)(b) of the *Act* (Modification or waiver of rules), the *FCA* may not grant a *waiver* if doing so would adversely affect the advancement of any of its *operational objectives*. Granting the *waiver* where a benchmark is important is likely to be inconsistent with section 138A(4)(b) because:
- (a) the occurrence of the situation in SYSC 23 Annex 1 6.18G(1) or (2) is likely in particular to prejudice the integrity *operational objective*; and
- (b) for the reasons in SYSC 23 Annex 1 6.15G(4), the *FCA* considers that applying the regime for *core SMCR firms* to benchmark *firms* will reduce the risk of that happening.

- 622 G The *FCA* anticipates that if a *firm* has a complicated management structure, that may mean that the *firm* does not meet the conditions in SYSC 23 Annex 1 6.16G(3)(b). In particular this may be the case if:
- (1) there are several managers involved in managing the *firm's regulated activities* who have different reporting lines; or
  - (2) the person managing the *firm's regulated activities* has different reporting lines for different aspects of the role that give them different levels of autonomy.

Benchmark firms: Ceasing to meet waiver criteria

- 623 G If a *limited scope SMCR benchmark firm* ceases to meet the criterion in SYSC 23 Annex 1 6.17G, it is likely to be inappropriate for the *waiver* to continue. The mechanism for ensuring that this is the case might include one or more of the following:
- (1) building those criteria into the *waiver*;
  - (2) revocation of the *waiver*; or
  - (3) granting the *waiver* subject to a time limit and re-examining the criteria if the *firm* applies for a renewal.

- 624 G The *FCA* anticipates that the mechanisms in SYSC 23 Annex 1 6.23G will generally provide for a period of time between the *firm* ceasing to meet the criterion in SYSC 23 Annex 1 6.17G and the *firm* ceasing to be a *limited scope SMCR firm*.

Benchmark firms: Opting to be a core or enhanced scope firm

- 625 R (1) A *limited scope SMCR benchmark firm* may opt to be an *enhanced scope SMCR firm* in accordance with this Annex.
- (2) A *limited scope SMCR benchmark firm* may not opt to be a *core SMCR firm* under this Annex.
- 626 G If a *limited scope SMCR benchmark firm* opts to be an *enhanced scope SMCR firm* and it subsequently revokes that election after it comes into effect, the *firm* will become a *core SMCR firm*. If it wants to be a *limited scope SMCR benchmark firm* again it will need to apply for a new *waiver*.
- 627 G A *limited scope SMCR benchmark firm* that wishes to become a *core SMCR firm* again should request the *FCA* to revoke the *waiver* in SYSC 23 Annex 1 6.12R.

Part Seven: Exclusion from enhanced regime

- 7.1 R This Part sets out which *firms* are excluded from the enhanced regime for the purposes of the flow diagram in Part One of this Annex.
- 7.2 R An *overseas SMCR firm* is excluded from the enhanced regime.
- 7.3 R A *firm* is excluded from the enhanced regime if its *permission* only covers being the *full-scope UK AIFM* of:
- (1) an *unauthorised AIF*; or
  - (2) an *authorised AIF* only marketed to investors that are *professional clients*.
- 7.4 R A *firm* is excluded from the enhanced regime if:
- (1) it is an *exempt MiFID commodities firm*; and
  - (2) its only *permission* is *bidding in emissions auctions*.
- 7.5 R An *ICVC* is excluded from the enhanced regime.

Part Eight: Financial qualification condition for being an enhanced scope SMCR firm

The financial qualification tests

- 8.1 R A *firm* meets a qualification condition for the purposes of identifying an *enhanced scope SMCR firm* under the flow diagram in Part One of this Annex if it meets one of the criteria set out in column (1) of the table in SYSC 23 Annex 1 8.2R.

- 8.2 R Table: Financial qualification conditions

(1)	(2)	(3)
-----	-----	-----

Qualification condition	How to do the calculation and corresponding reporting requirement	Comments
<b>Part One: Point in time measurements</b>		
(1) The average amount of the <i>firm's</i> assets under management (calculated as a three-year rolling average) is £50 billion or more	Assets under management are calculated in accordance with the method that must be used to calculate the amount to be recorded in <i>data element</i> 1A (Total funds under management) in <i>data item</i> FSA038 (Volumes and Type of Business)	SYSC 23 Annex 1 8.8R(2) and SYSC 23 Annex 1 8.11R apply to this calculation.
(2) The <i>firm</i> currently has 10,000 or more outstanding regulated mortgages	A <i>firm's</i> outstanding regulated mortgages are calculated as follows:  (a) calculate the amount that must be recorded in row E4.5 (Total) in the box under the successive headings and sub-headings	

“Regulated Loans”, “Balances outstanding” and “Number” in the *MLAR*;

(b) calculate the amount that must be recorded in row G1.1(d) (total) under the successive headings and sub-headings “As PRINCIPAL administrator” and “Regulated loans” in the *MLAR*; and

(c) add those amounts together.

**Part Two: Revenue measurements**

(3) The average amount of the *firm's* total intermediary regulated business revenue (calculated as a three-year rolling average) is £35

Total intermediary regulated business revenue is calculated in accordance with the method that must be used to calculate the amount to be recorded in *data element* 4E (Total regulated business

SYSC 23 Annex 1 8.8R(3) applies to this calculation.

SYSC 23 Annex 1 8.18R applies this condition to *firms* to which the reporting requirement in column (2) does not apply in the cases specified in that *rule*.

million per annum or more revenue) in Section B (Profit and Loss account) of the *RMAR*

(4) The average amount of the *firm's* annual revenue generated by regulated consumer credit lending (calculated as a three-year rolling average) is £100 million or more Annual revenue generated by regulated consumer credit lending is calculated as follows:  
 (a) calculate each amount that must be recorded in column B (Revenue) for the rows headed "Lending" in *data item* CCR002 (Consumer Credit data: Volumes); and  
 (b) add those amounts together.

SYSC 23 Annex 1 8.8R(3) applies to this calculation.

Note 1: Where Parts 8 to 11 of SYSC 23 Annex 1 refer to a calculation period they refer to the annual period in column (1).

Note 2: Where Parts 8 to 11 of SYSC 23 Annex 1 refer to an averaging period they refer to the three-year period in column (1).

Note 3: Where Parts 8 to 11 of SYSC 23 Annex 1 refer to a reporting period they refer to the period for which reports in column (2) are prepared.

Note 4: Where Parts 8 to 11 of SYSC 23 Annex 1 refer to a calculation date they refer to the date as of which the calculations in column (2) of this table are made.

- 8.3 G (1) Column (2) of the table in SYSC 23 Annex 1 8.2R refers to the *FCA Handbook* versions of the relevant *data items*.
- (2) The boxes referred to in row (2) (outstanding regulated mortgages) correspond to the online version of the *MLAR* as follows:
- (a) paragraph (a) corresponds to *data item* c3; and
  - (b) paragraph (b) corresponds to *data item* G1.1 c1 (d).

Qualification conditions only apply if reporting requirements apply

8.4 R Subject to SYSC 23 Annex 1 8.18R, a qualification condition in column (1) of the table in SYSC 23 Annex 1 8.2R only applies to a *firm* if the corresponding reporting requirement referred to in column (2) of the table currently applies to the *firm*.

General calculation principles

8.5 R If the applicable financial reporting requirements in column (2) of the table in SYSC 23 Annex 1 8.2R have changed during the relevant period, the calculations must be made in accordance with whatever requirements applied for the applicable period.

8.6 R The calculations are made on a solo basis.

- 8.7 R
- (1) The calculation periods, averaging periods and dates in column (1) of the table in SYSC 23 Annex 1 8.2R are defined so as to be consistent with the financial reporting periods and calculation dates used for the corresponding *data item* in column (2) of that table. The rest of this *rule* gives examples of this principle.
  - (2) If a calculation in column (1) of the table in SYSC 23 Annex 1 8.2R is based on per annum or annual revenue and the reporting period in column (2) is based on the *firm's* accounting period:
    - (a) the calculation periods in column (1) are also based on the *firm's* accounting period; and
    - (b) the averaging period in column (1) is made up of the applicable number of accounting periods.
  - (3) If a calculation in column (1) of the table in SYSC 23 Annex 1 8.2R is based on per annum or annual revenue and the reporting period in column (2) is based on a calendar year:
    - (a) the calculation periods in column (1) are also based on a calendar year; and
    - (b) the averaging period in column (1) is made up of the applicable number of calendar years.
  - (4) Where row (2) of column (1) of the table in SYSC 23 Annex 1 8.2R refers to a *firm's* current financial figures it refers to the figures as at the calculation date for its most recent reporting period in column (2).
  - (5) A *firm's* most recent reporting period is the one for the *data item* whose required submission date has passed most recently.

Averaging periods

- 8.8 R
- (1) This *rule* deals with the establishment of a *firm's* averaging periods.
  - (2) When the table in SYSC 23 Annex 1 8.2R specifies that this paragraph (2) applies:
    - (a) each averaging period ends on the calculation date for a reporting period; and
    - (b) there is an averaging period that ends on each such day.
  - (3) When the table in SYSC 23 Annex 1 8.2R specifies that this paragraph (3) applies:
    - (a) each averaging period ends on the last day of a year; and
    - (b) there is an averaging period that ends on each such day.
  - (4) The term 'year' in (3) is defined in accordance with SYSC 23 Annex 1 8.7R.

- 8.9 G
- (1) SYSC 23 Annex 1 8.8R(2) provides for a *firm's* status to be tested every six *months* if the relevant *data item* is reported in six-month intervals and to be tested yearly if the relevant *data item* is reported yearly.
  - (2) SYSC 23 Annex 1 8.8R(3) provides for a *firm's* status to be tested once a year even if the relevant *data item* is reported in six-month intervals.

Requirements where the firm reports more than once a year

- 8.10 R
- (1) This *rule* applies to calculations in Part Two of the table in SYSC 23 Annex 1 8.2R.
  - (2) If:
    - (a) the *firm* reports the relevant *data items* more than once a year; and
    - (b) each successive report covers the whole year to date;the calculations in the table are only based on the *data item* that covers the full year.



(3) The term year in (2) is defined in accordance with SYSC 23 Annex 1 8.7R.

Requirements for calculating average amounts in certain cases

811 R When the table in SYSC 23 Annex 1 8.2R specifies that this *rule* applies, the calculation of the average involves calculating the relevant amount for each reporting period relating to the averaging period, summing those amounts and dividing the result by the applicable number of reporting periods.

Adjustments where reporting periods cover irregular periods

812 R (1) This *rule* applies where:

- (a) the calculation is under Part Two of the table in SYSC 23 Annex 1 8.2R;
- (b) the reporting period in column (2) is based on the *firm's* accounting period;
- (c) any of the *firm's* accounting periods in the applicable averaging period is not twelve *months*; and
- (d) as a result the averaging period would not be a whole number of calendar years.

(2) Where this *rule* applies, the *firm* must adjust the minimum qualification amount in column (1) proportionately.

813 G The main example of when SYSC 23 Annex 1 8.12R may apply is where a *firm* changes its accounting reference date.

Short reporting periods

814 G (1) The financial reporting period may be shorter than the corresponding calculation period.

(2) For example, the calculation period may be based on annual revenue but the *firm* may have to prepare the corresponding *data item* in column (2) of the table in SYSC 23 Annex 1 8.2R for revenue arising in six-month periods.

(3) If SYSC 23 Annex 1 8.10R applies this does not matter as the calculation is based on the figures for the full year.

(4) If SYSC 23 Annex 1 8.10R does not apply, in the example in (2):

- (a) the calculation of the *firm's* most recent annual revenue in column (1) is based on the most recently ended six-month period and the six-month period before that; and
- (b) each year within the three-year averaging period is based on two six-month periods.

Effect of reporting requirements not applying for full period

815 R Subject to SYSC 23 Annex 1 8.4R, if the reporting requirement referred to in column (2) of the table in SYSC 23 Annex 1 8.2R did not apply to the *firm* for the whole of its most recent averaging period as defined in SYSC 23 Annex 1 8.2R, the averaging period is shortened to cover the period for which those requirements did apply.

816 G Reasons why SYSC 23 Annex 1 8.15R may apply to a *firm* include the following:

- (1) the *firm* has only recently been *authorised*;
- (2) the *firm's* Part 4A *permission* has only recently been varied to include the relevant *regulated activities*;
- (3) the *firm* has only recently become subject to the relevant reporting requirements; or
- (4) the reporting requirement did not exist for the full period (see SYSC TP 7.7.6G for an example).

817 G (1) This paragraph gives an example of how SYSC 23 Annex 1 8.15R works.

(2) In this example:

- (a) the relevant qualification condition is one of those in Part Two of the table in SYSC 23 Annex 1 8.2R;
- (b) the reporting requirement is based on a *firm's* accounting year and reports are due every six *months*;



- (c) the *firm's* accounting year ends on 31 December;
- (d) the *firm* is authorised in February.
- (2) The *firm* will not meet the qualification condition before the end of Year One, however large its business is in the period from February to June. This is because the calculations are based on calculation periods of a year and the year is not over yet.
- (3) Following the end of Year One, the assessment of whether the *firm* meets the qualification condition is based on the figures for Year One. There is no adjustment to take account of the fact that the *firm* was only authorised part of the way through that period.
- (4) After the end of Year Two, the averaging period is two years and the figures are taken from the part of Year One during which it was authorised and from Year Two.
- (5) The figures for the next averaging period are taken from the part of Year One during which it was authorised and from Years Two and Three.
- (6) If the *firm* in this example is authorised in September, the assessment of whether the *firm* meets the qualification condition for Year One is based on the figures for the part of Year One for which it is authorised, as it is in (3). However, in contrast to (2), that means that the assessment is made in respect of its first few months of authorisation.
- (7) In this paragraph:
  - (a) the *firm* being authorised means the *firm* being *authorised* or the relevant *regulated activities* being included in its *permission* so that the relevant reporting requirement applies;
  - (b) the accounting year in which this occurs is referred to as Year One; and
  - (c) subsequent accounting years are referred to accordingly.

Special requirements for calculating intermediary regulated business revenue

- 818 R The qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R may also apply to a *firm* that meets the following conditions, even though the financial reporting requirement referred to in that row does not apply to it:
- (1) it falls into any of the following categories:
    - (a) its *permission* includes an *insurance distribution activity* in relation to *non-investment insurance contracts*;
    - (b) its *permission* includes a *home finance mediation activity*;
    - (c) it is a *retail investment firm*;
    - (d) it is a *personal investment firm*;
    - (e) (subject to SYSC 23 Annex 1 8.19R) its *permission* includes *advising on P2P agreements*; or
    - (f) (subject to SYSC 23 Annex 1 8.20R) its *permission* includes *designated investment business* or it carries out *designated investment business*; and
  - (2) it is not required to complete Section B of the *RMAR*.
- 819 R A *firm* is excluded from SYSC 23 Annex 1 8.18R(1)(e) if its *permission*, so far as it relates to the activity in SYSC 23 Annex 1 8.18R(1)(e), is limited to activities carried on exclusively with or for *professional clients*.
- 820 R A *firm* is excluded from SYSC 23 Annex 1 8.18R(1)(f) if its *permission*, so far as it relates to the activity in SYSC 23 Annex 1 8.18R(1)(f), is limited and subject to requirements in a way that means it may only carry on those activities exclusively with or for *professional clients* or *eligible counterparties*.
- 821 R (1) This *rule* deals with how the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R applies to a *firm* in SYSC 23 Annex 1 8.18R.
- (2) The calculation is made in accordance with the requirements for Section B (Profit and Loss account) of the *RMAR* and otherwise as described in column (2) of row (3) of the table in SYSC 23 Annex 1 8.2R.

- (3) The reporting period for the purposes of this Annex is an annual period ending on the *firm's accounting reference date*.
- (4) For the purpose of applying this Annex to a *firm* in SYSC 23 Annex 1 8.18R, a reference in this Annex to:
  - (a) the due submission date for a *data item* is treated as being to the reporting date defined in SUP 15.15.9R;
  - (b) a *firm's* most recent reporting period is the period in (3) whose reporting date (as defined in (4)(a)) has occurred most recently; and
  - (c) being subject to a reporting requirement is treated as a reference to meeting the conditions in SYSC 23 Annex 1 8.18R.

- 822 G (1) There is only one qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R.
- (2) Therefore if a *firm* ceases to be in SYSC 23 Annex 1 8.18R because it begins to report using the *RMAR*, SYSC 23 Annex 1 8.4R does not apply and the *firm* will continue to meet the qualification condition as long as its income remains at the necessary level.
- (3) The same applies if the *firm* moves from reporting using the *RMAR* to being a *firm* within SYSC 23 Annex 1 8.18R.
- (4) If a *firm* makes a change of the kind in (2) or (3), the figures for the averaging periods during which this occurs will be made up of figures taken from its *RMAR* and ones calculated under SUP 15.15. SYSC 23 Annex 1 8.15R does not apply.
- (5) If there is a gap between being subject to SYSC 23 Annex 1 8.18R and reporting using the *RMAR*, SYSC 23 Annex 1 11.8R may mean that the *firm* never stops being an *enhanced scope SMCR firm*.

- 822 G SUP 15.15 requires a *firm* within SYSC 23 Annex 1 8.18R regularly to calculate whether it meets the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R and, in certain circumstances, to notify the *FCA* of the results.

Part Nine: Other qualification conditions for being an enhanced scope SMCR firm

- 9.1 R A *firm* meets a qualification condition for the purposes of identifying an *enhanced scope SMCR firm* under the flow diagram in Part One of this Annex if it meets one of the following criteria:
- (1) the *firm* is a *significant SYSC firm* and it meets all the additional criteria in SYSC 23 Annex 1 9.3R;
  - (2) the *firm* is a *CASS large firm*; or
  - (3) the *firm* notifies the *FCA* in accordance with Part 12 of this Annex that it intends to become an *enhanced scope SMCR firm*.
- 9.2 G 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 *firm* in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) it is to be treated as falling into that category of *firm* for the purpose of this Annex as well.
- 9.3 R The additional criteria that a *significant SYSC firm* must meet as referred to in SYSC 23 Annex 1 9.1R(1) are as follows:
- (1) it is an investment firm, as defined in article 4(1)(2) of the *UK CRR* (including a *collective portfolio management investment firm*) as it has effect on 27 January 2023; and
  - (2) it is not excluded by any of the exclusions in SYSC 23 Annex 1 9.4R.
- 9.4 R (1) A *firm* is excluded for the purposes of SYSC 23 Annex 1 9.3R(2) if it is a *local firm*.
- (2) A *firm* is excluded for the purposes of SYSC 23 Annex 1 9.3R(2) if it meets the following conditions:
- (a) it is authorised to provide one or more of the following *investment services*:
    - ⦿ reception and transmission of orders in relation to one or more *financial instruments*;
    - ⦿ execution of orders on behalf of *clients*;

- (i) *portfolio management*; and
      - (ii) *investment advice*;
    - (b) it is not authorised to provide any other *investment services*;
    - (c) it is not authorised to provide the *ancillary service* referred to in paragraph 1 of Part 3A of Schedule 2 to the *Regulated Activities Order* (Safekeeping and administration of *financial instruments*); and
    - (d) it is not permitted to hold MiFID money or securities (as defined in (3)) belonging to its *clients* and for that reason may not at any time place itself in debt with those *clients* in relation to its *MiFID business*.
  - (3) MiFID money or securities (as referred to in (2)(d)) means money or securities that a *firm* receives from, or holds for or on behalf of, a *client* in the course of, or in connection with, its *MiFID business*.
- 9.5 R (1) A *firm* that is authorised to execute investors' orders for *financial instruments* and to hold such *financial instruments* for its own account is not, for that reason, authorised for the purpose of SYSC 23 Annex 1 9.4R to provide the *investment service* of dealing on own account if it meets the following conditions:
- (a) such positions only arise as a result of the *firm's* failure to match investors' orders precisely;
  - (b) the total market value of all such positions is no higher than 15% of the *firm's* initial capital; and
  - (c) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.
- (2) Position and initial capital have the meaning that they had for the purpose of IFPRU 1.1.12R (Meaning of dealing on own account) as it applied on 31 December 2021.
- 9.6 G The purpose of the criteria in SYSC 23 Annex 1 9.3R to SYSC 23 Annex 1 9.5R is to replicate the main part of the definition of 'IFPRU investment firm'. Other elements of the definition are reflected elsewhere in this Annex. However, the definition applies to a *firm* whether or not it ever has been treated as an IFPRU investment firm for the purposes of any *rules* that used that definition.

Part Ten: When a firm becomes an enhanced scope SMCR firm

General rule

- 101 R (1) A *firm* must comply with the requirements for *enhanced scope SMCR firms* (and becomes an *enhanced scope SMCR firm*) from the date specified in this *rule*.
- (2) If a *firm*:
- (a) was not an *enhanced scope SMCR firm*; and
  - (b) then meets one of the qualification conditions in Part 8 or Part 9 of this Annex; the date is twelve *months* after it first meets the first qualification condition that it met.
- (3) Where the first qualification condition it meets is the one in SYSC 23 Annex 1 9.1R(3), the date is three *months* after the FCA receives the notice in SYSC 23 Annex 1 9.1R(3).
- (4) (3) also applies if:
- (a) it meets the qualification condition in SYSC 23 Annex 1 9.1R(3) after it meets another qualification condition; and
  - (b) the result of applying (3) would be that the *firm* would become an *enhanced scope SMCR firm* sooner.
- (5) This *rule* is subject to SYSC 23 Annex 1 11.8R.

Meeting the financial thresholds in Part 8

- 102 R (1) Subject to (4), a *firm* first meets one of the qualification conditions in Part 8 of this Annex (financial qualification conditions) on the due date for submission of the relevant *data item* (see (2) and (3) for the meaning of relevant *data item*).

- (2) Except where (3) applies, the relevant *data item* is the *data item* for the final reporting period applicable to the averaging period for which the *firm* first meets the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1 8.2R.
- (3) Where the qualification condition is the one in row (2) of the table in SYSC 23 Annex 1 8.2R, the relevant *data item* is the one for the reporting period for which the *firm* first meets the condition in column (1) of that row.
- (4) In the case of a *firm* in SYSC 23 Annex 1 8.18R, the *firm* meets the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R on the reporting date for the final reporting period applicable to the averaging period for which the *firm* first meets the condition in column (1) of that row.

Meeting the qualification conditions in Part 9

- 103 R A *firm* meets one of the qualification conditions in Part 9 of this annex (other qualification conditions) on the date when:
  - (1) the status in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) becomes effective; or (as the case may be)
  - (2) the FCA receives the notice in SYSC 23 Annex 1 9.1R(3).
- 104 G SYSC 23 Annex 1 10.1R and SYSC 23 Annex 1 10.3R mean that a *firm* becomes an *enhanced scope SMCR firm* under Part 9 of this Annex on the date in column (2) of the table in SYSC 23 Annex 1 10.5G.
- 105 G Table: Date firm becomes an enhanced scope firm

Qualification condition	Date firm becomes an enhanced scope SMCR firm
The <i>firm</i> is a <i>significant SYSC firm</i>	<p>If a <i>firm</i> meets the criteria in SYSC 23 Annex 1 9.3R but does not at first meet the conditions for being a <i>significant SYSC firm</i> and then later becomes a <i>significant SYSC firm</i>, it becomes an <i>enhanced scope SMCR firm</i> one year and three months after the date in SYSC 1.5.2R (the three-month period in SYSC 1.5.5R(2) plus the one year in this Part).</p> <p>If a <i>firm</i> meets the conditions for being a <i>significant SYSC firm</i> but at first does not meet the criteria in SYSC 23 Annex 1 9.3R and then later meets those criteria, the three-month period in SYSC 1.5.5R(2) does not apply. The one-year period in this Part runs from the date the <i>firm</i> first meets the criteria in SYSC 23 Annex 1 9.3R.</p> <p>If a <i>firm</i> first meets the conditions for being a <i>significant SYSC firm</i> and the criteria in SYSC 23 Annex 1 9.3R at the same time, the three-month period in SYSC 1.5.5R(2) applies.</p>
The <i>firm</i> is a <i>CASS large firm</i>	If the <i>firm</i> notifies the FCA in accordance with CASS 1A.2.9R(1) or CASS 1A.2.9R(2), it becomes an <i>enhanced scope SMCR firm</i> one year following the 1 February following the notification under CASS.
This includes a <i>firm</i> that has elected to be treated as a <i>CASS large firm</i>	<p>If the <i>firm</i> notifies the FCA in accordance with CASS 1A.2.9R(3), it becomes an <i>enhanced scope SMCR firm</i> one year after the day it begins to hold <i>client money</i> or <i>safe custody assets</i>.</p> <p>If the <i>firm</i> makes an election under CASS 1A.2.5R(1), it becomes an <i>enhanced scope SMCR firm</i> one year after the day the notification made under CASS 1A.2.5R(2)(a) states that the election is intended to take effect.</p>
The <i>firm</i> opts to be an <i>enhanced scope SMCR firm</i> by notifying the FCA using Form O	It becomes an <i>enhanced scope SMCR firm</i> three months after the FCA receives the notice.
106 G (1)	The purpose of the one year or three-month period between meeting the conditions for being an <i>enhanced scope SMCR firm</i> and the <i>firm</i> becoming subject to the requirements for such <i>firms</i> is to allow it to make preparations to comply with the new requirements.

(2) For example, a *core SMCR firm* opting up to be an *enhanced scope SMCR firm* should use this period to apply for approval for its personnel to perform the new *designated senior management functions* that will apply because it has become an *enhanced scope SMCR firm*.

- 107 G (1) A *firm* retains its old status during the one-year or three-month period described in this Part.
- (2) For example, a *core SMCR firm* that meets one of the qualification conditions for being an *enhanced scope SMCR firm* in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) will remain as a *core SMCR firm* for one year after it meets the qualification condition.

Part Eleven: When a firm stops being an enhanced scope SMCR firm

General rule

- 111 R A *firm* that:
- (1) was an *enhanced scope SMCR firm*; and
  - (2) then meets none of the qualification conditions in this Annex;
- ceases to be subject to the requirements for *enhanced scope SMCR firms* (and ceases to an *enhanced scope SMCR firm*) one year after it ceases to meet the last qualification condition that it met.

Ceasing to meet the financial thresholds in Part 8

- 112 R A *firm* ceases to meet one of the qualification conditions in Part 8 of this Annex (financial qualification conditions) on whichever of the following is applicable:
- (1) the due date for submission of the *data item* for the final reporting period applicable to the averaging period for which the *firm* first ceases to meet the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1 8.2R; or
  - (2) (where the qualification condition is the one in row (2) of the table in SYSC 23 Annex 1 8.2R) the due date for submission of the *data item* for the reporting period for which the *firm* first ceases to meet the condition in column (1) of that row; or
  - (3) (in the case of a *firm* in SYSC 23 Annex 1 8.18R) the reporting date for the final reporting period applicable to the averaging period for which the *firm* first ceases to meet the condition in column (1) of that row; or
  - (4) the date the relevant reporting requirement ceases to apply as referred to in SYSC 23 Annex 1 8.4R.

Ceasing to meet the qualification conditions in Part 9

- 113 R A *firm* ceases to meet one of the qualification conditions in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) (other qualification conditions) on the date that the status in SYSC 23 Annex 1 9.1R ceases to apply.
- 114 R (1) This *rule* deals with a *firm* that notifies the *FCA* under Part 12 of this Annex that it is cancelling its election to be an *enhanced scope SMCR firm* under SYSC 23 Annex 1 9.1R(3).
- (2) The *firm* ceases to meet the qualification condition under SYSC 23 Annex 1 9.1R(3) on the date the *FCA* receives the notice.

Only meeting qualification conditions for a short time

- 115 R (1) This *rule* deals with a case in which a *firm* ceases to meet a qualification condition in Part 8 or Part 9 of this Annex while the one-year period in Part 10 of this Annex resulting from meeting that qualification condition is still running.
- (2) The result is that the *firm* does not become an *enhanced scope SMCR firm*. The one-year period no longer runs.
- 116 G If, after the *firm* ceases to meet a qualification condition as described in SYSC 23 Annex 1 11.5R, it later meets the same qualification condition or another qualification condition in Part 8 or Part 9 of this Annex, a new one-year period or, as applicable, three-month period, under Part 10 of this Annex begins. This applies even if it meets that qualification condition during the one-year period referred to in SYSC 23 Annex 1 11.5R.



- 117 G (1) SYSC 23 Annex 1 12.13R allows a *firm* to withdraw an election to be an *enhanced scope SMCR firm* before it takes effect.
- (2) The result is that the *firm* does not become an *enhanced scope SMCR firm* and the three-month period in SYSC 23 Annex 1 11.1R does not apply.

Only ceasing to meet qualification conditions for a short time

- 118 R If:
- (1) the one-year period in SYSC 23 Annex 1 11.1R is still running; and
- (2) the *firm* again meets a qualification condition in Part Eight or Nine of this Annex; then (subject to SYSC 23 Annex 1 12.5R):
- (3) the *firm* remains an *enhanced scope SMCR firm*; and
- (4) the one-year period in Part Ten of this Annex does not apply.
- 119 G SYSC 23 Annex 1 12.5R allows a *firm* to opt to remain as an *enhanced scope SMCR firm* during the one-year period in SYSC 23 Annex 1 11.1R

Ceasing to meet one qualification condition and beginning to meet another

- 1110 G (1) This paragraph deals with the following example
- (a) a *firm* meets a qualification condition for being an *enhanced scope SMCR firm* and becomes an *enhanced scope SMCR firm*;
- (b) later the *firm* meets another qualification condition;
- (c) shortly after (b) the *firm* ceases to meet the first qualification condition; and
- (d) the gap between (b) and (c) is less than the one-year period provided for in Part 10 of this Annex.
- (2) In this example:
- (a) the *firm* never stops being an *enhanced scope SMCR firm*; and
- (b) neither the one-year period in Part 10 of this Annex nor the one year count-down provided for in SYSC 23 Annex 1 11.1R applies.

Part Twelve: Opting up and opting back down

Opting up to being a core firm

- 121 R (1) A *firm* may notify the FCA in accordance with this Part that it intends to become a *core SMCR firm*.
- (2) The notice takes effect three months after the FCA receives the notice.
- (3) A *firm* may only make such an election if the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) allows this.

- 122 G The flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) means that only a *limited scope SMCR firm* may opt up to be a *core SMCR firm*.

Opting up to being an enhanced scope firm

- 123 R (1) A *firm* may notify the FCA in accordance with this Part that it intends to become an *enhanced scope SMCR firm*.
- (2) The notice takes effect as described in Part 10 of this Annex.
- (3) A *firm* may only make such an election if the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) allows this.

- 124 G The flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) means that only a *limited scope SMCR firm* or a *core SMCR firm* may opt up to be an *enhanced scope SMCR firm*.

- 125 R (1) An *enhanced scope SMCR firm* that is within the one-year period in Part 11 of this Annex (When a firm stops being an enhanced scope SMCR firm) may notify the FCA in accordance with this Part that it intends to remain an *enhanced scope SMCR firm*.
- (2) The notice takes effect immediately on receipt by the FCA. The effect is that:
- (a) the *firm* remains an *enhanced scope SMCR firm*;

- (b) the three-month period in Part Ten of this Annex (When a firm becomes an enhanced scope SMCR firm) does not apply; and
- (c) the *firm* is treated as meeting the qualification condition for being an *enhanced scope SMCR firm* of having opted to be an *enhanced scope SMCR firm* under SYSC 23 Annex 1 9.1R(3).

Opting up by applicants for permission

- 126 R (1) The following may also give a notice described in SYSC 23 Annex 1 12.1R or SYSC 23 Annex 1 12.3R:
- (a) an applicant for *Part 4A permission*; and
  - (b) other *persons* seeking to carry on *regulated activities* as an *SMCR firm*.
- (2) The notice becomes effective when it becomes an *SMCR firm*.
- 127 D If a *person* in SYSC 23 Annex 1 12.6R(1) wishes to rely on SYSC 23 Annex 1 12.6R, it must make, or, as the case may be, amend its application so as to meet the relevant requirements of this Annex about the notices described in SYSC 23 Annex 1 12.1R or SYSC 23 Annex 1 12.3R.
- 128 G (1) This paragraph relates to a *person* who is about to become an *SMCR firm* and wishes to opt up in accordance with this Part of this Annex.
- (2) This Part of this Annex restricts who can elect to opt up to a higher category of *SMCR firm*. In a case covered by this paragraph, this restriction relates to the category of *SMCR firm* of which the person will be a member when it becomes an *SMCR firm* if it had not made the election.
- (3) (2) also applies to the requirements about how to notify the *FCA*.

Revoking an opt up

- 129 R (1) This *rule* deals with a *firm* that has elected under this Annex to become a *core SMCR firm* or an *enhanced scope SMCR firm* and that election has taken effect.
- (2) The *firm* may notify the *FCA* that it is cancelling its election under this Annex to be:
- (a) a *core SMCR firm*; or
  - (b) an *enhanced scope SMCR firm*.
- (3) A notification under (2)(a) takes effect one *year* after the *FCA* receives the notice.
- (4) A notification under (2)(b) takes effect in accordance with Part 11 of this Annex.

Opted up firm later meets other qualification conditions

- 1210 G (1) A *firm* may elect to opt up to a higher category of *SMCR firm* and then later meet one of the other qualification conditions for that higher category.
- (2) The table in SYSC 23 Annex 1 12.11G gives examples of various scenarios that can follow on from that.

1211 G Table: Examples involving a firm that opts up a category

Scenario	Treatment under this Annex
(1) A <i>firm</i> elects to opt up to a higher category. It later meets one of the other qualification conditions for that higher category. It ceases to meet that second qualification condition some time later.	The <i>firm</i> remains in the higher category because its election remains in force.
(2) A <i>firm</i> elects to opt up to a higher category. It later meets one	The <i>firm</i> remains within that higher category despite cancelling its election because it still meets that second qualification condition.

of the other qualification conditions for that higher category. It later cancels its election.

(3) A *firm* elects to opt up to a higher category. It later cancels its election. During the one-year period in Part E1-even of, or this Part of, this Annex following its cancellation notice it meets one of the other qualification conditions for that higher category.

The *firm* remains within that higher category despite the cancellation notice.

(4) A *firm* elects to opt up to a higher category. It later meets one of the other qualification conditions for that higher category. It later cancels its election. Some time after that, it ceases to meet the second qualification condition.

The cancellation notice has no immediate effect (see Example (2)).

However when it ceases to meet the second qualification condition it ceases to be in the higher category. In contrast to Example (1), its election is no longer in force when it ceases to meet the second qualification condition.

Note: When this table refers to the cancellation of an election it refers to cancelling that election after it has taken effect and not to withdrawing it before it takes effect.

Giving notices

- 1212 R (1) This *rule* deals with a notification under SYSC 23 Annex 1 12.1R to SYSC 23 Annex 1 12.6R.
- (2) The notification must be made in accordance with SUP 10C.15.11R (Method of submission: electronic submission).
- (3) A *firm* must use the version of the form made available for this purpose on the electronic system referred to in SUP 10C.15.11R, which is based on the version found in SYSC 23 Annex 2R (Form O).
- (4) If SUP 10C.15.11R requires the notification to be in accordance with SUP 10C.15.14R (Method of submission: other forms of submission), the *firm* must use the version of the form found in SYSC 23 Annex 2R.

Withdrawing notices

- 1213 R A *firm* may, by notice to the *FCA*, withdraw a notice in SYSC 23 Annex 1 12.12R at any time before it takes effect.
- (1) This paragraph relates to the withdrawal of a notice as described in SYSC 23 Annex 1 12.13R.
- (2) If a *firm* decides to give a withdrawal notice, it should send it to the *FCA* as soon as possible.



(3) A *firm* should give a withdrawal notice in accordance with SUP 15.7 (Form and method of notification). There is no specified form for the notice.

1215 G See SYSC 23 Annex 1 11.7G for more about the effect of withdrawing a notice electing to be an *enhanced scope SMCR firm*.

1216 G If a *firm* notifies the FCA in accordance with this Part of this Annex that it intends to revoke its election to be an *enhanced scope SMCR firm* and then changes its mind within a year, it should withdraw its revocation notice under SYSC 23 Annex 1 12.13R rather than use the opting-up procedure in SYSC 23 Annex 1 12.5R.



**Form O: Changing firm status under the Senior Managers and Certification Regime**

Form O: Changing firm status under the Senior Managers and Certification Regime

