

Senior managers and certification regime: Certification regime

## Chapter 27

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**27.8 Definitions of the FCA certification functions**

**CASS oversight function**

- 27.8.1** **R** (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** **G** **■ 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** **R** 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** **R** (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** **G** 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** G The examples in ■ SYSC 27.8.5G are illustrative only. They are not intended to be exhaustive.

**27.8.7** G 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, operations or information technology.

**27.8.8** G 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.

- 27.8.9** G 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**

- 27.8.10** R
- (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.

- 27.8.11** G
- (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** G ■ 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

Type of SMCR firm	Employees included
(1) A UK SMCR banking firm A third-country SMCR banking firm	Each member of the <i>dual-regulated firms Remuneration Code staff</i> of the <i>firm</i> in column (1) of this row (1).  This includes any <i>person</i> 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).
(2) An EEA SMCR banking firm  For these purposes, sub-paragraphs (i) and (ii) in SYSC 19D.1.1R(1)(d) (application of the dual-regulated firms Remuneration Code) do not apply.	In relation to a <i>firm</i> in column (1) of this row (2), the definition of <i>dual-regulated firms Remuneration Code staff</i> is extended so that it includes employees of this kind of <i>firm</i> in the same way as it includes employees of a <i>third-country SMCR banking firm</i> .
(3) A Solvency II firm	Persons referred to in articles 275.1(c) and (d) of <i>Solvency II Regulation 2015/35</i> (key functions and staff with a material impact).

- 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

**R**

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) a *person* with or for whom those activities are carried out; or
  - (b) the property of any such *person*;
 in a manner substantially connected with the carrying on of *regulated activities* by the *firm*.

27.8.19

**R**

Table: Activities covered by the client-dealing FCA certification function

Activity	Comments
(1) The following activities: (a) <i>advising on investments</i> other than a <i>non-investment insurance contract</i> ; or (b) performing other functions related to this, such as <i>dealing</i> and <i>arranging</i> . (2) The following activities: (a) giving advice in connection with <i>corporate finance business</i> ; or (b) performing other functions related to this.	(a) does not include <i>advising on investments</i> in the course of carrying on the activity of giving <i>basic advice</i> on a <i>stakeholder product</i> .
(3) If the <i>firm</i> does any of the following activities: (a) <i>dealing</i> , as principal or as agent; or (b) <i>arranging (bringing about) deals in investments</i> ; taking part in those activities is included.	(a) and (b) do not include <i>dealing</i> or <i>arranging (bringing about) deals in investments</i> in a <i>non-investment insurance contract</i> .  For the activity in this row (3), SYSC 27.8.18R(2)(a) and (b) are expanded to cover also:  (a) a <i>person</i> in connection with whom the activities in the first column of this row are carried out; and  (b) the property of any such <i>person</i> .
(4) If the <i>firm</i> is acting in the capacity of an <i>investment manager</i> the following are included: (a) taking part in that activity; and (b) carrying on functions connected to this.	

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Activity	Comments
(5) Acting as a 'bidder's representative' in relation to <i>bidding in emissions auctions</i> .	Acting as a 'bidder's representative' has the meaning in sub-paragraph 3 of article 6(3) of the <i>auction regulation</i> .

- 27.8.20 G ■ 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 G 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 G 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*.

**Algorithmic trading function**

- 27.8.23 R
  - (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** **G** 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** **G** The algorithmic trading *FCA certification function* applies whether the *firm* develops the algorithm itself or buys one from a third party.