Senior management arrangements, Systems and Controls

Chapter 4

General organisational requirements



4.2 Persons who effectively direct the **business**

General requirement

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

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

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

Responsibility of senior personnel of an AIFM

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

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

Composition of management

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

- (a) for a full-scope UK AIFM. SYSC 4.2.7R; or
- (b) for a common platform firm, SYSC 4.3A.3R.

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

4.2.3 In the case of a body corporate, the persons referred to in SYSC 4.2.2 R should either be executive directors or persons granted executive powers by, and reporting immediately to, the governing body. In the case of a partnership, they should be active partners.

SYSC 4/2

- 4.2.4
- At least two independent minds should be applied to the formulation and implementation of the policies of a common platform firm, a management company, a full-scope UK AIFM and the UK branch of a third country firm. Where a firm nominates just two individuals to direct its business, the FCA will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence on, the way in which strategy is being implemented through day-to-day policy.
- 4.2.5 G
- Where there are more than two individuals directing the business of a common platform firm, a management company, a full-scope UK AIFM or the UK branch of a third country firm, the FCA does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. However, at least two individuals should be involved in all such decisions. Both individuals' judgement should be engaged so that major errors leading to difficulties for the firm are less likely to occur. Similarly, each individual should have sufficient experience and knowledge of the business and the necessary personal qualities and skills to detect and resist any imprudence, dishonesty or other irregularities by the other individual. Where a single individual, whether a chief executive, managing director or otherwise, is particularly dominant in such a firm this will raise doubts about whether SYSC 4.2.2 R is met.

Alternative arrangements

- 4.2.6 R
- If a common platform firm, (other than a credit institution or AIFM investment firm) or the UK branch of a third country firm, is:
 - (1) a natural person; or
 - (2) a legal person managed by a single natural person;

then:

- (3) it must have alternative arrangements in place which ensure:
 - (a) sound and prudent management of the firm; and
 - (b) adequate consideration of the interests of *clients* and the integrity of the market; and
- (4) the natural persons concerned must be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

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

[Note: article 9(6) second paragraph of MiFID]

■ Release 35 • Apr 2024

4.2.7 A full-scope UK AIFM must notify the FCA of the names of the senior personnel of the firm and of every person succeeding them in office.

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

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