

Chapter 5

Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

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

Application to a common platform firm

5.1.-2

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For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* apply as set out in the table below:

| Subject | Applicable rule or guidance |
|---|---|
| Competent employees rule, knowledge and competence and segregation of functions | SYSC 5.1.2G to SYSC 5.1.5AG, SYSC 5.1.5AAR, SYSC 5.1.5ABR, SYSC 5.1.5ACG to SYSC 5.1.5AEG, SYSC 5.1.7R, SYSC 5.1.8G to SYSC 5.1.11G |
| Certification regime | SYSC 5.2 |

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

5.1.-1

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

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

Competent employees rule

5.1.1

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

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

5.1.2

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A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it. This includes assessing an individual's

honesty and competence. This assessment should normally be made at the point of recruitment. An individual's honesty need not normally be revisited unless something happens to make a fresh look appropriate.

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

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

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

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

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

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

Knowledge and competence

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

- (1) in relation to its *MiFID* or *equivalent third country business*;
- (2) in respect of any natural persons ("relevant individuals") who, on behalf of the *firm*:
 - (a) make *personal recommendations* to *clients* in relation to *financial instruments* or *structured deposits*; or
 - (b) provide information to *retail clients* or *professional clients* about *financial instruments*, *structured deposits*, *investment services* or *ancillary services*; or

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

[Note: article 25(1) of *MiFID*]

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| 5.1.5AB | R | <p>A <i>firm</i> must ensure, and be able to demonstrate to the <i>FCA</i>, at the <i>FCA</i>'s request, that any relevant individuals possess the necessary knowledge and competence so as to ensure that the <i>firm</i> is able to meet its obligations under:</p> <ol style="list-style-type: none"> (1) those <i>rules</i> which implement articles 24 and 25 of <i>MiFID</i> (including those <i>rules</i> which implement related provisions under the <i>MiFID Delegated Directive</i>); and (2) related provisions of the <i>MiFID Org Regulation</i>. <p>[Note: article 25(1) of <i>MiFID</i>]</p> |
| 5.1.5AC | G | <p>The <i>rules</i> which implement articles 24 and 25 of <i>MiFID</i> can be found in <i>COBS</i> and <i>PROD</i> and are identified with a 'Note:'.</p> |
| 5.1.5AD | G | <p><i>ESMA</i> has issued guidelines specifying the criteria for the assessment of knowledge and competence for the purposes of ■ SYSC 5.1.5ABR. The <i>ESMA</i> guidelines can be found at https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence.</p> |
| 5.1.5AE | G | <ol style="list-style-type: none"> (1) The <i>FCA</i> expects a <i>firm</i> to act consistently with the <i>ESMA</i> guidelines referred to in ■ SYSC 5.1.5ADG in relation to its <i>MiFID</i> or equivalent <i>third country business</i>. (2) The <i>FCA</i> is required to publish various information on its website in relation to <i>firms</i>' assessment of relevant individuals' knowledge and competence. That information can be found at https://www.fca.org.uk/firms/training-competence (3) A <i>firm</i> to which the Training and Competence sourcebook (<i>TC</i>) applies may satisfy its knowledge and competence obligations under ■ SYSC 5.1.5ABR in relation to a relevant individual by way of compliance with its obligations in <i>TC</i>. |
| 5.1.5B | R | <p>When complying with the <i>competent employees rule</i>, a <i>firm</i> must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.</p> |
| <p>Segregation of functions</p> | | |
| 5.1.6 | R | <p>A <i>management company</i> must ensure that the performance of multiple functions by its <i>relevant persons</i> does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally.</p> <p>[Note: article 5(3) of the <i>UCITS implementing Directive</i>]</p> |

5.1.7 **R** The *senior personnel* of a *common platform firm* must define arrangements concerning the segregation of duties within the *firm* and the prevention of conflicts of interest.

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

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

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

Segregation of functions: additional guidance

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

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

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

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

- (1) the work is carried out under the supervision and management of the *firm's* own internal staff; and
- (2) potential conflicts of interest between the provision of external audit services and the provision of internal audit are properly managed.

- Awareness of procedures: management company**
- 5.1.12 **R** A *management company* must ensure that its *relevant persons* are aware of the procedures which must be followed for the proper discharge of their responsibilities.
 [Note: article 4(1)(b) of the *UCITS implementing Directive*]
- Awareness of procedures: other firms**
- 5.1.12A **G** Other *firms* should take account of the *rule* concerning awareness of procedures (■ SYSC 5.1.12 R) as if it were *guidance* (and as if should appeared in that *rule* instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).
- General**
- 5.1.13 **R** The systems, internal control mechanisms and arrangements established by a *firm* (other than a *common platform firm*) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services, *claims management services* and other activities undertaken in the course of that business.
 [Note: articles 4(1) final paragraph and 5(4) of the *UCITS implementing Directive*]
- 5.1.14 **R** A *management company* must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter, and take appropriate measures to address any deficiencies.
 [Note: article 4(5) of the *UCITS implementing Directive*]
- 5.1.15 **G** Other *firms* should take account of the *rule* requiring monitoring and evaluation of the adequacy and effectiveness of systems (■ SYSC 5.1.14 R) as if it were *guidance* (and as if should appeared in that *rule* instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).