

Chapter 6

Compliance, internal audit and financial crime

6.1Compliance

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See https://www.esma.europa.eu/sites/default/files/library/esma35-36-1946_final_report_guidelines_on_certain_aspects_of_the_mifid_ii_compliance_function.pdf.]

Application to a common platform firm

6.1.-2

G

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
Adequate policy and procedures	SYSC 6.1.1R, SYSC 6.1.1AG
Compliance function	SYSC 6.1.4-AG, SYSC 6.1.7R
Internal audit	SYSC 6.2.2G
Financial crime	SYSC 6.3.1R to SYSC 6.3.11G

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

6.1.-1

G

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

(1) 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

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

Adequate policy and procedures

6.1.1

R

A *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* (or where applicable, *tied agents*) with its obligations under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.

[Note: article 16(2) of *MiFID* and article 12(1)(a) of the *UCITS Directive*]

- 6.1.1A** **G** The *FCA* provides *guidance* on steps that a *firm* can take to reduce the risk that it might be used to further *financial crime* in *FCG* (Financial Crime Guide: A firm's guide to countering financial crime risks) and *FCTR* (Financial Crime Thematic Reviews).
- 6.1.2** **R** A *firm* that is a *management company* or an *operator of an electronic system in relation to lending* must, taking 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, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the *FCA* to exercise its powers effectively under the *regulatory system*.
[Note: article 10(1) of the *UCITS implementing Directive*]
- 6.1.2A** **G** Other *firms* should take account of the adequate policies and procedures rule (■ SYSC 6.1.2 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).
- 6.1.3** **R** **Compliance function**
A *firm* that is a *management company* or an *operator of an electronic system in relation to lending* must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
- (1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with ■ SYSC 6.1.2 R, and the actions taken to address any deficiencies in the *firm's* compliance with its obligations; and
 - (2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm's* obligations under the *regulatory system*.
- [Note: article 10(2) of the *UCITS implementing Directive*]
- 6.1.3A** **G**
- (1) Other *firms* should take account of the compliance function rule (■ SYSC 6.1.3 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).
 - (2) Notwithstanding ■ SYSC 6.1.3 R, as it applies under (1), depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate compliance function. Where a *firm* has a separate compliance function the *firm* should also take into account ■ SYSC 6.1.3 R and ■ SYSC 6.1.4 R as guidance.
- 6.1.4** **R** In order to enable the compliance function to discharge its responsibilities properly and independently, a *firm* that is a *management company* or an *operator of an electronic system in relation to lending* must ensure that the following conditions are satisfied:

- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
- (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by ■ SYSC 4.3.2 R;
- (3) the *relevant persons* involved in the compliance functions must not be involved in the performance of the services or activities they monitor;
- (4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.

[Note: article 10(3) of the *UCITS implementing Directive*]

6.1.4-A

G

In setting the method of determining the *remuneration of relevant persons* involved in the compliance function:

- (1) [deleted]
- (2) [deleted]
- (3) *firms* that ■ SYSC 19D applies to will also need to comply with the *dual-regulated firms Remuneration Code*;
- (4) *firms* that the remuneration part of the *PRA Rulebook* applies to will also need to comply with it; and
- (5) *firms* that ■ SYSC 19G applies to will also need to comply with the *MIFIDPRU Remuneration Code*.

6.1.4A

R

- (1) A *firm* which is not a *common platform firm* or *management company* and which carries on *designated investment business* with or for retail clients or professional clients must allocate to a *director* or *senior manager* the function of:
 - (a) having responsibility for oversight of the *firm's* compliance; and
 - (b) reporting to the *governing body* in respect of that responsibility.
- (2) In ■ SYSC 6.1.4A R (1) compliance means compliance with the rules in:
 - (a) *COBS* (Conduct of Business sourcebook);
 - (b) *COLL* (Collective Investment Schemes sourcebook);
 - (c) *CASS* (Client Assets sourcebook); and
 - (d) *ICOBS* (Insurance: Conduct of Business sourcebook).

6.1.4-B

G

In setting the method of determining the remuneration of *relevant persons* involved in the compliance function, *full-scope UK AIFMs* will need to comply with the *AIFM Remuneration Code*.

- | | | |
|---------|---|--|
| 6.1.4C | G | <p>(1) A <i>firm</i> in (2) or (3) must appoint a compliance officer to be responsible for ensuring the <i>firm</i> meets its obligations under ■ SYSC 6.1.1R for any compliance function the <i>firm</i> has and for any reporting as to compliance which may be made under ■ SYSC 4.3.2R.</p> <p>(2) This <i>rule</i> applies to:</p> <ul style="list-style-type: none"> (a) a <i>debt management firm</i>; and (b) a <i>credit repair firm</i>. <p>(3) This <i>rule</i> also applies to a <i>firm</i> that meets the following conditions:</p> <ul style="list-style-type: none"> (a) it is a Class 1 <i>firm</i> as defined in ■ CMC OB 7.2.5R(1); and (b) ■ SUP 10C (FCA senior managers regime for approved persons in SMCR firms) applies the <i>compliance oversight function</i> to it. |
| 6.1.4-C | G | <p>(1) This <i>guidance</i> is relevant to an <i>SMCR firm</i> required to appoint a compliance officer under ■ SYSC 6.1.4R or article 22(3) of the <i>MiFID Org Regulation</i> as applicable.</p> <p>(2) Taking account of the nature, scale and complexity of its activities, the <i>firm</i> should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the compliance officer does not undermine the independence of the compliance function.</p> <p>(3) In the <i>FCA's</i> view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the compliance officer to require the approval of a majority of the <i>management body</i>, including at least a majority of its members who do not perform any executive function in the <i>firm</i>.</p> |
| 6.1.5 | R | <p>A <i>firm</i> that is a <i>management company</i> or an <i>operator of an electronic system in relation to lending</i> need not comply with ■ SYSC 6.1.4 R (3) or ■ SYSC 6.1.4 R (4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of financial services and activities, the requirements under those <i>rules</i> are not proportionate and that its compliance function continues to be effective.</p> <p>[Note: article 10(3) second paragraph of the <i>UCITS implementing Directive</i>]</p> |
| 6.1.6 | G | <p>Other <i>firms</i> should take account of the proportionality <i>rule</i> (■ SYSC 6.1.5 R) as if it were <i>guidance</i> (and as if should appeared in that <i>rule</i> instead of must) as explained in ■ SYSC 1 Annex 1 3.3R(1).</p> |
| 6.1.7 | R | <p>[deleted]</p> |
| 6.1.8 | G | <p>The exemptions in ■ SYSC 6.1.5R are unlikely to apply to a <i>firm</i> that is an <i>operator of an electronic system in relation to lending</i> where that <i>firm</i> offers lenders a <i>P2P portfolio</i> with a <i>target rate</i>.</p> |