

Senior Management Arrangements, Systems and Controls

SYSC TP 5

Financial Services (Banking Reform) Act 2013: Certification and regulatory references

Note to the reader			
5.1.1-2	G	(1)	SYSC TP 5 has not been amended to reflect changes in the <i>FCA Handbook</i> and <i>Glossary</i> since the beginning of 2018. This is because it is made up of transitional provisions that mostly expired before then.
		(2)	A small number of provisions may have effect beyond that date. To help the reader, the table in SYSC TP 5.1.1-1G explains how superseded <i>Glossary</i> terms in SYSC TP 5 should be interpreted.
5.1.1-1	G	Table: meaning of superseded Glossary terms	

Term in SYSC TP 5	Term that has replaced it	Comment
FCA specified significant-harm function	<i>FCA certification function</i>	
full scope regulatory reference firm	Any of the following: (a) an <i>SMCR banking firm</i> ; (b) a <i>Solvency II firm</i> ; or (c) a <i>large non-directive insurer</i> .	SYSC TP 5.4.2R refers to SYSC 22.2.1R (Obligation to obtain a regulatory reference). On 7 March 2017 (the date referred to in SYSC TP 5.4.2R), SYSC 22.2.1R applied to what were then called full scope regulatory reference firms.
relevant authorised person specified significant-harm function	<i>SMCR banking firm certification function</i>	

Purpose of SYSC TP 5			
SYSC 5.1.1	G	SYSC TP 5:	
		(1)	explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and
		(2)	has certain transitional provisions dealing with SYSC 22 (Regulatory references).
5.1.2	G	SYSC TP 5 deals with transitional issues that relate to changes to the <i>Handbook</i> that come into force in 2016 and 2017.	
Application			
SYSC 5.2.1	G	(1)	All of SYSC TP 5 applies to <i>relevant authorised persons</i> .
		(2)	SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all <i>firms</i> .
Certification: The transitional period			

SYSC 5.3.1	G	The obligation in section 63E(1) of the <i>Act</i> for a <i>relevant authorised person</i> to take reasonable care to ensure that no <i>employee</i> of the <i>firm</i> performs an <i>FCA specified significant-harm function</i> , unless the <i>firm</i> has issued the <i>employee</i> with a valid certificate, does not apply until the end of the transitional period.
SYSC 5.3.2	G	However, other parts of the <i>Handbook</i> and the <i>Act</i> about <i>certification employees</i> apply in the transitional period.
SYSC 5.3.3	G	The table in SYSC TP 5.3.4G explains how the requirements of the <i>Handbook</i> and the <i>Act</i> about <i>certification employees</i> apply in the transitional period.
SYSC 5.3.4	G	Table: How the certification regime applies in the transitional period

Provision in the Act or the Handbook	What that provision is about	How it applies in the transitional period
Definition of <i>certification employee</i>		During the transitional period, the <i>Glossary</i> definition of <i>certification employee</i> covers everyone who would need a certificate to perform their job if the obligation to issue certificates was in force
SYSC 27.2.3G to SYSC 5.2.17G	Guidance about issuing certificates and fitness	Does not apply
SYSC 27.6.1R to SYSC 27.8.31G	Definition of who falls into the certification regime	Applies for the purpose of those parts of the <i>Handbook</i> and the <i>Act</i> that are in force as described in this table.
The parts of SYSC 4.5 dealing with the <i>management responsibilities map</i>	SYSC 4.5 says that the <i>management responsibilities map</i> should say if <i>persons</i> described or identified in the <i>management responsibilities map</i> are <i>certification employees</i>	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
COCON		Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force. This applies even if they have not been notified that: (a) <i>COCON</i> applies to them; or (b) of the <i>rules</i> that apply to them. Applies to those who would have been excluded from the certification regime by SYSC 27.5.1R (Scope: emergency appointments).
Section 64B of the <i>Act</i>	<i>Firm</i> should ensure that all <i>persons</i> subject to <i>COCON</i> are notified <i>Firm</i> should take reasonable steps to ensure that those <i>persons</i> understand how <i>COCON</i> applies to them.	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.

Provision in the Act or the Handbook		What that provision is about	How it applies in the transitional period
Definition of <i>certification employee</i>			During the transitional period, the <i>Glossary</i> definition of <i>certification employee</i> covers everyone who would need a certificate to perform their job if the obligation to issue certificates was in force
The parts of SUP 15.3 that deal with COCON breaches		Notifying a significant breach of COCON to the FCA	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
Section 64C of the Act and SUP 15.11		Notifying the FCA of disciplinary action	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
Transitional provisions about regulatory references: Full scope regulatory reference firms			
SYSC 5.4.1	R	(1)	If on 7 March 2017 an <i>employee</i> (P) is already performing a <i>specified significant-harm function</i> for a <i>relevant authorised person</i> (A), the obligation under SYSC 22 (Regulatory references) for A to obtain a reference when issuing a certificate for P for that <i>significant-harm function</i> does not apply.
		(2)	Paragraph (1) ceases to apply if there has been a significant change in P's responsibilities forming part of that <i>specified significant-harm function</i> as compared to the position on 7 March 2017.
5.4.2	R	SYSC 22.2.1R (Obligation to obtain a regulatory reference) does not apply to an application for approval as an <i>approved person</i> that is made before 7 March 2017 but that has not yet been finally determined by that date.	
SYSC 5.4.3	G	(1)	SYSC 22.7.5G to SYSC 22.7.8G (Asking for a reference to be updated) deal with a <i>full scope regulatory reference firm</i> (A) that is obliged to get a reference from an <i>ex-employer</i> (B) and wants to rely on one that B has already given A.
		(2)	The SYSC material referred to in (1) can apply where the reference was given before 7 March 2017.
		(3)	One relevant factor is whether B is a <i>full scope regulatory reference firm</i> . This is because the FCA requirements about <i>firms</i> asked to give regulatory references that applied to <i>firms</i> that are not <i>full scope regulatory reference firms</i> before 7 March 2017 were similar to those in SYSC 22. As such, the existing reference may already be sufficient.
		(4)	The main difference between the requirements for a <i>firm</i> that is not a <i>full scope regulatory reference firm</i> before and after 7 March 2017 is that the range of functions for which A is entitled to ask for a reference was widened. For example, there was no obligation to supply a reference for a <i>certification employee</i> before then.
SYSC 5.4.4	G	SYSC 22.2.4R (Obligation to revise references) does not apply to references given before 7 March 2017.	
SYSC 5.4.5	R	Question (F) (disciplinary action) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements) does not require disclosure of breaches of individual conduct requirements referred to in question (F) if the disciplinary action referred to in that item took place before:	
		(1)	(in the case of a <i>relevant authorised person</i>) 7 March 2016; or
		(2)	(in the case of any other <i>full scope regulatory reference firm</i>) 7 March 2017;

		if the <i>firm's</i> records do not show whether the conduct that was subject to disciplinary action amounted to a breach of those individual conduct requirements.
		Transitional provisions about regulatory references: All firms
SYSC 5.5.1	R	If a <i>firm</i> (A) asks another <i>firm</i> (B) for a reference before 7 March 2017, SYSC 22 (Regulatory references) applies to B if B gives the reference after that date.
SYSC 5.5.2	G	SYSC 22 applies to a reference requested or given after 7 March 2017 even if the matters covered by the reference occurred before then.