

**SENIOR MANAGEMENT ARRANGEMENTS,
SYSTEMS AND CONTROLS INSTRUMENT 2001**

- A. The Financial Services Authority makes the rules and gives the guidance in the Annex to this instrument ("SYSC") in the exercise of the powers listed in Schedule 4 to SYSC (Powers exercised).
- B. This instrument shall come into force at the beginning of the day on which section 19 (The general prohibition) of the Financial Services and Markets Act 2000 (the "Act") comes into force.
- C. The provisions of the Act relevant to making rules and listed in Schedule 4 to SYSC (Powers exercised) are specified for the purpose of section 153(2) of the Act (Rule-making instruments).
- D. This instrument may be cited as the Senior Management Arrangements, Systems and Controls Instrument 2001.
- E. The Annex to this instrument (including its Schedules) may be cited as Senior Management Arrangements, Systems and Controls (or SYSC).

By order of the Board
21 June 2001

ANNEX



Senior Management Arrangements, Systems and Controls



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Transitional provisions

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- 1 There are no transitional provisions in SYSC. However, GEN contains some technical transitional provisions that apply throughout the Handbook and which are designed to ensure a smooth transition at commencement.

Chapter 1

Application and purpose

1.1 Application

Who?

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SYSC applies to every *firm* except that:

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- (1) for an *incoming EEA firm* or an *incoming Treaty firm*:
 - (a) ■ SYSC 2.1.1 R and ■ SYSC 2.1.2 G do not apply;
 - (b) ■ SYSC 2.1.3 R to ■ SYSC 2.2.3 G apply, but only in relation to allocation of the function in ■ SYSC 2.1.3 R (2) and only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the *firm's Home State regulator*; and
 - (c) ■ SYSC 3 applies, but only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the *firm's Home State regulator*;
- (2) for an *incoming EEA firm* which has *permission only for cross border services* and which does not carry on *regulated activities* in the *United Kingdom*, SYSC does not apply;
- (3) ■ SYSC 2 does not apply to a *sole trader* as long as he does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements); and
- (4) for a *UCITS qualifier*:
 - (a) ■ SYSC 2.1.1 R and ■ SYSC 2.1.2 G do not apply;
 - (b) ■ SYSC 2.1.3 R to ■ SYSC 2.2.3 G apply, but only in relation to allocation of the function in ■ SYSC 2.1.3 R (2) and only with respect to the activities in ■ SYSC 1.1.4 R;
 - (c) ■ SYSC 3 applies, but only with respect to the activities in ■ SYSC 1.1.4 R.

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- (1) Question 12 in ■ SYSC 2.1.6 G and ■ SYSC App 1 contain guidance on ■ SYSC 1.1.1R (1)(b) and (c).

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- (2) ■ SYSC 1.1.7 R and ■ SYSC 1.1.10 R (Where?) further restrict the territorial application of SYSC for an *incoming EEA firm*, *incoming Treaty firm* or *UCITS qualifier*.
- (3) ■ SYSC 1.1.1R (4) puts *incoming EEA firm* on an equal footing with *unauthorised overseas persons* who utilise the overseas persons exclusions in article 72 of the *Regulated Activities Order*.

What?

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SYSC applies with respect to the carrying on of:

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- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
- (3) *ancillary activities* in relation to *designated investment business*.

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SYSC also applies with respect to the *communication* and *approval* of *financial promotions* which:

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- (1) if *communicated* by an *unauthorised person* without *approval* would contravene section 21(1) of the *Act* (Restrictions on financial promotion); and
- (2) may be *communicated* by a *firm* without contravening section 238(1) of the *Act* (Restrictions on promotion of collective investment schemes).

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■ SYSC 3 also:

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- (1) applies with respect to the carrying on of *unregulated activities* in a *prudential context*; and
- (2) takes into account any activity of other members of a *group* of which the *firm* is a member.

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■ SYSC 1.1.5 R (2) does not mean that inadequacy of a *group* member's systems and controls will automatically lead to a *firm* contravening, for example, ■ SYSC 3.1.1 R. Rather, the potential impact of a *group* member's activities, including its systems and controls, and any systems and controls that operate on a *group* basis, will be relevant in determining the appropriateness of the *firm's* own systems and controls.

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Where?

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SYSC applies with respect to activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom* unless another applicable *rule*

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which is relevant to the activity has a wider territorial scope, in which case SYSC applies with that wider scope in relation to the activity described in that *rule*.

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An example of the type of *rule* referred to in ■ SYSC 1.1.7 R with a different territorial scope is the *rules* in ■ COB 9.1 (Custody). ■ COB 9.1 applies, for certain *UK firms*, to activities carried on from *branches* in other *EEA States* as well as *UK establishments* ■ COB 1.4.3 R (c) (General application – where?). Therefore, SYSC applies to the *custody* activities described in ■ COB 9.1 carried on from such a *branch* by such a *UK firm*. The *UK firm* must, for example, take reasonable care to establish systems and controls under ■ SYSC 3.1.1 R as are appropriate to those activities carried on from its *EEA branches* as well as from its *UK establishments*.

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SYSC also applies in a *prudential context* to a *UK domestic firm* with respect to activities wherever they are carried on.

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■ SYSC 3 also applies in a *prudential context* to an *overseas firm* (other than an *incoming EEA firm*, *incoming Treaty firm* or *UCITS qualifier*) with respect to activities wherever they are carried on.

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- (1) In considering whether to take regulatory action under SYSC in relation to activities carried on outside the *United Kingdom*, the *FSA* will take into account the standards expected in the market in which the *firm* is operating.
- (2) Most of the *rules* in ■ SYSC 3 are linked to other requirements and standards under the *regulatory system* which have their own territorial limitations so that those *SYSC rules* are similarly limited in scope.

Actions for damages

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A contravention of the *rules* in SYSC does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).



1.2 Purpose

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The purposes of SYSC are:

- (1) to encourage *firms' directors* and *senior managers* to take appropriate practical responsibility for their *firms'* arrangements on matters likely to be of interest to the *FSA* because they impinge on the *FSA's* functions under the *Act*;
- (2) to increase certainty by amplifying *Principle 3*, under which a *firm* must “take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems”; and
- (3) to encourage *firms* to vest responsibility for effective and responsible organisation in specific *directors* and *senior managers*.

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The main matters, referred to in ■ SYSC 1.2.1 G (1), which are likely to be of interest to the *FSA* are those which relate to confidence in the *financial system*; to the fair treatment of *firms' customers*; to the protection of *consumers*; and to the use of the *financial system* in connection with *financial crime*. The *FSA* is not primarily concerned with risks which threaten only the owners of a financial business except in so far as these risks may have an impact on those matters.

Chapter 2

2

Senior management arrangements

2.1 Apportionment of Responsibilities

2.1.1 **R** ^{/1} A *firm* must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its *directors* and *senior managers* in such a way that:

- (1) it is clear who has which of those responsibilities; and
- (2) the business and affairs of the *firm* can be adequately monitored and controlled by the *directors*, relevant *senior managers* and *governing body* of the *firm*.

2.1.2 **G** ^{/1} The role undertaken by a *non-executive director* will vary from one *firm* to another. For example, the role of a *non-executive director* in a *friendly society* may be more extensive than in other *firms*. Where a *non-executive director* is an *approved person*, for example where the *firm* is a *body corporate*, his responsibility and therefore liability will be limited by the role that he undertakes. Provided that he has personally taken due care in his role, a *non-executive director* would not be held disciplinarily liable either for the failings of the *firm* or for those of individuals within the *firm*. The *non-executive director function*, for the purposes of the *approved persons* regime, is described in ■ SUP 10.

2.1.3 **R** ^{/1} A *firm* must appropriately allocate to one or more individuals, in accordance with ■ SYSC 2.1.4 R, the functions of:

- (1) dealing with the apportionment of responsibilities under ■ SYSC 2.1.1 R; and
- (2) overseeing the establishment and maintenance of systems and controls under ■ SYSC 3.1.1 R.

2.1.4 **R** ^{/1} Table Allocation of functions
This table belongs to ■ SYSC 2.1.3 R

1: Firm type	2: Allocation of both functions must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:
<p>(1) A firm which is a body corporate and is a member of a group, other than a firm in row (2)</p> <p>(2) An incoming EEA firm or incoming Treaty firm (note: only the function in SYSC 2.1.3R(2) must be allocated)</p> <p>(3) Any other firm</p>	<p>(1) the firm’s chief executive (and all of them jointly, if more than one); or</p> <p>(2) a director or senior manager responsible for the overall management of:</p> <p>(a) the group; or</p> <p>(b) a group division within which some or all of the firm’s regulated activities fall</p> <p>(not applicable)</p> <p>the firm’s chief executive (and all of them jointly, if more than one)</p>	<p>the firm’s and its group’s:</p> <p>(1) directors; and</p> <p>(2) senior managers</p> <p>the firm’s and its group’s:</p> <p>(1) directors; and</p> <p>(2) senior managers</p> <p>the firm’s and its group’s:</p> <p>(1) directors; and</p> <p>(2) senior managers</p>
<p>Note: Column 2 does not require the involvement of the <i>chief executive</i> or other executive <i>director</i> or <i>senior manager</i> in an aspect of corporate governance if that would be contrary to generally accepted principles of good corporate governance.</p>		

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SYSC 2.1.3R and 2.1.4R give a *firm* some flexibility in the individuals to whom the functions may be allocated. It will be common for both the functions to be allocated solely to the *firm’s chief executive*. ■ SYSC 2.1.6 G contains further *guidance* on the requirements of ■ SYSC 2.1.3 R and 2.1.4R in a question and answer form.

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Table Frequently asked questions about allocation of functions in ■ SYSC 2.1.3 R
This table belongs to ■ SYSC 2.1.5 G

	Question	Answer
1	Does an individual to whom a function is allocated under SYSC 2.1.3R need to be an <i>approved person</i> ?	<p>An individual to whom a function is allocated under SYSC 2.1.3R will be performing the <i>apportionment and oversight function</i> (CF 8, see SUP 10.7.1R) and an application must be made to the FSA for approval of the individual before the function is performed under section 59 of the Act (Approval for particular arrangements).</p> <p>There are exceptions from this in SUP 10.1 (Approved persons – Application). In particular, an <i>incoming EEA firm</i> is referred to the <i>EEA investment business oversight function</i> (CF 9, see SUP 10.7.6R).</p>
2	If the allocation is to more than one individual, can they perform the functions, or aspects of the functions, separately?	<p>If the functions are allocated to joint <i>chief executives</i> under SYSC 2.1.4R, column 2, they are expected to act jointly.</p> <p>If the functions are allocated to an individual under SYSC 2.1.4R, column 2, in addition to individuals under SYSC 2.1.4R, column 3, the former may normally be expected to perform a leading role in relation to the functions that reflects his position.</p> <p>Otherwise, yes.</p>
3	What is meant by “appropriately allocate” in this context?	<p>The allocation of functions should be compatible with delivering compliance with <i>Principle 3</i>, SYSC 2.1.1R and SYSC 3.1.1R. The FSA considers that allocation to one or two individuals is likely to be appropriate for most <i>firms</i>.</p>
4	If a committee of management governs a <i>firm</i> or <i>group</i> , can the functions be allocated to every member of that committee?	<p>Yes, as long as the allocation remains appropriate (see Question 3).</p> <p>If the <i>firm</i> also has an individual as <i>chief executive</i>, then the functions must be allocated to that individual as well under SYSC 2.1.4R, column 2 (see Question 7).</p>
5	Does the definition of <i>chief executive</i> include the possessor of equivalent responsibilities with another title, such as a managing <i>director</i> or managing <i>partner</i> ?	<p>Yes.</p>

	Question	Answer
6	Is it possible for a <i>firm</i> to have more than one individual as its <i>chief executive</i> ?	Although unusual, some <i>firms</i> may wish the responsibility of a <i>chief executive</i> to be held jointly by more than one individual. In that case, each of them will be a <i>chief executive</i> and the functions must be allocated to all of them under SYSC 2.1.4R, column 2 (see also Questions 2 and 7).
7	If a <i>firm</i> has an individual as <i>chief executive</i> , must the functions be allocated to that individual?	<p>Normally, yes, under SYSC 2.1.4R, column 2.</p> <p>But if the <i>firm</i> is a <i>body corporate</i> and a member of a <i>group</i>, the functions may, instead of to the <i>firm's chief executive</i>, be allocated to a <i>director</i> or <i>senior manager</i> from the <i>group</i> responsible for the overall management of the <i>group</i> or of a relevant <i>group</i> division, so long as this is appropriate (see Question 3). Such individuals will nevertheless require approval by the <i>FSA</i> (see Question 1).</p> <p>If the <i>firm</i> chooses to allocate the functions to a <i>director</i> or <i>senior manager</i> responsible for the overall management of a relevant <i>group</i> division, the <i>FSA</i> would expect that individual to be of a seniority equivalent to or greater than a <i>chief executive</i> of the <i>firm</i> for the allocation to be appropriate.</p>
8	If a <i>firm</i> has a <i>chief executive</i> , can the functions be allocated to other individuals in addition to the <i>chief executive</i> ?	<p>See also Question 14.</p> <p>Yes. SYSC 2.1.4R, column 3, permits a <i>firm</i> to allocate the functions, additionally, to the <i>firm's</i> (or where applicable the <i>group's</i>) <i>directors</i> and <i>senior managers</i> as long as this is appropriate (see Question 3).</p>

	Question	Answer
9	What if a <i>firm</i> does not have a <i>chief executive</i> ?	<p>Normally, the functions must be allocated to one or more individuals selected from the <i>firm's</i> (or where applicable the <i>group's</i>) <i>directors</i> and <i>senior managers</i> under SYSC 2.1.4R, column 3.</p> <p>But if the <i>firm</i>:</p> <p>(1) is a <i>body corporate</i> and a <i>member</i> of a <i>group</i>; and</p> <p>(2) the <i>group</i> has a <i>director</i> or <i>senior manager</i> responsible for the overall management of the <i>group</i> or of a relevant <i>group</i> division;</p> <p>then the functions must be allocated to that individual (together, optionally, with individuals from column 3 if appropriate) under SYSC 2.1.4R, column 2.</p>
10	What do you mean by “ <i>group</i> division within which some or all of the <i>firm's</i> regulated activities fall”?	<p>A “division” in this context should be interpreted by reference to geographical operations, product lines or any other method by which the <i>group's</i> business is divided.</p> <p>If the <i>firm's</i> regulated activities fall within more than one division and the <i>firm</i> does not wish to allocate the functions to its <i>chief executive</i>, the allocation must, under SYSC 2.1.4R, be to:</p> <p>(1) a <i>director</i> or <i>senior manager</i> responsible for the overall management of the <i>group</i>; or</p> <p>(2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of one of those divisions;</p> <p>together, optionally, with individuals from column 3 if appropriate. (See also Questions 7 and 9.)</p>

	Question	Answer
11	<p>How does the requirement to allocate the functions in SYSC 2.1.3R apply to an <i>overseas firm</i> which is not an <i>incoming EEA firm</i>, <i>incoming Treaty firm</i> or <i>UCITS qualifier</i>?</p>	<p>The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 2.1.4R, but:</p> <p>(1) The responsibilities that must be apportioned and the systems and controls that must be overseen are those relating to activities carried on from a <i>UK</i> establishment with certain exceptions (see SYSC 1.1.7R). Note that SYSC 1.1.10R does not extend the territorial scope of SYSC 2 for an <i>overseas firm</i>.</p> <p>(2) The <i>chief executive</i> of an <i>overseas firm</i> is the <i>person</i> responsible for the conduct of the <i>firm's</i> business within the <i>United Kingdom</i> (see the definition of "<i>chief executive</i>"). This might, for example, be the manager of the <i>firm's</i> <i>UK</i> establishment, or it might be the <i>chief executive</i> of the <i>firm</i> as a whole, if he has that responsibility.</p> <p>The <i>apportionment and oversight function</i> applies to such a <i>firm</i>, unless it falls within a particular exception from the <i>approved persons</i> regime (see Question 1).</p>

	Question	Answer
12	How does the requirement to allocate the functions in SYSC 2.1.3R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	<p>SYSC 1.1.1R(2) and SYSC 1.1.7R restrict the application of SYSC 2.1.3R for such a <i>firm</i>. Accordingly:</p> <p>(1) Such a <i>firm</i> is not required to allocate the function of dealing with apportionment in SYSC 2.1.3R(1).</p> <p>(2) Such a <i>firm</i> is required to allocate the function of oversight in SYSC 2.1.3R(2). However, the systems and controls that must be overseen are those relating to matters which the <i>FSA</i>, as <i>Host State regulator</i>, is entitled to regulate (there is <i>guidance</i> on this in SYSC App 1). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the <i>firm's</i> activities carried on from its <i>UK branch</i>.</p> <p>(3) Such a <i>firm</i> need not allocate the function of oversight to its <i>chief executive</i>; it must allocate it to one or more <i>directors</i> and <i>senior managers</i> of the <i>firm</i> or the <i>firm's group</i> under SYSC 2.1.4R, row (2).</p> <p>(4) An <i>incoming EEA firm</i> which has <i>provision only</i> for <i>cross border services</i> is not required to allocate either function if it does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>; for example if they fall within the overseas persons exclusions in article 72 of the <i>Regulated Activities Order</i>.</p> <p>See also Question 1.</p>

	Question	Answer
13	What about a <i>firm</i> that is a <i>partnership</i> or a <i>limited liability partnership</i> ?	The <i>FSA</i> envisages that most if not all <i>partners</i> or members will be either <i>directors</i> or <i>senior managers</i> , but this will depend on the constitution of the <i>partnership</i> (particularly in the case of a <i>limited partnership</i>) or <i>limited liability partnership</i> . A <i>partnership</i> or <i>limited liability partnership</i> may also have a <i>chief executive</i> (see Question 5). A <i>limited liability partnership</i> is a <i>body corporate</i> and, if a member of a <i>group</i> , will fall within SYSC 2.1.4R, row (1) or (2).
14	What if generally accepted principles of good corporate governance recommend that the <i>chief executive</i> should not be involved in an aspect of corporate governance?	The Note to SYSC 2.1.4R provides that the <i>chief executive</i> or other <i>executive director</i> or <i>senior manager</i> need not be involved in such circumstances. For example, the Combined Code developed by the Committee on Corporate Governance recommends that the board of a listed company should establish an audit committee of non-executive directors to be responsible for oversight of the audit. That aspect of the oversight function may therefore be allocated to the members of such a committee without involving the <i>chief executive</i> . Such individuals may require approval by the <i>FSA</i> in relation to that function (see Question 1).

2.2 Recording the apportionment

- 2.2.1** **R**_{/1} (1) A *firm* must make a record of the arrangements it has made to satisfy ■ SYSC 2.1.1 R (apportionment) and ■ SYSC 2.1.3 R (allocation) and take reasonable care to keep this up to date.
- (2) This record must be retained for six years from the date on which it was superseded by a more up-to-date record.
- 2.2.2** **G**_{/1} (1) A *firm* will be able to comply with ■ SYSC 2.2.1 R by means of records which it keeps for its own purposes provided these records satisfy the requirements of ■ SYSC 2.2.1 R and provided the *firm* takes reasonable care to keep them up to date. Appropriate records might, for this purpose, include organisational charts and diagrams, project management *documents*, job descriptions, committee constitutions and terms of reference provided they show a clear description of the *firm's* major functions.
- (2) *Firms* should record any material change to the arrangements described in ■ SYSC 2.2.1 R as soon as reasonably practicable after that change has been made.
- 2.2.3** **G**_{/1} Where responsibilities have been allocated to more than one individual, the *firm's* record should show clearly how those responsibilities are shared or divided between the individuals concerned.

Chapter 3

Systems and Controls



3.1 Systems and Controls

- 3.1.1** **R** *A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.*
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- 3.1.2** **G** (1) The nature and extent of the systems and controls which a *firm* will need to maintain under **■ SYSC 3.1.1 R** will depend upon a variety of factors including:
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- (a) the nature, scale and complexity of its business;
 - (b) the diversity of its operations, including geographical diversity;
 - (c) the volume and size of its transactions; and
 - (d) the degree of risk associated with each area of its operation.
- (2) To enable it to comply with its obligation to maintain appropriate systems and controls, a *firm* should carry out a regular review of them.
- (3) The areas typically covered by the systems and controls referred to in **■ SYSC 3.1.1 R** are those identified in **■ SYSC 3.2**. Detailed requirements regarding systems and controls relevant to particular business areas or particular types of *firm* are covered elsewhere in the *Handbook*.
- 3.1.3** **G** Where the Combined Code developed by the Committee on Corporate Governance is relevant to a *firm*, the *FSA*, in considering whether the *firm's* obligations under **■ SYSC 3.1.1 R** have been met, will give it due credit for following corresponding provisions in the Code and related guidance.
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- 3.1.4** **G** A *firm* has specific responsibilities regarding its *appointed representatives* (see **■ SUP 12**).
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- 3.1.5** **G** **■ SYSC 2.1.3 R (2)** prescribes how a *firm* must allocate the function of overseeing the establishment and maintenance of systems and controls described in **■ SYSC 3.1.1 R**.
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3.2 Areas covered by systems and controls

Introduction

- 3.2.1** G_{/1} This section covers some of the main issues which a *firm* is expected to consider in establishing and maintaining the systems and controls appropriate to its business, as required by ■ SYSC 3.1.1 R.

Organisation

- 3.2.2** G_{/1} A *firm's* reporting lines should be clear and appropriate having regard to the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, should be communicated as appropriate within the *firm*.
- 3.2.3** G_{/1}
- (1) A *firm's governing body* is likely to delegate many functions and tasks for the purpose of carrying out its business. When functions or tasks are delegated, either to *employees* or to *appointed representatives*, appropriate safeguards should be put in place.
 - (2) When there is delegation, a *firm* should assess whether the recipient is suitable to carry out the delegated function or task, taking into account the degree of responsibility involved.
 - (3) The extent and limits of any delegation should be made clear to those concerned.
 - (4) There should be arrangements to supervise delegation, and to monitor the discharge of delegates' functions or tasks.
 - (5) If cause for concern arises through supervision and monitoring or otherwise, there should be appropriate follow-up action at an appropriate level of seniority within the *firm*.
- 3.2.4** G_{/1}
- (1) The *guidance* relevant to delegation within the *firm* is also relevant to external delegation ("outsourcing"). A *firm* cannot contract out its regulatory obligations. So, for example, under *Principle 3* a *firm* should take reasonable care to supervise the discharge of outsourced functions by its contractor.
 - (2) A *firm* should take steps to obtain sufficient information from its contractor to enable it to assess the impact of outsourcing on its systems and controls.
- 3.2.5** G_{/1} Where it is made possible and appropriate by the nature, scale and complexity of its business, a *firm* should segregate the duties of individuals and departments in

such a way as to reduce opportunities for *financial crime* or contravention of requirements and standards under the *regulatory system*. For example, the duties of front-office and back-office staff should be segregated so as to prevent a single individual initiating, processing and controlling transactions.

Compliance

- 3.2.6** **R** **A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.**
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- 3.2.7** **G**
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- (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate compliance function. The organisation and responsibilities of a compliance function should be documented. A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. It should be adequately resourced and should have unrestricted access to the *firm's* relevant records as well as ultimate recourse to its *governing body*.
 - (2) The *regulatory objectives* are defined in section 2 of the *Act* and include “the reduction of *financial crime*”. This objective is more fully described in section 6 of the *Act*. This describes “*financial crime*” as including “any offence involving (a) fraud or dishonesty, (b) misconduct in, or misuse of information relating to, a financial market, or (c) handling the proceeds of crime”.
 - (3) The FSA’s detailed requirements for systems and controls with respect to *money laundering* are set out in the *Money Laundering* sourcebook (*ML*).
- 3.2.8** **R**
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- (1) **A *firm* which carries on *designated investment business* 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 3.2.8 R (1) “compliance” means compliance with the *rules* in:**
 - (a) **COB (Conduct of Business); and**
 - (b) **CIS (Collective Investment Schemes).**
- 3.2.9** **G**
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- (1) ■ SUP 10.7.8 R uses ■ SYSC 3.2.8 R to describe the *controlled function*, known as the *compliance oversight function*, of acting in the capacity of a *director* or *senior manager* to whom this function is allocated.
 - (2) The *rules* referred to in ■ SYSC 3.2.8 R (2) are the minimum area of focus for the *firm's compliance oversight function*. A *firm* is free to give additional responsibilities to a person performing this function if it wishes.

Risk assessment

3.2.10

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- (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate risk assessment function responsible for assessing the risks that the *firm* faces and advising the *governing body* and *senior managers* on them.
- (2) The organisation and responsibilities of a risk assessment function should be documented. The function should be adequately resourced and staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively.

Management information

3.2.11

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- (1) A *firm's* arrangements should be such as to furnish its *governing body* with the information it needs to play its part in identifying, measuring, managing and controlling risks of regulatory concern. Three factors will be the relevance, reliability and timeliness of that information.
- (2) Risks of regulatory concern are those risks which relate to the fair treatment of the *firm's customers*, to the protection of *consumers*, to confidence in the *financial system*, and to the use of that system in connection with *financial crime*.

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It is the responsibility of the *firm* to decide what information is required, when, and for whom, so that it can organise and control its activities and can comply with its regulatory obligations. The detail and extent of information required will depend on the nature, scale and complexity of the business.

Employees and agents

3.2.13

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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.

3.2.14

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- (1) ■ SYSC 3.2.13 G 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.
- (2) 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.
- (3) The FSA's detailed requirements on *firms* with respect to the competence of individuals are in the Training and Competence sourcebook (TC).
- (4) The requirements on *firms* with respect to *approved persons* are in Part V of the *Act* (Performance of regulated activities) and ■ SUP 10.

Audit committee

- 3.2.15** **G**_{/1} Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to form an audit committee. An audit committee could typically examine management's process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the *regulatory system*, oversee the functioning of the internal audit function (if applicable) and provide an interface between management and the external auditors. It should have an appropriate number of *non-executive directors* and it should have formal terms of reference.

Internal audit

- 3.2.16** **G**_{/1} Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to delegate much of the task of monitoring the appropriateness and effectiveness of its systems and controls to an internal audit function. An internal audit function should have clear responsibilities and reporting lines to an audit committee or appropriate *senior manager*, be adequately resourced and staffed by competent individuals, be independent of the day-to-day activities of the *firm* and have appropriate access to a *firm's* records.

Business strategy

- 3.2.17** **G**_{/1} A *firm* should plan its business appropriately so that it is able to identify, measure, manage and control risks of regulatory concern (see ■ SYSC 3.2.11 G (2)). In some *firms*, depending on the nature, scale and complexity of their business, it may be appropriate to have business plans or strategy plans documented and updated on a regular basis to take account of changes in the business environment.

Remuneration policies

- 3.2.18** **G**_{/1} It is possible that *firms'* remuneration policies will from time to time lead to tensions between the ability of the *firm* to meet the requirements and standards under the *regulatory system* and the personal advantage of those who act for it. Where tensions exist, these should be appropriately managed.

Business continuity

- 3.2.19** **G**_{/1} A *firm* should have in place appropriate arrangements, having regard to the nature, scale and complexity of its business, to ensure that it can continue to function and meet its regulatory obligations in the event of an unforeseen interruption. These arrangements should be regularly updated and tested to ensure their effectiveness.

Records

- 3.2.20** **R**_{/1} (1) A *firm* must take reasonable care to make and retain adequate records of matters and dealings (including accounting records)

which are the subject of requirements and standards under the *regulatory system*.

- (2) Subject to (3) and to any other record-keeping *rule* in the *Handbook*, the records required by (1) or by such other *rule* must be capable of being reproduced in the English language on paper.
- (3) If a *firm's* records relate to business carried on from an establishment in a country or territory outside the *United Kingdom*, an official language of that country or territory may be used instead of the English language as required by (2).

3.2.21

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A *firm* should have appropriate systems and controls in place to fulfil the *firm's* regulatory and statutory obligations with respect to adequacy, access, periods of retention and security of records. The general principle is that records should be retained for as long as is relevant for the purposes for which they are made.

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Detailed record-keeping requirements for different types of *firm* are to be found elsewhere in the *Handbook*. Schedule 1 to the *Handbook* is a consolidated schedule of these requirements.

Appendix 1

1.1 Matters reserved to a Home State regulator (see SYSC 1.1.1 R (1)(b) and SYSC 1.1.1 R (1)(c))

1.1.1 G _{/1} The application of SYSC 2.1.3R to SYSC 2.2.3G and SYSC 3 to an *incoming EEA firm* or *incoming Treaty firm* depends on whether responsibility for the matter in question is reserved to the *firm's Home State regulator*. This appendix contains *guidance* designed to assist such *firms* in understanding the application of those provisions. This appendix is not concerned with the FSA's rights to take enforcement action against an *incoming EEA firm* or an *incoming Treaty firm*, which are covered in the Enforcement manual (ENF), or with the position of a *firm* with a *top-up permission*.

1.1.2 G _{/1} The *Single Market Directives* and the *Treaty* (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the *Home State regulator*. To summarise, the FSA, as *Host State regulator*, is entitled to impose requirements with respect to activities carried on within the *United Kingdom* if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the *Single Market Directives*:

- (1) the *Single Market Directives* expressly reserve responsibility for the prudential supervision of an *ISD investment firm*, *BCD credit institution* or passporting *insurance undertaking* to the *firm's Home State regulator*; accordingly, the FSA, as *Host State regulator*, is entitled to regulate only the conduct of the *firm's* business within the *United Kingdom*;
- (2) article 11 of the *ISD* sets out various rules of conduct which the FSA, as *Host State regulator*, is required to impose on an *ISD investment firm* (including a *BCD credit institution* which is an *ISD investment firm*) in relation to *core investment services* (and, where appropriate, to *non-core investment services*) provided within the *United Kingdom*;
- (3) for a *BCD credit institution*, the FSA, as *Host State regulator*, is jointly responsible with the *Home State regulator* under article 27 of the *Banking Consolidation Directive* for supervision of the liquidity of a *branch* in the *United Kingdom*;
- (4) for an *ISD investment firm* (including a *BCD credit institution* which is an *ISD investment firm*), the protection of clients' money and clients' assets is reserved to the *Home State regulator* under the *ISD*; and
- (5) responsibility for participation in compensation schemes for *BCD credit institutions* and *ISD investment firms* is reserved in most cases to the *Home*

State regulator under the *Deposit Guarantee Directive* and the *Investor Compensation Directive*.

- 1.1.3** G_{/1} It is necessary to refer to the case law of the European Court of Justice to interpret the concept of the “general good”. To summarise, to satisfy the general good test, *Host State* rules must come within a field which has not been harmonised at a Community level, satisfy the general requirements that they pursue an objective of the general good, be non-discriminatory, be objectively necessary, be proportionate to the objective pursued and not already be safeguarded by rules to which the *firm* is subject in its *Home State*.
- 1.1.4** G_{/1} The *FSA* considers that it is entitled, in the interests of the general good, to impose the requirements in SYSC 2.1.3R to SYSC 2.2.3G (in relation to the allocation of the function in SYSC 2.1.3R(2)) and SYSC 3 on an *incoming EEA firm* and an *incoming Treaty firm*; but only in so far as they relate to those categories of matter responsibility for which is not reserved to the *firm's Home State regulator*.
- 1.1.5** G_{/1} Should the *FSA* become aware of anything relating to an *incoming EEA firm* or *incoming Treaty firm* (whether or not relevant to a matter for which responsibility is reserved to the *Home State regulator*), the *FSA* may disclose it to the *Home State regulator* in accordance with any applicable directive and the applicable restrictions in Part XXIII of the *Act* (Public Record, Disclosure of Information and Co-operation).
- 1.1.6** G_{/1} This appendix represents the *FSA's* views, but a *firm* is also advised to consult the relevant European Community instrument and, where necessary, seek legal advice. The views of the European Commission in the banking and insurance sectors are contained in two Commission Interpretative Communications (Nos. 97/C209/04 and C(1999)5046).
- 1.1.7** G_{/1} *AUTH 5 Ann 1G* summarises the application of the *Handbook* to an *incoming EEA firm*. That annex indicates in broad terms, and in relation to such *firms*, those categories of matter which are reserved to a *Home State regulator* and those which the *FSA*, as *Host State regulator*, is entitled to regulate when carried on within the *United Kingdom*.
- 1.1.8** G_{/1} Examples of how the *FSA* considers that SYSC 3 will apply in practice to an *incoming EEA firm* (see SYSC App 1.1.4G) are as follows:
- (1) The interim Prudential sourcebook (insurers) (*IPRU (INS)*) does not apply to an *insurer* which is an *incoming EEA firm*. Similarly, SYSC 3 does not require such a *firm*:
 - (a) to establish systems and controls in relation to financial resources (SYSC 3.1.1R); or
 - (b) to establish systems and controls for compliance with that Interim Prudential sourcebook (SYSC 3.2.6R); or
 - (c) to make and retain records in relation to financial resources (SYSC 3.2.20R).
 - (2) The Conduct of Business sourcebook applies to an *incoming EEA firm*, except that COB 9 (Client asset rules) does not apply with respect to *passported activities*. Similarly, SYSC 3 does require such a *firm*:
 - (a) to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of COB (SYSC 3.1.1R);

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- (b) to establish systems and controls for compliance with the applicable sections of *COB* (*SYSC 3.2.6R*); and
 - (c) to make and retain records in relation to those aspects of the conduct of its business (*SYSC 3.2.20R*).
- See also Question 12 in *SYSC 2.1.6G* for guidance on the application of *SYSC 2.1.3R(2)*.

Handbook Modules

Schedule1 Record keeping requirements

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- 1 The aim of the guidance in the following table is to give the reader a quick over-all view of the relevant record keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.
- 3 Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SYSC 2.2.1R	Arrangements made to satisfy SYSC 2.1.1R (apportionment) and SYSC 2.1.3R (allocation)	Those arrangements	On making the arrangements and when they are updated	Six years from the date on which the record is superseded by a more up-to-date record
SYSC 3.2.20R	Matters and dealings (including accounting records) which are the subject of requirements and standards under the <i>regulatory system</i>	Adequate	Adequate time	Adequate

Handbook Modules

Schedule2 Notification requirements

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- 1 There are no notification or reporting requirements in SYSC.

Handbook Modules

Schedule3 Fees and other required payments

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- 1 There are no requirement for fees or other payments in SYSC.

Handbook Modules

Schedule4 Powers exercised

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- 1 The following powers and related provisions in the Act have been exercised by the FSA to make rules in SYSC:
 - (1) Section 138 (General rule-making power)
 - (2) Section 145 (Financial promotion rules)
 - (3) Section 146 (Money laundering rules)
 - (4) Section 150(2) (Actions for damages)
 - (5) Section 156 (General supplementary powers).

- 2 The following power in the Act has been exercised by the FSA to give the guidance in SYSC.
 - Section 157(1) (Guidance).

Handbook Modules

Schedule5 Rights of action for damages

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- 1 The table below sets out the rules in SYSC contravention of which by an authorised person may be actionable under section 150 of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.
- 2 If a “Yes” appears in the column headed “For private person?”, the rule may be actionable by a “private person” under section 150 (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A “Yes” in the column headed “Removed” indicates that the FSA has removed the right of action under section 150(2) of the Act. If so, a reference to the rule in which it is removed is also given.
- 3 The column headed “For other person?” indicates whether the rule may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the rule may be actionable is given.
- 4

Table	Actions for damages
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Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 150		
			For private person?	Removed?	For other person?
All rules in SYSC			No	Yes SYSC 1.1.12R	No

Handbook Modules

Schedule6 Rules that can be waived

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- 1 The rules in SYSC can be waived by the FSA under section 148 of the Act (Modification or waiver of rules).

Senior Management Arrangements, Systems and Controls

Derivations

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There is no table of derivations for *SYSC*.

Senior Management Arrangements, Systems and Controls

Destinations

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There is no table of destinations for *SYSC*.