

**SUPERVISION MANUAL (CONTROLLED FUNCTIONS) (AMENDMENT NO 2)
INSTRUMENT 2009**

Powers Exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 64 (Conduct: statements and codes);
 - (3) section 138 (General rule-making power);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 August 2009.

Amendments to the Handbook

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Supervision Manual (Controlled Functions) (Amendment No 2) Instrument 2009.

By order of the Board
23 July 2009

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

proprietary trader (in *SUP 10 (Approved Persons)* and *APER*) a *person (A)* whose responsibilities include committing another *person (B)* as part of B's *proprietary trading*.

proprietary trading (in *SUP 10 (Approved Persons)* and *APER*) *dealing in investments as principal* as part of a business of trading in *specified investments*. For these purposes *dealing in investments as principal* includes any activities that would be included but for the exclusion in Article 15 (Absence of holding out) or Article 16 (Dealing in contractually based investments) of the *Regulated Activities Order*.

Amend the following as shown.

required function any of *controlled functions* 8 to 12B in the *table of controlled functions* (*SUP 10.4.5R*).

Annex B

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4.7 Statement of Principle 7

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4.7.2 E In the opinion of the *FSA*, conduct of the type described in *APER* 4.7.3E, *APER* 4.7.4E, *APER* 4.7.5 E, *APER* 4.7.7E, *APER* 4.7.9E, ~~*APER* 4.7.10E~~ or *APER* 4.7.11AE does not comply with *Statement of Principle 7* (*APER* 2.1.2P).

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4.7.11A E Where the *approved person* is a *proprietary trader* under *SUP* 10.9.10R(1A), failing to maintain and comply with appropriate systems and controls in relation to that activity falls within *APER* 4.7.2E.

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Annex C

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

10.1 Application

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Overseas firms: UK establishments

- 10.1.7 R Only the following *controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:
- (1) ~~the chief executive function~~ the director function where the person performing that function:
 - (a) has responsibility for the regulated activities of a UK branch which are likely to enable him to exercise significant influence over that branch; or
 - (b) is someone whose decisions or actions are regularly taken into account by the governing body of that branch.
 - (2) ~~the required functions~~ the non-executive director function where the person performing that function:
 - (a) has responsibility for the regulated activities of a UK branch which is likely to enable him to exercise significant influence over that branch; or
 - (b) is someone whose decisions or actions are regularly taken into account by the governing body of that branch.
 - (3) ~~the significant management function in so far as the function relates to:~~
 - (a) ~~designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or~~
 - (b) ~~processing confirmations, payments, settlements, insurance claims, client money and similar matters in so far as this relates to designated investment business; and~~ the chief executive function;
 - (4) ~~[deleted]~~ the required functions;

- (5) ~~the customer function~~ the systems and controls function;
- (6) the significant management function in so far as the function relates to:
 - (a) designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or
 - (b) processing confirmations, payments, settlements, insurance claims, client money and similar matters in so far as this relates to designated investment business; and
- (7) the customer function.

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10.4.5 R Controlled functions

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Type	CF	Description of controlled function
...		
	28	[to follow]
	29	[to follow]

...

What the governing functions include

10.6.2 R Each of the *governing functions* (other than the *non-executive director function* and the function described in SUP 10.6.4R(2)) includes where apportioned under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R:

...

10.6.3 G The effect of SUP 10.6.2R is that a *person* who is *approved* to perform a *governing function* (other than the *non-executive function* and the function described in SUP 10.6.4R(2)) will not have to be specifically approved to perform the *systems and controls function* or the *significant management function*. A *person* who is *approved* to perform a *governing function* will have to be additionally approved before he can perform any of the *required functions* or the *customer function*.

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Director function (CF1)

- 10.6.4 R If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of either a:
- (1) director (other than *non-executive director*) of that *firm*; or
 - (2) a person:
 - (a) who is a *director*, partner, officer, member (if the *parent undertaking* or *holding company* is a *limited liability partnership*), senior manager, or employee (other than a *non-executive director*) of a *parent undertaking* or *holding company* (except where that *parent undertaking* or *holding company* is an *EEA firm*); and
 - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.
- 10.6.5 G ~~Examples of where SUP 10.6.4R(2) would apply include (but are not limited to):~~ Examples of where SUP 10.6.4R(2) would apply include (but are not limited to):
- (1) a chairman of an audit committee of a *parent undertaking* or *holding company* of a *UK firm* where that audit committee is working for that *UK firm* (that is, functioning as the audit committee for the *group*);
or
 - (2) a *director* (other than a *non-executive director*) of a *parent undertaking* or *holding company* of a *UK firm* exercising significant influence by way of his involvement in taking decisions for that *UK firm*; or
 - (3) an individual (such as a *senior manager*) of a *parent undertaking* or *holding company* of a *UK firm* who is responsible for and/or has significant influence in setting the objectives for and the remuneration of executive *directors* of that *UK firm*; or
 - (4) an individual who is a *director* (other than a *non-executive director*) or a *senior manager* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influencing the operations of that *UK firm*, and acts in a manner in which it can reasonably be expected that an executive *director* or *senior manager* of that *UK firm* would act; or
 - (5) an individual of an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*.

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Non-executive director function (CF2)

- 10.6.8 R (1) If a *firm* is a *body corporate*, the *non-executive director function* is the function of acting in the capacity of either a:
- (a) *non-executive director* of that *firm*; or
 - (b) *non-executive director* of a *parent undertaking* or *holding company* (except where that *parent undertaking* or *holding company* is an *EEA firm*) whose decisions, or actions are regularly taken into account by the governing body of the *firm*.

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- 10.6.9 G ~~{deleted}~~ Examples of where SUP 10.6.8R(1)(b) would apply include (but are not limited to):
- (1) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* who takes an active role in the running of the business of a *UK firm*, for example, as a member of a board or committee (on audit or remuneration) of that *firm*; or
 - (2) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* having significant influence in setting and monitoring the business strategy of the *UK firm*; or
 - (3) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* of a *UK firm* involved in carrying out responsibilities such as scrutinising the approach of executive management, performance, or standards of conduct of the *UK firm*; or
 - (4) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influence the operations of the *UK firm*, and acts in a way in which it can reasonably be expected that a *non-executive director* of the *UK firm* would act; or
 - (5) an individual who is a *non-executive director* of an *overseas firm* which maintains a branch in the *United Kingdom* from which *regulated activities* are carried on where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*.

Guidance on CF1 and CF2

- 10.6.10 G (1) ~~{deleted}~~ This paragraph explains the basis on which the *director function* and *non-executive director function* are applied to persons who have a position with the *firm's parent undertaking* or *holding company* under SUP 10.6.4R(2) or SUP 10.6.8R(1)(b).
- (2) The basic position is set out in SUP10.3.4G. As is the case with all

controlled functions, SUP 10.6.4R(2) and SUP 10.6.8R(1)(b) are subject to the overriding provisions in SUP 10.3.1R, which sets out the requirements of sections 59(1) and (2) of the Act. This means that unless the firm has an arrangement or a contract permitting the performance of these roles by the persons concerned, these persons will not be performing these controlled functions. Therefore, the FSA accepts that there will be cases in which a person performing these roles will not require approval.

- (3) However the FSA expects that in general a person who performs these roles will perform the director function or the non-executive director function. This is because the FSA would expect that a firm that allows major decisions to be taken by a group decision-making body will do so on the basis of a formal delegation from the firm's governing body. This delegation will amount to an arrangement for the purposes of section 59 of the Act.

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10.9 Significant management functions

Application

- 10.9.1 R SUP 10.9 applies only to a firm which;
- (1) under SYSC 2.1.1R or SYSC 4.4.3R, apportions a significant responsibility, within the description of the significant management function, to a senior manager of a significant business unit; or
 - (2) undertakes proprietary trading.
- 10.9.2 G The FSA anticipates that there will be only a few firms needing to seek approval for an individual to perform the significant management function set out in SUP 10.9.1R(1). In most firms, those approved for the governing functions, required functions and, where appropriate, the systems and controls function, are likely to exercise all the significant influence at senior management level.
- 10.9.2A G A proprietary trader undertakes activities with the firm's money and has the ability to commit the firm. By virtue of this role, all proprietary traders have potential to be able to exercise significant influence on the firm for the purposes of section 59(4) and (5) of the Act. It is therefore the FSA's expectation that all firms will assess all their proprietary traders to ascertain the ones for whom approval is required.
- 10.9.3 G ~~However, the~~ The scale, nature and complexity of the firm's business may be such that a firm apportions under SYSC 2.1.1R or SYSC 4.4.3R SUP 10.9.1R(1) a significant responsibility to an individual who is not approved to perform the governing functions, required functions or, where appropriate, the systems and controls function. ...

...

10.9.5 G The question may arise whether a manager who is based overseas will be performing the *significant management function* under SUP 10.9.10R(1) and should therefore be an *approved person*. This is especially true where the *firm* operates matrix management. The fact there is a *person* performing the *apportionment and oversight function*, and who has responsibility for activities subject to regulation by the *FSA*, may have a bearing on this. It is a factor to take into account when assessing the likely influence of the overseas manager.

10.9.6 G Generally, in relation to a *branch* of a *firm*, or a *firm* which is part of an overseas *group*, where an overseas *manager* is responsible for strategy, he will not need to be an *approved person* under SUP 10.9.10R. However, where he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing a that controlled function.

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Significant management function (CF29)

- 10.9.10 R (1) The *significant management function* is the function of acting as a *senior manager* with significant responsibility for a significant business unit that:
- (a) carries on *designated investment business* or other activities not falling within (b) - to (d);
 - (b) *effects contracts of insurance* (other than *contractually based investments*);
 - (c) makes material decisions on the commitment of a *firm's* financial resources, its financial commitments, its assets acquisitions, its liability management and its overall cash and capital planning;
 - (d) processes confirmations, payments, settlements, insurance claims, *client money* and similar matters.
- (1A) The significant management function also includes the function of acting as a proprietary trader.
- (2) This *controlled function* does not include any of the activities described in any other *controlled function*.
- 10.9.10A G A *senior manager* carrying on the significant management function under SUP 10.9.10R(1) with significant responsibility for a significant business unit that carries on activities other than *designated investment business* for the purposes of SUP 10.9.10R(1)(a) could, for example, be the head of a unit carrying on the activities of: retail banking, personal lending, corporate

lending, salvage or loan recovery, or ~~proprietary trading~~; *proprietary trading*, or a member of a committee (that is, a *person* who, together with others, has authority to commit the *firm*) making decisions in these functions. ~~The *senior manager* could also be a proprietary trader whose trading limits are such that he may put, or potentially put, his *firm* at significant risk. This function would not extend to every proprietary trader.~~

10.9.10B G A *proprietary trader* also undertakes activities which may have a significant influence on the *firm*. Such activities may require approval for CF29 under SUP 10.9.10R(1A).

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Who should make the application?

10.12.3 G (1) In accordance with section 60 of the *Act* (Applications for approval), applications must be submitted by, or on behalf of, the *firm* itself, not by the *candidate* or (where the *candidate* works for the *firm's parent undertaking* or *holding company*) by the *firm's parent undertaking* or *holding company*).

(2) Usually this will be the *firm* that is employing the *candidate* to perform the *controlled function*. Where a *firm* has outsourced the performance of a *controlled function*, the details of the outsourcing determine where responsibility lies and whom the *FSA* anticipates will submit *approved persons application* forms. SUP 10.12.4G describes some common situations. The *firm* which is outsourcing is referred to as "A" and the *person* to whom the performance of the ~~function~~ *controlled function* has been outsourced, or which makes the *arrangement* for the ~~function~~ *controlled function* to be performed, is referred to as "B". In each situation, A must take reasonable care to ensure that, in accordance with section 59(2) of the *Act*, no *person* performs a *controlled function* under an *arrangement* entered into by its contractor in relation to the carrying on by A of a *regulated activity*, without approval from the *FSA*. See also SYSC 3.2.4G and SYSC 8.1.1R, and for *insurers* SYSC 13.9.

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Ceasing to perform a controlled function

10.13.12 R (1) If a *firm* (A):

- (a) is considering appointing a *person* to perform any of the ~~*customer*~~ *controlled functions*;
- (b) requests another *firm* (B), as a current or former *employer* *employer* of that *person*, for a reference or other information in connection with that appointment; and
- (c) indicates to B the purpose of the request;

B must, as soon as reasonably practicable, give to A all relevant information of which it is aware.

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10.13.12A G The requirement in SUP 10.13.12(1)R for firm (B) to give to firm (A) all relevant information of which it is aware concerning a person firm A is considering appointing to perform any of the controlled functions, also applies where firm A has outsourced the collection of that information to another (unregulated) third party, where firm B has been made aware that the unregulated third party is acting on behalf of firm A.

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TP 1 Transitional provisions

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TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
8E	<u>SUP 10.6.4R(2)</u>	<u>R</u>	<p><u>(1) This rule deals with a person (a “director”) who would otherwise have been performing the director function for a firm under SUP 10.6.4R(2) on 6 August 2009 but who was not otherwise performing the director function for that firm at that date. This rule only applies if he was not approved at that date to perform the director function for that firm.</u></p> <p><u>(2) Between the dates in column (5), the functions described in SUP 10.6.4R(2) are not treated as forming part of the director function as respects that firm and that director unless they also fall under SUP 10.6.4.R(1).</u></p>	<u>6 August 2009 to 6 February 2010</u>	<u>6 February 2010</u>

			<u>(3) If this transitional rule has not already expired under column (5), this rule comes to an end as respects that director and that firm if and when an application is made for the director to perform the <i>director function</i> for that firm and that application is granted.</u>		
<u>8F</u>	<u>SUP 10.6.8R(1)(b)</u>	<u>R</u>	<p><u>(1) This rule deals with a person (a “non-executive director”) who would otherwise have been performing the <i>non-executive director function</i> for a firm under SUP 10.6.8R(1)(b) on 6 August 2009 but who was not otherwise performing the <i>non-executive director function</i> for that firm at that date. This rule only applies if he was not approved at that date to perform the <i>non-executive director function</i> for that firm.</u></p> <p><u>(2) Between the dates in column (5), the functions described in SUP 10.6.8R(1)(b) are not treated as forming part of the <i>non-executive director function</i> as respects the firm and that non-executive director unless they also fall under SUP 10.6.8.R(1)(a).</u></p> <p><u>(3) If this transitional rule has not already expired under column (5), this rule comes to an end as respects that non-executive director and that firm if and when an application is made for the non-executive director to perform the <i>non-executive director function</i> for that firm and that application is granted.</u></p>	<u>6 August 2009 to 6 February 2010</u>	<u>6 February 2010</u>
<u>8G</u>	<u>SUP 10.9.1R(2)</u>	<u>R</u>	<u>(1) This rule deals with a person (a “proprietary trader”) who would otherwise have been performing the <i>significant management function</i> for a firm under SUP 10.9.10R(1A) on 6 August 2009 but who was not otherwise performing the <i>significant management function</i> for that firm at that date. This rule only applies if he was not approved at that date to perform the <i>significant management function</i> for that firm.</u>	<u>6 August 2009 to 6 February 2010</u>	<u>6 February 2010</u>

			<p><u>(2) Between the dates in column (5), the functions described in SUP 10.9.10R(1A) are not treated as forming part of the significant management function as respects that firm and that proprietary trader unless they also fall under SUP 10.9.10R(1).</u></p> <p><u>(3) If this transitional rule has not already expired under column (5), this rule comes to an end as respects that proprietary trader and that firm if and when an application is made for the proprietary trader to perform the significant management function for that firm and that application is granted.</u></p>		
...					