LEGAL CUTOVER (APPROVED PERSONS) INSTRUMENT 2013

WHEREAS:

A. The Authority has, in accordance with Article 5 of the Designation Order, appointed persons to exercise functions referred to in Article 5(1) of the Designation Order, which include the function of the Financial Conduct Authority of designating or modifying a Relevant Instrument and the functions of making rules and issuing guidance, directions, statements of principle and codes of practice.

B. By virtue of Article 5(3)(a) of the Designation Order the persons appointed may discharge the relevant functions as if they were the governing body of the Financial Conduct Authority.

C. By virtue of Article 7(1) of the Designation Order this Instrument shall be treated as if it had been made by the Financial Conduct Authority acting through its governing body.

D. Article 2(1)(c) of the Early Commencement Order commenced certain the Financial Conduct Authority’s rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.

E. Article 2(1)(c) of the Early Commencement Order commenced the Prudential Regulation Authority’s rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.

F. The Financial Conduct Authority and the Prudential Regulation Authority wish to replace chapter 10 of the Supervision Manual in the Handbook and so that chapter is not being designated by either of them and will cease to have effect on the 1 April 2013. It will be replaced by a new Chapter 10A in the case of the Financial Conduct Authority and a new Chapter 10B in the case of the Prudential Regulation Authority.

Interpretation

1 In this Instrument (including the Recitals):


(2) “Early Commencement Order” means the Financial Services Act 2012 (Commencement No. 1) Order 2013 (SI 2013/113);

(3) “the 2000 Act” means the Financial Services and Markets Act 2000;

(4) “the 2012 Act” means the Financial Services Act 2012;

(5) “the Authority” means the Financial Services Authority;

(6) “Financial Conduct Authority” means the body corporate referred to in section 1A of the 2000 Act as amended by section 6 of the 2012 Act;

(7) “Prudential Regulation Authority” means the body corporate referred to in section 2A(1) of the 2000 Act as amended by section 6 of the 2012 Act;
(8) “Handbook” means the Authority’s Handbook of Rules and Guidance (and including for this purpose the Handbook Guides and Regulatory Guides published by the Authority alongside the Handbook of Rules and Guidance) in each case as published on the Authority’s Handbook website at 11h59 pm on 27 February 2013;

(9) “Relevant Instrument” has the meaning in section 119(6)(b) of the 2012 Act;

(10) “FSA Instrument” means an instrument published by the Authority, by which the Authority made, issued, gave, imposed or amended a Relevant Instrument;

(11) “FCA Relevant Instrument” means a Relevant Instrument designated by the Financial Conduct Authority under paragraph 2; and

(12) “PRA Relevant Instrument” means a Relevant Instrument designated by the Prudential Regulation Authority Limited under paragraph 14 and excludes any Relevant Instrument falling within paragraph 15.

Designation of rules etc. by the Financial Conduct Authority

2 In accordance with Article 3(1) of the Designation Order, the Financial Conduct Authority designates the guidance, statements of principle and codes of practice, set out in each FSA Instrument (or part of such instrument) by which the Authority made, issued, gave, imposed or amended each part or provision of the Handbook, identified as:

(1) “Designated” in Column 2 of Annex A to this Instrument; and

(2) “FCA” or “FCA/PRA” in Column 3 of Annex A to this Instrument.

3 As required by Article 3(1)(c) and (d) of the Designation Order, the Financial Conduct Authority specifies that:

(1) The FCA Relevant Instruments were made, issued, given or imposed by the Authority under the provisions set out in the relevant FSA Instrument;

(2) The FCA Relevant Instruments collectively were made, issued, given or imposed by the Authority under the provisions set out in column 1 of Parts 1 to 3 of Schedule A to this Instrument; and

(3) The FCA Relevant instruments collectively are treated as made, issued, given or imposed by the Financial Conduct Authority under the corresponding provisions set out in column 2 of Parts 1 to 3 of Schedule A to this Instrument.

4 In accordance with Article 2(2)(a) of the Designation Order, each FCA Relevant Instrument is treated as having been made, issued, given or imposed by the Financial Conduct Authority.

Modification and amendment of rules etc. by the Financial Conduct Authority

5 The Financial Conduct Authority:

(1) in accordance with Article 3(1) of the Designation Order, modifies each FCA Relevant Instrument (or part of such instrument); and
(2) in accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9 and to the extent not covered by paragraph 5(1) of this Instrument, amends each FCA Relevant Instrument (or part thereof);

as specified in Annex E to this Instrument, except for those provisions dealt with by paragraph 6 of this Instrument.

Rules etc. made, given or amended by the Financial Conduct Authority

6 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9, the Financial Conduct Authority makes, issues, gives, or imposes each provision in Annex E to this Instrument that meets all of the conditions in paragraph 7.

7 The conditions referred to in paragraph 6 are that a provision is:

(1) Identified as “Made” in Column 2 of Annex A to this Instrument; and
(2) Identified as “FCA” or “FCA/PRA” in Column 3 of Annex A to this Instrument.

8 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9, the Financial Conduct Authority makes, issues, gives, or imposes:

(1) each provision in Annex B to this Instrument; and
(2) each provision in Annex D to this Instrument identified as “FCA” or “FCA/PRA” in that Annex.

9 The Financial Conduct Authority makes, issues, gives amends or imposes the provisions in paragraphs 5(2), 6 and 8 in exercise of the following powers and related provisions (which are powers and related provisions of the 2000 Act, as amended by the 2012 Act, unless otherwise stated):

(1) Section 59 (Approval for particular arrangements);
(2) Section 60 (Applications for approval);
(3) Section 64 (Conduct: statements and codes);
(4) Section 137A (The FCA’s general rules);
(5) Section 137T (General supplementary powers);
(6) Article 13 of the Financial Services Act 2012 (Transitional Provisions) (Permission and Approval) Order 2013; and
(7) Section 139A (Power of the FCA to give guidance).

10 The rule-making powers in paragraph 9 are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.

Commencement: Financial Conduct Authority

11 As required by Article 3(1) of the Designation Order, the Financial Conduct Authority specifies that the designation (in paragraph 2) and the modification (in paragraph 5(1)) of each FCA Relevant Instrument comes into effect on the 1 April 2013.

12 The Financial Conduct Authority directs that paragraphs 5(2) and 6 of this Instrument come into force immediately after the coming into force of the designations in paragraph 2 and the modifications in paragraph 5(1).
13 The Financial Conduct Authority directs that paragraphs 5(2), 6 and 8 of this Instrument come into force on the 1 April 2013.

Designation of rules etc. by the Prudential Regulation Authority

14 In accordance with Article 3(1) of the Designation Order, the Prudential Regulation Authority designates the statements of principle and codes of practice, set out in each FSA Instrument (or part of such instrument) by which the Authority made, gave or amended the part or provision of the Handbook identified as:

(1) “Designated” in Column 2 of Annex A to this Instrument; and
(2) “PRA” or “FCA/PRA” in Column 3 of Annex A to this Instrument.

15 The designation by the Prudential Regulation Authority in paragraph 14 excludes any provision designated as guidance in an FSA Instrument.

16 As required by Article 3(1)(c) and (d) of the Designation Order, the Prudential Regulation Authority specifies that:

(1) The PRA Relevant Instruments were made, issued, given or imposed by the Authority under the provisions set out in the relevant FSA Instrument;

(2) The PRA Relevant Instruments collectively were made, issued, given or imposed by the Authority under the provisions set out in column 1 of Parts 1 to 3 of Schedule A to this Instrument; and

(3) The PRA Relevant instruments collectively are treated as made, issued, given or imposed by the Prudential Regulation Authority under the corresponding provisions set out in column 3 of Parts 1 to 3 of Schedule A to this Instrument.

17 In accordance with Article 2(2)(a) of the Designation Order, each PRA Relevant Instrument is treated as having been made, issued, given or imposed by the Prudential Regulation Authority.

Modification and amendment of rules etc. by the Prudential Regulation Authority

18 The Prudential Regulation Authority:

(1) in accordance with Article 3(1) of the Designation Order, modifies each PRA Relevant Instrument (or part of such instrument); and

(2) in accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9 and to the extent not covered by paragraph 23(1) of this Instrument, amends each PRA Relevant Instrument (or part thereof);

as specified in Annex E to this Instrument, except for those provisions dealt with by paragraph 19 of this Instrument.

Rules etc. made, given or amended by the Prudential Regulation Authority

19 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 21(1), the Prudential Regulation
Authority makes, issues, gives, or imposes each provision in Annex E to this Instrument that meets all of the conditions in paragraph 20.

20 The conditions referred to in paragraph 19 are that a provision is:
   (1) Identified as “Made” in Column 2 of Annex A to this Instrument;
   (2) Identified as “PRA” or “FCA/PRA” in Column 3 of Annex A to this Instrument; and
   (3) Not identified as guidance in Column 1 of Annex A to this Instrument.

21 In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph(1), the Prudential Regulation Authority makes, issues, gives, or imposes:
   (1) each provision in Annex C to this Instrument; and
   (2) each provision in Annex D to this Instrument identified as “PRA” or “FCA/PRA” in that Annex;
except for any provision identified as guidance in the relevant Annex.

22 The Prudential Regulation Authority makes, gives, issues, amends or imposes the provisions in paragraphs 18(2), 19 and 21 in exercise of the following powers and related provisions (which are powers and related provisions of the 2000 Act, as amended by the 2012 Act, unless otherwise stated):
   (1) Section 59 (Approval for particular arrangements);
   (2) Section 60 (Applications for approval);
   (3) Section 64 (Conduct: statements and codes);
   (4) Section 137G (The PRA’s general rules);
   (5) Section 137T (General supplementary powers);
   (6) Section 138D (Actions for damages); and

23 The rule-making powers in paragraph 21(1) are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.

24 The Prudential Regulation Authority gives:
   (1) each provision in Annex A to this Instrument identified as “PRA” or “FCA/PRA” in Column 3 of Annex A that is marked with a G in Column 1 of Annex A to this Instrument;
   (2) each provision in Annex C to this Instrument that is marked (in that Annex) with a G; and
   (3) each provision in Annex D to this Instrument identified as “PRA” or “FCA/PRA” in Annex D that is marked (in that Annex) with a G;
   as guidance.

**Commencement: Prudential Regulation Authority**

25 As required by Article 3(1) of the Designation Order, the Prudential Regulation Authority specifies that the designation (in paragraph 144) and the modification (in paragraph 188(1)) of each PRA Relevant Instrument comes into effect on the 1 April 2013.

26 The Prudential Regulation Authority directs that paragraphs 18(2) and 19 of this Instrument come into force immediately after the coming into force of the designations in paragraph 144 and the modifications in paragraph 18(1).
The Prudential Regulation Authority directs that paragraph 18(2), 19 and 21 of this Instrument come into force on the 1 April 2013.

The Prudential Regulation Authority directs that:

1. paragraph 24(1) of this Instrument comes into force at the time specified by paragraph 25 of this Instrument except in the case of provisions identified as “Made” in Column 2 of Annex A to this Instrument, in which case they come into force at the time specified by paragraph 26 of this Instrument; and

2. paragraphs 24(2) and 24(3) of this Instrument come into force at the time specified by paragraph 25 of this Instrument.

Amendments to the Handbooks

The modules of the FCA’s and PRA’s Handbooks of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this Instrument listed in column (2).

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<td>Supervision manual (SUP)</td>
<td>Annex C</td>
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Citation

This Instrument may be cited as the Legal Cutover (Approved Persons) Instrument 2013.

By order of the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body

19 March 2013

By order of the Board of the Prudential Regulation Authority

22 March 2013
Annex A

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

In addition to identifying provisions Designated or Made by this Instrument, Column 2 also identifies, for convenience and without operative effect, those provisions of the Handbook that will no longer have effect after “legal cutover”.

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Annex B

New Chapter 10A of the Supervision manual (SUP)

After SUP 10 (deleted) insert the following new section. The text is not underlined.

10A FCA Approved Persons

10A.1 Application

General

10A.1.1 R This chapter applies to every firm.

10A.1.2 G This chapter is also relevant to every FCA-approved person.

10A.1.3 G The rules in this chapter specify descriptions of FCA controlled functions under section 59 of the Act (Approval for particular arrangements).

10A.1.4 G The directions in this chapter relate to the manner in which a firm must apply for the FCA’s approval under section 59 of the Act and other procedures.

Overseas firms: UK services

10A.1.5 R This chapter does not apply to an overseas firm in relation to regulated activities which are carried on in the United Kingdom other than from an establishment maintained by it or its appointed representative in the United Kingdom.

Overseas firms: UK establishments

10A.1.6 R Only the following FCA controlled functions apply to an overseas firm which maintains an establishment in the United Kingdom from which regulated activities are carried on:

(1) 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 non-executive director function where the person performing one of those functions:
(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 chief executive function;

(4) the FCA required functions;

(5) 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.

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

10A.1.7 R This chapter does not apply to:

(1) an incoming EEA firm; or

(2) an incoming Treaty firm; or

(3) a UCITS qualifier;

if and in so far as the question of whether a person is fit and proper to perform a particular function in relation to that firm is reserved, under any of the Single Market Directives, the Treaty, the UCITS Directive or the auction regulation, to an authority in a country or territory outside the United Kingdom.
10A.1.8 SUP 10A.1.7R reflects the provisions of section 59(8) of the Act and, in relation to an incoming Treaty firm and a UCITS qualifier, the Treaty and the UCITS Directive. It preserves the principle of Home State prudential regulation. In relation to an incoming EEA firm exercising an EEA right, or an incoming Treaty firm exercising a Treaty right, the effect is to reserve to the Home State regulator the assessment of the fitness and propriety of a person performing a function in the exercise of that right. A member of the governing body, or the notified UK branch manager, of an incoming EEA firm, acting in that capacity, will not therefore have to be approved by the FCA under the Act.

10A.1.9 Notwithstanding SUP 10A.1.8G, an incoming EEA firm (other than an EEA pure reinsurer) or incoming Treaty firm will have had to consider the impact of the Host State rules with which it is required to comply when carrying on a passported activity or Treaty activity through a branch in the United Kingdom. An incoming EEA firm (other than an EEA pure reinsurer) will have been notified of those provisions under Part II of Schedule 3 to the Act in the course of satisfying the conditions for authorisation in the United Kingdom.

10A.1.10 An incoming EEA firm will have to consider, for example, the position of a branch manager based in the United Kingdom who may also be performing a function in relation to the carrying on of a regulated activity not covered by the EEA right of the firm. In so far as the function is within the description of an FCA controlled function, the firm will need to seek approval for that person to perform that FCA controlled function.

Incoming EEA firms: passported activities from a branch

10A.1.11 R Only the following FCA controlled functions apply to an incoming EEA firm with respect to its passported activities carried on from a branch in the United Kingdom:

1. the money laundering reporting function;

2. 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; or

   (c) the activity of accepting deposits from banking customers and activities substantially connected to that activity to the extent that it does not fall within (a) or (b); and
(3) the customer function other than where this relates to the function in SUP 10A.10.7R(4) and (7).

10A.1.12 R If an incoming EEA firm is an EEA pure reinsurer, then SUP 10A.1.11R does not apply. Instead, none of the FCA controlled functions apply with respect to its passported activities carried on from a branch in the United Kingdom.

Incoming EEA firms etc with top-up permission activities from a UK branch

10A.1.13 R In relation to the activities of a firm for which it has a top-up permission, only the following FCA controlled functions apply:

(1) the FCA required functions, other than the apportionment and oversight function and the compliance oversight function;

(2) the significant management function, in so far as it 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; or

(c) the activity of accepting deposits from banking customers and activities substantially connected to that activity to the extent that it does not fall within (a) or (b); and

(3) the customer function.

10A.1.14 R A person does not perform the significant management function for a firm under SUP 10A.1.11R or SUP 10A.1.13R if that person would not have been treated as performing any FCA controlled function for that firm if that firm had been a UK firm.

Appointed representatives

10A.1.15 R The descriptions of the following FCA controlled functions apply to an appointed representative of a firm, except an introducer appointed representative, as they apply to an FCA-authorised person:

(1) the FCA governing functions, subject to SUP 10A.1.16R and except for a tied agent of an EEA MiFID investment firm; and

(2) the customer function other than in relation to acting in the capacity of an investment manager (see SUP 10A.10.7R(6)).
10A.1.16 R (1) *SUP* 10A.1.15R is modified in relation to an *appointed representative* meeting the conditions in (2) so that only one of the following *FCA-governing functions*:

(a) *director function*; or

(b) *chief executive function*; or

(c) *partner function*; or

(d) *director of unincorporated association function*;

applies, as appropriate, to an individual within that *appointed representative* who will be required to be an *FCA-approved person*.

(2) The conditions are that:

(a) the scope of appointment of the *appointed representative* includes *insurance mediation activity* in relation to *non-investment insurance contracts*, but no other *regulated activity*; and

(b) the principal purpose of the *appointed representative* is to carry on activities other than *regulated activities*.

Members of a profession

10A.1.17 R (1) This chapter, except in respect of the *FCA required functions*, does not apply to an *authorised professional firm* in respect of its *non-mainstream regulated activities*, subject to (2).

(2) Where the *authorised professional firm* has appointed *FCA-approved persons* to perform the *FCA governing functions* with equivalent responsibilities for the firm’s *non-mainstream regulated activities* and other *regulated activities*, for the firm’s *non-mainstream regulated activities* this chapter applies with respect to the *FCA governing functions* and the *FCA required functions* (other than the *apportionment and oversight function*) only.

Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords and insurance intermediaries.

10A.1.18 R The descriptions of *FCA significant-influence functions*, other than the *FCA required functions*, and, if the *firm* is a *MiFID investment firm*, the *FCA governing functions* do not extend to activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:

(1) an *oil market participant*; or
(2) a service company; or

(3) an energy market participant; or

(4) a wholly owned subsidiary of:
   (a) a local authority; or
   (b) a registered social landlord; or

(5) a firm with permission to carry on insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity.

10A.1.19 G It will be a matter of fact in each case whether, having regard to all the circumstances, including in particular where the balance of the business lies, a firm’s principal purpose is to carry on activities other than regulated activities. If a firm wishes to rely on SUP 10A.1.18R, it should be in a position to demonstrate that its principal purpose is to carry on activities other than regulated activities.

Insolvency practitioners

10A.1.20 R This chapter does not apply to a function performed by:

(1) a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or

(2) a person acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986; or

(3) a person acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or

(4) a person acting as a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

Bidders in emissions auctions

10A.1.21 G For a firm that is exempt from MiFID under article 2(1)(i) and whose only permission is bidding in emissions auctions, the only FCA controlled functions that apply to it are:

(1) the FCA governing functions;

(2) the money laundering reporting function;

(3) the customer function; and
(4) (where it has exercised an opt-in to CASS in accordance with CASS 1.4.9R and is a CASS medium firm or a CASS large firm) the CASS operational oversight function.

This is because the FCA approved persons regime specifies a number of functions by incorporation of requirements in SYSC; however, a firm carrying on auction regulation bidding is only subject to SYSC to a limited extent in relation to that activity. This means that the FCA required functions do not apply to auction regulation bidding, except for the money laundering reporting function. Similarly, the significant management function does not apply in relation to auction regulation bidding because, in carrying on that activity, a firm is not subject to SYSC 2.1.1R or SYSC 4.1.1R and is not undertaking proprietary trading.

10A.2 Purpose

10A.2.1 G The immediate purpose of SUP 10A.3 to SUP 10A.11 is to specify, under section 59 of the Act, descriptions of the FCA controlled functions which are listed in SUP 10A.4.4R. The underlying purpose is to establish, and mark the boundaries of, the "FCA-approved persons regime".

10A.2.2 G SUP 10A does not deal with the PRA's approved persons regime.

10A.2.3 G The FCA has certain powers in relation to PRA-approved persons, such as the requirement to give its consent in certain cases to the PRA granting approval for the performance of a PRA controlled function. SUP 10A does not deal with these.

10.3 Provisions related to the Act

10A.3.1 R A function is an FCA controlled function only to the extent that it is performed under an arrangement entered into by:

(1) a firm; or

(2) a contractor of the firm;

in relation to the carrying on by the firm of a regulated activity.

10A.3.2 G Sections 59(1) and (2) of the Act provide that approval is necessary in respect of an FCA controlled function which is performed under an arrangement entered into by a firm, or its contractor (typically an appointed representative), in relation to a regulated activity.
10A.3.3 G *Arrangement* is defined in section 59(10) of the *Act* as any kind of arrangement for the performance of a function which is entered into by a *firm* or any of its contractors with another *person* and includes the appointment of a *person* to an office, his becoming a *partner*, or his employment (whether under a contract of service or otherwise). For the provisions in this chapter relating to outsourcing, see SUP 10A.13.5G and *SUP* 10A.13.6G.

10A.3.4 G If, however, a *firm* is a member of a group, and the *arrangements* for the performance of an *FCA controlled function* of the *firm* are made by, for instance, the *holding company*, the *person* performing the function will only require approval if there is an arrangement (under section 59(1)) or a contract (under section 59(2)) between the *firm* and *holding company* permitting this. This need not be a written contract but could arise, for example, by conduct, custom and practice.

10A.3.5 G The *arrangement* must be “in relation to” the carrying on of a *regulated activity*. *Regulated activities* are defined in the *Glossary* by reference to the *Regulated Activities Order*. This order prescribes the activities which are *regulated activities* for the purposes of the *Act*.

10A.4 Specification of functions

10A.4.1 R Each of the functions described in *SUP* 10A.4.4R (the table of FCA controlled functions) is an *FCA controlled function*.

10A.4.2 R Part 1 of the table of *FCA controlled functions* applies in relation to an *FCA-authorised person*. It also applies in relation to an appointed representative for the purposes of *SUP* 10A.1.15R (Appointed representatives) whether its principal is an *FCA-authorised person* or a *PRA-authorised person*. Part 2 applies in relation to a *PRA-authorised person*.

10A.4.3 G The fact that a *person* may be *FCA*-approved for one purpose does not have the effect of bringing all his activities within that *FCA controlled function*.

10A.4.4 R *FCA controlled functions*

<p>| Part 1 (FCA controlled functions for FCA-authorised persons and appointed representatives) |
|---------------------------------------------|---|-----------------------------------------------|
| <strong>Type</strong>                                    | <strong>CF</strong> | <strong>Description of FCA controlled function</strong> |
| <em>FCA governing functions</em>                   | 1     | Director function                             |
|                                             | 2     | Non-executive director function              |
|                                             | 3     | Chief executive function                     |</p>
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*FCA significant-influence functions

**Part 2 (FCA controlled functions for PRA-authorised persons)**

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*FCA significant-influence functions
10A.5 Significant-influence functions

What are the FCA significant-influence functions?

10A.5.1 G The FCA significant-influence functions, which are specified in SUP 10A.4.1R, comprise the FCA governing functions (SUP 10A.6), the FCA required functions (SUP 10A.7), the systems and controls function (SUP 10A.8) and the significant management function (SUP 10A.9). SUP 10A.5 applies to each of the FCA significant influence functions.

Definition of FCA significant-influence function

10A.5.2 R Each FCA significant-influence function is one which comes within the definition of a significant-influence function.

10A.5.3 G Section 59(7B) of the Act says that a significant-influence function, in relation to the carrying on of a regulated activity by a firm, means a function that is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the firm’s affairs, so far as relating to the activity.

10A.5.4 G SUP 10A.5.2R gives effect to section 59(5)(b) of the Act.

10A.5.5 G Whether an FCA controlled function is likely to result in the person responsible for its performance exercising significant influence on the conduct of the firm’s affairs is a question of fact in each case. The FCA has identified the FCA significant influence functions as satisfying this condition.

Periods of less than 12 weeks

10A.5.6 R If:

(1) a firm appoints an individual to perform a function which, but for this rule, would be an FCA significant influence function;

(2) the appointment is to provide cover for an approved person whose absence is:

(a) temporary; or

(b) reasonably unforeseen; and

(3) the appointment is for less than 12 weeks in a consecutive 12-month period;

the description of the relevant FCA significant influence function does not relate to those activities of that individual.
10A.5.7  

**SUP 10A.5.6R enables cover to be given for, as an example, holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy. However, as soon as it becomes apparent that a person will be performing an FCA controlled function for more than 12 weeks, the firm should apply for approval.**

10A.6  

**FCA governing functions**

**Introduction**

10A.6.1  

Every firm will have one or more persons responsible for directing its affairs. These persons will be performing the FCA governing functions and will be required to be FCA-approved persons unless the application provisions in **SUP 10A.1**, or the particular description of an FCA controlled function, provide otherwise. For example, each director of a company incorporated under the Companies Acts will perform an FCA governing function. However, if the firm is a PRA-authorised person, the governing functions do not apply. Instead, those persons will be performing the PRA governing functions and will be required to be PRA-approved persons instead.

10A.6.2  

A sole trader does not fall within the description of the governing functions.

**What the FCA governing functions include**

10A.6.3  

Each of the FCA governing functions includes:

(1) (where apportioned under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R):

(a) the systems and controls function (if it applies to the firm); and

(b) the significant management function;

(2) (in respect of bidding in emissions auctions) that part of the customer function specified in **SUP 10A.10.7R**(7) (bidder’s representative).

This does not apply to the non-executive director function or the function described in **SUP 10A.6.8R**.
10A.6.4 G (1) The effect of SUP 10A.6.3R is that a person who is approved to perform an FCA governing function will not have to be specifically FCA-approved to perform the systems and controls function or the significant management function or the part of the customer function specified in SUP 10A.10.7R(7). However, a person who is approved to perform an FCA governing function will have to be additionally FCA-approved before he can perform any of the FCA required functions or the customer function (except the part specified in SUP 10A.10.7R(7)).

(2) SUP 10A.6.3R does not apply to the non-executive director function. It does not apply to the director function if the only part of that function that the FCA-approved person is performing is the function described in SUP 10A.6.8R.

10A.6.5 G A firm carrying on insurance mediation activity, other than a sole trader, must allocate to a director or senior manager the responsibility for the firm’s insurance mediation activity (MIPRU 2.2.1R). MIPRU 2.2.2R(1) provides that the firm may allocate this responsibility to one or more of the persons performing an FCA governing function (other than the non-executive director function).

10A.6.6 G Where a person performing a governing function is also responsible for the firm’s insurance mediation activity, the words “(insurance mediation)” will be inserted after the relevant FCA controlled function (see MIPRU 2.2.5G).

Director function (CF1)

10A.6.7 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 a director (other than non-executive director) of that firm.

10A.6.8 R (1) If a firm is a body corporate (other than a limited liability partnership), the director function is also the function of acting in the capacity of 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 of a parent undertaking or holding company of the firm; and

(b) whose decisions or actions are regularly taken into account by the governing body of the firm.

(2) (1) does not apply if that parent undertaking or holding company has a Part 4A permission or is regulated by an EEA regulator.

(3) (1) does not apply to the function falling into SUP 10A.6.13R (non-executive director of the parent undertaking or holding company).
10A.6.9  G  Examples of where SUP 10A.6.8R might 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.

10A.6.10  G  A director can be a body corporate and may accordingly require approval as an FCA-approved person in the same way as a natural person may require approval.

10A.6.11  G  The director function does not apply in relation to a PRA-authorised person. PRA approval is required instead.

Non-executive director function (CF2)

10A.6.12  R  If a firm is a body corporate, the non-executive director function is the function of acting in the capacity of a non-executive director of that firm.

10A.6.13  R  (1)  If a firm is a body corporate, the non-executive director function is also the function of acting in the capacity of a person:

(a)  who is a non-executive director of a parent undertaking or holding company; and

(b)  whose decisions or actions are regularly taken into account by the governing body of the firm.
(2) However, (1) does not apply if that parent undertaking or holding company has a Part 4A permission or is regulated by an EEA regulator.

10A.6.14 G Examples of where SUP 10A.6.13R might 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.

10A.6.15 G The non-executive director function does not apply in relation to a PRA-authorised person. PRA approval is required instead.

Guidance on persons in a parent undertaking or holding company exercising significant influence

10A.6.16 G (1) This paragraph explains the basis on which the director function and the non-executive director function are applied to persons who have a position with the firm's parent undertaking or holding company under SUP 10A.6.8R or SUP 10A.6.13R.
(2) The basic position is set out in SUP 10A.3.4G. As is the case with all controlled functions, SUP 10A.6.8R and SUP 10A.6.13R are subject to the overriding provisions in SUP 10A.3.1R, which sets out the requirements of section 59(1) and (2) of the Act. This means that unless the firm has an arrangement permitting the performance of these roles by the persons concerned, these persons will not be performing these controlled functions. Therefore, the FCA accepts that there will be cases in which a person performing these roles will not require approval. However where there is such an arrangement the function may apply.

Chief executive function (CF3)

10A.6.17 R The chief executive function is the function of acting in the capacity of a chief executive of a firm.

10A.6.18 G This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the governing body: ,

(1) for the conduct of the whole of the business (or relevant activities); or

(2) in the case of a branch in the United Kingdom of an overseas firm, for the conduct of all of the activities subject to the UK regulatory system.

10A.6.19 G For a branch in the United Kingdom of an overseas firm, the FCA would not normally expect the overseas chief executive of the firm as a whole to be FCA-approved for this function where there is a senior manager under him with specific responsibility for those activities of the branch which are subject to the UK regulatory system. In some circumstances, the person within the firm responsible for UK operations may, if the function is likely to enable him to exercise significant influence over the branch, also perform the chief executive function (see SUP 10A.7.4G).

10A.6.20 G A person performing the chief executive function may be a member of the governing body but need not be. If the chairman of the governing body is also the chief executive, he will be discharging this function. If the responsibility is divided between more than one person but not shared, there is no person exercising the chief executive function. But if that responsibility is discharged jointly by more than one person, each of those persons will be performing the chief executive function.

10A.6.21 G Note that a body corporate may be a chief executive. If so, it will need to be approved (if the firm in question is an FCA-authorised person) to perform the chief executive function.

10A.6.22 G The chief executive function does not apply in relation to a PRA-authorised person. PRA approval is required instead.

Partner function (CF4)
If a firm is a *partnership*, the *partner function* is the function of acting in the capacity of a *partner* in that firm.

(2) If the principal purpose of the firm is to carry on one or more *regulated activities*, each *partner* performs the *partner function*.

(3) If the principal purpose of the firm is other than to carry on *regulated activities*:

(a) *a partner* performs the *partner function* to the extent only that he has responsibility for a *regulated activity*; and

(b) *a partner* in a firm will be taken to have responsibility for each *regulated activity* except where the *partnership* has apportioned responsibility to another *partner* or group of partners.

Any apportionment referred to in SUP 10A.6.23R(3)(b) will have taken place under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R. The FCA may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see SYSC 2.2).

The effect of SUP 10A.1.17R is that *regulated activity* in SUP 10A.6.23R (and elsewhere) is to be taken as not including an activity that is a *non-mainstream regulated activity*. Therefore, a *partner* whose only *regulated activities* are incidental to his professional services, in a *partnership* whose principal purpose is to carry on other than *regulated activities*, need not be an *FCA-approved person*. What amounts to the principal purpose of the firm is a matter of fact in each case having regard to all the circumstances, including the activities of the firm as a whole. Any *regulated activities* which such a partner carries on are not within the description of the *partner function*.

If a firm is a *limited liability partnership*, the *partner function* extends to the firm as if the firm were a *partnership* and a member of the firm were a *partner*.

If a *partnership* is registered under the Limited Partnership Act 1907, the *partner function* does not extend to any function performed by a limited partner.

The *partner function* does not apply in relation to a *PRA-authorised person*. *PRA approval* is required instead.

If a firm is an unincorporated association, the *director of unincorporated association function* is the function of acting in the capacity of a *director* of the unincorporated association.
10A.6.30 G The director of unincorporated association function does not apply in relation to a PRA-authorised person. PRA approval is required instead.

Small friendly society function (CF6)

10A.6.31 R (1) If a firm is a non-directive friendly society, the small friendly society function is the function of directing its affairs, either alone or jointly with others.

(2) If the principal purpose of the firm is to carry on regulated activities, each person with responsibility for directing its affairs performs the FCA controlled function.

(3) If the principal purpose of the firm is other than to carry on regulated activities, a person performs the small friendly society function only to the extent that he has responsibility for a regulated activity.

10A.6.32 R (1) Each person on the non-directive friendly society’s governing body will be taken to have responsibility for its regulated activities, unless the firm has apportioned this responsibility to one particular individual to whom it is reasonable to give this responsibility.

(2) The individual need not be a member of the governing body.

10A.6.33 G Typically a non-directive friendly Society will appoint a “committee of management” to direct its affairs. However, the governing arrangements may be informal and flexible. If this is the case, the FCA would expect the society to resolve to give responsibility for the carrying on of regulated activities to one individual who is appropriate in all the circumstances. That individual may, for example, have the title of chief executive or similar. The individual would have to be an FCA-approved person under SUP 10A.6.31R.

10A.6.34 G In practice, the FCA expects that most non-directive friendly societies will be PRA-authorised persons. Where that is the case, the small friendly society function will not apply. PRA approval is required instead.

10A.7 FCA required functions

Apportionment and oversight function (CF8)

10A.7.1 R The apportionment and oversight function is the function of acting in the capacity of a director or senior manager responsible for either or both of the apportionment function and the oversight function set out in SYSC 2.1.3R or SYSC 4.4.5R.
10A.7.2 G In requiring someone to apportion responsibility, a common platform firm should not apply for that person or persons to be FCA-approved to perform the apportionment and oversight function (see SUP 10A.7.1R, SYSC 2.1.3R and SYSC 1 Annex 1).

10A.7.3 G The fact that there is a person performing the apportionment and oversight function, and who has responsibility for activities subject to regulation by the FCA, may have a bearing on whether a manager who is based overseas will be performing an FCA controlled function. It is a factor to take into account when assessing the likely influence of the overseas manager.

10A.7.4 G Generally, in relation to a UK establishment of an overseas firm or a firm which is part of an overseas group, where an overseas manager’s responsibilities in relation to the United Kingdom are strategic only, he will not need to be an FCA-approved person. However, where, in accordance with SYSC 3 or SYSC 4 to SYSC 10, 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 an FCA controlled function for example, the chief executive function or a PRA controlled function.

10A.7.5 G A firm carrying on insurance mediation activity, other than a sole trader, must allocate to a director or senior manager the responsibility for the firm’s insurance mediation activity (MIPRU 2.2.1R). MIPRU 2.2.2R(2) provides that the firm may allocate this responsibility to the person performing the apportionment and oversight function.

10A.7.6 G Where the person performing the apportionment and oversight function is also responsible for the firm’s insurance mediation activity, the words “(insurance mediation)” will be inserted after this FCA controlled function (see MIPRU 2.2.5G).

10A.7.7 G As explained in SUP 10A.11 (Minimising overlap with the PRA approved persons regime), the application of the apportionment and oversight function is sometimes disapplied for a PRA-authorised person.

Compliance oversight function (CF10)

10A.7.8 R The compliance oversight function is the function of acting in the capacity of a director or senior manager who is allocated the function set out in SYSC 3.2.8R or SYSC 6.1.4R(2).

CASS operational oversight function (CF10a)

10A.7.9 R In relation to a CASS medium firm and a CASS large firm, the CASS operational oversight function is the function of acting in the capacity of a person to whom is allocated the function set out in CASS 1A.3.1AR.

Money laundering reporting function (CF11)
10A.7.10 R The money laundering reporting function is the function of acting in the capacity of the money laundering reporting officer of a firm.

10A.7.11 G A firm's obligations in respect of its money laundering reporting officer are set out elsewhere in the Handbook (see SYSC 3.2.6IR and SYSC 6.3.9R and for their scope, see the application provisions in SYSC 1 Annex 1).

10A.8 Systems and controls functions

Systems and controls function (CF28)

10A.8.1 R The systems and controls function is the function of acting in the capacity of an employee of the firm with responsibility for reporting to the governing body of a firm, or the audit committee (or its equivalent) in relation to:

(1) its financial affairs;

(2) setting and controlling its risk exposure (see SYSC 3.2.10G and SYSC 7.1.6R);

(3) adherence to internal systems and controls, procedures and policies (see SYSC 3.2.16G and SYSC 6.2).

10A.8.2 R The systems and controls function does not apply in relation to bidding in emissions auctions carried on by a firm that is exempt from MiFID under article 2(1)(i).

10A.8.3 G The systems and controls function does not apply in relation to a PRA-authorised person. PRA approval is required instead.

10A.8.4 G Where an employee performs the systems and controls function the FCA would expect the firm to ensure that the employee had sufficient expertise and authority to perform that function effectively. A director or senior manager would meet this expectation.

10A.9 Significant management functions

Application

10A.9.1 R SUP 10A.9 applies only to a firm which:

(1) under SYSC 2.1.1R or, SYSC 4.1.1R, 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; or
(3) (in the case of an EEA firm) undertakes the activity of accepting deposits from banking customers and activities connected with this.

**10A.9.2 G** The FCA 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 10A.9.1R(1). In most firms, those approved for the FCA governing functions, FCA required functions and, where appropriate, the systems and controls function or the equivalent PRA controlled functions, are likely to exercise all the significant influence at senior management level.

**10A.9.3 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 the definition of significant-influence function. Therefore, it is the FCA’s expectation that all firms will assess all their proprietary traders to ascertain the ones for whom approval is required.

**10A.9.4 G** The scale, nature and complexity of the firm’s business may be such that a firm apportions, under SUP 10A.9.1R(1), a significant responsibility to an individual who is not approved to perform the FCA governing functions, FCA required functions or, where appropriate, the systems and controls function or the equivalent PRA controlled functions. If so, the firm should consider whether the functions of that individual fall within the significant management function. For the purposes of the description of the significant management functions, the following additional factors about the firm should be considered:

1. The size and significance of the firm’s business in the United Kingdom; for example, a firm carrying on designated investment business may have a large number of approved persons (for example, in excess of 100 individuals); or a firm carrying on general insurance business may have gross written premiums in excess of £100m;

2. The number of regulated activities carried on, or proposed to be carried on, by the firm and (if relevant) other members of the group;

3. Its group structure (if it is a member of a group);

4. Its management structure (for example, matrix management); and

5. The size and significance of its international operations, if any.

**10A.9.5 G** When considering whether a business unit is significant, the firm should take into account all relevant factors in the light of the firm’s current circumstances and its plans for the future, including:

1. The risk profile of the unit; or

2. Its use or commitment of a firm’s capital; or
(3) its contribution to the profit and loss account; or

(4) the number of employees or approved persons in the unit; or

(5) the number of customers of the unit; or

(6) any other factor which makes the unit significant to the conduct of the firm’s affairs so far as relating to the regulated activity.

10A.9.6 G The question may arise whether a manager who is based overseas will be performing the significant management function under SUP 10A.9.9R and should, therefore, be an FCA-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 FCA, may have a bearing on this. It is a factor to take into account when assessing the likely influence of the overseas manager.

10A.9.7 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 approved for the significant management function. 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 that FCA controlled function.

10A.9.8 G See also SUP 10A.7.3G to SUP 10A.7.6G in relation to matrix management.

Significant management function (CF29)

10A.9.9 R The significant management function is the function of acting as a senior manager with significant responsibility for a significant business unit that:

(1) carries on designated investment business or other activities not falling within (2) to (4);

(2) effects contracts of insurance (other than contractually based investments);

(3) 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;

(4) processes confirmations, payments, settlements, insurance claims, client money and similar matters;

(5) (in the case of an EEA firm) undertakes the activity of accepting deposits from banking customers and activities connected with this.

10A.9.10 R The significant management function also includes the function of acting as a proprietary trader.
10A.9.11 R The *significant management function* does not include any of the activities described in any other *FCA controlled function* or *PRA controlled function* if that other *controlled function* applies to the *firm*.

10A.9.12 G A *senior manager* carrying on the *significant management function* under *SUP 10A.9.9R* with *significant responsibility* for a significant *business unit* that carries on activities other than *designated investment business* for the purposes of *SUP 10A.9.9R*(1) 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*, 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.

10A.9.13 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 10A.9.10R*.

10A.9.14 G A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the *responsibility* for the *firm's insurance mediation activity* (*MIPRU 2.2.1R*). *MIPRU 2.2.2R*(3) provides that the *firm* may allocate this responsibility to the *person* performing the *significant management function*.

10A.9.15 G Where the *person* performing the *significant management function* is also responsible for the *firm's insurance mediation activity*, the words “*(insurance mediation)*” will be inserted after this *FCA controlled function* (see *MIPRU 2.2.5G*).

10A.10 Customer-dealing functions

Introduction

10A.10.1 R *SUP 10A.10* applies with respect to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*.

10A.10.2 G Without *SUP 10A.10.1R*, the description of the *customer function* would extend to this function wherever it was performed. The effect of *SUP 10A.10.1R* is that the description is limited, in relation to *regulated activities* with an overseas element, in a manner which is broadly consistent with the scope of conduct of business regulation.

10A.10.3 G The *customer function* has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; it has no application to banking business such as deposit taking and lending, nor to *general insurance business*.

The basic rule about the customer function
10A.10.4 R The customer function is one which comes within the definition of a customer-dealing function.

10A.10.5 G Section 59(7A) of the Act (Approval for particular arrangements) says that the customer-dealing function, in relation to the carrying on of a regulated activity by a firm (“A”), means a function that will involve the person performing it in dealing with:

1. customers of A; or
2. property of customers of A;

in a manner substantially connected with the carrying on of the activity.

10A.10.6 G The FCA interprets the phrase “dealing with” as including having contact with customers and extending beyond “dealing” as used in the phrase “dealing in investments”. “Dealing in” is used in Schedule 2 to the Act to describe in general terms the regulated activities which are specified in Part II of the Regulated Activities Order.

Customer function (CF 30)

10A.10.7 R The customer function is the function of:

1. advising on investments other than a non-investment insurance contract (but not where this is advising on investments in the course of carrying on the activity of giving basic advice on a stakeholder product) and performing other functions related to this such as dealing and arranging;

2. giving advice to clients solely in connection with corporate finance business and performing other functions related to this;

3. giving advice or performing related activities in connection with pension transfers or opt-outs for retail clients;

4. giving advice to a person to become, or continue or cease to be, a member of a particular Lloyd’s syndicate;

5. dealing, as principal or as agent, and arranging (bringing about) deals in investments other than a non-investment insurance contract with, for, or in connection with customers where the dealing or arranging deals is governed by COBS 11 (Dealing and managing);

6. acting in the capacity of an investment manager and carrying on functions connected to this;

7. in relation to bidding in emissions auctions, acting as a ‘bidder’s representative’ within the meaning of subparagraph 3 of article 6(3) of the auction regulation.
10A.10.8 R The customer function does not extend to an individual who is performing the functions in SUP 10A.10.7R(1) to (2) or SUP 10A.10.7R(5) to (7) and who is based overseas and who, in a 12-month period, spends no more than 30 days in the United Kingdom to the extent that he is appropriately supervised by a person approved for this function.

10A.10.9 G The FCA would expect an individual from overseas to be accompanied on a visit to a customer. TC 2.1.9R(2) provides that the firm will have to be satisfied that the individual has at least three years of up-to-date, relevant experience obtained outside the United Kingdom. However, the remaining provisions of TC 2.1.9R(2) are disapplied in these circumstances (except for an individual who gives advice to retail clients on retail investment products or is a broker fund adviser). The effect of this is that such individuals need not attain the relevant regulatory module of an appropriate qualification (see TC 2.1.9R(2)).

10A.10.10 G The customer function in SUP 10A.10.7R(5) does not extend to the individual who, on the instructions of the customer, simply inputs the customer’s instructions into an automatic execution system where no discretion is or may be exercised by the individual performing the activity. Nor does it extend to merely introducing a customer to a firm or distributing advertisements.

10A.10.11 G An individual may advise on investments prior to being assessed as competent in accordance with the rules in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and, where relevant, the Training and Competence sourcebook (TC). The firm should record when that person subsequently becomes competent.

10A.11 Minimising overlap with the PRA approved persons regime

Introduction

10A.11.1 G SUP 10A.11 deals with how the FCA’s approved persons regime applies to PRA-authorised persons. SUP 10A.11 therefore only applies if the firm in question is a PRA-authorised person.

10A.11.2 G Both the FCA and the PRA may specify a function as a controlled function in relation to a PRA-authorised person. However, only the FCA has power to specify a customer-dealing function as a controlled function.

10A.11.3 G Therefore, if a person’s job for a firm involves:

(1) an FCA controlled function, the firm should apply to the FCA for approval;

(2) a PRA controlled function, the firm should apply to the PRA for approval;
(3) both an *FCA controlled function* and a *PRA controlled function*, the firm should apply to both the FCA and the PRA for approval (the purpose of SUP 10A.11 is to cut down the need for this sort of dual approval).

10A.11.4 G The *PRA* cannot give its approval for the performance of a *PRA controlled function* without the consent of the *FCA*. The firm does not need to apply to the *FCA* for that consent. The *PRA* must as soon as practicable notify the *FCA* of the receipt or withdrawal of an application to the *PRA*.

10A.11.5 G Under section 59B of the *Act* (Role of FCA in relation to PRA decisions) the *FCA* may arrange with the *PRA* that in agreed cases the *PRA* may give approval without obtaining the consent of the *FCA*. No such arrangements are currently in force.

10A.11.6 G The *FCA* and *PRA* have coordinated their approved persons regime to reduce the amount of overlap. These arrangements relate to *significant-influence functions* only.

10A.11.7 G The *FCA* is under a duty under section 59A of the *Act* (Specifying functions as controlled functions: supplementary) to exercise the power to specify any *significant-influence function* as an *FCA controlled function* in a way that it considers will minimise the likelihood that approvals fall to be given by both the *FCA* and the *PRA* in respect of the performance by a person of *significant-influence functions* in relation to the same *PRA-authorised person*.

Guidance on how SUP 10A.11 works

10A.11.8 G *SUP* 10A.11 disapplies the *apportionment and oversight function* for a person who is the subject of an application for approval to perform a *PRA governing function*, subject to certain conditions set out in *SUP* 10A.11.11R. Where this is the case the *apportionment and oversight function* is included in the *PRA governing function* for which the person has approval. *SUP* 10B.7 of the *PRA’s Handbook* deals with this.

10A.11.9 G *SUP* 10A.11.10G gives some examples of how *SUP* 10A.11 works.

10A.11.10 G Table: Examples of how the need for dual FCA and PRA approval in relation to PRA-authorised persons is reduced

<table>
<thead>
<tr>
<th>Example</th>
<th>Whether FCA approval required</th>
<th>Whether PRA approval required</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A is being appointed chief executive and the person performing the apportionment</td>
<td>No.</td>
<td>Yes</td>
<td>The <em>PRA chief executive function</em> is expanded to include the apportionment and</td>
</tr>
</tbody>
</table>
and oversight function.

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
<th>FCA Approval</th>
<th>PRA Approval</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) Same as (1) but the application to the PRA does not mention that it is also intended that A is perform what would otherwise be the apportionment and oversight function.</td>
<td>Yes</td>
<td>Yes</td>
<td>SUP 10A.11 does not apply if the application for PRA approval does not say that A will also be performing what would otherwise be the apportionment and oversight function.</td>
<td></td>
</tr>
<tr>
<td>(3) A is appointed as chief executive. Later, he is appointed to perform the apportionment and oversight function while carrying on as chief executive.</td>
<td>Yes, when he is appointed to perform the apportionment and oversight function</td>
<td>Yes, when he takes up the chief executive role</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4) A is appointed to perform the apportionment and oversight function. He later becomes the chief executive.</td>
<td>Yes, when he is appointed to perform the apportionment and oversight function</td>
<td>Yes, when he becomes the chief executive</td>
<td>When A is appointed as chief executive he retains his status as an FCA-approved person.</td>
<td></td>
</tr>
<tr>
<td>(5) A is being appointed as director and as the person performing the apportionment and oversight function. Later, he becomes chief</td>
<td>On being appointed director, see the answers to (1) and (2). No FCA approval is needed when A becomes chief</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
executive (but carries on with the apportionment and oversight function).

executive; the apportionment and oversight function remains switched off when A takes up the role of chief executive. The application to the PRA should say that A is performing what would otherwise be the apportionment and oversight function.

(6) A is appointed as chief executive and to perform the apportionment and oversight function at the same time. Later, A gives up his role as chief executive but carries on performing the apportionment and oversight function role.

On A’s first appointment, No. But when A gives up the role as chief executive, FCA approval is needed to perform the apportionment and oversight function. Form E should be used. The application should state that it is being made as a result of ceasing to perform a PRA controlled function when the rule in SUP 10B.7.4R of the PRA’s Handbook applies.

Performing the apportionment and oversight function requires FCA approval. A does not have that approval because A did not need it when he was first appointed. The combined effect of SUP 10A.11 and SUP 10B.7 of the PRA’s Handbook is that the firm has three months to secure approval by the FCA for A’s performance of the apportionment and oversight function. During that interim period, A keeps his status as a PRA-approved person performing the apportionment and oversight element of the PRA chief executive function which is included in that function.
The main rule

10A.11.11  R  A person (referred to as A in this rule) is not performing the *apportionment and oversight function* in relation to a PRA-authorised person (referred to as B in this rule), at a particular time, if:

1. A has been approved by the PRA to perform any *PRA governing function* in relation to B;
2. throughout the whole of the period between the time of the PRA approval in (1) and the time in question A has been the subject of a *current PRA approved person approval* to perform a *PRA governing function* in relation to B;
3. at the time of the PRA approval referred to in (1), A was not subject to a *current FCA approved person approval* to perform the *apportionment and oversight function* in relation to B; and
4. at the time of the PRA approval referred to in (1), A had not started to perform what would otherwise have been the *apportionment and oversight function* (the FCA function) and, as part of the application for the PRA approval referred to in (1), B notified the PRA that A would start to perform the FCA function at or around the time of the PRA approval in (1).
## 10A.12 Procedures relating to FCA-approved persons

Forms

### 10A.12.1 G
The forms listed in *SUP 10A.12.2G* are referred to in *SUP 10A.12* (Procedures relating to FCA-approved persons) to *SUP 10A.17* (Further questions).

### 10A.12.2 G
Table: FCA-approved persons forms

<table>
<thead>
<tr>
<th>Form</th>
<th>Purpose</th>
<th>Handbook requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>the relevant Form A</td>
<td>The relevant online form on the <em>FCA</em> and <em>PRA</em>’s ONA system or the form in <em>SUP 10A Annex 4D</em> (See Note)</td>
<td><em>SUP 10A.13.3D</em></td>
</tr>
<tr>
<td>Form B</td>
<td><em>SUP 10A Annex 5R</em> Notice to withdraw an application to perform controlled functions under the approved persons regime</td>
<td><em>SUP 10A.13.19R</em></td>
</tr>
<tr>
<td>Form C</td>
<td><em>SUP 10A Annex 6R</em> Notice of ceasing to perform controlled functions</td>
<td><em>SUP 10A.14.8R</em></td>
</tr>
<tr>
<td>Form D</td>
<td><em>SUP 10A Annex 7R</em> Notification of changes in personal information or application details</td>
<td><em>SUP 10A.14.15R</em></td>
</tr>
</tbody>
</table>
Form E | The relevant online form on the FCA and PRA’s ONA system or the form in SUP 10A Annex 8D (See Note) | Internal transfer of an approved person | SUP 10A.14.4D

Note: The form in the SUP annex shown is to be used by credit unions, and by other firms only in the event of a failure of the information technology systems used by the FCA. See the relevant “Handbook requirement”

10A.12.3 G A summary of the forms and their purposes is in SUP 10A Annex 2G.

10A.12.4 G Unless the context otherwise requires, in SUP 10A.12 (Procedures relating to FCA-approved persons) to SUP 10A.17 (Further questions) where reference is made to a firm, this also includes an applicant for Part 4A permission, and other persons seeking to carry on regulated activities as an authorised person.

10A.12.5 G Forms B, C, D and E can only be submitted in respect of an FCA-approved person by the firm that submitted an FCA-approved person’s original application (the relevant Form A).

10A.12.6 G Copies of Forms A, B, C, D and E may be obtained from the FCA website. Credit unions can obtain copies from the FCA’s Firm Contact Centre. To contact the FCA’s Customer Contact Centre for approved persons enquiries:

(1) telephone 0845 606 9966; or
(2) e-mail fcc@fca.org.uk; or
(3) fax 020 7066 0017; or
(4) write to:

Customer Contact Centre
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
LONDON E14 5HS.
10A.13 Application for approval and withdrawing an application for approval

When to apply for approval

10A.13.1 G In accordance with section 59 of the Act (Approval for particular arrangements), where a candidate will be performing one or more FCA controlled functions, a firm must take reasonable care to ensure that the candidate does not perform these functions unless he has prior approval from the FCA.

Failure to apply for approval

10A.13.2 G If a person performs an FCA controlled function without approval it is not only the firm that is accountable. Under section 63A of the Act (Power to impose penalties), if the FCA is satisfied that:

(1) a person (“P”) has at any time performed an FCA controlled function without approval; and

(2) at that time P knew, or could reasonably be expected to have known, that P was performing an FCA controlled function without approval;

it may impose a penalty on P of such amount as it considers appropriate.

How to apply for approval

10A.13.3 D An application by a firm for the FCA’s approval under section 59 of the Act (Approval for particular arrangements) must be made by completing Form A (except where SUP 10A.14.4D requires a Form E).

10A.13.4 G SUP 10A.16.1D explains how applications should be submitted.

Who should make the application?

10A.13.5 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:

(a) the FCA candidate; or

(b) (where the FCA 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 FCA candidate to perform the FCA controlled function. Where a firm has outsourced the performance of an FCA controlled function, the details of the outsourcing determine where responsibility lies and whom the FCA anticipates will submit FCA-approved persons application forms. SUP 10A.13.6G describes some common situations. The firm which is outsourcing is referred to as "A" and the person to whom the performance of the FCA controlled function has been outsourced, or which makes the arrangement for the FCA 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 an FCA 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 FCA. See also SYSC 3.2.4G and SYSC 8.1.1R, and SYSC 13.9 for insurers.

10A.13.6 G Outsourcing arrangements

<table>
<thead>
<tr>
<th>Outsourcing arrangements</th>
<th>Submitting form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm A to firm B</td>
<td>The FCA will consider A to have taken reasonable care if it enters into a contract with B under which B is responsible for ensuring that the relevant FCA controlled functions are performed by FCA-approved persons, and that it is reasonable for A to rely on this</td>
</tr>
<tr>
<td>Firm B submits FCA-approved persons forms on behalf of firm A</td>
<td></td>
</tr>
<tr>
<td>Outsourcing by A to B (both being a member of the same United Kingdom group and each having its registered office in the United Kingdom)</td>
<td>See SUP 10A.3.4G</td>
</tr>
<tr>
<td>See SUP 15.7.8G</td>
<td></td>
</tr>
</tbody>
</table>
(i) A to B, where B is a non-authorised person not part of the same group as A
(ii) A to B, where A is a branch of an overseas firm in the United Kingdom, and B is an overseas undertaking of the same group
(iii) A to B, where A is a UK authorised subsidiary of an overseas firm and B is an overseas undertaking of the same group

Responsibility for (as opposed to the performance of) any activity outsourced to B will remain with A. See SYSC 3.2.4G and SYSC 8

A ensures that an individual approved by the FCA or the PRA under a controlled function that is a significant-influence function has responsibility for the outsourced arrangement and A submits a form in relation to that individual

10A.13.7 G Where the notification of an appointed representative (SUP 12.7.1R) is linked to an application for approval (SUP 10A.13 (Applications for approval and withdrawing an application for approval)), any delay in receiving the notification under SUP 12.7.1R may delay the FCA’s approval of the individuals employed by that appointed representative who will be performing FCA controlled functions for the firm.

Processing an application

10A.13.8 G The Act sets out the time that the FCA has to consider an application and come to a decision.

10A.13.9 G In any case where the application for approval is made by a person applying for permission under Part 4A of the Act, the FCA has until the end of whichever of the following periods ends last:

1. the period within which an application for that permission must be determined; and

2. the period of three months from the time it receives a properly completed application.

10A.13.10 G In any other case it is the period of three months from the time it receives a properly completed application.
10A.13.11 G The FCA must either grant the application or, if it proposes not to grant an application, issue a warning notice (see DEPP 2). The FCA will deal with cases more quickly than this whenever circumstances allow and will try to meet the standard response times published on the website and in its Annual Report. However, if an application is incomplete when received, or the FCA has knowledge that, or reason to believe that, the information is incomplete, then the processing time will be longer than the published standard response times.

10A.13.12 G Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. If forms are not completed fully and honestly, applications will be subject to investigation and the FCA candidate’s suitability to be approved to undertake an FCA controlled function will be called into question. A person who provides information to the FCA that is false or misleading may commit a criminal offence, and could face prosecution under section 398 of the Act regardless of the status of their application.

10A.13.13 G If there is a delay in processing the application within the standard response time, the FCA will tell the firm making the application as soon as this becomes apparent.

10A.13.14 G Before making a decision to grant the application or give a warning notice, the FCA may ask the firm for more information about the FCA candidate. If it does this, the three-month period in which the FCA must determine a completed application:

(1) will stop on the day the FCA requests the information; and

(2) will start running again on the day on which the FCA finally receives all the requested information.

10A.13.15 G The FCA may grant an application only if it is satisfied that the FCA candidate is a fit and proper person to perform the FCA controlled function stated in the application form. Responsibility lies with the firm making the application to satisfy the FCA that the FCA candidate is fit and proper to perform the FCA controlled function applied for.

10A.13.16 G For further guidance on criteria for assessing whether a FCA candidate is fit and proper, see FIT.

Decisions on applications

10A.13.17 G Whenever it grants an application, the FCA will confirm this in writing to all interested parties.

10A.13.18 G If the FCA proposes to refuse an application in relation to one or more FCA controlled functions, it must follow the procedures for issuing warning and decision notices to all interested parties. The requirements relating to warning and decision notices are in DEPP 2.
Withdrawing an application for approval

10A.13.19  R  A firm applying to withdraw an application for approval must notify the FCA, using Form B, in the form set out in SUP 10A Annex 5R.

10A.13.20  G  Under section 61(5) of the Act (Determination of applications), the firm may withdraw an application only if it also has the consent of the candidate and the person by whom the candidate is or would have been employed, if this is not the firm making the application.

10A.14  Changes to an FCA-approved person’s details

Moving within a firm

10A.14.1  G  An FCA-approved person’s job may change from time to time as a result, for instance, of a change in personal job responsibilities or a firm’s regulated activities. Where the changes will involve the person performing one or more FCA controlled functions different from those for which approval has already been granted, then an application must be made to the FCA for approval for the person to perform those FCA controlled functions. The firm must take reasonable care to ensure that an individual does not begin performing an FCA controlled function until the FCA has granted FCA-approved person status to that individual in respect of that FCA controlled function. Similarly, a firm must get the FCA’s approval if a person is to start performing an FCA controlled function in relation to that firm when he already has the PRA’s approval to perform a PRA controlled function in relation to that firm.

10A.14.2  G  If an FCA-approved person or a PRA-approved person is ceasing to perform FCA controlled functions or PRA controlled functions, as well as applying for approval in respect of FCA controlled functions, SUP 10A.14.4D generally applies. Further details can be found in SUP 10A Annex 2G.

10A.14.3  G  If a person is to perform an FCA controlled function for a firm for which he already performs a PRA controlled function or FCA controlled function as an approved person but he is not at the same time ceasing to perform an FCA controlled function or PRA controlled function, a firm should use Form A. It is not mandatory to complete all parts of the form. See the notes relevant to each form for full details.

10A.14.4  D  (1)  A firm must use Form E where an approved person is both ceasing to perform one or more controlled functions and needs to be approved in relation to one or more FCA controlled functions within the same firm or group.
(2) A firm must not use Form E if the approved person has never before been approved to perform a significant-influence function for any firm or has not been subject to a current approved person approval from the FCA or PRA to perform a significant-influence function in relation to any firm for more than six months.

(3) A firm must not use Form E if a notification has been made or should be made under SUP 10A.14.17R (Changes in fitness to be notified under Form D) or SUP 10B.12.18R (the equivalent PRA rule) in relation to any controlled functions that that person is ceasing to perform (as referred to in (1)) or any controlled function that he is continuing to perform in relation to that firm or a firm in the same group.

10A.14.5 G SUP 10A.16.1D explains how applications should be submitted.

Moving between firms

10A.14.6 G If it is proposed that an FCA-approved person will no longer be performing an FCA controlled function under an arrangement entered into by one firm or one of its contractors, but will be performing the same or a different FCA controlled function under an arrangement entered into by a new firm or one of its contractors (whether or not the new firm is in the same group as the old firm), the new firm will be required to make a fresh application for the performance of the FCA controlled function by that person.

10A.14.7 G In certain circumstances, when the FCA already has the information it would usually require, a shortened version of the relevant Form A may be completed. See the notes relevant to each form for full details.

Ceasing to perform an FCA controlled function

10A.14.8 R A firm must submit to the FCA a completed Form C, in the form set out in SUP 10A Annex 6R, no later than seven business days after an FCA-approved person ceases to perform an FCA controlled function. This does not apply if the firm has already notified the FCA of the proposal to do that using Form E in accordance with this chapter or has notified the PRA of the proposal to do that using the PRA’s Form E in accordance with SUP 10B of the PRA’s Handbook.

10A.14.9 G SUP 10A.16.2R explains how notifications should be submitted.

10A.14.10 R (1) A firm must notify the FCA as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of an FCA-approved person.

(2) Form C is qualified if the information it contains:

(a) relates to the fact that the firm has dismissed, or suspended, the FCA-approved person from its employment; or
(b) relates to the resignation by the FCA-approved person while under investigation by the firm, the FCA or any other regulatory body; or

(c) otherwise reasonably suggests that it may affect the FCA’s assessment of the FCA-approved person’s fitness and propriety.

10A.14.11 G Notification under SUP 10A.14.10R may be made by telephone, email or fax and should be made, where possible, within one business day of the firm becoming aware of the information. If the firm does not submit Form C, it should inform the FCA in due course of the reason. This could be done using Form D, if appropriate.

10A.14.12 G A firm is responsible for notifying the FCA if any FCA-approved person has ceased to perform an FCA controlled function under an arrangement entered into by its appointed representative or former appointed representative.

10A.14.13 G A firm can submit Form C or Form E to the FCA in advance of the cessation date. When a person ceases the arrangement under which he performs an FCA controlled function, he will automatically cease to be an FCA-approved person in relation to that FCA controlled function. A person can only be an FCA-approved person in relation to a specific FCA controlled function. Therefore, a person is not an FCA-approved person during any period between ceasing to perform one FCA controlled function (when he is performing no other FCA controlled function) and being approved in respect of another FCA controlled function.

10A.14.14 G Sending forms promptly will help to ensure that any fresh application can be processed within the standard response times.

Changes to an approved person's personal details

10A.14.15 R If an FCA-approved person’s title, name or national insurance number changes, the firm for which the person performs an FCA controlled function, he must notify the FCA on Form D, in the form set out in SUP 10A Annex 7R, of that change within seven business days of the firm becoming aware of the matter.

10A.14.16 G The duty to notify in SUP 10A.14.15R does not apply to changes to an FCA-approved person’s private address.

10A.14.17 R If a firm becomes aware of information which would reasonably be material to the assessment of an FCA-approved person’s, or a FCA candidate’s, fitness and propriety (see FIT), it must inform the FCA on Form D, or (if it is more practical to do so and with the prior agreement of the FCA) by e-mail or fax, as soon as practicable.

10A.14.18 G SUP 10A.16.2R applies to the submission of Form D.
10A.14.19  
Failing to disclose relevant information to the FCA may be a criminal offence under section 398 of the Act.

10A.14.20  
The duty to notify in SUP 10A.14.17R extends to any circumstances that would normally be declared when giving the information required for section 5 of Form A or matters considered in FIT 2.

10A.14.21  
(1) If, in relation to a firm which has completed the relevant Form A (SUP 10A Annex 4D), any of the details relating to arrangements and FCA controlled functions are to change, the firm must notify the FCA on Form D (SUP 10A Annex 7R).

(2) The notification under (1) must be made as soon as reasonably practicable after the firm becomes aware of the proposed change.

(3) This also applies in relation to an FCA controlled function for which an application was made using Form E.

(4) This rule also applies to a firm in respect of an approved person, to whom the grandfathering arrangements relating to the coming into force of the Act applied as if the firm had completed the relevant Form A for that person.

10A.14.22  
SUP 10A.16.2R also applies to the submission of Form D under SUP 10A.14.21R.

10A.14.23  
An example of where a firm should use Form D is when an individual who is appointed by one appointed representative becomes employed by another appointed representative but continues to perform the customer function for the firm. The firm should notify the FCA by completing Section 1.07 of Form D.

Ongoing alerts for retail adviser complaints

10A.14.24  
(1) A firm must notify the FCA, in the form set out in SUP 10 Annex 9R, where:

(a) in any twelve-month period, it has upheld three complaints about matters relating to the retail investment activities carried out by any one retail investment adviser; or

(b) it has upheld a complaint about matters relating to the retail investment activities carried out by a retail investment adviser, where the redress paid exceeds £50,000.

(2) (a) Notifications made under (1)(a) must be made by the end of the period of 20 business days, beginning on the day in which the firm has upheld the third complaint.
(b) Notifications made under (1)(b) must be made by the end of the period of 20 business days, beginning on the day in which the firm has upheld the complaint.

10A.14.25 G For the purpose of SUP 10A.14.24R:

(1) when calculating the number of complaints in SUP 10A.14.24R(1)(a), the firm should exclude complaints previously notified to the FCA under this rule;

(2) redress, under SUP 10A.14.24R(1)(b), should be interpreted to include an amount paid, or cost borne, by the firm, where a cash value can be readily identified, and should include:

(a) amounts paid for distress and inconvenience;

(b) a free transfer out to another provider which transfer would normally be paid for;

(c) goodwill payments and goodwill gestures;

(d) interest on delayed settlements;

(e) waiver of an excess on an insurance policy; and

(f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred; and

(3) if a firm reports on the amount of redress paid under SUP 10A.14.24R(1)(b), the redress should not include repayments or refunds of premiums which had been taken in error (for example where a firm had been taking, by direct debit, twice the actual premium amount due under a policy); the refund of the overcharge would not count as redress.

[Note: See DISP 1.10.2AR for the duty to notify complaints under the complaints reporting rules]

10A.14.26 R Notifications under SUP 10A.14.24R must be made electronically using a method of notification prescribed by the FCA.

10A.15 References and accurate information

References

10A.15.1 R (1) If a firm (A):
(a) is considering appointing a person to perform any FCA controlled function;

(b) requests another firm (B), as a current or former 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.

(2) When giving the information to A under (1), B must have regard to the purpose of the request and, in particular, to:

(a) any outstanding liabilities of that person from commission payments;

(b) any relevant outstanding or upheld complaint from an eligible complainant against that person;

(c) section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime);

(d) FIT 2 (Main assessment criteria); and

(e) if SUP 16.8.1G(1) (Persistency reports from insurers) applies to B, the persistency of any life policies sold by that person.

10A.15.2 G The requirement in SUP 10A.15.1R(1) 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 FCA 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.

10A.15.3 G A firm supplying a reference in accordance with SUP 10A.15.1R owes a duty to its former employee and the recipient firm to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The firm may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based.

The need for complete and accurate information

10A.15.4 G The obligations to supply information to:

(1) the FCA under either SUP 10A.14.8R or SUP 10A.14.10R;
(2) another firm under SUP 10A.15.1R;

apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a firm and an employee upon termination of the employee’s employment. A firm should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

10A.15.5 G Failing to disclose relevant information to the FCA may be a criminal offence under section 398 of the Act.

10.16 How to apply for approval and give notifications

10A.16.1 D (1) This direction applies to an application under Form A or Form E.

(2) An application by a firm other than a credit union must be made by submitting the Form online at fca.org.uk using the form specified on the FCA’s and PRA’s ONA system.

(3) An application by a credit union must be made using the form in SUP 10A Annex 4D or SUP 10A Annex 8D and must be submitted in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

(4) Where a firm is obliged to submit an application online under (2), if the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a firm must use the form in SUP 10A Annex 4D or SUP 10A Annex 8D and submit it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

10A.16.2 R (1) This rule applies to a notification under Form C or Form D.

(2) A notification must be made in accordance with SUP 10A.16.1D, except that the annexes to SUP 10A in which the forms are to be found are SUP 10A Annex 6R or SUP 10A Annex 7R, rather than the Annexes mentioned in SUP 10A.16.1D.

10A.16.3 G If the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, the FCA and PRA will endeavour to publish a notice on their websites confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 10A.16.1D(4) and SUP 15.7.4R to SUP 15.7.9G (Form and method of notification) should be used.

10A.16.4 G Where SUP 10A.16.1D(4) or the equivalent situation under SUP 10A.16.2R applies to a firm, GEN 1.3.2R (Emergency) does not apply.
10A.17 **Further questions**

10A.17.1 G A list of frequently asked questions and answers is at SUP 10A Annex 1.

10A.17.2 G If the *firm* or its advisers have further questions, they should contact the *FCA’s* Contact Centre (see SUP 10A.12.6G).

**10A Annex 1G Frequently asked questions**

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Requirements of the regime</strong></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Does pre-approval apply to individuals taking up a new <em>FCA controlled function</em> within the same <em>firm</em>?</td>
</tr>
<tr>
<td>2</td>
<td>What are the procedures for ‘emergency situations’?</td>
</tr>
<tr>
<td>3</td>
<td>Can a <em>person</em> be approved for more than one <em>FCA controlled function</em>?</td>
</tr>
<tr>
<td></td>
<td>Question</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>4</td>
<td>Do the FCA controlled functions apply to an incoming EEA firm that is providing cross border services into the United Kingdom?</td>
</tr>
<tr>
<td>5</td>
<td>May any activity be outsourced by a firm?</td>
</tr>
<tr>
<td>6</td>
<td>Can an FCA significant-influence function be outsourced?</td>
</tr>
<tr>
<td>7</td>
<td>Do Lloyd’s underwriting agents still require registration with Lloyd’s?</td>
</tr>
<tr>
<td>8</td>
<td>What should a firm do if it is unsure whether an individual needs approval?</td>
</tr>
</tbody>
</table>

**Submitting an application**  

<table>
<thead>
<tr>
<th></th>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Who applies for approval?</td>
<td>The firm. See section 60 of the Act (Applications for approval).</td>
</tr>
</tbody>
</table>
### 10 What is the role of the FCA candidate in the application process?

Before the *firm* submits the relevant Form A or Form E, it must verify the information contained in it. As part of this verification, the Form provides for the *FCA candidate* to confirm the accuracy of the information given by the *firm* so far as it relates to him.

### 11 What checks should a *firm* make on a FCA candidate before submitting an application for approval from the FCA?

The *FCA* expects *firms* to perform due and diligent enquiries into their *FCA candidates* before they submit an application to the *FCA* for approval. The *FCA*'s approval process is not a substitute for the checks that a *firm* should be carrying out on its prospective recruits. It is for the *firm* to determine what checks are appropriate but, in making its decision, a *firm* should have regard to the *FCA controlled function* to which the application relates. *Firms*’ enquiries should include checks to verify relevant qualifications and previous employment. Note also the provisions of *EG 6*.

### 12 Should these checks include a check of criminal records?

It is for senior management to decide what checks should be made. In deciding if it is necessary to carry out a check of criminal records, the *firm* should consider that the *FCA* does not routinely carry out these checks during the approval process. By virtue of the *rehabilitation exceptions orders*, the *FCA* and the industry also have a right to ask about the spent criminal convictions specified in those Orders, as well as any unspent criminal convictions, in order to assess the suitability of *FCA candidates* for *approved person* status (see section 5 of the relevant Form A (Application to perform controlled functions under the approved persons regime)). Note also the provisions of *EG 6* (Publicity).

### 13 What is the "fit and proper" test for approval?

Section 61(1) of the *Act* (Determination of applications) provides that the *FCA* may grant an application only if it is satisfied that the *FCA candidate* is a fit and proper *person* to perform the relevant function. In determining this question, the *Act* sets out the matters to which the *FCA* may have regard (section 61(2)) and the *FCA* has given guidance on this in *FIT*. 
<table>
<thead>
<tr>
<th></th>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>If a <em>firm</em> is unsure whether or not something may have an impact upon an individual’s fitness and propriety, should it be disclosed?</td>
<td>Yes, always. The deliberate non-disclosure of material facts is taken very seriously by the <em>FCA</em> as it is seen as possible evidence of current dishonesty. Therefore, if in doubt, disclose.</td>
</tr>
<tr>
<td>15</td>
<td>What happens if adverse information comes to light after the application form has been submitted or after the individual has been <em>FCA</em>-approved?</td>
<td>The <em>firm</em> must inform the <em>FCA</em> at the earliest opportunity. See <em>SUP</em> 10A.14.17R.</td>
</tr>
<tr>
<td>16</td>
<td>Will the <em>FCA</em> consider an application in respect of a <em>FCA candidate</em> who has not yet signed a contract with the <em>firm</em>?</td>
<td>Yes, as the <em>FCA</em> will consider the arrangement under which the <em>FCA candidate</em> will perform the function. However, the <em>FCA</em> will not consider speculative or provisional applications - such as for the <em>FCA candidates</em> in an election to a mutual society Board. The <em>FCA</em> must be informed immediately of any material changes to the information provided on the application form which arises before the application has been determined. All changes must be communicated to the <em>FCA</em> by the <em>firm</em> making the application (see <em>SUP</em> 15.6.4R). Failure to notify the <em>FCA</em> may result in a delay in processing or rejection or both.</td>
</tr>
<tr>
<td>17</td>
<td>How can credit unions get a supply of application forms (Forms A to F)?</td>
<td>These can be ordered from the <em>FCA</em>’s Customer Contact Centre. There is no charge for an application form.</td>
</tr>
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<td></td>
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</tr>
<tr>
<td>18</td>
<td>Is there a separate fee for making an application for \textit{FCA-approved person} status?</td>
<td>No.</td>
</tr>
<tr>
<td>19</td>
<td>Must all gaps in previous employment be explained?</td>
<td>Yes.</td>
</tr>
<tr>
<td><strong>FCA procedure</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Does the \textit{FCA} verify the information provided to it?</td>
<td>Yes, as far as possible, information is verified.</td>
</tr>
<tr>
<td>21</td>
<td>Will the \textit{FCA} handle information confidentially?</td>
<td>Yes. The \textit{FCA} is obliged to handle all information confidentially and is subject to the provisions of the Data Protection Act 1998.</td>
</tr>
<tr>
<td>22</td>
<td>How long will the \textit{FCA} take to process an application for \textit{FCA-approved person} status?</td>
<td>The length of time taken to process the application will vary as it is dependent upon the application under consideration. The \textit{FCA} publishes standard response times on its website at <a href="http://www.fca.org.uk">www.fca.org.uk</a> setting out how long the application process is expected to take in practice. From time to time, the \textit{FCA} also publishes its performance against these times. However, if, for example, information is missing from the application, or the information provided gives the \textit{FCA} cause for concern, or the \textit{FCA} already has in its possession relevant information which gives rise to concerns, processing time will almost always be longer. In each case, the \textit{FCA} will notify the \textit{firm} of any extension to the processing times.</td>
</tr>
<tr>
<td>23</td>
<td>Will the \textit{firm} and individual be notified if there is a delay in processing the application form?</td>
<td>Yes. The \textit{FCA} will contact the \textit{firm} explaining the position and, where appropriate, giving the reasons for delay. It will then be the responsibility of the \textit{firm} to keep the \textit{FCA candidate} and any other interested party informed.</td>
</tr>
<tr>
<td></td>
<td>How are non-routine cases handled?</td>
<td>Refer to DEPP 2.</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>25</td>
<td>Can the FCA apply conditions to an FCA-approved person?</td>
<td>No. The application can either be granted or refused. The Act provides no equivalent to the limitations or requirements which may be included in permissions. If the application is refused, the firm may re-apply in respect of the same individual but a different FCA controlled function. If it is considering doing this, the firm is encouraged to discuss the matter with the FCA. Where there are reasonable grounds for doing so, the FCA may require a firm to provide information about an FCA-approved person (see section 165 of the Act (Power to require information)).</td>
</tr>
<tr>
<td>26</td>
<td>Will the firm be issued with confirmation of approval?</td>
<td>Yes. The firm will be sent a letter setting out the effective date of approval together with the FCA controlled function for which the individual has been FCA-approved. It will then be the firm’s responsibility to inform the individual and any other interested party, for example any appointed representative.</td>
</tr>
<tr>
<td><strong>Withdrawing an application</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Can a firm withdraw its application?</td>
<td>Yes, but only with the consent of the FCA candidate. See section 61(5) of the Act (Determination of applications).</td>
</tr>
<tr>
<td>28</td>
<td>What happens if the individual refuses to consent to the withdrawal of the application?</td>
<td>The FCA will consider with all interested parties what to do. If it proposes to refuse the application, it will give a warning notice to all interested parties. See section 62 of the Act (Applications for approval: procedure and right to refer to the Tribunal).</td>
</tr>
<tr>
<td>29</td>
<td>Can the firm withdraw only part of an application – for instance, in relation to a specific FCA controlled function?</td>
<td>The FCA will allow the firm to amend its application at any time before determination with the consent of all other interested parties. Whether the amendment will have the effect of amounting to a fresh application will be considered on a case by case basis.</td>
</tr>
</tbody>
</table>
30 How and when must the firm report to the FCA potentially adverse information about an FCA-approved person’s fitness and propriety?

Normally, the firm should report such matters to the FCA on Form D once it is reasonably satisfied as to the information’s validity (SUP 10A.14.17R). (See also, Chapter 11 of the Principle for Businesses sourcebook (PRIN) and Statement of Principle 4 in Chapter 2 of the Statements of Principle and Code of Practice for Approved Persons (APER).) However, if an FCA-approved person is dismissed, is suspended, or resigns while under investigation by the firm, the FCA or another regulatory body, or there are any other matters that might affect the individual’s fitness and propriety to perform an FCA controlled function, the firm should inform the FCA (SUP 10A.14.10R) that it will be submitting a Form C containing adverse information. Full details must then be provided within seven business days, on the Form C (SUP 10A.14.8R).

31 For how long are individuals accountable to the FCA after ceasing to be an FCA-approved person?

A person is guilty of misconduct if, while an FCA-approved person, he fails to comply with a Statement of Principle or is knowingly concerned in the contravention by a firm of a requirement in the Act or the Handbook or certain other requirements. But the FCA may not bring proceedings after three years from when it first knew of the misconduct.

How does the customer function relate to the training and competence requirements?

<table>
<thead>
<tr>
<th>Activity</th>
<th>Products/sectors in TC Appendix 1</th>
<th>FCA controlled function</th>
<th>SUP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advising only,</td>
<td>2-9</td>
<td>customer function (CF 30)</td>
<td>10A.10.4R</td>
</tr>
<tr>
<td>Undertaking an activity</td>
<td>10-11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advising and dealing</td>
<td>12-13</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 10A Annex 2 Approved person regime: summary of forms and their use for applications for approval to perform an FCA-controlled function

<table>
<thead>
<tr>
<th>Function</th>
<th>Form</th>
<th>Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person about to perform an <em>FCA controlled function</em> if he has never been approved by the FCA or PRA before.</td>
<td>A</td>
<td>Submitted by the <em>firm</em> making the application before activities requiring approval commence.</td>
</tr>
<tr>
<td>Candidate is to perform an <em>FCA significant-influence function</em> and either has current approval to perform an <em>FCA significant-influence function</em> or a <em>PRA controlled function</em>, or has had such an approval within the previous six <em>months</em>.</td>
<td>Shortened Form A if conditions met</td>
<td>Submitted by the <em>firm</em> making the application before activities requiring approval commence.</td>
</tr>
<tr>
<td>Candidate is to perform the <em>customer function</em> and is either an <em>FCA-approved person</em> or a <em>PRA-approved person</em>, or was one within the previous six <em>months</em>.</td>
<td>Shortened Form A if conditions met</td>
<td>Submitted by the <em>firm</em> making the application before activities requiring approval commence.</td>
</tr>
<tr>
<td>Candidate ceased to be an <em>approved person</em> more than six months ago.</td>
<td>A</td>
<td>Submitted by the <em>firm</em> making the application before activities requiring approval commence.</td>
</tr>
<tr>
<td>Candidate is seeking to perform a <em>significant-influence function</em> for the first time or ceased to have approval from the <em>FCA</em> or <em>PRA</em> to perform such function more than six <em>months</em> ago.</td>
<td>A</td>
<td>Submitted by the <em>firm</em> making the application before activities requiring approval commence.</td>
</tr>
<tr>
<td>Firm applying for an outstanding application to perform an <em>FCA controlled function</em> to be withdrawn.</td>
<td>B</td>
<td>Submitted by the <em>firm</em>: signed by all interested parties.</td>
</tr>
<tr>
<td>Person ceasing to perform an <em>FCA controlled function</em>.</td>
<td>C (unless it should be notified under Form E)</td>
<td>Submitted by the <em>firm</em> within seven business days of approved person ceasing to perform controlled function(s).</td>
</tr>
<tr>
<td>Description</td>
<td>Letter</td>
<td>Submission Requirement</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>--------</td>
<td>----------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>If an FCA-approved person’s title, name or national insurance number changes, or there is information which may be material to the continuing assessment of an approved person’s fitness and propriety.</td>
<td>D</td>
<td>Submitted by firm within seven business days of the firm becoming aware of the matter.</td>
</tr>
<tr>
<td><em>Person</em> remaining with the same firm but changing FCA controlled functions (excluding where the person is changing from a customer function to a significant-influence function).</td>
<td>E</td>
<td>Submitted by firm to the FCA before changes take place.</td>
</tr>
<tr>
<td><em>Person</em> remaining with the same firm but changing from a customer function to an FCA significant-influence function.</td>
<td>A</td>
<td>See examples in this table relating to the use of Form A</td>
</tr>
<tr>
<td><em>Person</em> remaining with the same firm but giving up a PRA controlled function and taking up an FCA controlled function.</td>
<td>E</td>
<td>Submitted by firm to the FCA before changes take place.</td>
</tr>
<tr>
<td><em>Person</em> remaining with the same firm in the circumstances described in Example 6 in the table in SUP 10A.11.10G (giving up a PRA controlled function triggering need for FCA approval).</td>
<td>E</td>
<td>Submitted by firm to the FCA in hard copy in advance of giving up the PRA governing function.</td>
</tr>
<tr>
<td><em>Person</em> remaining with the same firm but giving up an FCA significant-influence function and taking up a PRA controlled function.</td>
<td>E</td>
<td>Submitted by firm to the PRA before changes take place (see the PRA’s Handbook).</td>
</tr>
</tbody>
</table>
Annex C

New Chapter 10B of the Supervision manual (SUP)

Insert the following new chapter in the appropriate place in the Supervision manual. The text is not underlined.

10B PRA Approved Persons

10B.1 Application

General

10B.1.1 R This chapter applies to every PRA-authorised person.

10B.1.2 G This chapter is also relevant to every PRA-approved person.

10B.1.3 G The rules in this chapter specify descriptions of PRA controlled functions under section 59 of the Act (Approval for particular arrangements).

10B.1.4 G The directions in this chapter relate to the manner in which a firm must apply for the PRA’s approval under section 59 of the Act and other procedures.

Overseas firms: UK services

10B.1.5 R This chapter does not apply to an overseas firm in relation to regulated activities which are carried on in the United Kingdom other than from an establishment maintained by it or its appointed representative in the United Kingdom.

Overseas firms: UK establishments

10B.1.6 R Only the following PRA controlled functions apply to an overseas firm which maintains an establishment in the United Kingdom from which regulated activities are carried on:

(1) 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 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 chief executive function;

(4) the PRA required functions;

(5) the systems and controls function.

Incoming EEA firms and incoming Treaty firms

10B.1.7 R This chapter does not apply to:

(1) an incoming EEA firm; or

(2) an incoming Treaty firm;

if and in so far as the question of whether a person is fit and proper to perform a particular function in relation to that firm is reserved, under any of the Single Market Directives, the Treaty or the auction regulation, to an authority in a country or territory outside the United Kingdom.

10B.1.8 G SUP 10B.1.7R reflects the provisions of section 59(8) of the Act and, in relation to an incoming Treaty firm the Treaty. It preserves the principle of Home State prudential regulation. In relation to an incoming EEA firm exercising an EEA right, or an incoming Treaty firm exercising a Treaty right, the effect is to reserve to the Home State regulator the assessment of the fitness and propriety of a person performing a function in the exercise of that right. A member of the governing body, or the notified UK branch manager, of an incoming EEA firm, acting in that capacity, will not therefore have to be approved by the PRA under the Act.

10B.1.9 G Notwithstanding SUP 10B.1.8G, an incoming EEA firm (other than an EEA pure reinsurer) or incoming Treaty firm will have had to consider the impact of the Host State rules with which it is required to comply when carrying on a passported activity or Treaty activity through a branch in the United Kingdom. An incoming EEA firm (other than an EEA pure reinsurer) will have been notified of those provisions under Part II of Schedule 3 to the Act in the course of satisfying the conditions for authorisation in the United Kingdom.

10B.1.10 G An incoming EEA firm will have to consider, for example, the position of a branch manager based in the United Kingdom who may also be performing a function in relation to the carrying on of a regulated activity not covered by the EEA right of the firm. In so far as the function is within the description of a PRA controlled function, the firm will need to seek approval for that person to perform that PRA controlled function.
Incoming EEA firms: passported activities from a branch

10B.1.11 R None of the *PRA controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*.

Incoming EEA firms etc with top-up permission activities from a UK branch

10B.1.12 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the *PRA required functions* apply.

Committees of the Society of Lloyd’s

10B.1.13 R For the purpose of *SUP 10B.6.1R* (the *director function*), “director” includes an executive member of a committee to which the *Council of the Society of Lloyd’s* directly delegates authority to carry out the *Society’s regulatory functions*.

10B.1.14 R For the purpose of *SUP 10B.6.3R* (the non-executive director function), "*non-executive director*" includes a non-executive member of a committee to which the *Council of the Society of Lloyd’s* directly delegates authority to carry out the *Society’s regulatory functions*.

Insolvency practitioners

10B.1.15 R This chapter does not apply to a function performed by:

   (1) a *person* acting as an insolvency practitioner within the meaning of section 388 of the *Insolvency Act 1986*; or

   (2) a *person* acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the *Insolvency Act 1986*; or

   (3) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the *Insolvency (Northern Ireland) Order 1989*; or

   (4) a *person* acting as a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the *Insolvency (Northern Ireland) Order 1989*.

Appointed representatives

10B.1.16 G The *PRA* has no special rule relating to *appointed representatives*. Therefore, *SUP 10B* applies to an *appointed representative of a firm* in the same way as it does to any other contractor of the *firm* (see *SUP 10B.3.1R*). In practice in *SUP 10B* the main application to *appointed representatives* of a *firm* will be to people seconded by the *appointed representative* to the *firm*.
10.2 Purpose

10B.2.1 G The immediate purpose of SUP 10B.3 to SUP 10B.9 is to specify, under section 59 of the Act, descriptions of the PRA controlled functions which are listed in SUP 10B.4.3R. The underlying purpose is to establish, and mark the boundaries of, the PRA’s "approved persons regime".

10.3 Basic rules for all PRA controlled functions

The need for an arrangement

10B.3.1 R A function is a PRA controlled function only to the extent that it is performed under an arrangement entered into by:

(1) a firm; or

(2) a contractor of the firm;

in relation to the carrying on by the firm of a regulated activity.

10B.3.2 G Sections 59(1) and (2) of the Act provide that approval is necessary in respect of a PRA controlled function which is performed under an arrangement entered into by a firm, or its contractor (typically an appointed representative), in relation to a regulated activity.

10B.3.3 G Arrangement is defined in section 59(10) of the Act as any kind of arrangement for the performance of a function which is entered into by a firm or any of its contractors with another person and includes the appointment of a person to an office, his becoming a partner, or his employment (whether under a contract of service or otherwise). For the provisions in this chapter relating to outsourcing, see SUP 10B.11.6G and SUP 10B.11.7G.

10B.3.4 G If, however, a firm is a member of a group, and the arrangements for the performance of a PRA controlled function of the firm are made by, say, the holding company, the person performing the function will only require approval if there is an arrangement (under section 59(1)) or a contract (under section 59(2)) between the firm and holding company permitting this. This need not be a written contract but could arise, for example, by conduct, custom and practice.

10B.3.5 G The arrangement must be “in relation to” the carrying on of a regulated activity. Regulated activities are defined in the Glossary by reference to the Regulated Activities Order. This order prescribes the activities which are regulated activities for the purposes of the Act.

Significant-influence functions
10B.3.6 R Each PRA controlled function is one which comes within the definition of a significant-influence function.

10B.3.7 G Section 59(6) of the Act says that the PRA may specify a description of function as a PRA controlled function only if, in relation to the carrying on of a regulated activity by a firm, it is satisfied that the function is a significant-influence function.

10B.3.8 G Section 59(7B) of the Act says that a significant-influence function, in relation to the carrying on of a regulated activity by a firm, means a function that is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the firm’s affairs, so far as relating to the activity.

10B.3.9 G SUP 10B.3.6R gives effect to sections 59(6) and 59(7B) of the Act.

10B.3.10 G Whether a function is likely to result in the person responsible for its performance exercising significant influence on the conduct of the firm’s affairs is a question of fact in each case. The PRA has identified the PRA controlled functions as satisfying this condition.

Actions for damages

10B.3.11 R A contravention of the rules in SUP 10B (other than SUP 10B.1 to SUP 10B.9) gives rise to a right of action by a private person under section 138D of the Act (and each of those rules is specified under section 138D(1) of the Act as a provision giving rise to such a right of action).

10.4 Specification of functions

10B.4.1 R Each of the functions described in SUP 10B.4.3R (the table of PRA controlled functions) is a PRA controlled function.

10B.4.2 G The fact that a person may be approved for one purpose does not have the effect of bringing all his activities within that PRA controlled function.

10B.4.3 R PRA controlled functions

<table>
<thead>
<tr>
<th>Type</th>
<th>CF</th>
<th>Description of PRA controlled function</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRA governing functions</td>
<td>1</td>
<td>Director function</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>Non-executive director function</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>Chief executive function</td>
</tr>
</tbody>
</table>
10.5 Temporary vacancies

10B.5.1 R If:

1. a firm appoints an individual to perform a function which, but for this rule, would be a PRA controlled function;

2. the appointment is to provide cover for an approved person whose absence is:
   a. temporary; or
   b. reasonably unforeseen; and

3. the appointment is for less than 12 weeks in a consecutive 12-month period;

the description of the relevant PRA controlled function does not relate to those activities of that individual.

10B.5.2 G SUP 10B.5.1R enables cover to be given for holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy. However, as soon as it becomes apparent that a person will be performing a PRA controlled function for more than 12 weeks, the firm should apply for approval.

10B.6 PRA governing functions

Director function (CF1)
10B.6.1 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 a director (other than non-executive director) of that firm.

10B.6.2 R (1) If a firm is a body corporate (other than a limited liability partnership), the director function is also the function of acting in the capacity of 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 of a parent undertaking or holding company of the firm; and

(b) whose decisions or actions are regularly taken into account by the governing body of the firm.

(2) (1) does not apply if that parent undertaking or holding company has a Part 4A permission or is regulated by an EEA regulator.

(3) (1) does not apply to the function falling into SUP 10B.6.4R (non-executive director of the parent undertaking or holding company).

Non-executive director function

10B.6.3 R If a firm is a body corporate, the non-executive director function is the function of acting in the capacity of a non-executive director of that firm.

10B.6.4 R (1) If a firm is a body corporate, the non-executive director function is also the function of acting in the capacity of a person:

(a) who is a non-executive director of a parent undertaking or holding company; and

(b) whose decisions or actions are regularly taken into account by the governing body of the firm.

(2) However, (1) does not apply if that parent undertaking or holding company has a Part 4A permission or is regulated by an EEA regulator.

10B.6.5 R If a firm is a long-term insurer, the non-executive director function is also the function of acting in the capacity of an individual who, as a member of a committee having the purpose of a with-profits committee, has responsibility in relation to governance arrangements for with-profits business under COBS 20.3 (Principles and Practices of Financial Management). This does not apply to an individual performing the director function.

10B.6.6 G A firm should notify the PRA if a person moves between certain roles making up the non-executive director function (SUP 10B.12.6R).

Chief executive function (CF3)
10B.6.7  R  The chief executive function is the function of acting in the capacity of a chief executive of a firm.

10B.6.8  G  This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the governing body:

(1) for the conduct of the whole of the business (or relevant activities); or

(2) in the case of a branch in the United Kingdom of an overseas firm, for the conduct of all of the activities subject to the UK regulatory system.

10B.6.9  G  For a branch in the United Kingdom of an overseas firm, the PRA would not normally expect the overseas chief executive of the firm as a whole to be approved for this function where there is a senior manager under him with specific responsibility for those activities of the branch which are subject to the UK regulatory system. In some circumstances, the person within the firm responsible for UK operations may, if the function is likely to enable him to exercise significant influence over the branch, also perform the chief executive function.

10B.6.10 G  A person performing the chief executive function may be a member of the governing body but need not be. If the chairman of the governing body is also the chief executive, he will be discharging this function. If the responsibility is divided between more than one person but not shared, there is no person exercising the chief executive function. But if that responsibility is discharged jointly by more than one person, each of those persons will be performing the chief executive function.

10B.6.11 G  Note that a body corporate may be a chief executive. If so, it will need to be approved to perform the chief executive function.

Partner function (CF4)

10B.6.12  R  If a firm is a partnership, the partner function is the function of acting in the capacity of a partner in that firm.

10B.6.13  R  If a firm is a limited liability partnership, the partner function extends to the firm as if the firm were a partnership and a member of the firm were a partner.

10B.6.14  R  If a partnership is registered under the Limited Partnership Act 1907, the partner function does not extend to any function performed by a limited partner.

Director of unincorporated association function (CF5)

10B.6.15  R  If a firm is an unincorporated association, the director of unincorporated association function is the function of acting in the capacity of a director of the unincorporated association.
Small friendly society function (CF6)

10B.6.16 R (1) If a firm is a non-directive friendly society, the small friendly society function is the function of directing its affairs, either alone or jointly with others.

(2) If the principal purpose of the firm is to carry on regulated activities, each person with responsibility for directing its affairs performs the PRA controlled function.

(3) If the principal purpose of the firm is other than to carry on regulated activities, a person performs the small friendly society function only to the extent that he has responsibility for a regulated activity.

10B.6.17 R (1) Each person on the non-directive friendly society’s governing body will be taken to have responsibility for its regulated activities, unless the firm has apportioned this responsibility to one particular individual to whom it is reasonable to give this responsibility.

(2) The individual need not be a member of the governing body.

10B.6.18 G (1) Typically a non-directive friendly society will appoint a “committee of management” to direct its affairs. However, the governing arrangements may be informal and flexible. If this is the case, the PRA would expect the society to resolve to give responsibility for the carrying on of regulated activities to one individual who is appropriate in all the circumstances. That individual may, for example, have the title of chief executive or similar. The individual would have to be a PRA-approved person under SUP 10B.6.16R.

(2) The PRA expects that any apportionment of responsibilities will have taken place under SYSC 2.1.1R. The PRA may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see SYSC 2.2).

Insurance mediation

10B.6.19 G A firm carrying on insurance mediation activity, other than a sole trader, must allocate to a director or senior manager the responsibility for the firm’s insurance mediation activity (MIPRU 2.2.1R). MIPRU 2.2.2R(1) provides that the firm may allocate this responsibility to one or more of the persons performing a governing function (other than the non-executive director function).

10B.6.20 G Where a person performing a governing function is also responsible for the firm’s insurance mediation activity, the words “(insurance mediation)” will be inserted after the relevant PRA controlled function (see MIPRU 2.2.5G).

10B.7 Other functions included in the governing functions
Systems and controls function

10B.7.1 R Each of the PRA governing functions includes, where apportioned under SYSC 2.1.1R, SYSC 4.3.1R or SYSC 4.4.3R, the systems and controls function. This does not apply to the non-executive director function or the function described in SUP 10B.6.2R.

10B.7.2 G The effect of SUP 10B.7.1R is that a person who is approved to perform a PRA governing function (other than the non-executive director function or the function described in SUP 10B.6.2R) will not have to be specifically approved to perform the systems and controls function. A person who is approved to perform a PRA governing function will have to be additionally approved before he can perform any of the PRA required functions.

The FCA’s apportionment and oversight function (CF8)

10B.7.3 R If:

(1) a person has been approved to perform a PRA governing function in relation to a firm and that approval is still in force;

(2) that person is also performing a function that falls within the apportionment and oversight function in relation to that firm (or would do so except for SUP 10A.11.11R (FCA rule disapplying the apportionment and oversight function in relation to a person approved by the PRA to perform a governing function)); and

(3) that person is not the subject of a current FCA approved person approval for the apportionment and oversight function in relation to that firm;

that PRA governing function includes the apportionment and oversight function (or, if there is more than one such PRA governing function, each them does).

10B.7.4 R If in relation to a firm:

(1) SUP 10B.7.3R has applied to a PRA-approved person;

(2) that person has ceased to perform any PRA governing function (ignoring the expansion of that function by SUP 10B.7.3R); and

(3) that person is still performing what would otherwise be the apportionment and oversight function;

SUP 10B.7.3R continues to apply for three months after that PRA-approved person would otherwise have ceased to perform the PRA controlled function or, if sooner, until the FCA has approved the performance by that person of the apportionment and oversight function in relation to the firm.
10B.7.5 G An example of the way SUP 10B.7.4R works is this. Say that a person (A) is appointed as director and the person who performs the apportionment and oversight function. A will be performing the director function but will not be performing the apportionment and oversight function. Say that later A gives up his role as director but remains as the person who performs apportionment and oversight function. If SUP 10B.7.4R (and the corresponding parts of the FCA’s Handbook) did not apply the result would be that A would cease to perform a PRA controlled function but would start performing the apportionment and oversight function before A had a chance to apply to the FCA for approval. The combined effect of SUP 10B.7.4R and SUP 10A.11 of the FCA’s Handbook is that the firm has three months to secure approval by the FCA for A’s performance of the apportionment and oversight function and during that interim period A keeps his status as a PRA-approved person.

10B.7.6 G Further details of how SUP 10B.7.3R and SUP 10B.7.4R work can be found in SUP 10A.11 of the FCA’s Handbook.

10B.8 PRA required functions

Actuarial function (CF12)

10B.8.1 R The actuarial function is the function of acting in the capacity of an actuary appointed by a firm under SUP 4.3.1R to perform the duties set out in SUP 4.3.13R.

With-profits actuary function (CF12A)

10B.8.2 R The with-profits actuary function is the function of acting in the capacity of an actuary appointed by a firm under SUP 4.3.1R to perform the duties set out in SUP 4.3.16AR.

Lloyd’s actuary function (CF12B)

10B.8.3 R The Lloyd’s actuary function is the function of acting in the capacity of the actuary appointed under SUP 4.6.1R to perform the duties set out in SUP 4.6.7R.

10B.9 Systems and controls function

Systems and controls function (CF28)

10B.9.1 R The systems and controls function is the function of acting in the capacity of an employee of the firm with responsibility for reporting to the governing body of a firm, or the audit committee (or its equivalent) in relation to:
(1) its financial affairs;

(2) setting and controlling its risk exposure (see SYSC 3.2.10G and SYSC 7.1.6R); and

(3) adherence to internal systems and controls, procedures and policies (see SYSC 3.2.16G and SYSC 6.2).

10B.9.2 R The systems and controls function does not apply in relation to bidding in emissions auctions carried on by a firm that is exempt from MiFID under article 2(1)(i).

10B.9.3 G Where an employee performs the systems and controls function the PRA would expect the firm to ensure that the employee had sufficient expertise and authority to perform that function effectively. A director or senior manager would meet this expectation.

10B.10 Procedures relating to PRA-approved persons

Forms

10B.10.1 G The forms listed in SUP 10B.10.2G are referred to in SUP 10B.11 (Application for approval and withdrawing an application for approval) to SUP 10B.14 (How to apply for approval and give notifications).

10B.10.2 G Table PRA-approved persons forms

<table>
<thead>
<tr>
<th>Form</th>
<th>Purpose</th>
<th>Handbook requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>the relevant Form A</td>
<td>The relevant online form on the FCA’s and PRA’s ONA system or the form in SUP 10B Annex 4D (See Note)</td>
<td>Application to perform controlled functions under the approved persons regime</td>
</tr>
<tr>
<td>Form</td>
<td>Annex/Supplement</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-----------------</td>
<td>-------------</td>
</tr>
<tr>
<td>B</td>
<td>SUP 10B Annex 5R</td>
<td>Notice to withdraw an application to perform controlled functions under the approved persons regime</td>
</tr>
<tr>
<td>C</td>
<td>SUP 10B Annex 6R</td>
<td>Notice of ceasing to perform controlled functions</td>
</tr>
<tr>
<td>D</td>
<td>SUP 10B Annex 7R</td>
<td>Notification of changes in personal information or application details</td>
</tr>
<tr>
<td>E</td>
<td>The relevant online form on the FCA’s and PRA’s ONA system or the form in SUP 10B Annex 8D (See Note)</td>
<td>Internal transfer of an approved person</td>
</tr>
</tbody>
</table>

Note: The form in the SUP annex shown is to be used by credit unions, and by other firms only in the event of a failure of the information technology systems used by the PRA. See the relevant "Handbook requirement".

10B.10.3 G A summary of the forms and their purposes is in SUP 10B Annex 2G.

10B.10.4 G Unless the context otherwise requires, in SUP 10B.10 (Procedures relating to PRA-approved persons) to SUP 10B.14 (How to apply for approval and give notifications) where reference is made to a firm, this also includes an applicant for Part 4A permission, and other persons seeking to carry on regulated activities as an authorised person.

10B.10.5 G Forms B, C, D and E can only be submitted in respect of a PRA-approved person by the firm that submitted a PRA-approved person’s original application (the relevant Form A).
10B.10.6 G Copies of Forms A, B, C, D and E may be obtained from the PRA’s website. Credit unions can obtain copies by email at PRA-ApprovedPersons@bankofengland.co.uk. To contact the PRA for general approved persons enquiries please contact PRA Firm Enquiries:

(1) telephone: +44 (0) 20 3461 7000; or

(2) write to:

PRA Firm Enquiries
Prudential Regulation Authority
20 Moorgate
London EC2R 6DA; or

(3) e-mail: PRA-ApprovedPersons@bankofengland.co.uk.

10B.11 Application for approval and withdrawing an application for approval

When to apply for approval

10B.11.1 G In accordance with section 59 of the Act (Approval for particular arrangements), where a candidate will be performing one or more PRA controlled functions, a firm must take reasonable care to ensure that the candidate does not perform these functions unless he has prior approval from the PRA with the consent of the FCA.

10B.11.2 G Under section 59B of the Act (Role of FCA in relation to PRA decisions) the FCA may arrange with the PRA that in agreed kinds of cases there is no need for the consent of the FCA. There are currently no such arrangements in place.

Failure to apply for approval

10B.11.3 G If a person performs a PRA controlled function without approval it is not only the firm that is accountable. Under section 63A of the Act (Power to impose penalties) if the PRA is satisfied that:

(1) a person (“P”) has at any time performed a PRA controlled function without approval; and

(2) at that time P knew, or could reasonably be expected to have known, that P was performing a PRA controlled function without approval;

it may impose a penalty on P of such amount as it considers appropriate.
How to apply for approval

10B.11.4 D An application by a firm for the PRA’s approval under section 59 of the Act (Approval for particular arrangements) must be made by completing Form A (except where SUP 10B.12.4D requires a Form E).

10B.11.5 G SUP 10B.14.1D explains how applications should be submitted.

Who should make the application?

10B.11.6 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:

(a) the PRA candidate; or

(b) (where the PRA 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 PRA candidate to perform the PRA controlled function. Where a firm has outsourced the performance of a PRA controlled function, the details of the outsourcing determine where responsibility lies and whom the PRA anticipates will submit PRA-approved persons application forms. SUP 10B.11.7G describes some common situations. The firm which is outsourcing is referred to as "A" and the person to whom the performance of the PRA controlled function has been outsourced, or which makes the arrangement for the PRA 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 PRA 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 PRA. See also SYSC 3.2.4G and SYSC 8.1.1R, and SYSC 13.9 for insurers.

10B.11.7 G Outsourcing arrangements

<table>
<thead>
<tr>
<th>Outsourcing arrangements</th>
<th>Submitting form</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Firm A to firm B</strong></td>
<td>The PRA will consider A to have taken reasonable care if it enters into a contract with B under which B is responsible for ensuring that the relevant <em>PRA controlled functions</em> are performed by <em>PRA-approved persons</em>, and that it is reasonable for A to rely on this</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>Outsourcing by A to B (both being a member of the same <em>United Kingdom group</em> and each having its registered office in the <em>United Kingdom</em>)</td>
<td>See <em>SUP 10B.3.4G</em></td>
</tr>
</tbody>
</table>
| (i) A to B, where B is a non-authorised person not part of the same group as A  
(ii) A to B, where A is a *branch* of an *overseas firm* in the *United Kingdom*, and B is an *overseas undertaking* of the same group  
(iii) A to B, where A is a *UK authorised subsidiary* of an *overseas firm*, and B is an *overseas undertaking* of the same group | Responsibility for (as opposed to the performance of) any activity *outsourced* to B will remain with A. See *SYSC 3.2.4G* and *SYSC 8* | A ensures that an individual approved under one of the *PRA controlled functions* has responsibility for the *outsourced arrangement* and A submits a form in relation to that individual |

**Processing an application**

**10B.11.8 G** The *Act* sets out the time that the *PRA* has to consider an application and come to a decision.

**10B.11.9 G** In any case where the application for approval is made by a *person* applying for *permission* under Part 4A of the *Act* the *PRA* has until the end of whichever of the following periods ends last:
(1) the period within which an application for that permission must be determined; and
(2) the period of three months from the time it receives a properly completed application.

10B.11.10 G In any other case it is the period of three months from the time it receives a properly completed application.

10B.11.11 G Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. If forms are not completed fully and honestly, applications will be subject to investigation and the PRA candidate’s suitability to be approved to undertake a PRA controlled function will be called into question. A person who provides information to the PRA that is false or misleading may commit a criminal offence, and could face prosecution under section 398 of the Act regardless of the status of their application.

10B.11.12 G The PRA will as soon as practicable notify the FCA of the receipt of an application to the PRA. There is no need for the firm to copy the application to the FCA.

10B.11.13 G Before making a decision to grant the application or give a warning notice, the PRA may ask the firm for more information about the PRA candidate. If it does this, the period in which the PRA must determine a completed application:

(1) will stop on the day the PRA requests the information; and
(2) will start running again on the day on which the PRA finally receives all the requested information.

10B.11.14 G The FCA may also ask the firm for more information about the PRA candidate. If it does this, the period in which the PRA must determine a completed application is extended in the same way as it is if the PRA asks for the information.

10B.11.15 G The PRA may only grant an application (and the FCA may only give its consent) if it is satisfied that the PRA candidate is a fit and proper person to perform the PRA controlled function stated in the application form. Responsibility lies with the firm making the application to satisfy the PRA and the FCA that the PRA candidate is fit and proper to perform the PRA controlled function applied for.

10B.11.16 G For further guidance on criteria for assessing whether a PRA candidate is fit and proper, see FIT.

Decisions on applications

10B.11.17 G The PRA must either grant the application or, if it proposes not to grant an application, issue a warning notice.
10B.11.18 G Whenever it grants an application, the PRA will confirm this in writing to all interested parties.

10B.11.19 G If the PRA proposes to refuse an application in relation to one or more PRA controlled functions, it must follow the procedures for issuing warning and decision notices.

Withdrawing an application for approval

10B.11.20 R A firm applying to withdraw an application for approval must notify the PRA, using Form B, in the form set out in SUP 10B Annex 5R.

10B.11.21 G Under section 61(5) of the Act (Determination of applications), the firm may withdraw an application only if it also has the consent of the PRA candidate and the person by whom the PRA candidate is or would have been employed, if this is not the firm making the application.

10B.11.22 G The PRA will as soon as practicable notify the FCA of the receipt of a notice of withdrawal. There is no need for the firm to copy the notice to the FCA.

10B.12 Changes to a PRA-approved person’s details

Moving within a firm

10B.12.1 G A PRA-approved person’s job may change from time to time as a result, for instance, of a change in personal job responsibilities or a firm’s regulated activities. Where the changes will involve the person performing one or more PRA controlled functions different from those for which approval has already been granted, then an application must be made to the PRA for approval for the person to perform those PRA controlled functions. The firm must take reasonable care to ensure that an individual does not begin performing a PRA controlled function until the PRA has granted approved person status to that individual in respect of that PRA controlled function. Similarly, a firm must get the PRA’s approval if a person is to start performing a PRA controlled function in relation to that firm when he already has the FCA’s approval to perform an FCA controlled function in relation to that firm.

10B.12.2 G If an FCA-approved person or a PRA-approved person is ceasing to perform FCA controlled functions or PRA controlled functions, as well as applying for approval in respect of PRA controlled functions, SUP 10B.12.4D generally applies. Further details can be found in SUP 10B Annex 2G.
10B.12.3 G If a person is to perform a PRA controlled function for a firm for which he already performs a PRA controlled function or FCA controlled function as an approved person but he is not at the same time ceasing to perform an FCA controlled function or PRA controlled function, a firm should use Form A rather than Form E. It is not mandatory to complete all parts of the form. See the notes relevant to each form for full details.

10B.12.4 D (1) A firm must use Form E where an approved person is both ceasing to perform one or more controlled functions and needs to be approved in relation to one or more PRA controlled functions within the same firm or group.

(2) A firm must not use Form E if the approved person has never before been approved to perform a significant influence function for any firm or has not been the subject of a current approved person approval from the FCA or PRA to perform a significant influence function in relation to any firm for more than six months.

(3) A firm must not use Form E if a notification has been made or should be made under SUP 10B.12.18R (Changes in fitness to be notified under Form D) or SUP 10A.14.17R (the equivalent FCA rule) in relation to any controlled functions that, that person is ceasing to perform (as referred to in (1)) or any controlled function that he is continuing to perform in relation to that firm or a firm in the same group.

10B.12.5 G SUP 10B.14.1D explains how applications should be submitted.

10B.12.6 R If a person is performing the non-executive director function in relation to a firm, the firm must notify the PRA as soon as possible if that person begins to perform or ceases to perform any of the following functions:

(1) the function of acting in the capacity of the chairman of the governing body of the firm; or

(2) the function of acting as a non-executive director who has been appointed by the non-executive directors to act as the senior independent director of that firm; or

(3) the function of acting in the capacity of the chairman of the governing body risk committee of the firm (if there is such a committee). For these purposes, the governing body risk committee means the committee described in SYSC 21.1.5G; or

(4) the function of acting in the capacity of the chairman of the audit committee of the governing body of the firm (if there is such a committee); or

(5) the function of acting in the capacity of the chairman of the remuneration committee of the governing body of the firm (if there is such a committee).
Any such notification must be e-mailed to the PRA’s approved persons mailbox at PRA-ApprovedPersons@bankofengland.co.uk

10B.12.7 G So for example if a non-executive director moves from being chair of the audit committee to chair of the risk committee or adds the role of chair of the audit committee to his existing role as chair of the risk committee he does not require approval from the PRA. However, the firm should notify the PRA of that change as soon as possible. If a person stops performing the non-executive director function altogether, SUP 10B.12.4D or SUP 10B.12.10R apply instead.

Moving between firms

10B.12.8 G If it is proposed that a PRA-approved person will no longer be performing a PRA controlled function under an arrangement entered into by one firm or one of its contractors, but will be performing the same or a different PRA controlled function under an arrangement entered into by a new firm or one of its contractors (whether or not the new firm is in the same group as the old firm), the new firm will be required to make a fresh application for the performance of the PRA controlled function by that person.

10B.12.9 G In certain circumstances, when the PRA already has the information it would usually require, a shortened version of the relevant Form A may be completed. See the notes relevant to each form for full details.

Ceasing to perform a PRA controlled function

10B.12.10 R A firm must submit to the PRA a completed Form C, in the form set out in SUP 10B Annex 6R no later than seven business days after a PRA-approved person ceases to perform a PRA controlled function. This does not apply if the firm has already notified the PRA of the proposal to do that using Form E in accordance with this chapter or has notified the FCA of the proposal to do using the FCA’s Form E in accordance with SUP 10A of the FCA’s Handbook.

10B.12.11 G SUP 10B.14.2R explains how notifications should be submitted.

10B.12.12 R (1) A firm must notify the PRA as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of a PRA-approved person.

(2) Form C is qualified if the information it contains:

(a) relates to the fact that the firm has dismissed, or suspended, the PRA-approved person from its employment; or

(b) relates to the resignation by the PRA-approved person while under investigation by the firm, the PRA or any other regulatory body; or
(c) otherwise reasonably suggests that it may affect the PRA’s assessment of the PRA-approved person’s fitness and propriety.

10B.12.13 G Notification under SUP 10B.12.12R may be made by telephone, fax or email and should be made, where possible, within one business day of the firm becoming aware of the information. If the firm does not submit Form C, it should inform the PRA in due course of the reason. This could be done using Form D, if appropriate.

10B.12.14 G A firm is responsible for notifying the PRA if any PRA-approved person has ceased to perform a PRA controlled function under an arrangement entered into by its appointed representative or former appointed representative.

10B.12.15 G A firm can submit Form C or Form E to the PRA in advance of the cessation date. When a person ceases the arrangement under which he performs a PRA controlled function, he will automatically cease to be a PRA-approved person in relation to that PRA controlled function. A person can only be a PRA-approved person in relation to a specific PRA controlled function. Therefore, a person is not a PRA-approved person during any period between ceasing to perform one PRA controlled function (when he is performing no other PRA controlled function) and being approved in respect of another PRA controlled function.

Changes to a PRA-approved person’s personal details

10B.12.16 R If a PRA-approved person’s title, name or national insurance number changes, the firm for which the person performs a PRA controlled function must notify the PRA on Form D, in the form set out in SUP 10B Annex 7R, of that change within seven business days of the firm becoming aware of the matter.

10B.12.17 G The duty to notify in SUP 10B.12.16R does not apply to changes to a PRA-approved person’s private address.

10B.12.18 R If a firm becomes aware of information which would reasonably be material to the assessment of a PRA-approved person’s, or a PRA-candidate’s, fitness and propriety (see FIT), it must inform the PRA on Form D, or (if it is more practical to do so and with the prior agreement of the PRA) by fax or e-mail, as soon as practicable.

10B.12.19 G SUP 10B.14.2R applies to the submission of Form D.

10B.12.20 G Failing to disclose relevant information to the PRA may be a criminal offence under section 398 of the Act.

10B.12.21 G The duty to notify in SUP 10B.12.18R extends to any circumstances that would normally be declared when giving the information required for section 5 of Form A or matters considered in FIT 2.
10B.12.22 R (1) If, in relation to a firm which has completed the relevant Form A (SUP 10B Annex 4D), any of the details relating to arrangements and PRA controlled functions are to change, the firm must notify the PRA on Form D (SUP 10B Annex 7R).

(2) The notification under (1) must be made as soon as reasonably practicable after the firm becomes aware of the proposed change.

(3) This also applies in relation to a PRA controlled function for which an application was made using Form E.

(4) This rule also applies to a firm in respect of an approved person, to whom the grandfathering arrangements relating to the coming into force of the Act applied as if the firm had completed the relevant Form A for that person.

10B.13 References and accurate information

References

10B.13.1 R (1) If a firm (A):

(a) is considering appointing a person to perform any PRA controlled function;

(b) requests another firm (B), as a current or former 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.

(2) When giving the information to A under (1), B must have regard to the purpose of the request and in particular to:

(a) any outstanding liabilities of that person from commission payments;

(b) any relevant outstanding or upheld complaint from an eligible complainant against that person;

(c) section 5 of the relevant Form A in SUP 10B Annex 4 (Application to perform controlled functions under approved persons regime);

(d) FIT 2 (Main assessment criteria); and
(e) if SUP 16.8.1G(1) (Persistency reports from insurers and data reports on stakeholder pensions) applies to B, the persistency of any life policies sold by that person.

10B.13.2 G The requirement in SUP 10B.13.1R(1) 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 PRA 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.

10B.13.3 G A firm supplying a reference in accordance with SUP 10B.13.1R owes a duty to its former employee and the recipient firm to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The firm may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based.

The need for complete and accurate information

10B.13.4 G The obligations to supply information to:

(1) the PRA under either SUP 10B.12.10R or SUP 10B.12.12R; or

(2) another firm under SUP 10B.13.1R;

apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a firm and an employee upon termination of the employee’s employment. A firm should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

10B.13.5 G Failing to disclose relevant information to the PRA may be a criminal offence under section 398 of the Act.

10.14 How to apply for approval and give notifications

10B.14.1 D (1) This direction applies to an application under Form A or Form E.

(2) An application by a firm other than a credit union must be made by submitting the Form online at www.pra.org.uk using the form specified on the FCA’s and PRA’s ONA system.

(3) An application by a credit union must be made using the form in SUP 10B Annex 4D or SUP 10B Annex 8D and must be submitted in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).
(4) Where a firm is obliged to submit an application online under (2), if the information technology systems used by the PRA fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a firm must use the form in SUP 10B Annex 4D or SUP 10B Annex 8D and submit it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

10B.14.2 R (1) This rule applies to a notification under Form C or Form D.

(2) A notification must be made in accordance with SUP 10B.14.1D except that the annexes to SUP 10B in which the forms are to be found are SUP 10B Annex 6R or SUP 10B Annex 7R rather than the Annexes mentioned in SUP 10B.14.1D.

10B.14.3 G If the information technology systems used by the PRA fail and online submission is unavailable for 24 hours or more, the FCA and PRA will endeavour to publish a notice on their websites confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 10B.14.1D(4) and SUP 15.7.4R to SUP 15.7.9G (Form and method of notification) should be used.

10B.14.4 G Where SUP 10B.14.1D(4) or the equivalent situation under SUP 10B.14.2R applies to a firm, GEN 1.3.2R (Emergency) does not apply.
### SUP 10B Annex 2  
Approved person regime: summary of forms and their use for applications for approval to perform a PRA-controlled function

<table>
<thead>
<tr>
<th>Function</th>
<th>Form</th>
<th>Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Person</em> about to perform a PRA controlled function if he has never been approved by the FCA or PRA before.</td>
<td>A</td>
<td>Submitted by the <em>firm</em> making the application before activities requiring approval commence.</td>
</tr>
<tr>
<td><em>Candidate</em> is to perform a PRA controlled function and either has current approval to perform an FCA significant-influence function or a PRA controlled function or has had such an approval within the previous six months.</td>
<td>Shortened Form A</td>
<td>Submitted by the <em>firm</em> making the application before activities requiring approval commence.</td>
</tr>
<tr>
<td><em>Candidate</em> ceased to be an approved person more than six months ago.</td>
<td>A</td>
<td>Submitted by the <em>firm</em> making the application before activities requiring approval commence.</td>
</tr>
<tr>
<td><em>Candidate</em> is seeking to perform a significant-influence function for the first time or ceased to have approval from the FCA or PRA to perform such a function more than six months ago.</td>
<td>A</td>
<td>Submitted by the <em>firm</em> making the application before activities requiring approval commence.</td>
</tr>
<tr>
<td><em>Firm</em> applying for an outstanding application to perform a PRA controlled function to be withdrawn.</td>
<td>B</td>
<td>Submitted by the <em>firm</em>: signed by all interested parties.</td>
</tr>
<tr>
<td><em>Person</em> ceasing to perform a PRA controlled function.</td>
<td>C</td>
<td>Submitted by the <em>firm</em> within seven business days of approved person ceasing to perform controlled function(s).</td>
</tr>
<tr>
<td>If a PRA-approved person’s title, name or national insurance number changes, or there is information which may be material to the continuing assessment of an approved person’s fitness and propriety.</td>
<td>D</td>
<td>Submitted by <em>firm</em> within seven business days of the firm becoming aware of the matter.</td>
</tr>
<tr>
<td><strong>Person</strong> remaining with the same <strong>firm</strong> but changing <strong>PRA controlled functions.</strong></td>
<td><strong>E</strong></td>
<td><strong>Submitted by firm to the PRA before changes take place.</strong></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Person</strong> remaining with the same <strong>firm</strong> but giving up an <strong>FCA significant-influence function</strong> and taking up a <strong>PRA controlled function.</strong></td>
<td><strong>E</strong></td>
<td><strong>Submitted by firm to the PRA before changes take place.</strong></td>
</tr>
<tr>
<td><strong>Person</strong> remaining with the same <strong>firm</strong> in the circumstances described in <strong>SUP 10B.7.4R</strong> (giving up a <strong>PRA controlled function</strong> triggering need for <strong>FCA approval</strong>).</td>
<td><strong>E</strong></td>
<td><strong>Submitted by firm to the FCA in hard copy in advance of giving up the PRA governing function.</strong></td>
</tr>
<tr>
<td><strong>Person</strong> remaining with the same <strong>firm</strong> but giving up a <strong>PRA controlled function</strong> and taking up an <strong>FCA significant-influence function.</strong></td>
<td><strong>E</strong></td>
<td><strong>Submitted by firm to the FCA before changes take place (see the FCA’s Handbook).</strong></td>
</tr>
<tr>
<td><strong>Person</strong> being appointed to a <strong>PRA governing function</strong> role who is about to start a function that would otherwise have come within the <strong>apportionment and oversight function.</strong></td>
<td><strong>A or E as appropriate</strong></td>
<td><strong>The form should mention that the person is to perform what would otherwise have been the apportionment and oversight function.</strong> See <strong>SUP 10A.11.10G</strong> (table in the <strong>FCA’s Handbook</strong> of examples of how the need for dual <strong>FCA and PRA approval</strong> in relation to <strong>PRA-authorised persons</strong> is reduced).</td>
</tr>
<tr>
<td><strong>Person</strong> moving from one <strong>PRA governing function</strong> role to another while continuing to perform a function that would otherwise have come within the <strong>apportionment and oversight function.</strong></td>
<td><strong>See previous row</strong></td>
<td><strong>See previous row.</strong></td>
</tr>
</tbody>
</table>
Annex D

Amendments to the Transitional Provisions of the Supervision manual (SUP)

Insert the following new section after SUP TP 2. The text is not underlined.

TP 3 Transitional provisions relating to SUP 10A and SUP 10B: Transition from the FSA to the FCA and PRA

TP 3.1 Transition to the FCA

3.1.1 R An approved person who was, as at cutover, approved by the FSA to perform a controlled function specified by the FSA set out in column 1 of the table in SUP TP 3.1.2R in relation to a firm, is deemed to continue to be approved by the FCA to perform the FCA-controlled function in the same row of column 2 in that table in relation to that firm. Column 3 states whether this applies in relation to all firms or just FCA-authorised persons.

3.1.2 R Table: FSA controlled functions transitioned to the FCA

<table>
<thead>
<tr>
<th>FSA controlled function</th>
<th>FCA controlled function into which approved person transitioned</th>
<th>Firms to which transitional relates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director function (CF1)</td>
<td>Director function (CF1)</td>
<td>FCA-authorised persons only</td>
</tr>
<tr>
<td>Non-executive director function (CF2)</td>
<td>Non-executive director function (CF2)</td>
<td>FCA-authorised persons only</td>
</tr>
<tr>
<td>Chief executive function (CF3)</td>
<td>Chief executive function (CF3)</td>
<td>FCA-authorised persons only</td>
</tr>
<tr>
<td>Partner function (CF4)</td>
<td>Partner function (CF4)</td>
<td>FCA-authorised persons only</td>
</tr>
<tr>
<td>Director of unincorporated association function (CF5)</td>
<td>Director of unincorporated association function (CF5)</td>
<td>FCA-authorised persons only</td>
</tr>
<tr>
<td>Small friendly society function (CF6)</td>
<td>Small friendly society function (CF6)</td>
<td>FCA-authorised persons only</td>
</tr>
<tr>
<td>Apportionment and oversight function (CF8)</td>
<td>Apportionment and oversight function (CF8)</td>
<td>All firms</td>
</tr>
<tr>
<td>Compliance oversight function (CF10)</td>
<td>Compliance oversight function (CF10)</td>
<td>All firms</td>
</tr>
<tr>
<td>FSA controlled function</td>
<td>PRA controlled function</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------------------------</td>
<td></td>
</tr>
<tr>
<td>Director function (CF1)</td>
<td>Director function (CF1)</td>
<td></td>
</tr>
<tr>
<td>Non-executive director function (CF2)</td>
<td>Non-executive director function (CF2)</td>
<td></td>
</tr>
<tr>
<td>Chief executive function (CF3)</td>
<td>Chief executive function (CF3)</td>
<td></td>
</tr>
<tr>
<td>Partner function (CF4)</td>
<td>Partner function (CF4)</td>
<td></td>
</tr>
<tr>
<td>Director of unincorporated association function (CF5)</td>
<td>Director of unincorporated association function (CF5)</td>
<td></td>
</tr>
<tr>
<td>Small friendly society function (CF6)</td>
<td>Small friendly society function (CF6)</td>
<td></td>
</tr>
<tr>
<td>Actuarial function (CF12)</td>
<td>Actuarial function (CF12)</td>
<td></td>
</tr>
<tr>
<td>With-profits actuary function (CF12A)</td>
<td>With-profits actuary function (CF12A)</td>
<td></td>
</tr>
</tbody>
</table>

**TP 3.2 Transition to the PRA**

3.2.1

R An approved person who was, as at cutover, approved by the FSA to perform, in relation to a PRA-authorised person, a controlled function specified by the FSA set out in column 1 of the table in SUP TP 3.2.2R is deemed to be approved by the PRA to perform the PRA-controlled function in the same row of column 2 in that table in relation to that firm.

3.2.2

R Table: FSA controlled functions transitioned to the PRA
### TP 3.3 Amalgamation of functions

3.3.1 **[FCA]**

In the case of an *FCA-authorised person*, if *SUP 10.6.2R* (each of the *FSA’s* governing functions includes the *FSA’s* systems and controls function and significant management function) applied immediately before *cutover*, *SUP 10A.6.3R* (the equivalent *FCA rule*) applies to the same extent following *cutover*.

3.3.2 **[PRA]**

In the case of a *PRA-authorised person*, if *SUP 10.6.2R* (each of the *FSA’s* governing functions includes the *FSA’s* systems and controls function and significant management function) applied immediately before *cutover*, *SUP 10B.7.1R* (the equivalent *PRA rule*) applies following *cutover* in relation to the *systems and controls function*.

3.3.3 **[FCA/PRA]**

In the case of a *PRA-authorised person*, if a *person* was approved by the *FSA* to perform one of the *FSA’s* governing functions and the *FSA’s* apportionment and oversight function in relation to a *firm*, the effect of *SUP TP 3* is that he will deemed to be approved by the *FCA* for the *apportionment and oversight function* and by the *PRA* for the appropriate *governing function* in relation to that *firm*. *SUP 10A.11.11R* (disapplication of the *apportionment and oversight function* if approved for a *PRA governing function*) and *SUP 10B.7.3R* (functions making up the *apportionment and oversight function* if approved for a *PRA governing function*) do not apply.

### TP 3.4 Changes to approved persons details

3.4.1 **[FCA]**

*Firms* are reminded that an effect of the transitional provisions in *SUP TP 2.2* is that *SUP 10A.14.15R* to *SUP 10A.14.21R* (notifications relating to changes to the details relating to *approved persons* and *candidates* and new information relating to them) apply to changes and new information as compared to the position before *cutover*.

3.4.2 **[PRA]**

*Firms* are reminded that an effect of the transitional provisions in *SUP TP 2.2* is that *SUP 10B.14.16R* to *SUP 10B.14.22R* (notifications relating to changes to the details relating to *approved persons* and *candidates* and new information relating to them) apply to changes and new information as compared to the position before *cutover*.

### TP 3.5 Transitional provisions relating to bidding in emissions auctions
3.5.1  R  SUP TP 3.5 deals with an approved person in relation to a PRA-authorised person who:

(1) immediately before cutover, fell within SUP 10.6.2AR (FSA’s governing functions include certain functions relating to bidding in emissions auctions); and

(2) immediately before cutover was not approved to perform the FSA’s customer controlled function in relation to that firm.

3.5.2  R  SUP 10A.10.7R(7) does not apply in relation to that person and that firm until that person stops performing that function.

3.5.3  G  Under the FSA’s approved persons regime a person acting as a bidder’s representative within the meaning of subparagraph 3 of article 6(3) of the auction regulation did not require approval to perform the FSA’s customer controlled function if that person had approval for one of the FSA’s governing functions. If a person was in this position immediately before cutover, acting as a bidder’s representative is not included in the customer function following cutover. It is not included in any PRA controlled function either. This only applies in relation to the firm for which that person was performing that role immediately before cutover. Furthermore if that person stops performing that role and later takes it up again for the same firm he will require approval.

3.5.4  G  This transitional does not apply in relation to an FCA-authorised person.

TP 3.6  General

3.6.1  G  References in SUP TP 3 to a person being approved for the purposes of section 59 of the Act (approval for particular arrangements) or being an approved person includes someone being taken to be approved for the purposes of that section by virtue of an order made under the Act relating to transitional matters, such as one relating to the bringing into force of the Act.
Annex E

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

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

APER 1.1 is deleted in its entirety. The deleted text is not shown.

After APER 1.1 (deleted) insert the following new sections. The text is not underlined.

1.1A Application

Who?

1.1A.1 [FCA] P APER applies to FCA-approved persons and PRA-approved persons.

What?

1.1A.2 [FCA] P (1) APER applies to the performance by an approved person of:

(a) FCA controlled functions (whether or not approval has been sought and granted); and

(b) PRA controlled functions (whether or not approval has been sought and granted);

in relation to the authorised persons in relation to which that person is an approved person.

(2) APER also applies to the performance by an approved person of any other functions in relation to the carrying on of a regulated activity by the authorised persons referred to in (1).

1.1A.3 [FCA] G The functions described in APER 1.1A.2P are called accountable functions.

1.1A.4 [FCA] G The relevance of MiFID to the Statements of Principle will depend on the extent to which the corresponding requirement imposed on firms under MiFID is reserved to a Home State regulator or has been disapplied under MiFID (see APER 2.1A.2P and FIT 1.2.4AG. See also COBS 1 Annex 1, Part 2, 1.1R (EEA territorial scope rule: compatibility with European law)).

Where?

1.1A.5 [FCA] G The territorial scope of the approved persons regime and its application to incoming EEA firms is set out in SUP 10A.1 (see SUP 10A.1.11R and SUP 10A.1.13R).
Coverage of APER

1.1A.6  
APER 1.1A.7G gives examples of the effect of APER 1.1A.1P and APER 1.1A.2P. The first column says whether the example involves an FCA-approved person and the second column says whether the example involves a PRA-approved person. So for example if there is a “Yes” in both columns that means that the example concerns a person who has been approved both by the FCA and by the PRA. The third column explains what functions APER covers in the scenario set out in the first two columns. The table is divided between cases in which the person performs the controlled function for an FCA-authorised person and ones where the person does so for a PRA-authorised person.

1.1A.7  
Table: Examples of what activities APER covers

<table>
<thead>
<tr>
<th>FCA approved</th>
<th>PRA approved</th>
<th>Coverage of APER</th>
</tr>
</thead>
<tbody>
<tr>
<td>FCA-authorised person</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Yes, in relation to firm A</td>
<td>Not applicable</td>
<td>Applies to the FCA controlled function. Also applies to any other function performed for firm A in relation to the carrying on by firm A of a regulated activity even if it is not a controlled function.</td>
</tr>
<tr>
<td>(2) Yes, in relation to firm A. No, in relation to firm B,</td>
<td>Not applicable</td>
<td>In relation to firm A, the answer is the same as for scenario (1). However, APER does not apply to any function that the approved person carries on in relation to firm B even if that function relates to regulated activities carried out by firm B. However, if the function that he performs in relation to firm B is a controlled function the approved person and firm B may be subject to legal sanctions (see SUP 10A.13.1G to SUP 10A.13.2G).</td>
</tr>
</tbody>
</table>

<p>| PRA-authorised person |
| (3) Yes, in relation to firm A | No | The answer is the same as for scenario (1). |</p>
<table>
<thead>
<tr>
<th></th>
<th>(4) No</th>
<th>Yes, in relation to firm A</th>
<th>Applies to PRA controlled function. Also applies to any other function performed for firm A in relation to the carrying on by firm A of a regulated activity even if it is not a controlled function.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(5) Yes, in relation to firm A</td>
<td>Yes, in relation to firm A</td>
<td>Applies to FCA controlled function and PRA controlled function. Also applies to any other function performed for firm A in relation to the carrying on by firm A of a regulated activity even if it is not a controlled function.</td>
</tr>
<tr>
<td></td>
<td>(6) Yes, in relation to firm A. No, in relation to firm B,</td>
<td>Yes, in relation to firm A. No, in relation to firm B,</td>
<td>In relation to firm A, the answer is the same as for scenario (5). However, APER does not apply to any function that the approved person carries on in relation to firm B even if that function relates to regulated activities carried out by firm B. However, if the function that he performs in relation to firm B is a controlled function the approved person and firm B may be subject to legal sanctions (see SUP 10A.13.1G to SUP 10A.13.21G).</td>
</tr>
</tbody>
</table>

1.1A.8 [FCA] G A person may be an approved person in relation to more than one firm. When that is the case, APER applies in relation to all those firms.

1.1A.9 [FCA] G (1) APER 1.1A.2P refers to the authorised person in relation to which a person is an approved person.

(2) Under section 59 of the Act (Approval for particular arrangements) there are two kinds of approved person.

(3) Section 59(1) of the Act describes the first. It covers a person who performs a controlled function under an arrangement entered into by an authorised person (“A”). In this case, APER 1.1A.2P refers to A.

(4) Section 59(2) of the Act describes the second. It covers a person who performs a controlled function under an arrangement entered into by a contractor (“B”) of an authorised person (“A”). In this case, APER 1.1A.2P refers to A (and not B).
Rule in GEN about provisions shared between the FCA and PRA

1.1A.10 E GEN 2.2.23R (Cutover: Application of provisions made by both the FCA and the PRA) does not apply to any provision of APER marked with an “E” in the margin.

1.1A.11 [FCA] G GEN 2.2.23R does not apply to any of APER. It does not apply to any part of APER that is not shared as GEN 2.2.23R only applies to Handbook provisions made by both the FCA and the PRA. Hence GEN 2.2.23R does not apply to the Statements of Principle. APER 1.1A.10E means that GEN 2.2.23R does not apply to shared provisions marked with an “E” in the margin. GEN 2.2.23R does not apply to shared guidance in APER because the guidance is about material to which GEN 2.2.23R does not apply.

1.1B Application

Who?

1.1B.1 P APER applies to:

(1) PRA-approved persons; and

(2) FCA-approved persons in relation to whom the FCA has given its approval under section 59 of the Act in respect of the performance by them of significant-influence functions in relation to the carrying on by PRA-authorised persons of regulated activities.

What?

1.1B.2 P (1) APER applies to the performance by an approved person of:

(a) PRA controlled functions (whether or not approval has been sought and granted); and

(b) FCA controlled functions that are significant-influence functions (whether or not approval has been sought and granted);

in relation to the PRA-authorised persons in relation to which that person is an approved person.

(2) APER also applies to the performance by an approved person of any other significant-influence functions in relation to the PRA-authorised persons referred to in (1).

1.1B.3 G The functions described in APER 1.1B.2P are called accountable functions.
1.1B.4  [PRA]  G  The relevance of MiFID to the Statements of Principle will depend on the extent to which the corresponding requirement imposed on firms under MiFID is reserved to a Home State regulator or has been disapplied under MiFID (see APER 2.1B.2P and FIT 1.2.4AG).

Where?

1.1B.5  [PRA]  G  The territorial scope of the approved persons regime and its application to incoming EEA firms is set out in SUP 10B.1 (see SUP 10B.1.11R and SUP 10B.1.12R).

Coverage of APER

1.1B.6  [PRA]  G  APER 1.1B.7G gives examples of the effect of APER 1.1B.1P and APER 1.1B.2P. The first column says whether the example involves an FCA-approved person and the second column says whether the example involves a PRA-approved person. So, for example, if there is a “Yes” in both columns that means that the example concerns a person who has been approved both by the FCA and by the PRA. The third column explains what functions APER covers in the scenario set out in the first two columns. The table is divided between cases in which the person performs the controlled function for an FCA-authorised person, and ones where the person does so for a PRA-authorised person.

1.1B.7  [PRA]  G  Table: Examples of what activities APER covers

<table>
<thead>
<tr>
<th>FCA approved</th>
<th>PRA approved</th>
<th>Coverage of APER</th>
</tr>
</thead>
<tbody>
<tr>
<td>FCA-authorised person</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Yes, in relation to firm A</td>
<td>Not applicable</td>
<td>Does not apply</td>
</tr>
<tr>
<td>PRA-authorised person</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) No</td>
<td>Yes, in relation to firm A</td>
<td>Applies to PRA controlled function. Also applies to any other significant-influence functions performed for firm A, even if they are not controlled functions.</td>
</tr>
<tr>
<td>(3) Yes, in relation to firm A (for a significant-influence function)</td>
<td>No</td>
<td>Applies to FCA controlled function. Also applies to any other significant-influence functions performed for firm A, even if they are not controlled functions.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>(4) Yes, in relation to <strong>firm A</strong> (for a <strong>customer-dealing function</strong>)</td>
<td>No</td>
<td>Does not apply. If he is also performing a <strong>significant-influence function</strong> that is not a <strong>controlled function</strong>, <strong>APER</strong> does not apply to that function either.</td>
</tr>
<tr>
<td>(5) Yes, in relation to <strong>firm A</strong> (for a <strong>customer-dealing function</strong>)</td>
<td>Yes, in relation to <strong>firm A</strong></td>
<td>Applies to <strong>PRA controlled function</strong>. Does not apply to <strong>customer-dealing function</strong>. Also applies to any other <strong>significant-influence functions</strong> performed for <strong>firm A</strong>, even if they are not <strong>controlled functions</strong>.</td>
</tr>
<tr>
<td>(6) Yes, in relation to <strong>firm A</strong> (for a <strong>significant-influence function</strong>)</td>
<td>Yes, in relation to <strong>firm A</strong></td>
<td>Applies to <strong>FCA controlled function</strong> and <strong>PRA controlled function</strong>. Also applies to any other <strong>significant-influence functions</strong> performed for <strong>firm A</strong>, even if they are not <strong>controlled functions</strong>.</td>
</tr>
<tr>
<td>(7) Yes, in relation to <strong>firm A</strong> (for a <strong>significant-influence function</strong> and <strong>customer-dealing function</strong>)</td>
<td>Yes, in relation to <strong>firm A</strong></td>
<td>The answer is the same as for scenario (6). Does not apply to <strong>customer-dealing function</strong>.</td>
</tr>
<tr>
<td>(8) Yes, in relation to <strong>firm A</strong> (for a <strong>significant-influence function</strong>). <strong>No</strong>, in relation to <strong>firm B</strong>,</td>
<td>Yes, in relation to <strong>firm A</strong>. <strong>No</strong>, in relation to <strong>firm B</strong>,</td>
<td>In relation to <strong>firm A</strong>, the answer is the same as for scenario (6). However, <strong>APER</strong> does not apply to any function that the <strong>approved person</strong> carries on in relation to <strong>firm B</strong>, even if that function is a <strong>significant-influence function</strong>. However, if the function that he performs in relation to <strong>firm B</strong> is a <strong>controlled function</strong>, the <strong>approved person</strong> and <strong>firm B</strong> may be subject to legal sanctions (see <strong>SUP 10B.11.1G</strong> and <strong>SUP 10B.11.3G</strong>).</td>
</tr>
</tbody>
</table>

1.1B.8  
**G**  
**PRA**  
A **person** may be an **approved person** in relation to more than one **PRA-authorised person**. When that is the case, **APER** applies in relation to all those **firms**.

1.1B.9  
**G**  
**PRA**  
(1) **APER 1.1B.2P** refers to the **PRA-authorised person** in relation to which a **person** is an **approved person**.
(2) Under section 59 of the Act (Approval for particular arrangements) there are two kinds of approved person.

(3) Section 59(1) of the Act describes the first. It covers a person who performs a controlled function under an arrangement entered into by an authorised person (“A”). In this case, APER 1.1B.2P refers to A.

(4) Section 59(2) of the Act describes the second. It covers a person who performs a controlled function under an arrangement entered into by a contractor (“B”) of an authorised person (“A”). In this case, APER 1.1B.2P refers to A (and not B).

Rule in GEN about provisions shared between the FCA and PRA

1.1B.10 [PRA] E GEN 2.2.23R (Cutover: Application of provisions made by both the FCA and the PRA) does not apply to any provision of APER marked with an “E” in the margin.

1.1B.11 [PRA] G GEN 2.2.23R does not apply to any of APER. It does not apply to any part of APER that is not shared, as GEN 2.2.23R only applies to Handbook provisions made by both the FCA and the PRA. Hence GEN 2.2.23R does not apply to the Statements of Principle. APER 1.1A.10E means that GEN 2.2.23R does not apply to shared provisions marked with an “E” in the margin. GEN 2.2.23R does not apply to shared guidance in APER because the guidance is about material to which GEN 2.2.23R does not apply.

Amend the following as shown.

1.2 Purpose

1.2.1 G The Statements of Principle contained in APER 2 are issued under section 64(1) of the Act (Conduct: statements and codes). [deleted]

1.2.1A [FCA] G The Statements of Principle contained in APER 2 are issued under section 64(1) of the Act (Conduct: statements and codes). The paragraphs of the application section in APER 1.1A labelled “P” also form part of the Statements of Principle.

1.2.1B [PRA] G The Statements of Principle contained in APER 2 are issued under section 64(1A) of the Act (Conduct: statements and codes). The paragraphs of the application section in APER 1.1B labelled “P” also form part of the Statements of Principle.
1.2.2 G Section 64(2) of the Act states that if an appropriate regulator issues Statements of Principle it must also issue a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the Statements of Principle. The Code of Practice for Approved Persons in APER 3 and APER 4 fulfils this requirement.

1.2.3 G The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle and, in the case of Statement of Principle 3, conduct which tends to show compliance within that statement. The Code of Practice for Approved Persons also sets out, in certain cases, factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle. The guidance set out in APER 3 and APER 4 does not form part of the Code of Practice for Approved Persons.

1.2.3A G The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the PRA, do not comply with a Statement of Principle. The Code of Practice for Approved Persons also sets out, in certain cases, factors which, in the opinion of the PRA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle. The guidance set out in APER 3 and APER 4 does not form part of the Code of Practice for Approved Persons.

As set out in SUP 10.3.1 (Arrangements and regulated activities) 10A.3.1 (Provisions related to the Act), a function is a controlled function only to the extent that it is performed under an arrangement entered into by:

The Statements of Principle apply only to the performance of a controlled function (that is, to the activities carried on under the arrangement described in the firm's application for approval). [deleted]

The FSA recognises that an approved person may be performing functions which are unrelated to regulated activities or are otherwise outside the description of a controlled function. The fact that a person may be approved for one purpose does not have the effect of bringing all his functions within the controlled function, nor of making those functions subject to the Statements of Principle. [deleted]

The territorial scope of the approved persons regime is set out in SUP 10.1 (Application). [deleted]
The Statements of Principle apply only to the extent that a person is performing a controlled function for which approval has been sought and granted. [deleted]

APER 2.1 is deleted in its entirety. The deleted text is not shown.

After APER 2.1 (deleted) insert the following new sections. The text is not underlined.

2.1A The Statements of Principle

2.1A.1 APER 2.1A.3P sets out the Statements of Principle issued by the FCA to which APER 1.2.1AG refers and to which the provisions of the Code of Practice for Approved Persons and guidance in APER 3 and APER 4 apply. The paragraphs of APER 1.1A labelled “P” also form part of the Statements of Principle.

2.1A.2 An approved person will not be subject to a Statement of Principle to the extent that it would be contrary to the UK's obligations under a Single Market Directive or the auction regulation.

2.1A.3 Statements of Principle issued under section 64 of the Act

<table>
<thead>
<tr>
<th>Statement of Principle 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>An approved person must act with integrity in carrying out his accountable functions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Statement of Principle 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>An approved person must act with due skill, care and diligence in carrying out his accountable functions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Statement of Principle 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>An approved person must observe proper standards of market conduct in carrying out his accountable functions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Statement of Principle 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.</td>
</tr>
</tbody>
</table>
Statement of Principle 5

An approved person performing an accountable significant-influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function is organised so that it can be controlled effectively.

Statement of Principle 6

An approved person performing an accountable significant-influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function.

Statement of Principle 7

An approved person performing an accountable significant-influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function complies with the relevant requirements and standards of the regulatory system.

2.1B   The Statements of Principle

2.1B.1  [PRA] G  APER 2.1B.3P sets out the Statements of Principle issued by the PRA to which APER 1.2.1BG refers and to which the provisions of the Code of Practice for Approved Persons and guidance in APER 3 and APER 4 apply. The paragraphs of APER 1.1B labelled “P” also form part of the Statements of Principle.

2.1B.2  [PRA] P  An approved person will not be subject to a Statement of Principle to the extent that it would be contrary to the UK's obligations under a Single Market Directive or the auction regulation.

2.1B.3  [PRA] P  Statements of Principle issued under section 64 of the Act

Statement of Principle 1

An approved person must act with integrity in carrying out his accountable functions.

Statement of Principle 2

An approved person must act with due skill, care and diligence in carrying out his accountable functions.

Statement of Principle 3

[Not used]
Statement of Principle 4

An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.

Statement of Principle 5

An approved person performing an accountable function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function is organised so that it can be controlled effectively.

Statement of Principle 6

An approved person performing an accountable function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function.

Statement of Principle 7

An approved person performing an accountable function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function complies with the relevant requirements and standards of the regulatory system.

Amend the following as shown.

3 Code of Practice for Approved Persons: general

3.1 Introduction

3.1.1 G This Code of Practice for Approved Persons is issued under section 64 of the Act (Conduct: statements and codes) for the purpose of helping to determine whether or not an approved person’s conduct complies with a Statement of Principle. The code sets out descriptions of conduct which, in the FSA’s opinion, do not comply with the relevant Statements of Principle. The code also sets out certain factors which, in the opinion of the FSA, are to be taken into account in determining whether an approved person’s conduct complies with a particular Statement of Principle. The description of conduct, the factors and related provisions are identified in the text by the letter ‘E’ as explained in chapter 6 of the Reader’s Guide. [deleted]
3.1.1A G This Code of Practice for Approved Persons is issued under section 64 of the Act (Conduct: statements and codes) for the purpose of helping to determine whether or not an approved person’s conduct complies with a Statement of Principle. The code sets out descriptions of conduct which, in the FCA’s opinion, do not comply with the relevant Statements of Principle. The code also sets out certain factors which, in the opinion of the FCA, are to be taken into account in determining whether an approved person’s conduct complies with a particular Statement of Principle. The description of conduct, the factors and related provisions are identified in the text by the letter ‘E’ as explained in chapter 6 of the Reader’s Guide.

3.1.1B G This Code of Practice for Approved Persons is issued under section 64 of the Act (Conduct: statements and codes) for the purpose of helping to determine whether or not an approved person’s conduct complies with a Statement of Principle. The code sets out descriptions of conduct which, in the PRA’s opinion, do not comply with the relevant Statements of Principle. The code also sets out certain factors which, in the opinion of the PRA, are to be taken into account in determining whether an approved person’s conduct complies with a particular Statement of Principle. The description of conduct, the factors and related provisions are identified in the text by the letter ‘E’ as explained in the Reader’s Guide.

3.1.3 G The significance of conduct identified in the Code of Practice for Approved Persons as tending to establish compliance with or a breach of a Statement of Principle will be assessed only after all the circumstances of a particular case have been considered. Account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled accountable function and the behaviour to be expected in that function.

3.1.4A G (1) An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person’s conduct was deliberate or where the approved person’s standard of conduct was below that which would be reasonable in all the circumstances.

(2) For the avoidance of doubt, the Statements of Principle do not extend the duties of approved persons beyond those which the firm owes in its dealings with customers or others.

3.1.5 G In particular, in determining whether or not an approved person’s conduct complies with a Statement of Principle, the FSA appropriate regulator will take into account the extent to which an approved person has acted in a way that is stated to be in breach of a Statement of Principle.
3.1.6 The Code of Practice for Approved Persons (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle. The purpose of the code is to help determine whether or not a person's conduct complies with a Statement of Principle. The code may be supplemented from time to time. The FSA appropriate regulator will amend the code if there is a risk that unacceptable practice may become prevalent, so as to make clear what conduct falls below the standards expected of approved persons by the Statements of Principle.

3.1.7 Statements of Principle 1 to 4 apply to all approved persons. In the Statements of Principle and in the Code of Practice for Approved Persons, a reference to "his controlled function" is a reference to the controlled function to which the approval relates. A person performing a significant influence function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that controlled function. Those responsible under SYSC 2.1.3R or SYSC 4.4.5R (Apportionment of responsibilities) for the firm's apportionment obligation will be specifically subject to Statement of Principle 5 (and see in particular APER 4.5.6E). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see in particular APER 4.7.3E). [deleted]

3.1.7A Statements of Principle 1 to 4 apply to all approved persons. A person performing an accountable significant-influence function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that accountable function. Those responsible under SYSC 2.1.3R or SYSC 4.4.5R (Apportionment of responsibilities) for the firm's apportionment obligation will be specifically subject to Statement of Principle 5 (and see, in particular, APER 4.5.6E). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see, in particular, APER 4.7.3E).

3.1.7B Those responsible under SYSC 2.1.3R or SYSC 4.4.5R (Apportionment of responsibilities) for the firm's apportionment obligation will be specifically subject to Statement of Principle 5 (and see, in particular, APER 4.5.6E). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see, in particular, APER 4.7.3E).

3.1.8 In applying Statements of Principle 5 to 7, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be. The FSA will be of the opinion that an individual performing a significant influence function may have breached Statements of Principle 5 to 7 only if his conduct was below the standard which would be reasonable in all the circumstances. (See also
In applying Statements of Principle 5 to 7, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing an accountable significant-influence function within the firm will be relevant in assessing whether an approved person’s conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be. The FCA will be of the opinion that an individual performing an accountable significant-influence function may have breached Statements of Principle 5 to 7 only if his conduct was below the standard which would be reasonable in all the circumstances. (See also APER 3.3.1E(3) to (5).)

In applying Statements of Principle 5 to 7, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing an accountable function within the firm will be relevant in assessing whether an approved person’s conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be. The PRA will be of the opinion that an individual performing an accountable function may have breached Statements of Principle 5 to 7 only if his conduct was below the standard which would be reasonable in all the circumstances. (See also APER 3.3.1E(3) to (5).)

UK domestic firms listed on the London Stock Exchange are subject to the UK Corporate Governance Code, whose internal control provisions are amplified in the publication entitled "Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)" issued by the Financial Reporting Council. FSA-regulated firms Firms regulated by the appropriate regulator in this category will thus be subject to that code as well as to the requirements and standards of the regulatory system. In forming an opinion whether approved persons have complied with its requirements, the FSA appropriate regulator will give due credit for their following corresponding provisions in the UK Corporate Governance Code and related guidance.

Factors relating to all Statements of Principle

In determining whether or not the particular conduct of an approved person within his controlled accountable function complies with the Statements of Principle, the following are factors which, in the opinion of the FSA appropriate regulator, are to be taken into account:

Factors relating to Statements of Principle 5 to 7
3.3.1  E  In determining whether or not the conduct of an approved person performing an accountable significant-influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA FCA, are to be taken into account:

...  

(4) his role and responsibility as an approved person performing an accountable significant-influence function;  

...

3.3.2  E  In determining whether or not the conduct of an approved person performing an accountable function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the PRA, are to be taken into account:

(1) whether he exercised reasonable care when considering the information available to him;

(2) whether he reached a reasonable conclusion which he acted on;

(3) the nature, scale and complexity of the firm's business;

(4) his role and responsibility as an approved person performing an accountable function;

(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

4  Code of Practice for Approved Persons: specific

4.1  Statement of Principle 1

4.1.1  G  The Statement of Principle 1 (see APER 2.1.2P) is in the following terms: "An approved person must act with integrity in carrying out his controlled function." [deleted]

4.1.1A  G  The Statement of Principle 1 (see APER 2.1A.3P) is in the following terms: "An approved person must act with integrity in carrying out his accountable functions."

4.1.1B  G  The Statement of Principle 1 (see APER 2.1B.3P) is in the following terms: "An approved person must act with integrity in carrying out his accountable functions."
In the opinion of the FSA appropriate regulator, conduct of the type described in APER 4.1.3E, APER 4.1.5E, APER 4.1.6E, APER 4.1.8E, APER 4.1.10E, APER 4.1.12E, APER 4.1.13E, APER 4.1.14E or APER 4.1.15E does not comply with Statement of Principle 1 (APER 2.1.2P).

Deliberately misleading (or attempting to mislead) by act or omission:

(3) the FSA FCA or the PRA;

falls within APER 4.1.2E.

Behaviour of the type referred to in APER 4.1.3E includes, but is not limited to, deliberately:

(11) providing false or inaccurate information to the FSA FCA or the PRA;

(12) destroying, or causing the destruction of, documents (including false documentation), or tapes or their contents, relevant to misleading (or attempting to mislead) a client, his firm, the FCA or the FSA PRA;

Deliberately failing to inform, without reasonable cause:

(3) the FSA FCA or the PRA;

of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, falls within APER 4.1.2E.

Deliberately preparing inaccurate or inappropriate records or returns in connection with a controlled accountable function, falls within APER 4.1.2E.

4.2 Statement of Principle 2
4.2.1 G The Statement of Principle 2 (see APER 2.1.2P) is in the following terms: "An approved person must act with due skill, care and diligence in carrying out his controlled function." [deleted]

4.2.1A [FCA] G The Statement of Principle 2 (see APER 2.1A.3P) is in the following terms: "An approved person must act with due skill, care and diligence in carrying out his accountable functions."

4.2.1B [PRA] G The Statement of Principle 2 (see APER 2.1B.3P) is in the following terms: "An approved person must act with due skill, care and diligence in carrying out his accountable functions."

4.2.2 E In the opinion of the FSA appropriate regulator, conduct of the type described in APER 4.2.3E, APER 4.2.5E, APER 4.2.6E, APER 4.2.8E, APER 4.2.10E, APER 4.2.11E, APER 4.2.12E or APER 4.2.14E does not comply with Statement of Principle 2 (APER 2.1.2P).

4.2.2A [FCA] E In the opinion of the FCA, conduct of the type described in APER 4.2.13E does not comply with Statement of Principle 2.

4.2.13 E Continuing to perform a controlled function despite having failed to meet the standards of knowledge and skill set out in the Training and Competence sourcebook (TC) for that controlled function falls within APER 4.2.2E APER 4.2.2AE.

4.3 Statement of Principle 3

4.3.1 [FCA] G The Statement of Principle 3 (see APER 2.1-2P APER 2.1A.3P) is in the following terms: "An approved person must observe proper standards of market conduct in carrying out his controlled function accountable functions."

4.3.3 [FCA] E A factor to be taken into account in determining whether or not an approved person’s conduct complies with this Statement of Principle APER 2.1.2P is whether he, or his firm, has complied with the Code of Market Conduct (MAR 1) or relevant market codes and exchange rules.

4.3.4 [FCA] E Compliance with the code or rules described in APER 4.3.3E will tend to show compliance with this Statement of Principle (APER 2.1.2P).

4.4 Statement of Principle 4
4.4.1 G The Statement of Principle 4 (see APER 2.1.2 P) is in the following terms: "An approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice." [deleted]

4.4.1A G The Statement of Principle 4 (see APER 2.1A.3P) is in the following terms: "An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice."

4.4.1B G The Statement of Principle 4 (see APER 2.1B.3P) is in the following terms: "An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice."

4.4.2 G For the purpose of this Statement of Principle (APER 2.1.2 P), regulators in addition to the FSA are those which have recognised jurisdiction in relation to regulated activities and a power to call for information from the approved person in connection with his controlled function or (in the case of an individual performing a significant influence function) in connection with the business for which he is responsible. This may include an exchange or an overseas regulator.

4.4.2A G For the purpose of this Statement of Principle, regulators in addition to the FCA and the PRA are those which have recognised jurisdiction in relation to regulated activities and a power to call for information from the approved person in connection with his accountable function or (in the case of an individual performing an accountable significant-influence function) in connection with the business for which he is responsible. This may include an exchange or an overseas regulator.

4.4.2B G For the purpose of this Statement of Principle, regulators in addition to the FCA and the PRA are those which have recognised jurisdiction in relation to regulated activities and a power to call for information from the approved person in connection with his accountable function or in connection with the business for which he is responsible. This may include an exchange or an overseas regulator.

4.4.3 E In the opinion of the FSA appropriate regulator, conduct of the type described in APER 4.4.4E, APER 4.4.7E, or APER 4.4.9E does not comply with Statement of Principle 4 (APER 2.1.2P).

4.4.4 E Failing to report promptly in accordance with his firm's internal procedures (or if none exist direct to the FSA regulator concerned), information which it would be reasonable to assume would be of material significance to the FSA regulator concerned, whether in response to questions or otherwise, falls within APER 4.4.3E. The regulator concerned is:

(1) the FCA if it would be reasonable to assume that it would be of material significance to it;
(2) the PRA if it would be reasonable to assume that it would be of material significance to it;

(3) both the FCA and the PRA if it would be reasonable to assume that it would be of material significance to both of them.

4.4.5 G There is no duty on an approved person to report such information directly to the FSA regulator concerned unless he is one of the approved persons responsible within the firm for reporting matters to the FSA regulator concerned. However, if an approved person takes steps to influence the decision so as not to report to the FSA regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the FSA regulator concerned, then the FSA appropriate regulator will, in respect of that information, view him as being one of those within the firm who has taken on responsibility for deciding whether to report that matter to the FSA regulator concerned.

4.4.6 E In determining whether or not an approved person’s conduct under APER 4.4.4E complies with Statement of Principle 4, the following are factors which, in the opinion of the FSA appropriate regulator, are to be taken into account:

(1) the likely significance to the regulator concerned (as defined in APER 4.4.4E) of the information which it was reasonable for the individual to assume;

4.4.7 E Where the approved person is, or is one of the approved persons who is, responsible within the firm for reporting matters to the FSA regulator concerned (as defined in APER 4.4.4E), failing promptly to inform the FSA regulator concerned of information of which he is aware and which it would be reasonable to assume would be of material significance to the FSA regulator concerned, whether in response to questions or otherwise, falls within APER 4.4.3E.

4.4.8 E In determining whether or not an approved person’s conduct under APER 4.4.7E complies with Statement of Principle 4 (APER 2.1.2P), the following are factors which, in the opinion of the FSA appropriate regulator, are to be taken into account:

(1) the likely significance of the information to the FSA regulator concerned (as defined in APER 4.4.4E) which it was reasonable for the approved person to assume;

(2) whether any decision not to inform the FSA regulator concerned (as defined in APER 4.4.4E) was taken after reasonable enquiry and analysis of the situation.
4.5 Statement of Principle 5

4.5.1 G The Statement of Principle 5 (see APER 2.1.2P) is in the following terms: "An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively." [deleted]

4.5.1A [FCA] G The Statement of Principle 5 (see APER 2.1A.3P) is in the following terms: "An approved person performing an accountable significant-influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function is organised so that it can be controlled effectively." References in APER 4.5 to a significant-influence function are to an accountable function to which Statement of Principle 5 applies.

4.5.1B [PRA] G The Statement of Principle 5 (see APER 2.1B.3P) is in the following terms: "An approved person performing an accountable function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function is organised so that it can be controlled effectively." References in APER 4.5 to a significant-influence function are to an accountable function to which Statement of Principle 5 applies.

4.5.2 [FCA/PRA] E In the opinion of the FSA appropriate regulator, conduct of the type described in APER 4.5.3E, APER 4.5.4E, APER 4.5.6E or APER 4.5.8E does not comply with Statement of Principle 5 (APER 2.1.2P).

... 

4.5.7 [FCA/PRA] E Behaviour of the type referred to in APER 4.5.6E includes, but is not limited to:

(1) failing to review regularly the significant responsibilities which the firm is required to apportion under APER 2.1.1G;

... 

4.6 Statement of Principle 6

4.6.1 G The Statement of Principle 6 (see APER 2.1.2P) is in the following terms: "An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function." [deleted]
4.6.1A  G  The Statement of Principle 6 (see APER 2.1A.3P) is in the following terms: "An approved person performing an accountable significant-influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function." References in APER 4.6 to a significant-influence function are to an accountable significant-influence function to which Statement of Principle 6 applies.

4.6.1B  G  The Statement of Principle 6 (see APER 2.1B.3P) is in the following terms: "An approved person performing an accountable function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function." References in APER 4.6 to a significant-influence function are to an accountable function to which Statement of Principle 6 applies.

4.6.2  E  In the opinion of the FSA appropriate regulator, conduct of the type described in APER 4.6.3E, APER 4.6.5E, APER 4.6.6E or APER 4.6.8E does not comply with Statement of Principle 6 (APER 2.1.2P).

4.6.10  E  In determining whether or not the conduct of an approved person performing a significant-influence function under APER 4.6.5E, APER 4.6.6E and APER 4.6.8E complies with Statement of Principle 6 (APER 2.1.2P), the following are factors which, in the opinion of the FSA appropriate regulator, are to be taken into account:

4.6.11  G  An approved person performing a significant-influence function will not always manage the business on a day-to-day basis himself. The extent to which he does so will depend on a number of factors, including the nature, scale and complexity of the business and his position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines. The FSA appropriate regulator will look to the approved person performing a significant-influence function to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to his attention, he should deal with them in an appropriate way.

Delegation

4.6.13  G  …
The FSA recognises FCA and PRA recognise that the approved person performing a significant-influence function will have to exercise his own judgment in deciding how issues are dealt with, and that in some cases that judgment will, with the benefit of hindsight, be shown to have been wrong. He will not be in breach of Statement of Principle 6 unless he fails to exercise due and reasonable consideration before he delegates the resolution of an issue or authority for dealing with a part of the business and fails to reach a reasonable conclusion. If he is in doubt about how to deal with an issue or the seriousness of a particular compliance problem, then, although he cannot delegate to the FSA appropriate regulator the responsibility for dealing with the problem or issue, he can speak to the FSA appropriate regulator to discuss his approach (see APER 4.6.5E).

4.7 Statement of Principle 7

4.7.1 G The Statement of Principle 7 (see APER 2.1.2P) is in the following terms: "An approved person performing a significant-influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system." [deleted]

4.7.1A G The Statement of Principle 7 (see APER 2.1A.3P) is in the following terms: "An approved person performing an accountable significant-influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function complies with the relevant requirements and standards of the regulatory system." References in APER 4.7 to a significant-influence function are to an accountable significant-influence function to which Statement of Principle 7 applies.

4.7.1B G The Statement of Principle 7 (see APER 2.1B.3P) is in the following terms: "An approved person performing an accountable function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function complies with the relevant requirements and standards of the regulatory system." References in APER 4.7 to a significant-influence function are to an accountable function to which Statement of Principle 7 applies.

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

4.7.3 E Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its the regulated activities of the firm in question (as referred to in Statement of Principle 7) falls within APER 4.7.2E. In the case of an approved person who is responsible, under SYSC 2.1.3R(2) or SYSC 4.4.5R(2), with overseeing the firm's obligation under SYSC 3.1.1R or SYSC 4.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2E.

4.7.4 E Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of its the regulated activities of the firm in question (as referred to in Statement of Principle 7) falls within APER 4.7.2E (see APER 4.7.12G).

4.7.5 E Failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its the regulated activities of the firm in question (as referred to in Statement of Principle 7) may have arisen (taking account of the systems and procedures in place) falls within APER 4.7.2E.

...  

4.7.7 E Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its the regulated activities of the firm in question (as referred to in Statement of Principle 7), falls within APER 4.7.2E (see APER 4.7.13G and APER 4.7.14G).

...  

4.7.9 E In the case of the money laundering reporting officer, failing to discharge the responsibilities imposed on him by the firm in accordance with SYSC 3.2.6IR or SYSC 6.3.9R falls within APER 4.7.2E APER 4.7.2AE.

4.7.10 E In the case of an approved person performing a significant-influence function responsible for compliance under SYSC 3.2.8R, SYSC 6.1.4R or SYSC 6.1.4AR, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within APER 4.7.2E APER 4.7.2AE (see APER 4.7.13G and APER 4.7.14G).
4.7.11  G  The FSA appropriate regulator expects an approved person performing a significant-influence function to take reasonable steps both to ensure his firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

4.7.11A  E  Where the approved person is a proprietary trader under SUP 10A.9.10R 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 APER 4.7.2AE.

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TP 1  Transitional Provisions

TP 1.1  [FCA/PRA]

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<th>(1)</th>
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<th>(3)</th>
<th>(4) Transitional provision</th>
<th>(5) Transitional provision: dates in force</th>
<th>(6) Handbook provision coming into force</th>
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<td>From 29 June 2010 to 28 December 2011</td>
<td>6 August 2010</td>
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Sch 1  Record keeping requirements
Sch 1.1  There are no record keeping requirements in APER.

[FCA/ PRA]

**Sch 2.1  Record keeping requirements**

....

Sch 2.3

[FCA/ PRA]

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Schedule 4 of APER is deleted in its entirety. The deleted text is not shown.
## SCHEDULE A

### Part 1

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<td>Corresponding provisions: Prudential Regulation Authority</td>
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<td>Section 64 (Conduct: statements and codes)</td>
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### Part 2

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## SCHEDULE A

### Part 3

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