

INDIVIDUAL ACCOUNTABILITY (REGULATORY REFERENCES) (INTERIM REQUIREMENTS) INSTRUMENT 2016

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 7 March 2016.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Individual Accountability (Regulatory References) (Interim Requirements) Instrument 2016.

By order of the Board
28 January 2016

Annex A

Amendments to the Glossary of definitions

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

Amend the following definitions as shown.

<i>employee</i>	<p>...</p> <p>(4) (for the purposes of <i>SUP</i> 15.11 (Notification of conduct rule breaches and disciplinary action), <i>SYSC</i> 5.3 (References and accurate information) and <i>COCON</i>) has the meaning in section 64A(6) of the <i>Act</i> (Rules of conduct) which, in summary, says an employee of a person (the 'employer') includes a reference to a <i>person</i> who:</p> <p>...</p> <p>...</p>
<i>employer</i>	<p>(for the purposes of <i>SUP</i> 15.11 (Notification of conduct rule breaches and disciplinary action), <i>SYSC</i> 5.3 (References and accurate information) and <i>COCON</i>, and as defined in more detail in section 64A of the <i>Act</i> (Rules of conduct)), the <i>person</i> described as the “employer” in paragraph (4) of the <i>Glossary</i> definition of <i>employee</i>.</p>

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

...

1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
...		
2.13D	R	SYSC 4.5 (Management responsibilities maps for relevant authorised persons), SYSC 4.7 (Senior management responsibilities for relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material); <u>and</u> SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) also:
		...
...		
2.15	R	The <i>common platform requirements</i> , except the <i>common platform record-keeping requirements</i> , apply to a <i>firm</i> in relation to activities carried on by it from an establishment in the <i>United Kingdom</i> . However, SYSC 4.5 (Management responsibilities maps for relevant authorised persons), SYSC 4.7 (Senior management responsibilities for relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material); <u>and</u> SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) apply in accordance with the <i>rules</i> in those sections.
...		
2.18	R	The <i>common platform organisational requirements</i> , except the <i>common platform requirements on financial crime</i> , also apply in a <i>prudential context</i> to a <i>UK domestic firm</i> and to an <i>overseas firm</i> (other than an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i>) with respect to activities wherever they are carried on. However, SYSC 4.5 (Management responsibilities maps for relevant authorised persons), SYSC 4.7 (Senior management responsibilities for relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material); <u>and</u> SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) apply in accordance with the <i>rules</i> in those sections.

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...

Part 3	Tables summarising the application of the common platform requirements to different types of firm	
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Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
<i>SYSC 5.3</i>	Whole section applies to <i>relevant authorised persons</i> only. All <i>rules</i> apply as <i>rules</i> and not as <i>guidance</i> .	Not applicable	Not applicable	Whole section applies to <i>relevant authorised persons</i> only. All <i>rules</i> apply as <i>rules</i> and not as <i>guidance</i> .

...

[*Editor’s Note:* This instrument revokes the contents of SYSC 5.2.9G (made by the Individual Accountability Instrument 2015 (FCA 2015/31) which was otherwise due to come into force on 7 March 2016.)

5.2 Certification regime

...

5.2.9 G ~~SYSC 5.3 (References and accurate information) deals with obtaining references from a previous *employer* when a *firm* is planning to appoint someone to perform a *specified significant harm function* as part of its assessment of whether that *person* is fit and proper. [Not used]~~

Annex C

Amendments to the Supervision manual (SUP)

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

10A FCA Approved Persons

...

10A.15 References and accurate information

References

...

10A.15.3 G ...

10A.15.3 G SUP 10A.15.1R applies even if A (the *firm* asking for a reference) is a *firm* to which SUP 10C (FCA senior management regime for approved persons in relevant authorised persons) applies rather than this chapter.

...

[*Editor's Note:* This instrument revokes the contents of SUP 10C.10.23R (made by the Individual Accountability Instrument 2015 (FCA 2015/31) which was otherwise due to come into force on 7 March 2016.)]

10C FCA senior management regime for approved persons in relevant authorised persons

...

10C.10 Application for approval and withdrawing an application for approval

...

~~Application for approval: References~~

10C.10.23 G ~~Please see SYSC 5.3 (References and accurate information) about the requirement for a *firm* to ask for references from previous employers. [Not used]~~

...

After SUP 10C.15 insert the following new section. The text is not underlined.

10C.16 References and accurate information

References

- 10C.16.1 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*.
- 10C.16.2 G The requirement in SUP 10C.16.1R(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.
- 10C.16.3 G A *firm* supplying a reference in accordance with SUP 10C.16.1R 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.

- 10C.16.4 G *SUP* 10C.16.1R applies even if A (the *firm* asking for a reference) is a *firm* to which *SUP* 10A (FCA approved persons) applies rather than this chapter.

The need for complete and accurate information

- 10C.16.5 G (1) The obligations to supply information to:
- (a) the *FCA* under this chapter;
 - (b) another *firm* under *SUP* 10C.16.1R;
- apply notwithstanding any:
- (c) agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)); or
 - (d) any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment.
- (2) A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this chapter.
- 10C.16.6 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.