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:

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary of definitions</td>
<td>Annex A</td>
</tr>
<tr>
<td>Senior Management Arrangements, Systems and Controls sourcebook (SYSC)</td>
<td>Annex B</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>Annex C</td>
</tr>
</tbody>
</table>

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.

employee

... (4) (for the purposes of SUP 15.11 (Notification of conduct rule breaches and disciplinary action), SYSC 5.3 (References and accurate information) and COCON) has the meaning in section 64A(6) of the Act (Rules of conduct) which, in summary, says an employee of a person (the ‘employer’) includes a reference to a person who:

... 

employer

... (for the purposes of SUP 15.11 (Notification of conduct rule breaches and disciplinary action), SYSC 5.3 (References and accurate information) and COCON, and as defined in more detail in section 64A of the Act (Rules of conduct)), the person described as the “employer” in paragraph (4) of the Glossary definition of employee.
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  

...  

<table>
<thead>
<tr>
<th>Part 2</th>
<th>Application of the common platform requirements (SYSC 4 to 10)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>2.13D</td>
<td>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); and SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) also:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>2.15</td>
<td>R  The common platform requirements, except the common platform record-keeping requirements, apply to a firm in relation to activities carried on by it from an establishment in the United Kingdom. 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), and SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) apply in accordance with the rules in those sections.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>2.18</td>
<td>R  The common platform organisational requirements, except the common platform requirements on financial crime, also apply in a prudential context to a UK domestic firm and to an overseas firm (other than an incoming EEA firm or an incoming Treaty firm) 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), and SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) apply in accordance with the rules in those sections.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Part 3

**Tables summarising the application of the common platform requirements to different types of firm**

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

[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** 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  

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  

(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  

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