Powers exercised

A. The Financial Conduct Authority ("the FCA") 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 55U (Applications under this Part);  
(2) section 59 (Approval for particular arrangements);  
(3) section 59AB(1) (Specifying functions as controlled functions: transitional provision);  
(4) section 60 (Applications for approval);  
(5) section 60A (Vetting candidates by authorised persons);  
(6) section 61 (Determination of applications);  
(7) section 62A (Changes to responsibilities of senior managers);  
(8) section 63ZA (Variation of senior manager’s approval at request of authorised person);  
(9) section 63ZD (Statement of policy relating to conditional approval and variation);  
(10) section 63C (Statement of policy);  
(11) section 63E (Certification of employees by authorised persons);  
(12) section 63F (Issuing of certificates);  
(13) section 64A (Rules of conduct);  
(14) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);  
(15) section 69 (Statement of policy);  
(16) section 137A (The FCA’s general rules);  
(17) section 137T (General supplementary powers);  
(18) section 138D (Action for damages);  
(19) section 139A (Power of the FCA to give guidance);  
(20) section 347 (The record of authorised persons etc);  
(21) section 395 (The FCA’s and PRA’s procedures);  
(22) paragraph 23 of Schedule 1ZA (Fees); and  

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 December 2020 except as follows:

<table>
<thead>
<tr>
<th>Annex</th>
<th>Date comes into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1 of Annex B</td>
<td>3 June 2020</td>
</tr>
<tr>
<td>Part 1 of Annex H</td>
<td>3 June 2020</td>
</tr>
</tbody>
</table>
Amendments to the Handbook

D. The FCA’s Handbook of rules and guidance is amended in accordance with paragraph E of this instrument.

E. 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</td>
<td>Annex B</td>
</tr>
<tr>
<td>sourcebook (SYSC)</td>
<td></td>
</tr>
<tr>
<td>Code of Conduct sourcebook (COCON)</td>
<td>Annex C</td>
</tr>
<tr>
<td>Threshold Conditions sourcebook (COND)</td>
<td>Annex D</td>
</tr>
<tr>
<td>Statements of Principle and Code of Practice for Approved</td>
<td>Annex E</td>
</tr>
<tr>
<td>Persons (APER)</td>
<td></td>
</tr>
<tr>
<td>Fit and Proper test for Employees and Senior Personnel</td>
<td>Annex F</td>
</tr>
<tr>
<td>sourcebook (FIT)</td>
<td></td>
</tr>
<tr>
<td>Market Conduct sourcebook (MAR)</td>
<td>Annex G</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>Annex H</td>
</tr>
<tr>
<td>Professional Firms sourcebook (PROF)</td>
<td>Annex I</td>
</tr>
</tbody>
</table>

Amendments to material outside the Handbook

F. The General guidance on Benchmark Administration, Contribution and Use is amended in accordance with Annex J to this instrument.

Citation

G. This instrument may be cited as the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.

By order of the Board
21 May 2020
Annex A

Amendments to the Glossary of definitions

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

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

**APER employer**  
(in relation to an *approved person* whose approval is given under *SUP 10A* (FCA Approved Persons in Appointed Representatives)):

(a) the *appointed representative* in relation to which that *approved person* performs the *controlled function* in *SUP 10A*; and

(b) the *authorised approved person employer*.

[Note: In accordance with *APER 3.1.10R*, for the purposes of *Statements of Principle* 5 to 7, an *APER employer* only includes (a).]

**limited scope SMCR benchmark firm**  
has the meaning in *SYSC 23 Annex 1 6.12R*, and in summary means a *pure benchmark SMCR firm* that is subject to a *waiver* that treats the *firm* as a *limited scope SMCR firm*.

**pure benchmark SMCR firm**  
has the meaning in *SYSC 23 Annex 1 6.13R(1)(b)*, and in summary means an *SMCR firm* that has *permission* to carry on the *regulated activity* of *administering a benchmark* but no other *regulated activity*.

Amend the following definitions as shown.

**accountable functions**  
(in relation to an *approved person*) the functions described in *APER 1.1A.2R*, which are in summary:

(a) *FCA controlled functions* under *SUP 10A* (FCA Approved persons in Appointed Representatives); and

...
advising on investments

(1) (except in SUP 10A (FCA Approved Persons in Appointed Representatives), SYSC 27 (Senior managers and certification regime: Certification regime), APER and CONRED 2) the regulated activities, specified in article 53(1) to (1D) and article 53(2) of the Regulated Activities Order (Advising on investments), which are:

(a) advising on investments (except P2P agreements); and

(b) advising on P2P agreements.

(2) (in SUP 10A (FCA Approved Persons in Appointed Representatives), SYSC 27 (Senior managers and certification regime: Certification regime) and APER) the regulated activities specified in article 53(1) to (1D) and 53(2) (Advising on investments) of the Regulated Activities Order. For these purposes, advising on investments includes any activities that would be included but for the exclusion in article 72AA (Managers of UCITS and AIFs) of the Regulated Activities Order.

…

certification employee

(3) (in relation to an SMCR firm that is an FCA-authorised person (other than a pure benchmark SMCR firm and any other SMCR firm to which SYSC 27 (Senior managers and certification regime: Certification regime) does not apply) and subject to SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies)) an employee (as defined in section 63E of the Act) of an SMCR firm who performs a certification function under an arrangement entered into by the SMCR firm in relation to the carrying on by the SMCR firm of a regulated activity, even though the obligation of the SMCR firm to issue a certificate under section 63F of the Act has not yet come into force.

[Note: Paragraph (3) of this definition applies until 9 December 2020.]

chief executive function

(1) …

(2) (for other firms and in relation to an appointed representative) FCA controlled function CF3 in the table of FCA controlled functions, described more fully in SUP 10A.6.17R.
controlled function

A function, relating to the carrying on of a regulated activity by a firm, which is specified by:

(a) either the FCA in:

(i) (for SMCR firms) the table of FCA-designated senior management functions; or

(ii) (for other firms and in relation to appointed representatives) the table of FCA controlled functions; or

…

director

(1) …

(c) (in SYSC, APER, COCON, MIPRU 2 (Responsibility for insurance distribution and MCD credit intermediation activity), SUP 10A (FCA Approved persons in Appointed Representatives) and SUP 10C (FCA senior managers regime for approved persons in SMCR firms) a partnership;

(d) (in SYSC, SUP 10A (FCA Approved persons in Appointed Representatives) and SUP 10C (FCA senior managers regime for approved persons in SMCR firms) a sole trader;

…

FCA controlled function

A controlled function which is specified by the FCA under section 59 of the Act (Approval for particular arrangements) in:

(a) (for SMCR firms) the table of FCA-designated senior management functions; or

(b) (for other firms and in relation to appointed representatives) the table of FCA controlled functions.

FCA significant-influence functions

Any of the FCA controlled functions 1 to 29 in Part 1 or Part 2 of labelled as an FCA significant-influence function in the table of FCA controlled functions.

partner function

(1) …

(2) (for other firms and in relation to appointed representatives) FCA controlled function CF4 in the table of FCA controlled functions, described more fully in SUP 10A.6.23R to SUP 10A.6.27R.
proprietary trader (in SYSC 27 (Senior managers and certification regime: Certification regime), SUP 10A (FCA Approved Persons), and COCON and APER) a person (A) whose responsibilities include committing another person (B) as part of B’s proprietary trading.

proprietary trading (in SYSC 27 (Senior managers and certification regime: Certification regime), SUP 10A (FCA Approved Persons), and COCON and APER) dealing in investments as principal as part of a business of trading in specified investments. ...

significant-influence function has the meaning in SUP 10A.5.3R (Definition of FCA significant-influence function), which in summary defines it as (for the purposes of controlled functions specified in the table of FCA controlled functions and in relation to the carrying on of a regulated activity by an authorised person appointed representative) a function that is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person’s appointed representative’s affairs, so far as relating to the activity.

Delete the following definition. The text is not shown struck through.

significant management function FCA controlled function CF29 in the table of FCA controlled functions, described more fully in SUP 10A.9.9R.
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.

Part 1: Comes into force 3 June 2020

22 Regulatory references

22.1 Application

General application

22.1.1 R This chapter applies to all SMCR firms (subject to SYSC 22.1.5R).

...

23 Senior managers and certification regime: Introduction and classification

...

23.3 Overview of the senior managers and certification regime

...

23.3.3 G Table: Summary of the senior managers and certification regime

<table>
<thead>
<tr>
<th>(1) Description of component of the regime</th>
<th>(2) Handbook provisions</th>
<th>(3) Application to solo-regulated firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>The senior managers regime: Parts that only apply to a limited range of firms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><em>Firms</em> should report changes to their <em>management body</em> when members who are not <em>SMF managers</em> leave or join it.</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
A firm is required to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers

<table>
<thead>
<tr>
<th>SYSC 4.4 (Apportionment of responsibilities)</th>
<th>Applies to a limited scope SMCR firm.</th>
<th>Does not apply to most core SMCR firms.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Does not apply to an enhanced scope SMCR firm.</td>
<td></td>
</tr>
</tbody>
</table>

... ... …

The certification regime

<table>
<thead>
<tr>
<th>...</th>
<th>...</th>
<th>Applies to all solo-regulated firms except for internally managed AIFs and certain firms that only carry out benchmark activities.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>The certification regime does not apply to benchmark activities.</td>
</tr>
</tbody>
</table>

... ... …

Part 2: Comes into force 7 December 2020

4 General organisational requirements

4.1 General requirements

... Apportionment of responsibilities: the role of the non-executive director

| 4.1.14 | G | The role undertaken by a non-executive director will vary from one firm to another. Where a non-executive director is an approved person, for example where the firm is a body corporate, his responsibility and therefore liability will be limited by the role that he undertakes. |

Page 8 of 89
4.4 Apportionment of responsibilities

Application

4.4.1A R (-2) This section applies to:

(a) a limited scope SMCR firm (other than:

(i) a firm in SUP 10C Annex 1 7.10R (Table: Limited scope SMCR firms to which no controlled functions apply); and

(ii) limited scope SMCR benchmark firm; and

...
22.8.4A R (1) The approved person’s authorised approved person employer is responsible for compliance with SYSC 22.8.3R in the case of a requirement:

(a) to give a reference about an approved person whose approval is under SUP 10A.1.15R to SUP 10A.1.16BR (FCA Approved Persons in Appointed Representatives); and

22.8.5 G One effect of SYSC 22.8.4R is that when an appointed representative appoints an approved person under SUP 10A.1.16BR (appointed representatives of an SMCR firm) SUP 10A (FCA Approved Persons in Appointed Representatives) there is no requirement for the appointed representative or its principal to request a reference.

23 Senior managers and certification regime: Introduction and classification

23.2 Definitions and types of firms

23.2.3 G Broadly speaking, firms covered by the senior managers and certification regime that are regulated by the FCA are divided into three categories:

(3) Firms whose business is limited to certain types. These are called “limited scope SMCR firms”. A large number of firms will be in this category. The main examples are:

(d) firms whose main business is not regulated and whose regulated business is (with limited exceptions) restricted to insurance distribution activity in relation to non-investment insurance contracts; and

(e) a firm that only has regulated claims management activities in its permission; and

(f) a firm that only has permission for benchmark activities and has the benefit of a waiver treating it as a limited scope
SMCR firm as described in SYSC 23 Annex 1 6.12R (Benchmark firms: Waiver applying limited scope status).

23.3 Overview of the senior managers and certification regime

...  

23.3.3 G Table: Summary of the senior managers and certification regime

<table>
<thead>
<tr>
<th>(1) Description of component of the regime</th>
<th>(2) Handbook provisions</th>
<th>(3) Application to solo-regulated firms</th>
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<td>...</td>
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<td>The senior managers regime: Parts that only apply to a limited range of firms</td>
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<td>...</td>
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<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>A firm is required to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers</td>
<td>...</td>
<td>Applies to a limited scope SMCR firm, except for a limited scope SMCR benchmark firm.</td>
</tr>
<tr>
<td>A limited scope SMCR benchmark firm is required to report to the FCA certain changes in the split of its revenue between regulated activities and unregulated activities</td>
<td>SUP 15.17 (Notification of regulated income by limited scope SMCR benchmark firm)</td>
<td>Only applies to a limited scope SMCR benchmark firm. Does not apply to any other limited scope SMCR firm. Does not apply to a core SMCR firm or an enhanced scope SMCR firm.</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

The certification regime
A firm should not permit an employee to carry out certain functions (certification functions) unless it has issued them with a certificate.

…

A firm must report information to the FCA about its Directory persons, including its certification employees.

SUP 16.26 (Reporting of information about Directory persons)

…

<table>
<thead>
<tr>
<th>A firm should not permit an employee to carry out certain functions (certification functions) unless it has issued them with a certificate.</th>
<th>…</th>
<th>Applies to all solo-regulated firms except for internally managed AIFs and pure benchmark SMCR firms.</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A firm must report information to the FCA about its Directory persons, including its certification employees.</th>
<th>SUP 16.26 (Reporting of information about Directory persons)</th>
<th>Applies to all solo-regulated firms except pure benchmark SMCR firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>

23 Annex Definition of SMCR firm and different types of SMCR firms

1

Part One: Flow diagram and other basic provisions

…

1.2 R Flow diagram: Types of SMCR firm

…

Note to the flow diagram

The categorisation in this flow diagram is subject to SYSC 23 Annex 1 2.1R and SYSC 23 Annex 1 6.25R.

…

Part Three: Definition of exempt firm

…
A firm that has permission to carry on the regulated activity of administering a benchmark or administering a specified benchmark but no other regulated activity is an exempt firm. [deleted]

Part Six: Definition of limited scope SMCR firm

Introduction

6.1 R ...

Opting up

6.2 G ...

Specialised activities

6.3 R ...

Sole trader

6.6 R ...

Limited permission consumer credit firms

6.7 R ...

Authorised professional firms

6.9 R ...

Internally managed AIFs

6.10 R ...

Claims management

6.11 R ...

Benchmark firms: Waiver applying limited scope status

6.12 R A firm is a limited scope SMCR firm (and a limited scope SMCR benchmark firm) if:

(1) it is subject to a waiver that applies this rule to the firm; and

(2) it meets the conditions in SYSC 23 Annex 1 6.13R.
6.13 R (1) The conditions referred to in SYSC 23 Annex 1 6.12R(2) are that the firm:

(a) is capable of being a limited scope SMCR firm under the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm);

(b) has permission to carry on the regulated activity of administering a benchmark but no other regulated activity (a pure benchmark SMCR firm); and

(c) is an FCA-authorised person.

(2) A firm that meets the conditions in this rule is referred to in this Annex as a “potential benchmark waiver firm”.

6.14 G (1) If, after the waiver in SYSC 23 Annex 1 6.12R(1) comes into force, a firm ceases to be a potential benchmark waiver firm it immediately ceases to be:

(a) a limited scope SMCR benchmark firm; and

(b) a limited scope SMCR firm (unless it qualifies as one for another reason).

(2) (1) applies even if the firm subsequently becomes a potential benchmark waiver firm again.

(3) If (2) applies, it may become a limited scope SMCR benchmark firm again if it applies for and obtains a new waiver.

Benchmark firms: When the waiver is likely to be available

6.15 G (1) The FCA considers that treating a potential benchmark waiver firm (as defined in SYSC 23 Annex 1 6.13R(2)) as a core SMCR firm may be unduly burdensome as contemplated by section 138A(4)(a) of the Act (Modification or waiver of rules).

(2) The FCA considers that deciding whether this is the case involves balancing the factors in (3) and (4).

(3) The directors of a potential benchmark waiver firm who would require approval for performing one of the FCA governing functions if it was a core SMCR firm may spend very little of their time managing the firm’s regulated activities. In a big firm they may also be distant from those activities. It may therefore be more proportionate to require approval for someone who is closer to the day-to-day management of the firm’s regulated activities.

(4) On the other hand, applying the Act and the FCA’s requirements directly to a firm’s most senior management will make it more
likely that they will take steps and put in place systems that will increase the likelihood that the firm’s staff will meet the requirements of the senior managers and certification regime and that the values represented by those requirements will be absorbed into the firm’s culture. It also helps to ensure that the firm’s leaders have sufficient knowledge of, and skills in, the firm’s regulated activities.

(5) The approach in SYSC 23 Annex 1 6.16G is designed to weigh the factors in (3) and (4) against each other.

6.16 G (1) SYSC 23 Annex 1 6.16G summarises the approach the FCA anticipates it will take in deciding whether to grant the waiver. SYSC 23 Annex 1 6.17G to SYSC 23 Annex 1 6.22G then give more detail.

(2) Subject to (3), the FCA considers that a potential benchmark waiver firm (as defined in SYSC 23 Annex 1 6.13R(2)) is likely to meet the criteria for the granting of a waiver under section 138A(4)(a) of the Act (Modification or waiver of rules) if regulated activities form a small part of its activities, measured in the way described in SYSC 23 Annex 1 6.17G.

(3) The FCA considers that a potential benchmark waiver firm meeting the conditions in (2) is nevertheless unlikely to meet the criteria for the granting of a waiver under section 138A(4) of the Act if:

(a) any of the benchmarks it administers are important; or

(b) the firm or the person who would be performing the limited scope function would not meet the requirements of MAR 8.5.2R (Responsibility for benchmark activities: regulated benchmark administrators).

(4) In particular, under (3)(b):

(a) the person who would be performing the limited scope function should be sufficiently senior (see MAR 8.5.3AG); and

(b) the responsibilities in MAR 8.5.2R should not be split between several people (see MAR 8.5.3G).

(5) SYSC 23 Annex 1 6.18G to SYSC 23 Annex 1 6.20G describe what important means in (3)(a).

(6) SYSC 23 Annex 1 6.22G gives more detail about (3)(b).

(7) The waiver would be available to firms of any size.
6.17 G (1) SYSC 23 Annex 1 6.17G describes how the FCA anticipates that it would decide whether regulated activities form a small part of a firm’s activities for the purpose of SYSC 23 Annex 1 6.16G(2).

(2) The FCA anticipates that it would consider that:

(a) a firm would meet the criterion in (1) if revenue from regulated activities represents less than 20% of its overall revenue; and

(b) a firm would not meet the criterion in (1) if revenue from regulated activities were 20% or more.

(3) The FCA anticipates that it would measure those figures over a reasonable period and not just a single accounting period.

(4) The FCA anticipates that it would measure revenue from regulated activities and overall revenue in the way described in SUP 15.17.5R to SUP 15.17.7R (Obligation to make calculations).

(5) The FCA anticipates that it would adjust the calculation if there were good reason to think that past revenue is unlikely to be representative of the future. For instance:

(a) the firm’s past revenue may be distorted by extraordinary items; or

(b) the firm may recently have carried out a major reorganisation of its business involving, for example, the disposal of all its activities other than benchmark activities or the acquisition of a business carrying out activities other than benchmark activities.

6.18 G The FCA anticipates that, in deciding whether a benchmark is important for the purposes in SYSC 23 Annex 1 6.16G, it will take into account whether there could be a significant and adverse impact on the United Kingdom’s economy or financial system if the benchmark:

(1) stops being provided; or

(2) is provided in a way that significantly breaches or falls short of the requirements and standards of the benchmarks regulation.

6.19 G The FCA considers that a firm’s benchmark is likely to be important for the purposes in SYSC 23 Annex 1 6.16G(3) and to meet the criteria in SYSC 23 Annex 1 6.18G if the benchmark is recognised as critical under the benchmarks regulation.

6.20 G In making the assessment of the importance of a benchmark that is not recognised as critical as described in SYSC 23 Annex 1 6.19G, the FCA anticipates that it will take into account factors that include the following:
(1) whether the benchmark has no or very few appropriate market-led substitutes; and

(2) whether the benchmark is used extensively in particular markets or sectors.

6.21 G (1) One reason for taking into account the importance of a benchmark is that if it is important, the factors in SYSC 23 Annex 1 6.15G(4) outweigh the factors in SYSC 23 Annex 1 6.15G(3).

(2) Another reason is that, under section 138A(4)(b) of the Act (Modification or waiver of rules), the FCA may not grant a waiver if doing so would adversely affect the advancement of any of its operational objectives. Granting the waiver where a benchmark is important is likely to be inconsistent with section 138A(4)(b) because:

(a) the occurrence of the situation in SYSC 23 Annex 1 6.18G(1) or (2) is likely in particular to prejudice the integrity operational objective; and

(b) for the reasons in SYSC 23 Annex 1 6.15G(4), the FCA considers that applying the regime for core SMCR firms to benchmark firms will reduce the risk of that happening.

6.22 G The FCA anticipates that if a firm has a complicated management structure, that may mean that the firm does not meet the conditions in SYSC 23 Annex 1 6.16G(3)(b). In particular this may be the case if:

(1) there are several managers involved in managing the firm’s regulated activities who have different reporting lines; or

(2) the person managing the firm’s regulated activities has different reporting lines for different aspects of the role that give them different levels of autonomy.

Benchmark firms: Ceasing to meet waiver criteria

6.23 G If a limited scope SMCR benchmark firm ceases to meet the criterion in SYSC 23 Annex 1 6.17G, it is likely to be inappropriate for the waiver to continue. The mechanism for ensuring that this is the case might include one or more of the following:

(1) building those criteria into the waiver;

(2) revocation of the waiver; or

(3) granting the waiver subject to a time limit and re-examining the criteria if the firm applies for a renewal.
6.24 G The FCA anticipates that the mechanisms in SYSC 23 Annex 1 6.23G will generally provide for a period of time between the firm ceasing to meet the criterion in SYSC 23 Annex 1 6.17G and the firm ceasing to be a limited scope SMCR firm.

Benchmark firms: Opting to be a core or enhanced scope firm

6.25 R (1) A limited scope SMCR benchmark firm may opt to be an enhanced scope SMCR firm in accordance with this Annex.

(2) A limited scope SMCR benchmark firm may not opt to be a core SMCR firm under this Annex.

6.26 G If a limited scope SMCR benchmark firm opts to be an enhanced scope SMCR firm and it subsequently revokes that election after it comes into effect, the firm will become a core SMCR firm. If it wants to be a limited scope SMCR benchmark firm again it will need to apply for a new waiver.

6.27 G A limited scope SMCR benchmark firm that wishes to become a core SMCR firm again should request the FCA to revoke the waiver in SYSC 23 Annex 1 6.12R.

Part Twelve: Opting up and opting back down

25 Senior managers and certification regime: Management responsibilities maps and handover procedures and material

25.2 Management responsibilities maps: Main rules

Specific requirements

25.2.4 R SYSC 25.2.3R(1) does not require the firm to include the names of approved persons under SUP 10A.1.16BR (Appointed representatives) SUP 10A (FCA Approved Persons in Appointed Representatives).

27 Senior managers and certification regime: Certification regime

27.1 Application and purpose
27.1.1 R This chapter applies to an SMCR firm, except those excluded from this chapter by SYSC 27.6 (Other exclusions).

... 

27.6 Other exclusions

... 

Benchmarks

27.6.4 R (1) This chapter does not apply to a firm in relation to benchmark activities.

(2) In particular, this chapter does not apply to a pure benchmark SMCR firm.

... 

TP 7 Bank of England and Financial Services Act 2016: Certification and regulatory references

7.1 Application and purpose

... 

7.1.2 R Table: Application of SYSC TP 7

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Parts of SYSC TP 7 that apply</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>A core SMCR firm, an enhanced scope SMCR firm and a limited scope SMCR firm other than a pure benchmark SMCR firm</td>
<td>All applies, subject to the adjustments in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies).</td>
</tr>
<tr>
<td>A firm in SYSC TP 7.4.8R</td>
<td>Does not apply, except as follows. SYSC TP 7.4.6R, SYSC TP 7.4.7G, SYSC TP 7.4.8R and SYSC TP 7.6 apply.</td>
</tr>
<tr>
<td>A pure benchmark SMCR firm</td>
<td>All applies, except that SYSC TP 7.2, SYSC TP 7.3, SYSC TP 7.4.1R and SYSC TP 7.7.3G to SYSC TP 7.7.6G do not apply.</td>
</tr>
</tbody>
</table>
7.1.3 G SYSC TP 7:

...(3) has certain other transitional provisions relating to the amendments made to the FCA Handbook by the Individual Accountability (Dual-Regulated Firms) Instrument 2018, and the Individual Accountability (FCA-Authorised Firms) Instrument 2019 and the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020; and

...

7.1.6 R Table: glossary of bespoke terms used in SYSC TP 7

| Part Two: Dates |
|-----------------|----------------|----------------|------------------|
| certification transitional period | … | … | Does not apply |
| general commencement date | … | … | 7 December 2020 (as referred to in regulation 2(5) of the solo firms commencement SI) |

Note (2): Column (3) (Others) applies to a core SMCR firm, an enhanced scope SMCR firm and a limited scope SMCR firm but not to a pure benchmark SMCR firm.

Note (3): Column (4) (Benchmark firms) applies to a pure benchmark SMCR firm.
7.4  Transitional provisions about regulatory references

...  

7.4.8  R  (1)  SYSC 22 (Regulatory references) applies to a firm that is excluded from being an SMCR firm by SYSC 23 Annex 1 3.7R (benchmark firms) as it applies to an SMCR firm.

(2)  However, the provisions listed in SYSC 22.8.4R do not apply.
[deleted]

...  

TP 8  Bank of England and Financial Services Act 2016: Application to claims management companies

...  

8.4  Application of SYSC TP 7

...  

8.4.5  G  SYSC TP 7.4.8R (Transitional provisions about regulatory references) and SYSC TP 7.5 (Transitional provisions about benchmarks and the certification regime) are not relevant.

...
Annex C

Amendments to the Code of Conduct sourcebook (COCON)

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

1 Application and purpose

1.1 Application

... To what conduct does it apply? ...

1.1.7A R ...

(2) ...

(3) This rule does not apply where COCON 1.1.7BR applies.

1.1.7B R (1) Where a member (M) of the conduct rules staff of Firm A as described in COCON 1.1.6R to COCON 1.1.7R meets the condition in (c) and Firm A meets the conditions in (a) and (b), the application of COCON to the conduct of M in relation to Firm A is further restricted by this rule:

(a) the firm is a pure benchmark SMCR firm;

(b) the firm is an Annex II benchmark administrator (whether or not it also administers other benchmarks); and

(c) M does not perform any functions described in COCON 1.1.6R to COCON 1.1.7R in relation to Firm A with respect to any benchmark that the firm administers except a benchmark that is subject to Annex II to the benchmarks regulation.

(2) (a) The only conduct to which the following rules apply is the conduct described in (2)(b):

(i) the rules in COCON 2.1 (Individual conduct rules); and

(ii) rule SC4 in COCON 2.2 (You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice).

(b) The rules in (2)(a) apply only to any of the following:
(i) the performance of a function by M in relation to the carrying on of a *regulated activity* by Firm A;

(ii) (if M is an *SMF manager*) the performance by M of a *controlled function* in relation to Firm A (whether or not approval has been sought and granted).

(3) *Rules SC1 to SC3 in COCON 2.2 (Senior manager conduct rules) apply only to conduct:*

(a) that comes within (2)(b); or

(b) that comes within *COCON 1.1.7AR*, but this paragraph (3)(b) only applies in a *prudential context*.

1.1.8 G (1) More than one of *COCON 1.1.6R to COCON 1.1.7AR COCON 1.1.7BR* may apply to the same individual performing several roles.

...  

1.1.8A R (1) This *rule* applies to a person (P):

(a) who is an *approved person* approved to perform a *controlled function* under *SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives) SUP 10A (FCA Approved Persons in Appointed Representatives)*;

...  

...  

4 Specific guidance on individual conduct rules

4.1 Specific guidance on individual conduct rules

...  

Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators

...  

4.1.12 G

4.1.12A G The *FCA* only expects a member of the *conduct rules staff* of an *Annex II benchmark administrator* when the *firm* is acting as such to disclose information under *rule 3* which is relevant to the *firm’s compliance with its obligations under the benchmarks regulation*.  

Page 23 of 89
Rule 4: You must pay due regard to the interests of customers and treat them fairly.

...

4.1.14 G

4.1.14A G In general, the customers of a benchmark administrator are the users of the benchmark (as defined in the benchmarks regulation). A user of a benchmark will not however be a customer if the user does not have a licence to use it and the user has not made an agreement with the benchmark administrator about the way the benchmark administrator carries on the activities included in the regulated activity of administering a benchmark.

...

Rule 5: You must observe proper standards of market conduct.

...

4.1.17 G

4.1.18 G For the purposes of rule 5 and the regulated activity of administering a benchmark, proper standards of market conduct means compliance with the benchmarks regulation and other requirements of the regulatory system or of legislation applicable to administering a benchmark. In the case of administering a benchmark there are no additional standards of market conduct for the purposes of rule 5.

...

4.2 Specific guidance on senior manager conduct rules

...

SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

...

4.2.29 G ...

4.2.30 G The FCA only expects a senior conduct rules staff member of an Annex II benchmark administrator when the firm is acting as such to disclose information under rule SC4 which is relevant to the firm’s compliance with its obligations under the benchmarks regulation.

...

TP 1 Transitional provisions: Miscellaneous
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2) Material to which the transitional provision applies</th>
<th>(3) Transitional provision</th>
<th>(4) Transitional provision: dates in force</th>
<th>(5) Handbook provision coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Row (6) of the table in COCON 1.1.2R</td>
<td>R</td>
<td>Row (6) does not apply to an employee of a pure benchmark SMCR firm.</td>
<td>Between 7 December 2020 and 7 December 2021</td>
</tr>
<tr>
<td></td>
<td>(Table: To whom does COCON apply?)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Row (6) of the table in COCON 1.1.2R</td>
<td>G</td>
<td>The effect of COCON TP 1.3R is that an employee described in column (1) of row (6) of the table in COCON 1.1.2R is not subject to COCON until 7 December 2021.</td>
<td>As stated in COCON TP 1.3R.</td>
</tr>
<tr>
<td></td>
<td>(Table: To whom does COCON apply?)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2 The threshold conditions

... 

2.5 Suitability

... 

Paragraph 3D to Schedule 6 of the Act

...

2.5.3 G (1) The emphasis of the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 of the Act is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FCA and/or the PRA, as appropriate, under the approved persons regime (in relation to an FCA-approved person, see SUP 10A (FCA Approved Persons in Appointed Representatives), SUP 10C (FCA senior managers regime for approved persons in SMCR firms) and FIT). In certain circumstances, however, the FCA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
Annex E

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

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

1 Application and purpose

1.1A Application

Who?

1.1A.1 R APER applies to *FCA-approved persons* who are either:

(1) *approved persons* of firms that are not SMCR firms; or

(2) *approved persons* approved to perform a *controlled function* in SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives) SUP 10A (FCA Approved Persons in Appointed Representatives).

1.1A.1A G (1) APER does not apply to *FCA-approved persons* of SMCR firms.

COCON applies instead.

(2) However, APER applies to *approved persons* approved to perform a controlled function under SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives) even if the appointed representative’s principal is an SMCR firm. [deleted]

What?

1.1A.2 R (1) APER applies to the performance by an *approved person* of *FCA controlled functions* in SUP 10A (FCA Approved Persons in Appointed Representatives) (whether or not approval has been sought and granted).

... 

(5) APER does not apply to conduct unless it is within the scope of section 64A of the Act (Rules of conduct).

... 

Where?

1.1A.5 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 G  
APER 1.1A.7G gives examples of the effect of APER 1.1A.1R and APER 1.1A.2R. The first column says whether the example involves an FCA-approved person in relation to one or two firms. The second column explains what functions APER covers in the scenario set out in the first column. [deleted]

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

<table>
<thead>
<tr>
<th>FCA-approved</th>
<th>Coverage of APER</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Yes, in relation to firm A</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>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 they perform 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>

1.1A.8 G  
(1) 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.

(2) APER does not apply if the firm is an SMCR firm, except for approved persons of an appointed representative of an SMCR firm.

(3) If a person is an approved person of a firm (A) that is not an SMCR firm and also of another firm (B) that is an SMCR firm, the result is:

(a) APER applies to the approved person in relation to firm A; and

(b) COCON applies to the approved person in relation to firm B. [deleted]

1.1A.9 G  
(1) APER 1.1A refers to an approved person’s firm. This means their authorised approved person employer.

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

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, the authorised approved person employer is A (and not B). [deleted]

Replace the defined term “firm” (and derivatives thereof) wherever it appears in APER 2, APER 3 and APER 4 with the defined term “APER employer” (or derivatives thereof as appropriate). This does not apply to those provisions of APER in the following portion of this annex, which are instead amended as shown.

3 Code of Practice for Approved Persons: general

3.1 Introduction

... 3.1.7A G ...

3.1.7B G (1) Statements of Principle 1 to 4 apply to an approved person’s conduct in relation to:

(a) the appointed representative for which they work; and

(b) things directly done for their authorised approved person employer.

(2) Statements of Principle 5 to 7 only apply to an approved person’s conduct in relation to the appointed representative for which they perform their accountable higher management function.

... 3.1.9 G (1) UK domestic firms An APER employer that has its registered office (or, if it has no registered office, its head office) in the United Kingdom with a premium listing are subject to the UK Corporate Governance Code, whose internal control provisions are amplified in the publication entitled ‘Guidance on Risk Management, Internal Control and Related Financial and Business Reporting (September 2014)’ issued by the Financial Reporting Council. Firms regulated by the FCA An APER employer in this category will be subject to
that code as well as to the requirements and standards of the regulatory system.

(2) In Where (1) applies, in forming an opinion whether approved persons have complied with its the requirements of the regulatory system, the FCA will give due credit for their following corresponding Provisions in the UK Corporate Governance Code and related guidance.

3.1.10 R (1) In the case of an approved person approved to perform a controlled function in SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives), a reference in in APER 2 to APER 4 to a firm is a reference to:

(a) the appointed representative in relation to which that approved person performs the controlled function in SUP 10A.1.15R to SUP 10A.1.16BR; and

(b) their authorised approved person employer.

(2) For the purposes of Statements of Principle 5 to 7, a the reference to an APER employer only includes a person coming within paragraph is only to (a) of the definition of APER employer (the appointed representative in relation to which the approved person performs the controlled function in SUP 10A).
Annex F

Amendments to the Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)

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

1 General

1.1 Application and purpose

1.1.1 FIT applies to:

(1) a firm (including an SMCR firm);

(2) an applicant for Part 4A permission that will be an SMCR firm if the application succeeds;

(3) an EEA firm or a Treaty firm that wishes to establish a branch into the United Kingdom using EEA rights or Treaty rights, or apply for a top-up permission if the firm will be an SMCR firm;

...

1.1.3 The table in FIT 1.1.4G summarises the situations to which FIT applies.

1.1.4 Table: Situations to which FIT applies

<table>
<thead>
<tr>
<th>What FIT applies to</th>
<th>Does it apply to SMCR firms?</th>
<th>Does it apply to firms that are not SMCR firms?</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A firm assessing the fitness and propriety of a candidate whom the firm is proposing to put forward for approval</td>
<td>Yes</td>
<td>No</td>
<td>However, the answer to Question 11 in SUP 10A Annex 1 (Frequently asked questions) says that the FCA’s approval process is not a substitute for the checks that a firm should be carrying out on its prospective recruits.</td>
</tr>
<tr>
<td>(2) A firm assessing the continuing fitness and propriety of an approved person</td>
<td>Yes</td>
<td>No</td>
<td>However, a firm should employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (SYSC 5.1). <em>FIT</em> may be a useful guide to matters which a firm should take into account if it is not an SMCR firm.</td>
</tr>
<tr>
<td>(3) The FCA assessing the fitness and propriety of a candidate for approval as an approved person</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>(4) The FCA assessing the continuing fitness and propriety of an approved person</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>(5) A firm assessing the fitness and propriety of a person whom a firm is proposing to certify to perform an FCA certification function</td>
<td>Yes</td>
<td>No</td>
<td><em>FCA certification functions do not apply to a firm that is not an SMCR firm.</em> However, see the comment on row (2).</td>
</tr>
<tr>
<td>(6) A firm assessing the continuing fitness and propriety of a person whom a firm has certified to perform an FCA</td>
<td>Yes</td>
<td>No</td>
<td><em>FCA certification functions do not apply to a firm that is not an SMCR firm.</em> However, see the comment on row (2).</td>
</tr>
</tbody>
</table>
1.2 Introduction

1.2.1 G Under section 60A(1) of the Act, before an SMCR a firm may make an application for the FCA’s approval of a controlled function the firm must be satisfied that the person for whom the application is made is a fit and proper person to perform that function.

1.2.1A G Under section 63F of the Act, an SMCR a firm may issue a certificate to a person to perform a certification function only if it is satisfied that the person is a fit and proper person to perform that function.

1.2.1B G Under sections 60A and 63F of the Act, in assessing whether a person is a fit and proper person to perform an FCA designated senior management function or an FCA certification function, an SMCR a firm must have particular regard to whether that person:

1.3 Assessing fitness and propriety

1.3.2A G An SMCR A firm assessing the fitness and propriety of staff being assessed under FIT should consider:

1.3.2B G An SMCR A firm is reminded that, in assessing a candidate for a position within the management body of the firm, SYSC 4.3A.3R(3) requires the firm
to ensure that the management body, as a collective, possesses adequate knowledge, skills and experience to understand the firm’s activities.

1.3.3 G The criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms when the FCA is determining a person’s fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination. An SMCR A firm assessing the fitness and propriety of staff being assessed under FIT should be guided by substantially the same criteria in FIT 2.1 to FIT 2.3 (to the extent applicable to the firm), recognising that this is not intended to be a definitive list of matters to be considered.

1.3.4 G If a matter comes to the FCA’s attention which suggests that the person might not be fit and proper, the FCA will take into account how relevant and how important it is. In the same way, if a matter comes to the attention of an SMCR a firm which suggests that any staff being assessed under FIT might not be fit and proper, the firm should take into account how relevant and how important that matter is.

1.3.4A G An SMCR A firm assessing the continuing fitness and propriety of an approved person is required to notify the FCA under section 63(2A) of the Act if it forms the opinion that there are grounds on which the FCA could withdraw its approval (see SUP 10C.14.24R). In discharging its obligation to notify the FCA, an SMCR a firm should take into account how relevant and how important the matter is that comes to its attention which suggests an approved person might not be fit and proper before determining that a notification should be made.

1.3.4B G An SMCR A firm assessing the continuing fitness and propriety of staff being assessed under FIT should assess the role that the individual is actually performing at the time the assessment is done. For this purpose, the assessor(s) should be provided with an up-to-date job description for that individual in advance of the assessment.

…

2 Main assessment criteria

2.1 Honesty, integrity and reputation

…

2.1.1A G An SMCR A firm determining the honesty, integrity and reputation of staff being assessed under FIT, should consider all relevant matters, including those set out in FIT 2.1.3G, which may have arisen either in the United Kingdom or elsewhere. Firms should inform themselves of relevant matters, including checking for convictions for criminal offences (where possible) and contacting previous employers who have employed that candidate or person. If any staff being assessed under FIT has a conviction for a criminal offence, the firm should consider the seriousness of and circumstances surrounding the offence, the explanation offered by that person, the
relevance of the offence to the proposed role, the passage of time since the
offence was committed and evidence of the individual’s rehabilitation.

2.1.2A G In considering the reputation of staff being assessed under FIT 2.1.1AG an SMCR a firm should have regard to whether that person’s reputation might have an adverse impact upon the firm for which the function is to be performed and the person’s responsibilities.

2.1.3 G The matters referred to in FIT 2.1.1G to which the FCA will have regard, and to which an SMCR a firm should also have regard, include, but are not limited to:

2.2 Competence and capability

2.2.1A G In determining a person’s competence and capability to perform an FCA designated senior management function or an FCA certification function, an SMCR a firm, in accordance with FIT 1.1.2G, should have regard to all relevant matters including but not limited to:

2.2.2A G The FCA would expect an SMCR a firm determining the competence and capability of staff being assessed under FIT to consider convictions, dismissals and suspensions from employment for drug or alcohol abuses or other abusive acts only in relation to a person’s continuing ability to perform the particular FCA designated senior management function or an FCA certification function for which the person is, or is to be, employed.

2.3 Financial soundness

2.3.1 G In determining a person’s financial soundness, the FCA will have regard, and an SMCR a firm should also have regard, to any factors including, but not limited to:

2.3.2 G The FCA will not normally require a candidate to supply a statement of assets or liabilities. The fact that a person may be of limited financial means will not, in itself, affect their suitability to perform a controlled function. The FCA would expect an SMCR a firm to take a similar view in assessing whether staff being assessed under FIT, are fit and proper.
Annex G

Amendments to the Market Conduct sourcebook (MAR)

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

8 Benchmarks

... 

8.5 Regulated benchmark administrators

... 

Responsibility for benchmark activities: regulated benchmark administrators

8.5.2 R (1) This rule applies to a regulated benchmark administrator other than:

(a) an Annex II benchmark administrator;

(b) an SMCR firm a PRA-authorised person.

(2) A regulated benchmark administrator must allocate the responsibility described in (3) to a director or senior manager who is performing: other than a non-executive director.

(a) an FCA governing function other than the non-executive director function; or

(b) the significant management function (where applicable).

(2A) In the case of a limited scope SMCR benchmark firm, the director or senior manager in (2) must be sufficiently senior for the function of performing that responsibility to meet the definition of a senior management function.

... 

8.5.3 G The rule in MAR 8.5.2R does not apply to a regulated benchmark administrator which is an SMCR firm. That is because:

(1) Most UK SMCR firms are already subject to the requirement to allocate overall responsibility for each of the activities, business areas and management functions of the firm in SYSC 26.3 (Main rules) (the table in SYSC 25 Annex 1G (Examples of the business activities and functions of a relevant authorised person an SMCR firm) refers to administering a benchmark); and A firm may allocate the responsibility in MAR 8.5.2R to more than one person.
(2) **overseas SMCR firms** do not require authorisation to carry out the activity of administering a benchmark unless they are located in the UK. That is because that regulated activity gives effect to article 34 of the benchmarks regulation and, for these purposes, the requirements of article 34 only apply to administrators which are located in the UK. If the firm does so, it should not divide the responsibility between them. Instead each person should be responsible for all aspects of the role.

(3) For example, the role could be allocated to more than one person:

(a) as part of a job share; or

(b) where departing and incoming senior managers work together temporarily as part of a handover.

---

8.5.3A G (1) The FCA expects that a person who has the responsibility in MAR 8.5.2R will:

(a) be sufficiently senior and credible; and

(b) have sufficient resources and authority;

... to be able to exercise their management and oversight responsibilities effectively.

(2) One element of a manager’s seniority is the degree to which they can and do make decisions without prior approval and exercise judgment and discretion.

---

8.5.6 G **An Annex II benchmark administrator which is an SMCR firm** may comply with the requirement in MAR 8.5.2R(4) or MAR 8.5.4R(2) to notify the FCA of the identity of the most senior manager(s) responsible for implementing the requirements of the benchmarks regulation concerned by including that responsibility in that person’s statement of responsibilities.
Annex H

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force 3 June 2020

10A FCA Approved Persons

... 

SUP 10A Annex 10D (MiFID Article 4 APER Information Form) is deleted in its entirety. The deleted text is not shown but the Annex is marked [deleted], as shown below.

10A Annex MiFID Article 4 APER Information Form [deleted] 10D

Amend the following as shown.


11A.1 Application, purpose and definitions

11A.1.1 R (1) …

(2) …

(3) SUP TP 11A applies to a pure benchmark SMCR firm subject to the modifications in SUP TP 11A.25A.


...
11A.1.3  G  (1)  The main time period for which SUP TP 11A operates is 2019. For a pure benchmark SMCR firm the main period in which it operates is 2020.

(2)  …

11A.1.4  G  …

11A.1.5  R  (1)  The terms in the first column of the table in SUP TP 11A.1.5R, where they appear in bold in SUP TP 11A, have the meanings in the corresponding entry in column 2 for the purposes of SUP TP 11A.

(2)  For a pure benchmark SMCR firm the table is modified by SUP TP 11A.25A.3R.

<table>
<thead>
<tr>
<th>Defined term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>firm specific date</td>
<td>…</td>
</tr>
<tr>
<td>limited scope SMCR benchmark firm</td>
<td>has the meaning set out in the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>pre-implementation controlled function</td>
<td>…</td>
</tr>
<tr>
<td>pure benchmark SMCR firm</td>
<td>has the meaning set out in the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>

11A.4  Lapse of existing approvals and special provisions about appointed representatives

…

11A.4.2  R  (1)  SUP TP 11A does not apply to a pre-implementation approval that has effect under SUP 10A.1.15R to SUP 10A.1.16AR (appointed
... SUP 10A (FCA Approved Persons in Appointed Representatives).

... SUP 10A (FCA Approved Persons in Appointed Representatives).


11A.25A R ... 

11A.25A Pure benchmark firms

11A.25A. R SUP TP 11A.25A applies to a pure benchmark SMCR firm.

11A.25A. G SUP TP 11A.25A explains how SUP TP 11A applies to a pure benchmark SMCR firm.

11A.25A. R The definitions and dates in the table in SUP TP 11A.1.5R are amended as follows:

(1) The definition of a term in column one of Part One of the table in this rule replaces the corresponding definition in Part One of the table in SUP TP 11A.1.5R; and

(2) Part Two of the table in this rule replaces Part Two of the table in SUP TP 11A.1.5R.

Part One: General

<table>
<thead>
<tr>
<th>Defined term in main table of definitions</th>
<th>Adjusted meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>core SMCR firm, enhanced scope SMCR firm, limited scope SMCR firm, overseas SMCR firm</td>
<td>have the meaning set out in the Glossary and are subject to the amendments to be made by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020. This is subject to SUP TP 11A.23.</td>
</tr>
</tbody>
</table>

Part Two: Fixed dates
<table>
<thead>
<tr>
<th>Defined term in main table of definitions</th>
<th>New meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>first notification date</td>
<td>7 September 2020</td>
</tr>
<tr>
<td>final notification date</td>
<td>4 December 2020</td>
</tr>
<tr>
<td>commencement date</td>
<td>7 December 2020</td>
</tr>
<tr>
<td>Form O start date</td>
<td>9 June 2020</td>
</tr>
<tr>
<td>enhanced firm cut-off date</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Note: If a firm becomes a pure benchmark SMCR firm between the final notification date and the commencement date, the final notification date for it is the date it becomes a pure benchmark SMCR firm.

11A.25A.  R

(1) This rule makes some adjustments about how certain references to the Individual Accountability (FCA-Authorised Firms) Instrument 2019 in SUP 11A apply to a pure benchmark SMCR firm.

(2) Note (1) to the table in SUP 11A.2.5R (Mapping table: Potential conversion of approval for existing controlled functions into approval for designated senior management functions) is amended so that a reference to a new FCA-designated senior management function is to the FCA-designated senior management function with the same name taking into account amendments made by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.

(3) SUP 11A.23.1R is adjusted so that the firm’s categorisation is determined in accordance with SYSC 23 Annex 1 as adjusted by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.

(4) SUP 11A.23.5R(1) is adjusted so that the rules for making an election to become an enhanced scope SMCR firm that it modifies are the ones in SYSC 23 Annex 1 as adjusted by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.

11A.25A.  G

The material in SUP TP 11A about enhanced scope SMCR firms is likely to be irrelevant to a pure benchmark SMCR firm as it does not meet most of the qualification conditions for this category. However, SUP TP 11A.25A
does not disapply those provisions as it is possible that a pure benchmark SMCR firm may choose to opt into that category.

11A.25A.6 (1) The table in SUP TP 11A.25A.7G explains how each section of SUP TP 11A applies to a pure benchmark SMCR firm.

(2) It assumes that the firm has not elected to be an enhanced scope SMCR firm. If it does elect to be one, many of the parts of SUP TP 11A that the table shows as not applying will apply and a few parts that the table shows as applying will not apply.

11A.25A.7 Table: How SUP TP 11A applies to a pure benchmark SMCR firm

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>How it applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>11A.1</td>
<td>Application, purpose and definitions</td>
<td>This applies. The definitions in SUP TP 11A.1.5R are amended by SUP TP 11A.25A.3R.</td>
</tr>
<tr>
<td>11A.2</td>
<td>Conversion of existing approvals</td>
<td>This applies. However many of the pre-implementation controlled functions will not apply. Part Two of the table in SUP TP 11A.2.5R does not apply. SUP TP 11A.2.8G does not apply. SUP TP 11A.2.9R to SUP TP 11A.2.11G will generally not apply. They will only apply if the firm has to submit a Form K. The entry in this table for SUP TP 11A.5 explains when this is the case.</td>
</tr>
<tr>
<td>11A.3</td>
<td>Effect of conversion</td>
<td>This applies.</td>
</tr>
<tr>
<td>11A.4</td>
<td>Lapse of existing approvals and special provisions about appointed representatives</td>
<td>This applies. However, the material about appointed representatives in SUP TP 11A.4.2R and SUP TP 11A.4.3G does not apply as a pure benchmark SMCR firm is not a firm with a limited permission and is unlikely to have or be an appointed representative.</td>
</tr>
<tr>
<td>11A.5</td>
<td>Notification to the FCA: Initial notification</td>
<td>SUP TP 11A.5 (including the requirement to submit a Form K) does not apply to:</td>
</tr>
</tbody>
</table>

(a) a limited scope SMCR benchmark firm; or

(b) any other pure benchmark SMCR firm unless the chair of the governing body function will apply.
Even if it does apply, the material about the *customer function* does not apply as that function does not apply to a **pure benchmark SMCR firm**.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>11A.6</td>
<td>Notification to the FCA: Revision of initial notice</td>
<td>In general, this does not apply. It only applies if the firm has submitted a Form K under <em>SUP</em> TP 11A.5.</td>
</tr>
<tr>
<td>11A.7</td>
<td>In-flight applications: Conversion</td>
<td>This applies.</td>
</tr>
<tr>
<td>11A.8</td>
<td>In-flight applications: Notification requirements</td>
<td>In general, this does not apply. It only applies if the firm has to submit a Form K (for which, please see the entry in this table for <em>SUP</em> TP 11A.5).</td>
</tr>
<tr>
<td>11A.9</td>
<td>In-flight applications: Supplemental material</td>
<td>This applies.</td>
</tr>
<tr>
<td>11A.10</td>
<td>Procedure for notification</td>
<td>In general, this does not apply. It only applies if the firm has to submit a Form K (for which, please see the entry in this table for <em>SUP</em> TP 11A.5).</td>
</tr>
<tr>
<td>11A.11</td>
<td>Statements of responsibilities</td>
<td>This applies. A firm does not have to send the FCA its statements of responsibilities for its transitioned SMF managers.</td>
</tr>
<tr>
<td>11A.12</td>
<td>Management responsibilities maps</td>
<td>This does not apply.</td>
</tr>
<tr>
<td>11A.13</td>
<td>Supplemental material about statements of responsibilities and management responsibilities maps</td>
<td>The material in this section about statements of responsibilities applies. The material about management responsibilities maps does not.</td>
</tr>
<tr>
<td>11A.14</td>
<td>Criminal record checks and employment references</td>
<td>This applies.</td>
</tr>
<tr>
<td>11A.15</td>
<td>Applications of approved persons to take effect from</td>
<td>This applies.</td>
</tr>
</tbody>
</table>
the commencement date

11A.16 Application of ongoing requirements to converted approvals and conversion documents

This applies. However, the material about management responsibilities maps does not apply.

11A.17 Making sure that the Financial Services Register is accurate

This applies. However, the material about the customer function does not apply as that function does not apply to a pure benchmark SMCR firm.

11A.18 The 12-week rule

This applies.

11A.19 Application for permission

This applies to someone applying to be a pure benchmark SMCR firm.

11A.20 Prohibition orders

This applies.

11A.21 Reporting under SUP 15.11

This will generally not apply as for the most part it relates to certification employees. It applies to a board director.

11A.22 Calculations for retail intermediaries

This does not apply.

11A.23 Deciding which category a firm is in


The effect of SUP TP 11A.23.1R is that if a firm acquires permission for any regulated activities other than benchmark activities before 7 December 2020:

(a) the conversion arrangements in SUP TP 11A will not apply to it;

(b) SUP TP 11A.15 and SUP TP 11A.23.2G will not apply;

(c) the firm will become an SMCR firm; and

(d) the firm will need to apply for and obtain new approvals under SUP 10C (FCA senior managers regime for approved persons in SMCR firms) before its change of permission takes effect.
Most of the rest of SUP TP 11A.23 does not apply as it relates to enhanced scope SMCR firms or opting to be a core SMCR firm. SUP TP 11A.23.10G applies.

The waiver referred to in SYSC 23 Annex 1 6.12R (as set out the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020) may be given before the commencement date. If it is, the firm is a limited scope SMCR benchmark firm for the purpose of SUP TP 11A unless the waiver says otherwise.

<table>
<thead>
<tr>
<th>11A.24</th>
<th>Claims management firms</th>
<th>Does not apply.</th>
</tr>
</thead>
<tbody>
<tr>
<td>11A.25</td>
<td>Forms</td>
<td>In general, this does not apply. It only applies if the firm has to submit a Form K (for which, please see the entry in this table for SUP TP 11A.5).</td>
</tr>
</tbody>
</table>

Part 2: Comes into force 7 December 2020

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirement

6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

How a variation of permission may affect the firm’s approved persons

6.3.8 G (1) Where a firm is submitting an application for variation of Part 4A permission which would lead to a change in the controlled functions of its approved persons, it should, at the same time and as appropriate:

(a) make an application for an internal transfer of an approved person, Form E (Internal transfer of a person performing a controlled function), or make an application for an individual to perform additional controlled functions, the relevant Form A (Application to perform controlled senior management functions); see:

(i) SUP 10A.13.3D to SUP 10A.13.5G (for a firm that is not an SMCR firm has appointed representatives);
(b) notify the FCA or PRA of any approved person who has ceased to perform a controlled function specified by that regulator, Form C (Notice of ceasing to perform controlled functions (including senior management functions)); see:

(i) SUP 10A.14 (for a firm that is not an SMCR firm has appointed representatives);

(2) If the firm intends to recruit new individuals to perform controlled functions, it should apply for approval of the individuals as approved persons as soon as possible using Form A (Application to perform controlled senior management functions); see:

(a) SUP 10A.13 (for a firm that is not an SMCR firm has appointed representatives);

SMCR firm status

6.3.9 G A variation of a firm’s Part 4A permission may mean that it becomes an SMCR firm or that it changes from one type of SMCR firm to another. This would have a number of significant consequences, which include:

(1) the application of the special powers in relation to misconduct by approved persons (see DEPP 6.2.9-AG);

(2) the approved persons senior managers regime switches from SUP 10A to in SUP 10C applies;

(3) COCON applies in place of APER to its staff; and

(4) the other elements of the regime for SMCR firms described in SYSC 23.4 (Overview of the senior managers and certification regime) apply (which differ depending on the type of SMCR firm).

6.4 Applications for cancellation of permission

Approved persons
6.4.18 G (1) A firm which is applying for cancellation of Part 4A permission and which is not otherwise authorised by, or under, the Act should, at the same time:

(a) comply with:

(i) SUP 10A.14.8R (for a firm that is not an SMCR firm has appointed representatives);

... 

... 

10A FCA Approved Persons in Appointed Representatives

10A.1 Application

General

10A.1.1 R This chapter applies to every :

(1) firm that is not an SMCR firm; and

(2) SMCR firm, but only to the extent required by SUP 10A.1.16BR (Appointed representatives) with respect to their appointed representatives.

other than a firm which has permission to carry on only regulated claims management activities.

...

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

(1) of a firm that is not an SMCR firm FCA-approved person of an appointed representative of an SMCR firm; and

(2) of any appointed representative, including of an appointed representative of an SMCR firm.

...

Overseas firms appointed representatives: UK services

10A.1.5 R (1) This chapter does not apply in relation to an overseas firm overseas appointed representative 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 principal in the United Kingdom.

(2) An overseas appointed representative means an appointed representative which has its registered office (or, if it has no registered office, its head office) outside the United Kingdom.

Overseas firms appointed representatives: UK establishments

10A.1.6 R - (1) Only the following FCA controlled governing functions (as modified by this rule) apply in relation to an overseas firm overseas appointed representative which maintains (or whose principal maintains) an establishment in the United Kingdom from which regulated activities are carried on:

(a) the director function;

(b) the non-executive director function; and

(c) the chief executive function.

(1) The director function where only applies to the extent that the person performing that function:

(a) has responsibility for the regulated activities of a UK branch establishment which are likely to enable them to exercise significant influence over that branch establishment; or

(b) is someone whose decisions or actions are regularly taken into account by the governing body of that branch establishment.

(2) The non-executive director function where only applies to the extent that the person performing one of those functions that function:

(a) has responsibility for the regulated activities of a UK branch establishment which is likely to enable them to exercise significant influence over that branch establishment; or

(b) is someone whose decisions or actions are regularly taken into account by the governing body of that branch establishment.

(3) The chief executive function; [deleted]

(4) The FCA required functions; [deleted]

(5) The systems and controls function; [deleted]
(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 [deleted]

(7) the customer function. [deleted]

(8) An overseas appointed representative has the same meaning as in SUP 10A.1.5R.

Incoming EEA firms, and incoming Treaty firms and UCITS qualifiers

This chapter does not apply in relation to the appointed representative of:

(1) an incoming EEA firm; or

(2) an incoming Treaty firm; or

(3) a UCITS qualifier; [deleted]

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, the auction regulation or the benchmarks regulation, to an authority in a country or territory outside the United Kingdom.

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.

Notwithstanding SUP 10A.1.8G, an incoming EEA firm 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 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. [deleted]

10A.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 an FCA controlled function, the firm will need to seek approval for that person to perform that FCA controlled function. [deleted]

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; and

3. [deleted]

(3) the customer function other than where this relates to the function in SUP 10A.10.7R(4) and (7). [deleted]

... 

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; and

c) [deleted]

(3) the customer function. [deleted]

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. [deleted]

Appointed representatives Exclusions and modifications

10A.1.15 R The descriptions of the following FCA controlled functions apply to an appointed representative of a firm, except This chapter does not apply in relation to CBTL business or to an introducer appointed representative, as they apply to an FCA-authorised person: .

10A.1.15A (1) The FCA governing functions, subject to SUP 10A.1.16R and except for do not apply to 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 This chapter 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) …

10A.1.16A R (-1) This The customer function is the only controlled function in this chapter that applies to an appointed representative that is an SMCR firm and has a limited permission to carry on a regulated activity prescribed for the purposes of section 39(1E)(a) of the Act as follows: .
(1) **FCA controlled functions** apply to the appointed representative as set out in SUP 10A.1.15R and SUP 10A.1.16R in relation to the carrying on of the regulated activity, for which it does not have permission, comprised in the business for which its principal has accepted responsibility: [deleted]

(2) (a) unless it is a not-for-profit debt advice body, the **apportionment and oversight function** applies in relation to the carrying on of the regulated activity, for which it has limited permission;

(b) if it is a not-for-profit debt advice body and a CASS large debt management firm, the **CASS operational oversight function** applies in relation to the carrying on of debt management activity.

The **customer function** applies to the appointed representative in relation to the carrying on of the regulated activity, for which it does not have permission, comprised in the business for which its principal has accepted responsibility.

10A.1.16B R **SUP 10A.1.15R and SUP 10A.1.16R apply to the appointed representative of an SMCR firm.** [deleted]

10A.1.16C G (1) References in this chapter to a **firm** include an SMCR firm, but only to the extent required by SUP 10A.1.16BR Certain **additional controlled functions** apply to a firm in SUP 10A.1.16AR under SUP 10C (FCA senior managers regime for approved persons in SMCR firms).

(2) References in SUP 10A.1.15R and SUP 10A.1.16R to **FCA governing functions** and other controlled functions are to **controlled functions** in this chapter, not in SUP 10C (FCA senior managers regime for approved persons in SMCR firms).

Senior management functions

10A.1.16D G …

(2) Generally, the **FCA** does not think that a **person** performing a function in SUP 10A.1.16BR this chapter will have sufficient responsibility for managing the affairs of the **appointed representative’s principal** (as opposed to managing the affairs of the **appointed representative** itself) to perform a **senior management function**.

(3) Therefore:

(a) the **FCA** has not designated any of the functions in SUP 10A.1.16BR this chapter as a **senior management function**; and
(b) none of the functions in SUP 10A.1.16BR this chapter are designated senior management functions.

... Members of a profession

... Benchmark activities

10A.1.21A G  (1) [deleted]
(2) [deleted]
(3) [deleted]
(4) The customer function involves performing various types of activity none of which would be performed by a firm which does not carry on any regulated activities other than administering a benchmark. Therefore the customer function does not apply to such a firm. [deleted]

... Obligations on firms

10A.1.33 G (1) The requirements in this chapter about notifications and applications are addressed to firms. Where this chapter applies in relation to an appointed representative, this means it applies to the appointed representative’s principal.

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 function which are listed in SUP 10A.4.4R. The underlying purpose is to establish, and mark the boundaries of, the “FCA-approved persons regime” for appointed representatives.

10A.3 Provisions related to the Act

... 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 their becoming a partner, or his their 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. [deleted]

...  

10A.4 Specification of functions  

...  

10A.4.2 R 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 to SUP 10A.1.16BR (Appointed representatives) whether its principal is an FCA-authorised person or a PRA-authorised person. [deleted]

...  

10A.4.4 R FCA controlled functions

<table>
<thead>
<tr>
<th>Type</th>
<th>CF</th>
<th>Description of FCA controlled function</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>..</td>
<td>...</td>
</tr>
<tr>
<td>Significant management function*</td>
<td>29</td>
<td>Significant management function</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

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) 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.5.3 R A significant-influence function, in relation to the carrying on of a regulated activity by a firm an appointed representative, 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 appointed representative’s affairs, so far as relating to the activity.

... 

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.

10A.5.5A G A function is not a significant-influence function unless it also meets the requirements of SUP 10A.3.1R (Provisions related to the Act).

Periods of less than 12 weeks

10A.5.6 R If:

1. a firm or its appointed representative appoints an individual to perform a function which, but for this rule, would be an FCA significant-influence function;

... 

10A.5.7 G 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 authorised approved person employer of the approved person in question should apply for approval.

10A.6 FCA governing functions

Introduction

10A.6.1 G Every firm appointed representative 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.

…

What the FCA governing functions include

10A.6.3 R Each of the FCA governing functions includes:

(1) (where apportioned under SYSC 4.3.1R and SYSC 4.4.3R (or, for a full-scope UK AIFM apportioned under article 60(1) of the AIFMD level 2 regulation))

(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. [deleted]

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. [deleted]

10A.6.5 G See MIPRU 2.2 for how the FCA’s approved persons regime is adjusted for a firm carrying on insurance distribution activity. [deleted]

Director function (CF1)

10A.6.7 R If a firm an appointed representative 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 appointed representative.

10A.6.8  R  (1) If a firm appointed representative 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 appointed representative; and

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

(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 in to 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. [deleted]

Non-executive director function (CF2)

10A.6.12 R If a firm an appointed representative 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 appointed representative.

10A.6.13 R (1) If a firm an appointed representative 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 appointed representative.

(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. [deleted]

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

10A.6.16 G (1) The explanation in SUP 10C.5B.2G of the basis on which the group entity senior manager function is included as a controlled function for an SMCR firm is also relevant to 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 appointed representative’s parent undertaking or holding company under SUP 10A.6.8R or SUP 10A.6.13R.

(2) The guidance in SUP 10C.5B.3G to SUP 10C.5B.5G about when the group entity senior manager function applies to an SMCR firm is also relevant to when those who have a position with a firm’s appointed representative’s parent undertaking or holding company may be performing a controlled function under SUP 10A.6.8R or SUP 10A.6.13R.

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 an appointed representative.

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 branch in the United Kingdom of an overseas firm a non-UK appointed representative, for the conduct of all of the activities subject to the UK regulatory system.

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

... Partner function (CF4)

10A.6.23 R (1) If a firm an appointed representative is a partnership, the partner function is the function of acting in the capacity of a partner in that firm appointed representative.

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

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

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

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

10A.6.26 R If a firm an appointed representative is a limited liability partnership, the partner function extends to the firm appointed representative as if the firm appointed representative were a partnership and a member of the firm appointed representative were a partner.

... Director of unincorporated association function (CF5)

10A.6.29 R If a firm an appointed representative 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)

SUP 10A.9 (Significant management functions) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted], as shown below.
Amend the following as shown.

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) or its principal in the United Kingdom.

...

The basic rule about the customer function

...

10A.10.5 R The customer-dealing function, in relation to the carrying on of a regulated activity by a firm, an appointed representative (“A”), means a function that will involve the person performing it in dealing with:

...

10A.10.5A R In SUP 10A.10.5R, customer, in relation to a firm, an appointed representative, means a person who is using, or who is or may be contemplating using, any of the services provided by the firm appointed representative.

10A.10.5B G A function is not included in the customer function unless it also meets the requirements of SUP 10A.3.1R (Provisions related to the Act).

...

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) (where it applies) 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, gives advice on P2P agreements to retail clients 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.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) SUP 10A.16 (How to apply for approval and give notifications).

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 online form on the FCA and PRA’s online notification and application system or the form in SUP 10A Annex 4D (See Note) SUP 10C Annex 3D</td>
<td>Application to perform controlled functions under the approved persons regime</td>
<td>SUP 10A.13.3D</td>
</tr>
<tr>
<td>...</td>
<td>Internal transfer of an approved person</td>
<td>SUP 10A.14.4D</td>
</tr>
<tr>
<td>Form E</td>
<td>The relevant online form on the FCA and PRA’s online notification and application system or the form in SUP 10A Annex 8D (See Note) SUP 10C Annex 7D</td>
<td></td>
</tr>
</tbody>
</table>

Note (1) [deleted]

Note (2): Where SUP 10A.1.16BR (appointed representative of an SMCR firm) applies, the version of the form to be used is the one required by SUP 10C (FCA senior managers regime for approved persons in SMCR firms).

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

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)
SUP 10A.16 (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.

10A.13 Application for approval and withdrawing an application for approval

How to apply for approval

10A.13.3A D If a firm must make an application using Form A, it must use Form A (shortened form) if:

1. the candidate:
   a. has current approved person approval to perform:
      i. an FCA controlled function that is a significant influence function; or

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 the appointed representative.

(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 8.1.1R**. [deleted]

### 10A.13.6 G Outsourcing arrangements [deleted]

<table>
<thead>
<tr>
<th>Outsourcing arrangements</th>
<th>Submitting form</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Firm A to Firm B</strong></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. <strong>Firm B submits FCA-approved persons forms on behalf of Firm A</strong></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 <strong>SUP 10A.3.4G</strong></td>
</tr>
<tr>
<td>(i) A to B, where B is a non-authorised person not part of the same group as A</td>
<td>Responsibility for (as opposed to the performance of) any activity outsourced to B will remain with A. See <strong>SYSC 8</strong></td>
</tr>
</tbody>
</table>
(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

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

Moving within a firm

---

#### 10A.14.2 G If: an FCA-approved person or a PRA-approved person

1. A firm is applying for approval for someone to perform a controlled function under this chapter; and
2. That person is also ceasing to perform FCA controlled functions or a PRA controlled function, as well as applying for approval in respect of FCA controlled functions within in relation to the same firm or in relation to a firm in the same group.

The firm should generally use Form E. Further details can be found in SUP 10A.14.4D.

---

#### 10A.14.3 G If a person is to perform an FCA controlled function for under this chapter in relation to a firm for which they already perform an FCA controlled function as an approved person (whether under this chapter or SUP 10C (FCA senior managers regime for approved persons in SMCR firms)) but they are not at the same time ceasing to perform an FCA controlled function or PRA controlled function for the firm or a firm in the same group, a firm should use Form A. See SUP 10A.13.3D and SUP 10A.13.3AD for further details.

---

#### 10A.14.3A G See SUP 10A.14.23G for circumstances in which a firm should use Form D rather than Form A or E.

---

#### 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 in relation to the same firm or in relation to a firm in the same group.

(2) A firm must not use Form E if:
…

(c) any of the following apply (where applicable):

…

(ii) …

in relation to any:

(iii) …

(iv) controlled function that they are continuing to perform for in relation to that firm or to a firm in the same group.

…

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, the appointed representative of one principal, 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, the appointed representative of a new principal (whether or not the new firm is in the same group as the old firm), the new firm principal will be required to make a fresh application for the performance of the FCA controlled function by that person. This applies even if the new principal is in the same group as the old principal or the appointed representative is the same.

Ceasing to perform an FCA controlled function

10A.14.8 R …

(2) If:

(a) the firm is also making an application for approval for that approved person to perform a controlled function within in relation to the same firm or to a firm in the same group; and

…

10A.14.10 R …

(2) Form C is qualified if the information it contains:
(a) relates to the fact that the firm or the appointed representative 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 appointed representative, the FCA or any other regulatory body; or

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 authorised approved person employer must notify the FCA on Form D (SUP 10C Annex 6R) of that change within seven business days of the firm becoming aware of the matter.

10A.14.21 G (1) If, in relation to a firm which has completed the relevant Form A (SUP 10A Annex 4D) (SUP 10C Annex 3D), any of the details relating to arrangements and FCA controlled functions are to change, the firm must notify the FCA on Form D (SUP 10C Annex 6R).

References and accurate information

10A.15 References and accurate information

10A.15.1 G (1) SYSC 22 (Regulatory references) says that if a firm (A):

(a) is considering appointing a person (P) to perform any controlled function or certain other functions;

(b) requests a reference from a firm (B) that is P’s current or former employer; and

(c) indicates to B the purpose of the request;

B should, as soon as reasonably practicable, give a reference to A.

(2) This applies even if A is a firm to which SUP 10C (FCA senior managers regime for approved persons in SMCR firms) applies rather than this chapter. SYSC 22.8.3R and SYSC 22.8.4R
(Appointed representatives) say that this applies to B’s appointed representatives as well as to B.

The need for complete and accurate information

10A.15.4 G The obligations to supply information to the FCA under either SUP 10A.14.8R or SUP 10A.14.10R 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 or its appointed representative and an employee upon termination of the employee’s employment. A firm should not (and should ensure that its appointed representatives do not) enter into any such arrangements or agreements that could conflict with its obligations under this section.

10A.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 must be made by submitting the Form online at fca.org.uk using the form specified on the FCA’s and PRA’s online notification and application system in accordance with the requirements in SUP 10C.15 (Forms and other documents and how to submit them to the FCA) about the submission of those Forms.

(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); [deleted]

(5) An application by a firm in relation to a controlled function to which SUP 10A.1.16BR (appointed representative of an SMCR firm) applies must be made in accordance with SUP 10C.15 (Forms and other documents and how to submit them to the FCA) and not this section. [deleted]

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

(2) A notification must be made in accordance with SUP 10A.16.1D, except that the annexes in which the forms are to be
found are SUP 10C Annex 5R or SUP 10C Annex 6R, rather than the Annexes mentioned in SUP 10A.16.1D the requirements in SUP 10C.15 (Forms and other documents and how to submit them to the FCA) about the submission of those Forms.

(3) A notification by a firm in relation to a controlled function to which SUP 10A.1.16BR (appointed representative of an SMCR firm) applies must be made in accordance with SUP 10C.15 (Forms and other documents and how to submit them to the FCA) and not this section. [deleted]

10A.16.2A R SUP 10A.16.2R(3) rule also applies to Form B in relation to a controlled function to which SUP 10A.1.16BR (appointed representative of an SMCR firm) applies. [deleted]

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. [deleted]

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. [deleted]

SUP 10A.17 (Further questions) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted], as shown below.

10A.17 Further questions [deleted]

Delete the following Annexes. The deleted text of each Annex is not shown but they are marked [deleted] as shown below.

10A Annex 1G Frequently asked questions [deleted]

10A Annex 2G Approved persons regime: summary of forms and their use for applications for approval to perform an FCA-controlled function [deleted]
Amend the following as shown.

10C FCA senior managers regime for approved persons in SMCR firms

10C.1 Application

General

...

10C.1.2A G SUP 10C Annex 1 (What functions apply to what type of firm) sets out:

(1) ...

(2) the SMCR firms to which no controlled functions in this chapter does not apply.

...

Appointed representatives

10C.1.7 R This chapter does not deal with an approved person who is approved under SUP 10A.1.16BR (Appointed representatives) SUP 10A (FCA Approved Persons in Appointed Representatives).

10C.1.8 G (1) SUP 10A.1.15R to SUP 10A.1.16DG (Appointed representatives) deal SUP 10A (FCA Approved Persons in Appointed Representatives) deals with the approved persons regime for appointed representatives of SMCR firms.

...

10C.3 General material about the definition of controlled functions

...

Types of controlled function
10C.3.4 G The FCA has (in SUP 10A (FCA Approved Persons in Appointed Representatives)) specified controlled functions for SMCR firms that are not designated senior management functions. (See SUP 10C.1.7R to SUP 10C.1.8G (Appointed representatives)).

...

10C.4 Specification of functions

...

10C.4.4 G As described in SUP 10C.1.7R to SUP 10C.1.8G (Appointed representatives), SUP 10A (FCA Approved Persons in Appointed Representatives) specifies certain other controlled functions for SMCR firms.

...

10C.4A FCA governing functions: General

...

Sole traders

10C.4A.2 G (1) An individual sole trader themselves will not need approval to perform any of the FCA governing functions. Therefore the FCA governing functions do not apply to a sole trader with no employees.

(2) It is possible, although perhaps not likely in practice, that the FCA governing functions could apply to staff working for the sole trader.

...

...

10C.6 FCA-required functions FCA required functions

...

Limited scope function (SMF29)

10C.6.5 R The limited scope function is the function of acting in the capacity of a person;

(1) responsible for the apportionment function and/or the oversight function set out in SYSC 4.4.5R;
(2) who has the responsibility allocated under MAR 8.5.2R (Responsibility for benchmark activities: regulated benchmark administrators); or

(3) performing the role of the senior manager described in MAR 8.5.4R(2) (Responsibility for benchmark activities: regulated benchmark administrators).

10C.6.6 G The fact that there is a person performing the limited scope 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. [deleted]

10C.6B Systems and controls functions: Other

The chief operations function (SMF24)

10C.6B.2 R (1) …

(2) …

(b) the matters to which any of the FCA required functions relate; or

…

…

…

10C.7 Other overall responsibility function (SMF18)

…

Definition

…

10C.7.3 G

<table>
<thead>
<tr>
<th>Example</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>
(9) ‘A’ is appointed to a role for Firm X that comes within the PRA’s Head of Key Business Area designated senior management function. It is also a potential other overall responsibility function. Later, the firm reorganises—A’s role stays the same but now it falls outside the PRA’s Head of Key Business Area designated senior management function.

The relevant PRA rules can be found in Chapter 2 of the part of the PRA Rulebook titled ‘Senior Management Functions’, Chapter 2 of the part of the PRA Rulebook titled ‘Insurance - Senior Management Functions’ and Chapter 2 of the part of the PRA Rulebook titled ‘Large Non-Solvency II Firms – Senior Management Functions’.

This example only applies if Firm X is an SMCR banking firm. If Firm X is an insurer it will need to obtain FCA approval before the reorganisation takes effect as the relevant PRA insurance rules are different from the ones for SMCR banking firms.

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

How to apply for approval

10C.10.8A D If a firm must make an application using Form A, it must use Form A (shortened form) if:

(1) the candidate:

(a) has current approved person approval to perform:

(i) an FCA controlled function that is a significant influence function or

...
10C.10.9 D (1) …

(2) A firm must not use Form E if the approved person has never before been approved to perform for any firm:

(a) an FCA controlled function that is a significant-influence function; or

…

(3) A firm must not use Form E if the approved person has not been subject to a current approved person approval from the FCA or PRA to perform for any firm for more than six months:

(a) an FCA controlled function that is a significant-influence function; or

…

…

10C.12 Conditional and time-limited approvals

Purpose

…

10C.12.2 G …

(3) The FCA has (in SUP 10A (FCA Approved Persons in Appointed Representatives)) specified controlled functions for SMCR firms that are not designated senior management functions. See SUP 10C.1.7R to SUP 10C.1.8G (Appointed representatives) for more about this.

…

10C.15 Forms and other documents and how to submit them to the FCA

…

Forms and documents

…

10C.15.3 G Table: FCA approved persons forms and other documents
Form or other document | Purpose | Handbook requirement
---|---|---
... | ... | ... 
Form B | SUP 10C Annex 4R | Notice to withdraw an application to perform controlled functions under the approved persons senior managers regime | SUP 10C.10.36R 
... | ... | ... 
... | ... | ... 
Annex III template | ... | ... 

[Note: Some of these forms are also used for the purposes of SUP 10A (FCA Approved Persons in Appointed Representatives)]

...  
10C.16 References and accurate information  
References  
10C.16.1 R (4) SYSC 22 (Regulatory references) says that if a firm (A):

(1) (a) is considering appointing a person (P) to perform any controlled function or certain other functions;

(2) (b) requests a reference from a firm (B) that is P’s current or former employer; and

(3) (c) indicates to B the purpose of the request;

B should, as soon as reasonably practicable, give a reference to A.

(2) This applies even if A is a firm to which SUP 10A (FCA Approved Persons) applies rather than this chapter.
What functions apply to what type of firm

Annex 1

Part One: Introduction

1.3 G ...

(3) Another reason would be if the rules defining the FCA controlled function refer to a rule elsewhere in the FCA Handbook and the latter only applies to certain types of firm. For example:

(a) SYSC 1 Annex 1 (Detailed application of SYSC) cuts back the application of some of the FCA required functions;

(b) see the entry for this chapter in the table in BENCH 2.1.2G (Parts of the Handbook applicable to the regulated activity of administering a benchmark) for an example relating to FCA required functions.

Part Seven: Functions applying to limited scope firms

7.1 R Limited scope SMCR firms are divided into the following categories for the purposes of SUP 10C Annex 1:

(1) a firm falling within the table in SYSC 23 Annex 1 6.4R that does not come within (2) to (4A) or (8) to (9);

(4) …

(4A) a limited scope SMCR benchmark firm;

(5) a sole trader who does not come within (1) to (4A), (8) or (9);

(6) an authorised professional firm that does not come within (1) to (4A), (8) or (9);
7.3 R (1) The table in SUP 10C Annex 1 7.4R sets out which FCA controlled functions apply to a limited scope SMCR firm covered by SUP 10C Annex 1 7.1R(1), (2), (3), (4), (4A), (8) or (9).

...  

7.4 R Table: Controlled functions applying to limited scope SMCR firms except sole traders and authorised professional firms

<p>| Part 1.1 (UK and non-EEA firms) |
|-------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|</p>
<table>
<thead>
<tr>
<th>(1) Brief description of function</th>
<th>(2) Function number</th>
<th>(3) General Insurance distribution firms</th>
<th>(4) Credit firms</th>
<th>(5) Consumer credit appointed representatives</th>
<th>(7) Benchmark firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>The governing functions that apply to core SMCR firms</td>
<td>Various</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>Required functions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compliance oversight function</td>
<td>SMF 16</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Money laundering reporting function</td>
<td>SMF 17</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Limited scope function</td>
<td>SMF 29</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

...
Notes to the table

Note (1): The categories of firm in the column headings of this table are to be interpreted in accordance with the classification of firms at SUP 10C Annex 1 7.1R. Therefore:

(4) column six of Parts 1.1 and 1.2 of the table (Consumer credit appointed representatives) refers to SUP 10C Annex 1 7.1R(4);

(5) column seven of Part 1.1 of the table (Benchmark firms) refers to SUP 10C Annex 1 7.1R(4A);

(4 6) column three of Part 2 of the table (Class 1 claims management firms) refers to SUP 10C Annex 1 7.1R(8); and

(5 7) column four of Part 2 of the table (Other Claims management firms) refers to SUP 10C Annex 1 7.1R(9).

7.5 R (1) …

(2) The FCA required functions apply in relation to the carrying on of the regulated activity for which it has limited permission.

(3) The FCA governing functions apply in relation to the carrying on of the regulated activity, for which it does not have permission, comprised in the business for which its principal has accepted responsibility.

(4) If the appointed representative meets the conditions in SUP 10A.1.16R(2), only one of the FCA governing functions applies under (3), as appropriate, to an individual within that appointed representative who will be required to be an FCA-approved person.

7.11 G (1) …

(2) …

(a) In practice it is unlikely that the FCA governing functions will apply to a sole trader (see SUP 10C.4A.2G).

…
### 10C Summary of forms and their use in the senior managers regime

#### Annex 2G

<table>
<thead>
<tr>
<th>Function</th>
<th>Form</th>
<th>Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>(2) The <em>candidate</em> is to perform an <em>FCA-designated senior management function</em> and either:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) has current approval to perform an <em>FCA controlled function</em> that is a significant influence function, an FCA-designated senior management function, or a PRA controlled function; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) ...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>(4) Either:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) <em>candidate</em> is seeking to perform an <em>FCA-designated senior management function</em> for the first time and has never been approved to perform an <em>FCA controlled function</em> that is a significant influence function, an FCA-designated senior management function, or a PRA controlled function before; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) <em>candidate</em> ceased to have approval from the FCA or PRA to perform an <em>FCA controlled function</em> that is a significant influence function, an FCA-designated senior management function, or a PRA controlled function more than six months ago.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>(18) <em>Person</em> (P) has approval to perform a <em>FCA governing function</em> under <em>SUP 10A (FCA Approved Persons in Appointed Representatives)</em> for an <em>appointed representative</em> of an <em>SMCR firm</em> (F). P then takes up an <em>FCA-designated senior management function</em> position with F itself</td>
<td>E</td>
<td>Submitted by F to the <em>FCA</em> before changes take place. F should use a Form E because the function P performs for the <em>appointed representative</em> is treated as <em>being performed in relation to F</em> and so</td>
</tr>
</tbody>
</table>
and gives up their role with the appointed representative.

P is applying for approval to perform an FCA-designated senior management function for in relation to the same firm (F).

...  

12 Appointed representatives  

...

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

Obligations of firms under the approved persons and senior managers regime

12.6.8 G (1) Some of the controlled functions, as set out in SUP 10A.4.1R, *SUP 10A* apply applies certain controlled functions to an appointed representative of a firm, other than an introducer appointed representative, just as they apply to a firm (see *SUP 10A*.1.15R). These are the governing functions and the customer function. In the case of an appointed representative that also has a limited permission, an FCA designated senior management function may apply to it and *SUP 10C* may apply in addition to *SUP 10A*.

  (2) [deleted]

  (3) [deleted]

  (4) [deleted]

...

13A Qualifying for authorisation under the Act

...

13A Application of the Handbook to Incoming EEA Firms

Annex 1G

<table>
<thead>
<tr>
<th>(1) Module of Handbook</th>
<th>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of a</th>
<th>(3) Potential application to an incoming EEA firm with respect to activities carried on</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>firm (or its appointed representative) in the United Kingdom</td>
<td>other than from an establishment of the firm (or its appointed representative) in the United Kingdom</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>APER</strong></td>
<td>APER applies to approved persons of firms other than appointed representatives of SMCR firms. See below under SUP 10A as to whether controlled functions are performed and approval therefore required.</td>
<td>Not relevant because SUP 10A does not apply</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>SUP</strong></td>
<td>SUP 10A (FCA Approved persons in Appointed Representatives) Applies to an EEA firm that is not an SMCR firm, but the applicable controlled functions are limited. See SUP 10A.1 (Application) for more detailed guidance and has appointed representatives.</td>
<td>SUP 10A (FCA Approved persons in Appointed Representatives) Does not apply (SUP 10A.1.6R).</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
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<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

15 Notifications to the FCA

15.1 Application

SMCR firms

15.1.7 The following apply only to SMCR firms:

1. **SUP 15.2.5G (Purpose):**
(2) *SUP 15.11* (Notification of COCON breaches and disciplinary action);

(3) *SUP 15.15* (Enhanced scope SMCR firm retail intermediaries); and

(4) *SUP 15.16* (Notification of changes in the management body); and

(5) *SUP 15.17* (Notification by limited scope SMCR benchmark firm).

\[\ldots\]

15.3 General notification requirements

\[\ldots\]

Breaches of rules and other requirements in or under the Act or the CCA

\[\ldots\]

15.3.14A G (1) Some matters that need to be notified under *SUP 15.3.11R* may also have to be notified under *SUP 10A.14* or *SUP 10C.14* (Changes to an FCA-approved person's details).

\[\ldots\]

Insert a new section, *SUP 15.17*, after *SUP 15.16* (Notification of changes in the management body). The text is not underlined.

15.17 Notification of regulated income by limited scope SMCR benchmark firm

Application

15.17.1 R This section of the *FCA Handbook* applies to a *limited scope SMCR benchmark firm*.

Purpose

15.17.2 G (1) As explained in *SYSC 23 Annex 1 6.12R*, the *FCA* may grant a *waiver* to certain benchmark *firms* that treats them as a *limited scope SMCR firm*.

(2) One of the eligibility conditions that the *FCA* anticipates it will apply is that the *firm’s* income from benchmark activities is below 20% of its total income.
(3) The purpose of this section of the FCA Handbook is to allow the FCA to monitor whether a firm continues to meet that condition after it has received the waiver.

(4) The waiver may modify or replace this section to be consistent with the basis on which a firm receives the waiver if the firm receives the waiver:

(a) on a different basis from the one described in (2);

(b) on the basis of an adjusted calculation of revenue as contemplated by SYSC 23 Annex 1 6.17G(5) (Benchmark firms: When the waiver is likely to be available); or

(c) on some other basis inconsistent with this section.

Definitions

15.17.3 R In this section of the FCA Handbook:

(1) a firm’s reporting year means the annual period in respect of which it prepares its annual financial statements;

(2) reporting date is defined in SUP 15.17.9R;

(3) annual regulated income is defined in SUP 15.17.6R;

(4) annual income is defined in SUP 15.17.5R.

Obligation to make calculations

15.17.4 R A firm must calculate, for each reporting year, whether or not its annual regulated income is less than 20% of its annual income.

15.17.5 R A firm’s annual income for a reporting year is the gross inflow of economic benefits (i.e. cash, receivables and other assets) recognised in the firm’s annual financial statements for that reporting year.

15.17.6 R A firm’s annual regulated income is its annual income in respect of, or in relation to, activities in the United Kingdom that comprise a necessary part of its business as a regulated benchmark administrator.

15.17.7 R (1) Where the sales and marketing of a benchmark are undertaken by a separate legal entity, the firm is responsible for identifying the relevant income and treating it as its own income.

(2) To avoid double counting, the firm must include only the income from sales and exclude any amount paid to it from that income to pay for its expenses as a regulated benchmark administrator.
15.17.8 R A firm must calculate its annual regulated income fairly, consistently and in accordance with generally accepted accounting practice.

15.17.9 R (1) A firm must complete the calculation in SUP 15.17.4R no later than 80 business days after the accounting reference date for the applicable reporting year.

(2) This section of the FCA Handbook refers to the date in this rule as the ‘reporting date’.

Obligation to notify the FCA

15.17.10 R A firm must notify the FCA if its annual regulated income is 20% or more of its annual income for a reporting year if, in the previous reporting year, its annual regulated income was less than 20% of its annual income or it had no annual income.

15.17.11 R A firm must notify the FCA if its annual regulated income is less than 20% of its annual income for a reporting year if, in the previous reporting year, its annual regulated income was 20% or more of its annual income.

15.17.12 R A firm must make the notification in SUP 15.7.10R or SUP 15.17.11R no later than the reporting date for the reporting year in question.

15.17.13 G The notification obligations in this section apply whether this is the first time the relevant event has occurred or whether it has happened before.

15.17.14 G A firm need not include the amount of its annual regulated income or annual income in a notification under this section.

15.17.15 G A firm’s reporting year may start or end before it became a firm or a limited scope SMCR benchmark firm.

15.17.16 G A firm should make the notification in SUP 15.7.10R even if it had no annual regulated income in the previous reporting year because, for example, it has only recently started its benchmark activities.

15.17.17 G (1) This section of the FCA Handbook does not require a firm regularly to notify the FCA whether its annual regulated income is 20% or more of its annual income or less than 20%.

(2) Instead this section only requires a firm to notify the FCA when its annual regulated income crosses (upwards or downwards) the 20% mark.

(3) So, for example, if the firm’s annual regulated income stays below the 20% mark it will never need to notify the FCA under this section.

How to submit notifications

15.17.18 R A firm does not have to use the form in SUP 15 Annex 4R (Notification form) to make a notification under this section of the FCA Handbook but
must include the details required by Section A of that form (Personal Details).

15.17.19 G Subject to SUP 15.17.18R, SUP 15.7 (Form and method of notification) applies to notifications under this section of the FCA Handbook.

Amend the following as shown.

15 Annex 1R Application of SUP 15 to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions

<table>
<thead>
<tr>
<th>Applicable sections</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>SUP 15.14</td>
<td>…</td>
</tr>
<tr>
<td>SUP 15.15</td>
<td>Notification by retail intermediaries of qualification as an enhanced scope SMCR firm</td>
</tr>
<tr>
<td>SUP 15.16</td>
<td>…</td>
</tr>
<tr>
<td>SUP 15.17</td>
<td>Notification of regulated income by limited scope SMCR benchmark firm</td>
</tr>
</tbody>
</table>

…

16 Reporting requirements

16.26 Reporting of information about Directory persons

Application
16.26.1 R This section of the FCA Handbook applies to an SMCR firm but it does not apply to a pure benchmark SMCR firm.

...
Annex I

Amendments to Professional Firms sourcebook (PROF)

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

5  Non-mainstream regulated activities

... 

5.3  Reference to other sourcebooks and manuals

... 

Supervision manual

5.3.5  \textit{SUP 10A, 1.17R SUP 10C Annex 1 2.1R} provides that \textit{SUP 10A (Approved persons) SUP 10C (FCA senior managers regime for approved persons in SMCR firms)} does not apply (except in respect of the \textit{FCA required functions}) to an \textit{authorised professional firm} in respect of its \textit{non-mainstream regulated activities}. So a person such as a \textit{partner}, whose only \textit{regulated activities} are incidental to his their \textit{professional services}, in an \textit{authorised professional firm} whose principal purpose is to carry on activities other than \textit{regulated activities}, need not be an \textit{approved person}.

...
Annex J

Amendments to General guidance on Benchmark Administration, Contribution and Use (BENCH)

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

2 Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors

...  

2.1 Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors

...  

2.1.2 G Parts of the Handbook applicable to the regulated activity of administering a benchmark.

<table>
<thead>
<tr>
<th>High Level Standards</th>
<th>Part of the Handbook</th>
<th>Applicability to the regulated activity of administering a benchmark</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
| Senior Management Arrangements, Systems and Controls (SYSC) | The detailed application of this is set out in SYSC 1 Annex 1. However, in general, only the following parts of SYSC will be relevant to a firm which only has permission to carry on the regulated activity of administering a benchmark:  
(a) SYSC 1;  
(b) SYSC 18.3.9G;  
(c) SYSC 22 to SYSC 26. |
| Statements of Principle and Code of Practice for Approved Persons (APER) | This applies to an approved person of a firm that is not an SMCR firm. |
| Code of Conduct sourcebook (COCON) | This applies to a firm’s conduct rules staff of SMCR firms. |
| Regulatory processes | Supervision manual (SUP) | This applies subject to the following qualifications:

(a) In general only the following parts of SUP will be relevant to a firm which only has permission to carry on the regulated activity of administering a benchmark: SUP 1-2, SUP 5-8, SUP 9-10A, SUP 10C, SUP 15-15B, SUP 16.1-16.3 and SUP 16.10.

(b) SUP 10A only applies to a regulated benchmark administrator which is not an SMCR firm (but not all controlled functions apply to a firm which only has permission to carry on the regulated activity of administering a benchmark). [deleted]

(c) SUP 10C only applies to a regulated benchmark administrator which is an SMCR firm and so SUP 10C applies to it. That chapter deals with the designated senior management functions that apply to a regulated benchmark administrator and other SMCR firms.

If a regulated benchmark administrator is a core SMCR firm, the following FCA-designated senior management functions, which normally apply to a core SMCR firm, do not apply:

(i) the compliance oversight function; and

(ii) the money laundering reporting function.

That is because those FCA-designated senior management functions are specified by incorporation of requirements in SYSC and the relevant parts of SYSC do not apply in relation to benchmark activities (which includes administering a benchmark). |