

**EXITING THE EUROPEAN UNION: SMCR AND APR (AMENDMENTS) (No 2)  
INSTRUMENT 2020**

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

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 the IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020 (“IP completion day”), except that paragraph E of this instrument comes into force on 11 December 2020.

**Amendments to the Handbook**

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

(1)	(2)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Code of Conduct (COCON)	Annex B
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex C
Fit and Proper test for Employees and Senior Personnel (FIT)	Annex D
Supervision manual (SUP)	Annex E

**Revocation of the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019**

- E. The Exiting the European Union: SMCR and APR (Amendments) Instrument 2019 (FCA 2019/30) is revoked.

**Citation**

- F. This instrument may be cited as the Exiting the European Union: SMCR and APR (Amendments) (No 2) Instrument 2020.

By order of the Board  
10 December 2020

**Annex A**

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

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

**4 General organisational requirements**

...

**4.4 Apportionment of responsibilities**

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Allocating functions of apportionment and oversight

4.4.5 R A *firm* must appropriately allocate to one or more individuals, in accordance with the following table, the functions of:

...

...

1: Firm type	2: Allocation of both functions must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:
...	...	...
(2) An <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> <u>EEA SMCR firm</u> (note: only the functions in SYSC 4.4.5R(2) must be allocated)	...	...
...	...	...
...		

4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
...	...	...
12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an EEA SMCR firm other than a claims management firm?	<p>...</p> <p>(2) Such a firm is required to allocate the function of oversight in SYSC 4.4.5R(2). However, the systems and controls that must be overseen are those relating to matters which the FCA, as Host State regulator, is entitled to regulate (there is guidance on this in SUP 13A Annex 2). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the firm's activities carried on from its UK branch.</p> <p>...</p> <p>(4) SYSC 4.4 does not apply to an EEA SMCR PTV firm which has provision only for cross border services if it does not have a branch in the United Kingdom.</p> <p>See also Questions <u>Question 1</u> and <u>15</u>.</p>
...	...	...
15	What about incoming electronic commerce activities carried on from an establishment in another EEA State with or for a person in the United Kingdom? [deleted]	An incoming ECA provider acting as such is not an SMCR firm.

...

22 Regulatory references

22.1 Application

...

Territorial scope and overseas firms

...

- 22.1.6 R For an ~~incoming firm or any other~~ *overseas firm*, SYSC 22.2.2R (Obligation to give references) only applies if the current or former *employee* in question (defined as “P” in SYSC 22.2.2R) is or was an *employee* of its *branch* in the *United Kingdom* and only relates to their activities as such.

...

## 23 Senior managers and certification regime: Introduction and classification

...

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

### Annex 1

Part One: Flow diagram and other basic provisions

...

- 1.3 R ...
- 1.4 R (1) A Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an EEA PTV firm for the purposes of deciding whether it is an SMCR firm and into which category of SMCR firm it falls. In particular, if it is an SMCR firm, it is to be treated as an EEA SMCR firm.
- (2) (1) is without prejudice to the generality of GEN 2.3.

...

Part Three: Definition of exempt firm

...

- 3.3 R ~~An incoming EEA firm~~ An EEA PTV firm that is ~~an EEA~~ a pure reinsurer is an exempt firm.
- 3.4 R ~~An incoming ECA provider acting as such is an exempt firm. [deleted]~~
- 3.5 R ~~A UCITS qualifier~~ TP UCITS qualifier is an exempt firm (~~see section 266 of the Act (Disapplication of rules)~~).
- 3.6 R ~~An AIFM qualifier~~ A TP AIFM qualifier is an exempt firm.

...

Part Four: Definition of banking sector

...

- 4.4 R A *firm* is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is a non-UK institution other than ~~an incoming firm~~ an EEA PTV firm that meets the following conditions:

...

- 4.5 R An *SMCR banking firm* in SYSC 23 Annex 1 4.4R is ~~a third-country~~ an overseas SMCR banking firm.

- 4.6 R A *firm* is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is ~~an incoming EEA firm or incoming Treaty firm~~ an EEA PTV firm that meets the following conditions:

- (1) it has a *branch* in the *United Kingdom*;
- (2) it is not an institution authorised under the *Act* to carry on the *regulated activity* of *effecting contracts of insurance* or *carrying out contracts of insurance*; and
- (3) it meets one of the following conditions:
  - (a) it is a *credit institution* which has a *permission* under Part 4A, ~~Schedule 3 or Schedule 4~~ of the *Act* that includes *accepting deposits*; or
  - (b) it meets all the following conditions:
    - (i) the institution is an *investment firm*;
    - (ii) it has a *permission* under Part 4A, ~~Schedule 3 or Schedule 4~~ of the *Act* that covers *dealing in investments as principal*; and
    - (iii) when carried on by it, that activity is a *PRA-regulated activity*.

...

#### Part Six: Definition of limited scope SMCR firm

...

- 6.3 R (1) A *firm* listed in the table in SYSC 23 Annex 1 6.4R is a *limited scope SMCR firm* if:
- (a) its principal purpose is to carry on activities other than *regulated activities*; and
  - (b) it is not a *MiFID investment firm* or an EEA MiFID investment firm that is an EEA PTV firm.

- ...
- ...
- 24 Senior managers and certification regime: Allocation of prescribed responsibilities**
- ...
- 24.3 Who prescribed responsibilities should be allocated to**
- ...
- Dividing and sharing management functions between different people
- ...
- 24.3.10 G ...
- (2) The *firm* should make the judgement:
- ...
- (e) article 21 of the *MiFID Org Regulation* (General organisational requirements) or other similar relevant ~~and directly applicable EU legislation~~ onshored regulations.
- ...
- ...
- 24 Which FCA-prescribed senior management responsibilities apply to which kind of firm**
- Annex 1**
- ...
- Banking sector firms
- 2.1 R ...
- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):
- ...
- (c) ~~a third country~~ an overseas SMCR banking firm.
- ...
- 2.3 R Table: FCA-prescribed senior management responsibilities applying to banking sector firms

Brief description of responsibility	Reference letter of responsibility	UK firm	Small UK firm	<u>Third-country Overseas firm</u>
...	...	...	...	...
<p><b>Note (1):</b> the categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in SYSC 24 Annex 1 2.1R. Therefore:</p> <p>...</p> <p>(c) column five (<del>Third-country</del> <u>Overseas firm</u>) refers to SYSC 24 Annex 1 2.1R(2)(c).</p>				
...				

Insurance sector firms

3.1 R ...

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

...

(b) a *firm* falling within paragraph (b) of the definition of *Solvency II firm* (~~third country branch undertaking that would require Part 4A permission as an insurance or reinsurance undertaking if its head office were situated in the United Kingdom~~);

...

...

...

3.3 R Table: FCA-prescribed senior management responsibility applying to insurance sector firms

Brief description of responsibility	Reference letter of responsibility	Solvency II firm	<del>Third country Overseas</del> branches	Other insurance sector	ISPV
...	...	...	...	...	...
<p><b>Note:</b> The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in SYSC 24 Annex 1 3.1R. Therefore:</p> <p>...</p>					



(2) ~~Third country~~ Overseas branches (column four) refers to SYSC 24 Annex 1 3.1R(2)(b);  
 ...

Solo regulated firms

...

4.2 R Table: FCA-prescribed senior management responsibility applying to solo regulated firms

(1) Brief description of responsibility	(2) Reference letter of responsibility	(3) UK core firm	(4) <del>Third country</del> <u>Overseas</u> core firm	(5) Enhanced scope firm
...  <b>Note:</b> The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in SYSC 24 Annex 1 4.1R. Therefore: ... (2) <del>Third country</del> <u>Overseas</u> core firm (column four) refers to SYSC 24 Annex 1 4.1R(2)(b); and ...				

...

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

...

**25.6 Management responsibilities maps: Material only relevant to EEA SMCR firms**

Application

25.6.1 R ...

Purpose

25.6.2 G (4) ~~The management responsibilities map is an important support to the FCA's functions as Host State competent authority. [deleted]~~

- (2) ~~Having requirements and powers that apply directly to individuals helps to make the requirements on *firms* that the *FCA* is required or entitled to impose as *Host State competent authority* more effective.~~
- (3) ~~As explained in SYSC 25.1.6G (Purpose), the *management responsibilities map* also helps the *FCA* to operate its powers and requirements for individuals.~~
- (4) ~~By helping the *FCA* to better understand how the *branch* is structured, the *management responsibilities map* also helps the *FCA* to carry out more effective supervision of conduct of business, money laundering and other *Host State* responsibilities.~~

25.6.3 G This chapter is not intended to extend the application of the *common platform requirements* or other parts of SYSC to matters which are reserved by an EU instrument to the *firm's Home State regulator* in relation to *EEA SMCR firms*. ~~[deleted]~~

...

Leaving out information already supplied

- 25.6.5 R (1) ~~An *EEA SMCR firm* may exclude from its *management responsibilities map*: (1) any information contained in its *requisite details*; that it has, before *IP completion day*, excluded under this section of the *FCA Handbook* in the form this section was in immediately before *IP completion day*.~~
- (2) ~~any information contained in any notice of changes to its *requisite details* under the *EEA Passport Rights Regulations*; and [deleted]~~
- (3) ~~An *EEA SMCR firm* may exclude from its *management responsibilities map* any other information that has been supplied by the *firm* to the *FCA* or the *PRA* (including through the *firm's Home State competent authority*; Home State competent authority) if:~~
- (a) ~~that information was supplied to the *FCA* or the *PRA* as a *Host State competent authority* in carrying out their functions under the *regulatory system* in relation to *firms*; and~~
  - (b) ~~the *Single Market Directives* or any other *EU* legislation provides provided as at *IP completion day* for the supply of that kind of information to the *FCA* or the *PRA* as described in (a) a *Host State* competent authority.~~
- (4) ~~For these purposes:~~
- (a) ~~Home State and Host State have the meaning that they did in the *Glossary* as it was in force immediately before *IP completion day*; and~~

(b) competent authority means a competent authority in an EEA State for the purposes of a Single Market Directive.

- 25.6.6 G ~~Information contained in SYSC 25.6.5R(1) and (2) covers: [deleted]~~
- (1) ~~details about the branch contained in the notice given by the firm's Home State competent authority as part of the process for establishing the branch in the United Kingdom; and~~
  - (2) ~~any updates to that information under the EEA Passport Rights Regulations.~~
- 25.6.7 G ~~The management responsibilities map of an EEA SMCR firm may therefore consist of information: [deleted]~~
- (1) ~~that has changed since its requisite details were supplied or were last changed; or~~
  - (2) ~~that is not covered in the firm's Home State competent authority's passport notification.~~

...

**25.9 Handover procedures and material**

Application

- 25.9.1 R This section applies to a firm that meets the following conditions:
- (1) it falls within SYSC 25.1.1R (Application and purpose); and
  - (2) it falls within one of the following categories:
    - (a) it is a UK SMCR firm; or
    - (b) it is a ~~third country~~ an overseas SMCR banking firm.
- 25.9.2 R For ~~third country~~ overseas SMCR banking firms, references in this section to an SMF manager are references to the SMF manager when acting as an SMF manager for the firm's branch in the United Kingdom.

...

**25 Examples of the business activities and functions of an SMCR firm**

**Annex**

**1G**

Business areas and management functions	Explanation
...	...

(10) Market making	This has the same meaning as it does in <i>MIFID</i> (see the definition of market maker in article 4.1(7)) <u>means the activities described in the <i>Glossary</i> definition of <i>market maker</i>.</u>
...	...

**26 Senior managers and certification regime: Overall and local responsibility**

**26.1 Application**

...

Territorial scope

...

26.1.7 R Table: Application of this chapter to a ~~third country~~ an overseas SMCR firm

...

**26.6 Meaning of local and overall responsibility: General**

UK firms

...

26.6.2 G (1) Certain ~~EU legislation requires~~ requirements of the *regulatory system* say that the governing body of a ~~firm~~ to certain firms should have ultimate responsibility for, and the prime and leading role in, managing the *firm*.

(2) In particular this is the case under:

- (a) ~~article 88 of the *CRD* (Governance arrangements)~~ *SYSC* 4.3A.1R (Management body); and
- (b) ~~article 9 of *MiFID* (management body); and [deleted]~~
- (c) ~~article 40 of the *Solvency II Directive* (Responsibility of the administrative, management or supervisory body)~~ rule 2.1 (General Governance Requirements) in the Part of the *PRA Rulebook* called *Conditions Governing Business*.

...

...

**27 Senior managers and certification regime: Certification regime**

...

**27.6 Other exclusions**

Single Market Directives

27.6.1 G Under section 63E(7) of the *Act* (to the extent that it continues in effect under the standstill direction), this chapter does not apply to an arrangement which allows an *employee* to perform a function if the question of whether the *employee* is fit and proper to perform the function is reserved under ~~any of the *Single Market Directives* or the *auction regulation*~~ certain European legislation to an authority in a country or territory outside the *United Kingdom*. The standstill direction means the standstill direction as defined in the direction made by the *FCA* under Part 7 of the *Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019* that came into force on *IP completion day* and is titled “Main FCA Transitional Directions”.

...

**27.8 Definitions of the FCA certification functions**

...

Functions requiring qualifications

...

27.8.11 G ...  
 (2) *SYSC 27.8.10R* applies to an *overseas SMCR firm* irrespective of whether the function in *TC App 1.1.1R* (Activities and Products/Sectors to which *TC* applies) applies to ~~incoming EEA firms~~ EEA PTV firms or *overseas firms* for the purposes of *TC*.

...

...

Material risk takers

...

27.8.15 R Table: Definition of material risk taker

Type of SMCR firm	Employees included
(1) <del>A UK An</del> <u>An SMCR banking firm, including an EEA SMCR banking firm</u>	Each member of the <i>dual-regulated firms Remuneration Code</i> staff of the <i>firm</i> in column (1) of this row (1).  This includes any <i>person</i> who meets any of the criteria set out in articles 3 to 5 of

<p><i>A third country SMCR banking firm</i></p>	<p>Commission Delegated Regulation (EU) No 604/2014 <u>the Material Risk Takers Regulation</u> (criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile).</p>
<p>(2) <del>An EEA SMCR banking firm</del> For these purposes, sub-paragraphs (i) and (ii) in SYSC 19D.1.1R(1)(d) (application of the dual regulated firms Remuneration Code) do not apply. <del>[deleted]</del></p>	<p>In relation to a <i>firm</i> in column (1) of this row (2), the definition of <i>dual regulated firms Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of <i>firm</i> in the same way as it includes <i>employees</i> of a <i>third country SMCR banking firm</i>.</p>
<p>...</p>	<p>...</p>
<p>(4) A <i>firm</i> falling within SYSC 19A.1 (application provisions for the remuneration code for IFPRU investment firms), including an <u>EEA SMCR firm</u></p>	<p>...</p>
<p>(5) A <i>firm</i> that would fall within SYSC 19A.1 if it applied to an <i>incoming EEA firm</i> For these purposes sub-paragraphs (i) and (ii) in SYSC 19A.1.1R(1)(d) (application of the Remuneration Code) do not apply. <del>[deleted]</del></p>	<p>In relation to a <i>firm</i> in column (1), the definition of <i>Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of <i>firm</i> in the same way as it includes <i>employees</i> of an <i>overseas firm</i> in row (4) of this table.</p>
<p>...</p>	<p>...</p>
<p>(7) An <i>above-threshold non-EEA non-UK AIFM</i> or an <i>incoming EEA AIFM</i></p>	<p>...</p>
<p>(8) A <i>firm</i> falling within SYSC 19C.1 (application provisions for remuneration code for BIPRU firms), including an <u>EEA SMCR firm</u></p>	<p>...</p>
<p>(9) A <i>firm</i> that would fall within SYSC 19C.1 if it applied to an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> <del>[deleted]</del></p>	<p>In relation to a <i>firm</i> in column (1), the definition of <i>BIPRU Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of <i>firm</i> in the same way as it includes <i>employees</i> of a</p>

	<i>third country BIPRU firm</i> in column (1) of row (8) of this table.
...	...
(11) An <i>EEA UCITS management company</i> [deleted]	In relation to a <i>firm</i> in column (1), the definition of <i>UCITS Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of <i>firm</i> in the same way as it includes <i>employees</i> of <i>firms</i> in row (10) of this table.
<p><b>Note:</b> The definition of the <i>persons</i> included in column (2) applies in relation to an <i>EEA SMCR firm</i> in one of the rows of column (1) in the same way as it does to other <i>overseas SMCR firms</i> in that row. The definitions of <i>dual-regulated firms Remuneration Code staff</i>, <i>Remuneration Code staff</i>, <i>AIFM Remuneration Code staff</i> and <i>BIPRU Remuneration Code staff</i> apply accordingly.</p>	

...

## Annex B

### 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

...

Where does it apply?

...

- 1.1.12 R *A person will not be subject to COCON to the extent that ~~it~~ this would be contrary to the ~~UK's obligations under a Single Market Directive, the auction regulation or the benchmarks regulation~~ requirements of an EU measure passed or made before IP completion day, to the extent that those requirements continue to have effect after IP completion day under the EUWA.*

...



## Annex C

### 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.

#### 1 Application and purpose

##### 1.1A Application

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What?

...

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

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*.

...

#### 2 The Statements of Principle for Approved Persons

##### 2.1A The Statements of Principle

...

- 2.1A.2 R An *approved person* will not be subject to a *Statement of Principle* to the extent that ~~it~~ this would be contrary to the *UK's obligations under a *Single Market Directive*, the *auction regulation* or the *benchmarks regulation* requirements of an *EU measure* passed or made before *IP completion day*, to the extent that those requirements continue to have effect after *IP completion day* under the *EUWA*.*

...

## Annex D

### 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 G *FIT* applies to:

...

- (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; [deleted]~~

...

1.1.2 G The purpose of *FIT* is to set out and describe the criteria that:

- (1) an *SMCR firm* should consider when:

...

- (e) (in the case an *FCA-authorized person* that is not a *limited scope SMCR firm*) assessing the fitness of a *non-SMF board director subject to competence requirements* under the *competent employees rule*, any ~~directly applicable EU legislation~~ onshored regulation or any other requirement of the *regulatory system*.

...

...

##### 1.2 Introduction

...

1.2.4A G (1) ~~Under Article 21(1)(d) of the *MiFID Org Regulation* and articles 34 and 35 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the firm's *Home State*. Therefore, in assessing the fitness and propriety of: [deleted]~~

- (a) ~~a person to perform a controlled function; or~~

~~(b) a certification employee;~~

~~solely in relation to the MiFID business of an incoming EEA firm, the FCA will not have regard to that person's competence and capability.~~

~~(2) Where the function relates to:~~

~~(a) matters outside the scope of MiFID; or~~

~~(b) business outside the scope of the MiFID business of an incoming EEA firm, for example insurance distribution activities in relation to life policies; or~~

~~(c) matters within the responsibility of the FCA as the Host State regulator, for example money laundering responsibilities (see the money laundering reporting function (SMF17)) or (3) below;~~

~~the FCA will have regard to a person's competence and capability as well as their honesty, integrity, reputation and financial soundness.~~

~~(3) The FCA will have regard to a natural person's competence and capability to the extent they give a personal recommendation or information about financial instruments, structured deposits, investment services or ancillary services on behalf of a UK branch of:~~

~~(a) an investment firm authorised under MiFID;~~

~~(b) an AIFM investment firm carrying out activities under article 6(4) of the AIFMD (provision of additional services);~~

~~(c) a UCITS investment firm carrying out activities under article 6(3) of the UCITS Directive (provision of additional services); or~~

~~(d) a credit institution.~~

~~(4) (3) is the result of the combined effect of articles 25(1) (Assessment of suitability and appropriateness and reporting to clients) and 35(8) (Establishment of a branch) of MiFID.~~

~~(5) (1) to (4) are also relevant to the matters an EEA SMCR firm should take into account when assessing any staff being assessed under FIT. Where, under (1) to (4):~~

~~(a) the FCA will have regard to a person's competence and capability, so should a firm when assessing any staff being assessed under FIT; and~~

- (b) ~~the FCA will not have regard to a person's competence and capability, a firm need not do so either when assessing any staff being assessed under FIT.~~

...

1.2.4C G ~~Under article 10(1) and (2) of the IDD appropriate knowledge and ability is reserved to the firm's Home State (see SUP 13A Annex 2G). [deleted]~~

1.2.5 G For as long as the standstill direction referred to in SYSC 27.6.1G, SUP 10A.1.7R and SUP 10C.1.4R is in force, the guidance in FIT 1.2.4AG and FIT 1.2.4CG in the version of the FCA Handbook that was in force immediately before IP completion day is still relevant.

...

## Annex E

## Amendments to the Supervision manual (SUP)

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

**10A FCA Approved Persons in Appointed Representatives**

**10A.1 Application**

...

Incoming EEA firms and incoming Treaty firms

10A.1.7 R This chapter does not apply in relation to the *appointed representative* of: an EEA SMCR firm

(1) ~~an incoming EEA firm; or~~

(2) ~~an incoming Treaty firm;~~

if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved, ~~under any of the Single Market Directives, the Treaty, the auction regulation or the benchmarks regulation,~~ to an authority in a country or territory outside the *United Kingdom* as contemplated by section 59(8) of the Act. This rule has effect to the extent that, and for as long as, section 59(8) of the Act remains in effect under the standstill direction (as it relates to that section) as defined in the direction made by the FCA under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on IP completion day and is titled “Main FCA Transitional Directions”.

10A.1.8 G ~~SUP 10A.1.7R reflects the provisions of section 59(8) of the Act and, in relation to an incoming Treaty firm, the Treaty. It preserves the principle of Home State prudential regulation. In relation to an incoming EEA firm exercising an EEA right, or an incoming Treaty firm exercising a Treaty right, the effect is to reserve to the Home State regulator the assessment of the fitness and propriety of a person performing a function in the exercise of that right. [deleted]~~

...

10A.1.33 G ...

Gibraltar firms

10A.1.34 R (1) A firm that is a Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an EEA firm for the purposes of this chapter.

(2) (1) is without prejudice to the generality of GEN 2.3.

...

...

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

### 10C.1 Application

...

EEA firms: general application

10C.1.4 R This chapter does not apply to an *SMCR firm* if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved to an authority in a country or territory outside the *United Kingdom* ~~under:~~ as contemplated by section 59(8) of the Act. This rule has effect to the extent that, and for as long as, section 59(8) of the Act remains in effect under the standstill direction (as it relates to that section) as defined in the direction made by the FCA under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 that came into force on *IP completion day* and is titled “Main FCA Transitional Directions”.

(1) ~~the *Single Market Directives*;~~

(2) ~~the *Treaty*;~~

(3) ~~the *auction regulation*;~~

(4) ~~the *benchmarks regulation*.~~

10C.1.5 G (1) ~~SUP 10C.1.4R reflects the provisions of section 59(8) of the Act and, where relevant, the *Treaty*. [deleted]~~

(2) ~~It preserves the principle of *Home State* prudential regulation.~~

(3) ~~For an *EEA SMCR firm*, the effect is to reserve to the *Home State regulator* the assessment of fitness and propriety of a *person* performing a function in the exercise of an *EEA right*. A member of the *governing body*, or the notified *UK branch manager*, of an *EEA SMCR firm*, acting in that capacity, will not, therefore, have to be approved by the FCA under the Act.~~

(3A) ~~For example, *persons* in *Solvency II firms* which are *incoming EEA firms* are not expected to be carrying out FCA functions to the extent that the *person* will be regarded as effectively running the *firm* or responsible for a *Solvency II Directive* ‘key function’.~~

- (4) ~~Aside from (1) to (3A) an *EEA SMCR firm* should have:~~
- ~~(a) considered the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or a *Treaty activity* through a *branch* in the *United Kingdom*;~~
  - ~~(b) 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*; and~~
  - ~~(c) considered, 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*.~~

...

#### 10C.8A EEA branch senior manager function (SMF21)

...

10C.8A.2 R ...

- (4) Paragraph (2)(d) only applies in relation to the activities regulated activities of a firm for which it has a top-up permission that are not passported activities as defined in (5) and (6).
- (5) For the purposes of this rule, “passport activities” of an EEA SMCR firm means regulated activities that meet the following conditions:
- (a) they are included in the permission of the EEA SMCR firm under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018; and
  - the firm was entitled to carry them on in the United Kingdom immediately before IP completion day by virtue of section 31(1)(b) or (c) of the Act as it was in force immediately before IP completion day.
- (6) For the purposes of this rule, “passport activities” of an EEA SMCR firm also mean regulated activities that were subject to an EEA right applicable to the category of firm into which the EEA SMCR firm falls and which the firm is entitled to carry on

in its Home State. For these purposes EEA right has the meaning that it did in Schedule 3 of the Act as it was in force immediately before *IP completion day* and Home State has the meaning that it did in the *Glossary* as it was in force immediately before *IP completion day*.

...

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

...

How to apply for approval

...

10C.10.9A G (1) The *MiFID authorisation and management body change notification ITS* requires that *MiFID investment firms* (except *credit institutions*) submit the Annex III information on ~~the~~ ESMA a specified template (which is based on one prepared by ESMA and which is available at <https://www.fca.org.uk/publication/forms/mifid-changes-management-body-form.doc> ('Annex III template')) where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

10C.10.9AA G (1) The *MiFID authorisation and management body change notification ITS* requires that a *person* applying to be a *MiFID investment firm* (except a *credit institution*) should notify the *appropriate regulator* of information about members of its *management body* by filling in the template set out in Annex II of the appropriate part of the *MiFID authorisation and management body change notification ITS*.

...

10C.10.9B D Where:

(1) there is a change to a member of the *management body* or *person* who directs the business of a *MiFID investment firm* (except a *credit institution*) that the *firm* must notify to the *appropriate regulator* under Annex III of the appropriate part of the *MiFID authorisation and management body change notification ITS*; and

...

...



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

...

Ceasing to perform an FCA-designated senior management function

...

10C.14.6A G (1) The *MiFID authorisation and management body change notification ITS* requires that a *MiFID investment firm* (except a *credit institution*) submit the information in Annex III of the appropriate part of the *MiFID authorisation and management body change notification ITS* on the ~~ESMA Annex III~~ template referred to in *SUP 10C.10.9AG* where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

**10C Annex 1 What functions apply to what type of firm**

...

...

Part Three: Functions applying to banking sector firms

3.1 R ...

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

...

(c) ~~a third-country~~ an overseas *SMCR banking firm*.

3.2 R Table: Controlled functions applying to banking firms

(1) Brief description of function	(2) Function number	(3) UK firm	(4) EEA firm	(5) <del>Third-country</del> <u>Overseas</u> firm
...				
Note: The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in <i>SUP 10C Annex 1 3.1R</i> . Therefore:				

...

(3) column five (~~Third country~~ Overseas firm) refers to *SUP* 10C Annex 1 3.1R(2)(c).

Part Four: Functions applying to insurance sector firms

- 4.1 R ...
- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):
- (a) a *Solvency II firm* not within any other paragraph of this rule;
  - (b) a *Solvency II firm* ~~within paragraph (c) of the Glossary definition of *Solvency II firm* (EEA branch)~~ that is an *EEA SMCR firm*;
  - (c) a *Solvency II firm* that:
    - (i) is within paragraph (b) of the *Glossary* definition of *Solvency II firm* (~~third country branch~~ undertaking that would require *Part 4A* permission as an insurance or reinsurance undertaking if its head office were situated in the *United Kingdom*); and
    - (ii) does not fall within *SUP* 10C Annex 1 4.1R(2)(b);
- ...
- ...

...

4.3 R Table: Controlled functions applying to insurance sector firms

(1) Brief description of function	(2) Function number	(3) Solvency II and large NDF	(4) EEA branches	(5) <del>Third country</del> <u>Overseas</u> branches	(6) Small NDF and other	(7) ISPV
...  Note 1: The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> at <i>SUP</i> 10C Annex 1 4.1R. Therefore:  ...						

(c) column five (~~Third country~~ Overseas branches) refers to *SUP* 10C Annex 1 4.1R(2)(c);  
 ...

Part Five: Functions applying to core firms

5.1 R ...

(2) *Firms* in (1) are divided into the following categories for the purposes of this *rule*:

...

(d) a *UK SMCR firm* falling into *SYSC* 23 Annex 1 ~~6.4R~~ 7.4R (a *firm exempt under MiFID* whose only *permission* is *bidding in emissions auctions*).

...

...

**15 Notifications to the FCA**

...

**15.16 Notification of changes in the management body**

...

Purpose

15.16.2 G The purpose of this section is:

(1) to set out material related to the requirement in Part 1 (FCA) of the MiFID authorisation and management body change notification ITS for a *MIFID investment firm* to notify the *FCA* of changes to its *management body*;

...

15.16.3 G Article 5 of Part 1 (FCA) of the MiFID authorisation and management body change notification ITS says that a *MIFID investment firm* should:

(1) ...

(2) make the notification using the template in Part 1 of Annex III of the MiFID authorisation and management body change notification ITS.

Supplemental requirement for MIFID investment firms

- 15.16.4 R Where:
- (1) a *person* becomes a member of the *management body* of a *MiFID investment firm*; and
  - (2) the *firm* must notify that change to the *FCA* under Part 1 (FCA) of Annex III of the *MiFID authorisation and management body change notification ITS*;
- ...

Requirement for MIFID optional exemption firms

- 15.16.5 R A *MiFID optional exemption firm* must (subject to *SUP* 15.16.6R) comply with article 5 of Part 1 (FCA) of the *MiFID authorisation and management body change notification ITS* and *SUP* 15.16.4R as if it were a *MIFID investment firm*.

...

Method of submission

- 15.16.8 R (1) A *firm* must make a notification:
- (a) under *SUP* 15.16.4R or *SUP* 15.16.5R; or
  - (b) of a change in its *management body* under the template in Part 1 (FCA) of Annex III of the *MiFID authorisation and management body change notification ITS*;
- by submitting the notification online at [fca.org.uk](http://fca.org.uk) using the *FCA*'s and *PRA*'s *online notification and application system*.

...

...

**TP 6 Financial Services (Banking Reform) Act 2013: Approved persons**

Note to the reader

- 6.1.1-2 G (1) *SUP* TP 6 has not been amended to reflect changes in the *FCA Handbook* and *Glossary* since the beginning of 2018 (except for some small changes to *SUP* TP 6.1.1-1G made in 2020). This is because it is made up of transitional provisions that mostly expired before then.

...

## 6.1.1-1 G Table: Meaning of superseded Glossary terms

Term in SYSC TP 5	Term that has replaced it
EEA relevant authorised person	<i>EEA SMCR banking firm</i>
non-UK relevant authorised person	an <i>EEA SMCR banking firm</i> or a <del><i>third-country SMCR banking firm</i></del> <u>an overseas SMCR banking firm</u>
...	...
third-country relevant authorised person	<del><i>third-country</i></del> <u><i>overseas SMCR banking firm</i></u> but not an <i>EEA SMCR banking firm</i>
...	...

...