

SENIOR MANAGERS AND CERTIFICATION REGIME (SIGNIFICANT SYSC FIRM) INSTRUMENT 2023

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 60 (Applications for approval);
- (3) section 60A (Vetting candidates by authorised persons);
- (4) section 61 (Determination of applications);
- (5) section 62A (Changes to responsibilities of senior managers);
- (6) section 63ZA (Variation of senior manager’s approval at request of authorised person);
- (7) section 63ZD (Statement of policy relating to conditional approval and variation);
- (8) section 63C (Statement of policy);
- (9) section 63E (Certification of employees by authorised persons);
- (10) section 63F (Issuing of certificates);
- (11) section 64A (Rules of conduct);
- (12) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
- (13) section 69 (Statement of policy);
- (14) section 137A (The FCA’s general rules);
- (15) section 137T (General supplementary powers);
- (16) section 138D (Action for damages);
- (17) section 139A (Power of the FCA to give guidance)
- (18) section 347 (The record of authorised persons etc);
- (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 27 January 2023.

Amendments to the Handbook

D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Senior Managers and Certification Regime (Significant SYSC Firm) Instrument 2023.

By order of the Board
26 January 2023

Annex

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

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

23 Senior managers and certification regime: Introduction and classification

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23 Definition of SMCR firm and different types of SMCR firms

Annex 1

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Part Seven: Exclusion from enhanced regime

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7.4 R ...

7.5 R An ICVC is excluded from the enhanced regime.

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Part Nine: Other qualification conditions for being an enhanced scope SMCR firm

9.1 R A *firm* meets a qualification condition for the purposes of identifying an *enhanced scope SMCR firm* under the flow diagram in Part One of this Annex if it meets one of the following criteria:

- (1) the *firm* is a *significant SYSC firm* and it meets all the additional criteria in SYSC 23 Annex 1 9.3R;

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9.2 G ...

9.3 R The additional criteria that a *significant SYSC firm* must meet as referred to in SYSC 23 Annex 1 9.1R(1) are as follows:

- (1) it is an investment firm, as defined in article 4(1)(2) of the UK CRR (including a *collective portfolio management investment firm*) as it has effect on 27 January 2023; and

- (2) it is not excluded by any of the exclusions in SYSC 23 Annex 1 9.4R.

- 9.4 R (1) A firm is excluded for the purposes of SYSC 23 Annex 1 9.3R(2) if it is a local firm.
- (2) A firm is excluded for the purposes of SYSC 23 Annex 1 9.3R(2) if it meets the following conditions:
- (a) it is authorised to provide one or more of the following investment services:
- (i) reception and transmission of orders in relation to one or more financial instruments;
- (ii) execution of orders on behalf of clients;
- (iii) portfolio management; and
- (iv) investment advice;
- (b) it is not authorised to provide any other investment services;
- (c) it is not authorised to provide the ancillary service referred to in paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order (Safekeeping and administration of financial instruments); and
- (d) it is not permitted to hold MiFID money or securities (as defined in (3)) belonging to its clients and for that reason may not at any time place itself in debt with those clients in relation to its MiFID business.
- (3) MiFID money or securities (as referred to in (2)(d)) means money or securities that a firm receives from, or holds for or on behalf of, a client in the course of, or in connection with, its MiFID business.
- 9.5 R (1) A firm that is authorised to execute investors' orders for financial instruments and to hold such financial instruments for its own account is not, for that reason, authorised for the purpose of SYSC 23 Annex 1 9.4R to provide the investment service of dealing on own account if it meets the following conditions:
- (a) such positions only arise as a result of the firm's failure to match investors' orders precisely;
- (b) the total market value of all such positions is no higher than 15% of the firm's initial capital; and
- (c) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

(2) Position and initial capital have the meaning that they had for the purpose of IFPRU 1.1.12R (Meaning of dealing on own account) as it applied on 31 December 2021.

9.6 G The purpose of the criteria in SYSC 23 Annex 1 9.3R to SYSC 23 Annex 1 9.5R is to replicate the main part of the definition of ‘IFPRU investment firm’. Other elements of the definition are reflected elsewhere in this Annex. However, the definition applies to a firm whether or not it ever has been treated as an IFPRU investment firm for the purposes of any rules that used that definition.

Part Ten: When a firm becomes an enhanced scope SMCR firm

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Meeting the qualification conditions in Part 9

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10.5 G Table: Date firm becomes an enhanced scope firm

Qualification condition	Date firm becomes an enhanced scope SMCR firm
<p>The <i>firm</i> is a <i>significant SYSC firm</i></p>	<p>¶ <u>If a <i>firm</i> meets the criteria in SYSC 23 Annex 1 9.3R but does not at first meet the conditions for being a <i>significant SYSC firm</i> and then later becomes a <i>significant SYSC firm</i>, it becomes an <i>enhanced scope SMCR firm</i> one year and three months after the date in SYSC 1.5.2R (the three-month period in SYSC 1.5.5R(2) plus the one year in this Part).</u></p> <p><u>If a <i>firm</i> meets the conditions for being a <i>significant SYSC firm</i> but at first does not meet the criteria in SYSC 23 Annex 1 9.3R and then later meets those criteria, the three-month period in SYSC 1.5.5R(2) does not apply. The one-year period in this Part runs from the date the <i>firm</i> first meets the criteria in SYSC 23 Annex 1 9.3R.</u></p> <p><u>If a <i>firm</i> first meets the conditions for being a <i>significant SYSC firm</i> and the criteria in SYSC 23 Annex 1 9.3R at the same time, the three-month period in SYSC 1.5.5R(2) applies.</u></p>

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