

Chapter 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 force 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 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 “FCA Transitional Direction”.

Insolvency

27.6.2 **R** This chapter does not apply to a function performed by a *person* acting as:

- (1) an insolvency practitioner under section 388 of the Insolvency Act 1986;
- (2) a nominee in relation to a voluntary arrangement under Part I (Company Voluntary Arrangements) of the Insolvency Act 1986;
- (3) an insolvency practitioner under article 3 of the Insolvency (Northern Ireland) Order 1989; or
- (4) a nominee in relation to a voluntary arrangement under Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

Non-executive directors

27.6.3 **R** A function performed by a *non-executive director* of a *firm* acting as such is not an *FCA certification function* for that *firm*.

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*.

27.6.5 G Some benchmark activities are within the certification regime under ■ SYSC TP 7.5 (Transitional provisions about benchmarks and the certification regime).

Overall responsibility

27.6.6 R Performing any of the following is not an *FCA certification function*:

- (1) a responsibility allocated to an *SMF manager* under ■ SYSC 26.3 (Main rules); or
- (2) a responsibility allocated to someone under ■ SYSC 26.4.6R (Exclusion where the 12-week rule applies).

27.6.7 R ■ SYSC 27.6.6R does not apply to having overall or local responsibility for the *SMCR legal function*.

Administrators

27.6.8 R A function in paragraph (A) of row (6) of the table in ■ COCON 1.1.2R (Table: To whom does COCON apply?) is not an *FCA certification function*.

Exclusions: Sole traders

27.6.9 G

- (1) An individual *sole trader* will not themselves be a *certification employee*.
- (2) However members of a *sole trader's* staff may be.
- (3) Therefore the certification regime does not apply to a *sole trader* with no *employees*.

Exclusions: Internally managed AIFs

27.6.10 R This chapter does not apply to a *firm* that meets the following conditions:.

- (1) it is an *internally managed AIF*;
- (2) it is a *body corporate*; and
- (3) it is not a *collective investment scheme*.