Senior management arrangements, Systems and Controls

Senior management arrangements, Systems and Controls

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Senior management arrangements, Systems and Controls

Chapter 1

Application and purpose

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1.1A Application

1.1A.1 The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in ■ SYSC 1 Annex 1 and in the text of each chapter.

·	
Type of firm	Applicable chapters
Insurer, UK ISPV	Chapters 2, 3, 12 to 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28, 28A
Managing agent	Chapters 2, 3, 11, 12, 15A, 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28, 28A
Society	Chapters 2, 3, 12, 15A, 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28, 28A
Any other SMCR firm	Chapters 4 to 12, 15A, 18, 19D, 19F, 19G, 21, 22, 23, 24, 25, 26, 27, 28, 28A
Every other firm	Chapters 4 to 12, 15A, 18, 19D, 19F, 19G, 21, 22, 28, 28A

Firms that ■ SYSC 19D applies to should also refer to the Remuneration part of the PRA Rulebook.

1.1A.1A

The application of this sourcebook to specific firms that are not PRAauthorised persons is summarised at a high level in the following table. The detailed application is cut back in ■ SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
Full-scope UK AIFM	Chapters 4 to 10, 12, 18, 19B, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28, 28A
MIFIDPRU investment firm (including an over- seas firm that would have been a MIFIDPRU in- vestment firm if it had been a UK domestic firm, except that SYSC 19G does not apply to such a firm)	Chapters 4 to 10, 12, 18, 19F, 19G, 21, 22, 23, 24, 25, 26, 27, 28, 28A

1.1A.1B

Chapter 15A of this sourcebook also applies to:

(1) an electronic money institution, a payment institution and a registered account information service provider;

(2) a UK RIE.

as set out in the text of that chapter.

1.1A.2 G

The provisions in *SYSC* should be read in conjunction with ■ GEN 2.2.23 R to ■ GEN 2.2.25 G. In particular:

- (1) [deleted]
- (2) Provisions made by the FCA, and by the PRA in the PRA Rulebook, may be applied by both regulators to PRA-authorised persons. Such provisions are applied by each regulator to the extent of its powers and regulatory responsibilities.
- (3) For Solvency II firms, the FCA considers that the requirements and guidance in Chapters 2, 3, 12 to 18, 19F.2, 21, 22 and 28 of SYSC are not inconsistent with:
 - (a) the parts of the *PRA* Rulebook which implemented the governance provisions in the *Solvency II Directive* (articles 40 to 49);
 - (b) the Solvency II Regulation, or
 - (c) EIOPA guidelines on systems of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN).

In most cases, there is no direct overlap with those provisions because the SYSC requirements are directed at FCA conduct requirements not expressly covered by or under provisions which implemented or supplemented the Solvency II Directive. Where there is a direct overlap with SYSC rules and guidance, the FCA will take requirements and guidelines which implemented or supplemented the Solvency II Directive into account. The definition of Solvency II firm includes (for SYSC) large non-directive insurers because the PRA have applied certain Solvency II derived requirements to those firms. Where SYSC refers to the PRA Rulebook applicable to Solvency II firms, large non-directive insurers should read those references as if they were references to the corresponding part of the PRA Rulebook applicable to large non-directive insurers.

1.2 **Purpose**

- 1.2.1 The purposes of SYSC are:
 - (1) to encourage firms' directors and senior managers to take appropriate practical responsibility for their firms' arrangements on matters likely to be of interest to the FCA because they impinge on the FCA's functions under the Act;
 - (2) to increase certainty by amplifying Principle 3, under which a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
 - (3) to encourage firms to vest responsibility for effective and responsible organisation in specific directors and senior managers; and
 - (4) to create a common platform of organisational and systems and controls requirements for all firms.
 - (5) [deleted]
- 1.2.1A G

SYSC 1/4



1.4 Application of SYSC 11 to 28A

What?

- 1.4.1 G The application of each of chapters SYSC 11 to SYSC 21 is set out in those chapters and in SYSC 1.4.1A R.
- 1.4.1-A G The application of each of the chapters SYSC 19F.2, SYSC 22 to SYSC 28A is set out in those chapters.
- **1.4.1A** SYSC 12 and SYSC 21 do not apply to a *firm* in relation to its carrying on of auction regulation bidding.
- Apart from SYSC 12, and SYSC 21 which are disapplied by SYSC 1.4.1A R, the other chapters of SYSC 11 to SYSC 14 do not apply in relation to a firm's carrying on of auction regulation bidding because they only apply to an insurer. SYSC 18 provides guidance on the Public Interest Disclosure Act. Other chapters of SYSC may not apply to auction regulation bidding, for example because an exempt MiFID commodities firm will not be a MIFIDPRU investment firm.

Actions for damages

A contravention of a *rule* in ■ SYSC 11 to ■ SYSC 14, ■ SYSC 18 to ■ SYSC 21, ■ SYSC 22.8.1R, ■ SYSC 22.9.1R or ■ SYSC 23 to ■ SYSC 28A does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

.....



1.5 Significant SYSC firm

Purpose

- 1.5.1 G
- (1) The purpose of SYSC 1.5 is to set out the definition of a significant SYSC firm.
- (2) The following governance requirements in SYSC apply by reference to the term significant SYSC firm:
 - (a) SYSC 4.3A.6R on the limitations in the number of directorships;
 - (b) SYSC 4.3A.8R on the nomination committee; and
 - (c) SYSC 7.1.18R and SYSC 7.1.18AAR on the risk committee.
- (3) MIFIDPRU investment firms are not subject to SYSC 4.3A.8R or ■ SYSC 7.1.18R, and should refer instead to ■ MIFIDPRU 7.3.
- (4) The definition of significant SYSC firm is also relevant in determining whether a firm is an enhanced scope SMCR firm for the purposes of the senior managers and certification regime.

Definition of a significant SYSC firm

- 1.5.2
- A firm is a significant SYSC firm if it meets one or more of the following conditions:
 - (1) its total assets exceed £530 million;
 - (2) its total liabilities exceed £380 million;
 - (3) the annual fees and commission income it receives in relation to the regulated activities carried on by the firm exceeds £160 million in the 12-month period immediately preceding the date the firm carries out the assessment under this rule;
 - (4) the client money that it receives or holds exceeds £425 million; and
 - (5) the assets belonging to its *clients* that it holds in the course of, or in connection with, its regulated activities exceeds £7.8 billion.
- 1.5.3 R
- (1) This rule defines some of the terms used in SYSC 1.5.2R.
- (2) "Total assets" means the firm's total assets:
 - (a) as set out in the most recent relevant report submitted to the FCA under ■ SUP 16.12 (Integrated Regulatory Reporting); or

- (b) (where the *firm* carries out the assessment under SYSC 1.5.4R at any time after the date of its most recent report in (a)) as the *firm* would report to the *FCA* in accordance with the relevant report, as if the reporting period for that report ended on the date of the assessment.
- (3) "Total liabilities" means the firm's total liabilities:
 - (a) as set out in the most recent relevant report submitted to the FCA under SUP 16.12 (Integrated Regulatory Reporting); or
 - (b) (where the *firm* carries out the assessment under SYSC 1.5.4R at any time after the date of its most recent report in (a)) as the firm would report to the *FCA* in accordance with the relevant report, as if the reporting period for that report ended on the date of the assessment.
- (4) "client money" means *client money* that a *firm* receives or holds in the course of, or in connection with, all of the *regulated activities* that it carries on:
 - (a) as set out in the most recent client money and client asset report submitted to the FCA under SUP 16.12 (Integrated Regulatory Reporting); or
 - (b) (where the firm carries out the assessment under SYSC 1.5.4R at any time after the date of its most recent report in (a)) as the firm would report to the FCA in accordance with the relevant report, as if the reporting period for that report ended on the date of the assessment.
- (5) "Assets belonging to its *clients*" means the assets to which the *custody rules* apply:
 - (a) as set out in the most recent client money and client asset report submitted to the *FCA* under SUP 16.12 (Integrated Regulatory Reporting); or
 - (b) (if the *firm* carries out the assessment under SYSC 1.5.4R at any time after the date of its most recent report in (a)) as the *firm* would report to the *FCA* in accordance with the relevant report, as if the reporting period for that report ends on the date the assessment is carried out.
- 1.5.4 R A firm must assess regularly whether it becomes a significant SYSC firm.
- 1.5.5 (1) If a firm, at any time, becomes aware that it is likely to become a significant SYSC firm, it must forthwith make arrangements to establish and have in place sound, effective and comprehensive strategies, processes and systems to achieve compliance with the requirements that apply to a significant SYSC firm.
 - (2) The *firm* in (1) must comply with the requirements that apply to a *significant SYSC firm* on the expiry of a period of 3 *months* from the date it meets any one of the conditions in SYSC 1.5.2R.
- 1.5.6 If a firm that is a significant SYSC firm ceases to meet any of the conditions in SYSC 1.5.2R, it must continue to comply with the rules and requirements

applicable to a significant SYSC firm until the first anniversary of the date on which the firm ceased to be a significant SYSC firm.

- G 1.5.7
- The FCA may, on a case-by-case basis, require a firm which does not meet any of the conditions in SYSC 1.5.2R to comply with the rules and requirements that apply to a significant SYSC firm if the FCA considers it appropriate to do so to meet its strategic objective or to advance one or more of its operational objectives under the Act.
- G 1.5.8
- (1) A firm may apply to the FCA under section 138A of the Act to waive any one or more of the conditions in ■ SYSC 1.5.2R if it believes that one or more of the governance requirements in (2) that apply to a significant SYSC firm may be disproportionate. In its application for a waiver, the FCA expects the firm to demonstrate that it should not be considered as significant, taking into account the size, nature, scope and complexity of its activities, any membership of a group and the internal organisation of that group.
- (2) The governance requirements referred to in (1) are:
 - (a) SYSC 4.3A.6R on the limitations in the number of directorships;
 - (b) SYSC 4.3A.8R on the nomination committee; or
 - (c) SYSC 7.1.18 R on the risk committee.
- (3) The effect of such waiver is that the firm would not be a significant SYSC firm only for the purpose of the particular governance requirement in (2) that the waiver is expressed to apply to. For the avoidance of doubt, such a firm would still be a significant SYSC firm for the purpose of the other rules in the FCA Handbook that apply to a significant SYSC firm, except where expressly otherwise provided for.

SYSC 1/8

Detailed application of SYSC

Society	ation of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the			
Who?				
R			apply to an <i>insurer</i> , a <i>UK ISPV</i> , a <i>managing agent</i> and :	
	(1)	[deleted]		
	(2)	[deleted]		
	(3)	[deleted]		
	(4)	for a sole t	rader:	
		(a)	SYSC 2 applies but only if he employs any <i>person</i> who is required to be approved under section 59 of the <i>Act</i> (Approval for particular arrangements);	
		(b)	SYSC 3.2.61 R does not apply if he has no <i>employees</i> ; and	
	(5)	[deleted]		
	(6)		provided for in (7), SYSC 2 and SYSC 3 do not apply to a ation to benchmark activities.	
	(7)	to carry on	SYSC 3 continue to apply to a <i>person</i> with <i>permission</i> the <i>regulated activity</i> of <i>administering a specified</i> cacting as such.	
G	(1)	activity ref	quence of the <i>benchmarks regulation</i> , the <i>regulated</i> erred to in SYSC 1 Annex 1 1.1R(7) will cease to apply in numstances (see SUP TP 10 for an explanation of those ces).	
	(2)	tinue to ap	of SYSC 1 Annex 1 1.1R(7) is that SYSC 2 and SYSC 3 conply to <i>firms</i> which still have <i>permission</i> to carry on the <i>activity</i> in SYSC 1 Annex 1 1.1R(7) when carrying on that	
G		[deleted]		
What?				
R			with respect to the carrying on of:	
	(2)	regarding t	nat constitute <i>dealing in investments as principal</i> , disthe exclusion in article 15 of the <i>Regulated Activities</i> ence of holding out etc);	
	(3)		ctivities in relation to designated investment business, nee activity and insurance distribution activity; and	
	(4)	activities d	irectly arising from insurance risk transformation;	
			plies as described in SYSC 1 Annex 1 1.3AR and SYSC do not apply as described in SYSC 1 Annex 1.1.4R.	
	Society Who? R	Who? SYSC 2 and 5 the Society (1) (2) (3) (4) (5) (6) (7) G (1) (2) (3) (4) (2) (3) (4) (4) (4)	Nho? SYSC 2 and SYSC 3 only a the Society except that (1) [deleted] (2) [deleted] (3) [deleted] (4) for a sole to (a) (5) [deleted] (6) Except as parties in relative to carry on benchmark (7) SYSC 2 and to carry on benchmark (7) As a consequency of activity reference tinue to aparegulated activity. (2) The effect tinue to aparegulated activity. (3) [deleted] Nhat? SYSC 2 and SYSC 3 apply (1) regulated activity. (2) activities the regarding of Order (Absolution) (2) activities the regarding of Order (Absolution) (4) activities dexcept that SYSC 3.3 apply (4) activities dex	

Part 1	Applicatio Society	n of SYSC 2	and SYSC 3	to an insure	r, a UK ISPV, a managing agent and the
1.3A	R	SYSC 3.3 on tivities.	ly applies in	relation to	the carrying on of insurance distribution ac-
1.4	R	SYSC 3.2.6A	R to SYSC 3.	2.6J G do no	t apply:
		(1)		ect to the ac I Annex 1.1.3	tivities described in SYSC 1 Annex 1.1.3R(2) R(3); or
		(2)	in relation	n to the follo	owing regulated activities:
			(a)	general in	surance business;
			(aa)	insurance	risk transformation;
			(b)		distribution activity in relation to a gen- nnce contract or pure protection contract;
			(c)	scope of t	insurance business which is outside the he Solvency II Directive (unless it is other-of the regulated activities specified in this
			(d)	Regulated within par	elating to contracts which are within the Activities Order only because they fall ragraph (e) of the definition of "contract ce" in article 3 of that Order;
			(e)	(i)	arranging, by the <i>Society</i> , of deals in <i>general insurance contracts</i> written at Lloyd's; and
				(ii)	managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;
			(f)		nce mediation activity and administering a nce transaction; and
			(g)	reversion a	activity; or
		(3)	to a pure	reinsurer; oi	•
		(4)	in relation formation		s directly arising from insurance risk trans-

to the communication and approval of financial promotions which: (1) if communicated by an unauthorised person without approval would contravene section 21(1) of the Act (Restrictions on financial promotion); and (2) may be communicated by a firm without contravening section 238(1) of the Act (Restrictions on promotion of collective investment schemes). 1.6 R SYSC2 and SYSC3, except SYSC3.2.6AR to SYSC3.2.6J G, also: (1) apply with respect to the carrying on of unregulated activities in a prudential context; and (2) take into account any activity of other members of a group of which the firm is a member. 1.7 G SYSC1 Annex 1.1.6R(2) does not mean that inadequacy of a group member's systems and controls will automatically lead to a firm contravening, for example, SYSC3.1.1R. Rather, the potential impact of a group member's systems and controls, and any systems and controls that operate on a group basis, will be relevant in determining the appropriateness of the firm's own systems and controls, and any systems and controls that operate on a group basis, will be relevant in determining the appropriateness of the firm's own systems and controls. Where? 1.8 R SYSC2 and SYSC3 apply with respect to activities carried on from an establish ment maintained by the firm (or its appointed representative or, where applicable, its fied agent) in the United Kingdom unless another applicable rule which is relevant to the activity has a wider territorial scope, in which case SYSC2 and SYSC3 and SYSC3 apply with that wider scope in relation to the activity described in that rule. 1.8A R (1) SYSC3, except SYSC3.2.6AR to SYSC3.2.6JG, and (2) for a UK domestic firm, SYSC2; also apply in a prudential context with respect to activities wherever they are carried on. 1.9 R SYSC2 and SYSC3, except SYSC3.2.6AR to SYSC3.2.6JG, also apply in a prudential context to a UK domestic firm with respect to activities wherever they are carried on. 1.10 R SYSC3, except SYSC3.2.6AR to SYSC3.2.6JG, also applies in a prudential context to a	Part 1	Application Society	n of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the
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	Part 2	Application	n of the common platform requirements (SYSC 4 to 10)

Part 2	Applica	tion of the common platform requirements (SYSC 4 to 10)		
2.1	R	The common platform requirements apply to every firm apart from an insurer, a UK ISPV, a managing agent and the Society unless provided otherwise in a specific rule.		
2.2	R	[deleted]		
2.3	R	For a sole trader:		
		(1) SYSC 4.3 does not apply as long as they do not employ any <i>person</i> who is required to be approved under section 59 of the <i>Act</i> (Approval for particular arrangements);		
		(2) SYSC 4.1.4 R and SYSC 6.3.9 R do not apply if he has no <i>employees</i> .		
2.4	R	For a <i>UCITS qualifier</i> :		
		(1) the <i>rule</i> on responsibility of senior personnel (SYSC 4.3) does not apply; and		
		(2) the common platform requirements apply in relation to the communication and approval of financial promotions only as set out in SYSC 1 Annex 1.2.12R.		
		[Note: section 266 of the Act.]		
2.4A	R	For an AIFM qualifier:		
		(1) the <i>rule</i> on responsibility of senior personnel (SYSC 4.3) does not apply; and		
		(2) the common platform requirements apply in relation to the communication and approval of financial promotions only as set out in SYSC 1 Annex 1, 2.12R.		
2.5	R	For an authorised professional firm when carrying on non-mainstream regulated activities, the common platform requirements on financial crime, conflicts of interest and Chinese walls do not apply.		
2.5A	R	The common platform requirements on financial crime do not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.		
2.6	R	[deleted]		
2.6A	R	[deleted]		

Part 2	Applicatio	n of the com	nmon platform requirements (SYSC 4 to 10)
2.6B	R		SYSC 1 Annex 1 2.6CR, the common platform requirements do not full-scope UK AIFM of an unauthorised AIF except for:
		(1)	SYSC 4.1.1 R to SYSC 4.1.2 R and SYSC 4.1.2B R to SYSC 4.1.2D R;
		(2)	SYSC 4.2.1 R, SYSC 4.2.1B R, SYSC 4.2.2 R to SYSC 4.2.5 G, SYSC 4.2.7 R and SYSC 4.2.8 G;
		(3)	SYSC 6.1.1 R, which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the <i>firm</i> (including its managers and <i>employees</i>) might be used to further <i>financial crime</i> ;
		(4)	SYSC 6.1.4B G
		(5)	SYSC 6.3;
		(6)	SYSC 7.1.7BA G
		(7)	SYSC 10.1.1 R and SYSC 10.1.22 R to SYSC 10.1.26 R; and
		(8)	SYSC 10.2.
2.6C	R		on platform requirements apply to an AIFM investment firm which ope UK AIFM in respect of its MiFID business in line with Column A of Part 3.
2.6D	R		on platform requirements apply to a full-scope UK AIFM of an au- IF in line with Column A++ in Table A of Part 3.
2.6E	G	line with C	on platform requirements apply to a small authorised UK AIFM in folumn B in Table A of Part 3 (unless such a firm is also a common firm, in which case they must comply with Column A).
2.6F	R	[deleted]	
2.6G	R	(1)	Except as provided for in (2), the common platform requirements do not apply to a firm in relation to benchmark activities.
		(2)	The common platform requirements continue to apply to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.
2.6H	G	(1)	As a consequence of the <i>benchmarks regulation</i> , the <i>regulated activity</i> referred to in SYSC 1 Annex 1 2.6GR(2) will cease to apply in certain circumstances (see <i>SUP</i> TP 10 for an explanation of those circumstances).
		(2)	The effect of SYSC 1 Annex 1 2.6GR(2) is that the common plat- form requirements continue to apply to firms which still have permission to carry on the regulated activity in SYSC 1 Annex 1 2.6GR(2) when carrying on that activity.
2.7	G	[deleted]	
2.7A	G	[deleted]	
	What?		
2.8	vvnat? R		on platform organisational requirements apply with respect to the of the following (unless provided otherwise within a specific
		(1)	regulated activities;
		(2)	activities that constitute dealing in investments as principal, disregarding the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc);

Part 2	Applicatio	n of the con	ımon platform requirem	ents (SYSC 4 to 10)	
		(3)	ancillary activities;		
		(4)	in relation to MiFID bu	siness, ancillary services; and	
		(5)	collective portfolio ma	nagement.	
2.8A	R	(1)	Subject to (2), (3) and (5), in SYSC 1 Annex 1 2.8R, articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation (including any relevant definitions in the Glossary, MiFIR and the MiFID Org Regulation) apply as if they were rules or guidance in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a firm's carrying on of the business set out in SYSC 1 Annex 1 2.8R which is not MiFID business or a structured deposits regulated activity.		
		(1A)	Subject to (2), (3) and (6), articles 33 to 35 of the MiFID Org Regulation (including any relevant definitions in the Glossary, MiFIR and the MiFID Org Regulation) apply as if they were rules or guidance in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a firm's carrying on of the business set out in SYSC 10.1.1R which is not MiFID business or a structured deposits regulated activity.		
		(2)		(1) to a word or phrase used in the <i>MiFID</i> e purpose of (1) have the meaning indicthe table below:	
			(1)	(2)	
			"ancillary services"	ancillary services or ancillary activities associated with the firm's regulated activities	
			"client" and "poten- tial client"	client	
			"competent authority"	FCA	

Part 2	Application	on of the com	ımon platfoı	rm requirem	ents (SYSC 4 to 10)
			"investme and "firm		firm
				nt service" stment ser- activities"	designated investment business
				manage- d "portfolio ent service"	managing investments
			"shall"		must
		(3)	[deleted]		
		(4)	This rule d vestment i FID busine	<i>firm</i> in relati	y to a collective portfolio management in- on to the firm's business other than its Mi-
		(5)	not apply		ticle 72 of the <i>MiFID Org Regulation</i> do the extent that article 19 of the <i>IDD Regu-</i> rm.
		(6)	that article		does not apply to a <i>firm</i> to the extent e <i>IDD Regulation</i> apply to the <i>firm</i> (see
2.8B	G	mon platforments on or ies listed in do not invo	orm organisa conflicts of in SYSC 1 Anne olve investm	ational requi nterest also a ex 1 2.8R or S eent services	and SYSC 1 Annex 1 2.8AR is that the com- rements and the common platform require- apply when carrying on any of the activit- YSC 10.1.1R respectively even where they and/or activities and, where relevant, ancil- wise within a specific rule).
2.8C	G	FID Org Re a common or cross re	gulation that platform reference to a coss reference	at is a comm quirement o nother part	ct that, where the requirement in the Mi- con platform organisational requirement or n conflicts of interest includes a reference of the MiFID Org Regulation, that refer- same meaning as for the purposes of
2.8D	G	published	by the <i>FCA</i> t		8AR, a <i>firm</i> should apply any <i>guidance</i> ith interpreting the definitions in <i>MiFID</i> , <i>n</i> .
2.9	G				n the conflicts of interest in SYSC 10 is set and SYSC 10.2.1 R
2.10	R	FID Org Re	gulation ap	ply as set ou ley only appl	n SYSC 9 and articles 21 and 72 of the <i>Mi</i> t in SYSC 1 Annex 1.2.8R and SYSC 1 Annex y to the carrying on of <i>ancillary activities</i>
		(1)	designated	d investment	business;
		(2)	home fina	nce activity;	
		(3)	insurance	distribution	activity;
		(4)	credit-rela	ted regulate	d activity.
2.11	R				ts on financial crime apply as set out in y do not apply:
		(1)	with respe	ect to:	
			(a)	<i>principal</i> , d	at constitute dealing in investments as isregarding the exclusion in article 15 of ted Activities Order (Absence of holding ad

Part 2	Application	on of the con	ımon platfo	rm requiren	nents (SYSC 4 to 10)
			(b)	ancillary a	ctivities; or
		(2)	in relation	n to the follo	owing regulated activities:
			(a)	general in	surance business;
			(b)		distribution activity in relation to a general contract or pure protection contract;
			(c)	ency II Dir	insurance business which is outside the Solvective (unless it is otherwise one of the activities specified in this rule);
			(d)	Regulated within par	elating to contracts which are within the Activities Order only because they fall agraph (e) of the definition of "contract of in article 3 of that Order;
			(e)	(i)	arranging by the <i>Society</i> of deals in <i>general insurance contracts</i> written at Lloyd's; and
				(ii)	managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;
			(f)	home finance mediation activity and administering a home finance transaction;	
			(g)	reversion a	activity;
			(h)		f repayment claims and managing dormant is (including the investment of such funds);
			(i)	regulated	funeral plan activities.
2.12	R	form requ	irements on	financial cri	nal requirements, except the common plat- me, also apply with respect to the commun- promotions which:
		(1)	would cor		n <i>unauthorised person</i> without <i>approval</i> tion 21(1) of the Act (Restrictions on finan-
		(2)		the <i>Act</i> (Res	d by a <i>firm</i> without contravening section trictions on promotion of collective invest-
2.13	R			organisatio financial cr	nal requirements, except the common platime, also:
		(1)		n respect to tial context;	the carrying on of <i>unregulated activities</i> in and
		(2)		account any firm is a me	activity of other members of a <i>group</i> of ember.

Part 2		OI THE COUNT	mon platform requirements (SYSC 4 to 10)
2.13A	R	SYSC 6.3 only lated activit	y applies to a <i>firm</i> in relation to carrying on a <i>credit-related regu-</i> ty or <i>regulated claims management activity</i> , or <i>operating an elec-</i> <i>m in relation to lending</i> , to which the <i>Money Laundering Regula-</i>
2.13B	R		and SYSC 6.3.9 R do not apply to a firm with a limited permission g into a regulated credit agreement as lender.
2.13C	G	regulation credit institution ample, pers entering int	s to whom the Money Laundering Regulations apply are set out in 10 of the Money Laundering Regulations. The persons include utions (for example, banks) and financial institutions (for exons who carry on regulated activities which consist of or include to regulated credit agreements as lender). These expressions are regulation 10 of those Regulations.
2.14	G	systems and the common pact of a gr any systems	x 1.2.13R(2) does not mean that inadequacy of a <i>group</i> member's I controls will automatically lead to a <i>firm</i> contravening any of <i>n platform organisational requirements</i> . Rather, the potential imroup member's activities, including its systems and controls, and and controls that operate on a <i>group</i> basis, will be relevant in dehe appropriateness of the <i>firm</i> 's own systems and controls.
2.14A	G	The systems are in chapt	and control requirements in article 17 of <i>MiFID</i> for the following ter 7A of the Market Conduct sourcebook (<i>MAR</i>):
		(1)	algorithmic trading;
		(2)	direct electronic access to a trading venue; and
		(3)	acting as a general clearing member of a trading venue.
2.14B	G		d refer to articles 38 to 42 of the <i>MiFID Org Regulation</i> for addinisational requirements for underwriting and placing.
	Where?		
2.15	R		n platform requirements, except the common platform record- quirements, apply to a firm in relation to activities which:
		(1)	(except for regulated claims management activities and ancillary activities) are carried on by it from an establishment in the <i>United Kingdom</i> ; or
		(2)	are, or are ancillary to, regulated claims management activities.
2.16	R	[deleted]	
2.16A	R		[deleted]
2.16B	G	[deleted]	
2.16C	R		on platform requirements apply to a full-scope UK AIFM in respect gement of an AIF where carried on from an establishment in the
2.16D	R	[deleted]	
2.16E	R	is a full-scop	on platform requirements apply to an AIFM investment firm which one UK AIFM in respect of its MiFID business where carried on from ment in the UK.
2.16F	R	[deleted]	
2.17	R	The commo	n platform record-keeping requirements apply to activities which:
		(1)	(except for regulated claims management activities and ancillary activities) are carried on by it from an establishment in the <i>United Kingdom</i> ; or

Part 2	Applicatio	n of the common platform require	ments (SYSC 4 to 10)
rait 2	ripplicatio		to, regulated claims management activities.
		If, however, another applicable <i>r</i> wider territorial scope, the <i>comm</i>	ule which is relevant to the activity has a non platform record-keeping requirements elation to the activity described in that rule.
		[Note: article16(11) first paragrap	oh of <i>MiFID</i>]
2.17A	G	be carried on in <i>Great Britain</i> (se common platform record-keeping Annex, the application of the colorry on regulated claims managed pends on whether the activity is	gulated claims management activity it must e PERG 2.4A). Subject to the exception for g requirements in paragraph 2.17R of this mmon platform requirements to firms which ement activities (and ancillary activities) decarried on in Great Britain rather than establishment maintained in the United
		form requirements on financial c	ional requirements, except the common platrime, also apply in a prudential context to a seas firm with respect to activities wherever
2.18A	G	SYSC 6.1.1R on systems and control be used to further financial crime	ols for countering the risk that a <i>firm</i> might e is:
		(1)	a common platform organisational requirement, not a common platform requirement on financial crime; and
		(2)	subject to the application, amongst other provisions, of SYSC 1 Annex 1 2.13R, SYSC 1 Annex 1 2.18R.
	Actions fo	r damages	
2.19	R	give rise to a right of action by a	common platform requirements does not private person under section 138D of the ecified under section 138D(3) of the Act as a light of action).

3.1 G The common platform requirements apply as described in the following table (subject to the provisions in Part 2 of this Annex (Application of the common platform requirements). Type of firm Common platform requirements Type of firm Common platform requirements Type of firm Common platform requirements SYSC 1 Annex 1 3.2 G SYSC 1 SYSC 1 SYSC 1 G SYSC 1		Tables sum	nmarising the applica	ation of the common platform requirem	ents to different		
(subject to the provisions in Part 2 of this Annex (Application of the common platform requirements)). Type of firm Common platform firm SYSC 1 Annex 1 3.2.6, SYSC 1 Annex 1 3.2.6 SYSC 1 Annex 1 3.2.7 Third country firm SYSC 1 Annex 1 3.2.7 Third country firm All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi- 13.2 SYSC 1 Annex 1 3.2.7 The IDD Regulation applies to a firm when carrying on insurance distribution in relation to insurance-based investment products. Articles 3 to 7 of the IDD Regulation are reproduced in SYSC 10.1 A for information for these firms. Common platform firm 3.2 G For a common platform firm (other than a dormant asset fund operator not subject to MiFID): (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation are directly applicable to the firm. 3.2-ZA G A common platform firm that is a MIFIDPRU investment firms are not in scope of the requirements in SYSC 43.8 R and SYSC 7.1.18R regarding nomination and risk committees, certain MIFIDPRU investment firms are required by MIFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees, certain MIFIDPRU investment firms are required by MIFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees, certain MIFIDPRU investment firms are required by MIFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees, certain MIFIDPRU 1.2.5R to the MIFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8AR. 3.2-B R For a common platform firm that is a dormant asset fund operator not subject to MIFID: (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and 2) A common platform firm that is a dormant asset fund operat		types of fi	rm				
Common platform firm SYSC 1 Annex 1 3.2AR and SYSC 1 Annex 1 3.2AR MiFID optional exemption firm SYSC 1 Annex 1 3.2ER MiFID optional exemption firm All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi-13.3R FID optional exemption firms and third country firms) 3.1A G The IDD Regulation applies to a firm when carrying on insurance distribution in relation to insurance-based investment products. Articles 3 to 7 of the IDD Regulation are reproduced in SYSC 10.1A for information for these firms. Common platform firm 3.2 G For a common platform firm (other than a dormant asset fund operator not subject to MiFID): (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below, and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation and risk committees, certain MiFIDPRU investment firms are not in scope of the requirements in SYSC 43.ASR and SYSC 71.ASR regarding nomination and risk committees, certain MiFIDPRU investment firms are required by MiFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees, certain MiFID Dusiness or structured deposits regulated activities as if the MiFID Org Regulation applied to the firm as rules in accordance with Column A in Table A below; and 3.2-B R For a common platform firm that is a dormant asset fund operator not subject to MiFID). articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation applied to the firm as rules in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation applied to the firm as rules in accordance with Column A in Table A below; and articles in accordance with Column A in Table A below; and sift to 25, 30 to 35 and 72 of the MiFID Org Regulation applied to the	3.1	G	(subject to the pro	visions in Part 2 of this Annex (Applicati			
Management company Management company Full-scope UK AIFM of an authorised AIF Full-scope UK AIFM of an authorised AIF Full-scope UK AIFM of an authorised AIF MiFID optional exemption firm SYSC1 Annex 1 3.2BR MiFID optional exemption firm Third country firm All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi- 1.3.3R FID optional exemption firms and third country firms) 3.1A G The IDD Regulation applies to a firm when carrying on insurance distribution in relation to insurance-based investment products. Articles 3 to 7 of the IDD Regulation are reproduced in SYSC 10.1A for information for these firms. Common platform firm 3.2 G For a common platform firm (other than a dormant asset fund operator not subject to MiFID): (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation are directly applicable to the firms are not in scope of the requirements in SYSC 4.3.BR and SYSC 7.1.1BR regarding nomination and risk committees. 3.2-A R For a common platform firm (other than a dormant asset fund operator not subject to MiFID), articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation apply to the firm subsiness other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.				Type of firm	form re-		
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3.2BR MiFID optional exemption firm SYSC 1 Annex 1 3.2CR Third country firm All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi-FID optional exemption firms and third country firms) 3.1A G The IDD Regulation applies to a firm when carrying on insurance distribution in relation to insurance-based investment products. Articles 3 to 7 of the IDD Regulation are reproduced in SYSC 10.1A for information for these firms. Common platform firm 3.2 G For a common platform firm (other than a dormant asset fund operator not subject to MiFID): (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below, and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation are directly applicable to the firm. 3.2-ZA G A common platform firm that is a MIFIDPRU investment firm should read SYSC 4 to SYSC 10 together with MIFIDPRU 7. While MIFIDPRU investment firms are not in scope of the requirements in SYSC 4.3A.8A and SYSC 7.1.18R regarding nomination and risk committees, certain MIFIDPRU investment firms are required by MIFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees. 3.2-A R For a common platform firm (other than a dormant asset fund operator not subject to MiFID), articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply to the firm's business other than MiFID Drug Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR. 3.2-B R For a common platform firm that is a dormant asset fund operator and is not subject to MiFID: (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below, and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1			Management comp	pany			
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3.2 G For a common platform firm (other than a dormant asset fund operator not subject to MiFID): (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation are directly applicable to the firm. 3.2-ZA G A common platform firm that is a MIFIDPRU investment firm should read SYSC 4 to SYSC 10 together with MIFIDPRU 7. While MIFIDPRU investment firms are not in scope of the requirements in SYSC 4.3A.8R and SYSC 7.1.18R regarding nomination and risk committees, certain MIFIDPRU investment firms are required by MIFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees. 3.2-A R For a common platform firm (other than a dormant asset fund operator not subject to MiFID), articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR. 3.2-B R For a common platform firm that is a dormant asset fund operator and is not subject to MiFID: (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex	3.1A	G	in relation to insurance-based investment products. Articles 3 to 7 of the IDD				
subject to MiFID): (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation are directly applicable to the firm. 3.2-ZA G A common platform firm that is a MIFIDPRU investment firm should read SYSC 4 to SYSC 10 together with MIFIDPRU 7. While MIFIDPRU investment firms are not in scope of the requirements in SYSC 4.3A.8R and SYSC 7.1.18R regarding nomination and risk committees, certain MIFIDPRU investment firms are required by MIFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees. 3.2-A R For a common platform firm (other than a dormant asset fund operator not subject to MiFID), articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR. 3.2-B R For a common platform firm that is a dormant asset fund operator and is not subject to MiFID: (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.	Common	olatform firm	า				
Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation are directly applicable to the firm. 3.2-ZA G A common platform firm that is a MIFIDPRU investment firm should read SYSC 4 to SYSC 10 together with MIFIDPRU 7. While MIFIDPRU investment firms are not in scope of the requirements in SYSC 4.3A.8R and SYSC 7.1.18R regarding nomination and risk committees, certain MIFIDPRU investment firms are required by MIFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees. 3.2-A R For a common platform firm (other than a dormant asset fund operator not subject to MiFID), articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR. 3.2-B R For a common platform firm that is a dormant asset fund operator and is not subject to MiFID: (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8R	3.2	G		tform firm (other than a dormant asset t	fund operator not		
Regulation are directly applicable to the firm. 3.2-ZA G A common platform firm that is a MIFIDPRU investment firm should read SYSC 4 to SYSC 10 together with MIFIDPRU 7. While MIFIDPRU investment firms are not in scope of the requirements in SYSC 4.3A.8R and SYSC 7.1.18R regarding nomination and risk committees, certain MIFIDPRU investment firms are required by MIFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees. 3.2-A R For a common platform firm (other than a dormant asset fund operator not subject to MiFID), articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR. 3.2-B R For a common platform firm that is a dormant asset fund operator and is not subject to MiFID: (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.			(1)		vith Column A in		
SYSC 4 to SYSC 10 together with MIFIDPRU 7. While MIFIDPRU investment firms are not in scope of the requirements in SYSC 4.3A.8R and SYSC 7.1.18R regarding nomination and risk committees, certain MIFIDPRU investment firms are required by MIFIDPRU 7.3.1R and MIFIDPRU 7.3.5R to establish nomination and risk committees. 3.2-A R For a common platform firm (other than a dormant asset fund operator not subject to MiFID), articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR. 3.2-B R For a common platform firm that is a dormant asset fund operator and is not subject to MiFID: (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.				Regulation are directly applicable to the	ne firm.		
subject to MiFID), articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR. 3.2-B R For a common platform firm that is a dormant asset fund operator and is not subject to MiFID: (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.	3.2-ZA	G	SYSC 4 to SYSC 10 to are not in scope of ing nomination an required by MIFIDP	ogether with MIFIDPRU 7. While <i>MIFIDPRU</i> is the requirements in SYSC 4.3A.8R and SY drisk committees, certain <i>MIFIDPRU inv</i>	J investment firms 'SC 7.1.18R regard- estment firms are		
subject to MiFID: (1) SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.	3.2-A	R	subject to MiFID), a gulation apply to t deposits regulated	articles 1(2), 21 to 25, 30 to 35 and 72 of the firm's business other than MiFID business activities as if the MiFID Org Regulation	the MiFID Org Re- iness or structured applied to the		
Table A below; and (2) articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.	3.2-B	R		tform firm that is a dormant asset fund	operator and is not		
Regulation apply as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.			(1)		ith Column A in		
Management company			(2)	Regulation apply as if the MiFID Org R to the firm as rules in accordance with	egulation applied		
	Managem	ent company	1				

Part 3	Tables sun types of f		ation of the commo	on platform requirements to different	
3.2A	G	For a management company, the common platform requirements in SYSC 4 to SYSC 10 apply in accordance with Column A+ in Table A below.			
Full-scope	UK AIFM of	an authorised AIF			
3.2B	R	For a full-scope UK AIFM of an authorised AIF, the common platform requirements in SYSC 4 to SYSC 10 apply in accordance with Column A++ in Table A below.			
MiFID opt	ional exemp	tion firm and a third	l country firm		
3.2C	R	For a MiFID option	nal exemption firm a	and a third country firm:	
		(1)		pply as <i>rules</i> or as <i>guidanc</i> e in accordbelow in the following way:	
			(a)	where a <i>rule</i> is shown modified as 'Guidance', it should be read as <i>guidance</i> (as if "should" appeared in that <i>rule</i> instead of "must"); and	
			(b)	the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the <i>firm's</i> business; and	
		(2)	Regulation apply a to the firm as rule 2.8R and SYSC 1 An ance with Part 1 c	25, 30 to 32 and 72 of the MiFID Org as if the MiFID Org Regulation applied es (in accordance with SYSC 1 Annex 1 mex 1 2.8AR) or as guidance in accordance Table C below. Part 2 of Table C sets of the MiFID Org Regulation.	
3.2D	R	(1)	Subject to (2), SYSC 4.3A.6R, SYSC 4.3A.8R and SYSC 7.1.18R apply to a <i>MiFID optional exemption firm</i> that is 'significant' as a <i>rule</i> or as <i>guidance</i> in accordance with SYSC 1 Annex 1 3.2CR.		
		(2)	In (1), 'significant' firm that is a signi	means a MiFID optional exemption ificant SYSC firm.	
Other firm	ns				
3.2E	R	SYSC 1 Annex 1 3.3R	does not apply to t	the following:	
		(1)	insurers and UK IS	SPVs;	
		(2)	managing agents;		
		(3)	the Society;		
		(4)	full-scope UK AIFN	Ms of unauthorised AIFs;	
		(5)	MiFID optional ex	emption firms; and	
		(6)	third country firm	S.	
3.3	R	For all other firms:			
		(1)		pply as <i>rules</i> or as <i>guidance</i> in accord- B in Table A below in the following	
			(a)	where a <i>rule</i> is shown modified in Column B as 'Guidance', it should be read as <i>guidance</i> (as if "should" appeared in that <i>rule</i> instead of "must"); and	
				, , , , , , , , , , , , , , , , , , ,	

Part 3	Tables summarising the types of firm	e application of the co	ommon platform requirements to different
		(b)	the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the <i>firm's</i> business; and
	(2)	articles 1(2), Regulation d	21 to 25, 30 to 35 and 72 of the <i>MiFID Org</i> o not apply.
3.3A	R		

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

• •				
				COLUMN B
Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage-	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country
		ment company		firms
SYSC 4.12G	Guidance	Not applicable save in relation to a UCITS investment firm and its MiFID business	Not applicable	Not applicable
SYSC 4.11G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 4.1.1R	Rule	Rule	Rule	Rule
SYSC 4.1.1AR	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.1.1BR	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.1.1CR	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.1.1DR	Not applicable	Rule	Not applicable	Not applicable
SYSC 4.1.1ER	Not applicable	Rule	Not applicable	Not applicable
SYSC 4.1.1FG	Not applicable	Guidance	Not applicable	Not applicable
SYSC 4.1.2R	Rule	Rule for a <i>UCITS</i> investment firm; otherwise guidance	Rule	Guidance
SYSC 4.1.2AG	Not applicable	Guidance for a UCITS firm; not applicable to a UCITS investment firm	Not applicable	Guidance
SYSC 4.1.2AAR	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.1.2BR	Not applicable	Rule	Rule	Not applicable
SYSC 4.1.2CR	Not applicable		Rule	Not applicable
SYSC 4.1.2DR	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.1.3R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.1.4R	Not applicable	Rule	Not applicable	(1) and (3): Guid- ance; (2): Rule

				COLUMN B
	COLUMN A		COLUMN A++	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unau-
	Application to a common platform	COLUMN A+	Application to a	thorised AIFs, Mi- FID optional ex-
Provision	firm other than to a UCITS invest-	Application to a UCITS manage-	full-scope UK AIFM of an au-	emption firms and third country
SYSC 4	ment firm	ment company	thorised AIF	firms
SYSC 4.1.4AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 4.1.5R	Not applicable	Rule	Not applicable	Not applicable
SYSC 4.1.6R	Rule	Rule for a <i>UCITS</i> investment firm; otherwise guidance	Not applicable	Guidance
SYSC 4.1.7R	Rule <i>CRR firm</i> for a only	Rule	Not applicable	Guidance
SYSC 4.1.7AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 4.1.8G	Guidance	Guidance	Guidance	Guidance
SYSC 4.1.8AR	Applies as a rule only to an oper-ator of an electronic system in relation to lending	Not applicable	Not applicable	Applies as a rule only to an oper- ator of an elec- tronic system in relation to lending
SYSC 4.1.8CG	Applies as guid- ance only to an operator of an electronic system in relation to lending	Not applicable	Not applicable	Applies as guid- ance only to an operator of an electronic system in relation to lending
SYSC 4.1.8DG	Applies as guid- ance only to an operator of an electronic system in relation to lending	Not applicable	Not applicable	Applies as guid- ance only to an operator of an electronic system in relation to lending
SYSC 4.1.8DAG	Applies as guid- ance only to an operator of an electronic system in relation to lending	Not applicable	Not applicable	Applies as guid- ance only to an operator of an electronic system in relation to lending
SYSC 4.1.8DBR	Applies as a rule only to an oper-ator of an elec-tronic system in relation to lending	Not applicable	Not applicable	Applies as a rule only to an oper- ator of an elec- tronic system in relation to lending

				COLUMN B
Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 4.1.8DCR	Applies as a rule	Not applicable	Not applicable	Applies as a rule
	only to an Applies as a rule only to an operator of an electronic system in relation to lending	••		only to an oper- ator of an elec- tronic system in relation to lending
SYSC 4.1.8DDR	Applies as a rule only to an operator of an electronic system in relation to lending	Not applicable	Not applicable	Applies as a rule only to an operator of an electronic system in relation to lending
SYSC 4.1.9R	Not applicable	Rule	Not applicable	Not applicable
SYSC 4.1.10R	Not applicable	Rule	Not applicable	Guidance - except reference to SYSC 4.1.9 R which does not apply to these <i>firms</i>
SYSC 4.1.10AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 4.1.11G	Guidance	Guidance	Guidance	Guidance
SYSC 4.1.13G	Guidance	Guidance	Guidance	Guidance
SYSC 4.1.14G	Guidance	Guidance	Guidance	Guidance
SYSC 4.2.1R	Rule	Rule	Rule	Guidance
SYSC 4.2.1AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 4.2.2R	Rule	Rule	Rule	Not applicable
SYSC 4.2.3G - 4.2.5G	Guidance	Guidance	Guidance	Not applicable
SYSC 4.2.6R	Rule	Rule for a <i>UCITS</i> investment firm; otherwise not applicable	Not applicable	Not applicable
SYSC 4.2.7R	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.2.8G	Not applicable	Not applicable	Rule	Not applicable
SYSC 4.2.9G	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.3.1R	Not applicable	Rule	Not applicable	Rule
SYSC 4.3.2R	Not applicable	Rule	Not applicable	Guidance but applies as a rule to an operator of an electronic system

				COLUMN B
Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi-FID optional exemption firms and third country firms
				in relation to lending
SYSC 4.3.2AG	Not applicable	Not applicable	Not applicable	Guidance (but not applicable to an operator of an electronic system in relation to lending)
SYSC 4.3.3G	Guidance	Guidance	Not applicable	Guidance
SYSC 4.3A1R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.3A.1R	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.1AR	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.2R	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.2AG	Guidance	Guidance for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.3R	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.3AG	Guidance	Guidance for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.4R	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.5R	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.6R	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.7R	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.7AR	Rule (except for a MIFIDPRU in- vestment firm)	Not applicable	Not applicable	Not applicable
SYSC 4.3A.7BG	Guidance for a MI- FIDPRU invest- ment firm	Guidance for a UCITS investment firm	Not applicable	Not applicable

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 4.3A.8R	Rule (except for a MIFIDPRU in- vestment firm)	Not applicable	Not applicable	Not applicable
SYSC 4.3A.9R	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.10R	Rule	Rule for a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.11R	Rule applicable to CRR firms	Not applicable	Not applicable	Not applicable
SYSC 4.4.1R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 4.4.1AR	Not applicable	Not applicable	Not applicable	As specified in SYSC 4.4.1AR
SYSC 4.4.2G	Not applicable	Not applicable	Not applicable	Guidance only applying to the firms specified in SYSC 4.4.1A R
SYSC 4.4.3R	Not applicable	Not applicable	Not applicable	Rule only apply- ing to the <i>firms</i> specified in SYSC 4.4.1A R
SYSC 4.4.4G	Not applicable	Not applicable	Not applicable	Guidance only applying to the firms specified in SYSC 4.4.1A R
SYSC 4.4.5R	Not applicable	Not applicable	Not applicable	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1A R
SYSC 4.4.6G	Not applicable	Not applicable	Not applicable	Guidance only applying to the firms specified in SYSC 4.4.1A R

				COLUMN B
Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS invest- ment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 5.12G	Guidance	Not applicable	Not applicable	Not applicable
		save in relation to a UCITS invest- ment firm and its MiFID business		
SYSC 5.11G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 5.1.1R	Not applicable	Rule	Not applicable	Rule
SYSC 5.1.2G	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.3G	Guidance	Guidance	Not applicable	Guidance
SYSC 5.1.3AG	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.4G	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.4AG	Guidance	Guidance	Guidance	Guidance
	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.5AG	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.5AAR	Rule	Not applicable save in relation to a UCITS investment firm and its MiFID business	Not applicable	Not applicable
SYSC 5.1.5ABR	Rule	Not applicable save in relation to a UCITS investment firm and its MiFID business	Not applicable	Not applicable
SYSC 5.1.5ACG	Guidance	Not applicable save in relation to a UCITS invest-ment firm and its MiFID business	Not applicable	Not applicable
SYSC 5.1.5ADG				[deleted]
SYSC 5.1.5AEG				[deleted]
SYSC 5.1.5BR	Rule	Rule	Rule	Rule
SYSC 5.1.6R	Not applicable	Rule	Guidance	Guidance
SYSC 5.1.7R	Rule	Rule for a <i>UCITS</i> investment firm; otherwise guidance	Guidance	Guidance
SYSC 5.1.7AG	Not applicable	Not applicable to a UCITS invest	Guidance	Guidance

Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
		ment firm; other-		
SYSC 5.1.8G	Guidance	wise guidance Guidance	Guidance	Guidance
SYSC 5.1.9G	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.10G	Guidance	Guidance	Guidance, but not applicable for the	Guidance
			segregation of risk management functions	
SYSC 5.1.11G	Guidance	Guidance	Guidance	Guidance
SYSC 5.1.12R	Not applicable	Rule	Not applicable	Guidance
SYSC 5.1.12AG	Not applicable	Not applicable	Not applicable	Guidance
SYSC 5.1.13R	Not applicable	Rule	Not applicable	Rule
SYSC 5.1.14R	Not applicable	Rule	Not applicable	Guidance
SYSC 5.1.15G	Not applicable	Not applicable	Not applicable	Guidance
				COLUMN B
Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.12G	Guidance	Not applicable save in relation to a UCITS investment firm and its MiFID business	Not applicable	Not applicable
SYSC 6.11G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 6.1.1R	Rule	Rule	Rule but only regarding the obligation to establish, implement and maintain adequate policies	Rule

					COLUMN B
Provision SYSC 6	A co fi a	OLUMN A Application to a common platform frm other than to UCITS invest- nent firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi-FID optional exemption firms and third country firms
				and procedures for countering the risk that the firm (including its managers and em- ployees) might be used to further financial crime	
SYSC 6.1.1	AG G	iuidance	Guidance	Guidance	Guidance
SYSC 6.1.2	R N	lot applicable	Rule	Not applicable	Guidance, but applies as a rule to an operator of an electronic system in relation to lending
SYSC 6.1.2	AG N	lot applicable	Not applicable	Not applicable	Guidance, but applies as a rule to an operator of an electronic system in relation to lending
SYSC 6.1.3	R N	lot applicable	Rule	Not applicable	Guidance, but applies as a rule to an operator of an electronic system in relation to lending.
					For firms other than an operator of an electronic system in relation to lending, this provision shall be read with the following additional sentence at the start. "Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. Where a firm has a separate compliance

				COLUMN B
Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS invest- ment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
				function, the firm should also take into account SYSC 6.1.3R and SYSC 6.1.4R as guidance."
SYSC 6.1.3AG	Not applicable	Not applicable	Not applicable	Guidance, but does not apply to an operator of an electronic system in relation to lending
SYSC 6.1.4R	Not applicable	Rule	Not applicable	(1), (3) and (4): Guidance;
				(2):
				- Rule for firms which carry on designated in- vestment business with or for retail clients or profes- sional clients.
				- Guidance for all other <i>firms</i> .
				Applies as a rule to an operator of an electronic system in relation to lending.
SYSC 6.1.4-AG	Guidance	Not applicable	Rule	Guidance
SYSC 6.1.4AR	Not applicable	Not applicable	Not applicable	Rule for firms which carry on designated investment business with or for retail clients or professional clients.
SYSC 6.1.4BG	Not applicable	Not applicable	Guidance	Not applicable
SYSC 6.1.4-CG	Guidance applies to relevant au- thorised persons only	Not applicable	Not applicable	Not applicable

				COLUMN B
Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi-FID optional exemption firms and third country firms
SYSC 6.1.4CR	Not applicable	Not applicable	Not applicable	As specified in SYSC 6.1.4CR.
SYSC 6.1.5R	Not applicable	Rule	Not applicable	- Guidance, but applies as a rule to an operator of an electronic sys- tem in relation to lending
				- "investment ser- vices and activities" shall be read as "financial services and activities"
SYSC 6.1.6G	Not applicable	Not applicable	Not applicable	Guidance, but does not apply to an operator of an electronic system in relation to lending
SYSC 6.1.7R	Rule	Rule for a <i>UCITS</i> investment firm; otherwise not applicable	Not applicable	Guidance
SYSC 6.1.8G	Not applicable	Not applicable	Not applicable	Only applies to an operator of an electronic system in relation to lending
SYSC 6.2.1R	Not applicable	Rule	Not applicable	Guidance, but applies as a rule to an operator of an electronic system in relation to lending
SYSC 6.2.1AG	Not applicable	Not applicable	Not applicable	Guidance, but does not apply to an operator of an electronic system in relation to lending
SYSC 6.2.1BG	Guidance applies to relevant au- thorised persons only	Not applicable	Not applicable	Not applicable

Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.2.2G	Guidance	Guidance	Not applicable	Guidance
SYSC 6.3.1R	Rule	Rule	Rule	For firms carrying on a credit-re-lated regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.2G	Guidance	Guidance	Guidance	For firms carrying on a credit-re-lated regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for

				COLUMN B
Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.3.3R	Rule	Rule	Rule	which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.(FCA Handbook only)
313C 0.3.3N	TOTAL	TIGIC	Truit.	For firms carrying on a credit-re-lated regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.(FCA Handbook only)
SYSC 6.3.4G	Guidance	Guidance	Guidance	Guidance For firms carrying on a credit-related regulated
				activity or regu- lated claims man

Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.3.5G	Guidance	Guidance	Guidance	agement activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only) Guidance For firms carrying on a credit-related regulated
				activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the

Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms supervisory au-
SYSC 6.3.6G	Guidance	Guidance	Guidance	thority for the purposes of those regulations. (FCA Handbook only) Guidance
				For firms carrying on a credit-re-lated regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.7G	Guidance	Guidance	Guidance	For firms carrying on a credit-re-lated regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money

Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 6.3.8R	Rule	Rule	Rule	Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
				For firms carrying on a credit-re-lated regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as

COLUMN A Application to a common platform firm other than to a UCITS investment firm SYSC 6 Rule For firms carrying on a credit-related activity or regulations spept to the firm, apply to a firm bor where the Money Laundering Regulations as a lender. Rule does not apply to a firm for which apply to a firm					COLUMN B
SYSC 6.3.9R Rule Rule Rule Rule For firms carrying on a credit-re-lated regulated activity or regulated shall be a firm with a limited permission for entering into a regulated care a firm with a limited permission for entering into a regulated care permited on a pipt to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations, (FCA Handbook only) SYSC 6.3.10G Guidance Guidance Guidance For firms carrying on a credit-related regulated activity or regulations carrying on a credit-related regulated activity or regulation activity or regulated activity or regulations.		Application to a common platform firm other than to a UCITS invest-	Application to a UCITS manage-	Application to a full-scope UK AIFM of an au-	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country
For firms carrying on a credit-re- lated regulated activity or regu- lated claims man- agement activity, or operating an electronic system in relation to lend- ing, applies only where the Money Laundering Re- gulations apply to to the firm. Rule does not apply to a firm with a lim- ited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Re- gulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only) SYSC 6.3.10G Guidance Guidance Guidance For firms carrying on a credit-re- lated regulated activity or regu-	SVSC 6 3 0P	Rulo	Rulo	Rula	authority for the purposes of those regulations. (FCA Handbook only)
For firms carrying on a credit-re- lated regulated activity or regu-					For firms carrying on a credit-re-lated regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
	SYSC 6.3.10G	Guidance	Guidance	Guidance	For firms carrying on a credit-re- lated regulated activity or regu-

Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
				agement activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.11G	Guidance	Guidance	Guidance	For firms carrying on a credit-re-lated regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the

Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms purposes of those regulations. (FCA Handbook only)
				COLUMN B
Provision SYSC 7	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 7.12G	Guidance	Not applicable save in relation to a UCITS investment firm and its MiFID business	Not applicable	Not applicable
SYSC 7.11G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 7.1.1G	Guidance	Guidance	Not applicable	Guidance
SYSC 7.1.2R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance, but applies as a rule to an operator of an electronic system in relation to lending
SYSC 7.1.2AG	Not applicable	Not applicable to a <i>UCITS invest-</i> <i>ment firm</i> ; other- wise guidance	Not applicable	Guidance, but does not apply to an operator of an electronic system in relation to lending
SYSC 7.1.2BG	Not applicable	Guidance	Not applicable	Not applicable
SYSC 7.1.3R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance, but applies as a rule for an operator of an electronic system in relation to lending

				COLUMN B
Provision	COLUMN A Application to a common platform firm other than to a UCITS invest-	COLUMN A+ Application to a UCITS manage-	COLUMN A++ Application to a full-scope UK AIFM of an au-	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi-FID optional exemption firms and third country
SYSC 7	ment firm	ment company	thorised AIF	firms
SYSC 7.1.4R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance, but applies as a rule to an operator of an electronic system in relation to lending
SYSC 7.1.4AG	Guidance for a MI- FIDPRU invest- ment firm	Guidance for a UCITS investment firm	Not applicable	Guidance
SYSC 7.1.4BG	Not applicable	Rule for a <i>UCITS</i> investment firm; otherwise guidance	Not applicable	Guidance
SYSC 7.1.5R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance, but applies as a rule to an operator of an electronic system in relation to lending
SYSC 7.1.6R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance, but applies as a rule to an operator of an electronic system in relation to lending
SYSC 7.1.7R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance, but applies as a rule to an operator of an electronic system in relation to lending
SYSC 7.1.7AG	Not applicable	Rule for a UCITS investment firm; otherwise guidance	Not applicable	Guidance, but does not apply to an operator of an electronic system in relation to lending
SYSC 7.1.7BG	Guidance applicable to a CRR firm	Not applicable	Guidance	Guidance
SYSC 7.1.7BAG	Not applicable	Not applicable	Guidance	Not applicable
SYSC 7.1.7BBG	[deleted]	[deleted]	[deleted]	[deleted]

				COLUMN B
Provision SYSC 7 SYSC 7.1.7BDG	COLUMN A Application to a common platform firm other than to a UCITS investment firm Guidance applies	COLUMN A+ Application to a UCITS manage- ment company Guidance applies	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF Not applicable	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms Not applicable
	only to a MIFID- PRU investment firm	only to a UCITS investment firm		
SYSC 7.1.7CG	Guidance	Guidance	Guidance	Guidance
SYSC 7.1.8G	Guidance	Guidance	Guidance	Guidance
SYSC 7.1.9R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.10R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.11R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.12G	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.13R -	[deleted]	[deleted]	[deleted]	[deleted]
7.1.16R				
SYSC 7.1.16AG	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.16BG	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.16CR	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 7.1.17R	Rule applies to a CRR firm	Not applicable	Not applicable	Not applicable
SYSC 7.1.18R	Rule applies to a CRR firm	Not applicable	Not applicable	Not applicable
SYSC 7.1.18AAG	Guidance applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable
SYSC 7.1.18BR	Rule applies to a CRR firm	Not applicable	Not applicable	Not applicable
SYSC 7.1.19R	Rule applies to a CRR firm	Not applicable	Not applicable	Not applicable
SYSC 7.1.20R	Rule applies to a CRR firm	Not applicable	Not applicable	Not applicable
SYSC 7.1.21R	Rule applies to a CRR firm	Not applicable	Not applicable	Not applicable
SYSC 7.1.22R	Rule applies to a CRR firm	Not applicable	Not applicable	Not applicable
SYSC 7.1.23G	Guidance applies to UK relevant au- thorised persons and third country relevant au- thorised persons only	Not applicable	Not applicable	Not applicable

Provision SYSC 8	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 8.12G	Guidance	Not applicable save in relation to a UCITS investment firm and its MiFID business	Not applicable	Not applicable
SYSC 8.11G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 8.1.1R	Rule	Rule for a <i>UCITS</i> investment firm; otherwise guidance	Not applicable	Guidance
SYSC 8.1.1AG	Not applicable	Not applicable to a <i>UCITS invest-</i> <i>ment firm</i> ; other- wise guidance	Not applicable	Guidance
SYSC 8.1.2G	Guidance	Guidance	Not applicable	Guidance
SYSC 8.1.3G	Guidance	Guidance	Not applicable	Guidance
SYSC 8.1.4R	Not applicable	Rule for a <i>UCITS</i> investment firm; otherwise guidance	Not applicable	Guidance
SYSC 8.1.5R	Not applicable	Rule for a <i>UCITS</i> investment firm; otherwise guidance	Not applicable	Guidance
SYSC 8.1.5AG	Not applicable	Rule for a <i>UCITS</i> investment firm; otherwise guidance	Not applicable	Guidance
SYSC 8.1.6R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Rule
SYSC 8.1.6AG	Guidance for a UCITS investment firm in relation to its MiFID business	Not applicable	Not applicable	Not applicable
SYSC 8.1.7R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance

	COLUMN A		COLUMN A++	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unautherical AIFA Michael Columnia (1988).
Provision	Application to a common platform firm other than to	COLUMN A+ Application to a	Application to a full-scope UK	thorised AIFs, Mi- FID optional ex- emption firms
SYSC 8	a UCITS invest- ment firm	UCITS manage- ment company	AIFM of an au- thorised AIF	and third country firms
SYSC 8.1.8R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance
SYSC 8.1.9R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance
SYSC 8.1.10R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance
SYSC 8.1.11R	Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance
SYSC 8.1.11AG	Not applicable	Not applicable to a <i>UCITS invest-</i> <i>ment firm</i> ; other- wise guidance	Not applicable	Guidance
SYSC 8.1.12G	Guidance	Guidance	Not applicable	Guidance
SYSC 8.1.13R	Not applicable	Rule	Not applicable	Not applicable
SYSC 8.1.14G	Not applicable	Guidance	Not applicable	Not applicable
SYSC 8.2 SYSC 8.3	[deleted] [deleted]	[deleted] [deleted]	[deleted] [deleted]	[deleted] [deleted]
31300.3	[deleted]	[deleted]	[deleted]	[deleted]

Provision SYSC 9 SYSC 9.12G	COLUMN A Application to a common platform firm other than to a UCITS investment firm Guidance	COLUMN A+ Application to a UCITS manage- ment company Not applicable save in relation to	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF Not applicable	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms Not applicable
		a UCITS invest- ment firm and its MiFID business		
SYSC 9.11G SYSC 9.1.1R	Not applicable Not applicable	Not applicable Rule	Rule but only for the requirement to arrange for or- derly records to be kept of its busi- ness and internal organisation which do not re- late to portfolio transactions and subscription and redemptions orders	Not applicable Rule
SYSC 9.1.1AR	Rule	Not applicable	Not applicable	Not applicable
SYSC 9.1.2R	Rule applies only in relation to <i>Mi-FID business</i>	Rule applies only in relation to Mi- FID business of a UCITS investment firm	Rule but only for records specified by the modified application of SYSC 9.1.1 R	Not applicable
SYSC 9.1.2AR	Rule	Rule	Rule	Rule
SYSC 9.1.2BG	Guidance	Guidance	Guidance	Guidance
SYSC 9.1.2CUK	Applicable to a firm carrying on insurance distribution in relation to insurancebased investment products	Applicable to a firm carrying on insurance distribution in relation to insurancebased investment products	Applicable to a firm carrying on insurance distribution in relation to insurancebased investment products	Applicable to a firm carrying on insurance distribution in relation to insurancebased investment products
SYSC 9.1.2DR	Rule	Rule	Rule	Rule
SYSC 9.1.3R	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 9.1.4G	Guidance	Guidance	Guidance	Guidance
SYSC 9.1.5G	Guidance	Guidance	Not applicable	Guidance
SYSC 9.1.6G	Guidance	Guidance	Not applicable	Guidance
SYSC 9.1.6A	Guidance	Guidance	Guidance	Guidance
	[deleted]	[deleted]	[deleted]	[deleted]

Provision SYSC 9 SYSC 9.2G	COLUMN A Application to a common platform firm other than to a UCITS investment firm Not applicable	COLUMN A+ Application to a UCITS manage- ment company Not applicable	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF Not applicable	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms Applicable to credit institutions only
				Column B
Provision SYSC 10	Column A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi-FID optional exemption firms and third country firms
SYSC 10.15G	Not applicable	Not applicable	Not applicable	Guidance in rela- tion to funeral plan distribution
SYSC 10.14G	Guidance in relation to insurance distribution activities	Guidance in relation to insurance distribution activities	Guidance in relation to insurance distribution activities	Guidance in relation to insurance distribution activities
SYSC 10.13R	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities
SYSC 10.12G	Guidance	Guidance in relation to relation to relation to a UCITS investment firm in relation to its MiFID business; otherwise not applicable	Not applicable	Not applicable
SYSC 10.11G	Not applicable	Not applicable	Not applicable	Not applicable
SYSC 10.1.1R	Rule	Rule	Not applicable	Rule
SYSC 10.1.1AR	Not applicable	Not applicable	Rule	Not applicable
SYSC 10.1.2G	Guidance	Guidance	Guidance in relation to insurance distribution activities. Otherwise, not ap-	Guidance

				Calama D
				Column B
Provision SYSC 10	Column A Application to a common platform firm other than to a UCITS invest- ment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
SYSC 10.1.3R	Rule	Rule	Rule in relation to insurance distribution activities. Otherwise not applicable	Rule
SYSC 10.1.4R	Not applicable	Rule, but not applicable in relation to insurance distribution activities	Not applicable	Guidance - but applies as a rule in relation to the production or arrangement of investment research, or the production or dissemination of nonindependent research, in accordance with COBS 12.2
				Not applicable in relation to insur- ance distribution activitiesor fu- neral plan dis- tribution
SYSC 10.1.4AG	Not applicable	Not applicable	Not applicable	Guidance -but not applicable in rela- tion to insurance distribution ac- tivitiesor funeral plan distribution
SYSC 10.1.4BR	Not applicable	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities	Rule in relation to insurance distri- bution activit- iesand funeral plan distribution
SYSC 10.1.4CR	Not applicable	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities and funeral plan distribution
SYSC 10.1.5G	Guidance	Guidance	Not applicable	Guidance
SYSC 10.1.6R	Not applicable	Rule	Rule in relation to insurance distribution activities.	Guidance - but applies as a rule: (a) in relation to the

				Column B
Provision SYSC 10	Column A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
			Otherwise, not ap-	production or ar-
			plicable	rangement of investment research, or the production or dissemination of nonindependent research, in accordance with COBS 12.2; and (b) in relation to insurance distribution activities and funeral plan distribution
SYSC 10.1.6AG	Not applicable	Not applicable	Guidance - but not applicable in relation to insur- ance distribution activities	Guidance - but not applicable in relation to insur- ance distribution activitiesor fu- neral plan dis- tribution
SYSC 10.1.6AAR	Not applicable	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities and funeral plan distribution
SYSC 10.1.6BG	Not applicable	Guidance	Guidance	Guidance
SYSC 10.1.7R	Rule	Rule	Rule in relation to insurance distribution activities. Otherwise not applicable	Rule
SYSC 10.1.7AR	Rule	Rule	Rule	Rule
SYSC 10.1.8R	Rule in relation to insurance distribution activities. Otherwise, not applicable	Rule	Rule in relation to insurance distribution activities. Otherwise, not applicable	Rule
SYSC 10.1.9G	Not applicable	Guidance	Not applicable	Guidance
SYSC 10.1.9AR	Not applicable	Rule in relation to insurance distribution activities.	Rule in relation to insurance distribution activities.	Guidance - but applies as a rule in relation to <i>insur</i> -

				Column B
Provision SYSC 10	Column A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
		Otherwise, not applicable	Otherwise, not applicable	ance distribution activities and fu- neral plan dis- tribution
SYSC 10.1.10R	Not applicable	Rule	Rule in relation to insurance distribution activities. Otherwise, not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of nonindependent research, in accordance with COBS 12.2; and (b) in relation to insurance distribution activities and funeral plan distribution
SYSC 10.1.11R	Not applicable	Rule	Rule in relation to insurance distribution activities. Otherwise, not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of nonindependent research, in accordance with COBS 12.2; and (b) in relation to insurance distribution activities and funeral plan distribution
SYSC 10.1.11AG	Not applicable	Not applicable	Guidance - but not applicable in relation to insur- ance distribution activities	Guidance - but not applicable in relation to insur- ance distribution activities or fu- neral plan dis- tribution

				Column B
Provision SYSC 10	Column A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS manage- ment company	COLUMN A++ Application to a full-scope UK AIFM of an au- thorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, Mi-FID optional exemption firms and third country firms
SYSC 10.1.11AAR	Not applicable	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities and funeral plan distribution
SYSC 10.1.11ABR	Rule in relation to insurance distribution activities	Not applicable	Not applicable	Not applicable
SYSC 10.1.11BG	Not applicable	Guidance	Guidance	Guidance
SYSC 10.1.12G	Guidance	Guidance	Guidance	Guidance
SYSC 10.1.13- 10.1.15G	[deleted]	[deleted]	[deleted]	[deleted]
SYSC 10.1.16R	Not applicable	Not applicable	Not applicable	Rule
SYSC 10.1.17R	Not applicable	Rule	Not applicable	Not applicable
SYSC 10.1.18G	Not applicable	Guidance	Not applicable	Not applicable
[FCA]				
SYSC 10.1.19R	Not applicable	Rule	Not applicable	Not applicable
SYSC 10.1.20R	Not applicable	Rule	Not applicable	Not applicable
SYSC 10.1.21R	Not applicable	Rule	Not applicable	Not applicable
SYSC 10.1.22R	Not applicable	Rule	Rule	Not applicable
SYSC 10.1.23R to SYSC 10.1.26R	Not applicable	Not applicable	Rule	Not applicable
SYSC 10.1A	UK	UK	UK	UK
	Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products	Applicable to a firm carrying on insurance distribution in relation to insurancebased investment products	Applicable to a firm carrying on insurance distribution in relation to insurancebased investment products	Applicable to a firm carrying on insurance distribution in relation to insurancebased investment products
SYSC 10.2.1R	Rule	Rule	Rule	Rule
SYSC 10.2.2R	Rule	Rule	Rule	Rule
SYSC 10.2.3G	Guidance	Guidance	Guidance	Guidance
SYSC 10.2.4R	Rule	Rule	Rule	Rule
SYSC 10.2.5G	Guidance	Guidance	Guidance	Guidance

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

SYSC 1 : Application and purpose

	COLUMN A	COLUMN B
Provision	MiFID optional exemption firms	Third country firms
SYSC 4		
SYSC 4.12G	Not applicable	Not applicable
SYSC 4.11G	Guidance	Guidance
SYSC 4.1.1R	Rule	Rule
SYSC 4.1.1AR	Not applicable	Not applicable
SYSC 4.1.1BR	Not applicable	Not applicable
SYSC 4.1.1DR	Not applicable	Not applicable
SYSC 4.1.1ER	Not applicable	Not applicable
SYSC 4.1.1FG	Not applicable	Not applicable
SYSC 4.1.2R	Rule	Guidance
SYSC 4.1.2AG	Not applicable	Not applicable
SYSC 4.1.2BR	Not applicable	Not applicable
SYSC 4.1.2CR	Not applicable	Not applicable
SYSC 4.1.2DR	Not applicable	Not applicable
SYSC 4.1.4R	Not applicable	Not applicable
SYSC 4.1.4AG	Not applicable	Not applicable
SYSC 4.1.5R	Not applicable	Not applicable
SYSC 4.1.6R	Rule	Guidance
SYSC 4.1.7R	Rule	Guidance
SYSC 4.1.7AG	Not applicable	Not applicable
SYSC 4.1.8G	Guidance	Guidance
SYSC 4.1.8AR	Rule	Rule
SYSC 4.1.8CG	Guidance	Guidance
SYSC 4.1.8DG	Guidance	Guidance
SYSC 4.1.8DAG	Guidance	Guidance
SYSC 4.1.8DBR	Rule	Rule
SYSC 4.1.8DCR	Rule	Rule
SYSC 4.1.8DDR	Rule	Rule
SYSC 4.1.9R	Not applicable	Not applicable
SYSC 4.1.10R	Not applicable	Not applicable
SYSC 4.1.10AG	Not applicable	Not applicable
SYSC 4.1.11G	Guidance	Guidance
SYSC 4.1.13G	Guidance	Guidance
SYSC 4.1.14G	Guidance	Guidance
SYSC 4.2.1R	Rule	Rule
SYSC 4.2.1AG	Not applicable	Not applicable
SYSC 4.2.2R	Rule	Rule
SYSC 4.2.3G - 4.2.5G	Guidance	Guidance
SYSC 4.2.6R	Rule	Rule
SYSC 4.2.7R	Not applicable	Not applicable
SYSC 4.2.8G	Not applicable	Not applicable

	COLUMN A	COLUMN B
Provision	MiFID optional exemption firms	Third country firms
SYSC 4		
SYSC 4.3.1R	Not applicable	Not applicable
SYSC 4.3.2R	Not applicable	Not applicable
SYSC 4.3.2AG	Not applicable	Not applicable
SYSC 4.3.3G	Guidance	Guidance
SYSC 4.3A.1AR	Rule	Not applicable
SYSC 4.3A.2R	Rule	Not applicable
SYSC 4.3A.2AG	Guidance	Not applicable
SYSC 4.3A.3R	Rule	Not applicable
SYSC 4.3A.3AG	Guidance	Not applicable
SYSC 4.3A.4R	Rule	Not applicable
SYSC 4.3A.5R	Rule	Not applicable
SYSC 4.3A.6R	Rule	Not applicable
SYSC 4.3A.7R	Rule	Not applicable
SYSC 4.3A.8R	Rule	Not applicable
SYSC 4.3A.9R	Rule	Not applicable
SYSC 4.3A.10R	Rule	Not applicable
SYSC 4.3A.11R	Not applicable	Not applicable
SYSC 4.4.1AR	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR
SYSC 4.4.2G	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR
SYSC 4.4.3R	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR
SYSC 4.4.5R	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR
SYSC 4.4.6G	As specified in SYSC 4.4.1AR	As specified in SYSC 4.4.1AR

Note = SYSC 4.1.8AR to SYSC 4.1.8DDR apply as a *rule* or *guidance*, as indicated above, only to an *operator of an electronic system in relation to lending*.

	SYSC 5	
SYSC 5.12G	Not applicable	Not applicable
SYSC 5.11G	Guidance	Guidance
SYSC 5.1.1R	Not applicable	Not applicable
SYSC 5.1.2G	Guidance	Guidance
SYSC 5.1.3G	Guidance	Guidance
SYSC 5.1.4G	Guidance	Guidance
SYSC 5.1.4AG	Guidance	Guidance
SYSC 5.1.5G	Guidance	Guidance
SYSC 5.1.5AAR	Not applicable	Rule
SYSC 5.1.5ABR	Not applicable	Rule
SYSC 5.1.5ACG	Not applicable	Guidance
SYSC 5.1.5ADG	Not applicable	Guidance
SYSC 5.1.5AEG	Not applicable	Guidance

	SYSC 5	
SYSC 5.1.5AG	Guidance	Guidance
SYSC 5.1.6R	Not applicable	Not applicable
SYSC 5.1.7R	Rule	Rule
SYSC 5.1.7AG	Not applicable	Not applicable
SYSC 5.1.8G	Guidance	Guidance
SYSC 5.1.9G	Guidance	Guidance
SYSC 5.1.10G	Guidance	Guidance
SYSC 5.1.11G	Guidance	Guidance
SYSC 5.1.12R	Not applicable	Not applicable
SYSC 5.1.12AG	Not applicable	Not applicable
SYSC 5.1.13R	Not applicable	Not applicable
SYSC 5.1.14R	Not applicable	Not applicable
SYSC 5.1.15G	Not applicable	Not applicable
	SYSC 6	
SYSC 6.12G	Not applicable	Not applicable
SYSC 6.11G	Guidance	Guidance
SYSC 6.1.1R	Rule	Rule
SYSC 6.1.1AG	Guidance	Guidance
SYSC 6.1.2R	Not applicable	Not applicable
SYSC 6.1.2AG	Not applicable	Not applicable
SYSC 6.1.3R	Not applicable	Not applicable
SYSC 6.1.3AG	Not applicable	Not applicable
SYSC 6.1.4R	Not applicable	Not applicable
SYSC 6.1.4-AG	Guidance	Guidance
SYSC 6.1.4AR	Not applicable	Not applicable
SYSC 6.1.4-BG	Not applicable	Not applicable
SYSC 6.1.4CR	SYSC 6.1.4CR(3) applies as specified in SYSC 6.1.4CR	SYSC 6.1.4CR(3) applies as specified in SYSC 6.1.4CR
	Otherwise not applicable	Otherwise not applicable
SYSC 6.1.4-CG	Not applicable	Guidance for a third country relevant authorised person
SYSC 6.1.5R	Not applicable	Not applicable
SYSC 6.1.6G	Not applicable	Not applicable
SYSC 6.1.7R	Not applicable	Not applicable
SYSC 6.2.1R	Not applicable	Not applicable
SYSC 6.2.1AG	Not applicable	Not applicable
SYSC 6.2.1BG	Not applicable	Guidance for a third country relevant authorised person
SYSC 6.2.2G	Guidance	Guidance
SYSC 6.3.1R	Rule	Rule
SYSC 6.3.2G	Guidance	Guidance
SYSC 6.3.3R	Rule	Rule

	SYSC 6	
SYSC 6.3.4G	Guidance	Guidance
SYSC 6.3.5G	Guidance	Guidance
SYSC 6.3.6G	Guidance	Guidance
SYSC 6.3.7G	Guidance	Guidance
SYSC 6.3.8R	Rule	Rule
SYSC 6.3.9R	Rule	Rule
SYSC 6.3.10G	Guidance	Guidance
SYSC 6.3.11G	Guidance	Guidance
	SYSC 7	
SYSC 7.12G	Not applicable	Not applicable
SYSC 7.11G	Guidance	Guidance
SYSC 7.1.1G	Guidance	Guidance
SYSC 7.1.2R	Not applicable	Not applicable
SYSC 7.1.2AG	Not applicable	Not applicable
SYSC 7.1.2BG	Not applicable	Not applicable
SYSC 7.1.3R	Not applicable	Not applicable
SYSC 7.1.4R	Rule	Guidance
SYSC 7.1.4AG	Guidance	Guidance
SYSC 7.1.4BG	Not applicable	Not applicable
SYSC 7.1.5R	Not applicable	Not applicable
SYSC 7.1.6R	Not applicable	Not applicable
SYSC 7.1.7R	Not applicable	Not applicable
SYSC 7.1.7AG	Not applicable	Not applicable
SYSC 7.1.7BG	Not applicable	Not applicable
SYSC 7.1.7BAG	Not applicable	Not applicable
SYSC 7.1.7CG	Guidance	Guidance
SYSC 7.1.8G	Guidance	Guidance
SYSC 7.1.16AG	Not applicable	Not applicable
SYSC 7.1.16BG	Not applicable	Not applicable
SYSC 7.1.17R	Guidance	Not applicable
SYSC 7.1.18R	Guidance	Not applicable
SYSC 7.1.18AAG	Guidance	Not applicable
SYSC 7.1.18BR	Guidance	Not applicable
SYSC 7.1.19R	Guidance	Not applicable
SYSC 7.1.20R	Guidance	Not applicable
SYSC 7.1.21R	Guidance	Not applicable
SYSC 7.1.22R	Guidance	Not applicable
SYSC 7.1.23G	Not applicable	Guidance for a third country relevant authorised person

	SYSC 8	
SYSC 8.12G	Not applicable	Not applicable
SYSC 8.11G	Guidance	Guidance
SYSC 8.1.1R	Rule	Guidance
SYSC 8.1.1AG	Not applicable	Not applicable
SYSC 8.1.2G	Guidance	Guidance
SYSC 8.1.3G	Guidance	Guidance
SYSC 8.1.4R	Not applicable	Not applicable
SYSC 8.1.5R	Not applicable	Not applicable
SYSC 8.1.5AG	Not applicable	Not applicable
SYSC 8.1.6R	Not applicable	Not applicable
SYSC 8.1.6AG	Not applicable	Not applicable
SYSC 8.1.7R	Not applicable	Not applicable
SYSC 8.1.8R	Not applicable	Not applicable
SYSC 8.1.9R	Not applicable	Not applicable
SYSC 8.1.10R	Not applicable	Not applicable
SYSC 8.1.11R	Not applicable	Not applicable
SYSC 8.1.11AG	Not applicable	Not applicable
SYSC 8.1.12G	Not applicable	Not applicable
SYSC 8.1.13R	Not applicable	Not applicable
SYSC 8.1.14G	Not applicable	Not applicable
	SYSC 9	
SYSC 9.12G	Not applicable	Not applicable
SYSC 9.11G	Guidance	Guidance
SYSC 9.1.1R	Not applicable	Not applicable
SYSC 9.1.1AR	Rule	Rule
SYSC 9.1.2R	Rule	Not applicable
SYSC 9.1.2AR	Rule in relation to insurance distribution activities	Rule in relation to <i>insurance distribution activities</i>
SYSC 9.1.2BG	Guidance in relation to insurance distribution activities	Guidance in relation to insurance distribution activities
SYSC 9.1.2CUK	UK	UK
	Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products	Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products
SYSC 9.1.2DR	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities
SYSC 9.1.4G	Guidance	Guidance
SYSC 9.1.5G	Guidance	Guidance
SYSC 9.1.6G	Guidance	Guidance
SYSC 9.1.6AG	Guidance in relation to insur- ance distribution activities	Guidance in relation to <i>insur-</i> ance distribution activities

	SYSC 10	
SYSC 10.14G	Guidance in relation to insurance distribution activities	Guidance in relation to insurance distribution activities
SYSC 10.13G	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities
SYSC 10.12G	Not applicable	Not applicable
SYSC 10.11G	Guidance	Guidance
SYSC 10.1.1R	Rule	Rule
SYSC 10.1.1AR	Not applicable	Not applicable
SYSC 10.1.2G	Guidance	Guidance
SYSC 10.1.3R	Rule	Rule
SYSC 10.1.4R	Rule	Guidance – but applies as a rule in relation to the production or arrangement of investment re- search, or the production or dis- semination of non-independent research, in accordance with COBS 12.2
SYSC 10.1.4AG	Not applicable	Guidance
SYSC 10.1.4BR	Rule in relation to insurance distribution activities	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.4CR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.5G	Guidance	Guidance
SYSC 10.1.6R	Rule	Guidance – but applies as a rule in relation to: (a) the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) insurance distribution activities
SYSC 10.1.6AG	Not applicable	Guidance
SYSC 10.1.6AAR	Rule in relation to insurance distribution activities	Rule in relation to insurance distribution activities
SYSC 10.1.6BG	Not applicable	Guidance
SYSC 10.1.7R	Rule	Rule
SYSC 10.1.7AR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.8R	Rule	Rule
SYSC 10.1.9G	Guidance	Guidance
SYSC 10.1.9AR	Rule in relation to <i>insurance distribution activities</i> . Otherwise not applicable	Rule in relation to <i>insurance distribution activities</i> . Otherwise not applicable
SYSC 10.1.10R	Rule	Guidance – but applies as a rule in relation to: (a) the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) insurance distribution activities

	SYSC 10	
SYSC 10.1.11R	Rule	Guidance – but applies as a rule in relation to: (i) the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (ii) insurance distribution activities
SYSC 10.1.11AG	Not applicable	Guidance
SYSC 10.1.11AAR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.11ABR	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>
SYSC 10.1.11BG	Not applicable	Guidance
SYSC 10.1.12G	Guidance	Guidance
SYSC 10.1.16R	Not applicable	Not applicable
SYSC 10.1.17R	Not applicable	Not applicable
SYSC 10.1.18G	Not applicable	Not applicable
SYSC 10.1.19R	Not applicable	Not applicable
SYSC 10.1.20R	Not applicable	Not applicable
SYSC 10.1.21R	Not applicable	Not applicable
SYSC 10.1.22R	Not applicable	Not applicable
SYSC 10.1.23R	Not applicable	Not applicable
SYSC 10.1.24R	Not applicable	Not applicable
SYSC 10.1.25R	Not applicable	Not applicable
SYSC 10.1.26R	Not applicable	Not applicable
SYSC 10.1.27G	Not applicable	Not applicable
SYSC 10.1A	UK	UK
	Applicableto a firm carrying on insurance distribution in relation to insurance-based investment products	Applicableto a firm carrying on insurance distribution in relation to insurance-based investment products
SYSC 10.2.1R	Rule	Rule
SYSC 10.2.2R	Rule	Rule
SYSC 10.2.3G	Guidance	Guidance
SYSC 10.2.4R	Rule	Rule
SYSC 10.2.5G	Guidance	Guidance

Table C:

Part 1: Application of the requirements in articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation to MiFID optional exemption firms and third country firms

Provision MiFID Org Regulation	MiFID optional ex- emption firm	Third country firm
Article 1 – Subject- (2) matter and scope	Not applicable	Not applicable

Provision MiFID	Org Regulation	MiFID optional ex- emption firm	Third country firm
Article 21 – General organisational	(1)	Rule	(a), (b) and (g): Guidance;
requirements			(c), (d), (e), (f) and final paragraph: Rule
	(2)	Rule	Rule
	(3)	Rule	Guidance
	(4)	Rule	Guidance
	(5)	Rule	Guidance
Article 22 –	(1)	Guidance	Guidance
Compliance	(2)	Guidance	Guidance
	(3)	Guidance	(a), (c), (d) and (e): Guidance;
			(b): Rule
	(4)	Guidance	Guidance
Article 23 – Risk management		Guidance	Guidance
Article 24 – Interna	ıl audit	Guidance	Guidance
Article 25 – Respon	sibility of senior	Guidance	(1): Rule;
management			(2), (3) and (4): Guidance
Article 30 – Scope of portant operational		Guidance	Guidance
	rcing critical or im-	(1): Rule;	(1): Rule;
portant operationa	Il functions	(2), (3), (4) and (5): Guidance	(2), (3), (4) and (5): Guidance
Article 32(1) and (2 located in third co	?) – Service providers untries	Rule	Guidance
Article 72 – Retent	ion of records	Rule	Guidance

Part 2: Articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation

UK	Article 1 - Subject-n	1 - Subject-matter and scope	
	2	tutions and referen pass structured dep	tment firms shall encompass credit instices to financial instruments shall encomosits in relation to all the requirements in Chapters II to IV of this Regulation.
UK	Article 21 - General	organisational requi	irements
	1	Investment firms sh ational requirement	all comply with the following organis- ts:
		(a)	establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;
		(b)	ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

		(c)	establish, implement and maintain ad- equate internal control mechanisms de- signed to secure compliance with de- cisions and procedures at all levels of the investment firm;
		(d)	employ personnel with the skills, know- ledge and expertise necessary for the discharge of the responsibilities alloc- ated to them;
		(e)	establish, implement and maintain ef- fective internal reporting and commun- ication of information at all relevant levels of the investment firm;
		(f)	maintain adequate and orderly records of their business and internal organisation;
		(g)	ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.
		paragraph, investmenture, scale and com the nature and range	ith the requirements set out in the this ent firms shall take into account the naplexity of the business of the firm, and ge of investment services and activities course of that business.
	2	systems and proced security, integrity ar	all establish, implement and maintain ures that are adequate to safeguard the nd confidentiality of information, taking ture of the information in question.
	3	adequate business of the case of an inter the preservation of maintenance of inve that is not possible,	all establish, implement and maintain an continuity policy aimed at ensuring, in ruption to their systems and procedures, essential data and functions, and the estment services and activities, or, where the timely recovery of such data and mely resumption of their investment ser-
	4	counting policies ar request of the comp manner to the comp reflect a true and fa	all establish, implement and maintain ac- nd procedures that enable them, at the petent authority, to deliver in a timely petent authority financial reports which air view of their financial position and all applicable accounting standards and
	5	evaluate the adequ ternal control mech	all monitor and, on a regular basis, acy and effectiveness of their systems, in- anisms and arrangements established in ragraphs 1 to 4, and take appropriate s any deficiencies.
UK	Article 22 - Complia	nce	
	1	Investment firms she equate policies and of failure by the fir UK law on markets tions"), as well as the	all establish, implement and maintain ad- procedures designed to detect any risk m to comply with its obligations under in financial instruments ("UK obliga- ne associated risks, and put in place ad- nd procedures designed to minimise such

risk and to enable the competent authorities to exercise their powers effectively under UK law on markets in financial instruments.

Investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(a)	to monitor on a permanent basis and
	to assess, on a regular basis, the ad-
	equacy and effectiveness of the meas-
	ures, policies and procedures put in
	place in accordance with the first sub-
	paragraph of paragraph 1, and the ac-
	tions taken to address any deficiencies
	in the firm's compliance with its ob-
	ligations;

(b) to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's UK obligations;

to report to the management body, on (c) at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken:

(d) to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities.

In order to comply with points (a) and (b) of this paragraph, the compliance function shall conduct an assessment on the basis of which it shall establish a risk-based monitoring programme that takes into consideration all areas of the investment firm's investment services, activities and any relevant ancillary services, including relevant information gathered in relation to the monitoring of complaints handling. The monitoring programme shall establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.

In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, investment firms shall ensure that the following conditions are satisfied:

the compliance function has the neces-(a) sary authority, resources, expertise and access to all relevant information;

> a compliance officer is appointed and replaced by the management body and is responsible for the compliance function and for any reporting as to

2

3

(b)

			compliance required UK obligations and this Regulation;	
		(c)	the compliance fun- ad-hoc basis directly ment body where it ant risk of failure b ply with its UK oblig	y to the manage- c detects a signific- y the firm to com-
		(d)	the relevant person compliance function in the performance ities they monitor;	
		(e)	the method of dete neration of the rele volved in the compl does not compromi and is not likely to	vant persons in- iance function se their objectivity
	4	point (d) or point (e) demonstrate that in ity of its business, a services and activitie (e) are not proporti continues to be effeshall assess whether	shall not be required e) of paragraph 3 wh n view of the nature, nd the nature and ra- es, the requirements onate and that its co- ective. In that case, the r the effectiveness of nised. The assessmen	ere it is able to scale and complexinge of investment under point (d) or impliance function he investment firm the compliance
UK	Article 23 - Risk ma	nagement		
	1	Investment firms sho to risk management	all take the following t:	g actions relating
		(a)	establish, implement equate risk manage procedures which is lating to the firm's and systems, and w set the level of risk firm;	ment policies and dentify the risks re- activities, processes here appropriate,
		(b)	adopt effective arracesses and mechanic risks relating to the processes and system level of risk toleran	sms to manage the firm's activities, ms, in light of that
		(c)	monitor the followi	ng:
			(i)	the adequacy and effectiveness of the investment firm's risk management policies and procedures;
			(ii)	the level of com- pliance by the in- vestment firm and its relevant per- sons with the ar- rangements, processes and mechanisms ad- opted in accord-

				ance with point (b);
			(iii)	the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.
	2	ate in view of the rebusiness and the navices and activities ness, establish and	all, where appropriate and compature, scale and compature and range of the undertaken in the compaintain a risk manapendently and carries	plexity of their le investment ser- urse of that busi- gement function
		(a)	implementation of cedures referred to	
		(b)	provision of reports senior management with Article 25(2).	
		a risk management it shall be able to d icies and procedure	nt firm does not esta function under the f lemonstrate upon rec s which it is has adop atisfy the requiremen	irst sub-paragraph, quest that the pol- oted in accordance
UK	Article 24 - Internal	audit		
	ture, scale and component services and a and maintain an int	plexity of their busin ctivities undertaken ernal audit function ctions and activities o	te and proportionate less and the nature al in the course of that which is separate an of the investment firn	nd range of invest- business, establish d independent
		(a)	establish, implemen audit plan to exami the adequacy and e investment firm's sy trol mechanisms and	ne and evaluate effectiveness of the estems, internal con-
		(b)	issue recommendati result of work carrie ance with point (a) ance with those rec	ed out in accord- and verify compli-
		(c)	report in relation to ters in accordance v	internal audit mat- vith Article 25(2).
UK	Article 25 - Respons	ibility of senior man	agement	

Investment firms shall, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations under UK law on markets in financial instruments ("UK obligations"). In particular, senior management and, where applicable, the supervisory function shall be required to assess and periodically review the effectiveness of the policies, arrangements and
procedures put in place to comply with the UK obligations
and to take appropriate measures to address any defi-

The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm's organisational requirements. Records of the allocation of significant functions shall be kept up-to-date.

Investment firms shall ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

Investment firms shall ensure that where there is a supervisory function, it receives written reports on the matters covered by Articles 22, 23 and 24 on a regular basis.

For the purposes of this Article, the supervisory function shall be the function within an investment firm responsible for the supervision of its senior management.

Article 30 - Scope of critical and important operational functions

ciencies.

For the purposes of [SYSC 8.1.1R] and rule 2.1 of the Outsourcing Part of the PRA Rulebook, an operational function shall be regarded as critical or important where a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under UK law on markets in financial instruments, or its financial performance, or the soundness or the continuity of its investment services and activities.

Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph 1:

the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;

(b) the purchase of standardised services, including market information services and the provision of price feeds.

Article 31 - Outsourcing critical or important operational functions

Investment firms outsourcing critical or important operational functions shall remain fully responsible for discharging all of their obligations under UK law on markets in financial instruments and shall comply with the following conditions:

UK

2

2

3

4

UK

(a)

	(a)	the outsourcing does not result in the delegation by senior management of its responsibility;
	(b)	the relationship and obligations of the investment firm towards its clients under the terms of UK law on markets in financial instruments is not altered;
	(c)	the conditions with which the investment firm must comply in order to have permission under Part 4A of FSMA to carry on a regulated activity which is any of the investment services and activities (within the meaning of regulation 2(1) of the Markets in Financial Instruments Regulations 2017), and to remain so, are not undermined;
	(d)	none of the other conditions subject to which the firm's authorisation was granted is removed or modified.
2	when entering into ment for the outsou important operation	all exercise due skill, care and diligence, managing or terminating any arrange- urcing to a service provider of critical or nal functions and shall take the neceset hat the following conditions are
	(a)	the service provider has the ability, capacity, sufficient resources, appropriate organisational structure supporting the performance of the outsourced functions, and any authorisation required by law to perform the outsourced functions, reliably and professionally;
	(b)	the service provider carries out the out- sourced services effectively and in com- pliance with applicable law and regu- latory requirements, and to this end the firm has established methods and procedures for assessing the standard of performance of the service provider and for reviewing on an ongoing basis the services provided by the service provider;
	(c)	the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
	(d)	appropriate action is taken where it appears that the service provider may not be carrying out the functions effec- tively or in compliance with applicable laws and regulatory requirements;
	(e)	the investment firm effectively supervises the outsourced functions or services and manage the risks associated with the outsourcing and to this end the firm retains the necessary expertise and resources to supervise the out

		sourced functions effectively and manage those risks;
	(f)	the service provider has disclosed to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory re- quirements;
	(g)	the investment firm is able to terminate the arrangement for outsourcing where necessary, with immediate effect when this is in the interests of its clients, without detriment to the continuity and quality of its provision of services to clients;
	(h)	the service provider cooperates with the competent authorities of the in- vestment firm in connection with the outsourced functions;
	(i)	the investment firm, its auditors and the relevant competent authorities have effective access to data related to the outsourced functions, as well as to the relevant business premises of the service provider, where necessary for the purpose of effective oversight in accordance with this article, and the competent authorities are able to exercise those rights of access;
	(j)	the service provider protects any confidential information relating to the investment firm and its clients;
	(k)	the investment firm and the service provider have established, imple- mented and maintained a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the func- tion, service or activity that has been outsourced;
	(1)	the investment firm has ensured that the continuity and quality of the out- sourced functions or services are main- tained also in the event of termination of the outsourcing either by transfer- ring the outsourced functions or ser- vices to another third party or by per- forming them itself.
3	The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement. In particular, the investment firm shall keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall ensure that outsourcing by the service provider only takes place with the consent, in writing, of the investment firm.	

	4	Where the investment firm and the service provider are members of the same group, the investment firm may, fo the purposes of complying with this Article and Article 32 take into account the extent to which the firm controls the service provider or has the ability to influence its actions.		
	5	Investment firms shall make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced functions with the requirements of UK law on markets in financial instruments.		
UK	Article 32 - Service	providers located in third countries		
	1	In addition to the requirements set out in Article 31, wher an investment firm outsources functions related to the in- vestment service of portfolio management provided to cli- ents to a service provider located in a third country, that in vestment firm ensures that the following conditions are satisfied:		
		(a)	the service provider is authorised or registered in its home country to provide that service and is effectively supervised by a competent authority in that third country;	
		(b)	there is an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.	
	2	The cooperation agreement referred to in point (b) of paragraph 1 shall ensure that the competent authorities of the investment firm are able, at least, to:		
		(a)	obtain on request the information necessary to carry out their supervisory tasks pursuant to UK law on markets in financial instruments and Regula- tion (EU) No 600/2014;	
		(b)	obtain access to the documents relev- ant for the performance of their super- visory duties maintained in the third country;	
		(c)	receive information from the supervisory authority in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements of UK law on markets in financial instruments and its implementing measures and Regulation (EU) No 600/2014;	
		(d)	cooperate with regard to enforce- ment, in accordance with the national and international law applicable to the supervisory authority of the third country and the competent authorities in the United Kingdom in cases of breach of the requirements of UK law on markets in financial instruments.	

	3	The FCA must publish on its website a list of the supervisory authorities in third countries with which they have a cooperation agreement referred to in point (b) of paragraph 1.		
UK	Article 72 - Retention of records			
	1	The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met:		
		(a)	the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;	
		(b)	it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily as- certained;	
		(c)	it is not possible for the records otherwise to be manipulated or altered;	
		(d)	it allows IT or any other efficient ex- ploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and	
		(e)	the firm's arrangements comply with the record keeping requirements irre- spective of the technology used.	
			nall keep at least the records identified Regulation depending upon the nature	
		The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.		
	3	Investment firms shall also keep records of any policies and procedures they are required to maintain pursuant to Regulation (EU) No 600/2014, Regulation (EU) No 596/2014 and their implementing measures (as amended under the European Union (Withdrawal) Act 2018) and the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before IP completion day to implement Directive 2014/65/EU, Directive 2014/57/EU and their implementing measures in writing. Competent authorities may require investment firms to		
			cords to the list identified in Annex I to	

Senior management arrangements, Systems and Controls

Chapter 2

Senior management arrangements

■ Release 31 • Nov 2023



2.1 **Apportionment of Responsibilities**

- 2.1.1 A firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers in such a way that:
 - (1) it is clear who has which of those responsibilities; and
 - (2) the business and affairs of the firm can be adequately monitored and controlled by the directors, relevant senior managers and governing body of the firm.
- G 2.1.1A Firms should also consider the additional guidance on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21.
- G 2.1.2 The role undertaken by a non-executive director will vary from one firm to another. For example, the role of a non-executive director in a friendly society may be more extensive than in other firms. 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.
- 2.1.3 R [deleted]
- 2.1.3A R [deleted]

2.1.3B	G	[deleted]

- 2.1.3C R [deleted]
- **2.1.3D G** [deleted]
- 2.1.4 **R** [deleted]
- 2.1.5 **G** [deleted]
- 2.1.6 **G** [deleted]

Insurance distribution activities

2.1.6A R | A firm carrying on insurance distribution activities must allocate to a senior manager the function of ensuring the proper implementation of the policies and procedures approved in accordance with SYSC 3.1.11R.

[Note: second paragraph of article 10(8) of the IDD]

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2.2 Recording the apportionment

- 2.2.1 R
- (1) A firm must make a record of the arrangements it has made to satisfy ■ SYSC 2.1.1 R (apportionment) and take reasonable care to keep this up to date.
- (2) This record must be retained for six years from the date on which it was superseded by a more up-to-date record.
- 2.2.1A R

■ SYSC 2.2.1R does not apply to a *firm* to whom *PRA* Rulebook: Solvency II firms: Insurance – Allocation of Responsibilities, 5.1 and 5.2 or PRA Rulebook: Large Non-Solvency II firms – Allocation of Responsibilities, 5.1 and 5.2, applies nor to a large non-directive insurer.

- G 2.2.2
- (1) A *firm* will be able to comply with SYSC 2.2.1 R by means of records which it keeps for its own purposes provided these records satisfy the requirements of ■ SYSC 2.2.1 R and provided the *firm* takes reasonable care to keep them up to date. Appropriate records might, for this purpose, include organisational charts and diagrams, project management documents, job descriptions, committee constitutions and terms of reference provided they show a clear description of the firm's major functions.
- (2) Firms should record any material change to the arrangements described in ■ SYSC 2.2.1 R as soon as reasonably practicable after that change has been made.
- G 2.2.3
- Where responsibilities have been allocated to more than one individual, the firm's record should show clearly how those responsibilities are shared or divided between the individuals concerned.
- 2.2.4 R [deleted]
- 2.2.5 G [deleted]
- R 2.2.6 [deleted]
- 2.2.7 G

Senior management arrangements, Systems and Controls

Chapter 3

Systems and controls

■ Release 31 • Nov 2023



3.1 **Systems and controls**

- 3.1.1 A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.
- 3.1.1A R [deleted]
- 3.1.2 G (1) The nature and extent of the systems and controls which a firm will need to maintain under ■ SYSC 3.1.1 R will depend upon a variety of factors including:
 - (a) the nature, scale and complexity of its business;
 - (b) the diversity of its operations, including geographical diversity;
 - (c) the volume and size of its transactions; and
 - (d) the degree of risk associated with each area of its operation.
 - (2) To enable it to comply with its obligation to maintain appropriate systems and controls, a *firm* should carry out a regular review of them.
 - (3) The areas typically covered by the systems and controls referred to in ■ SYSC 3.1.1 R are those identified in ■ SYSC 3.2. Detailed requirements regarding systems and controls relevant to particular business areas or particular types of firm are covered elsewhere in the Handbook.
- 3.1.2A G Firms should also consider the additional quidance on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21.
- G 3.1.3 Where the UK Corporate Governance Code is relevant to a firm, the appropriate regulator, in considering whether the firm's obligations under ■ SYSC 3.1.1 R have been met, will give it due credit for following corresponding provisions in the codeand related guidance.
- 3.1.4 G A firm has specific responsibilities regarding its appointed representatives or, where applicable, its *tied agents* (see \blacksquare SUP 12).
- 3.1.5 G ■ SYSC 2.1.3 R (2) prescribes how a firm must allocate the function of overseeing the establishment and maintenance of systems and controls described in ■ SYSC 3.1.1 R.

Competent employees rule

- 3.1.6 R A firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
- When complying with the *competent employees rules*, a *firm* must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.
- **3.1.7A** ■ SYSC 28 contains *rules* and *guidance* relating to the minimum knowledge and competence requirements in relation to *insurance distribution activities* undertaken by a *firm*.
- 3.1.8 G The Training and Competence sourcebook (*TC*) contains additional *rules* and *guidance* relating to specified retail activities undertaken by a *firm*.
- **3.1.9 G** Firms which are carrying on activities that are not subject to TC may nevertheless wish to take TC into account in complying with the competence requirements in SYSC.
- If a *firm* requires *employees* who are not subject to a qualification requirement in *TC* to pass a relevant examination from the list of appropriate qualifications maintained by the *FCA*, the *appropriate regulator* will take that into account when assessing whether the *firm* has ensured that the *employee* satisfies the knowledge component of the *competent employees rule*.

Insurance distribution activities

A firm carrying on insurance distribution activities must approve, implement and regularly review its internal policies and procedures in respect of its obligations under ■ SYSC 28.

[Note: first paragraph of article 10(8) of the IDD]



Areas covered by systems and controls

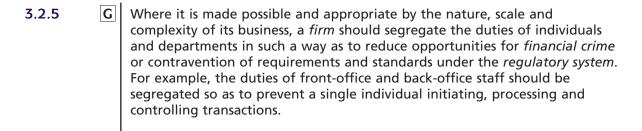
Introduction

3.2.1 This section covers some of the main issues which a *firm* is expected to consider in establishing and maintaining the systems and controls appropriate to its business, as required by ■ SYSC 3.1.1 R.

Organisation

- G 3.2.2 A firm's reporting lines should be clear and appropriate having regard to the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, should be communicated as appropriate within the firm.
- G 3.2.3 (1) A firm's governing body is likely to delegate many functions and tasks for the purpose of carrying out its business. When functions or tasks are delegated, either to employees or to appointed representatives or, where applicable, its tied agents, appropriate safeguards should be put in place.
 - (2) When there is delegation, a firm should assess whether the recipient is suitable to carry out the delegated function or task, taking into account the degree of responsibility involved.
 - (3) The extent and limits of any delegation should be made clear to those concerned.
 - (4) There should be arrangements to supervise delegation, and to monitor the discharge of delegates functions or tasks.
 - (5) If cause for concern arises through supervision and monitoring or otherwise, there should be appropriate follow-up action at an appropriate level of seniority within the firm.
- 3.2.4 G (1) The *guidance* relevant to delegation within the *firm* is also relevant to external delegation ('outsourcing'). A firm cannot contract out its regulatory obligations. So, for example, under Principle 3 a firm should take reasonable care to supervise the discharge of outsourced functions by its contractor.
 - (2) A firm should take steps to obtain sufficient information from its contractor to enable it to assess the impact of outsourcing on its systems and controls.

SYSC 3/4



- **3.2.5A R** [deleted]
- **3.2.5B G** [deleted]

Systems and controls in relation to compliance, financial crime and money laundering

- A *firm* must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.
- **3.2.6A** R A *firm* must ensure that these systems and controls:
 - (1) enable it to identify, assess, monitor and manage *money laundering* risk; and
 - (2) are comprehensive and proportionate to the nature, scale and complexity of its activities.
- 3.2.6B G "Money laundering risk" is the risk that a firm may be used to further money laundering. Failure by a firm to manage this risk effectively will increase the risk to society of crime and terrorism.
- 3.2.6C R A firm must carry out regular assessments of the adequacy of these systems and controls to ensure that it continues to comply with SYSC 3.2.6A R.
- 3.2.6D G A firm may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the Money Laundering Regulations. SYSC 3.2.6 R to SYSC 3.2.6 J G are not relevant for the purposes of regulation 76(6) or 86(2) of the Money Laundering Regulations, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.
- The FCA, when considering whether a breach of its rules on systems and controls against money laundering has occurred, will have regard to whether a firm has followed relevant provisions in the guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.

- 3.2.6F In identifying its money laundering risk and in establishing the nature of these systems and controls, a *firm* should consider a range of factors, including:
 - (1) its customer, product and activity profiles;
 - (2) its distribution channels;
 - (3) the complexity and volume of its transactions;
 - (4) its processes and systems; and
 - (5) its operating environment.
- 3.2.6G A *firm* should ensure that the systems and controls include:
 - (1) appropriate training for its employees in relation to money laundering;
 - (2) appropriate provision of information to its governing body and senior management, including a report at least annually by that firm's money laundering reporting officer (MLRO) on the operation and effectiveness of those systems and controls;
 - (3) appropriate documentation of its risk management policies and risk profile in relation to money laundering, including documentation of its application of those policies (see ■ SYSC 3.2.20 R to ■ SYSC 3.2.22 G);
 - (4) appropriate measures to ensure that money laundering risk is taken into account in its day-to-day operation, including in relation to:
 - (a) the development of new products;
 - (b) the taking-on of new customers; and
 - (c) changes in its business profile; and
 - (5) appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to its services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.
- 3.2.6H A firm must allocate to a director or senior manager (who may also be the money laundering reporting officer) overall responsibility within the firm for the establishment and maintenance of effective anti-money laundering systems and controls.

The money laundering reporting officer

- 3.2.61 R A firm must:
 - (1) appoint an individual as MLRO, with responsibility for oversight of its compliance with the FCA's rules on systems and controls against money laundering; and

- (2) ensure that its *MLRO* has a level of authority and independence within the *firm* and access to resources and information sufficient to enable him to carry out that responsibility.
- 3.2.6J The job of the MLRO within a firm is to act as the focal point for all activity within the firm relating to anti-money laundering. The FCA expects that a firm's MLRO will be based in the United Kingdom.

Financial crime guidance

The FCA provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime in FCG (Financial Crime Guide: A firm's guide to countering financial crime risks) and FCTR (Financial Crime Thematic Reviews).

The compliance function

- (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate compliance function. The organisation and responsibilities of a compliance function should be documented. A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. It should be adequately resourced and should have unrestricted access to the *firm*'s relevant records as well as ultimate recourse to its *governing body*.
 - (2) [deleted]
 - (3) [deleted]
- 3.2.8 (1) A firm must allocate to a director or senior manager the function of:
 - (a) having responsibility for oversight of the firm's compliance; and
 - (b) reporting to the *governing body* in respect of that responsibility.
 - (2) In (1) "compliance" means compliance with the *firm's* obligations under the *regulatory system* in relation to which the *FCA* has responsibility.
- **3.2.9** SUP 10C.6.1R uses SYSC 3.2.8R to describe the *controlled function*, known as the *compliance oversight function*, of acting in the capacity of a *director* or *senior manager* to whom this function is allocated.

Conduct risk oversight (Lloyd's) function

3.2.9A In relation to business done at Lloyd's, the *Society* must allocate to a *director* or *senior manager* the function of having responsibility for overseeing the conduct of business standards required of *managing agents* for which the *Society* has responsibility.

Risk assessment

G 3.2.10

- (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate risk assessment function responsible for assessing the risks that the firm faces and advising the governing body and senior managers on them.
- (2) The organisation and responsibilities of a risk assessment function should be documented. The function should be adequately resourced and staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively.
- (3) The term 'risk assessment function' refers to the generally understood concept of risk assessment within a firm, that is, the function of setting and controlling risk exposure. The risk assessment function is not an FCA controlled function itself, but firms it may fall under the PRA chief risk officer controlled function.
- (4) Paragraphs (1) and (3) do not apply to a Solvency II firm and (2) only applies as if the term 'risk assessment function' was replaced by 'risk management function'.
- (5) Solvency II firms are subject to requirements for an effective risk management system in PRA Rulebook: Solvency II firms: Conditions Governing Business 3.
- (6) Also, PRA Rulebook: Solvency II firms: Insurance Senior Management Functions makes the chief risk function a PRA controlled function. The chief risk function is the function of having responsibility for overall management of the risk management system, as specified in PRA Rulebook: Solvency II firms: Conditions Governing Business 3.
- (7) The FCA will take the requirements in (5) and (6) into account.

Management information

3.2.11 G

- (1) [deleted]
- (2) [deleted]

G 3.2.11A

- (1) A firm's arrangements should be such as to furnish its governing body with the information it needs to play its part in identifying, measuring, managing and controlling risks of regulatory concern. Three factors will be the relevance, reliability and timeliness of that information.
- (2) Risks of regulatory concern are those risks which relate to the fair treatment of the firm's customers, to the protection of consumers, to effective competition and to the integrity of the UK financial system. Risks which are relevant to the integrity of the UK financial system include risks which relate to its soundness, stability and resilience and to the use of the system in connection with financial crime.

3.2.11B

G

3.2.12

It is the responsibility of the *firm* to decide what information is required, when, and for whom, so that it can organise and control its activities and can comply with its regulatory obligations. The detail and extent of information required will depend on the nature, scale and complexity of the business.

Employees and agents

3.2.13 G

A *firm*'s systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it.

3.2.14 G

- (1) ■SYSC 3.2.13 G includes assessing an individual's honesty, and competence. This assessment should normally be made at the point of recruitment. An individual's honesty need not normally be revisited unless something happens to make a fresh look appropriate.
- (2) Any assessment of an individual's suitability should take into account the level of responsibility that the individual will assume within the *firm*. The nature of this assessment will generally differ depending upon whether it takes place at the start of the individual's recruitment, at the end of the probationary period (if there is one) or subsequently.
- (3) [deleted]
- (4) The requirements on *firms* with respect to *approved persons* are in Part V of the *Act* (Performance of regulated activities) and SUP 10C and the Senior Insurance Management Functions parts of the *PRA Rulebook*

Audit committee

3.2.15 G

Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to form an audit committee. An audit committee could typically examine management's process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the *regulatory system*, oversee the functioning of the internal audit function (if applicable - see SYSC 3.2.16 G) and provide an interface between management and the external auditors. It should have an appropriate number of *non-executive directors* and it should have formal terms of reference.

Internal audit

3.2.16 G

(1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to delegate much of the task of monitoring the appropriateness and effectiveness of its systems and controls to an internal audit function. An internal audit function should have clear responsibilities and reporting lines to an audit committee or appropriate *senior manager*, be adequately resourced and staffed by competent individuals, be independent of the day-to-day activities of the *firm* and have appropriate access to a *firm*'s records.

- (2) The term 'internal audit function' refers to the generally understood concept of internal audit within a firm, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not an FCA controlled function itself, but for certain firms it may fall under the PRA chief risk officer controlled function.
- (3) Paragraph (1) does not apply to Solvency II firms.
- (4) Solvency II firms are subject to a requirement in PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 5 to have an effective internal audit function.
- (5) Also, the PRA Rulebook: Solvency II firms: Insurance Senior Management Functions makes the chief internal audit function a PRA controlled function. The chief internal audit function is the function of having responsibility for management of the internal audit function specified in PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 5.
- (6) The FCA will take the requirements in (4) and (5) into account.

Business strategy

3.2.17

A firm should plan its business appropriately so that it is able to identify, measure, manage and control risks of regulatory concern (see SYSC 3.2.11 G (2)). In some firms, depending on the nature, scale and complexity of their business, it may be appropriate to have business plans or strategy plans documented and updated on a regular basis to take account of changes in the business environment.

Remuneration policies

3.2.18

It is possible that firms' remuneration policies will from time to time lead to tensions between the ability of the firm to meet the requirements and standards under the regulatory system and the personal advantage of those who act for it. Where tensions exist, these should be appropriately managed. See also Solvency II Regulation (Article 275) and EIOPA Guidelines on system of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN) (Guidelines 9 and 10).

Business continuity

3.2.19

A firm, other than a Solvency II firm, should have in place appropriate arrangements, having regard to the nature, scale and complexity of its business, to ensure that it can continue to function and meet its regulatory obligations in the event of unforeseen interruption. These arrangements should be regularly updated and tested to ensure their effectiveness. Solvency II firms are subject to the business continuity requirements in PRA Rulebook: Solvency II firms: Conditions Governing Business, 2.6, and the FCA will take those requirements into account.

Records

3.2.20

(1) A firm must take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which

- are the subject of requirements and standards under the *regulatory* system.
- (2) Subject to (3) and to any other record-keeping *rule* in the *Handbook*, the records required by (1) or by such other *rule* must be capable of being reproduced in the English language on paper.
- (3) If a *firm's* records relate to business carried on from an establishment in a country or territory outside the *United Kingdom*, an official language of that country or territory may be used instead of the English language as required by (2).
- A firm should have appropriate systems and controls in place to fulfil the firm's regulatory and statutory obligations with respect to adequacy, access, periods of retention and security of records. The general principle is that records should be retained for as long as is relevant for the purposes for which they are made.
- **3.2.21A** ■ SYSC 28 contains *rules* and *guidance* relating to knowledge and competence record keeping requirements in relation to *insurance distribution activities* undertaken by a *firm*.
- 3.2.22 G Detailed record-keeping requirements for different types of *firm* are to be found elsewhere in the *Handbook*. Schedule 1 to the Handbook is a consolidated schedule of these requirements.

Investment strategy and investment decision making

- 3.2.23 G
- (1) This guidance sets out the FCA's expectation on how a firm may take into account ESG financial considerations and other financial considerations and non-financial matters as part of its investment strategy and investment decision making, to demonstrate compliance with Principles 2, 3, 6 or 8.
- (2) This *guidance* only applies where the *firm's investment* strategy or *investment* decision could have a material impact on a *policyholder's investment* returns and relates to a product where:
 - (a) the primary purpose is to provide an investment return; and
 - (b) any *investment* risk is borne by a *policyholder* who is a natural person or a *relevant policyholder*.
- (3) As part of its *investment* strategy or *investment* decision making, a *firm* should take into account *ESG financial considerations* and *other financial considerations* over the period of time that the *firm* reasonably considers is needed to achieve the *investment* objective or *investment* strategy.
- (4) References to *other financial considerations* in (3) may include (but are not limited to) interest rate, liquidity, concentration, exchange rate, political and counterparty risks.

- (5) As part of its *investment* strategy or *investment* decision making in relation to a product, a firm may take into account non-financial matters if:
 - (a) the firm has good reason to consider that affected policyholders or relevant policyholders would generally share the views on which the non-financial matters are based; and
 - (b) taking those matters into account would not involve a risk of a significant financial detriment to any affected investment.
- (6) (5) does not apply to a firm's investment strategy or investment decision making in relation to a product (other than in relation to a relevant scheme or a pathway investment), that has been deliberately designed by the firm to take into account non-financial matters, and policyholders or relevant policyholders make an active decision to select that product.
- 3.2.23 R [deleted]
- 3.2.24 [deleted] R
- 3.2.25 R [deleted]
- 3.2.26 [deleted]
- 3.2.27 R [deleted]
- 3.2.28 R [deleted]
- 3.2.29 R [deleted]
- 3.2.30 R [deleted]
- 3.2.31 R [deleted]
- 3.2.32 R [deleted]
- 3.2.33 R [deleted]
- 3.2.34 R [deleted]
- 3.2.35 R [deleted]
- 3.2.36 [deleted]



3.3 Additional requirements for insurance distribution

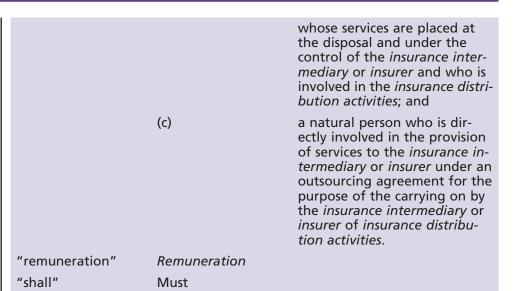
Application

3.3.1 R SYSC 3.3 applies to an *insurer* in the course of it carrying on any *insurance* distribution activities.

Effect of provisions marked "EU"

- The IDD Regulation applies directly to an insurer when carrying on insurance distribution in relation to insurance-based investment products. Some of the articles of the IDD Regulation (see the provisions marked with the status letters "UK") are reproduced in this section for those insurers for information only.
- 3.3.3 R (1) To the extent that the *IDD Regulation* does not apply, provisions in this section marked with the status letters "UK" apply to the *insurer* as if they were *rules*.
 - (2) References in Column (1) to a word or phrase used in the *IDD Regulation* have, for the purpose of ■SYSC 3.3.3R(1) above, the meaning indicated in Column (2) of the table below:

(2) (1)"customer" Client "insurance-based in- Policies vestment products" "insurance distribuinsurance distribution activities tion activities" "insurance ininsurance intermediary termediary" "insurance un-Insurer dertakings" "relevant person" any of the following: (a) a director, partner or equivalent, or manager of the insurance intermediary or insurer; (b) an employee of the *insurance* intermediary or insurer, as well as any other natural person



3.3.4 G The effect of ■ SYSC 3.3.3R is that:

- (1) the provisions marked "UK" apply as rules to an insurer when carrying on insurance distribution activities other than insurance distribution in relation to insurance-based investment products;
- (2) where SYSC 3.3.3R applies, an *insurer* is required to read the provisions marked "UK" as though the application of those provisions is not limited to the distribution of insurance-based investment products: and
- (3) the scope of the application of the *IDD Regulation* is extended from insurance distribution to insurance distribution activities.

Identifying conflicts

3.3.5 R A firm must take all appropriate steps to identify conflicts of interest that arise between:

- (1) the firm, including its managers, employees and appointed representatives (or where applicable, tied agents), or any person directly or indirectly linked to them by control, and a client of the firm: or
- (2) one *client* of the *firm* and another *client*.

[Note: article 28(1) of the IDD]

UK 3.3.6

3(1)For the purposes of identifying, in accordance with [■ SYSC 3.3.5R, ■ SYSC 3.3.13R, ■ SYSC 10.1.3R and ■ SYSC 10.1.8R], in so far as those rules apply to the insurance-based investment products, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome

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of the insurance distribution activities, which meets the following criteria:

it is distinct from the customer's or potential customer's interest in the outcome of the insurance distribution activities;

it has the potential to influence the outcome of the distribution activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in the same way for the purposes of identifying conflicts of interest between one customer and another.

3.3.7 UK

- 3(2) For the purposes of the assessment pursuant to paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, the following situations:
- (a) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the customer;
- (b) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control has a financial or other incentive to favour the interest of another customer or group of customers over the interest of the customer;
- (c) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked by control to an insurance intermediary or an insurance undertaking is substantially involved in the management or development of insurance-based investment products, in particular where such a person has an influence on the pricing of those products or their distribution costs.

[Note: article 3 of the IDD Regulation]

Managing conflicts

3.3.8 R

A *firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest identified under ■ SYSC 3.3.5R from adversely affecting the interests of its *clients*.

[Note: article 27 of the IDD]

Proportionality

3.3.9 R

The arrangements in ■ SYSC 3.3.8R must be proportionate to the activities performed, the *policies* sold and the type of *insurance distributor* the *firm* is or uses.

[Note: article 27 of the IDD]

Conflicts policy

3.3.10 UK

4(1)For the purposes of [■ SYSC 3.3.8R, ■ SYSC 3.3.9R, ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products, insurance intermediaries and

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insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 4(1) of the IDD Regulation]

Contents of policy

3.3.11 UK

4(2) The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;

procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the customer.

[Note: article 4(2) of the IDD Regulation]

UK 3.3.12

5(1) The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.

The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include, where appropriate, the following:

effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers;

the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;

the removal of any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance distribution activities are carried out by the insurance intermediary or insurance undertaking or their managers or employees or any person directly or indirectly linked to them by control;

measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest;

a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

5(2) Where insurance intermediaries and insurance undertakings can demonstrate that the measures and procedures referred to in paragraph 1 are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interest of the customer and are not biased due to conflicting interests of the insurance intermediary, the insurance undertaking or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.

[Note: article 5 of the IDD Regulation]

Disclosure of conflicts

3.3.13 R

(1) If arrangements made under ■ SYSC 3.3.8R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must:

- (a) clearly disclose to the *client* the general nature or sources of the conflicts of interest (or both); and
- (b) include sufficient detail in the disclosure, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.
- (2) The disclosure must be made:
 - (a) in a durable medium; and
 - (b) in good time before the conclusion of the contract of insurance.

[Note: article 28(2) and (3) of the IDD]

3.3.14 UK

6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to [■SYSC 3.3.13R] and [■SYSC 10.1.8R], in so far as those rules apply to insurance-based investment products, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with [■ SYSC 3.3.8R, ■ SYSC 3.3.9R, ■ SYSC 10.1.3R, ■ SYSC 10.1.7R, ■ SYSC 10.1.7AR], in so far as these rules apply to insurance-based investment products are not sufficient to

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ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:

provide a specific description of the conflict of interest in question;

explain the general nature and sources of the conflict of interest;

explain the risks to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;

clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

[Note: article 6 of the IDD Regulation]

Review of conflicts policy

3.3.15 UK

7(1) For the purposes of 3.3.8, [■ SYSC 3.3.9R, ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the IDD Regulation]

Record keeping

3.3.16 UK 7(2) Insurance intermediaries and insurance undertakings shall keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a customer has arisen or, in the case of an ongoing service or activity may arise.

Senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on the situations referred to in the first subparagraph.

[Note: article 7(2) of the IDD Regulation]

3.3.17

A firm carrying on insurance distribution activities in relation to insurancebased investment products must retain its records relating to:

- (1) suitability (■ COBS 9A); and
- (2) appropriateness (■ COBS 10A),

for a period of at least five years.

3.3.18



- (1) COBS 9A.4 and COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) reproduce certain record keeping requirements of the *IDD Regulation* (and apply these requirements to *firms* not in scope of the *IDD Regulation*). They specify information which should be recorded by *firms* carrying on *insurance distribution* in relation to *insurance-based investment products* and for how long the records must be retained.
- (2) For the purposes of ■SYSC 3.3.17R, a firm will need to consider whether the requirement in article 19 of the IDD Regulation (or in ■COBS 9A.4.3UK or 10A.7.2UK for any firm to whom the IDD Regulation does not apply) means that a record needs to be retained for longer than five years.

3.3.19 UK

19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the FCA. The FCA shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the IDD Regulation]



3.4 **SRD** requirements

Application

- 3.4.1 This section applies to:
 - (a) a UK insurer; and
 - (b) a UK pure reinsurer,

doing long-term insurance business.

- 3.4.2 The rules in this section apply to the extent that a firm is investing (or has invested), directly or through an SRD asset manager, in shares traded on a regulated market.
- The defined term regulated market has an extended meaning for the 3.4.3 G purposes of this section. The definition includes certain markets situated outside the United Kingdom.

Engagement policy and disclosure of information

- 3.4.4 R A firm must either:
 - (1) (a) develop and publicly disclose an engagement policy that meets the requirements of ■ SYSC 3.4.5R (an "engagement policy"); and
 - (b) publicly disclose on an annual basis how its engagement policy has been implemented, in a way that meets the requirements of ■ SYSC 3.4.6R; or
 - (2) publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).

[Note: article 3g(1) and (1)(a) of SRD]

- 3.4.5 R The engagement policy must describe how the firm:
 - (1) integrates shareholder engagement in its investment strategy;
 - (2) monitors investee companies on relevant matters, including:
 - (a) strategy;
 - (b) financial and non-financial performance and risk;

- (c) capital structure; and
- (d) social and environmental impact and corporate governance;
- (3) conducts dialogues with investee companies;
- (4) exercises voting rights and other rights attached to shares;
- (5) cooperates with other shareholders;
- (6) communicates with relevant stakeholders of the investee companies; and
- (7) manages actual and potential conflicts of interests in relation to the *firm's* engagement.

[Note: article 3q(1)(a) of SRD]

3.4.6 R

- (1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and the use of the services of *proxy advisors*.
- (2) (a) Subject to (b), a *firm* must publicly disclose how it has cast votes in the general meetings of companies in which it holds *shares*.
 - (b) A *firm* is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[Note: article 3g(1)(b) of SRD]

3.4.7 R

- (1) The applicable disclosures or information referred to in SYSC 3.4.4R to SYSC 3.4.6R must be made available free of charge on the *firm's* website.
- (2) Where an *SRD* asset manager implements the engagement policy, including voting, on behalf of a *firm*, the *firm* must make a reference as to where such voting information has been published by the *SRD* asset manager.

[Note: article 3g(2) of SRD]

Investment strategy and arrangements with SRD asset managers

3.4.8 R

A *firm* must disclose publicly how the main elements of its equity investment strategy are consistent with the profile and duration of its liabilities, in particular long-term liabilities, and how they contribute to the medium- to long-term performance of its assets.

[Note: article 3h(1) of SRD]

3.4.9 R

(1) Where an SRD asset manager invests on behalf of a firm, whether on a discretionary client-by-client basis or through a collective investment undertaking, the firm must publicly disclose the following information regarding its arrangement with the SRD asset manager:

- (a) how the arrangement with the SRD asset manager incentivises the SRD asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the firm, in particular long-term liabilities;
- (b) how that arrangement incentivises the SRD asset manager to make investment decisions based on assessments of medium- to long-term financial and non-financial performance of the investee company, and to engage with investee companies in order to improve their performance in the medium- to long-term;
- (c) how the method and time horizon of the evaluation of the SRD asset manager's performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the firm, in particular its long-term liabilities, taking into account its absolute long-term performance;
- (d) how the *firm* monitors portfolio turnover costs incurred by the SRD asset manager and how it defines and monitors a targeted portfolio turnover or turnover range; and
- (e) the duration of the arrangement with the SRD asset manager.
- (2) Where the arrangement with the SRD asset manager does not contain one or more such elements, the firm must give a clear and reasoned explanation why this is the case.

[Note: article 3h(2) of SRD]

3.4.10

The information referred to in ■ SYSC 3.4.8R and ■ SYSC 3.4.9R must:

- (1) be made available, free of charge, on the firm's website; and
- (2) be updated annually, unless there is no material change.

[Note: article 3h(3), first paragraph of SRD]

Senior management arrangements, Systems and Controls

Chapter 4

General organisational requirements

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4.1 **General requirements**

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See http://www.esma.europa.eu/content/Guidelines-certainaspects-MiFID-compliance-function-requirements .]

Application to a common platform firm

4.1.-2 G

For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	SYSC 4.1.1R, SYSC 4.1.1CR, SYSC 4.1.2R, SYSC 4.1.2AAR
Business continuity	SYSC 4.1.6R, SYSC 4.1.7R, SYSC 4.1.8G
Audit committee	SYSC 4.1.11G, SYSC 4.1.13G, SYSC 4.1.14G
Persons who effectively direct the business	SYSC 4.2.1R, SYSC 4.2.2R, SYSC 4.2.3G, SYSC 4.2.4G, SYSC 4.2.5G, SYSC 4.2.6R
Responsibility of senior personnel	SYSC 4.3.3G
Management body	SYSC 4.3A1R to SYSC 4.3A.7R
Nominations committee	SYSC 4.3A.8R to SYSC 4.3A.11R

Application to a MiFID optional exemption firm and to a third country firm

4.1.-1 G

For a MiFID optional exemption firm and a third country firm:

- (1) the *rules* and *guidance* in this chapter apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

General requirements

4.1.1 R

- (1) A firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.
- (2) [deleted]

[Note: article 74 (1) of CRD, article 16(5) second paragraph of MiFID, article 12(1)(a) of the UCITS Directive, and article 18(1) of AIFMD]

- (3) Without prejudice to the ability of the FCA or any other relevant competent authority to require access to communications in accordance with MiFID and MiFIR, a common platform firm must have sound security mechanisms in place for the following, while maintaining the confidentiality of the data at all times:
 - (a) to guarantee the security and authentication of the means of transfer of information;
 - (b) to minimise the risk of data corruption and unauthorised access; and
 - (c) to prevent information leakage.

[Note: article 16(5) third paragraph of MiFID]

4.1.1A R

A full-scope UK AIFM must comply with the AIFM Remuneration Code.

[Note: article 13(1) of AIFMD]

4.1.1B R

A full-scope UK AIFM must, in particular:

- (1) have rules for personal transactions by its *employees* or for the holding or management of investments it invests on its own account;
- (2) ensure that each transaction involving the *AIFs* may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and

(3) ensure that the assets of the AIFs managed by the AIFM are invested in accordance with the *instrument constituting the fund* and the legal provisions in force.

[Note: article 18(1) second paragraph of AIFMD]

4.1.1C R [deleted]

4.1.1D R A UK UCITS management company must comply with the UCITS Remuneration Code if it manages a UCITS scheme. [Note: article 14a(1) of the UCITS Directive

4.1.1E A UK UCITS management company must have appropriate procedures for its employees to report potential or actual breaches of UK provisions which implemented the UCITS Directive internally through a specific, independent and autonomous channel.

[Note: article 99d(5) of the UCITS Directive]

4.1.1F G ■ SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further guidance on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between firms and the FCA.

4.1.2 For a common platform firm, the arrangements, processes and mechanisms referred to in ■ SYSC 4.1.1 R must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the common platform firm's activities and must take into account the specific technical criteria described in article 21(3) of the MiFID Org Regulation, ■ SYSC 5.1.7 R, ■ SYSC 7 and whichever of the following is applicable:

[deleted];

(for a full-scope UK AIFM) ■ SYSC 19B (AIFM Remuneration Code);

[deleted];

(for a firm to which ■ SYSC 19D applies) ■ SYSC 19D (Dual-regulated firms Remuneration Code);

(for a firm to which the remuneration part of the PRA Rulebook applies) the remuneration part of the PRA Rulebook; or

(6) (for a firm to which ■ SYSC 19G applies) ■ SYSC 19G (MIFIDPRU Remuneration Code).

SYSC 4/4

- Other *firms* should take account of the comprehensiveness and proportionality *rule* (■ SYSC 4.1.2 R) as if it were *guidance* (and as if "should" appeared in that *rule* instead of "must") as explained in SYSC 1 Annex 1 3.3 R(1).
- 4.1.2AA R [deleted]
- For a management company or a full-scope UK AIFM, the arrangements, processes and mechanisms referred to in SYSC 4.1.1 R and SYSC 4.1.1A R must also take account of the UCITS schemes managed by the management company or the AIFs managed by the full-scope UK AIFM.

[Note: article 12(1) second paragraph of the *UCITS Directive* and article 18(1) second paragraph of *AIFMD*]

Resources for management companies and AIFMs

4.1.2C R A management company and a full-scope UK AIFM must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.

[Note: articles 12(1)(a) and 14(1)(c) of the UCITS Directive and article 12(1)(c) of AIFMD]

4.1.2D R A full-scope UK AIFM must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs.

[Note: article 18(1) first paragraph of AIFMD]

Subordinate measures relating to provisions implementing article 12(1) of AIFMD

- 4.1.2E G Articles 16 to 29 of the AIFMD level 2 regulation provide detailed rules supplementing the UK provisions which implemented article 12(1) of AIFMD, and articles 57 to 66 of the AIFMD level 2 regulation provide detailed rules supplementing the UK provisions which implemented articles 12 and 18 of AIFMD.
 - Mechanisms and procedures for a firm
- 4.1.3 G
- A firm (with the exception of a common platform firm and a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the firm, and the nature and range of the financial services, claims management services and other activities undertaken in the course of that business:
 - (1) (if it is a management company) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

- (2) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the firm;
- (3) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the firm; and
- (4) (if it is a management company) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the management company as well as effective information flows with any third party involved.

[Note: articles 4(1) final paragraph, 4(1)(a), 4(1)(c) and 4(1)(d) of the UCITS implementing Directive]

4.1.4A

A firm that is not a common platform firm or a management company should take into account the decision-making procedures and effective internal reporting rules (■ SYSC 4.1.4R (1), ■ (3) and ■ (4)) as if they were quidance (and as if "should" appeared in those rules instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.1.5

A management company must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[Note: article 4(2) of the UCITS implementing Directive]

Business continuity

4.1.6 R A common platform firm must take reasonable steps to ensure continuity and regularity in the performance of its regulated activities. To this end the common platform firm must employ appropriate and proportionate systems, resources and procedures.

[Note: article 16(4) of MiFID]

R 4.1.7

A CRR firm and a management company must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its regulated activities, or, in the case of a management company, its collective portfolio management activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities.

[Note: article 4(3) of the UCITS implementing Directive and article 85(2) of CRD]

4.1.7A

Other firms should take account of the business continuity rules (■ SYSC 4.1.6 R and ■ 4.1.7 R) as if they were *quidance* (and as if "should" appeared in those *rules* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.1.8 G

The matters dealt with in a business continuity policy should include:

- (1) resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;
- (2) the recovery priorities for the firm's operations;
- (3) communication arrangements for internal and external concerned parties (including the FCA, clients and the press);
- (4) escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;
- (5) processes to validate the integrity of information affected by the disruption; and
- (6) regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with SYSC 4.1.10R and for a common platform firm with article 21(5) of the MiFID Org Regulation.

Operators of electronic systems in relation to lending: arrangements to administer loans in the event of platform failure

4.1.8A R

- (1) An operator of an electronic system in relation to lending must have arrangements in place to ensure that P2P agreements facilitated by it will have a reasonable likelihood of being managed and administered, in accordance with the contract terms between the firm and its relevant borrower and lender customers, if at any time it ceases to manage and administer those P2P agreements.
- (2) Under (1), and wherever the requirement in (1) is referenced in the FCA's rules and guidance, the reference to P2P agreements includes any non-P2P agreement included in a P2P portfolio.
- (3) The arrangements under (1) must not be designed to prefer any particular customers or class of customers for whom it manages and administers *P2P agreements* or *non-P2P agreements*.

4.1.8B R [deleted]

4.1.8C G

Arrangements that are required to be put in place under ■ SYSC 4.1.8AR may include any one or more of the following:

- (1) entering into an arrangement with another *firm* that has the appropriate *permissions* to take over the management and administration of *P2P agreements* if the operator ceases to *operate* the electronic system in relation to lending and, where appropriate:
 - (a) obtaining prior and informed consent from *lender clients* to fund the continued cost of management and administration of their

- respective loans, for example through increased commissions; and/or
- (b) obtaining prior and informed consent from lender clients and borrower clients for the transfer of the service of managing and administration of P2P agreements from the firm to that other firm: or
- (2) holding sufficient collateral to cover the cost of management and administration while the loan book is wound down, ensuring that the collateral is held through a structure that is ring-fenced in the event of the firm's insolvency; or
- (3) [deleted]
- (4) managing the loan book in a way that ensures that income from P2P agreements facilitated by the firm is sufficient to cover the costs of managing and administering those agreements during the winding down process, taking into account the reduction of the loan pool and fee income from it.
- 4.1.8D G
- (1) When designing its arrangements, a firm should take into account the general law to ensure that the insolvency of the firm does not prejudice the operation of arrangements that the firm has put in place.
- (2) A firm should consider the need to obtain professional advice on the adequacy of its arrangements. For example, a firm may benefit from obtaining legal advice or advice from a qualified insolvency practitioner on the likelihood of its arrangements securing the required outcome for continuity of management and administration of P2P agreements.
- (3) In assessing the adequacy of its arrangements, a firm should consider, in particular:
 - (a) whether any terms included in relevant contracts as part of its arrangements are enforceable, for example terms in customer, service and supplier contracts;
 - (b) the extent to which other practical obstacles could foreseeably prevent the implementation of the arrangements or frustrate the required outcome, including whether the firm will be likely to have sufficient financial resources to fund the implementation of the arrangements at the relevant time;
 - (c) whether the arrangements make adequate provision for any activities that are ancillary to the management and administration of P2P agreements upon which the required outcome is, or could be, dependent;
 - (d) whether, having regard to SYSC 4.1.8AR(3), its arrangements are designed so as not to produce a better outcome for its customers who are party to non-P2P agreements than for customers who are party to P2P agreements;
 - (e) whether its arrangements take into account any relevant security arrangements in relation to loans; and

- (f) whether its arrangements take into account any relevant tax arrangements for *lender clients*.
- (4) Firms are reminded of the disclosure requirements in COBS 18.12.28R (Information concerning platform failure).
- (5) Firms may find it useful to refer to the FCA's Wind-down Planning Guide (WDPG) when designing their arrangements.

4.1.8DA G

In line with Principle 11 and ■ SUP 15.3.8G (Communication with the appropriate regulator in accordance with Principle 11), a firm should notify the FCA in writing if it is contemplating:

- (1) ceasing to manage and administer P2P agreements facilitated by it;
- (2) implementing its arrangements under SYSC 4.1.8AR; or
- (3) implementing any other arrangements that have a similar purpose.

4.1.8DB R

An operator of an electronic system in relation to lending must produce and keep up to date a P2P resolution manual which contains information about the firm that, in the event of the firm's insolvency, would assist in resolving the firm's business of management and administration of P2P agreements that it has facilitated. For these purposes, the reference to P2P agreements includes any non-P2P agreement included in a P2P portfolio. It must, as a minimum, include a written explanation of each of the following:

- (1) how the *firm* conducts the business of management and administration of *P2P agreements* that it has facilitated, what the day-to-day operation of that business entails and what resources would be needed to continue that business if the *firm* ceased to carry it on, including a specification of:
 - (a) critical staff and their respective roles;
 - (b) critical premises;
 - (c) the *firm's* IT systems, including details of data storage and data recovery arrangements;
 - (d) the *firm's* record-keeping systems, including how records are organised;
 - (e) all relevant bank accounts and payment facilities;
 - (f) all relevant *persons* outside of the *firm*, and their respective roles, including any outsourced service providers;
 - (g) all relevant legal documentation, including customer, service and supplier contracts;
 - (h) the firm's group, using a structure chart showing:
 - (i) the legal entities in the group;
 - (ii) the ownership structure of those entities; and
 - (iii) the jurisdiction of those entities; and
 - (i) how the firm holds and manages any security for loans;

- (2) the steps that would need to be implemented under the arrangements in place under ■ SYSC 4.1.8AR in order for P2P agreements facilitated by the firm to continue to be managed and administered:
- (3) any terms in contracts that may need to be relied on to ensure P2P agreements facilitated by it will continue to be managed and administered under those arrangements; and
- (4) how the firm's systems can produce the detail specified in ■ COBS 18.12.31R (Ongoing disclosures) for each P2P agreement facilitated by it.
- 4.1.8DC

An operator of an electronic system in relation to lending must put in place arrangements to ensure that its P2P resolution manual would be immediately available to:

(1) an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property; and the FCA, on request.

4.1.8DD

A operator of an electronic system in relation to lending must store its P2P resolution manual in the same place as its CASS resolution pack, if ■ CASS 10 (CASS resolution pack) applies to it.

Operators of electronic systems in relation to lending: title transfer

- 4.1.8E
- R
- (1) An operator of an electronic system in relation to lending must not accept, take, or receive the transfer of full ownership of money relating to P2P agreements.
- (2) If an operator of an electronic system in relation to lending has made a client money election under ■ CASS 7.10.7AR, when it is operating an electronic system in relation to non-P2P agreements it must also not accept, take, or receive the transfer of full ownership of money relating to non-P2P agreements.

Accounting policies: management company

4.1.9

A management company must establish, implement and maintain accounting policies and procedures that enable it, at the request of the FCA, to deliver in a timely manner to the FCA financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

[Note: article 4(4) of the UCITS implementing Directive]

Regular monitoring: management company

4.1.10

R

A management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with SYSC 4.1.4 R to SYSC 4.1.9 R and take appropriate measures to address any deficiencies.

[Note: article 4(5) of the UCITS implementing Directive]

Regular monitoring: other firms

4.1.10A G

Other *firms* should take account of the regular monitoring *rule* (■ SYSC 4.1.10 R) as if it were *guidance* (and as if "should" appeared in that *rule* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1), but ignoring the cross-reference to ■ SYSC 4.1.5 R and ■ SYSC 4.1.9R.

Audit committee

4.1.11 G

Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to form an audit committee. An audit committee could typically examine management's process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the *regulatory system*, oversee the functioning of the internal audit function (if applicable) and provide an interface between management and external auditors. It should have an appropriate number of *non-executive directors* and it should have formal terms of reference.

4.1.12 G [deleted]

Risk control: additional guidance

4.1.13 G

Firms should also consider the additional guidance on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21.

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.

Investment strategy and investment decision making of an operator of a personal pension scheme or stakeholder pension scheme

4.1.15 G

- (1) This guidance sets out the FCA's expectation on how an operator of a personal pension scheme or a stakeholder pension scheme may take into account ESG financial considerations and other financial considerations and non-financial matters as part of its investment strategy or investment decision making, to demonstrate compliance with Principles 2, 3, 6 or 8.
- (2) This guidance only applies where the personal pension scheme or stakeholder pension scheme operator's investment strategy or

investment decision could have a material impact on a client or a relevant policyholder's investment returns and relates to a product where:

- (a) the primary purpose of the product is to provide an investment return; and
- (b) the *investment* risk is borne by a *client* who is a natural person or a relevant policyholder.
- (3) As part of its investment strategy or investment decision making, an operator of a personal pension scheme or a stakeholder pension scheme should take into account ESG financial considerations and other financial considerations, over the period of time that the firm reasonably considers is needed to achieve the objective of the investment or the investment strategy.
- (4) References to other financial considerations in (3) may include (but are not limited to) interest rates, liquidity, concentration, exchange rate, political and counterparty risks.
- (5) As part of its *investment* strategy or *investment* decision making in relation to a product, an operator of a personal pension scheme or a stakeholder pension scheme may take into account non-financial matters if:

the firm has good reason to consider that affected clients or relevant policyholders would generally share the views on which the non-financial matters are based; and

taking those matters into account would not involve a risk of a significant financial detriment to an affected investment.

(6) (5) does not apply to a firm's investment strategy or investment decision making in relation to a product (other than in relation to a relevant scheme or a pathway investment) that has been deliberately designed by the firm to take into account non-financial matters, and clients or relevant policyholders make an active decision to select that product.



4.2 Persons who effectively direct the business

General requirement

The senior personnel of a common platform firm, a management company, a full-scope UK AIFM, or of the UK branch of a non-UK bank must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the firm.

[Note: article 9(1)(4) of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and article 91(1) of *CRD*]

4.2.1A Other *firms* should take account of the senior personnel *rule* (■ SYSC 4.2.1 R) as if it were *guidance* (and as if "should" appeared in that *rule* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

Responsibility of senior personnel of an AIFM

4.2.1B For a full-scope UK AIFM, the senior personnel must, in complying with
■ SYSC 4.2.1 R, be sufficiently experienced in relation to the investment strategies pursued by the AIFs it manages.

[Note: article 8(1)(c) of AIFMD]

Composition of management

- A common platform firm, a management company, a full-scope UK AIFM and the UK branch of a non-UK bank must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1 R and:
 - (a) for a full-scope UK AIFM, SYSC 4.2.7R; or
 - (b) for a common platform firm, SYSC 4.3A.3R.

[Note: article 9(6) first paragraph of MiFID, article 7(1)(b) of the UCITS Directive, article 8(1)(c) of AIFMD and article 13(1) of CRD]

4.2.3 G In the case of a *body corporate*, the persons referred to in SYSC 4.2.2 R should either be executive *directors* or persons granted executive powers by, and reporting immediately to, the *governing body*. In the case of a *partnership*, they should be active *partners*.

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4.2.4 At least two independent minds should be applied to the formulation and implementation of the policies of a common platform firm, a management company, a full-scope UK AIFM and the UK branch of a third country firm. Where a firm nominates just two individuals to direct its business, the FCA will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence on, the way in which

strategy is being implemented through day-to-day policy.

4.2.5 G Where there are more than two individuals directing the business of a common platform firm, a management company, a full-scope UK AIFM or the UK branch of a third country firm, the FCA does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. However, at least two individuals should be involved in all such decisions. Both individuals' judgement should be engaged so that major errors leading to difficulties for the firm are less likely to occur. Similarly, each individual should have sufficient experience and knowledge of the business and the necessary personal qualities and skills to detect and resist any imprudence, dishonesty or other irregularities by the other individual. Where a single individual, whether a chief executive, managing director or otherwise, is particularly dominant in such a firm this will raise doubts about whether SYSC 4.2.2 R is met.

Alternative arrangements

R 4.2.6 If a common platform firm, (other than a credit institution or AIFM investment firm) or the UK branch of a third country firm, is:

- (1) a natural person; or
- (2) a legal person managed by a single natural person;

then:

- (3) it must have alternative arrangements in place which ensure:
 - (a) sound and prudent management of the firm; and
 - (b) adequate consideration of the interests of clients and the integrity of the market; and
- (4) the natural persons concerned must be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

it must have alternative arrangements in place which ensure sound and prudent management of the firm.

[Note: article 9(6) second paragraph of MiFID]

SYSC 4/14

4.2.7 A full-scope UK AIFM must notify the FCA of the names of the senior personnel of the firm and of every person succeeding them in office.

[Note: article 8(1)(c) of AIFMD]

Where the senior personnel of a full-scope UK AIFM will carry out a FCA governing function and the firm has applied for the FCA's approval under section 59 of the Act, this will be considered sufficient to comply with

SYSC 4.2.7 R.

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4.3 Responsibility of senior personnel

4.3.1 Afirm (with the exception of a common platform firm and a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)), when allocating functions internally, must ensure that senior personnel and, where appropriate, the *supervisory function*, are responsible for ensuring that the firm complies with its obligations under the regulatory system. In particular, senior personnel and, where appropriate, the supervisory function must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the firm's obligations under the regulatory system and take appropriate measures to address any deficiencies.

[Note: articles 9(1) and 9(3) of the UCITS implementing Directive]

- 4.3.2 R A firm that is a management company or an operator of an electronic system in relation to lending must ensure that:
 - (1) its senior personnel receive on a frequent basis, and at least annually, written reports on the matters covered by ■ SYSC 6.1.2 R to ■ 6.1.5 R, ■ SYSC 6.2.1 R, ■ SYSC 7.1.2 R, ■ SYSC 7.1.3 R and ■ SYSC 7.1.5 R to ■ 7.1.7 R, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies; and
 - (2) the supervisory function, if any, receives on a regular basis written reports on the same matters.

[Note: articles 9(4) and 9(6) of the UCITS implementing Directive]

- G 4.3.2A Other firms should take account of the written reports rule (SYSC 4.3.2 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).
- 4.3.3 The supervisory function does not include a general meeting of the shareholders of a firm, or equivalent bodies, but could involve, for example, a separate supervisory board within a two-tier board structure or the establishment of a non-executive committee of a single-tier board structure.
- G 4.3.4 [deleted]



4.3A Management body and nomination committee

Management body

4.3A.-1 R [deleted]

4.3A.1 R

A common platform firm must ensure that the management body defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the firm, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interests of clients. The firm must ensure that the management body:

- (1) has overall responsibility for the firm;
- (2) approves and oversees implementation of the *firm*'s strategic objectives, risk strategy and internal governance;
- (3) ensures the integrity of the *firm*'s accounting and financial reporting systems, including financial and operational controls and compliance with the *regulatory system*.
- (4) oversees the process of disclosure and communications;
- (5) has responsibility for providing effective oversight of *senior* management;
- (6) monitors and periodically assesses:
 - (a) the adequacy and the implementation of the *firm's* strategic objectives in the provision of *investment services and/or activities* and *ancillary services*;
 - (b) the effectiveness of the firm's governance arrangements; and
 - (c) the adequacy of the policies relating to the provision of services to *clients*, and

takes appropriate steps to address any deficiencies; and

(7) has adequate access to information and documents which are needed to oversee and monitor management decision-making.

[Note: article 88(1) of CRD and articles 9(1) and 9(3) of MiFID]

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4.3A.1A

Without prejudice to ■ SYSC 4.3A.1R, a common platform firm must ensure that the management body defines, approves and oversees:

- (1) the organisation of the firm for the provision of investment services and/or activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with;
- (2) a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the *firm* and the characteristics and needs of the firm's clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate; and
- (3) a remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of *clients* as well as avoiding conflict of interest in the relationships with clients.

[Note: article 9(3) of MiFID]

4.3A.2

A common platform firm must ensure that the chairman of the firm's management body does not exercise simultaneously the PRA's Chief Executive function (controlled function SMF1) or chief executive function within the same firm.

[Note: article 88(1)(e) of CRD and article 9(1) of MiFID]

4.3A.2A G

A firm may apply to the FCA under section 138A of the Act to waive

■ SYSC 4.3A.2R.

4.3A.3

A common platform firm must ensure that the members of the management body of the firm:

- (1) are of sufficiently good repute;
- (2) possess sufficient knowledge, skills and experience to perform their duties:
- (3) possess adequate collective knowledge, skills and experience to understand the firm's activities, including the main risks;
- (4) reflect an adequately broad range of experiences;
- (5) commit sufficient time to perform their functions in the firm; and
- (6) act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of senior management where necessary and to effectively oversee and monitor management decision-making.

[Note: article 91(1)-(2) and (7)-(8) of CRD and article 9(1) and 9(4) of MiFID]

4.3A.3A

- G
- (1) A firm should have procedures for monitoring the collective adequacy of the knowledge, skills and experience of its management body as well as of its individual members.
- (2) A firm may wish to use the "Template for a matrix to assess the collective competence of members of the management body" in Annex I of the joint ESMA and EBA publication titled "Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU" when assessing collective competence.

[Note: https://www.esma.europa.eu/document/joint-esma-and-ebaguidelines-assessment-suitability-members-management-body-andkey-0]

4.3A.4

A common platform firm must devote adequate human and financial resources to the induction and training of members of the management body.

[Note: article 91(9) of CRD and article 9(1) of MiFID]

4.3A.5 R A common platform firm must ensure that the members of the management body of the firm do not hold more directorships than is appropriate taking into account individual circumstances and the nature, scale and complexity of the firm's activities.

[Note: article 91(3) of CRD and article 9(1) of MiFID]

4.3A.6 R

- (1) A common platform firm that is a significant SYSC firm must ensure that the members of the management body of the firm do not hold more than one of the following combinations of directorship in any organisation at the same time:
 - (a) one executive directorship with two non-executive directorships; and
 - (b) four non-executive directorships.
- (2) Paragraph (1) does not apply to members of the management body that represent the United Kingdom.

[Note: article 91(3) of CRD and article 9(1) of MiFID]

G 4.3A.6A

G 4.3A.6B

4.3A.7 R

For the purposes of ■ SYSC 4.3A.5 R and ■ SYSC 4.3A.6 R:

- (1) directorships in organisations which do not pursue predominantly commercial objectives shall not count; and
- (2) the following shall count as a single directorship:

.....

- (a) executive or non-executive directorships held within the same
- (b) executive or non-executive directorships held within:
 - (i) [deleted]
 - (ii) undertakings (including non-financial entities) in which the firm holds a qualifying holding.

[Note: article 91(4) and (5) of CRD and article 9(1) of MiFID]

Nomination Committee

4.3A.7A R ■ SYSC 4.3A.8R does not apply to a common platform firm that is a MIFIDPRU investment firm.

The regulatory requirement for certain MIFIDPRU investment firms to 4.3A.7B G establish nomination committees is contained in ■ MIFIDPRU 7.3.5R. However, all MIFIDPRU investment firms are still subject to ■ SYSC 4.3A.9R and ■ SYSC 4.3A.10R.

4.3A.8 A common platform firm that is a significant SYSC firm must:

- (1) establish a nomination committee composed of members of the management body who do not perform any executive function in the firm:
- (2) ensure that the nomination committee is able to use any forms of resources the nomination committee deems appropriate, including external advice: and
- (3) ensure that the nomination committee receives appropriate funding.

[Note: article 88(2) of CRD and article 9(1) of MiFID]

4.3A.8A G

4.3A.9

A common platform firm that has a nomination committee must ensure that the nomination committee:

- (1) engages a broad set of qualities and competences when recruiting members to the management body and for that purpose puts in place a policy promoting diversity on the management body;
- (2) identifies and recommends for approval, by the management body or by general meeting, candidates to fill management body vacancies, having evaluated the balance of knowledge, skills, diversity and experience of the management body;
- (3) prepares a description of the roles and capabilities for a particular appointment, and assesses the time commitment required;

- (4) decides on a target for the representation of the underrepresented gender in the management body and prepares a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target;
- (5) periodically, and at least annually, assesses the structure, size, composition and performance of the management body and makes recommendations to the management body with regard to any changes;
- (6) periodically, and at least annually, assesses the knowledge, skills and experience of individual members of the management body and of the management body collectively, and reports this to the management body;
- (7) periodically reviews the policy of the management body for selection and appointment of senior management and makes recommendations to the management body; and
- (8) in performing its duties, and to the extent possible, on an ongoing basis, takes account of the need to ensure that the management body's decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interest of the firm as a whole.

[Note: article 88(2) and article 91(10) of CRD and article 9(1) of MiFID]

4.3A.10

A common platform firm that does not have a nomination committee must engage a broad set of qualities and competences when recruiting members to the management body. For that purpose a common platform firm that does not have a nomination committee must put in place a policy promoting diversity on the management body.

[Note: article 91(10) of CRD and article 9(1) of MiFID]

Website

4.3A.11 R

A CRR firm that maintains a website must explain on the website how it complies with the requirements of ■ SYSC 4.3A.1 R to ■ SYSC 4.3A.3 R and ■ SYSC 4.3A.4 R to ■ SYSC 4.3A.11 R.

[Note: article 96 of CRD]



4.4 Apportionment of responsibilities

Application

- 4.4.1 R
- 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) a limited scope SMCR benchmark firm; and
 - (b) an authorised professional firm that is a core SMCR firm.
- (-1) The application of this section is further limited by the rest of this rule.
- (1) This section applies to an authorised professional *firm* as follows:
 - (a) it only applies in respect of its non-mainstream regulated activities; and
 - (b) it does not apply if the firm:
 - (i) is also conducting other regulated activities; and
 - (ii) has appointed approved persons to perform the FCA governing functions with equivalent responsibilities for the firm's non-mainstream regulated activities and other regulated activities.
- (2) [deleted]
- (3) [deleted]
- (4) Only SYSC 4.4.5R(2) applies to an *EEA SMCR firm*. However, the limitation in this paragraph (4) does not apply to a *firm* within ■ SYSC 23 Annex 1 6.13R (claims management).
- (5) This section only applies to a sole trader if they:
 - (a) have any person (other than themselves) who is required to be approved under section 59 of the Act (Approval for particular arrangements); or
 - (b) are an authorised approved person employer (except where they are the only approved person concerned); or
 - (c) have any certification employees.

- **4.4.2 G** This section does not apply to a *common platform firm*.
- 4.4.2A R [deleted]

Maintaining a clear and appropriate apportionment

- A firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers in such a way that:
 - (1) it is clear who has which of those responsibilities; and
 - (2) the business and affairs of the *firm* can be adequately monitored and controlled by the *directors*, relevant *senior managers* and *governing body* of the *firm*.
- **4.4.4 G** [deleted]

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) dealing with the apportionment of responsibilities under SYSC 4.4.3 R; and
 - (2) overseeing the establishment and maintenance of systems and controls under SYSC 4.1.1 R.

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:
(1) A firm which is a body corporate and is a member of a group, other than a firm in row (2)	 (1) the firm's chief executive (and all of them jointly, if more than one); or (2) a director or senior manager responsible for the overall management of: (a) the group; or (b) a group division within which some or all of the firm's regulated activities fall 	the firm's and its group's: (1) directors; and (2) senior managers
(2) An <i>EEA SMCR firm</i> (note: only the func-	(not applicable)	the firm's and its group's:

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:		
tions in SYSC 4.4.5R (2) must be allocated)		(1) directors; and		
		(2) senior managers		
(3) Any other firm	the firm's chief execut- ive (and all of them	the <i>firm</i> 's and its <i>group</i> 's:		
	jointly, if more than one)	(1) directors; and		
	,	(2) senior managers		
Note: Column 2 does no	Note: Column 2 does not require the involvement of the <i>chief executive</i> or			

other executive *director* or *senior manager* in an aspect of corporate governance if that would be contrary to generally accepted principles of good corporate governance.

4.4.6

G

Frequently asked questions about allocation of functions in ■ SYSC 4.4.5 R

Qu	estion	Answer
1	Does an individual to whom a function is allocated under SYSC	Yes. They will be performing the limited scope function.
	4.4.5 R need to be an approved person?	However, the limited scope function does not apply to an EEA SMCR firm (except claims management and funeral plan firms) or an authorised professional firm that is a core SMCR firm.
2	If the allocation is to more than one individual, can they perform the functions, or aspects of the functions, separately?	If the functions are allocated to joint <i>chief executives</i> under SYSC 4.4.5 R, column 2, they are expected to act jointly. If the functions are allocated to an individual under SYSC 4.4.5 R, column 2, in addition to individuals under SYSC 4.4.5 R, column 3, the former may normally be expected to perform a leading role in relation to the functions that reflects his position. Otherwise, yes.
3	What is meant by "appropriately allocate" in this context?	The allocation of functions should be compatible with delivering compliance with <i>Principle</i> 3, SYSC 4.4.3 R and SYSC 4.1.1 R. The <i>FCA</i> considers that allocation to one or two individuals is likely to be appropriate for most <i>firms</i> .
4	If a committee of management governs a <i>firm</i> or <i>group</i> , can the functions be allocated to every member of that committee?	Yes, as long as the allocation remains appropriate (see Question 3). If the <i>firm</i> also has an individual as <i>chief executive</i> , then the functions must be allocated to that individual as well under

Que	estion	Answer
		SYSC 4.4.5 R, column 2 (see Question 7).
5	Does the definition of <i>chief executive</i> include the possessor of equivalent responsibilities with another title, such as a managing <i>director</i> or managing <i>partner</i> ?	Yes.
6	Is it possible for a <i>firm</i> to have more than one individual as its <i>chief executive</i> ?	Although unusual, some firms may wish the responsibility of a chief executive to be held jointly by more than one individual. In that case, each of them will be a chief executive and the functions must be allocated to all of them under SYSC 4.4.5 R, column 2 (see also Questions 2 and 7).
7	If a firm has an individual as chief executive, must the functions be allocated to that individual?	Normally, yes, under SYSC 4.4.5 R, column 2.
		But if the firm is a body corporate and a member of a group, the functions may, instead of being allocated to the firm's chief executive, be allocated to a director or senior manager from the group responsible for the overall management of the group or of a relevant group division, so long as this is appropriate (see Question 3). Such individuals may nevertheless require approval under section 59 (see Question 1). If the firm chooses to allocate the functions to a director or senior manager responsible for the overall management of a relevant group division, the FCA would expect that individual to be of a seniority equivalent to or greater than a chief executive of the firm for the allocation to be ap-
		propriate. See also Question 14.
8	If a firm has a chief executive, can the functions be allocated to other individuals in addition to the chief executive?	Yes. SYSC 4.4.5 R, column 3, permits a <i>firm</i> to allocate the functions, additionally, to the <i>firm</i> 's (or where applicable the <i>group</i> 's) <i>directors</i> and <i>senior managers</i> as long as this is appropriate (see Question 3).
9	What if a <i>firm</i> does not have a chief executive?	Normally, the functions must be allocated to one or more individuals selected from the <i>firm</i> 's (or where applicable the <i>group</i> 's) <i>directors</i> and <i>senior managers</i> under SYSC 4.4.5 R, column 3.

Oue	stion	Answer
		But if the firm:
		(1) is a <i>body corporate</i> and a member of a <i>group</i> ; and
		(2) the group has a director or senior manager responsible for the overall management of the group or of a relevant group division;
		then the functions must be allocated to that individual (together, optionally, with individuals from column 3 if appropriate) under SYSC 4.4.5 R, column 2.
10	What do you mean by "group division within which some or all of the firm's regulated activities fall"?	A "division" in this context should be interpreted by reference to geographical operations, product lines or any other method by which the <i>group</i> 's business is divided.
		If the firm's regulated activities fall within more than one division and the firm does not wish to allocate the functions to its chief executive, the allocation must, under SYSC 4.4.5 R, be to:
		(1) a director or senior manager responsible for the overall management of the group; or (2) a director or senior manager responsible for the overall management of one of those divisions;
		together, optionally, with individuals from column 3 if appropriate. (See also Questions 7 and 9.)
11	How does the requirement to allocate the functions in SYSC 4.4.5 R apply to an overseas SMCR firm which is not an EEA SMCR firm?	The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 4.4.5 R, but:
		(1) The responsibilities that must be apportioned and the systems and controls that must be overseen are those relating to activities carried on from a <i>UK</i> establishment with certain exceptions (see SYSC 1 Annex 1 2.15R).
		(2) The chief executive of an over- seas firm is the person respons- ible for the conduct of the firm's business within the United King- dom (see the definition of "chief executive"). This might, for ex- ample, be the manager of the

firm's UK establishment, or it might be the chief executive of the firm as a whole, if he has that responsibility. (3) SYSC 4.4 does not apply to such a firm if it does not have a branch in the United Kingdom. How does the requirement to al-(1) Such a firm is not required to locate the functions in SYSC 4.4.5 R allocate the function of dealing apply to an EEA SMCR firm other with apportionment in SYSC 4.4.5R than a claims management or funeral plan firm? (2) Such a firm is required to allocate the function of oversight in SYSC 4.4.5R (2). (3) Such a firm need not allocate the function of oversight to its chief executive; it must allocate it to one or more directors and senior managers of the firm or the firm's group under SYSC 4.4.5 R, row (2). (4) SYSC 4.4 does not apply to an EEA PTV firm if it does not have a branch in the United Kingdom. See also Question 1. The FCA envisages that most if What about a firm that is a partnot all partners or members will nership or a limited liability be either directors or senior manpartnership? agers, but this will depend on the constitution of the partnership (particularly in the case of a limited partnership) or limited liability partnership. A partnership or limited liability partnership may also have a chief executive (see Question 5). A limited liability partnership is a body corporate and, if a member of a group, will fall within SYSC 4.4.5 R, row (1) or (2).What if generally accepted prin-The Note to SYSC 4.4.5 R provides ciples of good corporate governthat the chief executive or other ance recommend that the chief exexecutive director or senior manecutive should not be involved in ager need not be involved in an aspect of corporate such circumstances. For example, governance? the UK Corporate Governance Code recommends that the board of a listed company should establish an audit committee of independent, non-executive directors to be responsible (among other things) for overseeing the effectiveness of the audit process and the objectivity and independence of the external auditor. That as-

Question	Answer
	pect of the oversight function may therefore be allocated to the members of such a committee without involving the <i>chief executive</i> . Such individuals may require approval under section 59 in relation to that function (see Question 1).
15 [deleted]	



4.5

4.5.1 R [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.1.1R] 4.5.2 R [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.1.3R] 4.5.3 R [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.1.2R 4.5.4 R [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.2.1R] 4.5.5 R [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.2.2R] 4.5.6 G (1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.1.6G(1)] (2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.1.6G(2)] 4.5.7 R [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.2.3R1 R 4.5.8 [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.2.4R] G 4.5.9 (1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.1G] (2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.2Gl

■ SYSC 25.4.3G]

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4.5.10

[deleted] [Editor's note: The text of this provision has been moved to

- 4.5.11 [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.4G]
- 4.5.12 G
- (1) [deleted]
- (2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.5G]
- (3) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.6G]
- (4) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.7G
- (5) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.8G]
- (6) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.11G]
- (7) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.9G
- (8) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.10G]
- (9) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.12G]
- G 4.5.13
- (1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.4.14G(1)]
- (2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.5G]
- 4.5.14 [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 25.5.1R]
- 4.5.15 G
- (1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.5.2G(1)]
- (2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.5.2G(2)]
- (3) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.5.2G(3)]
- (4) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.5.2G(4)1
- (5) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.5.3G

4.5.16 G (1) [deleted] (2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.7.2G(1)] (3) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.7.2G(1)] (4) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.7.4G] (5) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.7.3G 4.5.17 G [deleted] 4.5.18 G [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.7.6G] 4.5.19 G [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.7.7G] G 4.5.20 [deleted] [Editor's note: he text of this provision has been moved to ■ SYSC 25.7.8G] 4.5.21 G [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.8.1G]

4.5.22

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■ SYSC 25.8.2G]

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4.6

- [deleted] [Editor's note: The text of this provision has been moved to 4.6.1 ■ SYSC 25.1.4R]
- 4.6.2 R [deleted]
- 4.6.3 R [deleted]
- G 4.6.4 [deleted]
- G 4.6.5 (1) [deleted]
 - (2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.6.3G]
- 4.6.6 R [deleted]
- 4.6.7 R [deleted]
- G 4.6.8 [deleted]
- R 4.6.9 (1) [deleted]
 - (2) [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 25.1.5R]
- 4.6.10 R [deleted]
- 4.6.11 R [deleted]
- G 4.6.12 [deleted]
- 4.6.13 G [deleted]

4.6.14	G	[deleted]
4.6.15	R	[deleted]
4.6.16	R	[deleted]
4.6.17	G	(1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.6.2G(1)]
		(2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.6.2G(2)]
		(3) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.1.6G(3)]
		(4) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.6.2G(4)]
4.6.18	R	[deleted]
4.6.19	R	[deleted]
4.6.20	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 25.6.5R]
4.6.21	G	[deleted] Editor's note: The text of this provision has been moved to SYSC 25.6.6G]
4.6.22	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 25.6.7G]
4.6.23	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 25.6.8G]
4.6.24	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 25.6.9G]
4.6.25	R	[deleted]
4.6.26	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 25.6.10G]
4.6.27	G	[deleted]

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G [deleted] 4.6.29



4.7

- 4.7.1 R [deleted] *Editor's note:* The text of this provision has been moved to SYSC 24.1.1R].
- 4.7.2 R [deleted] Editor's note: The text of this provision has been moved to SYSC 24.1.3R]
- 4.7.3 R [deleted] *Editor's note:* The text of this provision has been moved to SYSC 24.1.2R]
- **4.7.4 G** [deleted]
- 4.7.5 R (1) [deleted] *Editor's note:* The text of this provision has been moved to SYSC 24.2.1R]
 - (2) [deleted]
 - (3) [deleted]
 - (4) [deleted]
 - (5) [deleted] *Editor's note:* The text of this provision has been moved to SYSC 24.2.3R(1)]
 - (6) [deleted] *Editor's note:* The text of this provision has been moved to SYSC 24.2.3R(2)]
 - (7) [deleted] *Editor's note:* The text of this provision has been moved to SYSC 24.2.4R]
- 4.7.6 R [deleted] [Editor's note: The text of this provision has been moved to SYSC 24.2.5R]
- 4.7.7 R [deleted] [Editor's note: The text of this provision has been moved to SYSC 24.2.6R]
- 4.7.8 (1) [deleted] *Editor's note:* The text of this provision has been moved to SYSC 26.3.1R]

		(2) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 26.4.2R]
		(3) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 26.3.4R]
4.7.9	G	[deleted]
4.7.10	G	[deleted]
4.7.11	G	[deleted] [<i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 26.7.2G]
4.7.12	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.6.7G]
4.7.13	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.7.4G]
4.7.14	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.7.5G]
4.7.15	G	[deleted]
4.7.16	G	[deleted]
4.7.17	G	[deleted]
4.7.18	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 26.4.5R]
4.7.19	G	[deleted]
4.7.20	G	[deleted]
4.7.21	G	(1) [deleted]
		(2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.9.1G]
4.7.22	G	[deleted]

4.7.23	G	(1) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 26.9.4G]
4.7.24	G	(1) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 24.3.2G]
		(2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.3G]
		(3) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 24.3.1G]
		(4) [deleted]
		(4) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.4G]
4.7.25	G	(1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.7G]
		(2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.8G]
4.7.26	G	[deleted [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.9G]
4.7.27	G	[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.10G]
4.7.28	G	[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.11G]
4.7.29	G	[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.12G]
4.7.30	G	[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 24.3.13G]
4.7.31	G	[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.10.1G]
4.7.32	G	[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.10.3G]
4.7.33	G	[deleted]

4.7.34	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.10.2G]
4.7.35	G	[deleted]
4.7.36	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.11.1G(1) to (3)]
4.7.37	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.11.2G]
4.7.38	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.11.3G]



4.8

- **4.8.1** R [deleted]
- 4.8.3 R [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.1.4R]
- 4.8.4 R [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.1.2R]
- **4.8.6** R [deleted]
- **4.8.7** R [deleted]
- **4.8.9** R [deleted]
- 4.8.10 R (1) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.3.2R(1)]
 - (2) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.3.2R(2)]
 - (3) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.3.2R(3)]
 - (4) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.3.3R]
 - (5) [deleted]

		(6) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.4.3R]
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4.8.11	G	(1) [deleted]
		(2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.6.4G(1)]
		(3) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.6.4G(2)]
		(4) [deleted]
		(5) [deleted]
		(6) [deleted]
4.8.12	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.6.6G]
4.8.13	G	(1) [deleted]
		(2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.4.4G]
4.8.14	G	[deleted]
4.8.15	G	[deleted]
4.8.16	G	[deleted]
4.8.17	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.7.3G]
4.8.18	G	[deleted] [Editor's note: The text of this provision has been moved to SYSC 26.7.6G]
4.8.19	G	[deleted]
4.8.20	G	(1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.8.1G]
		(2) [deleted]

(3) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.8.2G] (4) [deleted] 4.8.21 G [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.9.2G] 4.8.23 G [deleted] 4.8.24 G [deleted] 4.8.25 G [deleted] 4.8.26 G [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.8.4G] 4.8.27 G [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.8.3G] 4.8.28 G (1) [deleted] (2) [deleted] (3) [deleted] (4) [deleted] (5) [deleted] (6) [deleted] (7) [deleted] (8) [deleted] (9) [deleted] (9) [deleted] (10) [deleted] (11) [deleted] (22) [deleted] (33) [deleted] (44) [deleted] (54) [deleted] (55) [deleted] (65) [deleted] (75) [deleted] (7			
4.8.21 G [deleted] [Editor's note: The text of this provision has been moved to \$\$\text{\$\tex{			
4.8.22			(4) [deleted]
SYSC 26.9.2G 4.8.23 G [deleted] 4.8.24 G [deleted] 4.8.25 G [deleted] 4.8.26 G [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.8.4G 4.8.27 G [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.8.3G] 4.8.28 G (1) [deleted] (2) [deleted] (3) [deleted] (4) [deleted] (5) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.9.5G] 4.8.29 G [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.5.3G] 4.8.30 G [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.5.3G]	4.8.21	G	[deleted]
4.8.24	4.8.22	G	
4.8.25	4.8.23	G	[deleted]
4.8.26	4.8.24	G	[deleted]
4.8.27	4.8.25	G	[deleted]
4.8.28 G (1) [deleted] (2) [deleted] (3) [deleted] (4) [deleted] (5) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.9.5G] 4.8.29 G [deleted]	4.8.26	G	·
(2) [deleted] (3) [deleted] (4) [deleted] (5) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.9.5G] 4.8.29 G [deleted] [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.5.3G] 4.8.31 R [deleted]	4.8.27	G	
(3) [deleted] (4) [deleted] (5) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.9.5G] 4.8.29	4.8.28	G	(1) [deleted]
(4) [deleted] (5) [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.9.5G] 4.8.29			(2) [deleted]
(5) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.9.5G] 4.8.29			(3) [deleted]
4.8.29 G [deleted] 4.8.30 G [deleted] [Editor's note: The text of this provision has been moved to SYSC 26.5.3G] 4.8.31 R [deleted]			(4) [deleted]
4.8.30			
4.8.31 R [deleted]	4.8.29	G	[deleted]
	4.8.30	G	
4.8.32 G [deleted]	4.8.31	R	[deleted]
	4.8.32	G	[deleted]

4.8.33	G	(1) [deleted]
		(2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.11.1G(4)]
4.8.34	G	[deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 26.11.1G(5)]
4.8.35	G	[deleted]
4.8.35	R	

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4.9

R 4.9.1 (1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.9.1R] (2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.9.2R] 4.9.2 R [deleted] R 4.9.3 [deleted] 4.9.4 R (1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.9.4R] 4.9.5 R [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.9.5R] G [deleted] [Editor's note: The text of this provision has been moved to 4.9.6 ■ SYSC 25.9.6G] G 4.9.7 [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.9.7G] G 4.9.8 [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 25.9.8G] 4.9.9 G [deleted] [Editor's note: The text of this provision has been moved to

■ SYSC 25.9.9G]



4 Annex 1

[Editor's note: The text of this provision has been moved to SYSC 25 Annex 1G]

Senior arrangements, Systems and Controls

Chapter 5

Employees, agents and other relevant persons



5.1 Skills, knowledge and expertise

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See http://www.esma.europa.eu/content/Guidelines-certainaspects-MiFID-compliance-function-requirements .]

Application to a common platform firm

5.1.-2

For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, ■SYSC 1 Annex 1 3.2-AR and ■SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

Subject	Applicable rule or guidance
Competent employees rule, knowledge and competence and segregation of functions	SYSC 5.1.2G to SYSC 5.1.5AG, SYSC 5.1.5AAR, SYSC 5.1.5ABR, SYSC 5.1.5ACG to SYSC 5.1.5AEG, SYSC 5.1.7R, SYSC 5.1.8G to SYSC 5.1.11G
[deleted]	[deleted]

Application to an MiFID optional exemption firm and to a third country firm

5.1.-1

G

For a MiFID optional exemption firm and a third country firm:

- (a) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (b) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and ■ SYSC 1 Annex 1 3.2CR apply to them as if they were *rules* or as guidance in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

Competent employees rule

5.1.1

A firm (other than a common platform firm) must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

[Note: articles 12(1)(a) and 14(1)(c) of the UCITS Directive and article 5(1) of the UCITS implementing Directive]

5.1.2

A firm's systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it. This includes assessing an individual's

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honesty and competence. This assessment should normally be made at the point of recruitment. An individual's honesty need not normally be revisited unless something happens to make a fresh look appropriate.

- Any assessment of an individual's suitability should take into account the level of responsibility that the individual will assume within the *firm*. The nature of this assessment will generally differ depending upon whether it takes place at the start of the individual's recruitment, at the end of the probationary period (if there is one) or subsequently.
- 5.1.4 G The Training and Competence sourcebook (*TC*) contains additional *rules* and *quidance* relating to specified retail activities undertaken by a *firm*.
- 5.1.4A G Firms which are carrying on activities that are not subject to TC may nevertheless wish to take TC into account in complying with the competence requirements in SYSC.
- The requirements on *firms* with respect to *approved persons* are in Part V of the *Act* (Performance of regulated activities) and SUP 10A, SUP 10C and in the corresponding parts of the *PRA's* Rulebook.
- If a firm requires employees who are not subject to a qualification requirement in TC to pass a relevant examination from the list of appropriate qualifications maintained by the FCA, or for the purposes of meeting its obligations under SYSC 5.1.5ABR, the FCA will take that into account when assessing whether the firm has ensured that the employee satisfies the knowledge component of the competent employees rule.

Knowledge and competence

- 5.1.5AA R
- SYSC 5.1.5ABR applies to a common platform firm and a third country firm:
 - (1) in relation to its MiFID or equivalent third country business;
 - (2) in respect of any natural persons ("relevant individuals") who, on behalf of the *firm*:
 - (a) make personal recommendations to clients in relation to financial instruments or structured deposits; or

.....

(b) provide information to retail clients or professional clients about financial instruments, structured deposits, investment services or ancillary services; or

who are otherwise responsible for the supervision of a relevant individual who has not acquired the necessary knowledge and competence to act in a capacity prescribed in (a) or (b).

[Note: article 25(1) of MiFID]

5.1.5AB

A firm must ensure, and be able to demonstrate to the FCA, at the FCA's request, that any relevant individuals possess the necessary knowledge and competence so as to ensure that the *firm* is able to meet its obligations under:

- (1) those rules which implement articles 24 and 25 of MiFID (including those rules which implement related provisions under the MiFID Delegated Directive); and
- (2) related provisions of the MiFID Org Regulation.

[Note: article 25(1) of MiFID]

5.1.5AC

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The rules which implement articles 24 and 25 of MiFID can be found in COBS and PROD and are identified with a 'Note:'.

5.1.5AD

G

The ESMA "Guidelines for the assessment of knowledge and competence", 3 January 2017 (ESMA71-1154262120-153 EN (rev)), specify the criteria for the assessment of knowledge and competence for the purposes of ■ SYSC 5.1.5ABR.

5.1.5AE G

- (1) The FCA expects a firm to act consistently with the ESMA guidelines referred to in ■ SYSC 5.1.5ADG in relation to its *MiFID* or equivalent third country business.
- (2) The FCA is required to publish various information on its website in relation to firms' assessment of relevant individuals' knowledge and competence. That information can be found at https:// www.fca.org.uk/firms/training-competence
- (3) A firm to which the Training and Competence sourcebook (TC) applies may satisfy its knowledge and competence obligations under ■ SYSC 5.1.5ABR in relation to a relevant individual by way of compliance with its obligations in TC.

5.1.5B

R

When complying with the competent employees rule, a firm must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.

Segregation of functions

5.1.6

R

A management company must ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally.

[Note: article 5(3) of the UCITS implementing Directive]

The *senior personnel* of a *common platform firm* must define arrangements concerning the segregation of duties within the *firm* and the prevention of conflicts of interest.

[Note: article 88 of CRD and article 9(1) of MiFID]

- Other firms should take account of the segregation of functions rules

 (■ SYSC 5.1.6 R and SYSC 5.1.7 R) as if they were guidance (and as if "should" appeared in those rules instead of "must") as explained in SYSC 1 Annex 1

 3.3 R(1).
- The effective segregation of duties is an important element in the *internal controls* of a *firm* in the *prudential context*. In particular, it helps to ensure that no one individual is completely free to commit a *firm*'s assets or incur liabilities on its behalf. Segregation can also help to ensure that a *firm*'s *governing body* receives objective and accurate information on financial performance, the risks faced by the *firm* and the adequacy of its systems.

Segregation of functions: additional guidance

- 5.1.9 G A firm should normally ensure that no single individual has unrestricted authority to do all of the following:
 - (1) initiate a transaction;
 - (2) bind the firm;
 - (3) make payments; and
 - (4) account for it.
- Where a *firm* is unable to ensure the complete segregation of duties (for example, because it has a limited number of staff), it should ensure that there are adequate compensating controls in place (for example, frequent review of an area by relevant *senior managers*).
- Where a *firm* outsources its internal audit function, it should take reasonable steps to ensure that every individual involved in the performance of this service is independent from the individuals who perform its external audit. This should not prevent services from being undertaken by a *firm*'s external auditors provided that:
 - (1) the work is carried out under the supervision and management of the *firm*'s own internal staff; and
 - (2) potential conflicts of interest between the provision of external audit services and the provision of internal audit are properly managed.

Awareness of procedures: management company

A management company must ensure that its relevant persons are aware of 5.1.12 R the procedures which must be followed for the proper discharge of their responsibilities.

[Note: article 4(1)(b) of the UCITS implementing Directive]

Awareness of procedures: other firms

G 5.1.12A Other firms should take account of the rule concerning awareness of procedures (SYSC 5.1.12 R) as if it were *quidance* (and as if should appeared in that rule instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).

General

The systems, internal control mechanisms and arrangements established by a 5.1.13 firm (other than a common platform firm) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services, claims management services and other activities undertaken in the course of that business.

> [Note: articles 4(1) final paragraph and 5(4) of the UCITS implementing Directive]

5.1.14 R A management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter, and take appropriate measures to address any deficiencies.

[Note: article 4(5) of the UCITS implementing Directive]

G 5.1.15 Other firms should take account of the rule requiring monitoring and evaluation of the adequacy and effectiveness of systems (SYSC 5.1.14 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).

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5.2

5.2.1 R [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.1.1R] 5.2.2 G [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.1.2G] 5.2.3 G [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.1.3G 5.2.4 G [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.2.3G] 5.2.5 G (1) [deleted] (2) [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.2.2Gl 5.2.6 G [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.2.4G] 5.2.7 G [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.2.5G] G 5.2.8 [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.2.6G] 5.2.9 G [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.2.7G] G 5.2.10 [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.2.8Gl G 5.2.11 [deleted] Editor's note: The text of this provision has been moved to ■ SYSC 27.2.9G]

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5.2.13	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.2.11G]
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5.2.16	G	(1) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.2.14G(1)]
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		(3) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.2.14G(5)]
5.2.17	G	(1) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.2.15G(1)) and ■ SYSC 27.2.15G(2)]
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		(3) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC27.2.15G(4)]
5.2.17A	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.2.16G]
5.2.18	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.7.1R]
5.2.19	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.3.1R]
5.2.20	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.3.2G]
5.2.20A	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.3.3G]
5.2.21	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.4.1G]

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5.2.24	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.6.1G]
5.2.25	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.6.2R]
5.2.26	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.6.3R]
5.2.27	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.5.1R]
5.2.28	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.5.2G]
5.2.28A	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.5.3R]
5.2.28B	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.5.4G]
5.2.28C	G	(1) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.5.5G]
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5.2.29	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.7.2R]
5.2.30	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.7.3R]
5.2.31	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.7.4G]
5.2.32	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.1R]

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5.2.34	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.8.3R]
5.2.35	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.4R]
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5.2.39	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.8.10R]
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5.2.41	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.8.13R]
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5.2.46	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.20G]

5.2.47	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.8.21G]
5.2.48	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.22G]
5.2.49	R	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.23R]
5.2.50	R	(1) [deleted] <i>Editor's note:</i> The text of this provision has been moved to ■ SYSC 27.8.24R]
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5.2.51	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.25G]
5.2.52	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.26G]
5.2.53	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.27G]
5.2.54	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.28G]
5.2.55	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.29G]
5.2.56	G	[deleted] <i>Editor's note:</i> The text of this provision has been moved to SYSC 27.8.30G]
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Senior arrangements, Systems and Controls

Chapter 6

Compliance, internal audit and financial crime



6.1 **Compliance**

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See https://www.esma.europa.eu/sites/default/files/library/ esma35-36-1946_final_report_quidelines_on_certain_aspects_of_the_mifid_ii_ compliance function.pdf

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Application to a common platform firm

6.1.-2 G

For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

Subject	Applicable rule or guidance
Adequate policy and procedures	SYSC 6.1.1R, SYSC 6.1.1AG
Compliance function	SYSC 6.1.4-AG, SYSC 6.1.7R
Internal audit	SYSC 6.2.2G
Financial crime	SYSC 6.3.1R to SYSC 6.3.11G

Application to an MiFID optional exemption firm and to a third country firm

6.1.-1

For a MiFID optional exemption firm and a third country firm:

- (1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

Adequate policy and procedures

R 6.1.1

A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.

[Note: article 16(2) of MiFID and article 12(1)(a) of the UCITS Directive]

SYSC 6/2

- 6.1.1A G The FCA provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime in FCG (Financial Crime Guide: A firm's guide to countering financial crime risks) and FCTR (Financial Crime Thematic Reviews).
- A firm that is a management company or an operator of an electronic system in relation to lending must, taking intoaccount the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under the regulatory system, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the FCA to exercise its powers effectively under the regulatory system.

[Note: article 10(1) of the UCITS implementing Directive]

Other *firms* should take account of the adequate policies and procedures *rule* (■ SYSC 6.1.2 R) as if it were *guidance* (and as if should appeared in that *rule* instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).

Compliance function

- A firm that is a management company or an operator of an electronic system in relation to lending must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
 - (1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with SYSC 6.1.2 R, and the actions taken to address any deficiencies in the *firm*'s compliance with its obligations; and

•••••

(2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm*'s obligations under the *regulatory system*.

[Note: article 10(2) of the UCITS implementing Directive]

- (1) Other firms should take account of the compliance function rule (■ SYSC 6.1.3 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in SYSC 1 Annex 1 3.3 R(1).
 - (2) Notwithstanding SYSC 6.1.3 R, as it applies under (1), depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate compliance function. Where a *firm* has a separate compliance function the *firm* should also take into account SYSC 6.1.3 R and SYSC 6.1.4 R as guidance.
- 6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a *firm* that is a *management company* or an operator of an electronic system in relation to lending must ensure that the following conditions are satisfied:

- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
- (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by ■ SYSC 4.3.2 R;
- (3) the relevant persons involved in the compliance functions must not be involved in the performance of the services or activities they monitor;
- (4) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

[Note: article 10(3) of the UCITS implementing Directive]

6.1.4-A

In setting the method of determining the remuneration of relevant persons involved in the compliance function:

- (1) [deleted]
- (2) [deleted]
- (3) firms that SYSC 19D applies to will also need to comply with the dual-regulated firms Remuneration Code;
- (4) firms that the remuneration part of the PRA Rulebook applies to will also need to comply with it; and
- (5) firms that SYSC 19G applies to will also need to comply with the MIFIDPRU Remuneration Code.

6.1.4A R

- (1) A firm which is not a common platform firm or management company and which carries on designated investment business with or for retail clients or professional clients must allocate to a director or senior manager the function of:
 - (a) having responsibility for oversight of the firm's compliance; and
 - (b) reporting to the governing body in respect of that responsibility.
- (2) In SYSC 6.1.4A R (1) compliance means compliance with the rules in:
 - (a) COBS (Conduct of Business sourcebook);
 - (b) COLL (Collective Investment Schemes sourcebook);
 - (c) CASS (Client Assets sourcebook); and
 - (d) ICOBS (Insurance: Conduct of Business sourcebook).

6.1.4-B

In setting the method of determining the remuneration of relevant persons involved in the compliance function, full-scope UK AIFMs will need to comply with the AIFM Remuneration Code.

6.1.4C

G

- (1) A firm in (2) or (3) must appoint a compliance officer to be responsible for ensuring the firm meets its obligations under
 ■ SYSC 6.1.1R for any compliance function the firm has and for any reporting as to compliance which may be made under SYSC 4.3.2R.
- (2) This rule applies to:
 - (a) a debt management firm; and
 - (b) a credit repair firm.
- (3) This *rule* also applies to a *firm* that meets the following conditions:
 - (a) it is a Class 1 firm as defined in CMCOB 7.2.5R(1); and
 - (b) SUP 10C (FCA senior managers regime for approved persons in SMCR firms) applies the *compliance oversight function* to it.
- 6.1.4-C G
- (1) This *guidance* is relevant to an *SMCR firm* required to appoint a compliance officer under SYSC 6.1.4R or article 22(3) of the *MiFID Org Regulation* as applicable.
- (2) Taking account of the nature, scale and complexity of its activities, the *firm* should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the compliance officer does not undermine the independence of the compliance function.
- (3) In the FCA's view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the compliance officer to require the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.
- 6.1.5 R

A firm that is a management company or an operator of an electronic system in relation to lending need not comply with ■ SYSC 6.1.4 R (3) or ■ SYSC 6.1.4 R (4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of financial services and activities, the requirements under those *rules* are not proportionate and that its compliance function continues to be effective.

[Note: article 10(3) second paragraph of the UCITS implementing Directive]

- 6.1.6 Other *firms* should take account of the proportionality *rule* (■ SYSC 6.1.5 R) as if it were *guidance* (and as if should appeared in that *rule* instead of must) as explained in SYSC 1 Annex 1 3.3R(1).
- **6.1.7** R [deleted]
- G The exemptions in SYSC 6.1.5R are unlikely to apply to a *firm* that is an operator of an electronic system in relation to lending where that *firm* offers lenders a *P2P* portfolio with a target rate.



6.2 Internal audit

6.2.1

A firm that is a management company or an operator of an electronic system in relation to lending management company must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of its financial services and activities, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the firm and which has the following responsibilities:

- (1) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the firm's systems, internal control mechanisms and arrangements;
- (2) to issue recommendations based on the result of work carried out in accordance with (1);
- (3) to verify compliance with those recommendations;
- (4) to report in relation to internal audit matters in accordance with ■ SYSC 4.3.2 R.

[Note: article 11 of the UCITS implementing Directive]

6.2.1A G Other firms should take account of the internal audit rule (SYSC 6.2.1 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).

G 6.2.1B

- (1) This guidance is relevant to an SMCR firm required to establish and maintain an internal audit function under article 24 of the MiFID Org Regulation.
- (2) Taking account of the nature, scale and complexity of its activities, the firm should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the head of the internal audit function does not undermine the independence of the internal audit function.
- (3) In the FCA's view, it will be appropriate, in many cases, for the removal or any other disciplinary sanctioning of the head of the internal audit function to require the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.

SYSC 6/6

- 6.2.2 G
- (1) The term 'internal audit function' in SYSC 6.2.1R (and SYSC 4.1.11G), and for a common platform firm in article 24 of the MiFID Org Regulation, refers to the generally understood concept of internal audit within a firm, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies.
- (2) [deleted]
- (3) For an SMCR firm that is a PRA-authorised person, the internal audit function is a PRA controlled function (SMF5). For an enhanced scope SMCR firm it is an FCA controlled function (SMF5).



6.3 **Financial crime**

- 6.3.1 A firm must ensure the policies and procedures established under ■ SYSC 6.1.1 R include systems and controls that:
 - (1) enable it to identify, assess, monitor and manage money laundering risk; and
 - (2) are comprehensive and proportionate to the nature, scale and complexity of its activities.
- G 6.3.2 "Money laundering risk" is the risk that a firm may be used to further money laundering. Failure by a firm to manage this risk effectively will increase the risk to society of crime and terrorism.
- 6.3.3 R A firm must carry out a regular assessment of the adequacy of these systems and controls to ensure that they continue to comply with ■ SYSC 6.3.1 R.
- G 6.3.4 A firm may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the Money Laundering Regulations. ■ SYSC 6.1.1 R and ■ SYSC 6.3.1 R to ■ SYSC 6.3.10 G are not relevant for the purposes of regulation 76(6) or 86(2) of the Money Laundering Regulations, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.
- 6.3.5 G The FCA, when considering whether a breach of its rules on systems and controls against money laundering has occurred, will have regard to whether a firm has followed relevant provisions in the guidance for the United Kingdom financial sector issued by the Joint Money Laundering Steering Group.
- 6.3.6 G In identifying its money laundering risk and in establishing the nature of these systems and controls, a firm should consider a range of factors, including:
 - (1) its customer, product and activity profiles;
 - (2) its distribution channels;
 - (3) the complexity and volume of its transactions;

- (4) its processes and systems; and
- (5) its operating environment.

G 6.3.7

A *firm* should ensure that the systems and controls include:

- (1) appropriate training for its employees in relation to money laundering;
- (2) appropriate provision of information to its governing body and senior management, including a report at least annually by that firm's money laundering reporting officer (MLRO) on the operation and effectiveness of those systems and controls;
- (3) appropriate documentation of its risk management policies and risk profile in relation to money laundering, including documentation of its application of those policies (see ■ SYSC 9);
- (4) appropriate measures to ensure that money laundering risk is taken into account in its day-to-day operation, including in relation to:
 - (a) the development of new products;
 - (b) the taking-on of new customers; and
 - (c) changes in its business profile; and
- (5) appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to its services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.

R 6.3.8

- (1) A firm must allocate to a director or senior manager (who may also be the money laundering reporting officer) overall responsibility within the firm for the establishment and maintenance of effective anti-money laundering systems and controls.
- (2) A firm may not allocate overall responsibility under (1) to a person who is approved to perform the other overall responsibility function.

The money laundering reporting officer

- 6.3.9 R
- A firm (with the exception of a sole trader who has no employees) must:
 - (1) appoint an individual as MLRO, with responsibility for oversight of its compliance with the FCA's rules on systems and controls against money laundering; and
 - (2) ensure that its MLRO has a level of authority and independence within the firm and access to resources and information sufficient to enable him to carry out that responsibility.
- 6.3.10 G
- The job of the MLRO within a firm is to act as the focal point for all activity within the firm relating to anti-money laundering. The FCA expects that a firm's MLRO will be based in the United Kingdom.

Financial crime guidance

6.3.11



The FCA provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime in FCG (Financial Crime Guide: A firm's guide to countering financial crime risks) and FCTR (Financial Crime Thematic Reviews).

SYSC 6/10

Senior arrangements, Systems and Controls

Chapter 7

Risk control



7.1 **Risk control**

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See http://www.esma.europa.eu/content/Guidelines-certainaspects-MiFID-compliance-function-requirements .]

Application to a common platform firm

7.1.-2 G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, ■SYSC 1 Annex 1 3.2-AR and ■SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

Subject	Applicable rule or guidance
Risk assessment	SYSC 7.1.1G
Risk management	SYSC 7.1.4R, SYSC 7.1.4AG
Risk control: remuneration	SYSC 7.1.7BG, SYSC 7.1.7BBG
Risk control: additional provisions	SYSC 7.1.7CG, SYSC 7.1.8G, SYSC 7.1.9R to SYSC 7.1.16R
Additional rules for CCR firms	SYSC 7.1.16CR to SYSC 7.1.22R

Application to an MiFID optional exemption firm and to a third country firm

7.1.-1

For a MiFID optional exemption firm and a third country firm:

- (1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as quidance in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

Risk assessment

- G 7.1.1
- SYSC 4.1.1 R requires a firm to have effective processes to identify, manage, monitor and report the risks it is or might be exposed to.
- 7.1.2 R
- A firm that is a UCITS investment firm or an operator of an electronic system in relation to lending must establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identify the risks relating to the firm's activities,

processes and systems, and where appropriate, set the level of risk tolerated by the *firm*.

- 7.1.2A Other firms should take account of the risk management policies and procedures rule (■ SYSC 7.1.2 R) as if it were guidance (and as if should appeared in that rule instead of must) as explained in SYSC 1 Annex 1 3.3 R(1).
- 7.1.2B G A management company should be aware that COLL 6.11 contains requirements in relation to risk control and internal reporting that will apply to it.
- 7.1.2C G Full-scope UK AIFMs should be aware that FUND 3.7 and articles 38 to 47 of the AIFMD level 2 regulation contain further requirements in relation to risk management.

Risk management

- 7.1.3 A firm that is a UCITS investment firm or an operator of an electronic system in relation to lending must adopt effective arrangements, processes and mechanisms to manage the risk relating to the firm's activities, processes and systems, in light of that level of risk tolerance.
- 7.1.4 The management body of a common platform firm or of an operator of an electronic system in relation to lending must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the firm is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

[Note: article 76(1) of CRD]

- 7.1.4A G MIFIDPRU investment firms should refer to MIFIDPRU 7 for more specific details on risk management expectations.
- 7.1.4B G Other firms should take account of the risk management rules (■ SYSC 7.1.3 R and SYSC 7.1.4 R) as if they were guidance (and as if "should" appeared in those rules instead of "must") as explained in SYSC 1 Annex 1 3.3 R(1).
- 7.1.5 R A firm that is a UCITS investment firm or an operator of an electronic system in relation to lending must monitor the following:
 - (1) the adequacy and effectiveness of the *firm*'s risk management policies and procedures;
 - (2) the level of compliance by the *firm* and its *relevant persons* with the arrangements, processes and mechanisms adopted in accordance with SYSC 7.1.3 R;
 - (3) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and

mechanisms, including failures by the relevant persons to comply with such arrangements or processes and mechanisms or follow such policies and procedures.

- 7.1.6
- A firm that is a UCITS investment firm or an operator of an electronic system in relation to lending must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:
 - (1) implementation of the policies and procedures referred to in ■ SYSC 7.1.2 R to ■ 7.1.5 R; and
 - (2) provision of reports and advice to senior personnel in accordance with SYSC 4.3.2 R.
- R 7.1.7 Where a firm that is a UCITS investment firm or an operator of an electronic system in relation to lending is not required under ■ SYSC 7.1.6 R to maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with ■ SYSC 7.1.2 R to ■ 7.1.5 R satisfy the requirements of those rules and are consistently effective.
- G 7.1.7A Other firms should take account of the risk management rules (SYSC 7.1.5 R to ■ SYSC 7.1.7 R) as if they were *guidance* (and as if should appeared in those rules instead of must) as explained in ■ SYSC 1 Annex 1 3.3 R(1).
- 7.1.7B G In setting the method of determining the remuneration of employees involved in the risk management function:
 - (1) firms that SYSC 19D applies to will also need to comply with the dual-regulated firms Remuneration Code; and
 - (2) firms that the remuneration part of the PRA Rulebook applies to will also need to comply with it.
- 7.1.7BA In setting the method of determining the remuneration of employees involved in the risk management function full-scope UK AIFMs will need to comply with the AIFM Remuneration Code.
- 7.1.7BB G [deleted]

7.1.7BC G [deleted] G 7.1.7BD In setting the method of determining the remuneration of employees involved in the risk management function, firms that ■ SYSC 19G applies to will also need to comply with the MIFIDPRU Remuneration Code. Risk control: additional provisions G 7.1.7C Firms should also consider the additional guidance on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21. 7.1.8 G (1) [deleted] (2) The term 'risk management function' in ■ SYSC 7.1.6 R and ■ SYSC 7.1.7R, and for a common platform firm in article 23(2) of the MiFID Org Regulation, refers to the generally understood concept of risk assessment within a firm, that is, the function of setting and controlling risk exposure. (3) [deleted] (4) For an SMCR firm that is a PRA authorised person, the risk management function is a PRA controlled function (SMF4). For an enhanced scope SMCR firm it is an FCA controlled function. 7.1.9 R [deleted] 7.1.10 R [deleted] 7.1.11 R [deleted] 7.1.12 G [deleted] Residual risk 7.1.13 R [deleted] Market risk R 7.1.14 [deleted] Interest rate risk 7.1.15 R [deleted] Operational risk R 7.1.16 [deleted]

- 7.1.16A G [deleted]
- 7.1.16B G [deleted]

Additional rules for CRR firms

- 7.1.16C R [deleted]
- 7.1.17 R (1) The management body of a CRR firm has overall responsibility for risk management. It must devote sufficient time to the consideration of risk issues.
 - (2) The management body of a CRR firm must be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in the rules implementing the CRD and in the UK CRR as well as in the valuation of assets, the use of external ratings and internal models related to those risks.
 - (3) A CRR firm must establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

[Note: article 76(2) of CRD]

7.1.18 R

(1) A CRR firm that is significant must establish a risk committee composed of members of the management body who do not perform any executive function in the firm. Members of the risk committee must have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the firm.

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- (2) The risk committee must advise the *management body* on the institution's overall current and future risk appetite and assist the *management body* in overseeing the implementation of that strategy by *senior management*.
- (3) The risk committee must review whether prices of liabilities and assets offered to clients take fully into account the *firm*'s business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the risk committee must present a remedy plan to the *management body*.

[Note: article 76(3) of CRD]

7.1.18A G

7.1.18AA G A CRR firm which is not a significant SYSC firm may combine the risk committee with the audit committee.

[Note: article 76(3) of CRD]

7.1.18B R Members of the combined risk and audit committee must have the knowledge, skills and expertise required for both committees.

[Note: article 76(3) of CRD]

7.1.19 R

- (1) A CRR firm must ensure that the management body in its supervisory function and, where a risk committee has been established, the risk committee have adequate access to information on the risk profile of the firm and, if necessary and appropriate, to the risk management function and to external expert advice.
- (2) The *management body* in its supervisory function and, where one has been established, the risk committee must determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

[Note: article 76(4) of CRD]

7.1.20 F

In order to assist in the establishment of sound remuneration policies and practices, the risk committee must, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

[Note: article 76(4) of CRD]

7.1.21 R

(1) A CRR firm's risk management function (article 23 of the MiFID Org Regulation) must be independent from the operational functions and have sufficient authority, stature, resources and access to the management body.

- (2) The risk management function must ensure that all material risks are identified, measured and properly reported. It must be actively involved in elaborating the firm's risk strategy and in all material risk management decisions and it must be able to deliver a complete view of the whole range of risks of the firm.
- (3) A CRR firm must ensure that the risk management function is able to report directly to the management body in its supervisory function, independent from senior management and that it can raise concerns and warn the management body, where appropriate, where specific risk developments affect or may affect the firm, without prejudice to the responsibilities of the management body in its supervisory and/or managerial functions pursuant to the CRD and the UK CRR.

[Note: article 76(5) of CRD]

7.1.22 R The head of the risk management function must be an independent senior manager with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the CRR firm do not justify a specially appointed person, another senior person within the firm may fulfil that function, provided there is no conflict of interest. The head of the risk management function must not be removed without prior approval of the management body and must be able to have direct access to the management body where necessary.

[Note: article 76(5) of CRD]

G 7.1.23

- (1) This quidance is relevant to an SMCR banking firm that has appointed a head of the risk management function.
- (2) Taking account of the nature, scale and complexity of its activities, the firm should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the head of the risk management function does not undermine the independence of the risk management function.
- (3) It will be appropriate, in many cases, for the procedures in (2) to include that any approval for the removal of the head of the risk management function requires the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.
- (4) It will also be appropriate, in many cases, for any other disciplinary sanctioning of the head of the risk management function to require the approval of a majority of the management body, including at least a majority of its members who do not perform any executive function in the firm.

Senior arrangements, Systems and Controls

Chapter 8

Outsourcing



8.1 **General outsourcing requirements**

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See https://www.esma.europa.eu/sites/default/files/library/ esma35-36-1946_final_report_guidelines_on_certain_aspects_of_the_mifid_ii_ compliance_function.pdf

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Application to a common platform firm

8.1.-2 G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, ■SYSC 1 Annex 1 3.2-AR and ■SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	SYSC 8.1.1R, SYSC 8.1.2G, SYSC 8.1.3G, SYSC 8.1.12G

Application to an MiFID optional exemption firm and to a third country firm

- 8.1.-1 G
- For a MiFID optional exemption firm and a third country firm:
 - (1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
 - (2) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as quidance in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

General requirements

8.1.1 R A common platform firm must:

- (1) when relying on a third party for the performance of operational functions which are critical for the performance of regulated activities, listed activities or ancillary services (in this chapter "relevant services and activities") on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk; and
- (2) not undertake the *outsourcing* of important operational functions in such a way as to impair materially:
 - (a) the quality of its internal control; and

(b) the ability of the FCA to monitor the firm's compliance with all obligations under the regulatory system and, if different, of a competent authority to monitor the firm's compliance with all obligations under MiFID.

[Note: article 16(5) first paragraph of MiFID]

- 8.1.1A Other *firms* should take account of the outsourcing *rule* (■ SYSC 8.1.1 R) as if it were *guidance* (and as if should appeared in that *rule* instead of must) as explained in SYSC 1 Annex 1 3.3R(1).

- 8.1.4 For the purposes of this chapter an operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a *firm* (other than a *common platform firm*) with the conditions and obligations of its *authorisation* or its other obligations under the *regulatory system*, or its financial performance, or the soundness or the continuity of its relevant services and activities.
- 8.1.5 R For a *UCITS investment firm* and without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:
 - (1) the provision to the firm of advisory services, and other services which do not form part of the relevant services and activities of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;
 - (2) the purchase of standardised services, including market information services and the provision of price feeds;
 - (3) the recording and retention of relevant telephone conversations or electronic communications subject to SYSC 10A.
- 8.1.5A Other *firms* should take account of the critical functions *rules* (■ SYSC 8.1.4 R and SYSC 8.1.5 R) as if they were *guidance* (and as if should appeared in those *rules* instead of must) as explained in SYSC 1 Annex 1 3.3R(1).

- 8.1.6 If a firm (other than a common platform firm) outsources critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the regulatory system and must comply, in particular, with the following conditions:
 - (1) the outsourcing must not result in the delegation by senior personnel of their responsibility;
 - (2) the relationship and obligations of the firm towards its clients under the regulatory system must not be altered;
 - (3) the conditions with which the *firm* must comply in order to be authorised, and to remain so, must not be undermined;
 - (4) none of the other conditions subject to which the firm's authorisation was granted must be removed or modified.
- 8.1.6A A UCITS investment firm should take account of the provisions that apply to a common platform firm in relation to its MiFID business in accordance with SYSC 8.1.-2G.
- 8.1.7 A UCITS investment firm must exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any relevant services and activities.
- 8.1.8 R A UCITS investment firm must in particular take the necessary steps to ensure that the following conditions are satisfied:
 - (1) the service provider must have the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;
 - (2) the service provider must carry out the outsourced services effectively, and to this end the firm must establish methods for assessing the standard of performance of the service provider;
 - (3) the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
 - (4) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
 - (5) the firm must retain the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing, and must supervise those functions and manage those risks:
 - (6) the service provider must disclose to the *firm* any development that may have a material impact on its ability to carry out the *outsourced* functions effectively and in compliance with applicable laws and regulatory requirements;

- (7) the *firm* must be able to terminate the arrangement for the *outsourcing* where necessary without detriment to the continuity and quality of its provision of services to *clients*;
- (8) the service provider must co-operate with the FCA and any other relevant competent authority in connection with the outsourced activities;
- (9) the *firm*, its auditors, the *FCA* and any other relevant *competent* authority must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and the *FCA* and any other relevant *competent* authority must be able to exercise those rights of access;
- (10) the service provider must protect any confidential information relating to the *firm* and its *clients*;
- (11) the *firm* and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary having regard to the function, service or activity that has been *outsourced*.
- 8.1.9 A UCITS investment firm must ensure that the respective rights and obligations of the firm and of the service provider are clearly allocated and set out in a written agreement.
- 8.1.11 R A firm (other than a common platform firm) must make available on request to the FCA all information necessary to enable the FCA to supervise the compliance of the performance of the outsourced activities with the requirements of the regulatory system.
- 8.1.11A G Other firms should take account of the outsourcing of important operational functions rules (■ SYSC 8.1.7 R to SYSC 8.1.11 R) as if they were guidance (and as if should appeared in those rules instead of must) as explained in SYSC 1 Annex 1 3.3R(1).
- 8.1.12 G As SUP 15.3.8 G explains, a *firm* should notify the *FCA* when it intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities on a continuous and satisfactory basis.

[Note: recital 44 to the MiFID Org Regulation]

Additional requirements for a management company

8.1.13 R A management company must retain the necessary resources and expertise so as to monitor effectively the activities carried out by third parties on the

basis of an arrangement with the firm, especially with regard to the management of the risk associated with those arrangements.

[Note: article 5(2) of the UCITS implementing Directive]

G 8.1.14

A management company should be aware that ■ SUP 15.8.6 R (Delegation by UCITS management companies) and ■ COLL 6.6.15A R (Committees and delegations) contain requirements implementing article 13 of the UCITS Directive in relation to delegation that will apply to it.

Senior Management Arrangements, Systems and Contro

Chapter 9

Record-keeping

■ Release 31 • Nov 2023



9.1 General rules on record-keeping

Application to a common platform firm

9.1.-2 G

For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, ■SYSC 1 Annex 1 3.2-AR and ■SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	SYSC 9.1.1AR
Specific requirements for insurance distribution	SYSC 9.1.2AR, SYSC 9.1.2DR
Guidance on record-keeping	SYSC 9.1.2BG, SYSC 9.1.4G, SYSC 9.1.5G, SYSC 9.1.6AG

Application to an MiFID optional exemption firm and to a third country firm

9.1.-1 G For a MiFID optional exemption firm and a third country firm:

- (1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

General requirements

9.1.1 R A firm (other than a common platform firm) must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the FCA to monitor the firm's compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients.

[Note: article 12(1)(a) of the UCITS Directive and article 4(1)(e) of the UCITS implementing Directive]

9.1.1A R (1) A common platform firm must arrange for records to be kept of all services, activities and transactions undertaken by it.

(2) The records in (1) must be sufficient to enable the FCA to fulfil its supervisory tasks and to perform the enforcement actions under the regulatory system including MiFID, MiFIR and the Market Abuse Regulation, and in particular to ascertain that the common platform firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.

[Note: article 16(6) of MiFID]

9.1.2 R

A common platform firm must retain all records kept by it under this chapter in relation to its MiFID business for a period of at least five years.

Specific requirements for the distribution of insurance-based investment products

9.1.2A R

A firm carrying on insurance distribution activities in relation to insurance-based investment products must retain its records relating to:

- (1) suitability (■ COBS 9A); and
- (2) appropriateness (■ COBS 10A),

for a period of at least five years.

9.1.2B G

- (1) COBS 9A.4 and COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) reproduce certain record keeping requirements of the *IDD Regulation* (and apply these requirements to *firms* not in scope of the *IDD Regulation*). They specify information which should be recorded by *firms* carrying on *insurance distribution* in relation to *insurance-based investment products* and for how long the records must be retained.
- (2) For the purposes of ■SYSC 9.1.2AR, a firm will need to consider whether the requirement in article 19 of the IDD Regulation (or in ■COBS 9A.4.3UK or ■COBS 10A.7.2UK for any firm to whom the IDD Regulation does not apply) means that a record needs to be retained for longer than five years.

9.1.2C UK

19(4)The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the Financial Conduct Authority. The Financial Conduct Authority shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the IDD Regulation]

9.1.2D

R

(1) ■ SYSC 9.1.2CUK applies as if it was a *rule* to *firms* doing *insurance* distribution activities to which the *IDD Regulation* does not apply, in

relation to the records for an insurance-based investment product required in ■ COBS 9A.4 and ■ COBS 10A.7.

- (2) [deleted]
- 9.1.3 R [deleted]

Guidance on record-keeping

- Subject to any other record-keeping rule in the Handbook, the records 9.1.4 G required under the *Handbook* should be capable of being reproduced in the English language on paper. Where a firm is required to retain a record of a communication that was not made in the English language, it may retain it in that language. However, it should be able to provide a translation on request. If a firm's records relate to business carried on from an establishment in a country or territory outside the *United Kingdom*, an official language of that country or territory may be used instead of the English language.
- G 9.1.5 In relation to the retention of records for non-MiFID business, a firm should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the firm may fulfil its regulatory and statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made.
- G 9.1.6 Schedule 1 to each module of the Handbook sets out a list summarising the record-keeping requirements of that module. A common platform firm should also refer to the record-keeping requirements in the MiFID Org Regulation.
- 9.1.6A G ■ SYSC 28 contains *rules* and *guidance* relating to knowledge and competence record keeping requirements in relation to insurance distribution activities undertaken by the firm.
- G 9.1.7 [deleted]



9.2 Credit institutions providing account information services or payment initiation services

- 9.2.1 R A credit institution must keep records of any account information services and payment initiation services it provides in the UK.
- **9.2.2** R [deleted]
- 9.2.3 R [deleted]
- 9.2.4 R The records required by SYSC 9.2.1R must be sufficient to enable the *credit* institution to provide to the *FCA*, upon request, the following information:
 - (1) The number of different payment accounts that the credit institution has accessed for the purposes of providing account information services.
 - (2) The number of *payment service users* who have used the *account information services* provided by the *credit institution*.
 - (3) The number of different payment accounts that the credit institution has accessed for the purposes of providing payment initiation services.
 - (4) The number of payment transactions the credit institution has initiated when providing payment initiation services.
- 9.2.5 The records required by SYSC 9.2.1R must be sufficient to enable the *credit* institution to provide the *FCA* with the information specified in SYSC 9.2.4R for each calendar year in the previous five years, except that there is no requirement to record this information for any period prior to 13 January 2018.
- 9.2.6 (1) When keeping records in accordance with SYSC 9.2.4R (1) and (3), credit institutions should count each individual payment account once, even where it has been accessed multiple times.
 - (2) When keeping records in accordance with SYSC 9.2.4R (2), credit institutions should count each customer once (including where the customer has used the account information services multiple times).

9.2.7 Credit institutions providing account information services and payment initiation services are also required to notify the FCA in accordance with ■ SUP 15.8.12R.

Senior arrangements, Systems and Controls

Chapter 10

Conflicts of interest

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10.1 Application

Application to funeral plan distribution

10.1.-5 G This section applies to a firm carrying on funeral plan distribution in accordance with the tables in Part 3 of ■ SYSC 1 Annex 1.

Application to insurance intermediaries

- 10.1.-4 G
- (1) Subject to SYSC 10.1.-3R, this section applies to a *firm* carrying on insurance distribution activities in accordance with the tables in Part 3 of ■ SYSC 1 Annex 1. Certain rules are disapplied where the firm is subject to the provisions in the IDD Regulation (see ■ SYSC 10.1.-3R).
- (2) Where a provision in this section applies to an insurance intermediary, it applies in relation to the carrying on of insurance distribution activities.
- 10.1.-3 The rules and guidance in the table below do not apply to a firm when carrying on insurance distribution in relation to insurance-based investment products (see ■ SYSC 10.1A for the provisions of the IDD Regulation on conflicts of interest).

Subject	Rule or guidance
Types of conflict	SYSC 10.1.4R, SYSC 10.1.4AG, SYSC 10.1.4BR, SYSC 10.1.4CR(1), (2) and (5) and SYSC 10.1.5G.
Record of conflicts	SYSC 10.1.6R, SYSC 10.1.6AG, SYSC 10.1.6AAR and SYSC 10.1.6BG
Disclosure of conflicts	SYSC 10.1.8R(1)(b), (2)(b) to (2)(d) and SYSC 10.1.9AR
Conflicts policy	SYSC 10.1.10R
Contents of policy	SYSC 10.1.11R, SYSC 10.1.11AG, SYSC 10.1.11AG and SYSC 10.1.11BG

Application to a common platform firm

10.1.-2

For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance in the table below apply:

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Subject	Applicable rule or guidance
Provision of services	SYSC 10.1.2G
Identifying conflicts	SYSC 10.1.3R
Types of conflicts	SYSC 10.1.5G
Managing conflicts	SYSC 10.1.7R
Conflicts policy	SYSC 10.1.12G

(3) ■ SYSC 10.1.7AR (Proportionality – insurance distribution activities), ■ SYSC 10.1.8R (Disclosure of conflicts) and ■ SYSC 10.1.11ABR (Contents of policy) also apply in relation to the carrying on of *insurance distribution activities*.

Application to a MiFID optional exemption firm and to a third-country firm

10.1.-1 G

For a MiFID optional exemption firm and a third country firm, the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1).

General application

10.1.1 R

- (1) This section applies to a *firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities* or providing *ancillary services* (but only where the *ancillary services* constitute *MiFID business*).
- (2) This section also applies to a UK UCITS management company.

[Note: The provisions in ■SYSC 10.1 also implement articles 27 and 28 of the IDD, articles 74(1) and 88 of CRD and as applied under the discretion in the third paragraph of article 95(2) of the UK CRR, BCD article 22 and BCD Annex V paragraph 1]

10.1.1A R This section also applies to:

- (1) a full-scope UK AIFM of:
 - (a) a UK AIF; and
 - (b) [deleted]
 - (c) a non-UK AIF; and
- (2) [deleted]

Requirements only apply if a service is provided

10.1.2 G

(1) The requirements in this section only apply where a service is provided by a *firm*. The status of the *client* to whom the service is provided (as a *retail client*, *professional client* or *eligible counterparty*) is irrelevant for this purpose.

[Note: recital 46 to the MiFID Org Regulation]

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For the avoidance of doubt, a reference to "service" in this section includes all insurance distribution activities.

SRD requirements

10.1.2A

The requirements in this section apply to an SRD asset manager with regard to its engagement activities covered by the SRD.

[Note: article 3g(3) of SRD]

Identifying conflicts

10.1.3

A firm must take all appropriate steps to identify and to prevent or manage conflicts of interest between:

- (1) the firm, including its managers, employees and appointed representatives (or where applicable, tied agents), or any person directly or indirectly linked to them by control, and a client of the firm; or
- (2) one client of the firm and another client;

that arise or may arise in the course of the *firm* providing any service referred to in ■ SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the firm's own remuneration and other incentive structures.

[Note: article 23(1) of MiFID and articles 27 and 28(1) of the IDD]

Types of conflicts

10.1.4 R

For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may damage the interests of a client, a management company must take into account, as a minimum, whether the firm or a relevant person, or a person directly or indirectly linked by control to the firm:

- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;
- (2) has an interest in the outcome of a service provided to the *client* or of a transaction carried out on behalf of the *client*, which is distinct from the *client*'s interest in that outcome:
- (2A) in the case of a management company providing collective portfolio management services for a UCITS scheme, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a client other than the UCITS scheme:
 - (3) has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;
 - (4) carries on the same business as the client; or in the case of a management company, carries on the same activities for the UCITS scheme and for another client or clients which are not UCITS schemes; or

(5) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service.

The conflict of interest may result from the *firm* or *person* providing a service referred to in ■ SYSC 10.1.1 R or engaging in any other activity or, in the case of a *management company*, whether as a result of providing *collective* portfolio management services or otherwise.

[Note: article 17(1) of the UCITS implementing Directive]

10.1.4A G

Other firms (except common platform firms, UCITS management companies and insurance intermediaries) should take account of the rule on the types of conflicts (see ■ SYSC 10.1.4 R) in accordance with ■ SYSC 1 Annex 1 3.3R.

10.1.4B R

For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of carrying on *insurance distribution activities* or funeral plan distributions funeral plan distributions and whose existence may damage the interests of a *client* ("A"), a *firm* must assess whether:

- (1) the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*; or
- (2) (in the case of conflicts between A and another *client*) the other *client*.

has an interest in the outcome of the *insurance distribution activities* or *funeral plan distribution*, which meets the following criteria:

- (3) it is distinct from A's interest in the outcome of the *insurance* distribution activities or funeral plan distributions; and
- (4) it has the potential to influence the outcome of the activities to the detriment of A.

10.1.4C R

For the purpose of carrying out the assessment in ■SYSC 10.1.4BR, a *firm* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:

- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;
- (2) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interest of the *client*;
- (3) carries on the same business as the client;
- (4) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service; or

- (5) is substantially involved in the management or development of policies, in particular where such a person has an influence on the pricing of those policies or their distribution costs.
- 10.1.5 The circumstances which should be treated as giving rise to a conflict of interest cover cases where there is a conflict between the interests of the firm or certain persons connected to the firm or the firm's group and the duty the firm owes to a client; or between the differing interests of two or more of its clients, to whom the firm owes in each case a duty. It is not enough that the firm may gain a benefit if there is not also a possible disadvantage to a client, or that one client to whom the firm owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such client.

[Note: recital 45 to the MiFID Org Regulation]

Record of conflicts

10.1.6 R A management company, an insurance intermediary and a firm carrying on funeral plan distribution must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

[Note: article 20(1) of the UCITS implementing Directive]

- 10.1.6A G Other firms (other than common platform firms and insurance intermediaries) should also take account of the rule on records of conflicts (see ■ SYSC 10.1.6 R) in accordance with ■ SYSC 1 Annex 1 3.2BR. ■ SYSC 1 Annex 1 3.2CR and ■ SYSC 1 Annex 1 3.3R).
- 10.1.6AA R An insurance intermediary and a firm carrying on funeral plan distribution must ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in ■ SYSC 10.1.6R.
- 10.1.6B G A firm (other than a common platform firm and an insurance intermediary) should read ■ SYSC 10.1.6AAR as if "should" appeared in that rule instead of "must".

Managing conflicts

10.1.7 R A firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in ■ SYSC 10.1.3 R from adversely affecting the interests of its clients.

[Note: article 16(3) of MiFID and article 27 of the IDD]

Proportionality – insurance distribution activities

10.1.7A

R

Where a firm carries on insurance distribution activities, the arrangements in ■ SYSC 10.1.7R must be proportionate to the activities performed, the policies sold and the type of insurance distributor the firm is or uses.

[Note: article 27 of the IDD]

Disclosure of conflicts

10.1.8 R

- (1) If arrangements made by a firm under SYSC 10.1.7 R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must clearly disclose the following to the *client* before undertaking business for the client:
 - (a) the general nature or sources of conflicts of interest, or both; and
 - (b) the steps taken to mitigate those risks.
- (2) The disclosure must:
 - (a) be made in a durable medium;
 - (b) clearly state that the organisational and administrative arrangements established by the firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented;
 - (c) include specific description of the conflicts of interest that arise in the provision of funeral plan distribution, insurance distribution activitiesinvestment services or ancillary services;
 - (d) explain the risks to the *client* that arise as a result of the conflicts of interest; and
 - (e) include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.
- (3) This *rule* does not apply to the extent that SYSC 10.1.21 R applies.

[Note: 23(2) and (3) of MiFID and article 28(2) and (3) of the IDD]

10.1.8A

R

[deleted]

10.1.9 G

Firms should aim to identify and manage the conflicts of interest arising in relation to their various business lines and their group's activities under a comprehensive conflicts of interest policy. In particular, the disclosure of conflicts of interest by a firm should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements under ■ SYSC 10.1.7 R. While disclosure of specific conflicts of interest is required by ■ SYSC 10.1.8 R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

10.1.9A

A firm must treat disclosure of conflicts pursuant to ■ SYSC 10.1.8R as a measure of last resort to be used only where the effective organisational and administrative arrangements established by the firm to prevent or manage its conflicts of interest in accordance with ■ SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.

Conflicts policy

10.1.10 R

- (1) A management company, an insurance intermediary and a firm carrying on funeral plan distribution must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and is appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.
- (2) Where the management company, or insurance intermediary or firm carrying on funeral plan distribution is a member of a group, the policy must also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 18(1) of the UCITS implementing Directive]

Contents of policy

10.1.11

- (1) The conflicts of interest policy must include the following content:
 - (a) it must identify in accordance with SYSC 10.1.3 R, SYSC 10.1.4 R, ■ SYSC 10.1.4BR and ■ SYSC 10.1.4CR (as applicable), by reference to the specific services and activities carried out by or on behalf of the management company, insurance intermediary or firm carrying on funeral plan distribution, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients; and
 - (b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- (2) The procedures and measures provided for in paragraph (1)(b) must:
 - (a) be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which either of them respectivelybelongs, and to the materiality of the risk of damage to the interests of clients;
 - (aa) (for an insurance intermediary or a firm carrying on funeral plan distribution) be designed to ensure that the insurance distribution activities or funeral plan distribution are carried out in accordance with the best interests of the *client* and are not biased due to conflicting interests of the insurance intermediary, the firm carrying on funeral plan distribution or another client; and

- (b) include, for an *insurance intermediary* or a *firm* carrying on *funeral plan distribution*, where appropriate, the following, and for a *management company*, such of the following as are necessary and appropriate for the *management company* to ensure the requisite degree of independence:
 - effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more *clients*;
 - (ii) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;
 - (iii) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - (iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant* person carries out services or activities;
 - (v) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate services or activities where such involvement may impair the proper management of conflicts of interest; and
 - (vi) (for *insurance intermediaries* or *firms* carrying on *funeral plan distribution*) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.
- (3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a management company must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).
- (4) If one or more of the measures and procedures in paragraph (2) is not appropriate for the purposes of paragraph (2)(aa), an *insurance intermediary* or a *firm* carrying on *funeral plan distribution* must adopt such alternative measures and procedures as are necessary and appropriate.
- (5) The procedures and measures provided for in paragraph (1)(b) must be appropriate to the size and activities of an *insurance intermediary* or a *firm* carrying on *funeral plan distribution*, the *group* to which it may belong and to the risk of damage to the interests of the *client*.

[Note: articles 18(2), 19(1) and 19(2) of the UCITS implementing Directive]

10.1.11A G

Other firms (except common platform firms, UCITS management companies and insurance intermediaries and firms carrying on funeral plan distribution) should take account of the rules relating to conflicts of interest policies (see ■ SYSC 10.1.10 R and ■ SYSC 10.1.11 R) in accordance with ■ SYSC 1 Annex 1 3.2BR, ■ SYSC 1 Annex 1 3.2CR and ■ SYSC 1 Annex 1 3.3R.

10.1.11AA R

An insurance intermediary and a firm carrying on funeral plan distribution must assess and periodically review, on at least an annual basis, the conflicts of interest policy established in accordance with ■ SYSC 10.1.10R and ■ SYSC 10.1.11R and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).

10.1.11AB R

A common platform firm, in relation to its insurance distribution activities, must:

> take into account the factors set out in ■ SYSC 10.1.4BR(4) and SYSC 10.1.4CR(5) when complying with article 33 of the MiFID Org Regulation (as applied as a rule by ■SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)); and

include the measure set out in ■ SYSC 10.1.11R(2)(b)(vi) in the list of measures to be adopted, where necessary, when complying with article 34 (3) of the MiFID Org Regulation (as applied as a rule by ■ SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)).

10.1.11B G

A firm (other than a common platform firm, an insurance intermediary and a firm carrying on funeral plan distribution) should read ■ SYSC 10.1.11AAR as if "should" appeared in that rule instead of "must".

G 10.1.12

In drawing up a conflicts of interest policy which identifies circumstances which constitute or may give rise to a conflict of interest, a firm should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the firm or a person directly or indirectly linked by control to the firm performs a combination of two or more of those activities.

[Note: recital 47 to the MiFID Org Regulation]

10.1.13 G [deleted]

10.1.14 G [deleted]

10.1.15 G [deleted]

Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research

10.1.16 R

The *rules* relating to:

- (1) types of conflict (see SYSC 10.1.4 R);
- (2) records of conflicts (see SYSC 10.1.6 R); and
- (3) conflicts of interest policies (see SYSC 10.1.10 R and SYSC 10.1.11 R);

also apply to a *firm* which is not a *common platform firm* when it produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, and when it produces or disseminates *non-independent research*, in accordance with COBS 12.2.

Additional requirements for a management company

10.1.17 R

A *UK UCITS management company*, when identifying the types of conflict of interests for the purposes of ■SYSC 10.1.4 R, must take into account:

- (1) the interests of the *firm*, including those deriving from its belonging to a *group* or from the performance of services and activities, the interests of the *clients* and the duty of the *firm* towards the *UCITS* scheme it manages; and
- (2) where it manages two or more *UCITS schemes*, the interests of all of them.

[Note: article 17(2) of the UCITS implementing Directive]

10.1.18 **G**

For a *UK UCITS management company*, references to client in \blacksquare SYSC 10.1.4 R and in the other *rules* in this section should be construed as referring to any *UCITS scheme* managed by that *firm* or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

Structure and organisation of a management company

10.1.19 R

A *UK UCITS management company* must be structured and organised in such a way as to minimise the risk of a *UCITS scheme*'s or *client*'s interests being prejudiced by conflicts of interest between the *UK UCITS management company* and its *clients*, between two of its *clients*, between one of its *clients* and a *UCITS scheme*, or between two such *schemes*.

[Note: articles 12(1)(b) and 14(1)(d) of the UCITS Directive]

Avoidance of conflicts of interest for a management company

10.1.20 R

A *UK UCITS management company* must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the *UCITS schemes* it manages are fairly treated.

[Note: articles 12(1)(b) and 14(1)(d) of the UCITS Directive]

Disclosure of conflicts of interest for a management company

10.1.21

- (1) Where the organisational or administrative arrangements made by a UK UCITS management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the UCITS scheme it manages or of its Unitholders will be prevented, the senior personnel or other competent internal body of the firm must be promptly informed in order for them to take any necessary decision to ensure that in all cases the firm acts in the best interests of the scheme and of its Unitholders.
- (2) A UK UCITS management company must report situations referred to in (1) to the *Unitholders* of the *UCITS scheme* it manages by any appropriate durable medium and give reasons for its decision.

[Note: articles 20(2) and 20(3) of the UCITS implementing Directive]

Collective portfolio management investment firms

10.1.22

A collective portfolio management investment firm which manages investments other than for an AIF or UCITS for which it has been appointed as manager, must obtain approval from its client before it invests all or part of the client's portfolio in units or shares of an AIF or UCITS it manages.

[Note: article 12(2)(a) of the UCITS Directive and article 12(2)(a) of AIFMD]

Additional requirements for an AIFM

10.1.23 R An AIFM must take all reasonable steps to identify conflicts of interest that arise, in the course of managing AIFs, between:

- (1) the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and an AIF managed by the AIFM or the investors in that AIF; or
- (2) an AIF or the investors in that AIF, and another AIF or the investors in that AIF; or
- (3) an AIF or the investors in that AIF, and another client of the AIFM; or
- (4) an AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS: or
- (5) two clients of the AIFM.

[Note: article 14(1) first paragraph of AIFMD]

10.1.24

An AIFM must take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, manage, monitor and (where applicable) disclose those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors, and to ensure that the AIFs it manages are fairly treated.

[Note: article 12(1)d of AIFMD]

10.1.25



- (1) maintain and operate effective organisational and administrative arrangements, with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors;
- (2) segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest; and
- (3) assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the AIF's investors.

[Note: article 14(1) second and third paragraphs of AIFMD]

10.1.26

R

If the organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the AIFM must:

- (1) clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf; and
- (2) develop appropriate policies and procedures.

[Note: article 14(2) of AIFMD]

Subordinate measures for alternative investment fund managers

G 10.1.27

Articles 30 to 37 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions of article 14 of AIFMD.

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10.1A **IDD Regulation – Conflicts of** interest

Application

10.1A.1

The IDD Regulation applies directly to a firm when carrying on insurance distribution in relation to insurance-based investment products. The relevant articles relating to conflicts of interest are set out in this section for information only.

Identifying conflicts

10.1A.2 UK

3(1)For the purposes of identifying, in accordance with [■ SYSC 3.3.5R, ■ SYSC 3.3.13R, ■ SYSC 10.1.3R and ■ SYSC 10.1.8R], in so far as those rules apply to the insurance-based investment products, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

it is distinct from the customer's or potential customer's interest in the outcome of the insurance distribution activities:

it has the potential to influence the outcome of the distribution activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in the same way for the purposes of identifying conflicts of interest between one customer and another.

3(2) For the purposes of the assessment pursuant to paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, the following situations:

the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the customer;

the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control has a financial or other incentive to favour the interest of another customer or group of customers over the interest of the customer;

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the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked by control to an insurance intermediary or an insurance undertaking is substantially involved in the management or development of insurance-based investment products, in particular where such a person has an influence on the pricing of those products or their distribution costs.

.....

[Note: article 3 of the IDD Regulation]

Conflicts policy

10.1A.3 UK

4(1) For the purposes of [■ SYSC 3.3.8R, ■ SYSC 3.3.9R, ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 4(1) of the IDD Regulation]

Contents of policy

10.1A.4



4(2)The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;

.....

procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the customer.

[Note: article 4(2) of the IDD Regulation]

10.1A.4 EU



The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.

The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include, where appropriate, the following:

effective procedures to prevent or control the exchange of information between relevant persons engaged in activities

involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers;

the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;

the removal of any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance distribution activities are carried out by the insurance intermediary or insurance undertaking or their managers or employees or any person directly or indirectly linked to them by

measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest;

a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

5(2)Where insurance intermediaries and insurance undertakings can demonstrate that the measures and procedures referred to in paragraph 1 are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interest of the customer and are not biased due to conflicting interests of the insurance intermediary, the insurance undertaking or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.

[Note: article 5 of the IDD Regulation]

Disclosure of conflicts

10.1A.6 UK

6(1)Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to [■SYSC 3.3.13R and ■SYSC 10.1.8R], in so far as those rules apply to insurance-based investment products, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with [■ SYSC 3.3.8R, ■ SYSC 3.3.9R, ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:

provide a specific description of the conflict of interest in question;

explain the general nature and sources of the conflict of interest;

explain the risks to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks:

clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

.....

[Note: article 6 of the IDD Regulation]

Review of conflicts policy

10.1A.7 UK

7(1)For the purposes of [■ SYSC 3.3.8R, ■ SYSC 3.3.9R, ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the IDD Regulation]

Record keeping

10.1A.8 UK

7(2)Insurance intermediaries and insurance undertakings shall keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a customer has arisen or, in the case of an ongoing service or activity may arise.

Senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on the situations referred to in the first subparagraph.

[Note: article 7(2) of the IDD Regulation]

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10.2 Chinese walls

Application

10.2.1 This section applies to any firm.

Control of information

10.2.2 R (1) When a firm establishes and maintains a Chinese wall (that is, an arrangement that requires information held by a person in the course of carrying on one part of the business to be withheld from, or not to be used for, persons with or for whom it acts in the course of carrying on another part of its business) it may:

......

- (a) withhold or not use the information held; and
- (b) for that purpose, permit persons employed in the first part of its business to withhold the information held from those employed in that other part of the business;

but only to the extent that the business of one of those parts involves the carrying on of regulated activities, ancillary activities or, in the case of MiFID business, the provision of ancillary services.

- (2) Information may also be withheld or not used by a firm when this is required by an established arrangement maintained between different parts of the business (of any kind) in the same group. This provision does not affect any requirement to transmit or use information that may arise apart from the rules in COBS.
- (3) For the purpose of this *rule*, "maintains" includes taking reasonable steps to ensure that the arrangements remain effective and are adequately monitored, and must be interpreted accordingly.
- (4) [deleted]

Effect of rules

10.2.3

- SYSC 10.2.2 R is made under section 137P of the Act (Control of information rules). It has the following effect:
 - (1) acting in conformity with SYSC 10.2.2 R (1) provides a defence against proceedings brought under sections89(2), 90(1) and 91(1) of the Financial Services Act 2012 (Misleading statements, Misleading impressions and Misleading statements etc. in relation to benchmarks) - see sections 89(3)(b), 90(9)(c) and 91(3)(b); and
 - (2) [deleted]

(3) acting in conformity with ■ SYSC 10.2.2 R (1) provides a defence for a firm against *FCA* enforcement action, or an action for damages under section 138D of the *Act*, based on a breach of a relevant requirement to disclose or use this information.

Attribution of knowledge

- When any of the *rules* of *COBS* or *CASS* apply to a *firm* that acts with knowledge, the *firm* will not be taken to act with knowledge for the purposes of that *rule* if none of the relevant individuals involved on behalf of the *firm* acts with that knowledge as a result of arrangements established under SYSC 10.2.2 R.
- When a *firm* manages a conflict of interest using the arrangements in ■ SYSC 10.2.2 R which take the form of a *Chinese wall*, individuals on the other side of the wall will not be regarded as being in possession of knowledge denied to them as a result of the *Chinese wall*.

Senior Management Arrangements, Systems and Contro

Chapter 10A

Recording telephone conversations and electronic communications

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10A.1 Application

Application

10A.1.1

Subject to the exemptions in ■ SYSC 10A.1.4R, this chapter applies to a firm:

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- (1) that is a:
 - (a) MiFID investment firm; or
 - (b) full-scope UK AIFM; or
 - (c) small authorised UK AIFM or residual CIS operator; or
 - (d) [deleted]
 - (e) UCITS management company; or
 - (f) MiFID optional exemption firm, performing activities covered by the exemption; or
 - (g) [deleted]
 - (h) third country investment firm; or
 - (i) that carries on activities referred to in the general application rule related to:
 - (i) commodity futures; or
 - (ii) commodity options; or
 - (iii) contracts for differences related to an underlying commodity;
 - (iv) other futures or contracts for differences which are not related to commodities, financial instruments or cash,

which are not MiFID or equivalent third country business and energy market activity or oil market activity, but excluding the following firms:

- (v) a depositary when acting as such; and
- (vi) an authorised professional firm with respect to its nonmainstream regulated activities; or
- (j) that carries on energy market activity or oil market activity; or

communications

- (k) is an OPS firm; and
- (2) that carries out any of the following activities, in *investments* that are financial instruments:
 - (a) arranging (bringing about) deals in investments;
 - (b) dealing in investments as agent;
 - (c) dealing in investments as principal;
 - (d) managing investments;
 - (e) managing a UK UCITS to the extent that this comprises the function of investment management referred to in Annex II of the UCITS Directive;
 - (f) managing an AIF to the extent that this comprises the function of portfolio management referred to in Annex I of the AIFMD;
 - (g) establishing, operating or winding up a collective investment scheme to the extent that this comprises scheme management activity,

only with respect to a firm's activities carried on from an establishment (including a branch) maintained by the firm in the United Kingdom.

[Note: article 16(7) and 16(11) of MiFID]

- G 10A.1.2
- Where this chapter applies to a third country investment firm, it applies in conjunction with ■ GEN 2.2.22AR, to ensure that such *firms* are not treated in a more favourable way than a UK firm.
- 10A.1.3 R
- For a firm in SYSC 10A.1.1R(1) (other than a MiFID investment firm or a third country investment firm) MiFIR, and any EU Regulation adopted under MiFIR or MiFID which is an onshored regulation, apply to the extent relevant to the subject matter of this chapter as if the firm were a MiFID investment firm providing investment services or performing investment activities in accordance with article 16(7) of MiFID.
- 10A.1.4 R

This chapter does not apply to the carrying on of:

- (1) activities between operators and depositaries, of the same fund (when acting in that capacity); or
- (2) energy market activity and oil market activity which is not MiFID or equivalent third country business but which, if the firm carrying it on were not authorised, would not be a regulated activity because of article 16 of the Regulated Activities Order (Dealing in contractually based investments) or article 22 of the Regulated Activities Order (Deals with or through authorised persons etc.); or
- (3) any activity referred to in SYSC 10A.1.1R(2), to the extent that it is carried out by a firm that is not a MiFID investment firm, MiFID optional exemption firm or third country investment firm, in financial instruments that are not:
 - (a) admitted to trading on a trading venue; or

- (b) traded on a trading venue; or
- (c) instruments for which a request has been made for admission to trading on a trading venue; or

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- (d) instruments covered by paragraph (a), (b) or (c), but the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in those paragraphs; or
- (3A) the activities referred to in SYSC 10A.1.1R(2)(d) to (g), to the extent that they are carried out by a MiFID investment firm or third country investment firm in financial instruments that are not:
 - (a) admitted to trading on a trading venue; or
 - (b) traded on a trading venue; or
 - (c) instruments for which a request has been made for admission to trading on a trading venue; or
 - (d) instruments covered by paragraph (a), (b) or (c), but the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in those paragraphs; or

activities which comprise:

- (a) underwriting of financial instruments on a firm commitment basis; or
- (b) placing of financial instruments with or without a firm commitment basis,

within the meaning of section A(6) or A(7) of Annex 1 of MiFID.

ancillary services.

10A.1.5 G Firms should refer to article 76 of the MiFID Org Regulation, which contains additional requirements on recording of telephone conversations or electronic communications, in addition to this chapter.

Obligations for telephone and electronic communications

10A.1.6

A firm must take all reasonable steps to record telephone conversations, and keep a copy of electronic communications, that relate to the activities in financial instruments referred to in ■ SYSC 10A.1.1R(2) (and that are not excluded by SYSC 10A.1.4R), and that are made with, sent from, or received on, equipment:

- (1) provided by the firm to an employee or contractor; or
- (2) the use of which by an employee or contractor has been accepted or permitted by the firm.

[Note: article 16(7) of MiFID, third subparagraph]

10A.1.7

A firm must take all reasonable steps to prevent an employee or contractor from making, sending, or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the firm is unable to record or copy.

[Note: article 16(7) of MiFID, eighth subparagraph]

SYSC 10A: Recording telephone conversations and electronic communications

10A.1.8

R

The telephone conversations and electronic communications referred to in SYSC 10A.1.6R include those that are intended to result in the performance of the activities in *financial instruments* referred to in SYSC 10A.1.1R(2), even if those conversations or communications do not in fact result in the performance of such activities.

[Note: article 16(7) of MiFID, second subparagraph]

10A.1.9

A MiFID optional exemption firm that provides services solely or mainly to retail clients is not required to comply with the requirements of ■ SYSC 10A.1.6R, ■ SYSC 10A.1.7R and ■ SYSC 10A.1.11R in relation to telephone conversations, subject to compliance with the following requirements:

- (1) a telephone conversation that would be subject to SYSC 10A.1.6R must be recorded instead using a written minute or note; and
- (2) the minute or note must include all relevant, and at least the following, information:
 - (a) date and time of the conversation;
 - (b) identity of the individual participants in the conversation;
 - (c) initiator of the conversation; and
 - (d) relevant information about the client order, including the price, volume, type of order and when it will be transmitted or executed.

10A.1.10 G

A MiFID optional exemption firm that chooses to take advantage of the provisions in ■ SYSC 10A.1.9R should set out its decision in its recording policy. Further, any minute or note made in accordance with ■ SYSC 10A.1.9R should contain all relevant substantive details of the conversation, as well as the information set out in ■ SYSC 10A.1.9R(4)(a)-(d). MiFID optional exemption firms should note that the effect of ■ SYSC 10A.1.3R is to require their compliance, as relevant, with article 76 of the MiFID Org Regulation, including that records must be:

- (1) stored in a *durable medium* which allows them to be replayed or copied; and
- (2) retained in a format that does not allow the original record to be altered or deleted.

Notification

10A.1.11 R

A firm must notify new and existing *clients* that telephone communications or conversations between the *firm* and its *clients* that result or may result in activities in *financial instruments* referred to in SYSC 10A.1.1R(2) (and that are not excluded by SYSC 10A.1.4R) will be recorded. The notification must be made before the provision of any *investment services* to new and existing *clients*.

[Note: article 16(7) of MiFID, fourth subparagraph]

10A.1.12 G

A notification referred to in ■ SYSC 10A.1.11R is only required to be made by the *firm* once, at the following times:

(1) to a new client prior to the provision of any investment services; and

Section 10A.1 : Application

- (2) to an existing client prior to the provision of any investment services following:
 - (a) the commencement of these rules; or
 - (b) the firm otherwise becoming subject to these rules, after the date of commencement.

[Note: article 16(7) of MiFID, fifth subparagraph]

Obligation for other communications

10A.1.13 R

Client instructions given otherwise than by telephone must be made in a durable medium such as by mail, faxes, emails or documentation of client instructions issued at meetings. In particular, the content of relevant face-toface conversations with a *client* may be recorded by using written minutes or notes.

[Note: article 16(7) of MiFID, seventh subparagraph]

Record-keeping

10A.1.14 R

The records kept in accordance with this chapter must be:

- (1) provided by the firm to the client involved upon request; and
- (2) kept for a period of five years and, where requested by the FCA, for a period of up to seven years.

[Note: article 16(7) of MiFID, ninth subparagraph]

SYSC 10A/6

Senior arrangements, Systems and Controls

Chapter 11

Liquidity risk systems and controls

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Application 11.1 11.1.2 [deleted] R 11.1.3 [deleted] 11.1.4 R [deleted] 11.1.5 G (1) [deleted] (2) [deleted] Purpose 11.1.10 G [deleted] 11.1.11 R [deleted] 11.1.12 R [deleted] 11.1.14 G [deleted] 11.1.15 G [deleted] 11.1.16 G [deleted] 11.1.26 G [deleted] 11.1.27 G [deleted] 11.1.28 G [deleted]

SYSC 11 : Liquidity risk systems and controls

11.1.29 **G** [deleted]

11.1.30 **G** [deleted]

11.1.31 **G** [deleted]

11.1.32 **G** [deleted]

Senior arrangements, Systems and Controls

Chapter 12

Group risk systems and controls requirements

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12.1 Application

- 12.1.1 Subject to ■ SYSC 12.1.2 R to ■ SYSC 12.1.4 R, this section applies to each of the following which is a member of a group:
 - (1) a firm that falls into any one or more of the following categories:
 - (a) an investment firm that is not a designated investment firm;
 - (b) [deleted]
 - (c) an insurer;
 - (ca) a UK ISPV;
 - (d) [deleted]
 - (e) a UK parent entity of an investment firm group that is subject to prudential consolidation under MIFIDPRU 2.5 or to the group capital test under ■ MIFIDPRU 2.6; and
 - (f) a firm subject to the rules in IPRU(INV) Chapter 14.
 - (2) a UCITS firm, but only if its group contains a firm falling into (1); and
 - (3) the Society.
- 12.1.2 Except as set out in ■ SYSC 12.1.4 R, this section applies with respect to different types of group as follows:
 - (1) SYSC 12.1.8 R and SYSC 12.1.10 R apply with respect to all groups, including financial conglomerates and groups dealt with in ■ SYSC 12.1.13 R to ■ SYSC 12.1.15 R;
 - (2) the additional requirements set out in SYSC 12.1.11 R and ■ SYSC 12.1.12 R only apply with respect to a financial conglomerate of which notification has been made that it has been identified as a financial conglomerate as contemplated by regulation 2 of the Financial Groups Directive Regulations; and
 - (3) the additional requirements set out in SYSC 12.1.13 R to ■ SYSC 12.1.15 R only apply with respect to *groups* of the kind dealt with by whichever of those rules apply.

- 12.1.3 R This section does not apply to an ICVC.
- R 12.1.4
 - (1) This rule applies in respect of the following rules:
 - (a) SYSC 12.1.8R (2);
 - (b) SYSC 12.1.10R (1), so far as it relates to SYSC 12.1.8R (2);
 - (c) SYSC 12.1.10R (2); and
 - (d) SYSC 12.1.11 R to SYSC 12.1.15 R.
 - (2) The rules referred to in (1):
 - (a) only apply with respect to a *financial conglomerate* if it is a financial conglomerate of which notification has been made that it has been identified as a financial conglomerate as contemplated by regulation 2 of the Financial Groups Directive Regulations;
 - (b) [deleted]
 - (c) (so far as they apply with respect to a *financial conglomerate*) do not apply to a firm with respect to a financial conglomerate of which it is a member if the interest of the *financial conglomerate* in that firm is no more than a participation;
 - (d) (so far as they apply with respect to other groups) do not apply to a firm with respect to a group of which it is a member if the only relationship of the kind set out in paragraph (3) of the definition of group between it and the other members of the group is nothing more than a participation; and
 - (e) do not apply with respect to a third-country group.
- G 12.1.5

For the purpose of this section, a group is defined in the Glossary, and includes the whole of a firm's group, including financial and non-financial undertakings. It also covers undertakings with other links to group members if their omission from the scope of group risk systems and controls would be misleading. The scope of the *group* systems and controls requirements may therefore differ from the scope of the quantitative requirements for groups.

- 12.1.6 G
- Purpose The purpose of this chapter is to set out how the systems and control requirements imposed by SYSC (Senior Management Arrangements, Systems and Controls) apply where a firm is part of a group. If a firm is a member of a group, it should be able to assess the potential impact of risks arising from other parts of its group as well as from its own activities.
- 12.1.7 G [deleted]

General rules

- 12.1.8 R
- A firm must:
 - (1) have adequate, sound and appropriate risk management processes and internal control mechanisms for the purpose of assessing and

- managing its own exposure to group risk, including sound administrative and accounting procedures; and
- (2) ensure that its *group* has adequate, sound and appropriate risk management processes and internal control mechanisms at the level of the group, including sound administrative and accounting procedures.
- 12.1.9 For the purposes of ■ SYSC 12.1.8 R, the question of whether the risk management processes and internal control mechanisms are adequate, sound and appropriate should be judged in the light of the nature, scale and complexity of the group's business and of the risks that the group bears.
- 12.1.10 The internal control mechanisms referred to in ■ SYSC 12.1.8 R must include:
 - (1) mechanisms that are adequate for the purpose of producing any data and information which would be relevant for the purpose of monitoring compliance with any prudential requirements (including any reporting requirements and any requirements relating to capital adequacy, solvency, systems and controls and large exposures):
 - (a) to which the firm is subject with respect to its membership of a group; or
 - (b) that apply to or with respect to that group or part of it; and
 - (2) mechanisms that are adequate to monitor funding within the group.
- 12.1.10A G ■ SYSC 1.1A.2 G sets out the general principle that the FCA will apply provisions to the extent of its powers and regulatory responsibilities. ■ SYSC 12.1.10 R will, therefore, have limited application to a Solvency II firm.

Financial conglomerates

- Where this section applies with respect to a *financial conglomerate*, the risk 12.1.11 management processes referred to in ■ SYSC 12.1.8R (2) or, for a Solvency II firm, the risk management system referred to in the PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3, must include:
 - (1) sound governance and management processes, which must include the approval and periodic review by the appropriate managing bodies within the *financial conglomerate* of the strategies and policies of the *financial conglomerate* in respect of all the risks

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- assumed by the *financial conglomerate*, such review and approval being carried out at the level of the *financial conglomerate*;
- (2) adequate capital adequacy policies at the level of the *financial* conglomerate, one of the purposes of which must be to anticipate the impact of the business strategy of the *financial* conglomerate on its risk profile and on the capital adequacy requirements to which it and its members are subject;
- (3) adequate procedures for the purpose of ensuring that the risk monitoring systems of the *financial conglomerate* and its members are well integrated into their organisation;
- (4) adequate procedures for the purpose of ensuring that the systems and controls of the members of the *financial conglomerate* are consistent and that the risks can be measured, monitored and controlled at the level of the *financial conglomerate*; and
- (5) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans; a *firm* must update these arrangements regularly.

[Note: article 9(2) of the Financial Groups Directive]

12.1.12 R

Where this section applies with respect to a *financial conglomerate*, the internal control mechanisms referred to in ■ SYSC 12.1.8R (2) or, for a *Solvency II firm*, the internal control system referred to in the PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3, must include:

- (1) mechanisms that are adequate to identify and measure all material risks incurred by members of the *financial conglomerate* and appropriately relate capital in the *financial conglomerate* to risks; and
- (2) sound reporting and accounting procedures for the purpose of identifying, measuring, monitoring and controlling *intra-group* transactions and risk concentrations.

CRR firms and non-CRR firms that are parent financial holding companies in the United Kingdom or UK parent financial holding companies

12.1.13 R

If this *rule* applies under ■ SYSC 12.1.14 R to a *firm*, the *firm* must:

- (1) comply with SYSC 12.1.8R (2) in relation to any *UK consolidation* group of which it is a member, as well as in relation to its group; and
- (2) ensure that the risk management processes and internal control mechanisms at the level of any *consolidation group* of which it is a member comply with the obligations set out in the following provisions on a consolidated (or sub-consolidated) basis:
 - (a) SYSC 4.1.1 R and SYSC 4.1.2 R:
 - (b) SYSC 4.1.7 R;
 - (bA) SYSC 4.3A;
 - (c) SYSC 5.1.7 R;

- (e) [deleted]
- (f) [deleted];
- (g) [deleted];
- (h) [deleted];

[Note: article 109(2) of CRD]

(3) ensure that compliance with the obligations in (2) enables the consolidation group to have arrangements, processes and mechanisms that are consistent and well integrated and that any data relevant to the purpose of supervision can be produced.

[Note: article 109(2) of CRD]

12.1.14 R ■ SYSC 12.1.13 R applies to a *firm* that is:

- (1) [deleted]
- (2) a CRR firm; or
- (3) anon-CRR firm that is a parent financial holding company in the United Kingdom or a UK parent financial holding company.
- 12.1.15 R In the case of a firm that:
 - (1) is aCRR firm; and
 - (2) has a mixed-activity holding company as a parent undertaking;

the risk management processes and internal control mechanisms referred to in ■ SYSC 12.1.8 R must include sound reporting and accounting procedures and other mechanisms that are adequate to identify, measure, monitor and control transactions between the firm's parent undertaking mixed-activity holding company and any of the mixed-activity holding company's subsidiary undertakings.

12.1.15A R [deleted]

> Nature and extent of requirements and allocation of responsibilities within the group

12.1.18 G Assessment of the adequacy of a group's systems and controls required by this section will form part of the FCA's risk management process.

- The nature and extent of the systems and controls necessary under

 SYSC 12.1.8R (1) to address *group* risk will vary according to the materiality of those risks to the *firm* and the position of the *firm* within the *group*.
- In some cases the management of the systems and controls used to address the risks described in SYSC 12.1.8R (1) may be organised on a *group*-wide basis. If the *firm* is not carrying out those functions itself, it should delegate them to the *group* members that are carrying them out. However, this does not relieve the *firm* of responsibility for complying with its obligations under SYSC 12.1.8R (1). A *firm* cannot absolve itself of such a responsibility by claiming that any breach of that *rule* is caused by the actions of another member of the *group* to whom the *firm* has delegated tasks. The risk management arrangements are still those of the *firm*, even though personnel elsewhere in the *firm*'s *group* are carrying out these functions on its behalf.
- SYSC 12.1.8R (1) deals with the systems and controls that a *firm* should have in respect of the exposure it has to the rest of the *group*. On the other hand, the purpose of SYSC 12.1.8R (2) and the *rules* in this section that amplify it is to require *groups* to have adequate systems and controls. However a *group* is not a single legal entity on which obligations can be imposed. Therefore the obligations have to be placed on individual *firms*. The purpose of imposing the obligations on each *firm* in the *group* is to make sure that the *FCA* can take supervisory action against any *firm* in a *group* whose systems and controls do not meet the standards in this section. Thus responsibility for compliance with the *rules* for *group* systems and controls is a joint one.
- If both a *firm* and its *parent undertaking* are subject to SYSC 12.1.8R (2), the *FCA* would not expect systems and controls to be duplicated. In this case, the *firm* should assess whether and to what extent it can rely on its parent's *group* risk systems and controls.

Chapter 13

Operational risk: systems and controls for insurers



13.1 Application

- G ■ SYSC 13 applies to an *insurer* unless it is a *non-directive friendly society*. 13.1.1
- G 13.1.2 ■ SYSC 13 applies a Swiss general insurer only in respect of the activities of the firm carried on from a branch in the United Kingdom.

only in respect of the activities of the firm carried on from a branch in the United Kingdom.

- 13.1.3 G ■ SYSC 13 applies to a UK ISPV.
- 13.1.4 G ■ SYSC 13 does not apply to an *incoming ECA provider* acting as such.

13.2 Purpose

- SYSC 13 provides *guidance* on how to interpret SYSC 3.1.1 R and SYSC 3.2.6 R, which deal with the establishment and maintenance of systems and controls, in relation to the management of operational risk. Operational risk has been described by the Basel Committee on Banking Supervision as "the risk of loss, resulting from inadequate or failed internal processes, people and systems, or from external events". This chapter covers systems and controls for managing risks concerning any of a *firm*'s operations, such as its IT systems and *outsourcing* arrangements. It does not cover systems and controls for managing credit, market, liquidity and insurance risk.
- Operational risk is a concept that can have a different application for different *firms*. A *firm* should assess the appropriateness of the *guidance* in this chapter in the light of the scale, nature and complexity of its activities as well as its obligations as set out in *Principle* 3, to organise and control its affairs responsibly and effectively.
- A *firm* should take steps to understand the types of operational risk that are relevant to its particular circumstances, and the operational losses to which they expose the *firm*. This should include considering the potential sources of operational risk addressed in this chapter: people; processes and systems; external events.
- **13.2.4 G** [deleted]
- Operational risk can, amongst other things, lead to unfair treatment of consumers or lead to financial crime. A *firm* should consider all operational risk events that may affect these matters in establishing and maintaining its systems and controls.
- 13.2.4B G

13.3 Other related Handbook sections

- 13.3.1 G [deleted]
- G 13.3.1A The following is a non-exhaustive list of rules and guidance in the Handbook that are relevant to a firm's management of operational risk:
 - (1) COBS contains rules and guidance that can relate to the management of operational risk; for example, ■ COBS 2 (Conduct of business obligations), ■ COBS 4 (Communicating with clients, including financial promotions), ■ COBS 6 (Information about the firm, its services and remuneration), ■ COBS 7 (Insurance distribution), ■ COBS 9 (Suitability (including basic advice)(other than MiFID and insurance-based investment products)), ■ COBS 9A (Suitability (MiFID and insurancebased investment products provisions), COBS 10A (Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions), ■ COBS 11 (Dealing and managing), ■ COBS 12 (Investment research), ■ COBS 14 (Providing product information to clients) and ■ COBS 19 (Pensions: supplementary provisions).
- G 13.3.1B



13.4 Requirements to notify the appropriate regulator

- Under *Principle* 11 and ■SUP 15.3.1 R, a *firm* must notify the *FCA* immediately of any operational risk matter of which the *FCA* would reasonably expect notice. ■SUP 15.3.8 G provides *guidance* on the occurrences that this requirement covers, which include a significant failure in systems and controls and a significant operational loss.
- Regarding operational risk, matters of which the FCA would expect notice under *Principle* 11 include:
 - (1) any significant operational exposures that a firm has identified;
 - (2) the firm's invocation of a business continuity plan; and
 - (3) any other significant change to a *firm*'s organisation, infrastructure or business operating environment.

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13.5 Risk management terms

13.5.1

In this chapter, the following interpretations of risk management terms apply:

- (1) a firm's risk culture encompasses the general awareness, attitude and behaviour of its employees and appointed representatives or, where applicable, its tied agents, to risk and the management of risk within the organisation;
- (2) operational exposure means the degree of operational risk faced by a firm and is usually expressed in terms of the likelihood and impact of a particular type of operational loss occurring (for example, fraud, damage to physical assets);
- (3) a firm's operational risk profile describes the types of operational risks that it faces, including those operational risks within a firm that may have an adverse impact upon the quality of service afforded to its clients, and its exposure to these risks.

13.6 People

- A firm should consult SYSC 3.2.2 G to SYSC 3.2.5 G for guidance on reporting lines and delegation of functions within a firm and SYSC 3.2.13 G to SYSC 3.2.14 G for guidance on the suitability of employees and appointed representatives or, where applicable, its tied agents. This section provides additional guidance on management of employees and other human resources in the context of operational risk.
- 13.6.2 G A *firm* should establish and maintain appropriate systems and controls for the management of operational risks that can arise from *employees*. In doing so, a *firm* should have regard to:
 - (1) its operational risk culture, and any variations in this or its human resource management practices, across its operations (including, for example, the extent to which the compliance culture is extended to in-house IT staff);
 - (2) whether the way *employees* are remunerated exposes the *firm* to the risk that it will not be able to meet its regulatory obligations (see SYSC 3.2.18 G). For example, a *firm* should consider how well remuneration and performance indicators reflect the *firm*'s tolerance for operational risk, and the adequacy of these indicators for measuring performance;
 - (3) whether inadequate or inappropriate training of *client*-facing services exposes *clients* to risk of loss or unfair treatment including by not enabling effective communication with the *firm*;
 - (4) the extent of its compliance with applicable regulatory and other requirements that relate to the welfare and conduct of *employees*;
 - (5) its arrangements for the continuity of operations in the event of *employee* unavailability or loss;
 - (6) the relationship between indicators of 'people risk' (such as overtime, sickness, and *employee* turnover levels) and exposure to operational losses; and
 - (7) the relevance of all the above to *employees* of a third party supplier who are involved in performing an *outsourcing* arrangement. As necessary, a *firm* should review and consider the adequacy of the staffing arrangements and policies of a service provider.

Employee responsibilities

13.6.3

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A firm should ensure that all employees are capable of performing, and aware of, their operational risk management responsibilities, including by establishing and maintaining:

- (1) appropriate segregation of employees' duties and appropriate supervision of employees in the performance of their responsibilities (see ■ SYSC 3.2.5 G);
- (2) appropriate recruitment and subsequent processes to review the fitness and propriety of employees (see ■ SYSC 3.2.13 G and ■ SYSC 3.2.14 G);
- (3) clear policy statements and appropriate systems and procedures manuals that are effectively communicated to employees and available for employees to refer to as required. These should cover, for example, compliance, IT security and health and safety issues;
- (4) training processes that enable employees to attain and maintain appropriate competence; and
- (5) appropriate and properly enforced disciplinary and employment termination policies and procedures.

G 13.6.4

A firm should have regard to ■SYSC 13.6.3 G in relation to approved persons, people occupying positions of high personal trust (for example, security administration, payment and settlement functions); and people occupying positions requiring significant technical competence (for example, derivatives trading and technical security administration). A firm should also consider the rules and quidance for approved persons in other parts of the Handbook (including APER, COCON and SUP) and the rules and guidance on senior manager responsibilities in SYSC 2.1 (Apportionment of Responsibilities).



regard to:

13.7 Processes and systems

- A *firm* should establish and maintain appropriate systems and controls for managing operational risks that can arise from inadequacies or failures in its processes and systems (and, as appropriate, the systems and processes of third party suppliers, agents and others). In doing so a *firm* should have
 - (1) the importance and complexity of processes and systems used in the end-to-end operating cycle for products and activities (for example, the level of integration of systems);
 - (2) controls that will help it to prevent system and process failures or identify them to permit prompt rectification (including pre-approval or reconciliation processes);
 - (3) whether the design and use of its processes and systems allow it to comply adequately with regulatory and other requirements;
 - (4) its arrangements for the continuity of operations in the event that a significant process or system becomes unavailable or is destroyed; and
 - (5) the importance of monitoring indicators of process or system risk (including reconciliation exceptions, compensation payments for *client* losses and documentation errors) and experience of operational losses and exposures.

Internal documentation

13.7.2 G Internal documentation may enhance understanding and aid continuity of operations, so a *firm* should ensure the adequacy of its internal documentation of processes and systems (including how documentation is developed, maintained and distributed) in managing operational risk.

External documentation

- A firm may use external documentation (including contracts, transaction statements or advertising brochures) to define or clarify terms and conditions for its products or activities, its business strategy (for example, including through press statements), or its brand. Inappropriate or inaccurate information in external documents can lead to significant operational exposure.
- A *firm* should ensure the adequacy of its processes and systems to review external documentation prior to issue (including review by its compliance,

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- (1) compliance with applicable regulatory and other requirements;
- (2) the extent to which its documentation uses standard terms (that are widely recognised, and have been tested in the courts) or nonstandard terms (whose meaning may not yet be settled or whose effectiveness may be uncertain);
- (3) the manner in which its documentation is issued; and
- (4) the extent to which confirmation of acceptance is required (including by customer signature or counterparty confirmation).

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IT systems

13.7.5 G IT systems include the computer systems and infrastructure required for the automation of processes, such as application and operating system software; network infrastructure; and desktop, server, and mainframe hardware. Automation may reduce a firm's exposure to some 'people risks' (including by reducing human errors or controlling access rights to enable segregation of duties), but will increase its dependency on the reliability of its IT systems.

G 13.7.6

A firm should establish and maintain appropriate systems and controls for the management of its IT system risks, having regard to:

- (1) its organisation and reporting structure for technology operations (including the adequacy of senior management oversight);
- (2) the extent to which technology requirements are addressed in its business strategy;
- (3) the appropriateness of its systems acquisition, development and maintenance activities (including the allocation of responsibilities between IT development and operational areas, processes for embedding security requirements into systems); and
- (4) the appropriateness of its activities supporting the operation of IT systems (including the allocation of responsibilities between business and technology areas).

Information security

13.7.7

Failures in processing information (whether physical, electronic or known by employees but not recorded) or of the security of the systems that maintain it can lead to significant operational losses. A firm should establish and maintain appropriate systems and controls to manage its information security risks. In doing so, a firm should have regard to:

- (1) confidentiality: information should be accessible only to persons or systems with appropriate authority, which may require firewalls within a system, as well as entry restrictions;
- (2) integrity: safeguarding the accuracy and completeness of information and its processing;

SYSC 13/10

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- (3) availability and authentication: ensuring that appropriately authorised *persons* or systems have access to the information when required and that their identity is verified;
- (4) non-repudiation and accountability: ensuring that the *person* or system that processed the information cannot deny their actions.
- A *firm* should ensure the adequacy of the systems and controls used to protect the processing and security of its information, and should have regard to established security standards such as ISO17799 (Information Security Management).

Geographic location

- Operating processes and systems at separate geographic locations may alter a *firm*'s operational risk profile (including by allowing alternative sites for the continuity of operations). A *firm* should understand the effect of any differences in processes and systems at each of its locations, particularly if they are in different countries, having regard to:
 - (1) the business operating environment of each country (for example, the likelihood and impact of political disruptions or cultural differences on the provision of services);
 - (2) relevant local regulatory and other requirements regarding data protection and transfer;
 - (3) the extent to which local regulatory and other requirements may restrict its ability to meet regulatory obligations in the *United Kingdom* (for example, access to information by the *FCA* and local restrictions on internal or external audit); and
 - (4) the timeliness of information flows to and from its headquarters and whether the level of delegated authority and the risk management structures of the overseas operation are compatible with the *firm*'s head office arrangements.

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regard to:

13.8 **External events and other changes**

- 13.8.1 The exposure of a firm to operational risk may increase during times of significant change to its organisation, infrastructure and business operating environment (for example, following a corporate restructure or changes in regulatory requirements). Before, during, and after expected changes, a firm should assess and monitor their effect on its risk profile, including with
 - (1) untrained or de-motivated employees or a significant loss of employees during the period of change, or subsequently;
 - (2) inadequate human resources or inexperienced employees carrying out routine business activities owing to the prioritisation of resources to the programme or project;
 - (3) process or system instability and poor management information due to failures in integration or increased demand; and
 - (4) inadequate or inappropriate processes following business reengineering.
- 13.8.2 A firm should establish and maintain appropriate systems and controls for the management of the risks involved in expected changes, such as by ensuring:
 - (1) the adequacy of its organisation and reporting structure for managing the change (including the adequacy of senior management oversight);
 - (2) the adequacy of the management processes and systems for managing the change (including planning, approval, implementation and review processes); and
 - (3) the adequacy of its strategy for communicating changes in systems and controls to its employees.

Unexpected changes and business continuity management

13.8.3 ■ SYSC 3.2.19 G provides high level *quidance* on business continuity. This section provides additional guidance on managing business continuity in the context of operational risk.

SYSC 13/12

- The high level requirement for appropriate systems and controls at SYSC 3.1.1 R applies at all times, including when a business continuity plan is invoked. However, the *FCA* recognises that, in an emergency, a *firm* may be unable to comply with a particular *rule* and the conditions for relief are outlined in GEN 1.3 (Emergency).
- A firm should consider the likelihood and impact of a disruption to the continuity of its operations from unexpected events. This should include assessing the disruptions to which it is particularly susceptible (and the likely timescale of those disruptions) including through:
 - (1) loss or failure of internal and external resources (such as people, systems and other assets);
 - (2) the loss or corruption of its information; and
 - (3) external events (such as vandalism, war and "acts of God").
- A firm should implement appropriate arrangements to maintain the continuity of its operations. A firm should act to reduce both the likelihood of a disruption (including by succession planning, systems resilience and dual processing); and the impact of a disruption (including by contingency arrangements and insurance).
- 13.8.7 G A *firm* should document its strategy for maintaining continuity of its operations, and its plans for communicating and regularly testing the adequacy and effectiveness of this strategy. A *firm* should establish:
 - (1) formal business continuity plans that outline arrangements to reduce the impact of a short, medium or long-term disruption, including:
 - (a) resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;
 - (b) the recovery priorities for the firm's operations; and
 - (c) communication arrangements for internal and external concerned parties (including the FCA, clients and the press);
 - (2) escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;
 - (3) processes to validate the integrity of information affected by the disruption; and
 - (4) processes to review and update (1) to (3) following changes to the *firm*'s operations or risk profile (including changes identified through testing).
- The use of an alternative site for recovery of operations is common practice in business continuity management. A *firm* that uses an alternative site should assess the appropriateness of the site, particularly for location, speed of recovery and adequacy of resources. Where a site is shared, a *firm* should

evaluate the risk of multiple calls on shared resources and adjust its plans accordingly.

SYSC 13/14

13.9 Outsourcing

- As SYSC 3.2.4 G explains, a *firm* cannot contract out its regulatory obligations and should take reasonable care to supervise the discharge of outsourced functions. This section provides additional *guidance* on managing *outsourcing* arrangements (and will be relevant, to some extent, to other forms of third party dependency) in relation to operational risk. *Outsourcing* may affect a *firm*'s exposure to operational risk through significant changes to, and reduced control over, people, processes and systems used in outsourced activities.
- Firms should take particular care to manage material outsourcing arrangements and, as SUP 15.3.8 G (1)(e) explains, a firm should notify the FCA when it intends to enter into a material outsourcing arrangement.
- A *firm* should not assume that because a service provider is either a regulated *firm* or an intra-group entity an *outsourcing* arrangement with that provider will, in itself, necessarily imply a reduction in operational risk.
- Before entering into, or significantly changing, an *outsourcing* arrangement, a *firm* should:
 - (1) analyse how the arrangement will fit with its organisation and reporting structure; business strategy; overall risk profile; and ability to meet its regulatory obligations;
 - (2) consider whether the agreements establishing the arrangement will allow it to monitor and control its operational risk exposure relating to the *outsourcing*;
 - (3) conduct appropriate due diligence of the service provider's financial stability and expertise;
 - (4) consider how it will ensure a smooth transition of its operations from its current arrangements to a new or changed outsourcing arrangement (including what will happen on the termination of the contract); and
 - (5) consider any concentration risk implications such as the business continuity implications that may arise if a single service provider is used by several *firms*.

In negotiating its contract with a service provider, a firm should have regard

- (1) reporting or notification requirements it may wish to impose on the service provider;
- (2) whether sufficient access will be available to its internal auditors, external auditors or actuaries (see section 341 of the Act) and to the FCA (see ■ SUP 2.3.5 R (Access to premises) and ■ SUP 2.3.7 R (Suppliers under material outsourcing arrangements);
- (3) information ownership rights, confidentiality agreements and *Chinese* walls to protect client and other information (including arrangements at the termination of the contract);
- (4) the adequacy of any guarantees and indemnities;
- (5) the extent to which the service provider must comply with the firm's policies and procedures (covering, for example, information security);
- (6) the extent to which a service provider will provide business continuity for outsourced operations, and whether exclusive access to its resources is agreed;
- (7) the need for continued availability of software following difficulty at a third party supplier;
- (8) the processes for making changes to the outsourcing arrangement (for example, changes in processing volumes, activities and other contractual terms) and the conditions under which the firm or service provider can choose to change or terminate the outsourcing arrangement, such as where there is:
 - (a) a change of ownership or control (including insolvency or receivership) of the service provider or firm; or
 - (b) significant change in the business operations (including subcontracting) of the service provider or firm; or
 - (c) inadequate provision of services that may lead to the firm being unable to meet its regulatory obligations.

13.9.6

In implementing a relationship management framework, and drafting the service level agreement with the service provider, a firm should have regard

- (1) the identification of qualitative and quantitative performance targets to assess the adequacy of service provision, to both the firm and its clients, where appropriate;
- (2) the evaluation of performance through service delivery reports and periodic self certification or independent review by internal or external auditors; and
- (3) remedial action and escalation processes for dealing with inadequate performance.

SYSC 13 : Operational risk: systems and controls for insurers

- In some circumstances, a *firm* may find it beneficial to use externally validated reports commissioned by the service provider, to seek comfort as to the adequacy and effectiveness of its systems and controls. The use of such reports does not absolve the *firm* of responsibility to maintain other oversight. In addition, the *firm* should not normally have to forfeit its right to access, for itself or its agents, to the service provider's premises.
- A *firm* should ensure that it has appropriate contingency arrangements to allow business continuity in the event of a significant loss of services from the service provider. Particular issues to consider include a significant loss of resources at, or financial failure of, the service provider, and unexpected termination of the *outsourcing* arrangement.
- 13.9.9 G

 (1) Parts of the *guidance* in SYSC 13.9 do not apply to a *Solvency II firm*. They are SYSC 13.9.3G, SYSC 13.9.4G(1), (2), (4) and (5) and SYSC 13.9.5G(6).
 - (2) A *Solvency II firm* is subject to the outsourcing requirements in PRA Rulebook: Solvency II firms: Conditions Governing Business 7.
 - (3) The Solvency II Regulation (EU) 2015/35 of 10 October 2014 (article 274) also imposes specific requirements on *firms* which outsource, or propose to outsource, functions or insurance activities.
 - (4) EIOPA guidelines on systems of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN) include guidelines on, or relating to, outsourcing.
 - (5) The FCA will take the requirements and guidelines in (2) to (4) into account when considering a *firm's* outsourcing arrangements.



13.10 **Insurance**

- 13.10.1 Whilst a firm may take out insurance with the aim of reducing the monetary impact of operational risk events, non-monetary impacts may remain (including impact on the firm's reputation). A firm should not assume that insurance alone can replace robust systems and controls.
- 13.10.2 G When considering utilising insurance, a firm should consider:
 - (1) the time taken for the *insurer* to pay claims (including the potential time taken in disputing cover) and the firm's funding of operations whilst awaiting payment of claims;
 - (2) the financial strength of the insurer, which may determine its ability to pay claims, particularly where large or numerous small claims are made at the same time; and
 - (3) the effect of any limiting conditions and exclusion clauses that may restrict cover to a small number of specific operational losses and may exclude larger or hard to quantify indirect losses (such as lost business or reputational costs).

Senior arrangements, Systems and Controls

Chapter 14

Risk management and associated systems and controls for insurers

14.1 Application

- 14.1.1 This section applies to an insurer unless it a non-directive friendly society.
- 14.1.2 R This section applies to a Swiss general insurer only in respect of the activities of the firm carried on from a branch in the United Kingdom.
- 14.1.2A This section does not apply to:
 - (1) an incoming ECA provider acting as such; or
 - (2) a firm in relation to benchmark activities.
- 14.1.2AA R This section applies to a UK ISPV.

Internal controls: introduction

- 14.1.27 R A firm must take reasonable steps to establish and maintain adequate internal controls.
- G 14.1.28 The precise role and organisation of internal controls can vary from firm to firm. However, a firm's internal controls should normally be concerned with assisting its governing body and relevant senior managers to participate in ensuring that it meets the following objectives:
 - (1) safeguarding both the assets of the firm and its customers, as well as identifying and managing liabilities;
 - (2) maintaining the efficiency and effectiveness of its operations;
 - (3) ensuring the reliability and completeness of all accounting, financial and management information; and
 - (4) ensuring compliance with its internal policies and procedures as well as all applicable laws and regulations.

SYSC 14: Risk management and associated systems and controls for insurers

14.1.29A G



When determining the adequacy of its internal controls, a firm should consider both the potential risks that might hinder the achievement of the objectives listed in ■ SYSC 14.1.28 G, and the extent to which it needs to control these risks. More specifically, this should normally include consideration of:

- (1) the appropriateness of its reporting and communication lines (see ■ SYSC 3.2.2 G);
- (2) how the delegation or contracting of functions or activities to employees, appointed representatives or, where applicable, its tied agents or other third parties (for example outsourcing) is to be monitored and controlled (see ■ SYSC 3.2.3 G to ■ SYSC 3.2.4 G and the additional guidance on the management of outsourcing arrangements is also provided in ■ SYSC 13.9);
- (3) the risk that a firm's employees or contractors might accidentally or deliberately breach a firm's policies and procedures (see ■ SYSC 13.6.3 G);
- (4) the need for adequate segregation of duties (see SYSC 3.2.5 G);
- (5) the establishment and control of risk management committees;
- (6) the need for risk assessment and the establishment of a risk assessment function (see ■ SYSC 3.2.10 G);
- (7) the need for internal audit and the establishment of an internal audit function and audit committee (see ■ SYSC 3.2.15 G to ■ SYSC 3.2.16 G).

14.1.29B G

- (1) SYSC 14.1.29G(6) does not apply to a Solvency II firm.
- (2) SYSC 14.1.29G(7) does not apply to a Solvency II firm, but only in relation to references to the internal audit function. It does apply to a Solvency II firm in relation to references to the internal audit committee.
- (3) For Solvency II firms, the PRA has made rules implementing the governance provisions of the Solvency II Directive relating to internal controls (article 46), see PRA Rulebook: Solvency II firms: Conditions Governing Business.
- (4) The Solvency II Regulation (EU) 2015/35 of 10 October 2014 also imposes specific requirements (see articles 266, 267 and 270).
- (5) The FCA will take the rules and requirements in (3) and (4) into account when considering a Solvency II firm's internal controls.

Senior arrangements, Systems and Controls

Chapter 15

Credit risk management systems and controls for insurers

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Senior arrangements, Systems and Controls

Chapter 15A

Operational resilience

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15A.1 Application

Application

- 15A.1.1 This chapter applies to:
 - (1) a firm that is:
 - (a) an enhanced scope SMCR firm;
 - (b) a bank;
 - (c) a designated investment firm;
 - (d) a building society;
 - (e) a Solvency II firm,
 - (2) a UK RIE; and
 - (3) an electronic money institution, a payment institution or a registered account information service provider.
- 15A.1.2 R In this chapter, a reference to a firm includes a UK RIE, an electronic money institution, a payment institution and a registered account information service provider.
- 15A.1.3 This chapter does not apply to a TP firm, a TA PI firm, TA RAISP firm or a TA EMI firm.
- 15A.1.4 This chapter does not apply to a firm which has its registered office (or, if it has no registered office, its head office) outside the United Kingdom.
- 15A.1.5 In this chapter, a reference to a *client* in relation to a *UK RIE* includes a person who is entitled, under an arrangement or agreement between them and that UK RIE, to use the UK RIE's facilities.
- 15A.1.6 R In this chapter, a reference to a *client* in relation to a *firm* carrying on the activity of managing a UK UCITS or managing an AIF includes:
 - (1) a unitholder; and
 - (2) an investor in an AIF.

15A.1.7 R The requirements in this chapter apply with respect to:

- (1) regulated activities;
- (2) activities that constitute dealing in investments as principal, disregarding the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc.);
- (3) ancillary activities;
- (4) in relation to MiFID or equivalent third country business, ancillary services;
- (5) collective portfolio management;
- (6) the provision of payment services and the issuance of electronic money, and activities connected to the provision of payment services and to the issuing of electronic money (whether or not the activity of issuing electronic money is specified in article 9B of the Regulated Activities Order); and
- (7) any other unregulated activities, but only in a prudential context.
- Notwithstanding SYSC 15A.1.7R, where the requirements in this chapter apply to a *firm* only as a result of SYSC 15A.1.1R(3), the requirements only apply to the provision of *payment services* and the issuance of *electronic money* by the *firm*, and activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of issuing *electronic money* is specified in article 9B of the *Regulated Activities Order*).
- 15A.1.9 R There is no territorial limitation on the application of this chapter.

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Operational resilience 15A.2 requirements

Important business services

- 15A.2.1 R A firm must identify its important business services.
- 15A.2.2 A firm must keep its compliance with ■ SYSC 15A.2.1R under review and, in particular, consider its compliance in the following circumstances:
 - (1) if there is a material change to the firm's business or the market in which it operates; and
 - (2) in any event, no later than 1 year after it last carried out the relevant assessment.
- 15A.2.3 In the course of identifying its important business services under ■ SYSC 15A.2.1R, a firm should treat each distinct relevant service separately, and should not identify a collection of services as a single important business service.
- 15A.2.4 G The factors that a *firm* should consider when identifying its *important* business services include, but are not limited to:
 - (1) the nature of the *client* base, including any vulnerabilities that would make the person more susceptible to harm from a disruption;
 - (2) the ability of *clients* to obtain the service from other providers (substitutability, availability and accessibility);
 - (3) the time criticality for *clients* receiving the service;
 - (4) the number of *clients* to whom the service is provided;
 - (5) the sensitivity of data held;
 - (6) potential to inhibit the functioning of the UK financial system;
 - (7) the firm's potential to impact the soundness, stability or resilience of the UK financial system;
 - (8) the possible impact on the firm's financial position and potential to threaten the firm's viability where this could harm the firm's clients or

- pose a risk to the soundness, stability or resilience of the UK financial system or the orderly operation of the financial markets;
- (9) the potential to cause reputational damage to the firm, where this could harm the firm's clients or pose a risk to the soundness, stability or resilience of the UK financial system or the orderly operation of the financial markets:
- (10) whether disruption to the services could amount to a breach of a legal or regulatory obligation;
- (11) the level of inherent conduct and market risk;
- (12) the potential to cause knock-on effects for other market participants, particularly those that provide financial market infrastructure or critical national infrastructure; and
- (13) the importance of that service to the UK financial system, which may include market share, client concentration and sensitive clients (for example, governments or pension funds).

......

Impact tolerances

- 15A.2.5 R A firm must, for each of its important business services, set an impact tolerance.
- 15A.2.6 \mathbf{R} A firm must keep its compliance with SYSC 15A.2.5R under review and, in particular, consider its compliance in the following circumstances:
 - (1) if there is a material change to the firm's business or the market in which it operates; and
 - (2) in any event, no later than 1 year after it last carried out the relevant assessment.
- 15A.2.7 G The factors that a *firm* should consider when setting its *impact tolerance* include, but are not limited to:
 - (1) the nature of the *client* base, including any vulnerabilities that would make the person more susceptible to harm from a disruption;
 - (2) the number of *clients* that may be adversely impacted and the nature of the impact;
 - (3) the potential financial loss to *clients*;
 - (4) the potential financial loss to the firm where this could harm the firm's clients or pose a risk to the soundness, stability or resilience of the UK financial system or the orderly operation of the financial markets;
 - (5) the potential level of reputational damage to the firm where this could harm the firm's clients or pose a risk to the soundness, stability or resilience of the UK financial system or the orderly operation of the financial markets:

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- (6) the potential impact on market or consumer confidence;
- (7) potential spread of risks to their other business services, other firms or the UK financial system;
- (8) the potential loss of functionality or access for *clients*;
- (9) any potential loss of confidentiality, integrity or availability of data;
- (10) the potential aggregate impact of disruptions to multiple important business services, in particular where such services rely on common operational resources as identified by the firm's mapping exercise under ■ SYSC 15A.4.1R.
- 15A.2.8 When setting its impact tolerance, a firm should take account of the fluctuations in demand for its *important business service* at different times of the day and throughout the year in order to ensure that its *impact tolerance* reflects these fluctuations and is appropriate in light of the peak demand for the important business service.
- 15A.2.9 A firm must ensure it can remain within its impact tolerance for each important business service in the event of a severe but plausible disruption to its operations.
- 15A.2.10 While under SYSC 15A.2.9R a firm must ensure it is able to remain within its impact tolerance, it should generally not do so if this would put the firm in breach of another regulatory obligation, conflict with the proper exercise of a discretion granted to it under any rule or regulation, or result in increased risk of harm to its *clients* or the soundness, stability or resilience of the *UK* financial system or the orderly operation of the financial markets. Under certain circumstances, a *firm* may wish to resume a degraded service. This is usually only appropriate if having regard to the interest of the firm's clients, the soundness, stability and resilience of the UK financial system and the orderly operation of the financial markets, the benefits of resuming a degraded service outweigh the negatives of keeping the service unavailable until the issues have been fully remediated and the service is able to be fully restored to its pre-disruption levels.
- 15A.2.11 G Under Principle 11 (Relations with regulators), the FCA expects to be notified of any failure by a firm to meet an impact tolerance.
- 15A.2.12 G When setting *impact tolerances* under ■ SYSC 15A.2.5R a *payment services* provider should have regard to its obligations under the EBA Guidelines on ICT and security risk management.
- 15A.2.13 G Payment service providers should have regard to the impact tolerance set under ■ SYSC 15A.2.5R when complying with the EBA Guidelines on ICT and security risk management. In particular, they should, as part of their continuity planning and testing, consider their ability to remain within their impact tolerance through a range of severe but plausible disruption scenarios.

15A.3 Strategies, processes and systems

- A firm must have in place sound, effective and comprehensive strategies, processes and systems to enable it to comply with its obligations under this chapter.
- The strategies, processes and systems required under SYSC 15A.3.1R must be comprehensive and proportionate to the nature, scale and complexity of the *firm's* activities.

15A



15A.4 Mapping

- 15A.4.1 A firm must identify and document the people, processes, technology, facilities and information necessary to deliver each of its important business services. This must be sufficient to allow the firm to identify vulnerabilities and remedy these as appropriate.
- 15A.4.2 G Where a firm relies on a third party for the delivery of an important business service, we would expect the firm to have sufficient understanding of the people, processes, technology, facilities, and information that support the provision by the third party of its services to or on behalf of the firm so as to allow the *firm* to comply with its obligations under ■ SYSC 15A.4.1R.
- 15A.4.3 A firm must keep its compliance with SYSC 15A.4.1R under review and, in particular, review its compliance in the following circumstances:
 - (1) if there is a material change to the firm's business, the important business services identified in accordance with ■ SYSC 15A.2.1R or impact tolerances set in accordance with ■ SYSC 15A.2.5R; and
 - (2) in any event, no later than 1 year after it last carried out the relevant assessment.

15A.5 Scenario testing

Testing plan

15A.5.1 R A firm must develop and keep up to date a testing plan that appropriately details how it will gain assurance that it can remain within the *impact* tolerances for each of its important business services.

.....

15A.5.2 G Firms should ensure that the testing plan takes account of a number of factors, including but not limited to:

- (1) the type of scenario testing undertaken. For example, whether it is paper based, simulations or through the use of live-systems;
- (2) the scenarios which the firm expects to be able to remain within their impact tolerances and which ones they may not;
- (3) the frequency of the testing;
- (4) the number of important business services tested;
- (5) the availability and integrity of supporting assets;
- (6) how the firm would communicate with internal and external stakeholders effectively to reduce the harm caused by operational disruptions.

15A.5.3

Testing A firm must carry out scenario testing, to assess its ability to remain within its impact tolerance for each of its important business services in the event of a severe but plausible disruption of its operations.

15A.5.4 R In carrying out the scenario testing, a firm must identify an appropriate range of adverse circumstances of varying nature, severity and duration relevant to its business and risk profile and consider the risks to the delivery of the firm's important business services in those circumstances.

15A.5.5

Where a firm relies on a third party for the delivery of its important business services, we would expect the firm to work with the third party to ensure the validity of the *firm's* scenario testing under ■ SYSC 15A.5.3R. To the extent that the *firm* relies on the third party to carry out testing of the services provided by the third party to or on behalf of the firm, the firm should ensure the suitability of the methodologies, scenarios and considerations

adopted by the third party in carrying out testing. The firm is ultimately responsible for the quality and accuracy of any testing carried out, whether by the *firm* or by a third party.

15A.5.6

G

In carrying out the scenario testing, a firm should, among other things, consider the following scenarios:

- (1) corruption, deletion or manipulation of data critical to the delivery of its important business services;
- (2) unavailability of facilities or key people;
- (3) unavailability of third party services, which are critical to the delivery of its important business services;
- (4) disruption to other market participants, where applicable; and
- (5) loss or reduced provision of technology underpinning the delivery of important business services.

15A.5.7

A firm must carry out the scenario testing:

- (1) if there is a material change to the firm's business, the important business services identified in accordance with ■ SYSC 15A.2.1R or impact tolerances set in accordance with ■ SYSC 15A.2.5R;
- (2) following improvements made by the firm in response to a previous test; and
- (3) in any event, on a regular basis.

Lessons learned

15A.5.8

R

A firm must, following scenario testing or, in the event of an operational disruption, after such event, conduct a lessons learned exercise that allows the firm to identify weaknesses and take action to improve its ability to effectively respond and recover from future disruptions.

15A.5.9 R

Following the lessons learned exercise, a firm must make necessary improvements to address weaknesses identified to ensure that it can remain within its *impact tolerances* in accordance with ■ SYSC 15A.2.9R.



15A.6 Self-assessment and lessons learned exercise documentation

15A.6.1 R

A *firm* must make, and keep up to date, a written record of its assessment of its compliance with the requirements in this chapter, including, but not limited to, a written record of:

- (1) important business services identified by the firm and the justification for the determination made:
- (2) the *firm's impact tolerances* and the justification for the level at which they have been set by the *firm*;
- (3) the *firm's* approach to mapping under SYSC 15A.4.1R, including how the *firm* has used mapping to:
 - (a) identify the people, processes, technology, facilities and information necessary to deliver each of its *important business* services;
 - (b) identify vulnerabilities; and
 - (c) support scenario testing;
- (4) the firm's testing plan and a justification for the plan adopted;
- (5) details of the scenario testing carried out as part of its obligations under SYSC 15A.5, including a description and justification of the assumptions made in relation to scenario design and any identified risks to the *firm's* ability to meet its *impact tolerances*;
- (6) any lessons learned exercise conducted under SYSC 15A.5.8R;
- (7) an identification of the vulnerabilities that threaten the *firm's* ability to deliver its *important business services* within the *impact tolerances* set, including the actions taken or planned and justifications for their completion time;
- (8) its communication strategy under SYSC 15A.8.1R and an explanation of how it will enable it to reduce the anticipated harm caused by operational disruptions; and
- (9) the methodologies used to undertake the above activities.

15A.6.2

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A firm must retain each version of the records referred to in \blacksquare SYSC 15A.6.1R for at least 6 years and, on request, provide these to the FCA.



15A.7 **Governance**

15A.7.1



A *firm* must ensure that its *governing body* approves and regularly reviews the written records required under ■ SYSC 15A.6 (Self-assessment and lessons learned exercise documentation).

15A.8 Communications

- A *firm* must maintain an internal and external communication strategy to act quickly and effectively to reduce the anticipated harm caused by operational disruptions.
- 15A.8.2 G As part of a *firm's* communications strategy, the *FCA* expects the *firm* to:
 - (1) consider, in advance of a disruption, how it would provide important warnings or advice quickly to *clients* and other stakeholders, including where there is no direct line of communication;
 - (2) use effective communication to gather information about the cause, extent, and impact of operational incidents; and
 - (3) ensure that their choice of communication method takes account of the circumstances, needs and vulnerabilities of their *clients* and other stakeholders.
- 15A.8.3 R A firm must provide clear, timely and relevant communications to stakeholders in the event of an operational disruption.

15A



15A.9 **Supervisory review and feedback**

- 15A.9.1 The FCA may provide individual *guidance* as to whether a *firm's* compliance with this chapter is adequate and, if necessary, require a firm to take the necessary actions or steps to address any failure to meet the requirements in this chapter.
- 15A.9.2 G A firm should have regard to the views provided by the FCA in relation to the firm's compliance. If a firm considers that any individual guidance given to it is inappropriate to its circumstances it should, consistent with *Principle* 11 (Relations with regulators), inform the FCA that it disagrees with that quidance. The FCA may reissue the individual quidance if, after discussion with the firm, the FCA concludes that the appropriate actions or steps a firm should take is different from that initially suggested by the FCA.
- 15A.9.3 If, after discussion, the FCA and a firm still do not agree, the FCA may consider other tools available to it, including its powers under sections 55J and 55L of the Act on its own initiative to require the firm to take specific steps in line with the FCA's view to comply with the requirements in this chapter.

Senior arrangements, Systems and Controls

Chapter 16

Market risk management systems and controls for insurers

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Senior arrangements, Systems and Controls

Chapter 17

Insurance risk systems and controls

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Senior arrangements, Systems and Controls

Chapter 18

Whistleblowing

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18.1 **Application and purpose**

Application

18.1.1 G

[deleted]

18.1.1A R

This chapter applies to:

- (1) a firm;
- (2) in relation to the *guidance* in SYSC 18.3.9G, every *firm*;
- (3) in relation to SYSC 18.3.6R and SYSC 18.3.10R, EEA SMCR banking firms and overseas SMCR banking firms only in relation to a branch maintained by them in the United Kingdom; and
- (4) in relation to SYSC 18.6.1R to SYSC 18.6.3G (Whistleblowing obligations under MiFID):
 - (a) a UK MiFID investment firm, except a collective portfolio management firm; and
 - (b) a third country investment firm; and
- (5) in relation to SYSC 18.6.4G to SYSC 18.6.5G (Whistleblowing obligations under other EU legislation), a person within the scope of the identified EU sectoral and cross-sectoral legislation.

18.1.1AA G

Firms are reminded that for the purpose of ■ SYSC 18 (except for SYSC 18.3.9G) "firm" has the specific meaning set out in paragraph (8) of that definition in the *Glossary*, namely:

- (a) "(8) (in SYSC 18, with the exception of the *guidance* in ■ SYSC 18.3.9G):
 - (a) a UK SMCR banking firm except a small deposit taker; and
- (b) a firm as referred to in Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing Instrument 2015."

18.1.1B

In this chapter, a reference to a provision of the Employment Rights Act 1996 includes a reference to the corresponding provision of the Employment Rights (Northern Ireland) Order 1996.

18.1.1C

G

A firm not referred to in SYSC 18.1.1AR may adopt the *rules* and *guidance* in this chapter as best practice. If so, it may tailor its approach in a manner that reflects its size, structure and headcount.

Purpose

18.1.2 G

- (1) The purposes of this chapter are to:
 - (a) set out the requirements on *firms* in relation to the adoption, and communication to *UK*-based *employees*, of appropriate internal procedures for handling *reportable concerns* made by *whistleblowers* as part of an effective risk management system (SYSC 18.3);

.....

- (b) set out the role of the whistleblowers' champion (■ SYSC 18.4);
- (c) require firms to ensure that settlement agreements expressly state that workers may make protected disclosures (■ SYSC 18.5) and do not include warranties related to protected disclosures;
- (ca) set out the requirements which implemented the whistleblowing obligation under article 73(2) of MiFID, which requires MiFID investment firms (except collective portfolio management firms) to have in place appropriate procedures for their employees to report potential or actual infringements of the MiFID regime (

 SYSC 18.6);
- (cb) outline other *EU*-derived whistleblowing obligations similar to those in article 73(2) of *MiFID*, some of which may also be applicable to *MiFID* investment firms (■ SYSC 18.6);
- (d) outline best practice for *firms* which are not required to apply the measures set out in this chapter but which wish to do so; and
- (e) outline the link between effective whistleblowing measures and fitness and propriety.
- (2) [deleted]

18.1.3 G

[deleted]

18



18.3 **Internal arrangements**

Arrangements to be appropriate and effective

- 18.3.1 R
- (1) A firm must establish, implement and maintain appropriate and effective arrangements for the disclosure of reportable concerns by whistleblowers.
- (2) The arrangements in (1) must at least:
 - (a) be able effectively to handle disclosures of reportable concerns including:
 - (i) where the whistleblower has requested confidentiality or has chosen not to reveal their identity; and
 - (ii) allowing for disclosures to be made through a range of communication methods:
 - (b) ensure the effective assessment and escalation of reportable concerns by whistleblowers where appropriate, including to the FCA or PRA;
 - (c) include reasonable measures to ensure that if a reportable concern is made by a whistleblower no person under the control of the firm engages in victimisation of that whistleblower;
 - (d) provide feedback to a whistleblower about a reportable concern made to the firm by that whistleblower, where this is feasible and appropriate;
 - (e) include the preparation and maintenance of:
 - (i) appropriate records of reportable concerns made by whistleblowers and the firm's treatment of these reports including the outcome; and
 - (ii) up-to-date written procedures that are readily available to the firm's UK-based employees outlining the firm's processes for complying with this chapter;
 - (f) include the preparation of the following reports:
 - (i) a report made at least annually to the firm's governing body on the operation and effectiveness of its systems and controls in relation to whistleblowing (see ■ SYSC 18.3.1R); this report must maintain the confidentiality of individual whistleblowers: and
 - (ii) prompt reports to the FCA about each case the firm contested but lost before an employment tribunal where the claimant successfully based all or part of their claim on either detriment suffered as a result of making a protected

disclosure in breach of section 47B of the Employment Rights Act 1996 or being unfairly dismissed under section 103A of the Employment Rights Act 1996;

- (g) include appropriate training for:
 - (i) UK-based employees;
 - (ii) managers of UK-based employees wherever the manager is based; and
 - (iii) employees responsible for operating the firms' internal arrangements.

G 18.3.2

- (1) When establishing internal arrangements in line with SYSC 18.3.1R a firm may:
 - (a) draw upon relevant resources prepared by whistleblowing charities or other recognised standards setting organisations; and
 - (b) consult with its *UK*-based *employees* or those representing these employees.
- (2) In considering if a firm has complied with SYSC 18.3.1R the FCA will take into account whether the firm has applied the measures in (1).
- (3) A firm may wish to clarify in its written procedures for the purposes of ■ SYSC 18.3.1R(2)(e)(ii), that:
 - (a) there may be other appropriate routes for some issues, such as employee grievances or consumer complaints, but internal arrangements as set out in ■ SYSC 18.3.1R(2) can be used to blow the whistle after alternative routes have been exhausted, in relation to the effectiveness or efficiency of the routes; and
 - (b) nothing prevents firms taking action against those who have made false and malicious disclosures.

18.3.3 G

- (1) A firm may wish to operate its arrangements under SYSC 18.3.1R internally, within its group or through a third party.
- (2) Firms will have to consider how to manage any conflicts of interest.
- (3) If the firm uses another member of its group or a third party to operate its arrangements under ■ SYSC 18.3.1R it will continue to be responsible for complying with that rule.

Training and development

18.3.4 G

A firm's training and development in line with ■ SYSC 18.3.1R(2)(g) should include:

- (1) for all UK-based employees:
 - (a) a statement that the firm takes the making of reportable concerns seriously;
 - (b) a reference to the ability to report reportable concerns to the firm and the methods for doing so;

- (c) examples of events that might prompt the making of a reportable concern;
- (d) examples of action that might be taken by the firm after receiving a reportable concern by a whistleblower, including measures to protect the whistleblower's confidentiality; and information about sources of external support such as whistleblowing charities;
- (2) for all managers of UK-based employees wherever the manager is based:
 - (a) how to recognise when there has been a disclosure of a reportable concern by a whistleblower;
 - (b) how to protect whistleblowers and ensure their confidentiality is preserved:
 - (c) how to provide feedback to a whistleblower, where appropriate;
 - (d) steps to ensure fair treatment of any person accused of wrongdoing by a whistleblower; and
 - (e) sources of internal and external advice and support on the matters referred to in (a) to (d);
- (3) all employees of the firm, wherever they are based, responsible for operating the *firm's* arrangements under SYSC 18.3.1R, how to:
 - (a) protect a whistleblower's confidentiality;
 - (b) assess and grade the significance of information provided by whistleblowers; and
 - (c) assist the whistleblowers' champion (see SYSC 18.4) when asked to do so.
- G 18.3.5

Where a *firm* operates its arrangements under ■ SYSC 18.3.1R through another member of its group or a third party it should consider providing the training referred to in ■ SYSC 18.3.4G(3) to the *persons* operating the arrangements by the group member or third party.

Reporting of concerns by employees to regulators

18.3.6 R

This rule applies to an EEA SMCR banking firm and an overseas SMCR banking firm.

- (1) A person subject to this rule ('P') must, in the manner described in (2), communicate to its UK-based employees that they may disclose reportable concerns to the PRA or the FCA and the methods for doing so. P must make clear that:
 - (a) reporting to the PRA or to the FCA is not conditional on a report first being made using P's internal arrangements;
 - (b) it is possible to report using P's internal arrangements and also to the PRA or FCA; these routes may be used simultaneously or consecutively; and
 - (c) it is not necessary for a disclosure to be made to P in the first instance.
- (2) The communication in (1) must be included in the firm's employee handbook or other equivalent document.

- **18.3.6A G** [deleted]
- 18.3.7 Firms must ensure that their appointed representatives or, where applicable, their tied agents, inform any of their UK-based employees who are workers that, as workers, they may make protected disclosures to the FCA.

Appointed representatives and tied agents

Firms are encouraged to invite their appointed representatives or, where applicable, their tied agents to consider adopting appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the FCA or PRA.

Link to fitness and propriety

The FCA would regard as a serious matter any evidence that a firm had acted to the detriment of a whistleblower. Such evidence could call into question the fitness and propriety of the firm or relevant members of its staff, and could therefore, if relevant, affect the firm's continuing satisfaction of threshold condition 5 (Suitability) or, for an approved person or a certification employee, their status as such.

Additional rules for UK branches

- 18.3.10 R
- (1) This rule applies where an EEA SMCR banking firm or an overseas SMCR banking firm has:

- (a) a branch in the United Kingdom; and
- (b) a group entity which is a UK SMCR banking firm.
- (2) An EEA SMCR banking firm and an overseas SMCR banking firm must, in the manner described in (3), communicate to the UK-based employees of its UK branch:
 - (a) the whistleblowing arrangements of the *group* entity that is a *UK SMCR banking firm*; and
 - (b) indicate that these arrangements may be used by *employees* of its *UK branch*.
- (3) The communication in (2) must be included in the *branch's* employee handbook or other equivalent *document*.

18



18.4 The whistleblowers' champion

- G 18.4.1
- (1) A UK SMCR banking firm is required under SYSC 24.2.1R to allocate the FCA-prescribed senior management responsibility for acting as the firm's whistleblowers' champion.
- (2) SYSC 18.4.2R requires the appointment by an insurer of a director or senior manager as its whistleblowers' champion.
- (3) This section sets out the role of the whistleblowers' champion.
- (4) The FCA expects that a firm will appoint a non-executive director as its whistleblowers' champion. A firm that does not have a nonexecutive director would not be expected to appoint one just for this purpose.
- 18.4.2 R An insurer must appoint a director or senior manager as its whistleblowers' champion.
- 18.4.3 R A firm must assign the responsibilities set out in ■ SYSC 18.4.4R to its whistleblowers' champion.
- 18.4.4 A firm must allocate to the whistleblowers' champion the responsibility for ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing (see ■ SYSC 18.3 (Internal Arrangements)) including those policies and procedures intended to protect whistleblowers from being victimised because they have disclosed reportable concerns.
- 18.4.5 G The whistleblowers' champion:
 - (1) should have a level of authority and independence within the firm and access to resources (including access to independent legal advice and training) and information sufficient to enable him to carry out that responsibility;
 - (2) need not have a day-to-day operational role handling disclosures from whistleblowers: and
 - (3) may be based anywhere provided he can perform his function effectively.

The role of a *whistleblowers' champion*, before the introduction of his or her responsibilities under those provisions of ■ SYSC 18 which are to come into force on 7 September 2016, includes oversight of the *firm's* transition to its new arrangements for whistleblowing.

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18.5.2



18.5 **Settlement agreements with** workers

- 18.5.1 A firm must include a term in any settlement agreement with a worker that makes clear that nothing in such an agreement prevents a worker from making a protected disclosure.
 - Ε (1) Firms may use the following wording, or alternative wording which has substantively the same meaning, in any settlement agreement: "For the avoidance of doubt, nothing precludes [name of worker] from making a "protected disclosure" within the meaning of Part 4A (Protected Disclosures) of the Employment Rights Act 1996. This includes protected disclosures made about matters previously

disclosed to another recipient."

- (2) Compliance with (1) may be relied on as tending to establish compliance with ■ SYSC 18.5.1R.
- 18.5.3 R (1) Firms must not request that workers enter into warranties which require them to disclose to the firm that:
 - (a) they have made a protected disclosure; or
 - (b) they know of no information which could form the basis of a protected disclosure.
 - (2) Firms must not use measures intended to prevent workers from making *protected disclosures*.



18.6 Whistleblowing obligations under the MiFID regime and other sectoral legislation

Whistleblowing obligations under the MiFID regime

- 18.6.1 R
- (1) A MiFID investment firm (except a collective portfolio management investment firm) must have appropriate procedures in place for its employees to report a potential or actual breach of:
 - (a) any rule which implemented MiFID; or
 - (b) a requirement imposed by MiFIR or any onshored regulation which was previously an EU regulation adopted under MiFID or MiFIR.
- (2) The procedures in (1) must enable employees to report internally through a specific, independent and autonomous channel.
- (3) The channel referred to in (2) may be provided through arrangements made by social partners, subject to the Public Interest Disclosure Act 1998 and the Employment Rights Act 1996 to the extent that they apply.

[Note: article 73(2) of MiFID]

- 18.6.2 R
- SYSC 18.6.1R applies to a third country investment firm as if it were a MiFID investment firm (unless it is a collective portfolio management investment firm) when the following conditions are met:
 - (1) it carries on MiFID or equivalent third country business; and
 - (2) it carries on the business in (1) from an establishment in the United Kingdom.
- G 18.6.3
- When considering what procedures may be appropriate for the purposes of SYSC 18.6.1R(1), a UK MIFID investment firm or a third country investment firm may wish to consider the arrangements in SYSC 18.3.1R(2).

Whistleblowing obligations under other sectoral legislation

- G 18.6.4
- In addition to obligations under the MiFID regime, similar whistleblowing obligations apply to miscellaneous persons subject to regulation by the FCA under the following non-exhaustive list of legislation:

- (1) article 32(3) of the Market Abuse Regulation, as implemented in section 131AA of the Act;
- (2) [deleted]
- (3) the UK provisions which implemented article 99d(5) of the UCITS Directive (see ■ SYSC 4.1.1ER in respect of UK UCITS management companies, and ■ COLL 6.6B.30R in respect of depositaries);
- (4) article 24(3) of the securities financing transactions regulation; and
- (5) section 97A of the Act, as regards obligations under the Prospectus Regulation, the PR Regulation, and the Prospectus RTS Regulation.
- 18.6.5 G Depending on the nature of its business, in addition to ■ SYSC 18.6.1R, a MiFID investment firm may, for example, be subject to one or more of the requirements in ■ SYSC 18.6.4G.

Senior Management Arrangements, Systems and Contro

Chapter 19A

IFPRU Remuneration Code [deleted]

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Senior Management Arrangements, Systems and Contro

Chapter 19B

AIFM Remuneration Code

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19B.1 Application

19B.1.1

The AIFM Remuneration Code applies to a full-scope UK AIFM of:

- (1) a UK AIF; and
- (2) a non-UK AIF.
- (3) [deleted]
- 19B.1.1A G
- (1) Full-scope UK AIFMs are advised that ESMA published Guidelines on sound remuneration policies under the AIFMD on 3 July 2013 (Guidelines on sound remuneration policies under the AIFMD, 03.07.2013|ESMA/2013/232), which full-scope UK AIFMs should comply with in applying the *rules* in this section.
- (2) The FCA has provided additional guidance on the application of principles of proportionality to remuneration policies of AIFM. The guidance also addresses several other aspects of the AIFM Remuneration Code and the Guidelines. The guidance can be found at: [http://www.fca.org.uk/your-fca/documents/finalised-guidance/ fg14-02]

Remuneration policies and practices

- 19B.1.2
- An AIFM must establish, implement and maintain remuneration policies and practices for AIFM Remuneration Code staff that are consistent with, and promote, sound and effective risk management and do not encourage risktaking which is inconsistent with the risk profile of the instrument constituting the fund of the AIFs it manages.

[Note: article 13(1) of AIFMD]

- 19B.1.3
- AIFM Remuneration Code staff comprise those categories of staff whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs the AIFM manages. This includes senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers.

[Note: article 13(1) of AIFMD]

- 19B.1.4 R
- (1) When establishing and applying the total remuneration policies for AIFM Remuneration Code staff (inclusive of salaries and discretionary

pension benefits), an AIFM must comply with the AIFM remuneration principles in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities.

- (2) Paragraph (1) does not apply to the requirement for significant *AIFMs* to have a *remuneration* committee (SYSC 19B.1.9 R).
- (3) The AIFM remuneration principles apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units or shares of the AIF made to the benefits of AIFM Remuneration Code staff.

[Note: paragraph 1 and 2 of Annex II of AIFMD]

AIFM Remuneration Principle 1: Risk management

19B.1.5 R

An AIFM must ensure that its remuneration policy is consistent with, and promotes, sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles of the instrument constituting the fund of the AIFs it manages.

[Note: paragraph 1(a) of Annex II of AIFMD]

AIFM Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interest

19B.1.6 R

An AIFM must ensure that its remuneration policy is in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and includes measures to avoid conflicts of interest.

[Note: paragraph 1(b) of Annex II of AIFMD]

AIFM Remuneration Principle 3: Governance

19B.1.7 R

An *AIFM* must ensure that the *governing body* of the *AIFM*, in its supervisory function, adopts and periodically reviews the general principles of the *remuneration* policy and is responsible for its implementation.

[Note: paragraph 1(c) of Annex II of AIFMD]

19B.1.8

An AIFM must ensure the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the governing body in its supervisory function.

[Note: paragraph 1(d) of Annex II of AIFMD]

19B.1.9 R

- (1) An *AIFM* that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a *remuneration* committee.
- (2) The *remuneration* committee must be constituted in a way that enables it to exercise competent and independent judgment on

- remuneration policies and practices, and the incentives created for managing risk.
- (3) The chairman and the members of the remuneration committee must be members of the governing body who do not perform any executive function in the AIFM.
- (4) The remuneration committee must be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are taken by the governing body in its supervisory function.

[Note: paragraph 3 of Annex II of AIFMD]

AIFM Remuneration Principle 4: Control functions

19B.1.10 R

An AIFM must ensure that employees engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[Note: paragraph 1(e) of Annex II of AIFMD]

19B.1.11 R An AIFM must ensure the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee, or, if such a committee has not been established, by the governing body in its supervisory function.

[Note: paragraph 1(f) of Annex II of AIFMD]

AIFM Remuneration Principle 5(a): Remuneration structures assessment of performance

19B.1.12 R

An AIFM must ensure that, where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM. When assessing individual performance, financial and non-financial criteria are taken into account.

[Note: paragraph 1(g) of Annex II of AIFMD]

19B.1.13 R

An AIFM must ensure that the assessment of performance is set in a multiyear framework appropriate to the life-cycle of the AIFs managed by the AIFM to ensure that:

- (1) the assessment process is based on longer term performance; and
- (2) the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks.

[Note: paragraph 1(h) of Annex II of AIFMD]

19B.1.13A G

- (1) Taking account of the remuneration principles proportionality *rule* in SYSC 19B.1.4 R, the *FCA* does not generally consider it necessary for a *firm* to apply the *rules* referred to in (2) where, in relation to an individual ("X"), both of the following conditions are satisfied:
 - (a) Condition 1 is that X's variable *remuneration* is no more than 33% of total *remuneration*; and
 - (b) Condition 2 is that X's total *remuneration* is no more than £500,000.
- (2) The rules referred to in (1) are those relating to:
 - (a) quaranteed variable remuneration (■ SYSC 19B.1.14 R);
 - (b) retained *units*, *shares* or other instruments (■ SYSC 19B.1.17 R);
 - (c) deferral (■ SYSC 19B.1.18 R); and
 - (d) performance adjustment (■ SYSC 19B.1.19 R).

AIFM Remuneration Principle 5(b): Remuneration structures - guaranteed variable remuneration

19B.1.14 R

An AIFM must not award, pay or provide guaranteed variable remuneration unless it;

- (1) is exceptional;
- (2) occurs only in the context of hiring new staff; and
- (3) is limited to the first year of service.

[Note: paragraph 1(i) of Annex II of AIFMD]

AIFM Remuneration Principle 5(c): Remuneration structures - fixed and variable components of total remuneration

19B.1.15 R

An AIFM must ensure that:

- (1) fixed and variable components of total *remuneration* are appropriately balanced; and
- (2) the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component.

[Note: paragraph 1(j) of Annex II of AIFMD]

AIFM Remuneration Principle 5(d): Remuneration structures - payments related to early termination

19B.1.16 R

An *AIFM* must ensure that payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

[Note: paragraph 1(k) of Annex II of AIFMD]

AIFM Remuneration Principle 5(e): Remuneration structures retained units, shares or other instruments

19B.1.17 R

- (1) Subject to the legal structure of the AIF and the instrument constituting the fund, an AIFM must ensure that a substantial portion, and in any event at least 50% of any variable remuneration, consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent noncash instruments. However, if the management of AIFs accounts for less than 50% of the total portfolio managed by the AIFM, the minimum of 50 % does not apply.
- (2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the long-term interests of the AIFM and the AIFs it manages and the investors of such AIFs.
- (3) This rule applies to the portion of the variable remuneration component deferred in line with ■ SYSC 19B.1.18R (1) and the portion not deferred.

[Note: paragraph 1(m) of Annex II of AIFMD]

AIFM Remuneration Principle 5(f): Remuneration structures deferral

19B.1.18 R

- (1) An AIFM must not award, pay or provide a variable remuneration component unless a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question
- (2) The period referred to in (1) must be at least three to five years, unless the life cycle of the AIF concerned is shorter.
- (3) Remuneration payable under (1) must vest no faster than on a prorata basis.
- (4) In the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount must be deferred.

[Note: paragraph 1(n) of Annex II of AIFMD]

19B.1.18A G

- (1) £500,000 is a particularly high amount for the purpose of ■ SYSC 19B.1.18R (4).
- (2) Paragraph (1) is without prejudice to the possibility of lower sums being considered a particularly high amount.
- (3) Whilst any variable remuneration component of £500,000 or more paid to AIFM Remuneration Code staff should be subject to 60% deferral, firms should also consider whether lesser amounts should be considered to be 'particularly high', taking account, for example, of whether there are significant differences within AIFM Remuneration Code staff in the levels of variable remuneration paid.

AIFM Remuneration Principle 5(g): Remuneration structures - performance adjustment, etc.

19B.1.19 R

An *AIFM* must ensure that any variable *remuneration*, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the *AIFM* as a whole and justified according to the performance of the *AIF*, the business unit and the individual concerned.

[Note: paragraph 1(o) first sub-paragraph of Annex II of AIFMD]

19B.1.20 G

The total variable *remuneration* should generally be considerably contracted where subdued or negative financial performance of the *AIFM* or of the *AIF* concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: paragraph 1(o) second sub-paragraph of Annex II of AIFMD]

AIFM Remuneration Principle 6: Measurement of performance

19B.1.21 R

An *AIFM* must ensure the measurement of performance used to calculate variable *remuneration* components, or pools of variable *remuneration* components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.

[Note: paragraph 1(I) of Annex II of AIFMD]

AIFM Remuneration Principle 7: Pension policy

19B.1.22 R

An AIFM must ensure that:

- (1) its pension policy is in line with its business strategy, objectives, values and long-term interests of the *AIFs* it manages;
- (2) when an *employee* leaves the *firm* before retirement, any discretionary pension benefits are held by the *firm* for a period of five years in the form of instruments in SYSC 19B.1.17R (1); and
- (3) in the case of an *employee* reaching retirement, *discretionary pension* benefits are paid to the *employee* in the form of instruments referred to in SYSC 19B.1.17R (1) and subject to a five-year retention period.

[Note: paragraph 1(p) of Annex II of AIFMD]

AIFM Remuneration Principle 8: Personal investment strategies

19B.1.23 R

An *AIFM* must ensure that its *employees* undertake not to use personal hedging strategies or *remuneration*- and liability-related insurance to undermine the risk alignment effects embedded in their *remuneration* arrangements.

[Note: paragraph 1(q) of Annex II of AIFMD]

AIFM Remuneration Principle 9: Avoidance of the remuneration code

19B.1.24 R

An AIFM must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the AIFM Remuneration Code.

[Note: paragraph 1(r) of Annex II of AIFMD]

Senior Management Arrangements, Systems and Contro

Chapter 19C

BIPRU Remuneration Code [deleted]

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Senior Management Arrangements, Systems and Controls

Chapter 19D

Dual-regulated firms Remuneration Code



19D.1 Application and purpose

Who? What? Where?

19D.1.1 R

- (1) The dual-regulated firms Remuneration Code applies to:
 - (a) a building society;
 - (b) a UK bank;
 - (c) a UK designated investment firm;
 - (d) an overseas firm that would be a firm in (a), (b) or (c) if it had been a UK domestic firm, had carried on all of its business in the United Kingdom and had obtained whatever authorisations for doing so as are required under the Act.
- (2) For a firm which falls under (1)(a), (1)(b) or (1)(c), the dual-regulated firms Remuneration Code applies in relation to:
 - (a) its UK activities; and
 - (b) [deleted]
 - (c) a UK domestic firm's activities wherever they are carried on.

For a firm that falls under (1)(d), the dual-regulated firms Remuneration Code applies only in relation to activities carried on from an establishment in the United Kingdom.

(4) Otherwise, the dual-regulated firms Remuneration Code applies to a firm within (1) in the same way as ■ SYSC 4.1.1R (General requirements).

19D.1.1A G

SYSC 19D.1.1R(2) is applied to the extent of the FCA's powers and regulatory responsibilities.

19D.1.2 R

Under Part 2 of ■ SYSC 1 Annex 1 in relation to ■ SYSC 4.1.1R (General requirements), and subject to the provisions on group risk systems and controls requirements in ■ SYSC 12 (Group risk systems and controls requirements), the dual-regulated firms Remuneration Code:

(1) applies in relation to regulated activities, activities that constitute dealing in investments as principal (disregarding the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc)), ancillary activities and (in relation to MiFID business) ancillary services;

- (2) applies in relation to the carrying on of *unregulated activities* in a *prudential context*; and
- (3) takes into account activities of other group members.

When?

19D.1.3 R

Except as set out in (3), a *firm* must apply the *remuneration* requirements in ■ SYSC 19D.3 (Remuneration principles) in relation to:

- (a) remuneration awarded, whether pursuant to a contract or otherwise, on or after 1 January 2011;
- (b) remuneration due on the basis of contracts concluded before 1 January 2011 which is awarded or paid on or after 1 January 2011; and
- (c) remuneration awarded, but not yet paid, before 1 January 2011, for services provided in 2010.

[Note: article 3(2) of Directive 2010/76/EU]

- (2) [deleted]
- (3) A firm must apply the remuneration requirements in

 SYSC 19D.3.59R(1)(b), SYSC 19D.3.61R(2), SYSC 19D.3.61R(3),

 SYSC 19D.3.61R(4), SYSC 19D.3.61R(5), SYSC 19D.3.64R and

 SYSC 19D.3.67R(1)(c) in relation to variable remuneration awarded in relation to the performance year starting on or after 1 January 2016.

19D.1.4 G

Subject to ■ SYSC 19D.1.5R, ■ SYSC 19D.1.3R does not require a *firm* to breach requirements of applicable contract or employment law.

[Note: recital 14 of Directive 2010/76/EU]

Conflict with other obligations

19D.1.5 R

- (1) Where a *firm* is unable to comply with the *dual-regulated firms* Remuneration Code because to do so would breach a provision of a prior contract (including a provision in a contract with a *dual-regulated firms Remuneration Code staff member*), it must take reasonable steps to amend or to terminate the provision in question in a way which enables it to comply with the *dual-regulated firms* Remuneration Code at the earliest opportunity.
- (2) Until the provision in (1) ceases to prevent the *firm* from complying with the *dual-regulated firms Remuneration Code*, it must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the provision.

Purpose

19D.1.6 G

(1) The aim of the dual-regulated firms Remuneration Code is to ensure that firms have risk-focused remuneration policies, which are consistent with and promote effective risk management and do not expose them to excessive risk. It expands upon the general organisational requirements in ■ SYSC 4.

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(2) The dual-regulated firms Remuneration Code implements the main provisions of the CRD which relate to remuneration. In applying the rules in the dual-regulated firms Remuneration Code, firms should comply with the EBA "Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013", 21 December 2015 (EBA/GL/2015/22).

Notifications to the FCA

19D.1.7 G

- (1) In addition to the notification requirements in the dual-regulated firms Remuneration Code, general circumstances in which the FCA expects to be notified by firms of matters relating to their compliance with requirements under the regulatory system are set out in ■ SUP 15.3 (General notification requirements).
- (2) For remuneration matters in particular, those circumstances should take into account unregulated activities, as well as regulated activities and the activities of other members of a group, and would include each of the following:
 - (a) significant breaches of the dual-regulated firms Remuneration Code, including any breach of a rule to which the provisions on voiding and recovery in ■ SYSC 19D Annex 1 apply;
 - (b) any proposed remuneration policies, procedures or practices which could:
 - (i) have a significant adverse impact on the firm's reputation; or
 - (ii) affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm: or
 - (iii) result in serious financial consequences to the financial system or to other firms;
 - (c) any proposed changes to remuneration policies, practices or procedures which could have a significant impact on the firm's risk profile or resources;
 - (d) fraud, errors and other irregularities described in SUP 15.3.17R (notification of fraud, errors and other irregularities) which may suggest weaknesses in, or be motivated by, the firm's remuneration policies, procedures or practices.

(3) Notifications should be made immediately as the *firm* becomes aware or has information which reasonably suggests that those circumstances have occurred, may have occurred or may occur in the foreseeable future.

Individual guidance

19D.1.8 G

The FCA's policy on individual guidance is set out in SUP 9. Firms should particularly note the policy on what the FCA considers to be a reasonable request for guidance (see SUP 9.2.5G). For example, where a firm is seeking guidance on a proposed remuneration structure, the FCA will expect the firm to provide a detailed analysis of how the structure complies with the dual-regulated firms Remuneration Code, including the general requirement for remuneration policies, procedures and practices to be consistent with, and promote, sound and effective risk management.

Interpretation

19D.1.9 G

Except as provided in the *Glossary*, any expression used in, or for the purpose of, this chapter which is defined or used in *UK CRR* has the meaning given by, or used in, those Regulations.

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19D.2 **General requirement**

Remuneration policies must promote effective risk management

19D.2.1

A firm must establish, implement and maintain remuneration policies, procedures and practices that are consistent with, and promote, sound and effective risk management.

[Note: article 74(1) of CRD]

19D.2.2 G

- (1) The dual-regulated firms Remuneration Code covers all aspects of remuneration that could have a bearing on effective risk management, including salaries, bonuses, long-term incentive plans, options, hiring bonuses, severance packages and pension arrangements.
- (2) As with other aspects of a *firm*'s systems and controls, in accordance with ■ SYSC 4.1.2R (general organisational requirements) remuneration policies, procedures and practices must be comprehensive and proportionate to the nature, scale and complexity of the common platform firm's activities. What a firm must do in order to comply with the dual-regulated firms Remuneration Code will therefore vary. For example, while the dual-regulated firms Remuneration Code refers to a firm's remuneration committee and risk management function, it may be appropriate for the governing body of a smaller firm to act as the remuneration committee and for the firm not to have a separate risk management function.
- (3) The FCA may also ask remuneration committees to provide it with evidence of how well the firm's remuneration policies meet the dualregulated firms Remuneration Code's principles, together with plans for improvement where there is a shortfall.
- (4) The FCA would also expect firms to apply, on a firm-wide basis, at least the following principles relating to:
 - (a) risk management and risk tolerance (Remuneration Principle 1);
 - (b) supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2);
 - (c) avoiding conflicts of interest (Remuneration Principle 3);
 - (d) governance (Remuneration Principle 4);

- (e) risk adjustment (Remuneration Principle 8);
- (f) pension policy (Remuneration Principle 9);
- (g) personal investment strategies (Remuneration Principle 10);
- (h) payments related to early termination (Remuneration Principle 12(e)): and
- (i) deferral (Remuneration Principle 12(g)).

Gender neutral policies and practices

19D.2.2A R

A firm must ensure that its remuneration policy is a gender neutral remuneration policy and the practices referred to in ■ SYSC 19D.2.1R are gender neutral.

[Note: articles 74(1) and 92(2)(aa) of CRD V]

19D.2.2B G

Firms are reminded that the Equality Act 2010 prohibits discrimination on the basis of an individual's protected characteristics both before and after employment is offered. The Act applies to pay and all other contractual terms, including variable remuneration. A firm should ensure that its remuneration policy complies with the Equality Act 2010.

19D.2.2C G

Firms should ensure that when they assess individual performance, the assessment process and any variable remuneration awarded in accordance with ■ SYSC 19D.3.39R does not discriminate on the basis of the protected characteristics of an individual.

Record keeping

19D.2.3 R

In line with the record-keeping requirements in ■ SYSC 9, a firm must ensure that its remuneration policies, practices and procedures, including performance appraisals processes and decisions, are clear and documented.

Interpretation of references to remuneration

19D.2.4 R

- (1) In this chapter, references to remuneration include remuneration paid, provided or awarded by any person to the extent that it is paid, provided or awarded in connection with employment by a firm.
- (2) Paragraph (1) is without prejudice to the meaning of remuneration elsewhere in the Handbook.

19D.2.5 G

For example, remuneration includes payments made by a seconding organisation which is not subject to the dual-regulated firms Remuneration Code to a secondee in respect of their employment by a firm which is subject to the dual-regulated firms Remuneration Code.

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19D.3 Remuneration principles

Application: groups

19D.3.1 R

- (1) A firm must apply the requirements of this section at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established in a country or territory which is outside the United Kingdom.
- (2) Paragraph (1) does not limit SYSC 12.1.13R(2)(dA) (which relates to the application of the dual-regulated firms Remuneration Code within UK consolidation groups).

19D.3.2 G

■ SYSC 12.1.13R(2)(dA) requires the firm to ensure that the risk management processes and internal control mechanisms at the level of any UK consolidation group or non-UK sub-group of which a firm is a member, comply with the obligations in this section on a consolidated basis (or subconsolidated basis). In the FCA's view, the application of this section at group, parent undertaking and subsidiary undertaking levels in ■ SYSC 19D.3.1R(1) is in line with the application of systems and controls requirements to *groups* (as in ■ SYSC 12.1.13R).

19D.3.2A G

Firms should refer to ■ SYSC 12 (Group risk systems and controls requirements), which sets out how the systems and control requirements imposed by SYSC (Senior Management Arrangements, Systems and Controls) apply where a firm is part of a group.

19D.3.2B R

- (1) For a firm within the scope of \blacksquare SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), the rules in (3) do not apply if:
 - (a) the firm is not a large institution; and
 - (b) the firm's average total assets, calculated on an individual basis in accordance with the UK legislation that implemented CRD V and the UK CRR, are less than or equal to £4 billion.
- (2) For a firm within the scope of SYSC 19D.1.1R(1)(d), the rules in (3) do not apply if the average total assets that relate to the activities of the UK branch are less than or equal to £4 billion.
- (3) The rules referred to in (1) and (2) are:
 - (a) SYSC 19D.3.31R(2) and (3) (pension policy);
 - (b) SYSC 19D.3.56R (retained *shares* or other instruments); and

(c) ■ SYSC 19D.3.59R (deferral).

[Note: article 94(3)(a) of CRD V]

19D.3.2C R

- (1) The value in SYSC 19D.3.2BR(1)(b) or (2) is increased to £13 billion if:
 - (a) the *firm* meets the criteria set out in points (145)(c), (d) and (e) of Article 4(1) of the *UK CRR*; and
 - (b) the increase is appropriate taking into account the *firm's* nature, the scope and complexity of its activities, its internal organisation and (if applicable) the characteristics of the *group* to which it belongs.
- (2) For a *firm* within the scope of SYSC 19D.1.1R(1)(d), the criteria referred to in (1)(a) must be assessed on the basis of the activities of the *UK branch*.

[Note: article 94(4) of CRD V]

Application: categories of staff and proportionality

19D.3.3 R

- (1) This section applies in relation to *dual-regulated firms Remuneration Code staff*, except as set out in (3).
- (2) When establishing and applying the total *remuneration* policies for dual-regulated firms Remuneration Code staff, a firm must comply with this section in a way that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities (the dual-regulated firms remuneration principles proportionality rule).
- (3) Paragraphs (1) and (2) do not apply to the requirement for significant firms to have a remuneration committee (■ SYSC 19D.3.12R).

[Note: article 92(2) of CRD]

[Note: In addition to the *guidance* in this section about the *dual-regulated* firms remuneration principles proportionality rule, the FCA provides guidance on the division of firms into categories for the purpose of providing a framework for the operation of the *dual-regulated firms remuneration* principles proportionality rule. This *guidance* is available on the FCA website at https://www.fca.org.uk/firms/being-regulated/remuneration-codes.]

19D.3.4 R

- (1) Dual-regulated firms Remuneration Code staff comprises:
 - (a) an employee of a dual-regulated firm whose professional activities have a material impact on the firm's risk profile, including any employee who is deemed to have a material impact on the firm's risk profile in accordance with the Material Risk Takers Regulation 2020; or
 - (b) subject to (2) and (3), an employee of an overseas firm in ■ SYSC 19D.1.1R(1)(d) (i.e., an overseas firm that would have been a UK bank, building society or UK designated investment firm if it had been a UK domestic firm) whose professional activities have a material impact on the firm's risk profile, including any employee who would meet any of the criteria set out in articles 6

or 7(1) of the Material Risk Takers Regulation 2020 if it had applied to them.

- (1A) For the purposes of paragraph (1), dual-regulated firms Remuneration Code staff must, at least, include:
 - (a) all members of the firm's management body and senior management;
 - (b) staff members with managerial responsibility over the firm's control functions or material business units;
 - (c) staff members entitled to significant remuneration in the preceding financial year, provided that the following conditions are met:
 - (i) the staff member's remuneration is equal to or higher than:
 - (A) £440,000; and
 - (B) the average remuneration awarded to the members of the firm's management body and senior management referred to in point (a);
 - (ii) the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile.

[Note: article 92(3) of CRD V]

- (2) An overseas firm in SYSC 19D1.1.R(1)(d) (i.e., an overseas firm that would have been a dual-regulated firm if it had been a UK domestic firm) may deem an employee not to be a dual-regulated firms Remuneration Code staff where:
 - (a) the employee:
 - (i) would meet the criteria in article 7(1) of the Material Risk Takers Regulation 2020;
 - (ii) would not meet any of the criteria in article 6 of the Material Risk Takers Regulation 2020; and
 - (iii) was awarded total remuneration of less than £658,000 in the previous year;

and

- (b) the overseas firm determines that the professional activities of the employee do not have a material impact on its risk profile on the grounds described in article 7(2) of the Material Risk Takers Regulation 2020; and
- (2) the overseas firm has obtained the prior written approval of the PRA, in accordance with Chapter 3 of the Remuneration Part of the PRA Rulebook.
- (3) [deleted]

[Note: article 92(2) of CRD V and articles 6 and 7 of the Material Risk Takers Regulation 2020.]

19D.3.5

Where an overseas firm in ■ SYSC 19D1.1.R(1)(d) (i.e., an overseas firm that would have been a dual-regulated firm if it had been a UK domestic firm) wishes to deem an employee who earns more than £658,000 not to be dualregulated firms Remuneration Code staff, the overseas firm may apply for a waiver of the requirement in ■ SYSC 19D.3.4R in respect of that employee.

19D.3.6 R

A firm must:

- (1) maintain a record of its dual-regulated firms Remuneration Code staff under the general record-keeping requirements (■ SYSC 9); and
- (2) take reasonable steps to ensure that its dual-regulated firms Remuneration Code staff understand the implications of their status as such, including the potential for remuneration which does not comply with certain requirements of the dual-regulated firms Remuneration Code to be rendered void and recoverable by the firm.

Remuneration Principle 1: Risk management and risk tolerance

19D.3.7

A firm must ensure that its remuneration policy is consistent with, and promotes, sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the firm.

[Note: article 92(2)(a) of CRD]

Remuneration Principle 2: Supporting business strategy, objectives, values and long-term interests of the firm

19D.3.8 R A firm must ensure that its remuneration policy is in line with the business strategy, objectives, values and long-term interests of the firm.

[Note: article 92(2)(b) of CRD]

Remuneration Principle 3: Avoiding conflicts of interest

19D.3.9 R A firm must ensure that its remuneration policy includes measures to avoid conflicts of interest.

[Note: article 92(2)(b) of CRD]

Remuneration Principle 4: Governance

19D.3.10 R

A firm must ensure that its management body in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing its implementation.

[Note: article 92(2)(c) of CRD and Standard 1 of the FSB Compensation Standards1

19D.3.11 R

A firm must ensure that the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function.

[Note: article 92(2)(d) of CRD and Standard 1 of the FSB Compensation Standards]

19D.3.12 R

- (1) A significant firm must establish a remuneration committee .
- (2) A firm in (1) must ensure that:
 - (a) the remuneration committee is constituted in a way that enables it to exercise competent and independent judgement on remuneration policies and practices and the incentives created for managing risk, capital and liquidity;
 - (b) the chairman and the members of the remuneration committee must be members of the *management body* who do not perform any executive function in the firm;
 - (c) the remuneration committee is responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the firm and which are to be taken by the management body; and
 - (d) when preparing those decisions, the remuneration committee must take into account the long-term interests of shareholders, investors and other stakeholders in the firm and the public interest.

[Note: article 95 of CRD and Standard 1 of the FSB Compensation Standards]

19D.3.13 R

A firm that maintains a website must explain on the website how it complies with the dual-regulated firms Remuneration Code.

[Note: article 96 of the CRD]

19D.3.14 G

- (1) A firm should be able to demonstrate that its decisions are consistent with an assessment of its financial condition and future prospects. In particular, practices by which remuneration is paid for potential future revenues whose timing and likelihood remain uncertain should be evaluated carefully and the governing body or remuneration committee (or both) should work closely with the firm's risk function in evaluating the incentives created by its remuneration system.
- (2) The governing body and any remuneration committee are responsible for ensuring that the firm's remuneration policy complies with the dual-regulated firms Remuneration Code and, where relevant, should take into account relevant guidance, such as that issued by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO).
- (3) Guidance on what the *supervisory function* might involve is set out in ■ SYSC 4.3.3G (responsibility of senior personnel, in particular, the supervisory function).

Remuneration Principle 5: Control functions

19D.3.15 R

A firm must ensure that employees engaged in control functions:

- (1) are independent from the business units they oversee;
- (2) have appropriate authority; and

- (3) are remunerated:
 - (a) adequately to attract qualified and experienced employees; and
 - (b) in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[Note: article 92(2)(e) of CRD and Standard 2 of the FSB Compensation Standards]

19D.3.16 E

- (1) A *firm*'s risk management and compliance functions should have appropriate input into setting the *remuneration* policy for other business areas. The procedures for setting *remuneration* should allow risk and compliance functions to have significant input into the setting of individual *remuneration* awards where those functions have concerns about the behaviour of the individuals concerned or the riskiness of the business undertaken.
- (2) Contravention of (1) may be relied on as tending to establish contravention of the *rule* on *employees* engaged in control functions having appropriate authority (■ SYSC 19D.3.15R(2)).

19D.3.17 R

A firm must ensure that the remuneration of the senior officers in risk management and compliance functions is directly overseen by the remuneration committee referred to in SYSC 19D.3.12R or, if such a committee has not been established, by the governing body in its supervisory function.

[Note: article 92(2)(f) of CRD]

19D.3.18 G

- (1) This Remuneration Principle is designed to manage the conflicts of interest which might arise if other business areas had undue influence over the remuneration of employees within control functions. Conflicts of interest can easily arise when employees are involved in the determination of remuneration for their own business area. Where these could arise, they need to be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. It is good practice to seek input from a firm's human resources function when setting remuneration for other business areas.
- (2) [deleted]
- (3) [deleted]

Remuneration Principle 6: Remuneration and capital

19D.3.19 R

A *firm* must ensure that total variable *remuneration* does not limit the *firm*'s ability to strengthen its capital base.

[Note: article 94(1)(c) of the CRD and Standard 3 of the FSB Compensation Standards]

19D.3.20 G

[deleted]

Remuneration Principle 7: Exceptional government intervention

19D.3.21 R

A firm that benefits from exceptional government intervention must ensure

- (1) variable remuneration is strictly limited as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base and timely exit from government support;
- (2) it restructures remuneration in a manner aligned with sound risk management and long-term growth, including (when appropriate) establishing limits to the remuneration of members of its management body; and
- (3) no variable or discretionary remuneration of any kind is paid to members of its management body unless this is justified.

[Note: article 93 of the CRD and Standard 10 of the FSB Compensation Standards]

19D.3.22 G

The FCA would normally expect it to be appropriate for the ban on paying variable remuneration to members of the management body of a firm that benefits from exceptional government intervention to apply only to members of the management body who were in office at the time that the intervention was required.

Remuneration Principle 8: Profit-based measurement and risk

19D.3.23 R

- (1) A firm must ensure that any measurement of performance used to calculate variable remuneration components or pools of variable remuneration components:
 - (a) includes adjustments for all types of current and future risks and takes into account the cost and quantity of the capital and the liquidity required; and
 - (b) takes into account the need for consistency with the timing and likelihood of the firm receiving potential future revenues incorporated into current earnings.
- (2) A firm must ensure that the allocation of variable remuneration components within the *firm* also takes into account all types of current and future risks.

[Note: article 94(1)(j), (k) of the CRD and Standard 4 of the FSB Compensation Standards]

19D.3.24 G

- (1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance within that process of applying judgment and common sense. The FCA expects that a *firm* will apply qualitative judgements and common sense in the final decision about the performance-related components of variable remuneration pools.
- (2) [deleted]

- (3) We consider good practice in this area to be represented by those firms who provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered, including non-financial risks such as reputation, conduct, client outcomes, values and strategy.
- (4) The FCA expects a firm to be able to provide it with details of all adjustments that the firm has made whether through application of formulae or the exercise of discretion. This will enable the FCA to consider whether the firm's risk adjustment framework is sufficiently robust. Where discretion has been applied, the firm should be able to provide a clear explanation for, and quantification of such adjustments.
- (5) A *firm* should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the *governing body* or *remuneration committee* for this purpose.
- 19D.3.25 R A *firm* must have a clear and verifiable mechanism for measuring performance, with risk adjustment applied thereafter in a clear and transparent manner.
- A *firm* may apply discretionary factors to the extent that is appropriate and consistent with the overall aims of the risk adjustment exercise. Where such further adjustments have been made, *firms* should provide clear quantification and explanation to ensure their risk adjustment frameworks are sufficiently transparent.
- 19D.3.27 R A firm must base assessments of financial performance used to calculate variable remuneration components or pools of variable remuneration components principally on profits.
- (1) Performance measures based primarily on revenues or turnover are unlikely to pay sufficient regard to the quality of business undertaken or services provided. Profits are a better measure provided they are adjusted for risk, including future risks not adequately captured by accounting profits.
 - (2) [deleted]
- 19D.3.29 R

 (1) A firm's risk-adjustment approach must reflect both ex-ante adjustment (which adjusts remuneration for intrinsic risks that are inherent in its business activities) and ex-post adjustment (which adjusts remuneration for crystallisation of specific risks events).
 - (2) A *firm* must ensure that its total variable *remuneration* is generally considerably contracted where subdued or negative financial performance of the *firm* occurs, taking into account both current *remuneration* and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: article 94(1)(n) of CRD and Standard 5 of the FSB Compensation Standards \

19D.3.30 G

[deleted]

Remuneration Principle 9: Pension policy

19D.3.31 R

A firm must ensure that:

- (1) its pension policy is in line with its business strategy, objectives, values and long-term interests;
- (2) when an employee leaves the firm before retirement, any discretionary pension benefits are held by the firm for a period of five years in the form of instruments referred to in ■ SYSC 19D.3.56R(1); and
- (3) when an employee reaches retirement, discretionary pension benefits are paid to the employee in the form of instruments referred to in ■ SYSC 19D.3.56R(1) and subject to a five-year retention period.

[Note: article 94(1)(o) of the CRD]

19D.3.32 R

Remuneration Principle 10: Personal investment strategies

- (1) A firm must ensure that its employees undertake not to use personal hedging strategies to undermine the risk alignment effects embedded in their remuneration arrangements.
- (2) A firm must ensure that its employees do not use remuneration- or liability-related contracts of insurance to undermine the risk alignment effects embedded in their remuneration arrangements.
- (3) A firm must maintain effective arrangements designed to ensure that employees comply with their undertaking.

[Note: article 94(1)(p) of the CRD and Standard 14 of the FSB Compensation Standards]

19D.3.33 G

In the FCA's view, circumstances in which a person will be using a personal hedging strategy include (and are not limited to) entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to that person that are linked to or commensurate with the amounts by which the person's remuneration is subject to reductions.

Remuneration Principle 11: Non-compliance with the dualregulated firms Remuneration Code

19D.3.34 R

A firm must ensure that variable remuneration is not paid through vehicles or methods that facilitate non-compliance with obligations arising from the Dual-regulated Remuneration Code, the UK CRR or the UK legislation that implemented the CRD.

[Note: article 94(1)(q) of the CRD]

Remuneration Principle 12: Remuneration structures introduction

19D.3.35 R

- (1) The rules in (2) do not apply to a firm in relation to an individual (X), where both the following conditions are satisfied:
 - (a) Condition 1 is that X's annual variable remuneration is no more than one third of X's total annual remuneration; and
 - (b) Condition 2 is that X's total annual variable remuneration is no more than £44,000.
- (2) The rules referred to in (1) are those relating to:
 - (a) pension policy (SYSC 19D.3.31R(2) and (3));
 - (b) retained shares or other instruments (■ SYSC 19D.3.56R);
 - (c) deferral (■ SYSC 19D.3.59R); and
 - (d) [deleted]

[Note: article 94(3)(b) of CRD V]

Remuneration Principle 12(a): Remuneration structures general requirement

19D.3.36 R

A firm must ensure that the structure of an employee's remuneration is consistent with, and promotes, effective risk management.

19D.3.37 R

A firm must ensure that the remuneration policy makes a clear distinction between criteria for setting:

- (1) basic fixed remuneration that primarily reflects an employee's professional experience and organisational responsibility, as set out in the employee's job description and terms of employment; and
- (2) variable remuneration that reflects performance in excess of that required to fulfil the *employee*'s job description and terms of employment and that is subject to performance adjustment in accordance with the dual-regulated firms Remuneration Code.

[Note: article 92(2)(g) of the CRD]

19D.3.38 R

A firm must not award variable remuneration to a non-executive director acting as such.

Remuneration Principle 12(b): Remuneration structures assessment of performance

19D.3.39 R

- (1) A firm must ensure that where remuneration is performance-related:
 - (a) the total amount of remuneration is based on a combination of the assessment of the performance of:
 - (i) the individual:
 - (ii) the business unit concerned; and
 - (iii) the overall results of the firm; and

(b) when assessing individual performance, financial as well as nonfinancial criteria are taken into account.

[Note: article 94(1)(a) of the CRD and Standard 6 of the FSB Compensation Standards]

19D.3.40 G

- (1) The non-financial criteria in SYSC 19D.3.39R(1)(b) should include:
 - (a) the extent of the *employee's* adherence to effective risk management, and compliance with the regulatory system and with relevant overseas regulatory requirements; and
 - (b) metrics relating to conduct, which should comprise a substantial portion of the non-financial criteria.
- (2) Aligning variable awards to sustainable financial performance requires firms to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance measures commonly used (such as earnings per share (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer-term risk factors and have a tendency to incentive highly leveraged activities.

19D.3.41 G

Poor performance, such as poor risk management or other behaviours contrary to firm values, can pose significant risks for a firm and non-financial metrics should override metrics of financial performance where appropriate.

19D.3.41A G

A firm should note that the requirement in ■SYSC 19D.3.39R(1)(b) for financial and non-financial criteria to be taken into account applies wherever remuneration is performance-related including within any assessment of future performance.

19D.3.42 R

A firm must clearly explain the performance assessment process in ■ SYSC 19D.3.39R to relevant *employees*.

19D.3.43 R

A firm must ensure that the assessment of performance is set in a multi-year framework in order to ensure that:

- (1) the assessment process is based on longer-term performance; and
- (2) the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the firm and its business risks.

[Note: article 94(1)(b) of CRD]

Remuneration Principle 12(c): Remuneration structures guaranteed variable remuneration, buy-outs and retention awards

19D.3.44 R

(1) A firm must ensure that guaranteed variable remuneration is not part of prospective remuneration plans.

- (2) A *firm* must not award, pay or provide guaranteed variable *remuneration* unless:
 - (a) it is exceptional;
 - (b) it occurs in the context of hiring new dual-regulated firms Remuneration Code staff;
 - (c) the firm has a sound and strong capital base; and
 - (d) it is limited to the first year of service.

[Note: article 94(1)(d) and (e) of the CRD and Standard 11 of the FSB Compensation Standards]

19D.3.45 R

A *firm* must ensure that *remuneration* packages relating to compensation for, or buy out from, an *employee's* contracts in previous *employment* align with its long-term interests including appropriate retention, deferral and performance and clawback arrangements.

[Note: article 94(1)(i) of CRD]

19D.3.46 G

- (1) Guaranteed variable *remuneration* should be subject to the same requirements applicable to variable *remuneration* awarded by the *firm* including deferral, malus and clawback.
- (2) The FCA expects that guaranteed variable awards and retention awards should not be common practice for dual-regulated firms Remuneration Code staff and should be limited to rare, infrequent occurrences. The FCA expects a firm to provide prior notification to the FCA of any proposed retention awards.

19D.3.47 G

Retention awards should form part of variable *remuneration* for the purpose of SYSC 19D.3.48R.

Remuneration Principle 12(d): Remuneration structures - ratios between fixed and variable components of total remuneration

19D.3.48 R

A *firm* must set an appropriate ratio between the fixed and variable components of total *remuneration* and ensure that:

- (1) fixed and variable components of total *remuneration* are appropriately balanced; and
- (2) the level of the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component.
- (3) [deleted]

[Note: article 94(1)(f) of the CRD]

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SYSC 19D: Dual-regulated firms Remuneration Code

19D.3.48A G

- (1) When determining what is an appropriate balance and an appropriate ratio for the purposes of ■ SYSC 19D.3.48R, a firm should consider all relevant factors, including:
 - (a) the firm's business activities and associated prudential and conduct risks; and
 - (b) the role of the individual in the firm and, in the case of dualregulated firms Remuneration Code staff, the impact that different categories of staff have on the risk profile of the firm.
- (2) A firm may set different ratios for different categories of staff. For example, the FCA considers that it will usually be appropriate to set a lower ratio of variable to fixed remuneration for control functions than for the business units they control.
- (3) Ratios may differ from one performance period to the next.
- (4) When setting a ratio, a firm should consider all potential scenarios, including that a firm exceeds its financial objectives. The ratio should reflect the highest amount of variable remuneration that can be awarded in the most positive scenario. A firm should be satisfied that it has considered all relevant factors and should be able to explain its decision to the FCA if requested.

19D.3.49 R [deleted]

19D.3.50 R [deleted] 19D.3.51 R [deleted]

19D.3.52 R [deleted]

19D.3.53 R [deleted]

Remuneration Principle 12(e): Remuneration structures payments related to early termination

19D.3.54 R A firm must ensure that payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure or misconduct.

> [Note: article 94(1)(h) of the CRD and Standard 12 of the FSB Compensation Standards]

19D.3.55 G [deleted]

Remuneration Principle 12(f): Remuneration structures retained shares or other instruments

19D.3.56 R (1) A firm must ensure that a substantial portion, which is at least 50%, of any variable remuneration consists of an appropriate balance of:

- (a) subject to the legal structure of the firm concerned: shares or equivalent ownership interests; or share-linked instruments or equivalent non-cash instruments; and
- (b) where possible, other instruments that in each case adequately reflect the credit quality of the firm as a going concern and are appropriate for use as variable remuneration, such as:
 - (i) those which are eligible as additional tier 1 instruments or tier 2 instruments; or
 - (ii) those that can be fully converted to common equity tier 1 instruments or written down:

(where the expressions in italics are defined, with the conditions for eligibility, in the Definition of the Capital part of the PRA Rulebook).

- (2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the firm.
- (3) This *rule* applies to both the portion of the variable *remuneration* component deferred in accordance with ■ SYSC 19D.3.59R and the portion not deferred.

[Note: article 94(1)(I) of the CRD and Standard 8 of the FSB Compensation Standards1

19D.3.57 G [deleted]

19D.3.58 G

[deleted]

Remuneration Principle 12(g): Remuneration structures deferral

19D.3.59 R

- (1) In relation to higher paid material risk takers a firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:
 - (a) for dual-regulated firms Remuneration Code staff who perform a FCA-designated senior management function, five years, and vesting no faster than on a pro-rata basis;
 - (b) for dual-regulated firms Remuneration Code staff who perform a PRA-designated senior management function, seven years, with no vesting taking place until three years after the award, and vesting no faster than on a pro-rata basis; and
 - (c) for any other dual-regulated firms Remuneration Code staff who do not fall within (a) or (b) above, four years, and vesting no faster than on a pro-rata basis.
- (1A) In relation to dual-regulated firms Remuneration Code staff who are not higher paid material risk takers, a firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:
 - (a) for dual-regulated firms Remuneration Code staff who perform a FCA-designated senior management function at a significant firm, five years, and vesting no faster than on a pro-rata basis;
 - (b) for dual-regulated firms Remuneration Code staff who perform a PRA-designated senior management function at a significant firm, five years, and vesting no faster than on a pro-rata basis;
 - (c) for any other dual-regulated firms Remuneration Code staff who do not fall within (a) or (b) above, four years, and vesting no faster than on a pro-rata basis.
 - (2) In the case of a variable remuneration component:
 - (a) of £500,000 or more, or
 - (b) payable to a director of a significant firm;
 - at least 60% of the amount must be deferred on the basis set out in ■ SYSC 19D.3.59R(1) and vesting no faster than on a pro-rata basis.

(3) Subject to (1), the length of the deferral period must be established in accordance with the business cycle, the nature of the business, its risks and the activities of the *employee* in question.

[Note: article 94(1)(m) of the CRD and Standards 6 and 7 of the FSB Compensation Standards]

19D.3.60 G

- (1) Deferred remuneration paid in:
 - (a) shares or share-linked instruments should be made under a scheme which meets appropriate criteria, including risk adjustment of the performance measure used to determine the initial allocation of shares;
 - (b) cash should also be subject to performance criteria.
- (2) The FCA would generally expect a firm to have a firm-wide policy (and group-wide policy, where appropriate) on deferral. The proportion deferred should generally rise with the ratio of variable remuneration to fixed remuneration and with the amount of variable remuneration. While any variable remuneration component of £500,000 or more paid to dual-regulated firms Remuneration Code staff must be subject to 60% deferral, firms should also consider whether lesser amounts should be considered to be 'particularly high' taking account, for example, of whether there are significant differences within dual-regulated firms Remuneration Code staff in the levels of variable remuneration paid.

Remuneration Principle 12(h): Remuneration structures - performance adjustment (affordability, malus, clawback)

19D.3.61 R

A firm must ensure that:

- (1) any variable remuneration, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the firm as a whole, and justified on the basis of the performance of the firm, the business unit and the individual concerned;
- (2) any variable remuneration is subject to clawback, such that it is only awarded if an amount corresponding to it can be recovered from the individual by the *firm* if the recovery is justified on the basis of the circumstances described in SYSC 19D.3.62R(2) and SYSC 19D.3.64R;
- (3) for higher paid material risk takers, variable remuneration is subject to clawback for a period of at least seven years from the date on which the variable remuneration is awarded;
- (3A) for dual-regulated firms Remuneration Code staff who are not higher paid material risk takers:
 - (a) who are PRA-designated senior management function holders at a significant firm, the deferred component of variable remuneration is subject to clawback for a period of at least six years from the date on which the variable remuneration is awarded:
 - (b) who are FCA-designated senior management function holders at a significant firm, the deferred component of variable

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- remuneration is subject to clawback for a period of at least six years from the date on which the variable remuneration is awarded:
- (c) who do not fall within (a) or (b) above, the deferred component of variable remuneration is subject to clawback for a period of at least five years from the date on which the variable remuneration is awarded:
- (d) the undeferred component of variable remuneration is subject to clawback for a period of at least one year from the date on which the variable remuneration is awarded; and
- (4) for dual-regulated firms Remuneration Code staff whose total annual remuneration is greater than £500,000 and who perform either a PRA-designated senior management function or FCA-designated senior management function, it can, by notice to the employee to be given no later than seven years after the variable remuneration was awarded, extend the period during which variable remuneration is subject to clawback to at least ten years from the date on which the variable remuneration is awarded, where:
 - (a) the *firm* has commenced an investigation into facts or events which it considers could potentially lead to the application of clawback were it not for the expiry of the clawback period; or
 - (b) the firm has been notified by a regulatory authority (including an overseas regulatory authority) that an investigation has been commenced into facts or events which the firm considers could potentially lead to the application of clawback by the firm were it not for the expiry of the clawback period; and
- (5) it considers on an ongoing basis whether to use the power in (4).

[Note: article 94(1)(n) of the CRD and Standards 6 and 9 of the FSB Compensation Standards]

19D.3.62 R

A firm must:

- (1) set specific criteria for the application of malus and clawback; and
- (2) ensure that the criteria for the application of malus and clawback in particular cover situations where the employee:
 - (a) participated in, or was responsible for, conduct which resulted in significant losses to the firm; or
 - (b) failed to meet appropriate standards of fitness and propriety.

[Note: article 94(1)(n) of the CRD and Standards 6 and 9 of the FSB Compensation Standards

[Note: The FSA also gave guidance on the application of the requirements on risk adjustments. This guidance is available on the FCA website at https:// www.fca.org.uk/firms/being-regulated/remuneration-codes.]

19D.3.63 E

(1) A firm should reduce unvested deferred variable remuneration when, as a minimum:

- (a) there is reasonable evidence of *employee* misbehaviour or material error; or
- (b) the *firm* or the relevant business unit suffers a material downturn in its financial performance; or
- (c) the *firm* or the relevant business unit suffers a material failure of risk management.
- (2) For performance adjustment purposes, awards of deferred variable remuneration made in shares or other non-cash instruments should provide the ability for the *firm* to reduce the number of shares or other non-cash instruments.
- (3) Contravention of any of (1) or (2) may be relied on as tending to establish contravention of SYSC 19D.3.61R(1) on performance adjustment.
- 19D.3.64 R
- (1) A *firm* must make all reasonable efforts to recover an appropriate amount corresponding to some or all vested variable *remuneration* where either of the following circumstances arise during the period in which clawback applies (including any part of such period occurring after the relevant *employment* has ceased):
 - (a) there is reasonable evidence of *employee* misbehaviour or material error; or
 - (b) the *firm* or the relevant business unit suffers a material failure of risk management.
- (2) A firm must take into account all relevant factors (including, where the circumstances described in (1)(b) arise, the proximity of the employee to the failure of risk-management in question and the employee's level of responsibility) in deciding whether, and to what extent it is reasonable, to seek recovery of any or all of their vested variable remuneration.
- 19D.3.65 G

The governing body (or, where appropriate, the remuneration committee) should approve performance adjustment policies, including the triggers under which adjustment would take place. The FCA may ask firms to provide a copy of their policies and expects firms to make adequate records of material decisions to operate the adjustments.

Effect of breaches of the Remuneration Principles

- 19D.3.66 G
- SYSC 19D Annex 1 makes provision about voiding and recovery.
- 19D.3.67 R
- (1) Subject to (2) to (7), the *rules* in SYSC 19D Annex 1.1R to 1.6R apply in relation to the prohibitions on *dual-regulated firms Remuneration Code staff* being *remunerated* in the ways specified in:
 - (a) SYSC 19D.3.44R (quaranteed variable remuneration);
 - (b) SYSC 19D.3.59R (deferred variable remuneration);
 - (c) SYSC 19D.3.61R(2) (performance adjustment clawback); and

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- (d) SYSC 19D Annex 1.10R (replacing payments recovered or property transferred).
- (2) Paragraph (1) applies only to those prohibitions as they apply in relation to a firm that satisfies either Condition 1 or Condition 2 as set out in (3) and (4).
- (3) Condition 1 is that the firm is a UK bank, a building society, or a UK designated investment firm, that has relevant total assets exceeding £50 billion.
- (4) Condition 2 is that the firm:
 - (a) is either a full credit institution or a UK designated investment firm; and
 - (b) is part of a *group* containing a *firm* that has relevant total assets exceeding £50 billion and that is a UK bank, a building society or a UK designated investment firm.
- (5) For the purposes of this rule, 'relevant total assets' means the arithmetic mean of the firm's total assets as set out in its balance sheet on its last three accounting reference dates.
- (6) This rule does not apply in relation to the prohibition on dualregulated firms Remuneration Code staff being remunerated in the way specified in ■ SYSC 19D.3.44R (guaranteed variable remuneration) if both the conditions in paragraphs (2)(b) and (2)(c) of that rule are met.
- (7) This rule does not apply to a firm in relation to an individual (X), where both the following conditions are satisfied:
 - (a) Condition 1 is that X's annual variable remuneration is no more than one third of X's total annual remuneration; and
 - (b) Condition 2 is that X's total annual variable remuneration is no more than £44,000.
- (8) In relation to (7):
 - (a) references to remuneration are to remuneration awarded or paid in respect of the relevant performance year;
 - (b) the amount of any remuneration is:
 - (i) if it is money, its amount when awarded;
 - (ii) otherwise, whichever of the following is greatest:
 - (A) its value to the recipient when awarded;
 - (B) its market value when awarded; and
 - (C) the cost of providing it;
 - () where remuneration is, when awarded, subject to any condition, restriction or other similar provision which causes the amount of the remuneration to be less than it otherwise would be, that condition, restriction or provision is to be ignored in arriving at its value; and

() it is to be assumed that the member of *dual-regulated firms* Remuneration Code staff will remain so for the duration of the relevant performance year.

19D.3.68 G

- (1) Sections 137H and 137I of the *Act* enable the *FCA* to make *rules* that render void any provision of an agreement that contravenes specified prohibitions in the *dual-regulated firms Remuneration Code*, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision.
- (2) SYSC 19D.3.66R and SYSC 19D.3.67R (together with SYSC 19D Annex 1) are:
 - (a) rules referred to in (1) that render void provisions of an agreement that contravene the specified prohibitions on guaranteed variable remuneration, non-deferred variable remuneration and replacing payments recovered or property transferred; and
 - (b) the exception to the general position set out in section 138E(2) of the *Act* that a contravention of a *rule* does not make any transaction void or unenforceable.

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Detailed provisions on voiding and recovery (SYSC 19D.3.66R and SYSC 19D.3.67R)

Rendering contravening provisions of agreements void								
1	R	Any pro ing <i>rem</i> i	Any provision of an agreement that contravenes a prohibition on <i>persons</i> being <i>remunerated</i> in a way specified in a <i>rule</i> to which this <i>rule</i> applies (a 'contravening provision') is void.					
2	R	A contra	A contravening provision does not cease to be void because:					
		(1)		concerned ceases to satisfy any of the conditions set out 19D.3.67R(3) to (4); or				
		(2)	concern	mber of dual-regulated firms Remuneration Code staff ed starts to satisfy both of the conditions set out in SYSC R(7)(a) and (b).				
3	R	was first tained ii	3 A contravening provision that, at the time a <i>rule</i> to which this <i>rule</i> applies was first made (including any previous <i>rules</i> in the <i>FCA Handbook</i>), is contained in an agreement made before that time is not rendered void by SYSC 19D Annex 1.1R, unless it is subsequently amended so as to contravene such a <i>rule</i> .					
4	G	The effect of SYSC 19D Annex 1.3R, in accordance with sections 137H and 137I of the <i>Act</i> , is to prevent contravening provisions being rendered void retrospectively. However, contravening provisions may be rendered void if they are contained in an agreement made after the <i>rule</i> containing the prohibition is made by the <i>FCA</i> but before the <i>rule</i> comes into effect.						
5	R	(1)	(1) A pre-existing provision is not rendered void by SYSC 19 1.1R.					
		(2)	agreem	Annex, a pre-existing provision is any provision of an ent that would (but for this <i>rule</i>) be rendered void by Annex 1.1R that was agreed at a time when either:				
			(a)	the <i>firm</i> concerned did not satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); or				
			(b)	the member of <i>dual-regulated firms Remuneration Code staff</i> concerned satisfied both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).				
	is not to b		is not to	amendment to, or in relation to, a pre-existing provision be treated as a pre-existing provision where the amendagreed at a time when both:				
			(a)	the <i>firm</i> concerned satisfies at least one of the conditions set out in SYSC 19D.3.67R(3) to (4); and				
			(b)	the member of <i>dual-regulated firms Remuneration Code staff</i> concerned does not satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).				
6	R	For the purposes of this chapter, it is immaterial whether the law which (apart from this annex) governs a contravening provision is the law of the <i>United Kingdom</i> , or of a part of the <i>United Kingdom</i> .						

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Recovery of payments made or property transferred pursuant to a void contravening provision

Rendering	contravenir	ng provisions	of agreem	ents void			
7	R	In relation to any payment made or other property transferred in purs of a contravening provision other than a pre-existing provision, a <i>firm</i> take reasonable steps to:					
		(1)	recover an the <i>firm</i> ; a	y such payment made or other property transferred by and			
		(2)		t any other <i>person</i> (P) recovers any such payment ther property transferred by that <i>person</i> .			
8	R	SYSC 19D Annex 1.7R continues		ntinues to apply in one or both of the following cases:			
		(1)		oncerned ceases to satisfy any of the conditions set out 0.3.67R(3) to (4);			
		(2)	concerned	er of dual-regulated firms Remuneration Code staff starts to satisfy both of the conditions set out in SYSC ()(a) and (b).			
9	G	The <i>rule</i> in SYSC 19D Annex 1.7(2)R would, for example, apply in the context of a secondment. Where a <i>group</i> member seconds an individual to a <i>firm</i> and continues to be responsible for the individual's <i>remuneration</i> in respect of services provided to the <i>firm</i> , the <i>firm</i> would need to take reasonable steps to ensure that the <i>group</i> member recovers from the secondee any <i>remuneration</i> paid in pursuance of a contravening provision.					
Replacing	payments re	covered or p	property tra	nsferred			
10	R	(1)	A firm must not award, pay or provide variable remuneration to a person who has received remuneration in pursuance of a contravening provision other than a pre-existing provision (the 'contravening remuneration') unless the firm has obtained a legal opinion stating that the award, payment or provision of the remuneration complies with the dual-regulated firms Remuneration Code.				
		(2)		pplies only to variable <i>remuneration</i> relating to a peryear to which the contravening <i>remuneration</i> related.			
		(3)	The legal opinion in (1) must be properly reasoned and be provided by an appropriately qualified independent individual.				
		(4)	Paragraph (1) continues to apply in one or both of the following cases:				
			(a)	the <i>firm</i> concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4);			
			(b)	the member of <i>dual-regulated firms Remuneration Code staff</i> concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).			
Notification to the FCA							
11	G	The FCA considers any breach of a rule to which this annex applies to be a significant breach which should be notified to the FCA in accordance with SUP 15.3.11R (Breaches of rules and other requirements in or under the Act). Such a notification should include information on the steps which a firm or other person has taken or intends to take to recover payments or property in accordance with SYSC 19D Annex 1.7R.					

Senior Management Arrangements, Systems and Controls

Chapter 19E

UCITS Remuneration Code

■ Release 31 • Nov 2023 www.ha



19E.1 Application

- 19E.1.1
- (1) The UCITS Remuneration Code applies to a UK UCITS management company that manages a UCITS scheme.
- (2) [deleted]
- (3) In this section, a firm under (1) above, is referred to as a management company.
- 19E.1.2 R
- (1) This chapter applies to a UK UCITS management company in relation to remuneration paid, provided or awarded by any person to the extent that it is paid, provided or awarded in connection with employment by a management company.
- (2) Paragraph (1) is without prejudice to the meaning of remuneration elsewhere in the Handbook.
- 19E.1.3

Remuneration includes payments made by a seconding organisation, which is not subject to the UCITS Remuneration Code, to a secondee in respect of their employment by a management company which is subject to the UCITS Remuneration Code.



19E.2 Remuneration policies and practices

- 19E.2.1
- A management company must establish and apply remuneration policies and practices for UCITS Remuneration Code staff that:
 - (1) are consistent with and promote sound and effective risk management;
 - (2) do not encourage risk taking which is inconsistent with the risk profiles or the instrument constituting the fund or the prospectus, as applicable, of the UCITS it manages;
 - (3) do not impair the *management company's* compliance with its duty to act in the best interests of the UCITS it manages; and
 - (4) include fixed and variable components of remuneration, including salaries and discretionary pension benefits.

[Note: article 14a(1) and (2) of the UCITS Directive]

- 19E.2.2 R
- (1) UCITS Remuneration Code staff comprise those categories of staff whose professional activities have a material impact on the risk profiles of:
 - (a) the management company; or
 - (b) the UCITS that the management company manages.
- (2) UCITS Remuneration Code staff must comprise:
 - (a) senior management;
 - (b) risk takers;
 - (c) staff engaged in control functions; and
 - (d) any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers.

[Note: article 14a(3) of the UCITS Directive]

- 19E.2.3 G
- A management company need not treat a person in SYSC 19E.2.2R(2) as UCITS Remuneration Code staff if it can demonstrate that the person's professional activities do not have a material impact on the risk profiles of:

.....

- (1) the management company; or
- (2) the UCITS that the management company manages.

Proportionality

19E.2.4 R

- (1) When establishing and applying the remuneration policies for UCITS Remuneration Code staff, a management company must comply with the UCITS remuneration principles in a way and to the extent that is appropriate to:
 - (a) its size;
 - (b) internal organisation; and
 - (c) the nature, scope and complexity of its activities.
- (2) Paragraph (1) does not apply to the requirement for significant management companies to have a remuneration committee (■ SYSC 19E.2.9R).
- (3) The UCITS remuneration principles apply to:
 - (a) any benefit of any type paid by the management company;
 - (b) any amount paid directly by the UCITS itself, including performance fees, for the benefit of UCITS Remuneration Code staff; and
 - (c) any transfer of units or shares of the UCITS made for the benefit of UCITS Remuneration Code staff.

[Note: article 14b(1), (3) and (4) of the UCITS Directive]

UCITS Remuneration Principle 1: Risk management

19E.2.5

A management company must ensure that its remuneration policy:

- (1) is consistent with, and promotes sound and effective risk management; and
- (2) does not encourage risk taking which is inconsistent with the risk profiles or the instrument constituting the fund of the UCITS it manages.

[Note: article 14b(1)(a) of the UCITS Directive]

UCITS Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interests

19E.2.6

A management company must ensure that its remuneration policy:

- (1) is in line with the business strategy, objectives, values and interests of:
 - (a) the management company;
 - (b) the UCITS it manages; and
 - (c) the investors in such UCITS; and

(2) includes measures to avoid conflicts of interest.

[Note: article 14b(1)(b) of the UCITS Directive]

UCITS Remuneration Principle 3: Governance

19E.2.7 R

- (1) A management company must ensure that its management body in its supervisory function:
 - (a) adopts and reviews at least annually the general principles of the remuneration policy; and
 - (b) is responsible for the implementation of the general principles of the remuneration policy.
- (2) The tasks in (1) must be undertaken only by members of the management body who:
 - (a) do not perform any executive functions in the management company concerned; and
 - (b) have expertise in risk management and remuneration.

[Note: article 14b(1)(c) of the UCITS Directive]

19E.2.8 R

A management company must ensure the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function.

[Note: article 14b(1)(d) of the UCITS Directive]

19E.2.9 \mathbf{R}

- (1) A management company must establish a remuneration committee if it is significant in terms of:
 - (a) its size, or the size of the UCITS that it manages;
 - (b) [deleted]
 - (c) the complexity of its internal organisation; and
 - (d) the nature, the scope and the complexity of its activities.
- (2) The remuneration committee must be constituted in a way that enables it to exercise competent and independent judgment on:
 - (a) remuneration policies and practices; and
 - (b) the incentives created for managing risk.
- (3) The remuneration committee must be responsible for the preparation of decisions regarding remuneration, including those which:
 - (a) have implications for the risk and risk management of the management company or the UCITS concerned; and
 - (b) are taken by the management body in its supervisory function.
- (4) The chairman and the members of the remuneration committee must be members of the management body who do not perform any executive function in the management company.

(5) When preparing its decisions, the remuneration committee must take into account the long-term interest of investors and other stakeholders and the public interest.

[Note: article 14b(4) of the UCITS Directive]

UCITS Remuneration Principle 4: Control functions

19E.2.10

A management company must ensure that employees engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas that are within their remit.

[Note: article 14b(1)(e) of the UCITS Directive]

19E.2.11

A management company must ensure the remuneration of the senior officers in the risk management and compliance functions is directly overseen by:

- (1) the remuneration committee; or
- (2) if such a committee has not been established, the management body in its supervisory function.

[Note: article 14b(1)(f) of the UCITS Directive]

UCITS Remuneration Principle 5(a): Remuneration structures – assessment of performance

19E.2.12 R

- (1) A management company must ensure that, where remuneration is performance related, the total amount of remuneration is based on a combination of:
 - (a) the assessment of the performance of the individual and of the business unit or UCITS concerned, and of their risks; and
 - (b) the overall results of the management company.
- (2) When assessing individual performance, financial and non-financial criteria must be taken into account.

[Note: article 14b(1)(g) of the UCITS Directive]

19E.2.13

A management company must ensure that the assessment of performance is set in a multi-year framework appropriate to any holding period recommended to the investors of the UCITS managed by the management company to ensure that the:

- (1) assessment process is based on the long-term performance of the UCITS and its investment risks; and
- (2) actual payment of the performance-based components of remuneration is spread over the same period.

[Note: article 14b(1)(h) of the UCITS Directive]

UCITS Remuneration Principle 5(b): Remuneration structures guaranteed variable remuneration

19E.2.14 R

A management company must not award, pay or provide guaranteed variable remuneration unless it:

- (1) is exceptional;
- (2) occurs only in the context of hiring new staff; and
- (3) is limited to the first year of engagement.

[Note: article 14b(1)(i) of the UCITS Directive]

UCITS Remuneration Principle 5(c): Remuneration structures – fixed and variable components of total remuneration

19E.2.15 R

A management company must ensure that:

- (1) fixed and variable components of total remuneration are appropriately balanced; and
- (2) the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component.

[Note: article 14b(1)(j) of the UCITS Directive]

UCITS Remuneration Principle 5(d): Remuneration structures payments related to early termination

19E.2.16 R

A management company must ensure that payments related to the early termination of a contract:

- (1) reflect performance achieved over time; and
- (2) are designed in a way that does not reward failure.

[Note: article 14b(1)(k) of the UCITS Directive]

19E.2.17 G

- (1) Taking account of the *remuneration* principles proportionality rule in SYSC 19E.2.4R, the FCA does not generally consider it necessary for a management company to apply the rules referred to in (2) where, in relation to an individual ("X"), both the following conditions are satisfied:
 - (a) Condition 1 is that X's variable remuneration is no more than 33% of total remuneration; and
 - (b) Condition 2 is that X's total remuneration is no more than £500,000.
- (2) The rules to which (1) applies are those relating to:
 - (a) retained units, shares or other instruments (■ SYSC 19E.2.18R);

- (b) deferral (■ SYSC 19E.2.20R); and
- (c) performance adjustment (■ SYSC 19E.2.22R).

UCITS Remuneration Principle 5(e): Remuneration structures – retained units, shares or other instruments

19E.2.18 R

- (1) Subject to the legal structure of the UCITS and the instrument constituting the fund, a management company must ensure that a substantial portion, and in any event at least 50%, of any variable remuneration component consists of:
 - (a) units or shares of the UCITS concerned; or
 - (b) equivalent ownership interests in the UCITS concerned; or
 - (c) share-linked instruments relating to the UCITS concerned; or
 - (d) equivalent non-cash instruments relating to the UCITS concerned with incentives that are equally as effective as any of the instruments referred to in (a) to (c).
- (2) However, if the management of UCITS accounts for less than 50% of the total portfolio managed by the management company, the minimum of 50% does not apply.
- (3) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives for the UCITS Remuneration Code staff with the long-term interests of:
 - (a) the management company;
 - (b) the UCITS it manages; and
 - (c) the investors of such UCITS.
- (4) This rule applies to:
 - (a) the portion of the variable remuneration component deferred in line with ■ SYSC 19E.2.20R(1); and
 - (b) the portion not deferred.

[Note: article 14b(1)(m) of the UCITS Directive]

19E.2.19 G

- (1) If the management of UCITS accounts for less than 50% of the total portfolio managed by the management company, the minimum of 50% in ■ SYSC 19E.2.18R(1) does not apply.
- (2) However, in the circumstances in (1) the management company is still required to ensure that a substantial portion of any variable remuneration component consists of the instruments in ■ SYSC 19E.2.18R(1) and appropriately reflects the extent of the management of UCITS by the management company.
- (3) In the circumstances in (1), the management company may consider the additional use of instruments other than those in ■ SYSC 19E.2.18R(1) that achieve the alignment of interest referred to in ■ SYSC 19E.2.18R(3).

UCITS Remuneration Principle 5(f): Remuneration structures – deferral

19E.2.20 R

A management company must not award, pay or provide a variable remuneration component unless a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is:

- (a) appropriate in view of any holding period recommended to the investors of the *UCITS* concerned; and
- (b) correctly aligned with the nature of the risks of the *UCITS* in question.
- (2) The period referred to in (1) must be at least three years.
- (3) Remuneration payable under (1) must vest no faster than on a prorata basis.
- (4) For a variable *remuneration* component of a particularly high amount, at least 60% of the amount must be deferred.

[Note: article 14b(1)(n) of the UCITS Directive]

19E.2.21 G

- (1) £500,000 should be considered a particularly high amount for the purpose of SYSC 19E.2.20R(4).
- (2) While any variable remuneration component of £500,000 or more paid to UCITS Remuneration code staff should be subject to 60% deferral, management companies should also consider whether lesser amounts should be considered to be 'particularly high'.
- (3) Management companies should take into account, for example, whether there are significant differences within UCITS Remuneration Code staff in the levels of variable remuneration paid.

UCITS Remuneration Principle 5(g): Remuneration structures – performance adjustment, etc.

19E.2.22 R

A management company must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is:

- (1) sustainable according to the financial situation of the *management* company as a whole; and
- (2) justified according to the performance of:
 - (a) the UCITS;
 - (b) the business unit; and
 - (c) the individual concerned.

[Note: first sub-paragraph of article 14b(1)(o) of the UCITS Directive]

19E.2.23 G

(1) The total variable *remuneration* should generally be considerably contracted where subdued or negative financial performance of the *management company* or of the *UCITS* concerned occurs.

19E

(2) When considering (1), management companies should take into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: second sub-paragraph of article 14b(1)(o) of the UCITS Directive]

UCITS Remuneration Principle 6: Measurement of performance

19E.2.24 R A management company must ensure that the measurement of performance used to calculate variable remuneration components, or pools of variable remuneration components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.

[Note: article 14b(1)(I) of the UCITS Directive]

UCITS Remuneration Principle 7: Pension Policy

19E.2.25 R A management company must ensure that:

- (1) its pension policy is in line with the business strategy, objectives, values and long-term interests of:
 - (a) the management company; and
 - (b) the UCITS it manages;
- (2) when an employee leaves the management company before retirement, any discretionary pension benefits are held by the management company for a period of five years in the form of the instruments referred to in ■ SYSC 19E.2.18R(1); and
- (3) for an employee reaching retirement, discretionary pension benefits are:
 - (a) paid to the employee in the form of instruments referred to in ■ SYSC 19E.2.18R(1); and
 - (b) subject to a five-year retention period.

[Note: article 14b(1)(p) of the UCITS Directive]

UCITS Remuneration Principle 8: Personal investment strategies

19E.2.26

A management company must ensure that its employees undertake not to use any of the following to undermine the risk alignment effects embedded in their remuneration arrangements:

- (1) personal hedging strategies; or
- (2) remuneration-related insurance; or
- (3) liability-related insurance.

[Note: article 14b(1)(q) of the UCITS Directive]

UCITS Remuneration Principle 9: Avoidance of the remuneration code

19E.2.27 R

A management company must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the UCITS Remuneration Code.

[Note: article 14b(1)(r) of the UCITS Directive]

Senior Management Arrangements, Systems and Controls

Chapter 19F

Remuneration and performance management

■ Release 31 • Nov 2023



19F.1 MiFID remuneration incentives

Application

19F.1.1 R

- (1) SYSC 19F.1 applies to:
 - (a) a common platform firm, unless it is a collective portfolio management investment firm;
 - (b) a MiFID optional exemption firm; and
 - (c) a third country firm.
 - (d) [deleted]
- (2) In relation to a firm that falls under (1)(c), SYSC 19F.1 applies only in relation to activities carried on from an establishment in the *United* Kingdom.

Purpose

19F.1.2

G

This chapter contains rules implementing article 24(10) of MiFID and on remuneration policies and practices.

MiFID requirement on remuneration incentives

19F.1.3 R A firm which provides investment services to clients must ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular, a firm must not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the firm could offer a different financial instrument which would better meet that client's needs.

[Note: article 24(10) of MiFID]

Remuneration policies and practices

19F.1.4 R

- (1) A dormant account fund operator in respect of its investment services and ancillary services, a MiFID optional exemption firm in respect of its investment services and ancillary services and a third country firm in respect of its MiFID or equivalent third country business must:
 - (a) define and implement remuneration policies and practices under appropriate internal procedures taking into account the interests of all the *clients* of the *firm*, with a view to ensuring that *clients* are treated fairly and their interests are not impaired by the remuneration practices adopted by the firm in the short, medium

- or long term. Remuneration policies and practices must be designed in such a way so as not to create a conflict of interest or incentive that may lead relevant persons to favour their own interests or the firm's interests to the potential detriment of any client;
- (b) ensure that their remuneration policies and practices apply to all relevant persons with an impact, directly or indirectly, on investment services and ancillary services provided by the firm or on its corporate behaviour, regardless of the type of clients, to the extent that the remuneration of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the firm's clients; and
- (c) ensure that its management body approves, after taking advice from the compliance function, the firm's remuneration policy. The senior management of the firm must be responsible for the day-to-day implementation of the remuneration policy and the monitoring of compliance risks related to the policy.
- (2) (a) Remuneration and similar incentives must not be solely or predominantly based on quantitative commercial criteria, and must take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of clients and the quality of services provided to clients.
 - (b) A balance between fixed and variable components of remuneration must be maintained at all times, so that the remuneration structure does not favour the interests of the firm or its relevant persons against the interests of any client.

19F.1.5 G A firm should also be aware of:

- (1) in the case of a common platform firm (but excluding a collective portfolio management investment firm), the requirements on remuneration in article 27 of the MiFID Org Regulation applying to it;
- (2) the requirements in relation to remuneration policies (■ SYSC 4.3A.1AR) and conflicts of interest (■ SYSC 10.1.7R);
- (3) the Finalised Guidance 13/01 entitled 'Risks to customers from financial incentives' published in January 2013; and
- (4) the Finalised Guidance 15/10 entitled 'Risks to customers from performance management at firms' published in July 2015.

19F



19F.2 **IDD** remuneration incentives

Application

19F.2.1

This section applies to insurance distributors carrying on insurance distribution activities from an establishment maintained by it, or its appointed representative, in the United Kingdom.

[Note: article 7(2) of the IDD]

19F.2.1A R

This section does not apply to an authorised professional firm with respect to its non-mainstream regulated activities if:

- (1) the firm's designated professional body has made rules which implemented article 17(3) of the IDD;
- (2) those rules have been approved by the FCA under section 332(5) of the Act; and
- (3) the firm is subject to the rules in the form in which they were approved.

Remuneration and the customer's best interests

19F.2.2 R

- (1) Insurance distributors must not:
 - (a) be remunerated; or
 - (b) remunerate or assess the performance of their employees,

in a way that conflicts with their duty to comply with the customer's best interests rules (ICOBS 2.5.-1R, in relation to a non-investment insurance contract, or ■ COBS 2.1.1R, in relation to a life policy).

(2) In particular, an insurance distributor must not make any arrangements by way of remuneration, sales target or otherwise that could provide an incentive to itself or its employees to recommend a particular contract of insurance to a customer when the insurance distributor could offer a different insurance contract which would better meet the customer's needs.

[Note: article 17(3) of the IDD]

Retail premium finance

19F



19F.3 **Funeral plan remuneration** incentives

Application

- 19F.3.1 This section applies to a firm carrying on regulated funeral plan activities. R Remuneration and the customer's best interests
- 19F.3.2 R (1) A firm must not:
 - (a) be remunerated; or
 - (b) remunerate or assess the performance of its employees, in a way that conflicts with its duty to comply with the customer's best interests rule.
 - (2) In particular, a firm must not make any arrangements by way of remuneration, sales target or otherwise that could provide an incentive to itself or its *employees* to recommend or offer a particular funeral plan contract to a customer when the firm could offer a different funeral plan contract which would better meet the customer's needs.
- 19F.3.3 G
- (1) A firm should consider FPCOB 6.4R and FPCOB 6.5R when making arrangements which concern remuneration or performance incentives.
- (2) Examples of remuneration arrangements which may conflict with the customer's best interests rule include:
 - (a) arrangements which provide for higher levels of remuneration based on the price of the plan that is recommended or offered (i.e. higher remuneration for selling a more expensive plan);
 - (b) arrangements for *remuneration* or performance management which are based primarily on the number of plans sold, or the price of plans sold; and
 - (c) arrangements which do not have adequate provision for remuneration to be taken back if the customer cancels the plan.

Senior Management Arrangements, Systems and Controls

Chapter 19G

MIFIDPRU Remuneration Code

■ Release 31 • Nov 2023



19G.1 **General application**

Application: non-SNI MIFIDPRU investment firms

19G.1.1 R

- (1) Subject to (2), the MIFIDPRU Remuneration Code applies to a non-SNI MIFIDPRU investment firm.
- (2) The provisions in (4) do not apply to a non-SNI MIFIDPRU investment firm:
 - (a) where the value of the firm's on-balance sheet assets and offbalance sheet items over the preceding 4-year period is a rolling average of £100 million or less; or
 - (b) where:
 - (i) the value of the firm's on-balance sheet assets and offbalance sheet items over the preceding 4-year period is a rolling average of £300 million or less; and
 - (ii) the conditions in (3) are (where they are relevant to a firm) satisfied.
- (3) The conditions referred to in (2)(b)(ii) are:
 - (a) that the exposure value of the firm's on- and off-balance sheet trading book business is equal to or less than £150 million; and
 - (b) that the exposure value of the firm's on- and off-balance sheet derivatives business is equal to or less than £100 million.
- (4) The provisions referred to in (2) are:
 - (a) SYSC 19G.6.19R to SYSC 19G.6.21G (Shares, instruments and alternative arrangements):
 - (b) SYSC 19G.6.22R and SYSC 19G.6.23G (Retention policy);
 - (c) SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and
 - (d) SYSC 19G.6.35R(2) (Discretionary pension benefits).

- (5) For the purposes of paragraph (2), paragraph (6) applies where a non-SNI MIFIDPRU investment firm does not have monthly data covering the 4-year period referred to in that paragraph.
- (6) Where this paragraph applies, a *non-SNI MIFIDPRU investment firm* must calculate the rolling averages referred to in paragraph (2) using the data points that it does have.

19G.1.2 G

- (1) For the purposes of ■SYSC 19G.1.1R(5), the FCA expects a non-SNI MIFIDPRU investment firm to have insufficient data for a period only where it did not carry on any MiFID business during that period, or where (for periods prior to the application of the MIFIDPRU Remuneration Code) the firm did not record the relevant data on a monthly basis.
- (2) Where a *firm* doesn't have all the monthly data points, the *firm* should use the data points it has in the way that paints the most representative picture of the period in question. For example, if a *firm* has monthly data for 2 years of the 4-year period, but prior to that only recorded the relevant data on a quarterly basis, the *firm* could sensibly calculate its rolling average by using the quarterly figure for each of the 3 monthly data points in each quarter.

19G.1.3 R

- (1) The amounts referred to in SYSC 19G.1.1R must be calculated on an individual basis, and:
 - (a) in the case of on-balance sheet assets, in accordance with the applicable accounting framework;
 - (b) in the case of off-balance sheet items, using the full nominal value.
- (2) The value of the on-balance sheet assets and off-balance sheet items in SYSC 19G.1.1R(2)(a) and (b) must be an arithmetic mean of the assets and items over the preceding 4 years, based on monthly data points.
- (3) A *firm* may choose the day of the *month* that it uses for the data points in (2), but once that day has been chosen the *firm* may only change it for genuine business reasons.

19G.1.4 R

- (1) When calculating the amounts referred to in SYSC 19G.1.1R(2)(a) and (b), a firm must use the total amount of its on-balance sheet assets and off-balance sheet items.
- (2) A firm must calculate the exposure values referred to in
 SYSC 19G.1.1R(3)(a) and (b) by adding together the following items:
 - (a) the positive excess of the firm's long positions over its short positions in all trading book financial instruments, using the approach specified for K-NPR in MIFIDPRU 4.12.2R to calculate the net position for each instrument; and
 - (b) the exposure value of contracts and transactions referred to in MIFIDPRU 4.14.3R, calculated using the approach specified for K-TCD in MIFIDPRU 4.14.8R.

- (3) Any amounts in foreign currencies must be converted into pound sterling using the relevant conversion rate.
- (4) A firm must determine the relevant conversion rate referred to in (3) by reference to an appropriate market rate and must record which rate was chosen.

19G.1.5 G

The FCA considers that an example of an appropriate market rate for the purposes of ■ SYSC 19G.1.4R(4) is the relevant daily spot exchange rate against pound sterling published by the Bank of England.

Application: SNI MIFIDPRU investment firms

19G.1.6 R

- (1) The provisions in (2) apply to a SNI MIFIDPRU investment firm.
- (2) The provisions referred to in (1) are:
 - (a) SYSC 19G.2 (Remuneration policies and practices);
 - (b) SYSC 19G.3.1R to SYSC 19G.3.3R (Oversight of remuneration policies and practices);
 - (c) SYSC 19G.3.6R to SYSC 19G.3.8G (Control functions);
 - (d) SYSC 19G.4.1R to SYSC 19G.4.5R and SYSC 19G.4.7G(1) and (2) (Fixed and variable components of remuneration);
 - (e) SYSC 19G.6.1R (Remuneration and capital);
 - (f) SYSC 19G.6.2R (Exceptional government intervention); and
 - (g) SYSC 19G.6.5R to SYSC 19G.6.6G (Assessment of performance).

Application: summary of application to MIFIDPRU investment firms

19G.1.7 G

The effect of the application provisions in ■ SYSC 19G.1.1R to ■ 19G.1.6R is summarised in the following table. Applicable sections

Type of firm	Applicable sections
Non-SNI MIFID- PRU investment firm not falling within SYSC 19G.1.1R(2)	The MIFIDPRU Remuneration Code
Non-SNI MIFID-	The MIFIDPRU Remuneration Code except for:
PRU investment firm falling within SYSC	SYSC 19G.6.19R to SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
19G.1.1R(2)	SYSC 19G.6.22R and SYSC 19G.6.23G (Retention policy);
	SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and
	SYSC 19G.6.35R(2) (Discretionary pension benefits)
SNI MIFIDPRU	SYSC 19G.2 (Remuneration policies and practices);
investment firm	SYSC 19G.3.1R to SYSC 19G.3.3R (Oversight of remuneration policies and practices);
	SYSC 19G.3.6R to SYSC 19G.3.8G (Control functions);

SYSC 19G.4.1R to SYSC 19G.4.5R and SYSC 19G.4.7G(1) and SYSC 19G.4.7G(2) (Fixed and variable components of remuneration);

SYSC 19G.6.1R (Remuneration and capital);

SYSC 19G.6.2R (Exceptional government intervention); and

SYSC 19G.6.5R to SYSC 19G.6.6G (Assessment of performance)

■ MIFIDPRU 1.2 contains provisions regarding the classification of a firm as a SNI MIFIDPRU investment firm and non-SNI MIFIDPRU investment firm

Application: where the application of SYSC 19G.1.1R changes in relation to a firm

19G.1.8 R

- (1) This *rule* applies to a *non-SNI MIFIDPRU investment firm* that did not meet either condition in SYSC 19G.1.1R(2)(a) or (b) but subsequently does.
- (2) The provisions referred to in SYSC 19G.1.1R(2) cease to apply to the *firm* in (1) if:
 - (a) the firm has met the conditions in either SYSC 19G.1.1R(2)(a) or
 (b) for a continuous period of at least 6 months (or such longer period as may have elapsed before the firm submits the notification in (b)); and
 - (b) it has notified the FCA that it has met the conditions in (a).
- (3) The notification in (2)(b) must be submitted through the *online* notification and application system using the form in MIFIDPRU 7 Annex 3R.

19G.1.9 G

The effect of \blacksquare SYSC 19G.1.8R(2)(a) is that a *firm* may move between meeting the conditions in \blacksquare SYSC 19G.1.1R(2)(a) and \blacksquare (b) during the 6-month period.

19G.1.10 R

Where a *non-SNI MIFIDPRU investment firm* has met the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b) but then ceases to do so, it must comply with the provisions referred to in ■ SYSC 19G.1.1R(2) within 12 *months* from the date on which the *firm* ceased to meet the conditions.

19G.1.11 R

- (1) Where a *non-SNI MIFIDPRU investment firm* ceases to meet the conditions in SYSC 19G.1.1R(2)(a) or (b), it must promptly notify the *FCA*.
- (2) The notification in (1) must be submitted through the *online* notification and application system using the form in MIFIDPRU 1 Annex 3R.

19G.1.12 G

Where a *firm* ceases to meet the conditions in \blacksquare SYSC 19G.1.1R(2)(a) or \blacksquare (b), but subsequently meets the conditions again within a period of 6 *months*, the *firm* will still be subject to the provisions referred to in \blacksquare SYSC 19G.1.1R(2)

for 12 months after the date on which it first ceased to meet the conditions. The firm only ceases to be subject to the provisions referred to in ■ SYSC 19G.1.1R(2) where it meets the conditions in ■ SYSC 19G.1.8R(2).

19G.1.13 R

The requirements in ■ SYSC 19G.1.8R(2)(b) and ■ SYSC 19G.1.11R(1) do not apply where a non-SNI MIFIDPRU investment firm has notified the FCA in accordance with the requirements of ■ MIFIDPRU 7.1.9R(2)(b) or ■ MIFIDPRU 7.1.12R(1) of the same event.

Application: collective portfolio management investment firms

19G.1.14 G

The MIFIDPRU Remuneration Code applies to a collective portfolio management investment firm.

19G.1.15 G

- (1) A collective portfolio management investment firm must assess the thresholds in ■ SYSC 19G.1.1R(2) and ■ (3) on the basis of the total of both its MiFID business and non-MiFID business.
- (2) SYSC 19G.1.20R to SYSC 19G.1.23G explain the position for firms subject to the MIFIDPRU Remuneration Code and another FCA remuneration code.

Application: levels of application

19G.1.16 G

■ SYSC 19G.1.1R to ■ SYSC 19G.1.15R and ■ SYSC 19G.1.17R explain when the MIFIDPRU Remuneration Code applies to a firm on an individual basis. ■ SYSC 19G.1.18R and ■ 19G.1.19R explain when the MIFIDPRU Remuneration Code applies on a consolidated basis, and what that means.

19G.1.17 R

The MIFIDPRU Remuneration Code applies to a firm on an individual basis where the FCA has granted a firm permission under ■ MIFIDPRU 2.4.17R and ■ MIFIDPRU 2.4.18R to apply the group capital test.

19G.1.18 R

- (1) Subject to (3), where MIFIDPRU 2.5 applies to a *UK parent entity*, the MIFIDPRU Remuneration Code applies to that UK parent entity on a consolidated basis.
- (2) A UK parent entity that is treated as an SNI MIFIDPRU investment firm in accordance with ■ MIFIDPRU 2.5.21R is also treated as an SNI MIFIDPRU investment firm when applying the MIFIDPRU Remuneration Code on a consolidated basis.
- (3) A UK parent entity that is treated as a non-SNI MIFIDPRU investment firm in accordance with ■ MIFIDPRU 2.5.21R is also treated as a non-SNI MIFIDPRU investment firm when applying the MIFIDPRU Remuneration Code on a consolidated basis.
- (4) The following provisions only apply to a *firm* on an individual basis:
 - (a) SYSC 19G.1.1R(2), (3), (5) and (6);
 - (b) The provisions listed in SYSC 19G.1.1R(4);
 - (c) SYSC 19G.1.2G to 19G.1.5G; and

- (d) SYSC 19G.1.8G to 19G.1.13G.
- (5) For the purposes of the MIFIDPRU Remuneration Code, application on a consolidated basis means on the basis of the situation that results from applying the requirements in the MIFIDPRU Remuneration Code to a UK parent entity as if that undertaking, together with all the investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group, formed a single MIFIDPRU investment firm.
- (6) For the purposes of (5), the terms investment firm, financial institution, ancillary services undertaking and tied agent apply to undertakings established in third countries, which, if established in the UK, would satisfy the definitions of those terms.
- (7) Where an undertaking in a third country is included in the consolidated situation of a UK parent entity as a result of (6), the MIFIDPRU Remuneration Code only applies in relation to material risk takers at that undertaking who oversee or are responsible for business activities that take place in the UK.

19G.1.19 G

- Where the MIFIDPRU Remuneration Code applies on a consolidated basis, the effect of ■ SYSC 19G.1.18R(5) is that the UK parent entity and all the investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group are treated for these purposes as a single MIFIDPRU investment firm. This means, for example, treating a staff member of an undertaking within the investment firm group as if they were a staff member of the *UK parent entity*.
- (2) When considering which rules in the MIFIDPRU Remuneration Code apply on a consolidated basis, a UK parent entity must consider whether it is treated as an SNI MIFIDPRU investment firm or a non-SNI MIFIDPRU investment firm under MIFIDPRU 2.5.21R (which, as ■ SYSC 19G.1.18R(2) and ■ (3) explain, also determines its categorisation under the MIFIDPRU Remuneration Code).
- (3) The effect of SYSC 19G.1.18R(4)(b) is that a UK parent entity need not comply with the provisions listed in ■ SYSC 19G.1.1R(4) on a consolidated basis. These provisions apply on an individual basis where a firm exceeds the thresholds in ■ SYSC 19G.1.1R(2)(a) or ■ (b). As these thresholds are not relevant where the MIFIDPRU Remuneration Code applies on a consolidated basis, the provisions concerning them are also disapplied.

Application: firms subject to different remuneration requirements

19G.1.20 R

- (1) Where a firm is subject to the MIFIDPRU Remuneration Code and, as a result of the application of any of the requirements listed in (2), to provisions imposing different remuneration requirements, only one of which can be complied with, it must comply with the most stringent of the relevant provisions.
- (2) The requirements referred to in (1) are:
 - (a) different requirements in the MIFIDPRU Remuneration Code;

- (b) the AIFM Remuneration Code;
- (c) the Dual-regulated firms Remuneration Code; and
- (d) the UCITS Remuneration Code.

19G.1.21 G

■ SYSC 19G.1.20R states that where different remuneration requirements apply to a firm it must comply with the most stringent of the relevant provisions. Some non-exhaustive examples follow.

Example 1: A firm may be subject to different requirements under the MIFIDPRU Remuneration Code on an individual basis and on a consolidated basis. This scenario may arise because a firm is an SNI MIFIDPRU investment firm on an individual basis but a non-SNI MIFIDPRU investment firm on a consolidated basis.

Example 2: Different remuneration requirements may apply to a firm when an investment firm group contains both a PRA-designated investment firm and an FCA investment firm (but not a credit institution). This may lead to a firm being subject to both the MIFIDPRU Remuneration Code and the Dual-regulated firms Remuneration Code.

Example 3: A staff member at a collective portfolio management investment firm may be a material risk taker and also AIFM Remuneration Code Staff or UCITS Remuneration Code Staff. In this case the material risk taker will be subject to the MIFIDPRU Remuneration Code and the requirements of the AIFM Remuneration Code or the UCITS Remuneration Code.

19G.1.22 G

The effect of ■SYSC 19G.1.20R is that a *firm* must consider which requirement is the most stringent on a provision by provision basis.

19G.1.23 G

■ SYSC 19G.1.20R is not relevant where a firm can comply with both sets of remuneration requirements, for example requirements to establish, implement and maintain remuneration policies and practices on both an individual basis and a consolidated basis.

Application: staff

19G.1.24 G

The term 'staff' should be interpreted broadly in the MIFIDPRU Remuneration Code to include, for example, employees of the firm itself, partners or members (in the case of partnership structures), employees of other entities in the group, employees of joint service companies, and secondees.

Application: performance periods

19G.1.25 G

The rules in the MIFIDPRU Remuneration Code apply to each performance period, regardless of whether it is annual, quarterly, or another frequency. A firm must comply with the rules on performance assessment and risk adjustment in relation to each such performance period.

Application: proportionality

19G.1.26 R

A firm must comply with the MIFIDPRU Remuneration Code in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities.

Application: carried interest

19G.1.27 R

- (1) The MIFIDPRU Remuneration Code applies to remuneration, including carried interest (which represents a share in the profits of a fund managed by the firm's staff, as compensation for the management of the fund).
- (2) Where arrangements concerning carried interest meet the conditions in (3), the following provisions do not apply:
 - (a) SYSC 19G.6.19R to SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
 - (b) SYSC 19G.6.22R and SYSC 19G.6.23G (Retention policy);
 - (c) SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and
 - (d) SYSC 19G.6.30R to SYSC 19G.6.34G (Performance adjustment).
- (3) The conditions referred to in (2) are that:
 - (a) the value of the carried interest must be determined by the performance of the *fund* in which the carried interest is held;
 - (b) the period between the award of the carried interest and any payment under it must be at least 4 years; and
 - (c) there are provisions for the forfeiture or cancellation of carried interest that include at least the circumstances set out in
 SYSC 19G.6.31R(3)(a) and SYSC 19G.6.31R(3)(b).
- 19G.1.28 R

For the purposes of the *MIFIDPRU Remuneration Code*, a carried interest must be valued at the time of its award.

Application: general

19G.1.29 G

While the rules in the MIFIDPRU Remuneration Code set out the minimum regulatory requirements that a MIFIDPRU investment firm must comply with, the FCA considers it good practice for a firm to assess whether going beyond those regulatory requirements would contribute to sound risk management or a healthy firm culture.

When?

19G.1.30 R

A firm must apply the MIFIDPRU Remuneration Code from the start of its first performance period that begins on or after 1 January 2022.



19G.2 Remuneration policies and practices

General requirements

- 19G.2.1 R A MIFIDPRU investment firm must establish, implement and maintain remuneration policies and practices.
- 19G.2.2 G The remuneration policies and practices referred to in ■ SYSC 19G.2.1R should cover all aspects of remuneration within the scope of the MIFIDPRU Remuneration Code, and all staff.
- 19G.2.3 G In line with the record-keeping requirements in ■ SYSC 9, a firm should ensure that its remuneration policies and practices (including performance assessment processes and decisions) are clear and documented.

Proportionality

- 19G.2.4 R A firm's remuneration policies and practices must be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the firm.
- 19G.2.5 G The proportionality principle in ■ SYSC 19G.2.4R means that the content and level of detail of a firm's remuneration policy may depend on a number of factors. These may include the number of staff it employs, the different types of roles, the activities it carries out, and whether the firm is part of a group with a group-wide remuneration policy.

Gender neutral remuneration policies and practices

- 19G.2.6 A firm must ensure that its remuneration policy is a gender neutral remuneration policy and the practices referred to in ■ SYSC 19G.2.1R are gender neutral.
- 19G.2.7 Firms are reminded that the Equality Act 2010 prohibits discrimination on the basis of an individual's protected characteristics both before and after employment is offered. The Act applies to pay and all other contractual terms, including variable remuneration. A firm must ensure that its remuneration policy complies with the Equality Act 2010.

		Risk management, business strategy and avoiding conflicts of interest
19G.2.8	R	A <i>firm</i> must ensure that its <i>remuneration</i> policies and practices are consistent with, and promote sound and effective, risk management.
19G.2.9	R	A <i>firm</i> must ensure that its <i>remuneration</i> policies and practices are in line with the business strategy, objectives and long-term interests of the <i>firm</i> .
19G.2.10	G	For the purposes of SYSC 19G.2.9R, the business strategy, objectives and long-term interests of the <i>firm</i> should include consideration of:
		(1) the firm's risk appetite and strategy, including environmental, social and governance risk factors;
		(2) the firm's culture and values; and
		(3) the long-term effects of the investment decisions taken.
19G.2.11	R	A firm must ensure that its remuneration policy:
		(1) contains measures to avoid conflicts of interest;
		(2) encourages responsible business conduct; and
		(3) promotes risk awareness and prudent risk taking.
19G.2.12	R	A MIFIDPRU investment firm must not pay variable remuneration to members of the management body who do not perform any executive function in the firm.



19G.3 Governance and oversight

Oversight of remuneration policies and practices

- 19G.3.1 R
- A MIFIDPRU investment firm must ensure that its management body in its supervisory function adopts and periodically reviews the remuneration policy and has overall responsibility for overseeing its implementation.
- 19G.3.2 G
- (1) Each firm should assess the most appropriate frequency for the periodic reviews referred to in ■ SYSC 19G.3.1R, taking into account all relevant factors.
- (2) The development and review of the remuneration policy should be supported by the control functions, including (where they exist) risk management, compliance, internal audit and human resources, and by business units.
- (3) The processes and decision-making around the development, review and amendment of remuneration policies and practices are subject to the general record-keeping requirements set out in ■ SYSC 9.
- 19G.3.3
- A firm's remuneration committee, where it has one, must oversee the implementation of the firm's remuneration policies and practices established under ■ SYSC 19G.2.1R.
- 19G.3.4
- A non-SNI MIFIDPRU investment firm must, at least annually, conduct a central and independent internal review of whether the implementation of its remuneration policies and practices complies with the remuneration policy and practices adopted by the management body in its supervisory function.
- 19G.3.5 G
- (1) The FCA would expect the central and independent internal review to assess whether the implementation of the remuneration policies and practices:
 - (a) results in remuneration awards that are in line with the firm's business strategy;
 - (b) reflects the risk profile, long-term objectives and other relevant goals of the firm; and
 - (c) complies with all relevant legal requirements.
- (2) A non-SNI MIFIDPRU investment firm may outsource part or all of the independent review in ■ SYSC 19G.3.4R. The management body in its

- supervisory function remains responsible for ensuring the review is carried out and any necessary follow up actions are taken.
- (3) A non-SNI MIFIDPRU investment firm should document appropriately the results of the review and the actions taken to remedy any findings.

Control functions

19G.3.6 R

A MIFIDPRU investment firm must ensure that staff engaged in control functions:

- (1) are independent from the business units they oversee;
- (2) have appropriate authority; and
- (3) are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.
- 19G.3.7 R

A MIFIDPRU investment firm must ensure that the remuneration of the senior officers in risk management and compliance functions is directly overseen by the remuneration committee, or, if such a committee has not been established, by the management body in its supervisory function.

19G.3.8 G

■ SYSC 19G.3.6R and ■ SYSC 19G.3.7R are designed to manage the conflicts of interest which may arise if other business areas had undue influence over the remuneration of staff in control functions. Conflicts of interest can easily arise when staff members are involved in the determination of remuneration for their own business area. Where these could arise, they need to be managed by having in place independent control functions (in particular risk management, compliance and human resources functions).



19G.4 Fixed and variable components of remuneration

Categorising fixed and variable remuneration

- 19G.4.1
- A MIFIDPRU investment firm must ensure that the remuneration policy makes a clear distinction between criteria for setting fixed and variable remuneration.
- 19G.4.2 G
- (1) The effect of SYSC 19G.4.1R is that all remuneration paid to a staff member must be clearly categorised as either fixed or variable remuneration.
- (2) In allocating individual remuneration components to fixed or variable remuneration, it is the quality and purpose of the component that is decisive, not the label applied to it.
- (3) The FCA considers that:
 - (a) fixed remuneration:
 - (i) should primarily reflect a staff member's professional experience and organisational responsibility as set out in the staff member's job description and terms of employment; and
 - (ii) should be permanent, pre-determined, non-discretionary, non-revocable and not dependent on performance; and
 - (b) variable remuneration:
 - (i) should be based on performance or, in exceptional cases, other conditions:
 - (ii) where based on performance, should reflect the long-term performance of the staff member as well as performance in excess of the staff member's job description and terms of employment;
 - (iii) includes discretionary pension benefits; and
 - (iv) includes carried interest, as referred to in SYSC 19G.1.27R.
- 19G.4.3

Returns made by staff on co-investment arrangements are shares in the profits as a pro rata return on an investment. The FCA does not usually consider these returns to be remuneration for the purposes of the MIFIDPRU Remuneration Code. However, the FCA considers these returns will be remuneration if the investment was made using a loan provided by the firm or by an undertaking in the same group as the firm, and if the loan was

either not provided on commercial terms or had not been repaid in full by the date on which the returns on investment were paid.

19G.4.4 G

- (1) In relation to remuneration received by a partner or a member in a limited liability partnership, the FCA's view on how to categorise certain payments received by those individuals is as follows:
 - (a) at the end of each year, the residual profits of a partnership or limited liability partnership are distributed among the partners or members. The level of ownership of each partner or member is reflected in the number of ownership shares they have. Residual profits are distributed according to the ownership shares, so are not linked to work or performance. In the FCA's view, payments on this basis are not remuneration;
 - (b) a partner or member may receive an amount fixed at the beginning of the year and subject only to the firm making a profit. These are often called fixed profit shares. A partner or member usually takes drawings on it throughout the year, often monthly. If profits at year-end are insufficient, drawings may have to be paid back. The FCA considers that drawings on fixed profit shares are usually fixed remuneration;
 - (c) a partner or member may receive a discretionary share of the profit at the end of the year. These may be distributed to all partners or members but are usually dependent on the performance of the individual or their business unit. Awards may be at the discretion of the remuneration committee. The FCA considers that payments made on this basis are usually variable remuneration.
- (2) A firm that is a partnership or limited liability partnership may use a benchmarking approach instead of, or in addition to, the approach in
 (1) to categorise payments made to partners or members of limited liability partnerships. For example, it may take into account:
 - (a) the *remuneration* structures of other *individuals* performing similar tasks or working in similar businesses as the *partner* or member in question; or
 - (b) the return expected in a similar investment context where the partner or member has invested in a fund or firm.
- (3) Where a partner or member of a limited liability partnership works full-time for a firm the FCA would expect a reasonable portion of the partner's or member's profit share to be categorised as remuneration. Where a partner or member works part-time and receives less remuneration than a partner or member who works full-time, the FCA would expect a smaller proportion of the part-time partner or member's profit share to be classed as remuneration.

Balance of fixed and variable components of total remuneration

19G.4.5 R

A MIFIDPRU investment firm must ensure that:

(1) the fixed and variable components of the total *remuneration* are appropriately balanced; and

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(2) the fixed component represents a sufficiently high proportion of the total remuneration to enable the operation of a fully flexible policy on variable remuneration, including the possibility of paying no variable remuneration component.

19G.4.6

For the purposes of ■ SYSC 19G.4.5R, a non-SNI MIFIDPRU investment firm must set an appropriate ratio between the variable component and the fixed component of the total remuneration in their remuneration policies.

19G.4.7 G

- (1) When determining what is an appropriate balance and an appropriate ratio for the purposes of ■ SYSC 19G.4.5R and ■ SYSC 19G.4.6R respectively, a firm should consider all relevant factors, including:
 - (a) the firm's business activities and associated prudential and conduct risks: and
 - (b) the role of the *individual* in the *firm* and, in the case of *material* risk takers, the impact that different categories of staff have on the risk profile of the non-SNI MIFIDPRU investment firm or of the assets it manages.
- (2) It may be appropriate for some staff to receive only fixed remuneration. The FCA does not consider it would be an appropriate balance for any individual to receive only variable remuneration.

19G.4.8

A non-SNI MIFIDPRU investment firm may set different ratios for different categories of staff. For example, the FCA considers that it will usually be appropriate to set a lower ratio of variable to fixed remuneration for control functions than for the business units they control.

19G.4.9 G

Ratios may differ from one performance period to the next.

G 19G.4.10

When setting a ratio, a firm should consider all potential scenarios, including that a firm exceeds its financial objectives. The ratio should reflect the highest amount of variable remuneration that can be awarded in the most positive scenario. A firm should be satisfied that it has considered all relevant factors and should be able to explain its decision to the FCA if requested.

19G.4.11 R

When a firm is assessing whether the award of variable remuneration is consistent with the ratio set in accordance with ■ SYSC 19G.4.6R, it may exclude from that calculation any amount of severance pay that:

- (1) exceeds the maximum amount of severance pay that can be paid under the firm's remuneration policy (in accordance with ■ SYSC 19G.6.12R(2)); and
- (2) the firm has become obliged to pay as a result of a legal obligation that has arisen after the date on which the firm adopted the relevant version of its remuneration policy.

19G.4.12 G

As explained in ■ SYSC 19.6.12R(2), where severance pay is payable a firm's remuneration policy must set out the maximum level of severance pay or the criteria for determining the amount. Firms should therefore take these policies into account when establishing the ratio between variable and fixed remuneration in accordance with ■ SYSC 19G.4.6R. The FCA accepts that in rare circumstances, for reasons that wouldn't have been clear to a firm when setting its remuneration policy, a firm may become legally obliged to pay a higher amount of severance pay, for example as a result of legal proceedings. In these situations, ■ SYSC 19G.4.11 states that the difference between the maximum severance pay permitted under the firm's remuneration policy and the higher amount the firm is legally obliged to pay may be excluded from an assessment of whether an award of variable remuneration is consistent with the ratio set in accordance with ■ SYSC 19G.4.6R.



19G.5 **Application of remuneration** requirements to material risk takers

Identifying material risk takers

- 19G.5.1 A material risk taker is a staff member at a non-SNI MIFIDPRU investment firm whose professional activities have a material impact on the risk profile of the firm or of the assets that the firm manages.
- 19G.5.2 R A non-SNI MIFIDPRU investment firm must assess at least once a year which of its staff members are material risk takers.
- 19G.5.3 R For the purposes of ■ SYSC 19G.5.1R, a staff member's professional activities are deemed to have a material impact on a firm's risk profile or the assets the firm manages if one or more of the following criteria are met:
 - (1) the staff member is a member of the management body in its management function;
 - (2) the staff member is a member of the management body in respect of the management body in its supervisory function;
 - (3) the staff member is a member of the senior management;
 - (4) the staff member has managerial responsibility for business units that are carrying on at least one of the following regulated activities:
 - (a) arranging (bringing about) deals in investments;
 - (b) dealing in investments as agent;
 - (c) dealing in investments as principal;
 - (d) managing investments;
 - (e) making investments with a view to transactions in investments;
 - (f) advising on investments (except P2P agreements); and/or
 - (g) operating an organised trading facility;
 - (5) the staff member has managerial responsibilities for the activities of a control function;
 - (6) the staff member has managerial responsibilities for the prevention of money laundering and terrorist financing;

- (7) the staff member is responsible for managing a material risk within the *firm*:
- (8) in a *firm* that has permission for carrying on at least one of the *regulated activities* in (4)(a) to (g), the staff member is responsible for managing one of the following activities:
 - (a) information technology;
 - (b) information security; and/or
 - (c) outsourcing arrangements of critical or important functions as referred to in article 30(1) of the MiFID Org Regulation; and
- (9) the staff member has authority to take decisions approving or vetoing the introduction of new products.

19G.5.4 G

The FCA considers the following are key indicators that the professional activities of a staff member (X) have a material impact on the risk profile of the firm or of the assets that the firm manages for the purposes of SYSC 19G.5.1R:

- (1) there is no sufficiently senior and experienced *material risk taker* who supervises X on a day-to-day basis or to whom X reports;
- (2) X is responsible for key strategic decisions; and
- (3) X is responsible for significant revenue, material assets under management or for approving transactions.

19G.5.5 G

The FCA expects individuals in the following roles would usually be categorised as material risk takers:

- (1) in relation to portfolio management business, heads of key areas including equities, fixed income, alternatives, private equity;
- (2) heads of investment research;
- (3) individuals responsible for a high proportion of revenue;
- (4) senior advisors where they can exert key strategic influence;
- (5) chief market strategists, where media profile is linked to reputational risk and risk to market integrity;
- (6) heads of a trading or broking desk; and
- (7) all *individuals* with responsibility for information technology, information security and outsourcing where there is not a single person with responsibility for all three areas. For example, if there is a chief operating officer and a chief information technology officer who are both equally senior and have shared responsibility for these areas, then both should be identified as *material risk takers*.

19G.5.6 G

(1) A *firm* should update its assessment under ■ SYSC 19G.5.2R as necessary throughout the year.

- (2) It is important that *firms* consider all types of roles that may have a material impact on the firm's risk profile or on the assets it manages. The categories of staff referred to in ■ SYSC 19G.5.3R are intended to be a starting point only. A firm should develop its own additional criteria to identify further individuals based on the specific types of activities and risks relevant to the firm.
- (3) In identifying its material risk takers, a firm should consider all types of risks involved in its professional activities. These may include prudential, operational, market, conduct and reputational risks.
- (4) The decisive factor when identifying material risk takers is not the name of the function or role, but the authority and responsibility held by the individual.

19G.5.7

- (1) If a non-SNI MIFIDPRU investment firm is part of an FCA investment firm group to which prudential consolidation applies, its material risk takers must be identified at both individual and consolidated level.
- (2) The UK parent entity of a firm is responsible for the material risk taker identification process at a consolidated level and must identify as material risk takers:
 - (a) all staff members whose professional activities have a material impact on the risk profile of the investment firm group; and
 - (b) all staff members of an undertaking in the investment firm group ('undertaking A') whose professional activities have a material impact on:
 - (i) the risk profile of another undertaking within the investment firm group to whom the MIFIDPRU Remuneration Code applies on an individual basis ('undertaking B'); or
 - (ii) the risk profile of any assets managed by undertaking B.

19G.5.8 G

It may be helpful for the UK parent entity to coordinate the process for identifying material risk takers across the group entities.

Exemption for individuals

19G.5.9 R

- (1) The provisions in (2) do not apply in relation to a material risk taker (X), where X's annual variable remuneration:
 - (a) does not exceed £167,000; and
 - (b) does not represent more than one-third of X's total annual remuneration.
- (2) The provisions referred to in (1) are:
 - (a) SYSC 19G.6.19R to SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
 - (b) SYSC 19G.6.22R and SYSC 19G.6.23G (Retention policy);
 - (c) SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and
 - (d) SYSC 19G.6.35R(2) (Discretionary pension benefits).

19G.5.10 G

- (1) SYSC 19G.5.9R applies only to material risk takers of non-SNI MIFIDPRU investment firms that do not fall within SYSC 19G.1.1R(2).
- (2) A non-SNI MIFIDPRU investment firm not falling within

 SYSC 19G.1.1R(2) should therefore assess whether staff members are material risk takers before applying the thresholds in SYSC 19G.5.9R.
- (3) As the provisions listed in SYSC 19G.5.9R(2) don't apply on a consolidated basis (see 19G.1.18R(4)(b)), the exemption for *individuals* in SYSC 19G.5.9R(1) will not be relevant on a consolidated basis.

19G.5.11 R

When considering whether an *individual* that becomes a *material risk taker* at a point during the *firm's* performance period falls within ■ SYSC 19G.5.9R, a *firm* must:

- (1) apply the full £167,000 variable remuneration threshold;
- (2) apply the requirement that the variable remuneration must not be more than one-third of the individual's total remuneration to the relevant portion of the total remuneration paid for the part of the performance period that the individual is a material risk taker at that firm; and
- (3) include any guaranteed variable remuneration, for example a 'sign-on bonus', in the individual's variable remuneration for the part of the performance period that the individual is a material risk taker at that firm.

19G.5.12 G

- (1) An *individual* may become a *material risk taker* at any point during the *firm*'s performance period, either by changing role within the *firm* or by joining the *firm*.
- (2) The effect of SYSC 19G.5.11R is illustrated by the following example:

An individual ('X'), becomes a material risk taker 6 months into the firm's performance period. X receives annual fixed remuneration of £900,000. This means X will receive £450,000 for the 6 months of the performance period for which X is a material risk taker. X receives variable remuneration of £100,000 in respect of the first 6 months. X falls below the thresholds in ■ SYSC 19G.5.9R because X's variable remuneration of £100,000 is:

- (a) less than the £167,000 threshold in SYSC 19G.5.9R(1), and
- (b) less than one-third of the £450,000 fixed remuneration received (which would be £150,000) for the purposes of SYSC 19G.5.9R(2).

19G.5.13 G

The FCA considers it good practice for a firm to consider whether applying any of the rules applicable to material risk takers to other members of staff would contribute to sound risk management or a healthy firm culture.

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19G.6 Variable remuneration

Remuneration and capital

..... 19G.6.1 A MIFIDPRU investment firm must ensure that variable remuneration does not affect the firm's ability to ensure a sound capital base.

Exceptional government intervention

- 19G.6.2 A MIFIDPRU investment firm that benefits from exceptional government intervention must ensure that:
 - (1) no variable remuneration is paid to members of its management body, unless it is justified to do so; and
 - (2) variable remuneration is limited to a portion of net revenue when its payment to staff that are not members of its management body would be inconsistent with:
 - (a) the maintenance of the firm's sound capital base; and
 - (b) its timely exit from exceptional government intervention.
- 19G.6.3 An example of where it may be justifiable to pay variable remuneration to a member of the management body of a MIFIDPRU investment firm that benefits from exceptional government intervention is where that person was not in office at the time the exceptional government intervention was first required.

Assessment of performance

- 19G.6.4 R A non-SNI MIFIDPRU investment firm must ensure that where variable remuneration is performance-related:
 - (1) the total amount of the variable remuneration is based on a combination of the assessment of the performance of:
 - (a) the material risk taker;
 - (b) the business unit concerned; and
 - (c) the overall results of the firm;
 - (2) the assessment of performance is part of a multi-year framework that ensures:
 - (a) the assessment of performance is based on longer-term performance: and

- (b) the payment of perfomance-based remuneration is spread over a period that takes account of the business cycle of the firm and its business risks.
- R 19G.6.5 When assessing individual performance to determine the amount of variable remuneration to be paid to an individual, a MIFIDPRU investment firm must take into account financial as well as non-financial criteria.
- 19G.6.6 G (1) For some firms it may be appropriate to give equal weight to financial and non-financial criteria for the purposes of ■ SYSC 19G.6.5R. For other firms a slightly different split may be appropriate.
 - (2) Non-financial criteria under SYSC 19G.6.5R should:
 - (a) form a significant part of the performance assessment process;
 - (b) override financial criteria, where appropriate;
 - (c) include metrics on conduct, which should make up a substantial portion of the non-financial criteria; and
 - (d) include how far the individual adheres to effective risk management and complies with relevant regulatory requirements.
 - (3) Examples of non-financial criteria under SYSC 19G.6.5R include:
 - (a) measures relating to building and maintaining positive customer relationships and outcomes, such as positive customer feedback;
 - (b) performance in line with firm strategy or values, for example by displaying leadership, teamwork or creativity;
 - (c) adherence to the firm's risk management and compliance policies;
 - (d) achieving targets relating to:
 - (i) environmental, social and governance factors; and
 - (ii) diversity and inclusion.
 - (4) A firm should ensure that when it assesses individual performance, the assessment process and any variable remuneration awarded in accordance with ■ SYSC 19G.6.4R does not discriminate on the basis of the protected characteristics of an *individual* in accordance with the Equality Act 2010.

General requirements for awards of non-standard forms of variable remuneration

- 19G.6.7 R
- (1) A non-SNI MIFIDPRU investment firm must ensure that all guaranteed variable remuneration, retention awards, severance pay and buy-out awards falling under ■ SYSC 19G.6.8R to ■ SYSC 19G.6.14G are:
 - (a) subject to malus and clawback;
 - (b) in the case of non-SNI MIFIDPRU investment firms to which those rules apply:
 - (i) subject to the requirements in SYSC 19G.6.19R and ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements), ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G

- (Retention policy), and SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and
- (ii) included in the variable component of the variable to fixed ratio for the performance period in which the award is made.
- (2) A non-SNI MIFIDPRU investment firm must ensure that each decision it makes to award variable remuneration falling within the scope of (1) is appropriate, taking all relevant circumstances into account.

Guaranteed variable remuneration

19G.6.8

R

A non-SNI MIFIDPRU investment firm must not award, pay or provide quaranteed variable remuneration to a material risk taker unless:

- (1) it occurs in the context of hiring a new material risk taker;
- (2) it is limited to the first year of service; and
- (3) the firm has a strong capital base.

19G.6.9 G

- (1) Guaranteed variable remuneration is sometimes referred to as a 'signon bonus' or 'golden handshake'.
- (2) Guaranteed variable remuneration can be used as a way to compensate new staff members where they have lost the opportunity to receive variable remuneration by leaving their previous employment during the performance period. These awards may be called 'lost opportunity bonuses'.
- (3) The FCA expects non-SNI MIFIDPRU investment firms to award guaranteed remuneration only rarely and not as common practice.

Retention awards

19G.6.10 R

Retention awards must only be paid to material risk takers:

- (1) after a defined event; or
- (2) at a specified point in time.

19G.6.11 G

- (1) Retention awards are bonuses which are dependent on an individual remaining in a role until a defined event or for a set period of time. For example, retention bonuses can be used under restructurings, in wind-down or in the context of specific projects within a firm.
- (2) The payment of a retention award may be made dependent on the material risk taker meeting certain performance criteria that have been defined in advance.
- (3) The FCA expects non-SNI MIFIDPRU investment firms to make retention awards to material risk takers only rarely and not as common practice.

Severance pay

19G.6.12 R

- (1) A non-SNI MIFIDPRU investment firm must ensure that payments to material risk takers relating to the early termination of an employment contract reflect the individual's performance over time and do not reward failure or misconduct.
- (2) A non-SNI MIFIDPRU investment firm must set out in its remuneration policy whether severance payments may be paid, and any maximum amount or criteria for determining the amount.

Buy-out awards

19G.6.13 R

A non-SNI MIFIDPRU investment firm must ensure that remuneration packages relating to compensation for, or buy out from, a material risk taker's contracts in previous employment:

- (1) align with the long term interests of the firm; and
- (2) contain provisions on periods of retention, deferral, vesting and ex post risk adjustment that are no shorter than any corresponding periods that applied to unvested variable *remuneration* under the previous contract of employment, and which remained outstanding.

19G.6.14 G

Buy-out awards involve a *firm* compensating a new staff member, or 'buying out' their previous contract with another employer, where the deferred variable *remuneration* of the staff member was reduced, revoked or cancelled by the previous employer. This could be because they terminated their contract or because the *individual* has to pay back some money, for example where the employer has paid for a training course or qualification for the *individual* that was attached to a retention clause.

Risk adjustment

19G.6.15 R

A non-SNI MIFIDPRU investment firm must ensure that any measurement of performance used as a basis to calculate pools of variable remuneration takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with MIFIDPRU.

19G.6.16 R

A non-SNI MIFIDPRU investment firm must ensure that the allocation of variable remuneration components within the firm takes into account all types of current and future risks.

19G.6.17 R

For the purposes of ■ SYSC 19G.6.15R and ■ SYSC 19G.6.16R, a *non-SNI MIFIDPRU investment firm* must:

- (1) determine at what level the adjustments should be applied (for example at *business unit*, trading desk or individual level), which risks are relevant, and which risk adjustment techniques and measures are most appropriate; and
- (2) in considering all types of current and future risks, include both financial risks (for example economic profit or economic capital) and

non-financial risks (for example reputation, conduct and customer outcomes, values and strategy).

19G.6.18 R

A non-SNI MIFIDPRU investment firm must ensure that its total variable remuneration is generally considerably contracted, including through malus or clawback arrangements, where the financial performance of the firm is subdued or negative.

Shares, instruments and alternative arrangements

19G.6.19 R

A non-SNI MIFIDPRU investment firm to which this rule applies must ensure that at least 50% of the variable remuneration paid to a material risk taker in relation to a performance period consists of any of the following eligible instruments:

- (1) shares, or subject to the firm's legal structure, equivalent ownership interests:
- (2) share-linked instruments, or subject to the firm's legal structure, equivalent non-cash instruments;
- (3) instruments that comply with the requirements in SYSC 19G Annex 1R;
- (4) non-cash instruments (including those settled in cash) which reflect the instruments of the portfolios managed.

19G.6.20 R

Where an *eligible instrument* that falls within the scope of ■ SYSC 19G.6.19R(1) or ■ (2) relates to an ownership interest in a parent undertaking of the MIFIDPRU investment firm, it will only satisfy the requirements of ■ SYSC 19G.6.19R where its value moves in line with the value of an equivalent ownership interest in the MIFIDPRU investment firm.

19G.6.21 G

- (1) Where a MIFIDPRU investment firm is unable to issue eligible instruments, the firm may apply to the FCA for a modification under section 138A of the Act to permit the firm to use alternative arrangements. The firm will need to provide a detailed explanation in its application of the alternative arrangements it is proposing to operate.
- (2) The FCA may grant a modification under section 138A of the Act for these purposes only where it is satisfied that:
 - (a) compliance by the *firm* with the requirement to issue variable remuneration in eligible instruments would be unduly burdensome or would not achieve the purpose for which the rules were made; and
 - (b) granting the modification would not adversely affect the advancement of any of the FCA's objectives.
- (3) As part of its assessment of whether the modification would adversely affect the advancement of its objectives, the FCA will consider whether the proposed alternative arrangements for variable remuneration achieve similar outcomes to the standard requirements

applicable to *eligible instruments*. In particular, the *FCA* will normally consider the following non-exhaustive list of factors:

- (a) whether the proposed alternative arrangement ensures suitable alignment between the interests of the staff member and the long-term interests of the *firm*, its *clients* and creditors;
- (b) whether the proposed alternative arrangement is subject to a retention policy that is of sufficient length to align the incentives of the staff member with the long-term interests of the *firm*, its *clients* and creditors;
- (c) whether the proposed alternative arrangement is clear and transparent to the staff member and contains sufficient detail on the applicable conditions;
- (d) whether the firm will ensure that any amounts that are subject to deferral and retention arrangements cannot be accessed, transferred or redeemed by the staff member during the deferral and retention periods;
- (e) whether the proposed alternative arrangement would facilitate the appropriate application of malus and clawback requirements;
- (f) whether the proposed alternative arrangements adequately ensure that the value of the variable *remuneration* received does not increase during the deferral period through distributions or other payments on the instrument; and
- (g) where the proposed alternative arrangements allow for predetermined changes of the value received as variable remuneration during deferral and retention periods, based on the performance of the *firm* or the managed assets, whether the following conditions would be met:
 - (i) the change of the value is based on predefined performance indicators that are based on the credit quality of the *firm* or the performance of the managed assets;
 - (ii) where deferral and retention must be applied, value changes are calculated at least annually and at the end of the retention period;
 - (iii) the rate of possible positive and negative value changes is equally based on the level of positive or negative credit quality changes or performance measured;
 - (iv) where the value change under (i) is based on the performance of assets managed, the percentage of value change should be limited to the percentage of value change of the managed assets;
 - (v) where the value change under (i) is based on the credit quality of the *firm*, the percentage of value change should be limited to the percentage of the annual total gross revenue in relation to the *firm's* total *own funds*.
- (4) If a firm cannot issue eligible instruments because of its legal structure, that is likely to be a reason for the FCA to conclude that requiring the firm to comply with SYSC 19G.6.19R would not achieve the purpose for which that rule was made.

Retention policy

19G.6.22 R

A non-SNI MIFIDPRU investment firm to which this rule applies must establish an appropriate retention policy for eligible instruments that is designed to align the interests of the staff member with the longer-term interests of the firm, its creditors and clients.

19G.6.23 G

- (1) In considering what is an appropriate retention policy for the purposes of ■ SYSC 19G.6.22R, a firm should consider at least the following:
 - (a) the length of the deferral period referred to in ■ SYSC 19G.6.24R(1);
 - (b) the length of the firm's business cycle;
 - (c) the types of risks relevant to the role of the staff member; and
 - (d) how long it could take for the risks underlying the staff member's performance to crystallise.
- (2) The greater the impact of the material risk taker on the risk profile of the firm and of the assets managed, the longer the retention period should be. Different retention periods for different material risk takers may be appropriate, particularly where the applicable deferral periods differ.

Deferral

19G.6.24 R

- (1) A non-SNI MIFIDPRU investment firm to which this rule applies must not award, pay or provide a variable remuneration component unless at least 40% is deferred over a period which is at least 3 years.
- (2) Where the variable remuneration is a particularly high amount, and in all cases where the variable remuneration is £500,000 or more, at least 60% of the amount must be deferred.
- (3) Deferred variable remuneration must vest no faster than on a prorata basis.
- (4) The first deferred portion of the variable remuneration must not vest sooner than a year after the start of the deferral period.

19G.6.25 R

- (1) A non-SNI MIFIDPRU investment firm must take into account the factors in (2) when determining:
 - (a) the amount of variable remuneration to be deferred under ■ SYSC 19G.6.24R(1) and ■ (2);
 - (b) the length of the deferral period under SYSC 19G.6.24R(1); and
 - (c) the speed of vesting of the variable remuneration for the purposes of ■ SYSC 19G.6.24R(3).
- (2) The factors referred to in (1) are:
 - (a) the firm's business cycle, the nature of its business and its risk profile;

- (b) the activities and responsibilities of the staff member in question and how these may impact the risk profile of the firm or the assets the firm manages;
- (c) whether the deferred variable remuneration is paid out in instruments or cash;
- (d) the amount of the variable remuneration; and
- (e) the ratio of variable to fixed remuneration.

19G.6.26 G

- (1) Where appropriate, a firm should tailor the proportion of deferred variable remuneration, the deferral period and the speed of vesting in different ways for different categories of material risk taker.
- (2) The FCA considers that it may be appropriate for the most senior material risk takers at a firm (for example members of the management body), to be subject to a deferral period longer than the 3-year minimum.
- (3) It may be appropriate for *firms* to apply different proportions of deferred variable remuneration, deferral periods or vesting arrangements to the portion of variable remuneration paid out in cash and the portion paid out in instruments.
- (4) In the FCA's view, the higher the amount of the variable remuneration, and the higher the ratio of variable to fixed remuneration, the more appropriate it is likely to be to defer a greater proportion of the variable remuneration.
- (5) In certain circumstances variable remuneration below £500,000 may still be considered 'particularly high' and so subject to 60% deferral. A firm should take into account the average remuneration at the firm, the ratio of the variable to fixed remuneration of the material risk taker, and the amount of variable remuneration compared to that of other staff at the firm.
- (6) After the first deferred portion of the variable remuneration vests in accordance with ■ SYSC 19G.6.24R(4), the FCA does not expect vesting to take place more often than once a year.
- 19G.6.27 R
- A non-SNI MIFIDPRU investment firm must pay out at least 50% of the variable remuneration deferred under ■ SYSC 19G.6.24R in instruments falling within ■ SYSC 19G.6.19R.
- 19G.6.28 G
- The FCA considers it good practice for the deferred portion to contain a higher proportion of instruments than the non-deferred portion.
- 19G.6.29 R
- A non-SNI MIFIDPRU investment firm may only pay to a material risk taker interest or dividends on an instrument which is subject to deferral under SYSC 19G.24R where:

- (1) the rate of interest or level of dividends paid on that instrument is no higher than would have been paid to an ordinary holder of such an instrument: and
- (2) payment is not made before the date on which the instrument vests.

Performance adjustment

19G.6.30 R

A non-SNI MIFIDPRU investment firm must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the firm as a whole, and justified on the basis of the performance of the firm, the business unit and the material risk taker concerned.

19G.6.31 R

A non-SNI MIFIDPRU investment firm must:

- (1) ensure that all of the total variable remuneration is subject to in-year adjustments, malus or clawback arrangements;
- (2) set specific criteria for the application of malus and clawback; and
- (3) ensure that the criteria for the application of malus and clawback in particular cover situations where the material risk taker:
 - (a) participated in or was responsible for conduct which resulted in significant losses to the firm; and/or
 - (b) failed to meet appropriate standards of fitness and propriety.

19G.6.32 R

A non-SNI MIFIDPRU investment firm must:

set minimum malus and clawback periods as part of its remuneration policies;

ensure that malus can be applied until the award has vested in its entirety; and

ensure that the clawback period spans at least the combined length of any deferral and retention periods.

19G.6.33 G

- (1) The effect of SYSC 19G.6.31R(1) is that (save in the circumstances explained in (2)) a non-SNI MIFIDPRU investment firm must include in its remuneration policy the possibility of applying in-year adjustments, malus and clawback to the variable remuneration of its material risk takers. Where performance adjustment is required, the appropriate tool or tools (in-year adjustments, malus or clawback) should then be applied.
- (2) A non-SNI MIFIDPRU investment firm that is not required by ■ SYSC 19G.6.24R to apply deferral will not be able to apply malus, so should foresee the use of in-year adjustments and clawback arrangements only. Alternatively, the firm may choose to use deferral, which would enable the use of malus arrangements in addition to inyear adjustments and clawback.

- (3) A non-SNI MIFIDPRU investment firm should ensure that the malus and clawback periods it sets and applies allow sufficient time for any potential risks to crystallise. This may mean that different periods are set for different categories of material risk takers.
- (4) In setting appropriate malus and clawback periods, a non-SNI MIFIDPRU investment firm should take into account all relevant factors, including:

the nature of the material risk taker's activities;

the material risk taker's impact on the risk profile of the firm or of the assets it manages; and

the length of the business cycle that is relevant for the material risk taker's role.

- (5) For a non-SNI MIFIDPRU investment firm that satisfies the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b), the FCA considers that 3 years will generally be an appropriate starting point for the firm's consideration of the appropriate clawback period.
- (6) The FCA's 'General guidance on the application of ex-post risk adjustment to variable remuneration' provides further detail of the FCA's expectations on firms' use of malus and clawback arrangements.

19G.6.34 G

- (1) In the FCA's view, malus should be applied when, as a minimum:
 - (a) there is reasonable evidence of staff member misbehaviour or material error:
 - (b) the firm or the relevant business unit suffers a material downturn in its financial performance: or
 - (c) the firm or the relevant business unit suffers a material failure of risk management.
- (2) In the FCA's view, clawback should, in particular, be applied in cases of fraud or other conduct with intent or severe negligence which led to significant losses.

Discretionary pension benefits

19G.6.35 R

- (1) A non-SNI MIFIDPRU investment firm must ensure that:
 - (a) any discretionary pension benefits it awards or pays to material risk takers are:
 - (i) in line with its business strategy, objectives, values and longterm interests: and
 - (ii) paid only in eligible instruments;
 - (b) it applies malus and clawback arrangements to discretionary pension benefits in the same way as to other elements of variable remuneration.
- (2) A non-SNI MIFIDPRU investment firm to which this paragraph applies must ensure that:

- (a) where a material risk taker leaves the firm before retirement age, any discretionary pension benefits are held by the firm for a period of 5 years; and
- (b) where a material risk taker reaches retirement age, any discretionary pension benefits are subject to a 5-year retention period by that individual.

Personal investment strategies

- 19G.6.36 R A non-SNI MIFIDPRU investment firm must take all reasonable steps to ensure that material risk takers do not use personal hedging strategies or remuneration- and liability-related contracts of insurance to undermine the remuneration rules in the MIFIDPRU Remuneration Code.
- G 19G.6.37 Actions a firm may take under ■ SYSC 19G.6.36R include requesting an undertaking or declaration from its material risk takers and implementing policies regarding dealing in financial instruments.

Avoidance of the MIFIDPRU Remuneration Code

19G.6.38 R A non-SNI MIFIDPRU investment firm must not pay variable remuneration through financial vehicles or methods that facilitate non-compliance with the MIFIDPRU Remuneration Code or MIFIDPRU.



19G.7 Remuneration committee

19G.7.1 G

- (1) MIFIDPRU 7.3.3R(1) requires a non-SNI MIFIDPRU investment firm to establish a remuneration committee, unless MIFIDPRU 7.3.3R(2) applies.
- (2) The FCA encourages non-SNI MIFIDPRU investment firms that are not required to establish a remuneration committee under

 MIFIDPRU 7.3.3R(1) to consider whether establishing and maintaining a remuneration committee would contribute to the better alignment of risk and individual reward across the firm.

Other instruments for use in variable remuneration

Purpose

1.1 G SYSC 19G.6.19R requires that at least 50% of variable remuneration must be paid in eligible instruments. Under SYSC 19G.6.19R(3), eligible instruments include instruments that meet the requirements set out in this Annex. The instruments within the scope of this Annex include additional tier 1 instruments, tier 2 instruments and other instruments which can be fully converted to common equity tier 1 instruments, or written down, and that adequately reflect the firm's credit quality.

Requirements for instruments

- 1.2 R An instrument under SYSC 19G.6.19R(3) must satisfy the following requirements
 - (1) the instrument must be issued by the firm;
 - (2) the instrument must not be secured or subject to a guarantee or any other arrangement that enhances the seniority of the claims of its holder in insolvency;
 - (3) the terms of the instrument must provide that any distributions on the instrument will be paid on at least an annual basis and will be paid to the holder:
 - (4) the instrument must be priced at its value at the time of issuance under the accounting framework applicable to the *firm*;
 - (5) the valuation of the instrument in (4) must be subject to independent review;
 - (6) if the instrument is part of an issuance which has the sole purpose of being used for variable remuneration, the price at which the instrument is redeemed, called, repurchased or converted must be subject to an independent valuation in accordance with the accounting framework applicable to the firm:
 - (7) if the instrument is not perpetual, at the time at which it is awarded as variable *remuneration*, the remaining period before the maturity of the instrument must be at least equal to the sum of any deferral and retention periods that would apply to the staff member to whom the instrument is awarded:
 - (8) the instrument must not be subject to redemption, call or repurchase during any deferral and retention periods that would apply to the *material risk taker* to whom the instrument is awarded;
 - (9) any right to redeem, call or repurchase the instrument must be exercisable only at the sole discretion of the *firm*;
 - (10) the holder of the instrument must have no rights to accelerate the future scheduled payment of interest or principal, except in the insolvency or liquidation of the *firm*;
 - (11) the terms of the instrument must provide that the claim on the principal amount of the instrument is wholly subordinated to the claim of all non-subordinated creditors;
 - (12) one of the requirements in SYSC 19G Annex 1.3R must be satisfied; and
 - (13) the instrument must be either:

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- (a) a convertible instrument, in which case the requirements in SYSC 19 Annex 1.4R and SYSC 19 Annex 1.5R must be satisfied; or (b) a write-down instrument, in which case the requirements in SYSC 19 Annex 1.6R must be satisfied. An instrument under SYSC 19G.6.19R(3) must meet either the conditions 1.3 R (1) in (2) or the conditions in (4). The first set of conditions is as follows: (2) (a) the instrument must be part of an issuance which has the sole purpose of being used as variable remuneration; and (b) the terms of the instrument must ensure that any distributions payable on the instrument are paid at a rate which is: (i) consistent with market rates for similar issuances issued by other firms with comparable credit quality; and (ii) subject to (3), no higher than 8% above the Consumer Price Index 12-month rate as published by the UK Office of National Statistics from time to (3)If the instrument has been awarded to a member of staff whose professional duties are predominantly performed outside the UK and the instruments are denominated in a currency other than pound sterling, a firm may substitute another similar independently-calculated consumer price index for a relevant third country in place of the rate specified in (2)(b)(ii).
 - (4) The second set of conditions is that, at the time at which the instrument was awarded as variable remuneration, at least 60% of that class of instrument in issuance was:
 - (1)issued other than for use as variable remuneration; and
 - (2)not held by any person who has close links to:
 - the firm; (i)
 - (ii) the firm's group; or
 - (iii) a connected undertaking included within the firm's investment firm group.

Additional requirements for convertible instruments

- A firm must satisfy the following requirements in relation to an instrument re-1.4 ferred to SYSC 19G.6.19R(3) that is a convertible instrument:
 - the instrument must contain a trigger event which, if it occurs, results in (1)the full principal amount of the instrument being converted into common equity tier 1 capital of the firm;
 - (2) the trigger event in (1) must occur where the common equity tier 1 capital of the firm falls below a specified level that is no lower than 64% of the firm's own funds requirement;
 - the firm issuing the instrument must ensure the following to the extent (3)necessary to give full effect to the required conversion following the trigger event in (1):
 - where applicable, the *firm* has sufficient authorised share (a) capital;
 - (b) the firm has all necessary permissions, authorisations and corporate authorities; and

- (c) there are no other restrictions in the *firm's* constitutional documents, contractual arrangements or applicable national law that would prevent the *firm* from issuing the required common equity tier 1 capital instruments.
- 1.5 R The rate of conversion of the principal amount into common equity tier capital of the firm specified in the terms governing an instrument under SYSC 19G.6.19R(3) that is a convertible instrument must be set at a level that ensures that the value of the common equity tier 1 capital received by the holder upon conversion:
 - (1) would not be higher than the value of the instrument at the time that it was originally awarded as variable *remuneration*; and
 - (2) if the *convertible instrument* is part of an issuance which has the sole purpose of being used as variable *remuneration*, would not be higher than the value of the instrument at the time of conversion.

Additional requirements for write-down instruments

- 1.6 R A firm must satisfy the following requirements in relation to an instrument under SYSC 19G.6.19R(3) that is a write-down instrument:
 - (1) the instrument must contain a trigger event which, if it occurs, results in the principal amount of the instrument being written down;
 - (2) the trigger event in (1) must occur where the common equity tier 1 capital of the firm falls below a specified level that is no lower than 64% of the firm's own funds requirement;
 - the aggregate principal amount of *write-down instruments* that must be written down following the trigger event in (1) must be at least equal to the lower of the following:
 - (a) the amount required to ensure that the *common equity tier*1 capital of the firm referenced in the trigger event is restored to a level that is higher than the specified trigger; or
 - (b) the full principal amount of the instrument;
 - (4) any write-down in the principal amount of the instrument following the trigger event in (1) must:
 - (a) apply on a pro rata basis across all *write-down instruments* that contain the same trigger event;
 - (b) generate items that, under the accounting framework applicable to the *firm*, qualify as *common equity tier 1 capital*;
 - (c) result in a proportional reduction in the holder's entitlement to receive:
 - (i) distributions paid in connection with the instrument;
 - (ii) payment if the instrument is called or redeemed;
 - (iii) repayment in the insolvency or liquidation of the firm;
 - (5) any write-down in the principal amount of the instrument following the trigger event in (1) may be permanent or temporary, but if it is temporary, any subsequent write-up must comply with the following requirements:
 - (a) it cannot increase the principal amount of the instrument beyond its level before the write-down occurred;
 - (b) it must be at the absolute discretion of the firm:
 - (c) the *firm* must have a reasonable basis to conclude that the write-up is appropriate, having regard to the following factors, among others:

19G

(i) the importance of effectively aligning the interests of the recipient with the longer-term interests of the firm, its clients and its creditors; (ii) the financial position of the firm and the effect of the write-up on the firm's own funds; and (iii) if the firm or any member of its group has been subject to exceptional government intervention, whether the write-up is consistent with the objective of ensuring the timely exit from that support; it must be applied on a pro rata basis between all recipients (d) of instruments falling under SYSC 19G.6.19R(3) that are writedown instruments where those instruments have previously been subject to a write-down.

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Chapter 20

Reverse stress testing [deleted]

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Chapter 21

Risk control: additional guidance

■ Release 31 • Nov 2023



21.1 Risk control: guidance on governance arrangements

Additional guidance on governance arrangements

21.1.1 G

- (1) This chapter provides additional guidance on risk-centric governance arrangements for effective risk management. It expands upon the general organisational requirements in ■ SYSC 2, ■ SYSC 3, ■ SYSC 4, ■ SYSC 7 and ■ FUND 3.7, and so applies to the same extent as ■ SYSC 3.1.1 R (for insurers, managing agents and the Society), ■ SYSC 4.1.1 R (for every other firm) and ■ FUND 3.7 (for a full-scope UK AIFM of an authorised AIF).
- (2) Firms should, taking account of their size, nature and complexity, consider whether in order to fulfil the general organisational requirements in ■ SYSC 2, ■ SYSC 3, ■ SYSC 4, ■ SYSC 7 and (for a fullscope UK AIFM of an authorised AIF) FUND 3.7 their risk control arrangements should include:
 - (a) appointing a Chief Risk Officer; and
 - (b) establishing a governing body risk committee.

The functions of a Chief Risk Officer and governing body risk committee are explained further in this section.

- (3) The FCA considers that banks and insurers that are included in the FTSE 100 Index are examples of the types of firm that should structure their risk control arrangements in this way. However, this quidance will also be relevant to some similar sized firms (whether or not *listed*) and some smaller *firms*, by virtue of their risk profile or complexity.
- (4) For Solvency II firms, the PRA Rulebook: Solvency II firms: Senior Insurance Management Functions makes the chief risk function a PRA controlled function.
- (5) The chief risk function is having responsibility for overall management of the risk management system specified in PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3.
- (6) Solvency II firms may read references to Chief Risk Officer in SYSC 21 as if it were a reference to the risk management function in the PRA Rulebook.

Chief Risk Officer

21.1.2 G

- (1) A Chief Risk Officer should:
 - (a) be accountable to the *firm*'s *governing body* for oversight of *firm*-wide risk management;
 - (b) be fully independent of a firm's individual business units;
 - (c) have sufficient authority, stature and resources for the effective execution of his responsibilities;
 - (d) have unfettered access to any parts of the *firm*'s business capable of having an impact on the *firm*'s risk profile;
 - (e) ensure that the data used by the *firm* to assess its risks are fit for purpose in terms of quality, quantity and breadth;
 - (f) provide oversight and challenge of the *firm*'s systems and controls in respect of risk management;
 - (g) provide oversight and validation of the *firm*'s external reporting of risk;
 - (h) ensure the adequacy of risk information, risk analysis and risk training provided to members of the *firm*'s *governing body*;
 - (i) report to the *firm's governing body* on the *firm's* risk exposures relative to its risk appetite and tolerance, and the extent to which the risks inherent in any proposed business strategy and plans are consistent with the *governing body's* risk appetite and tolerance. The Chief Risk Officer should also alert the *firm's governing body* to and provide challenge on, any business strategy or plans that exceed the *firm's* risk appetite and tolerance;
 - (j) provide risk-focused advice and information into the setting and individual application of the firm's remuneration policy (Where the MIFIDPRU Remuneration Code applies, see in particular SYSC 19G.3.2G (2). Where the dual-regulated firms Remuneration Code applies, see in particular SYSC 19D.3.16E. Where the remuneration part of the PRA Rulebook applies, see the PRA's Supervisory Statement on Remuneration).

[Note: The PRA's Supervisory Statement on remuneration is available on the PRA website at http://www.bankofengland.co.uk/pra/Pages/default.aspx.]

- (2) Firms will need to seek the FCA's or PRA's (as appropriate) approval for a Chief Risk Officer to perform:
 - (a) (for an SMCR firm that is a PRA-authorised person) the PRA's Chief Risk Function controlled function; or
 - (b) (for an enhanced scope SMCR firm) the chief risk officer function.
- (3) The FCA expects that where a firm is part of a group it will structure its arrangements so that a Chief Risk Officer at an appropriate level within the group will exercise functions in (1) taking into account group-wide risks.

Reporting lines of Chief Risk Officer

21.1.3

G

- (1) The Chief Risk Officer should be accountable to a firm's governing body.
- (2) The FCA recognises that in addition to the Chief Risk Officers primary accountability to the governing body, an executive reporting line will be necessary for operational purposes. Accordingly, to the extent necessary for effective operational management, the Chief Risk Officer should report into a very senior executive level in the firm. In practice, the FCA expects this will be to the chief executive, the chief finance officer or to another executive director.

Appointment of Chief Risk Officer

21.1.4 G

- (1) Firms should ensure that a Chief Risk Officers remuneration is subject to approval by the firm's governing body, or an appropriate subcommittee.
- (2) Firms should also ensure that the Chief Risk Officer may not be removed from that role without the approval of the firm's governing body.

21.1.4A G

- (1) This guidance is relevant to an SMCR banking firm that has appointed a chief risk officer.
- (2) Taking account of the nature, scale and complexity of its activities, the firm should have appropriate procedures to ensure that the removal or any other disciplinary sanctioning of the chief risk officer does not undermine the independence of the chief risk officer.
- (3) It will be appropriate, in many cases, for the procedures in (2) to include that any approval for the removal of the chief risk officer requires the approval of a majority of the governing body, including at least a majority of its members who do not perform any executive function in the firm.
- (4) Similarly, it will also be appropriate, in many cases, for any other disciplinary sanctioning of the chief risk officer to require the approval of a majority of the governing body, including at least a majority of its members who do not perform any executive function in the firm.

Governing body risk committee

21.1.5 G

- (1) The FCA considers that, while the firm's governing body is ultimately responsible for risk governance throughout the business, firms should consider establishing a governing body risk committee to provide focused support and advice on risk governance.
- (2) Where a firm has established a governing body risk committee, its responsibilities will typically include:
 - (a) providing advice to the firm's governing body on risk strategy, including the oversight of current risk exposures of the firm, with particular, but not exclusive, emphasis on prudential risks;

- (b) development of proposals for consideration by the *governing* body in respect of overall risk appetite and tolerance, as well as the metrics to be used to monitor the *firm*'s risk management performance;
- (c) oversight and challenge of the design and execution of stress and scenario testing;
- (d) oversight and challenge of the day-to-day risk management and oversight arrangements of the executive;
- (e) oversight and challenge of due diligence on risk issues relating to material transactions and strategic proposals that are subject to approval by the *governing body*;
- (f) provide advice to the *firm's remuneration committee* on risk weightings to be applied to performance objectives incorporated in the incentive structure for the executive;
- (g) providing advice, oversight and challenge necessary to embed and maintain a supportive risk culture throughout the *firm*.
- (3) Where a governing body risk committee is established, its chairman should be a non-executive director, and while its membership should predominantly be non-executive it may be appropriate to include senior executives such as the chief finance officer.

21.1.6 G

In carrying out their risk governance responsibilities, a *firm's governing body* and *governing body* risk committee should have regard to any relevant advice from its audit committee or internal audit function concerning the effectiveness of its current control framework. In addition, they should remain alert to the possible need for expert advice and support on any risk issue, taking action to ensure that they receive such advice and support as may be necessary to meet their responsibilities effectively.

Senior Management Arrangements, Systems and Contro

Chapter 22

Regulatory references

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22.1 **Application**

General application 22.1.1 R This chapter applies to all SMCR firms. 22.1.1A G ■ SYSC TP 8.5.1R applies this chapter to certain claims management firms that are not SMCR firms. **Activities covered** 22.1.2 G This chapter is not limited to regulated activities or other specific types of activities. Territorial scope and overseas firms 22.1.3 R There is no territorial limitation on the application of this chapter, subject to ■ SYSC 22.1.6R. 22.1.4 G One effect of ■ SYSC 22.1.3R is that the obligation to provide a reference can apply even if the employee worked in an overseas office of the employer. 22.1.5 R [deleted] R 22.1.6 For an 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. 22.1.7 R (1) In order to decide whether someone is an employee of a branch, the Glossary definition of employee is applied to the branch as if the

branch and the firm of which it forms part were separate firms.

employee (someone employed elsewhere in the group) does not

(2) For the purpose of (1), paragraph (4A)(c) of the definition of

apply.



22.2 Getting, giving and updating references: the main rules

Obligation to obtain references

22.2.1 R

- (1) If a firm (A) is considering:
 - (a) permitting or appointing someone (P) to perform a *controlled* function;
 - (b) issuing a certificate under the certification regime for P; or
 - (ba) appointing a board director;

(as explained in more detail in rows (A) and (B) of the table in ■ SYSC 22.2.3R), A must take reasonable steps to obtain appropriate references from:

- (c) P's current employer; and
- (d) anyone who has been P's employer in the past six years.
- (2) A must take reasonable steps to obtain the reference before the time in column two of the applicable row in the table in SYSC 22.2.3R. If A does not obtain it within that time it must take reasonable steps to obtain it as soon as possible thereafter.
- (3) A must in particular request:
 - (a) the information in SYSC 22.2.2R(1) to (3); and
 - (b) (if P's current or previous *employer* is also an *SMCR firm*) the information in SYSC 22.2.2R(4) (questions (A) to (F) of Part One of SYSC 22 Annex 1R).
- (4) When deciding what information to request under (1), A must have regard to the factors in SYSC 22.2.2R(5) (Factors set out in SYSC 22 Annex 2R).

Obligation to give references

22.2.2 R

- (1) A firm (B) must provide a reference to another firm (A) as soon as reasonably practicable if:
 - (a) A is considering:
 - (i) permitting or appointing someone (P) to perform a controlled function; or
 - (ii) issuing a certificate under the certification regime for P; or
 - (iii) appointing P to another position in the table in ■ SYSC 22.2.3R;

(as explained in more detail in the table in ■ SYSC 22.2.3R);

- (b) A makes a request, for a reference or other information in respect of P from B, in B's capacity as P's current or former employer;
- (c) B:
 - (i) is P's current employer; or
 - (ii) has been P's employer at any time in the six year period preceding the request in (1)(b); and
- (d) A indicates to B the purpose of the request.
- (2) B must disclose to A in the reference all information of which B is aware that B reasonably considers to be relevant to A's assessment of whether P is fit and proper.
- (3) B is only required to disclose under (1) and (2) something that occurred or existed:
 - (a) in the six years before the request for a reference; or
 - (b) between the date of the request for the reference and the date B gives the reference; or
 - (c) (in the case of serious misconduct) at any time.

[Note: See ■ SYSC 22.5.10G and ■ SYSC 22.5.11G for guidance on the meaning of serious misconduct]

- (4) B must in addition disclose the information in questions (A) to (F) of Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).
- (5) When deciding what information to give to A under (1) to (3), B must have regard to the factors in ■ SYSC 22 Annex 2R (Factors to take into account when asking for and giving regulatory references).

22.2.3 Table: What positions need a reference

Position	When to obtain reference	Comments
(A) Permitting or appointing someone to perform an FCA controlled function or a PRA controlled function.	One <i>month</i> before the end of the application period	
	Where a request for a reference would require:	
	(a) the <i>firm</i> requesting the reference;	
	(b) the <i>employer</i> giving the reference; or	
	(c) any other person;	

Position	When to obtain reference	Comments
	to make a mandatory disclosure prior to P disclosing to its current employer that such application has been made, the date is the end of the application period.	
(B) Issuing a certificate under section 63F of the <i>Act</i> (Certification of employees by authorised persons).	Before the certificate is issued	This includes renewing an existing certificate.
(C) Appointing someone to any of the following positions (as defined in the <i>PRA Rulebook</i>):	Not applicable	SYSC 22.2.1R (obligation to obtain a reference) does not apply to a firm appointing someone to the position in column (1).
(a) a notified non-executive director;(b) a credit union non-		However SYSC 22.2.2R does apply to a firm asked to give a reference to a firm appointing someone to the position in column (1).
executive director; or (c) a key function		
holder.		
(D) A <i>firm</i> appointing someone to be a <i>non-SMF</i> board director sub-	Before appointment	Only applies where the appointment is by a <i>UK SMCR firm</i> that is:
ject to competence requirements of itself.		(a) a core SMCR firm; or
		(b) an enhanced scope SMCR firm.

Note 1: Mandatory disclosure means an obligation in any applicable laws, regulations or rules to declare or disclose information to the public.

Note 2: P refers to the *employee* or ex-*employee* about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.

Note 3: The application period means the period for consideration referred to in section 61 of the *Act* (Determination of application).

Obligation to revise references: The main rule

22.2.4 R

If at any time:

- (1) a firm (B) has given a reference under SYSC 22.2.2R to another firm (A) about an employee or ex-employee of B (P);
- (2) B was also an SMCR firm when it gave the reference in (1);
- (3) either of the following applies:
 - (a) B is aware of matters or circumstances that mean that if B had been aware of them when giving that reference, this chapter would have required B to draft the reference differently; or

(b) the following applies:

- (i) B has since giving the reference reached conclusions of the type described in question (E) of Part One of ■ SYSC 22 Annex 1R or taken disciplinary action of the type described in question (F) of Part One of ■ SYSC 22 Annex 1R; and
- (ii) if B had taken or reached those conclusions or actions within the six year period referred to in Part One of ■ SYSC 22 Annex 1R, this chapter would have required B to draft the reference differently; and
- (4) it would be reasonable to consider the differences in (3) to be significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must:

- (5) make reasonable inquiries as to the identity of P's current employer; and
- (6) give A details of those differences in writing as soon as reasonably practicable, unless ■ SYSC 22.2.5R says that B does not have to do so.

22.2.5 B does not need to update A if:

- (1) A is no longer a firm;
- (2) P has not yet been employed by A (because, for example, P is still working their notice period with B) and it is no longer intended for A to employ P;
- (3) A is no longer P's employer; or
- (4) despite making reasonable enquiries under SYSC 22.2.4R, B does not know whether P is still employed by A.

22.2.6 R This *rule* sets out time limits about the obligation to update a reference in ■ SYSC 22.2.4R.

- (1) If B still employs P, SYSC 22.2.4R applies throughout the period B remains employed.
- (2) If B no longer *employs* P, the obligation to update ends six years after P ceased to be *employed* by B.
- (3) If B no longer *employs* P and the matters or circumstances are not serious misconduct by P, B does not have to disclose something if it did not occur or exist in the six year period ending on the date B gave the original reference. This limitation applies in addition to the one in (2).

[Note: See ■ SYSC 22.5.10G and ■ SYSC 22.5.11G for *guidance* on the meaning of serious misconduct]

Obligation to revise references: Finding out who the current employer is

22.2.7 R

If at any time:

- (1) a firm (B) has given a reference under SYSC 22.2.2R to another firm (A) about an employee or ex-employee of B (P);
- (2) B asks A whether P is still an employee of A; and
- (3) B gave A the reference no more than six years ago;

A must answer that question as soon as reasonably practicable, even if B does not tell A why it wants to know that information.

Sole traders

22.2.8 R

The obligation in \blacksquare SYSC 22.2.1R (Obligation to obtain references) does not apply if A and P (as referred to in that *rule*) are the same *person*.

22.2.9 G

An example of SYSC 22.2.8R is this. Say that P works at a *firm* (B) and leaves to become a *firm* and a *sole trader*. P appoints themselves to perform the *compliance oversight function*. P does not need to get a regulatory reference from B about themselves.

22.2.10 G

- (1) If a firm is appointing someone who was a sole trader to a position that would normally require a regulatory reference under SYSC 22.2.1R, it does not have to request a reference from the sole trader themselves. That is because SYSC 22.2.1R only requires a firm to request a reference from a previous employer and a sole trader is not their own employer.
- (2) An example of (1) is this. Say that P was a *firm* and a *sole trader* and performed the *compliance oversight function* themselves. P goes to work for another *firm* (A). A does not need to request a regulatory reference from P about P.



Drafting the reference and the 22.3 request for a reference

- 22.3.1 G [deleted]
- 22.3.2 G [deleted]
- 22.3.3 G (1) A firm (A) asking another firm (B) for a reference should give B sufficient information to let B know that the requirements in this chapter apply to the reference it is being asked to give and which requirements apply.
 - (2) As long as it complies with (1), A does not have to set out specifically the information this chapter requires it to obtain. This is because B should include that information even though B is not specifically asked to include it.
- 22.3.4 A firm asking for a reference under this chapter from a current or former employer that is not a firm will normally need to specify what information it would like.
- 22.3.5 G (1) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 22.4.6G(-1)]
 - (2) [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 22.4.7Gl
- 22.3.6 G [deleted] [Editor's note: The text of this provision has been moved to ■ SYSC 22.4.8G]



22.4 Drafting the reference: detailed requirements

Drafting the reference: detailed requirements for SMCR firms

- 22.4.1 G
- SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) has two purposes:
 - (1) to set out what information a *firm* should disclose under SYSC 22.2.2R(4); and
 - (2) to provide a template that a *firm* should use when giving a reference under this chapter.

How to draft the reference

- 22.4.2 R
- (1) A firm must use the template in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) when giving a reference under this chapter to another firm (A).

.....

- (2) A firm may make minor changes to the format of the template in Part One of SYSC 22 Annex 1R when giving a reference under this chapter, provided that the reference includes all the information required by SYSC 22 Annex 1R.
- (3) This rule applies even if A is not an SMCR firm.
- 22.4.3 G
- (1) [deleted] [Editor's note: The text of this provision has been moved to SYSC 22.4.6G(1)]
- (2) [deleted] [Editor's note: The text of this provision has been moved to SYSC 22.4.6G(2)]
- (3) [deleted] [Editor's note: The text of this provision has been moved to SYSC 22.4.6G(3)]
- 22.4.4 G
- A firm should use the template in SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) even if the firm asking for the reference does not specifically ask it to.

PRA requirements

22.4.5 B may combine in a single reference what the PRA's rules require and what this chapter requires.

Inclusion of additional material

G 22.4.6

- (-1) This chapter sets out minimum requirements for a reference. It does not prevent a firm from including more than is required by this chapter.
 - (1) Therefore SYSC 22.4.2R does not stop a *firm* including matters in the reference not required by the template in ■ SYSC 22 Annex 1R.
 - (2) A firm may include the material required by the template and additional material in the same document.
 - (3) Any additional material should not alter the scope of any of the questions in the templates.
- 22.4.7 G If a *firm* does disclose more than is required by this chapter the reference should still meet its duties under general law to its former employee and the recipient (see ■ SYSC 22.5.3G to ■ SYSC 22.5.5G).

Time limits

22.4.8 G

..... Nothing in this chapter prevents a *firm* from disclosing material outside the time limits under this chapter.



22.5 Giving references: additional rules and guidance for all firms

Verification

- 22.5.1 This chapter does not require a *firm* to disclose information that has not been properly verified.
- (1) For example, this chapter does not necessarily require a *firm* to include in a reference the fact that an ex-employee left while disciplinary proceedings were pending or had started. Including such information is likely to imply that there is cause for concern about the ex-employee but the *firm* may not have established that the ex-employee was actually responsible for misconduct.
 - (2) However, a *firm* may include such information in a reference if it wishes to (see SYSC 22.3.5G).

Accuracy

22.5.3 G A *firm* should, when giving a reference under this chapter, provide as complete a picture of an *employee's* conduct record as possible to new *employers*.

Fairness

- 22.5.4 G
- (1) A *firm* supplying a reference in accordance with this chapter owes a duty under the general law to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference.
- (2) The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed.
- (3) References should be true, accurate, fair and based on documented fact.
- 22.5.5 G
- (1) An example of the general duty described in ■SYSC 22.5.4G is that fairness will normally require a firm to have given an employee an opportunity to comment on information in a reference. The firm might do this through, for example, disciplinary proceedings.

- (2) Paragraph (1) does not mean that the firm should provide an opportunity to comment on the reference itself, as opposed to the allegations on which it is based.
- (3) A firm may have given the employee an opportunity to comment on allegations that are later included in a reference even though, at the time that the firm is giving that opportunity, no reference is being contemplated. That may mean that the firm gives the employee their opportunity to comment on the allegations some time before the reference is prepared.
- (4) Paragraph (1) does not mean that a firm will be unable to include an allegation in a reference if it has offered the employee an opportunity to comment on the allegation but the employee has unreasonably refused to do so.
- (5) Where a firm should have given an employee an opportunity to comment on an allegation if the allegation is to be included in a reference, this chapter requires the firm to give the employee that opportunity rather than merely to leave the allegation out of the reference.
- (6) Paragraph (5) may mean that where the firm has not given its employee an opportunity to comment on a matter at the time it first arose, it will have to give the employee the opportunity around the time that the *firm* is preparing the reference.
- (7) The obligation to give an employee an opportunity to comment does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see ■ SYSC 22.5.18G).
- (8) This chapter does not require the *employee's* views to be included in the reference. Instead the firm should take those views into account so far as appropriate when deciding whether something should be disclosed and how the disclosure is drafted.

.....

Outsourcing

G 22.5.6

The requirements in this chapter for a firm (B) to give a firm (A) a reference also apply where A has outsourced the collection of that information to another (unregulated) third party, where B has been made aware that the unregulated third party is acting on behalf of A.

Circumstances in which the ex-employee left

G 22.5.7

The obligation to give a reference for an employee or ex-employee applies however the *employment* ended or is going to end. For example, it applies whether it ended through resignation, redundancy, dismissal or fixed term work, a secondment or temporary work coming to an end.

Missing or incomplete information

22.5.8 G (1) If a firm's records do not cover the maximum periods contemplated by ■ SYSC 22.2.2R or ■ SYSC 22 Annex 1R (Template for regulatory

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- references given by SMCR firms and disclosure requirements), the *firm* should note that in the reference.
- (2) A *firm* should not include a warning of the type described in (1) as a matter of routine. It should only be included if there is a genuine need to include it.

All relevant information: Calculation of six year period for disclosure

22.5.9 G

- (1) In general there is a six year limit on what should be disclosed under SYSC 22.2.2R(1) to (3).
- (2) Where the matter to be disclosed consists of a single course of conduct (such as market manipulation) the six year period does not begin until that course of conduct has come to an end. This means that individual events that occurred more than six years ago may still be within the six year limit.
- (3) This *guidance* is also relevant to the six year time limits for updating references in SYSC 22.2.6R.

All relevant information: Removal of six year period

22.5.10 G

- (1) SYSC 22.2.2R(1) to (3) normally has a six year time limit.
 SYSC 22.2.2R(3)(c) removes that time limit for serious matters. This paragraph (■ SYSC 22.5.10G) and SYSC 22.5.11G have *guidance* about this. This *guidance* is also relevant to the time limits for updating references in SYSC 22.2.6R.
- (2) The removal of the time limit does not mean that the time that has elapsed since the matter occurred is irrelevant. The length of time that has elapsed is relevant to deciding whether the matter is serious. In general, the longer ago the matter occurred, the less likely it is still to be serious for these purposes.
- (3) In determining whether something is serious for these purposes, the key question is how important the information still is for the requesting *firm's* assessment of the *employee's* fitness for the function that they are going to perform.
- (4) In considering what is relevant, a *firm* should, in particular, have regard to SYSC 22.5.4G (Fairness).
- (5) The table in SYSC 22.5.11G provides *guidance* on some of the factors which a *firm* should take into account when determining whether a matter is serious.
- (6) The guidance in this paragraph and in the table in ■SYSC 22.5.11G is only designed for the purposes of this chapter. It does not, for example, apply for the purposes of ■SUP 15 (Notifications to the FCA), DEPP or EG.

22.5.11 G

Table: Examples of factors to take into account when deciding whether old misconduct is sufficiently serious to disclose

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(A) Whether P has committed a ser-Individual conduct requirements has ious breach of individual conduct rethe same meaning as in Part Two of quirements. SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements). Factors to take into account in deciding whether the breach is serious include the following. (1) The extent to which the conduct was deliberate or reckless. (2)The extent to which the conduct was dishonest. (3) Whether the breaches are frequent or whether they have continued over a long period of time. The fact that breaches were frequent or repeated may increase the likelihood that they should be disclosed since the breaches may show a pattern of non-compliance. (4) The extent of loss, or risk of loss, caused to existing, past or potential investors, depositors, policyholders or other counterparties or customers. (5)The reasons for the breach. For example, where the breach was caused by lack of experience which has been remedied by training or further experience, it is less likely that the breach will still be relevant. (B) Whether the conduct caused B (1) The factors in (A) are relevant to to breach requirements of the requwhether P's conduct was serious. latory system or P was concerned in (2) The seriousness of the breach by a contravention of such a require-B is relevant. The factors in (A) are ment by B and, in each case, also relevant to this. whether P's conduct was itself serious. (3)A breach by B of certain requirements is always likely to be serious under (2). Breach of the threshold conditions is an example. However that does not mean that P's involvement will automatically be serious. (C) Whether P's conduct involved dis-Dishonesty is an important factor but it is not automatically decisive honesty (whether or not also involving a criminal act). in every case. For instance, a small one-off case of dishonesty many years ago may not be sufficiently serious to require disclosure. (D) Whether the conduct would have resulted in B's dismissing P, had P still been working for B, based on B's disciplinary policies

and the requirements of the law

about unfair dismissal.

		Factors to take into account	Comments
		(E) Whether the conduct was such that, if B was considering P for a role today and became aware of the historical conduct, B would not employ P today notwithstanding the time that has passed.	
		Note 1: P refers to the <i>employee</i> about written.	whom the reference is being
		Note 2: B refers to the <i>firm</i> giving the re	eference.
22.5.12	G	(1) [deleted] [Editor's note: The text of SYSC 22.8.10G(2)]	of this provision has been moved to
		(2) [deleted] [Editor's note: The text of SYSC 22.8.10G(1)]	of this provision has been moved to
		Agreements not to disclose inforn	nation
22.5.13	R	A <i>firm</i> must not enter into any arrangem that limit its ability to disclose information	
22.5.14	G	■ SYSC 22.5.13R covers all types of agreeme example:	ents and arrangements. For
		(1) it is not limited to an agreement of the <i>employee</i> leaves;	or arrangement entered into when
		(2) it applies however the employmen	nt ends (see ■ SYSC 22.5.7G); and
		(3) it covers a "COT 3" Agreement set and Arbitration Service (ACAS).	ttled by the Advisory, Conciliation
22.5.15	G	A <i>firm</i> should not give any undertakings information in order to secure a negotiat	•
22.5.16	G	The obligation to supply information to a apply notwithstanding any agreement pr	
22.5.17	G	Time in which to respond to reference. The FCA expects that normally a firm sho chapter within six weeks of being asked to	uld issue a reference under this
22.5.18	G	Outy to investigate allegations (1) A firm should, wherever feasible, before the employee departs.	conclude investigative procedures
		(2) However, this chapter does not cre misconduct by an <i>employee</i> or for	

- (3) There are several reasons why a firm may find it appropriate to investigate potential misconduct by an employee or former employee, including:
 - (a) assessing the actual and potential damage resulting from misconduct;
 - (b) identifying other individuals potentially culpable or accountable for the breach;
 - (c) satisfying itself that the SMF manager responsible for the areas where the misconduct occurred took reasonable steps to prevent or stop it; and
 - (d) (where the employee has remuneration susceptible to malus or clawback) enabling it to consider whether any adjustments are justified.

Criminal record checks

G 22.5.19

A firm giving a reference need not include information from a criminal records check it has carried out under Part V of the Police Act 1997 (Certificates of Criminal Records, &). The recruiting firm should carry out a criminal records check itself if necessary. The main FCA Handbook requirements on a recruiting firm to carry out a criminal records check are:

- (1) SUP 10C.10.16R a firm should carry out such a check when appointing an SMF manager); and
- (2) SYSC 23.4 (Criminal record checks for certain directors).

SYSC 22/16



Giving and updating references: additional rules and guidance

Omitting or supplementing mandatory disclosures

22.6.1 G

- (1) A *firm* may have concluded that an *employee* is unfit or has breached *COCON* or *APER* (as described in questions (E) to (F) of Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)). The *firm* may later become aware of facts or matters causing it to revise its original conclusions.
- (2) If so, the *firm* may decide not to disclose in a reference its conclusion or may qualify its conclusion with supplementary information.

22.6.2 G

- (1) A firm may have concluded that an employee is unfit or has breached COCON or APER (as described in questions (E) to (F) of Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements)). However the firm may consider that the disclosure is incomplete without including mitigating circumstances.
- (2) For example, if the *firm* is reporting a breach of *COCON* it may consider that the breach is very uncharacteristic of the *employee* and that they have had an exemplary record since then. In that case, the *firm* should include those views.

Requirement to consider whether there has been a conduct breach

22.6.3 G

- (1) If a firm has taken disciplinary action of the type referred to in question (F) in Part One of ■SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) against an employee and is asked to give a reference about that employee, the firm should (if it has not already done so) consider whether the basis on which it took that action amounts to a breach of any individual conduct requirements covered by question (F).
- (2) If the *firm* decides that the basis on which it took that action does amount to a breach of those requirements, it should include that disciplinary action in the reference under question (F).
- (3) Paragraph (2) applies even if the grounds of the disciplinary action did not include such a breach of individual conduct requirements.
- (4) The requirement in (1) is disapplied for disciplinary action taken before certain specified dates, where a *firm's* records do not record

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- whether previous conduct subject to disciplinary action amounted to a breach. The date differs between different types of firms. ■ SYSC TP 5 and ■SYSCTP7 set out those specified dates and other details.
- (5) The obligation to consider whether there was a conduct breach does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see ■ SYSC 22.5.18G).

All relevant information: Interaction with mandatory disclosures

22.6.4 G

- (1) SYSC 22.2.2R(1) to (3) may require a *firm* to disclose information that goes beyond the mandatory minimum information in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).
- (2) This may mean, for instance, that a firm should in some cases disclose a conclusion that an employee or former employee has breached COCON or APER where that conclusion was reached outside the time limits in Part One of ■ SYSC 22 Annex 1R.

Updating references fairly

22.6.5 G

- (1) SYSC 22.5.1R to SYSC 22.5.5G (Verification, accuracy and fairness) also apply to updating a reference under ■ SYSC 22.2.4R.
- (2) Therefore fairness may require a firm to have given an employee an opportunity to comment on an allegation if it is included in an update to a reference.

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22.7 Getting references: additional rules and guidance for SMCR firms

- 22.7.1 R
- (1) [deleted] [Editor's note: The text of this provision has been moved to SYSC 22.8A.1R]
- 22.7.2 G
- [deleted] [Editor's note: The text of this provision has been moved to SYSC 22.8A.2G]

Who should be asked to give a reference

- 22.7.3 G
- The Glossary definition of employer covers more than just a conventional employer and so it may not always be obvious who a person's employer is. Therefore a firm appointing someone to a position that requires a reference may have to get the employee's help in identifying their previous employers.
- 22.7.4 G
- (1) SYSC 22.2.1R (Obligation to obtain a reference) applies even if the ex-employer is not a firm.
- (2) A *firm* should take all reasonable steps to try to obtain the reference in these circumstances. However, the *FCA* accepts that the previous *employer* may not be willing to give sufficient information.

Asking for a reference to be updated

- 22.7.5 G
- (1) SYSC 22.2.1R (Obligation to obtain references) applies even if the *employer* has already got a reference for the *employee*. For example:
 - (a) a *firm* should have a reference whenever it renews the certificate of a *certification employee*; and
 - (b) changing jobs within the same firm may require a reference.
- (2) However, the *firm* does not necessarily need to obtain a new reference each time (a) or (b) above occurs. That is because an existing reference will very often still be appropriate for the purpose (see SYSC 22.7.6G to SYSC 22.7.8G).
- 22.7.6 G

G If a firm (A):

- (1) appoints someone (P) to a certification function position;
- (2) obtains a reference from an ex-employer; and

(3) later wishes to renew P's certificate under the certification regime;

it is unlikely that A will need to ask for another reference from that exemployer or ask for it to be reissued unless there is a change in P's role of the type described in ■ SYSC 27.2.15G (major changes in role).

22.7.7 G

- (1) If a firm (A):
 - (a) appoints someone (P) to a certification function or an approved person position;
 - (b) obtains a reference from an ex-employer (B); and
 - (c) later wishes to:
 - (i) appoint P to another certification function or approved person position; or
 - (ii) keep P in the same certification function but make a change in P's role of the type described in ■ SYSC 27.2.15G (major changes in role), whether that change is made at a time when the certificate has not yet come up for renewal or at the time it is being reissued; or
 - (iii) move P from a certification function to an approved person position or vice versa;

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A should consider whether to ask B to reissue or amend its reference.

- (2) A may decide that it is not necessary to ask B to reissue or amend its reference. For example, A may decide that:
 - (a) the existing reference already covers everything necessary; or
 - (b) (where B is not a firm) B will not give any further information.
- 22.7.8 G [deleted] [Editor's note: The text of this provision has been moved to SYSC 22.8A.3G]

When references are to be obtained

- 22.7.9 If a *firm* is unable to obtain a reference by the time in column two of the table in ■SYSC 22.2.3R, it should still try to obtain the reference as soon as possible afterwards.
- (1) Where a *firm* needs to fill a vacancy for a *certification function* which could not have reasonably been foreseen, the *FCA* recognises that it may not be reasonable to expect the *firm* to obtain references prior to issuing a certificate.
 - (2) In such cases, the *SMCR firm* should take up the reference as soon as reasonably possible.
 - (3) If a reference obtained later raises concerns about the person's fitness and propriety, the *firm* should revisit its decision to issue the person with a certificate.
- 22.7.11 G
- (1) Although this chapter (see ■SYSC 22.2.3R) only requires a *firm* to try to get a reference for a *person* it is recruiting to perform an *FCA* controlled function or a *PRA* controlled function towards the end of the application process, the *FCA* would normally expect a *firm* to have obtained the reference before the application for approval is made.
- (2) The main examples of circumstances in which it would be reasonable for a *firm* to delay getting a reference are where asking for a reference earlier will create a serious risk of:
 - (a) breaching the confidentiality of a wider commercial or corporate transaction;
 - (b) prematurely triggering the need for a public announcement; or
 - (c) the *candidate* not applying for the position in the first place because it would reveal to the *candidate's* current *employer* the proposed move too soon.
- (3) The FCA may consider that it needs to see the information in a reference before it reaches a decision. If so, it may formally ask for that information and extend the time period in which it has to make its decision until it gets the reference. SUP 10C.10.28G gives additional details about requests for further information and the effect they have on the period of time the FCA has to make a decision about an application.

(4) Firms are reminded that the Act itself requires a firm to be satisfied that a *candidate* is fit and proper before it makes an application for approval (see ■ SUP 10C.10.14G for more detail). ■ SYSC 22.7.11G(2) does not affect that obligation.



Policies and appointed representatives

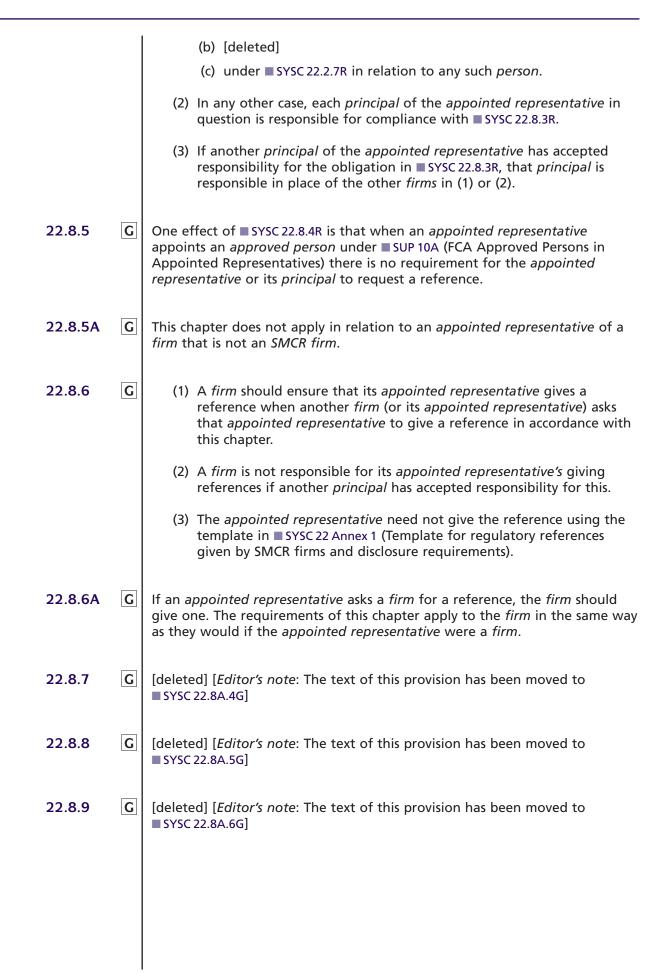
Policies and procedures

- A firm must establish, implement and maintain policies and procedures that are adequate for the purpose of complying with the obligations in this chapter.
- (1) SYSC 22.8.1R does not require a *firm* to create or keep records that are not required under SYSC 22.9.1R (General record keeping rules) or another *rule*.
 - (2) (1) applies to a *firm* whether or not SYSC 22.9.1R applies to it.

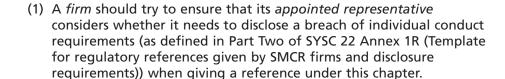
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Appointed representatives

- 22.8.3 R This chapter applies to a firm's appointed representatives as well as to the firm.
- When SYSC 22.8.3R applies to an *SMCR firm*, the requirements of this chapter for firms that are not *SMCR firms* apply in place of the requirements that only apply to *SMCR firms*. In particular, the following requirements do not apply in relation to an *appointed representative*:
 - (1) SYSC 22.2.1R (Obligation to obtain references);
 - (2) SYSC 22.2.2R(4) (Obligation to give references);
 - (3) SYSC 22.2.4R to SYSC 22.2.6R (Obligation to revise references);
 - (4) SYSC 22.4.2R (How to draft the reference);
 - (5) SYSC 22.8A.1R (Intra-group transfers); and
 - (6) SYSC 22.9.1R (General record keeping rules).
- 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 (FCA Approved Persons in Appointed Representatives); and



G 22.8.10



(2) Therefore an example of information that may be relevant under ■ SYSC 22.2.2R(1) to ■ (3) is the fact that the *employee* has breached a requirement in APER, not just a requirement in COCON.

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22.8A **Groups and outsourcing**

Intra-group transfers

22.8A.1 R

- (1) This rule applies when:
 - (a) a firm (A) would otherwise have to ask another person (B) for a reference under ■ SYSC 22.2.1R; and
 - (b) A and B are in the same group.
- (2) A need not ask for a reference from B if there are adequate arrangements in place under which A has access to the same information sources as B to the extent that they are relevant to things A has to ask B under ■ SYSC 22.2.1R (Obligation to obtain references).
- (3) If A only has access to some of the information sources in (2), A may ask for a reference that only covers the sources to which A does not have such access.
- (4) If A, in accordance with this rule, does not ask for a reference or a full reference it must access the information resources referred to in this rule and get the relevant information within the time specified by ■ SYSC 22.2.3R.

22.8A.2 G

- (1) SYSC 22.8A.1R means that a *firm* recruiting someone from another member of its group is not required to request a reference from the other where the group has centralised records or alternative measures in place to ensure sharing of relevant information between its members.
- (2) The recruiting firm should be satisfied that the centralised or alternative measures ensure relevant information is made available as part of the fit and proper assessment of the recruit.

22.8A.3 G

If:

- (1) a firm (A) appoints someone (P) to a certification function or approved person position;
- (2) A obtains a reference from an ex-employer (B);
- (3) later P transfers to a certification function position or an approved person position with an SMCR firm in A's group (C);

- (4) B's reference is:
 - (a) addressed to all firms in A's group; or
 - (b) otherwise drafted so that it is clear that C may rely on it; and
- (5) C does not need to ask for the reference to be reissued or amended, taking account of SYSC 22.7.6G and SYSC 22.7.7G;

C may be able to rely on that reference without asking B to give another one.

Getting and giving a reference where the employee has worked in a group or on secondment

22.8A.4 G

If:

- (1) a firm (A) is thinking of employing someone (P);
- (2) P is employed by a group services company (D) that is not a firm;
- (3) P (in their capacity as an *employee* of D) performs a function or service for a *firm* (B) in the same *group* as D such that P is also an *employee* of B; and
- (4) A intends to appoint (P) to a position that entitles A to obtain a reference from B;

then:

- (5) A should ask both B and D for a reference;
- (6) B is obliged to give the reference if A asks it to;
- (7) B should ask D to provide it with the information needed to provide a reference in accordance with this chapter;
- (8) D may give a reference but (as it is not a *firm*) it is not obliged to; and
- (9) D and B may give a single joint reference.

22.8A.5 G

■ SYSC 22.8A.4G also applies where:

- (1) D is not in the same group but has seconded P to B; and
- (2) P (in their capacity as an *employee* of D) performed any function or services for B such that P was also an *employee* of B.

22.8A.6 G

If:

- (1) a *firm* (A) is thinking of appointing someone (P) to a position that entitles A to obtain a reference from another *firm* (B); and
- (2) P was an employee of other members of B's group as well as of B;

then:

- (3) A should ask all the group members that employed P for a reference;
- (4) B should give a reference if A asks it to;
- (5) P's employers in that group (including any that are not firms) may give a single joint reference; and
- (6) if the reference is being provided on a consolidated group basis, it should be clear what information is relevant to which employer within the group.



22.9 Records and transitionals

General record keeping rules

22.9.1 R

- (1) A *firm* must arrange for orderly records to be created and kept that are sufficient to enable it to comply with the requirements of this chapter.
- (2) This *rule* only applies to records in relation to the following questions in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements):
 - (a) question (E) (fit and proper); and
 - (b) question (F) (disciplinary action).

Time limit for records to be kept

22.9.2 G

■ SYSC 22.9.1R does not have an express time limit for which a *firm* should retain the records as its effect is that those time limits are the same as the time limits in ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).

Reduction in disclosure obligations where there are limited record keeping requirements

22.9.3 R

A *firm* does not breach the requirements of this chapter by failing to include information in a reference that it would otherwise have to include if:

- (1) the reason for the omission is that the *firm* does not have the necessary records; and
- (2) neither SYSC 22.9.1R nor any other requirement of or under the regulatory system requires the firm to have those records.

22.9.4 G

If a *firm* is asked to give a reference in circumstances where the record keeping requirements in ■ SYSC 22.9.1R do not apply:

- (1) it is still required to give the reference;
- (2) it should give the reference based on the records it does have; and
- (3) it will not breach the requirements of this chapter by failing to include information in a reference if the reason for this is that it does not have the necessary records, as long as it is not required to have those records by some other requirement in the *Handbook* outside

this chapter or some other requirement of or under the regulatory system.

Effect of previous record keeping requirements

G 22.9.5

- (1) SYSC 22.9.1R applies to keeping records created before the date this chapter came into force as well as ones created afterwards.
- (2) A firm does not breach the requirements of this chapter by failing to include something in a reference or by failing to have records because it destroyed the relevant records before the date this chapter came into force in accordance with the record keeping requirements applicable to it at the time of destruction.
- (3) (1) also applies to records created before this chapter (or the relevant provision of this chapter) first applied to the firm.
- (4) (2) also applies if the firm destroyed the records before this chapter (or the relevant provision of this chapter) first applied to it.

Transitionals

22.9.6

If:

R

- (1) a firm (A) asks a person (B) who is not an SMCR firm for a reference;
- (2) B then becomes an SMCR firm; and
- (3) B gives the reference after it becomes an SMCR firm;

the requirements in this chapter apply to B when giving the reference.

G 22.9.7

If a firm gives a reference after it becomes an SMCR firm, the requirements of this chapter apply even if the matters covered by the reference occurred before then.

22.9.8 G ■ SYSC 22.2.4R (Obligation to revise references) does not apply to a reference that a firm gave before it became an SMCR firm.

Template for regulatory references given by SMCR firms and disclosure requirements

Part One: Form of Template

Guide to using this template:

Each question must be answered. Where there is nothing to disclose, this should be confirmed by ticking the "No" box for the relevant question.

In this template:

- "we" / "our firm" refers to the firm or firms giving the reference (as set out in either 1A or 1B below);
- •"individual" refers to the subject of the reference (as set out in 2 below); and
- •"your" refers to the firm requesting the reference (as set out in 3 below).

Informatio	on requested	Response
1A	Name, contact details and firm reference number of firm providing reference; or	
1B	Names, contact details and firm reference numbers (where applicable) of group firms providing a joint reference	
2	Individual's name (i.e. the subject of the reference)	
3	Name, contact details and firm reference number of firm requesting the reference	
4	Date of request for reference	
5	Date of reference	

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

Question A

Has the individual:

- (1) performed a certification function for our firm; or
- (2) been an approved person for our firm.

Answer:

Yes

No

Question B:

Has the individual performed one or more of the following roles in relation to our firm:

- (1) notified non-executive director;
- (2) credit union non-executive director;
- (3) key function holder (other than a controlled function); or

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

(4) board director.

Answer:

Yes

No

Question C:

If we have answered 'yes' to either Question A or B above, we set out the details of each position held below, including:

- (1) what the controlled function, certification function or key function holder role is or was;
- (2) (in the case of a controlled function) whether the approval is or was subject to a condition, suspension, limitation, restriction or time limit;
- (3) whether any potential FCA governing function is or was included in a PRA controlled function; and
- (4) the dates during which the individual held the position.

Question D:

Has the individual performed a role for our firm other than the roles referred to in Questions A and B above:

Answer:

Yes

No

If 'yes', we have provided summary details of the other role(s), e.g. job title, department and business unit, below.

Question E:

Have we concluded that the individual was not fit and proper to perform a function:

Answer:

Yes

No

If 'yes' and associated disciplinary action was taken as a result, please refer to Question F below.

If 'yes', and no associated disciplinary action was taken as a result, we have set out below the facts which led to our conclusion.

Question F:

We have taken disciplinary action against the individual that:

- (1) relates to an action, failure to act, or circumstances, that amounts to a breach of any individual conduct requirements that:
 - (a) apply or applied to the individual; or
 - (b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under PRA rules (including if applicable, PRA rules in force before 7 March 2016); or
- (2) relates to the individual not being fit and proper to perform a function.

Answer:

Yes

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

No

If 'yes', we have provided below a description of the breaches (including dates of when they occurred) and the basis for, and outcome of, the subsequent disciplinary action.

Question G:

Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper? This disclosure is made on the basis that we shall only disclose something that:

- (1) occurred or existed:
 - (a) in the six years before your request for a reference; or
 - (b) between the date of your request for the reference and the date of this reference; or
- (2) is serious misconduct.

Answer:

Yes

No

If 'yes', we have provided the relevant information below.

Part Two: Definitions used in Part One

Section One of Part Two of this annex defines terms used in this annex.

Section Two of Part Two of this annex modifies the meaning of certain requirements in Part One and has material about completing the template.

That material about completing the template.			
Section One: Meaning of	certain terms and phrases		
Defined term or phrase	Meaning		
В	B refers to the <i>employer</i> or ex- <i>employer</i> giving the reference as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.		
P	P refers to the <i>employee</i> or ex- <i>employee</i> about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.		
A finding or conclusion by B that P was not fit	This means a finding or conclusion by B where:		
and proper to perform a function (see questions (E) to (F) of the template)	(a)B assesses the continuing fitness and propriety of P as an approved person in accordance with the requirements of the regulatory system, including when carrying out this assessment under section 63(2A) of the Act (annual assessment of approved persons by an SMCR firm); or		
	(b)B assesses the fitness and propriety of P when B is proposing to issue a certificate under section 63F of the Act (Certification of employees by SMCR firms) for P.		
	Paragraph (b) applies whether the certificate is being issued for the first time or is being renewed.		
Individual conduct requirements	Individual conduct requirements mean any of the following:		
	(a)COCON;		
	(b)APER;		

Section One: Meaning of	certain terms and phrases
Defined term or phrase	Meaning
	(c)the <i>PRA's</i> Individual Conduct Standards or Senior Manager Conduct Standards in:
	(i) Chapter 3 of the Part of the <i>PRA Rulebook</i> called Insurance – Conduct Standards;
	(ii) Chapter 3 of the Part of the <i>PRA Rulebook</i> called Large Non-Solvency II Firms – Conduct Standards; and
	(iii) Chapter 2 of the Part of the <i>PRA Rulebook</i> called Non-Solvency II firms - Conduct Standards; or
	(d)the <i>PRA's</i> Individual Conduct Rules or Senior Manager Conduct Rules in:
	(i) Chapters 2 and 3 of the Part of the <i>PRA Rule-book</i> called CRR Firms: Conduct Rules; and
	(ii) Chapters 2 and 3 of the Part of the PRA Rulebook called Non-CRR Firms: Conduct Rules.
Function (as referred to in questions (E) to (F))	A function means a function as an approved person or certification employee.
Disciplinary action	Disciplinary action has the same meaning as in section 64C(2) of the <i>Act</i> (Requirement for authorised persons to notify regulatory of disciplinary action), which is:
	(a)the issue of a formal written warning; or
	(b)the suspension or dismissal of P; or
	(c) the reduction or recovery of any of P's remuneration.
	This definition applies even if B is not an SMCR firm.
Notified non-executive director, credit union non-executive director and key function holder	These terms have the same meaning as they do in the <i>PRA Rulebook</i> .
Certification function, approved person, controlled function and PRA controlled function	These terms have the same meaning as they do in the <i>Glossary</i> .
Board director	Non-SMF board director subject to competence requirements, as defined in the <i>Glossary</i> .
Potential FCA governing function	Potential FCA governing function means a function:
	(a)that would have been an FCA controlled function but for:
	(i)SUP 10A.11 (Minimising overlap with the PRA approved persons regime) (when that section was in force); or
	(ii)SUP 10C.9 (Minimising overlap with the PRA approved persons regime);
	(b)but instead is included in a <i>PRA controlled function</i> under the parts of the <i>PRA Rulebook</i> listed in SUP 10C.9.6G.
Section Two: Supplementary requirements Item of template for which supplemental requirements apply	Supplemental requirements

Section One: Meaning of	certain terms and phrases	
Defined term or phrase	Meaning	
Questions (E) and (F)	If:	
	(a)the finding or disciplinary action was reached or taken by another member of B's group with the authority to do so; and	
	(b) the finding or disciplinary action relates to conduct by P relating to the carrying on of activities (whether or not regulated activities) by B;	
	this question applies to such finding or disciplin- ary action in the same way as it does to findings or disciplinary action made or taken by the <i>firm</i> itself.	
Question (F)	This question is subject to SYSC TP 5.4.5R and SYSC TP 7.4.4R (where there is no need to disclose disciplinary action that took place before certain dates if the <i>firm's</i> records do not show whether there was a breach of individual conduct requirements).	
The whole of Part One of this annex	The template to be used by a <i>firm</i> in giving a reference consists of everything in Part One of this annex except for the "Guide to using this template" paragraph.	

Factors to take into account when asking for and giving regulatory references

Matters to take into account	Comments	
(A)Any outstanding liabilities of that person from commission payments		
(B)Any relevant outstanding or upheld complaint from an <i>eligible complainant</i> against P		
(C)Section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime) or SUP 10C Annex 3 (Application to perform senior management functions)		
(D)FIT 2 (Main assessment criteria)		
(E)The persistency of any life policies sold by P	This only applies if SUP 16.8.1G(1) (Persistency reports from insurers) applies to B	
Note: P refers to the <i>employee</i> or ex- <i>employee</i> about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.		

Chapter 23

Senior managers and certification regime: Introduction and classification

■ Release 31 • Nov 2023 www.handbook.fca.org.uk



23.1 **Purpose**

- 23.1.1 The purpose of this chapter is to:
 - (1) explain what the senior managers and certification regime is and where to find the main FCA Handbook provisions;
 - (2) define which firms the regime applies to;
 - (3) define the different kinds of SMCR firm; and
 - (4) require certain firms to carry out criminal record checks before appointing certain board directors.

SYSC 23/2

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



23.2 Definitions and types of firms

- 23.2.1 R SYSC 23 Annex 1R (Definition of SMCR firm and different types of SMCR firms) defines:
 - (1) what an SMCR firm is; and
 - (2) what the different types of SMCR firm are.
- Broadly speaking, *firms* covered by the senior managers and certification regime that are dual-regulated by the *FCA* and the *PRA* are divided into two categories:
 - (1) Banks and deposit-takers. They are called SMCR banking firms.
 - (2) Insurers. They are called SMCR insurance 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:
 - (1) Firms regulated by the FCA that do not fall into (2) or (3). They are called core SMCR firms. A large number of firms will be in this category.
 - (2) Certain large *firms*. These are called *enhanced scope SMCR firms*. Relatively few *firms* fall into this category.
 - (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:
 - (a) limited permission consumer credit firms;
 - (b) an authorised professional firm whose only regulated activities are non-mainstream regulated activities;
 - (c) internally managed AIFs;
 - (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;
 - (e) a firm that only has regulated claims management activities in its permission;
 - (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

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

described in ■ SYSC 23 Annex 1 6.12R (Benchmark firms: Waiver applying limited scope status); and

(G) a firm that only has permission for funeral plan distribution.

SYSC 23/4



23.3 Overview of the senior managers and certification regime

- 23.3.1 G There are three main elements to the regime:
 - (1) the senior managers regime;
 - (2) the certification regime; and
 - (3) conduct rules that apply directly to a firm's workforce.
- The table in SYSC 23.3.3G gives more details about each of those three elements. The first two columns of the table apply to all *firms*. The third column only covers *firms* that are not regulated by the *PRA*.
- 23.3.3 G Table: Summary of the senior managers and certification regime

(1)		(3)	
Description of component of the regime	(2) Handbook provisions	Application to solo- regulated firms	
The senior managers reg	ime: Parts that apply to al	l firms	
Pre-approval by the FCA of senior management (the FCA Hand-book calls senior management subject to pre-approval SMF managers)	SUP 10C	Applies to all solo-regulated firms	
Firm to be satisfied that a person is fit and proper before applying for them to be ap- proved as an SMF man- ager by the FCA or PRA	This requirement is in section 60A of the Act. There is guidance on it in SUP 10C.10.14G (Vetting of candidates by the firm).	Applies to all solo-regulated firms	
Annual assessment of fitness and propriety by the SMF managers' firms	This requirement is in section 63(2A) of the Act. There is guidance and related notification obligations in SUP 10C.14.18R to SUP 10C.14.25G (Notifications about fitness, disciplinary action and breaches of COCON).	Applies to all solo-regulated <i>firms</i>	
A firm should carry out	SUP 10C.10.16R (Criminal	Applies to all solo-regu-	

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

(1)	70)	(3)
Description of component of the regime	(2) Handbook provisions	Application to solo- regulated firms
criminal records checks before applying for someone to be approved as an SMF manager	records checks and veri- fying fitness and properness)	lated <i>firms</i> except for a sole trader without employees
A firm should ask for a regulatory reference before appointing	SYSC 22 (Regulatory references)	Obligation to give a reference applies to all solo-regulated <i>firms</i> .
someone to be an SMF manager, or to certain other senior management positions, and give one if asked to by another firm doing so		Obligation to ask for one applies to all solo-regulated <i>firms</i> except for a <i>sole trader</i> without employees.
Statements of respons- ibilities	SUP 10C.11 (Statements of responsibilities).	Applies to all solo-regulated <i>firms</i>
This is a document that sets out the responsibilities that an <i>SMF manager</i> performs as part of their <i>desig-</i>	Many of the requirements are in the <i>Act</i> itself but they are summarised in SUP 10C.11.	
nated senior manage- ment function. It is pre- pared as part of the firm's application to the FCA or (if the firm is a PRA-authorised per- son) PRA for them to be approved as an SMF manager. It should be updated after approval when there has been any significant change in the responsibilities of the SMF manager	SUP 10C.11 also adds some further requirements, particularly about there being one statement of responsibilities per SMF manager per firm.	
Duty of responsibility This applies to SMF	This is dealt with in section 66A(5) of the <i>Act</i> .	Applies to all solo-regulated <i>firms</i>
managers in all types of firm.	There is <i>guidance</i> on this in DEPP 6.2.9-AG to DEPP 6.2.9-FG.	
The senior managers reg	ime: Parts that apply to m	any firms
A <i>firm</i> should allocate certain specified management responsibilit-	SYSC 24 (Senior managers and certification regime: Allocation of	Does not apply to a <i>limited scope SMCR firm</i> .
ies among its SMF managers	prescribed respons- ibilities)	Applies to a core SMCR firm and an enhanced scope SMCR firm.
The FCA Handbook calls them FCA-pre-scribed senior management responsibilities		

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

(1)		(3)
Description of compon- ent of the regime	(2) Handbook provisions	Application to solo- regulated firms
A firm solo-regulated by the FCA should carry out criminal re- cords checks before ap- pointing a board dir- ector who is not an SMF manager	SYSC 23.4 (Criminal record checks for non-executive directors)	Does not apply to a limited scope SMCR firm. Applies to a core SMCR firm and an enhanced scope SMCR firm.
The senior managers reg firms	ime: Parts that only apply	to a limited range of
A firm should maintain a comprehensive and up-to-date document (called the management responsibilities map) that describes its management and governance arrangements	SYSC 25 (Senior managers and certification regime: Management responsibilities maps and handover procedures and material)	Does not apply to a limited scope SMCR firm or a core SMCR firm. Applies to an enhanced scope SMCR firm.
A firm should ensure that, at all times, one or more of its SMF managers have overall responsibility for each of the activities, business areas and functions of the firm.	SYSC 26 (Senior managers and certification regime: Overall and local responsibility)	Does not apply to a limited scope SMCR firm or a core SMCR firm. Applies to an enhanced scope SMCR firm.
A firm should ensure that a person becoming an SMF manager has all the information and material that they could reasonably expect to have to perform their responsibilities	SYSC 25.9 (Handover procedures and material)	Does not apply to a limited scope SMCR firm or a core SMCR firm. Applies to an enhanced scope SMCR firm.
A retail intermediary firm should check whether it meets the financial criteria for being an enhanced scope SMCR firm and report to the FCA when it meets those criteria for the first time or ceases to meet them.	SUP 15.15 (Notification by retail intermediaries of qualifying as an en- hanced scope SMCR firm)	Only applies to certain <i>UK</i> retail intermediaries. The full details of who this covers are in SUP 15.15.
Firms should report changes to their management body when members who are not SMF managers leave or join it.	SUP 15.16 (Notification of changes in the management body)	Only applies to a MiFID investment firm or a MiFID optional exemption firm.
A firm is required to maintain a clear and appropriate apportionment of significant responsibilities among	SYSC 4.4 (Apportion- ment of respons- ibilities)	Applies to a limited scope SMCR firm, except for a limited scope SMCR benchmark firm

(1) Description of compon-	(2)	(3) Application to solo-
ent of the regime	Handbook provisions	regulated firms
its directors and senior managers		Does not apply to most core SMCR firms.
		Does not apply to an enhanced scope SMCR firm.
A limited scope SMCR benchmark firm is required to report to the	SUP 15.17 (Notification of regulated income by limited scope SMCR	Only applies to a <i>limited scope SMCR</i> benchmark firm.
FCA certain changes in the split of its revenue between regulated ac- tivities and unregu-	benchmark firm)	Does not apply to any other <i>limited scope SMCR firm</i> .
lated activities		Does not apply to a core SMCR firm or an enhanced scope SMCR firm.
The senior managers reg	ime: Parts outside the Har	ndbook
Criminal offence relating to a decision that causes a financial institution to fail.	This is contained in section 36 of the Financial Services (Banking Reform) Act 2013	Does not apply to any solo-regulated <i>firm</i>
It applies to a <i>UK SMCR banking firm</i> but does not apply to a credit union.		
It does not apply to any firm that is not a UK SMCR banking firm.		
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.	Most of the requirements of this regime are in sections 63E (Certification of employees by authorised persons) and 63F (Issuing of certificates) of the <i>Act</i> .	Applies to all solo-regulated firms except for internally managed AIFs and pure benchmark SMCR firms. The certification re-
The certificate is only valid for a year. The firm will have to renew it if the employee is to carry on performing the function.	SYSC 27 (Senior managers and certification regime: Certification regime) describes the regime and explains which <i>employees</i> are	gime does not apply to benchmark activities.
A firm may not issue or renew a certificate unless it is satisfied that the person is fit and proper.	covered.	
Certification does not involve pre-approval by the FCA or PRA.		

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo- regulated firms
A firm should ask for a regulatory reference before appointing someone to perform an FCA certification function (or a PRA equivalent) and give one if asked to by another firm doing so.	SYSC 22 (Regulatory references)	Applies to all solo-regulated firms
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)	Applies to all solo-regulated firms except pure benchmark SMCR firms
Conduct rules (applies to	all firms)	
Rules of conduct that apply directly to a firm's workforce other than ancillary staff	COCON	Applies to all solo-regulated <i>firms</i>
A firm should report breaches of COCON to the FCA	Section 64C of the Act (Requirement for au- thorised persons to no- tify regulator of discip- linary action) and SUP 15.11 (Notification of COCON breaches and disciplinary action)	Applies to all solo-regulated <i>firms</i>
A firm should:	These obligations are	Applies to all solo-regu-
(a) ensure that all persons subject to COCON are notified of the rules that apply to	in section 64B of the Act (Rules of conduct: responsibilities of authorised persons).	lated firms
them; and	There is guidance in CO-	
(b) take all reasonable steps to ensure that they understand how COCON applies to them	CON 2.3 (Firms: Training and breaches).	

23.3.4 G

The PRA has requirements corresponding to the senior managers and certification regime that apply to PRA-authorised persons. The FCA and PRAs' regimes are designed to work together and complement each other. A PRA-authorised person will therefore need to consider the PRA's requirements to get a complete picture of the requirements that apply to it (and its workforce) in the area covered by the senior managers and certification regime and the requirements in the Act on which it is based.



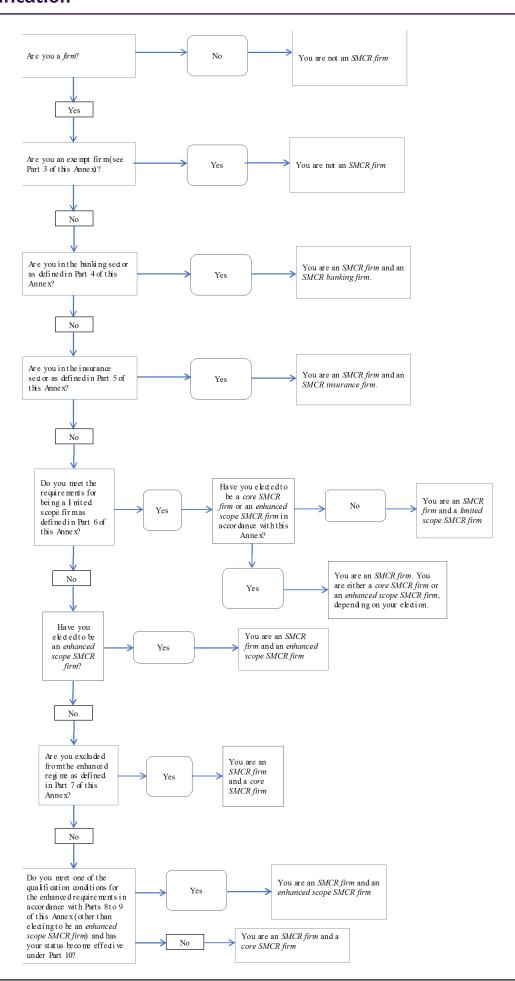
23.4 Criminal record checks for certain directors

- 23.4.1 This section applies to a *UK SMCR firm* that is:
 - (1) an enhanced scope SMCR firm; or
 - (2) a core SMCR firm.
- 23.4.2 A firm must (as part of its assessment of the fitness and propriety of any of its non-SMF board directors subject to competence requirements (P)) obtain the fullest information that it is lawfully able to obtain about P under Part V of the Police Act 1997 (Certificates of Criminal Records, &c) and related subordinated legislation of the *United Kingdom* or any part of the *United* Kingdom before P's appointment as a board director.
- G 23.4.3 The *guidance* in ■ SUP 10C.10.17G, ■ SUP 10C.10.18G and ■ SUP 10C.10.21G about criminal record checks for candidates to be an SMF manager applies to criminal record checks under this section.

SYSC 23/10

Definition of SMCR firm and different types of SMCR firms

Part (One: Flo	w diagra	am and other basic provisions	
1.1	R	The fl	The flow diagram in SYSC 23 Annex 1 1.2R defines:	
		(1)	an SMCR firm; and	
		(2)	the different categories of SMCR firm.	
1.2	R	Flow	diagram: Types of SMCR firm	
1.3	R	(1)	A Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as an <i>EEA PTV firm</i> for the purposes of deciding into which category of <i>SMCR firm</i> it falls. In particular, it is to be treated as an <i>EEA SMCR firm</i> .	
		(2)	(1) is without prejudice to the generality of GEN 2.3.	
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 <i>EEA PTV firm</i> for the purposes of deciding whether it is an <i>SMCR firm</i> and into which category of <i>SMCR firm</i> it falls. In particular, if it is an <i>SMCR firm</i> , it is to be treated as an <i>EEA SMCR firm</i> .	
		(2)	(1) is without prejudice to the generality of GEN 2.3.	



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.

1.3 R A reference in this Annex to a *firm* having permission to carry on a particular *regulated activity* includes that *firm* also having *permission* for *agreeing to carry on a regulated activity* in respect of that first *regulated activity*.

for agreeing to carry on a regulated activity in respect of that first regulated activity. Part Two: Changing category 2.1 If a firm is subject to a requirement that it must comply with the rules in the FCA Handbook applicable to one of the categories of SMCR firm set out in this Annex, it is to be treated as falling into that category of SMCR firm for all purposes. The FCA may, on a case-by-case basis, require a limited scope SMCR firm or a 2.2 G (1)core SMCR firm to comply with the requirements that apply to an enhanced scope SMCR firm if the FCA considers it appropriate to do so to advance one or more of its operational objectives under the Act. (2)The most common example of a requirement described in SYSC 23 Annex 1 2.1R is likely to be one of the kind described in (1). (3)One effect of SYSC 23 Annex 1 2.1R is that if a firm is moved from the limited scope SMCR firm or core SMCR firm category to the enhanced scope SMCR firm category, the FCA-designated senior management functions that will apply to it are the ones for enhanced scope SMCR firms. In practice, it is unlikely that the procedure described in SYSC 23 Annex 1 2.1R 2.3 G (1)will be used to move a firm from a category applicable to PRA-authorised persons to one applicable to FCA-authorised persons or vice versa. This is because the FCA's regime for PRA-authorised persons is designed on the (2)basis that the PRA's regime also applies to those firms while the regime for FCA-authorised persons is designed on the basis that no PRA requirements apply. 2.4 Where a firm becomes or stops being an enhanced scope SMCR firm under the G (1)

- procedure described in SYSC 23 Annex 1 2.1R, the material in Parts 10 and 11 of this Annex about when the change of status becomes effective will not apply. Instead the timing will be dealt with in the variation of *permission*.
- (2) If the variation does not specify the timing of the change, the change is likely to take effect when the variation does.

Part Three: Definition of exempt firm

- 3.1 R This part defines an exempt firm for the purposes of the flow diagram in Part One of this Annex.
- 3.2 R An overseas firm is an exempt firm if it:
 - (1) does not have; and
 - (2) does not have an appointed representative that has;

an establishment in the *United Kingdom*.

- 3.3 R An EEA PTV firm that is a pure reinsurer is an exempt firm.
- 3.4 R [deleted]
- 3.5 R A TP UCITS qualifier is an exempt firm.
- 3.6 R A TP AIFM qualifier is an exempt firm.
- 3.7 R [deleted]
- 3.8 G As explained in SYSC TP 8.2.1R, certain claims management *firms* are excluded from being *SMCR firms* and treated as exempt under this Part.

Part Four: Definition of banking sector

4.1 R A *firm* is in the banking sector for the purposes of the flow diagram in Part One of this Annex if the *firm* meets the conditions in SYSC 23 Annex 1 4.2R, SYSC 23 Annex 1 4.4R or SYSC 23 Annex 1 4.6R.

- 4.2 R A firm is in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is an institution that meets the following conditions:
 - it is incorporated in, or formed under the law of any part of, the United Kingdom;
 - it is not an institution authorised under the Act to carry on the regulated activ-(2)ity of effecting contracts of insurance or carrying out contracts of insurance;
 - (3)it meets one of the following conditions:
 - its Part 4A permission includes accepting deposits; or : (a)
 - (b) it meets all the following conditions:
 - the institution is an investment firm; (i)
 - its Part 4A permission covers dealing in investments as principal; (ii)
 - (iii) when carried on by it, that activity is a PRA-regulated activity.
- 4.3 R An SMCR banking firm in SYSC 23 Annex 1 4.2R is a UK SMCR banking firm.
- 4.4 A firm is also in the banking sector for the purposes of the flow diagram in Part One R of this Annex if it is a non-UK institution other than an EEA PTV firm that meets the following conditions:
 - it has a branch in the United Kingdom; (1)
 - it is not an institution authorised under the Act to carry on the regulated activ-(2) ity of effecting contracts of insurance or carrying out contracts of insurance; and
 - (3)it meets one of the following conditions:
 - it is a credit institution which has a Part 4A permission that includes accepting deposits; or
 - (b) it meets all the following conditions:
 - (i) the institution is an investment firm;
 - (ii) its Part 4A permission covers dealing in investments as principal;
 - (iii) when carried on by it, that activity is a PRA-regulated activity.
- 4.5 R An SMCR banking firm in SYSC 23 Annex 1 4.4R is an overseas SMCR banking firm.
- 4.6 A firm is also in the banking sector for the purposes of the flow diagram in Part One R of this Annex if it is 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:
 - it is a credit institution which has a permission under Part 4A of the Act that includes accepting deposits; or
 - it meets all the following conditions: (b)
 - (i) the institution is an investment firm:
 - (ii) it has a permission under Part 4A of the Act that covers dealing in investments as principal; and
 - when carried on by it, that activity is a PRA-regulated activity. (iii)

4.7 R An SMCR banking firm in SYSC 23 Annex 1 4.6R is an EEA SMCR banking firm.

Part Five: Definition of insurance sector

- 5.1 R A *firm* is in the insurance sector for the purposes of the flow diagram in Part One of this Annex if the *firm* is:
 - (1) a Solvency II firm (including a large non-directive insurer); or
 - (2) a small non-directive insurer.
- 5.2 R (1) A *firm* from which the Solvency II rules (as defined by the part of the *PRA Rule-book* described in this paragraph (1)) are disapplied by chapter 2 of the Solvency II Firms: Transitional Measures part of the *PRA Rulebook* is in the insurance sector for the purposes of the flow diagram in Part One of this Annex.
 - (2) A *firm* defined as a small run-off firm in the Glossary part of the *PRA Rulebook* is in the insurance sector for the purposes of the flow diagram in Part One of this Annex.

Part Six: Definition of limited scope SMCR firm

Introduction

- 6.1 R (1) This Part sets out the requirements for being a *limited scope SMCR firm* referred to in the flow diagram in Part One of this Annex.
 - (2) Where this Part says that a *firm* is a *limited scope SMCR firm*, that means that the *firm* meets those requirements.

Opting up

6.2 G Part 12 of this Annex sets out a procedure for a *firm* that would otherwise have been a *limited scope SMCR firm* to elect to be a *core SMCR firm* or an *enhanced scope SMCR firm* and to reverse that election.

Specialised activities

- 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.
 - (2) In the case of a *firm* in SYSC 23 Annex 1 6.4R(5), *regulated claims management activities* are treated as *unregulated activities* for the purpose of deciding what the *firm*'s principal purpose is under (1).
- 6.4 R Table: List of limited scope SMCR firms referred to in SYSC 23 Annex 1 6.3R
- (1) Oil market participant
- (2) Service company
- (3) Energy market participant
- (4) A wholly owned subsidiary of:
 - (a)a local authority; or
 - (b)a registered social landlord.
- (5) A *firm* that meets the following conditions:

(a)it has permission to carry on insurance distribution activity in relation to non-investment insurance contracts; and

(b)it:

- (i)either does not have permission to carry on any other regulated activity; or
- (ii) has *permission* to carry on no other *regulated activity* except one or more of the following:
 - (A)advising on P2P agreements; or
 - (B) regulated claims management activities.

(6) A *firm* that meets the following conditions:

(a) it has permission for any activity constituting funeral plan distri-

bution; and

(b) it does not have *permission* to carry on any other *regulated*

activity.

6.5 G It will be a matter of fact in each case whether, having regard to all the circumstances, including in particular where the balance of the business lies, a *firm's* principal purpose is to carry on activities other than *regulated activities*. If a *firm* wishes to rely on SYSC 23 Annex 1 6.3R, it should be in a position to demonstrate that its principal purpose is to carry on activities other than *regulated activities*.

Sole trader

6.6 R A sole trader is a limited scope SMCR firm.

Limited permission consumer credit firms

- 6.7 R A firm whose permission is limited to the carrying on of a relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) (a limited permission) is a limited scope SMCR firm, excluding a firm in SYSC 23 Annex 1 6.8R.
- 6.8 R A not-for-profit debt advice body is a limited scope SMCR firm.

Authorised professional firms

6.9 R An authorised professional firm whose only regulated activities are non-mainstream regulated activities is a limited scope SMCR firm.

Internally managed AIFs

- 6.10 R A firm is a limited scope SMCR firm if it 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.

Claims management

- 6.11 R (1) A firm is a limited scope SMCR firm if it meets the following conditions:
 - (a) it has permission to carry on regulated claims management activities; and
 - (b) it:
 - (i) either does not have *permission* to carry on any other *regulated activity*; or
 - (ii) has permission to carry on no other regulated activity except a relevant credit activity.
 - (2) A firm in SYSC 23 Annex 1 6.7R or SYSC 23 Annex 1 6.8R does not fall within this rule.

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
 - 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

- (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 in 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 in 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.
- SYSC 23 Annex 1 6.17G describes how the FCA anticipates that it would decide 6.17 G (1) whether regulated activities form a small part of a firm's activities for the purpose of SYSC 23 Annex 1 6.16G(2).
 - The FCA anticipates that it would consider that: (2)
 - a firm would meet the criterion in (1) if revenue from regulated activities represents less than 20% of its overall revenue; and
 - a firm would not meet the criterion in (1) if revenue from regulated ac-(b) tivities 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).
 - The FCA anticipates that it would adjust the calculation if there were good (5) reason to think that past revenue is unlikely to be representative of the future.
 - the firm's past revenue may be distorted by extraordinary items; or (a)
 - the firm may recently have carried out a major reorganisation of its busi-(b) ness 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.
- The FCA anticipates that, in deciding whether a benchmark is important for the pur-6.18 G poses 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
 - is provided in a way that significantly breaches or falls short of the require-(2) ments and standards of the benchmarks regulation.
- 6.19 The FCA considers that a firm's benchmark is likely to be important for the purposes in G 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 In making the assessment of the importance of a benchmark that is not recognised as G critical as described in SYSC 23 Annex 1 6.19G, the FCA anticipates that it will take into account factors that include the following:
 - whether the benchmark has no or very few appropriate market-led substitutes; (1) and
 - (2) whether the benchmark is used extensively in particular markets or sectors.
- 6.21 G One reason for taking into account the importance of a benchmark is that if it (1) is important, the factors in SYSC 23 Annex 1 6.15G(4) outweigh the factors in SYSC 23 Annex 1 6.15G(3).
 - Another reason is that, under section 138A(4)(b) of the Act (Modification or (2) 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:
 - the occurrence of the situation in SYSC 23 Annex 1 6.18G(1) or (2) is likely (a) in particular to prejudice the integrity operational objective; and
 - for the reasons in SYSC 23 Annex 1 6.15G(4), the FCA considers that apply-(b) ing 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
 - 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 Seven: Exclusion from enhanced regime

- 7.1 R This Part sets out which *firms* are excluded from the enhanced regime for the purposes of the flow diagram in Part One of this Annex.
- 7.2 R An overseas SMCR firm is excluded from the enhanced regime.
- 7.3 R A firm is excluded from the enhanced regime if its permission only covers being the full-scope UK AIFM of:
 - (1) an unauthorised AIF; or
 - (2) an authorised AIF only marketed to investors that are professional clients.
- 7.4 R A *firm* is excluded from the enhanced regime if:
 - (1) it is an exempt MiFID commodities firm; and
 - (2) its only permission is bidding in emissions auctions.
- 7.5 R An *ICVC* is excluded from the enhanced regime.

Part Eight: Financial qualification condition for being an enhanced scope SMCR firm

The financial qualification tests

- 8.1 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 criteria set out in column (1) of the table in SYSC 23 Annex 1 8.2R.
- 8.2 R Table: Financial qualification conditions
- (1) (2) (3)

d classifica
Qualifica-
tion
condition
(1) The aver-
age amount
of the firm's
assets under
manage-
ment (calcu-
lated as a

How to do the calculation and corresponding reporting requirement

Comments

Part One: Point in time measurements

Assets under management are calculated in accordance with the method that must be used to calculate the amount to lated as a three-year be recorded in data element 1A rolling av-(Total funds under erage) is management) in £50 billion data item FSA038 or more (Volumes and Type

of Business)

(2) The firm currently has 10,000 or more outstanding regulated mortgages

A firm's outstanding regulated mortgages are calculated as follows:

(a)calculate the amount that must be recorded in row E4.5 (Total) in the box under the successive headings and sub-headings "Regulated Loans", "Balances outstanding" and "Number" in the MLAR:

(b)calculate the amount that must be recorded in row G1.1(d) (total) under the successive headings and subheadings "As PRIN-CIPAL administrator" and "Regulated loans" in the MLAR; and

(c)add those amounts together.

Part Two: Revenue measurements

(3) The average amount of the firm's total intermediary regulated business revenue (calculated

Total intermediary regulated business revenue is calculated in accordance with the method that must be used to calculate the amount to be recorded in

SYSC 23 Annex 18.8R(3) applies to this calculation.

SYSC 23 Annex 1 8.18R applies this condition to firms to which the reporting requirement in column (2) does not apply in the cases specified in that rule.

SYSC 23 Annex 1 8.8R(2) and SYSC 23 Annex 1 8.11R apply to this calculation.

as a thyear reaverage f35 m per ar or mo	olling ge) is illion nnum	(Total busine in Sect and Lo of the	regulated ess revenue) tion B (Profit ess account) RMAR	SYSC 23 Annex 1 8.8R(3) applies to this calculation.
age ar	mount firm's Il ue ated	genera lated o credit	ated by regu- consumer lending is ated as	313C23 Amick 10.0N(3) applies to this calculation.
sumer credit ing (ca lated a three- rolling erage)	lend- alcu- as a year y av- y is million	amour be rec umn B for the heade in data CCR00 Credit umes);	d "Lending" a item 2 (Consumer data: Vol- ; and	
			I those nts together.	
	1: Where	e Parts	8 to 11 of sysc	23 Annex 1 refer to a calculation period they refer to the annual
	2: Where			23 Annex 1 refer to an averaging period they refer to the three-
			8 to 11 of SYSC column (2) are	23 Annex 1 refer to a reporting period they refer to the period prepared.
				23 Annex 1 refer to a calculation date they refer to the date as of) of this table are made.
8.3	G	(1)		f the table in SYSC 23 Annex 1 8.2R refers to the FCA Handbook verelevant data items.
		(2)		ferred to in row (2) (outstanding regulated mortgages) correonline version of the <i>MLAR</i> as follows:
			(a) paragi	raph (a) corresponds to <i>data item</i> c3; and
			(b) paragi	raph (b) corresponds to <i>data item</i> G1.1 c1 (d).
	Qualifi	cation	conditions only	y apply if reporting requirements apply
8.4	R	SYSC 23	3 Annex 1 8.2R o	nex 1 8.18R, a qualification condition in column (1) of the table in only applies to a <i>firm</i> if the corresponding reporting requirement in (2) of the table currently applies to the <i>firm</i> .
	Genera	al calcul	lation principle	es
8.5	R	Annex	18.2R have cha	ancial reporting requirements in column (2) of the table in SYSC 23 anged during the relevant period, the calculations must be made whatever requirements applied for the applicable period.
8.6	R	The ca	lculations are	made on a solo basis.
8.7	R	(1)	table in SYSC cial reporting	on periods, averaging periods and dates in column (1) of the 23 Annex 1 8.2R are defined so as to be consistent with the finangeriods and calculation dates used for the corresponding data on (2) of that table. The rest of this <i>rule</i> gives examples of this
			•	

- (2)If a calculation in column (1) of the table in SYSC 23 Annex 1 8.2R is based on per annum or annual revenue and the reporting period in column (2) is based on the *firm's* accounting period:
 - the calculation periods in column (1) are also based on the firm's accounting period; and
 - the averaging period in column (1) is made up of the applicable num-(b) ber of accounting periods.
- (3)If a calculation in column (1) of the table in SYSC 23 Annex 1 8.2R is based on per annum or annual revenue and the reporting period in column (2) is based on a calendar year:
 - the calculation periods in column (1) are also based on a calendar year; (a)
 - the averaging period in column (1) is made up of the applicable num-(b) ber of calendar years.
- (4)Where row (2) of column (1) of the table in SYSC 23 Annex 1 8.2R refers to a firm's current financial figures it refers to the figures as at the calculation date for its most recent reporting period in column (2).
- A firm's most recent reporting period is the one for the data item whose re-(5)quired submission date has passed most recently.

Averaging periods

- 8.8 (1) This rule deals with the establishment of a firm's averaging periods. R
 - (2)When the table in SYSC 23 Annex 1 8.2R specifies that this paragraph (2) applies:
 - each averaging period ends on the calculation date for a reporting (a) period: and
 - there is an averaging period that ends on each such day. (b)
 - (3)When the table in SYSC 23 Annex 1 8.2R specifies that this paragraph (3) applies:
 - (a) each averaging period ends on the last day of a year; and
 - (b) there is an averaging period that ends on each such day.
 - (4)The term 'year' in (3) is defined in accordance with SYSC 23 Annex 18.7R.
- 8.9 SYSC 23 Annex 1 8.8R(2) provides for a firm's status to be tested every six months G (1)if the relevant data item is reported in six-month intervals and to be tested yearly if the relevant data item is reported yearly.
 - (2)SYSC 23 Annex 1 8.8R(3) provides for a firm's status to be tested once a year even if the relevant data item is reported in six-month intervals.

Requirements where the firm reports more than once a year

- 8.10 This rule applies to calculations in Part Two of the table in SYSC 23 Annex 1 8.2R. (1)
 - (2)If:
 - (a) the firm reports the relevant data items more than once a year; and
 - each successive report covers the whole year to date;

the calculations in the table are only based on the data item that covers the full year.

The term year in (2) is defined in accordance with SYSC 23 Annex 18.7R. (3)

Requirements for calculating average amounts in certain cases

8.11 When the table in SYSC 23 Annex 1 8.2R specifies that this rule applies, the calculation of the average involves calculating the relevant amount for each reporting period relating to the averaging period, summing those amounts and dividing the result by the applicable number of reporting periods.

Adjustments where reporting periods cover irregular periods

8.12 This rule applies where: R (1)

- (a) the calculation is under Part Two of the table in SYSC 23 Annex 1 8.2R;
- (b) the reporting period in column (2) is based on the *firm's* accounting period;
- (c) any of the *firm's* accounting periods in the applicable averaging period is not twelve *months*; and
- (d) as a result the averaging period would not be a whole number of calendar years.
- (2) Where this *rule* applies, the *firm* must adjust the minimum qualification amount in column (1) proportionately.
- 8.13 G The main example of when SYSC 23 Annex 1 8.12R may apply is where a *firm* changes its accounting reference date.

Short reporting periods

- 8.14 G (1) The financial reporting period may be shorter than the corresponding calculation period.
 - (2) For example, the calculation period may be based on annual revenue but the *firm* may have to prepare the corresponding *data item* in column (2) of the table in SYSC 23 Annex 1 8.2R for revenue arising in six-*month* periods.
 - (3) If SYSC 23 Annex 1 8.10R applies this does not matter as the calculation is based on the figures for the full year.
 - (4) If SYSC 23 Annex 1 8.10R does not apply, in the example in (2):
 - (a) the calculation of the *firm's* most recent annual revenue in column (1) is based on the most recently ended six-month period and the six-month period before that; and
 - (b) each year within the three-year averaging period is based on two sixmonth periods.

Effect of reporting requirements not applying for full period

- 8.15 R Subject to SYSC 23 Annex 1 8.4R, if the reporting requirement referred to in column (2) of the table in SYSC 23 Annex 1 8.2R did not apply to the *firm* for the whole of its most recent averaging period as defined in SYSC 23 Annex 1 8.2R, the averaging period is shortened to cover the period for which those requirements did apply.
- 8.16 G Reasons why SYSC 23 Annex 1 8.15R may apply to a *firm* include the following:
 - (1) the firm has only recently been authorised;
 - (2) the *firm's Part 4A permission* has only recently been varied to include the relevant *regulated activities*;
 - (3) the *firm* has only recently become subject to the relevant reporting requirements; or
 - (4) the reporting requirement did not exist for the full period (see SYSC TP 7.7.6G for an example).
- 8.17 G (1) This paragraph gives an example of how SYSC 23 Annex 1 8.15R works.
 - (2) In this example:
 - (a) the relevant qualification condition is one of those in Part Two of the table in SYSC 23 Annex 1 8.2R:
 - (b) the reporting requirement is based on a *firm's* accounting year and reports are due every six *months*;
 - (c) the firm's accounting year ends on 31 December;
 - (d) the firm is authorised in February.
 - (2) The *firm* will not meet the qualification condition before the end of Year One, however large its business is in the period from February to June. This is because the calculations are based on calculation periods of a year and the year is not over yet.

- (3)Following the end of Year One, the assessment of whether the firm meets the qualification condition is based on the figures for Year One. There is no adjustment to take account of the fact that the firm was only authorised part of the way through that period.
- After the end of Year Two, the averaging period is two years and the figures (4)are taken from the part of Year One during which it was authorised and from Year Two.
- The figures for the next averaging period are taken from the part of Year One (5)during which it was authorised and from Years Two and Three.
- If the firm in this example is authorised in September, the assessment of (6)whether the firm meets the qualification condition for Year One is based on the figures for the part of Year One for which it is authorised, as it is in (3). However, in contrast to (2), that means that the assessment is made in respect of its first few months of authorisation.
- (7)In this paragraph:
 - the firm being authorised means the firm being authorised or the relevant regulated activities being included in its permission so that the relevant reporting requirement applies;
 - (b) the accounting year in which this occurs is referred to as Year One; and
 - (c) subsequent accounting years are referred to accordingly.

Special requirements for calculating intermediary regulated business revenue

- 8.18 The qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R may also apply to a firm that meets the following conditions, even though the financial reporting requirement referred to in that row does not apply to it:
 - it falls into any of the following categories: (1)
 - (a) its permission includes an insurance distribution activity in relation to non-investment insurance contracts;
 - its permission includes a home finance mediation activity; (b)
 - (c) it is a retail investment firm:
 - (d) it is a personal investment firm;
 - (e) (subject to SYSC 23 Annex 1 8.19R) its permission includes advising on P2P agreements; or
 - (f) (subject to SYSC 23 Annex 1 8.20R) its permission includes designated investment business or it carries out designated investment business; and
 - it is not required to complete Section B of the RMAR. (2)
- 8.19 A firm is excluded from SYSC 23 Annex 1 8.18R(1)(e) if its permission, so far as it relates R to the activity in SYSC 23 Annex 1 8.18R(1)(e), is limited to activities carried on exclusively with or for professional clients.
- 8.20 A firm is excluded from SYSC 23 Annex 1 8.18R(1)(f) if its permission, so far as it relates to R the activity in SYSC 23 Annex 1 8.18R(1)(f), is limited and subject to requirements in a way that means it may only carry on those activities exclusively with or for professional clients or eligible counterparties.
- 8.21 R (1)This rule deals with how the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R applies to a firm in SYSC 23 Annex 1 8.18R.
 - (2)The calculation is made in accordance with the requirements for Section B (Profit and Loss account) of the RMAR and otherwise as described in column (2) of row (3) of the table in SYSC 23 Annex 18.2R.
 - The reporting period for the purposes of this Annex is an annual period end-(3)ing on the firm's accounting reference date.
 - (4)For the purpose of applying this Annex to a firm in SYSC 23 Annex 1 8.18R, a reference in this Annex to:

- (a) the due submission date for a *data item* is treated as being to the reporting date defined in SUP 15.15.9R;
- (b) a firm's most recent reporting period is the period in (3) whose reporting date (as defined in (4)(a)) has occurred most recently; and
- (c) being subject to a reporting requirement is treated as a reference to meeting the conditions in SYSC 23 Annex 1 8.18R.
- 8.22 G (1) There is only one qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R.
 - (2) Therefore if a *firm* ceases to be in SYSC 23 Annex 1 8.18R because it begins to report using the *RMAR*, SYSC 23 Annex 1 8.4R does not apply and the *firm* will continue to meet the qualification condition as long as its income remains at the necessary level.
 - (3) The same applies if the *firm* moves from reporting using the *RMAR* to being a firm within SYSC 23 Annex 1 8.18R.
 - (4) If a *firm* makes a change of the kind in (2) or (3), the figures for the averaging periods during which this occurs will be made up of figures taken from its *RMAR* and ones calculated under SUP 15.15. SYSC 23 Annex 1 8.15R does not apply.
 - (5) If there is a gap between being subject to SYSC 23 Annex 1 8.18R and reporting using the *RMAR*, SYSC 23 Annex 1 11.8R may mean that the *firm* never stops being an *enhanced scope SMCR firm*.
- 8.22 G SUP 15.15 requires a *firm* within SYSC 23 Annex 1 8.18R regularly to calculate whether it meets the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R and, in certain circumstances, to notify the *FCA* of the results.

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;
 - (2) the firm is a CASS large firm; or
 - (3) the *firm* notifies the *FCA* in accordance with Part 12 of this Annex that it intends to become an *enhanced scope SMCR firm*.
- 9.2 G If a *firm* is subject to a *requirement* that it must comply with the *rules* in the *FCA*Handbook applicable to one of the categories of *firm* in SYSC 23 Annex 1 9.1R(1) or SYSC
 23 Annex 1 9.1R(2) it is to be treated as falling into that category of *firm* for the purpose of this Annex as well.
- 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

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- (iv) investment advice;
- (b) it is not authorised to provide any other investment services;
- it is not authorised to provide the ancillary service referred to in para-(c) graph 1 of Part 3A of Schedule 2 to the Regulated Activities Order (Safekeeping and administration of financial instruments); and
- it is not permitted to hold MiFID money or securities (as defined in (3)) (d) 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.
- MiFID money or securities (as referred to in (2)(d)) means money or securities (3)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:
 - such positions only arise as a result of the firm's failure to match investors' orders precisely;
 - the total market value of all such positions is no higher than 15% of (b) the firm's initial capital; and
 - such positions are incidental and provisional in nature and strictly lim-(c) ited 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.
- The purpose of the criteria in SYSC 23 Annex 1 9.3R to SYSC 23 Annex 1 9.5R is to replicate 9.6 G 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

General rule

- 10.1 R (1) A firm must comply with the requirements for enhanced scope SMCR firms (and becomes an enhanced scope SMCR firm) from the date specified in this rule.
 - (2)If a *firm*:
 - (a) was not an enhanced scope SMCR firm; and
 - (b) then meets one of the qualification conditions in Part 8 or Part 9 of this Annex:

the date is twelve months after it first meets the first qualification condition that it met.

- Where the first qualification condition it meets is the one in SYSC 23 Annex 1 (3)9.1R(3), the date is three months after the FCA receives the notice in SYSC 23 Annex 1 9.1R(3).
- (4)(3) also applies if:
 - it meets the qualification condition in SYSC 23 Annex 1 9.1R(3) after it (a) meets another qualification condition; and
 - (b) the result of applying (3) would be that the firm would become an enhanced scope SMCR firm sooner.
- (5)This rule is subject to SYSC 23 Annex 1 11.8R.

Meeting the financial thresholds in Part 8

(1)

10.2 R

- Subject to (4), a *firm* first meets one of the qualification conditions in Part 8 of this Annex (financial qualification conditions) on the due date for submission of the relevant *data item* (see (2) and (3) for the meaning of relevant *data item*).
- (2) Except where (3) applies, the relevant *data item* is the *data item* for the final reporting period applicable to the averaging period for which the *firm* first meets the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1 8.2R.
- (3) Where the qualification condition is the one in row (2) of the table in SYSC 23 Annex 1 8.2R, the relevant *data item* is the one for the reporting period for which the *firm* first meets the condition in column (1) of that row.
- (4) In the case of a *firm* in SYSC 23 Annex 1 8.18R, the *firm* meets the qualification condition in row (3) of the table in SYSC 23 Annex 1 8.2R on the reporting date for the final reporting period applicable to the averaging period for which the *firm* first meets the condition in column (1) of that row.

Meeting the qualification conditions in Part 9

- 10.3 R A *firm* meets one of the qualification conditions in Part 9 of this annex (other qualification conditions) on the date when:
 - (1) the status in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) becomes effective; or (as the case may be)
 - (2) the FCA receives the notice in SYSC 23 Annex 1 9.1R(3).
- 10.4 G SYSC 23 Annex 1 10.1R and SYSC 23 Annex 1 10.3R mean that a *firm* becomes an *enhanced* scope SMCR firm under Part 9 of this Annex on the date in column (2) of the table in SYSC 23 Annex 1 10.5G.
- 10.5 G Table: Date firm becomes an enhanced scope firm

Qualification condition

Date firm becomes an enhanced scope SMCR firm

The firm is a significant SYSC firm

If a *firm* meets the criteria in SYSC 23 Annex 1 9.3R but does not at first meet the conditions for being a *significant SYSC firm* and then later becomes a *significant SYSC firm*, it becomes an *enhanced scope SMCR firm* 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).

If a *firm* meets the conditions for being a *significant SYSC firm* 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 *firm* first meets the criteria in SYSC 23 Annex 1 9.3R.

If a *firm* first meets the conditions for being a *significant SYSC firm* 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.

The firm is a CASS large firm

This includes a *firm* that has elected to be treated as a *CASS large firm*

If the *firm* notifies the *FCA* in accordance with CASS 1A.2.9R(1) or CASS 1A.2.9R(2), it becomes an *enhanced scope SMCR firm* one year following the 1 February following the notification under *CASS*.

If the *firm* notifies the *FCA* in accordance with CASS 1A.2.9R(3), it becomes an *enhanced scope SMCR firm* one year after the day it begins to hold *client money* or *safe custody assets*.

If the *firm* makes an election under CASS 1A.2.5R(1), it becomes an *enhanced scope SMCR firm* one year after the day the notification made under CASS 1A.2.5R(2)(a) states that the election is intended to take

The firm opts to be an enhanced scope SMCR firm by notifying the FCA using Form O

It becomes an *enhanced scope SMCR firm* three months after the *FCA* receives the notice.

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- 10.6 G (1) The purpose of the one year or three-month period between meeting the conditions for being an enhanced scope SMCR firm and the firm becoming subject to the requirements for such firms is to allow it to make preparations to comply with the new requirements.
 - For example, a core SMCR firm opting up to be an enhanced scope SMCR firm (2)should use this period to apply for approval for its personnel to perform the new designated senior management functions that will apply because it has become an enhanced scope SMCR firm.
- 10.7 G (1)A firm retains its old status during the one-year or three-month period described in this Part.
 - For example, a core SMCR firm that meets one of the qualification conditions (2)for being an enhanced scope SMCR firm in SYSC 23 Annex 1 9.1R(1) or SYSC 23 Annex 1 9.1R(2) will remain as a core SMCR firm for one year after it meets the qualification condition.

Part Eleven: When a firm stops being an enhanced scope SMCR firm General rule

11.1 R A firm that:

- was an enhanced scope SMCR firm; and (1)
- then meets none of the qualification conditions in this Annex;

ceases to be subject to the requirements for enhanced scope SMCR firms (and ceases to an enhanced scope SMCR firm) one year after it ceases to meet the last qualification condition that it met.

Ceasing to meet the financial thresholds in Part 8

- 11.2 A firm ceases to meet one of the qualification conditions in Part 8 of this Annex (financial qualification conditions) on whichever of the following is applicable:
 - the due date for submission of the data item for the final reporting period ap-(1)plicable to the averaging period for which the firm first ceases to meet the condition in column (1) of the applicable row in the table in SYSC 23 Annex 1
 - (where the qualification condition is the one in row (2) of the table in SYSC 23 (2)Annex 1 8.2R) the due date for submission of the data item for the reporting period for which the firm first ceases to meet the condition in column (1) of that row: or
 - (in the case of a firm in SYSC 23 Annex 1 8.18R) the reporting date for the final (3)reporting period applicable to the averaging period for which the firm first ceases to meet the condition in column (1) of that row; or
 - the date the relevant reporting requirement ceases to apply as referred to in (4) SYSC 23 Annex 18.4R.

Ceasing to meet the qualification conditions in Part 9

- 11.3 A firm ceases to meet one of the qualification conditions in SYSC 23 Annex 1 9.1R(1) or R SYSC 23 Annex 1 9.1R(2) (other qualification conditions) on the date that the status in SYSC 23 Annex 1 9.1R ceases to apply.
- This rule deals with a firm that notifies the FCA under Part 12 of this Annex 11.4 (1)that it is cancelling its election to be an enhanced scope SMCR firm under SYSC
 - The firm ceases to meet the qualification condition under SYSC 23 Annex 1 (2)9.1R(3) on the date the FCA receives the notice.

Only meeting qualification conditions for a short time

- This rule deals with a case in which a firm ceases to meet a qualification condi-11.5 (1)tion in Part 8 or Part 9 of this Annex while the one-year period in Part 10 of this Annex resulting from meeting that qualification condition is still running.
 - (2)The result is that the firm does not become an enhanced scope SMCR firm. The one-year period no longer runs.

- 11.6 G If, after the *firm* ceases to meet a qualification condition as described in SYSC 23 Annex 1 11.5R, it later meets the same qualification condition or another qualification condition in Part 8 or Part 9 of this Annex, a new one-year period or, as applicable, three-month period, under Part 10 of this Annex begins. This applies even if it meets that qualification condition during the one-year period referred to in SYSC 23 Annex 1 11.5R.
- 11.7 G (1) SYSC 23 Annex 1 12.13R allows a *firm* to withdraw an election to be an *enhanced* scope SMCR firm before it takes effect.
 - (2) The result is that the *firm* does not become an *enhanced scope SMCR firm* and the three-*month* period in in SYSC 23 Annex 1 11.1R does not apply.

Only ceasing to meet qualification conditions for a short time

- 11.8 R If:
 - (1) the one-year period in SYSC 23 Annex 1 11.1R is still running; and
 - (2) the *firm* again meets a qualification condition in Part Eight or Nine of this Annex;

then (subject to SYSC 23 Annex 1 12.5R):

- (3) the firm remains an enhanced scope SMCR firm; and
- (4) the one-year period in Part Ten of this Annex does not apply.
- 11.9 G SYSC 23 Annex 1 12.5R allows a *firm* to opt to remain as an *enhanced scope SMCR firm* during the one-year period in SYSC 23 Annex 1 11.1R

Ceasing to meet one qualification condition and beginning to meet another

- 11.10 G (1) This paragraph deals with the following example
 - (a) a firm meets a qualification condition for being an enhanced scope SMCR firm and becomes an enhanced scope SMCR firm;
 - (b) later the firm meets another qualification condition;
 - (c) shortly after (b) the *firm* ceases to meet the first qualification condition; and
 - (d) the gap between (b) and (c) is less than the one-year period provided for in Part 10 of this Annex.
 - (2) In this example:
 - (a) the firm never stops being an enhanced scope SMCR firm; and
 - (b) neither the one-year period in Part 10 of this Annex nor the one year countdown provided for in SYSC 23 Annex 1 11.1R applies.

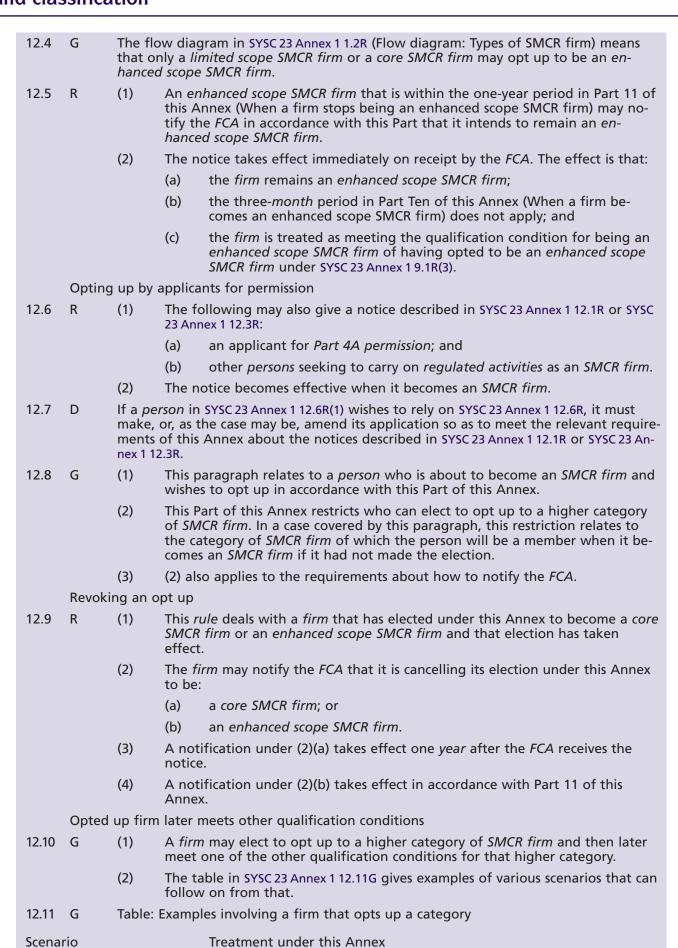
Part Twelve: Opting up and opting back down

Opting up to being a core firm

- 12.1 R (1) A firm may notify the FCA in accordance with this Part that it intends to become a core SMCR firm.
 - (2) The notice takes effect three months after the FCA receives the notice.
 - (3) A *firm* may only make such an election if the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) allows this.
- 12.2 G The flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) means that only a *limited scope SMCR firm* may opt up to be a *core SMCR firm*.

Opting up to being an enhanced scope firm

- 12.3 R (1) A firm may notify the FCA in accordance with this Part that it intends to become an enhanced scope SMCR firm.
 - (2) The notice takes effect as described in Part 10 of this Annex.
 - (3) A *firm* may only make such an election if the flow diagram in SYSC 23 Annex 1 1.2R (Flow diagram: Types of SMCR firm) allows this.



(1) A firm elects to opt up to a higher category. It later meets one of the other qualification conditions for that higher category. It ceases to meet that second qualification condition some time later.

The *firm* remains in the higher category because its election remains in force.

(2) A firm elects to opt up to a higher category. It later meets one of the other qualification conditions for that higher category. It later cancels its election.

The *firm* remains within that higher category despite cancelling its election because it still meets that second qualification condition.

(3) A firm elects to opt up to a higher category. It later cancels its election. During the one-year period in Part Eleven of, or this Part of, this Annex following its cancellation notice it meets one of the other qualification conditions for that higher category.

The *firm* remains within that higher category despite the cancellation notice.

(4) A firm elects to opt up to a higher category. It later meets one of the other qualification conditions for that higher category. It later cancels its election. Some time after that, it ceases to meet the second qualification condition.

The cancellation notice has no immediate effect (see Example (2)).

However when it ceases to meet the second qualification condition it ceases to be in the higher category. In contrast to Example (1), its election is no longer in force when it ceases to meet the second qualification condition.

Note: When this table refers to the cancellation of an election it refers to cancelling that election after it has taken effect and not to withdrawing it before it takes effect.

Giving notices

- 12.12 R
- (1) This *rule* deals with a notification under SYSC 23 Annex 1 12.1R to SYSC 23 Annex 1 12.6R.
- (2) The notification must be made in accordance with SUP 10C.15.11R (Method of submission: electronic submission).
- (3) A *firm* must use the version of the form made available for this purpose on the electronic system referred to in SUP 10C.15.11R, which is based on the version found in SYSC 23 Annex 2R (Form O).
- (4) If SUP 10C.15.11R requires the notification to be in accordance with SUP 10C.15.14R (Method of submission: other forms of submission), the *firm* must use the version of the form found in SYSC 23 Annex 2R.

Withdrawing notices

- 12.13 R A *firm* may, by notice to the *FCA*, withdraw a notice in SYSC 23 Annex 1 12.12R at any time before it takes effect.
 - (1) This paragraph relates to the withdrawal of a notice as described in SYSC 23 Annex 1 12.13R.
 - (2) If a *firm* decides to give a withdrawal notice, it should send it to the *FCA* as soon as possible.

- A firm should give a withdrawal notice in accordance with SUP 15.7 (Form and (3)method of notification). There is no specified form for the notice.
- See SYSC 23 Annex 1 11.7G for more about the effect of withdrawing a notice electing 12.15 G to be an enhanced scope SMCR firm.
- If a firm notifies the FCA in accordance with this Part of this Annex that it intends to 12.16 G revoke its election to be an enhanced scope SMCR firm and then changes its mind within a year, it should withdraw its revocation notice under SYSC 23 Annex 1 12.13R rather than use the opting-up procedure in SYSC 23 Annex 1 12.5R.

Form O: Changing firm status under the Senior Managers and **Certification Regime**

Form O: Changing firm status under the Senior Managers and Certification Regime

Senior managers and certification regime: Allocation of prescribed responsibilities

Chapter 24

Senior managers and certification regime: Allocation of prescribed responsibilities

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24.1 **Application**

Main application rules

- 24.1.1 This chapter applies to an SMCR firm, except to the extent that this chapter applies a narrower scope to a particular provision. However, this chapter does not apply to:
 - (1) an EEA SMCR firm; or
 - (2) a limited scope SMCR firm.
- 24.1.2 This chapter is not limited to regulated activities or other specific types of activities.

Territorial scope

- 24.1.3 R There is no territorial limitation on the application of this chapter, subject to ■ SYSC 24.1.4R.
- 24.1.4 R When this chapter applies to an overseas SMCR firm, it applies in relation to the activities of the firm's branch in the United Kingdom.



24.2 Allocation of FCA-prescribed senior management responsibilities: Main allocation rules

Allocation of FCA-prescribed senior management responsibilities

- A firm must allocate each of the FCA-prescribed senior management responsibilities in the table in SYSC 24.2.6R that apply to it to one or more SMF managers of the firm.
- (1) Subject to (2),■SYSC 24 Annex 1 (Which prescribed responsibilities apply to which kind of firm) sets out which FCA-prescribed senior management responsibilities apply to which kind of SMCR firm.
 - (2) In some cases, an FCA-prescribed senior management responsibility is subject to further restrictions on the types of firm and circumstances to which it applies, as set out in the table in SYSC 24.2.6R (Table: FCA-prescribed senior management responsibilities).
- 24.2.3 R
 (1) A firm may not allocate an FCA-prescribed senior management responsibility to an SMF manager who is only approved to perform the other overall responsibility function or the other local responsibility function for that firm, subject to (2).
 - (2) A firm may allocate FCA-prescribed senior management responsibility (z) in the table in SYSC 24.2.6R (functions in relation to CASS) to an SMF manager who is only approved to perform the other overall responsibility function or the other local responsibility function.
- 24.2.4 R A firm must make the allocations of FCA-prescribed senior management responsibilities in this chapter in such a way that it is clear who has which of those responsibilities.

What the FCA-prescribed senior management responsibilities are

The FCA-prescribed senior management responsibilities are set out in the table in ■ SYSC 24.2.6R.

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24.2.6 Table: FCA-prescribed senior management responsibilities

Table: FCA-prescribed	senior management responsibilit	ies
FCA-prescribed senior management responsibility	Explanation	Reference letter
(1) Responsibility for the <i>firm's</i> perform- ance of its obliga- tions under the senior managers regime	The senior managers regime means the requirements of the regulatory system applying to SMCR firms insofar as they relate to SMF managers performing designated senior management functions, including SUP 10C (FCA senior managers regime for approved persons).	(a)
	This responsibility includes:	
	(1) compliance with conditions and time limits on approval;	
	(2) compliance with the requirements about the statements of responsibilities (but not the allocation of responsibilities recorded in them);	
	(3) compliance by the <i>firm</i> with its obligations under section 60A of the Act (Vetting of candidates by authorised persons); and	
	(4) compliance by the <i>firm</i> with the requirements in SYSC 22 (Regulatory references) (and the corresponding <i>PRA</i> requirements) so far as they relate to the senior managers regime, including the giving of references to another <i>firm</i> about an <i>SMF manager</i> or former <i>SMF manager</i> .	
(2) Responsibility for the <i>firm's</i> performance of its obligations under the certification regime	The certification regime means the requirements of sections 63E and 63F of the Act (Certification of employees) and all other requirements of the regulatory system about the matters dealt with in or relating to those sections, including:	(b)
	(1) SYSC 27 (Senior managers and certification regime: Certification Regime);	
	(2) the requirements in SYSC 22 (Regulatory references) so far as they relate to the certification regime, including the giving of references to another firm about a certification employee or former certification and continuous and	
	fication employee; and	

SYSC 24 : Senior managers and certification regime: Allocation of prescribed responsibilities

FCA-prescribed senior management responsibility	Explanation	Reference letter
	(3) the corresponding <i>PRA</i> requirements; and	
	(4) the requirements in SUP 16.26 (Reporting of information about Directory persons), which require a <i>firm</i> to report information to the <i>FCA</i> about its <i>Directory persons</i> .	
(3) Responsibility	(1) This includes:	(d)
for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime	(a) responsibility for the firm's policies and procedures in relation to the matters in SYSC 3.2.6R (Systems and controls in relation to compliance, financial crime and money laundering);	
	(b) the functions in SYSC 3.2.6HR or SYSC 6.3.8R (firm must allocate to a director or senior manager overall responsibility within the firm for the establishment and maintenance of effective anti-money laundering systems and controls);	
	if any of those <i>rules</i> apply to the <i>firm</i> .	
	(2) The firm may allocate this FCA-prescribed senior management responsibility to the MLRO but does not have to.	
	(3) If the firm does not allocate this FCA-prescribed senior management responsibility to the MLRO, this FCA-prescribed senior management responsibility includes responsibility for supervision of the MLRO.	
(4) Responsibility for the firm's obligations for:(a) conduct rules training; and	(1) The <i>firm's</i> obligations for conduct rules training means its obligations under section 64B of the <i>Act</i> (Rules of conduct: responsibilities of authorised persons).	(b-1)
(b) conduct rules reporting.	(2) The <i>firm's</i> obligations for conduct rules reporting means its obligations under section 64C of the <i>Act</i> (Requirement for authorised persons to notify regulator of disciplinary action).	
(5) Responsibility for:		(f)

(a) leading the development of; and (b) monitoring the effective implementation of; policies and procedures for the induction, training and professional development of all members of the firm's governing body. (6) Responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all the firm's: (a) SMF managers; and (b) key function holders; (c) Paragraph (b) of column (1) of this row (6) only applies to a firm if and to the extent that the PRA's requirements about key function holders; other than members of the firm's governing body. (7) Responsibility for: (a) safeguarding the development of it is in the Glossary Part of the PRA Rulebook. (2) Paragraph (b) of column (1) of this row (6) only applies to a firm if and to the extent that the PRA's requirements about key function holders apply to it. (a) SMF managers; and (b) key function holder has the same meaning as it does in the Glossary Part of the PRA rulebook. (2) Paragraph (b) of column (1) of this row (6) only applies to a firm if and to the extent that the PRA's requirements for soft the firm's governing body. (7) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the internal audit function, in accordance with the internal audit function, in accordance with the internal audit function in accordance with the internal audit requirements for SMCR firms and the PRA requirements of SMCR firms; or (b) any requirements of the PRA about the matters in paragraph (1) of this column of this row (7); apply to the firm.			
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PRA about the matters in paragraph (1) of this column of this row (7);			
apply to the firm.		PRA about the matters in paragraph (1) of this column	
		apply to the firm.	

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FCA-prescribed senior management responsibility	Explanation	Reference letter
	(3) Independence means independence to the extent it is required by the requirements referred to in paragraph (2) of this column of this row (7).	
	(4) The Head of Internal Audit function means the head of internal audit function or the PRA's Head of Internal Audit designated senior management function.	
(8) Responsibility for:	(1) This responsibility includes responsibility for:	(k)
(a) safeguarding the independence	(a) safeguarding the inde- pendence of; and	
of; and (b) oversight of the	(b) oversight of the performance of;	
performance of; the compliance function in accord-	the person performing the compliance oversight function for the firm.	
ance with the com- pliance require- ments for SMCR firms.	(2) This responsibility only applies if and to the extent that the compliance requirements for SMCR firms apply to the firm.	
	(3) "Independence" means in- dependence to the extent it is required by the <i>compliance</i> requirements for SMCR firms.	
(9) Responsibility for:	(1) This responsibility includes responsibility for:	(1)
(a) safeguarding the independence	(a) safeguarding the inde- pendence of; and	
of; and (b) oversight of the	(b) oversight of the performance of;	
performance of; the risk function, in accordance with the risk control re-	a person approved to perform the Chief Risk function for the <i>firm</i> if that function applies to the <i>firm</i> .	
quirements for SMCR firms and the PRA requirements referred to in col-	(2) This responsibility only applies if and to the extent that:	
umn (2) of this row (9).	(a) the risk control require- ments for SMCR firms; or	
	(b) any requirements of the <i>PRA</i> about the matters in paragraph (1) of this column of this row (9);	
	apply to the <i>firm</i> .	
	(3) "Independence" means in- dependence to the extent it	

FCA-prescribed		
senior management responsibility	Explanation	Reference letter
	is required by the require- ments referred to in para- graph (2) of this column of this row (9).	
	(4) The Chief Risk function means the chief risk officer function or the PRA's Chief Risk designated senior management function.	
(10) Responsibility for overseeing the development of and implementation of the <i>firm</i> 's remuneration policies and practices in accordance with SYSC 19D (Remuneration Code)	This responsibility does not apply to a <i>firm</i> to which SYSC 19D does not apply.	(m)
(11) Responsibility for the <i>firm's</i> compliance with <i>CASS</i>	(1) This responsibility only applies to a <i>firm</i> to which <i>CASS</i> applies.	(z)
	(2) A firm may include in this FCA-prescribed senior management responsibility whichever of the following functions apply to the firm:	
	(a) CASS 1A.3.1R (certain CASS compliance functions for a CASS small firm);	
	(b) CASS 1A.3.1AR (certain CASS compliance functions for a CASS medium firm or a CASS large firm);	
	(c) CASS 11.3.1R (certain CASS compliance functions for certain CASS small debt management firms);	
	(d) CASS 11.3.4R (certain CASS compliance functions for a CASS large debt management firm); or	
	(e) CASS 13.2.3R (certain CASS compliance functions for a firm carrying on a regulated claims management activity);	
	but it does not have to.	
	(3) If the firm does not include the functions in paragraph (2) of this column of this row (11) in this FCA-prescribed senior management responsibility, this FCA-prescribed senior management	

SYSC 24 : Senior managers and certification regime: Allocation of prescribed responsibilities

FCA-prescribed senior management responsibility	Explanation	Reference letter
	responsibility includes responsibility for supervision of the person performing the functions in paragraph (2) of this column of this row (11) that apply to the firm.	
(12) Responsibility for compliance with the requirements of the regulatory system about the management	(1) This responsibility does not include allocating responsibilities recorded in the management responsibilities map.	(c)
responsibilities map	(2) This responsibility does not apply to a <i>firm</i> to which the requirements about <i>management responsibilities maps</i> in SYSC 25 (Senior managers and certification regime: Management responsibilities maps and handover procedures and material) do not apply.	
(13) Acting as the firm's whistleblowers'	(1) The whistleblowers' champion's allocated responsibilities are set out in SYSC 18.4.4R.	(n)
champion	(2) This responsibility does not apply to a <i>firm</i> that is not required to have a <i>whistleblowers' champion</i> .	
(14) Responsibility for:	(1) Only applies to a firm:	(j-2)
(a) providing for an effective internal audit function in ac-	(a) that outsources its internal audit function to an external third party service provider; and	
cordance with one of the sections of the PRA Rulebook listed in paragraph (2) of column (2) of	(b) to which one of the following internal audit <i>PRA-prescribed senior management responsibilities</i> applies:	
this row (14); and (b) overseeing the performance of the internal audit	(i) the responsibility in rule 3.3(1) in the Insurance – Allocation of Responsibilities Part of the <i>PRA Rulebook</i> ; or	
function.	(ii) the responsibility in rule 3.2(1) in the Large Non-Solvency II Firms – Allocation of Responsibilities Part of the <i>PRA Rulebook</i> .	
	(2) The parts of the <i>PRA Rule-book</i> referred to in column (1) of this row (14) are:	
	(a) Solvency II firms - Conditions Governing Business 5; and	
	(b) Non-Solvency II Firms – Governance 9.2.	

ECA proscribad		
FCA-prescribed senior management responsibility	Explanation	Reference letter
	(3) Terms used in column (1) of this row (14) have the same meaning as they do for the corresponding <i>PRA-pre-scribed senior management responsibility</i> described in paragraph (1) of this column of this row (14).	
(15) Responsibility for management of the <i>firm's</i> risk management processes in the <i>UK</i>		(aa)
(16) Responsibility for the firm's compliance with the UK regulatory system applicable to the firm		(ff)
(17) Responsibility for the escalation of correspondence from the PRA, FCA and other regulators in respect of the firm to each of the governing body or the management body of the firm and, as appropriate, of the firm's parent undertaking and the ultimate parent undertaking of the firm's group	This includes taking steps to ensure that the senior management of the firm and, where applicable, the group, are made aware of any views expressed by the regulatory bodies and any steps taken by them in relation to the branch, firm or group.	(ee)
(18) Responsibility for taking reasonable steps to ensure that every person involved in the performance of the firm's internal audit function is independent from the persons who perform external audit, including:	This only applies if the <i>firm</i> outsources its internal audit function.	(j-3)
(a) supervision and management of the work of out- sourced internal auditors; and		
(b) management of potential conflicts of interest between the provision of ex- ternal audit and in		

SYSC 24 : Senior managers and certification regime: Allocation of prescribed responsibilities

FCA-prescribed senior management responsibility	Explanation	Reference letter
ternal audit services.		
(19) Responsibility for:	Stress testing refers to stress testing under MIFIDPRU 7.5 (ICARA process: capital and li-	(s)
(a) managing the firm's internal stress tests; and	quidity planning, stress test- ing, wind-down planning and recovery planning).	
(b) ensuring the accuracy and timeliness of information provided to the FCA and other regulatory bodies for the purposes of stress testing.	This responsibility only applies to a <i>firm</i> to which MIFID-PRU 7.5 applies.	
(20) The responsibilities allocated under COLL 6.6.27R, COLL 8.5.22R or COLL 15.7.24R (Allocation of responsibility for compliance to an approved person).	Only applies to a <i>firm</i> to which the <i>rules</i> in column (1) apply.	(za)
(21) Responsibility for the development and maintenance of the firm's business model by the governing body.	Business model means the same thing as it does in Schedule 6 to the <i>Act</i> (Threshold Conditions). This responsibility applies even if the business model threshold condition does not	(t)
	apply to it.	



24.3 Who prescribed responsibilities should be allocated to

Seniority and authority

- 24.3.1
- The FCA expects that a person who has responsibility for an FCA-prescribed senior management responsibility:
 - (1) will generally (in the case of the FCA-prescribed senior management responsibilities in ■ SYSC 24.3.3G(1)) be the most senior employee or officer responsible for managing that area (or the most senior below the chief executive); and
 - (2) will:
 - (i) be sufficiently senior and credible; and
 - (ii) have sufficient resources and authority;
 - to be able to exercise their management and oversight responsibilities effectively.

Executive or non-executive

- 24.3.2
- The FCA expects that normally a firm will allocate the FCA-prescribed senior management responsibility with the following FCA reference letters (see column three of the table in ■ SYSC 24.2.6R) to an SMF manager who is a nonexecutive director of the firm (or, in the case of a partnership, a partner without management responsibilities):
 - (1) (f) (development of members of governing body);
 - (2) (j) (internal audit oversight);
 - (3) (k) (compliance oversight);
 - (4) (I) (risk control oversight);
 - (5) (m) (remuneration code oversight); and
 - (6) (n) (whistleblowers' champion).
- 24.3.3 G
- (1) Subject to (2), the FCA expects that normally a firm will allocate the other FCA-prescribed senior management responsibilities to an SMF manager who performs executive functions for the firm.

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SYSC 24 : Senior managers and certification regime: Allocation of prescribed responsibilities

(2) The relevant *rules* in *COLL* deal with the persons to whom a *firm* should allocate *FCA-prescribed senior management responsibility* (za) (Allocation of responsibility for COLL compliance to an approved person).

Exceptions for small non-complex firms

- The FCA accepts that it may not be practical for a small non-complex firm to comply with the parts of SYSC 24.3.1G(1), SYSC 24.3.2G and SYSC 24.3.3G(1) that would otherwise apply to it.
- 24.3.5 G (1) A UK SMCR banking firm is likely to be small for the purposes in SYSC 24.3.4G if it is:
 - (a) a small CRR firm as defined in the part of the *PRA Rulebook* called "Allocation of responsibilities"; or
 - (b) a *credit union* that meets the *PRA's* size requirements for small CRR firms as defined.
 - (2) A firm is likely to be non-complex for these purposes if:
 - (a) it conducts a limited number of simple business lines;
 - (b) it does not rely on group governance arrangements; and
 - (c) (in the case of a *branch*) it does not rely on governance arrangements for other parts of the *firm*.

Not assigning too many responsibilities to one person

When deciding how to allocate FCA-prescribed senior management responsibilities, a firm should avoid assigning such a wide range of responsibilities to a particular SMF manager that they are not able to carry out those responsibilities effectively.

Dividing and sharing management functions between different people

- 24.3.7 G The FCA expects that a firm will not normally split an FCA-prescribed senior management responsibility between several SMF managers, with each only having responsibility for part.
- 24.3.8 G The FCA expects that a firm will not normally allocate responsibility for an FCA-prescribed senior management responsibility to two or more SMF managers jointly.
- (1) Although the norm should be for a *firm* to have a single individual performing each *FCA-prescribed senior management responsibility*, there may be circumstances in which responsibilities can be divided or shared (see (2)).
 - (2) A *firm* should only divide or share a responsibility where this is appropriate and can be justified.

- (3) For example, it would be justified to share a responsibility if that is
 - (a) as part of a job share; or
 - (b) where departing and incoming senior managers work together temporarily as part of a handover.
- (4) A firm may have co-heads of a department or business unit if this can be justified under (1) to (3).

24.3.10 G

- (1) The FCA expects a firm to divide and allocate responsibilities under this chapter between its SMF managers so that responsibilities are grouped together appropriately.
- (2) The firm should make the judgement:
 - (a) in (1); and
 - (b) about whether and how responsibilities should be shared;
 - (c) SYSC 4.1.1R (robust governance arrangements);
 - (d) any other applicable *Handbook* requirements, including:
 - (i) SYSC 2 (Apportionment of Responsibilities);
 - (ii) SYSC 24.3.7G to SYSC 24.3.9G;
 - (iii) article 21 of the MiFID Org Regulation (as applied in accordance with ■ SYSC 1 Annex 1 2.8AR, ■ SYSC 1 Annex 1 3.2-AR, ■ SYSC 1 Annex 1 3.2-BR, ■ SYSC 1 Annex 1 3.2CR and ■ SYSC 1 Annex 1 3.3R); and
 - (e) article 21 of the MiFID Org Regulation (General organisational requirements) or other similar relevant onshored regulations.
- (3) The firm should take into account the way it is organised, the business it carries out and the need not to allocate too many responsibilities to one individual (SYSC 24.3.6G).
- (4) The FCA expects a firm to allocate FCA-prescribed senior management responsibilities to the SMF managers they are most closely linked to.

24.3.11

■ SUP 10C.11.31G to ■ SUP 10C.11.33G (What statements of responsibilities should contain: dividing and splitting responsibilities) contains material about:

- (1) how to prepare statements of responsibilities where a responsibility is shared or divided between several SMF managers; and
- (2) dividing and sharing responsibilities.

24.3.12 G

- (1) A firm may allocate more than one FCA-prescribed senior management responsibility to the same SMF manager.
- (2) This is subject to:

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- SYSC 24: Senior managers and certification regime: Allocation of prescribed responsibilities
 - (a) SYSC 24.3.6G (should not give too many responsibilities to one person); and
 - (b) ■SYSC 24.3.10G (what responsibilities should be grouped together).

Allocation of responsibilities and territorial scope.

24.3.13 G

- (1) As explained in SYSC 24.1.3R, there is no territorial limitation to the application of this chapter.
- (2) This means that a firm should allocate the FCA-prescribed senior management responsibilities so that they cover activities, transactions, business areas and management functions that are located or take place wholly or partly outside, as well as ones in, the United Kingdom.

24.3.14 G

In the case of an overseas SMCR firm, the FCA-prescribed senior management responsibilities relate to the activities of the firm's branch in the United Kingdom (see ■ SYSC 24.1.4R).

Which FCA-prescribed senior management responsibilities apply to which kind of firm

Introduction and exclusions					
1.1	G	This annex sets out which FCA-prescribed senior management responsibilities apply to which type of SMCR firm.			
1.2	R	In this annex:			
		(1) a $$ means that the FCA-prescribed senior management responsibility does apply;			
		(2) a × means that the FCA-prescribed senior management responsibility does not apply; and			
		(3) a reference letter refers to the reference letters in column (3) of the table in SYSC 24.2.6R (Table: FCA-prescribed senior management responsibilities).			
1.3	G	If an FCA-prescribed senior management responsibility is not included in the table for a particular class of firm, that FCA-prescribed senior management responsibility does not apply to any firm in that class.			
1.4	R	The following FCA-prescribed senior management responsibilities do not apply to a full-scope UK AIFM in relation to its managing an AIF:			
		(1) responsibility (j) (internal audit oversight);			
		(2) responsibility (k) (compliance oversight);			
		(3) responsibility (I) (risk oversight);			
		(4) responsibility (j-3) (independence of outsourced internal audit); and			
		5) responsibility (t) (business model).			
Bankin	ig secto	r firms			
2.1	R	(1) The table in SYSC 24 Annex 1 2.3R sets out which FCA-prescribed senior management responsibilities apply to which type of SMCR banking firm.			
		(2) SMCR firms in (1) are divided into the following categories for the purposes in (1):			
		(a) a UK SMCR banking firm (excluding firms in (b));			
		(b) a small <i>UK SMCR banking firm</i> ; and			
		(c) an overseas SMCR banking firm.			
2.2	R	A small UK SMCR banking firm means a UK SMCR banking firm that is:			
		(1) a small CRR firm as defined in the part of the <i>PRA Rulebook</i> called "Allocation of responsibilities"; or			
		(2) a credit union.			
2.3	R	Table: FCA-prescribed senior management responsibilities applying to banking sector firms			

Brief description of re- sponsibility	Reference letter of responsibility	UK firm	Small UK firm	Overseas firm
Responsibility for the firm's performance of its obligations under the senior managers regime	(a)	V	V	\checkmark

Brief description of re- sponsibility	Reference letter of responsibility	UK firm	Small UK firm	Overseas firm
Responsibility for the firm's performance of its obligations under the employee certification regime	(b)	\checkmark	$\sqrt{}$	√
Financial crime	(d)	\checkmark	$\sqrt{}$	\checkmark
COCON	(b-1)	\checkmark	$\sqrt{}$	\checkmark
Training governing body	(f)	\checkmark	×	×
Training of staff per- forming designated senior management respons- ibilities	(g)	√	×	×
See Note (2)				
Management respons- ibilities maps	(c)	\checkmark	\checkmark	\checkmark
Whistleblowers' champion	(n)	\checkmark	\checkmark	×
Internal audit oversight	(j)	\checkmark	×	×
Compliance oversight	(k)	\checkmark	×	×
Risk oversight	(I)	\checkmark	×	×
Remuneration	(m)	\checkmark	×	×
CASS	(z)	\checkmark	\checkmark	\checkmark
UK risk management	(aa)	×	×	\checkmark
Compliance with UK regulatory system	(ff)	×	×	$\sqrt{}$
Escalation of correspondence	(ee)	×	×	$\sqrt{}$

Note (1): the categories of firm in the column headings of this table are to be interpreted in accordance with the classification of firms in SYSC 24 Annex 1 2.1R. Therefore:

- (a) column three (UK firm) refers to SYSC 24 Annex 1 2.1R(2)(a);
- (b) column four (Small UK firm) refers to SYSC 24 Annex 1 2.1R(2)(b); and
- (c) column five (Overseas firm) refers to SYSC 24 Annex 1 2.1R(2)(c).

Note (2): Paragraph (b) of this FCA-prescribed senior management responsibility (key function holder) does not apply to any firm in this table.

Insurance sector firms

- 3.1 R The table in SYSC 24 Annex 1 3.2R sets out which FCA-prescribed senior management responsibilities apply to which type of SMCR insurance firm.
 - (2) SMCR firms in (1) are divided into the following categories for the purposes in (1):

- (a) a Solvency II firm (excluding firms in any other paragraph);
- (b) a firm falling within paragraph (b) of the definition of Solvency II firm (undertaking that would require Part 4A permission as an insurance or reinsurance undertaking if its head office were situated in the United Kingdom);
- (c) a small non-directive insurer;
- (d) a firm in SYSC 23 Annex 1 5.2R (firms in run-off); and
- (e) an insurance special purpose vehicle.
- (3) An *insurance special purpose vehicle* only falls into paragraph (2)(e). Subject to that, a *firm* in (2)(d) does not fall into any other paragraph.
- 3.2 G References to a Solvency II firm include a large non-directive insurer.
- 3.3 R Table: FCA-prescribed senior management responsibility applying to insurance sector firms

Brief description of re- sponsibility	Reference letter of re- sponsibility	Solvency II firm	Overseas branches	Other insur- ance sector	ISPV
Responsibility for the firm's performance of its obligations under the senior managers regime	(a)	$\sqrt{}$	V	√	V
Responsibility for the firm's performance of its obligations under the employee certification regime	(b)	\checkmark	$\sqrt{}$	$\sqrt{}$	V
Financial crime	(d)	\checkmark	\checkmark	$\sqrt{}$	$\sqrt{}$
COCON	(b-1)	\checkmark	\checkmark	$\sqrt{}$	$\sqrt{}$
Training governing body	(f)	\checkmark	×	×	×
Training of staff per- forming designated senior management re- sponsibilities	(g)	\checkmark	×	×	×
Management respons- ibilities maps	(c)	\checkmark	$\sqrt{}$	×	×
Whistleblowers' champion	(n)	\checkmark	×	×	×
CASS	(z)	\checkmark	$\sqrt{}$	\checkmark	×
Internal audit for non-sig- nificant insurers	(j-2)	$\sqrt{}$	×	×	×
Compliance with UK regulatory system	(ff)	×	\checkmark	×	×
Escalation of correspondence	(ee)	×	\checkmark	×	×

Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SYSC 24 Annex 1 3.1R. Therefore:

- (1) Solvency II firm (column three) refers to SYSC 24 Annex 1 3.1R(2)(a);
- (2) Overseas branches (column four) refers to SYSC 24 Annex 1 3.1R(2)(b);
- (3) Other insurance sector (column five) refers to SYSC 24 Annex 1 3.1R(2)(c) and (d); and
- (4) ISPV (column six) refers to SYSC 24 Annex 1 3.1R(2)(e).

	Solo	Solo regulated firms			
4.1	R	(1)	ageme	The table in SYSC 24 Annex 1 4.2R sets out which FCA-prescribed senior management responsibilities apply to which type of core SMCR firm and enhanced scope SMCR firm.	
		(2)	SMCR : of in (1	firms in (1) are divided into the following categories for the purposes (1):	
			(a)	UK core SMCR firm;	
			(b)	overseas core SMCR firm (excluding an EEA SMCR firm); and	
			(c)	enhanced scope SMCR firm.	
4.2	R	Table: firms	FCA-pres	cribed senior management responsibility applying to solo regulated	

****	1113			
(1)	(2)			(5)
Brief description of responsibilit	Reference letter of responsibility	(3) UK core firm	(4) Overseas core firm	Enhanced scope firm
Responsibility for the firm's per- formance of its obligations under the senior man- agers regime	(a)	√	√	√
Responsibility for the firm's per- formance of its obligations under the employee cer- tification regime	(b)	√	√	V
Financial crime	(d)	$\sqrt{}$	\checkmark	\checkmark
COCON	(b-1)	$\sqrt{}$	\checkmark	\checkmark
Management re- sponsibilities maps	(c)	×	×	\checkmark
Internal audit oversight	(j)	×	×	\checkmark
Compliance oversight	(k)	×	×	$\sqrt{}$
Risk oversight	(I)	×	×	\checkmark
CASS	(z)	$\sqrt{}$	\checkmark	\checkmark
Independence of outsourced internal audit	(j-3)	×	×	√
Business model	(t)	×	×	\checkmark
Stress tests	(s)	×	×	\checkmark
Allocation of responsibility for <i>COLL</i> compliance to an approved person	(za)	√	√	√
<i>UK</i> risk management	(aa)	×	\checkmark	×
Compliance with UK regulatory system	(ff)	×	√	×

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	(2) Reference letter of responsibility	(3) UK core firm	(4) Overseas core firm	(5) Enhanced scope firm
Escalation of cor- respondence	(ee)	×	\checkmark	×

Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SYSC 24 Annex 1 4.1R. Therefore:

- (1) UK core firm (column three) refers to SYSC 24 Annex 1 4.1R(2)(a);
- (2) Overseas core firm (column four) refers to SYSC 24 Annex 1 4.1R(2)(b); and
- (3) Enhanced scope firm (column five) refers to SYSC 24 Annex 1 4.1R(2)(c).

Chapter 25

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

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25.1 **Application and purpose**

Main application rules

25.1.1

This chapter applies to:

- (1) an SMCR banking firm;
- (2) an SMCR insurance firm that is a Solvency II firm (including a large non-directive insurer) but excluding:
 - (a) an insurance special purpose vehicle; and
 - (b) a firm in SYSC 23 Annex 1 5.2R (firms in run-off); and
- (3) an enhanced scope SMCR firm;

except to the extent that this chapter applies a narrower scope to a particular provision.

25.1.2 This chapter is not limited to regulated activities or other specific types of activities.

Territorial scope

- 25.1.3 R Subject to ■ SYSC 25.1.4R, there is no territorial limitation on the application of this chapter.
- R 25.1.4 This chapter applies to an overseas SMCR firm in relation to the activities of a branch maintained by the firm in the United Kingdom.

How this chapter applies to overseas SMCR firms

Unless the context requires otherwise, the following terms in this chapter are 25.1.5 modified as follows in relation to an overseas SMCR firm:

П	modified as follows in relation to air c	verseus sivien illilli.
	Reference in this chapter	Modification
	firm	treated as a reference to the branch
	governing body, management body, senior management and senior personnel	(a) treated as a reference to the branch's governing body, management or senior personnel;
		(b) the <i>Glossary</i> definitions of these terms are adjusted so as to refer to the <i>branch</i> rather than the <i>firm</i> as a whole

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Reference in this chapter	Modification
group	treated as including the rest of the firm

Purpose

25.1.6 G

- (1) One purpose of the *management responsibilities map* is to help the *firm* and the *FCA* satisfy themselves that the *firm* has a clear organisational structure (as required by the *regulatory system*).
- (2) It also helps the FCA to identify who it needs to speak to about particular issues.
- (3) The management responsibilities map helps the FCA to operate its powers and requirements for individuals. For example it helps the FCA:
 - (a) to identify who is accountable if something goes wrong;
 - (b) to understand the role of the approved person (or candidate) in the firm and therefore to judge how to use its powers under the regime for SMCR firms, such as the power to grant or refuse approval of an SMF manager or to amend or impose conditions.



25.2 Management responsibilities maps: Main rules

General rule

25.2.1 R

- (1) A UK SMCR firm must, at all times, have a comprehensive and up-todate document (the management responsibilities map) that describes its management and governance arrangements.
- (2) An overseas SMCR firm must, at all times, have a comprehensive and up-to-date document (the management responsibilities map) that describes the management and governance arrangements for any branch it maintains in the United Kingdom.
- (3) A management responsibilities map must include:
 - (a) details of the reporting lines and the lines of responsibility; and
 - (b) reasonable details about:
 - (i) the persons who are part of those arrangements; and
 - (ii) their responsibilities.

(See further requirements in ■ SYSC 25.2.3R.)

25.2.2 R The firm's management responsibilities map must show clearly how any responsibilities covered by a firm's management responsibilities map are shared or divided between different persons.

Specific requirements

25.2.3 R

A management responsibilities map must include:

- (1) (a) the names of all the firm's:
 - (i) approved persons (including PRA approved persons);
 - (ii) members of its governing body and (if different) management body who are not approved persons;
 - (iii) senior management;
 - (iv) senior personnel; and
 - (b) details of the responsibilities which they hold;
- (2) all responsibilities described in any current statement of responsibilities;

•••••

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- Section 25.2 : Management responsibilities maps: Main rules
- (3) details of the management and governance arrangements relating to:
 - (a) the FCA-prescribed senior management responsibilities; and
 - (b) the *PRA-prescribed senior management responsibilities*; including the identity of the *persons* to whom those functions are allocated;
- (4) the reasons why (if it has done any of these things) the firm:
 - (a) allocates responsibility for an FCA-prescribed senior management responsibility to more than one person jointly; or
 - (b) divides responsibility for an FCA-prescribed senior management responsibility between different persons;
- (5) details about the functions allocated under, SYSC 26 (Senior managers and certification regime: Overall and local responsibility), including:
 - (a) what the activities, business areas and management functions allocated under that chapter are;
 - (b) the management and governance arrangements relating to them;
 - (c) [deleted]
 - (d) the reasons why (if it has done this) the *firm* allocates responsibility for any such function to more than one *person* jointly; and
 - (e) the identity of the *persons* to whom those functions are allocated;
- (6) matters reserved to the *governing body* (including the terms of reference of its committees) and, if different, the *management body*;
- (7) details of how the *firm's* management and governance arrangements fit together with:
 - (a) its group; and
 - (b) any other person in (8);
- (8) details of the extent to which the *firm's* management and governance arrangements are provided by, or shared with, other members of its *group* or others;
- (9) details of the reporting lines and the lines of responsibility (if any) between the *firm* and those who carry out functions in relation to it and:
 - (a) other members of its group or other third parties;
 - (b) persons acting as employees or officers of, or otherwise acting for, anyone in (a); or
 - (c) committees or other bodies of anyone in (a);
- (10) reasonable information about the *persons* described or identified in the *management responsibilities map*, including:
 - (a) whether they are *employees* of the *firm* and, if not, by whom they are employed;

- (b) if they are certification employees of the firm; and
- (c) the responsibilities they have in relation to other group members or any other person in (8); and
- (11) details of how (1) to (10) fit together and fit into the firm's management and governance arrangements as a whole.
- 25.2.4 ■ SYSC 25.2.3R(1) does not require the firm to include the names of approved persons under ■ SUP 10A (FCA Approved Persons in Appointed Representatives).



25.3 Management responsibilities maps: Exclusion of non-financial services activities for some firms

- An enhanced scope SMCR firm may prepare its management responsibilities map so that (subject to SYSC 25.3.2R) it only includes its management and governance arrangements to the extent that they cover, support or otherwise relate to its SMCR financial activities.
- If a *firm* uses the exclusion in SYSC 25.3.1R it must include sufficient information about the excluded management and governance arrangements to show how the included management and governance arrangements fit in with the *firm*'s management and governance arrangements as a whole.
- 25.3.3 Support functions that should be covered by a management responsibilities map despite SYSC 25.3.1R include:
 - (1) human resources;
 - (2) the firm's information technology; and
 - (3) compliance and legal services.
- 25.3.4 G
- (1) A *firm* may have a non-financial services business in addition to carrying on its *SMCR financial activities*. Its support services may support both aspects of its business and its *management responsibilities map* may therefore still need to cover the support services even though they also cover the *firm's* non-financial services business.
- (2) Take for example human resources. If the *firm's* human resources function covers the *firm's* entire workforce without separating the parts that deal with the *firm's* financial services and its other business, the *management responsibilities map* should cover the entire human resources function.
- (3) On the other hand, the *firm* may separate the part of its human resources function that deals with those working in its financial services business from the part that deals with the other part of its business. In that case the *management responsibilities map* may leave out (subject to SYSC 25.3.2R) the part of the human resources function that covers its non-financial services business.



25.4 Guidance about what should be in a management responsibilities map

Material applicable to all firms

- 25.4.1 G The management responsibilities map should be consistent with the statements of responsibilities.
- G 25.4.2 The statements of responsibilities and the management responsibilities map should all be prepared in a way that makes it simple to see how the responsibilities allocated in a particular statement of responsibilities fit into the overall system of management and governance of the firm.
- 25.4.3 G The management responsibilities map should include functions that are:
 - (1) included in a PRA controlled function under the PRA rules complementing ■ SUP 10C.9 (Minimising overlap with the PRA approved persons regime) (as listed in ■ SUP 10C.9.6G(2));
 - (2) excluded from the other overall responsibility function under ■ SUP 10C.7.1R(2) (Exclusion for approved person with approval to perform other designated senior management functions); or
 - (3) excluded from the other local responsibility function under ■ SUP 10C.8.1R(2) (Exclusion for approved person with approval to perform other designated senior management functions).
- 25.4.4 G A firm's management responsibilities map should demonstrate that there are no gaps in the allocation of responsibilities among its management.
- 25.4.5 G A firm need only include summary details of the persons in ■ SYSC 25.2.3R(1).
- G 25.4.6 A firm's SMF managers and members of its governing body may overlap with its senior management and senior personnel. If so, the firm does not have to give the same details twice.
- 25.4.7 G A firm should include details about individuals in addition to the details in SYSC 25.2.3R(1), (3) and (5) if they are needed to make the management responsibilities map clear. For example, if the same individual has

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responsibilities in a number of different areas of the firm it may be necessary to make this clear.

- G 25.4.8
- A firm should only include summary details about statements of responsibilities under SYSC 25.2.3R(2). There is no need to duplicate the statements of responsibilities. The main aim of including material about statements of responsibilities in the management responsibilities map is to show how that material:
 - (1) fits into the firm's overall governance structure; and
 - (2) for each statement of responsibilities, fits with the others.
- 25.4.9 G

A management responsibilities map should include a checklist confirming that all FCA-prescribed senior management responsibilities have been allocated or, if some have not been allocated, the reason why.

25.4.10 G

- If:
- (1) any designated senior management function is performed by; or
- (2) any FCA-prescribed senior management responsibility is allocated to;

more than one person, a firm's management responsibilities map should give details of how the performance or discharge of the responsibilities is to be carried out by those persons.

- 25.4.11
- The executive director function, the other local responsibility function, the group entity senior manager function, the partner function and the other overall responsibility function are defined generally and generically and can be performed by several people. Therefore, there is no need to explain why several people perform one of the functions.
- G 25.4.12
- The material in SUP 10C.11.31G and SUP 10C.11.32G (recording sharing and splitting of responsibilities in statements of responsibilities) also applies to a management responsibilities map.
- 25.4.12A G
- In relation to the temporary absence of an SMF manager of a firm see the *quidance* at ■ SUP 10C.14.5JG.

Branches of overseas firms

- 25.4.13
- One effect of SYSC 25.1.5R is that an overseas SMCR firm should draw up its management responsibilities map as if the rest of the firm outside the UK branch were a separate company in its group. This means, for example, that the map should include:
 - (1) details of how the branch's management and governance arrangements fit together with the wider firm;

- (2) details of the extent to which the branch's management and governance arrangements are provided by, or shared with, the wider firm; and
- (3) details of the reporting lines and the lines of responsibility between the branch and those who carry out functions in relation to it and the wider firm and persons acting for it.

Small firms

25.4.14 G

- (1) The FCA expects that the management responsibilities map of a small and non-complex firm is likely to be simple and short. It may be no more than a single sheet of paper.
- (2) See SYSC 24.3.5G for what small and non-complex mean.

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25.5 Management responsibilities map should be a single document

- 25.5.1 R A management responsibilities map must be a single document.
- 25.5.2 G
- (1) The requirement for a management responsibilities map to be a single document does not mean that it has to be a single sheet of paper or must be capable of being reproduced as one.
- (2) A management responsibilities map may be made up of a folder with several files or items in it. The folder may be electronic.
- (3) However, a *firm* that creates a *management responsibilities map* in this way should ensure that its approach is compatible with it being a single *document*. In particular:
 - (a) there should be a single item that identifies every item making up the *management responsibilities map* and shows where each item can be found;
 - (b) for example, this could be a contents list of the items making up the *management responsibilities map* with electronic links to each of them;
 - (c) the management responsibilities map should be complete by itself and should not refer to documents not forming part of it;
 - (d) every item in the *management responsibilities map* should only contain material about the matters required by this chapter to be included in *management responsibilities maps*;
 - (e) for example, if there is relevant material in the *firm's* report and accounts, the folder should only contain the relevant parts or a link to those parts.
- (4) The folder and its contents should be easily identifiable as the *firm's* management responsibilities map.
- 25.5.3 G Although a management responsibilities map can be large and complex, SYSC 25.4.14G explains that, for small non-complex firms, it may be small and simple.



Application 25.6.1 This section applies to an EEA SMCR firm. G 25.6.2 [deleted] G [deleted] 25.6.3 FCA-prescribed senior management responsibilities G 25.6.4 SYSC 25.2.3R (Specific requirements) requires a management responsibilities map to cover the allocation of FCA-prescribed senior management responsibilities. This is not relevant to an EEA SMCR firm as FCA-prescribed senior management responsibilities do not apply to it. Leaving out information already supplied R (1) An EEA SMCR firm may exclude from its management responsibilities 25.6.5

in immediately before IP completion day.

(2) [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) if:

map any information that it has, before IP completion day, excluded under this section of the FCA Handbook in the form this section was

- (a) that information was supplied to the FCA or the PRA in carrying out their functions under the regulatory system in relation to firms; and
- (b) the Single Market Directives or any other EU legislation 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 a Host State competent authority.
- (4) For these purposes:

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- (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** [deleted]
- **25.6.7 G** [deleted]
- The FCA expects that an EEA SMCR firm that excludes information from its management responsibilities map under SYSC 25.6.5R will identify in its management responsibilities map the documents supplied to the FCA or the PRA where the omitted information can be found.
- In practice an *EEA SMCR firm* may find it easier to prepare its *management* responsibilities map without omitting any information under SYSC 25.6.5R so that all the information referred to in SYSC 25.2 (Management responsibilities maps: Main rules) can be found in a single integrated document.
- SYSC 25.4 (Guidance about what should be in a management responsibilities map) does not take into account the right of a *firm* to omit information under SYSC 25.6.5R. It assumes that the *firm* will prepare a single *document* under SYSC 25.6.9G. However SYSC 25.4 is not intended to take away the right to omit information under SYSC 25.6.5R.



25.7 Guidance about SYSC 25 Annex 1G

- G 25.7.1 This section gives *quidance* about ■ SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm).
 - Purpose of SYSC 25 Annex 1G
- G 25.7.2 (1) A firm may use ■ SYSC 25 Annex 1G as a prompt to see whether its management responsibilities map covers all its business activities.
 - (2) A firm may wish to prepare its management responsibilities map using the same split of activities, where this is appropriate.
- 25.7.3 G As mentioned in ■SYSC 26.11.2G, a firm may also use ■SYSC 25 Annex 1G as a prompt when allocating responsibilities under SYSC 26 (Senior managers and certification regime: Overall and local responsibility).
- 25.7.4 If a firm uses ■ SYSC 25 Annex 1G to help it prepare its management responsibilities map or when allocating responsibilities under ■ SYSC 26 (Senior managers and certification regime: Overall and local responsibility), it should bear in mind that it is not comprehensive and that there may be other business activities and functions that are relevant to that firm but that are not included in ■ SYSC 25 Annex 1G (see ■ SYSC 25.7.8G).
- 25.7.5 G The purpose of ■ SYSC 25 Annex 1G is not say how an *SMCR firm* should:
 - (1) prepare its management responsibilities map;
 - (2) allocate responsibilities amongst its senior management; or
 - (3) organise itself.

Contents of SYSC 25 Annex 1G

- 25.7.6 ■ SYSC 25 Annex 1G sets out examples of the business activities and functions that the FCA thinks could be relevant to most large or complex firms, although the FCA does not require firms (large or small, complex or noncomplex) to organise themselves in this way.
- 25.7.7 G Most or all of these activities and functions will normally apply to a complex firm. Many of them may not apply to a non-complex firm.

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25.7.8



- (1) SYSC 25 Annex 1G is not comprehensive. While it is intended to cover most front-line business activities of an *SMCR firm*, it does not cover all internal oversight and monitoring functions.
- (2) For example, it does not cover compliance or internal audit or the *firm's governing body* or its *committees*.

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25.8 Management responsibilities maps: Records

- 25.8.1 G A firm should consider past versions of its management responsibilities map as an important part of its records and as an important resource for the FCA in supervising the firm.
- G 25.8.2 Past versions of a firm's management responsibilities map form part of its records under the regulatory system.
- (1) This rule applies to a Solvency II firm (including a large non-directive 25.8.3 R insurer) to which ■ SYSC 25.1.1R(2) (Main application rules) applies.
 - (2) A firm must retain each version of its management responsibilities map for:
 - (a) (in the case of a large non-directive insurer) six years; or
 - (b) (in any other case) ten years; from the date on which it was superseded by a more up-to-date version.
 - (3) A firm must be prepared to provide each version to the FCA on request for as long as the firm is required to retain it.

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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 an overseas SMCR banking firm.
- 25.9.2 R
- For 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.
- 25.9.3 R
- This section does not apply to a *full-scope UK AIFM* in relation to its *managing an AIF*.

Rules about handover material

- 25.9.4 R
- A firm must take all reasonable steps to ensure that:
 - (1) a person who is becoming an SMF manager;
 - (2) an SMF manager:
 - (a) taking on a new job or new responsibilities; or
 - (b) whose responsibilities or job are being changed; and
 - (3) anyone who has management or supervisory responsibilities for the *SMF manager* in (1) or (2);

has, when the *SMF manager* starts to perform their new or revised responsibilities or job, all information and material that a *person* in (1) to (3) could reasonably expect to have to perform those responsibilities or that job effectively and in accordance with the requirements of the *regulatory system*.

- 25.9.5 R
- (1) A *firm* must have a policy about how it complies with SYSC 25.9.4R, including the systems and controls it uses.

- (2) A firm must make and maintain adequate records of the steps taken to comply with ■ SYSC 25.9.4R.
- G 25.9.6 The information and material in ■ SYSC 25.9.4R that should be made available includes details:
 - (1) about unresolved or possible breaches of the requirements of the regulatory system; and
 - (2) of any unresolved concerns expressed by the FCA, the PRA or another regulatory body.
- 25.9.7 G (1) The main purpose of ■ SYSC 25.9.4R is to help the *SMF manager* with their new or revised responsibilities or job and to help the managers of SMF managers.
 - (2) The information and material should be practical and helpful and not just a record.
 - (3) The material should include an assessment of what issues should be prioritised.
 - (4) The information and material should include judgement and opinion, not just facts and figures.

Handover arrangements and certificates

- G 25.9.8 (1) Where the responsibilities or job in ■ SYSC 25.9.4R are being taken over from another *person*, the *firm* should have arrangements for an orderly transition.
 - (2) As part of these arrangements, the *firm* should take reasonable steps to ensure that the predecessor contributes to the information and material in ■ SYSC 25.9.4R all that would be reasonable to expect the predecessor to know and consider relevant, including the predecessor's opinions.
 - (3) One way of doing this could be for the predecessor to prepare a handover certificate.
 - (4) However, the FCA accepts that there will be cases in which it will be impractical to ask the predecessor to prepare a handover certificate.

Application of this section to other parts of a firm's management

25.9.9 A firm should consider whether to apply the procedures in this section to other parts of its management.

Examples of the business activities and functions of an SMCR firm

Business areas and management functions	Explanation
(1) Payment services	This means:
	(1) payment services;
	(2) issuing and administering other means of payment (for example, cheques and bankers' drafts);
	(3) issuing electronic money; and
	(4) current accounts.
(2) Settlement	This means clearing and settlement of any transactions described in rows (3) and (6) to (9) of this annex, in relation to the assets covered by (9).
	It also includes clearing and settlement of any transactions described in row (10).
(3) Investment management	This has the same meaning as <i>managing investments</i> with the following adjustments:
	(a)it covers all types of assets; and
	(b) the exclusions in the <i>Regulated Activities Order</i> do not apply.
	It also covers fund management.
(4) Financial or investment advice	This includes advising on investments.
(5) Mortgage advice	This has the same meaning as <i>advising on regulated mort-gage contracts</i> but is expanded to cover land anywhere in the world and to cover security of any kind over land.
(6) Corporate investments	This means acquiring, holding, managing and disposing a <i>firm's</i> investments made for its own account.
(7) Wholesale sales	This means the selling of any investment to a person other than a retail customer.
	It does not include the activities in (1).
(8) Retail sales	This means the <i>selling</i> of any <i>investment</i> to a <i>retail</i> customer.
	It includes savings accounts. It does not include the activities in (1).
(9) Trading for clients	This means dealing in investments as agent and execution of orders on behalf of clients but the list of products also includes money market instruments and foreign exchange.
(10) Market making	This means the activities described in the <i>Glossary</i> definition of <i>market maker</i> .
(11) Investment research	
(12) Origination/syndication and un-	Origination and syndication include:
derwriting	(1) entering into or acquiring (directly or indirectly) any commitment or <i>investment</i> with a view to transferring some or

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Business areas and management functions	Explanation
	all of it to others, or with a view to others investing in the same transaction;
	(2) sub-participation; and
	(3) any transaction described in the <i>Glossary</i> definition of originator.
	Underwriting includes underwriting that is not on a firm commitment basis.
	A commitment or <i>investment</i> includes an economic interest in some or all of it.
	This activity also includes the provision of services relating to such transactions.
(13) Retail lending decisions	Deciding whether, and on what terms, to lend to <i>retail</i> customers.
	Lending includes granting credit, leasing and hire (including finance leasing).
(14) Wholesale lending decisions	Deciding whether, and on what terms, to lend to <i>persons</i> who are not <i>retail customers</i> .
	Lending includes granting credit, leasing and hire (including finance leasing).
(15) Design and manufacturing of products intended for wholesale customers	Wholesale customers mean <i>persons</i> who are not <i>retail</i> customers.
(16) Design and manufacture of products intended for <i>retail customers</i>	
(17) Production and distribution of marketing materials and communications	This includes financial promotions.
(18) Customer service	This means dealing with <i>clients</i> after the point of sale, including queries and fulfilment of <i>client</i> requests.
(19) Customer complaints handling	This includes the firm's compliance with DISP.
	It also includes:
	(1) any similar procedures relating to activities that do not come under the jurisdiction of the <i>Financial Ombudsman Service</i> ;
	(2)activities that take place outside the UK; and
	(3)activities that are not subject to any ombudsman service.
(20) Collection and recovering amounts owed to a <i>firm</i> by its customers Dealing with customers in arrears	'Customer' means any <i>person</i> falling into any of the definitions of <i>client</i> in the <i>Glossary</i> so far as they apply to the <i>FCA's Handbook</i> . The definition is extended to cover all services provided by the <i>firm</i> and not just those that are provided in the course of carrying on a <i>regulated activity</i> or an <i>ancillary service</i> .
(21) Middle office	This means risk management and controls in relation to, and accounting for, transactions in securities or derivatives.
(22) The <i>firm's</i> information technology	This includes cybersecurity.
(23) Business continuity planning	If SYSC 4.1.6R and SYSC 4.1.7R (Business continuity) apply to the <i>firm</i> , this includes the systems and policies used to comply with those <i>rules</i> .

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Business areas and management functions	Explanation
	This business area of function includes operational continuity, resilience and strategy.
(24) Human resources	This includes recruitment, training and competence and performance monitoring.
(25) Incentive schemes for the firm's staff	This is not limited to schemes based on sales.
(26) Contributing input data to a BMR benchmark administrator (other than an Annex II benchmark administrator)	
(27) Administering a benchmark	
(28) Administration of insurance	This means the activity described in SYSC 27.8.5G(1)(k) (examples of what the significant management <i>FCA certification function</i> can cover).
(29) Issuing commitments	This means the activity described in SYSC 27.8.5G(1)(i) (examples of what the significant management <i>FCA certification function</i> can cover).
(30) Processing	This means the activity described in SYSC 27.8.5G(1)(j) (examples of what the significant management <i>FCA certification function</i> can cover).
(31) Outsourcing, procurement and vendor management	
Management of services shared with other <i>group</i> members	
(32) Internal operations	
(33) The firm's legal department	
Note (1): The purpose of this annex is explained in SYSC 25.7 (Guidance about SYSC 25 Annex 1G) and SYSC 26.11.2G.	
Note (2): A <i>firm</i> does not have to use the split of example activities in this annex for the purposes in Note (1). If a <i>firm</i> does decide to use it, the <i>firm</i> should adapt it to suit the <i>firm</i> 's management arrangements better.	
For example, a <i>firm</i> may find the split of activities into retail and wholesale activities unsuitable. If so, the <i>firm</i> might:	
(a) treat retail and wholesale activities together; or	
(b) use its own definition of retail and wholesale activities.	

Chapter 26

Senior managers and certification regime: Overall and local responsibility

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26.1 **Application**

Main application rules

- 26.1.1 This chapter applies to:
 - (1) an SMCR banking firm;
 - (2) an SMCR insurance firm that is a Solvency II firm (including a large non-directive insurer) but excluding:
 - (a) an insurance special purpose vehicle; and
 - (b) a firm in SYSC 23 Annex 1 5.2R (firms in run-off); and
 - (3) an enhanced scope SMCR firm; except to the extent that this chapter applies a narrower scope to a particular provision.
- 26.1.2 R This chapter is not limited to regulated activities or other specific types of activities.

Exclusions

26.1.3 R This chapter does not apply to an EEA SMCR firm.

Territorial scope

- 26.1.4 R There is no territorial limitation on the application of this chapter, save as set out in ■ SYSC 26.1.5R.
- 26.1.5 R When this chapter applies to an overseas SMCR firm, it applies in relation to the firm's branch in the United Kingdom.
- 26.1.6 R Unless the context requires otherwise, the terms in the first column of the table in ■ SYSC 26.1.7R are modified as described in the second column of that table in relation to an overseas SMCR firm.
- 26.1.7 Table: Application of this chapter to an overseas SMCR firm R

Reference in this chapter	Modification
firm	treated as a reference to the branch

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Reference in this chapter	Modification
governing body	(a) treated as a reference to the branch's governing body;
	(b) the <i>Glossary</i> definition of this term is adjusted so as to refer to the <i>branch</i> rather than the <i>firm</i> as a whole
group	treated as including the rest of the firm
chief executive	branch manager or the person per- forming the head of third country branch function or the PRA's Head of Overseas Branch designated senior management function



26.2 **Purpose**

26.2.1

The purpose of this chapter is to ensure, together (in the case of a PRAauthorised person) with the equivalent PRA requirements and the requirements about FCA-prescribed senior management responsibilities in ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities), that:

- (1) an SMF manager is responsible and accountable for every area of a firm's activities;
- (2) the allocation of responsibilities is done systematically and explicitly;
- (3) the process of allocation of responsibilities under this chapter covers every part of a firm's activities, business areas and management functions (subject to the exclusions in ■ SYSC 26.4 (Exclusions) without any gaps in what is allocated in this process.

26.2.2

The purpose of this chapter is not primarily to ensure that formal responsibility for everything a firm does is allocated amongst its senior management. Even without the requirements of this chapter, responsibilities that have not been allocated explicitly would fall to the chief executive by default. However, one of the purposes of this chapter is to avoid responsibilities being allocated by implication or by default.

26.2.3 G

- (1) The allocation of responsibilities under this chapter does not replace the responsibilities of the chief executive.
- (2) If a firm allocates responsibilities under this chapter to an SMF manager other than the chief executive, the chief executive will be responsible for managing that person's performance of those responsibilities in the same way that the chief executive manages that person's other responsibilities.
- (3) A firm may allocate responsibilities under this chapter to the chief executive.



26.3 Main rules

- A UK SMCR firm must ensure that, at all times, one or more of its SMF managers have overall responsibility for each of the activities, business areas and management functions of the firm.
- (1) An overseas SMCR firm must ensure that, at all times, one or more of its SMF managers has overall responsibility (subject to the branch's governing body) for each of the activities, business areas and management functions of the branch that are under the management of the branch's governing body.
 - (2) An overseas SMCR firm must ensure that, at all times, one or more of its SMF managers has responsibility for each of the activities, business areas and management functions of the branch not covered by (1).
 - (3) An *SMF manager* in (2) must be directly involved in the management of the activity, business area or management function for which they have responsibility under (2).
- 26.3.3 R An SMF manager who has responsibility for an activity, business area or management function under this section:
 - (1) (in the case of a UK SMCR firm) has "overall responsibility";
 - (2) (in the case of an overseas SMCR firm) has "local responsibility";

for that activity, business area or management function.

A firm must make the allocations of responsibilities in this chapter in such a way that it is clear who has which of those responsibilities.



26.4 **Exclusions**

Exclusions where other requirements apply

- 26.4.1 ■ SYSC 26.3 (Main rules) does not require a PRA-authorised person to ensure R that SMF managers have local or overall responsibility for any activity, business area or management function that is included in an FCA-prescribed senior management responsibility that applies to the firm.
- 26.4.2 ■ SYSC 26.3 (Main rules) does not require a firm to ensure that SMF managers have local or overall responsibility for any activity, business area or management function that is:
 - (1) included in a PRA-prescribed senior management responsibility that applies to the firm; or
 - (2) managed (as part of the PRA-designated senior management function concerned) by any of the firm's SMF managers approved to perform any of the following PRA-designated senior management functions for the firm:
 - (a) the Chief Finance function;
 - (b) the Chief Risk function;
 - (c) the Head of Internal Audit function;
 - (d) the Head of Key Business Area function;
 - (e) the Chief Operations function; or
 - (f) the Group Entity Senior Manager function or the Group Entity Senior Insurance Manager function.

Exclusion of the governing body and non-executive directors

- 26.4.3 R SYSC 26.3 (Main rules) does not require a firm to allocate overall or local responsibility for the running of the firm's governing body.
- 26.4.4 G ■ SYSC 26.4.3R means that a *person* does not have overall or local responsibility for a function under this chapter just by being a member of a firm's governing body or equivalent.
- (1) A person who just provides oversight of a function does not have 26.4.5 G overall or local responsibility for that function under this chapter.

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- (2) Paragraph (1) and SYSC 26.4.4G mean that a non-executive director acting as such does not have overall or local responsibility for a function under SYSC 26.3 or perform the other overall responsibility function or the other local responsibility function.
- (3) Paragraph (1) and SYSC 26.4.4G mean that a *non-executive director*:
 - (a) providing oversight of a function; or
 - (b) being responsible for the independence of a function; does not have overall or local responsibility for that function under this chapter or perform the other overall responsibility function or the other local responsibility function.

Exclusion where the 12-week rule applies

- 26.4.6 R
- (1) This rule applies where:
 - (a) a firm appoints someone to perform a function in order to provide cover as described in SUP 10C.3.13R(1) (The 12-week rule) or (in the case of a PRA-authorised person) the PRA equivalent; and
 - (b) the *firm* has allocated any responsibilities (the "Responsibilities") under SYSC 26.3 (Main rules) to the *SMF manager* (the absent manager) who is absent as described in SUP 10C.3.13R(2) or (in the case of a *PRA-authorised person*) the *PRA* equivalent.
- (2) While the disapplication of the designated senior management function provided for in SUP 10C.3.13R or (in the case of a PRA-authorised person) the PRA equivalent is still in force the firm may allocate the Responsibilities to an employee who is not an SMF manager.
- (3) For the purposes of this rule, the PRA equivalent of:
 - (a) SUP 10C.3.13R is the following parts of the *PRA Rulebook*:
 - (i) rule 2.3 in "Senior Management Functions";
 - (ii) rule 2.4 in "Insurance Senior Management Functions"; and
 - (iii) rule 2.4 in "Large Non-Solvency II Firms Senior Management Functions".
 - (b) ■SUP 10C.3.13R(1) and (2) is the following parts of the *PRA Rulebook*:
 - (i) rules 2.3(1) and (2) in "Senior Management Functions";
 - (ii) rules 2.4(1) and (2) in "Insurance Senior Management Functions"; and
 - (iii) rules 2.4(1) and (2) in "Large Non-Solvency II Firms Senior Management Functions".
- 26.4.7 G A firm need not allocate the Responsibilities referred to in SYSC 26.4.6R(1)(b) to the person who is providing cover for the absent SMF manager.
- **26.4.8** SYSC 26.4.6R and SUP 10C.3.13R apply to a person performing the *other* overall responsibility function or the *other* local responsibility function as

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well as to a person performing one of the other designated senior management functions.

Exclusion of the legal function

26.4.9 R

local responsibility

- (1) SYSC 26.3 (Main rules) applies to the SMCR legal function as modified by (2).
- (2) A firm may allocate local or overall responsibility for the SMCR legal function to someone who is not an SMF manager.
- 26.4.10
- (1) The SMCR legal function of a firm means an activity of the firm that consists of one or more of the following:
 - (a) the provision of legal advice or assistance to the *firm* or any member of its group in connection with the application of the law or with any form of resolution of legal disputes;
 - (b) the provision of representation for the firm or any member of its group in connection with any matter concerning the application of the law or any form of resolution of legal disputes;
 - (c) a reserved legal activity as defined in section 12 of the Legal Services Act 2007 (Meaning of "reserved legal activity" and "legal activity") when carried out for the firm or any member of its group; or
 - (d) any of the activities set out in section 32(1) of the Solicitors (Scotland) Act 1980 (Offence for unqualified persons to prepare certain documents) when carried out for the firm or any member of its group.
- (2) For the purposes of the definition of the SMCR legal function, legal dispute includes a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any person's legal rights or liabilities.
- 26.4.11 R
- (1) If a firm allocates the functions in (2) to the same person as the one to whom it allocates responsibility for activities in ■ SYSC 26.4.10R, the functions in (2) also form part of the SMCR legal function. As a result the exclusion in ■ SYSC 26.4.9R(2) also applies.
- (2) A function is covered by this *rule* to the extent that it directly supports the activities in ■ SYSC 26.4.10R.
- 26.4.12 G
- (1) The purpose of SYSC 26.4.11R is to treat support services for the legal function as part of the legal function where responsibility for the support services is allocated to the person with overall responsibility for the legal function.
- (2) A support service is one that is directly related, but subordinate, to the legal services described in ■ SYSC 26.4.10R. It should be necessary for the successful or better functioning of the main legal services and be an integral part of them.

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- (3) One example of a support service is human resources services for the legal staff. This includes recruitment, training, continuing professional development, appraisal and discipline.
- (4) The effect of ■SYSC 26.4.11R is that if the person with overall responsibility for the legal function also has overall responsibility for human resources services for the staff of the legal function, those services are covered by the exclusion in ■SYSC 26.4.9R(2). However, they are not excluded if those services are provided by a separate human resources department.

26.4.13 G

- (1) A *firm* may divide its legal function into different parts and appoint a different person to have overall responsibility for each.
- (2) If it does, SYSC 26.4.9R and SYSC 26.4.11R still apply.
- (3) So for example, if the *firm* has two legal departments, one headed by A (for which A has overall responsibility) and one headed by B (for which B has overall responsibility):
 - (a) neither A nor B need be an SMF manager; and
 - (b) the *firm* may allocate overall responsibility for the human resources function for A's department to A and overall responsibility for the human resources function for B's department to B even though neither A nor B is an *SMF manager*.

26.4.14 G

■ SUP 10C.7.1R and ■ SUP 10C.8.1R exclude the person with overall responsibility for the legal function from the *other overall responsibility function* (SMF18) and the *other local responsibility function* (SMF22).

26.4.15 G

The exclusions in \blacksquare SYSC 26.4.9R(2), \blacksquare SYSC 26.4.11R and \blacksquare SYSC 26.4.14G do not affect the scope of the following or the obligation to appoint an *SMF* manager to carry them out:

- (1) any FCA-designated senior management function other than the ones in SYSC 26.4.14G; or
- (2) any of the FCA-prescribed responsibilities.

Exclusion of non-financial services activities

26.4.16 R

■ SYSC 26.3 (Main rules) only requires an *enhanced scope SMCR firm* to allocate responsibility for activities, business areas and management functions to the extent that they support, form part of or otherwise relate to its *SMCR financial activities*.

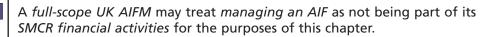
26.4.17 G

■ SYSC 25.3.3G and ■ SYSC 25.3.4G (Management responsibilities maps: Exclusion of non-financial services activities for some firms) are relevant to when an *enhanced scope SMCR firm* may exclude support services from the allocation of responsibilities under this chapter.

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Exclusion for AIFMD

26.4.18



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26.5 Guidance on territorial scope

Allocation of responsibilities and territorial scope

26.5.1 G

■ SYSC 26.1.4R (territorial scope) means that a *firm* should allocate overall responsibilities under this chapter so that they cover activities, transactions, business areas and functions that are located or take place wholly or partly outside, as well as ones in, the *United Kingdom*.

Allocation of responsibility for transactions in branches

26.5.2 G

There is an exception to ■ SYSC 26.5.1G for an *overseas SMCR firm*. This is that ■ SYSC 26.1.5R limits this chapter to the activities of its *UK branch*.

26.5.3 G

- (1) It is common for a *branch* to carry out only part of a transaction. For instance, a transaction may be booked in a *branch* but negotiated and arranged elsewhere or vice versa.
- (2) When allocating responsibility to an *SMF manager* for activities in relation to transactions under SYSC 26.3 (Main rules), a *firm* should not exclude a transaction which is arranged, booked or negotiated in the *branch* merely because other elements of the transaction occur outside the *United Kingdom*.

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26.6 Meaning of local and overall responsibility: General

UK firms

- G 26.6.1
- The meaning in practice of overall responsibility for a function of a UK SMCR firm depends on whether that function is under the management of the firm's governing body or not.
- G 26.6.2
- (1) Certain requirements of the regulatory system say that the governing body of 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) SYSC 4.3A.1R (Management body); and
 - (b) [deleted]
 - (c) rule 2.1 in the Part of the PRA Rulebook called Conditions Governing Business (General Governance Requirements) in the Part of the PRA Rulebook called Conditions Governing Business.
- (3) This means that the governing body of a UK SMCR firm subject to these requirements will manage the conduct of the whole of the business of the firm. In turn that means that the parts of this chapter dealing with a function that is not managed by the firm's governing body will not be relevant to it.
- 26.6.3 G

The FCA recognises that for some UK SMCR firms not subject to the requirements in ■ SYSC 26.6.2G, some activities, business areas and functions of a firm may not be under the management of its governing body. This may be the case where, for example:

- (1) the firm does not have a governing body; or
- (2) the firm's shareholders play a key role in managing it through, for example, a group management committee.

Branches of overseas firms

G 26.6.4

(1) ■ SYSC 26.3.2R(1) refers to the activities, business areas and management functions of the branch that are under the management of the branch's governing body. However, the FCA recognises that for some branches, some activities, business areas and functions of the branches may not be under the management of the branch's governing body. This may be the case where the branch does

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> not have its own governing body or where it is organised in such a way that certain functions are under the management of a person or body outside the branch's management structure. In those circumstances, it would not be appropriate to require the firm to allocate overall responsibility for that matter to a person who is part of the management structure of the branch.

- (2) The requirements to allocate responsibility for activities, business areas and functions of a branch under ■ SYSC 26.3.2R(1) and (2) respectively are intended to allow for the difference described in (1). In particular:
 - (a) SYSC 26.3.2R(1) is intended to cater for the situation where a particular activity, business area or function of the branch is under the management of the branch's governing body. In that situation, the firm should allocate responsibility for that matter under ■ SYSC 26.3.2R(1); and
 - (b) SYSC 26.3.2R(2) is intended to cater for the situation where a particular activity, business area or function of the branch is not under the management of branch's governing body. In that situation, the *firm* should allocate responsibility for that matter under ■ SYSC 26.3.2R(2).

Further guidance

26.6.5 G ■ SYSC 26.7 gives *guidance* on the effect of ■ SYSC 26.3 (Main rules) when a function is under the *governing body's* management. ■ SYSC 26.8 gives *guidance* on the effect of ■SYSC 26.3 when the function is not.

Day-to-day or ultimate control

26.6.6 G Having overall or local responsibility under this chapter for a matter does not necessarily mean:

- (1) having ultimate authority over it; or
- (2) having day-to-day management control of that function.

26.6.7 G In particular, the ultimate decision-making body of many UK SMCR firms is their governing body, acting collectively.



26.7 Meaning of local and overall responsibility: Reporting to the governing body

- 26.7.1 G This section gives *quidance* on what overall and local responsibility for a function means when the governing body manages the function in question under ■ SYSC 26.3 (Main rules).
- G 26.7.2 When this chapter refers to a person having overall or local responsibility for a function as described in ■ SYSC 26.7.1G, it means a *person* who has:
 - (1) ultimate responsibility (under the governing body and the chief executive) for managing or supervising that function; and
 - (2) primary and direct responsibility for:
 - (a) briefing and reporting to the governing body about that function; and
 - (b) putting matters for decision about that function to the governing body.
- 26.7.3 In general, the FCA expects that a person to whom overall responsibility for a function is allocated as described in ■ SYSC 26.7.1G will be the most senior employee or officer responsible for managing or supervising that function under the management of the governing body.
- 26.7.4 G (1) A person with overall or local responsibility for a matter will either be a member of the governing body or will report directly to the governing body for that matter.
 - (2) For example, a *firm* appoints A to be head of sales. A is not on the governing body. A reports to an executive director (B) and B reports to the governing body about the sales function. In this example B, rather than A, has overall responsibility for sales.
- 26.7.5 G (1) A person who reports to another, or is subject to oversight by another, may still have overall or local responsibility for a function.
 - (2) For example, a head of compliance may report direct to the governing body but be subject to performance appraisal by the chief executive. In this example, the head of compliance will still have overall responsibility for compliance.

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Section 26.7: Meaning of local and overall responsibility: Reporting to the governing body

- (3) If a person (A):
 - (a) reports directly to the *firm's governing body* about a particular matter; but
 - (b) is not a member of the governing body; and
 - (c) reports to a member of the *governing body* (B) about that matter, who also reports to the *governing body* about that matter;

B has overall or local responsibility for that matter.

- (4) If:
 - (a) a *person* (A) reports directly to the *firm's governing body* about a particular matter;
 - (b) A also reports to another person (B) about that matter;
 - (c) neither A nor B is a member of the governing body; and
 - (d) B also reports directly to the *firm's governing body* about that matter;

B has overall responsibility for that matter.

- (5) A member of the *governing body* who reports to the *chief executive* may still have overall or local responsibility for a function.
- (6) If:
 - (a) a person (A) reports directly to the firm's governing body about a particular matter; and
 - (b) A's function is subject to oversight by a *non-executive director* (B) or by a committee of the *firm's governing body* chaired by B;

A (not B) has overall or local responsibility for that matter.

26.7.6 G A person may have local responsibility for a function for a branch of an overseas SMCR firm even though that person also reports to a person outside the branch.



26.8 Meaning of local and overall responsibility: Not reporting to the governing body

Scope of this section

26.8.1 G This section relates to the allocation of overall or local responsibility for any activities, business areas and functions of the firm which are not under the management of its governing body (see ■ SYSC 26.3 (Main rules)).

Branches: Responsibility held outside the management structure of branch

26.8.2 G A person having local responsibility for a function for a branch does not need to be part of the management structure of the branch in order to have local responsibility for the function.

Branches: Setting overall strategy for a branch

- G 26.8.3 (1) Generally, where a an overseas SMCR firm allocates responsibility as described in ■ SYSC 26.8.1G to one of the firm's SMF managers who is not based in the branch the FCA would expect:
 - (a) that the responsibility would not be allocated to a manager whose responsibilities for the branch are limited to setting overall strategy for the branch; and
 - (b) that, instead, the firm would allocate it to a manager who is the most senior person responsible for implementing the strategy for the branch.
 - (2) See SUP 10C.1.5AG for more about how the difference between strategic and implementing responsibilities affects the FCA senior managers regime for approved persons in overseas SMCR firms.

Branches: Seniority

G 26.8.4 (1) In some cases, a *person* who has local responsibility for a particular function may be very senior within the firm as a whole.

> (2) For instance, in some branches, an individual with local responsibility for a function may also be the head of the firm's Europe and Middle East division for a business line and may be more senior within the firm as a whole than the person performing the PRA's Head of Overseas Branch designated senior management function.

SYSC 26/16

UK firms

26.8.5

G

Having overall responsibility for a function as described in ■ SYSC 26.8.1G for a *UK SMCR firm* means being the most senior employee or officer (under the *chief executive* if there is one) responsible for managing or supervising that function.

26



26.9 Who functions should be allocated to

Seniority

- 26.9.1 G
- The FCA expects that anyone who has overall or local responsibility for a matter:
 - (1) will be sufficiently senior and credible; and
 - (2) will have sufficient resources and authority;

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

- 26.9.2 G
- (1) The FCA would not consider it unusual if a person who has overall or local responsibility for a particular function was not a member of the firm's governing body or equivalent.
- (2) For example, in some firms, the head of compliance may report directly to the firm's governing body even though the head of compliance is not a member of the governing body.
- 26.9.3 G

Other parts of this chapter dealing with seniority are:

- (1) SYSC 26.7.3G (seniority of someone with overall responsibility for a function under the management of a firm's governing body);
- (2) SYSC 26.8.3G and SYSC 26.8.4G (seniority of someone from elsewhere in the firm having local responsibility in a branch); and
- (3) SYSC 26.8.5G (seniority of someone within a UK SMCR firm with overall responsibility for a function not under the management of a firm's governing body).

Not giving too much responsibility to one individual

G 26.9.4

- (1) It will be common for a small non-complex firm to divide overall or local responsibility for its activities under the management of its governing body between members of its governing body and not to assign overall or local responsibility for any activity to someone who is not a member.
- (2) However, when deciding how to divide up overall or local responsibility for its activities, a firm should avoid assigning such a

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- wide range of responsibilities to a particular *person* that the *person* is not able to carry out those responsibilities effectively.
- (3) Therefore, in a large or complex *firm*, the *FCA* expects overall or local responsibility for some functions to be assigned to *persons* in the layer of management below the *governing body*. Anyone in that layer having overall or local responsibility for an activity will be performing a *designated senior management function*.

Dividing and sharing management functions between different people

- **26.9.6** The following provisions of SYSC 24.3 (Who prescribed responsibilities should be allocated to) also apply to allocations under this chapter so far as those provisions deal with sharing responsibilities:
 - (1) SYSC 24.3.8G (responsibilities should generally not be shared);
 - (2) SYSC 24.3.9G (when responsibilities may be shared); and
 - (3) SYSC 24.3.11G (statements of responsibilities);
- (1) The material in ■SYSC 24.3 (Who prescribed responsibilities should be allocated to) about splitting of responsibilities is not directly relevant to this chapter. This is because ■SYSC 24 deals with functions that have been defined in the FCA Handbook whereas this chapter does not define the areas into which a firm's activities should be divided when allocating responsibilities to its SMF managers.
 - (2) However SYSC 24.3.10G (responsibilities should be grouped together appropriately) is also relevant for deciding whether responsibility for a particular set of matters should be allocated to one *SMF manager* or allocated between several.



26.10 **Group management** arrangements and outsourcing

26.10.1 G

- (1) This chapter requires overall or local responsibility for various aspects of a firm's affairs to be allocated to an SMF manager.
- (2) This requirement does not prevent a *firm* from relying on an employee of a company in the same group to perform the function.
- (3) A firm has two main choices about how to fit such arrangements into the senior managers regime for SMCR firms.
 - (a) The group employee is appointed by the firm (usually by its governing body if it has one) to perform the function. This means that the *firm* will have entered into an arrangement with that person. As explained in ■ SUP 10C.3.9G, an arrangement with the firm is one of the factors that makes the senior managers regime for SMCR firms apply. The result is that the group official will be performing a controlled function and will need to be approved as an SMF manager.
 - (b) The firm appoints someone (A) to supervise what the group employee does (so far as it concerns the *firm*) and allocates responsibility for the function to A, leaving day-to-day activities to the group employee. A will need to be approved as an SMF manager.
- 26.10.2

■ SYSC 26.10.1G also applies to a *firm* that outsources functions to a third party and is relying on an individual from the outsourced services provider to carry out the functions in those paragraphs.

26.10.3 G

- (1) This chapter does not cover responsibility for an aspect of a PRAauthorised person's affairs managed by an individual approved to perform the Group Entity Senior Manager or the Group Entity Senior Insurance Manager PRA-designated senior management function (see ■ SYSC 26.4.2R (Exclusions where other requirements apply)).
- (2) Where a responsibility is held by someone approved to perform one of those PRA-designated senior management functions for the PRAauthorised person, there is no need to appoint that person under this chapter and apply the arrangements in ■ SYSC 26.10.1G.

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- (3) (a) The statement of responsibilities for the individual performing the PRA-designated senior management function; and
 - (b) the firm's management responsibilities map;

should clearly show what responsibilities are held by that individual.

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26.11 Link between this chapter and other parts of the senior managers regime

Link between designated senior management functions and this chapter

G 26.11.1

- (1) Having overall or local responsibility for an activity under this chapter requires approval as an SMF manager. This is because a person who has overall or local responsibility for an activity will be:
 - (a) performing the other overall responsibility function or the other local responsibility function; or
 - (b) approved to perform another designated senior management function.
- (2) The other overall responsibility function applies because this is the effect of ■ SUP 10C.7.1R (definition of other overall responsibility function).
- (3) SUP 10C.7.1R(2) says that the other overall responsibility function does not apply to a person who is approved to perform another designated senior management function.
- (4) The other local responsibility function applies because this is the effect of ■ SUP 10C.8.1R (Definition of the other local responsibility function (SMF22)).
- (5) SUP 10C.8.1R(2) says that the other local responsibility function does not apply to a *person* who is approved to perform another designated senior management function in relation to the branch.

Link between SYSC 25 Annex 1G and this chapter

G 26.11.2

- (1) The purpose of SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm) is to help a firm to prepare its management responsibilities map (see ■ SYSC 25.7.2G).
- (2) There is no direct link between SYSC 25 Annex 1G and this chapter.
- (3) However, a firm may find SYSC 25 Annex 1G useful as a prompt to help it make sure that it has not failed to allocate overall or local responsibility under this chapter for a particular activity of the firm.

(4) If a *firm* uses ■ SYSC 25 Annex 1G as a prompt when it allocates overall or local responsibility as described in (3), it should bear in mind that it is not comprehensive (see ■ SYSC 25.7.8G).

26.11.3 G The *FCA* does not require:

(1) there to be a separate *person* with overall responsibility for each individual business area in ■ SYSC 25 Annex 1G (Examples of the business activities and functions of an SMCR firm); or

a firm to allocate functions under this chapter using the same split of business areas as in ■ SYSC 25 Annex 1G.

Overall responsibility for internal operations

26.11.4 G

If a firm does not have anyone who performs the chief operations function (or the equivalent PRA-designated senior management function) the firm should allocate responsibility for the functions in SUP 10C.6B.4G (The chief operations function (SMF24)) among its SMF managers under this chapter.

Senior managers and certification regime: Certification regime

Chapter 27

Senior managers and certification regime: Certification regime

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Application and purpose 27.1

Application

- 27.1.1 This chapter applies to an SMCR firm, except those excluded from this chapter by ■ SYSC 27.6 (Other exclusions).
- G This chapter is also relevant to employees of SMCR firms performing 27.1.2 functions specified as FCA certification functions.

Purpose

G 27.1.3

- (1) This chapter is about the FCA's certification regime.
- (2) Under this regime, a firm should ensure that its employees only perform an FCA certification function if they have a certificate issued by that firm to perform that function.

.....

(3) The purpose of this chapter is to specify 'FCA certification functions' and to give quidance on the FCA's certification regime.

SYSC 27/2

SYSC 27 : Senior managers and certification regime: Certification regime



27.2 Requirements of the certification regime

General

- 27.2.1 G Most of the requirements of the certification regime are in the *Act*. This section summarises and gives *guidance* on them.
- 27.2.2 G SYSC TP 5, SYSC TP 7 and SYSC TP 8 contain transitional material about the certification regime. This includes material about the fact that:
 - (1) the requirement in SYSC 27.2.3G did not come into force at the same time as the rest of the certification regime; and

.....

(2) the certification regime came into force at different times for different types of *firm*.

Basic requirements

Under section 63E(1) of the Act, a firm must take reasonable care to ensure that no employee of the firm performs an FCA certification function under an arrangement entered into by the firm in relation to the carrying on by that firm of a regulated activity, unless the employee has a valid certificate issued by that firm to perform the function to which the certificate relates.

Fitness to act

- 27.2.4 G Under section 63F of the Act, a firm may issue a certificate to a person only if the firm is satisfied that the person is a fit and proper person to perform the FCA certification function to which the certificate relates.
- 27.2.5 G Under section 63F of the *Act*, in assessing if a *person* is fit and proper to perform an *FCA certification function*, a *firm* must have regard, in particular, to whether that person:
 - (1) has obtained a qualification;
 - (2) has undergone, or is undergoing, training;
 - (3) possesses a level of competence; or
 - (4) has the personal characteristics,

required by general rules made by the FCA.

- 27.2.6 G ■ FIT 1.3 provides guidance to *firms* about the criteria that the *FCA* would expect the firm to consider in assessing if a person is fit and proper to perform an FCA certification function.
- G 27.2.7 SYSC 22 (Regulatory references) deals with obtaining references from a previous employer when a firm is planning to appoint someone to perform a certification function as part of its assessment of whether that person is fit and proper.
- G 27.2.8 (1) A person seconded from a contractor may fall into the certification regime. The material in ■ SYSC 27.4.1G is relevant to when this is the case.
 - (2) In deciding whether a person seconded from a contractor is fit and proper, the firm may take into account information and references from the contractor.
 - (3) In deciding how much reliance to put on the contractor, the firm should take into account:
 - (a) the familiarity of the contractor with the obligations of firms under this chapter, the corresponding PRA requirements (if the firm is a PRA-authorised person) and the requirements of the Act described in this chapter;
 - (b) whether any reference directly addresses the criteria in FIT; and
 - (c) the degree to which the firm believes it can rely on the contractor's judgement about the secondee's fitness and properness and the grounds for that belief.

Issuing and renewing certificates

- 27.2.9 G Under section 63F of the Act, a certificate issued by a firm to a person must:
 - (1) state that the firm is satisfied that the person is fit and proper to perform the function to which the certificate relates; and
 - (2) set out the aspects of the affairs of the firm in which the person will be involved in performing the function.
- G 27.2.10 (1) The Act says that a certificate is valid for a period of 12 months, beginning with the day on which it is issued.
 - (2) The FCA believes that the Act allows a firm to draft a certificate to expire after fewer than 12 months. The FCA interprets the Act in this way because to require a *firm* to make a certificate last longer than the firm thinks best is likely to make it harder for the firm to ensure the fitness of its certification employees. That would undermine the purpose of the certification regime in the Act.
 - (3) A certificate cannot be drafted to last more than 12 months.
- 27.2.11 Under section 63F of the Act, if, after having considered if a person is fit and proper to perform an FCA certification function, a firm decides not to issue a

SYSC 27 : Senior managers and certification regime: Certification regime

certificate to that person, the firm must give the person a notice in writing stating:

- (1) what steps (if any) the firm proposes to take in relation to the person as a result of the decision; and
- (2) the reasons for proposing to take those steps.
- 27.2.12

If, after having considered whether a person is fit and proper to perform an FCA certification function, a firm decides not to issue a certificate to that person, it should consider if the circumstances warrant making a notification to the FCA for a breach of the rules in COCON pursuant to ■ SUP 15.3.11R (Breaches of rules and other requirements in or under the Act or the CCA).

G 27.2.13

Under section 63F of the Act, a firm must maintain a record of every employee who has a valid certificate issued by it.

- 27.2.14 G
- (1) A firm need not issue multiple certificates for one of its employees even if they perform several FCA certification functions as part of the same job.
- (2) Similarly, a firm need not issue multiple certificates for one of its employees who performs an FCA certification function that is made up of a number of different functions.
- (3) An example of an FCA certification function in (2) is the material risk taker FCA certification function described in ■ SYSC 27.8.14R. ■ SYSC 27.8.14R says that each function carried out by someone who is covered by that rule is an FCA certification function.
- (4) Rather than having to issue multiple certificates, a firm may, in a single certificate, describe the employee's functions that involve an FCA certification function in broad terms, and without listing all the activities that the function may involve.
- (5) A firm should assess whether the employee is fit and proper to perform all aspects of the employee's functions that involve an FCA certification function as described by a certificate.
- (6) Although a firm does not need to issue multiple certificates for an employee who performs several different certification functions, under the requirements in ■ SUP 16.26 (Reporting of Directory persons) the firm will need to specify each of the certification functions which the employee has been assessed as fit and proper to perform and for which the employee has a certificate at the time of the report.
- 27.2.15 G
- (1) In cases where a certification employee's role changes to involve a new FCA certification function part way through the 12-month period for which their certificate is valid, the firm may need to reissue the certificate.
- (2) If that new function has different requirements relating to:
 - (a) personal characteristics;

- (b) the level of competence, knowledge and experience;
- (c) qualifications; or
- (d) training;

the FCA would expect the firm to assess whether the employee is fit and proper to perform that new function before they start it.

- (3) In such a case, the firm should not wait until the point of annual reassessment to determine whether the employee is fit and proper for the new function.
- (4) A firm may not need to issue a new certificate if:
 - (a) applying the conditions in paragraph (2), the firm concludes that no re-assessment is required; and
 - (b) the certificate is drafted broadly enough to cover the new FCA certification function.
- (5) Paragraphs (1) to (4) also apply if a certification employee's role changes part way through the 12-month period without the new role involving a new FCA certification function.
- (1) This paragraph gives further guidance on the flexibility a firm has in drafting its certificates.
- (2) A certificate may cover functions that a certification employee is not currently performing, as long as the firm has assessed the employee's fitness for these additional functions. This is subject to (3).
- (3) When a firm is deciding what a certificate can cover beyond the functions that the certification employee is currently performing, it should take the factors in ■ SYSC 27.2.15G(2) into account. A certificate should not normally cover an additional function if ■ SYSC 27.2.15G(2) would require the firm to consider the employee's fitness before allowing them to perform it.
- (4) A firm may, if it wishes, restrict a certificate to the functions that the certification employee is currently performing rather than drafting the certificate more widely as described in (2) and (3).
- (5) SYSC 27.2.10G deals with the flexibility a firm has in choosing the period for which a certificate lasts.

27.2.16 G SYSC 27 : Senior managers and certification regime: Certification

regime



27.3 Territorial scope

- 27.3.1 R
- (1) A function is an FCA certification function for a UK SMCR firm only to the extent:
 - (a) it is performed by a *person* from an establishment of the *firm* (or its *appointed representative*) in the *United Kingdom*; or
 - (b) the *person* performing that function is dealing with a *client* of the *firm* in the *United Kingdom* from an establishment of the *firm* (or its *appointed representative*) overseas.
- (2) A function is an FCA certification function for an overseas SMCR firm only to the extent that it is performed by a person from an establishment of the firm (or its appointed representative) in the United Kingdom.
- (3) Paragraph (1) does not apply to FCA certification function (6) (material risk takers). For a UK SMCR firm, FCA certification function (6) applies without any territorial limitation.
- 27.3.2 G

The FCA interprets the phrase 'dealing with' in ■ SYSC 27.3.1R as including having contact with *clients* and extending beyond 'dealing' as used in the phrase 'dealing in investments'. 'Dealing in' is used in Schedule 2 to the Act to describe in general terms the *regulated activities* which are specified in Part II of the *Regulated Activities Order*.

27.3.3 G

The FCA interprets the phrase 'a client of the firm in the United Kingdom' in ■ SYSC 27.3.1R as referring to:

- (1) for a *client* which is a body corporate, its office or *branch* in the *United Kingdom*; or
- (2) for a *client* who is an individual, a *client* who is in the *United Kingdom* at the time of the dealing.
- 27.3.4 G
- (1) The *Regulated Activities Order* has an effect on the territorial scope of this chapter.
- (2) As explained in SYSC 27.7.1R (General requirements), a function is only an FCA certification function if it is connected to regulated activities.

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(3) Therefore where overseas activities are excluded from being regulated activities by the Regulated Activities Order, that will have an effect on the certification regime.

G 27.3.5

- (1) An example of SYSC 27.3.4G is the territorial restriction relating to regulated claims management activities.
- (2) As explained in PERG 2.4A (Link between regulated claims management activities and Great Britain), a claims management activity specified in the Regulated Activities Order is only a regulated activity if it is carried on by way of business in Great Britain.
- (3) The result is that a claims management activity specified in the Regulated Activities Order carried on outside Great Britain is an unregulated activity for the purposes of this chapter and the FCA certification functions.
- (4) This restriction:
 - (a) applies to the FCA certification function in SYSC 27.3.1R(3) as well as to the other FCA certification functions; and
 - (b) applies in addition to the restriction in SYSC 27.3.1R.

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27.4 General material about the scope of the certification regime

Employees

- 27.4.1 G
- (1) The certification regime only applies to an employee.
- (2) This definition includes a person who:
 - (a) personally provides, or is under an obligation personally to provide, services to the *firm* in question under an arrangement made between the *firm* and the *person* providing the services or another *person*; and

- (b) is subject to (or to the right of) supervision, direction or control by the *firm* as to the manner in which those services are provided.
- 27.4.2 G
- (1) A person who works for an appointed representative of a firm may fall into the certification regime. In practice, however, they may not meet the conditions for the certification regime to apply.
- (2) One condition for the certification regime to apply to a *person* is that the *person* performs a *certification function* under an arrangement entered into by the *firm* (see SYSC 27.2.3G). However, unlike the equivalent parts of the *Act* for the *approved persons* regime, the *Act* does not say that the certification regime applies if the function is performed under an arrangement entered into by the employee with a contractor of the *firm* instead of the *firm*.
- (3) The certification regime only applies if the *person* concerned is an *employee*. This is defined in SYSC 27.4.1G. In many cases, a *person* working for an *appointed representative* will not fall into this definition as they may not:
 - (a) provide services to the firm; or
 - (b) be subject to (or to the right of) supervision, direction or control by the *firm*.
- (4) If none of these limitations on the scope of the certification regime apply, a *person* working for an *appointed representative* will be subject to the certification regime, as long as the other conditions in this chapter are met.

Effect of PRA requirements

27.4.3



A function does not cease to be an FCA certification function if that function is also a PRA certification function.

SYSC 27/10

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27.5 Exclusions for emergency and temporary appointments

Emergency appointments

27.5.1 R

- (1) If:
 - (a) a *firm* appoints an individual to perform a function which, but for this *rule*, would be an *FCA certification function*;
 - (b) the appointment is to provide cover for a *certification employee* whose absence is reasonably unforeseen; and
 - (c) the appointment is for less than four weeks; then the performance by that individual of such function does not constitute an FCA certification function.
- (2) This *rule* does not apply to *FCA certification function* (4) (functions requiring qualifications).

27.5.2 G

■ SYSC 27.5.1R does not apply to FCA certification function (4) (functions requiring qualifications). Where there is an unforeseen absence of an employee performing a function for which there is a qualification requirement:

- (1) the *firm* should take reasonable care to ensure that no *employee* of that *firm* performs that function without a valid certificate; and
- (2) the certificate should be issued before the *person* starts to perform the function.

Temporary UK role (the 30-day rule)

27.5.3 R

- (1) None of the FCA certification functions extend to an individual ("P") in relation to a firm if:
 - (a) P is based outside the United Kingdom for the firm; and
 - (b) in a 12-month period, P spends no more than 30 days performing what would otherwise be an FCA certification function for that firm within the territorial scope of this chapter as described in SYSC 27.3.1R.
- (2) Paragraph (1) only applies to the extent that P is appropriately supervised by:
 - (a) one of the firm's SMF managers; or

- (b) one of the firm's certification employees whose certificate covers the FCA certification function that is to be disapplied under (1).
- (3) This rule does not apply to any FCA certification function to the extent that it involves:
 - (a) giving advice or performing related activities in connection with pension transfers, pension conversions or pension opt-outs for retail clients; or
 - (b) giving advice to a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate.
- (4) In the case of a UK SMCR firm, this rule does not apply to FCA certification function (6) (material risk takers).
- 27.5.4 G ■ SYSC 27 Annex 1G gives examples of how ■ SYSC 27.5.3R works.
- G 27.5.5 The FCA would expect an individual from overseas using the temporary UK role rule in ■ SYSC 27.5.3R to be accompanied on a visit to a customer in the United Kingdom.
- G 27.5.6 An individual benefiting from the temporary *UK* role *rule* in ■ SYSC 27.5.3R may still be subject to the requirements of TC (Training and competence). However, ■TC 2.1.9R gives an exemption from certain qualification requirements in TC to an individual benefiting from the temporary UK role rule.



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

- Performing any of the following is not an FCA certification function: 27.6.6 R
 - (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 SYSC 27.6.6R does not apply to having overall or local responsibility for the SMCR legal function.

Administrators

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

Exclusions: Sole traders

- G 27.6.9 (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 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.

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27.7 Specification of functions

General requirements

27.7.1 R

In accordance with section 63E of the *Act* (Certification of employees by authorised persons), a function is an *FCA certification function* only if, in relation to the carrying on of a *regulated activity* by a *firm*, that function:

- (1) is not a *controlled function* in relation to the carrying on of that *regulated activity* by that *firm*; and
- (2) will require the *person* performing it to be involved in one or more aspects of the *firm's* affairs, so far as relating to that *regulated* activity.

Scope: FCA certification functions

27.7.2 R

In accordance with section 63E(3) of the *Act*, the functions in the table in ■ SYSC 27.7.3R are *FCA* certification functions.

27.7.3 R

Table: FCA certification functions

Function	Where defined
(1) CASS oversight	SYSC 27.8.1R
(2) Proprietary trader	SYSC 27.8.3R
(3) Significant management	SYSC 27.8.4R
(4) Functions requiring qualifications	SYSC 27.8.10R
(5) Managers of certification employees	SYSC 27.8.13R
(6) Material risk takers	SYSC 27.8.14R
(7) Client-dealing	SYSC 27.8.18R
(8) Algorithmic trading	SYSC 27.8.23R

27.7.4 G

- (1) If a function falls into more than one of the FCA certification functions in the table in ■SYSC 27.7.3R, all of those FCA certification functions apply to it.
- (2) For example, if a *person's* job involves both *FCA certification function* (4) (functions requiring qualifications) and (6) (material risk takers), the emergency appointments *rule* (■ SYSC 27.5.1R) does not apply to that job.

- (3) Another example is the *rule* about the territorial scope of this section (SYSC 27.3.1R)) for a UK SMCR firm. For example, if a person's job involves both FCA certification function (4) (functions requiring qualifications) and (6) (material risk takers), the territorial restriction in that rule does not apply to that job. Instead, this chapter applies without any territorial limitation.
- (4) The reason for (3) is that SYSC 27.3.1R(3) says that there is no territorial limitation on FCA certification function (6) for a UK SMCR firm. As explained in (1), it does not matter that the job also involves FCA certification function (4), to which the territorial limitation does apply.

Overlap with designated senior management functions

27.7.5 G

- (1) SYSC 27.7.1R(1) means that an FCA-designated senior management function cannot also be an FCA certification function at the same time.
- (2) So an SMF manager performing an activity that forms part of their FCA-designated senior management function is not, by performing that activity, also performing an FCA certification function.
- (3) But if an FCA-designated senior management function does not apply to a firm, performing the function described in the definition of that FCA-designated senior management function can be an FCA certification function.
- (4) See SYSC 27.8.7AG for an example of this.

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27.8 Definitions of the FCA certification functions

CASS oversight function

- 27.8.1 R
- (1) Each of the following is an FCA certification function:
 - (a) in relation to a CASS medium firm and a CASS large firm (other than a CASS large debt management firm), the function of acting in the capacity of a person who is allocated the function in
 CASS 1A.3.1AR (oversight of operational effectiveness);

- (b) in relation to a CASS large debt management firm, the function of acting in the capacity of a person who is allocated the function in CASS 11.3.4R (oversight of operational effectiveness);
- (c) in relation to a CASS small firm, the function of acting in the capacity of a person who is allocated the function in
 CASS 1A.3.1R (oversight of operational effectiveness);
- (d) in relation to a firm to which CASS 13 (Claims management: client money) applies, the function of acting in the capacity of a person who is allocated the function in ■ CASS 13.2.3R (Organisational requirements and responsibility for CASS operational oversight).
- (2) A function in (1) is not an FCA certification function for that firm if it is performed by an SMF manager of that firm.

Proprietary trader function

- 27.8.3
- The function of acting as a *proprietary trader* whose activity involves, or might involve, a risk of significant harm to the *firm* or any of its *customers* is an *FCA certification function*.

Significant management function

27.8.4 R

- (1) The function of acting as a *senior manager*, with significant responsibility for a significant business unit, is an *FCA certification function*.
- (2) For an overseas SMCR firm's branch in the United Kingdom, the significant management function is limited to business units of the branch.

- 27.8.5 A senior manager carrying on the significant management FCA certification function under ■ SYSC 27.8.4R could, for example, be:
 - (1) the head of a unit carrying on the activities of:
 - (a) retail banking;
 - (b) personal lending;
 - (c) corporate lending;
 - (d) salvage or loan recovery;
 - (e) proprietary trading;
 - (f) designated investment business;
 - (g) effecting contracts of insurance;
 - (h) credit-related regulated activity;
 - (i) making material decisions on the commitment of the firm's financial resources, its financial commitments, its assets acquisitions, its liability management or its overall cash and capital planning;
 - (j) processing confirmations, payments, settlements, insurance claims, client money and similar matters;
 - (k) administration of contracts of insurance;
 - (I) complaints handling; or
 - (m) determining whether an applicant should be accepted for credit (including lending) and on what terms; or
 - (2) a member of a committee (that is, a person who, together with others, has authority to commit the firm) making decisions in these functions.
- G 27.8.6 The examples in ■ SYSC 27.8.5G are illustrative only. They are not intended to be exhaustive.
- G 27.8.7 A business unit is not limited to one that carries on commercial activities with customers and third parties or that earns revenue. A business unit can be an internal support department that has no contact with people outside the firm. It may include, for example, human resources, the legal department, operations or information technology.
- 27.8.7A G (1) An example of ■ SYSC 27.7.5G is that a person performs the significant management FCA certification function if:
 - (a) the person performs a role coming within the definition of one of the following roles:
 - (i) an FCA-designated senior management function described in ■ SUP 10C.6A (Systems and controls functions: Finance, risk and internal audit); or
 - (ii) the chief operations function; and
 - (b) that FCA-designated senior management function does not apply to the firm.

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- (2) For example, if a core SMCR firm has a chief risk officer, the chief risk officer will not be performing the chief risk officer function because the chief risk officer function does not apply to core SMCR firms. Instead that person will perform the significant management FCA certification function.
- (3) (2) does not apply if the chief risk officer performs that role as part of their job as an executive director. The executive director function applies to core SMCR firms and so that person will be performing the executive director function rather than the significant management FCA certification function.
- **27.8.8** G For the purposes of the definition of the significant management *FCA* certification function, the following additional factors about the *firm* should be considered:
 - (1) the size and significance of the firm's business in the United Kingdom for example, a firm carrying on designated investment business may have a large number of certification employees (for example, in excess of 100 individuals); or a firm carrying on general insurance business may have gross written premiums in excess of £100m;
 - (2) the number of *regulated activities* carried on, or proposed to be carried on, by the *firm* and (if relevant) other members of the *group*;
 - (3) its group structure (if it is a member of a group);
 - (4) its management structure (for example, matrix management); and
 - (5) the size and significance of its international operations, if any.
- 27.8.9 G

When considering whether a business unit is significant for the purposes of ■ SYSC 27.8.4R, the *firm* should take into account all relevant factors in the light of the *firm*'s current circumstances and its plans for the future, including:

- (1) the risk profile of the unit;
- (2) its use or commitment of the firm's capital;
- (3) its contribution to the profit and loss account;
- (4) the number of *employees*, *certification employees* or *SMF managers* in the unit;
- (5) the number of customers of the unit; and
- (6) any other factor which makes the unit significant to the conduct of the *firm*'s affairs so far as relating to the *regulated activity*.

Functions requiring qualifications

27.8.10

- R
- (1) Each function involving an activity for which there is a qualification requirement as specified in ■ TC App 1.1.1R (Activities and Products/ Sectors to which TC applies) is an FCA certification function.
- (2) For an overseas SMCR firm, each function involving an activity for which there would have been a qualification requirement, as specified in (1) if the firm had been a UK SMCR firm, is an FCA certification function.
- (3) A person performs the FCA certification function in this rule even if:
 - (a) the time period within which the person must have obtained the qualification requirement has not yet expired; or
 - (b) the *person* is exempt from the qualification requirement.

27.8.11 G

- (1) SYSC 27.8.10R (Functions requiring qualifications) may still apply to an SMCR firm where one of the exclusions in ■TC App 3.1 (Circumstances in which TC does not apply) or elsewhere in TC applies.
- (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 EEA PTV firms or overseas firms for the purposes of TC.
- (3) The territorial scope of qualification requirements as specified in ■ TC App 2.1.1R (Territorial Scope subject to the limitation in TC Appendix 3) does not apply to the FCA certification function in ■ SYSC 27.8.10R. However ■ SYSC 27.3.1R (Territorial scope) restricts the scope of this chapter outside the United Kingdom.

27.8.12

SYSC 27.8.10R(3) means that a person performs the FCA certification function in ■ SYSC 27.8.10R even if for example they are:

- (1) still in training and do not yet need to have the qualification; or
- (2) exempt under TC 2.1.9R (Exemption from appropriate qualification requirements).

Managers of certification employees

- 27.8.13
 - R

R

- (1) The function of managing or supervising a certification employee, directly or indirectly, is an FCA certification function.
- (2) A function in (1) is not an FCA certification function for that firm if it is performed by an SMF manager of that firm.

Material risk takers

27.8.14

Each function performed by a person in column (2) of the table in ■ SYSC 27.8.15R is an FCA certification function with respect to a firm in the corresponding entry in column (1).

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27.8.15 R Table: Definition of material risk taker

Type of SMCR firm **Employees included** (1) An SMCR banking firm, including Each member of the dual-regulated an EEA SMCR banking firm firms Remuneration Code staff of the firm in column (1) of this row (1). This includes any *person* who meets any of the criteria set out in articles 6 to 8 of the Material Risk Takers Regulation 2020 (criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile). (2) [deleted] (3) A Solvency II firm Persons referred to in articles 275.1(c) and (d) of Solvency II Regulation 2015/35 (key functions and staff with a material impact). (4) A firm subject to SYSC 19G.5 (ap-Each staff member identified as a plication of remuneration requirematerial risk taker of the firm in column (1). ments to material risk takers) including an overseas SMCR firm (5) [deleted] (6) A firm falling within SYSC 19B.1 Each member of the AIFM Remuneration Code staff of the firm in (application provisions for the remuneration code for a fullscope UK column (1). AIFM) (7) An above-threshold non-UK In relation to a firm in column (1), the definition of AIFM Remuneration Code staff is extended so that it includes *employees* of this kind of firm in the same way as it includes employees of firms in row (6) of this table. (8) [deleted] (9) [deleted] (10) A firm falling within SYSC 19E.1 Each member of the UCITS Remuneration Code staff of the firm in (application provisions for remuneration code for UCITS managecolumn (1). ment companies) (11) [deleted] Note: The definition of the persons included in column (2) applies in relation to an EEA SMCR firm in one of the rows of column (1) in the same way as it does to other overseas SMCR firms in that row. The definitions of

dual-regulated firms Remuneration Code staff, and AIFM Remuneration Code staff apply accordingly.

Where an overseas SMCR firm would be subject to SYSC 19G.5 if it were a UK SMCR firm, row (4) applies in the same way as it applies to UK SMCR firms, and the definition of material risk taker in column (2) applies accordingly.

27.8.16 G

If the definitions or requirements in the 'Employees included' column of the table in ■ SYSC 27.8.15R (as adjusted) do not apply to a firm in the

corresponding entry in the 'Type of SMCR firm' column, that row of the table does not apply to the firm.

G 27.8.17

One example of ■ SYSC 27.8.16G is that a *credit union* is excluded from the table in ■ SYSC 27.8.15R. Therefore the material risk taker FCA certification function does not apply to a credit union. However, it is subject to equivalent PRA requirements.

Client-dealing function

27.8.18

A person ("P") performs the client-dealing FCA certification function for a firm if:

- (1) P is carrying out any of the activities in the table in SYSC 27.8.19R;
- (2) those activities will involve P dealing with:
 - (a) a person with or for whom those activities are carried out; or
 - (b) the property of any such person;

in a manner substantially connected with the carrying on of regulated activities by the firm.

27.8.19

Table: Activities covered by the client-dealing FCA certification function

(1) The following activities: (a) advising on investments other than a non-investment insurance contract; or (a) does not include advising on investments in the course of carrying on the activity of giving basic advice on a stakeholder product.	Activity	Comments
	(a)advising on investments other than a non-investment insurance	vestments in the course of carrying on the activity of giving basic advice

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		Activity	Comments			
		(b)performing other functions related to this, such as <i>dealing</i> , <i>arranging</i> and (where the product is a contract) entering into and carrying it out.				
		(2) The following activities:				
		(a)giving advice in connection with corporate finance business; or				
		(b)performing other functions related to this.				
		(3) If the <i>firm</i> does any of the following activities:	(a) and (b) do not include dealing or arranging (bringing about) deals			
		(a) dealing, as principal or as agent;	in investments in a non-investment insurance contract.			
		(b)arranging (bringing about) deals in investments; or	For the activity in this row (3), SYSC 27.8.18R(2)(a) and (b) are expanded			
		(c) funeral plan distribution (but not	to cover also:			
		advising on investments) or a fu- neral plan provision activity;	(a)a person in connection with whom the activities in the first col-			
		taking part in those activities is included.	umn of this row are carried out; and			
			(b) the property of any such <i>person</i> .			
		(4) If the <i>firm</i> is acting in the capacity of an <i>investment manager</i> the following are included:				
		(a)taking part in that activity; and				
		(b)carrying on functions connected to this.				
		(5) Acting as a 'bidder's representative' in relation to bidding in emissions auctions.	Acting as a 'bidder's representative' has the meaning in regulation 5(5) of the <i>UK auctioning regulations</i> .			
27.8.20	G	■ SYSC 27.3.2G (the <i>FCA</i> interprets the plant having contact with and extending bey				
		investments') applies to ■ SYSC 27.8.18R.				
27.8.21	G	The client-dealing FCA certification function generally involves dealing with any person with or for whom the activities in the table in ■SYSC 27.8.19R are carried out (or their property). That person need not be a client of the firm.				
27.8.22	G	The restrictions in SYSC 27.7.1R (FCA certification function should require the person performing it to be involved in one or more aspects of the firm's affairs so far as they relate to regulated activities) also applies to the client-dealing FCA certification function.				
27.8.22A	R	(1) This <i>rule</i> qualifies rows (3) and (4) of the table in ■ SYSC 27.8.19R (Table: Activities covered by the client-dealing FCA certification function).				

(2) A person does not perform a function in (1) if their only activities that would otherwise come within the client-dealing FCA certification function do not require them to exercise a significant amount of discretion, judgment or technical skill.

27.8.22B G

- (1) The client-dealing FCA certification function does not apply to purely administrative roles even though they involve customer contact.
- (2) SYSC 27.8.22AR excludes someone who has no scope to choose, decide or reach a judgement on what should be done in a given situation, and whose tasks do not require them to exercise significant technical skill.
- (3) SYSC 27.8.22AR is likely to exclude a role that is simple or largely automated.
- (4) There is no need to apply SYSC 27.8.22AR to row (1)(b) or (2)(b) of the table in ■ SYSC 27.8.19R, because a person must also be carrying out the functions in row (1)(a) or (2)(a) for the client-dealing FCA certification function to apply and the functions in row (1)(a) or (2)(a) require judgment and skill.

Algorithmic trading function

27.8.23 R

- (1) Each of the following is an FCA certification function:
 - (a) approving the deployment of:
 - (i) a trading algorithm or a part of one; or
 - (ii) an amendment to a trading algorithm or a part of one; or
 - (iii) a combination of trading algorithms; and
 - (b) each of the following functions:
 - (i) having significant responsibility for the management of monitoring whether or not a trading algorithm; and
 - (ii) deciding whether or not a trading algorithm;
 - is, or remains, compliant with the firm's obligations.
- (2) The firm's obligations in (1)(b) include:
 - (a) the firm's regulatory obligations; and
 - (b) the rules and requirements of the trading venues to which the firm's trading systems are connected.
- 27.8.24 R A trading algorithm means a computer algorithm used in algorithmic tradina.
- 27.8.25 G Algorithmic trading is not limited to high-frequency algorithmic trading.
- 27.8.26 G Deploying a trading algorithm includes deploying one on a trading venue on which the firm has not traded before where the firm is already using that trading algorithm on another trading venue.

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- 27.8.28 G (1) Sometimes an approval or a decision involves sign-off from different people about different aspects of the decision or approval.
 - (2) If this is the case, all will have given the approval or decision for the purposes of SYSC 27.8.23R.
- 27.8.29 G (1) Sometimes an approval or decision involves sign-off by a number of people of different levels of seniority about the same aspects of the decision.
 - (2) If this is the case, only the most senior decision-taker gives the approval or decision for the purposes of SYSC 27.8.23R.
 - (3) Where the *firm's* procedures do not require the more senior person to carry out a detailed review of the decision of the more junior, both the junior and the senior person will give the approval or decision.
- **27.8.30 G** A *firm* may have deployed an algorithm even though:
 - (1) it has not yet actually been used in the generation or acceptance of orders; or
 - (2) it is not actually being used in the generation or acceptance of orders at the moment; or
 - (3) it is not currently being used in the generation or acceptance of orders because the circumstances have not arisen for it to start doing so.
- 27.8.32 G The algorithmic trading FCA certification function applies whether the firm develops the algorithm itself or buys one from a third party.



Material relating to several FCA certification functions 27.9

Legal function

27.9.1

A *person* performing the function described in ■ SYSC 26.4.9R (Exclusion of the legal function) will perform the significant management or the material risk taker FCA certification function, or both.

SYSC 27/26

Examples of how the temporary UK role rule in SYSC 27.5.3R (the 30day rule) works

	Example	How the temporary UK role rule applies
(1)	A spends 20 days in the <i>UK</i> performing the proprietary trader <i>FCA certification function</i> for Firm X and wishes to spend another 20 days in the <i>UK</i> performing the significant management <i>FCA certification function</i> for Firm X.	The <i>rule</i> does not allow this. There is a single 30-day allowance, not a separate 30-day allowance for each <i>FCA</i> certification function.
(2)	A spends 20 days in the <i>UK</i> performing an <i>FCA certification function</i> for Firm X (which is a <i>UK SMCR firm</i>) and wishes to spend another 20 days dealing with Firm X's <i>clients</i> in the <i>UK</i> from the overseas office of Firm X in which A is based.	The <i>rule</i> does not allow this. There is a single 30-day limit for both types of contact with the <i>UK</i> .
(3)	A wishes to spend 40 days dealing with Firm X's clients in the UK from the overseas office of Firm X (which is a UK SMCR firm) in which A is based. However the total time spent doing that will only be a few hours overall.	The <i>rule</i> does not allow this. If A deals with a <i>UK client</i> on one day, that uses up one day of the 30-day allowance, however short the time for which the contact lasts.
(4)	A spends 25 days in calendar year one for Firm X in the <i>UK</i> and 25 days in calendar year two. However A spends 40 days in the <i>UK</i> for Firm X between June in calendar year 1 and June in calendar year 2.	The <i>rule</i> does not allow this. This is because the 30-day annual allowance relates to any 12-month period and not just a calendar year.
(5)	Firm X is an overseas SMCR firm. A is employed by Firm X and is based in one of its offices outside the UK. A wants to work in the UK branch for 10 days.	The rule applies to overseas SMCR firms.
		It does not matter that A is not <i>employed</i> by the <i>UK branch</i> and instead is <i>employed</i> by another part of Firm X.
		It does not make a difference whether A is based in an office of Firm X in its home state or one in a third country.
(6)	A is based in one of Firm X's overseas of- fices. Firm X then decides to relocate A to the UK, where A will be certified to per- form an FCA certification function for Firm X. Firm X wants to rely on the tem- porary UK role rule for the first 30 days while Firm X goes through the certifica- tion process for A.	The <i>rule</i> does not allow this. A is no longer based in an overseas office and so the <i>rule</i> does not apply.
(7)	A is based in the overseas branch of a <i>UK SMCR firm</i> . A is to be promoted, so that A will be performing the material risk taker <i>FCA certification function</i> . Firm X wants to rely on the temporary <i>UK</i> role <i>rule</i> for the first 30 days while Firm X goes through the certification process for A.	The <i>rule</i> does not allow this because it does not apply to the material risk taker <i>FCA</i> certification function when it is performed for a <i>UK</i> SMCR firm.

How the temporary UK role rule applies

A reference in this table to an FCA certification function is to a function that would have been an FCA certification function but for SYSC 27.5.3R (temporary UK role).

Senior Management Arrangements, Systems and Contro

Chapter 28

Insurance distribution: specific knowledge, ability and good repute requirements



28.1 Minimum knowledge, ability and good repute requirements for carrying out insurance distribution activities

Application

- 28.1.1 R
- (1) This chapter applies to a firm with Part 4A permission to carry on insurance distribution activities.
- (2) SYSC 28.2 (except SYSC 28.2.1R(1)) does not apply to an *authorised* professional firm with respect to its non-mainstream regulated activities.
- 28.1.2

In this chapter, relevant employees are employees or other *persons*:

- (1) directly involved in the carrying on of the firm's insurance distribution activities; or
- (2) within the management structure responsible for the firm's insurance distribution activities; or
- (3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).

[Note: article 10(1) and the fifth paragraph of article 10(2) of the IDD]

28.1.3 R In this chapter 'employee':

- (1) is not restricted to an individual working under a contract of employment; and
- (2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the firm, under an arrangement between the firm and a third party; and
- (3) also includes appointed representatives and their employees.
- 28.1.4

Rules specified in sections ■ SYSC 28.2 (knowledge and ability), ■ SYSC 28.4 (record-keeping) and ■SYSC 28.5 (other requirements to consider) relate to the requirements in:

■ SYSC 3.1.6R:

SYSC 28/2

SYSC 28 : Insurance distribution: specific knowledge, ability and good repute requirements

Section 28.1 : Minimum knowledge, ability and good repute requirements for carrying out insurance distribution activities

- SYSC 5.1.1R;
- SYSC 3.2.20R, SYSC 9.1.1R and SYSC 9.1.1AR;
- TC 4.2 (Specified requirements for firms carrying on insurance distribution activities); and

article 22 of the AIFMD level 2 regulation.



28.2 Knowledge and ability requirements

Knowledge and ability requirements

- 28.2.1 R
- (1) A firm must ensure that it and each relevant employee possesses appropriate knowledge and ability in order to complete their tasks and perform their duties adequately.
- (2) A firm must ensure that it and each relevant employee complies with continued professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market.
- (3) A firm must ensure that each relevant employee completes a minimum of 15 hours of professional training or development in each 12 month period.
- (4) For the purposes of (3), a *firm* must take into account the:
 - (a) role and activity carried out by the relevant employee within the firm; and
 - (b) type of distribution and the nature of the products sold.

[Note: article 10(1) and the first, second and fourth paragraphs of article 10(2) of the *IDD*]

- G 28.2.2 Training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.[Note: recital 29 to the IDD1
- 28.2.3 R A firm must, including in relation to the relevant employee, demonstrate compliance with the following professional knowledge and competence requirements:
 - (1) for general insurance contracts:
 - (a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks covered by such policies;
 - (b) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
 - (c) minimum necessary knowledge of claims handling;
 - (d) minimum necessary knowledge of complaints handling;

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- (e) minimum necessary knowledge of assessing customer needs;
- (f) minimum necessary knowledge of the insurance market;
- (g) minimum necessary knowledge of business ethics standards; and
- (h) minimum necessary financial competence;

(2) for insurance-based investment products:

- (a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
- (b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;
- (c) minimum necessary knowledge of financial risks borne by policyholders;
- (d) minimum necessary knowledge of policies covering life risks and other savings products;
- (e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;
- (f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;
- (g) minimum necessary knowledge of the insurance market and the saving products market;
- (h) minimum necessary knowledge of complaints handling;
- (i) minimum necessary knowledge of assessing customer needs;
- (j) conflict of interest management;
- (k) minimum necessary knowledge of business ethics standards; and
- (I) minimum necessary financial competence; and

(3) for long-term insurance contracts:

- (a) minimum necessary knowledge of policies including the terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
- (b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant state;
- (c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, relevant tax law and relevant social and labour law;
- (d) minimum necessary knowledge of insurance and other relevant financial services markets;
- (e) minimum necessary knowledge of complaints handling;
- (f) minimum necessary knowledge of assessing consumer needs;
- (g) conflict of interest management;
- (h) minimum necessary knowledge of business ethics standards; and
- (i) minimum necessary financial competence.

[Note: article 10(2) last paragraph and annex I of the IDD]



28.3 Good repute

Good repute requirements

- 28.3.-1 R This section does not apply to a connected travel insurance intermediary.
- A firm must ensure that all the persons in its management structure and any staff directly involved in insurance distribution activities are of good repute.[Note: article 10(3) paragraphs 1 to 3 of the IDD]
- **28.3.2** G This includes but is not limited to those natural persons:
 - (1) that are directly involved in insurance distribution activities; or

- (2) within the management structure responsible for *insurance* distribution activities; or
- (3) within the management structure responsible for any staff directly involved in *insurance distribution activities*.

[Note: article 10(3) paragraphs 1 and 3 of the IDD]

28.3.3 R An *IDD* ancillary insurance intermediary must ensure that natural persons working in the *firm*, responsible for ancillary insurance distribution activities, are of good repute.

[Note: article 10(3) paragraph 4 of the IDD]

- 28.3.4 R In considering a *person's* repute the firm must at a minimum ensure that the *person*:
 - (1) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
 - (2) has not previously been declared bankrupt,

unless they have been rehabilitated in accordance with national law.

[Note: article 10(3) paragraph 1 of the IDD]

28.3.5 G (1) In the *United Kingdom* the following *persons* will be considered to have been rehabilitated:

- (a) in relation to a serious criminal offence, where the conviction is considered 'spent' under the Rehabilitation of Offenders Act 1974;
- (b) in relation to bankruptcy, where the bankruptcy has been discharged.
- (2) References to "serious criminal offences" are not restricted to offences considered to have been committed in or under the law of the United Kingdom.
- (3) A firm should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.
- G 28.3.6 A firm's systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (see ■ SYSC 3.2.13G and ■ SYSC 5.1.2G). This includes, among other things, the assessment of an individual's honesty.



28.4 **Record-keeping requirements**

Record-keeping requirements

28.4.1

R

R

A firm must:

- (1) establish, maintain and keep appropriate records to demonstrate compliance with this chapter; and
- (2) be in a position to provide to the FCA, on request, the name of the person responsible for the record-keeping requirement in (1).

[Note: article 10(8) last paragraph of the IDD]

28.4.2

A firm must:

- (1) make an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 month period;
- (2) retain that record for not less than 3 years after the relevant employee stops carrying on the activity; and
- (3) be in a position to provide any version of the record to the FCA on request.

[Note: article 10(2) second paragraph of the IDD]

28.4.3

A firm must not prevent a relevant employee from obtaining a copy of the records relating to that relevant employee which are maintained by the firm for the purposes of ■ SYSC 28.4.1R and ■ SYSC 28.4.2R.

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28.5 Other requirements to consider

- 28.5.1 In addition to the requirements in ■ SYSC 28:
 - (1) firms may have to take into account and comply with the requirements in the Training and Competence sourcebook (TC);
 - (2) article 22 of the AIFMD level 2 regulation and the competent employees rules (■ SYSC 3.1.6R and ■ SYSC 5.1.1R) set out a high-level competence requirement which every firm has to comply with; and
 - (3) it may be that the effect of the rules referred to in (1) and (2) is that firms have to meet requirements additional to those in ■ SYSC 28.

SYSC 28/10

Senior Management Arrangements, Systems and Contro

Chapter 28A

Regulated funeral plan activities: good repute requirements

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28A.1 Application

This chapter applies to a firm with respect to regulated funeral plan 28A.1.1 activities.

requirements



28A.2 Good repute

Good repute requirements

28A.2.1 R

A *firm* must ensure that all the *persons* in its management structure and any staff directly involved in the activities specified in ■ SYSC 28A.1.1R are of good repute.

28A.2.2 G

This includes but is not limited to those natural persons:

- (1) that are directly involved in the activities specified in SYSC 28A.1.1R; or
- (2) within the management structure responsible for the activities specified in SYSC 28A.1.1R; or
- (3) within the management structure responsible for any staff directly involved in the activities specified in SYSC 28A.1.1R.

28A.2.3 R

In considering a *person's* repute the *firm* must at a minimum ensure that the *person*:

- (1) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
- (2) has not previously been declared bankrupt,

unless they have been rehabilitated in accordance with national law.

28A.2.4 G

- (1) In the *United Kingdom* the following *persons* will be considered to have been rehabilitated:
 - (a) in relation to a serious criminal offence, where the conviction is considered 'spent' under the *Rehabilitation of Offenders Act* 1974:
 - (b) in relation to bankruptcy, where the bankruptcy has been discharged.
- (2) References to "serious criminal offences" are not restricted to offences considered to have been committed in or under the law of the *United Kingdom*.

(3) A firm should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.

28A.2.5

A firm's systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (see ■ SYSC 5.1.2G). This includes, among other things, the assessment of an individual's honesty.

requirements



28A.3 Record keeping requirements

Record keeping requirements

28A.3.1 R

A firm must:

- (1) establish, maintain and keep appropriate records to demonstrate compliance with this chapter; and
- (2) be in a position to provide to the FCA, on request, the name of the person responsible for the record-keeping requirement in (1).
- A firm must not prevent any person from obtaining a copy of the records relating to them which are maintained by the firm for the purposes of SYSC 28A.3.1R.

Section 28A.3 : Record keeping requirements

Senior management arrangements, Systems and Controls

SYSC TP 2
Firms other than common platform firms, insurers, managing agents and the Society

(2)	(3)	(1)	(5)	(6)
Material to which the transitional provision		Transitional provision	Transitional provision: dates in force	Handbook provisions: Coming into force
SYSC 8.1	R	If a firm other than a common platform firm, insurer, managing agent or the Society has in force on 1 April 2009 outsourcing arrangements which would be covered by SYSC 8.1 it need not amend those contracts to comply with these provisions but should comply with the new rules and guidance in respect of any outsourcing contracts which are entered into, or materially amended, on or after 1 April 2009.	1 April 2009 indefinitely	1 April 2009
The changes to SYSC set out in Annex D of the Al- ternative In- vestment Fund Managers Dir-	R	[expired]		
	The changes to SYSC 8.1 The changes to SYSC set out in Annex D of the Alternative Investment Fund	Material to which the transitional provision applies SYSC 8.1 R The changes R to SYSC set out in Annex D of the Alternative Investment Fund	Material to which the transitional provision Transitional provision SYSC 8.1 R If a firm other than a common platform firm, insurer, managing agent or the Society has in force on 1 April 2009 outsourcing arrangements which would be covered by SYSC 8.1 it need not amend those contracts to comply with these provisions but should comply with the new rules and guidance in respect of any outsourcing contracts which are entered into, or materially amended, on or after 1 April 2009. The changes R [expired] The changes R [expired]	Material to which the transitional provision applies SYSC 8.1 R If a firm other than a common platform firm, insurer, managing agent or the Society has in force on 1 April 2009 outsourcing arrangements which would be covered by SYSC 8.1 it need not amend those contracts to comply with these provisions but should comply with these provisions but should comply with the new rules and guidance in respect of any outsourcing contracts which are entered into, or materially amended, on or after 1 April 2009. The changes R [expired] Transitional provision: dates in force of the firm of the simple provision: dates in force on 1 April 2009 indefinitely 1 April 2009 indefinitely 1 April 2009 indefinitely 1 April 2009 outsourcing arrangements which would be covered by SYSC 8.1 it need not amend those contracts to comply with the new rules and guidance in respect of any outsourcing contracts which are entered into, or materially amended, on or after 1 April 2009. The changes R [expired]

(1)	(2)	(3)	(4)	(5)	(6)
	ective Instru- ment 2013				
2.3	SYSC 4.2.2 R to	R	[expired]		
[FCA]	SYSC 4.2.5 G, SYSC 9.1.2 R and SYSC 9.1.3 R				
2.4	SYSC 4.1.8A R to	R	[expired]		
[FCA]	SYSC 4.1.8E R and 4.1.9AR				

Senior Management Arrangements, Systems and Contro

SYSC TP 3 Remuneration codes

Part A		IFPRU Remuneration Code [deleted]				
i	Part E	}	UCIT	S Remuneration Code		
	(1)	(2) Material to which the transitional provision applies		(3) Transitional provision	(4) Transitional provision: date in force	(5) Handbook provisions: coming into force
	1	The UCITS remuneration principles	R	A management company need not apply the UCITS remuneration principles to any awards of variable remuneration until it commences its first full performance year starting on or after 18 March 2016.	From 18 March 2016 until 18 March 2017	18 March 2016

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Senior Management Arrangements, Systems and Controls

SYSC TP 5 Financial Services (Banking Reform) Act 2013: Certification and regulatory references

	Note	to the re	eader
5.1.1-2	G	(1)	SYSCTP 5 has not been amended to reflect changes in the FCA Handbook and Glossary since the beginning of 2018. This is because it is made up of transitional provisions that mostly expired before then.
		(2)	A small number of provisions may have effect beyond that date. To help the reader, the table in SYSC TP 5.1.1-1G explains how superseded <i>Glossary</i> terms in SYSC TP 5 should be interpreted.
5.1.1-1	G	Table:	meaning of superseded Glossary terms

FCA specified significant-harm function full scope regulatory reference firm Any of the following: (a) an SMCR banking firm; (b) a Solvency II firm; or (c) a large non-directive insurer. relevant authorised person specified significant-harm certification function Purpose of SYSCTP 5 SYSC G SYSCTP 5: 1 (1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSCTP 5.1; and (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references). SYSC SYSC TP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017. Application SYSC G (1) All of SYSCTP 5.2 and SYSCTP 5.5 apply to all firms. Certification: The transitional period	Term in SYSC TP 5		YSC TP 5	Term that has replaced it	Comment
firm (a) an SMCR banking firm; (b) a Solvency II firm; or (c) a large non-directive insurer. (c) a large non-directive insurer. (d) a SMCR banking firm; (e) a large non-directive insurer. (e) a large non-directive insurer. (f) a large non-directive insurer. SMCR banking firm specified significant-harm function Purpose of SYSCTP 5 SYSC G SYSCTP 5: (1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references). 5.1.2 G SYSCTP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017. Application SYSC G (1) All of SYSCTP 5 applies to relevant authorised persons. 5.2.1 (2) SYSCTP 5.1, SYSCTP 5.2 and SYSCTP 5.5 apply to all firms.			nificant-harr	m FCA certification function	
specified significant-harm function Purpose of SYSC TP 5 SYSC G SYSC TP 5: 5.1.1 (1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references). 5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017. Application SYSC G (1) All of SYSC TP 5 applies to relevant authorised persons. 5.2.1 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all firms.	full scope regulatory reference		tory referend	(a) an <i>SMCR banking firm</i> ; (b) a <i>Solvency II firm</i> ; or	22.2.1R (Obligation to obtain a regulatory reference). On 7 March 2017 (the date referred to in SYSC TP 5.4.2R), SYSC 22.2.1R applied to what were then called full scope regulatory ref-
Purpose of SYSC TP 5 SYSC G SYSC TP 5: 5.1.1 (1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references). 5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017. Application SYSC G (1) All of SYSC TP 5 applies to relevant authorised persons. 5.2.1 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all firms.	relevant	authori	sed person	SMCR banking firm	
SYSC G SYSC TP 5: (1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references). 5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017. Application SYSC G (1) All of SYSC TP 5 applies to relevant authorised persons. 5.2.1 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all firms.			ant-harm	certification function	
(1) explains how the certification regime described in SYSC 5.2 applies during the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references). 5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the <i>Handbook</i> that come into force in 2016 and 2017. Application SYSC G (1) All of SYSC TP 5 applies to relevant authorised persons. 5.2.1 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all firms.		Purpose	e of SYSC TP!	5	
ing the transitional period between 7 March 2016 and 7 March 2017 described in SYSC TP 5.3.1G; and (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references). 5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the Handbook that come into force in 2016 and 2017. Application SYSC G (1) All of SYSC TP 5 applies to relevant authorised persons. 5.2.1 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all firms.		G	SYSC TP 5:		
references). 5.1.2 G SYSC TP 5 deals with transitional issues that relate to changes to the <i>Handbook</i> that come into force in 2016 and 2017. Application SYSC G (1) All of SYSC TP 5 applies to <i>relevant authorised persons</i> . 5.2.1 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all <i>firms</i> .			(1)	ing the transitional period between 7	
come into force in 2016 and 2017. Application SYSC G (1) All of SYSC TP 5 applies to relevant authorised persons. 5.2.1 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all firms.			(2)		ling with SYSC 22 (Regulatory
SYSC G (1) All of SYSC TP 5 applies to <i>relevant authorised persons</i> . 5.2.1 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all <i>firms</i> .	5.1.2	G			
5.2.1 (2) SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 apply to all <i>firms</i> .		Applica	ation		
		G	(1)	All of SYSC TP 5 applies to relevant aut	horised persons.
Certification: The transitional period			(2)	SYSC TP 5.1, SYSC TP 5.2 and SYSC TP 5.5 a	pply to all <i>firms</i> .
		Certific	ation: The ti	ransitional period	

SYSC 5.3.1	G	The obligation in section 63E(1) of the Act for a relevant authorised person to take reasonable care to ensure that no employee of the firm performs an FCA specified significant-harm function, unless the firm has issued the employee with a valid certificate, does not apply until the end of the transitional period.
SYSC 5.3.2	G	However, other parts of the <i>Handbook</i> and the <i>Act</i> about <i>certification employees</i> apply in the transitional period.
SYSC 5.3.3	G	The table in SYSC TP 5.3.4G explains how the requirements of the <i>Handbook</i> and the <i>Act</i> about <i>certification employees</i> apply in the transitional period.
SYSC 5.3.4	G	Table: How the certification regime applies in the transitional period

5.3.4		
Provision in the Act or the Handbook	What that provision is about	How it applies in the trans- itional period
Definition of <i>certification</i> employee		During the transitional period, the <i>Glossary</i> definition of <i>certi-</i> <i>fication employee</i> covers every- one who would need a certific- ate to perform their job if the obligation to issue certificates was in force
SYSC 27.2.3G to SYSC 5.2.17G	Guidance about issuing certificates and fitness	Does not apply
SYSC 27.6.1R to SYSC 27.8.31G	Definition of who falls into the certification regime	Applies for the purpose of those parts of the <i>Handbook</i> and the <i>Act</i> that are in force as described in this table.
The parts of SYSC 4.5 dealing with the management responsibilities map	SYSC 4.5 says that the manage- ment responsibilities map should say if persons described or identified in the manage- ment responsibilities map are certification employees	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
COCON		Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
		This applies even if they have not been notified that:
		(a) COCON applies to them; or
		(b) of the <i>rules</i> that apply to them.
		Applies to those who would have been excluded from the certification regime by SYSC 27.5.1R (Scope: emergency appointments).
Section 64B of the <i>Act</i>	Firm should ensure that all persons subject to COCON are notified	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
	Firm should take reasonable steps to ensure that those persons understand how COCON applies to them.	

	the Act or the	What that provision is about	How it applies in the trans- itional period
Definition of <i>c</i> <i>employee</i>	ertification		During the transitional period, the <i>Glossary</i> definition of <i>certification employee</i> covers everyone who would need a certificate to perform their job if the obligation to issue certificates was in force
The parts of S with COCON b	UP 15.3 that deal oreaches	Notifying a significant breach of COCON to the FCA	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
Section 64C of 15.11	f the <i>Act</i> and SUF	Notifying the <i>FCA</i> of disciplinary action	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
Tran	sitional provision	s about regulatory references: Full so	cope regulatory reference firms
SYSC R 5.4.1	(1) If s, li e	on 7 March 2017 an employee (P) is ignificant-harm function for a releval gation under SYSC 22 (Regulatory refere when issuing a certificate for P foes not apply.	already performing a specified nt authorised person (A), the ob- erences) for A to obtain a refer-
	Р	aragraph (1) ceases to apply if there 's responsibilities forming part of tha 'on as compared to the position on 7	at specified significant-harm func-
5.4.2 R	plication fo	(Obligation to obtain a regulatory re r approval as an approved person th s not yet been finally determined by	at is made before 7 March 2017
SYSC G 5.4.3	v re	YSC 22.7.5G to SYSC 22.7.8G (Asking for vith a full scope regulatory reference eference from an ex-employer (B) and Iready given A.	firm (A) that is obliged to get a
		he <i>SYSC</i> material referred to in (1) ca iven before 7 March 2017.	an apply where the reference was
	fi ro la	one relevant factor is whether B is a referm. This is because the FCA requiremental regulatory references that applied to actory reference firms before 7 March YSC 22. As such, the existing reference	nents about <i>firms</i> asked to give <i>firms</i> that are not <i>full scope regu-</i> 2017 were similar to those in
	fi tl e	he main difference between the requall scope regulatory reference firm be that the range of functions for which note was widened. For example, there reference for a certification employee	efore and after 7 March 2017 is A is entitled to ask for a refer- e was no obligation to supply a
SYSC G 5.4.4	SYSC 22.2.4R before 7 M	(Obligation to revise references) doe arch 2017.	es not apply to references given
SYSC R 5.4.5	regulatory ments) doe) (disciplinary action) in Part One of streferences given by relevant authorises not require disclosure of breaches of the disciplinate to in question (F) if the disciplinate before:	sed persons and disclosure require- of individual conduct require-
	(1) (i	n the case of a <i>relevant authorised p</i>	person) 7 March 2016; or
		n the case of any other <i>full scope re</i> g 017;	gulatory reference firm) 7 March

		if the <i>firm's</i> records do not show whether the conduct that was subject to disciplinary action amounted to a breach of those individual conduct requirements.
	Tra	insitional provisions about regulatory references: All firms
SYS 5.5		If a <i>firm</i> (A) asks another <i>firm</i> (B) for a reference before 7 March 2017, SYSC 22 (Regulatory references) applies to B if B gives the reference after that date.
SYS 5.5		SYSC 22 applies to a reference requested or given after 7 March 2017 even if the matters covered by the reference occurred before then.

SYSC TP 6 Transitional Provision 6

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional pro- vision: dates in force	(6) Handbook provisions: coming into force
1.	SYSC 2.2.4	R	[expired]		
2.	SYSC 2.1.3A	R	[expired]		
3.	SYSC 2.2.6		[expired]		
4.	SYSC 2.1.3C	R	[expired]		
5.	SYSC 2.2.1R and SYSC 2.2.1AR	R	A firm must continue to retain the records it was required to make and retain under SYSC 2.2.1R before its disapplication to the firm under SYSC 2.2.1AR, for as long as SYSC 2.2.1R required before its disapplication.	From 1 January 2016 until the date that the records are no longer required to be retained.	1 January 2016
6	SYSC 27.7.3R (row 2) and SYSC 5.2.33R	R	[deleted]		
7	SYSC 14.1.2AR	R	The rule in column 2, as it was in force on 28 June 2018, continues to apply to a benchmark administrator, until that administrator becomes authorised or registered under the benchmarks regulation, or ceases to be authorised for administering a specified benchmark.	From 29 June 2018	Already in force

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

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

not apply. (3) SYSCTP 7.4.4R and SYSCTP 7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification). (4) SYSCTP 7.7 does not apply. A core SMCR firm, an enhanced scope SMCR firm and a limited scope SMCR firm other than a pure benchmark SMCR firm A pure benchmark SMCR firm A pure benchmark SMCR firm All applies, subject to the adjustments in SYSCTP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies). All applies, except that SYSCTP 7.2 (except as explained in the following paragraph), SYSCTP 7.3, SYSCTP 7.4.1R and SYSCTP 7.7.3G to SYSCTP 7.7.6G do not apply. The material in the row of SYSCTP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an SMCR firm. The material about obtaining references does not apply as the certification regime does not apply to a pure benchmark SMCR firm. All other firms Does not apply, except as follows. The material in the row of SYSCTP 7.2.4G (Table:	and	regula	atory references	
7.1.2 R Table: Application of SYSC TP7 Type of firm An SMCR insurance firm except one in the following row An SMCR insurance firm that is a Solvency II firm (including a large non-directive insurer) All applies except SYSC TP7.4.3G do not apply. (2) Subject to (3), SYSC TP7.4.4R and SYSC TP7.4.5G do not apply. (3) SYSC TP7.4.4R and SYSC TP7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification). (4) SYSC TP7.7 does not apply. All applies, subject to the adjustments in SYSC TP8 (Bank of England and Financial Services Act 2016: Application to claims management companies). All applies, except that SYSC TP7.2 (except as explained in the following paragraph), SYSC TP7.3, SYSC TP7.4.1R and SYSC TP7.3.G to SYSC TP7.3.G to SYSC TP7.4.6G do not apply. The material in the row of SYSC TP7.2.4G (Table: How the certification regime applies in the certification regime does not apply as the certification regime does not apply to a pure benchmark SMCR firm. All other firms Does not apply, except as follows. The material in the row of SYSC TP7.2.4G (Table: Does not apply, except as follows.	7.1	Applic	ation, purpose and definitions	
Type of firm An SMCR insurance firm except one in the following row An SMCR insurance firm that is a Solvency II firm (including a large non-directive insurer) All applies except as follows: (1) SYSCTP 7.4.2R to SYSCTP 7.4.3G do not apply. (2) Subject to (3), SYSCTP 7.4.4R and SYSCTP 7.4.5G do not apply. (3) SYSCTP 7.4.4R and SYSCTP 7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification). (4) SYSCTP 7.7 does not apply. All applies, subject to the adjustments in SYSCTP 8. (Bank of England and Financial Services Act 2016: Application to claims management companies). All applies, except that SYSCTP 7.2 (except as explained in the following paragraph), SYSCTP 7.3, SYSCTP 7.4.1R and SYSCTP 7.7.3G to SYSCTP 7.7.6G do not apply. The material in the row of SYSCTP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an SMCR firm. All other firms Does not apply, except as follows. The material in the row of SYSCTP 7.2.4G (Table: Does not apply, except as follows.	7.1.1	R	SYSCTP7 applies as set out in t	he table in SYSC TP 7.1.2R.
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plained in the following paragraph), SYSCTP 7.3, SYSCTP 7.4.1R and SYSCTP 7.7.3G to SYSCTP 7.7.6G do not apply. The material in the row of SYSCTP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an SMCR firm. The material about obtaining references does not apply as the certification regime does not apply to a pure benchmark SMCR firm. All other firms Does not apply, except as follows. The material in the row of SYSCTP 7.2.4G (Table:			hanced scope SMCR firm and a limited scope SMCR firm other than a pure	(Bank of England and Financial Services Act 2016:
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The material in the row of SYSC TP 7.2.4G (Table:				How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies to an SMCR firm. The material about obtaining references does not apply as the certification regime
The material in the row of SYSC TP 7.2.4G (Table:			All other firms	Does not apply, except as follows.
tion transitional period) whose first column is labelled "SYSC 22" about providing references applies to an SMCR firm.				The material in the row of SYSCTP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled "SYSC 22" about providing references applies
SYSC TP 7.6 applies.				SYSC TP 7.6 applies.

7.1	Α	pplicatio	on, purp	ose and definitions			
					SYSC TP 7.5 appl 7.5.	ies to the firms speci	fied in SYSCTP
7.1.3	G	SYSC	TP 7:				
		(1)		ns how the certifica n transitional perio		oed in SYSC 27 applies SC TP 7.2.1G;	during the certi -
		(2)		rtain transitional pr ith benchmark activ		ith SYSC 22 (Regulato	ory references)
		(3)	FCA Ha	a <i>ndbook</i> by the Inc 2018, the Individual	lividual Accountab Accountability (FC	ting to the amendmility (Dual-Regulated CA-Authorised Firms) orised Benchmark Fi	Firms) Instru- Instrument 2019
		(4)		sted and suppleme firms; and	nted by SYSC TP 8 ir	relation to certain (claims manage-
		(5)	does n that:	ot apply to a <i>firm</i> t	that becomes an <i>SI</i>	MCR firm after 31 Ma	arch 2021 except
				nay apply after then by SYSC TP 8; and	n in relation to cer	tain claims managem	nent firms co-
			Applic in pra	cation of SYSC TP 7) ctice the material a of the time period	as applying to "All bout employment	n the table in SYSCTI other <i>firms</i> " might a references will not n operates as describe	apply although ormally apply be-
7.1.4	G	(1)	The m	ain time period for	which SYSC TP 7 or	perates is 2018 to 20	21.
		(2)		are transitional pro on events occurrin		oply beyond that per od.	riod. They are
7.1.5	R		7, have			7.1.6R, where they a w of column 2 for th	
7.1.6	R	Table:	glossary	of bespoke terms	used in SYSCTP7		
					Part One: Gener	al	
		Define	d term	Meaning			
		comme ment S		the insurance firm	s commencement	SI and the solo firms	commencement
		insurar firms o mence SI	om-			ervices Act 2016 (Cor tions 2018 (SI 2018/9	
		solo fin comme ment S	ence-	No. 6 and Transition amended by The E	onal Provisions) Reg Bank of England ar and Transitional Pi	ervices Act 2016 (Coi gulations 2019 (SI 20 nd Financial Services rovisions) (Amendme	19/1136) as Act 2016 (Com-
		[delete	ed]	[deleted]			
					Part Two: Date:	s	
		(1)		(2)		(3)	(4) Meaning: Benchmark firms

	Defined term	Meaning: Insurers	Meaning: Others	
	certification transitional period	the one year period beginning on 10 December 2018 and ending on 10 December 2019 referred to in regulation 2 of the insurance firms commencement SI (Appointed days for the coming into force of section 21 and Schedule 4 for insurers)	the period beginning on the general commencement date and ending on 31 March 2021 (as referred to in regulation 2(6) of the solo firms commencement SI)	Does not apply
	general com- mencement date	10 December 2018	9 December 2019 (as re- ferred to in regulation 2(4) of the solo firms commence- ment SI)	7 December 2020 (as re- ferred to in regulation 2(5) of the solo firms commence- ment SI)
		imn (2) (Insurers) applies to an <i>SMCR insuran</i> iies to such <i>firms</i>).	ce firm (to the e	extent that
	Note (2): Colu and a <i>limited</i>	imn (3) (Others) applies to a core SMCR firm, scope SMCR firm but not to a pure benchma	an enhanced sc ork SMCR firm.	ope SMCR firm
	Note (3): Colu	ımn (4) (Benchmark firms) applies to a <i>pure k</i>	enchmark SMCI	R firm.
7.2	Certification: The co	ertification transitional period		
7.2.1	firm to take certification	pmmencement SIs, the obligation in section 6 reasonable care to ensure that no employee function, unless the firm has issued the employ until the end of the certification transition	of the <i>firm</i> perfloyee with a val	forms an FCA
7.2.2		ner parts of the FCA Handbook and the Act a certification transitional period.	about <i>certificatio</i>	on employees
7.2.3	G The table in	SYSC TP 7.2.4G explains how the requirement	s of the FCA Hai	ndbook and

	the Act about certification emp	hoyees apply in the certific	ation transitional period.
7.2.4 G	Table: How the certification r Provision in the Act or the Handbook	regime applies in the certifi What that provision is about	cation transitional period How it applies in the certification transitional period
	Glossary definition of certi- fication employee		During the certification transitional period, the Glossary definition of certification employee covers everyone who would need a certificate to perform their job if the obligation to issue certificates were in force

7.2.4	G	Table: How the certification	regime applies in the certifica	tion transitional period
		Provision in the Act or the Handbook	What that provision is about	How it applies in the certi- fication transitional period
		SYSC 27.2 and the parts of the <i>Act</i> on which it gives	Issuing certificates and fitness	Does not apply except as follows.
		guidance		A firm may issue a certificate during the certification transitional period. The reason it may wish to do this is so that when the requirement in the Act to issue certificates comes into force, the firm will have issued all the certificates that it needs to have issued to allow its certification employees to carry on their jobs after the certification transitional period.
				If it does issue a certificate during the certification transitional period, that certificate is valid after the end of the certification transitional period for the twelvemonth period provided for in section 63F of the Act (Issuing of certificates). That twelvemonth period runs from the date of issue, even though it was issued during the certification transitional period.
				This means that a certificate issued before 31 March 2020 will not be effective.
				All the provisions of the Act and the FCA Hand-book about certificates apply to a certificate issued in the certification transitional period.
		SYSC 27.3	Territorial scope of the cer- tification regime	
		SYSC 27.4	General material about the scope of the certification regime	
		SYSC 27.5	Exclusions for emergency and temporary appointments	Applies for the purpose of those parts of the FCA Handbook and the Act that are in force as de-
		SYSC 27.6	Other exclusions	scribed in this table

7.2.4	G	Table: How the certification	regime applies in the certifica	tion transitional period
		Provision in the Act or the Handbook	What that provision is about	How it applies in the certi- fication transitional period
		SYSC 27.7	Specification of functions	
		SYSC 27.8	Definitions of the FCA certification functions	
		SYSC 27.9	Material relating to several FCA certification functions	
		SYSC 22	Regulatory references	Except as explained later in this row about SYSC 22, the obligation to obtain a reference does not apply because the obligation to get a reference is trig- gered by issuing a cer- tificate.
				SYSC TP 7.4 has exemptions that apply after the certification transitional period .
				If a firm wishes to issue a certificate during the certification transitional period as described in the row of this table column 1 of which is titled "SYSC 27.2 and the parts of the Act on which it gives guidance" the obligation on the firm to ask for a reference and the obligation of other firms to give one apply.
		SYSC 25	SYSC 25 says that the management responsibilities map should say whether persons described or identified in the management responsibilities map are certification employees	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force

7.2.4	G	T	able: How the certification	regime applies in the certifica	ntion transitional period
		Р	rovision in the Act or the Handbook	What that provision is about	How it applies in the certi- fication transitional period
		(COCON		Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
					This applies even if they have not been notified:
					(a) that COCON applies to them; or
					(b) of the <i>rules</i> that apply to them.
					COCON also applies to those who would have been excluded from the certification regime by SYSC 27.5.1R (Emergency appointments) or SYSC 27.5.3R (Temporary UK role).
		S	Section 64B of the <i>Act</i>	Firm should ensure that all persons subject to COCON are notified	
				Firm should take reasonable steps to ensure that those persons understand how COCON applies to them.	Applies to everyone who would need a certificate to perform their job if the obligation to issue certific-
		C	The parts of SUP 15.3 that deal with <i>COCON</i> preaches	Notifying a significant breach of COCON to the FCA	ates was in force
			Section 64C of the <i>Act</i> and SUP 15.11	Notifying the FCA of disciplinary action	
7.3	Gene	ral ma	aterial about certification		
7.3.1	G	(1)	perform a function which	appointments) allows a <i>firm</i> to n would normally be an <i>FCA c</i> tation employee. There is a ma t.	ertification function with-
		(2)	count any time spent by	eximum time period in (1), the P before the general commen A certification function in (1).	
		(3)	the maximum time perio	nd of the certification transiti d in (1), the <i>firm</i> should take i i on transitional period perfor	into account any time spent
7.3.2	G	(1)		where P (as referred to in SYSC employee whose absence is rea	
		(2)		ly if the absence referred to ine or during the certification tr	
7.3.3	G	(1)		unctions only apply where the ction with the United Kingdon	

- (2) SYSC 27.5.3R (Temporary UK role (the 30-day rule)) allows a *person* (P) to carry on a function for a *firm* that would normally be an *FCA certification function* because of its connection with the *United Kingdom* without P becoming a *certification employee*. There is a time limit on how long the *firm* can allow P to do this.
- (3) When calculating the time limit in (2), the *firm* need not take into account any time spent by P before the **general commencement date** performing functions with a *United Kingdom* connection.
- (4) When a *firm*, after the end of the **certification transitional period**, is calculating the maximum time period in (1), the *firm* should take into account any time spent by P during the **certification transitional period** performing functions with a *United Kingdom* connection.

7.4 Transitional provisions about regulatory references

- 7.4.1 R (1) If on the **general commencement date** an *employee* (P) is already performing an *FCA certification function* for an *SMCR firm* (A), the obligation under SYSC 22 (Regulatory references) for A to obtain a reference when issuing a certificate (including reissuing a certificate) for P for that *FCA certification function* does not apply during, at the end of or after the end of the **certification transitional period**.
 - (2) If there has been a significant change in P's responsibilities forming part of that FCA certification function as compared to the position on the **general commencement date**, paragraph (1) ceases to apply from that time.
- 7.4.2 R SYSC 22.2.1R (Obligation to obtain a regulatory reference) does not apply to an application for approval as an *approved person* that:
 - (1) is made before the **general commencement date** and is continued in force by SUP TP 11.7 or SUP TP 11A.7 (In-flight applications: Conversion); or
 - (2) is made under SUP TP 11.15 or SUP TP 11A.15 (Applications of approved persons to take effect from the commencement date).
- 7.4.3 G SYSC 22.2.4R (Obligation to revise references) does not apply to references given before the **general commencement date**.
- 7.4.4 R Question (F) (disciplinary action) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) does not require disclosure of breaches of individual conduct requirements referred to in question (F) if:
 - (1) the disciplinary action referred to in that item took place before the **general commencement date**; and
 - (2) the *firm's* records do not show whether the conduct that was subject to disciplinary action amounted to a breach of those individual conduct requirements.
- 7.4.5 G The term individual conduct requirements in SYSC TP 7.4.4R is defined in Section One of Part Two of SYSC 22 Annex 1R.
- 7.4.6 R If:
 - (1) a *firm* (A) asks another *firm* (B) for a reference before the **general commencement date**; but
 - (2) B gives the reference after that date;
 - SYSC 22 (Regulatory references) in the form it is in at the time in (2) applies to B.
- 7.4.7 G SYSC 22 in the form it is in after the **general commencement date** applies to a reference requested or given after the **general commencement date** even if the matters covered by the reference occurred before then.
- 7.4.8 R [deleted]
- 7.5 Transitional provisions about benchmarks and the certification regime
- 7.5.1 G SYSC 27.6.4R excludes *benchmark activities* from the certification regime. SYSC TP 7.5 brings certain activities in relation to benchmarks back into the certification regime.

- 7.5.2 R SYSC 27 (Senior managers and certification regime: Certification regime) applies to a person with permission to carry on the regulated activity of administering a specified benchmark acting as such.
- As a consequence of the benchmarks regulation, the regulated activities referred to in 7.5.3 G SYSC TP 7.5.2R will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances).
- 7.5.4 The effect of SYSC TP 7.5.2R is that SYSC 27 continues to apply to firms which still have G permission to carry on the regulated activity in SYSC TP 7.5.2R when carrying on that activity.

7.6 Miscellaneous

Common platform requirements

- 7.6.1 G The Individual Accountability (Dual-Regulated Firms) Instrument 2018 renumbered material that used to be in SYSC 4 and SYSC 5 so that it now appears in SYSC 24 to SYSC 27. That instrument updated FCA Handbook cross-references accordingly.
- 7.6.2 G The requirements of chapters SYSC 24 to SYSC 27 no longer form part of the common platform organisational requirements and a reference to anything in SYSC 4 or SYSC 5 does not include any material referred to in SYSC TP 7.6.1G.

7.7 Qualification conditions for FCA-authorised firms

Firm classification: Effect of pre-commencement events

- 7.7.1 R If a firm is treated as a core SMCR firm, an enhanced scope SMCR firm or a limited scope SMCR firm immediately before the general commencement date for the purposes of SUP TP 11A (Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms) it retains that status after the general commencement date unless and until it changes under SYSC 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms).
- 7.7.2 G For example if before the general commencement date a firm has opted up to be an enhanced scope SMCR firm it remains an enhanced scope SMCR firm after the general commencement date. It may then elect to cease being an enhanced scope SMCR firm using a Form O under the procedure in SYSC 23 Annex 1 unless it also meets one of the other qualifications for being an enhanced scope SMCR firm.
- A calculation period, an averaging period or a reporting period as referred to in Part 7.7.3 G Eight of SYSC 23 Annex 1 (Part Eight: Financial qualification condition for being an enhanced scope SMCR firm) may begin or end before the general commencement date.

Financial qualification conditions for enhanced scope SMCR firms

7.7.4 R (1) This rule applies to a firm that:

(a)

does not meet one of the qualification conditions for being an enhanced scope SMCR firm in Part 8 of SYSC 23 Annex 1 (Financial qualification condition for being an enhanced scope SMCR firm) at the date in SUPTP 11A.23.3R(2) (Deciding which category a firm is in); but

meets it between that date and the general commencement date.

(b)

- (2) The one-year period referred to in Part 10 of SYSC 23 Annex 1 (When a firm becomes an enhanced scope SMCR firm) begins on the date the *firm* met that qualification condition, even though that date is before the **general commencement** date.
- 7.7.5 G The situation in SYSC TP 7.7.4R may apply to a *firm* because, for example, its accounting reference date falls between the date in SUP TP 11A.23.3R(2) and the **general commencement date**.

Consumer credit reporting

- 7.7.6 G (1) SYSC 23 Annex 1 8.15R deals with cases in which the period in relation to which the financial calculations are made to test whether a *firm* meets one of the financial qualification conditions for being an *enhanced scope SMCR firm* is adjusted because the relevant reporting requirements did not apply for the whole period. SYSC 23 Annex 1 8.16G gives examples of why this may happen.
 - (2) One example in SYSC 23 Annex 1 8.16G is that the relevant reporting requirements have not existed for the whole of the period. A particular example of this is consumer credit reporting requirements. At the time the financial qualification conditions for being an *enhanced scope SMCR firm* first came into force in 2019, the relevant reporting requirements had not existed for a full three years.

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

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

to ci		management companies
8.1		Application, purpose and definitions
8.1.1	R	Subject to SYSC TP 8.1.2R, SYSC TP 8 applies to a <i>firm</i> if it met the following conditions on the general solo firms' commencement date :
		(1) the only regulated activities in its permission were regulated claims management activities;
		(2) it still had a claims management temporary permission; and
		(3) it would have been an SMCR firm but for SYSC TP 8.2.1R.
8.1.2	R	SYSC TP 8.1.1R does not apply to SYSC TP 8.6.1R. Instead, SYSC TP 8.6.1R sets out the <i>firms</i> to which it applies.
8.1.3	G	SYSC TP 8:
		(1) deals with the application of certain aspects of the senior managers and certification regime to claims management firms brought into regulation under the Act by the Claims Management Order in April 2019;
		(2) explains how the transitional provisions in SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) are amended for certain claims management <i>firms</i> ;
		(3) in particular, describes a transition period (the individual transitional period) that applies for the purposes of the certification regime in place of the one described in SYSC TP 7; and
		(4) has certain other transitional provisions relating to the application of the senior managers and certification regime to claims management <i>firms</i> .
8.1.4	R	The terms in the first column of the table in SYSC TP 8.1.5R, where they appear in bold in SYSC TP 8, have the meaning in the corresponding row of column 2 for the purposes of SYSC TP 8.
8.1.5	R	Table: glossary of bespoke terms used in SYSCTP8

Part One: General		
Defined term	Meaning	
general solo firms' com- mencement date	9 December 2019	
individual transitional period	the period of fifteen <i>months</i> and twenty two <i>days</i> referred to in regulation 3(2) of the solo-regulated firms' commencement SI .	
	If a firm's permission is varied to include regulated activities in addition to regulated claims management activities, it means the shorter period (if any) provided for by regulations 3(2) and 3(3) of the solo-regulated firms' commencement SI.	

	Part One: General						
solo-regulated firms' com- mencement SI			No. am (Co	e Bank of England and Financial Services Act 2016 (Commencement 6 and Transitional Provisions) Regulations 2019 (SI 2019/1136) as ended by The Bank of England and Financial Services Act 2016 (Immencement No. 6 and Transitional Provisions) (Amendment) Relations 2020 (SI 2020/929)			
8.2				Exclusion from the SMCR			
8.2.1	R			n SMCR firm (and is included in Part Three of SYSC 23 Annex 1 (Definifirm)) for as long as			
		(1)		ly regulated activities in its permission are regulated claims man- nt activities; and			
		(2)	it only	lly has a claims management temporary permission.			
8.3		Tra	ansitiona	al period for certification for claims management firms			
8.3.1	G	The eff section no emp issued t	ect of th 63E(1) o oloyee of	the solo-regulated firms' commencement SI is that the obligation in of the Act, for an SMCR firm to take reasonable care to ensure that if the firm performs an FCA certification function unless the firm has loyee with a valid certificate, does not apply during its individual			
8.3.2	G	(1)	A firm's	s individual transitional period is the period that:			
			(a)	begins on (and includes) the date on which the firm's claims management temporary permission comes to an end under the Claims Management Order and the firm's full authorisation for regulated claims management activities comes into effect; and			
			(b)	ends on (and excludes) the day falling fifteen <i>months</i> and twenty two <i>days</i> later.			
		(2)		activities are included in a <i>firm's permission</i> part of the way the period in (1), its individual transitional period ends at once.			
		(3)	authori itional have no ments i fication	r activities are included in a <i>firm's permission</i> before it receives full sation for its <i>regulated claims management activities</i> , the transarrangements described in SYSCTP 8 do not apply and the <i>firm</i> will be individual transitional period . However, the transitional arrangent SYSCTP 7 (Bank of England and Financial Services Act 2016: Certinand regulatory references) will still apply if it is authorised before ch 2021.			
8.3.3	R	ployee' the firm by the though	' is amer n who po firm in ro the obli	individual transitional period the definition of "certification em- nded to mean an employee (as defined in section 63E of the Act) of erforms a certification function under an arrangement entered into elation to the carrying on by the firm of a regulated activity, even igation of the SMCR firm to issue a certificate under section 63F of ot yet apply to the firm.			
8.4				Application of SYSC TP 7			
8.4.1	R			of England and Financial Services Act 2016: Certification and regu- es) applies to a <i>firm</i> with the adjustments set out in this section.			
8.4.2	R			SYSC TP 7 to the "certification transitional period" is a reference to a I transitional period .			
8.4.3	R	(1)	ence to following	ence in SYSC TP 7 to the "general commencement date" is a referthe start of a <i>firm's</i> individual transitional period , except in the ng provisions:			
			(a)	SYSC TP 7.4.6R (Giving references); and			
			(b)	SYSC TP 7.4.7G (Form of references).			
	finition of "general commencement date" is unchanged in the prolisted in (1)(a) and (b).						

8.4		Application of SYSC TP 7
8.4.4	G	SYSC TP 8.3.1G applies in place of SYSC TP 7.2.1G (Certification: The certification transitional period).
8.4.5	G	SYSC TP 7.5 (Transitional provisions about benchmarks and the certification regime) is not relevant.
8.4.6	G	SYSC TP 7.7 (Qualification conditions for FCA-authorised firms) is not relevant as it covers <i>firms</i> that are <i>SMCR firms</i> on the general solo firms' commencement date .
8.5		Additional material about regulatory references
8.5.1	R	The provisions of SYSC 22 (Regulatory references), except those listed in SYSC 22.8.4R, apply to a <i>firm</i> excluded from being an <i>SMCR firm</i> by SYSC TP 8.2.1R as they apply to an <i>SMCR firm</i> .

SYSC TP 8/4

Updates to reflect CRD V

SYSC TP 9 Updates to reflect CRD V

	Material to which the transitional provision applies	R/G	Transitional Provision	Transitional Provision: dates in force	Handbook Pro- vision: coming into force
1	SYSC 19D.3		A firm subject to SYSC 19D.1.3 on 28 December 2020, must apply the rules and guidance in SYSC 19D.3 as it stood on the 28 December 2020 in relation to:	From 29 December 2020	29 December 2020
			(a) remuneration awarded, whether pursuant to a contract or otherwise, in relation to the performance year active on the 28 December 2020;		
			(b) remuneration due on the basis of contracts concluded before 29 De- cember 2020 which is awarded or paid in rela- tion to the performance year active on the 28 De- cember 2020; and		
			(c) remuneration awarded, but not yet paid, before 29 De- cember 2020, for ser- vices provided in the per- formance year active on the 28 December 2020.		

Operational resilience

SYSC TP 10 Operational resilience

•	(0) 11 (1 1				
(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions: dates in force
10.1	SYSC 15A.2.9	R	The provision in column (2) does not apply. However, a firm must ensure that, as soon as reasonably practicable after 31 March 2022, and in any event no later than 31 March 2025, it can remain within its impact tolerance for each important business service in the event of a severe but plausible disruption to its operations.	From 31 March 2022 to 31 March 2025	31 March 2022
10.2	SYSC 15A.4.1 and 15A.5.3	R	A firm is not required to have performed the mapping and testing exercises as required by the provisions in column (2) to the full extent of sophistication by 31 March 2022. A firm is required to have carried out the mapping and testing exercises as required by the provisions in column (2) by 31 March 2022 to the extent necessary to identify important business services, set impact tolerances and to identify any vulnerabilities in its operational resilience. After that date, a firm must continue the mapping and testing exercises so that it is able to remain within its impact tolerance for each important business service as soon as reasonably practicable, and in any event no later than 31 March 2025.	From 31 March 2022 to 31 March 2025	31 March 2022

Operational resilience

SYSC TP 11 MIFIDPRU Remuneration Code transitional provision

14111	וטו וענ	, itelliu	incration code transitional provision					
	Applic	ation						
11.1	R		11 applies to an undertaking to whom the <i>MIFIDPRU Remuneration Code</i> bly for the first time in the performance period beginning on or after 1 Jan-22.					
	Durati	on of trans	f transitional					
11.2	R	in the p	YSC TP 11 applies to <i>remuneration</i> awarded for performance or services provided the performance period before the performance period to which the <i>MIFIDPRU</i> emuneration Code first applies.					
11.3	G	only ap _l 19G.1.30 neratior	While the MIFIDPRU Remuneration Code comes into force on 1 January 2022, it only applies to performance periods that begin on or after that date (see SYSC 9G.1.30R). This transitional provision therefore addresses the position for remuleration for performance or services provided in any performance period prior to the performance period to which the MIFIDPRU Remuneration Code first applies.					
	Transi	tional						
11.4	R	(1)	Where an <i>undertaking</i> was subject to any of the remuneration codes listed in (2) immediately before the <i>MIFIDPRU Remuneration Code</i> came into force, that remuneration code (and any related reporting requirements) continues to apply in accordance with SYSC TP 11.2.					
		(2)	The remuneration codes referred to in (1) are:					
			(a) SYSC 19A (IFPRU Remuneration Code); and					
			(b) SYSC 19C (BIPRU Remuneration Code).					
11.5	G	(1)	The effect of the transitional provision in SYSC TP 11.4 is to preserve the application of the IFPRU and BIPRU remuneration codes to performance or services provided in any performance period prior to the performance period to which the MIFIDPRU Remuneration Code first applies.					
		(2)	This means, for example, that remuneration paid to a member of the <i>Remuneration Code staff</i> of an <i>IFPRU investment firm</i> for performance in a performance period from 2019 to 2020 would continue to be subject to the remuneration rules in SYSC 19A (the IFPRU Remuneration Code).					
		(3)	As the application of the transitional provision is determined by the date of the performance period in which the performance or services were provided (not when the remuneration was awarded or paid out) this would remain the case even if the member of the Remuneration Code staff was paid the remuneration after the MIFIDPRU Remuneration Code applied to a firm.					
11.6	R	tion cod	erence in SYSC TP 11.4R(1) to an <i>undertaking</i> being subject to a remunera- de includes the situation in which those <i>rules</i> include an obligation for a ensure a <i>parent undertaking</i> complies with certain requirements.					
11.7	G	to unreg position parent of SYSC TP	previous remuneration codes, certain obligations were not applied directly gulated parent undertakings but were applied indirectly through the important of an obligation on a firm within the group to ensure compliance by the undertaking. SYSC TP 11.6R makes clear that the transitional provision in 11.4R also applies to those indirect obligations on the parent undertaking. ans that where provisions in SYSC 19A or SYSC 19C applied on an indirect baparent undertaking before the MIFIDPRU Remuneration Code began to appropriate the second content of					

ply, those remain the relevant obligations for performance or services provided during the performance period in which the *MIFIDPRU Remuneration Code* began to apply.

SYSC TP 11/2

Schedule 1 Record keeping requirements

Sch 1.1 G

The aim of the guidance in the following table is to give the reader a quick over-all view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SYSC 2.2.1 R	Arrangements made to satisfy SYSC 2.1.1 R(ap- portionment) and SYSC 2.1.3 R(al- location)	Those ar- rangements	On making the ar- rangements and when they are updated	6 years from the date on which the re- cord is super- seded by a more up-to- date record
SYSC 3.2.20 R	Matters and dealings (including accounting records) which are the subject of requirements and standards under the regulatory system	Adequate	Adequate time	Adequate
SYSC 4.1.8DBR	The firm's most recent P2P resolution manual	As stated in rule	When the <i>P2P resolution manual</i> is made or updated	None speci- fied (but see SYSC 4.1.8DCR)
SYSC 9.1.1R	Business and in- ternal organisation	Details of the firm's orderly records of services and transactions undertaken	Within a reason- able time	Adequate
SYSC 9.1.1AR	Business and in- ternal organisation	Details of the firm's orderly records of services and transactions undertaken	Within a reason- able time	Adequate

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SYSC 9.1.2AR, SYSC 3.3.6R	Suitability or appropriateness in relation to an insurance-based investment product	(1) In relation to suitability:(a) why the recommendation is considered suitable; and	(1) From the date of:(a) recommendation; and	5 years
		(b)client information for suitability report and suitability report.	(b) thesuitability report.	
		(2)In relation to appropriateness, client information obtained in making assessment of appropriateness and the appropriateness assessment.	(2) Date of assessment.	
SYSC 10.1.6 R	Conflict of interest	Kinds of service or activity carried out by or on behalf of	Not specified	5 years

Handbook	Subject of record	Contents of record	When record must	Retention
reference	- Jubject of Tecolu		be made	period
		the firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.		
SYSC 10A.1.6R	Telephone conversations and electronic communications in relation to stipulated activities in <i>financial instruments</i> (see SYSC 10A.1.1R)	Those activities in financial instruments	At the time of the conversation or communication	Five years from the date of the conversation or communication unless the FCA requests a period of seven years
SYSC 14.1.53 R	Prudential risk management and systems and controls	Accounting and other records that are sufficient to enable the firm to demonstrate to the PRA: (1) that the firm is financially sound and has appropriate systems and controls; (2) the firm's financial position and exposure to risk (to a reasonable degree of accuracy); (3) the firm's compliance with the rules in GENPRU, INSPRU and SYSC.	Not specified	3 years, or longer as appropriate
SYSC 22.9.1R	Employment history of <i>employees</i>	As specified in the <i>rule</i> in column 1	Not specified	As specified in SYSC 22.9.2G
SYSC 25.8.1G	Past versions of a firm's manage-ment responsibil-ities maps	Past versions of a firm's manage- ment responsibil- ities maps	sysc 25.8.1G does not itself impose requirements but says that past ver- sions of a firm's management re- sponsibilities maps are an important part of its records	does not itself impose requirements but says that past versions of a firm's management responsibilities maps are an import-

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Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
				ant part of its records
SYSC 25.8.3R	Past versions of a firm's manage- ment responsibil- ities maps	Past versions of a firm's manage- ment responsibil- ities maps	None specified	10 years from the date super- seded, or 6 years for large non- directive insurers
SYSC 25.9.5R	Steps taken to comply with SYSC 25.9.4R (Informa- tion to be made available to new manager)	Adequate	Adequate time	None specified
SYSC 28.4.1R	Arrangements made to demonstrate compliance with knowledge, ability and good repute requirements in relation to the carrying out of insurance distribution activities.	As required to demonstrate compliance.	As required to demonstrate compliance.	As required to demonstrate compliance.
SYSC 28.4.2R	Matters dealing with knowledge and competence and completed continued professional training and development in relation to the carrying out of insurance distribution activities.	The firm must record the professional training or development completed by each relevant employee in each 12 month period.	As required to demonstrate compliance.	As required to demonstrate compliance but at least 3 years after the relevant employee stops carrying on the activity.

Schedule 2 Notification requirements

Sch 2.1 G

- (1) The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification requirements.
- (2) It is not a complete statement of those requirements and should not be relied on as if it were.

(3) Table

Handbook reference	Matter to be notified	Content of the noti- fication	Trigger event
[deleted]			
SYSC 19D.3.51R	The decision by the shareholders, members or owners of the <i>firm</i> to approve a higher maximum ratio between the fixed and variable components of total <i>remuneration</i>		Matter as described in SYSC 19D.3.51R

Schedule 3 Fees and other required payments

Sch 3.1 G

There are no requirement for fees or other payments in SYSC.

SYSC Sch 3/2

Schedule 4 Powers exercised

Sch 4.1 G [deleted]

Sch 4.2 G [deleted]

SYSC Sch 4/2

Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in *SYSC* contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

Sch 5.2 G

If a 'Yes' appears in the column headed 'For private person', the *rule* may be actionable by a 'private person' under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A 'Yes' in the column headed 'Removed' indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed 'For other person' indicates whether the rule may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the *rule* may be actionable is given.

Sch 5.4 G

Chapter/	Section/	Right of action under section 138D		
Appendix	Annex	For private person?	Removed?	For other person?
SYSC 2 and SYSC 3		No	YesSYSC 1 An- nex 1.1.12R	No
SYSC 4 to SYSC 10		No	Yes SYSC 1 Annex 1.2.19R	No
SYSC 11 to SYSC 14, SYSC 18 to SYSC 21		No	Yes SYSC 1.4.2 R	No
SYSC 15A		Yes	No, SYSC 1.4.2R	No
SYSC 22		Yes (apart from SYSC 22.8.1R and SYSC 22.9.1R -	No (apart from SYSC 22.8.1R and SYSC 22.9.1R -	No

Chapter/	Section/ Paragraph		Right of action under section 138D		
Appendix	Annex		For private person?	Removed?	For other person?
			see SYSC 1.4.2R)	see SYSC 1.4.2R)	
SYSC 23 to SYSC 28A			No	Yes, SYSC 1.4.2R	No

Schedule 6 Rules that can be waived

Sch 6.1 G [deleted]

Sch 6.1A G

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 64A (rules of conduct), 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*.

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