

Extending the Senior Managers Regime to Benchmark Administrators

Consultation Paper

CP19/31**

November 2019

How to respond

We are asking for comments on this Consultation Paper (CP) by **28 February 2020**.

You can send them to us using the form on our website at: www.fca.org.uk/cp19-31-response-form

Or in writing to:

Benchmarks Policy
Financial Conduct Authority
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Contents

1	Summary	3
2	The wider context	6
3	Background on the Senior Managers & Certification Regime	9
4	Applying the Senior Managers Regime to benchmark administrators	13
5	Conduct Rules	19
Annex 1		
	Questions in this paper	22
Annex 2		
	Cost benefit analysis	23
Annex 3		
	Compatibility statement	28
Annex 4		
	Abbreviations used in this paper	32

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1 Summary

Why we are consulting

- 1.1** Parliament introduced the Senior Managers and Certification Regime (SM&CR) to improve the governance and regulatory oversight of financial services firms. It was implemented for banks in 2016 and extended to insurers in 2018. We consulted in 2017 on rules for almost all other firms regulated under the Financial Services & Markets Act (FSMA). We published the near-final rules in 2018, which are due to come into force in December 2019.
- 1.2** Parliament has decided that the SM&CR should also apply to all benchmark administrators. As benchmark administrators are a new category of authorised firms introduced by the EU Benchmarks Regulation (BMR), the Treasury and FCA have agreed a later commencement date for benchmark administrators that do not undertake any other regulated activities. We are not proposing to apply the Certification Regime to benchmark administrators, so the Senior Managers Regime (SMR) will come into force for these benchmark administrators on 7 December 2020.
- 1.3** This consultation sets out how we propose to apply the regime to benchmark administrators that do not undertake any other regulated activities. It also contains some consequential changes to the regime which will be relevant for Appointed Representatives and their principals.

Who this applies to

- 1.4** Who needs to read this whole document?
- Benchmark administrators that do not undertake any other regulated activities
- 1.5** Who else is affected by this consultation?
- Appointed Representatives and their principals

The wider context of this consultation

- 1.6** The SM&CR was created in response to the 2008 banking crisis to improve standards in the banking sector. The government legislated to extend the SM&CR to all financial services firms in 2015.

What we want to change

- 1.7** The SM&CR is designed to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence. It is a key part of delivering our cross-sector priority on firms' culture and governance as set out in our [2019/20 Business Plan](#). Under the SM&CR, firms will not be required to change their governance structures or to hire employees to fill specific functions. Instead, it will clarify and reinforce the allocation of responsibilities in firms' existing governance models. This should help drive a cultural change across financial services.

Outcome we are seeking

- 1.8** Individual Senior Managers have an important role to play in establishing and embedding cultures in firms. The SM&CR should encourage and empower Senior Managers to ensure healthy firm cultures by being more precise about individual responsibilities within firms and strengthening existing governance structures. This should in turn improve decision-making and make it easier to identify misconduct.
- 1.9** The SM&CR contains Conduct Rules which introduce basic standards for how employees should behave. These include acting with due skill, care and diligence and observing proper standards of market conduct. Applying these rules widely to most employees in financial services firms should improve individual accountability and increase awareness of conduct issues. These Conduct Rules are explained more fully in Chapter 5.
- 1.10** These changes are equally important for benchmark administrators, who play an important role in financial markets. In applying the regime to benchmark administrators, we want to ensure the regime reflects the diverse business models in the UK market, and is proportionate to their size and complexity.

Measuring success

- 1.11** We will evaluate the success of these reforms by comparing the outcomes against the policy's aims. The SM&CR is designed to:
- ensure Senior Managers clearly understand and can demonstrate where responsibility lies
 - encourage employees to take personal responsibility for their actions and to improve conduct at all levels
 - support and promote healthy cultures within firms, driving change across financial services

Next steps

- 1.12** We want to know what you think of our proposals. Please send us your feedback by 28 February 2020. You can do this using the form on our website or by writing to the address on page 2. We will consider all the feedback received before publishing final rules next year.
- 1.13** Until the new rules come into force in December 2020 the Approved Persons Regime (APR) will continue to apply in full to benchmark administrators, and we will continue to process applications for Controlled Functions.

2 The wider context

- 2.1** Following the 2008 financial crisis, the Parliamentary Commission on Banking Standards published a report on professional standards and culture in the UK banking sector. This report examined a series of failures, including LIBOR manipulation, mis-selling and poor practice. It concluded that poor governance and a lack of personal responsibility had been key drivers of misconduct.
- 2.2** The Commission's recommendations included replacing the APR with a new accountability regime for senior managers. In response, the SM&CR was introduced for banks in 2016 and extended to insurers in 2018. It ensures that the most important responsibilities in financial services firms are allocated to specific, senior individuals who can be held fully accountable for them. It also aims to improve culture and conduct across all sectors by introducing new standards of personal conduct.
- 2.3** In 2016, Parliament amended FSMA to extend the SM&CR to all FSMA-authorized firms that are not regulated by the Prudential Regulation Authority (PRA). The government argued that this would ensure a consistent approach across different sectors. It would also provide a more effective and proportionate means of raising standards of conduct across the financial services industry. Extending the regime requires the FCA to consult on applying the SM&CR to all firms providing financial services under FSMA. In 2017, we consulted on rules for most FSMA-authorized firms that are not regulated by the PRA. These rules will come into effect for approximately 47,000 firms in December 2019.
- 2.4** Benchmark administrators are a new category of authorised firm introduced by the EU Benchmarks Regulation. To reflect this, the Treasury and FCA have agreed a later commencement date for the SMR of 7 December 2020 for benchmark administrators that do not have permission to carry on any other regulated activity. This Consultation Paper is consulting on how the SMR should be extended to these firms.

How it links to our objectives

Consumer protection

- 2.5** By improving culture and governance within benchmark administrators, the SMR should drive better decision-making and increase public confidence in financial services. This ultimately benefits consumers that rely on products and services which reference benchmarks.

Market integrity

- 2.6** The SMR is expected to strengthen market integrity by ensuring senior managers in benchmark administrators are accountable for their firms' financial services activities and exercise oversight over them. This should make misconduct easier to identify and enforce against. The Conduct Rules should also drive better standards of behaviour amongst individuals which will support market integrity.

Wider effects of this consultation

- 2.7** This consultation also clarifies the parts of the Handbook that will now apply only to Appointed Representatives.

What we are doing

Categorising benchmark administrators under the SMR

- 2.8** We propose that all benchmark administrators should be classified as 'Core' firms in the first instance. This reflects the importance of their services to financial markets and the real economy. It also reflects the potential for harm to markets if unhealthy cultures and poor standards of personal conduct develop.
- 2.9** However, we know the Core regime may not be appropriate for all benchmark administrators. To reflect this, we propose that benchmark administrators should use the FCA's existing waiver process to apply for 'Limited Scope' categorisation if appropriate. We give more detail on this in Chapter 4.

The Senior Manager Functions

- 2.10** Under the Core regime, benchmark administrators may be required to allocate up to 4 Senior Manager Functions (SMFs) depending on their governance structure. These are the Chair, Partner, CEO and Executive Directors. These functions will only apply to staff currently in these roles and firms will not be required to hire new employees to fill them. Each Senior Manager will be required to have a Statement of Responsibilities that clearly sets out the areas they are responsible for.
- 2.11** Senior Managers holding these functions will require our approval to perform their roles. As with the regime for other FCA regulated firms, firms will be required to conduct a criminal record check for each Senior Manager as part of their due diligence. Following this, benchmark administrators will have to confirm annually that these Senior Managers are fit and proper to perform their role. They will also be required to request and provide regulatory references when Senior Managers move firm.
- 2.12** Core firms will also be required to allocate specific responsibilities known as Prescribed Responsibilities. These ensure that there is a Senior Manager accountable for key conduct and prudential risks.
- 2.13** Only one type of SMF, the Limited Scope Function, will apply to a firm which has a waiver for Limited Scope categorisation. Limited Scope firms will not be required to implement any Prescribed Responsibilities.

The Certification Regime

- 2.14** As set out in Policy Statement 17/28, we do not propose to implement the Certification Regime for benchmark administrators. This is because the BMR requires administrators to ensure employees are fit and proper and this should achieve a similar outcome to the Certification Regime.

The Conduct Rules

- 2.15** In line with the extension of the SM&CR to all FSMA-authorized firms, we propose that the Conduct Rules should apply widely to almost all employees at benchmark administrators. This should improve individual accountability and increase awareness of conduct issues across firms. The Conduct Rules will apply to any regulated or unregulated financial service activities that employees at benchmark administrators undertake.
- 2.16** However, we are proposing to tailor the Conduct Rules for benchmark administrators subject to the Annex II regime under the BMR ('Annex II firms'). Under our proposals, most of the Conduct Rules will only apply to the regulated financial services activities of these firms. This includes the rules on disclosure to regulators. This would be in line with how our Principles of Business (PRIN) apply to these firms and reflect their specific treatment under the BMR.

Changes that affect Appointed Representatives and their principals

- 2.17** After the SM&CR is extended to FCA regulated firms on 9 December 2019, the existing Approved Persons Regime will no longer apply to firms authorized under FSMA. The only set of market participants the APR will apply to is Appointed Representatives. We propose some changes to our rules to make this clear. For more information on these changes please see the Handbook instrument.

Equality and diversity considerations

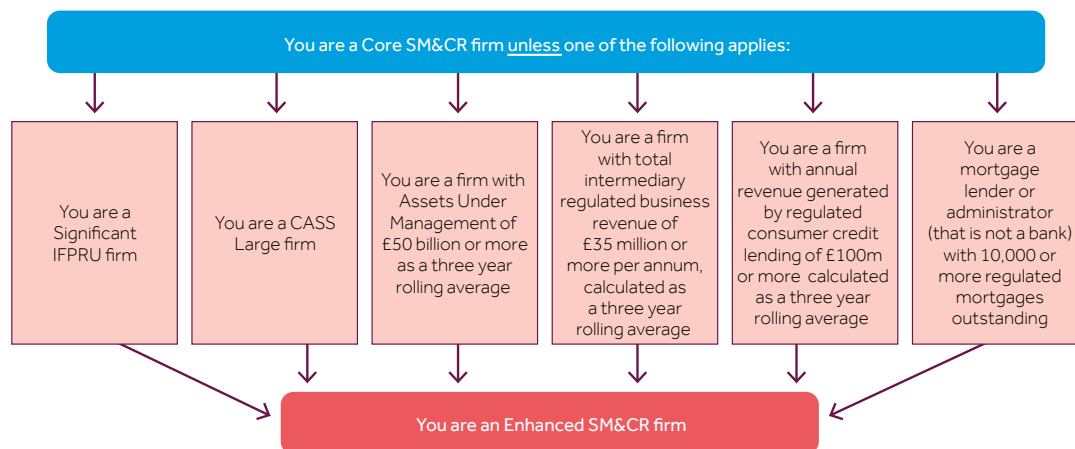
- 2.18** We have considered the equality and diversity issues from the proposals in this Consultation Paper.
- 2.19** Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules.

3 Background on the Senior Managers & Certification Regime

Overview of the SM&CR

- 3.1** By law, the SM&CR applies at a legal entity level. It has three main components:
- **The Senior Managers Regime (SMR)** – this contains the requirements for those performing certain senior roles ('Senior Managers'). Senior Managers must be approved by us before carrying out their role, and firms must assess whether they are fit and proper on an ongoing basis. Each Senior Manager will also be required to have a Statement of Responsibilities and, in some cases, the firm will need to allocate a Prescribed Responsibility to them.
 - **The Certification Regime** – this requires firms to certify at least once a year that individuals performing certain roles are fit and proper to do the job. These individuals will not need our approval. Individuals performing Certification Functions, including Executive and Non-Executive Directors, will appear on a central Directory. As explained below, we do not propose to apply the Certification Regime to benchmark administrators.
 - **The Conduct Rules** – this contains both Individual Conduct Rules and Senior Manager Conduct Rules. The individual rules are basic standards of behaviour that apply to everyone performing financial services activities in a firm. The Senior Manager Conduct rules are additional rules that apply to all Senior Managers and certain other senior staff.
- 3.2** Under the SM&CR firms are classified into three categories: Enhanced, Core or Limited Scope. Enhanced firms are a small proportion of FCA-regulated firms that have to apply extra rules because they are large and/or complex. There are 6 criteria for being classified as an Enhanced firm, summarised in the diagram below. In line with the regime for FCA regulated firms, benchmark administrators will be able to opt up to the Enhanced Regime if they want to by submitting a form to us.

Table 1: Criteria for Enhanced Firms



3.3 The Core regime has a baseline of SM&CR requirements. Firms we have categorised as Limited Scope firms will be exempt from some of the Core requirements and will typically have fewer Senior Management Functions to implement.

The Senior Managers Regime

3.4 Under the regime for FCA regulated firms, Core firms can allocate up to 6 SMFs within their organisation. These include 4 Governing Functions and 2 Required Functions.

3.5 Under FSMA, every Senior Manager must have a Statement of Responsibilities which sets out what they are accountable for in the firm. Firms will need to send this to us when a Senior Manager is being approved or when there is a significant change to a Senior Manager’s responsibilities.

3.6 The Statement of Responsibilities will make clear where a Senior Manager’s Duty of Responsibility lies. Under this duty, a Senior Manager could be held accountable if a firm breaches one of our requirements in an area for which they are responsible. In considering a breach, we will consider whether the Senior Manager could reasonably have been expected to prevent the breach happening. More information on enforcing the Duty of Responsibility in FCA regulated firms and insurers can be found in [Policy Statement 18/16](#).

3.7 Individuals performing Senior Manager Functions at firms require our approval. In addition, FSMA requires firms to confirm each year that these individuals are fit and proper to do their job. The FIT module of our Handbook gives guidance on how firms should undertake this assessment and includes factors for them to consider. These include the individual’s honesty, integrity and reputation, alongside their financial soundness and capability. We have also extended the requirement to assess an individual’s fitness and propriety to Non-Executive Directors who are not Senior Managers.

3.8 The SM&CR requires firms to collect certain evidence when assessing candidates for Senior Management roles. This includes criminal records checks and regulatory references for Senior Managers.

Criminal records checks for Senior Managers

3.9 Firms are required to undertake a criminal records check as part of each Senior Manager application for approval. This requirement also applies to Non-Executive Directors who are not Senior Managers where a fitness requirement already applies to them. This means firms will have to register with the Disclosure and Barring Service (DBS) who run the checks. However, smaller firms may use an umbrella organisation as an intermediary.

Regulatory references for Senior Managers

3.10 Under the SM&CR, firms are required to ask an individual's previous employers for a reference when they apply for a Senior Manager role. This also applies to Non-Executive Directors who are not Senior Managers. This allows information to be shared in a standard template and should help firms make better-informed decisions about candidates. Firms must disclose certain information going back 6 years. This includes details of any disciplinary action taken due to breaches of the Conduct Rules and any findings that the person was not fit and proper. Firms must update this where new, significant information comes to light.

3.11 The rules do not require criminal records checks or regulatory references for non-approved Executive or Non-Executive Directors at Limited Scope firms. The [guide](#) for FCA regulated firms gives further detail on the requirements for Senior Managers under the SM&CR.

Conduct Rules

3.12 The FCA has powers to apply Conduct Rules to all employees working in authorised firms. Under the SM&CR there are 2 tiers of Conduct Rules that apply to all firms: Individual Conduct Rules and Senior Manager Conduct Rules.

3.13 These rules are designed to promote healthy cultures within firms and encourage behaviours that reduce harm. They apply broadly to reflect the range of staff that can potentially cause harm in financial services firms. These basic standards of good personal conduct are in the COCON module of our Handbook and are summarised below.

Table 2: Conduct Rules for SM&CR Firms

First Tier – Individual Conduct Rules	
1	You must act with integrity
2	You must act with due care, skill and diligence
3	You must be open and cooperative with the FCA, PRA and other regulators
4	You must pay due regard to the interests of customers and treat them fairly
5	You must observe proper standards of market conduct
Second Tier – Senior Manager Conduct Rules	
SC1	You must take reasonable steps to ensure the business of the firm for which you are responsible is controlled effectively
SC2	You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system
SC3	You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively
SC4	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

3.14 In most cases, the Conduct Rules will apply to employees of UK firms in two situations: where activities are carried out from the UK or where they involve dealing with UK clients. This means that if a person based overseas does not deal with UK clients, the Conduct Rules will not apply to them. For certain senior staff, the rules apply on a global basis.

4 Applying the Senior Managers Regime to benchmark administrators

4.1 This chapter outlines our proposals for applying the SMR to benchmark administrators. It covers:

- our proposal not to apply the Certification Regime
- categorising the benchmark administrator population under the SMR
- how the SMR, including Senior Management Functions and Prescribed Responsibilities, will apply to Core benchmark administrators
- moving from Core to Limited Scope classification
- moving from the APR to the SMR

Applying the Certification Regime

4.2 As set out in [Policy Statement 17/28](#), we do not propose to implement the Certification Regime for benchmark administrators. This is because the BMR contains requirements on administrators to ensure employees are fit and proper. This should achieve a similar result. We also do not propose to require non-Certification staff who would otherwise be captured, including Executive and non-Executive Directors, to be included in our Directory.

Categorising benchmark administrators under the SMR

4.3 The 6 criteria for Enhanced firms under the regime for FCA regulated firms will apply to benchmark administrators. However, we do not expect any benchmark administrators that do not undertake any other regulated activities will meet these thresholds based on the authorised population.

4.4 We propose that all benchmark administrators should automatically be subject to the Core SMR regime. Benchmark administrators provide critical market infrastructure and the pricing of many financial instruments and contracts depends on the accuracy and integrity of benchmarks they administer. As a result, healthy cultures and high standards of personal conduct are important in preventing harm to markets and consumers.

4.5 The largest benchmark administrators are global firms whose benchmarks can have a significant impact on our ability to ensure markets work well. Benchmark manipulation scandals have shown the impact on markets of poor controls and weak governance around the benchmarking process. We consider that making individuals within benchmark administrators more responsible and accountable for their conduct is an important part of ensuring that markets and consumers can have confidence in the benchmarks they administer.

- 4.6** The SMR is a domestic regime that is consistent with, and supports the aims of, the BMR. We consider that SMR requirements, such as the prior approval of Senior Managers, complement the BMR by ensuring firms' governance structures support benchmark integrity. Where areas of the SMR conflict with the harmonised field under the BMR, such as the Certification Regime, we have adapted the regulatory framework for benchmark administrators.
- 4.7** Under our proposals, all benchmark administrators will have to comply with the Senior Managers Regime and the Conduct Rules. We give more detail on these proposals below.

Applying the SMR to firms that are subject to the Annex II regime under the BMR

- 4.8** The BMR places benchmarks into different categories. Regulatory requirements for the firms administering these benchmarks depend on the types of benchmark they administer.
- 4.9** Commodity benchmarks are subject to the requirements set out in Annex II of the Regulation unless they are regulated data benchmarks, based on submissions the majority of which are from supervised entities, or are critical benchmarks and the underlying asset is gold, silver or platinum. Under the Annex II regime, the requirements around benchmark integrity and reliability in Title II do not apply, apart from the provisions on outsourcing.
- 4.10** We have considered how we should treat firms subject to the Annex II regime under the BMR when applying the SMR. This includes where the activities of these firms include some journalistic activities. We consider that our proposals for applying the SMR are proportionate, compatible with EU and human rights law, and do not impact freedom of the press. In administering benchmarks that meet the definition of a benchmark under the BMR, Annex II firms are engaging in regulated financial services where our statutory objectives, and so our powers, are engaged. To reflect the position of Annex II firms, we propose to tailor the application of the Conduct Rules for these firms. We explain these proposals in more detail in paragraphs 5.8-5.11.
- 4.11** We have concluded that the Core regime is the correct default for these firms. This is because their services can significantly affect our ability to discharge our objectives of protecting and enhancing market integrity and protecting consumers in regulated financial markets. However, the existing waiver process will provide a clear route for these firms to move to Limited Scope classification if they can demonstrate they have met the relevant tests. We explain the waiver in more detail in paragraphs 4.19-24.

The Senior Managers Regime for Core benchmark administrators

- 4.12** Due to the interplay with the BMR, we propose to adjust how the Senior Managers Regime will apply to benchmark administrators.

- 4.13** We propose that under the Core regime, the SMFs that will apply to benchmark administrators will be the 4 Governing Functions. These are the Chair, Partner, CEO and Executive Directors, depending on the firm's governance structure. Senior Managers that are carrying out these functions will require our approval. However, we will not require benchmark administrators to allocate the two Required Functions: SMF16 – Compliance Oversight or SMF17 – Money Laundering Reporting Officer. This is because these parts of the Handbook do not apply to firms that only have permission for administering a benchmark due to overlap with the BMR.
- 4.14** The Governing Functions will apply only if a firm has someone doing these jobs. Benchmark administrators are not required to change their existing governance structure or to hire new staff to fill the relevant SMFs. For benchmark administrators that have already been authorised, this is likely to mean that fewer Senior Managers require our approval than under the APR.
- 4.15** We propose that Core benchmark administrators will also be required to allocate 3 Prescribed Responsibilities:
- (a)** performance by the firm of its obligations under the SMR, including implementation and oversight
 - (b-1)** performance by the firm of its obligations in respect of notifications and training of the Conduct Rules and
 - (d)** responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime.
- 4.16** Firms should allocate each Prescribed Responsibility to the Senior Manager who is the most senior person responsible for that activity or area. This individual will need to have sufficient authority and an appropriate level of knowledge and competence to carry out the responsibility properly. We give an overview of how the SMFs would apply to Core and Limited Scope firms below.

Table 3: SMFs for Core Benchmark Administrators

Governing Functions	
Function Name	Description
SMF1 – Chief Executive	This is the person(s) with responsibility, under the immediate authority of the governing body, for the conduct of the whole of the business (or relevant activities). Although the Chief Executive is the most senior member of an executive team, it does not mean that a firm's governing body cannot allocate specific responsibilities to other Senior Managers.
SMF3 – Executive Director	A director of a firm, other than a Non-Executive Director
SM27 – Partner	A partner in a firm, other than a limited partner in a partnership registered under the Limited Partnership Act 1907.
SMF9 – Chair	The person with responsibility for chairing, and overseeing the performance of the role of, the governing body of the firm.

Table 4: Prescribed Responsibilities for Core Benchmark Administrators

Description Handbook PR Ref.	Description
(a)	Performance by the firm of its obligations under the SMR, including implementation and oversight
(b-1)	Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules
(d)	Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime

Table 5: SMFs for Limited Scope Benchmark Administrators

Required Functions	Description
SMF29 – Limited Scope Function	The most senior person in a firm with day-to-day responsibility for benchmark administration activities

4.17 FSMA requires benchmark administrators, like all other firms, to satisfy themselves at least annually that the Senior Managers in their firms are fit and proper. As with our rules for other FCA regulated firms, they will also be required to request and provide regulatory references in the prescribed template when a Senior Manager moves from one organisation to another. They will also have to update these when they have any new, significant information about the Senior Manager.

4.18 We will also require Core benchmark administrators to undertake criminal records checks when appointing Senior Managers and Non-Executive Directors in the firm. We will not require benchmark administrators that qualify as Limited Scope to undertake criminal records checks for any non-approved Executive or Non-Executive Directors or to ask for regulatory references for them. However, they will be required to carry out these checks when appointing a Senior Manager for the Limited Scope Function and give a reference if asked to.

Moving to Limited Scope classification

- 4.19** We know that the population of benchmark administrators have different business models and governance structures. They range from global firms with large senior management teams whose benchmarks have a significant impact on regulated markets and the real economy, to smaller firms with a few staff who produce benchmarks that have little impact on these.
- 4.20** To reflect this, we propose that benchmark administrators should use our existing waiver process to apply to move from the Core to Limited Scope, if appropriate. Firms applying for a waiver would be required to demonstrate that complying with the Core regime would be unduly burdensome or would otherwise not achieve the rules' purpose.
- 4.21** Our view is that the waiver option would generally be met by:
- small benchmark administrators with simple business models whose organisational structure would not support applying the Core regime, and
 - large firms which principally carry on non-regulated activities, whose senior management team is far removed from the regulated activity, and which do not administer benchmarks that have a significant impact on UK market integrity or UK consumers
- 4.22** Benchmark administrators that successfully apply for a waiver to move from Core to Limited Scope will be required to allocate the SMF29 Limited Scope Function to the most appropriate person at the firm. Other SMFs (SMF16 – Compliance Oversight and SMF17 – Money Laundering Reporting Officer) will also not apply for Limited Scope benchmark administrators. Limited Scope benchmark administrators will not be required to implement any Prescribed Responsibilities.
- 4.23** We propose to adjust how the Limited Scope Function applies to benchmark administrators that are granted a waiver. This is because under our current rules the function relates to parts of SYSC that are not appropriate for benchmark firms because they cover similar ground to the BMR. We expect that the waiver would adjust the definition of SMF29 so that it covers the most senior person or persons in a firm with day-to-day responsibility for benchmark administration activities.
- 4.24** We consider that this approach would be more proportionate for small benchmark administrators. It would also be more appropriate for administrators whose regulated activity is only a small part of their business, and where the organisation's structure would capture individuals that are very far removed from the benchmarking activities so long as the regulated activity does not have a significant impact on UK market integrity.

Moving from the APR to the SMR

- 4.25** The APR will continue to apply in full for benchmark administrators until the SMR comes into force in December 2020. We will still process applications for Controlled Functions under the APR until that date.
- 4.26** Ahead of the implementation date, firms already under the APR will have most of their Controlled Functions automatically converted to the corresponding SMFs under the

SMR. However, in some cases firms will need to complete a form to convert some individuals. More information on the SMR and the conversion from the APR can be found in the [SM&CR Guide](#) for FCA regulated firms, which we will update for benchmark administrators after we have published the final rules.

Questions for consultation

- Q1:** Do you agree with our assessment that benchmark administrators are unlikely to meet the criteria for Enhanced firms under the regime?
- Q2:** Do you agree that all benchmark administrators should be subject to the Core regime under the SMR in the first instance? If not, please explain why.
- Q3:** Do you agree that our waiver-based approach allows enough flexibility for benchmark administrators with different governance models? If not, please explain why.
- Q4:** What are your views on our stated approach to assessing waiver applications? Are there factors we should exclude or other factors we should include?
- Q5:** Do you agree with our proposals for applying SMFs to Core and Limited Scope benchmark administrators?
- Q6:** Are there any Core SMFs or Prescribed Responsibilities that should not be applied to benchmark administrators?

5 Conduct Rules

5.1 This chapter sets out our proposals for applying the Conduct Rules to benchmark administrators. It covers:

- how the Conduct Rules will apply to benchmark administrators
- our proposed amendments to how the Conduct rules will apply to firms under the Annex II regime under the BMR ('Annex II firms')

How the Conduct Rules will apply to benchmark administrators

5.2 As with all other SM&CR firms, we propose that the Conduct Rules apply to benchmark administrators' regulated and unregulated financial services activities, including any related ancillary activities. This aims to improve individual accountability and awareness of personal conduct issues across all benchmark administrators. However, the Conduct Rules will not apply to any other activities undertaken by a benchmark administrator.

5.3 The Conduct Rules will not apply to ancillary staff at benchmark administrators. A list of these employees, including receptionists and catering staff, is below:

Table 3: Ancillary Staff List

Receptionists
Switchboard operators
Postroom staff
Reprographics/printroom staff
Property/Facilities Management
Events Management
Security guards
Invoice processing
Audio-visual technicians
Vending machine Staff
Medical staff
Archive Records Management
Drivers
Corporate Social Responsibility staff
Data Controllers and Processors under the Data Protection Act
Cleaners
Catering staff
Personal Assistants and Secretaries
Information Technology Support (ie Helpdesk)
Human Resources administrators/processors

- 5.4** In implementing the rules, firms will need to ensure that they have sufficiently tailored their arrangements for compliance with Conduct Rules to the risks in their business models and staff roles. This will ensure the Conduct Rules are effective in the environments in which benchmark administrators work.
- 5.5** Under FSMA, benchmark administrators will be required to train those employees subject to the Conduct Rules so that they understand how the rules apply to them. Senior Managers will need to have been trained and meet the Conduct Rules from the start of the new regime, but firms will have 12 months to train their other staff on the Conduct Rules. Firms must provide suitable training so that all employees subject to the Conduct Rules understand the rules and how they apply to them.
- 5.6** FSMA also requires firms to notify us when they have taken action against a person for breaching a Conduct Rule. For breaches by Senior Managers, we must be notified within 7 business days of concluding disciplinary action. Breaches by other employees must be notified annually. An annual notification to the FCA about Conduct Rules will be required even if there have not been any breaches. More detail on breach reporting can be found in the [guide for FCA regulated firms](#).
- 5.7** For Core firms, there is a requirement to allocate a Prescribed Responsibility for the firm's training and breach reporting obligations for these Conduct Rules. Core firms will be required to allocate this responsibility to an appropriate Senior Manager. As explained above, Limited Scope firms will not have to allocate this Prescribed Responsibility.

The application of COCON to Annex II firms

- 5.8** When finalising our Handbook rules for the BMR, we pared back the application of PRIN 11 for Annex II firms. The scope of PRIN generally covers regulated activities only but PRIN 11 requires firms to disclose to the FCA anything relating to the firm of which the regulator would reasonably expect notice.
- 5.9** Our amended rule stated that PRIN 11 would not apply to the non-regulated activities of Annex II benchmark administrators. To support this, we also included guidance that we would only expect Annex II firms to disclose to us information relating to their compliance with the BMR. This reflected the specific treatment of Annex II administrators under the BMR. However, if an administrator with Annex II benchmarks carries on any other regulated activity, including administering other types of benchmark, then PRIN 11 will apply to that firm in the normal way.
- 5.10** We propose to tailor the application of COCON to Annex II firms in line with the approach to the application of PRIN. Under this approach, all the individual conduct rules in COCON, including the rule about being open and cooperative with the authorities, will be restricted to Annex II firms' regulated benchmark activities only. The Senior Manager Conduct Rules would be restricted to:
- the regulated benchmark activities of Annex II firms and
 - any activities that might reasonably be regarded as having a negative effect on the integrity of the UK financial system or a firm's financial resources.

- 5.11** However, the Senior Manager Conduct rule regarding disclosure of information to the authorities would apply more narrowly and only apply to a firm's regulated benchmark activities. We consider that this option would achieve the policy outcomes of the SMR while reflecting the unique circumstances of Annex II firms.

Questions for consultation

- Q7:** In line with our approach for other FCA regulated firms, do you agree that the Conduct Rules should be applied to all employees in benchmark administrators that undertake financial service activities?
- Q8:** Do you agree that benchmark administrators should have 12 months to train other staff on Conduct Rules, in line with the extension of the regime for other FCA regulated firms?
- Q9:** Do you agree that the Conduct Rules should be tailored for firms that are subject to the Annex II regime under the BMR to reflect their specific treatment under the BMR?

Annex 1

Questions in this paper

- Q1:** Do you agree with our assessment that benchmark administrators are unlikely to meet the criteria for Enhanced firms under the regime?
- Q2:** Do you agree that all benchmark administrators should be subject to the Core regime under the SMR in the first instance? If not, please explain why.
- Q3:** Do you agree that our waiver-based approach allows enough flexibility for benchmark administrators with different governance models? If not, please explain why.
- Q4:** What are your views on our stated approach to assessing waiver applications? Are there factors we should exclude or other factors we should include?
- Q5:** Do you agree with our proposals for applying SMFs to Core and Limited Scope benchmark administrators?
- Q6:** Are there any Core SMFs or Prescribed Responsibilities that should not be applied to benchmark administrators?
- Q7:** In line with our approach for other FCA regulated firms, do you agree that the Conduct Rules should be applied to all employees in benchmark administrators that undertake financial service activities?
- Q8:** Do you agree that benchmark administrators should have 12 months to train other staff on Conduct Rules, in line with the extension of the regime for other FCA regulated firms?
- Q9:** Do you agree that the Conduct Rules should be tailored for firms that are subject to the Annex II regime under the BMR to reflect their specific treatment under the BMR?

Annex 2

Cost benefit analysis

Introduction

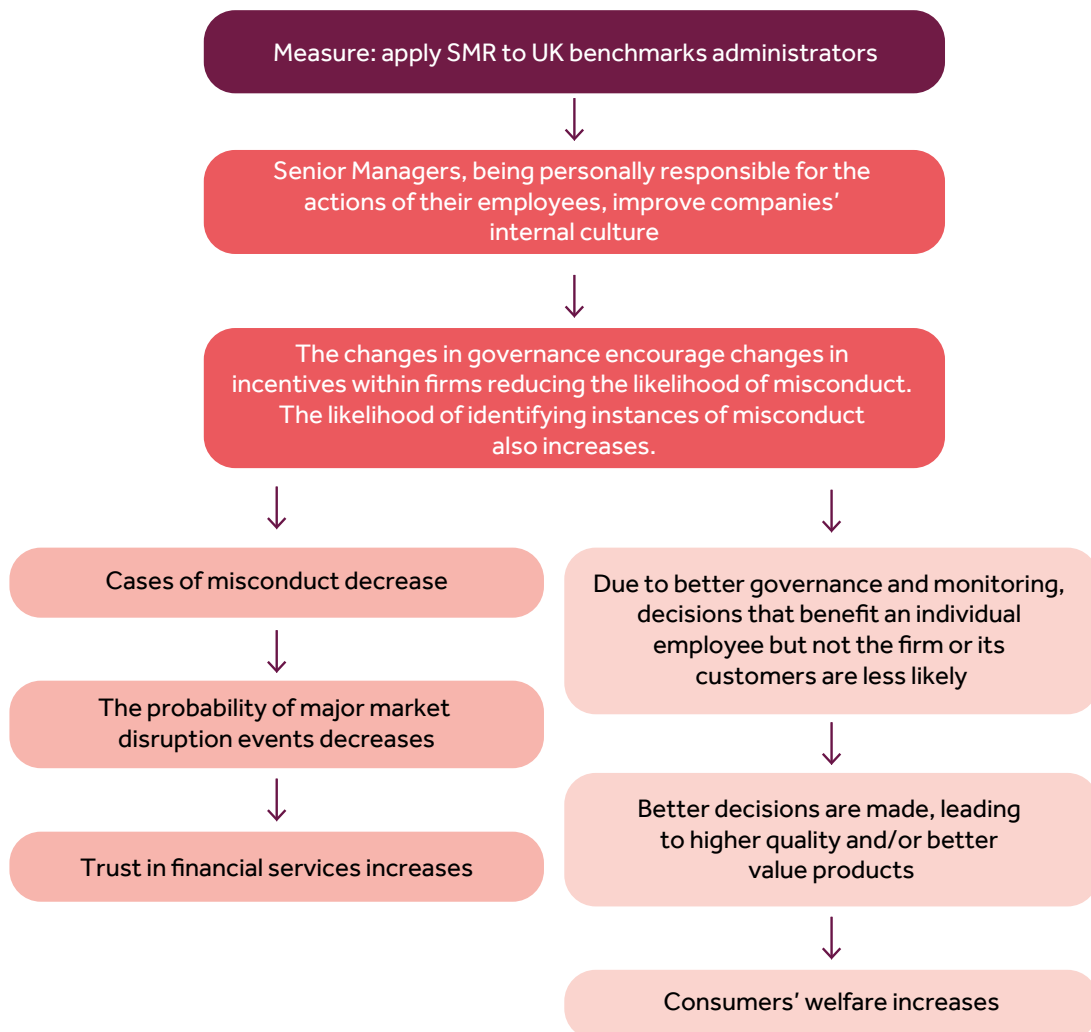
1. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we think it is reasonably practicable to do so. For others, we provide qualitative estimates of outcomes.
2. We have conducted this cost benefit analysis (CBA) to assess the proportionality of our proposed intervention and its likely effects on retail consumers and market participants.
3. We are required under FSMA to undertake a CBA for any proposed rules. Specifically, Section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.

Market failure analysis and the proposed remedies

4. As explained in Chapter 3, the SMR aims to reduce harm to markets and consumers by raising conduct standards for everyone who works in financial services and making senior people in firms more responsible and accountable for their actions. As benchmark administrators provide an important market function, unhealthy cultures and poor standards of personal conduct could create a significant risk of harm. These elements of corporate culture can undermine the regulatory efforts already taken to improve governance and transparency during the setting of benchmarks.
5. Firms also have more information than their regulators and regulators cannot monitor all activities and outcomes in financial markets, or detect all misconduct. Moreover, firms' employees have more information than firms' owners, such as shareholders. Employees may exploit this asymmetry and engage in misconduct (perhaps through taking excessive risks or not complying with the firm's rules more generally), especially where this leads to higher personal bonuses. These information asymmetries and misaligned incentives harm consumers and firms' long-term profits.
6. This CP aims to address this harm by extending SMR to benchmarks administrators. The SMR introduces personal responsibility, aims to increase conduct standards at all levels and make sure firms and their staff clearly understand and can demonstrate who does what. In this way, we believe seniors managers can embed cultures leading to better governance and accountability within the firms. These changes, together with reporting requirements, will promote better decision-making and hiring processes within firms, and increase the likelihood of detecting instances of misconduct. We consider that these changes in firms' culture will further reduce the probability of major market disruption events due to misconduct, improving trust in financial services.

7. The diagram in Figure 1 summarises the rationale of our proposal, while the following sections assess in detail costs and expected benefits due to the proposal.

Figure 1: Causal pathway of our proposals and their expected benefits



Baseline and key assumptions

8. The estimates in this CBA require a counterfactual which provides a baseline against which to consider the costs. We have considered other ongoing regulatory initiatives and believe that a comparison against the Approved Persons Regime is an appropriate counterfactual.
9. The estimates of the compliance costs are based on the questionnaires sent to about 2,000 firms, on a legal entity level, for the original SM&CR CBA and the extension to insurers. The limitations of those CBAs apply also to this one. The estimates are subject to reporting inaccuracies and small sample size bias.
10. The estimates of governance and IT change costs are based on our standardised cost models. These costs may depend on a firm's size. To take this into account, we estimated the costs for different permutations of small, medium and large firms and for a group of firms chosen as representative of the wider market. We report the average figures of these estimations. They are mean average figures so individual firms may experience higher or lower costs than these.

11. We consider that all the benchmark administrators will be classified as 'Core' firms under the regime, unless they successfully apply to us for a waiver to be 'Limited Scope'. This would require firms to demonstrate that compliance with the Core regime would be unduly burdensome or would not achieve the purpose for which the rules were made. We have conducted this CBA on the assumption that approximately 20% of the firms affected by this policy could successfully apply for the waiver, which reflects our best understanding of the likely position of firms. However, as the authorisation window for benchmark administrators will be open until January 2020, we do not have a complete picture of firms' business models and organisational structures.
12. Due to the authorisation window for benchmark administrators still being open, we also do not have a clear view of the size of the authorised population at this stage. However, the figures in this CBA are calculated on the basis that we could supervise between 16-48 Core and 4-12 Limited Scope benchmark administrators (based on the 20% assumption above).

Summary of costs and benefits

13. Overall, we expect our intervention to reduce the risk of major market disruption events, and increase trust in financial services.
14. We estimate that our proposal leads to around £0.8m-£2.4m one-off and £0.05m-£0.22m per year of ongoing costs to the firms. The 10-year present value of these costs is approximately £1.2m-£4.1m, based on a discount rate of 3.5%.
15. We do not consider it practical to provide a precise harm prevented. However, fines of over £2bn for benchmark manipulation we levied between 2012 and 2015 indicate that the potential benefits from improving the quality of benchmarks significantly outweigh the costs. As such, we consider our proposal is proportionate and justified to deliver our market integrity objective.

Costs

16. Overall, we have estimated approximately £0.8m-£2.4m one-off costs and £0.05m-£0.22m per year of ongoing costs due to the proposal. As we now show, these costs are divided into costs faced by all benchmark administrators that need to comply with SMR, including familiarisation costs (Compliance costs), and costs faced by only a subset of firms which may have to reorganize to be able to comply (Governance and IT changes costs).

Compliance costs

17. Table 1 summarizes the expected one-off and ongoing costs which any benchmark administrator will have to face to comply with our proposed rules.

Table 1: Average one-off and annual ongoing costs per firm. Source: FCA survey of firms (undertaken Q4 2016).

Element	Core		Limited Scope	
	One-off costs per firm, £	Ongoing costs per firm, £	One-off costs per firm, £	Ongoing costs per firm, £
Senior Managers Regime	8,640	2,010 – 3,260	3,620	1,020-1,390
Conduct Rules	2,510	820	910	460
Total	11,150	2,830 – 4,080	4,530	1,480-1,850

18. If there are between 16-48 Core and 4-12 Limited Scope benchmark administrators, we obtain a total of £0.2m-£0.6m one-off and £0.05m-£0.22m ongoing compliance costs due to our proposal.

Governance and IT changes costs

19. Our proposal does not require firms to change their existing organisational structure or hire new people. Still, we recognise that some firms may have to reorganise to be able to comply and implement the Senior Managers Regime. These firms will have to face additional one-off costs in implementing the new governance arrangements.
20. Using our standardized cost model, we have estimated an average extra one-off cost of £0.3m per firm facing these governance and IT changes. The estimate accounts for possible training, modifications to IT systems and governance changes related to our regulatory intervention.
21. We do not expect all the firms to make IT adjustments—and so to incur all the extra one-off cost estimated—but we acknowledge that with governance changes, IT systems may need to be updated. We do not believe that our proposal will lead to ongoing governance or IT/System changes.
22. Based on our understanding of the likely applicants, we expect approximately 10% of the firms affected by our proposal to face these additional one-off costs. Therefore, we expect a total of £0.6m-£1.8m of extra one-off costs due to governance and IT changes.

Costs to FCA

23. Overall, we do not expect any material costs to the FCA.
24. We already have teams in Policy and Supervision dedicated to financial benchmarks. The cost of training staff to cover the changes related to SMR can be considered within the usual training provided, and therefore within BAU costs. For the same reasons, we also do not expect any significant change in the level of resources used to provide communications to our staff and to the industry.
25. Moreover, we have already incurred costs to develop the IT infrastructure to support the implementation of the SM&CR for other firms. We therefore do not expect any significant changes in the level of resources we use, relative to the costs of regulating the current regime.

Benefits

- 26.** We expect that, due to clarifying areas of responsibility, Senior Managers will have an incentive to put appropriate safeguards in place and increase their own internal monitoring. Therefore, we expect Senior Managers to increase their monitoring of firms' activities.
- 27.** SMR also introduces the ability to take action and impose sanctions on single individuals in cases of misconduct. This ability will make it easier for us to identify who is responsible during an investigation, increasing the probability of being able to take effective disciplinary action, if this is appropriate.
- 28.** Better culture, increased monitoring by Senior Managers and improved enforcement capability will decrease the instances of misconduct which, in turn, will increase market integrity and reduce harm to consumers. Increased accountability also leads to better decisions and so to lower costs and/or higher quality products for end consumers who rely on products that reference financial benchmarks. Overall, we expect the intervention to improve trust in financial services.
- 29.** We do not consider it practicable to provide an estimate of the benefits or the reduction of harm due to the proposal. We can use redress paid to compensate for harm, costs of handling complaints and the fines we have imposed for misconduct as a rough estimate of the level of harm that needs to be addressed. FCA fines for benchmark manipulation alone have added up to over £2bn between 2012 and 2015.

Unintended consequences

- 30.** Our proposal may drive some indirect costs to firms but, overall, we do not expect significant net changes. For example, the changes here proposed may lead to higher recruitment costs as Senior Managers may request higher salaries due to their increased responsibilities under the new regime. The increased monitoring carried out by Senior Managers may add costs to firms. Part of these higher costs may be passed on to end consumers in form of higher prices. Yet, better conduct may result in better decisions which increase operational efficiency and profitability.
- 31.** We also do not expect any adverse effects on competition. The SMR introduces higher compliance requirements, and so fixed costs. Under the proposed regime, benchmark administrators that undertake fewer FCA-regulated activities can apply for a waiver for Limited Scope categorisation which will reduce compliance costs. Therefore, the regime already mitigates possible concerns about the higher fixed costs effects on smaller firms and so on competition.

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records our compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of our reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties. Our proposals are intended to have a positive impact on the behaviour and culture of the firms in question, which should contribute to greater sustainability of any growth in the financial services markets and in the UK economy as a result.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance our operational objective of supporting market integrity. They are also relevant to our consumer protection objective. By improving the culture and governance at benchmark administrators, the SMR should drive better decision-making, reduce consumer harm and increase public confidence in financial services.
8. We consider that these proposals are compatible with our strategic objective of ensuring that the relevant markets function well because applying the SMR to benchmark administrators will reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s. 1F FSMA.
9. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

10. We will be required to pre-approve fewer employees in benchmark administrators under the SMR than under the APR.

The principle that a burden or restriction should be proportionate to the benefits

11. The Cost Benefit Analysis in Annex 3 sets out the costs and benefits for the proposals in this Consultation Paper. We consider that the benefits of these proposals outweigh the costs.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

12. Better culture, increased monitoring by Senior Managers and more effective enforcement will decrease the instances of misconduct which, in turn, will increase market integrity and promote sustainable growth.

The general principle that consumers should take responsibility for their decisions

13. The proposals in our consultation are not relevant for consumer decision-making.

The responsibilities of senior management

14. One of the core objectives of the Senior Managers Regime is to ensure that Senior Managers understand their responsibilities and can be held to account for them.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

15. We consider that our proposals are consistent with this principle and accommodate different types of business models by using the waiver process to allow benchmark administrators to move to the Limited Scope classification where relevant.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

16. We will be able to see compliance with the rules either from the information that firms give us or by a supervisory visit. We do not propose to change our current policy which is that this information is not published, but instead will consider each firm's circumstances on a case-by-case basis, including as part of any enforcement investigation.

The principle that we should exercise of our functions as transparently as possible

17. We will engage with industry and other stakeholders to obtain feedback during the consultation process.
18. In formulating these proposals, we have had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). By requiring Core benchmark administrators to allocate a Prescribed Responsibility for the firm's policies around Financial Crime to a Senior Manager, our proposals should help ensure strong accountability exists for a firm's systems and controls for preventing financial crime.

Expected effect on mutual societies

19. We do not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility with the duty to promote effective competition in the interests of consumers

20. The proposals in this Consultation Paper do not directly impact competition in the interests of consumers.

Equality and diversity

21. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
22. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. Overall, we do not consider that our proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules.

Legislative and Regulatory Reform Act 2006 (LRRRA)

- 23.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that they are consistent with them. By publishing our proposals for consultation, we are ensuring a level of transparency and accountability and allowing firms to input into our policy thinking. We will consider all evidence received during the consultation period ahead of making final rules. We consider that these proposals are consistent as they mirror the application of the SM&CR to all other FCA-regulated firms as far as is appropriate within the constraints of the BMR.
- 24.** We consider that these proposals are proportionate as they allow benchmark administrators with different business models and organisational structures to apply for different categorisation under the regime using the existing waiver process. Finally, we consider that in applying the SMR to benchmark administrators we are targeting only action that is needed. The Parliamentary Commission on Banking Standards' 2008 report underlined the need to tackle poor governance and the lack of personal responsibility that had been key drivers of misconduct during the financial crisis. The SMR is designed to mitigate this by making individuals more accountable for their conduct and competence. This should reduce harm to consumers and strengthen market integrity
- 25.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that they are consistent with these supplementary principles. In considering how the SMR should be applied to benchmark administrators, we have adopted a risk-based approach based on our assessment of these firms' potential to cause harm to the market and consumers.
- 26.** Further to this, we consider that the information we have provided around SMR is clear and should help firms understand how they can meet their compliance responsibilities. The information around applying for a waiver should assist firms in moving to Limited Scope classification, where appropriate. Publishing the factors we will consider when assessing applications for Limited Scope should also ensure our approach is transparent.

Annex 4

Abbreviations used in this paper

APR	Approved Persons Regime
BMR	EU Benchmarks Regulation
DBS	Disclosure and Barring Service
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act
PRA	Prudential Regulation Authority
PRIN	Principles of Business
SM&CR	Senior Managers & Certification Regime
SMF	Senior Manager Functions
SMR	Senior Managers Regime



We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

Appendix 1

Draft Handbook text

**INDIVIDUAL ACCOUNTABILITY (FCA-AUTHORISED BENCHMARK FIRMS)
INSTRUMENT 2020**

Powers exercised

A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (1) section 55U (Applications under this Part);
- (2) section 59 (Approval for particular arrangements);
- (3) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
- (4) section 60 (Applications for approval);
- (5) section 60A (Vetting candidates by authorised persons);
- (6) section 61 (Determination of applications);
- (7) section 62A (Changes to responsibilities of senior managers);
- (8) section 63ZA (Variation of senior manager’s approval at request of authorised person);
- (9) section 63ZD (Statement of policy relating to conditional approval and variation);
- (10) section 63C (Statement of policy);
- (11) section 63E (Certification of employees by authorised persons);
- (12) section 63F (Issuing of certificates);
- (13) section 64A (Rules of conduct);
- (14) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
- (15) section 69 (Statement of policy);
- (16) section 137A (The FCA’s general rules);
- (17) section 137T (General supplementary powers);
- (18) section 138D (Action for damages);
- (19) section 139A (Power of the FCA to give guidance);
- (20) section 347 (The record of authorised persons etc);
- (21) section 395 (The FCA’s and PRA’s procedures);
- (22) paragraph 23 of Schedule 1ZA (Fees); and
- (23) regulations 5 and 6 of the Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) Regulations 2019.

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 7 December 2020 except as follows:

Annex	Date comes into force
Part 1 of Annex B	[shortly after instrument made]
Part 1 of Annex H	[shortly after instrument made]
Annex I	[shortly after instrument made]

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Code of Conduct sourcebook (COCON)	Annex C
Threshold Conditions sourcebook (COND)	Annex D
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex E
Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)	Annex F
Market Conduct sourcebook (MAR)	Annex G
Supervision manual (SUP)	Annex H
Professional Firms sourcebook (PROF)	Annex I

- F. In each case in which one of the Annexes listed in column (2) of the table in paragraph E of this instrument says that a module of the FCA's Handbook of rules and guidance is amended by amending a form in that module, as set out in Annex K of this instrument, that module is amended accordingly.

Amendments to material outside the Handbook

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

Citation

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

By order of the Board
[date] 2020

Annex A

Amendments to the Glossary of definitions

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

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

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

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

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

limited scope SMCR benchmark firm has the meaning in *SYSC* 23 Annex 1 6.13R(1), which in summary means a *pure benchmark SMCR firm* that is subject to a *waiver* that treats the *firm* as a *limited scope SMCR firm*.

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

Amend the following definitions as shown.

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

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

...

advising on investments

- (1) (except in *SUP* 10A (FCA Approved Persons in Appointed Representatives), *SYSC* 27 (Senior managers and certification regime: Certification regime), *APER* and *CONRED* 2) the *regulated activities*, specified in article 53(1) to (1D) and article 53(2) of the *Regulated Activities Order* (Advising on investments), which are:
 - (a) *advising on investments (except P2P agreements);*
and
 - (b) *advising on P2P agreements.*
- (2) (in *SUP* 10A (FCA Approved Persons in Appointed Representatives), *SYSC* 27 (Senior managers and certification regime: Certification regime) and *APER*) the *regulated activities* specified in article 53(1) to (1D) and 53(2) (Advising on investments) of the *Regulated Activities Order*. For these purposes, *advising on investments* includes any activities that would be included but for the exclusion in article 72AA (Managers of UCITS and AIFs) of the *Regulated Activities Order*.

...

certification employee

...

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

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

chief executive function

- (1) ...
- (2) (~~for other firms and~~ in relation to an *appointed representative*) *FCA controlled function* CF3 in the table of *FCA controlled functions*, described more fully in *SUP* 10A.6.17R.

<i>controlled function</i>	<p>a function, relating to the carrying on of a <i>regulated activity</i> by a <i>firm</i>, which is specified by:</p> <p>(a) either the <i>FCA</i> in:</p> <p>(i) (for <i>SMCR firms</i>) the <i>table of FCA-designated senior management functions</i>; or</p> <p>(ii) (for other firms and in relation to <i>appointed representatives</i>) the <i>table of FCA controlled functions</i>; or</p> <p>...</p>
<i>director</i>	<p>(1) ...</p> <p>(c) (in <i>SYSC</i>, <i>APER</i>, <i>COCON</i>, <i>MIPRU 2</i> (Responsibility for insurance distribution and <i>MCD</i> credit intermediation activity), <i>SUP 10A</i> (FCA Approved persons <u>in Appointed Representatives</u>) and <i>SUP 10C</i> (FCA senior managers regime for approved persons in <i>SMCR firms</i>) a <i>partnership</i>;</p> <p>(d) (in <i>SYSC</i>, <i>SUP 10A</i> (FCA Approved persons <u>in Appointed Representatives</u>) and <i>SUP 10C</i> (FCA senior managers regime for approved persons in <i>SMCR firms</i>) a <i>sole trader</i>;</p> <p>...</p> <p>...</p>
<i>FCA controlled function</i>	<p>a <i>controlled function</i> which is specified by the <i>FCA</i> under section 59 of the <i>Act</i> (Approval for particular arrangements) in:</p> <p>(a) (for <i>SMCR firms</i>) the <i>table of FCA-designated senior management functions</i>; or</p> <p>(b) (for other firms and in relation to <i>appointed representatives</i>) the <i>table of FCA controlled functions</i>.</p>
<i>partner function</i>	<p>(1) ...</p> <p>(2) (for other firms and in relation to <i>appointed representatives</i>) <i>FCA controlled function</i> CF4 in the <i>table of FCA controlled functions</i>, described more fully in <i>SUP 10A.6.23R</i> to <i>SUP 10A.6.27R</i>.</p>
<i>proprietary trader</i>	<p>(in <i>SYSC 27</i> (Senior managers and certification regime: Certification regime), <i>SUP 10A</i> (FCA Approved Persons <u>in Appointed Representatives</u>), <i>COCON</i> and <i>APER</i>) a <i>person</i> (A)</p>

whose responsibilities include committing another *person* (B) as part of B's *proprietary trading*.

proprietary trading

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

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

significant

management function

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

Annex B

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

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

Part 1: Comes into force [] 2020 [shortly after the instrument is made]

22 Regulatory references

22.1 Application

General application

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

...

23 Senior managers and certification regime: Introduction and classification

...

23.3 Overview of the senior managers and certification regime

...

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

(1) Description of component of the regime	(2) Handbook provisions	(3) Application to solo-regulated firms
...
The senior managers regime: Parts that only apply to a limited range of firms		
...
<i>Firms</i> should report changes to their <i>management body</i> when members who are not <i>SMF managers</i> leave or join it.

<u>A firm is required to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers</u>	<u>SYSC 4.4 (Apportionment of responsibilities)</u>	<u>Applies to a limited scope SMCR firm.</u> <u>Does not apply to most core SMCR firms.</u> <u>Does not apply to an enhanced scope SMCR firm.</u>
...
The certification regime		
...	...	<u>Applies to all solo-regulated firms except for internally managed AIFs and certain firms that only carry out benchmark activities.</u> <u>The certification regime does not apply to benchmark activities.</u>
...

Part 2: Comes into force 7 December 2020

4 General organisational requirements

4.1 General requirements

...

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

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

...

4.4 Apportionment of responsibilities

Application

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

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

...

...

...

22 Regulatory references**22.1 Application**

General application

...

22.1.1A G SYSC TP 7.4.8R applies this chapter to certain claims management ~~and benchmark firms~~ that are not *SMCR firms*.

...

22.8 Policies and appointed representatives

...

22.8.4A R (1) The *approved person's authorised approved person employer* is responsible for compliance with SYSC 22.8.3R in the case of a requirement:(a) to give a reference about an *approved person* whose approval is under ~~SUP 10A.1.15R to SUP 10A.1.16BR~~ SUP 10A (FCA Approved Persons in Appointed representatives); and

...

...

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

...

23 Senior managers and certification regime: Introduction and classification

...

23.2 Definitions and types of firms

...

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

...

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

...

- (d) *firms* whose main business is not regulated and whose regulated business is (with limited exceptions) restricted to *insurance distribution activity* in relation to *non-investment insurance contracts*; ~~and~~
- (e) a *firm* that only has *regulated claims management activities* in its *permission*; and
- (f) a *firm* that only has *permission* for benchmark activities and has the benefit of a *waiver* treating it as a *limited scope SMCR firm* as described in SYSC 23 Annex 1 6.13R (Benchmark firms: Waiver applying limited scope status).

23.3 Overview of the senior managers and certification regime

...

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

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

...		
-----	--	--

...

23 Annex 1 Definition of SMCR firm and different types of SMCR firms

...

Part Three: Definition of exempt firm

...

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

...

Part Six: Definition of limited scope SMCR firm

Introduction

6.1 R ...

Opting up

6.2 G ...

Specialised activities

6.3 R ...

...

Sole trader

6.6 R ...

Consumer credit activities

6.7 R ...

...

Authorised professional firms

6.9 R ...

Internally managed AIFs

6.10 R ...

Claims management

6.11 R ...

Benchmark firms: Waiver applying limited scope status

6.12 R A limited scope SMCR benchmark firm is a limited scope SMCR firm.

6.13 R (1) A limited scope SMCR benchmark firm means a firm that:

- (a) is subject to a waiver that applies SYSC 23 Annex 1 6.12R to the firm;
- (b) 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);
- (c) has permission to carry on the regulated activity of administering a benchmark but no other regulated activity (a pure benchmark SMCR firm); and
- (d) is an FCA-authorised person.

(2) A firm that meets the conditions in (1)(b) to (d) is referred to in this Annex as a “potential benchmark waiver firm”.

6.14 G (1) If, after the waiver SYSC 23 Annex 1 6.13R(1) comes into force, a firm ceases to be a potential benchmark waiver firm it ceases to be:

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

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

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

Benchmark firms: When the waiver is likely to be available

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

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

- (3) The directors of a potential benchmark waiver firm who would require approval for performing one of the *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 may be more likely to cause the *firm's* staff to meet the requirements of the senior managers and certification regime and cause the values represented by those requirements to 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 person who would be performing the *limited scope function* would not meet the requirements of MAR 8.5.2R (Responsibility for benchmark activities: regulated benchmark administrators).
- (4) In particular, under (3)(b):
- (a) the person who would be performing the *limited scope function* should be sufficiently senior (see MAR 8.5.3AG); and
- (b) the responsibilities in MAR 8.5.2R should not be split between several people (see MAR 8.5.3G).

- (5) SYSC 23 Annex 1 6.18G to SYSC 23 Annex 1 6.20G describe what important means in (3)(a).
- (6) SYSC 23 Annex 1 6.22G gives more detail about (3)(b).
- (7) The waiver would be available to firms of any size.
- 6.17 G (1) SYSC 23 Annex 1 6.17G describes how the FCA anticipates that it would decide whether regulated activities form a small part of a firm's activities for the purpose of SYSC 23 Annex 1 6.16G(2).
- (2) The FCA anticipates that it would consider that:
- (a) a firm would meet the criterion in (1) if revenue from regulated activities represents less than 20% of its overall revenue; and
- (b) a firm would not meet the criterion in (1) if revenue from regulated activities were 20% or more.
- (3) The FCA anticipates that it would measure those figures over a reasonable period and not just a single accounting period.
- (4) The FCA anticipates that it would measure revenue from regulated activities and overall revenue in the way described in SUP 15.17.5R to SUP 15.17.7R (Obligation to make calculations).
- (5) The FCA anticipates that it would adjust the calculation if there were good reason to think that past revenue is unlikely to be representative of the future. For instance:
- (a) the firm's past revenue may be distorted by extraordinary items; or
- (b) the firm may recently have carried out a major reorganisation of its business involving, for example, the disposal of all its activities involving regulated activities other than benchmark activities or the acquisition of a business carrying out regulated activities other than benchmark activities.
- 6.18 G The FCA anticipates that, in deciding whether a benchmark is important for the purposes in SYSC 23 Annex 1 6.16G, it will take into account whether there could be a significant and adverse impact on the United Kingdom's economy or financial system if the benchmark:
- (1) stops being provided; or
- (2) is provided in a way that significantly breaches or falls short of the requirements and standards of the benchmarks regulation.
- 6.19 G The FCA considers that a firm's benchmark is likely to be important for the purposes in SYSC 23 Annex 1 6.16G(3) and to meet the criteria in

SYSC 23 Annex 1 6.18G if the benchmark is recognised as critical under the *benchmarks regulation*.

- 6.20 G In making the assessment of the importance of a benchmark that is not recognised as critical as described in SYSC 23 Annex 1 6.19G, the FCA anticipates that it will take into account factors that include the following:
- (1) whether the benchmark has no or very few appropriate market-led substitutes; and
 - (2) whether the benchmark is used extensively in particular markets or sectors.
- 6.21 G (1) One reason for taking into account the importance of a benchmark is that in such a case, the factors in SYSC 23 Annex 1 6.13G(4) outweigh the factors in SYSC 23 Annex 1 6.13G(3).
- (2) Another reason is that, under section 138A(4)(b) of the Act (Modification or waiver of rules), the FCA may not grant a waiver if doing so would adversely affect the advancement of any of its operational objectives. Granting the waiver where a benchmark is important is likely to be inconsistent with section 138A(4)(b) because:
- (a) the occurrence of the situation in SYSC 23 Annex 1 6.18G(1) or (2) is likely in particular to prejudice the integrity operational objective; and
 - (b) for the reasons in SYSC 23 Annex 1 6.13G(4), the FCA considers that applying the regime for core SMCR firms to benchmark firms will reduce the risk of that happening.
- 6.22 G The FCA anticipates that if a firm has a complicated management structure, that may mean that the firm does not meet the conditions in SYSC 23 Annex 1 6.16G(3)(b). In particular this may be the case if:
- (1) there are several managers involved in managing the firm's regulated activities who have different reporting lines; or
 - (2) the person managing the firm's regulated activities has different reporting lines for different aspects of the role that give them different levels of autonomy.

Benchmark firms: Ceasing to meet waiver criteria

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

- (2) revocation of the *waiver*; or
- (3) granting the *waiver* subject to a time limit and re-examining the criteria if the *firm* applies for a renewal.

...

Part Twelve: Opting up and opting back down

...

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

...

25.2 Management responsibilities maps: Main rules

...

Specific requirements

...

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

...

27 Senior managers and certification regime: Certification regime

...

27.6 Other exclusions

...

Benchmarks

- 27.6.4 R (1) This chapter does not apply to a *firm* in relation to *benchmark activities*.
- (2) In particular, this chapter does not apply to a *pure benchmark SMCR firm*.

...

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

7.1 Application and purpose

...

7.1.2 R Table: Application of SYSC TP 7

Type of firm	Parts of SYSC TP 7 that apply
...	...
<i>A core SMCR firm, an enhanced scope SMCR firm and a limited scope SMCR firm other than a pure benchmark SMCR firm</i>	All applies, subject to the adjustments in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies).
<i>A firm in SYSC TP 7.4.8R</i>	Does not apply, except as follows: SYSC TP 7.4.6R, SYSC TP 7.4.7G, SYSC TP 7.4.8R and SYSC TP 7.6 apply.
<i><u>A pure benchmark SMCR firm</u></i>	<u>All applies, except that SYSC TP 7.2, SYSC TP 7.3, SYSC TP 7.4.1R and SYSC TP 7.7.4R do not apply.</u>
...	...

7.1.3 G SYSC TP 7:

...

- (3) has certain other transitional provisions relating to the amendments made to the *FCA Handbook* by the Individual Accountability (Dual-Regulated Firms) Instrument 2018₂ ~~and~~ the Individual Accountability (FCA-Authorised Firms) Instrument 2019 and the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020; and

...

...

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

...

Part Two: Dates			
(1) Defined term	(2) Meaning: Insurers	(3) Meaning: Others	(4) <u>Meaning: Benchmark firms</u>
certification transitional period	<u>Does not apply</u>
general commencement date	<u>7 December 2020 (as referred to in regulation 2(5) of the solo firms commencement SI)</u>
...			
Note (2): Column (3) (Others) applies to a <i>core SMCR firm</i> , an <i>enhanced scope SMCR firm</i> and a <i>limited scope SMCR firm</i> <u>but not to a <i>pure benchmark SMCR firm</i>.</u>			
<u>Note (3): Column (4) (Benchmark firms) applies to a <i>pure benchmark SMCR firm</i>.</u>			

...

7.4 Transitional provisions about regulatory references

...

- 7.4.8 R (1) ~~*SYSC 22 (Regulatory references) applies to a firm that is excluded from being an SMCR firm by SYSC 23 Annex 1 3.7R (benchmark firms) as it applies to an SMCR firm.*~~
- (2) ~~However, the provisions listed in SYSC 22.8.4R do not apply.~~
~~[deleted]~~

...

Annex C

Amendments to the Code of Conduct sourcebook (COCON)

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

1 Application and purpose

1.1 Application

...

To what conduct does it apply?

...

1.1.7A R ...

(2) ...

(3) This rule does not apply where Firm A in COCON 1.1.6R to COCON 1.1.7R is a firm in COCON 1.1.7BR(1).

1.1.7B R (1) Where Firm A in COCON 1.1.6R to COCON 1.1.7R meets the following conditions, the application of COCON is further restricted by this rule:

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

(b) the firm is an Annex II benchmark administrator; and

(c) all the benchmarks that the firm administers are subject to Annex II to the benchmarks regulation.

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

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

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

(b) The rules in (2)(a) apply only to:

(i) the performance of a function in relation to the carrying on of a regulated activity by Firm A; or

(ii) (in the case of an SMF manager) the performance by the SMF manager of a controlled function in relation

to Firm A (whether or not approval has been sought and granted).

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

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

(b) that comes within COCON 1.1.7AR, but only in a prudential context.

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

...

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

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

...

...

...

4 Specific guidance on individual conduct rules

4.1 Specific guidance on individual conduct rules

...

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

...

4.1.12 G

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

...

4.2 Specific guidance on senior manager conduct rules

...

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

...

4.2.29 G ...

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

...

TP 1 Transitional provisions: Miscellaneous

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

Annex D

Amendments to the Threshold Conditions sourcebook (COND)

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

2 **The threshold conditions**

...

2.5 **Suitability**

...

Paragraph 3D to Schedule 6 of the Act

...

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

...

Annex E

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

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

1 Application and purpose

1.1A Application

Who?

- 1.1A.1 R *APER* applies to *FCA-approved persons* who are ~~either:~~
- (1) ~~*approved persons of firms that are not SMCR firms; or*~~
 - (2) ~~*approved persons*~~ approved to perform a *controlled function* in *SUP* 10A.1.15R to *SUP* 10A.1.16BR (appointed representatives) *SUP* 10A (FCA Approved Persons in Appointed Representatives).

- 1.1A.1A G (1) ~~*APER* does not apply to *FCA-approved persons* of *SMCR firms*. *COCON* applies instead.~~
- (2) ~~However, *APER* applies to *approved persons* approved to perform a controlled function under *SUP* 10A.1.15R to *SUP* 10A.1.16BR (appointed representatives) even if the *appointed representative's principal* is an *SMCR firm*. [deleted]~~

What?

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

...

- (5) *APER* does not apply to conduct unless it is within the scope of section 64A(4) of the Act (Rules of conduct).

...

Coverage of APER

- 1.1A.6 G ~~*APER* 1.1A.7G gives examples of the effect of *APER* 1.1A.1R and *APER* 1.1A.2R. The first column says whether the example involves an *FCA-approved person* in relation to one or two *firms*. The second column~~

explains what functions *APER* covers in the scenario set out in the first column. [deleted]

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

FCA approved	Coverage of <i>APER</i>
(1) Yes, in relation to <i>firm A</i>	Applies to the <i>FCA controlled function</i> . Also applies to any other function performed for <i>firm A</i> in relation to the carrying on by <i>firm A</i> of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .
(2) Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	In relation to <i>firm A</i> , the answer is the same as for scenario (1). However, <i>APER</i> does not apply to any function that the <i>approved person</i> carries on in relation to <i>firm B</i> even if that function relates to <i>regulated activities</i> carried out by <i>firm B</i> . However, if the function that they perform in relation to <i>firm B</i> is a <i>controlled function</i> the <i>approved person</i> and <i>firm B</i> may be subject to legal sanctions (see <i>SUP 10A.13.1G</i> to <i>SUP 10A.13.2G</i>).

- 1.1A.8 G (1) A person may be an *approved person* in relation to more than one *firm*. When that is the case, *APER* applies in relation to all those *firms*.
- (2) *APER* does not apply if the *firm* is an *SMCR firm*, except for *approved persons* of an *appointed representative* of an *SMCR firm*.
- (3) If a person is an *approved person* of a *firm (A)* that is not an *SMCR firm* and also of another *firm (B)* that is an *SMCR firm*, the result is:
- (a) *APER* applies to the *approved person* in relation to *firm A*; and
- (b) *COCON* applies to the *approved person* in relation to *firm B*.
[deleted]

- 1.1A.9 G (1) *APER 1.1A* refers to an *approved person's firm*. This means their *authorised approved person employer*.
- (2) Under section 59 of the *Act* (Approval for particular arrangements) there are two kinds of *approved person*.
- (3) Section 59(1) of the *Act* describes the first. It covers a person who performs a *controlled function* under an arrangement entered into by an *authorised person* ("A"). In this case, the *authorised approved person employer* is A.

- (4) ~~Section 59(2) of the Act describes the second. It covers a person who performs a *controlled function* under an arrangement entered into by a contractor ("B") of an *authorised person* ("A"). In this case, the *authorised approved person employer* is A (and not B). [deleted]~~

...

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

3 Code of Practice for Approved Persons: general

3.1 Introduction

...

3.1.7A G ...

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

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

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

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

...

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

(2) ~~Where (1) applies, in~~ forming an opinion whether *approved persons* have complied with ~~its~~ the requirements of the *regulatory system*, the *FCA* will give due credit for their following

corresponding provisions in the *UK Corporate Governance Code* and related *guidance*.

- 3.1.10 R (1) ~~In the case of an *approved person* approved to perform a *controlled function* in SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives), a reference in in *APER 2* to *APER 4* to a *firm* is a reference to:~~
- (a) ~~the *appointed representative* in relation to which that *approved person* performs the *controlled function* in SUP 10A.1.15R to SUP 10A.1.16BR; and~~
 - (b) ~~their *authorised approved person employer*.~~
- (2) For the purposes of *Statements of Principle 5 to 7*, a the reference to an *APER employer* only includes a *person* coming within paragraph is only to (a) of the definition of *APER employer* (the *appointed representative* in relation to which the *approved person* performs the *controlled function* in SUP 10A).

Annex F

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

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

1 General

1.1 Application and purpose

1.1.1 G *FIT* applies to:

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

...

...

1.1.3 G The table in *FIT* 1.1.4G summarises the situations to which *FIT* applies. [deleted]

1.1.4 G Table: Situations to which *FIT* applies [deleted]

What <i>FIT</i> applies to	Does it apply to <i>SMCR firms</i> ?	Does it apply to <i>firms</i> that are not <i>SMCR firms</i> ?	Comment
(1) A <i>firm</i> assessing the fitness and propriety of a <i>candidate</i> whom the <i>firm</i> is proposing to put forward for approval	Yes	No	However, the answer to Question 11 in <i>SUP</i> 10A Annex 1 (Frequently asked questions) says that the <i>FCA</i> 's approval process is not a substitute for the checks that a <i>firm</i> should be carrying out on its prospective recruits. <i>FIT</i> may be a useful guide to matters that a <i>firm</i> that is not an <i>SMCR firm</i> should take into account.
(2) A <i>firm</i> assessing the	Yes	No	However, a <i>firm</i> should employ personnel with the

continuing fitness and propriety of an <i>approved person</i>			skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (<i>SYSC 5.1</i>). <i>FIT</i> may be a useful guide to matters which a <i>firm</i> should take into account if it is not an <i>SMCR firm</i> .
(3) The <i>FCA</i> assessing the fitness and propriety of a <i>candidate</i> for approval as an <i>approved person</i>	Yes	Yes	
(4) The <i>FCA</i> assessing the continuing fitness and propriety of an <i>approved person</i>	Yes	Yes	
(5) A <i>firm</i> assessing the fitness and propriety of a <i>person</i> whom a <i>firm</i> is proposing to certify to perform an <i>FCA certification function</i>	Yes	No	<i>FCA certification functions</i> do not apply to a <i>firm</i> that is not an <i>SMCR firm</i> . However, see the comment on row (2).
(6) A <i>firm</i> assessing the continuing fitness and propriety of a <i>person</i> whom a <i>firm</i> has certified to perform an <i>FCA certification function</i>	Yes	No	<i>FCA certification functions</i> do not apply to a <i>firm</i> that is not an <i>SMCR firm</i> . However, see the comment on row (2).

1.2 Introduction

- 1.2.-1 G Under section 60A(1) of the *Act*, before an *SMCR* a *firm* may make an application for the *FCA*'s approval of a *controlled function* the *firm* must be

satisfied that the *person* for whom the application is made is a fit and proper *person* to perform that function.

...

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

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

...

...

1.2.4A G ...

(2) ...

(c) matters within the responsibility of the *FCA* as the *Host State regulator*, for example *money laundering* responsibilities (see the *money laundering reporting function* (~~CF11 and SMF17~~)) or (3) below;

...

...

1.3 Assessing fitness and propriety

...

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

...

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

1.3.3 G The criteria listed in *FIT 2.1* to *FIT 2.3* are *guidance* and will be applied in general terms when the *FCA* is determining a *person's* fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination. ~~An SMCR~~ A firm assessing the fitness and propriety of *staff being assessed under FIT* should be guided by substantially the same criteria in *FIT 2.1* to *FIT 2.3* (to the extent

applicable to the *firm*), recognising that this is not intended to be a definitive list of matters to be considered.

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

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

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

...

2 Main assessment criteria

2.1 Honesty, integrity and reputation

...

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

...

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

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

...

2.2 Competence and capability

...

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

...

...

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

2.3 Financial soundness

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

...

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

...

Annex G

Amendments to the Market Conduct sourcebook (MAR)

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

8 Benchmarks

...

8.5 Regulated benchmark administrators

...

Responsibility for benchmark activities: regulated benchmark administrators

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

- (a) an *Annex II benchmark administrator*;
- (b) ~~an SMCR firm~~ a PRA-*authorised person*.

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

- (a) ~~an FCA governing function other than the non-executive director function~~; ~~or~~
- (b) ~~the significant management function (where applicable)~~.

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

...

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

- (1) ~~Most *UK SMCR firms* are already subject to the requirement to allocate overall responsibility for each of the activities, business areas and management functions of the *firm* in SYSC 26.3 (Main rules) (the table in SYSC 25 Annex 1G (Examples of the business activities and functions of a relevant authorised person an *SMCR firm*) refers to *administering a benchmark*); and A *firm* may allocate the responsibility in MAR 8.5.2R to more than one person.~~

- (2) ~~overseas SMCR firms do not require authorisation to carry out the activity of administering a benchmark unless they are located in the UK. That is because that regulated activity gives effect to article 34 of the benchmarks regulation and, for these purposes, the requirements of article 34 only apply to administrators which are located in the UK. If the firm does so, it should not divide the responsibility between them. Instead each person should be responsible for all aspects of the role.~~
- (3) For example, the role could be allocated to more than one person:
- (a) as part of a job share; or
 - (b) where departing and incoming senior managers work together temporarily as part of a handover.

- 8.5.3A G (1) The FCA expects that a person who has the responsibility in MAR 8.5.2R will:
- (a) be sufficiently senior and credible; and
 - (b) have sufficient resources and authority;
- to be able to exercise their management and oversight responsibilities effectively.
- (2) One element of a manager's seniority is the degree to which they can and do make decisions without prior approval and exercise judgment and discretion.

...

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

...

Annex H

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force [] 2020 [immediately after instrument made]

10A FCA Approved Persons

...

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

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

Amend the following as shown.

TP 11A Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms

11A.1 Application, purpose and definitions

11A.1.1 R (1) ...

(2) ...

(3) SUP TP 11A applies to a **pure benchmark SMCR firm** subject to the modifications in SUP TP 11A.26.

11A.1.2 G (1) *SUP TP 11A has transitional provisions relating to the introduction of the senior managers and certification regime for *FCA-authorised persons* by Part 2 of the Bank of England and Financial Services Act 2016 and the Individual Accountability (FCA-Authorised Firms) Instrument 2019 and the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.*

...

- 11A.1.3 G (1) The main time period for which *SUP* TP 11A operates is 2019. For a **pure benchmark SMCR firm** the main period in which it operates is 2020.
- (2) ...
- 11A.1.4 G ...
- 11A.1.5 R (1) The terms in the first column of the table in *SUP* TP 11A.1.5R, where they appear in bold in *SUP* TP 11A, have the meanings in the corresponding entry in column 2 for the purposes of *SUP* TP 11A.
- (2) For a **pure benchmark SMCR firm** the table is modified by *SUP* TP 11A.26.3R.

Part One: General	
Defined term	Meaning
...	...
firm specific date	...
<u>limited scope SMCR benchmark firm</u>	<u>has the meaning set out in the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.</u>
...	...
pre-implementation controlled function	...
<u>pure benchmark SMCR firm</u>	<u>has the meaning set out in the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.</u>
...	...

Insert a new section, *SUP* TP 11A.26, after *SUP* TP 11A.25.2R. The text is not underlined.

11A.25.2 R ...

11A.26 Pure benchmark firms

11A.26.1 R *SUP* TP 11A.26 applies to a **pure benchmark SMCR firm**.

- 11A.26.2 G *SUP* TP 11A.26 explains how *SUP* TP 11A applies to a **pure benchmark SMCR firm**.
- 11A.26.3 R The definitions and dates in the table in *SUP* TP 11A.1.5R are amended as follows:
- (1) the definition of a term in column one of Part One of the table in this *rule* replaces the corresponding definition in Part One of the table in *SUP* TP 11A.1.5R; and
 - (2) Part Two of the table in this *rule* replaces Part Two of the table in *SUP* TP 11A.1.5R.

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

Part Two: Fixed dates	
Defined term in main table of definitions	New meaning
first notification date	7 September 2020
final notification date	4 December 2020
commencement date	7 December 2020
Form O start date	9 June 2020
enhanced firm cut-off date	N/A
<p>Note: If a <i>firm</i> becomes a pure benchmark SMCR firm between the final notification date and the commencement date or changes the category of solo-regulated SMCR firm into which it falls within that period, the final</p>	

notification date for it is the date it becomes a **pure benchmark SMCR firm** or changes category.

- 11A.26.4 R (1) This *rule* makes some adjustments about how certain references to the Individual Accountability (FCA-Authorised Firms) Instrument 2019 in *SUP* 11A apply to a **pure benchmark SMCR firm**.
- (2) Note (1) to the table in *SUP* 11A.2.5R (Mapping table: Potential conversion of approval for existing controlled functions into approval for designated senior management functions) is amended so that a reference to a new FCA-designated senior management function is to the *FCA-designated senior management function* with the same name taking into account amendments made by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.
- (3) *SUP* 11A.23.1R is adjusted so that the *firm's* categorisation is determined in accordance with *SYSC* 23 Annex 1 as adjusted by the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020.
- 11A.26.5 G The material in *SUP* TP 11A about **enhanced scope SMCR firms** is likely to be irrelevant to a **pure benchmark SMCR firm** as it does not meet most of the qualification conditions for this category. However, *SUP* TP 11A.26 does not disapply those provisions as it is possible that a **pure benchmark SMCR firm** may choose to opt into that category.
- 11A.26.6 G (1) The table in *SUP* TP 11A.26.7G explains how each section of *SUP* TP 11A applies to a **pure benchmark SMCR firm**.
- (2) It assumes that the *firm* has not elected to be an **enhanced scope SMCR firm**. If it does elect to be one, many of the parts of *SUP* TP 11A that the table shows as not applying will apply and a few parts that the table shows as applying will not apply.
- 11A.26.7 G Table: How *SUP* TP 11A applies to a pure benchmark SMCR firm

Section	Title	How it applies
11A.1	Application, purpose and definitions	This applies. The definitions in <i>SUP</i> TP 11A.1.5R are amended by <i>SUP</i> TP 11A.26.3R.
11A.2	Conversion of existing approvals	This applies. However many of the pre-implementation controlled functions will not apply. The ones that apply are listed in <i>SUP</i> 10A.1.21AG (Benchmark activities).

		<p>Part Two of the table in <i>SUP TP 11A.2.5R</i> does not apply.</p> <p><i>SUP TP 11A.2.8G</i> does not apply.</p> <p><i>SUP TP 11A.2.9R</i> to <i>SUP TP 11A.2.11G</i> will generally not apply. They will only apply if the <i>firm</i> has to submit a Form K. The entry in this table for <i>SUP TP 11A.5</i> explains when this is the case.</p>
11A.3	Effect of conversion	This applies.
11A.4	Lapse of existing approvals and special provisions about appointed representatives	This applies. However, the material about <i>appointed representatives</i> in <i>SUP TP 11A.4.2R</i> and <i>SUP TP 11A.4.3G</i> does not apply as a pure benchmark SMCR firm will not have any.
11A.5	Notification to the FCA: Initial notification	<p><i>SUP TP 11A.5</i> (including the requirement to submit a Form K) does not apply to:</p> <p>(a) a limited scope SMCR benchmark firm; or</p> <p>(b) any other pure benchmark SMCR firm unless the <i>chair of the governing body function</i> will apply.</p> <p>Even if it does apply, the material about the <i>customer function</i> does not apply as that function does not apply to a pure benchmark SMCR firm.</p>
11A.6	Notification to the FCA: Revision of initial notice	In general, this does not apply. It only applies if the <i>firm</i> has submitted a Form K under <i>SUP TP 11A.5</i> .
11A.7	In-flight applications: Conversion	This applies.
11A.8	In-flight applications: Notification requirements	In general, this does not apply. It only applies if the <i>firm</i> has to submit a Form K (for which, please see the entry in this table for <i>SUP TP 11A.5</i>).
11A.9	In-flight applications: Supplemental material	This applies.
11A.10	Procedure for notification	In general, this does not apply. It only applies if the <i>firm</i> has to submit a Form K (for which, please see the entry in this table for <i>SUP TP 11A.5</i>).

11A.11	Statements of responsibilities	This applies. <i>A firm</i> does not have to send the <i>FCA</i> its statements of responsibilities for its transitioned SMF managers .
11A.12	Management responsibilities maps	This does not apply.
11A.13	Supplemental material about statements of responsibilities and management responsibilities maps	The material in this section about statements of responsibilities applies. The material about management responsibilities maps does not.
11A.14	Criminal record checks and employment references	This applies.
11A.15	Applications of approved persons to take effect from the commencement date	This applies.
11A.16	Application of ongoing requirements to converted approvals and conversion documents	This applies. However, the material about management responsibilities maps does not apply.
11A.17	Making sure that the Financial Services Register is accurate	This applies. However, the material about the <i>customer function</i> does not apply as that function does not apply to a pure benchmark SMCR firm .
11A.18	The 12-week rule	This applies.
11A.19	Application for permission	This applies to someone applying to be a pure benchmark SMCR firm .
11A.20	Prohibition orders	This applies.
11A.21	Reporting under SUP 15.11	This will generally not apply as for the most part it relates to <i>certification employees</i> . It applies to a <i>board director</i> .

11A.22	Calculations for retail intermediaries	This does not apply.
11A.23	Deciding which category a firm is in	<p><i>SUP</i> TP 11A.23.1R applies. <i>SUP</i> TP 11A.26.4R adjusts the reference to the Individual Accountability (FCA-Authorised Firms) Instrument 2019) in this <i>rule</i>.</p> <p>The effect of <i>SUP</i> TP 11A.23.1R is that if a <i>firm</i> acquires <i>permission</i> for any <i>regulated activities</i> other than benchmark activities before 7 December 2020:</p> <ul style="list-style-type: none"> (a) the conversion arrangements in <i>SUP</i> TP 11A will not apply to it; (b) <i>SUP</i> TP 11A.15 and <i>SUP</i> TP 11A.23.2G will not apply; (c) the <i>firm</i> will become an <i>SMCR firm</i>; and (d) the <i>firm</i> will need to apply for new approvals under <i>SUP</i> 10C (FCA senior managers regime for approved persons in <i>SMCR firms</i>) before its change of <i>permission</i> takes effect. <p>Most of the rest of <i>SUP</i> TP 11A.23 does not apply as it relates to enhanced scope SMCR firms or opting to be a core SMCR firm. <i>SUP</i> TP 11A.23.10G applies.</p>
11A.24	Claims management firms	Does not apply.
11A.25	Forms	In general, this does not apply. It only applies if the <i>firm</i> has to submit a Form K (for which, please see the entry in this table for <i>SUP</i> TP 11A.5).

Part 2: Comes into force 7 December 2020

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

...

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

...

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

- 6.3.8 G (1) Where a *firm* is submitting an application for variation of *Part 4A permission* which would lead to a change in the *controlled functions* of its *approved persons*, it should, at the same time and as appropriate:
- (a) make an application for an internal transfer of an *approved person*, Form E (Internal transfer of a person performing a controlled function), or make an application for an individual to perform additional *controlled functions*, the relevant Form A (Application to perform ~~controlled~~ senior management functions); see:
 - (i) *SUP 10A.13.3D to SUP 10A.13.5G* (for a *firm* that is ~~not an SMCR firm~~ has appointed representatives);
 - ...
 - (b) notify the *FCA* or *PRA* of any *approved person* who has ceased to perform a *controlled function* specified by that regulator, Form C (Notice of ceasing to perform controlled functions (including senior management functions)); see:
 - (i) *SUP 10A.14* (for a *firm* that is ~~not an SMCR firm~~ has appointed representatives);
 - ...
- (2) If the *firm* intends to recruit new individuals to perform *controlled functions*, it should apply for approval of the individuals as *approved persons* as soon as possible using Form A (Application to perform ~~controlled~~ senior management functions); see:
- (a) *SUP 10A.13* (for a *firm* that is ~~not an SMCR firm~~ has appointed representatives);
 - ...

SMCR firm status

- 6.3.9 G A variation of a *firm's Part 4A permission* may mean that it becomes an *SMCR firm* or that it changes from one type of *SMCR firm* to another. This would have a number of significant consequences, which include:
- (1) the application of the special powers in relation to misconduct by *approved persons* (see *DEPP 6.2.9-AG*);

- (2) the ~~approved persons~~ senior managers regime ~~switches from SUP 10A to~~ in SUP 10C applies;
- (3) ~~COCON~~ applies ~~in place of APER~~ to its staff; and
- (4) the other elements of the regime for *SMCR firms* described in SYSC 23.4 (Overview of the senior managers and certification regime) apply (which differ depending on the type of *SMCR firm*).

...

6.4 Applications for cancellation of permission

...

Approved persons

- 6.4.18 G (1) A *firm* which is applying for cancellation of *Part 4A permission* and which is not otherwise *authorised* by, or under, the *Act* should, at the same time:
- (a) comply with:
 - (i) ~~SUP 10A.14.8R~~ (for a *firm* that ~~is not an SMCR firm~~ has appointed representatives);

...

...

...

...

10A FCA Approved Persons in Appointed Representatives

10A.1 Application

General

- 10A.1.1 R This chapter applies to every ÷
- (1) ~~firm that is not an SMCR firm~~; and
 - (2) ~~SMCR firm, but only to the extent required by SUP 10A.1.16BR (Appointed representatives)~~ with respect to their appointed representatives.

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

...

- 10A.1.2 G This chapter is also relevant to ~~every FCA-approved person:~~
- (1) ~~of a firm that is not an SMCR firm~~ FCA-approved person of an appointed representative of an SMCR firm; and
 - (2) ~~of any appointed representative, including of an appointed representative of an SMCR firm.~~

...

Overseas ~~firms~~ appointed representatives: UK services

- 10A.1.5 R (1) This chapter does not apply in relation to an ~~overseas firm~~ overseas appointed representative in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by ~~it or its~~ that appointed representative in the *United Kingdom*.
- (2) An overseas appointed representative means an appointed representative which has its registered office (or, if it has no registered office, its head office) outside the United Kingdom.

Overseas ~~firms~~ appointed representatives: UK establishments

- 10A.1.6 R - (1) Only the following *FCA controlled governing functions* (as modified by this rule) apply in relation to an ~~overseas firm~~ overseas appointed representative which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:
- (a) the director function;
 - (b) the non-executive director function; and
 - (c) the chief executive function.
- (1) ~~the~~ The director function ~~where~~ only applies to the extent that the person performing that function:
- (a) has responsibility for the *regulated activities* of ~~a~~ the UK branch establishment which are likely to enable ~~him~~ them to exercise significant influence over that ~~branch~~ establishment; or
 - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that ~~branch;~~ establishment.

- (2) ~~the~~ The non-executive director function ~~where only applies to the extent that the person performing one of those functions that function:~~
- (a) has responsibility for the *regulated activities* of ~~a~~ the UK branch establishment which is likely to enable ~~him~~ them to exercise significant influence over that ~~branch establishment~~; or
 - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that ~~branch; establishment.~~
- (3) ~~the chief executive function; [deleted]~~
- (4) ~~the FCA required functions; [deleted]~~
- (5) ~~the systems and controls function; [deleted]~~
- (6) ~~the significant management function in so far as the function relates to:~~
- (a) ~~designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or~~
 - (b) ~~processing confirmations, payments, settlements, insurance claims, client money and similar matters in so far as this relates to designated investment business; and [deleted]~~
- (7) ~~the customer function. [deleted]~~
- (8) An overseas appointed representative has the same meaning as in SUP 10A.1.5R.

Incoming EEA firms; and incoming Treaty firms ~~and UCITS qualifiers~~

- 10A.1.7 R This chapter does not apply in relation to the appointed representative of:
- (1) an *incoming EEA firm*; or
 - (2) an *incoming Treaty firm*; ~~or~~
 - (3) ~~a UCITS qualifier; [deleted]~~

if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved, under any of the *Single Market Directives*, the *Treaty*, ~~the UCITS Directive~~,

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

- 10A.1.8 G *SUP 10A.1.7R* reflects the provisions of section 59(8) of the *Act* and, in relation to an incoming *Treaty firm* ~~and a *UCITS qualifier*, the *Treaty* and the *UCITS Directive*~~. It preserves the principle of *Home State* prudential regulation. In relation to an *incoming EEA firm* exercising an *EEA right*, or an *incoming Treaty firm* exercising a *Treaty right*, the effect is to reserve to the *Home State regulator* the assessment of the fitness and propriety of a *person* performing a function in the exercise of that right. ~~A member of the *governing body*, or the notified *UK branch manager*, of an *incoming EEA firm*, acting in that capacity, will not therefore have to be approved by the *FCA* under the *Act*.~~
- 10A.1.9 G Notwithstanding *SUP 10A.1.8G*, ~~an *incoming EEA firm* or *incoming Treaty firm* will have had to consider the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An *incoming EEA firm* will have been notified of those provisions under Part II of Schedule 3 to the *Act* in the course of satisfying the conditions for *authorisation* in the *United Kingdom*.~~ [deleted]
- 10A.1.10 G ~~An *incoming EEA firm* will have to consider, for example, the position of a *branch manager* based in the *United Kingdom* who may also be performing a function in relation to the carrying on of a *regulated activity* not covered by the *EEA right* of the *firm*. In so far as the function is within the description of an *FCA controlled function*, the *firm* will need to seek approval for that *person* to perform that *FCA controlled function*.~~ [deleted]

~~Incoming EEA firms: passported activities from a branch~~

- 10A.1.11 R ~~Only the following *FCA controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*:~~
- ~~(1) the *money laundering reporting function*;~~
 - ~~(2) the *significant management function*, in so far as the function relates to:

 - ~~(a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or~~
 - ~~(b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters, in so far as this relates to *designated investment business*; and~~
 - ~~(e) [deleted]~~~~

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

...

~~Incoming EEA firms etc with top up permission activities from a UK branch~~

- 10A.1.13 R ~~In relation to the activities of a *firm* for which it has a *top up permission*, only the following *FCA controlled functions* apply:~~
- (1) ~~the *FCA required functions*, other than the *apportionment and oversight function* and the *compliance oversight function*;~~
- (2) ~~the *significant management function*, in so far as it relates to:~~
- (a) ~~*designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or~~
- (b) ~~processing confirmations, payments, settlements, insurance claims, *client money* and similar matters, in so far as this relates to *designated investment business*; and~~
- (c) ~~[deleted]~~
- (3) ~~the *customer function*. [deleted]~~
- 10A.1.14 R ~~A *person* does not perform the *significant management function* for a *firm* under SUP 10A.1.11R or SUP 10A.1.13R if that *person* would not have been treated as performing any *FCA controlled function* for that *firm* if that *firm* had been a *UK firm*. [deleted]~~

~~Appointed representatives Exclusions and modifications~~

- 10A.1.15 R ~~The descriptions of the following *FCA controlled functions* apply to an *appointed representative* of a *firm*, except This chapter does not apply in relation to *CBTL business* or to an *introducer appointed representative*, as they apply to an *FCA authorised person*: .~~
- 10A.1.15A (1) ~~the The *FCA governing functions*, subject to SUP 10A.1.16R and except for do not apply to a *tier 1 agent* of an *EEA MiFID investment firm*; and .~~
- (2) ~~the *customer function* other than in relation to acting in the capacity of an *investment manager* (see SUP 10A.10.7R(6)).~~
- 10A.1.16 R (1) ~~SUP 10A.1.15R~~ This chapter is modified in relation to an *appointed representative* meeting the conditions in (2) so that only one of the following *FCA governing functions*:
- (a) ~~*director function*; or~~

- (b) *chief executive function*; or
- (c) *partner function*; or
- (d) *director of unincorporated association function*;

applies, as appropriate, to an individual within that *appointed representative* who will be required to be an *FCA-approved person*.

- (2) The conditions are that:
 - (a) the scope of appointment of the *appointed representative* includes *insurance distribution activity* in relation to *non-investment insurance contracts* or *credit-related regulated activity*, but no other *regulated activity*; and
 - (b) the principal purpose of the *appointed representative* is to carry on activities other than *regulated activities*.

- 10A.1.16A R (1) ~~This~~ The customer function is the only controlled function in this chapter that applies to an appointed representative that is an SMCR firm and has a limited permission to carry on a regulated activity prescribed for the purposes of section 39(1E)(a) of the Act as follows:
- (1) ~~FCA-controlled functions apply to the appointed representative as set out in SUP 10A.1.15R and SUP 10A.1.16R in relation to the carrying on of the regulated activity, for which it does not have permission, comprised in the business for which its principal has accepted responsibility;~~
 - (2) (a) ~~unless it is a not for profit debt advice body, the apportionment and oversight function applies in relation to the carrying on of the regulated activity for which it has limited permission;~~
 - (b) ~~if it is a not for profit debt advice body and a CASS large debt management firm, the CASS operational oversight function applies in relation to the carrying on of debt management activity.~~

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

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

- 10A.1.16C G (1) ~~References in this chapter to a *firm* include an *SMCR firm*, but only to the extent required by *SUP 10A.1.16BR*. Certain additional *controlled functions* apply to a *firm* in *SUP 10A.1.16AR* under *SUP 10C* (FCA senior managers regime for approved persons in SMCR firms).~~
- (2) ~~References in *SUP 10A.1.15R* and *SUP 10A.1.16R* to *FCA governing functions* and other *controlled functions* are to *controlled functions* in this chapter, not in *SUP 10C* (FCA senior managers regime for approved persons in SMCR firms).~~

Senior management functions

- 10A.1.16D G ...
- (2) Generally, the *FCA* does not think that a *person* performing a function in ~~*SUP 10A.1.16BR*~~ this chapter will have sufficient responsibility for managing the affairs of the *appointed representative's principal* (as opposed to managing the affairs of the *appointed representative* itself) to perform a *senior management function*.
- (3) Therefore:
- (a) the *FCA* has not designated any of the functions in ~~*SUP 10A.1.16BR*~~ this chapter as a *senior management function*; and
- (b) none of the functions in ~~*SUP 10A.1.16BR*~~ this chapter are *designated senior management functions*.

...

...

Members of a profession

...

Benchmark activities

- 10A.1.21A G (1) {deleted}
- (2) {deleted}
- (3) {deleted}
- (4) ~~The *customer function* involves performing various types of activity none of which would be performed by a *firm* which does not carry on any *regulated activities* other than~~

~~administering a benchmark~~ Therefore the ~~customer function~~ does not apply to such a ~~firm~~. ~~[deleted]~~

...

Obligations on firms

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

...

10A.2 Purpose

- 10A.2.1 G The immediate purpose of *SUP* 10A.3 to *SUP* 10A.11 is to specify, under section 59 of the *Act*, descriptions of the *FCA controlled function* which are listed in *SUP* 10A.4.4R. The underlying purpose is to establish, and mark the boundaries of, the “FCA-approved persons regime” for appointed representatives.

10A.3 Provisions related to the Act

...

- 10A.3.3 G *Arrangement* is defined in section 59(10) of the *Act* as any kind of arrangement for the performance of a function which is entered into by a *firm* or any of its contractors with another *person* and includes the appointment of a *person* to an office, ~~his~~ their becoming a *partner*, or ~~his~~ their employment (whether under a contract of service or otherwise). ~~For the provisions in this chapter relating to outsourcing, see SUP 10A.13.5G and SUP 10A.13.6G.~~

- 10A.3.4 G ~~If, however, a firm is a member of a group, and the arrangements for the performance of an FCA controlled function of the firm are made by, for instance, the holding company, the person performing the function will only require approval if there is an arrangement (under section 59(1)) or a contract (under section 59(2)) between the firm and holding company permitting this. This need not be a written contract but could arise, for example, by conduct, custom and practice.~~ [deleted]

...

10A.4 Specification of functions

...

- 10A.4.2 R ~~The table of FCA controlled functions applies in relation to an FCA authorised person. It also applies in relation to an appointed representative for the purposes of SUP 10A.1.15R to SUP 10A.1.16BR~~

(Appointed representatives) whether its *principal* is an *FCA authorised person* or a *PRA authorised person*. [deleted]

...

10A.4.4 R FCA controlled functions

(FCA controlled functions for FCA authorised persons and appointed representatives)		
Type	CF	Description of FCA controlled function
...
Significant management function*	29	Significant management function
...
...		

10A.5 Significant-influence functions

What are the FCA significant-influence functions?

10A.5.1 G The *FCA significant-influence functions*, which are specified in *SUP 10A.4.1R*, comprise the *FCA governing functions* (*SUP 10A.6*) ~~and the significant management function~~ (*SUP 10A.9*). *SUP 10A.5* applies to each of the *FCA significant-influence functions*.

Definition of FCA significant-influence function

...

10A.5.3 R A *significant-influence function*, in relation to ~~the carrying on of a regulated activity by a firm~~ an appointed representative, means a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *firm's appointed representative's* affairs, ~~so far as relating to the activity~~.

...

10A.5.5 G Whether an *FCA controlled function* is likely to result in the *person* responsible for its performance exercising significant influence ~~on the~~

~~conduct of the firm's affairs~~ is a question of fact in each case. The FCA has identified the *FCA significant-influence functions* as satisfying this condition.

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

Periods of less than 12 weeks

10A.5.6 R If:

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

...

10A.5.7 G SUP 10A.5.6R enables cover to be given for, as an example, holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy. However, as soon as it becomes apparent that a *person* will be performing an *FCA controlled function* for more than 12 weeks, the ~~firm~~ *authorised approved person employer of the approved person in question* should apply for approval.

10A.6 FCA governing functions

Introduction

10A.6.1 G Every ~~firm~~ *appointed representative* will have one or more *persons* responsible for directing its affairs. These *persons* will be performing the *FCA governing functions* and will be required to be *FCA-approved persons* unless the application provisions in SUP 10A.1, or the particular description of an *FCA controlled function*, provide otherwise. For example, each *director* of a *company* incorporated under the Companies Acts will perform an *FCA governing function*.

...

~~What the FCA governing functions include~~

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

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

(a) the *systems and controls function* (if it applies to the *firm*); and

(b) the *significant management function*;

- (2) ~~(in respect of *bidding in emissions auctions*) that part of the *customer function* specified in SUP 10A.10.7R(7) (bidder's representative).~~

~~This does not apply to the *non-executive director function* or the function described in SUP 10A.6.8R. [deleted]~~

- 10A.6.4 G (1) ~~The effect of SUP 10A.6.3R is that a *person* who is approved to perform an *FCA governing function* will not have to be specifically *FCA approved* to perform the *systems and controls function* or the *significant management function* or the part of the *customer function* specified in SUP 10A.10.7R(7). However, a *person* who is approved to perform an *FCA governing function* will have to be additionally *FCA approved* before he can perform any of the *FCA required functions* or the *customer function* (except the part specified in SUP 10A.10.7R(7)).~~
- (2) ~~SUP 10A.6.3R does not apply to the *non-executive director function*. It does not apply to the *director function* if the only part of that function that the *FCA approved person* is performing is the function described in SUP 10A.6.8R. [deleted]~~

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

Director function (CF1)

- 10A.6.7 R ~~If a *firm* an appointed representative is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of a *director* (other than *non-executive director*) of that *firm* appointed representative.~~

- 10A.6.8 R (1) ~~If a *firm* an appointed representative is a *body corporate* (other than a *limited liability partnership*), the *director function* is also the function of acting in the capacity of a *person*:~~
- (a) ~~who is a *director*, partner, officer, member (if the *parent undertaking* or *holding company* is a *limited liability partnership*), *senior manager*, or employee of a *parent undertaking* or *holding company* of the *firm* appointed representative; and~~
- (b) ~~whose decisions or actions are regularly taken into account by the *governing body* of the *firm* appointed representative.~~

- (2) (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
- (3) (1) does not apply to the function falling into *SUP 10A.6.13R* (*non-executive director* of the *parent undertaking* or *holding company*).
- 10A.6.9 G ~~Examples of where *SUP 10A.6.8R* might apply include (but are not limited to):~~
- (1) ~~a chairman of an audit committee of a *parent undertaking* or *holding company* of a *UK firm* where that audit committee is working for that *UK firm* (that is, functioning as the audit committee for the *group*); or~~
- (2) ~~a *director* (other than a *non-executive director*) of a *parent undertaking* or *holding company* of a *UK firm* exercising significant influence by way of his involvement in taking decisions for that *UK firm*; or~~
- (3) ~~an individual (such as a *senior manager*) of a *parent undertaking* or *holding company* of a *UK firm* who is responsible for and/or has significant influence in setting the objectives for and the remuneration of executive *directors* of that *UK firm*; or~~
- (4) ~~an individual who is a *director* (other than a *non-executive director*) or a *senior manager* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influencing the operations of that *UK firm*, and acts in a manner in which it can reasonably be expected that an executive *director* or *senior manager* of that *UK firm* would act; or~~
- (5) ~~an individual of an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on, where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*. [deleted]~~

...

Non-executive director function (CF2)

- 10A.6.12 R If a ~~*firm*~~ an appointed representative is a *body corporate*, the *non-executive director function* is the function of acting in the capacity of a *non-executive director* of that ~~*firm*~~ appointed representative.

- 10A.6.13 R (1) If a ~~firm~~ an appointed representative is a *body corporate*, the *non-executive director function* is also the function of acting in the capacity of a *person*:
- (a) who is a *non-executive director* of a *parent undertaking* or *holding company*; and
- (b) whose decisions or actions are regularly taken into account by the *governing body* of the ~~firm~~ appointed representative.
- (2) However, (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
- 10A.6.14 G Examples of where ~~SUP 10A.6.13R~~ might apply include (but are not limited to):
- (1) ~~an individual who is a non-executive director of a parent undertaking or holding company who takes an active role in the running of the business of a UK firm, for example, as a member of a board or committee (on audit or remuneration) of that firm; or~~
- (2) ~~an individual who is a non-executive director of a parent undertaking or holding company having significant influence in setting and monitoring the business strategy of the UK firm; or~~
- (3) ~~an individual who is a non-executive director of a parent undertaking or holding company of a UK firm involved in carrying out responsibilities such as scrutinising the approach of executive management, performance, or standards of conduct of the UK firm; or~~
- (4) ~~an individual who is a non-executive director of a parent undertaking or holding company of a UK firm who is accustomed to influence the operations of the UK firm, and acts in a way in which it can reasonably be expected that a non-executive director of the UK firm would act; or~~
- (5) ~~an individual who is a non-executive director of an overseas firm which maintains a branch in the United Kingdom from which regulated activities are carried on where that individual has responsibilities for those regulated activities which are likely to enable him to exercise significant influence over the UK branch. [deleted]~~

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

- 10A.6.16 G (1) The explanation in *SUP 10C.5B.2G* of the basis on which the *group entity senior manager function* is included as a *controlled function* for an *SMCR firm* is also relevant to the basis on which the *director function* and the *non-executive director function* are applied to *persons* who have a position with the ~~firm's~~ appointed representative's parent undertaking or holding company under *SUP 10A.6.8R* or *SUP 10A.6.13R*.
- (2) The *guidance* in *SUP 10C.5B.3G* to *SUP 10C.5B.5G* about when the *group entity senior manager function* applies to an *SMCR firm* is also relevant to when those who have a position with ~~a firm's~~ an appointed representative's parent undertaking or holding company may be performing a *controlled function* under *SUP 10A.6.8R* or *SUP 10A.6.13R*.

Chief executive function (CF3)

10A.6.17 R The *chief executive function* is the function of acting in the capacity of a *chief executive* of ~~a firm~~ an appointed representative.

10A.6.18 G This function is having the responsibility, alone or jointly with one or more others, under the immediate authority of the *governing body*:

- (1) for the conduct of the whole of the business (or relevant activities); or
- (2) in the case of a ~~branch~~ branch in the *United Kingdom* of ~~an overseas firm~~ a non-UK appointed representative, for the conduct of all of the activities subject to the *UK regulatory system*.

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

...

Partner function (CF4)

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

- (2) If the principal purpose of the ~~firm~~ appointed representative is to carry on one or more *regulated activities*, each *partner* performs the *partner function*.
- (3) If the principal purpose of the ~~firm~~ appointed representative is other than to carry on *regulated activities*:
- (a) a *partner* performs the *partner function* to the extent only that ~~he has~~ they have responsibility for a *regulated activity*; and
- (b) a *partner* in a ~~firm~~ an appointed representative will be taken to have responsibility for each *regulated activity* except where the *partnership* has apportioned responsibility to another *partner* or group of *partners*.
- 10A.6.26 R If a ~~firm~~ an appointed representative is a *limited liability partnership*, the *partner function* extends to the ~~firm~~ appointed representative as if the ~~firm~~ appointed representative were a *partnership* and a member of the ~~firm~~ appointed representative were a *partner*.

...

Director of unincorporated association function (CF5)

- 10A.6.29 R If a ~~firm~~ an appointed representative is an unincorporated association, the *director of unincorporated association function* is the function of acting in the capacity of a *director* of the unincorporated association.

...

~~Small friendly society function (CF6)~~

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

10A.9 Significant management functions [deleted]

Amend the following as shown.

10A.10 Customer-dealing functions

Introduction

10A.10.1 R SUP 10A.10 applies with respect to activities carried on from an establishment maintained by the *firm* ~~(or by its appointed representative)~~ in the *United Kingdom*.

...

The basic rule about the customer function

...

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

- (1) customers of A or of A's principal; or
- (2) property of customers of A; or of A's principal.

10A.10.5A R In SUP 10A.10.5R, customer τ means:

- (1) (in relation to an appointed representative) a person who is using, or who is or may be contemplating using, any of the services provided by the appointed representative; or
- (2) (in relation to a firm, means principal) a person who is using, or who is or may be contemplating using, any of the services provided by the firm principal.

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

...

10A.12 Procedures relating to FCA-approved persons

Forms

10A.12.1 G The forms listed in SUP 10A.12.2G are referred to in SUP 10A.12 (Procedures relating to FCA-approved persons) to ~~SUP 10A.17 (Further questions)~~ SUP 10A.16 (How to apply for approval and give notifications).

10A.12.2 G Table: FCA-approved persons forms

Form		Purpose	Handbook requirement
the relevant	The relevant online form on the FCA and PRA's online	Application to perform controlled functions	SUP 10A.13.3D

Form A	notification and application system or the form in SUP 10A Annex 4D (See Note) SUP 10C Annex 3D	under the approved persons regime	
...			
Form E	The relevant online form on the FCA and PRA's online notification and application system system or the form in SUP 10A Annex 8D (See Note) SUP 10C Annex 7D	Internal transfer of an approved person	SUP 10A.14.4D
Note (1) [deleted]			
Note (2): Where SUP 10A.1.16BR (appointed representative of an SMCR firm) applies, the version of the form to be used is the one required by SUP 10C (FCA senior managers regime for approved persons in SMCR firms).			

...

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

...

Who should make the application?

- 10A.13.5 G (1) In accordance with section 60 of the *Act* (Applications for approval), applications must be submitted by, or on behalf of, the *firm* itself, not by:
- (a) the *FCA candidate*; or
 - (b) ~~(where the *FCA candidate* works for the *firm's parent undertaking or holding company*) by the *firm's parent undertaking or holding company* the appointed representative.~~
- (2) Usually this will be the *firm* that is employing the *FCA candidate* to perform the *FCA controlled function*. Where a *firm* has outsourced the performance of an *FCA controlled function*,

the details of the outsourcing determine where responsibility lies and whom the *FCA* anticipates will submit *FCA approved persons* application forms. *SUP 10A.13.6G* describes some common situations. The *firm* which is outsourcing is referred to as “A” and the *person* to whom the performance of the *FCA controlled function* has been outsourced, or which makes the arrangement for the *FCA controlled function* to be performed, is referred to as “B”. In each situation, A must take reasonable care to ensure that, in accordance with section 59(2) of the *Act*, no *person* performs an *FCA controlled function* under an arrangement entered into by its contractor in relation to the carrying on by A of a *regulated activity*, without approval from the *FCA*. See also *SYSC 8.1.1R*: [deleted]

10A.13.6 G Outsourcing arrangements [deleted]

Outsourcing arrangements		Submitting form
<i>Firm A to firm B</i>	The <i>FCA</i> will consider A to have taken reasonable care if it enters into a contract with B under which B is responsible for ensuring that the relevant <i>FCA controlled functions</i> are performed by <i>FCA approved persons</i> , and that it is reasonable for A to rely on this	<i>Firm B</i> submits <i>FCA approved persons</i> forms on behalf of <i>firm A</i>
Outsourcing by A to B (both being a member of the same <i>United Kingdom</i> group and each having its registered office in the <i>United Kingdom</i>)	See <i>SUP 10A.3.4G</i>	See <i>SUP 15.7.8G</i>
(i) A to B, where B is a non- <i>authorised person</i> not part of the same group as A (ii) A to B, where A is a <i>branch</i> of an <i>overseas firm</i> in the <i>United Kingdom</i> , and B is an <i>overseas</i>	Responsibility for (as opposed to the performance of) any activity outsourced to B will remain with A. See <i>SYSC 8</i>	A ensures that an individual approved by the <i>FCA</i> under a controlled function that is a <i>significant influence function</i> has responsibility for the outsourced arrangement and A submits a form in

<p>undertaking of the same group</p> <p>(iii) A to B, where A is a UK authorised subsidiary of an overseas firm and B is an overseas undertaking of the same group</p>		<p>relation to that individual</p>
--	--	---

...

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

Moving within a firm

...

10A.14.4 D (1) A *firm* must use Form E where an *approved person* is both ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *FCA controlled functions* ~~within~~ in relation to the same firm or in relation to a firm in the same group.

(2) A *firm* must not use Form E if:

...

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

...

(ii) ...

in relation to any:

(iii) ...

...

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

...

...

Moving between firms

10A.14.6 G If it is proposed that an *FCA-approved person* will no longer be performing an *FCA controlled function* under an *arrangement* entered

into by ~~one firm or one of its contractors~~ the appointed representative of one principal, but will be performing the same or a different *FCA controlled function* under an arrangement entered into by ~~a new firm or one of its contractors~~ the appointed representative of a new principal (whether or not the new firm is in the same group as the old firm), the new ~~firm~~ principal will be required to make a fresh application for the performance of the *FCA controlled function* by that person. This applies even if the new principal is in the same group as the old principal or the appointed representative is the same.

Ceasing to perform an FCA controlled function

10A.14.8 R ...

(2) If:

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

...

...

10A.14.10 R ...

(2) Form C is qualified if the information it contains:

- (a) relates to the fact that the *firm* or the appointed representative has dismissed, or suspended, the *FCA-approved person* from its employment; or
- (b) relates to the resignation by the *FCA-approved person* while under investigation by the *firm*, the appointed representative, the *FCA* or any other *regulatory body*; or

...

...

Changes to an approved person's personal details

10A.14.15 R If an *FCA-approved person's* title, name or national insurance number changes, the ~~firm for which the person performs an FCA controlled function~~ authorised approved person employer must notify the *FCA* on Form D (*SUP* 10C Annex 6R) of that change within seven *business days* of the *firm* becoming aware of the matter.

...

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

...

...

10A.15 References and accurate information

References

- 10A.15.1 G (1) *SYSC 22* (Regulatory references) says that if a *firm* (A):
- (a) is considering appointing a *person* (P) to perform any *controlled function* or certain other functions;
 - (b) requests a reference from a *firm* (B) that is P's current or former *employer*; and
 - (c) indicates to B the purpose of the request;
- B should, as soon as reasonably practicable, give a reference to A.
- (2) ~~This applies even if A is a *firm* to which *SUP 10C* (FCA senior managers regime for approved persons in SMCR firms)) applies rather than this chapter. *SYSC 22.8.3R* and *SYSC 22.8.4R* (Appointed representatives) say that this applies to B's appointed representatives as well as to B.~~

...

The need for complete and accurate information

- 10A.15.4 G The obligations to supply information to the *FCA* under either *SUP 10A.14.8R* or *SUP 10A.14.10R* apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* or its appointed representative and an *employee* upon termination of the *employee's* employment. A *firm* should not (and should ensure that its appointed representatives do not) enter into any such arrangements or agreements that could conflict with its obligations under this section.

...

10A.16 How to apply for approval and give notifications

- 10A.16.1 D (1) This direction applies to an application under Form A or Form E.
- (2) An application by a *firm* must be made by submitting the Form ~~online at fea.org.uk using the form specified on the FCA's and PRA's online notification and application system~~ in accordance with the requirements in SUP 10C.15 (Forms and other documents and how to submit them to the FCA) about the submission of those Forms.
- ...
- (4) ~~Where a *firm* is obliged to submit an application online under (2), if the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must use the form in SUP 10A Annex 4D or SUP 10A Annex 8D and submit it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification). [deleted]~~
- (5) ~~An application by a *firm* in relation to a controlled function to which SUP 10A.1.16BR (appointed representative of an SMCR firm) applies must be made in accordance with SUP 10C.15 (Forms and other documents and how to submit them to the FCA) and not this section. [deleted]~~
- 10A.16.2 R (1) This *rule* applies to a notification under Form B, Form C or Form D.
- (2) A notification must be made in accordance with ~~SUP 10A.16.1D~~, except that the annexes in which the forms are to be found are SUP 10C Annex 5R or SUP 10C Annex 6R, rather than the Annexes mentioned in SUP 10A.16.1D the requirements in SUP 10C.15 (Forms and other documents and how to submit them to the FCA) about the submission of those Forms.
- (3) ~~A notification by a *firm* in relation to a controlled function to which SUP 10A.1.16BR (appointed representative of an SMCR firm) applies must be made in accordance with SUP 10C.15 (Forms and other documents and how to submit them to the FCA) and not this section. [deleted]~~
- 10A.16.2A R ~~SUP 10A.16.2R(3) rule also applies to Form B in relation to a controlled function to which SUP 10A.1.16BR (appointed representative of an SMCR firm) applies. [deleted]~~
- 10A.16.3 G ~~If the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, the FCA and PRA will endeavour to publish a notice on their websites confirming that online submission is unavailable and that the alternative methods of~~

~~submission set out in SUP 10A.16.1D(4) and SUP 15.7.4R to SUP 15.7.9G (Form and method of notification) should be used. [deleted]~~

- 10A.16.4 G ~~Where SUP 10A.16.1D(4) or the equivalent situation under SUP 10A.16.2R applies to a firm, GEN 1.3.2R (Emergency) does not apply. [deleted]~~

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

10A.17 Further questions [deleted]

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

10A Annex 1G Frequently asked questions [deleted]

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

10A Annex 4D Form A: Application to perform controlled functions under the approved person regime [deleted]

10A Annex 8D Form E: Internal transfer of an approved person [deleted]

Amend the following as shown.

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

10C.1 Application

...

Appointed representatives

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

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

...

...

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

...

Types of controlled function

...

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

...

10C.4 Specification of functions

...

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

...

10C.6 FCA-required functions

...

10C.6.4 R ...

Limited scope function (SMF29)

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

- (1) responsible for the apportionment function and/or the oversight function set out in SYSC 4.4.5R;

- (2) who has the responsibility allocated under MAR 8.5.2R (Responsibility for benchmark activities: regulated benchmark administrators); or
- (3) performing the role of the senior manager described in MAR 8.5.4R(2) (Responsibility for benchmark activities: regulated benchmark administrators).

10C.6.6 G The fact that there is a *person* performing the *limited scope function* under SUP 10C.6.5R(1), and who has responsibility for activities subject to regulation by the *FCA*, may have a bearing on whether a manager who is based overseas will be performing an *FCA controlled function*. It is a factor to take into account when assessing the likely influence of the overseas manager.

...

10C.12 Conditional and time-limited approvals

Purpose

...

10C.12.2 G ...

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

...

...

10C.16 References and accurate information

References

10C.16.1 R (4) *SYSC 22* (Regulatory references) says that if a *firm* (A):

- (1) (a) is considering appointing a *person* (P) to perform any *controlled function* or certain other functions;
- (2) (b) requests a reference from a *firm* (B) that is P's current or former *employer*; and
- (3) (c) indicates to B the purpose of the request;

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

- (2) ~~This applies even if A is a *firm* to which SUP 10A (FCA Approved Persons) applies rather than this chapter.~~

...

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

Part One: Introduction

...

1.3 G ...

- (3) Another reason would be if the *rules* defining the *FCA controlled function* refer to a *rule* elsewhere in the *FCA Handbook* and the latter only applies to certain types of *firm*. For example:
- (a) SYSC 1 Annex 1 (Detailed application of SYSC) cuts back the application of some of the *FCA required functions*;
 - (b) see the entry for this chapter in the table in BENCH 2.1.2G (Parts of the Handbook applicable to the regulated activity of administering a benchmark) for another example relating to *FCA required functions*.

...

...

Part Seven: Functions applying to limited scope firms

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

- (1) a *firm* falling within the table in SYSC 23 Annex 1 6.4R that does not come within (2) to (4A) or (8) to (9);
- ...
- (4) ...
- (4A) a *limited scope SMCR benchmark firm*;
- (5) a *sole trader* who does not come within (1) to (4A), (8) or (9);
- (6) an *authorised professional firm* that does not come within (1) to (4A), (8) or (9);

...

...

- 7.3 R (1) The table in *SUP 10C Annex 1 7.4R* sets out which *FCA controlled functions* apply to a *limited scope SMCR firm* covered by *SUP 10C Annex 1 7.1R(1), (2), (3), (4), (4A), (8) or (9)*.

...

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

Part 1.1 (UK and non-EEA firms)						
(1) Brief description of function	(2) Function number	(3) General	(4) Insurance distribution firms	(5) Credit firms	(6) Consumer credit appointed representatives	(7) <u>Benchmark firms</u>
Governing functions						
<i>The governing functions that apply to core SMCR firms</i>	Various	...	...	...	...	✗
Required functions						
<i>Compliance oversight function</i>	SMF 16	...	...	...	...	✗
<i>Money laundering reporting function</i>	SMF 17	...	...	...	...	✗
<i>Limited scope function</i>	SMF 29	...	...	...	...	✓

...

Notes to the table

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

...

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

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

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

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

...

...

Amend the following forms in the following annexes in accordance with Annex K of this instrument.

10C Annex 3D Form A: Application to perform senior management functions

Long Form A

Long Form A – Dual-regulated firms (including EEA and third country firms)

Long Form A – Solo regulated firms (including EEA and third country)

Long Form A – UK and overseas firms (not incoming EEA) for MiFID authorisation applications

Short Form A

Dual-regulated firms (including EEA and third country firms)

Short Form A – Solo regulated firms (including EEA and third country)

10C Annex 4R Form B: Notice to withdraw an application to perform controlled functions (including senior management functions)

Form B – Notice to withdraw an application to perform controlled functions (including senior management functions)

10C Annex 5R Form C: Notice of ceasing to perform controlled functions including senior management functions

Form C – Notice of ceasing to perform controlled functions including senior management functions

10C Annex 6R Form D: Notification: Changes to personal information/application details and conduct breaches/disciplinary action related to conduct

Form D – Notification: Changes to personal information/application details and conduct breaches/disciplinary action related to conduct

10C Annex 7D Form E: Internal transfer of a person performing a controlled function

Form E – Internal transfer of a person performing a controlled function for dual-regulated firms

Form E – Internal transfer of a person performing a controlled function for solo-regulated firms (including EEA and third country)

...

12 Appointed representatives

...

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

...

Obligations of firms under the approved persons and senior managers regime

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

(2) [deleted]

...

13A Qualifying for authorisation under the Act

...

13A Application of the Handbook to Incoming EEA Firms
Annex 1G

...

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

...

15 Notifications to the FCA**15.1 Application**

...

SMCR firms

15.1.7 R The following apply only to *SMCR firms*:

- (1) *SUP 15.2.5G* (Purpose);
- (2) *SUP 15.11* (Notification of COCON breaches and disciplinary action);
- (3) *SUP 15.15* (Enhanced scope SMCR firm retail intermediaries); ~~and~~
- (4) *SUP 15.16* (Notification of changes in the management body); and
- (5) *SUP 15.17* (Notification by limited scope SMCR benchmark firm).

...

15.3 General notification requirements

...

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

...

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

...

...

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

15.17 Notification of regulated income by limited scope SMCR benchmark firm

Application

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

Purpose

- 15.17.2 G (1) As explained in SYSC 23 Annex 1 6.13R, the *FCA* may grant a *waiver* to certain benchmark *firms* that treats them as a *limited scope SMCR firm*.
- (2) One of the eligibility conditions that the *FCA* anticipates it will apply is that the *firm's* income from benchmark activities is below 20% of its total income.
- (3) The purpose of this section of the *FCA Handbook* is to allow the *FCA* to monitor whether a *firm* continues to meet that condition after it has received the *waiver*.
- (4) The *waiver* may modify or replace this section to be consistent with the basis on which a *firm* receives the *waiver* if the *firm* receives the *waiver*:
- (a) on a different basis from the one described in (2);
 - (b) on the basis of an adjusted calculation of revenue as contemplated by SYSC 23 Annex 1 6.17G(5) (Benchmark firms: When the waiver is likely to be available); or
 - (c) on some other basis inconsistent with this section.

Definitions

- 15.17.3 R In this section of the *FCA Handbook*:
- (1) a *firm's* reporting year means the annual period in respect of which it prepares its *annual financial statements*;
 - (2) reporting date is defined in SUP 15.17.9R;
 - (3) annual regulated income is defined in SUP 15.17.6R;
 - (4) annual income is defined in SUP 15.17.5R.

Obligation to make calculations

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

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

- 15.17.6 R A *firm*'s annual regulated income is its annual income in respect of, or in relation to, activities in the *UK* that comprise a necessary part of its business as a *regulated benchmark administrator*.
- 15.17.7 R (1) Where the sales and marketing of a benchmark are undertaken by a separate legal entity, the *firm* is responsible for identifying the relevant income and treating it as its own income.
- (2) To avoid double counting, the *firm* must include only the income from sales and exclude any amount paid to it from that income to pay for its expenses as a *regulated benchmark administrator*.
- 15.17.8 R A *firm* must calculate its annual regulated income fairly, consistently and in accordance with generally accepted accounting practice.
- 15.17.9 R (1) A *firm* must complete the calculation in *SUP* 15.17.4R no later than 80 *business days* after the *accounting reference date* for the applicable reporting year.
- (2) This section of the *FCA Handbook* refers to the date in this *rule* as the 'reporting date'.

Obligation to notify the FCA

- 15.17.10 R A *firm* must notify the *FCA* if its annual regulated income is 20% or more of its annual income for a reporting year if, in the previous reporting year, its annual regulated income was less than 20% of its annual income
- 15.17.11 R A *firm* must notify the *FCA* if its annual regulated income is less than 20% of its annual income for a reporting year if, in the previous reporting year, its annual regulated income was 20% or more of its annual income.
- 15.17.12 R A *firm* must make the notification in *SUP* 15.7.10R or *SUP* 15.17.11R no later than the reporting date for the reporting year in question.
- 15.17.13 G The notification obligations in this section apply whether this is the first time the relevant event has occurred or whether it has happened before.
- 15.17.14 G A *firm* need not include the amount of its annual regulated income or annual income in a notification under this section.
- 15.17.15 G A *firm*'s reporting year may start or end before it became a *firm*.
- 15.17.16 G (1) This section of the *FCA Handbook* does not require a *firm* regularly to notify the *FCA* whether its annual regulated income is 20% or more of its annual income or less than 20%.
- (2) Instead this section only requires a *firm* to notify the *FCA* when its annual regulated income crosses (upwards or downwards) the 20% mark.

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

How to submit notifications

- 15.17.17 R A *firm* does not have to use the form in *SUP 15 Annex 4R* (Notification form) to make a notification under this section of the *FCA Handbook* but must include the details required by Section A of that form (Personal Details).
- 15.17.18 G Subject to *SUP 15.17.17R*, *SUP 15.7* (Form and method of notification) applies to notifications under this section of the *FCA Handbook*.

Amend the following as shown

16 Reporting requirements

...

16.26 Reporting of information about Directory persons

Application

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

...

Annex I

Amendments to Professional Firms sourcebook (PROF)

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

5 Non-mainstream regulated activities

...

5.3 Reference to other sourcebooks and manuals

...

Supervision manual

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

...

Annex J

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

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

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

...

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

...

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

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

...
Regulatory processes	Supervision manual (<i>SUP</i>)	<p>This applies subject to the following qualifications:</p> <p>(a) In general only the following parts of <i>SUP</i> will be relevant to a <i>firm</i> which only has <i>permission</i> to carry on the <i>regulated activity</i> of <i>administering a benchmark</i>: <i>SUP</i> 1-2, <i>SUP</i> 5-8, <i>SUP</i> 9-10A, <u><i>SUP</i> 10C</u>, <i>SUP</i> 15-15B, <i>SUP</i> 16.1-16.3 and <i>SUP</i> 16.10.</p> <p>(b) <i>SUP</i> 10A only applies to a regulated benchmark administrator which is not an SMCR firm (but not all controlled functions apply to a firm which only has permission to carry on the regulated activity of administering a benchmark). [deleted]</p> <p>(c) <i>SUP</i> 10C only applies to a <i>regulated benchmark administrator</i> which is because it is an SMCR firm. That chapter deals with the designated senior management functions that apply to a regulated benchmark administrator and other SMCR firms.</p> <p><u>If a regulated benchmark administrator is a core SMCR firm, the following FCA-designated senior management functions, which normally apply to a core SMCR firm, do not apply:</u></p> <p>(i) <u>the compliance oversight function; and</u></p> <p>(ii) <u>the money laundering reporting function.</u></p> <p><u>That is because those FCA-designated senior management functions are specified by incorporation of requirements in SYSC and the relevant parts of SYSC do not apply in relation to benchmark activities (which includes administering a benchmark).</u></p>

...

Annex K

Handbook forms

[Editor's Note: The proposed amendment of the joint FCA/PRA forms is subject to the PRA consulting on and deciding to make the same amendment.]

This Annex contains the amendments to the Handbook forms which are to be made in accordance with paragraph F of the cover sheet of this instrument.

In the following forms, the following paragraph is to be amended as shown.

SUP 10C Annex 3D

Long Form A – Dual-regulated firms (including EEA and third country firms)

Short Form A – Dual-regulated firms (including EEA and third country firms)

SUP 10C Annex 4R

Form B – Notice to withdraw an application to perform controlled functions (including senior management functions)

SUP 10C Annex 5R

Form C – Notice of ceasing to perform controlled functions including senior management functions

SUP 10C Annex 6R

Form D – Notification: Changes to personal information/application details and conduct breaches/disciplinary action related to conduct

SUP 10C Annex 7D

Form E – Internal transfer of a person performing a controlled function for dual-regulated firms



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

The *FCA* has produced notes which will assist both the applicant *firm* and the *approved person* in answering the questions in this form. Please read these notes, which are available on the *FCA* website at <https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex5.html>

Both the applicant *firm* and the *approved person* will be treated by the *FCA* and *PRA* as having taken these notes into consideration when completing this form. Terms defined in either or both of the *FCA Handbook* or the *PRA Rulebook* are italicised and should be construed accordingly.

...

In the following forms, the following paragraph is to be amended as shown.

SUP 10C Annex 3D

Long Form A – Solo regulated firms (including EEA and third country)
Long Form A – UK and overseas firms (not incoming EEA) for MiFID authorisation applications
Short Form A – Solo regulated firms (including EEA and third country)

SUP 10C Annex 7D

Form E – Internal transfer of a person performing a controlled function for solo-regulated firms (including EEA and third country)



Application number
(for FCA use only)

~~The FCA has produced notes which will assist both the applicant *firm* and the *candidate* in answering the questions in this form. Please read the notes, which are available on the FCA's website at: <https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex3D.html>~~

~~Both the *applicant* and the *candidate* will be treated by the FCA as having taken these notes into consideration when completing this form.~~

...

