

Changes to the Approved Persons Regime for Solvency II firms

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We are asking for comments on this Consultation Paper by 2 February 2015.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp14-25-response-form.

Or in writing to:

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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.

You can download this Consultation Paper from our website: www.fca.org.uk

Abbreviations used in this paper

APER	Statements of Principle and Code of Practice for Approved Persons
APR	Approved Persons Regime
CBA	Cost benefit analysis
CEO	Chief Executive Officer
CF	Controlled Function
CFO	Chief Finance Officer
CP	Consultation Paper
CRO	Chief Risk Officer
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
FCA	Financial Conduct Authority
FIT	The Fit and Proper Test for Approved Persons (Handbook)
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
ISPV	Insurance Special Purpose Vehicle
MoU	Memorandum of Understanding
NED	Non-Executive Director
PRA	Prudential Regulation Authority
RAP	Relevant Authorised Person
SIF	Significant Influence Function
SIMF	Senior Insurance Manager Function
SMF	Senior Management Function

1. Overview

Introduction

- 1.1** This Consultation Paper (CP) proposes changes to the Approved Persons Regime for Solvency II firms to address:
- the Financial Conduct Authority's (FCA) role in reviewing firms' assessments of the fitness and propriety of certain important individuals within these firms
 - provisions in the Financial Services (Banking Reform) Act 2013 ('the Banking Reform Act'), which allow the regulators to apply Conduct Rules to certain individuals in FSMA-authorised firms, and
 - the Prudential Regulation Authority's (PRA) proposed reforms to the scope of its pre-approval regime

Who does this consultation affect?

- 1.2** This consultation affects all firms within the scope of the Solvency II Directive (referred to in this CP as 'firms') including Insurance Special Purpose Vehicles (ISPVs), the Society of Lloyd's, managing agents, UK branches of foreign firms (both EEA and third country firms), and to approved persons within those firms. The proposals in this CP are unlikely to be of practical relevance to approved persons of Appointed Representatives of these firms. They also do not apply to non-directive firms, but such firms should note the changes in case they become subject to Solvency II in the future.
- 1.3** We are not proposing any changes to the territorial scope of the existing Approved Persons Regime. Some of the proposals will not be relevant to incoming EEA firms.

Is this of interest to consumers?

- 1.4** This consultation will primarily be of interest to firms and their approved persons. Consumers may be interested in how the staff they interact with will be required to comply with the proposed Conduct Rules.

Context

- 1.5** In addition to provisions aimed at supporting the prudential strength and good governance of firms, the Solvency II Directive introduces new requirements to ensure the fitness and propriety of persons performing important functions in these organisations.
- 1.6** The Financial Services Authority (FSA) consulted on changes to implement these requirements in part in 2011.¹ Since then, the FSA has been replaced by the FCA and the PRA, which have different statutory objectives and therefore different regulatory focuses. Because of its emphasis on the prudential strength of firms, the transposition of Solvency II is primarily for the PRA, but since the fitness and propriety of key persons impacts all of the FCA's objectives², we have a role in relation to these particular provisions. Our proposals, as set out in this CP, complement and build on those of the PRA as the lead transposing authority, and it is important that they are read in conjunction with them.³ Respondents should also note the level 2 EU Regulation⁴ which is directly applicable to firms and supplements the provisions in the Directive, and also the draft EIOPA Guidelines⁵ which, if made, will set out expectations on firms as well as on supervisory authorities.
- 1.7** In July 2014, the PRA and FCA issued a joint consultation on plans to apply provisions in the Banking Reform Act on the regulation of individuals in Relevant Authorised Persons (RAPs)⁶; this included a new set of Conduct Rules. The Banking Reform Act enables the regulators to introduce Conduct Rules for certain individuals in all FSMA-authorized firms. Both the PRA and FCA consider that the Conduct Rules proposed for individuals in banks are applicable more broadly to those within the insurance and re-insurance sectors.
- 1.8** The PRA's consultation on its plans for transposing Solvency II also sets out its intention to focus its pre-approval processes on those functions it believes are most important in relation to its statutory objectives.⁷ This means that it will not require its pre-approval for some executive and certain other functions. This triggers a decision for the FCA on whether to make these functions Controlled Functions for the purposes of conduct regulation.

Summary of our proposals

- 1.9** We propose to:
- Amend our current Approved Persons assessments to reflect the Solvency II framework, supplementing the information we request in line with (currently draft) EIOPA Guidelines. We plan to consult in a later CP on particular changes to the form that firms must submit to us in order to apply for pre-approval for Significant Influence Functions (Form A) to give effect to this.

¹ www.bankofengland.co.uk/pr/Pages/publications/transpositionofsolvency2.aspx

² See Compatibility Statement at Annex 3

³ The PRA's proposals can be found in PRA CP CP26/14. www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2614.aspx

⁴ Commission Delegated Regulation (EU) of 10.10.2014 supplementing the Solvency II Directive and in particular Chapter IX on Systems of Governance and article 273 relating to Fit and Proper Requirements: <http://ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-7230-EN-F1-1.Pdf>

⁵ See draft EIOPA Guidelines on Systems and Governance and Own Risk and Solvency Assessment and in particular Section 3 re Fit and Proper and Guidelines 15 and 16. <https://eiopa.europa.eu/en/consultations/consultation-papers/2014-closed-consultations/june-2014/public-consultation-on-the-set-1-of-the-solvency-ii-guidelines/index.html>

⁶ UK banks, building societies, credit unions and PRA-designated investment firms.

⁷ www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2614.aspx

- Make those executive and certain other Controlled Functions which the PRA is proposing not to maintain FCA Significant Influence Functions (SIFs) and therefore subject to our pre-approval. This will ensure that individuals who can significantly impact our objectives remain in-scope of conduct regulation.
- Defer consideration of whether to include Non-Executive Directors (NEDs)⁸ within the amended Approved Persons Regime for Solvency II firms, while we consider responses to our parallel consultation on banks.⁹ We will consult separately on this point.
- Apply to FCA and PRA approved persons new FCA Conduct Rules mirroring those that we have proposed for individuals in RAPs. These rules build on existing Statements of Principle and Code of Practice for Approved persons (APER) principles¹⁰, and in addition emphasise the importance of treating customers fairly, and of responsible delegation by holders of SIFs.

Equality and diversity considerations

1.10 We have considered the equality and diversity issues that may arise from the proposals in this CP. Overall, we do not consider that the proposals in this CP raise concerns with regards to equality and diversity issues. We do not consider that the proposals in this consultation result in direct discrimination for any of the groups with protected characteristics i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.

1.11 We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any input respondents to this consultation have on such matters.

Impact on mutuals

1.12 We consider that the impact of the proposed changes to the rules proposed within this CP on mutual organisations will not be significantly different from its impact on other authorised persons, but we welcome views from respondents on this issue.

Next steps

What do you need to do next?

1.13 We are asking for feedback on the proposals set out in this CP, and in particular we would welcome responses to consultation questions 1-5, set out at Annex 4.

1.14 Please send your responses to us at: cp14-25@fca.org.uk by 2 February 2015. This is a shortened consultation period, to enable us to support the implementation of Solvency II by the 31 March transposition deadline.

⁸ Including the Chair of the Nominations Committee

⁹ www.fca.org.uk/your-fca/documents/consultation-papers/cp14-13

¹⁰ <http://fshandbook.info/FS/html/FCA/APER/2/1A>

What will we do?

- 1.15** We will consider your feedback and plan to publish our rules alongside those relating to reforms to the regime for regulating individuals in RAPs.
- 1.16** A further technical CP will follow this one in due course. This will cover changes to forms, consequential changes, and details of transitional arrangements.¹¹ We also plan to consult on the position of NEDs, and may also consult on broader consequential changes to the governance provisions in the FCA handbook in light of PRA proposals transposing Solvency II requirements, Level 2 Regulations and (currently draft) EIOPA Guidelines.
- 1.17** We will make available more details on the timetable for implementing the proposals in this CP later this year.
- 1.18** The FCA will consider the application of Conduct Rules to individuals in all other FSMA-authorized persons that are neither RAPs nor Solvency II firms in due course, in line with powers granted in the Banking Reform Act. In the interim, the existing Approved Persons Regime will continue to apply in its current form.

¹¹ In addition, further consequential changes are expected in relation to the FCA's proposals but as they are required in relation to both the proposals in this CP and CP 14/13 they will be dealt with together in a subsequent consultation.

2. Solvency II requirements on fitness and propriety

- 2.1** This chapter sets out how we intend to reflect Solvency II requirements on the fitness and propriety of individuals performing important roles in firms, in so far as they relate to FCA Controlled Functions, through the existing Approved Persons Regime.

Solvency II requirements on fitness and propriety

- 2.2** The PRA is proposing in PRA CP 26/14 to transpose Article 42 of Solvency II (which sets out the high-level fit and proper requirements of the directive) into its rules. Article 42 envisages that firms will ensure that persons performing 'key functions' are fit and proper, and that in relation to certain of those key functions, firms must notify the supervisory authority and provide them with information needed to assess whether such persons are fit and proper.
- 2.3** Draft EIOPA Guidelines set out EIOPA's expectation that supervisory authorities should assess the fitness and propriety of those subject to notification requirements (see draft guideline 16). These guidelines also set out the information that EIOPA considers supervisory authorities should require as a minimum to support these assessments (see guideline 15).

Using the existing system for pre-approving Controlled Functions

- 2.4** The existing Approved Persons Regime includes checks to ensure that those carrying out important functions within firms are competent to perform their role and have high standards of personal integrity before they take up the position ('pre-approval'). While Solvency II and the EIOPA guidelines do not require pre-approval, we propose to use the existing approved persons assessment mechanisms within this regime, adapted slightly to align with the Solvency II framework.
- 2.5** Therefore, where individuals being approved by the FCA are also carrying out Solvency II key functions where notification of the regulator is required, our assessments will demonstrate that the appropriate checks by firms have been made in line with expectations arising under the Solvency II framework.

FCA Controlled Functions that are Solvency II functions

- 2.6** Articles 44-48 include details of specific functions which would be considered key functions under Solvency II. In its consultation PRA CP 26/14, the PRA has proposed that it will supervise the fit and proper assessment by firms of any key function holders who are performing neither a PRA nor an FCA Controlled Function.¹²

¹² www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2614.aspx

- 2.7** In practice, we expect that the FCA-designated functions within the current Approved Persons Regime that are most likely also to be regarded by us or firms as Solvency II key functions (depending on their particular circumstances) are CF29 (Significant Management), CF10 (Compliance) and CF8 (Appointment and oversight) (we plan to give further consideration to CF8 so have not made specific proposals here). If the changes proposed in Chapter 3 are made then those functions will also potentially be Solvency II key functions.
- 2.8** Note that we are not proposing to expand the current description of our Controlled Functions for the purposes of Solvency II. So, for example, we are not proposing to expand the current scope of CF10, despite the Compliance function being prescribed as a key function within Solvency II. This is because the Solvency II Compliance function appears to be primarily focused on compliance with Solvency II as a whole which largely contains prudential requirements. Also, we have not expanded the CF29 function to incorporate a residual category of ‘Solvency II key function’. We consider that the existing scope of our Controlled Functions is appropriate for the purposes of advancing our objectives. Any persons performing Solvency II functions which fall outside the approved persons regime will be subject to PRA rules transposing Article 42 (and directly applicable Regulations and EIOPA Guidelines), and will be dealt with under the Memorandum of understanding we have with the PRA.
- 2.9** We have not proposed particular provisions in relation to CF8 in light of the PRA’s proposals, as we may consult further on consequential changes to our governance regime (including SYSC 2 which is linked to CF8).

Changes to the FCA’s Form A to align with (currently draft) EIOPA Guidelines

- 2.10** The draft EIOPA guidelines published for consultation in June 2014 set out the information that firms should submit to the supervisory authorities¹³ in order to enable them to assess the fitness and propriety of individuals responsible for Solvency II functions.
- 2.11** We intend to consult further on amending Form A for candidates for all FCA SIFs in Solvency II firms (i.e. not just persons also proposing to carry out a Solvency II function) to require the inclusion of information which may be expected in EIOPA Guidelines (the exact requirements of which will be subject to the outcome of the EIOPA consultation exercise). In particular, we propose to collect details on the scope of candidates’ responsibilities, over and above a basic ‘job description’.

Changes to FIT guidance

- 2.12** Solvency II Regulations and currently draft EIOPA guidelines set out the specific considerations that firms and supervisory authorities will need to take into account when assessing the fitness and propriety of individuals fulfilling Solvency II functions.
- 2.13** We therefore propose to amend the Fit and Proper Test for Approved Persons to state that we will take into account the Solvency II framework when making our assessment. This will include consideration of firms’ own assessment of candidates’ fitness and propriety as required under PRA rules and the Solvency II Regulation and EIOPA Guidelines, as well as EIOPA Guidelines directed to supervisory authorities themselves.

Q1: Do you agree with our proposals for aligning our approvals process with the Solvency II framework?

¹³ <https://eiopa.europa.eu/en/consultations/consultation-papers/2014-closed-consultations/june-2014/public-consultation-on-the-set-1-of-the-solvency-ii-guidelines/index.html>

3. Further changes to the Approved Persons Regime for Solvency II firms

- 3.1** This chapter sets out further changes which the FCA intends to make to the Approved Persons Regime taking into account the provisions within the Banking Reform Act, the PRA's proposals in its consultation PRA CP 26/14, and the joint PRA and FCA consultation *Strengthening accountability in banking: a new regulatory framework for individuals* published in July 2014 (FCA CP13/14 PRA CP14/14).¹⁴

The scope of the FCA's Approved Persons Regime

- 3.2** The provisions in the Banking Reform Act apply differently to RAP and non-RAP firms. Within RAPs, the FCA must designate Controlled Functions which meet the statutory definition of Senior Management Functions¹⁵ as such. Those carrying out such functions will become subject to the 'presumption of responsibility'¹⁶ and possible personal liability under a new criminal offence of reckless misconduct in the management of a bank. These provisions do not apply to individuals in non-RAP firms.
- 3.3** The Certification Regime does not apply to non-RAPs. In addition, in RAPs the regulators may define those individuals to whom they consider it appropriate and proportionate to apply Conduct Rules in the pursuit of their objectives, while in non-RAP firms, the regulators' ability to enforce Conduct Rules is limited to those individuals who are subject to regulatory pre-approval.
- 3.4** In its consultation PRA CP 26/14, the PRA proposes to focus only on the executive director roles that are most critical to its statutory objectives, and so will only require PRA pre-approval for executive directors who are also either the Chief Executive, Chief Risk Officer, Chief Finance Officer, Head of Internal Audit or other functions set out in Annex 1.
- 3.5** We propose requiring pre-approval of all individuals taking up executive and certain other functions¹⁷ whom the PRA has not otherwise approved.¹⁸ These individuals will become FCA SIF holders, and subject only to the FCA's approval processes. For the remaining PRA Controlled

¹⁴ www.fca.org.uk/your-fca/documents/consultation-papers/cp14-13

¹⁵ Senior Management Functions cover functions that will require the person performing them to be responsible for managing one or more aspects of the relevant firm's affairs, so far as relating to regulated activities, and those aspects involve, or might involve, a risk of serious consequences for the authorised person, or for business or other interests in the UK. FSMA, as amended by the Act, states that, for the purposes of the definition of SMF, 'managing' can include taking decisions or participating in the taking of decisions on how a firm's affairs should be run. This means that non-executive directors and directors in other group entities that participate in the taking of decisions about the firm can be specified as SMFs.

¹⁶ If a firm contravenes a relevant requirement, the Senior Manager responsible for the area where the contravention has occurred could be held accountable if they are unable to satisfy the regulators that they have taken 'reasonable steps' to prevent or stop the contravention (the 'presumption of responsibility').

¹⁷ See tables in Annex 1 for details.

¹⁸ Subject to certain conditions set out in the rules at Appendix 1 (see draft rule SUP 10A.11.11AR).

Functions we will maintain the existing approve and consent model to ensure that candidates for those functions are suitable from a conduct perspective.

- 3.6** This will ensure that executives who we believe are important to the pursuit of our objectives remain subject to our pre-approval, individual accountability, and financial penalties. They will then also become subject to those amended processes for approving FCA SIF holders which are set out in Chapter 2, above.
- 3.7** In *Strengthening accountability in banking: a new regulatory framework for individuals* the PRA proposed that under the new regime, it would not require pre-approval of NEDs except the Chairman, a Senior Independent Director, and the Heads of the Risk, Audit and Remuneration Committees. We proposed to designate all NEDs not otherwise approved by the PRA as FCA Senior Managers.
- 3.8** We received a number of responses to this proposal. We feel that the issue of individual accountability of NEDs in Solvency II firms should not be considered in isolation from this feedback. We will therefore consider how best to achieve a consistent approach given the powers under the Banking Reform Act, and will consult separately on the specific issue of the regulatory regime for NEDs in Solvency II firms.

Q2: Do you agree that the FCA should require pre-approval of all individuals taking up executive and certain other functions whom the PRA has not otherwise approved?

New Conduct Rules

- 3.9** Section 64A of FSMA gives the FCA power to introduce Conduct Rules for Approved Persons in FSMA-authorized firms. The regulators aim to produce a regime that demands consistent standards of conduct from individuals across the banking and insurance sectors: we believe that the Conduct Rules which we proposed in *Strengthening accountability in banking: a new regulatory framework for individuals* are appropriate for individuals in both sectors. However, as noted in paragraph 3.3, above, in non-RAPs (including Solvency II firms), the regulators can only apply Conduct Rules to those individuals who are subject to pre-approval.
- 3.10** Our Conduct Rules build on the existing Statements of Principles for Approved Persons (APER), with two additions. Firstly, individuals would be explicitly required to pay due regard to the interests of customers and treat them fairly, mirroring existing obligations on firms. Secondly, there is a specific requirement on those in positions of particular responsibility to take reasonable steps to ensure that any delegation of their responsibilities is to an appropriate person and that they oversee the discharge of that delegated responsibility effectively. This aims to strengthen senior accountability for activity in the area of business for which they are responsible but which they are not personally managing.

3.11 The full set of FCA Conduct Rules is set out below:

First tier – Individual Conduct Rules

Rule 1: You must act with integrity.

Rule 2: You must act with due skill, care and diligence.

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

Rule 4: You must pay due regard to the interests of customers and treat them fairly.

Rule 5: You must observe proper standards of market conduct.

Second tier – Significant Influence Function holder Conduct Rules

SI1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

SI2: 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.

SI3: 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.

SI4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

3.12 For FSMA-authorized persons (including insurers) which are not RAPs, the regulators can only enforce Conduct Rules against individuals who are subject to regulatory pre-approval. We propose to apply Rules 1-5 to all FCA approved persons and PRA approved persons in Solvency II firms. We propose to apply Rules SI1- SI4 (which are equivalent to those Rules which apply only to Senior Managers in banks) to FCA SIF holders only within Solvency II firms, and to all PRA approved persons in such firms.¹⁹

3.13 We also propose to apply the same guidance to Solvency II firms as is applied to RAPs. That draft guidance is attached in the proposed changes to handbook text at Appendix 1. While insurers are not subject to section 64B of FSMA to ensure that their approved persons understand the new regime that applies to them, we would expect that insurers would need to do this in order to comply with the threshold condition in paragraph 3D to Schedule 6 of FSMA (and see current guidance on this in COND 2.5.6G(7)).

3.14 In order to achieve alignment between the Conduct Rules for banks and Solvency II firms, we will consider responses to both consultations together before finalising a common set of Rules and guidance for individuals in both sectors.

Q3: Do you agree that these are the right Conduct Rules for the FCA to apply to approved persons in Solvency II firms?

Q4: Does the proposed guidance attached at Appendix 1 give helpful clarity on the behaviours the FCA expects under each of the Conduct Rules?

¹⁹ Under the Banking Reform Act, the PRA may only designate Controlled Functions which it considers to be Senior Management Functions.

4.

ISPVs and UK branches of foreign firms

- 4.1** This section sets out how we propose to apply the changes set out in this CP to Insurance Special Purpose Vehicles (ISPVs) and UK branches of foreign firms.

ISPVs

- 4.2** In addition to the functions set out in paragraph 3.4, for ISPVs the PRA also proposes not to require its pre-approval for candidates for the Chief Risk and Chief Internal Audit functions.²⁰ We believe that these functions remain important for the purposes of conduct regulation and will designate them as FCA SIFs accordingly (under the existing CF28 function). As applicants for FCA SIFs, we will only assess the suitability of candidates for these functions from a conduct perspective, and will not make any judgement with regard to their prudential expertise.
- 4.3** The reforms set out above in Chapters 2 and 3 will then apply to FCA Controlled Functions in ISPVs in the same way as to other Solvency II insurance firms.

UK branches of EEA Solvency II firms

- 4.4** The PRA do not pre-approve any functions in UK branches of EEA Solvency II firms. Not all FCA Controlled Functions are required in UK branches of EEA Solvency II firms and there is also a general override that FCA-controlled functions do not apply where the question of whether someone is fit and proper is reserved to the home state. But where they are required, and the general override does not apply, they will be subject to the reforms set out in Chapters 2 and 3 above in the same way as such individuals in UK incorporated Solvency II firms. In practice, however, we expect the general override will apply in relation to the new FCA governing functions proposed in Chapter 3.

UK branches of third country Solvency II firms

- 4.5** The PRA intends to require only one individual, a 'third country branch manager' to be subject to its pre-approval. Firms would also submit other candidates to it for pre-approval in certain circumstances if they are responsible for key areas of PRA interest.²¹

²⁰ www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2614.aspx

²¹ See Appendix 1 of www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2614.aspx. As with domestic firms, where the PRA pre-approves an individual in a third country branch we will maintain the existing approve and consent model to ensure that candidates for those functions are suitable from a conduct perspective.

- 4.6** We propose that those individuals who perform Controlled Functions in third country branches which are currently required for third country branches will be FCA Controlled Function holders, where they are not subject to PRA pre-approval as described in paragraph 4.5, above. Where these functions are currently SIFs, they will remain so: we expect that these functions may include in particular some governing and systems and control functions depending on how the firm arranges itself. Individuals carrying out FCA Controlled Functions in these firms will then be subject to the proposals set out in Chapters 2 and 3 in the usual way. We will only assess candidates for the actuarial function and CF28 systems and control functions in terms of their suitability from a conduct perspective.

Q5: Do you agree with the proposals set out above for applying our planned reforms to ISPVs and UK branches of foreign Solvency II Firms?

Annex 1

Tables showing changes to Controlled Functions under the reformed Approved Persons Regime

UK incorporated (non- ISPV) firm

Current APR ¹	Reformed APR	
Current PRA / FCA Controlled Function	New PRA CF	FCA SIFs
PRA Director (CF1)	CFO (SIMF2) CRO (SIMF4) Head of Internal Audit (SIMF5) Chief Actuary (SIMF20) Underwriting Function (General Insurance Firms) (SIMF22) Underwriting Risk Oversight Officer (Lloyd's) (SIMF23) Group Entity Senior Manager (SIMF7)	CF1s not otherwise approved by the PRA
PRA NED (CF2)	<i>To be consulted on separately</i>	<i>To be consulted on separately</i>
PRA CEO (CF3)	CEO (SIMF1)	
FCA Apportionment and oversight (CF8)		To be reviewed in due course
FCA Compliance (CF10)		Compliance (CF10)
FCA CASS Operational Oversight (CF10a)		CASS Operational Oversight (CF10a)
FCA Money Laundering Reporting (CF11)		Money Laundering Reporting Officer (CF11)
PRA Actuarial function holder (CF12)	Chief Actuary (SIMF20)	
PRA With-profits Actuary (CF12A)	With-profits Actuary (SIMF21)	
PRA Lloyd's Actuary (CF12B)	Chief Actuary (SIMF20)	
PRA Systems and Controls (CF28)	CFO (SIMF2) CRO (SIMF4) Chief of Internal Audit (SIMF5)	
FCA Significant Management (CF29)	Underwriting Function (General Insurance Firms) (SIMF22) Underwriting Risk Oversight Officer (Lloyd's) (SIMF23) Group Entity Senior Manager (SIMF7)	CF29s not otherwise approved by the PRA
FCA Customer function (CF30)		Customer function (CF30)

¹ Functions CF 4 (Partner), CF 5 (Director of an unincorporated association) and CF 6 (Small friendly society) are not relevant to Solvency II firms.

ISPV

Current APR	Reformed APR	
Current PRA / FCA Controlled Function	New PRA CF	FCA SIFs
PRA Director (CF1)	CFO (SIMF2) Chief Actuary (SIMF20) Group Entity Senior Manager (SIMF7)	All CF1s not otherwise approved by the PRA.
PRA NED (CF2)	<i>To be consulted on separately</i>	<i>To be consulted on separately</i>
PRA CEO (CF3)	CEO (SIMF1)	
FCA Apportionment and oversight (CF8)		<i>To be reviewed in due course</i>
FCA Compliance (CF10)		Compliance (CF10)
FCA CASS Operational Oversight (CF10a)		CASS Operational Oversight (CF10a)
FCA Money Laundering Reporting (CF11)		Money Laundering Reporting Officer (CF11)
PRA Actuarial function (CF12)	Chief Actuary (SIMF20)	
PRA Systems and Controls (CF28)	CFO (SIMF2)	CF28s not otherwise approved by the PRA ²
PRA Significant Management (CF29)	Group Entity Senior Manager (SIMF7)	All CF29s not otherwise approved by the PRA
FCA Customer function (CF 30)		Customer function (CF30)

Third country branch

Current APR	Reformed APR	
Current PRA / FCA Controlled Function	New PRA CF³	FCA SIFs⁴
PRA Director (CF1)		Director (CF1)
PRA NED (CF2)	<i>To be consulted on separately</i>	<i>To be consulted on separately</i>
PRA CEO (CF3)	Third Country Branch Manager function (SIMF19)	
FCA Apportionment and oversight (CF8)		<i>To be reviewed in due course</i>
FCA Compliance (CF10)		Compliance (CF10)
FCA CASS Operational Oversight (CF10a)		CASS Operational Oversight (CF10a)
FCA Money Laundering Reporting (CF11)		Money Laundering Reporting Officer (CF11)
PRA Actuary function holder (CF12)		Actuarial conduct function holder in a third country branch (CF51)
PRA With-profits Actuary (CF12A)	With-profits Actuary (SIMF21)	
PRA Systems and Controls (CF28)		Systems and Controls (CF 28) ⁵
FCA Significant Management (CF29)		Significant Management (CF29)
FCA Customer function (CF 30)		Customer function (CF30)

² Conduct perspective only

³ Further individuals may be approved by the PRA under certain circumstances. See the PRA's CP 26/14 www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2614.aspx

⁴ Functions only apply so far as is set out in SUP 10A.1.5 – SUP 10A.1.6: <http://fshandbook.info/FS/html/handbook/SUP/10A>

⁵ Conduct perspective only

Annex 2

Cost benefit analysis

1. The FCA is required to carry out and publish a cost benefit analysis (CBA) when proposing draft rules (sections 138I and 128J FSMA refer). The FCA considers that the CBA set out below meets the FSMA CBA requirements.
2. 'Fit and proper' requirements for insurers are changing due to the requirements of Solvency II. However, as amendments relating to governance and the fitness and propriety of relevant individuals have not yet been implemented, the counterfactual for this CBA is the status quo (i.e. the existing Approved Persons Regime for Solvency II firms).
3. The FCA's proposals are set out in Chapters 2,3 and 4 of this CP. The FCA considers that for the following proposals, incremental costs to firms will be minimal:
 - a. Using the existing Approved Persons Regime system for pre-approval of Solvency II functions: as the proposal is to apply existing Approved Persons Regime mechanisms to the existing CF population.
 - b. Picking up new Controlled Functions which the PRA has chosen to stop making subject to its pre-approval, as the proposal is to use the existing Approved Persons Regime mechanisms and processes to individuals who are already subject to pre-approval (albeit by the PRA), minimal incremental costs are expected.
 - c. Conduct Rules: the FCA Conduct Rules themselves do not introduce broader requirements on Solvency II firms and only introduce one additional requirement on all approved persons, individual Conduct Rule 4 ('Rule 4'), and one additional requirement on FCA SIF holders, Significant Influence Conduct Rule 3 ('SI3'). Both Rule 4 and SI3 are aligned with existing guidance in APER. Therefore, minimal incremental costs are expected.
4. The detailed implementation of, and transitional arrangements for the following items are not yet finalised. Much of the administrative burden on firms and the FCA's operations and systems will depend on this detail. The FCA will consult on this and, if necessary, provide a CBA in a later CP.
 - a. Enhanced Form A and information on individuals' scope of responsibilities: the FCA already requires information to ascertain whether individuals applying for Controlled Function roles are fit and proper. The proposal is to include information on the scope of the responsibilities for SIFs.
 - b. Possible grandfathering or migration of those individuals performing functions which the PRA proposes to stop designating, but which we wish to make subject to our pre-approval.
5. We welcome views from affected firms on whether this is an accurate assessment of the costs that they will face as a result of the proposals set out in this CP.

FCA costs

6. The proposals contained in this consultation will have an impact on the FCA's existing authorisations, supervision and enforcement processes and systems. However, the impact on resources is expected to be minimal as existing capacity is likely to be deployed.

Benefits

7. The changes proposed in this document will further the FCA's objectives by :
- supporting fitness and propriety through enhanced checks based on the currently draft EIOPA guidelines
 - ensuring that key individuals remain in scope of conduct regulation, and
 - emphasising the importance of treating customers fairly and of responsible delegation in the new Conduct Rules.

Annex 3

Compatibility statement

Compatibility with the FCA's general duties

1. This Annex follows the requirements set out in section 138I FSMA. When consulting on new rules, we are required by section 138I FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
2. This Annex also sets out our view of how the proposed rules are compatible with our duty, so far as is compatible with acting in a way which advances the consumer protection or market integrity objectives, to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4) FSMA). For our assessments of the equality and diversity implications, and impact on mutuals of these proposals, see paragraph 1.10 and 1.11, and 1.12, respectively.

The FCA's strategic objective and regulatory principles

3. The proposals set out in this consultation paper are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. They will clarify responsibilities at the top of Solvency II firms. This should, over time, result in improved governance within this sector of the industry.
4. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s.3B FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

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

5. The proposals set out in this consultation will impact the FCA's existing authorisations, supervision and enforcement processes and systems. But the impact on resources is expected to be minimal as existing capacity is likely to be deployed.

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

6. The proposals set out in this consultation are intended to support fitness and propriety, retain key individuals within the scope of conduct regulation and emphasise the importance of treating customers fairly, and of responsible delegation by SIF holders. As set out in our cost benefit analysis, we consider that the changes set out in Chapters 2, 3, and 4¹ are likely to result in minimal cost increases to firms, compared to the potential benefits to consumers. We therefore believe the proposals in this consultation paper are proportionate to the benefits.

¹ As outlined in Annex 2 on the Cost Benefit Analysis, the costs of the implementation and transitional arrangements for Enhanced Form A and for possibly grandfathering or migrating across previously PRA-designated individuals will be considered in a later consultation paper.

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

7. The proposed changes are intended to have a positive impact on the behaviour and culture of Solvency II firms, which should contribute the advancement of this objective.

The general principle that consumers should take responsibility for their decisions

8. The proposals we have made concern the internal organisation of Solvency II firms and requirements applying to their staff. These are not matters over which consumers can have any influence.

The responsibilities of senior management

9. The proposals contained in this consultation paper aim to ensure that individuals with significant influence within Solvency II insurers are fit and proper to execute all their responsibilities. The new Conduct Rule for SIF holders on delegation will also emphasise senior accountability for activity in the area of business for which they are responsible but which they are not personally managing.

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons

10. We believe our proposals comply with this principle. Our implementation of changes to the Approved Persons Regime for Solvency II firms are designed to take into account the different statutory provisions that apply to such firms compared to RAPs. The Conduct Rules are also written at a reasonably high level, which allows them to be applied so as to reflect the differing levels of complexity and riskiness of different firms' businesses.

The desirability of publishing information relating to persons on whom requirements are imposed by or under FSMA

11. We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide, we will not normally make public the fact that we are or are not investigating a particular matter or any of our findings or conclusions of an investigation public except in the circumstances described in chapter 6 of the Guide. The proposals contained in this consultation paper do not provide for any changes in this regard.
12. The FCA has a range of powers, contained in FSMA, which can be used to bring firms into compliance with regulatory requirements. There are a number of legal constraints in FSMA that apply to the FCA's ability to publish confidential information about its use of these powers against specific firms. We see no additional benefit to our objectives by requiring firms to publish information about this.

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

13. We are an open and transparent regulator. The FCA will engage actively with relevant stakeholders throughout the consultation process.

The FCA's operational objectives

Consumer Protection and Market Integrity

14. The proposals contained in this consultation paper are intended to create a structure within Solvency II firms that will make it more likely that individuals and roles are appropriately matched and that high standards of conduct are observed. We therefore consider that these aims and objectives support our Consumer Protection and Market Integrity objectives.

Promoting Competition

15. The proposals in this CP act principally to advance our consumer protection objective. The scope for promoting effective competition in a way that would remain compatible with advancing that objective is limited. However, we consider that these proposals promote effective competition in the interests of consumers in so far as is compatible with acting in a way which advances the consumer protection objective, in accordance with our duty under section 1B(4)FSMA. Reforms to the Approved Persons Regime for non-Directive firms will be dealt with later, and further competition issues addressed then.
16. An alternative approach we could have taken would be to apply the minimum requirements of Solvency II, which do not necessitate pre-approval of key functions holders. However, we do not believe this would be compatible with advancing our consumer protection objective.

Annex 4

List of questions

- Q1:** Do you agree with our proposals for aligning our approvals process with the Solvency II framework?
- Q2:** Do you agree that the FCA should require pre-approval of all individuals taking up executive and certain other functions whom the PRA has not otherwise approved?
- Q3:** Do you agree that these are the right Conduct Rules for the FCA to apply to approved persons in Solvency II firms?
- Q4:** Does the proposed guidance attached at Appendix 1 give helpful clarity on the behaviours the FCA expects under each of the Conduct Rules?
- Q5:** Do you agree with the proposals set out above for applying our planned reforms to ISPVs and UK branches of foreign Solvency II Firms?

Appendix 1

Draft Handbook text

Editorial note: The amendments proposed in this Appendix take into account the proposals in the PRA proposed draft rules in its CP26/14 and, because they are linked, build upon the draft Handbook text proposed by the FCA in CP14/13 as if it was made (and so is not shown as underlined or deleted text), even though that proposed text is subject to the outcome of consultation and may change.

SOLVENCY II FIRMS ACCOUNTABILITY INSTRUMENT 2015

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 64 (Conduct: statements and codes);
 - (3) section 64A (Rules of conduct);
 - (4) section 137A (The FCA’s general rules);
 - (5) section 137T (General supplementary powers);
 - (6) section 139A (Power of the FCA to give guidance); and
 - (7) section 395 (The FCA’s and PRA’s procedures).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
The Statements of Principle and Code of Practice for Approved Persons (APER)	Annex B
The Fit and Proper test for Approved Persons (FIT)	Annex C
Supervision manual (SUP)	Annex D
Decision Procedure and Penalties manual (DEPP)	Annex E

[Amendments to proposed FCA Handbook rules and guidance currently subject to consultation

E. In the FCA's CP 14/13, the FCA proposed the introduction of a new FCA module to the FCA's Handbook of rules and guidance, the Code of Conduct Sourcebook (C-CON). If made, Annex F shows how that module would be amended to reflect the proposals in this CP.]

Citation

F. This instrument may be cited as the Solvency II Firms Accountability Instrument 2015.

By order of the Board of the Financial Conduct Authority

[*date*]

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.

<i>Actuarial conduct function in Solvency II third country insurance undertakings</i>	that part of the function of acting in the capacity of an actuary (as appointed by a <i>firm</i> under rule 7.1(2) of the PRA Rulebook: Solvency II Firms: Third Country Branches Instrument) that relates to compliance with <i>FCA</i> requirements and standards under the <i>regulatory system</i> .
<i>EIOPA</i>	the European Insurance and Occupational Pensions Authority established in accordance with Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010.
<i>Solvency II firm</i>	a <i>firm</i> which is any of: <ol style="list-style-type: none">(1) a UK Solvency II firm as defined in chapter 2 of the <i>PRA</i> Rulebook: Solvency II Firms General Application Instrument;(2) a third country insurance undertaking, namely an undertaking that would require authorisation as an insurance undertaking in accordance with article 14 of the <i>Solvency II Directive</i> if its head office was situated in the <i>EEA</i>;(3) an undertaking authorised in accordance with a non-UK <i>EEA State's</i> measures which implement article 14 of the <i>Solvency II Directive</i>;(4) (in <i>APER, FIT, SUP 10A, C-CON</i> and <i>DEPP</i>), the <i>Society</i> and, separately, a <i>managing agent</i>; and(5) (in <i>APER, FIT, SUP 10A, C-CON</i> and <i>DEPP</i>), an insurance special purpose vehicle as defined (as an <i>ISPV</i>) in the PRA Rulebook: Solvency II firms: Glossary Amendments Instrument.
<i>Solvency II Directive</i>	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance.
<i>Solvency II Regulations</i>	the directly applicable EU Regulations adopted in accordance with the <i>Solvency II Directive</i> .

Amend the following definitions as shown.

- controlled function* a function relating to the carrying on of a *regulated activity* by a *firm*, which is specified by either the *FCA* (in the *table of FCA controlled functions*... or the *PRA* in any of:
- (1) ~~(in the table of PRA controlled functions); or~~
 - (2) (for relevant authorised persons) in the PRA controlled functions for RAPS instrument; or
 - (3) (for Solvency II firms) the PRA Rulebook: Solvency II Firms: Insurance - Senior Insurance Management Functions Instrument,
- under section 59 of the *Act* (Approval for particular arrangements).
- director function* (1) (in the *FCA Handbook*) *FCA controlled function* CF1 in Part 1 and, for a Solvency II firm only, Part 2 of the *table of FCA controlled functions*, described more fully in SUP 10A.6.7R and SUP 10A.6.8R.
- FCA governing functions* any of the following *FCA controlled functions*:
- ...
- (2) (in the case of a Solvency II firm) FCA controlled function CF1, in Part 2 of the table of FCA controlled functions);
 - (3) (in the case of other firms) *FCA controlled functions*...
- PRA controlled function* a *controlled function* which is specified by the *PRA* under section 59 of the *Act* (Approval for particular arrangements) in the *table of PRA controlled functions*; ~~or the PRA controlled functions for RAPS instrument~~ or the PRA Rulebook: Solvency II Firms: Insurance - Senior Insurance Management Functions Instrument.
- Significant-influence function* ... a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *authorised person's* affairs, so far as relating to the activity, and for the purposes of C-CON and DEPP, also means a PRA controlled function specified in the PRA Rulebook: Solvency II Firms: Insurance - Senior Insurance Management Functions Instrument.
- systems and controls function* (1) (in the *FCA Handbook*) *FCA controlled function* CF28 in Part 1, and, for a Solvency II firm which is an third country insurance undertaking or an insurance special purpose vehicle, Part 2, of the *table of FCA controlled functions*, described more fully in

SUP 10A.8.1R and SUP 10A.8.1AR.

...

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

In this Annex, underlining indicates new text.

1.1A Application

Who?

- 1.1A.1 P *APER applies to FCA-approved persons and PRA-approved persons, other than those performing controlled functions in a Solvency II firm.*

Annex C

Amendments to the Fit and Proper test for Approved Persons (FIT)

In this Annex, underlining indicates new text.

1.2 Introduction

...

- 1.2.4A G However, if the *firm* is a *PRA-authorised person*, the *governing functions* do not apply. The exception to this is a *Solvency II firm*. For a *Solvency II firm*, the *FCA governing function* CF1 may apply if the *person* carrying out the function is not already approved to carry out a *PRA controlled function* and the conditions in *SUP* 10A.11.11AR (minimising overlap with the PRA approved persons regime) are satisfied.
- 1.2.4B G Where the application relates to a function within a *Solvency II firm* and is for an *FCA controlled function* which is also a *Solvency II Directive* ‘key function’ as defined in the PRA Rulebook: *Solvency II Firms: Senior Insurance Management Regime: Glossary Amendments Instrument* then the *FCA* will also have regard to the assessment made by the *firm* as required in article 273 of the *Solvency II Regulation* of 10.10.2014; Rules 2.1 and 2.2 of the *PRA Rulebook: Solvency II Firms: Insurance - Fitness and Propriety Instrument*, and other factors as set out in *EIOPA Guidelines on systems of government and own risk and solvency assessment* (see Guideline 16).

Annex D

Amendments to the Supervision manual (SUP)

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

10A FCA Approved Persons

10A.1 Application

...

- 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*.

For example, persons in *Solvency II firms* which are incoming *EEA firms* are not expected to be carrying out the *FCA governing function CF1*, nor a *significant management function CF29* where the *person* will be regarded as effectively running the *firm* or responsible for a *Solvency II Directive* 'key function' as defined in the *PRA Rulebook: Solvency II Firms: Insurance - Senior Insurance Management Regime - Glossary Amendments Instrument*.

...

- 10A.4.4 R FCA controlled functions

...

Part 2 (FCA controlled functions for PRA-authorized persons)		
Type	CF	Description of FCA controlled function
<u><i>FCA governing function*</i></u> <u><i>(Solvency II firms only)</i></u>	<u>1</u>	<u><i>Director function</i></u>
<u><i>FCA required functions*</i></u>	<u>8</u>	<u><i>Apportionment and oversight function</i></u>

	...	
	50	
	51	<u>Actuarial conduct function in Solvency II third country insurance undertakings</u>
<u>Systems and controls function* (third country insurance undertakings and ISPVs in Solvency II firms only)</u>	28	<u>Systems and control function</u>
...		
*FCA significant-influence functions		

...

10A.6 FCA governing functions

Introduction

- 10A.6.1 G Every *firm* 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*. However, if the *firm* is a *PRA-authorised person*, the *governing functions* do not apply. Instead, those *persons* will be performing the *PRA governing functions* and will be required to be *PRA-approved person* instead. The exception to this is a *Solvency II firm*. For a *Solvency II firm* the *FCA governing function* CF1 may apply if the *person* carrying out the function is not approved to carry out a *PRA controlled function* and the conditions in SUP 10A.11.11AR (minimising overlap with the PRA approved persons regime) are satisfied.

...

- 10A.6.11 G The *director function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead. The exception to this is a *Solvency II firm*. For a *Solvency II firm* the *FCA director function* may apply if the *person* carrying out the function is not approved to carry out a *PRA controlled function* and the conditions in SUP 10A.11.11AR (minimising overlap with the PRA approved persons regime) are satisfied.

10A.6.11A R For the purposes of SUP 10A.6.7R and SUP 10A.6.8R (the director function), ‘director’ includes an executive member of a committee to which the Council of the Society directly delegates authority to carry out the Society’s regulatory functions.

...

Actuarial conduct function in Solvency II third country insurance undertakings

10A.7.14 R The actuarial conduct function in Solvency II third country insurance undertakings is that part of the function of acting in the capacity of an actuary appointed (by a Solvency II firm which is a third-country insurance undertaking) under rule 7.1(2) of the PRA Rulebook: Solvency II Firms: Third Country Branches Instrument that relates to compliance with FCA requirements and standards under the regulatory system.

...

10A.8.1A R For a Solvency II firm which is an insurance special purpose vehicle or a third country insurance undertaking the systems and controls function is modified as follows:

(1) it does not include any of the activities described in any PRA controlled function if that controlled function applies to the firm and nor does it include activities carried on by a person who is already a PRA approved person; and

(2) it only includes that part of the function that relates to compliance with FCA requirements and standards under the regulatory system.

10A.8.3 G The systems and controls function does not apply in relation to a PRA-authorized person. PRA approval is required instead. The exception is a Solvency II firm which is an insurance special purpose vehicle or a third country insurance undertaking. For such firms, FCA approval may be required but only to the extent that the activities are not already covered by a PRA controlled function that applies to the firm or are not activities carried on by a person who is already a PRA approved person. Also in such firms, the function is expressly limited to that part of the function that relates to compliance with FCA requirements and standards under the regulatory system. For these firms, references in SUP 10A.8.1R to SYSC should also be read as including references to comparable provisions in the PRA Rulebook: Solvency II Firms: Third Country Branches Instrument and Solvency II Regulations, as appropriate.

...

- 10A.9.1 R *SUP* 10A.9 only applies to a *firm* which:
- (1) under *SYSC* 2.1.1R, chapters 2, 3 and 5 of the PRA Rulebook: Solvency II Firms: Insurance – Allocation of Responsibilities Instrument or, *SYSC* 4.1.1R, apportions a significant responsibility, within the description of the *significant management function*, to a *senior manager* of a significant business unit; or

...

...

10A.11 Minimising overlap with the PRA approved persons regime

...

Guidance on how *SUP* 10A.11 works

- 10A.11.8 G *SUP* 10A.11:
- (1) disapplies the *apportionment and oversight function* for a *person* who is the subject of an application for approval to perform a *PRA governing function*, subject to certain conditions set out in *SUP* 10A.11.11R. ~~Where this is the case~~ In such cases, the *apportionment and oversight function* is included in the *PRA governing function* for which the *person* has approval. *SUP* 10B.7 of the PRA's Handbook deals with this; and
 - (2) disapplies, in the case of a Solvency II firm only, the FCA governing function for a person who is the subject of an application for approval to perform a PRA controlled function, subject to the conditions in SUP 10A.11.11AR.
- 10A.11.9 G *SUP* 10A.11.10 G gives some examples of how *SUP* 10A.11 works for the *apportionment and oversight function*.

...

The main rules

...

- 10A.11.11A R *A person* (referred to as “A” in this rule) is not performing an *FCA governing function* (referred to as the ‘particular’ *FCA governing function* in this rule) in relation to a *PRA-authorised person* (referred to as “B” in this rule), at a particular time, if:

- (1) A has been approved by the PRA to perform any PRA controlled function in relation to B;
- (2) throughout the whole of the period between the time of the PRA approval in (1) and the time in question, A has been the subject of a current PRA approved person approval to perform a PRA controlled function in relation to B;
- (3) at the time of the PRA approval in (1), A was not subject to a current FCA approved person approval to perform the particular FCA controlled function in relation to B;
- (4) as part of the application for the PRA approval in (1), B notified the PRA that A would start to perform what would otherwise have been the particular FCA governing function (referred to as the “potential” FCA governing function in this rule) at or around the time of the PRA approval in (1); and
- (5) A started to perform the potential FCA governing function at or around the time of the PRA approval in (1) and has continued to perform it up to the time in question.

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

Editorial note: The amendments proposed in this Annex build upon the draft Handbook text proposed by the FCA in CP14/13 as if it was made (and so is not shown as underlined or deleted text), even though that proposed text is subject to the outcome of consultation and may change.

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

6 Penalties

...

6.2.7 G The *FCA* will not discipline individuals on the basis of vicarious liability (that is, holding them responsible for the acts of others), provided appropriate delegation and supervision has taken place (see *APER* 4.6.13G, *APER* 4.6.14G, and *C-CON* 4.1.9G to *C-CON* 4.1.12G). In particular, disciplinary action will not be taken against an *approved person* performing a *significant influence function* simply because a regulatory failure has occurred in an area of business for which he is responsible. The *FCA* will consider that an *approved person* performing a *significant influence function* may have breached *Statements of Principle* 5 to 7, or that an *SMF manager*, or an *approved person* performing a *significant influence function* in a *Solvency II firm*, may have breached *Rules* SM1/SI1 to SM4/SI4 in *C-CON* 2.2, only if his conduct was below the standard which would be reasonable in all the circumstances at the time of the conduct concerned (see also *APER* 3.1.8AG and *C-CON* 3.1.6G).

Annex F

Amendments to the Code of Conduct sourcebook (C-CON)

Editorial note: The proposed changes in this annex are based on the Handbook text proposed to be made in CP14/13. As such it has not been made and is subject to change as a result of consideration of feedback from the consultation. For ease of reference we have included the applicable guidance here even though in large part the text will not be amended.

Underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

1.1 Application

1.1.1 G Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of *approved persons* and *persons* who are *employees* of *relevant authorised persons*.

To whom does it apply?

- 1.1.2 R (1) *C-CON* applies to:
- (a) *an SMF manager*;
 - (b) *an employee of a relevant authorised person* who:
 - (i) performs the function of an *SMF manager*;
 - (ii) is not an *approved person* to perform the function in question; and
 - (iii) is required to be an *approved person* at the time he performs that function;
 - (c) *a certification employee employed by a relevant authorised person; and*
 - (d) any other *employee* of a *relevant authorised person* except an *employee* whose role is listed under *C-CON* 1.1.2R(2); and
 - (e) *an FCA-approved person or PRA-approved person approved to perform a controlled function in a Solvency II firm.*
- 1.1.3 R *Rules* 1 to 5 in *C-CON* 2.1 apply to all *conduct rules staff*.
- 1.1.4 R *Rules* SM1/SI1 to SM4/SI4 in *C-CON* 2.2 apply to:

(1) (for relevant authorised persons) all *SMF managers* and to *employees* who perform the function of an *SMF manager* as specified in *C-CON* 1.1.2R(1)(b); and

(2) (for Solvency II firms) all approved persons performing a significant influence function.

1.1.5 G The *guidance* in *C-CON* 2.3 applies to *relevant authorised persons*.

To what conduct does it apply?

1.1.6 R In the case of a *person* (P) who is an *SMF manager* or an approved person performing a significant influence function in a Solvency II firm, *C-CON* applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by the *relevant authorised person* or Solvency II firm on whose application approval was given to P.

1.1.7 R In the case of a *person* (P) subject to *C-CON* who is not an *SMF manager* or an approved person performing a significant influence function in a Solvency II firm, *C-CON* applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by P's *employer*.

Where does it apply?

1.1.8 R *C-CON* applies to the conduct of an *SMF manager* (and to the conduct of *employees* who perform the function of an *SMF manager* as specified in *C-CON* 1.1.2R(1)(b)), or of an approved person performing a significant influence function in a Solvency II firm, wherever it is performed.

1.1.9 R *C-CON* only applies to the conduct of *persons* other than an *SMF manager* (or an *employee* who performs the function of an *SMF manager* as specified in *C-CON* 1.1.2R(1)(b)), or an approved person performing a significant influence function in a Solvency II firm, if that conduct:

(a) is performed from an establishment maintained by that *person's employer* in the *United Kingdom*; or

(b) involves dealing with a *client* in the *United Kingdom* from an establishment overseas.

...

1.1.11 G A *person* will not be subject to *C-CON* to the extent that it would be contrary to the *UK's* obligations under a *Single Market Directive* or the *auction regulation*.

Purpose

- 1.1.12 G The purpose of this chapter is to set out *rules* about the conduct of *SMF managers, approved persons approved to perform a controlled function in Solvency II firms, certification employees and other conduct rules staff* and to provide *guidance to relevant authorised persons and Solvency II firms* in relation to the *conduct rules*.

2 The conduct rules

2.1 Individual conduct rules

- 2.1.1 R *Rule 1: You must act with integrity.*
- 2.1.2 R *Rule 2: You must act with due skill, care and diligence.*
- 2.1.3 R *Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.*
- 2.1.4 R *Rule 4: You must pay due regard to the interests of *customers* and treat them fairly.*
- 2.1.5 R *Rule 5: You must observe proper standards of market conduct.*

2.2 Senior manager and Solvency II significant influence function conduct rules

- 2.2.1 R SM1/SI1: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible is controlled effectively.
- 2.2.2 R SM2/SI2: 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*.
- 2.2.3 R SM3/SI3: 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.
- 2.2.4 R SM4/SI4: You must disclose appropriately any information of which the *FCA* or *PRA* would reasonably expect notice.

3 Compliance with C-CON

3.1 General factors for assessing compliance

- 3.1.1 G Where descriptions of conduct are provided in this chapter which exemplify breaches of the *rules* in *C-CON*, they are not intended to be an exhaustive list of the kind of conduct that may contravene the relevant *rule*.
- 3.1.2 G In assessing compliance with or a breach of a *rule* in *C-CON*, the *FCA* will have regard to the context in which a course of conduct was undertaken, including:
- (1) the precise circumstances of the individual case;
 - (2) the characteristics of the particular function performed by the individual in question; and
 - (3) the behaviour expected in that function.
- 3.1.3 G Without prejudice to section 66A of the *Act*, a *person* will only be in breach of any of the *rules* in *C-CON* where they are personally culpable. Personal culpability arises where:
- (1) a *person's* conduct was deliberate; or
 - (2) the *person's* standard of conduct was below that which would be reasonable in all the circumstances.
- 3.1.4 G In determining whether or not the particular conduct of a *person* complies with the *rules* in *C-CON*, factors the *FCA* would expect to take into account include:
- (1) whether that conduct relates to activities that are subject to other provisions of the *Handbook*;
 - (2) whether that conduct is consistent with the requirements and standards of the *regulatory system* relevant to the *person's firm*.
- 3.1.5 G In determining whether or not the conduct of an *SMF manager or approved person performing a significant influence function in a Solvency II firm* complies with *rules SM1/SI1 to SM4/SI4* in *C-CON*, factors the *FCA* would expect to take into account include:
- (1) whether they exercised reasonable care when considering the information available to him;
 - (2) whether they reached a reasonable conclusion upon which to act;

- (3) the nature, scale and complexity of the *firm's* business;
- (4) their role and responsibility as determined by reference to the relevant [*statement of responsibility*];
- (5) the knowledge they had, or should have had, of regulatory concerns, if any, relating to his role and responsibilities.

3.1.6 G In assessing whether an *SMF manager* or an *approved person* performing a *significant influence function in a Solvency II firm* may have breached a *rule* in *C-CON*, the nature, scale and complexity of the business and the role and responsibility of the individual undertaking the activity in question within the *firm* will be relevant in assessing whether that *person's* conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be.

3.1.7 G *UK domestic firms* listed on the London Stock Exchange are subject to the *UK Corporate Governance Code*, whose internal control provisions are amplified in the publication entitled 'Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)' issued by the Financial Reporting Council. Therefore, *firms* in this category will be subject to that code as well as to the *rules* in *C-CON*. In forming an opinion of whether an *SMF manager* or an *approved person* performing a *significant influence function in a Solvency II firm* has complied with the *rules* in *C-CON*, the *FCA* will give due credit if they followed corresponding provisions in the *UK Corporate Governance Code* and related guidance.

4.1 More specific guidance regarding individual conduct rules

Rule 1: You must act with integrity

4.1.1 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.

- (1) Misleading (or attempting to mislead) by act or omission:
 - (a) a *client*; or
 - (b) the *firm* for whom the *person* works (or its auditors); or
 - (c) the *FCA* or;
 - (d) the *PRA*.
- (2) Falsifying *documents*.
- (3) Misleading a *client* about the risks of an *investment*.

- (4) Misleading a *client* about the charges or surrender penalties of products.
- (5) Misleading a *client* about the likely performance of products by providing inappropriate projections of future returns.
- (6) Misleading a *client* by informing him that products require only a single payment when that is not the case.
- (7) Mismarking the value of *investments* or trading positions.
- (8) Procuring the unjustified alteration of prices on illiquid or *off-exchange* contracts, or both.
- (9) Misleading others within the *firm* about the credit-worthiness of a borrower.
- (10) Providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience.
- (11) Providing false or inaccurate information to the *firm* (or to the *firm's* auditors).
- (12) Providing false or inaccurate information to the *FCA* or the *PRA*.
- (13) Destroying, or causing the destruction of, *documents* (including falsified documentation), or tapes or their contents, relevant to misleading (or attempting to mislead) a *client*, his *firm*, or the *FCA* or the *PRA*.
- (14) Failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.
- (15) Misleading others in the *firm* about the nature of risks being accepted.
- (16) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer* where the *person* knows that they are unable to justify its suitability for that *customer*.
- (17) Failing to inform, without reasonable cause:
 - (a) a *customer*; or
 - (b) his *firm* (or its auditors); or
 - (c) the *FCA* or;

(d) the *PRA*;

of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, including, but not limited to, deliberately:

- (i) failing to disclose the existence of falsified documents; and
- (ii) failing to rectify mismarked positions immediately.

(18) Preparing inaccurate or inappropriate records or returns, including, but not limited to:

- (a) preparing performance reports for transmission to *customers* which are inaccurate or inappropriate (for example, by relying on past performance without appropriate warnings);
- (b) preparing inaccurate training records or inaccurate details of qualifications, past employment record or experience; and
- (c) preparing inaccurate trading confirmations, contract notes or other records of *transactions* or holdings of *securities* for a *customer*, whether or not the *customer* is aware of these inaccuracies or has requested such records.

(19) Misusing the assets or confidential information of a *client* or of their *firm* including, but not limited to, deliberately:

- (a) front running *client* orders;
- (b) carrying out unjustified trading on *client* accounts to generate a benefit (whether direct or indirect) to the *person* (that is, churning);
- (c) misappropriating a *client's* assets, including wrongly transferring to personal accounts cash or *securities* belonging to *clients*;
- (d) wrongly using one *client's* funds to settle margin calls or to cover trading losses on another *client's* account or on *firm* accounts;
- (e) using a *client's* funds for purposes other than those for which they were provided;
- (f) retaining a *client's* funds wrongly; and

- (g) pledging the assets of a *client* as security or margin in circumstances where the *firm* is not permitted to do so.
- (20) Designing *transactions* to disguise breaches of requirements and standards of the *regulatory system*.
- (21) Not paying due regard to the interests of a *customer*.
- (22) Acts, omissions or business practices that could be reasonably expected to cause *customer* detriment.

Rule 2: You must act with due skill, care and diligence

- 4.1.2 G Due skill, care and diligence are required especially where activities might affect *customers* or affect the integrity of the financial system.

Examples of acting with due skill, etc

- 4.1.3 G The following is a non-exhaustive list of examples of conduct by any *conduct rules staff* that would be in breach of this *rule*.

- (1) Failing to inform:
 - (a) a *customer*; or
 - (b) his *firm* (or its auditors);

of material information in circumstances where he was aware, or ought to have been aware, of such information, and of the fact that he should provide it, including the following:

- (i) failing to explain the risks of an *investment* to a *customer*;
 - (ii) failing to disclose to a *customer* details of the charges or surrender penalties of *investment* products;
 - (iii) mismarking trading positions;
 - (iv) providing inaccurate or inadequate information to a *firm* or its auditors;
 - (v) failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.
- (2) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where they do not have reasonable grounds to believe that it is suitable for

that *customer*.

- (3) Undertaking, recommending or providing advice on *transactions* without a reasonable understanding of the risk exposure of the *transaction* to a *customer*, including recommending *transactions* in *investments* to a *customer* without a reasonable understanding of the liability (either potential or actual) of that *transaction*.
- (4) Undertaking *transactions* without a reasonable understanding of the risk exposure of the *transaction* to the *firm*, including trading on the *firm's* own account without a reasonable understanding of the liability (either potential or actual) of the *transaction*.
- (5) Failing to provide adequate control over a *client's* assets, including:
 - (a) failing to segregate a *client's* assets; and
 - (b) failing to process a *client's* payments in a timely manner;
- (6) Continuing to perform a function having failed to meet the standards of knowledge and skill set out in the Training and Competence sourcebook (*TC*) for that function.

Acting with due skill, etc as a manager

- 4.1.4 G It is important for a manager to understand the business for which they are responsible. A manager is unlikely to be an expert in all aspects of a complex financial services business. However, they should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.
- 4.1.5 G It is important for a manager to understand the risks of expanding the business into new areas and, before approving the expansion, they should investigate and satisfy themselves, on reasonable grounds, about the risks, if any, to the business.
- 4.1.6 G Where unusually profitable business is undertaken, or where the profits are particularly volatile or the business involves funding requirements on the *firm* beyond those reasonably anticipated, a manager should require explanations from those who report to him. Where those explanations are implausible or unsatisfactory, they should take steps to test the veracity of those explanations.
- 4.1.7 G Where a manager is not an expert in a business area, they should consider whether they (or those with whom they work) have the necessary expertise to provide an adequate explanation of issues within that business area. If not, they should seek an independent

opinion from elsewhere within or outside the *firm*.

- 4.1.8 G The following is a non-exhaustive list of examples of conduct by a manager that would be in breach of this *rule*.
- (1) Failing to take reasonable steps to ensure that the business of the *firm* for which he has responsibility:
 - (a) is controlled effectively;
 - (b) complies with the relevant requirements and standards of the *regulatory system* applicable to that area of the business; and
 - (c) is conducted in such a way to ensure that any delegation of responsibilities is to an appropriate person and is overseen effectively.
 - (2) Failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible, including:
 - (a) permitting *transactions* without a sufficient understanding of the risks involved;
 - (b) permitting expansion of the business without reasonably assessing the potential risks of that expansion;
 - (c) inadequately monitoring highly profitable *transactions* or business practices or unusual *transactions* or business practices;
 - (d) accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations; and
 - (e) failing to obtain independent, expert opinion where appropriate.
 - (3) Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors).

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

- 4.1.9 G For the purpose of *rule 3* in *C-CON* 2.1.3R, regulators other than the *FCA* and the *PRA* are those which have recognised jurisdiction in relation to *activities* to which *C-CON* applies and a power to call for information from the *firm*, or from individuals performing certain

functions in connection with those *regulated activities*. This may include an exchange or an *overseas regulator*.

- 4.1.10 G There is no duty on a *person* to report information directly to the regulator concerned unless they are one of the *persons* responsible within the *firm* for reporting matters to the regulator concerned. However, if a *person* takes steps to influence the decision not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the *appropriate regulator* will, in respect of that information, view them as being one of those within the *firm* who has taken on responsibility for deciding whether to report that matter to the regulator concerned.
- 4.1.11 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- (1) Failing to report promptly in accordance with his *firm's* internal procedures (or, if none exist, direct to the regulator concerned), information in response to questions from the *FCA*, the *PRA*, or both the *PRA* and the *FCA*.
 - (2) Failing without good reason to:
 - (a) inform a regulator of information of which the *approved person* was aware in response to questions from that regulator;
 - (b) attend an interview or answer questions put by a regulator, despite a request or demand having been made; and
 - (c) supply a regulator with appropriate *documents* or information when requested or required to do so and within the time limits attaching to that request or requirement.
- 4.1.12 G For the purposes of *C-CON* 4.1.12G(2), good reasons could include, where applicable, a right to preserve legal professional privilege, a right to avoid self-incrimination, complying with an order of a court, or complying with an obligation imposed by law or by a regulator.

Rule 4: You must pay due regard to the interests of *customers* and treat them fairly.

- 4.1.13 G *Rule 4* in *C-CON* 2.1.4R applies to all *conduct rules staff*, regardless of whether that *person* has direct contact or dealings with *customers* of the *firm*. *Persons* subject to the *rules* in *C-CON* should consider how their actions (or their failure to act) can affect the interests of *customers* or result in *customers* being treated unfairly.

- 4.1.14 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- (1) Failing to inform a *customer* of material information in circumstances where they were aware, or ought to have been aware, of such information, and of the fact that they should provide it, including the following:
 - (a) failing to explain the risks of an *investment* to a *customer*;
 - (b) failing to disclose to a *customer* details of the charges or surrender penalties of *investment* products; and
 - (c) providing inaccurate or inadequate information to a *customer* about a product or service.
 - (2) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where they do not have reasonable grounds to believe that it is suitable for that *customer*.
 - (3) Undertaking, recommending or providing advice on *transactions* without a reasonable understanding of the risk exposure of the *transaction* to a *customer*, including recommending *transactions* in *investments* to a *customer* without a reasonable understanding of the liability (either potential or actual) of that *transaction*.
 - (4) Failing to provide adequate control over a *client's* assets, including:
 - (a) failing to segregate a *client's* assets; and
 - (b) failing to process a *client's* payments in a timely manner.
 - (5) Providing a *customer* with a product which is other than the one applied for by that *customer*, unless the *customer* understands the differences and understands the product they have purchased.
 - (6) Failing to acknowledge or to seek to resolve mistakes in dealing with *customers*.
 - (7) Failing to provide terms and conditions to which a product or service is subject in a way which is clear and easy for the *customer* to understand.

Rule 5: You must observe proper standards of market conduct.

- 4.1.15 G A general consideration about whether or not a *person's* conduct complies with the relevant requirements and standards of the market, is whether they, or the *firm*, complies with the *Code of Market Conduct (MAR 1)* or relevant market codes and exchange rules. Compliance with the *Code of Market Conduct (MAR 1)* or relevant market codes and exchange rules will tend to show compliance with *rule 5* in *C-CON 2.1.5R*.
- 4.1.16 G Manipulating or attempting to manipulate a market, such as a foreign exchange market, exemplifies failing to observe proper standards of market conduct.

4 **More specific guidance on conduct**

4.2 **More specific guidance regarding senior manager and Solvency II significant influence function conduct rules**

SM1/SII: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively

- 4.2.1 G An *SMF manager's* role and responsibilities are set out in the *statement of responsibilities*.
- 4.2.2 G Strategy and plans will often dictate the risk which the business is prepared to take on and high level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be high. In organising the business for which they are responsible, an *SMF manager or an approved person performing a significant influence function in a Solvency II firm* should bear this in mind.
- 4.2.3 G To comply with the obligations of *rule SM1 or SII in C-CON 2.2.1R*, an *SMF manager or an approved person performing a significant influence function in a Solvency II firm* may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.
- 4.2.4 G The organisation of the business and the responsibilities of those within it should be clearly defined. Reporting lines should be clear to staff. Where staff have dual reporting lines there is a greater need to ensure that the responsibility and accountability of each individual line manager is clearly set out and understood.
- 4.2.5 G Where members of staff have particular levels of authorisation, these should be clearly set out and communicated to staff. It may be appropriate for each member of staff to have a job description of which they are aware.

- 4.2.6 G An SMF manager or an approved person performing a significant influence function in a Solvency II firm should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible, has appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.
- 4.2.7 G If an individual's performance is unsatisfactory, then the relevant SMF manager or an approved person performing a significant influence function in a Solvency II firm should review carefully whether to allow that individual to continue in their position. In particular, if they are aware of concerns relating to the compliance with requirements and standards of the *regulatory system* (or internal controls) of the individual concerned, or of staff reporting to that individual, the SMF manager or an approved person performing a significant influence function in a Solvency II firm should take care not to give undue weight to the financial performance of the individual or group concerned when considering whether any action should be taken. An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The SMF manager or an approved person performing a significant influence function in a Solvency II firm should be satisfied, on reasonable grounds, that the investigation is appropriate, the results are accurate and that the concerns do not pose an unacceptable risk to compliance with the requirements and standards of the *regulatory system*.
- 4.2.8 G As part of organising the business, an SMF manager or an approved person performing a significant influence function in a Solvency II firm should ensure that there is an orderly transition when another SMF manager or approved person performing a significant influence function in a Solvency II firm under his oversight or responsibility ceases to perform that function and someone else takes up that function. It would be appropriate for the individual vacating such a position to prepare a comprehensive set of handover-notes for his successor. Those notes should at a minimum specify for the successor any matter that is ongoing which the successor would reasonably expect to be aware to:
- (1) perform their function effectively;
 - (2) ensure compliance with the requirements and standards of the *regulatory system*; and
 - (3) ensure that the individual with overall responsibility for that part of the business of the *firm* maintains effective control.
- 4.2.9 G In organising the business, an SMF manager or an approved person performing a significant influence function in a Solvency II firm should pay attention to any temporary vacancies which exist. They

should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The *SMF manager or approved person performing a significant influence function in a Solvency II firm* should assess the risk that is posed to compliance with the requirements and standards of the *regulatory system* as a result of the vacancy, and the higher the risk the greater the steps he should take to fill the vacancy. It may be appropriate to limit or suspend the activity if adequate cover for responsibilities cannot be arranged. To the extent that those vacancies are in respect of *controlled functions*, they may only be filled by *persons* approved for that function.

- 4.2.10 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- (1) Failing to take reasonable steps to apportion responsibilities for all areas of the business under the *approved person's* control.
 - (2) Failing to take reasonable steps to apportion responsibilities clearly among those to whom responsibilities have been delegated, including the following:
 - (a) implementing confusing or uncertain reporting lines;
 - (b) implementing confusing or uncertain authorisation levels; and
 - (c) implementing confusing or uncertain job descriptions and responsibilities.
 - (3) In the case of a manager who is responsible for dealing with the apportionment of responsibilities, failing to take reasonable care to maintain a clear and appropriate apportionment of responsibilities, including the failure:
 - (a) to review regularly the responsibilities which have been apportioned; and
 - (b) to act where that review shows that those responsibilities have not been clearly apportioned.
 - (4) Failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of the individual performing a *senior management function*, or an *approved person performing a significant influence function in a Solvency II firm*, including the following:
 - (a) failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is

unacceptable;

- (b) giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role; and
- (c) allowing managerial vacancies which put at risk compliance with the requirements and standards of the *regulatory system* to remain, without arranging suitable cover for the responsibilities.

SM2/SI2: 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

- 4.2.11 G An SMF manager or an approved person performing a significant influence function in a Solvency II firm must take reasonable steps both to ensure his *firm's* compliance with the relevant requirements and standards of the *regulatory system* and to ensure that all staff are aware of the need for compliance.
- 4.2.12 G An SMF manager or an approved person performing a significant influence function in a Solvency II firm need not themselves put in place the systems of control for the business. Whether they do this depends on their role and responsibilities. However, they should take reasonable steps to ensure that the business for which they are responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the *regulatory system* and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the *regulatory system*, and the nature, scale and complexity of the business.
- 4.2.13 G Where an SMF manager or an approved person performing a significant influence function in a Solvency II firm becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the *regulatory system* falling within his area of responsibility, then they should take reasonable steps to ensure that they are dealt with ~~with in~~ within a timely and appropriate manner. This may involve an adequate investigation to find out whether any systems or procedures may have failed and why. They may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.
- 4.2.14 G If an issue raises questions of law or interpretation, an SMF manager or an approved person performing a significant influence function in a Solvency II firm may need to take legal advice. If appropriate legal expertise is not available in-house, they may need to consider appointing an appropriate external adviser.

- 4.2.15 G Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the *SMF manager or an approved person performing a significant influence function in a Solvency II firm* responsible for that business area should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner. What is reasonable will depend on the nature of the inadequacy and the cost of the improvement. It will be reasonable for the *SMF manager or an approved person performing a significant influence function in a Solvency II firm* to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.
- 4.2.16 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- (a) Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the *regulatory system* in respect of the activities of the *firm* in question.
 - (2) Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the *regulatory system* in respect of the activities of the *firm* in question.
 - (3) Failing to take reasonable steps adequately to inform themselves about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the *regulatory system* in respect of the activities of the *firm* in question may have arisen (taking account of the systems and procedures in place) including failing to investigate whether systems or procedures may have failed and, where appropriate, failing to obtain expert opinion on the adequacy of the systems and procedures.
 - (4) Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the *regulatory system* relating to the activities of the *firm* in question including:
 - (a) unreasonably failing to implement recommendations for improvements in systems and procedures; and
 - (b) unreasonably failing to implement recommendations for improvements to systems and procedures in a

timely manner.

- (5) In the case of a manager who has responsibility for overseeing the establishment and maintenance of appropriate systems and controls or the apportionment of responsibilities, failing to take reasonable care, to ensure that these obligations are discharged effectively.
- (6) In the case of a *proprietary trader*, failing to maintain and comply with appropriate systems and controls in relation to that activity.
- (7) In the case of the *money laundering reporting officer*, failing to discharge the responsibilities imposed on them by the *firm* for oversight of its compliance with the *FCA's rules* on systems and controls against *money laundering*.
- (8) In the case of an *SMF manager* or an approved person performing a significant influence function in a Solvency II firm who is responsible for the compliance function failing to ensure that:
 - (a) the compliance function has the necessary authority, resources, expertise and access to all relevant information;
 - (b) a compliance officer is appointed and is responsible for the compliance function and for any reporting as to compliance;
 - (c) the *persons* involved in the compliance functions are not involved in the performance of services or activities they monitor;
 - (d) the method of determining the remuneration of the *persons* involved in the compliance function does not compromise their objectivity; and
 - (e) the method of determining the remuneration complies, where applicable, with the *Remuneration Code* or other relevant requirements in relation to remuneration.

SM3/SI3: 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

- 4.2.17 G An *SMF manager* or an approved person performing a significant influence function in a Solvency II firm may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them

or to others.

- 4.2.18 G An SMF manager or an approved person performing a significant influence function in a Solvency II firm should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately.
- 4.2.19 G The FCA recognises that an SMF manager or an approved person performing a significant influence function in a Solvency II firm will have to exercise their own judgement in deciding how issues are dealt with and sometimes that judgement will, with the benefit of hindsight, be shown to have been wrong. The SMF manager or approved person performing a significant influence function in a Solvency II firm will not be in breach of rule SM3 or SI3 in C-CON 2.2.3R unless they fail to exercise due and reasonable consideration before they delegate the resolution of an issue or authority for dealing with a part of the business and fails to reach a reasonable conclusion. If they are in doubt about how to deal with an issue or the seriousness of a particular compliance problem, then, although they cannot delegate to the FCA the responsibility for dealing with the problem or issue, they can speak to the FCA to discuss his approach.
- 4.2.20 G An SMF manager or an approved person performing a significant influence function in a Solvency II firm will not always manage the business on a day-to-day basis themselves. The extent to which they do so will depend on a number of factors, including the nature, scale and complexity of the business and their position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The FCA will look to the SMF manager or approved person performing a significant influence function in a Solvency II firm to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to their attention, they should deal with them in an appropriate way.
- 4.2.21 G Delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business exemplifies a failure to comply with rule SM3/SI3 in C-CON 2.2.3R.
- 4.2.22 G Although an SMF manager or approved person performing a significant influence function in a Solvency II firm may delegate the

resolution of an issue, or authority for dealing with a part of the business, they cannot delegate responsibility for it. It is that *person's* responsibility to ensure that they receive reports on progress and questions those reports where appropriate. For instance, if progress appears to be slow or if the issue is not being resolved satisfactorily, then the *SMF manager* may need to challenge the explanations he receives and possibly take action personally to resolve the problem. This may include increasing the resource applied to it, reassigning the resolution internally or obtaining external advice or assistance. Where an issue raises significant concerns, an *SMF manager* or an approved person performing a significant influence function in a Solvency II firm should act clearly and decisively. If appropriate, this may be by suspending members of staff or relieving them of all or part of their responsibilities.

- 4.2.23 G The following is a non-exhaustive list of examples of conduct that would be in breach of this *rule*.
- (1) Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors) including:
 - (a) disregarding an issue or part of the business once it has been delegated;
 - (b) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated; and
 - (c) accepting implausible or unsatisfactory explanations from delegates without testing their veracity.
 - (2) Failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated including:
 - (a) failing to take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided; and
 - (b) failing to review the performance of an outside contractor in connection with the delegated issue or business.
- 4.2.24 G In determining whether or not the conduct of an *SMF manager* or an approved person performing a significant influence function in a Solvency II firm complies with *rule* SM3/SI3 in C-CON 2.2.3R, the factors which the *FCA* would expect to take into account include:

- (1) the competence, knowledge or seniority of the delegate; and
- (2) the past performance and record of the delegate.

SM4/SI4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

- 4.2.25 G For the purpose of *rule* SM4/SI4 in C-CON 2.2.4R, regulators in addition to the *FCA* and the *PRA* are those which have recognised jurisdiction in relation to *activities* to which C-CON applies and a power to call for information from the relevant *person* in connection with their function or in connection with the business for which they are responsible. This may include an exchange or an *overseas regulator*.
- 4.2.26 G SM4/SI4 applies to an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* in addition to *rule* 3 in C-CON 2.1.3R. Although, the *rules* have some overlap, they are different. *Rule* 3 normally relates to responses from individuals to requests from the regulator, whereas SM4/SI4 imposes a duty on *SMF managers* and *approved persons* performing *significant influence functions* in a *Solvency II firm* to disclose appropriately any information of which the *appropriate regulator* would reasonably expect, including making a disclosure in the absence of any request or enquiry from the *appropriate regulator*. By virtue of his position, an *SMF manager* or *approved person* performing a *significant influence function* in a *Solvency II firm* is likely both to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the *appropriate regulator* would reasonably expect notice.
- 4.2.27 G Where a *person* is, or is one of the *persons* performing a *senior management function* or is an *approved person* performing a *significant influence function* in a *Solvency II firm* who is responsible within the *firm* for reporting matters to the regulator, failing promptly to inform the regulator concerned of information of which they are aware and which it would be reasonable to assume would be of material significance to the regulator concerned, whether in response to questions or otherwise, constitutes a breach of *rule* SM4/SI4 in C-CON 2.2.4R.
- 4.2.28 G If an *SMF manager* or an *approved person* performing a *significant influence function* in a *Solvency II firm* were to come across a piece of information that was something in relation to which they thought the *FCA* or *PRA* could reasonably expect notice, they should determine whether that information falls within the scope of their responsibilities (for an *SMF Manager*, by virtue of his *statement of responsibilities*). If it does, then they should ensure that, if it otherwise appropriate to do so, it is disclosed to the *appropriate*

regulator. If it does not fall within the scope of their responsibilities, then in the absence of any reason to the contrary, they might reasonably assume that the matter of its disclosure to the *appropriate regulator* was being dealt with by the *SMF manager or approved person performing a significant influence function in a Solvency II firm* who has responsibility for dealing with information of that nature. If an *SMF manager or an approved person performing a significant influence function in a Solvency II firm* was not sure that the matter was being dealt with by another *SMF manager or another approved person performing a significant influence function in a Solvency II firm*, or if they were not sure whether this was in their area or not, then the *FCA* would expect them to make enquiries to inform themselves, rather than disregard the matter.

- 4.2.29 G In determining whether or not a *person's* conduct complies with *rule SM4/SI4* in *C-CON 2.2.4R*, the factors which the *FCA* would expect to take into account include:
- (1) the likely significance to the regulator concerned of the information which it was reasonable for the individual to assume;
 - (2) whether the information related to the individual themselves or to their *firm*; and
 - (3) whether any decision not to report the matter was taken after reasonable enquiry and analysis of the situation.

Financial Conduct Authority



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