

CP16/1 Consequential changes to the Senior Managers Regime

January 2016



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We are asking for comments on this Consultation Paper by 5 February 2016.

You can send them to us using the form on our website at:

<https://www.the-fca.org.uk/cp16-1-response-form>

Or in writing to:

Seema Mistry
Strategy & Competition Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 5862
Email: cp16-01@fca.org.uk

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.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 706 0790 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS

Abbreviations used in this document

CBA	Cost Benefit Analysis
CP	Consultation Paper
FCA	Financial Conduct Authority
FS(BR)A	Financial Services (Banking Reform) Act 2013
FSMA	Financial Services and Markets Act 2000
PCBS	Parliamentary Commission on Banking Standards
PRA	Prudential Regulation Authority
SM&CR	Senior Managers and Certification Regime
SMR	Senior Managers Regime

1. Overview

Introduction

- 1.1** In this paper we, the Financial Conduct Authority (FCA), set out a number of technical rule changes to the Senior Managers & Certification Regime (SM&CR). These changes reflect the removal of the requirement on firms, as set out under section 64B(5) of the Financial Services and Markets Act 2000 (FSMA), to report known and suspected breaches of our Rules of Conduct to the FCA.
- 1.2** As part of these changes, we are amending the associated forms to remove references to notifications of known and suspected rule breaches. The result is streamlined reporting requirements so that the forms only require firms to inform us of disciplinary action taken against staff as a result of a breach of one or more Rules of Conduct. The pre-existing obligation to report material breaches of our rules under SUP15.3 of our Handbook will however remain.
- 1.3** Firms will therefore still be required to notify us of the most serious issues concerning their staff. We will consider if there are any implications for our regulatory references proposals (CP15/31) and provide feedback in the corresponding Policy Statement in due course.
- 1.4** The proposed rule changes are being made as a direct result of Her Majesty's Treasury's 15 October 2015 announcement of changes to the existing SM&CR legislation as it applies to the banking sector, which included the proposed repeal of section 64B(5) of FSMA. HM Treasury has now published the Financial Services (Banking Reform) Act (FS(BR)A) 2013 (Commencement No. 9) (Amendment) Order 2015 which cancels the coming into force of section 64B(5) of FSMA, which would otherwise have come into force on 7 March 2016 with the rest of the SM&CR. However the clause (64C) requiring the FCA to be notified of all disciplinary action taken against staff as a result of a breach of a Rule of Conduct will not be changed.
- 1.5** We are keen to ensure that our forms and rules reflect the latest statutory position when the SM&CR enters into force for relevant persons on 7 March 2016. The Prudential Regulation Authority (PRA) is consulting simultaneously on changes to its rules and identical amendments to shared forms C and D as well as form L, which is a PRA-only form.
- 1.6** This Consultation Paper (CP) sets out how we intend to implement the consequential changes to rules and forms that will be required prior to commencement of the regime. It also examines the impact that we believe they will have upon the industry and on consumers.

Who does this consultation affect?

- 1.7** This paper will be of primary interest to UK banks, building societies, credit unions and PRA-designated investment firms (collectively referred to in this paper as 'relevant firms'). It will also be of interest to incoming branches of overseas relevant firms. The proposed rule changes will affect a large number of individuals within these firms as the obligations under the SM&CR apply to all staff that are subject to the Rules of Conduct.

Is this of interest to consumers?

- 1.8** This paper will primarily be of interest to firms. Consumers may be interested in how the conduct of the staff that they interact with is handled by the firm and reported to the regulator.

Context

- 1.9** The FS(BR)A created the legislative framework that underpins our SM&CR. This followed on from the publication of recommendations by the Parliamentary Commission on Banking Standards (PCBS), which was appointed to consider and report on professional standards and the culture of the UK banking sector in the wake of problems in areas such as benchmark setting, corporate governance, transparency and conflicts of interest.
- 1.10** On 15 October 2015, HM Treasury announced that as part of the Bank of England and Financial Services Bill (Bank of England Bill) and via additional secondary legislation they intended to make changes to the existing SM&CR legislation as it applies to the banking sector. Specifically, this includes stopping the introduction of Section 64B(5) of FSMA.
- 1.11** Section 64B(5) of FSMA would require banks, building societies, credit unions and PRA-designated investment firms to notify the regulators if they know or suspect that an individual subject to the regulators' Rules of Conduct had failed to comply with those Rules. Section 64C of FSMA sets out the requirement for firms to notify the regulator of disciplinary action taken against an individual.
- 1.12** We, alongside the PRA, consulted on the original rules to implement sections 64B(5) and 64C of FSMA in the consultations *Strengthening accountability in banking: a new regulatory framework for individuals* (CP14/13) (July 2014) and *Strengthening accountability in banking: forms, consequential and transitional aspects* (CP14/31) (December 2014).
- 1.13** Our response to these consultations was set out in *Strengthening accountability in banking: Final rules (including feedback on CP14/31 and CP15/5) and consultation on extending the Certification Regime to wholesale market activities* (CP15/22) (July 2015).
- 1.14** The SM&CR will enter into force for relevant firms on 7 March 2016. However, following HM Treasury's publication of the Financial Services (Banking Reform) Act 2013 (Commencement No. 9) (Amendment) Order 2015 on 17 December 2015, section 64B(5) of FSMA will no longer come into force on that date. The obligation for firms to report disciplinary action taken against staff as a result of a breach of Rules of Conduct, as laid out in section 64C of FSMA, remains unchanged.

- 1.15** Whilst HM Treasury's suspension of the relevant rules will come into force by 7 March 2016, the rules will be formally repealed during the course of 2016 by the Bank of England Bill, which remains subject to Parliamentary approval.
- 1.16** This paper lays out the practical changes that will need to be made to the FCA's Handbook and related forms in light of the changes to the SM&CR in the Bank of England Bill; in particular, the proposed removal of section 64B(5) of FSMA as amended by FS(BR)A.
- 1.17** We will keep the reporting requirements under review and will, if necessary, consider any further changes following Royal Assent to the Bank of England Bill.

Equality and diversity considerations

- 1.18** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. Overall, we do not consider that the proposals raise concerns with regards to equality and diversity issues.
- 1.19** We do not consider that the proposals in this consultation adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. 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 to this consultation on such matters.

Next steps

What do you need to do next?

- 1.20** We want to know what you think of our proposals. The consultation is open for a period of 1 month. Please send us your comments by 5 February 2016.

How?

- 1.21** Use the online response form on our website or write to us at the address on page 2. You can also email your response to the email addresses on page 2.

What will we do?

- 1.22** We will consider your feedback and publish our rules in a Policy Statement in March 2016.

2. Summary of proposals

Consequential changes to the Handbook and forms

- 2.1** In order to reflect the removal of the reporting requirement under section 64B(5) of FSMA for known and suspected breaches of our Rules of Conduct, in time for commencement of the regime on 7 March 2016, we need to make a series of consequential changes to our Handbook and to related forms.
- 2.2** This CP therefore sets out the rule changes that we are proposing to make. These changes will remove relevant references to reporting of known and suspected breaches of the Rules of Conduct within the FCA's Handbook in order to align with changes in legislation. The proposed changes also seek to amend the corresponding forms where such breaches would have been reported.
- 2.3** As mentioned above, the pre-existing obligation to report material breaches of our rules, as set out in SUP 15.3 of our Handbook, remains in force.
- 2.4** Our proposed changes entail consequential changes to the following:

Handbook Section/Form	Associated Rule	Note
Code of Conduct Sourcebook	COCON 2.3.3	Removal of reference to section 64B(5) of FSMA
Senior Manager Arrangements, Systems and Controls Sourcebook	SYSC 5.2.14	Removal of reference to section 64B(5) of FSMA
Senior Manager Arrangements, Systems and Controls Sourcebook	SYSC TP 5.3.4	Update to table to remove reference to section 64B of FSMA
Supervision manual: Form C	SUP 10A Annex 6R	Removal of references to known or suspected breaches and consequential changes
Supervision manual: Form D	SUP 10A Annex 7R	Removal of references to section 64B(5) of FSMA, known or suspected breaches and consequential changes
Supervision manual	SUP 10C	Removal of references to section 64B(5) of FSMA and to known or suspected breaches

Handbook Section/Form	Associated Rule	Note
Supervision manual	SUP 15.2.5	Removal of references to section 64B(5) of FSMA, known or suspected breaches
Supervision manual	SUP 15.3.14B	Consequential changes to clarify reporting requirements
Supervision manual	SUP 15.11	This has been updated to remove references to section 64B(5) of FSMA
Supervision manual: Form H	SUP 15 Annex 7R	This form has been repurposed to collect information on disciplinary action only, as required under section 64C of FSMA. References and tables which collected information on known or suspected breaches have been removed.

Annex 1: List of questions

- Q1:** *Do you agree with our proposals to amend or delete these rules and guidance? If not, what changes should we make instead?*
- Q2:** *Do you agree with our proposed amendments to Forms C, D and H?*

Annex 2: Cost benefit analysis

Consequential changes cost benefit analysis

1. Section 138I of FSMA requires the FCA to perform a cost benefit analysis of our proposed requirements and to publish the results.
2. We believe that there are no direct costs or benefits of our rule change. Whilst there are likely to be quantitative benefits from no longer requiring the reporting of known or suspected breaches as proposed in this CP, these benefits result from the Parliamentary suspension of section 64B(5) of FSMA, not from the changes that we have proposed, which are purely consequential. With regards to the consequential changes to the forms concerned, we feel that these changes are cost-neutral.
3. The proposals do not impact upon firms' obligations to maintain their current levels of reporting of material breaches of our Rules of Conduct as our pre-existing reporting requirements, as laid out in SUP 15.3 of our Handbook, remain in force. As such, we do not believe that the proposals will weaken consumer protection. The FCA Rules of Conduct also provide clear incentives for individuals to maintain appropriate standards of behaviour in their dealings with customers and their activities in the UK market. Therefore the proposals should not affect existing consumer protections.
4. The proposals contained in this Consultation Paper will impact firms but are likely to have a minimal impact on our existing authorisations, supervision and enforcement processes and systems.

Annex 3: Compatibility statement

Compatibility with the FCA's general duties

1. Section 1B of FSMA requires the FCA, when discharging its general functions, as far as is reasonably possible, to act in a way that is compatible with its strategic objective and that advances one or more of its operational objectives. The FCA also needs to carry out its general functions in a way that promotes effective competition in the interests of consumers, so as far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective.
2. We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in section 1C(2) and the regulatory principles in section 3B of FSMA.
3. In preparing the proposals as set out in this Consultation Paper, we have considered the FCA's duty to promote effective competition in the interests of consumers. It is our opinion that making changes to the rules and the data requested from firms has no negative impact on competition.
4. 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. We have already considered this and do not believe that mutual societies will be impacted any differently from other firms as a result of these proposed rules.

Appendix 1: Draft Handbook text

**INDIVIDUAL ACCOUNTABILITY (CONDUCT RULES) (BREACHES REPORTING)
INSTRUMENT 2016**

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 60 (Applications for approval);
 - (2) section 64C (Requirements for relevant authorised persons to notify regulator of disciplinary action);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers);
 - (5) section 139A (Power of the FCA to give guidance); and
 - (6) The Financial Services (Banking Reform) Act 2013 (Commencement No. 9) (Amendment) Order 2015.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 7 March 2016.

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)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Code of Conduct sourcebook (COCON)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Individual Accountability (Conduct Rules) (Breaches Reporting) Instrument 2016.

By order of the Board
[date] 2016

Annex A

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

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

5.2 Certification regime

...

Issuing and renewing certificates

...

- 5.2.14 G If, after having considered whether a *person* is fit and proper to perform an *FCA-specified significant-harm function*, a *firm* decides not to issue a certificate to that *person*, it should consider if the circumstances warrant making a notification to the *FCA* for a breach of the *rules* in *COCON* pursuant to ~~section 64B(5) of the Act~~ SUP 15.3.11R (Breaches of rules and other requirements in or under the Act or the CCA).

...

TP 5 Financial Services (Banking Reform) Act 2013: Certification

...

The transitional period

...

- 5.3.4 G Table: How the certification regime applies in the transitional period

Provision in the Act or the Handbook	What that provision is about	How it applies in the transitional period
...		
Section 64B of the <i>Act</i>	...	
Section 64B of the Act and SUP 15.11 <u>The parts of SUP 15.3 that deal with COCON breaches</u>	Notifying a <u>significant</u> breach of <i>COCON</i> to the <i>FCA</i>	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force.
...		

Annex B

Amendments to the Code of Conduct sourcebook (COCON)

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

2 Conduct rules

...

2.3 Firms: training and breaches

...

- 2.3.3 G ~~Section 64B(5) of the Act requires a relevant authorised person to notify the FCA if it knows, or suspects, that any member of its conduct rules staff has failed to comply with any of the rules in COCON. Further~~ There are rules and guidance on notifications to the FCA by a relevant authorised person can be found in SUP 15.3 (General notification requirements) and SUP 15.11 (Notification of COCON breaches and disciplinary action) that deal with reporting by a relevant authorised person of COCON breaches to the FCA.

...

Annex C

Amendments to the Supervision manual (SUP)

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

10A FCA Approved Persons

...

10A Form C: Notice of ceasing to perform controlled functions (including senior management functions)
Annex 6R

...

List of controlled functions

Section 3

...

3.03 For Relevant Authorised Persons, does the firm also seek to notify the *FCA* and/or *PRA* under one or ~~more~~both of section 63(2A) (Duty to notify regulator of grounds for withdrawal of approval), ~~section 64B(5) (Breach of conduct rules)~~ or section 64C (Requirement for Relevant Authorised Persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000? ?

YES NO

If the firm has answered "No", please go to section 4

If the firm has answered "Yes", please complete the below:

3.04 If the firm is making a notification under question 3.03 based on ~~of~~ any ~~known or suspected~~ breach(es) of the individual or senior manager conduct rules set out in the *FCA's* ~~C-CON~~ COCON or *PRA's* Conduct Rules, please complete the relevant boxes below. -

	Tick the rule(s) relevant to this notification	Tick if this is a known breach	Tick if this is a suspected breach
Individual Conduct Rules			
Rule 1: You must act with integrity.	<input checked="" type="checkbox"/>		
...			

3.05 For each breach please provide the following information. Please attach additional sheets as necessary.

Details of the ~~known or suspected~~ breach:

3.06 If the firm is making a notification under section 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000, please provide details below of disciplinary action taken and the reasons for this action. Please do not repeat information already included in the answers to Questions 3.04 and 3.05 above. If necessary please cross refer to the answers provided.

3.07 If the firm is making a notification under section 63(2A) (Duty to notify regulator of grounds for withdrawal of approval) of the Financial Services and Markets Act 2000, please provide details below. Please do not repeat information already included in the answers to Questions 3.04 and 3.05 above. If necessary please cross refer to the answers provided.

...

**10A Form D: Notification of changes to personal information or
Annex 7R application details and conduct breaches/disciplinary action related
to conduct**

...

What sections should you complete?

The question below will help you determine the sections of the form you must complete

Please select the outcome

...

...

Notifications under ~~Section~~ section 64B(5) or 64C of the Financial Services and Markets Act 2000

YES You must complete sections 1, 2, 6 & 7

...

**Fitness and Propriety – Notifications under ~~Section 64B(5) or section 64C~~ of the
Financial Services and Markets Act 2000 Section 6**

This section should be completed by a firm that is a relevant authorised person to:

~~(a) make a notification under section 64B(5) (Breach of conduct rules) of the Financial Services and Markets Act 2000 of known or suspected breach of the individual or senior manager conduct rules set out in the FCA's COCON or PRA Conduct Rules;~~

~~(b) (a) make a notification of disciplinary action (as defined in section 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000) due to any action, failure to act or circumstance that amounts to a breach of the individual or senior manager conduct rules set out in the FCA's COCON or PRA Conduct Rules;~~

~~(c) (b) make a follow up notification to update a determination that has previously been the subject of a notification that has been made by the firm in relation to (a) or (b) (as appropriate and to the extent required by, in the case of the FCA FCA, SUP 15.11.8 or in the case of the PRA PRA, Notifications 11.4 and 11.5 in the PRA's Rulebook).~~

6.01 Initial or update on previous notification

6.01.1 Is the firm updating a previous notification made under ~~section 64B(5) or section 64C~~ of the Financial Services and Markets Act 2000?

YES NO

If the firm has answered "No", please go to section 6.02

If the firm has answered "Yes", please complete the below:

Date of previous notification:

Please provide brief details of prior notification including reference number:

Description of the update to the previous notification (this includes updates to previous notifications made under section 64B(5) (~~Breach of Conduct Rules~~) and 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000):

6.02 Notification of ~~breaches of the individual or senior manager conduct rules and/or~~ disciplinary action:-

6.02.1 ~~If the firm is making a notification under section 64B(5) of the Financial Services and Markets Act 2000~~ Please include details in the relevant boxes below of any known or suspected breach(es) of the individual or senior manager conduct rules set out in the FCA's COCON or PRA Conduct Rules, please complete the relevant boxes below on which the disciplinary action was based.

	Tick the rule(s) relevant to this notification	Tick if this is a known breach	Tick if this is a suspected breach
...			

6.02.2 For each breach please provide the following information. Please attach additional sheets as necessary.

Relevant rule(s): Date when known or suspected breach came to the attention of the firm: Date or period of known or suspected breach:
<u>Further d</u> Details of the known or suspected breach:

6.02.3 ~~If the firm is making a notification under section 64C of the Financial Services and Markets Act 2000, please~~ Please provide details below of disciplinary action taken and the reasons for this action. Please do not repeat information already included in the answers to Questions 6.02.1 and 6.02.2 above. If necessary please cross refer to the answers provided.

--

...

10C FCA senior management regime for approved persons in relevant authorised persons

...

10C.10 Application for approval and withdrawing an application for approval

...

How to apply for approval

...

10C.10.9 D ...

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

(a) ...

(b) a notification has been made or should be made to the *FCA* or *PRA* under any of the following:

(i) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or

(ii) ~~section 64B(5) (Notification of non-compliance with *COCON* or equivalent *PRA* rules); or~~
[deleted]

(iii) ...

...

...

10C.14 Changes to an FCA-approved person's details

...

Ceasing to perform an FCA-designated senior management function

10C.14.7 R ...

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

...

(d) includes a notification about the *FCA-approved SMF manager* under one of the provisions of the *Act* listed in *SUP* 10C.14.22R (notification of grounds for withdrawal of approval, ~~breach of~~

conduct rules and disciplinary action).

...

Notifications about fitness, disciplinary action and breaches of COCON

...

10C.14.22 R If a *firm* is required to notify the *FCA* about an *FCA-approved SMF manager* under any of the following:

- (1) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or
- (2) ~~section 64B(5) of the *Act* (Breach of conduct rules); or [deleted]~~

...

...

10C.14.24 G Table: Explanation of the sections of the Act mentioned in SUP 10C.12.22R

Section	Summary of relevant parts	Other Handbook material	Comments
...			
Section 64B(5) (Breach of conduct rules)	If a <i>firm</i> knows or suspects that an <i>approved person</i> has failed to comply with <i>COCON</i> , the <i>firm</i> should notify the <i>FCA</i> of that fact.	SUP 15.11 (Notification of <i>COCON</i> breaches and disciplinary action)	
...			

...

10C Annex 1G Summary of forms and their use in the senior management regime for SMF managers

Function	Form	Submission
...		
(8) <i>Firm</i> obliged to notify the <i>FCA</i> under: (a) section 63(2A) of the <i>Act</i> (Duty to notify regulator of grounds for withdrawal of

approval); <u>or</u>		
(b) section 64B(5) of the Act (Breach of conduct rules); or [deleted]		
(c) section 64C of the Act (Requirement for relevant authorised persons to notify regulator of disciplinary action).		
...		

...

15 Notifications to the FCA or PRA

...

15.2 Purpose

...

15.2.5 G *SUP* 15.11 (Notification of COCON breaches and disciplinary action) provides *rules* and *guidance* on notifications to the *FCA* by a *relevant authorised person* where ~~it knows or suspects that any *conduct rules staff* has failed to comply with *COCON* or it takes disciplinary action in relation to any *conduct rules staff* and the reason for taking that action is a reason specified in *rules* made by the *FCA*.~~ This is a ~~These are~~ requirements imposed under ~~sections 64B and~~ section 64C of the *Act*.

...

15.3 General notification requirements

...

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

...

- 15.3.14B G (1) ...
- (2) If the same thing has to be notified under *SUP* 15.11 and *SUP* 15.3.11R, a *firm* should make separate notifications under both. This is because; ~~notification under *SUP* 15.11 is annual and notification under *SUP* 15.3.11R is immediate.~~
- (a) notification under *SUP* 15.11 is annual and notification under *SUP* 15.3.11R is immediate; and
- (b) the details of what has to be notified under those requirements are different.

...

15.11 Notification of COCON breaches and disciplinary action

...

Reasons for making a notification to the FCA

...

15.11.3 G ~~Under section 64B of the Act, if a firm knows or suspects that any conduct rules staff has failed to comply with COCON, it must notify the FCA. [deleted]~~

...

15.11.7 G A firm should make a separate notification about a person under section 64C of the Act where:

- (1) it has made a notification to the FCA about a person pursuant to ~~section 64B of the Act~~ SUP 15.3.11R(1)(a); and
- (2) it subsequently takes disciplinary action against the person for the action, failure to act, or circumstance, that amounted to a breach of COCON.

15.11.8 G If, after a firm has made a notification for a person (A) pursuant to:

- (1) ~~section 64B of the Act; or~~
- (2) ~~section 64C of the Act;~~

section 64C of the Act, it becomes aware of facts or matters which cause it to change its view that A has breached COCON, or cause it to determine that A has breached a provision of COCON other than the provision to which the notification related, the firm should inform the FCA of those facts and matters and its revised conclusion in line with a firm's obligation to comply with Principle 11.

15.11.9 G ~~A firm that is considering whether to make a notification in respect of a suspected breach of COCON should satisfy itself that it has reasonable grounds for its suspicion before making the notification. If a firm has made a notification about a person pursuant to section 64B of the Act based on a suspicion, the firm should inform the FCA of any subsequent determination it makes in relation to that matter. [deleted]~~

15.11.10 G ~~A firm should make a notification pursuant to section 64B of the Act even if the matter giving rise to the notification relates to a person who is no longer a member of the conduct rules staff of the firm, including where that person is no longer an employee of the firm. [deleted]~~

15.11.11 G In relation to any conduct rules staff, the FCA does not expect a firm to notify it pursuant to ~~section 64B or~~ section 64C of the Act if the known or suspected

breach of *COCON* occurred before the application of *COCON* to that *firm*.

Timing and form of notifications: SMF managers

- 15.11.12 G Where a *firm* is required to notify the *FCA* pursuant to ~~section 64B~~ or section 64C of the *Act* and that notification relates to an *SMF manager*, *SUP 10C* sets out how and when the notification must be made, and the relevant *notification rules* in *SUP 10C* apply.

Timing and form of notifications: certification employees and other conduct rules staff

- 15.11.13 R A *firm* must make any notifications required pursuant to ~~section 64B~~ or section 64C of the *Act* relating to a *certification employee* or *other conduct rules staff* annually. That notification should be made in October each year and cover the year up to the first day of that month.
- 15.11.14 R A *firm* must make any notifications required pursuant to ~~section 64B~~ or section 64C of the *Act* relating to a *certification employee* or *other conduct rules staff* on Form H (*SUP 15 Annex 7R*).
- 15.11.15 R A *firm* must make notifications pursuant to ~~section 64B~~ or section 64C of the *Act* relating to a *certification employee* or *other conduct rules staff* in accordance with the *rules* and *guidance* in *SUP 15.7*.

General guidance on notifications of rule breaches and disciplinary action

- 15.11.16 G A *firm* is not required to: submit nil return notifications pursuant to section 64C of the Act.
- (1) ~~submit nil return notifications pursuant to section 64B or section 64C of the Act;~~
 - (2) ~~submit a notification pursuant to section 64B of the Act in respect of a suspected breach of COCON where the firm no longer has reasonable grounds for the suspicion at the time of the notification.~~
- 15.11.17 G The obligation to notify pursuant to ~~section 64B~~ or section 64C of the *Act* does not replace or limit a *firm's* obligation to comply with *Principle 11*.
- 15.11.18 G When considering whether to make a notification pursuant to ~~section 64B~~ or section 64C of the *Act*, a *firm* should also consider whether a notification should be made under any *notification rules*, including, without limitation, any *notification rules* that require a notification to be made to the *PRA*.
- 15.11.19 G The obligations to make a notification pursuant to ~~section 64B~~ or section 64C of the *Act* apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment. A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

...

The form in the following annex is deleted and is replaced with the text shown on the following pages. The deleted text is not shown and the new text is not shown underlined.

...

15 Annex **Form H: The Notification of Conduct rules Breaches and Disciplinary Action**
7R **Form**



Application number
(for FCA/PRA use only)

Form H

Notification of Disciplinary Action relating to certification employees and other conduct rules staff

FCA Handbook Reference: SUP 15 Annex 7R
7 March 2016

Name of *firm*
(as entered in 2.01)

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 845 606 9966
Facsimile +44 (0) 207 066 0017
E-mail iva@fca.org.uk
Website <http://www.fca.org.uk>

Contact for this notification

1.01	Title	
1.02	First Name	
1.03	Surname	
1.04	Job Title	
1.05	Business address	
1.06	Post code	
1.07	Phone number (including STD code)	
1.08	Email address	
1.09	Mobile No	
1.10	Fax No.	

2.01 Name of *firm*

--

2.02 Firm Reference Number (FRN)

--

Fitness and Propriety - Notifications under section 64C of the Financial Services and Markets Act 2000

Section 3

This section should be completed by a firm to:

- (a) make an annual notification of disciplinary action (as defined in section 64C ((Requirement for relevant authorised persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000) if the reason for taking the disciplinary action is any action, failure to act or circumstance that amounts to a breach of the individual conduct rules set out in the *FCA's Code of Conduct (COCON)*; or
- (b) make a follow up notification to update a notification that has been previously made by the firm in relation to (a).

Disciplinary Action Details

Section 4

For each individual that is the subject of a notification under this Form, please provide the details requested below, in so far as applicable.

Title	Surname	Forenames	IRN (If available)	Date of Birth	National Insurance Number or Passport Number / National ID Number	Nationality <i>If providing passport number or National ID please provide nationality</i>	Job Title / Position And Department / Division	Please identify the relevant conduct rule(s) that have been breached which form the basis of the disciplinary action taken <i>Refer to Conduct Rules</i>	Please provide more information in relation to the conduct rule breached. Please also state here whether the firm is updating a previous notification or is making a new notification. <i>Free text description (300 words only) anything greater than this please provide an attachment</i>	Please provide information as to the disciplinary action taken: <ul style="list-style-type: none"> issuing of a formal written warning suspension or dismissal of the person reduction or recovery of any of the persons remuneration <i>Free text description (300 words only) anything greater than this please provide an attachment</i>

Declaration

It is a criminal offence, knowingly or recklessly, to give us information that is materially false, misleading or deceptive. Even if you believe information has been provided to us before (whether as part of another application or otherwise) or is in the public domain, you must nonetheless disclose it clearly and fully in this form and as part of this application. If there is any doubt about the relevance of information, it should be included.

The firm confirms that the information provided is accurate and complete to the best of the firm's knowledge. The firm will notify the *FCA* immediately if there is a material change to the information provided.

The firm authorises the *FCA* and *PRA*, as applicable, to make such enquiries and seek such further information as it thinks appropriate to verify information that it considers relevant to this notification.

The firm understands that the *FCA* and/or *PRA* may require it to provide further information or documents at any time.

For the purpose of complying with the Data Protection Act 1998, personal data about an individual that is the subject of a notification under this Form will be used by the *FCA* and/or *PRA* to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation, and will not be disclosed for other purposes without the permission of the firm.

In addition to other regulatory responsibilities, *firms*, have a responsibility to disclose to the *FCA* and/or *PRA* matters of which it or they would reasonably expect to be notified. Failure to notify the *FCA* and/or *PRA* of such information may lead to the *FCA* and/or *PRA* taking disciplinary or other action against the firm.

By signing below, the person submitting this form on behalf of the firm confirms that this form is accurate and complete to the best of his or her knowledge and he or she has read and understood the notes to this form.

Name of the *firm*

Name of *person* signing on behalf of the *firm*

Position

Signature

Date

Financial Conduct Authority



PUB REF: 005189

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