

# Supervision



## Supervision

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# Chapter 1

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# Chapter 1A

## The FCA's approach to supervision





**1A.1 Application and purpose**

**Application**

**1A.1.1**  
**FCA**

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This chapter applies to every *firm*, except that its relevance for an *ICVC* is limited as the *FCA* does not intend to carry out an assessment of an *ICVC* that is specific to that *ICVC*.

**Purpose**

**1A.1.2**  
**FCA**

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The *Act* (section 1L) requires the *FCA* to "maintain arrangements for supervising authorised persons". Section 1K of the *Act* also requires the *FCA* to provide general *guidance* about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of *authorised person* or *regulated activity*. One purpose of this *guidance* is to discharge the duties of the *FCA* set out in sections 1L and 1K of the *Act*. The *FCA*'s approach to supervision is also designed to enable it to meet its supervisory obligations in accordance with *EU* legislation, where applicable, including in relation to requirements arising otherwise than under the *Act* (for example, directly applicable *EU* regulations).

**1A.1.3**  
**FCA**

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The design of these arrangements is shaped by the *FCA*'s *statutory objectives* in relation to the conduct supervision of financial services *firms* as well as the prudential supervision of *firms* not supervised by the *PRA*. These objectives are set out in Chapter 1 of the *Act*. The *FCA* has one *strategic objective*: ensuring that the relevant markets function well. In discharging its general functions, the *FCA* must, so far as is reasonably possible, act in a way which is compatible with its *strategic objective* and which advances one or more of its three operational objectives:

- (1) securing an appropriate degree of protection for *consumers*;
- (2) protecting and enhancing the integrity of the UK financial system; and
- (3) promoting effective competition in the interests of *consumers* in the markets for regulated financial services (or services provided by a recognised exchange in carrying on regulated activities in respect of which it is exempt from the general prohibition by virtue of section 285(2) of the *Act*).

**1A.1.4**  
**FCA**

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- (1) In designing its approach to supervision, the *FCA* has regard to the regulatory principles set out in section 3B of the *Act*. In particular, the *FCA*'s regulatory approach aims to focus and reinforce the responsibility of the senior management of each *firm* (section 3B(1)(d) of the *Act*) to ensure that it takes reasonable care to organise and control the affairs of the *firm* responsibly

and effectively, and develops and maintains adequate risk management systems. It is the responsibility of management to ensure that the *firm* acts in compliance with its regulatory requirements.

- (2) The *FCA* will have regard to the principle that a burden or restriction which is imposed on a *firm* should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction (section 3B(1)(b) of the *Act*). The *FCA* will, so far as is compatible with acting in a way which advances the *consumer* protection or the integrity objective, discharge its supervisory functions in a way which promotes effective competition in the interests of *consumers*.



## 1A.2 Introduction

### 1A.2.1

FCA

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- (1) The Supervision manual (*SUP*) and Decision Procedure and Penalties manual (*DEPP*) form the Regulatory Processes part of the *Handbook*.
- (2) *SUP* sets out the relationship between the *FCA* and *authorised persons* (referred to in the *Handbook* as *firms*). As a general rule, *SUP* contains material that is of continuing relevance after *authorisation*.
- (3) *DEPP* is principally concerned with and sets out the *FCA*'s decision making procedures that involve the giving of *statutory notices*, the *FCA*'s policy in respect to the imposition and amount of penalties, and the conduct of interviews to which a direction under section 169(7) of the *Act* has been given or the *FCA* is considering giving.

### 1A.2.2

FCA

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For a *firm* which undertakes business internationally (or is part of a *group* which does), the *FCA* will have regard to the context in which it operates, including the nature and scope of the regulation to which it is subject in jurisdictions other than the *United Kingdom*. For a *firm* with its head office outside the *United Kingdom*, the regulation in the jurisdiction where the head office is located will be particularly relevant. As part of its supervision of such a *firm*, the *FCA* will usually seek to cooperate with relevant *overseas regulators*, including exchanging information on the *firm*. Different arrangements apply for an *incoming EEA firm*, an *incoming Treaty firm* and a *UCITS qualifier*. The arrangements applying for an *incoming EEA firm* and an *incoming Treaty firm* are addressed in SYSC Appendix 1. For *UCITS qualifiers* see also COLLG.



## 1A.3 The FCA's approach to supervision

### Purpose

1A.3.1  
FCA

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The *FCA* will adopt a pre-emptive approach which will be based on making forward-looking judgments about *firms'* business models, product strategy and how they run their businesses, to enable the *FCA* to identify and intervene earlier to prevent problems crystallising. The *FCA's* approach to supervising *firms* will contribute to its delivery against its objective to protect and enhance the integrity of the *UK financial system* (as set out in the *Act*). Where the *FCA* has responsibilities for prudential supervision, its focus will be on reducing the impact on customers and the integrity of the financial system of *firms* failing or being under financial strain. In addition, when *consumer* detriment does actually occur, the *FCA* will robustly seek redress for *consumers*. This approach will be delivered through a risk-based and proportionate supervisory approach.

1A.3.2  
FCA

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The overall approach in the *FCA* supervision model is based on the following principles:

- (1) forward looking and more interventionist;
- (2) focused on judgment, not process;
- (3) *consumer*-centric;
- (4) focused on the big issues and causes of problems;
- (5) interfaces with executive management/Boards;
- (6) robust when things go wrong;
- (7) focused on business model and culture as well as product supervision;
- (8) viewing poor behaviour in all markets through the lens of the impact on *consumers*;
- (9) orientated towards *firms* doing the right thing; and
- (10) externally focused, engaged and listening to all sources of information.

### The scope of the supervision model for firms

1A.3.3  
FCA

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The *FCA* supervision model risk assessment process applies to all *firms*, although the detail required may vary from *firm* to *firm*. For example, some *firms* may experience a highly intensive level of contact although others may only be contacted once every four

years. *Firms* judged as high impact are likely to require a more detailed assessment. A peer review process within the *FCA* assists consistency and will be focused on *firms* and sectors of the industry that could cause, or are causing, *consumers* harm or threaten market integrity.

1A.3.4  
FCA

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The supervision model is based on three pillars:

- (1) the Firm Systematic Framework (FSF) - preventative work through structured conduct assessment of *firms*;
- (2) event-driven work - dealing with problems that are emerging or have crystallised, and securing customer redress or other remedial work (e.g. to secure the integrity of the market) where necessary; and
- (3) issues and products - thematic work on sectors of the market or products within a sector that are putting or may put *consumers* at risk

1A.3.5  
FCA

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In order to create incentives for *firms* to raise standards and to maximise the success of the *FCA*'s supervisory arrangements, it is important that a *firm* understands the *FCA*'s evaluation of its risk so that it can take appropriate action.

1A.3.6  
FCA

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- (1) The *FCA* intends to communicate the outcomes of its pillars of supervision to each *firm* within an appropriate time frame. In the case of *firms* in which risks have been identified which could have a material bearing on the *FCA* meeting its *statutory objectives*, the *FCA* will also outline a remedial programme intended to address these.
- (2) The *FCA* considers that it would generally be inappropriate for a *firm* to disclose its *FCA* risk assessment to third parties, except to those who have a need or right to be aware of it, for example external auditors. *FCA* risk assessments are directed towards a specific purpose - namely illustration of the risks posed by a *firm* to the *FCA*'s *statutory objectives* and to enable the *FCA* to allocate its resources accordingly. Using a risk assessment for any other purpose has the potential to be misleading. The *FCA* therefore discourages *firms* from disclosing their assessments, unless they are required to make them public under relevant disclosure obligations.

**The nature of the FCA's relationship with firms**

1A.3.7  
FCA

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As many *firms* will not have dedicated, fixed portfolio resource, the first point of contact for many issues for such *firms* will be handled by the *FCA*'s Contact Centre, with the aim being that fewer issues and queries will need to be referred to the supervisors. To support all *firms* the *FCA* will also provide regional workshops and road shows to clarify its expectations on these risks and issues that are particularly important to the *FCA*.

**The nature of the FCA's relationship with the PRA**

1A.3.8  
FCA

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While respecting each regulator's different *statutory objectives* and mandates, in undertaking its supervisory activity the *FCA* will co-ordinate and co-operate with the *PRA* as required and necessary in the interests of the effective and efficient supervision of regulated *firms* and *individuals*. Both regulators will coordinate with each other as required under the *Act*, including on the exchange of information relevant to each

regulator's individual objectives. However, the *FCA* and *PRA* will act independently from one another when engaging with *firms*, reflecting an independent but co-ordinated regulatory approach. Maintaining effective working relationships with the *PRA* will be vital to achieving the *FCA* vision. To this end, and as required under the *Act*, the *FCA* will maintain a *memorandum of understanding* with the *PRA* which will set out how the two organisations will work together.



**1A.4 Tools of supervision**

**1A.4.1**  
**FCA**

**G**

In order to meet the *statutory objectives* and address identified risks to those objectives, the *FCA* has a range of supervisory tools available to it, including the power to impose financial penalties.

**1A.4.2**  
**FCA**

**G**

These tools may be usefully grouped under four headings:

- (1) diagnostic: designed to identify, assess and measure risks;
- (2) monitoring: to track the development of identified risks, wherever these arise;
- (3) preventative: to limit or reduce identified risks and so prevent them crystallising or increasing; and
- (4) remedial: to respond to risks when they have crystallised.

**1A.4.3**  
**FCA**

**G**

Tools may serve more than one purpose. For example, supervisory powers can be used to address risks which have materialised or to assist in preventing risks from escalating. In the first instance they are remedial; in the second, preventative.

**1A.4.4**  
**FCA**

**G**

Some of these tools, for example the use of public statements to deliver messages to *firms* or *consumers* of financial services, do not involve the *FCA* in direct oversight of the business of *firms*. In contrast, other tools do involve a direct relationship with *firms*. The *FCA* also has powers to act on its own initiative to impose or vary individual *requirements* on a *firm* (see ■ SUP 7) and to ban or impose requirements in relation to specific financial promotions. The *FCA* may also use its general rule-making powers to ban or impose requirements in relation to specific products, types of products or practices associated with a particular product or type of product. The use of the *FCA*'s tools in its oversight of market practices, in ensuring the protection of client assets and for prudential supervision of *FCA*-only *firms*, will also contribute to the integrity and orderly operation of the financial markets.

**1A.4.5**  
**FCA**

**G**

The *FCA* uses a variety of tools to monitor whether a *firm*, once *authorised*, remains in compliance with regulatory requirements. These tools include (but are not limited to):

- (1) desk-based reviews;

- (2) liaison with other agencies or regulators;
- (3) meetings with management and other representatives of a *firm*;
- (4) on-site inspections;
- (5) reviews and analysis of periodic returns and notifications;
- (6) reviews of past business;
- (7) transaction monitoring;
- (8) use of auditors; and
- (9) use of *skilled persons*.

1A.4.6

FCA

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The *FCA* also uses a variety of tools to address specific risks identified in *firms*. These tools include:

- (1) making recommendations for preventative or remedial action;
- (2) giving other individual *guidance* to a *firm*;
- (3) imposing individual *requirements*; and
- (4) varying a *firm's permission* in another way.

1A.4.7

FCA

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For further discussion of the *FCA's* regulatory approach, see publications on the *FCA's* website.





## Chapter 2

# Information gathering by the FSA on its own initiative

## 2.1 Application and purpose

### Application

**2.1.1** **R** The application of this chapter is the same as the application of *Principle 11 (Relations with regulators)*.  
FCA PRA

**2.1.2** **G** ■ PRIN 3 (Rules about application) specifies to whom, to what and where *Principle 11* applies.  
FCA

### Purpose

**2.1.3** **G** Achieving the *regulatory objectives* involves the *FCA* informing itself of developments in *firms* and in markets. The *Act* requires the *FCA* to monitor a *firm's* compliance with requirements imposed by or under the *Act* , or by any directly applicable Community regulation or decision made under *MiFID* or the *UCITS Directive* or the *auction regulation* (paragraph 6 (1) of Schedule 1). The *Act* also requires the *FCA* to take certain steps to cooperate with other relevant bodies and regulators (section 354A ). For these purposes, the *FCA* needs to have access to a broad range of information about a *firm's* business.  
FCA

**2.1.4** **G** The *FCA* receives the information in ■ SUP 2.1.3 G through a variety of means, including notifications by *firms* (see ■ SUP 15) and regular reporting by *firms* (see ■ SUP 16). This chapter is concerned with the methods of information gathering that the *FCA* may use on its own initiative in the discharge of its functions under the *Act*. This chapter does not deal with the information gathering powers that the *FCA* has under the *Unfair Terms Regulations*. These are dealt with in *UNFCOG*.  
FCA

**2.1.5** **G** Part XI of the *Act* (Information Gathering and Investigations) gives the *FCA* statutory powers, including:

- (1) to require the provision of information (see sections 165 and ■ EG 3 );
- (2) to require reports from *skilled persons* (see section 166 and ■ SUP 5);
- (3) to appoint investigators (see sections 167, 168 and 169 of the *Act* and ■ EG 3 ); and
- (4) to apply for a warrant to enter premises (see section 176 of the *Act* and ■ EG 4 ).

2.1.6  
FCA

G

The FCA prefers to discharge its functions by working in an open and cooperative relationship with *firms*. The FCA will look to obtain information in the context of that relationship unless it appears that obtaining information in that way will not achieve the necessary results, in which case it will use its statutory powers. The FCA has exercised its *rule-making* powers to make *Principle 11* which requires that a *firm* must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the *firm* of which the FCA would reasonably expect notice.

2.1.7  
FCA

G

The FCA operates in the context of the *Act* and the general law. The purpose of ■ SUP 2.2 is to explain how certain provisions of the *Act* and the general law are relevant to the FCA's methods of information gathering described in ■ SUP 2.3 and ■ SUP 2.4.

2.1.8  
FCA

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The purpose of ■ SUP 2.3 is to amplify *Principle 11* in the context of information gathering by the FCA on its own initiative in the discharge of its functions under the *Act*. ■ SUP 2.3 therefore sets out, in *guidance on Principle 11* and in *rules*, how the FCA expects *firms* to deal with the FCA in that context, including the steps that a *firm* should take with a view to ensuring that certain connected persons should also cooperate with the FCA.

2.1.9  
FCA

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The purpose of ■ SUP 2.4 is to explain a particular method of information gathering used by the FCA, known as "mystery shopping". Information about how a *firm* sells financial products can be very difficult to obtain, and the purpose of this method is to obtain such information from individuals who approach a *firm* in the role of potential retail *consumers* on the FCA's initiative. The FCA may seek information about particular issues or the activities of individual *firms* by means of mystery shopping.

## 2.2 Information gathering by the appropriate regulator on its own initiative: background

### Link to the statutory information gathering and investigation powers

2.2.1 **FCA** **PRA** **G**

Breaching *Principle 11*, or the *rules* in this chapter, makes a *firm* liable to regulatory sanctions, including discipline under Part XIV of the *Act* (Disciplinary Measures), and may be relevant to the use of the *appropriate regulator's* other powers, including the statutory information gathering and investigation powers (see further ■ PRIN 1.1.7 G to ■ PRIN 1.1.9 G). But, unlike a breach of a requirement imposed under the statutory powers listed in ■ SUP 2.1.5 G, a breach of *Principle 11* or a *rule*:

- (1) is not a criminal offence; and
- (2) cannot lead to a *person* being treated as if in contempt of court (see section 177 of the *Act* (Offences)).

2.2.2 **FCA** **PRA** **G**

Neither *Principle 11* nor ■ SUP 2.3.5 R (1) (Access to premises) enable the *appropriate regulator* to force access to premises.

### Banking confidentiality and legal privilege

2.2.3 **FCA** **G**

The *FCA* would not normally seek to gather information using the methods described in ■ SUP 2.3 or ■ SUP 2.4 in a situation where the *FCA* could not have obtained it under the powers in Part XI of the *Act* (Information Gathering and Investigations). In particular, the limitations in the following sections of the *Act* are relevant to this chapter:

- (1) section 175(5) (Information and documents: supplementary powers) under which no *person* may be required under Part XI of the *Act* (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); the *FCA* would not normally seek such information using the methods described in ■ SUP 2.3 or ■ SUP 2.4; and
- (2) section 413 (Protected items), under which no *person* may be required under the *Act* to produce, disclose or permit the inspection of *protected items*; a *firm* would not breach *Principle 11* or the *rules* in this chapter by not producing such items.

2.2.3A **PRA** **G**

The *PRA* would not normally seek to gather information using the methods described in ■ SUP 2.3 in a situation where the *PRA* could not have obtained it under the powers

in Part XI of the *Act* (Information Gathering and Investigations). In particular, the limitations in the following sections of the *Act* are relevant to this chapter:

- (1) section 175(5) (Information and documents: supplementary powers) under which no *person* may be required under Part XI of the *Act* (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); the *PRA* would not normally seek such information using the methods described in ■ SUP 2.3; and
- (2) section 413 (Protected items), under which no *person* may be required under the *Act* to produce, disclose or permit the inspection of *protected items*; a *firm* would not breach *Principle 11* or the *rules* in this chapter by not producing such items.

**Confidentiality of information**

2.2.4  
FCA

G

When the *FCA* obtains confidential information using the methods of information gathering described in ■ SUP 2.3 or ■ SUP 2.4, it is obliged under Part XXIII of the *Act* (Public Record, Disclosure of Information and Co-operation) to treat that information as confidential. The *FCA* will not disclose confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates.

2.2.4A  
PRA

G

When the *PRA* obtains confidential information using the methods of information gathering described in ■ SUP 2.3, it is obliged under Part XXIII of the *Act* (Public Record, Disclosure of Information and Co-operation) to treat that information as confidential. The *PRA* will not disclose confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates.

**Admissibility of information in proceedings**

2.2.5  
FCA

G

Information obtained by the *FCA* using the methods described in ■ SUP 2.3 and ■ SUP 2.4 is admissible in evidence in any proceedings, so long as it complies with any requirements governing the admissibility of evidence in the circumstances in question.

2.2.5A  
PRA

G

Information obtained by the *PRA* using the methods described in ■ SUP 2.3 is admissible in evidence in any proceedings, so long as it complies with any requirements governing the admissibility of evidence in the circumstances in question.



## 2.3 Information gathering by the appropriate regulator on its own initiative: cooperation by firms

### Introduction: Methods of information gathering requiring cooperation

2.3.1 G [deleted]

2.3.2 G The *appropriate regulator* expects to request meetings or access to business premises during reasonable business hours. The *appropriate regulator* also normally expects to be able to give reasonable notice to a *firm* or connected person when it seeks information, *documents*, meetings or access to business premises. On rare occasions, however, the *appropriate regulator* may seek access to premises without notice. The prospect of unannounced visits is intended to encourage *firms* to comply with the requirements and standards under the *regulatory system* at all times.

FCA PRA

### Access to a firm's documents and personnel

2.3.3 G In complying with *Principle 11*, the *appropriate regulator* considers that a *firm* should, in relation to the discharge by the *appropriate regulator* of its functions under the *Act*:

FCA PRA

- (1) make itself readily available for meetings with representatives or appointees of the *appropriate regulator* as reasonably requested;
- (2) give representatives or appointees of the *appropriate regulator* reasonable access to any records, files, tapes or computer systems, which are within the *firm's* possession or control, and provide any facilities which the representatives or appointees may reasonably request;
- (3) produce to representatives or appointees of the *appropriate regulator* specified *documents*, files, tapes, computer data or other material in the *firm's* possession or control as reasonably requested;
- (4) print information in the *firm's* possession or control which is held on computer or on microfilm or otherwise convert it into a readily legible *document* or any other record which the *appropriate regulator* may reasonably request;
- (5) permit representatives or appointees of the *appropriate regulator* to copy *documents* or other material on the premises of the *firm* at the *firm's* reasonable expense and to remove copies and hold them elsewhere, or provide any copies, as reasonably requested; and
- (6) answer truthfully, fully and promptly all questions which are reasonably put to it by representatives or appointees of the *appropriate regulator*.

2.3.4

FCA PRA

G

In complying with *Principle 11*, the *appropriate regulator* considers that a *firm* should take reasonable steps to ensure that the following *persons* act in the manner set out in

■ SUP 2.3.3 G:

- (1) its *employees*, agents and *appointed representatives*; and
- (2) any other members of its *group*, and their *employees* and agents.

(See also, in respect of *appointed representatives*, ■ SUP 12.5.3 G (2)).

#### Access to premises

2.3.5

FCA PRA

R

(1) A *firm* must permit representatives of the *appropriate regulator*, or *persons* appointed for the purpose by the *appropriate regulator*, to have access, with or without notice, during reasonable business hours to any of its business premises in relation to the discharge of the *appropriate regulator's* functions under the *Act* or its obligations under the *short selling regulation* .

(2) A *firm* must take reasonable steps to ensure that its agents, suppliers under *material outsourcing* arrangements and *appointed representatives* permit such access to their business premises. (See also, in respect of *appointed representatives*, ■ SUP 12.5.3 G (2)).

2.3.6

FCA PRA

G

The *appropriate regulator* normally expects to give reasonable notice of a visit (See ■ SUP 2.3.2 G).

#### Suppliers under material outsourcing arrangements

2.3.7

FCA PRA

R

A *firm* must take reasonable steps to ensure that each of its suppliers under *material outsourcing* arrangements deals in an open and cooperative way with the *appropriate regulator* in the discharge of its functions under the *Act* in relation to the *firm*.

2.3.8

FCA PRA

G

The cooperation that a *firm* is expected to procure from such suppliers is similar to that expected of the *firm*, in the light of the *guidance* in ■ SUP 2.3.3 G to ■ SUP 2.3.4 G, but does not extend to matters outside the scope of the *appropriate regulator's* functions in relation to the *firm*. ■ SUP 2.3.5 R (2) also requires a *firm* to take reasonable steps regarding access to the premises of such suppliers.

2.3.9

FCA PRA

G

When a *firm* appoints or renews the appointment of a supplier under a *material outsourcing* arrangement, it should satisfy itself that the terms of its contract with the supplier require the supplier to give the *appropriate regulator* access to its premises as described in

■ SUP 2.3.5 R (2), and to cooperate with the *appropriate regulator* as described in

■ SUP 2.3.7 R. The *appropriate regulator* does not consider that the 'reasonable steps' in

■ SUP 2.3.7 R would require a *firm* to seek to change a contract, already in place either when that *rule* : (1) was made by the *appropriate regulator* on 21 June 2001; or (2) was designated by the *appropriate regulator*, until renewal of the contract.



2.3.10  
FCA PRA

G

The *appropriate regulator* will normally seek information from the *firm* in the first instance, but reserves the right to seek it from a supplier under a *material outsourcing* arrangement if the *appropriate regulator* considers it appropriate.

**Information requested on behalf of other regulators**

2.3.11  
FCA PRA

G

The *appropriate regulator* may ask a *firm* to provide it with information at the request of or on behalf of other regulators to enable them to discharge their functions properly. Those regulators may include *overseas regulators* or the *Takeover Panel*. The *appropriate regulator* may also, without notifying a *firm*, pass on to those regulators information which it already has in its possession. The *appropriate regulator's* disclosure of information to other regulators is subject to the obligation described in ■ SUP 2.2.4 G (Confidentiality of information).

2.3.12

G

[Deleted]

2.3.12A  
FCA

G

In complying with *Principle 11*, the *FCA* considers that a *firm* should cooperate with it in providing information for other regulators. Sections 169 (Investigations etc. in support of overseas regulator) of the *Act* gives the *FCA* certain statutory powers to obtain information and appoint investigators for *overseas regulators* if required (see ■ DEPP 7 and ■ EG 3).

2.3.12B  
PRA

G

In complying with *Principle 11*, the *PRA* considers that a *firm* should cooperate with it in providing information for other regulators. Sections 169 (Investigations etc. in support of overseas regulator) and 169A (Support of overseas regulator with respect to financial stability) of the *Act* give the *PRA* certain statutory powers to obtain information and appoint investigators for *overseas regulators* if required (see ■ FINMAR 1).



## 2.4 'Mystery shopping'

2.4.1  
FCA

**G** Representatives or appointees of the *FCA* (which may include individuals engaged by a market research firm) may approach a *firm*, its agents or its *appointed representatives* in the role of potential retail *consumers* . This is known as 'mystery shopping'.

2.4.2  
FCA

**G** The *FCA* uses mystery shopping to help it protect *consumers*. This may be by seeking information about a particular practice across a range of *firms* ( ■ SUP 2.4.3 G (1)) or the practices of a particular *firm* ( ■ SUP 2.4.3 G (2)). One of the risks *consumers* face is that they may be sold financial products which are inappropriate to them. A problem in protecting *consumers* from this risk is that it is very difficult to establish after the event what a *firm* has said to a 'genuine' *consumer* in discussions. By recording what a *firm* says in discussions with a 'mystery shopper', the *FCA* can establish a *firm's* normal practices in a way which would not be possible by other means.

2.4.3  
FCA

**G** The *FCA* may carry out mystery shopping:

- (1) together with a programme of visits to obtain information about a particular practice, looking at a particular issue across a range of *firms*, when the *FCA* may advise the *firms* of the issues beforehand; the practice being scrutinised may be that of *firms* or a class of *firms* in carrying on *regulated activities* or *ancillary activities* or in *communicating* or *approving financial promotions*;
- (2) together with focused visits (concentrating on particular aspects of a *firm's* business) to obtain information about the practices of a *firm*; these practices may be in carrying on *regulated activities* or *ancillary activities* or in *communicating* or *approving financial promotions* when the *FCA* has particular concerns about those practices;
- (3) using recording devices, telephonic or other communications; the *FCA* may monitor and store the contents of the materials obtained by these devices or communications.

2.4.4  
FCA

**G** Telephone calls and meetings held during mystery shopping will be recorded. The *FCA* expects that any mystery shopping it arranges will be conducted in accordance with the Market Research Society Code of Practice.

2.4.5  
FCA

**G** The *FCA* may use the information it obtains from mystery shopping in support of both its supervisory functions and its enforcement functions. This includes sharing any information so obtained with *firms* and *approved persons*.



Supervision

# Chapter 3

# Auditors

## 3.1 Application

### 3.1.1

FCA PRA

R

This chapter applies to:

- (1) every *firm* within a category listed in column (1) of the table in ■ SUP 3.1.2 R; and
- (2) the external auditor of such a *firm* (if appointed under ■ SUP 3.3 or appointed under or as a result of a statutory provision other than in the *Act*);

in accordance with column (2) or (3) of that table, except as described in the remainder of this section.

### 3.1.1A

FCA

G

For the avoidance of doubt, this chapter does not apply to the following *firms* if they do not hold *client money* or client assets and do not appoint an auditor under or as a result of a statutory provision other than in the *Act*:

- (1) *authorised professional firms*;
- (2) *energy market participants*, including *oil market participants* to whom ■ IPRU(INV) 3 does not apply;
- (3) *exempt insurance intermediaries*;
- (4) *insurance intermediaries* not subject to ■ SUP 3.1.2 R(10);
- (5) *investment management firms*;
- (6) *home finance administrators*;
- (7) *home finance intermediaries*;
- (8) *home finance providers*;
- (9) *personal investment firms*, including *small personal investment firms*;
- (10) *securities and futures firms*; and
- (11) *service companies*.

3.1.2

FCA PRA

R

Table Applicable sections (see ■ SUP 3.1.1 R)

This table and the provisions in SUP 3 should be read in conjunction with GEN 2.2.23 R to GEN 2.2.25 G. In particular, the PRA does not apply any of the provisions in SUP 3 in respect of FCA-authorized persons. SUP 3.10 and SUP 3.11 are applied by the FCA only.

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(1) <i>Authorised professional firm</i> which is required by <i>IPRU(INV) 2.1.2R</i> to comply with chapters 3, 5 or 13 of <i>IPRU(INV)</i> and which has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i> (Notes 1 and 6)	SUP 3.1 - SUP 3.7, SUP 3.10	SUP 3.1, SUP 3.2, SUP 3.8 , SUP 3.11
(2) <i>Authorised professional firm</i> not within (1) to which the <i>custody chapter</i> or <i>client money chapter</i> applies	SUP 3.1 - SUP 3.7, SUP 3.10	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.11
(3) <i>Authorised professional firm</i> not within (1) or (2) which has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i>	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(4) <i>Bank, building society or dormant account fund operator</i> which in each case carries on <i>designated investment business</i> (Notes 2A and 6)	SUP 3.1-SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(5) <i>Bank , building society or a dormant account fund operator</i> which in each case does not carry on <i>designated investment business</i> (Note 2A)	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8

3

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(5A) <i>Credit union</i>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(6) <i>Insurer, the Society of Lloyd's, underwriting agent or members' adviser , UK ISPV (Note 5)</i>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(7) <i>Investment management firm, (other than an exempt CAD firm), personal investment firm (other than a small personal investment firm or exempt CAD firm) or securities and futures firm (other than an exempt CAD firm or an exempt BIPRU commodities firm) which, in each case, has an auditor appointed under or as a result of a statutory provision other than in the Act (Notes 3 and 6 )</i>	SUP 3.1 - SUP 3.7, SUP 3.10 3.11	SUP 3.1, SUP 3.2, SUP 3.8 , SUP 3.10
(7A) <i>Investment management firm (other than an exempt CAD firm) , personal investment firm (other than a small personal investment firm or exempt CAD firm) or securities and futures firm (other than an exempt CAD firm or an exempt BIPRU commodities firm ) not within (7) to which the custody chapter or client money chapter applies</i>	SUP 3.1 - SUP 3.7, SUP 3.10 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(7AA) <b>A firm that has exercised an opt in to CASS in accordance with CASS 1.4.9 R</b>	SUP 3.1 to SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10.
(7B) <b>UCITS firm (Note 6)</b>	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8 , SUP 3.10
(7C) <b>UK MiFID investment firm, which has an auditor appointed under or as a result of a statutory provision other than in the Act (Notes 3B and 6)</b>	SUP 3.1 - 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(7D) <b>Sole trader or partnership that is a UK MiFID investment firm (other than an exempt CAD firm) (Notes 3C and 6)</b>	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(8) <b>Small personal investment firm or service company which, in either case, has an auditor appointed under or as a result of a statutory provision other than in the Act</b>	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(9) <b>Home finance provider which has an auditor appointed under or as a result of a statutory provision other than in the Act</b>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(10) <b>Insurance intermediary (other than an exempt insurance intermediary) to which the insurance client money chapter (except for CASS 5.2 (Holding money as</b>	SUP 3.1 - SUP 3.7 , SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10

3



(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
agent)) applies (see Note 4)		
(11) <i>Exempt insurance intermediary and insurance intermediary not subject to SUP 3.1.2 R(10) which has an auditor appointed under or as a result of a statutory provision other than in the Act</i>	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(12) <i>Home finance intermediary or home finance administrator which has an auditor appointed under or as a result of a statutory provision other than in the Act.</i>	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
<p>Note 1 = This chapter applies to an <i>authorised professional firm</i> in row (1) (and its auditor) as if the <i>firm</i> were of the relevant type in the right-hand column of <i>IPRU(INV)</i> 2.1.4R.</p> <p>Note 2 [deleted]</p> <p>Note 2A = For this purpose, <i>designated investment business</i> does not include either or both:</p> <p>(a) <i>dealing</i> which falls within the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc) (or agreeing to do so); and</p> <p>(b) <i>dealing in investments as principal</i> (or agreeing to do so):</p> <p>(i) by a <i>firm</i> whose <i>permission to deal in investments as principal</i> is subject to a <i>limitation</i> to the effect that the <i>firm</i>, in carrying on this <i>regulated activity</i>, is limited to entering into transactions in a manner which, if the <i>firm</i> was an <i>unauthorised person</i>, would come within article 16 of the <i>Regulated Activities Order</i> (Dealing in contractually based investments); and</p> <p>(ii) in a manner which comes within that <i>limitation</i>;</p> <p>having regard to article 4(4) of the <i>Regulated Activities Order</i> (Specified activities: general ).</p>		

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
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**Note 3 = This note applies in relation to an *oil market participant* to which *IPRU(INV) 3* does not apply and in relation to an *energy market participant* to which *IPRU(INV) 3* does not apply. In SUP 3:**

- (a) only SUP 3.1, SUP 3.2 and SUP 3.7 are applicable to such a *firm*; and**
- (b) only SUP 3.1, SUP 3.2 and SUP 3.8 are applicable to its auditor;**

**and, in each case, only if it has an auditor appointed under or as a result of a statutory provision other than in the *Act*.**

**Note 3A [deleted]**

**Note 3B = *UK MiFID investment firms* include *exempt CAD firms*. An *exempt CAD firm* that has opted into *MiFID* can benefit from the audit exemption for small companies in the Companies Act legislation if it meets the relevant criteria in that legislation and fulfils the conditions of regulation 4C(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. If a *firm* does so benefit then SUP 3 will not apply to it. For further details about *exempt CAD firms*, see PERG 13, Q58.**

**Note 3C = A *sole trader* or a *partnership* that is a *UK MiFID investment firm* to which the *custody chapter* or *client money chapter* applies must have its annual accounts audited.**

**Note 4 = The *client money* audit requirement in SUP 3.1.2 R(10) therefore applies to all *insurance intermediaries* except:**

- those which do not hold *client money* or *other client assets* in relation to *insurance mediation activities*; or
- those which only hold up to, but not exceeding, £30,000 of *client money* under a statutory trust arising under CASS 5.3.

***Insurance intermediaries* which, in relation to *insurance mediation activities*, hold no more than that amount of *client money* only on a statutory trust are *exempt insurance intermediaries*.**

**Note (5) = In row (6):**

- (a) SUP 3.1 - SUP 3.7 applies to a *managing agent* in respect of its own business and in respect of the *insurance business* of each *syndicate* which it manages; and**
- (b) SUP 3.1, SUP 3.2 and SUP 3.8 apply to the auditors of a *managing agent* and the auditors of the *insurance business* of each *syndicate* which the *managing agent* manages.**

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
----------------------	-------------------------------------	--

**Note 6 = Where SUP 3.11 applies to a firm, and SUP 3.10 applies to the auditor of that firm, those sections apply whether or not that firm's permission prevents it from holding client money or custody assets and whether or not it holds client money or custody assets.**

**3.1.2A**  
FCA PRA

G

If a firm falls within more than one row in column (1) of the table in ■ SUP 3.1.2 R, ■ SUP 3.1.1 R requires the firm and its external auditor to comply with all the sections referred to in column (2) or (3).

**Incoming firms**

**3.1.3**  
FCA PRA

R

This chapter applies to an *incoming EEA firm* (and the auditor of such a firm) only if it has a *top-up permission*.

**3.1.4**  
FCA PRA

G

The application of ■ SUP 3.10 to the auditor of an *incoming EEA firm* with a *top-up permission* is qualified in ■ SUP 3.10.3 R.

**3.1.5**  
FCA PRA

R

This chapter does not apply to an *incoming Treaty firm*, which:

- (1) does not have a *top-up permission*; and
- (2) is not required to comply with the *client asset rules*.

**3.1.6**  
FCA PRA

G

The application of ■ SUP 3.7 to an *incoming Treaty firm* or an auditor of such a firm is further qualified in ■ SUP 3.7.1 G .

**Auditors of lead regulated firms**

**3.1.7**  
FCA

G

The application of ■ SUP 3.10 to the auditor of a *lead regulated firm* is qualified in ■ SUP 3.10.3 R.

**3.1.8**

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[deleted]

**Material elsewhere in the Handbook**

**3.1.9**  
FCA PRA

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A firm which is a *friendly society* or other *insurer, investment management firm, personal investment firm* or a *securities and futures firm* , should see the Prudential Standards part of the *Handbook* for further provisions on auditors as set out in ■ SUP 3.1.10 G. For the categorisations employed in ■ SUP 3.1.2 R and ■ SUP 3.1.10 G see ■ SUP App 1.

3.1.10

FCA PRA

G

Table Other relevant sections of the Handbook (see ■ SUP 3.1.9 G)

<i>Friendly society</i>	<i>IPRU(FSOC)</i>
<i>Insurer (other than a friendly society)</i>	<i>IPRU(INS)</i>
<i>Investment management firm, personal investment firm, securities and futures firm (other than BIPRU investment firms)</i>	<i>IPRU(INV)</i>
<i>UCITS firm</i>	<i>(UPRU)</i>
<i>Society of Lloyd's and Lloyd's managing agents</i>	<i>IPRU(INS)</i>

**Lloyd's**

**Enabling provision and application**

3.1.11

PRA

G

The *insurance market direction* in this chapter is given under section 316(1) of the Act (Direction by a regulator) and applies to *members*.

**Purpose**

3.1.12

PRA

G

The *insurance market direction* in this chapter is intended to enable the *rules* in ■ SUP 3 and ■ SUP 4 to be applied to a *managing agent* in respect of the *insurance business* of each *syndicate* which it manages.

**Insurance market direction on rules concerning auditors and actuaries**

3.1.13

PRA

D

- (1) With effect from 1 January 2005, Part XXII of the *Act* (Auditors and Actuaries) applies to the carrying on of *insurance business* by *members* as modified by paragraph (3).
- (2) For the purposes of (1) "insurance business" means the *regulated activities of effecting or carrying out contracts of insurance* written at Lloyd's.
- (3) Regulations made by the Treasury under section 342(5) and section 343(5) of Part XXII of the *Act* apply only to *actuaries* appointed by a *managing agent* in respect of the *insurance business* of a *syndicate*, in relation to the *long-term insurance business* of that *syndicate*.
- (4) In Part XXII of the *Act* (Auditors and Actuaries) as applied by this *insurance market direction*:
  - (a) a reference to an auditor of an *authorised person* is to be read as including an auditor appointed by a *managing agent* in respect of the *insurance business* of a *syndicate*; and
  - (b) a reference to an *actuary* acting for an *authorised person* is to be read as including an *actuary* appointed by a *managing agent* in respect of the *insurance business* of a *syndicate*.

3.1.14

PRA

G

Part XXII (Auditors and Actuaries) is a *core provision* mentioned in section 317(1) of the *Act* (The core provisions).

3.1.15

PRA

G

Section 317(2) of the *Act* (The core provisions) provides that references in an applied *core provision* to an *authorised person* are to be read as references to a *person* in the class to which the *insurance market direction* applies. The effect of this, and of the *insurance market direction* set out at ■ SUP 3.1.13 D, is that Part XXII of the *Act* (Auditors and Actuaries), applies also to auditors and *actuaries* who are appointed to report on the underwriting business of *members*. Part XXII is modified in its application to *members* by paragraph (3) of ■ SUP 3.1.13 D with the effect that the regulations made under sections 342(5) and 343(5) of the *Act* relating to communications by *actuaries* will only apply where the *actuary* is appointed to evaluate the *long-term insurance business* of the *syndicate*. The regulations made under sections 342(5) and 343(5) in relation to communications by auditors will apply in relation to both *general insurance business* and *long-term insurance business*.

3.1.16

PRA

G

■ SUP 3.3 sets out *rules* the effect of which is to require a *managing agent* to appoint an auditor in respect of its own business and the *insurance business* of each *syndicate* which it manages.

3.1.17

PRA

G

References in ■ SUP 3, as applied by ■ SUP 3.1.2 R, to a *firm* include, where appropriate:

- (1) a *managing agent*; and
- (2) one or more *members* carrying on *insurance business* at Lloyd's through a *syndicate*,

and references to an *actuary* of a *firm* should be read accordingly.

3.1.18

PRA

G

■ SUP 4.6 sets out *rules* the effect of which is to require a *managing agent* to appoint an *actuary* in respect of the *insurance business* of each *syndicate* which it manages.



## 3.2 Purpose

### Purpose: general

3.2.1

FCA PRA

G

This chapter sets out *rules* and *guidance* on the role auditors play in the *appropriate regulator's* monitoring of *firms'* compliance with the requirements and standards under the *regulatory system*. In determining whether a *firm* satisfies the *threshold conditions*, the *appropriate regulator* has regard to whether the *firm* has appointed auditors with sufficient experience in the areas of business to be conducted by the *firm* . Auditors act as a source of information for the *appropriate regulator* in its supervision. They report, where required, on the financial resources of the *firm*, the accuracy of its reports to the *appropriate regulator* and its compliance with particular *rules*, such as the *Client asset rules*.

3.2.2

FCA PRA

G

The *Act*, together with other legislation such as the Companies Acts 1985 , 1989 and 2006 , the Building Societies Act 1986 and the Friendly Societies Act 1992, provides the statutory framework for *firms'* and auditors' obligations.

3.2.3

G

The requirements in ■ SUP 3.9 represent an interim approach to the use of auditors, based mainly on the requirements which *previous regulators* applied to *firms*.

3.2.4

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[deleted]

### Insurance intermediaries and their auditors

3.2.5

FCA

G

It is the responsibility of an *insurance intermediary's* senior management to determine, on a continuing basis, whether the *insurance intermediary* is an *exempt insurance intermediary* and to appoint an auditor if management determines the *firm* is no longer exempt. ■ SUP 3.7 (amplified by ■ SUP 15) sets out what a *firm* should consider when deciding whether it should notify the *FCA* of matters raised by its auditor.

### Rights and duties of auditors

3.2.6

FCA

G

The rights and duties of auditors are set out in ■ SUP 3.8 (Rights and duties of all auditors) and ■ SUP 3.10 (Duties of auditors: notification and report on client assets). ■ SUP 3.8.10 G includes the auditor's statutory duty to report certain matters to the *FCA* imposed by regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (information given by auditor or actuary to a *regulator* ). An auditor should bear these rights and duties in mind when carrying out *client* asset report work, including whether anything should be notified to the *FCA* immediately.

3.2.6A

PRA

G

The rights and duties of auditors are set out in ■ SUP 3.8 (Rights and duties of all auditors). ■ SUP 3.8.10 G includes the auditor's statutory duty to report certain matters to the *PRA* imposed by regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (information given by auditor or actuary to a *regulator*).



### 3.3 Appointment of auditors

#### Purpose

3.3.1

G

FCA PRA

This section requires a *firm* to appoint an auditor and supply the appropriate regulator with information about its auditor. The *appropriate regulator* requires such information to ensure that the *firm* has an auditor.

#### Appointment by firms

3.3.2

R

FCA PRA

A *firm* to which this section applies (see ■ SUP 3.1) must:

- (1) appoint an auditor;
- (2) notify the *appropriate regulator*, without delay, on the form in ■ SUP 15 Ann 3 R (Standing data form), in accordance with the instructions on the form, when it is aware that a vacancy in the office of auditor will arise or has arisen, giving the reason for the vacancy;
- (3) appoint an auditor to fill any vacancy in the office of auditor which has arisen;
- (4) ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable after that; and
- (5) notify the *appropriate regulator* of the appointment of an auditor, on the form in ■ SUP 15 Ann 3 R (Standing data form), in accordance with the instructions on the form, advising the *appropriate regulator* of the name and business address of the auditor appointed and the date from which the appointment has effect.

3.3.3

G

PRA

- (1) ■ SUP 3.3.2 R applies to every *firm* to which this section applies. That includes a *firm* which is under an obligation to appoint an auditor under an enactment other than the *Act*, such as the Companies Act 1985 or the Companies Act 2006, as appropriate. Such a *firm* is expected to wish to have a single auditor who is appointed to fulfil both obligations. ■ SUP 3.3.2 R is made under section 137F of the *Act* (The PRA's general rules), in relation to such *firms*, and under section 340(1) (Appointment) in relation to other *firms*.



(2) *Building societies* and *friendly societies* are reminded that they are subject to the provisions of Schedule 11 to the Building Societies Act 1986 and Schedule 14 to the Friendly Societies Act 1992 relating to auditors, in addition to the provisions in this chapter. In relation to ■ SUP 3.3.2 R (2), such *firms* may give the *PRA* a single notification of a vacancy in the office of auditor provided that the notification complies with the requirements of the relevant Act and ■ SUP 3.3.2 R (2).

3.3.3A  
FCA

G

■ SUP 3.3.2 R applies to every *firm* to which this section applies. That includes a *firm* which is under an obligation to appoint an auditor under an enactment other than the *Act*, such as the Companies Act 1985 or the Companies Act 2006, as appropriate. Such a *firm* is expected to wish to have a single auditor who is appointed to fulfil both obligations. ■ SUP 3.3.2 R is made under section 137A of the *Act* (The *FCA*'s general rules), in relation to such *firms*, and under section 340(1) (Appointment) in relation to other *firms*.

3.3.4

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[deleted]

3.3.5

R

[deleted]

3.3.6

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[deleted]

**Appointment by the appropriate regulator**

3.3.7

FCA PRA

R

(1) Paragraph (2) applies to a *firm* which is not under an obligation to appoint an auditor imposed by an enactment other than the *Act*.

(2) If a *firm* fails to appoint an auditor within 28 days of a vacancy arising, the *appropriate regulator* may appoint an auditor for it on the following terms:

- (a) the auditor to be remunerated by the *firm* on the basis agreed between the auditor and *firm* or, in the absence of agreement, on a reasonable basis; and
- (b) the auditor to hold office until he resigns or the *firm* appoints another auditor.

3.3.8

PRA

G

In addition, in the case of a *building society* or *friendly society*, Schedule 11 of the Building Societies Act 1986 and Schedule 14 of the Friendly Societies Act 1992 allow the *PRA* to appoint an auditor if this is not done at the society's annual general meeting.

3.3.9

FCA PRA

G

■ SUP 3.3.7 R allows but does not require the appropriate regulator to appoint an auditor if the *firm* has failed to do so within the 28 day period. When it considers whether to use this power, the *appropriate regulator* will take into account the likely delay until the *firm* can make an appointment and the urgency of any pending duties of the appointed auditor.

3.3.10

FCA PRA

R

A *firm* must comply with and is bound by the terms on which an auditor has been appointed by the *appropriate regulator*, whether under

■ SUP 3.3.7 R, the Building Societies Act 1986 or the Friendly Societies Act 1992.

3



### 3.4 Auditors' qualifications

#### Purpose

3.4.1

FCA PRA

G

The *appropriate regulator* is concerned to ensure that the auditor of a *firm* has the necessary skill and experience to audit the business of the *firm* to which he has been appointed. This section sets out the *appropriate regulator's rules and guidance* aimed at achieving this.

#### Qualifications

3.4.2

FCA PRA

R

Before a *firm*, to which ■ SUP 3.3.2 R applies, appoints an auditor, it must take reasonable steps to ensure that the auditor has the required skill, resources and experience to perform his functions under the *regulatory system* and that the auditor:

- (1) is eligible for appointment as an auditor under Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990 (Eligibility for appointment) where applicable, otherwise Chapters 1, 2 and 6 of Part 42 of the Companies Act 2006 ; or
- (2) if appointed under an obligation in another enactment, is eligible for appointment as an auditor under that enactment; or
- (3) in the case of an *overseas firm*, is eligible for appointment as an auditor under any applicable equivalent laws of that country or territory.

3.4.3

PRA

G

Enactments within ■ SUP 3.4.2 R (2) include the Building Societies Act 1986 and the Friendly Societies Act 1992.

3.4.4

FCA PRA

G

An auditor which a *firm* proposes to appoint should have skills, resources and experience commensurate with the nature, scale and complexity of the *firm's* business and the requirements and standards under the *regulatory system* to which it is subject. A *firm* should have regard to whether its proposed auditor has expertise in the relevant requirements and standards (which may involve access to *UK* expertise) and possesses or has access to appropriate specialist skill, for example actuarial expertise in carrying out audits of insurance companies or *friendly societies* where appropriate. The *firm* should seek confirmation of this from the auditor concerned as appropriate.

**Disqualified auditors**

3.4.5

FCA PRA

R

*A firm must not appoint as auditor a person who is disqualified under Part XXII of the Act (Auditors and Actuaries) from acting as an auditor either for that firm or for a relevant class of firm.*

3.4.6

FCA PRA

G

If it appears to the *appropriate regulator* that an auditor of a *firm* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A, respectively, of the *Act*. A list of *persons* who are disqualified may be found on the *FCA*'s website ([www.fsa.gov.uk](http://www.fsa.gov.uk)).

**Requests for information on qualifications by the appropriate regulator**

3.4.7

FCA PRA

R

*A firm must take reasonable steps to ensure that an auditor, which it is planning to appoint or has appointed, provides information to the appropriate regulator about the auditor's qualifications, skills, experience and independence in accordance with the reasonable requests of the appropriate regulator .*

3.4.8

FCA PRA

G

To enable it to assess the ability of an auditor to audit a *firm*, the *appropriate regulator* may seek information about the auditor's relevant experience and skill. The *appropriate regulator* will normally seek information by letter from an auditor who has not previously audited any *firm*. The *firm* should instruct the auditor to reply fully to the letter (and should not appoint an auditor who does not reply to the *appropriate regulator*). The *appropriate regulator* may also seek further information on a continuing basis from the auditor of a *firm* (see also the auditor's duty to cooperate under ■ SUP 3.8.2 R).



## 3.5 Auditors' independence

### Purpose

3.5.1

FCA PRA

G

If an auditor is to carry out his duties properly, he needs to be independent of the *firm* he is auditing, so that he is not subject to conflicts of interest. Many *firms* are also subject to requirements under the Companies Act 1989, or the Companies Act 2006, the Building Societies Act 1986 or the Friendly Societies Act 1992 on auditor's independence.

### Independence

3.5.2

FCA PRA

R

A *firm* must take reasonable steps to ensure that the auditor which it appoints is independent of the *firm*.

3.5.3

FCA PRA

R

If a *firm* becomes aware at any time that its auditor is not independent of the *firm*, it must take reasonable steps to ensure that it has an auditor independent of the *firm*. The *firm* must notify the FCA and the PRA (if it is a PRA-*authorised firm*) or the FCA (in all other cases) if independence is not achieved within a reasonable time.

3.5.4

FCA PRA

G

The *appropriate regulator* will regard an auditor as independent if his appointment or retention does not breach the ethical guidance in current issue from the auditor's recognised supervisory body on the appointment of an auditor in circumstances which could give rise to conflicts of interest.

3.5.5

PRA

G

*Firms* are reminded that the Building Societies Act 1986 and Friendly Societies Act 1992 provide that an auditor who is ineligible under section 27 of the Companies Act 1989 where applicable, otherwise sections 1214 and 1215 of the Companies Act 2006 for appointment as auditor of a company (which is a subsidiary undertaking of a *building society* or a subsidiary of a *friendly society*) is ineligible for appointment as auditor to the *building society* or *friendly society* concerned.



### 3.6 Firms' cooperation with their auditors

**3.6.1** **R** A *firm* must cooperate with its auditor in the discharge of his duties under this chapter.  
**FCA** **PRA**

**Auditor's access to accounting records**

**3.6.2** **G** In complying with **■** SUP 3.6.1 R, a *firm* should give a right of access at all times to the *firm's* accounting and other records, in whatever form they are held, and *documents* relating to its business. A *firm* should allow its auditor to copy *documents* or other material on the premises of the *firm* and to remove copies or hold them elsewhere, or give him such copies on request.  
**FCA** **PRA**

**3.6.3** **G** Section 341 of the *Act* (Access to books etc.) provides that an auditor of a *firm* appointed under **■** SUP 3.3.2 R:

- (1) has a right of access at all times to the *firm's* books, accounts and vouchers; and
- (2) is entitled to require from the *firm's* officers such information and explanations as he reasonably considers necessary for the performance of his duties as auditor.

**3.6.4** **G** Section 389A of the Companies Act 1985 where applicable, otherwise sections 499 and 500 of the Companies Act 2006 , section 79 of the Building Societies Act 1986 and section 75 of the Friendly Societies Act 1992 give similar rights to auditors of companies, *building societies* and *friendly societies* respectively.  
**FCA** **PRA**

**3.6.5** **G** Section 413 (Protected items), under which no person may be required under the *Act* to produce, disclose or permit the inspection of *protected items*, is relevant to **■** SUP 3.6.1 R and **■** SUP 3.6.3 G.  
**FCA** **PRA**

**Access and cooperation: appointed representatives, material outsourcing, employees**

**3.6.6** **G** In complying with **■** SUP 3.6.1 R, a *firm* should take reasonable steps to ensure that each of its *appointed representatives* or, where applicable, *tied agents* gives the *firm's* auditor the same rights of access to the books, accounts and vouchers of the *appointed representative* or *tied agent* and entitlement to information and explanations from the *appointed representative's* or *tied agent's* officers as are given in respect of the *firm* by section 341 of the *Act* (see also **■** SUP 12.5.5 R (3)).  
**FCA** **PRA**

3.6.7  
FCA PRA

G

In complying with ■ SUP 3.6.1 R, a *firm* should take reasonable steps to ensure that each of its suppliers under a *material outsourcing* arrangement gives the *firm's* auditor the same rights of access to the books, accounts and vouchers of the *firm* held by the supplier, and entitlement to information and explanations from the supplier's officers as are given in respect of the *firm* by section 341 of the *Act*.

3.6.8  
FCA PRA

G

In complying with ■ SUP 3.6.1 R, a *firm* should take reasonable steps to ensure that all its employees cooperate with its auditor in the discharge of his duties under this chapter.

**Provision of false or misleading information to auditors**

3.6.9  
FCA PRA

G

*Firms* and their officers, *managers* and *controllers* are reminded that, under section 346 of the *Act* (Provision of false or misleading information to auditor or actuary), knowingly or recklessly giving false information to an auditor appointed under ■ SUP 3.3.2 R constitutes an *offence* in certain circumstances, which could render them liable to prosecution. This applies even when an auditor is also appointed under an obligation in another enactment.



### 3.7 Notification of matters raised by auditor

#### Application

3.7.1

G

FCA PRA

■ SUP 3.7 does not apply to an *incoming Treaty firm* which does not have a *top-up permission*.

#### Notification

3.7.2

G

FCA PRA

A *firm* should consider whether it should notify the *FCA* and the *PRA* (if it is a *PRA-authorized firm*) or the *FCA* (in all other cases) under *Principle 11* if:

- (1) the *firm* expects or knows its auditor will qualify his report on the audited annual financial statements or add an explanatory paragraph; or
- (2) the *firm* receives a written communication from its auditor commenting on *internal controls* (see also ■ SUP 15.3).

3.7.3

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[deleted]



## 3.8 Rights and duties of auditors

### Purpose

- 3.8.1** FCA PRA G The auditor of a *firm* has various rights and duties to obtain information from the *firm* and both to enable and to require him to pass information to the *appropriate regulator* in specified circumstances. This section imposes or gives *guidance* on those rights and duties.

### Cooperation with the appropriate regulator

- 3.8.2** FCA PRA R An auditor of a *firm* must cooperate with the *appropriate regulator* in the discharge of its functions under the *Act*.

- 3.8.3** FCA PRA G The *appropriate regulator* may ask the auditor to attend meetings and to supply it with information about the *firm*. In complying with ■ SUP 3.8.2 R, the auditor should attend such meetings as the *appropriate regulator* requests and supply it with any information the *appropriate regulator* may reasonably request about the *firm* to enable the *appropriate regulator* to discharge its functions under the *Act*.

- 3.8.4** FCA PRA R An auditor of a *firm* must give any *skilled person* appointed by the *firm* all assistance that *person* reasonably requires (see ■ SUP 5 and section 166(5) of the *Act* (Reports by skilled persons)).

### Auditor's independence

- 3.8.5** FCA PRA R An auditor of a *firm* must be independent of the *firm* in performing his duties in respect of that *firm*.

- 3.8.6** FCA PRA R An auditor of a *firm* must take reasonable steps to satisfy himself that he is free from any conflict of interest in respect of that *firm* from which bias may reasonably be inferred. He must take appropriate action where this is not the case.

- 3.8.7** FCA PRA G ■ SUP 3.5.4 G explains that an auditor whose appointment does not breach the ethical guidance in current issue from the auditor's recognised supervisory body will be regarded as independent by the *appropriate regulator*.

### Auditors' rights to information

3.8.8

FCA PRA

G

■ SUP 3.6.1 R requires a *firm* to cooperate with its auditor. ■ SUP 3.6.3 G refers to the rights to information which an auditor is granted by the *Act*. ■ SUP 3.6.4 G refers to similar rights granted by the Companies Act 1985 or where applicable, the Companies Act 2006, the Building Societies Act 1986 and the Friendly Societies Act 1992.

### Communication between the appropriate regulator, the firm and the auditor

3.8.9

FCA PRA

G

Within the legal constraints that apply, the *appropriate regulator* may pass on to an auditor any information which it considers relevant to his function. An auditor is bound by the confidentiality provisions set out in Part XXIII of the *Act* (Public record, disclosure of information and cooperation) in respect of confidential information he receives from the *appropriate regulator*. An auditor may not pass on such confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates.

### Auditors' statutory duty to report

3.8.10

FCA PRA

G

- (1) Auditors are subject to regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (Information given by auditor or actuary to a regulator). Section 343 and the regulations also apply to an auditor of an *authorised person* in his capacity as an auditor of a *person* who has *close links* with the *authorised person*.
- (2) These regulations oblige auditors to report certain matters to the *appropriate regulator*. Sections 342(3) and 343(3) of the *Act* provide that an auditor does not contravene any duty by giving information or expressing an opinion to the *appropriate regulator*, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the *appropriate regulator*. These provisions continue to have effect after the end of the auditor's term of appointment.

In relation to Lloyd's, an effect of the *insurance market direction* set out at ■ SUP 3.1.13 D is that sections 342(5) and 343(5) of the *Act* (Information given by an auditor or actuary to a regulator) apply also to auditors appointed to report on the *insurance business* of *members*.

### Termination of term of office, disqualification

3.8.11

FCA PRA

R

An auditor must notify the *appropriate regulator* without delay if he:

- (1) is removed from office by a *firm*; or
- (2) resigns before his term of office expires; or
- (3) is not re-appointed by a *firm*.

3.8.12  
FCA PRA

R

If an auditor ceases to be, or is formally notified that he will cease to be, the auditor of a *firm*, he must notify the *appropriate regulator* without delay:

- (1) of any matter connected with his so ceasing which he thinks ought to be drawn to the *appropriate regulator's* attention; or
- (2) that there is no such matter.

3.8.13

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[deleted]

3.8.14

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[deleted]



**3.9 [deleted]**

- 3.9.1 [Deleted]
- 3.9.2 [Deleted]
- 3.9.3 [Deleted]
- 3.9.4 [Deleted]
- 3.9.5 [Deleted]
- 3.9.6 [Deleted]
- 3.9.7 [Deleted]
- 3.9.8 [Deleted]
- 3.9.9 [Deleted]
- 3.9.10 [Deleted]
- 3.9.11 [Deleted]

## 3.10 Duties of auditors: notification and report on client assets

### Application

- 3.10.1 **R** [deleted]
- 3.10.2 **R** An auditor of an *authorised professional firm* need not report under this section in relation to that *firm's* compliance with the *client money rules* in the *client money chapter* if:
- (1) that *firm* is regulated by:
    - (a) the Law Society (England and Wales); or
    - (b) the Law Society of Scotland; or
    - (c) the Law Society of Northern Ireland; and
  - (2) that *firm* is subject to the rules of its *designated professional body* as specified in ■ CASS 7.1.15 R (2), with respect to its *regulated activities*.
- 3.10.3 **R** ■ SUP 3.10.5 R(3) does not apply to an auditor of a *lead regulated firm* or an *incoming EEA firm*.

### Client assets report: content

- 3.10.4 **R** An auditor of a *firm* must submit a client assets report addressed to the *FCA* which:
- (1) (a) states the matters set out in ■ SUP 3.10.5 R; and
    - (b) specifies the matters to which ■ SUP 3.10.9 R and ■ SUP 3.10.9A R refer; or
  - (2) if the *firm* claims not to hold *client money* or *custody assets*, states whether anything has come to the auditor's attention that causes him to believe that the *firm* held *client money* or *custody assets* during the period covered by the report.

3.10.4A

FCA

R

- (1) For the purpose of ■ SUP 3.10.4 R (1), an auditor must ensure that the report is prepared in accordance with the terms of a *reasonable assurance engagement*.
- (2) For the purpose of ■ SUP 3.10.4 R (2), an auditor must ensure that the report is prepared in accordance with the terms of a *limited assurance engagement*.

3.10.5

FCA

R

**Table Client assets report**

**Whether in the auditor's opinion**

- (1) the *firm* has maintained systems adequate to enable it to comply with the *custody rules*, the *collateral rules*, the *client money rules* (except CASS 5.2) and the *mandate rules* throughout the period ;
- (2) the *firm* was in compliance with the *custody rules*, the *collateral rules*, the *client money rules* (except CASS 5.2) and the *mandate rules*, at the date as at which the report has been made;
- (3) in the case of an *investment management firm*, *personal investment firm*, a *UCITS firm*, *securities and futures firm* or *BIPRU investment firm*, when a *subsidiary* of the *firm* is during the period a *nominee company* in whose name *custody assets* of the *firm* are registered during the period, that *nominee company* has maintained throughout the period systems for the custody, identification and control of *custody assets* which:
  - (a) were adequate; and
  - (b) included reconciliations at appropriate intervals between the records maintained (whether by the *firm* or the *nominee company*) and statements or confirmations from *custodians* or from the *person* who maintained the record of legal entitlement; and
- (4) if there has been a *secondary pooling event* during the period, the *firm* has complied with the *rules* CASS 5.6 and CASS 7A (Client money distribution) in relation to that pooling event.

3.10.5A

FCA

R

In relation to a client assets report provided in accordance with ■ SUP 3.10.4 R, an auditor must ensure that it:

- (1) is submitted in the form prescribed by ■ SUP 3 Annex 1 R; and
- (2) is signed on behalf of the audit firm by the individual with primary responsibility for a *firm's* client assets report and in that individual's own name.

3.10.5B

FCA

G

■ SUP 3.10.4 R provides that an auditor must ensure that a client assets report is prepared in accordance with the terms of, as the case may be, a *reasonable assurance engagement* or a *limited assurance engagement*. However, the FCA also expects an auditor to have regard, where relevant, to material published by the Auditing Practices Board that deals specifically with the client assets report which the auditor is required to submit to the FCA . In the FCA's view, a client assets report that is prepared in accordance with that material is likely to comply with ■ SUP 3.10.4 R and ■ SUP 3.10.5 R where that report is prepared for a *firm* within the scope of the material in question.

3.10.5C

FCA

R

- (1) An auditor must ensure that the information provided to it by a *firm* in accordance with ■ SUP 3.11.1 G is included in the client assets report.
- (2) If by the date at which the report is due for submission in accordance with ■ SUP 3.10.7 R or ■ SUP 3.10.8A R an auditor has not received the information prescribed in ■ SUP 3.11.1 G it must submit the report without that information, together with an explanation for its absence.

**Client assets report: period covered**

3.10.6

FCA

R

The period covered by a report under ■ SUP 3.10.4 R must end not more than 53 weeks after the period covered by the previous report on such matters, or, if none, after the *firm* is *authorised* or becomes subject to ■ SUP 3.11 and its auditor becomes subject to ■ SUP 3.10.

**Client assets report: timing of submission**

3.10.7

FCA

R

An auditor must deliver a client assets report under ■ SUP 3.10.4 R to the FCA within four months from the end of each period covered , unless it is the auditor of a *firm* falling within category (10) of ■ SUP 3.1.2 R.

3.10.7A

G

[deleted]

3.10.8

FCA

R

- (1) If an auditor expects that it will fail to comply with ■ SUP 3.10.7 R, it must no later than the end of the four month period in question:
  - (a) notify the FCA that it expects that it will be unable to deliver a client assets report by the end of that period; and
  - (b) ensure that the notification in (a) is accompanied by a full account of the reasons for its expected failure to comply with ■ SUP 3.10.7 R.
- (2) If an auditor fails to comply with ■ SUP 3.10.7 R, it must promptly:
  - (a) notify the FCA of that failure; and

- (b) ensure that the notification in (a) is accompanied by a full account of the reasons for its failure to comply with
  - SUP 3.10.7 R.

3.10.8A  
FCA

R

The auditor of a *firm* falling within category (10) of ■ SUP 3.1.2 R must deliver a report under ■ SUP 3.10.4 R:

- (1) to the *firm* so as to be received within four months of the end of each period covered; and
- (2) to the FCA upon request within six years of the end of the period covered.

3.10.8B  
FCA

G

The rights and duties of auditors are set out in ■ SUP 3.8 (Rights and duties of all auditors) and ■ SUP 3.10 (Duties of auditors: notification and report on client assets). ■ SUP 3.8.10 G also refers to the auditor's statutory duty to report certain matters to the FCA imposed by regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (information given by auditor or actuary to a regulator). An auditor should bear these rights and duties in mind when carrying out *client* asset report work, including whether anything should be notified to the FCA immediately.

3.10.8C  
FCA

G

It is the responsibility of an *insurance intermediary's* senior management to determine, on a continuing basis, whether the *firm* is an *exempt insurance intermediary* for the purposes of this requirement and to appoint an auditor if management determines the *firm* is no longer exempt. ■ SUP 3.7 (amplified by ■ SUP 15) sets out what a firm should consider when deciding whether it should notify the FCA of matters raised by its auditor.

3.10.8D  
FCA

R

An auditor must:

- (1) deliver to a *firm* a draft of its client assets report such that the *firm* has an adequate period of time to consider the auditor's findings and to provide the auditor with comments of the kind to which ■ SUP 3.11.1 G refers; and
- (2) unless it is the auditor of a *firm* falling within category (10) of ■ SUP 3.1.2 R, deliver to the *firm* a copy of the final report at the same time as it delivers that report to the FCA in accordance with ■ SUP 3.10.7 R.

**Client assets report: requirements not met or inability to form opinion**

3.10.9  
FCA

R

If the client assets report under ■ SUP 3.10.4 R states that one or more of the applicable requirements described in ■ SUP 3.10.5 R(1) to ■ (4) has or have not been met, the auditor must specify in the report each of those requirements and the respects in which it has or they have not been met.

3.10.9A  
FCA

R

- (1) Whether or not an auditor concludes that one or more of the requirements specified in ■ SUP 3.10.5 R (1) to ■ (4) has or have been met, the auditor must ensure that the client assets report identifies



each individual *rule* in respect of which a breach has been identified.

- (2) If an auditor does not identify a breach of any individual *rule*, it must include a statement to that effect in the client assets report.

3.10.9B  
FCA

R

For the purpose of ■ SUP 3.10.9 R and ■ SUP 3.10.9A R, an auditor must ensure that the information prescribed under those *rules* is submitted using, respectively, Part 1 (Auditor's Opinion) and Part 2 (Breaches Schedule) of ■ SUP 3 Annex 1 R.

3.10.9C  
FCA

G

- (1) The *FCA* expects that the list of breaches will include every breach of a *rule* in *CASS* insofar as that *rule* is within the scope of the client assets report and is identified in the course of the auditor's review of the period covered by the report, whether identified by the auditor or disclosed to it by the *firm*, or by any third party.
- (2) For the purpose of determining whether to qualify its opinion or express an adverse opinion, the *FCA* would expect an auditor to exercise its professional judgment as to the significance of a *rule* breach, as well as to its context, duration and incidence of repetition. The *FCA* would expect an auditor to consider the aggregate effect of any breaches when judging whether a *firm* had failed to comply with the requirements described in ■ SUP 3.10.5 R (1) to ■ (4).

3.10.10  
FCA

R

If an auditor is unable to form an opinion as to whether one or more of the applicable requirements described in ■ SUP 3.10.5 R have been met, the auditor must specify in the report under ■ SUP 3.10.4 R those requirements and the reasons why the auditor has been unable to form an opinion.

3.10.11

G

[deleted]

**Method of submission of reports**

3.10.12  
FCA

R

An auditor of a *firm* must submit a report under ■ SUP 3.10.4 R in accordance with the rules in ■ SUP 16.3.6 R to ■ SUP 16.3.13 R as if those *rules* applied directly to the auditor.

**Service of Notice Regulations**

3.10.13  
FCA

G

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) contain provisions relating to the service of documents on the *FCA* . They do not apply to reports required by ■ SUP 3.10 because of the specific provisions in ■ SUP 3.10.12 R.

## 3.11 Review of auditor's client assets report

### 3.11.1

FCA

G

A *firm* should ensure that:

- (1) it considers the draft client assets report provided to the *firm* by its auditor in accordance with ■ SUP 3.10.8DR (1) in order to provide an explanation of:
  - (a) the circumstances that gave rise to each of the breaches identified in the draft report; and
  - (b) any remedial actions that it has undertaken or plans to undertake to correct those breaches; and
- (2) the explanation provided in accordance with (1):
  - (a) is submitted to its auditor in a timely fashion and in any event before the auditor is required to deliver a report to the *FCA* in accordance with ■ SUP 3.10.7 R or to the *firm* in accordance with ■ SUP 3.10.8A R as the case may be; and
  - (b) is recorded in the relevant field in the draft report submitted to it by its auditor.

### 3.11.2

FCA

R

A *firm* must ensure that the final client assets report delivered to it in accordance with ■ SUP 3.10.8A R or ■ SUP 3.10.8DR (2) is reported to that *firm's governing body*.

### 3.11.3

FCA

G

The *FCA* expects a *firm* to use the client assets report as a tool to evaluate the effectiveness of the systems that it has in place for the purpose of complying with requirements to which ■ SUP 3.10.5 R refers. Accordingly, a *firm* should ensure that the report is integrated into its risk management framework and decision-making.

### 3.11.4

FCA

G

■ SUP 3.4.2 R provides that a *firm* must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its functions. The *FCA* expects a *firm* to keep under review the adequacy of the skill, resources and experience of its auditor and should critically assess the content of the client assets report as part of that ongoing review.



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**SUP 3 Annex 1**

**FCA**

**Auditor's client assets report - SUP 3 Annex 1**

**3**



Supervision

# Chapter 4

# Actuaries



## 4.1 Application

### 4.1.1

FCA PRA

R

This chapter applies to:

- (1) every *firm* within a category listed in column (1) of the table in
  - SUP 4.1.3 R; and
- (2) every *actuary* appointed under this chapter;

in accordance with column (2) of that table.

### 4.1.2

FCA PRA

G

This chapter applies to *long-term insurers* (including *friendly societies*) and other *friendly societies* and to the *Society of Lloyd's* and *managing agents* at Lloyd's. This chapter does not apply to *actuaries* advising the auditors of *long-term insurers* under IPRU(INS) 9.35(1A) or IPRU(FSOC) 5.11(2A), as they are not appointed to act on behalf of the *firm*.

### 4.1.3

FCA PRA

R

#### Table Applicable sections

(1) Category of firm	(2) Applicable sections
(1) <i>Along-term insurer, other than:</i>	SUP 4.1, SUP 4.2, SUP 4.3 and SUP 4.5
(a) <i>a registered friendly society which is a non-directive friendly society;</i>	
(b) <i>an incorporated friendly society that is a flat rate benefits business friendly society; and</i>	
(c) <i>an incoming EEA firm</i>	
(2) <i>A friendly society, other than a friendly society within (1).</i>	SUP 4.1, SUP 4.2, SUP 4.4 and SUP 4.5
(3) <i>A Lloyd's managing agent, in respect of each syndicate it manages</i>	SUP 4.1, SUP 4.2, SUP 4.5, SUP 4.6
(4) <i>The Society of Lloyd's</i>	SUP 4.1, SUP 4.2, SUP 4.5, SUP 4.6



## 4.2 Purpose

### 4.2.1

FCA PRA

G

Section 340 of the *Act* gives the *PRA* power to make *rules* requiring an *authorised person*, or an *authorised person* falling into a specified class, to appoint an *actuary*. Section 340 further empowers the *PRA* to make *rules* governing the manner, timing and notification of such an appointment and, where an appointment is not made, for the *PRA* to make an appointment on the *firm's* behalf. The rule-making powers of the *PRA* and *FCA* under section 340 of the *Act* also extend to an *actuary's* duties.

### 4.2.2

FCA PRA

G

This chapter defines the relationship between *firms* and their *actuaries* and clarifies the role which *actuaries* play in the appropriate regulator's monitoring of *firms'* compliance with the requirements and standards under the *regulatory system*. The chapter sets out *rules* and *guidance* on the appointment of *actuaries*, and the termination of their term of office, as well as setting out their respective rights and duties. The purpose of the chapter is to ensure that:

- (1) *long-term insurers* (other than certain *friendly societies*) have access to adequate actuarial advice, both in valuing their *liabilities to policyholders* and in exercising discretion affecting the interests of their *with-profits policyholders*; and
- (2) other *friendly societies* carrying on *insurance business* (and which have traditionally relied upon actuarial expertise) employ or use an *actuary* of appropriate seniority and experience to evaluate the liabilities of that business; and
- (3) *managing agents* of Lloyd's *syndicates* employ or use an *actuary* of appropriate seniority and experience to evaluate the liabilities associated with *insurance business* carried on at Lloyd's.

### 4.2.3

FCA PRA

G

The functions described by ■ SUP 4.2.2 G (1) are performed by one or more *actuaries* who are required to hold office continuously and must be *approved persons*. The principal duty of an *actuary* appointed to perform these functions is to advise the *firm* (see ■ SUP 4.3.13 R to ■ SUP 4.3.18 G for the rights and duties of such an *actuary*).

### 4.2.4

FCA PRA

G

The function described by ■ SUP 4.2.2 G (2) is performed by an *appropriate actuary* who is appointed to prepare the triennial investigation and interim certificate or statement required by *IPRU(FSOC)* 5.2(1) (see ■ SUP 4.4.6 R and ■ SUP 4.5.12 G to ■ SUP 4.5.14 G for the rights and duties of an *appropriate actuary*).



4.2.5

FCA PRA

G

*Actuaries* act as a valuable source of information to the appropriate regulator in carrying out its functions. For example, in determining whether a *firm* satisfies the *threshold conditions*, the appropriate regulator has regard to whether the *firm* has appointed an *actuary* with sufficient experience in the areas of business to be conducted by the *firm*.

4.2.6

FCA PRA

G

In making appointments under this chapter and in allocating duties to *actuaries*, *firms* are reminded of their obligation under ■ SYSC 2.1.1 R to maintain a clear and appropriate apportionment of significant responsibilities so that it is clear who has which of those responsibilities and that the business and affairs of the *firm* can be adequately monitored and controlled by the *directors*, relevant *senior managers* and *governing body* of the *firm*.

## 4.3 Appointment of actuaries

### Appointment by firms

4.3.1

PRA

R

A *firm* to which this section applies (see ■ SUP 4.1) must:

- (1) appoint one or more *actuaries* to perform:
  - (a) the *actuarial function* (see ■ SUP 4.3.13 R) in respect of all classes of its *long-term insurance business*; and
  - (b) the *with-profits actuary function* (see ■ SUP 4.3.16A R) in respect of all classes of its *with-profits business* (if any);
- (2) notify the PRA, without delay, when it is aware that a vacancy in the office of any such *actuary* will arise or has arisen, giving the reason for the vacancy;
- (3) appoint an *actuary* to fill any such vacancy that has arisen; and
- (4) ensure a replacement *actuary* can take up office at the time the vacancy arises or as soon as is reasonably practicable after that.

4.3.2

FCA PRA

G

The provisions relating to the duties of an *actuary* appointed to perform these functions are set out in ■ SUP 4.3.13 R to ■ SUP 4.3.18 G. The functions performed by *actuaries* appointed by a *firm* under ■ SUP 4.3.1 R are specified as *controlled functions* (CF 12, the *actuarial function*, and CF 12A, the *with-profits actuary function*) in SUP 10B (*PRA-Approved persons*). As a result, an application must be made to the PRA under section 60 of the Act (Applications for approval) for approval by the PRA with the consent of the FCA of the *person* proposing to take up such an appointment. Section 61(3) of the Act (Determination of applications) gives the PRA three months to grant its approval or give a *warning notice* that it proposes to refuse the application. A *firm* should not appoint an *actuary* until the PRA with the consent of the FCA has approved the *actuary*. In order to comply with ■ SUP 4.3.1 R, a *firm* should ensure it applies to the PRA as soon as practicable before the date when it needs the *actuary* to take office. The PRA will need time to consider the application before deciding whether to grant approval. See SUP 10B (*PRA-Approved persons*).

### Appointment by the FCA

4.3.3

PRA

R

If a *firm*, which is required to appoint one or more *actuaries* under ■ SUP 4.3.1 R, fails to do so within 28 days of a vacancy arising, the PRA

may appoint one or more *actuaries* to perform any function corresponding to the *actuarial function* or the *with-profits actuary function* on the following terms:

- (1) the *actuary* to be remunerated by the *firm* on the basis agreed between the *actuary* and the *firm* or, in the absence of agreement, on a reasonable basis; and
- (2) the *actuary* to hold office until he resigns or the *firm* appoints another *actuary*.

4

4.3.4  
PRA

G

■ SUP 4.3.3 R allows but does not require the *PRA* to appoint an *actuary* if the *firm* has failed to do so within the 28 day period. When it considers whether to use this power, the *PRA* will take into account the likely delay until the *firm* can make an appointment and the urgency of any pending duties of the *actuary*.

4.3.5  
PRA

G

The *PRA* will not normally seek to appoint an *actuary* under ■ SUP 4.3.3 R if a notification under ■ SUP 10B (*PRA-Approved persons*) has been received from the *firm* in relation to a proposed appointment of an *actuary* under ■ SUP 4.3.1 R, and that application is still being considered.

4.3.6  
PRA

R

**A *firm* must comply with and is bound by the terms on which an *actuary* has been appointed by the *PRA* under ■ SUP 4.3.3 R.**

4.3.7  
PRA

G

If the *PRA* appoints an *actuary* under ■ SUP 4.3.3 R, he will not be an *approved person* (not being appointed under ■ SUP 4.3.1 R). However, the *firm* is still under an obligation to appoint an *actuary* under ■ SUP 4.3.1 R and will need to seek prior approval of that *person* (even if the individual it proposes to appoint is the *person* who has been appointed by the *PRA* under ■ SUP 4.3.3 R).

**Actuaries' qualifications**

4.3.8  
FCA PRA

G

The appropriate regulator is concerned to ensure that every *actuary* appointed by a *firm* under this section has the necessary skill and experience to provide the *firm* with appropriate actuarial advice. ■ SUP 4.3.9 R to ■ SUP 4.3.10 G set out the appropriate regulator's *rules* and *guidance* aimed at achieving this.

4.3.9  
FCA PRA

R

**Before a *firm* applies for approval of the *person* it proposes to appoint as an *actuary* under ■ SUP 4.3.1 R, it must take reasonable steps to ensure that the *actuary*:**

- (1) has the required skill and experience to perform his functions under the *regulatory system*; and
- (2) is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries.

4.3.10

FCA PRA

G

To comply with ■ SUP 4.3.9 R and *Principle 3*, before an *actuary* takes up his appointment the *firm* should ensure that the *actuary*:

- (1) has skills and experience appropriate to the nature, scale and complexity of the *firm's* business and the requirements and standards under the *regulatory system* to which it is subject; and
- (2) has adequate qualifications and experience, which includes holding an appropriate practising certificate under the rules of the Institute of Actuaries or the Faculty of Actuaries;

and seek confirmation of these from the *actuary*, or the *actuary's* current and previous employers, as appropriate.

**Disqualified actuaries**

4.3.11

FCA PRA

R

A *firm* must not appoint under ■ SUP 4.3.1 R an *actuary* who is disqualified by the *FCA* under section 345 of the *Act* (Disciplinary measures: FCA) or the *PRA* under section 345A of the *Act* (Disciplinary measures: PRA) from acting as an *actuary* either for that *firm* or for a relevant class of *firm*.

4.3.12

FCA PRA

G

If it appears to the *FCA* or *PRA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A respectively of the *Act*. A list of *actuaries* who are disqualified may be found on the *FCA* website (<http://www.fca.org.uk>).

**Conflicts of interest**

4.3.12A

FCA PRA

R

A *firm* must take reasonable steps to ensure that an *actuary* who is to be, or has been, appointed under ■ SUP 4.3.1 R:

- (1) does not perform the function of chairman or *chief executive* of the *firm*, or does not, if he is to perform the *with-profits actuary function*, become a member of the *firm's governing body*; and
- (2) does not perform any other function on behalf of the *firm* which could give rise to a significant conflict of interest.

4.3.12B

FCA PRA

G

Both the *actuarial function* and the *with-profits actuary function* may be performed by *employees* of the *firm* or by external consultants, and performing other functions on behalf of the *firm* will not necessarily give rise to a significant conflict of interest. However, being a *director*, or a senior manager responsible, say, for sales or marketing in a *firm* (or for finance in a proprietary *firm*), is likely to give rise to a significant conflict of interest for an *actuary* performing the *with-profits actuary function*. He nevertheless retains direct access to the *firm's governing body* under ■ SUP 4.3.17 R (2).

4.3.13

FCA PRA

R

**The actuarial function**

An *actuary* appointed to perform the *actuarial function* must, in respect of those classes of the *firm's long-term insurance business* which are covered by his appointment:

- (1) advise the *firm's* management, at the level of seniority that is reasonably appropriate, on the risks the *firm* runs in so far as they may have a material impact on the *firm's* ability to meet *liabilities to policyholders* in respect of *long-term insurance contracts* as they fall due and on the capital needed to support the business, including regulatory capital requirements;
- (2) monitor those risks and inform the *firm's* management, at the level of seniority that is reasonably appropriate, if he has any material concerns or good reason to believe that the *firm*:
  - (a) is not meeting *liabilities to policyholders* under *long-term insurance contracts* as they fall due, or may not be doing so, or might not have done so, or might, in reasonably foreseeable circumstances, not do so;
  - (b) is, or may be, effecting new *long-term insurance contracts* on terms under which the resulting income earned is insufficient, under reasonable actuarial methods and assumptions, and taking into account the other financial resources that are available for the purpose, to enable the *firm* to meet its *liabilities to policyholders* as they fall due (including reasonable bonus expectations);
  - (c) does not, or may not, have sufficient financial resources to meet *liabilities to policyholders* as they fall due (including reasonable bonus expectations) and the capital needed to support the business, including regulatory capital requirements or, if the *firm* currently has sufficient resources, might, in reasonably foreseeable circumstances, not continue to have them;
- (3) advise the *firm's governing body* on the methods and assumptions to be used for the investigations required by IPRU(INS) 9.4R or IPRU(FSOC) 5.1R and the calculation of the *with-profits insurance capital component* under INSPRU 1.3 as applicable;
- (4) perform those investigations and calculations in (3), in accordance with the methods and assumptions determined by the *firm's governing body*;
- (5) report to the *firm's governing body* on the results of those investigations and calculations in (3); and

(6) in the case of a *friendly society* to which this section applies, perform the functions of the appropriate actuary under section 87 (Actuary's report as to margin of solvency) of the Friendly Societies Act 1992.

4.3.14

FCA PRA

G

IPRU(INS) 9.4R and IPRU(FSOC) 5.1R require *firms* to which this section applies to cause an investigation to be made at least yearly by the *actuary* or *actuaries* appointed to perform the *actuarial function*, and to report on the result of that investigation. INSPRU 1.3 requires *realistic basis life firms* to calculate the *with-profits insurance component* as part of their capital resources requirements. The *firm* is responsible for the methods and assumptions used to determine the *liabilities* attributable to its *long-term insurance business*. The obligation on *friendly societies* to obtain a report from the 'appropriate actuary' under section 87 of the Friendly Societies Act 1992 applies to a *friendly society* which is to receive a transfer of engagements under section 86 (transfer of engagements to or by a friendly society). The 'appropriate actuary' in this context is the *actuary* appointed to perform the *actuarial function*, rather than the *appropriate actuary* under ■ SUP 4.4 (Appropriate actuaries).

4.3.15

FCA PRA

G

■ SUP 4.3.13 R is not intended to be exhaustive of the professional advice that a *firm* should take whether from an *actuary* appointed under this chapter or from any other *actuary* acting for the *firm*. *Firms* should consider what systems and controls are needed to ensure that they obtain appropriate professional advice on financial and risk analysis; for example:

- (1) risk identification, quantification and monitoring;
- (2) stress and scenario testing;
- (3) ongoing financial conditions;
- (4) financial projections for business planning;
- (5) investment strategy and asset-liability matching;
- (6) individual capital assessment;
- (7) pricing of business, including unit pricing;
- (8) variation of any charges for benefits or expenses;
- (9) discretionary surrender charges; and
- (10) adequacy of reinsurance protection.

**The with-profits actuary function**

4.3.16

PRA

R

An *actuary* appointed to perform the *with-profits actuary functions* must:

- (1) advise the *firm's* management, at the level of seniority that is reasonably appropriate, on key aspects of the discretion to be exercised affecting those classes of the *with-profits business* of the *firm* in respect of which he has been appointed;

- (2) where the *firm* is a *realistic basis life firm* advise the *firm's* governing body as to whether the assumptions used to calculate the with-profits insurance component under ■ INSPRU 1.3 are consistent with the *firm's PPFM* in respect of those classes of the *firm's with-profits business*;
- (3) at least once a year, report to the *firm's governing body* on key aspects (including those aspects of the *firm's* application of its *Principles and Practices of Financial Management* on which the advice described in (1) has been given) of the discretion exercised in respect of the period covered by his report affecting those classes of *with-profits business* of the *firm*;
- (4) request from the *firm* such information and explanations as he reasonably considers necessary to enable him properly to perform the duties in (1) to (3);
- (5) advise the *firm* as to the data and systems that he reasonably considers necessary to be kept and maintained to provide the duties in (4); and
- (6) in the case of a *friendly society* to which this section applies, perform the function of appropriate actuary under section 12 (Reinsurance) of the Friendly Societies Act 1992 or section 23A (Reinsurance) of the Friendly Societies Act 1974 as applicable, in respect of those classes of its *with-profits business* covered by his appointment.

4.3.16A

FCA

R

An *actuary* appointed to perform the *with-profits actuary function* must:

- (1) advise the *firm's* management, at the level of seniority that is reasonably appropriate, on key aspects of the discretion to be exercised affecting those classes of the *with-profits business* of the *firm* in respect of which he has been appointed;
- (2) where the *firm* is a *realistic basis life firm* advise the *firm's* governing body as to whether the assumptions used to calculate the with-profits insurance component under INSPRU 1.3 are consistent with the *firm's PPFM* in respect of those classes of the *firm's with-profits business*;
- (3) at least once a year, report to the *firm's governing body* on key aspects (including those aspects of the *firm's* application of its *Principles and Practices of Financial Management* on which the advice described in (1) has been given) of the discretion exercised in respect of the period covered by his report affecting those classes of *with-profits business* of the *firm*;

- (4) in respect of each financial year, make a written report addressed to the relevant classes of the *firm's with-profits policyholders*, to accompany the *firm's* annual report under ■ COBS 20.4.7 R as to whether, in his opinion and based on the information and explanations provided to him by the *firm*, and taking into account where relevant the *rules and guidance* in ■ COBS 20, the annual report and the discretion exercised by the *firm* in respect of the period covered by the report may be regarded as taking, or having taken, the interests of the relevant classes of the *firm's with-profits policyholders* into account in a reasonable and proportionate manner;
- (5) request from the *firm* such information and explanations as he reasonably considers necessary to enable him properly to perform the duties in (1) to (4);
- (6) advise the *firm* as to the data and systems that he reasonably considers necessary to be kept and maintained to provide the duties in (5); and
- (7) in the case of a *friendly society* to which this section applies, perform the function of appropriate actuary under section 12 (Reinsurance) of the Friendly Societies Act 1992 or section 23A (Reinsurance) of the Friendly Societies Act 1974 as applicable, in respect of those classes of its *with-profits business* covered by his appointment.

## 4.3.16B

FCA

G

In advising or reporting on the exercise of discretion, an *actuary* performing the *with-profits actuary function* should cover the implications for the fair treatment of the relevant classes of the *firm's with-profits policyholders*. His opinion on any communication or report to them should also take into account their information needs and the extent to which the communication or report may be regarded as clear, fair and not misleading. Aspects of the business that should normally be included are:

- (1) bonus rates to be applied to *policies* at maturity or on the death of a *policyholder*, or when calculating the annual bonus;
- (2) investment policy in the light of product descriptions disclosed to *customers*;
- (3) surrender value methodology (including market value adjusters);
- (4) new business plans and premium rates;
- (5) allocation of expenses to *with-profits business*;
- (6) investment fees to be charged to *with-profits business*;
- (7) changes to the *Principles and Practices of Financial Management*; and
- (8) communications with *policyholders* or potential *policyholders* on the issues in (1) to (7).



4.3.16C  
FCA

G

The reports in ■ SUP 4.3.16A R (3) and ■ SUP 4.3.16A R (4) should be proportionate to the nature of the *with-profits business*. For smaller *firms* with fewer products, the extent of reporting would be proportionately less.

4.3.16D  
FCA

G

*Firms* should normally obtain advice, from the *actuary* appointed to perform the *with-profits actuary function* in respect of the affected class or classes of *with-profits business*, whenever they are preparing to make key decisions based on the exercise of discretion affecting their *with-profits business*. *Firms* should also have risk management processes in place to ensure that all relevant matters are referred to the *actuary* for advice.

4.3.17  
FCA

R

A *firm* must require and allow any *actuary* appointed to perform the *with-profits actuary function* to perform his duties and must:

- (1) keep him informed of the *firm's* business and other plans (including, where relevant, those of any related *firm*, to the extent it is aware of these);
- (2) provide him with sufficient resources (including his own time and access to the time of others);
- (3) hold such data and establish such systems as he reasonably requires;
- (4) request his advice about the likely effect of material changes in the *firm's* business plans, practices or other circumstances on the fair treatment of the relevant classes of the *firm's with-profits policyholders*;
- (5) pay due regard to his advice, whether provided in response to a request under (4) or on the *actuary's* own initiative; this will include, if he requests it, allowing him to present his advice directly to the *firm's governing body* (that is, the board of *directors* or, for a *friendly society*, the committee of management); and
- (6) ensure that where a conflict of interest may arise in relation to the role of the *with-profits actuary* and the advice he gives, for example due to the *firm's* reporting lines or remuneration process, that potential conflict is identified and managed in order to minimise the possible effect of the potential conflict on the advice given.

4.3.18  
FCA

G

A *firm's* duty to keep an *actuary* appointed to perform the *with-profits actuary function* informed includes providing relevant information, even where the *actuary* does not ask for it. The *firm* needs to appreciate that the *actuary* may be unaware of certain business developments and so unable to request relevant information.

4.3.19

G

[deleted]

4.3.20 **R** [deleted]

4.3.21 **G** [deleted]

4



## 4.4 Appropriate actuaries

### Appointment of an appropriate actuary

4.4.1  
PRA

R

A *firm* to which this section applies (see ■ SUP 4.1) and required by IPRU(FSOC) 5.2(1) to ensure that an investigation is carried out must:

- (1) appoint an *actuary* (the "*appropriate actuary*") to carry out the triennial investigation and prepare an abstract of the report as required by IPRU(FSOC) 5.2(2) and provide the interim certificate or statement as required by IPRU(FSOC) 5.2(3); and
- (2) appoint a replacement for that *actuary* if he ceases to hold office before he has carried out the duty described in (1).

### Appropriate actuaries' qualifications

4.4.2  
PRA

R

Before a *friendly society* appoints an *appropriate actuary*, it must take reasonable steps to ensure that the *actuary* is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries.

4.4.3  
PRA

G

An *appropriate actuary* should have skills and experience appropriate to the nature, scale and complexity of the *firm's* business and the requirements and standards under the *regulatory system* to which it is subject. In complying with *Principle 3*, a *firm* should have regard to whether its proposed *appropriate actuary* has adequate qualifications and experience, and seek confirmation of this from the *actuary*, or the *actuary's* current and previous employers, as appropriate.

4.4.4  
FCA PRA

R

A *firm* must not appoint as *appropriate actuary* an *actuary* who has been disqualified by the FCA under section 345 of the *Act* (Disciplinary measures: FCA) or the PRA under section 345A of the *Act* (Disciplinary measures: PRA) from acting as an *actuary* either for that *firm* or for a relevant class of *firm*.

4.4.5  
FCA PRA

G

If it appears to the FCA or PRA that an *appropriate actuary* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A respectively of the *Act*. A list of *actuaries* who have been disqualified may be found on the FCA website (<http://www.fca.org.uk>).

**Specific duties of the appropriate actuary**

4.4.6 **R** An *appropriate actuary* must carry out the triennial investigation and prepare an abstract of the report as required by *IPRU(FSOC)* 5.2(2) and provide the interim certificate or statement as required by *IPRU(FSOC)* 5.2(3).  
**FCA** **PRA**

4.4.7 **G** [deleted]

4.4.8 **R** [deleted]

4.4.9 **G** [deleted]



## 4.5 Provisions applicable to all actuaries

### Objectivity

**4.5.1** **R** **FCA** **PRA** An *actuary* appointed under this chapter must be objective in performing his duties.

**4.5.2** **G** **FCA** **PRA** Objectivity requires the *actuary* to perform his duties in such a manner that he can have an honest belief in his work and does not compromise the quality of his work or his judgment. An *actuary* should not allow himself to be placed in situations where he feels unable to make objective professional judgments.

**4.5.3** **R** **FCA** **PRA** An *actuary* appointed under this chapter must take reasonable steps to satisfy himself that he is free from bias, or from any conflict of interest from which bias may reasonably be inferred. He must take appropriate action where this is not the case.

**4.5.4** **G** **FCA** **PRA** The appropriate action may include asking the *firm's governing body* to re-assign temporarily some or all of his duties to another competent *actuary*. Where this is insufficient, the *actuary* should resign his office.

**4.5.5** **G** **FCA** **PRA** If the *actuary* is an *employee* of the *firm*, the ordinary incentives of employment, including profit-related pay, *share options* or other financial interests in the *firm* or any *associate*, give rise to a conflict of interest only where they are disproportionate, or exceptional, relative to those of other employees of equivalent seniority.

**4.5.6** **G** **FCA** **PRA** The guidance and professional conduct standards in current issue from the Institute of Actuaries and the Faculty of Actuaries are relevant to compliance with ■ SUP 4.5.1 R and ■ SUP 4.5.3 R.

### Actuaries' statutory duty to report

**4.5.7** **G** **FCA** **PRA** (1) *Actuaries* appointed under this chapter are subject to regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (Information given by auditor or actuary to a regulator). Section 343 and the regulations also apply to an actuary of an *authorised person* in his capacity as an actuary of a *person* with *close links* with the *authorised person*.

(2) These regulations oblige *actuaries* to report certain matters to the *appropriate regulator*. Sections 342(3) and 343(3) of the *Act* provide that an *actuary* does not contravene any duty by giving information or expressing an opinion

to the *appropriate regulator*, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the *appropriate regulator*. These provisions continue to have effect after the end of the actuary's term of appointment.

4.5.7A

PRA

G

In relation to Lloyd's, an effect of the *insurance market direction* set out at ■ SUP 3.1.13 D is that sections 342(5) and 343(5) of the *Act* (Information given by auditor or actuary to a regulator) apply also to *actuaries* who are appointed to evaluate the *long-term insurance business* of a *syndicate*.

**Termination of term of office**

4.5.8

FCA PRA

G

■ SUP 4.5.9 R to ■ SUP 4.5.11 G apply to a *person* who is or has been an *actuary* appointed under this chapter.

4.5.9

FCA PRA

R

**An *actuary* appointed under this chapter must notify the appropriate regulator without delay if he:**

- (1) is removed from office by a *firm*; or
- (2) resigns before his term of office expires; or
- (3) is not reappointed by a *firm*.

4.5.10

FCA PRA

R

**An *actuary* who has ceased to be appointed under this chapter, or who has been formally notified that he will cease to be so appointed, must notify the appropriate regulator without delay:**

- (1) of any matter connected with the cessation which he thinks ought to be drawn to the appropriate regulator's attention; or
- (2) that there is no such matter.

4.5.11

PRA

G

When an *actuary* appointed under ■ SUP 4.3.1 R ceases to hold office, he ceases to perform a *controlled function*. A *firm* is therefore required under ■ SUP 10B.12.10 R to tell the PRA within seven *business days* of its *actuary* ceasing to hold office and to complete a withdrawal form (Form C, SUP 10A Annex 6 R). Note also the requirement of ■ SUP 10B.12.12 R in relation to qualified withdrawals.

**Rights and duties**

4.5.12

FCA PRA

G

Section 341 of the *Act* (Access to books etc.) provides that an *actuary* appointed under or as a result of the *Act*:

- (1) has a right of access at all times to the *firm's* books, accounts and vouchers; and
- (2) is entitled to require from the *firm's* officers such information and explanation as he reasonably considers necessary to perform his duties as *actuary*.

4.5.13

FCA PRA

R

When carrying out his duties, an *actuary* appointed under this chapter must pay due regard to generally accepted actuarial practice.

4.5.14

FCA PRA

G

The standards and guidance issued from time to time by the Institute of Actuaries and the Faculty of Actuaries are important sources of generally accepted actuarial practice.

## 4.6 Lloyd's

### Appointment of the Lloyd's actuary and syndicate actuaries

4.6.1

PRA

R

The *Society* must:

- (1) appoint an *actuary* to perform the *Lloyd's actuary function*;
- (2) notify the *PRA*, without delay, when it is aware that a vacancy in the office of *Lloyd's actuary* will arise or has arisen, giving the reason for the vacancy;
- (3) appoint an *actuary* to fill any vacancy in the office of *Lloyd's actuary* that has arisen; and
- (4) ensure that the replacement *actuary* can take up office at the time the vacancy arises or as soon as reasonably practicable after that.

4.6.2

PRA

G

The functions performed by the *actuary* appointed as the *Lloyd's actuary* under ■ SUP 4.6.1 R are specified as *controlled functions* in ■ SUP 10B (*PRA-Approved persons*). As a result, an application must be made to the *PRA* under section 60 of the *Act* (Applications for approval) for approval of the *person* proposing to take up such an appointment. Section 61(3) of the *Act* (Determination of applications) gives the *PRA* three months to grant its approval or give a *warning notice* that it proposes to refuse the application. An *actuary* should not be appointed until the *PRA* with the consent of the *FCA* has approved the *actuary*. In order to comply with ■ SUP 4.6.1 R, the *Society* should ensure it applies to the *PRA* as soon as practicable before the date when it needs the *actuary* to take office. The *PRA* will need time to consider the application before deciding whether to grant approval.

### Qualifications

4.6.3

PRA

R

Before the *Society* applies for approval of its proposed appointment of the *Lloyd's actuary* under ■ SUP 4.6.1 R, it must take reasonable steps to ensure that the *actuary*:

- (1) has the required skill and experience to perform his functions under the *regulatory system*; and
- (2) is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries.



4.6.4  
PRA

G

To comply with ■ SUP 4.6.3 R and *Principle 3*, before the *Lloyd's actuary* takes up his appointment the *Society* should ensure that the *actuary*:

- (1) has skills and experience appropriate to the nature, scale and complexity of the *Society's* business and the requirements and standards under the *regulatory system* to which it is subject; and
- (2) has adequate qualifications and experience, which includes holding an appropriate practising certificate under the rules of the Institute of Actuaries or the Faculty of Actuaries;

and seek confirmation of these from the *actuary*, or the *actuary's* current and previous employers, as appropriate.

**Disqualified actuaries**

4.6.5  
PRA

R

The *Society* must not appoint under ■ SUP 4.6.1 R as *Lloyd's actuary* an *actuary* who is disqualified by the *FCA* under section 345 of the *Act* (Disciplinary measures: FCA) or the *PRA* under section 345A of the *Act* (Disciplinary measures: PRA) from acting:

- (1) as an *actuary* for the *Society*; or
- (2) as a *syndicate actuary*; or
- (3) as an *actuary* for any other relevant class of *firm*.

4.6.6  
PRA

G

If it appears to the *FCA* or *PRA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A respectively of the *Act*. A list of *actuaries* who are disqualified may be found on the *FCA* website.

**Conflicts of interest**

4.6.7  
PRA

R

The *Society* must take reasonable steps to ensure that an *actuary* who is to be, or has been, appointed under ■ SUP 4.6.1 R:

- (1) does not perform the function of chairman or *chief executive* of the *Society*; and
- (2) does not perform any other function on behalf of the *Society* which could give rise to a significant conflict of interest.

**The Lloyd's actuary function**

4.6.8  
PRA

R

An *actuary* who has been appointed to perform the *Lloyd's actuary function* must:

- (1) prepare the statement required under *IPRU(INS) 9.58 (1)* to be annexed to the *Lloyd's Return*; and

- (2) take reasonable steps to ensure that the *general insurance business technical provisions* for each *syndicate year* have been reviewed by the *syndicate actuary* and that an appropriate opinion has been obtained under ■ SUP 4.6.15 R; and
- (3) where a *syndicate actuary's* opinion has not been provided, sets appropriate *technical provisions* and, within six months of the end of the *financial year*, submits a report to the *PRA* on the setting of those *technical provisions*.

**Appointment of syndicate actuaries**

4.6.9

PRA

R

Each *managing agent* must, in respect of each *syndicate* it manages:

- (1) appoint an *actuary* (the "*syndicate actuary*") to carry out the duties described in ■ SUP 4.6.15 R or ■ SUP 4.6.16 R; and
- (2) appoint a replacement for that *actuary* if he ceases to hold office before he has carried out the duties described in ■ SUP 4.6.15 R or ■ SUP 4.6.16 R; and
- (3) ensure that the replacement *syndicate actuary* can take up office at the time the vacancy arises or as soon as reasonably practicable after that.

4.6.10

PRA

G

- (1) The *insurance market direction* and guidance set out in ■ SUP 3.1.4 G to ■ SUP 3.1.15 G is relevant to *actuaries* appointed to report on the *insurance business of members*.
- (2) References in ■ SUP 4, as applied by ■ SUP 4.1.3 R, to a *firm* include, where appropriate:
  - (a) a *managing agent*; and
  - (b) one or more *member* carrying on *insurance business* at Lloyd's policy through a *syndicate*;

and references to an *actuary* of a *firm* should be read accordingly.

**Syndicate actuaries' qualifications**

4.6.11

PRA

R

Before a *managing agent* appoints a *syndicate actuary*, it must take reasonable steps to ensure that the *syndicate actuary*:

- (1) has the required skill and experience to perform his duties; and
- (2) is a fellow of an *actuarial body* or (except for a *syndicate actuary* of a *long-term insurance business syndicate*) is a fellow of the Casualty Actuarial Society who is a member of an *actuarial body*.

4.6.12  
PRA

G

To comply with ■ SUP 4.6.11 R and *Principle 3*, before a *syndicate actuary* takes up his appointment a *managing agent* should ensure that the *syndicate actuary*:

- (1) has skills and experience appropriate to the nature, scale and complexity of a *syndicate's* business and the requirements and standards under the *regulatory system* applicable to the activities of *managing agents* in relation to each *syndicate* which they manage; and
- (2) has adequate qualifications and experience, which includes holding an appropriate practising certificate under the rules of the Institute of Actuaries or the Faculty of Actuaries;

and seeks confirmation of these from the *syndicate actuary*, or the *syndicate actuary's* current and previous employers, as appropriate.

**Disqualified actuaries**

4.6.13  
PRA

R

A *managing agent* must not appoint under ■ SUP 4.6.9 R as *syndicate actuary* an *actuary* who is disqualified by the *FCA* under section 345 of the *Act* (Disciplinary measures: FCA) or the *PRA* under section 345A of the *Act* (Disciplinary measures: PRA) from acting:

- (1) as a *syndicate actuary*; or
- (2) as a *Lloyd's actuary*; or
- (3) as an *actuary* for a relevant class of *firm*.

4.6.14  
PRA

G

If it appears to the *FCA* or *PRA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A respectively of the *Act*. A list of *actuaries* who are disqualified may be found on the *FCA* website.

**Duties of syndicate actuaries**

4.6.15  
PRA

R

The *syndicate actuary* of a *long-term insurance business syndicate* must:

- (1) make an investigation at the end of each *financial year* into the financial condition of the business carried on through each *syndicate year* (other than a *closed year*);
- (2) make an abstract of his report of the investigation; and
- (3) prepare the certificate required under *IPRU(INS) 9.58 (3)* to be annexed to the *Lloyd's Return*.

4.6.16

PRA

R

The *syndicate actuary* of a *general insurance business syndicate* must:

- (1) review the *technical provisions* (both gross and net of reinsurance recoveries) of each *syndicate year* (other than a *closed year*); and
- (2) provide his opinion confirming that the *technical provisions* for each *syndicate year* are no less prudent than his best estimate of the amounts required.

4.6.17

PRA

R

If a *managing agent* becomes aware that the *syndicate actuary* of a *general insurance business syndicate* will or may be unable to produce an unqualified opinion under ■ SUP 4.6.16 R, the *managing agent* must promptly inform the *PRA* that this is the case.

4.6.18

PRA

R

In carrying out his duties a *syndicate actuary* must pay due regard to generally accepted actuarial best practice.

4.6.19

PRA

G

The standards and guidance issued by the Institute of Actuaries and the Faculty of Actuaries are important sources of actuarial best practice.



# Chapter 5

## Reports by skilled persons



## 5.1 Application and purpose

### Application

5.1.1 **R**  
FCA PRA

(1) This chapter applies to every *firm*.

(2) The *rules*, and the *guidance on rules* in ■ SUP 5.5 (Duties of firms), do not apply to a *UCITS qualifier*.

5.1.1A **R**  
FCA

In respect of the *FCA's* power in section 166 of the *Act* (Reports by skilled persons), reference to a *firm* in ■ SUP 5.5.1 R, ■ SUP 5.5.5 R and ■ SUP 5.5.9 R includes a *recognised investment exchange*.

5.1.1B **G**  
FCA

In respect of the *FCA's* power in section 166 of the *Act* (Reports by skilled persons), the *guidance* in this chapter applies to a *recognised investment exchange* in the same way as it applies to a *firm*.

5.1.2 **G**  
FCA PRA

This chapter (other than the *rules*, and *guidance on rules*, in ■ SUP 5.5 (Duties of firms)) is also relevant to certain unauthorised *persons* within the scope of section 166 of the *Act* (Reports by skilled persons) (see ■ SUP 5.2.1 G).

### Purpose

5.1.3 **G**  
FCA PRA

The purpose of this chapter is to give *guidance* on the *appropriate regulator's* use of the power in section 166 (Reports by skilled persons) and section 166A (Appointment of skilled person to collect and update information) of the *Act*. The purpose is also to make *rules* requiring a *firm* to give assistance to a *skilled person* and, where a *firm* is required to appoint a *skilled person*, to include certain provisions in its contract with a *skilled person*. These *rules* are designed to ensure that the *appropriate regulator* receives certain information from a *skilled person* and that a *skilled person* receives assistance from a *firm*.

## 5.2 The appropriate regulator's power

### Who may be required to provide a report?

#### 5.2.1

FCA PRA

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Under section 166 of the *Act* (Reports by skilled persons), the *appropriate regulator* may, by giving a written notice, itself appoint a *skilled person* to provide it with a report, or require any of the following *persons* to provide it with a report by a *skilled person*:

- (1) a *firm*;
- (2) any other *member* of the *firm's* group;
- (3) a *partnership* of which the *firm* is a *member*;
- (4) a *person* who has at any relevant time been a *person* falling within (1), (2) or (3);

but only if the *person* is, or was at the relevant time, carrying on a business.

#### 5.2.2

FCA PRA

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Under section 166A of the *Act* (Appointment of skilled person to collect and update information), the *appropriate regulator* may require a *firm* to appoint, or itself appoint, a *skilled person* to collect or update information.



## 5.3 Policy on the use of skilled persons

### 5.3.1

**FCA** **PRA**

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The appointment of a *skilled person* to produce a report under section 166 of the *Act* (Reports by skilled persons) is one of the *appropriate regulator's* regulatory tools. The tool may be used:

- (1) for diagnostic purposes, to identify, assess and measure risks;
- (2) for monitoring purposes, to track the development of identified risks, wherever these arise;
- (3) in the context of preventative action, to limit or reduce identified risks and so prevent them from crystallising or increasing; and
- (4) for remedial action, to respond to risks when they have crystallised.

### 5.3.1A

**FCA**

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■ SUP 5 Annex 1 gives examples of circumstances in which the *FCA* may use the *skilled persons* tool.

### 5.3.2

**FCA** **PRA**

**G**

The decision by the *appropriate regulator* to require a report by a *skilled person* under section 166 of the *Act* (Reports by skilled persons) will normally be prompted by a specific requirement for information, analysis of information, assessment of a situation, expert advice or recommendations or by a decision to seek assurance in relation to a regulatory return. It may be part of the risk mitigation programme applicable to a *firm*, or the result of an event or development relating or relevant to a *firm*, prompted by a need for verification of information provided to the *appropriate regulator* or part of the *appropriate regulator's* regular monitoring of a *firm*.

### 5.3.2A

**FCA** **PRA**

**G**

The decision by the *appropriate regulator* to require the collection or updating of information by a *skilled person* under section 166A of the *Act* (Appointment of skilled person to collect and update information) will be prompted where the *appropriate regulator* considers there has been a breach of a requirement by a *firm* to collect, and keep up to date, information of a description specified in the *appropriate regulator's* rules.

### 5.3.3

**FCA** **PRA**

**G**

When making the decision to require a report by a *skilled person* under section 166 (Reports by skilled persons) or the collection or updating of information by a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, the *appropriate regulator* will have regard, on a case-by-case basis, to all relevant factors. Those are likely to include:

- (1) circumstances relating to the *firm*;
- (2) alternative tools available, including other statutory powers;
- (3) legal and procedural considerations;
- (4) the objectives of the *appropriate regulator's* enquiries;
- (5) cost considerations; and
- (6) considerations relating to *appropriate regulator's* resources.

■ SUP 5.3.4 G to ■ SUP 5.3.10 G give further guidance on these listed factors.

### Circumstances relating to the firm

5.3.4

FCA PRA

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The *appropriate regulator* will have regard to circumstances relating to the *firm*, for example:

- (1) attitude of the *firm*: whether the *firm* is being cooperative;
- (2) history of similar issues: whether similar issues have arisen in the past and, if so, whether timely corrective action was taken;
- (3) quality of a *firm's* systems and records: whether the *appropriate regulator* has confidence that the *firm* has the ability to provide the required information;
- (4) objectivity: whether the *appropriate regulator* has confidence in the *firm's* willingness and ability to deliver an objective report;
- (5) conflicts of interest: whether the subject matter of the enquiries or the report involves actual or potential misconduct and it would be inappropriate for the *appropriate regulator* to rely on the *firm* itself to enquire into the matter; and
- (6) knowledge or expertise available to the *firm*: whether it would be appropriate to involve a third party with the required technical expertise.

### Alternative tools available, including other statutory powers

5.3.5

FCA PRA

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The *appropriate regulator* will have regard to alternative tools that may be available, including for example:

- (1) obtaining what is required without using specific statutory powers (for example, by a visit by staff of the *appropriate regulator* or a request for information on an informal basis);
- (2) requiring information from *firms* and others, including authorising an agent to require information, under section 165 of the *Act* (Power to require information);
- (3) appointing investigators to carry out general investigations under section 167 of the *Act* (Appointment of investigator in general cases) (see ■ EG 3 for the *appropriate regulator's* policy on the use of this power); and

- (4) appointing investigators to carry out investigations in particular cases under section 168 of the *Act* (Appointment of investigator in specific cases) (see ■ EG 3 for the *appropriate regulator's* policy on the use of this power).

**Legal and procedural considerations**

5.3.6

FCA PRA

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The *appropriate regulator* will have regard to legal and procedural considerations including:

- (1) statutory powers: whether one of the other available statutory powers is more appropriate for the purpose than the power in section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act*;
- (2) subsequent proceedings: whether it is desirable to obtain an authoritative and independent report for use in any subsequent proceedings; and
- (3) application of the *Handbook rules*: whether it is important that the relevant *rules* in the *Handbook* should apply, for example ■ SUP 5.5.1 R which obliges the *firm* to require and permit the *skilled person* to report specified matters to the *appropriate regulator*.

**The objectives of the appropriate regulator's enquiries**

5.3.7

FCA PRA

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The *appropriate regulator* will have regard to the objectives of its enquiries, and the relative effectiveness of its available powers to achieve those objectives. For example:

- (1) historic information or evidence: if the objectives are limited to gathering historic information, or evidence for determining whether enforcement action may be appropriate, the *appropriate regulator's* information gathering and investigation powers under sections 165 (Power to require information), 167 (Appointment of investigator in general cases) and 168 (Appointment of investigator in specific cases) of the *Act* are likely to be more appropriate than the power in section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act*; and
- (2) expert analysis or recommendations: if the objectives include obtaining expert analysis or recommendations (or both) for diagnostic, monitoring, preventative or remedial purposes, the section 166 power (Reports by skilled persons) may be an appropriate power to use, instead of, or in conjunction with, the *appropriate regulator's* other available powers.

**Cost considerations**

5.3.8

FCA PRA

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In accordance with its general policy the *appropriate regulator* will have regard to the question of cost, which is particularly pertinent in relation to *skilled persons* because:

- (1) if the *appropriate regulator* uses the section 166 power (Reports by skilled persons) or the section 166A power (Appointment of skilled person to collect and update information), either the *firm* will appoint, and will have to pay for the services of, the *skilled person*, or the *appropriate regulator* will appoint, and will require under ■ FEES 3.2.7 R (zp) or ■ FEES 3.2.7 R (zq) that the relevant *firm* pays for the services of, the *skilled person*;

- (2) if the *appropriate regulator* uses its other information gathering and investigation powers, it will either authorise or appoint its own staff to undertake the information gathering or investigation (or both), or it will pay for the services of external competent persons to do so; in either case the costs will be recovered under the *appropriate regulator's* general fee scheme.

5.3.9

FCA PRA

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In having regard to the cost implications of using the section 166 power (Reports by skilled persons) or the section 166A power (Appointment of skilled person to collect and update information) alternative options (such as visits) or other powers, the *appropriate regulator* will take into account relevant factors, including:

- (1) whether the *firm* may derive some benefit from the work carried out and recommendations made by the *skilled person*, for instance a better understanding of its business and its risk profile, or the operation of its information systems, or improvements to its systems and controls;
- (2) whether the work to be carried out by the *skilled person* is work that should reasonably have been carried out by the *firm*, or by persons instructed by the *firm* on its own initiative; for instance a compliance review or the development of new systems;
- (3) whether the *firm's* record-keeping and management information systems are poor and:
  - (a) the required information and *documents* are not readily available; or
  - (b) an analysis of the required information cannot readily be performed without expert assistance;
- (4) whether the *firm* appears to have breached requirements or standards under the *regulatory system* or otherwise put the interests of consumers at risk, and it is unable or unwilling to review and remedy the matters of concern, or the *appropriate regulator* considers that it cannot rely on the *firm* to do so; and
- (5) the perceived probability and seriousness of possible breaches of regulatory requirements and the possible need for further action.

5.3.9A

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[deleted]

**Considerations relating to appropriate regulator resources**

5.3.10

FCA PRA

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The *appropriate regulator* will have regard to *appropriate regulator*-related considerations including:

- (1) *appropriate regulator* expertise: whether the *appropriate regulator* has the necessary expertise; and
- (2) *appropriate regulator* resources: whether the resources required to produce a report or to make enquiries or to appoint a *skilled person* itself are available within the *appropriate regulator*, or whether the exercise will be the best use of the *appropriate regulator's* resources at the time.



## 5.4 Appointment and reporting process

### Scope of report

5.4.1 FCA PRA G

Where the *appropriate regulator* requires a report by a *skilled person* under section 166 of the Act (Reports by skilled persons), the *appropriate regulator* will send a notice in writing requiring the *person* in ■ SUP 5.2.1 G to provide a report by a *skilled person*, or notifying the *person* in ■ SUP 5.2.1 G in writing of the *appropriate regulator's* appointment of a *skilled person* to provide a report, on any matter if it is reasonably required in connection with the exercise of its functions conferred by or under the *Act*. The *appropriate regulator* may require the report to be in whatever form it specifies in the notice .

5.4.1A FCA PRA G

Where the *appropriate regulator* requires the updating or collection of information by a *skilled person* under section 166A of the *Act* (Appointment of skilled person to collect and update information), the *appropriate regulator* will send a notice in writing requiring the *firm* to appoint a *skilled person*, or notifying the *firm* of the *appropriate regulator's* appointment of a *skilled person*, to collect or update the relevant information.

5.4.2 FCA PRA G

As part of the decision making process the *appropriate regulator* will normally contact the *person* in ■ SUP 5.2.1 G or in ■ SUP 5.2.2 G to discuss its needs before finalising its decision to require a report or the updating or collection of information by a *skilled person*. This will provide an opportunity for discussion about the appointment, whether an alternative means of obtaining the information would be better, what the scope of a report should be, who should be appointed, who should appoint, and the likely cost.

5.4.3 FCA PRA G

The *appropriate regulator* will give written notification to the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G of the purpose of the report or collection or updating of information, its scope, the timetable for completion and any other relevant matters. The *appropriate regulator* will state the matters which the report is to contain, or the information which is to be collected or updated, as well as any requirements as to the report's format. For example, a report on controls may be required to address key risks, key controls and the control environment. The *appropriate regulator* attaches importance to there being a timetable for each report and to the *skilled person*, with the cooperation of the *person* in ■ SUP 5.2.1 G or the *firm* in ■ SUP 5.2.2 G, as relevant , keeping to that timetable.

5.4.4 FCA PRA G

The written notification in ■ SUP 5.4.3 G may be preceded or followed by a discussion of the *appropriate regulator's* requirements and the reasons for them. This may involve the *appropriate regulator*, the *person* in ■ SUP 5.2.1 G or in ■ SUP 5.2.2 G and the person

who has been, or is expected to be, appointed as the *skilled person*. The *appropriate regulator* recognises that there will normally be value in holding discussions involving the *skilled person* at this stage. These discussions may include others if appropriate.

5.4.5

FCA PRA

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The *appropriate regulator* will wish to conduct the discussion with the *firm*, its *skilled person* and any others within a timescale appropriate to the circumstances of the case.

### Appointment process

5.4.6

FCA PRA

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Where the *skilled person* is appointed by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, the *appropriate regulator* will normally seek to agree in advance with the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, the *appropriate regulator* the *skilled person* who will make the report or collect or update the relevant information. The *Act* requires that such *skilled person* be nominated or approved by the *appropriate regulator*:

- (1) if the *appropriate regulator* decides to nominate the *skilled person* who is to make the report or collect or update the information, it will notify the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G accordingly; and
- (2) alternatively, if the *appropriate regulator* is content to approve a *skilled person* selected by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, it will notify the latter *person* of that fact.

The *appropriate regulator* may give the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G a shortlist from which to choose.

5.4.7

FCA PRA

G

A *skilled person* must appear to the *appropriate regulator* to have the skills necessary to make a report on the matter concerned or collect or update the relevant information. A *skilled person* may be an accountant, lawyer, compliance consultant, *actuary* or *person* with relevant business, technical or technological skills.

5.4.8

FCA PRA

G

When considering whether to nominate, approve or appoint a *skilled person* to make a report or collect or update information, the *appropriate regulator* will have regard to the circumstances of the case, including whether the proposed *skilled person* appears to have:

- (1) the skills necessary to make a report on the matter concerned or collect or update the relevant information;
- (2) the ability to complete the report or collect or update the information within the time expected by the *appropriate regulator*;
- (3) any relevant specialised knowledge, for instance of the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, the type of business carried on by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, or the matter to be reported on or information to be collected or updated;
- (4) any professional difficulty or potential conflict of interest in reviewing the matters to be reported on, or the information to be collected or updated, for instance because it may involve questions reflecting on the quality or reliability of work previously carried out by the proposed *skilled person*; and

- (5) enough detachment, bearing in mind the closeness of an existing professional or commercial relationship, to be able to collect or update the information or to give an objective opinion on matters such as:
  - (a) matters already reported on by the *skilled person* (for example, on the financial statements of the *person* in ■ SUP 5.2.1 G or in ■ SUP 5.2.2 G or in relation to their systems and controls); or
  - (b) matters that are likely to be contentious and may result in disciplinary or other enforcement action against the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, its management, *shareholders* or *controllers*; or
  - (c) matters that the *skilled person* has been involved in, in another capacity (for example, when a *skilled person* has been involved in developing an information system it may not be appropriate for him to provide a subsequent opinion on the adequacy of the system).

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5.4.9  
FCA PRA

G

In appropriate circumstances, it may be cost effective for the *appropriate regulator* to nominate or approve the appointment of, or appoint itself, a *skilled person* who has previously acted for, or advised, the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G. For example, the *appropriate regulator* may nominate or approve the appointment of, or appoint, the auditor of a *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G to prepare a report or collect or update the information taking into account, where relevant, the considerations set out in ■ SUP 5.4.7 G.

**Reporting process**

5.4.10  
FCA PRA

G

Where the *skilled person* is appointed by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, the *appropriate regulator* will normally require the *skilled person* to be appointed to report to the *appropriate regulator* through that *person*. In the normal course of events the *appropriate regulator* expects that the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G will be given the opportunity to provide written comments on the report or the collection of the relevant information prior to its submission to the *appropriate regulator*.

5.4.10A  
FCA PRA

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Where the *skilled person* is to be appointed by the *appropriate regulator* itself, the *skilled person* will report directly to the *appropriate regulator*.

5.4.11  
FCA PRA

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The *appropriate regulator* may enter into a dialogue with the *skilled person*, and is ready to discuss matters relevant to the report or the collection or updating of the relevant information with him, during the preparation of the report or the collection or updating of the relevant information. Such discussions may involve or be through the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G.

5.4.12  
FCA PRA

G

The *appropriate regulator* will normally specify a time limit within which it expects the *skilled person* to deliver the report or collect or update the relevant information. Where the *skilled person* is appointed by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, the *skilled person* should, in complying with its contractual duty under ■ SUP 5.5.1 R, take reasonable steps to achieve delivery by that time. If the *skilled person* becomes aware that the report may not be delivered, or collection or updating of the relevant information may not be, on time, he should inform the *appropriate regulator* and the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G as soon as possible. Where the *skilled person* is appointed by the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G, if the *skilled person* becomes

aware that there may be difficulties delivering the report or collecting or updating the relevant information within cost estimates, he will no doubt wish to advise the *firm*.

5.4.13

FCA PRA

G

The *appropriate regulator* may meet with the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G and the *skilled person* together to discuss the final report. The *appropriate regulator* may also wish to discuss the final report with the *skilled person* present but without the *person* in ■ SUP 5.2.1 G or ■ SUP 5.2.2 G.

5



## 5.5 Duties of firms

### Contract with the skilled person

When a *firm* appoints a *skilled person* to provide a report under section 166 (Reports by skilled persons) or collect or update information under section 166A (Appointment of skilled person to collect and update information) of the *Act*, the *firm* must, in a contract with the *skilled person*:

- (1) require and permit the *skilled person* during and after the course of his appointment:
  - (a) to cooperate with the *appropriate regulator* in the discharge of its functions under the *Act* in relation to the *firm*; and
  - (b) to communicate to the *appropriate regulator* information on, or his opinion on, matters of which he has, or had, become aware in his capacity as *skilled person* reporting on the *firm* in the following circumstances:
    - (i) the *skilled person* reasonably believes that, as regards the *firm* concerned (A) there is or has been, or may be or may have been, a contravention of any relevant *requirement* that applies to the *firm* concerned; and (B) that the contravention may be of material significance to the *appropriate regulator* in determining whether to exercise, in relation to the *firm* concerned, any functions conferred on the *appropriate regulator* by or under any provision of the *Act* other than Part VI. (Official Listing); or
    - (ii) the *skilled person* reasonably believes that the information on, or his opinion on, those matters may be of material significance to the *appropriate regulator* in determining whether the *firm* concerned satisfies and will continue to satisfy the *threshold conditions*; or
    - (iii) the *skilled person* reasonably believes that *firm* is not, may not be or may cease to be a going concern;

- (2) require the *skilled person* to prepare a report or collect or update information, as notified to the *firm* by the *appropriate regulator*, within the time specified by the *appropriate regulator*; and
- (3) waive any duty of confidentiality owed by the *skilled person* to the *firm* which might limit the provision of information or opinion by that *skilled person* to the *appropriate regulator* in accordance with (1) or (2). (See also ■ SUP 5.5.13 G and ■ SUP 5.6)

## 5.5.2

FCA PRA

G

In complying with the contractual duty in ■ SUP 5.5.1 R (1) the *appropriate regulator* expects that a *skilled person* appointed by a *firm* under section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act* will cooperate with the *appropriate regulator* by, amongst other things, providing information or documentation about the planning and progress of the report and its findings and conclusions, if requested to do so. A *firm* should therefore ensure that the contract it makes with the *skilled person* requires and permits the *skilled person* to provide the following to the *appropriate regulator* if requested to do so:

- (1) interim reports;
- (2) source data, *documents* and working papers;
- (3) copies of any draft reports given to the *firm*; and
- (4) specific information about the planning and progress of the work to be undertaken (which may include project plans, progress reports including percentage of work completed, details of time spent, costs to date, and details of any significant findings and conclusions).

## 5.5.3

FCA PRA

G

If the *appropriate regulator* is considering asking for the information specified in ■ SUP 5.5.2 G it will take into consideration the cost of the *skilled person* complying with the request, and the benefit that the *appropriate regulator* may derive from the information. For example, in most cases, the *appropriate regulator* will not need to request a *skilled person* to give it source data, *documents* and working papers. However, the *appropriate regulator* may do so when it reasonably believes that this information will be relevant to any investigation it may be conducting, or any action it may need to consider taking against the *firm*.

## 5.5.4

FCA PRA

G

In complying with the contractual duty in ■ SUP 5.5.1 R, the *appropriate regulator* expects that, in the case of substantial or complex reports, the *skilled person* will give a periodic update on progress and issues to allow for a re-focusing of the report if necessary. The channel of communication would normally be directly between the *skilled person* and the *appropriate regulator*. However, the *appropriate regulator* would also expect *firms* normally to be informed about the passage of information, and the *skilled person* would usually be expected to keep the *firm* informed of any communication between the *skilled person* and the *appropriate regulator*.

## 5.5.5

FCA PRA

R

A *firm* must ensure that the contract required by ■ SUP 5.5.1 R:

- (1) is governed by the laws of a part of the *United Kingdom*;

- (2) expressly
  - (a) provides that the *appropriate regulator* has a right to enforce the provisions included in the contract under ■ SUP 5.5.1 R and ■ SUP 5.5.5 R (2);
  - (b) provides that, in proceedings brought by the *appropriate regulator* for the enforcement of those provisions, the *skilled person* is not to have available by way of defence, set-off or counterclaim any matter that is not relevant to those provisions;
  - (c) (if the contract includes an arbitration agreement) provides that the *appropriate regulator* is not, in exercising the right in (a), to be treated as a party to, or bound by, the arbitration agreement; and
  - (d) provides that the provisions included in the contract under ■ SUP 5.5.1 R and ■ SUP 5.5.5 R (2) are irrevocable and may not be varied or rescinded without the *appropriate regulator's* consent; and
  
- (3) is not varied or rescinded in such a way as to extinguish or alter the provisions referred to in (2)(d).

5.5.6  
FCA PRA

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The Contracts (Rights of Third Parties) Act 1999, or Scots common law, enables the *appropriate regulator* to enforce the rights conferred on it under the contract required by ■ SUP 5.5.1 R against the *skilled person*.

5.5.7  
FCA PRA

G

If the *appropriate regulator* considers it appropriate, it may request the *firm* to give it a copy of the draft contract required by ■ SUP 5.5.1 R before it is made with the *skilled person*. The *appropriate regulator* will inform the *firm* of any matters that it considers require further clarification or discussion before the contract is finalised.

5.5.8  
FCA PRA

G

The *appropriate regulator* expects the *firm*, including where applicable in complying with *Principle 11*, to give the *appropriate regulator* information about the cost of the *skilled persons* report. This may include both an initial estimate of the cost as well as the cost of the completed report. This information is required to help inform the *appropriate regulator's* decision making in the choice of regulatory tools. Information about the number and cost of reports by *skilled persons* will be published by the *appropriate regulator*.

**Assisting the skilled person**

5.5.9  
FCA PRA

R

A *firm* must provide all reasonable assistance to any *skilled person* appointed to provide a report under section 166 (Reports by skilled persons) or to collect or update information under section 166A (Appointment of skilled person to collect and update information) of the *Act*.

**5.5.10** G In providing reasonable assistance under ■ SUP 5.5.9 R, a *firm* should take reasonable steps to ensure that, when reasonably required by the *skilled person*, each of its *appointed representatives* or, where applicable, *tied agents* waives any duty of confidentiality and provides reasonable assistance as though ■ SUP 5.5.1 R (3) and ■ SUP 5.5.9 R applied directly to the *appointed representative* or *tied agent*.

**5.5.11** G Reasonable *assistance* in ■ SUP 5.5.9 R should include:

- (1) access at all reasonable business hours for the *skilled person* to the *firm's* accounting and other records in whatever form;
- (2) providing such information and explanations as the *skilled person* reasonably considers necessary or desirable for the performance of his duties; and
- (3) permitting a *skilled person* to obtain such information directly from the *firm's* auditor as he reasonably considers necessary or desirable for the proper performance of his duties.

**Responsibility for delivery**

**5.5.12** G When a *firm* appoints a *skilled person* to provide a report under section 166 (Reports by skilled persons) or collect or update information under section 166A (Appointment of skilled person to collect and update information) of the *Act*, a *firm* is expected, including where applicable in complying with *Principle 11*, to take reasonable steps to ensure that a *skilled person* delivers a report or collects or updates information in accordance with the terms of his appointment.

**Assistance to skilled persons from others**

**5.5.13** G In respect of the appointment of a *skilled person* under section 166 of the *Act* (Reports by skilled persons), section 166(7) of the *Act* imposes a duty on certain *persons* to give assistance to a *skilled person*. The *persons* on whom this duty is imposed are those who are providing, or have at any time provided, services to any *person* falling within ■ SUP 5.2.1 G. They include suppliers under *material outsourcing arrangements*.

**5.5.14** G In respect of the appointment of a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, under section 166A(5) a *skilled person* may require any *person* to provide all such assistance as the *skilled person* may reasonably require to collect or update the information in question.

## 5.6 Confidential information and privilege

### Confidential information

#### 5.6.1

FCA PRA

G

Within the legal constraints that apply, the *appropriate regulator* may pass on to a *skilled person* any information which it considers relevant to the *skilled person's* function. A *skilled person*, being a primary recipient under section 348 of the *Act* (Restrictions on disclosure of confidential information by Authority etc.), is bound by the confidentiality provisions in Part XXIII of the *Act* (Public record, disclosure of information and cooperation) as regards confidential information he receives from the *appropriate regulator* or directly from a *firm* or other *person*. A *skilled person* may not pass on confidential information without lawful authority, for example, where an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates. The *appropriate regulator* will indicate to a *skilled person* if there is any matter which cannot be discussed with the *person* in ■ SUP 5.2.1 G.

#### 5.6.2

FCA PRA

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### Banking confidentiality and legal privilege

The *limitations* in the following sections of the *Act* are relevant to this chapter:

- (1) section 175(5) (Information and documents: supplemental provisions) under which a person may be required under Part XI of the *Act* (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); and
- (2) section 413 (Protected items), under which no *person* may be required to produce, disclose or allow the inspection of *protected items*.

#### 5.6.3

FCA PRA

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In respect of the appointment of a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, a contractual or other requirement imposed on a *person* to keep any information confidential will not apply if:

- (1) the information is or may be relevant to anything required to be done as part of the *skilled person's* appointment under section 166A (Appointment of skilled person to collect and update information) of the *Act*;
- (2) a *firm* or a *skilled person* requests or requires the *person* to provide the information for the purpose of securing that those things are done; and

- (3) the *appropriate regulator* has approved the making of the request or the imposition of the requirement before it is made or imposed.

5.6.4

FCA PRA

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A *firm* may provide information that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done in respect of the *skilled person's* collection or updating of information under section 166A (Appointment of skilled person to collect and update information) of the *Act*.

5



**Non-exhaustive list of examples of when the FCA may use the skilled person tool (This Annex belongs to SUP 5.3.1AG)**

**FCA**

Toolkit purpose	Purpose for use of tool	Examples of reasons for use of tool
Diagnostic	<ul style="list-style-type: none"> <li>• To find out more about a concern (e.g. the result of a visit, risk assessment, or notification) and determine whether action is needed to mitigate a risk to the <i>regulatory objectives</i> or to determine whether there may have been a breach of a <i>rule</i> or of a <i>threshold condition</i> or, in the case of an <i>RIE</i>, failure to meet the <i>recognised requirements</i>.</li> <li>• To assess the implications of, and <i>firm's*</i> response to, a change of circumstances e.g.                             <ul style="list-style-type: none"> <li>- proposed entry into new business area;</li> <li>- new control structure;</li> <li>- merger or take-over;</li> <li>- new IT system; or</li> <li>- launch of an E-Commerce venture.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Concern about effectiveness of the <i>firm's*</i> internal audit department.</li> <li>• Concern about reliability of submitted financial returns.</li> <li>• Inability of a <i>firm*</i> to quantify its current financial position.</li> <li>• Assessment of consequences of incomplete customer files.</li> <li>• Concern about quality of systems and controls.</li> <li>• Indication of financial crime or <i>money laundering</i>.</li> <li>• Concern about a <i>firm's* controller</i>.</li> <li>• Assessment of control structure when a <i>bank</i> (specialising in consumer lending) diversifies into commercial lending.</li> </ul>
Diagnostic/monitoring	<ul style="list-style-type: none"> <li>• To verify information provided to the <i>FCA</i>.</li> <li>• To collect information required by but not provided to the <i>FCA</i> by the <i>firm*</i>.</li> <li>• To update information previously provided to the <i>FCA</i> but not kept up to date by the <i>firm*</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• Verification of a specific return to give the <i>FCA</i> assurance of the quality of information provided.</li> <li>• Failure by a <i>firm*</i> to provide or keep up to date information required by the <i>FCA</i>.</li> </ul>
Monitoring	<ul style="list-style-type: none"> <li>• To review systems and controls</li> <li>• To complement baseline monitoring</li> </ul>	<ul style="list-style-type: none"> <li>• Assessment of systems and controls in <i>firms*</i> where identified as a risk mitigation priority.</li> <li>• In-depth review of part of a <i>firm*</i> which is material to the <i>firm's</i> risk profile but of which the <i>FCA</i> does not consider it has an adequate, up-to-date understanding.</li> </ul>



Toolkit purpose	Purpose for use of tool	Examples of reasons for use of tool
Preventative	<ul style="list-style-type: none"> <li>• To gather and analyse information on an identified risk and develop recommendations for resolution.</li> </ul>	<ul style="list-style-type: none"> <li>• Review of identified control weaknesses over <i>client money</i> to obtain recommendations to ensure compliance with the relevant <i>rules</i>.</li> </ul>
Remedial	<ul style="list-style-type: none"> <li>• To assist in the design of a customer redress programme.</li> <li>• To assist in the design of a remedial action plan.</li> <li>• To oversee and report on remedial action plan.</li> </ul>	<ul style="list-style-type: none"> <li>• Where possible, the <i>FCA</i> has identified possible losses from failure to reconcile assets or from mis-posting of transactions to the general ledger.</li> <li>• To report on quality of work undertaken and adherence to milestones in the action plan.</li> </ul>

\* or, where applicable, the other *persons* in SUP 5.2.1 G.

Non-exhaustive list of examples of when the *FCA* may itself appoint a *skilled person* rather than require a *firm* to do so

Toolkit purpose	Purpose for use of tool	Examples of reasons for use of tool
Diagnostic/ monitoring/ preventative/ remedial	(any of the above)	<ul style="list-style-type: none"> <li>• To provide a report or information that is urgently required.</li> <li>• To assert a greater degree of control over the appointment and oversight of the <i>skilled person</i> due to the sensitive nature of the matter concerned.</li> <li>• To assert a greater degree of control over the appointment and oversight of the <i>skilled person</i> in circumstances where more than one <i>firm</i>* is the subject of the same report or information required.</li> </ul>

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## Chapter 6

# Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

## 6.1 Application, interpretation and purpose

### Application

#### 6.1.1

FCA PRA

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This chapter applies to every *firm* with a *Part 4A permission* which wishes to:

- (1) vary its *Part 4A permission*; or
- (2) cancel its *Part 4A permission* and end its *authorisation* ;
- (3) have a new *requirement* imposed on it;
- (4) vary a *requirement* imposed on it; or
- (5) cancel a *requirement* imposed on it.

#### 6.1.2

FCA PRA

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If appropriate, a *firm* which is an *authorised fund manager* should also refer to ■ COLL 7 for *guidance* on the termination of *ICVCs* and *AUTs* and on winding up *authorised funds* that are not commercially viable.

#### 6.1.3

FCA PRA

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This chapter applies to an *incoming firm* or a *UCITS qualifier* only in respect of a *top-up permission*. An *incoming firm* or a *UCITS qualifier* should refer to ■ SUP 14 (Variation of passport rights by incoming EEA firms and ending authorisation) for the procedures for changes to *permission* granted under Schedules 3, 4 or 5 of the *Act*.

#### 6.1.3A

FCA PRA

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- (1) In ■ SUP 6 the "relevant regulator" is the regulator to which a *firm* with a *Part 4A permission* has made or can make (in accordance with ■ SUP 6) an application to vary or cancel its *Part 4A permission* or to have imposed on it a new *requirement* or to vary or cancel any existing *requirement* (see ■ SUP 6.2.3A G to ■ SUP 6.2.3E G).
- (2) Where the *PRA* can only determine an application with the consent of the *FCA*, the *FCA* may request further information as if it were the relevant regulator.
- (3) In some instances, the *Act* requires the *FCA* and the *PRA* to consult with each other prior to exercising their powers under the *Act*. Details of where consultation is required have not been set out in ■ SUP 6. Where a provision in ■ SUP 6 makes reference to a power, the exercise of which by the *FCA* or the *PRA* (as the case may be) requires consultation under the *Act*, *firms*

should be aware that the regulator concerned will need to consult the other regulator before exercising that power.

**Purpose**

6.1.4

FCA PRA

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This chapter explains:

- (1) how a *firm* with a *Part 4A permission* can apply to the relevant regulator to vary that *permission*;
- (2) how a *firm* which has ceased to carry on any of the *regulated activities* for which it has a *Part 4A permission*, or which expects to do so in the short term (normally less than six months), should apply to the relevant regulator to cancel that *permission* completely;
- (2A) how a *firm* with a *Part 4A permission* can apply to the relevant regulator to:
  - (a) have a new *requirement* imposed on it; or
  - (b) vary a *requirement* imposed on it; or
  - (c) cancel a *requirement* imposed on it.
- (3) the additional procedures that apply to a *firm* carrying on *regulated activities* which create long term obligations to *customers* (for example, *effecting contracts of insurance*, *carrying out contracts of insurance* or *accepting deposits*) that needs to wind down (run off) its business over a long term period (normally more than six months) and the applications it should make with a view to ultimately cancelling its *permission*; and
- (4) how the relevant regulator assesses those applications.

6.1.5

FCA PRA

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This chapter also outlines the relevant regulator's powers to withdraw *authorisation* from a *firm* whose *Part 4A permission* has been cancelled at the *firm's* request.

6.1.6

FCA

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This chapter does not cover the *FCA's* use of its *own-initiative variation power* to vary or cancel a *firm's Part 4A permission* or its *own-initiative requirement power* to impose, vary or cancel a *requirement* (see ■ SUP 7 (Individual requirements) and ■ EG 8 (Variation and cancellation of permission on the *FCA's* own initiative and intervention against incoming firms)).

## 6.2 Introduction

### 6.2.1

FCA PRA

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A *firm authorised* under Part 4A of the *Act* (Permission to carry on regulated activity) has a single *Part 4A permission* granted by the *FCA* or the *PRA*. A *firm's Part 4A permission* specifies all or some of the following elements ( see ■ PERG 2 Annex 2 G (Regulated activities and the permission regime) and the information online at the *FCA* and *PRA* websites):

- (1) a description of the activities the *firm* may carry on, including any *limitations*;
- (2) the *specified investments* involved; and
- (3) if appropriate, *requirements*.

### 6.2.2

FCA PRA

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Under section 20(1) and 20(1A) of the *Act* (Authorised persons acting without permission), a *firm* is prohibited from carrying on a *regulated activity* in the *United Kingdom* (or purporting to do so) otherwise than in accordance with its *permission*.

### 6.2.3

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[deleted]

### 6.2.3A

FCA

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If an *FCA-authorised person* wishes to change its *Part 4A permission* to:

- (1) add a *regulated activity*, other than a *PRA-regulated activity*; or
- (2) remove a *regulated activity* from those to which the *permission* relates; or
- (3) vary the description of a *regulated activity* to which the *permission* relates;  
or
- (4) cancel the *permission*;

it can apply to the *FCA* under section 55H of the *Act* (Variation by *FCA* at request of authorised person).

### 6.2.3B

FCA PRA

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If an *FCA-authorised person* wishes to change its *Part 4A permission*, by adding to the *regulated activities* to which the *permission* relates one or more *regulated activities*, which include a *PRA-regulated activity*, it can apply to the *PRA* under section 55I of the *Act* (Variation by *PRA* at request of authorised person). The *PRA* can determine such an application only with the consent of the *FCA*.

6.2.3C

FCA

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If a *firm* with a *Part 4A permission* wishes the *FCA* to:

- (1) impose a new *requirement*; or
- (2) vary a *requirement* imposed by the *FCA*; or
- (3) cancel such a *requirement*;

it can apply to the *FCA* under section 55L(5) of the *Act* (Imposition of Requirements by *FCA*).

6.2.3D

PRA

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If a *PRA-authorized person* wishes to change its *Part 4A permission* to:

- (1) add a *regulated activity* to those to which the *permission* relates; or
- (2) remove a *regulated activity* from those to which the *permission* relates; or
- (3) vary the description of a *regulated activity* to which the *permission* relates; or
- (4) cancel the *permission*;

it can apply to the *PRA* under section 55I of the *Act* (Variation by *PRA* at request of authorised person). The *PRA* can determine such an application, other than an application to cancel the *permission*, only with the consent of the *FCA*.

6.2.3E

PRA

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If a *PRA-authorized person* wishes the *PRA* to:

- (1) impose a new *requirement*; or
- (2) vary a *requirement* imposed by the *PRA*; or
- (3) cancel such a *requirement*;

it can apply to the *PRA* under section 55M(5) of the *Act* (Imposition of Requirements by *PRA*).

6.2.4

FCA PRA

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A *firm* intending to expand its business should assess, taking appropriate professional advice where necessary, whether it will need to make an application in accordance with ■ SUP 6 before making any changes to its business.

6.2.4A

FCA PRA

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If a *firm* intends to transfer its business to a different legal entity it will need to apply to the relevant regulator for cancellation of its *Part 4A permission* and the entity to which the business is to be transferred will need to apply for a *Part 4A permission*.

6.2.4B

FCA PRA

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■ SUP 6.2.5 G sets out the differences between these types of applications and the circumstances in which they should be made.

6.2.5

FCA PRA

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Table Variation and cancellation of *Part 4A permission* and imposition, variation and cancellation of requirements. See ■ SUP 6.2.3A G to ■ SUP 6.2.3E G



Question	Variation of Part 4A permission	Cancellation of Part 4A permission	Imposition, variation and cancellation of requirements
What does the application apply to?	Individual elements of a <i>firm's Part 4A permission</i> . Variations may involve adding or removing categories of <i>regulated activity</i> or <i>specified investments</i> or varying or removing any <i>limitations</i> in the <i>firm's Part 4A permission</i> .	A <i>firm's</i> entire <i>Part 4A permission</i> and not individual elements within it.	Any <i>requirement</i> imposed on a <i>firm</i> with a <i>Part 4A permission</i> . <i>Requirements</i> may involve requiring the <i>firm</i> concerned to take or refrain from taking a specified action.
In what circumstances is it usually appropriate to make an application?	If a <i>firm</i> : 1. wishes to change the <i>regulated activities</i> it carries on in the <i>United Kingdom</i> under a <i>Part 4A permission</i> (SUP 6.3); or  2. has the ultimate intention of ceasing carrying on <i>regulated activities</i> but due to the nature of those <i>regulated activities</i> (for example, <i>accepting deposits</i> , or <i>insurance business</i> ) it will require a long term (normally over six months) to wind down (run off) its business (see SUP 6.2.8 G to SUP 6.2.11 G and SUP 6 Annex 4 G).	If a <i>firm</i> : 1. has ceased to carry on all of the <i>regulated activities</i> for which it has <i>Part 4A permission</i> (SUP 6.4); or 2. wishes or expects to cease carrying on all of the <i>regulated activities</i> for which it has <i>Part 4A permission</i> in the short term (normally not more than six months). In this case, the <i>firm</i> may apply to cancel its <i>Part 4A permission</i> prior to ceasing the <i>regulated activities</i> (see SUP 6.4.3 G).	If a <i>firm</i> : 1. wishes to have a new <i>requirement</i> imposed on it; or  2. wishes to vary or cancel an existing <i>requirement</i> imposed by the <i>FCA</i> or <i>PRA</i> (for example, if anything relating to the <i>firm's</i> individual circumstances change and any existing <i>requirement</i> should be varied or cancelled).

6.2.6

FCA PRA

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A *firm* which is seeking :

- (1) to vary its *Part 4A permission* substantially; or
- (2) to cancel its *Part 4A permission*; or
- (3) the imposition of a new *requirement* and/or the variation or cancellation of any existing *requirement*;

should discuss its plans with its supervisory contact at the relevant regulator as early as possible before making an application, in order to comply with *Principle 11* (see

■ SUP 15.3.7 G ). These discussions will help the relevant regulator and the *firm* to agree the correct approach for the *firm*.

**6.2.7**

**FCA PRA**

**G**

If a *firm* intends to cease carrying on one or more *regulated activities* permanently, it should give prompt notice to the *appropriate regulator* to comply with *Principle 11* (see ■ SUP 15.3.8 G (1)(d)). A *firm* should consider whether it needs to notify the *appropriate regulator* before applying to vary or cancel its *Part 4A permission*.

**Firms with long term liabilities to customers**

**6.2.8**

**FCA PRA**

**G**

Discussions with the *appropriate regulator* are particularly relevant where the *firm* has to discharge obligations to its *customers* or policyholders before it can cease carrying on a *regulated activity*. This may be the case, for example, where the *firm* is an *insurer*, a *bank* a *dormant account fund operator*, or, as is often the case, holding *client money* or *customer assets*.

**6.2.9**

**FCA PRA**

**G**

If an *insurer* , a *bank* , or a *dormant account fund operator* wishes to cease carrying on all *regulated activities* for which it has *Part 4A permission*, it will usually be necessary to wind down the business over a long term period which is normally more than six months. This may also be the case for a *firm* holding *client money* or *customer assets*. In these circumstances, it will usually be appropriate for the *firm* to apply for variation of its *Part 4A permission* and/or imposition of a new *requirement*, variation of any existing *requirement* or cancellation of such a *requirement* before commencing the wind-down. A *firm* should only make an application for cancellation of *permission* when it expects to complete its wind-down (run-off) within six months.

**6.2.10**

**FCA PRA**

**G**

A *firm* which is winding down (running off) its activities should contact its supervisory contact at the *appropriate regulator* to discuss its circumstances. Discussions will focus on the *firm's* winding down plans and the need for the *firm* to vary or cancel its *Part 4A permission* and/or the need to impose a new *requirement*, vary any existing *requirement* or cancel such a *requirement*. Following these discussions the *firm* should usually make the relevant application, as appropriate.

**6.2.10A**

**FCA PRA**

**G**

In certain circumstances the *FCA* and/or the *PRA* may use their *own-initiative powers* (see ■ SUP 7 and ■ EG 8) (Variation and cancellation of permission on the *FCA's* own initiative and intervention against incoming firms)).

**6.2.11**

**FCA PRA**

**G**

- (1) Specific guidance on the additional procedures for a *firm* winding down (running off) its business in the circumstances discussed in ■ SUP 6.2.8 G is in ■ SUP 6 Annex 4.
- (2) The guidance in ■ SUP 6 Annex 4 applies to any *firm* that is applying for variation of *Part 4A permission* or for the imposition, variation or cancellation of a *requirement* before it applies for cancellation of *Part 4A permission* to enable it to wind down (run off) its business over a long term period of six months or more. It will apply to most *insurers* and *banks* and, in some circumstances, to *firms* holding *client money* or *customer assets*.
- (3) If a *firm* wishes to cease carrying on some of its *regulated activities*, or the *specified investments* in respect of which the activities are carried on, the *appropriate regulator* may consider it appropriate for the *firm* to comply with

the additional procedures in ■ SUP 6 Annex 4. This would depend on the scale and nature of the *regulated activities* concerned. This might be the case, for example, if the *firm* is ceasing a significant part of its business in respect of which it has outstanding obligations to *customers* and it is believed that the additional procedures would protect *consumers*.

### UK firms exercising EEA or Treaty rights

6.2.12

FCA PRA

G

A *UK firm* should assess the effect of any change to its *Part 4A permission*, or any *requirements*, on its ability to continue to exercise any *EEA right* or *Treaty right* and discuss any concerns with its appropriate supervisory contact(s). This may also change the *applicable provisions* with which it is required to comply by a *Host State*.

6.2.13

FCA PRA

G

A *UK firm* which, as well as applying to vary or cancel its *Part 4A permission*, wishes to vary or terminate any business which it is carrying on in another *EEA State* under one of the *Single Market Directives*, should follow the procedures in ■ SUP 13 (Exercise of passport rights by UK firms) on varying or terminating its *branch* or *cross border services* business.

### The Lloyd's market

6.2.14

FCA PRA

G

A *firm* making an application in accordance with ■ SUP 6 which requires any approval from the *Society of Lloyd's* should apply to the *Society* for this at the same time as applying to the relevant regulator. See ■ SUP 6 Annex 4 for additional procedures.



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

### What is a variation of permission?

- 6.3.1** **G** [deleted]
- 6.3.1A** **G** Under section 55H of the *Act*, an *FCA-authorized person* may apply to the *FCA* to vary its *Part 4A permission* to:
- FCA**
- (1) allow it to carry on further *regulated activities*, other than a *PRA-regulated activity*; or
  - (2) reduce the number of *regulated activities* it is permitted to carry on; or
  - (3) vary the description of its *regulated activities* (including by the removal or variation of any *limitations*).
- 6.3.1B** **G** Under section 55I of the *Act*, an *FCA-authorized person* may apply to the *PRA* to vary its *Part 4A permission* to add *regulated activities* which include a *PRA-regulated activity*.
- FCA PRA**
- 6.3.1C** **G** Under section 55I of the *Act*, a *PRA-authorized person* may apply to the *PRA* to vary its *Part 4A permission* to:
- PRA**
- (1) allow it to carry on further *regulated activities*; or
  - (2) reduce the number of *regulated activities* it is permitted to carry on; or
  - (3) vary the description of its *regulated activities* (including by the removal or variation of any *limitations*).
- 6.3.2** **G** [deleted]

### Applications to impose, vary or cancel requirements

- 6.3.2A** **G** Under section 55L(5) of the *Act* a *firm* with a *Part 4A permission* may apply to the *FCA* for the imposition of a new *requirement* and/or the variation or cancellation of any *requirement* previously imposed by the *FCA*.
- FCA**

6.3.2B  
PRA

G

Under section 55M(5) of the *Act*, a *PRA-authorized person* may apply to the *PRA* for the imposition of a new *requirement* and/or the variation or cancellation of any *requirement* previously imposed by the *PRA*.

**The scope of applications**

6.3.2C  
FCA

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An application may relate to one or more of ■ SUP 6.3.1A G and ■ SUP 6.3.2A G. For example, a *firm* may apply to vary its *Part 4A permission* to add a new *regulated activity* and at the same time remove a *regulated activity* for which it currently has *permission*.

6.3.2D  
PRA

G

An application may relate to one or more of ■ SUP 6.3.1C G and ■ SUP 6.3.2B G. For example, a *firm* may apply to vary its *Part 4A permission* to add a new *regulated activity* and at the same time remove a *regulated activity* for which it currently has *permission*.

6.3.3  
FCA PRA

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In applying for a variation of *Part 4A permission*, a branch of a *firm* from outside the *EEA* should be mindful of any continuing requirements referred to in the rest of the *Handbook*.

**Applications to add additional regulated activities**

6.3.4  
FCA PRA

G

In determining the activities and *specified investments* for which a *Part 4A permission* is required, and whether to apply for a variation of that *permission*, a *firm* may need to take professional advice and may also wish to discuss this with its appropriate supervisory contact.

6.3.5  
FCA PRA

G

Before applying to vary its *permission*, a *firm* should determine whether there are any statutory restrictions that do not allow combinations of certain types of *regulated activity*, particularly for *insurance business* or *UCITS managers*. For example, the *PRA* will not grant a variation of *Part 4A permission* to allow a *friendly society* to carry on reinsurance business as this is not permitted under the *Friendly Societies Acts 1974 and 1992*. A *firm* should discuss its plans with its appropriate supervisory contact.

6.3.6  
FCA PRA

G

If a *firm* is seeking a variation of *Part 4A permission* to add categories of *regulated activities*, it should be mindful of the directive requirements referred to at ■ SUP 6.3.42 G relating to the need to commence new activities within 12 months.

**Applications to remove certain regulated activities**

6.3.7  
FCA PRA

G

If a *firm* wishes to cease carrying on an activity for which it has *Part 4A permission*, it will usually apply to vary its *Part 4A permission* to remove that activity. If a *firm* wishes to cease carrying on an activity in relation to any *specified investment*, it will usually apply to vary its *Part 4A permission* to remove that *specified investment* from the relevant activity.

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

6.3.8  
FCA PRA

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- (1) Where a *firm* is submitting an application for variation of *Part 4A permission* which would lead to a change in the *controlled functions* of its *approved persons*, it should, at the same time and as appropriate:

- (a) make an application for an internal transfer of an *approved person*, Form E (Internal transfer), or make an application for an individual to perform additional *controlled functions*, the relevant Form A (Application); see ■ SUP 10.13.3 D to ■ SUP 10.13.5 G;
  - (b) notify the *appropriate regulator* of any *approved person* who has ceased to perform a *controlled function* specified by that regulator, Form C (Ceasing to perform controlled functions); see ■ SUP 10.13.6 R to ■ SUP 10.13.13 G.
- (2) If the *firm* intends to recruit new individuals to perform *controlled functions*, it should apply for approval of the individuals as *approved persons* as soon as possible using Form A (Application); see ■ SUP 10.12.

6.3.9 G [deleted]

6.3.10 G [deleted]

**Variation of permission involving insurance business**

6.3.11 G A *firm* with *Part 4A permission* to carry on *insurance business*, which is applying for a variation of its *Part 4A permission* to add further insurance activities or *specified investments*, will be required to submit particular information on its existing activities as part of its application. This includes the *scheme of operations* which is required to be submitted as part of the application pack (for further details on the *scheme of operations*, see ■ SUP App 2 (Insurers: scheme of operations)).

6.3.12 G In applying to vary its *Part 4A permission* to add categories of *specified investments*, in relation to *insurance business*, a *firm* carrying on *insurance business* will need to determine the *classes* of *specified investments* relating to *effecting* and *carrying out contracts of insurance* for which variation of *Part 4A permission* will be necessary, having regard to whether certain *classes* of contract may qualify to be effected or carried out on an ancillary or supplementary basis (see SUP 3.12.6G to SUP 3.12.12G).

6.3.13 G The application for variation of *Part 4A permission* will need to provide information about the *classes* of *contract of insurance* for which variation of *Part 4A permission* is requested and also those *classes* qualifying to be carried on, on an ancillary or supplementary basis. For example, an *insurer* applying to vary its *permission* to include *class 10* (motor vehicle liability, other than carrier's liability) must satisfy the *FCA* that it will meet, and continue to meet, *threshold condition 3F* (Appointment of claims representatives). *Firms* should note that, although the relevant regulator is able in principle to use its power to give *Part 4A permission* for an applicant to carry on a *regulated activity* for which it did not originally apply, this is not possible under the Insurance Directives, which set out minimum information requirements for an application for *authorisation* including information on the specified investments the applicant proposes to deal in.

6.3.14 G (1) A *firm* carrying on *insurance business* which is seeking to cease such business in respect of one or more classes of *specified investment*, but which is not intending to cease all *insurance business*, should apply to vary its *Part 4A permission* to remove the activity of *effecting contracts of insurance* in respect of those *specified investments* in relation to which it no longer wishes to carry

on business. A *firm* intending to cease all *insurance business* should refer to ■ SUP 6 Annex 4.

- (2) If the application for variation of *Part 4A permission* is granted by the *PRA*, the *firm* will have *Part 4A permission* only to *carry out contracts of insurance* in respect of the *specified investments* in relation to which it no longer wishes to carry on business (see ■ SUP 6 Annex 4). This will allow the *firm* to run off this aspect of its business. When the business in question has been run-off completely, the *firm* should then apply to vary its *Part 4A permission* to remove the relevant *classes of specified investment*.

**The application for variation of permission and/or imposition, variation or cancellation of requirements**

6.3.15

D

FCA PRA

- (1) A *firm* other than a *credit union* wishing to make an application under ■ SUP 6 must apply online using the form specified on the ONA system.
- (2) [deleted]
- (3) Until the application has been determined, a *firm* which submits an application must inform the relevant regulator of any significant change to the information given in the application immediately it becomes aware of the change.
- (3A) Where an application requires the consent of the *FCA*, a *firm* which submits an application must inform the *FCA* of any significant change to the information given in the application immediately it becomes aware of the change.
- (4) Where a *firm* is obliged to submit any form, notice or application online under (1), if the ONA information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must submit any form, notice or application by using the form in ■ SUP 6 Ann 5D and submitting it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

6.3.15A

G

FCA PRA

- (1) If the ONA systems fail and online submission is unavailable for 24 hours or more, the relevant regulator will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 6.3.15 D (4) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification) should be used.
- (2) Where ■ SUP 6.3.15 D (4) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

6.3.15B

G

PRA

A *credit union* wishing to make an application under ■ SUP 6 must apply using the form in ■ SUP 6 Annex 5 D and submit its application in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

6.3.16

FCA PRA

G

- (1) Section 55(U)(2) of the *Act* (Applications under this Part) requires that the application for variation of *Part 4A permission* must contain a statement:
  - (a) of the desired variation; and
  - (b) of the *regulated activity* or *regulated activities* which the *firm* proposes to carry on if its *permission* is varied.
- (1A) Section 55(U)(3) of the *Act* requires that an application for variation of a *requirement* imposed under section 55L or 55M or the imposition of a new *requirement* must contain a statement of the desired variation or *requirement*.
- (2) The full form and content of the application for variation of *Part 4A permission* or for the imposition or variation of a *requirement* is a matter for direction by the relevant regulator, who will determine the additional information and documentation required on a case by case basis.

6.3.17

FCA PRA

G

- (1) [deleted]
- (2) A *firm* is advised to discuss its application with the relevant regulator before submission, particularly if it is seeking a variation of *Part 4A permission* or imposition, variation or cancellation of a *requirement* within a short timescale. A *firm* is also advised to include as much detail as possible (including any additional information identified by its supervisors at this stage) with its application.

6.3.18

FCA PRA

G

The relevant regulator, as soon as possible after receipt of an application, will advise the *firm* of any additional information which is required as part of its application (see ■ SUP 6.3.23 G to ■ SUP 6.3.27 G). The amount of information required will vary depending on the scale of the variation in the context of the *firm* as a whole, and the nature, risk profile and complexity of the variation.

#### **Applications from firms winding down (running off) business over the long term**

6.3.19

FCA PRA

G

A *firm* which is making an application for variation of *Part 4A permission* to wind down (run off) its business before applying for a cancellation of that *permission* (see ■ SUP 6.2.9 G) should read ■ SUP 6 Annex 4 for details of the additional procedures that apply.

#### **Applications involving significant changes**

6.3.20

FCA PRA

G

In certain cases, the relevant regulator may consider that granting an application for imposition, variation or cancellation of any *requirement* or for variation of *Part 4A permission* which includes adding further *regulated activities* or changing a *limitation* would cause a significant change in the *firm's* business or risk profile. In these circumstances, the relevant regulator may require the *firm* to complete appropriate parts of the full application pack (see the relevant regulator's website ), as directed by the relevant regulator. Applications for variation involving significant changes may be processed by the *firm's* appropriate supervisory contact in conjunction with the Authorisations Team. Examples of an application for imposition, variation or cancellation of a *requirement* and for variation of *Part 4A permission* which may represent a significant change include, but are not limited to, an application:

- (1) to carry on new *regulated activities* such as *accepting deposits*;



- (2) to extend the *insurance business* of a *firm* which already has *Part IV permission* which includes *carrying out* or *effecting contracts of insurance* (or both), to new *classes of specified investment*; or
- (3) to remove a *requirement* preventing a *firm* from holding or controlling *client money*.
- (4) [deleted]

**6.3.21** G  
FCA PRA

A *firm* that wishes to make a significant change to its business, or is unsure whether the changes it is proposing would be considered to be significant, should contact the relevant regulator. The relevant regulator will discuss with the *firm* whether it will be required to submit parts of the application pack and whether any reports from third parties may be required.

**6.3.22** G  
FCA PRA

The fees payable for a *firm* applying for the imposition, variation or cancellation of any *requirements* and/or a variation of its *Part 4A permission* are set out in ■ FEES 3.

**6.3.22A** R

[Deleted]

**6.3.22B** G

[Deleted]

**6.3.22C** G

[Deleted]

**Information to be supplied to the relevant regulator as part of the application**

**6.3.23** G  
FCA PRA

- (1) The relevant regulator may ask for any information it reasonably requires before determining the application. The information required will be determined on a case by case basis, taking into account the relevant regulator's existing knowledge of the *firm* and the change requested. The relevant regulator will advise the *firm* of the information required at an early stage in the application process.
- (2) The nature of the information and documents requested will be related to the risks posed to the relevant regulator's *statutory objectives* by the *regulated activities* and any *unregulated activities* that the *firm* is carrying on or is seeking to carry on. This information will be proportional to the nature of the business which the *firm* intends to carry on or the risks posed by the *firm*.

**6.3.24** G  
FCA PRA

- (1) The information the relevant regulator may require includes, but is not limited to, the examples given in ■ SUP 6.3.25 G:

**6.3.25** G  
FCA PRA

Table Information which may be required. See ■ SUP 6.3.24 G

Type of business	Information which may be required
All	1. Details of how the <i>firm</i> plans to comply with the relevant regulator's regulatory requirements relating to any additional <i>regulated activities</i> it is seeking to carry on.

Type of business	Information which may be required
	<p>2. Descriptions of the <i>firm's</i> key controls, senior management arrangements and audit and proposed compliance arrangements in respect of any new <i>regulated activity</i> (see <i>SYSC</i>).</p> <p>3. Organisation charts and details of individuals transferring or being recruited to perform new <i>controlled functions</i> (see <i>SUP 10</i> for details of the application or transfer procedures under the <i>approved persons</i> regime).</p>
<i>Insurance business</i>	<p>1. A <i>scheme of operations</i> in accordance with <i>SUP App 2</i>.</p> <p>2. (If the application seeks to vary a <i>permission</i> to include <i>motor vehicle liability insurance business</i>) details of the claims representatives required by <i>threshold condition 3F</i> (Appointment of claims representatives), if applicable.</p>
<i>Accepting deposits and designated investment business</i>	<p>1. A business plan which includes the impact of the variation on the <i>firm's</i> existing or continuing business financial projections for the <i>firm</i>, including the impact of the requested change on the <i>firm's</i> financial resources and capital adequacy requirements.</p>

6.3.26  
FCA PRA

G

Specific information may also be required by the relevant regulator on the activities the *firm* intends to cease, or cease carrying on in relation to any *specified investments* (see ■ *SUP 6 Annex 4*).

6.3.27  
FCA PRA

G

When determining whether to grant an application, the relevant regulator may request further information, including reports from third parties such as the *firm's* auditors, and may require meetings with, and visits to, the *firm*. The relevant regulator may also require a statement from members of the *firm's governing body* confirming, to the best of their knowledge, the completeness and accuracy of the information supplied. The relevant regulator may also discuss the application with other regulators or exchanges.

**When will an application for variation of permission and/or imposition or variation of requirements be granted?**

6.3.28  
FCA PRA

G

(1) The relevant regulator is required by section 55B(3) of the *Act* to ensure that a *firm* applying to gain or vary a *Part 4A permission* or to impose or vary a *requirement* satisfies and will continue to satisfy the *threshold conditions* in relation to all the regulated activities for which the *firm* has or will have a *Part 4A permission*.

(2) [deleted]

6.3.28A  
FCA

G

Where a *firm* applies to the *PRA* for the variation of its *Part 4A permission*, the *FCA*, in giving consent to such an application or imposing any requirements on the *firm*, is required by section 55B(3) of the *Act* to ensure that the *firm* satisfies and will continue to satisfy the *threshold conditions* for which the *FCA* is responsible in relation to all the *regulated activities* for which the *firm* has or will have *Part 4A permission* after the variation.

6.3.28B  
FCA

G

(1) The *FCA's* duty under section 55B(3) of the *Act* does not prevent it, having regard to that duty, from taking such steps as it considers necessary in relation to a particular *firm*, to meet any of its operational objectives. This may include

granting or consenting to (as the case may be) a *firm's* application for variation of *Part 4A permission* when it wishes to wind down (run off) its business activities and cease to carry on new business as a result of no longer being able to satisfy the *threshold conditions*.

(2) The *FCA* may refuse an application, or refuse to give its consent to an application, under section 55B(3) of the *Act* if it considers that it is desirable to do so in order to advance any of its operational objectives.

**6.3.28C**  
**PRA**

**G**

(1) The *PRA's* duty under section 55B(3) of the *Act* does not prevent it, having regard to that duty, from taking such steps as it considers necessary in relation to a particular *firm*, to meet any of its objectives. This may include, with the consent of the *FCA*, granting a *firm's* application for variation of *Part 4A permission* when it wishes to wind down (run off) its business activities and cease to carry on new business as a result of no longer being able to satisfy the *threshold conditions*.

(2) The *PRA* may refuse an application under section 55B(3) of the *Act* if it considers that it is desirable to do so in order to advance any of its objectives.

**6.3.29**  
**FCA PRA**

**G**

In determining whether the *firm* satisfies and continues to satisfy the *threshold conditions*, the regulator concerned will consider whether the *firm* is ready, willing and organised to comply with the regulatory requirements it will be subject to if the application is granted.

**6.3.30**  
**FCA PRA**

**G**

The specific requirements that apply to certain types of activity will also need to be considered as these may not allow certain combinations of activity.

**6.3.31**  
**FCA PRA**

**G**

In considering whether to grant (or consent to, as the case may be) a *firm's* application to vary its *Part 4A permission* or impose or vary a *requirement*, the regulator concerned will also have regard, under section 55R(1) of the *Act* (Persons connected with an applicant), to any *person* appearing to be, or likely to be, in a relationship with the *firm* which is relevant . The *Financial Groups Directive Regulations* make special consultation provisions where the regulator is exercising its functions under Part 4A of the *Act* (Permission to carry on regulated activities) for the purposes of carrying on supplementary supervision . Broadly, where a regulator, in the course of carrying on supplementary supervision, is considering varying the *Part 4A permission* of a *person* who is a member of a *group* which is a *financial conglomerate*, the consultation provisions in section 55R(2) of the *Act* are disapplied. In their place, the regulations impose special obligations, linked to the *Financial Groups Directive*, to obtain the consent of the relevant competent authorities, to consult those authorities and to consult with the *group* itself.

**The regulator's powers in respect of application for variation of Part IV permission**

**6.3.32**

**G**

[deleted]

**6.3.32A**  
**FCA**

**G**

The *FCA's* power to vary a *Part 4A permission* after it receives an application from a *firm* extends to including in the *Part 4A permission* as varied any provision that could be included as though a fresh *permission* was being given in response to an application

under section 55A of the *Act* (Application for permission). Under section 55E of the *Act* (Giving permission: the FCA) the *FCA* may:

- (1) incorporate in the description of a *regulated activity* such *limitations* (for example, as to the circumstance in which a *regulated activity* may or may not be carried on) as it considers appropriate; or
- (2) specify a narrower or wider description of *regulated activity* than that to which the application relates; or
- (3) give permission for the carrying on of a *regulated activity* which is not included among those to which the application relates and is not a *PRA-regulated activity*.

**6.3.32B**

**G**

**FCA**

Thus, when determining an application for variation of *Part 4A permission*, the *FCA* can, include new *limitations* and vary existing *limitations*, either on application from the *firm* (for example, the *customer* categories with which a *firm* may carry on a specified activity) or, if considered appropriate, by the *FCA* under section 55E(5) of the *Act*.

**6.3.32C**

**G**

**FCA PRA**

If a *firm* has applied (whether to the *FCA* or the *PRA*) for the variation of a *Part 4A permission*, the *FCA* has the power to impose on that person such *requirements*, taking effect on or after the variation of permission, as the *FCA* considers appropriate.

**6.3.33**

**G**

[deleted]

**6.3.33A**

**G**

**PRA**

The *PRA*'s powers to vary a *Part 4A permission* after it receives an application from a *firm* extends, subject to the consent of the *FCA*, to including in the *Part 4A permission* as varied any provision that could be included as though a fresh *permission* was being given in response to an application under section 55A of the *Act* (Application for permission). Under section 55F of the *Act* (Giving permission: the *PRA*), the *PRA* may:

- (1) incorporate in the description of a *regulated activity* such *limitations* (for example, as to the circumstance in which a *regulated activity* may or may not be carried on) as it considers appropriate; or
- (2) specify a narrower or wider description of *regulated activity* than that to which the application relates; or
- (3) give permission for the carrying on of a *regulated activity* which is not included among those to which the application relates.

**6.3.33B**

**G**

**PRA**

Thus, when determining an application for variation of *Part 4A permission*, the *PRA* can include new *limitations* and vary existing *limitations*, either on application from the *firm* (for example, the *customer* categories with which a *firm* may carry on a specified activity), or if considered appropriate by the *PRA* under section 55F(4) of the *Act*.

**6.3.33C**

**G**

**PRA**

If a *firm* has applied to the *PRA* for the variation of a *Part 4A permission*, the *PRA* has the power to impose on that person such *requirements*, taking effect on or after the giving or variation of the *permission*, as the *PRA* considers appropriate.

**6.3.34**  
**FCA PRA**

**G**

If *limitations* are varied or imposed or *requirements* are imposed by the relevant regulator which were not included in the *firm's* application for variation of *Part 4A permission*, the relevant regulator will be required to issue the *firm* with a *warning notice* and *decision notice* (see ■ SUP 6.3.39 G).

**6.3.34A**  
**FCA PRA**

**G**

Where a *firm* has made an application to the *PRA* for the variation of its *Part 4A permission* and *requirements* are imposed by the *FCA* which were not included in the *firm's* application, the *FCA* will be required to issue the *firm* with a *warning notice* and *decision notice* (see ■ SUP 6.3.39 G).

**How long will an application take?**

**6.3.35**  
**FCA PRA**

**G**

Under section 55V(1) of the *Act* (Determination of applications), the relevant regulator has six months to consider a completed application from the date of receipt.

**6.3.36**  
**FCA PRA**

**G**

If the relevant regulator receives an application which is incomplete (that is, if information or a document required as part of the application is not provided), section 55V(2) of the *Act* requires the relevant regulator to determine that incomplete application within 12 months of the initial receipt of the application.

**6.3.36A**  
**FCA PRA**

**G**

Where the application cannot be determined by the *PRA* without the consent of the *FCA*, section 55V(3) of the *Act* requires that the *FCA's* decision must also be made within the period required in ■ SUP 6.3.35 G or ■ SUP 6.3.36 G as appropriate.

**6.3.37**  
**FCA PRA**

**G**

Within these time limits, however, the length of the process will relate directly to the complexity of the application.

**6.3.37A**  
**FCA**

**G**

The *FCA* publishes standard times on its website setting out how long the application process is expected to take. From time to time, the *FCA* also publishes its performance against these times.

**6.3.38**  
**FCA PRA**

**G**

At any time after receiving an application and before determining it, the relevant regulator may require the applicant to provide additional information or documents. The circumstances of each application will dictate what additional information or procedures are appropriate.

**How will the relevant regulator make the decision?**

**6.3.39**  
**FCA PRA**

**G**

A decision to grant an application will be taken by appropriately experienced staff at the relevant regulator. However, if the staff dealing with the application recommend that a *firm's* application for variation of *Part 4A permission* be either refused or granted subject to *limitations* or *requirements* or a narrower description of *regulated activities* than applied for, the decision will be subject to the regulator's formal decision making process.

**6.3.40**  
**FCA**

**G**

*DEPP* gives guidance on the *FCA's* decision making procedures including the procedures it will follow if it proposes to refuse an application for variation of *Part 4A permission* or for imposition or variation of a *requirement* either in whole or in part (for example,

an application granted by the *FCA* but subject to *limitations* or *requirements* not applied for).

### Commencing new regulated activities

6.3.41

FCA PRA

G

If the variation of *Part 4A permission* is given, the relevant regulator will expect a *firm* to commence a new *regulated activity* in accordance with its business plan (revised as necessary to take account of changes during the application process) or scheme of operations for an *insurer*. *Firms* should take this into consideration when determining when to make an application to the relevant regulator.

6.3.42

FCA PRA

G

- (1) *Firms* should be aware that the *appropriate regulator* may exercise its *own-initiative variation power* to vary or cancel their *Part 4A permission* if they do not (see section 55J of the *Act* (Variation or cancellation on initiative of regulator)):
  - (a) commence a *regulated activity* for which they have *Part 4A permission* within a period of at least 12 months from the date of being given; or
  - (b) carry on a *regulated activity* for which they have *Part 4A permission* for a period of at least 12 months (irrespective of the date of grant).

- (1A) The *appropriate regulator* may exercise its *own-initiative variation power* to cancel an *investment firm's Part 4A permission* if the *investment firm* has provided or performed no *investment services and activities* at any time during the period of six months ending with the day on which the *warning notice* under section 55Z(1) of the *Act* is given (see ■ EG 8).

[Note: article 8(a) of *MiFID*]

- (2) If the *appropriate regulator* considers that such a variation or cancellation of the *firm's Part 4A permission* is appropriate, it will discuss the proposed action with the *firm* and its reasons for not commencing or carrying on the *regulated activities* concerned.

6.3.43

FCA PRA

G

When a *firm* commences new *regulated activities* following a variation of a *Part 4A permission*, it should have particular regard to the requirements of *Principle 11* (Relations with regulators) (see ■ SUP 15.3.8 G (1)(c)).



## 6.4 Applications for cancellation of permission

6.4.1 G [deleted]

6.4.1A FCA G Under section 55H(3) of the *Act* (Variation by FCA at request of authorised person), if an *FCA-authorised person* applies to the *FCA*, the *FCA* may cancel its *Part 4A permission*. Cancellation applies to a *firm's* entire *Part 4A permission*, that is to every activity and every *specified investment* and not to the individual elements such as *specified investments*. Changes to the individual elements of a *permission* would require a variation.

6.4.1B PRA G Under section 55I(2) of the *Act* (Variation by PRA at request of authorised person), if a *PRA-authorised person* applies to the *PRA*, the *PRA* may cancel its *Part 4A permission*. Cancellation applies to a *firm's* entire *Part 4A permission*, that is to every activity and every *specified investment* and not to the individual elements such as *specified investments*. Changes to the individual elements of a *permission* would require a variation.

6.4.2 G [deleted]

6.4.2A FCA G Under section 55H(4) of the *Act*, the *FCA* may refuse an application from a *firm* to cancel its *Part 4A permission* if it considers that it is desirable to do so in order to advance any of its operational objectives.

6.4.2B PRA G Under section 55I(4) of the *Act*, the *PRA* may refuse an application from a *firm* to cancel its *Part 4A permission* if it appears that it is desirable to do so in order to advance any of its objectives.

6.4.3 FCA PRA G

- (1) A *firm* may apply to the relevant regulator to cancel its *Part 4A permission* before it has ceased carrying on all *regulated activities*. However, where a *firm* makes a formal application for cancellation of its *permission* when it has not yet ceased carrying on *regulated activities*, the relevant regulator will expect the *firm*:
  - (a) to cease those *regulated activities* within the short term (normally no more than six months from the date of application for cancellation); and
  - (b) to have formal plans to cease its *regulated activities* in an orderly manner.

- (2) *Firms* should note, however, that the relevant regulator will not grant an application for cancellation of *Part 4A permission* until the *firm* can demonstrate that it has ceased carrying on all *regulated activities* (■ SUP 6.4.19 G).
- (3) The relevant regulator may apply additional procedures or require additional information, as if the *firm* had entered into a long term wind down of business (see ■ SUP 6 Annex 4), if it considers it appropriate to the circumstances of the *firm*.

**6.4.4**

**FCA PRA**

**G**

Additional guidance for a *firm* carrying on *insurance business, accepting deposits, operating a dormant account fund* or which holds *client money* or *customer's assets* is given in ■ SUP 6 Annex 4. As noted in ■ SUP 6.2.9 G, it will usually be appropriate for a *firm* to apply for variation of its *Part 4A permission* and/or the imposition, variation or cancellation of a *requirement* while winding down (running off) its *regulated activities* and before applying to cancel its *Part 4A permission*.

**The application for cancellation of permission**

**6.4.5**

**FCA PRA**

**D**

- (1) A *firm* other than a *credit union* wishing to cancel its *Part 4A permission*, must apply online at the *appropriate regulator* website using the form specified on the ONA system.
- (2) [deleted]
- (3) [deleted]
- (4) Until the application has been determined, a *firm* which submits an application for cancellation of *Part 4A permission* must inform the relevant regulator of any significant change to the information given in the application immediately it becomes aware of the change.
- (5) Where a *firm* is obliged to submit any form, notice or application online under (1), if the ONA systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must submit any form, notice or application by using the form in ■ SUP 6 Annex 6D and submitting it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

**6.4.5A**

**FCA PRA**

**G**

- (1) If the ONA systems fail and online submission is unavailable for 24 hours or more, the relevant regulator will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 6.4.5 D (5) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification) should be used.
- (2) Where ■ SUP 6.4.5 D (5) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

**6.4.5B**

**PRA**

**G**

A *credit union* wishing to cancel its *Part 4A permission* must apply using the form in ■ SUP 6 Annex 6 D and submit its application in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification). The application must be addressed for the attention of the [to be inserted] at the *PRA*.



6.4.6  
FCA PRA

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- (1) In addition to applying for cancellation of *Part 4A permission* in accordance with ■ SUP 6.4.5 D, a *firm* may discuss prospective cancellations with its supervisory contact at the *appropriate regulator*. Alternatively a *firm* can contact the Firms Contact Centre on 0845 606 9966.
- (2) To contact the
  - (a) write to: Cancellations Team, The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS; or ; or
  - (b) email [cancellation.team@fca.org.uk](mailto:cancellation.team@fca.org.uk)
- (3) If a *firm* which has applied for cancellation decides to remain authorised it should inform the relevant regulator immediately using one of the methods in ■ SUP 6.4.6 G (2).

6.4.7  
FCA PRA

G

When an application is received , the relevant regulator will send the *firm* a written acknowledgement. The *firm* will be required to provide information which, in the opinion of the relevant regulator, is necessary for it to determine whether to grant or refuse the application for cancellation of *Part 4A permission*.

### Information to be supplied to the relevant regulator as part of the application for cancellation of permission

6.4.8  
FCA PRA

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The information which the relevant regulator may request on the circumstances of the application for cancellation and the confirmations which the relevant regulator may require a *firm* to provide will differ according to the nature of the *firm* and the activities it has *Part 4A permission* to carry on.

6.4.9  
FCA PRA

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A *firm* will be expected to demonstrate to the relevant regulator that it has ceased carrying on *regulated activities*. The relevant regulator may require, as part of the application, a report from the *firm* that includes, but is not limited to, the confirmations referred to in ■ SUP 6.4.12 G (as appropriate to the *firm's* business). The relevant regulator may also require additional information to be submitted with the report including, in some cases, confirmation or verification from a professional adviser on certain matters to supplement the report (see ■ SUP 6.4.15 G).

6.4.10  
FCA

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- (1) If a *firm* is subject to the complaints rules in *DISP*, the *FCA* may request confirmation from the *firm* that there are no unresolved, unsatisfied or undischarged complaints against the *firm* from a *customer* of the *firm*.
- (2) If there are unresolved or undischarged complaints against a *firm* from a *customer* of the *firm*, the *FCA* may request confirmation, as appropriate, of the steps (if any) which have been taken under the *firm's* complaints procedures and the amount of compensation claimed. The *FCA* may also request an explanation of the arrangements made for the future consideration of such complaints.

6.4.11  
FCA

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If the *firm* is carrying on *designated investment business* with *retail clients* , the *FCA* may request confirmation that the *firm* has written, or intends to write, to all *retail clients* with, or for whom, the *firm* has conducted *regulated activities* within a certain period.

**Confirmations and resolutions**

6.4.12

FCA PRA

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The relevant regulator will usually require the report in ■ SUP 6.4.9 G to be signed by a *director* or other officer with authority to bind the *firm*. It may include confirmations from the *firm* that, in relation to business carried on under its *Part 4A permission*, it has:

- (1) ceased carrying on all *regulated activities*;
- (2) properly disbursed funds in its *client bank accounts* and closed those accounts;
- (3) discharged all insurance or *deposit* liabilities; and
- (4) properly transferred all *investments*, title documents and other property that it held on behalf of *clients*.

6.4.13

FCA PRA

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The relevant regulator may also require a resolution from the *firm's governing body*, for example to support the application for cancellation of *permission*, expressed to be irrevocable, and to give the signatory the authority to sign the formal report to the relevant regulator.

6.4.14

FCA PRA

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Under section 398 of the *Act* (Misleading the FCA or PRA: residual cases), it is an *offence*, in purported compliance with a requirement imposed by or under the *Act* (including the directions in ■ SUP 6.4.5 D), for a *person* to knowingly or recklessly give the regulator information that is false or misleading. If necessary, a *firm* should take appropriate professional advice when supplying information required by the regulator(s). An *insurer*, for example, may ask an *actuary* to check assumptions in respect of future *claims* made under *contracts of insurance*.

**Reports from professionals**

6.4.15

FCA PRA

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The relevant regulator may require additional information, including professional advice, to supplement or support the report in ■ SUP 6.4.9 G where it considers this appropriate. Examples of reports that may be requested by the relevant regulator include, but are not limited to those detailed in ■ SUP 6.4.16 G.

6.4.16

FCA PRA

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Table Types of reports. See ■ SUP 6.4.15 G

Category of firm	Type of report
a <i>bank</i> or <i>building society</i>	? an audited balance sheet which confirms that, in the auditor's opinion, the <i>firm</i> has no remaining <i>deposit</i> liabilities to <i>customers</i> ;
	? a report from auditors or <i>reporting accountants</i> ;
a <i>securities and futures firm</i>	? a report from auditors or <i>reporting accountants</i>

Category of firm	Type of report
an <i>insurer</i>	<p>? an audited closing balance sheet which demonstrates that the <i>firm</i> has no insurance liabilities to <i>policyholders</i>;</p> <p>? a report from the auditors or <i>reporting accountants</i>; and</p> <p>? in some cases, an actuarial opinion as to the likelihood of any remaining liabilities to <i>policyholders</i>.</p>

**6.4.17**  
FCA PRA

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If a *firm* is transferring its business, the relevant regulator may require a professional opinion in respect of certain aspects of the transfer. For example, the relevant regulator may require a legal opinion on the validity of arrangements to transfer *regulated activities, client money, client deposits, custody assets* or any other property belonging to *clients*, to another *authorised person*. Alternatively, an auditor or *reporting accountant* may be requested to verify that a transfer has been properly accounted for in the *firm's* books and records. Transfers of *insurance* and *banking business* are subject to statutory requirements (see ■ SUP 18).

**6.4.18**  
FCA PRA

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**Approved persons**

A *firm* which is applying for cancellation of *Part 4A permission* and which is not otherwise *authorised* by, or under, the *Act* should, at the same time, comply with ■ SUP 10.13.6 R and notify the *appropriate regulator* of persons ceasing to perform *controlled functions* specified by that regulator. These forms should give the effective date of withdrawal, if known (see ■ SUP 10 (Approved persons)).

**6.4.19**  
FCA PRA

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**When will the relevant regulator grant an application for cancellation of permission?**

The relevant regulator will usually not cancel a *firm's Part 4A permission* until the *firm* can demonstrate that, in relation to business carried on under that permission, it has, as appropriate:

- (1) ceased carrying on *regulated activities* or fully run off or transferred all insurance liabilities;
- (2) repaid all *client money* and *client deposits*;
- (3) discharged *custody assets* and any other *property* belonging to *clients*; and
- (4) discharged, satisfied or resolved complaints against the *firm*.

**6.4.20**  
FCA PRA

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If it is not possible for a *firm* to demonstrate a relevant matter referred to in ■ SUP 6.4.19 G, for example, depositors are uncontactable, the *firm* will be expected to have satisfied therelevant regulator that it has made adequate provisions for discharging any liabilities to *clients* which do not involve the *firm* carrying on *regulated activities*.

**6.4.21**

**FCA PRA**

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Before the relevant regulator cancels a *firm's Part 4A permission*, the *firm* will be expected to be able to demonstrate that it has ceased or transferred all *regulated activities* under that *permission*. For example, the *firm* may be asked to provide evidence that a transfer of business (including, where relevant, any *client money*, *customer* assets or *deposits* or insurance liabilities) is complete. As noted in ■ SUP 6.4.9 G, the relevant regulator may require the *firm* to confirm this by providing a report, in a form specified by the relevant regulator:

- (1) as part of the application for cancellation of *permission*, if the *firm* has ceased carrying on all *regulated activities* under its *Part 4A permission* at the time of application (see ■ SUP 6.4.9 G); or
- (2) after the application but before its determination, if the *firm* has not ceased carrying on *regulated activities* under its *Part 4A permission* at the time of application.

**6.4.22**

**FCA PRA**

**G**

In deciding whether to cancel a *firm's Part 4A permission*, the relevant regulator will take into account all relevant factors in relation to business carried on under that *permission*, including whether:

- (1) there are unresolved, unsatisfied or undischarged complaints against the *firm* from any of its *customers*;
- (2) the *firm* has complied with ■ CASS 5.5.80 R and ■ CASS 7.2.15 R (Client money: discharge of fiduciary duty) and ■ CASS 7.2.19 R (Client money: allocated but unclaimed client money) if it has ceased to hold *client money*; these *rules* apply to both repayment and transfer to a third party;
- (3) the *firm* has ceased to hold or control *custody assets* in accordance with instructions received from *clients* and ■ COBS 6.1.7 R (Information concerning safeguarding of designated investments belonging to clients and client money) ;
- (4) the *firm* has repaid all *client deposits*, if it is ceasing to carry on *regulated activities* including *accepting deposits*;
- (5) the relevant regulator or another regulator has commenced an investigation against the *firm* or continuing enforcement action against the *firm*;
- (6) there are any matters affecting the *firm* which should be investigated before a decision on whether the *firm* should have its *Part 4A permission* cancelled by the relevant regulator or be disciplined;
- (7) the *firm* has unsettled or unexpired liabilities to *consumers*, for example, outstanding contracts (such as *deposits* or insurance liabilities);
- (8) the *firm* has settled all its debts to the *appropriate regulator*; and
- (9) the factors set out in ■ SUP 6.4.19 G apply.

**The FCA and the PRA enforcement and investigation powers against a former authorised person**

6.4.23

FCA PRA

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If an application for cancellation of a *firm's Part 4A permission* has been granted and a *firm's* status as an *authorised person* has been withdrawn (see ■ SUP 6.5) it will remain subject to certain investigative and enforcement powers as a former *authorised person*. These include:

- (1) information gathering and investigation powers in Part XI of the *Act* (Investigation gathering and investigations) (see ■ EG 3 (Use of information gathering and investigation powers) );
- (2) powers to apply to court for *injunctions* and restitution orders in Part XXV of the *Act* (Injunctions and restitution) (see ■ EG 10 (Injunctions) and ■ EG 11 (Restitution and redress));
- (3) powers in Part XXIV of the *Act* (Insolvency) to petition for *administration orders* or *winding up orders* against *companies* or insolvent *partnerships*, or *bankruptcy orders* (or in Scotland sequestration awards) against individuals (see ■ EG 13 (Insolvency));
- (4) powers in Part XXVII of the *Act* (Offences) to prosecute *offences* under the *Act* and other specified provisions (see ■ EG 12 (Prosecution of criminal offences)).

6.4.24

FCA PRA

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However, the following powers may not be used against former *authorised persons*:

- (1) powers to take disciplinary action against *firms* by publishing statements of misconduct under section 205 of the *Act* (Public censure) or imposing financial penalties under section 206(1) of the *Act* (Financial penalties); and
- (2) the power to require *firms* to make restitution under section 384 of the *Act* (Power of FCA or PRA to require restitution).

6.4.25

FCA PRA

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Consequently, the relevant regulator considers that it will have good reason not to grant a *firm's* application for cancellation of *permission* where:

- (1) the *FCA* and/or the *PRA* proposes to exercise any of the powers described in ■ SUP 6.4.24 G; or
- (2) the *FCA* and/or the *PRA* has already begun disciplinary and/or restitution proceedings against the *firm* by exercising either or both of these powers against the *firm*.

6.4.26

FCA

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The *FCA's* use of those powers is outlined in ■ DEPP 6 (Penalties).

6.4.27

FCA PRA

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**How long will an application take?**

- (1) Under section 55V(1) of the *Act* (Determination of applications), the relevant regulator has six months to consider a completed application.

- (2) If the relevant regulator receives an application which is incomplete, that is, where information or a *document* required as part of the application is not provided, section 55V(2) of the *Act* requires the relevant regulator to determine the incomplete application within 12 months of the initial receipt of the application.
- (3) Within these time limits, however, the length of the process will relate directly to the complexity of cancellation requested and whether the *firm* has fully wound down (run off) its activities at the time it applies.

6.4.27A

FCA

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The *FCA* publishes standard response times on its website setting out how long the application process is expected to take in practice. From time to time, the *FCA* also publishes its performance against these times.

6.4.28

FCA PRA

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#### **How will the relevant regulator make the decision?**

A decision to grant an application for cancellation of *permission* will be taken by appropriately experienced staff at the relevant regulator. Where, however, the staff dealing with the application recommend that a *firm's* application for cancellation of *Part 4A permission* be refused, the decision will be subject to the regulator's formal decision making process.

6.4.29

FCA

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See *DEPP* for *guidance* on the *FCA's* decision making procedures, including the procedures it will follow if it proposes to refuse an application for cancellation of *Part 4A permission*.



## 6.5 Ending authorisation

### 6.5.1

**FCA** **PRA**

**G**

Under section 33(2) of the *Act* (Withdrawal of authorisation ), if the *appropriate regulator* cancels a *firm's Part 4A permission*, and as a result there is no *regulated activity* for which the *firm* has *permission*, the regulator authorising that *firm* is required to give a *direction* withdrawing the *firm's* status as an *authorised person*.

### 6.5.2

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[deleted]

(1)

(2)

(3)

### 6.5.2A

**FCA**

**G**

If the *FCA* concludes that it should grant an *FCA-authorised person's* application for cancellation of *permission* and end its *authorisation*, the *FCA* will:

(1) cancel the *firm's Part 4A permission* under section 55H(3) of the *Act*;

(2) withdraw the *firm's authorised* status under section 33(2) of the *Act* by giving the *firm* a direction in writing; and

(3) update the *firm's* entry in the Financial Services Register to show it has ceased to be *authorised*.

### 6.5.2B

**PRA**

**G**

If the *PRA* concludes that it should grant a *PRA-authorised person's* application for cancellation of *permission* and end its *authorisation*, the *PRA* will:

(1) cancel the *firm's Part 4A permission* under section 55I(2) of the *Act*;

(2) withdraw the *firm's authorised* status under section 33(2) of the *Act* by giving the *firm* a direction in writing; and

(3) contact the *FCA* and request that it update the *firm's* entry in the Financial Services Register to show it has ceased to be *authorised*.

**[Deleted]**





**[Deleted]**



**[Deleted]**



## Additional guidance for a firm winding down (running off) its business

**FCA** **PRA**

1. If a *firm* has *Part 4A permission* which enables it to hold *client money* or to carry on *regulated activities* including:
  - (a) *carrying out contracts of insurance* and *effecting contracts of insurance*; or
  - (b) *accepting deposits*;
  - (c) *safeguarding and administration of assets*; or
  - (d) *meeting of repayment claims* or *managing dormant account funds (including the investment of such funds)*;it may require a long period (usually in excess of six months) in which to wind down (run off) its business. In these circumstances, it will usually be appropriate for the *firm* to apply for a variation of *Part 4A permission* before commencing the wind down.
2. A *firm* that believes that it may need to apply for a variation of *Part 4A permission* as a first step towards cancellation of its *permission* should discuss its plans with its supervisory contact at the relevant regulator.
3. If appropriate, in the interests of its *statutory objectives* (limited to the operational objectives in the case of the *FCA*), the *appropriate regulator* will require details of the *firm's* plans and will discuss them with the *firm* and monitor the winding down or transfer of the *firm's* business. During the period in which it is winding down, a *firm* will also be required to notify any material changes to the information provided such as, for example, receipt of new complaints and changes to plans.
4. If, after its *Part 4A permission* has been varied, a *firm* has wound down its business, complied with any *requirements* imposed and ceased to carry on *regulated activities* (or expects to do so within the next six months), it should then make an application for cancellation of its *Part 4A permission* (see SUP 6.4 (Applications for cancellation of permission)).

### Use of own-initiative powers

5. If, for example, the *FCA* or the *PRA* has concerns relating to any of the *statutory objectives* (limited to the operational objectives in the case of the *FCA*), it may use its *own-initiative variation power* (see SUP 7 (Individual requirements) and EG 8 (Variation and cancellation of permission on the *FCA's* own initiative and intervention against incoming firms)), to vary the *Part 4A permission* of a *firm* which is winding down or transferring its *regulated activities*.
- 5A. If, for example, the *appropriate regulator* has concerns relating to any of its *statutory objectives* (limited to the operational objectives in the case of the *FCA*), it may use its *own-initiative requirements power* to impose on a *firm* that is winding down or transferring its *regulated activities*, any *requirement*, or vary or cancel a *requirement* imposed by it on that *firm*.

### Reporting requirements: general

6. If a *firm* is winding down (running-off) its business, the routine reporting requirements in SUP 16 (Reporting requirements) will apply unless the *firm* is granted a waiver. In addition, a *firm* may be asked to submit additional reports, for example, to enable the *appropriate regulator* to monitor the wind down.

**FCA** **PRA**

PAGE  
1

1. If a *firm* makes an application in accordance with SUP 6 to effect the winding down of *regulated activities* which it is carrying on including the repayment of *client money*, or the return of *client deposits*, *custody assets* or any other property belonging to *clients*, the *appropriate regulator* will expect it to have formal plans to ensure that:
  - (1) the *regulated activities* are wound down in an orderly manner;

- (2) the *regulated activities* are properly completed and all *client deposits*, *client money*, *custody assets* or any other property belonging to *clients* are repaid, returned or transferred to another *Authorised person*; and
- (3) the interests of *customers* are not adversely affected.
2. [deleted]

**FCA**

- 1 A *firm* must comply with CASS 5.5.80 R and CASS 7.2.15 R (Client money: discharge of fiduciary duty) and CASS 7.2.19 R (Allocated but unclaimed *client money*) if it is ceasing to hold *client money*. A *firm* must also cease to hold or control *custody assets* in accordance with instructions received from *clients* and COBS 6.1.7 R (Information concerning safeguarding of designated investments belonging to clients and client money). These *rules* apply to both repayment and transfer to a third party.

**FCA PRA**

1. A *firm* carrying on *insurance business* which, ultimately, intends to cease *insurance business* completely, will first need to apply for a variation of its *Part 4A permission* while it is running off its business. The *firm* should apply for a variation of *Part 4A permission* to remove the activity of *effecting contracts of insurance* from its *permission*, thus restricting its activities to *carrying out insurance contracts* to enable it to run off its remaining insurance liabilities (see SUP 6.2.9 G ).
2. Examples of variations of *Part 4A permission* which may be appropriate in the context of winding down *insurance business* include:
  - (1) removing one or more *regulated activities* (for example, when a *firm* which has *Part 4A permission* to carry on *insurance business* enters into run-off, its *Part 4A permission* will need to be varied to remove the activity of *effecting contracts of insurance* in relation to new *contracts of insurance*); a new *contract of insurance* excludes contracts effected under a term of a subsisting *contract of insurance*. Thus the *firm's permission* will be restricted to *carrying out contracts of insurance* to enable it to run off its existing liabilities; or
  - (2) imposing a *limitation on regulated activities* in a *firm's Part 4A permission*.
- 2A A *firm* may also have imposed on it a new *requirement*, or any existing *requirement* imposed on a *firm* may be varied or cancelled. In the context of winding down *insurance business*, it may for example be appropriate to impose a *requirement* on the type of investments a *firm* holds to support its insurance liabilities.
3. An *insurer* ceasing to *effect contracts of insurance* is required to submit a *scheme of operations* in accordance with SUP App 2 (Insurers: scheme of operations). The *PRA* may require other information depending on the circumstances, for example an actuarial assessment of the *firm's* run-off.
4. A *firm* that is ceasing *effecting new contracts of insurance* in all categories of *specified investment* should refer to SUP App 2 for details of the specific reporting requirements that apply.
5. An *insurer* should note that the *PRA* will not cancel a *firm's permission* until all the *firm's* insurance liabilities have been discharged, including any potential insurance liabilities. A *firm* is, therefore, advised to submit an application for cancellation of its *Part 4A permission* when its run-off is completed.

**FCA PRA**

1. A *firm* making an application in accordance with SUP 6 which requires any approval from the *Society of Lloyd's* should apply to the *Society* for this in addition to applying to the relevant regulator.
2. Where a *firm* has *Part 4A permission* to *manage the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* then, if it wishes to vary its *Part 4A permission* to remove this *regulated activity* or to cancel its *Part 4A permission* completely, special procedures will apply.

3. (1) As a first step, the *firm* should apply to the relevant regulator for a variation of its *Part 4A permission* to limit the *regulated activity*, after the Lloyd's *syndicates* have been closed, to permit no new business. Once the *syndicates* have been closed, the *firm's* consent from the *Society* to manage *syndicates* will also lapse
- (2) After a period of one year from the date of closure of the Lloyd's *syndicates* the *firm* may apply to vary its *Part 4A permission*, to remove the *regulated activity* or to cancel its *Part 4A permission* entirely, as appropriate. At this time, a *firm's* approval from the *Society of Lloyd's* as a *managing agent* will cease.
4. *Firms* which wish to discuss these procedures in more detail should contact their appropriate supervisory contact and the *Society of Lloyd's*, as appropriate.

**FCA PRA**

1. As stated in SUP 6.2.9 G, where a *bank*, or other *firm* with permission that includes *accepting deposits*, wishes to cancel its *Part 4A permission*, it will generally need to apply for a variation of that *permission* while it winds down its business.
2. When a *firm* is winding down its business activities, it may be appropriate to:
  - (1) vary its *Part 4A permission* by imposing a *limitation* that no new *deposits* will be accepted; or
  - (2) vary its *Part 4A permission* by imposing a *limitation* on the purchasing of *investments* for its own account; or
  - (3) impose on it *requirements* concerning solvency.
3. After a *bank* has discussed with the *appropriate regulator* the type of variation of *Part 4A permission* and/or *requirement* the *bank* requires to wind down its business, it should make an application as directed in SUP 6.3.15 D and follow the *guidance* and procedures in SUP 6 as well as the additional procedures set out in this annex.
4. As appropriate, one or more of the following may be imposed on a *firm*:
  - (1) a *requirement* that the *firm* takes certain steps or refrains from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
  - (2) a *limitation* on *accepting deposits*, for example a *limitation* that no new deposits will be accepted;
  - (3) a *requirement* restricting the granting of *credit* or the making of investments;
  - (4) a *requirement* prohibiting the *firm* from soliciting *deposits* either generally or from *persons* who are not already depositors.
5. The information concerning the circumstances of these applications and the confirmations a *firm* is required to give to the regulator(s) concerned will differ according to the nature of the *bank* and its *Part 4A permission*. If appropriate, it may include, but will not necessarily be limited to:
  - (1) a plan containing the arrangements made in respect of the business of any current depositors, for example how and when the *firm* intends to repay or novate arrangements with depositors; or
  - (2) confirmation that the *bank* will not take any new *deposits*, will not roll over or renew any existing *deposits* at maturity and will repay all remaining *deposits* (including accrued interest) as they fall due for repayment

**Dealing with residual deposits: general**

6. Where a *firm* has residual *deposits* which, for whatever reason, cannot be repaid, they may be protected by a number of different methods. The precise applicability of the courses to be followed depends upon the particular circumstances of the individual *firm*. The *appropriate regulator's* supervisory approach will be determined by the course of action taken.

**Holding funds on trust**



7. In some circumstances, it may be appropriate for the *firm* to make an irrevocable transfer of funds, at least equal to the total of its *deposits*, to an independent *trustee* to be held on *trust* for the benefit of the depositors. Any such proposal should be discussed in advance with the *appropriate regulator*. The amount of funds held on trust should at all times exceed the total of all *deposits*, in order to provide for contingencies. Trust account arrangements are appropriate only in respect of solvent institutions. The *guidance* in paragraph 13 of this section applies in most cases.

8. (1) A plan containing the arrangements should be made by the *firm* in respect of the business of any current depositors, for example how and when the *firm* intends to repay or novate arrangements with depositors.

(2) The *trustee* should be an independent and appropriately qualified third party, nominated by the institution and acceptable to the *appropriate regulator*.

(a) The *trustee* should usually be a major *UK bank*. If appropriate, an additional trustee from within the institution may be appointed, preferably in an advisory role. An internal trustee may help to ensure continuity if the *firm* and the trust are likely to remain in existence for the foreseeable future.

(b) The *appropriate regulator* should be consulted about, or pre-notified of, a potential change of trustee.

(c) Trustees are responsible for fulfilling their obligations under the trust deed. In practice, the *appropriate regulator* may wish to point out that certain factors need to be given consideration by the trustees and the institution (for example, the procedures for paying out to depositors).

9. The *appropriate regulator* would require to see an opinion by the *firm's* legal advisers, confirming the validity and enforceability of the *trust* and in particular specifying the extent (if any) to which the trust arrangements may be set aside in future. The *appropriate regulator* reserves the right to request sight of the proposed trust documentation itself.

10. The trustee has the right (and probably the obligation) to invest the funds, and in doing so should normally seek to "match" the maturity profile of the *firm's deposit* base. However, the following could result in *deposit* liabilities exceeding *trust* funds at any time:

(a) maturity mismatches, that is, whether there are insufficient liquid funds across the maturity bands to repay depositors; or

(b) changes in interest rates; or

(c) the trustee's fees and disbursements.

11. The trustee should not deposit, or otherwise invest, trust funds except in segregated accounts with third-party authorised institutions.

(1) An auditor's report, similar to that used to determine whether all the *deposits* have been repaid by a *firm*, should be provided to confirm that all depositors have been repaid before the discharge of a trust is allowed.

(2) Auditors' reports, from the trust's auditors, should subsequently be obtained at intervals to demonstrate that funds in the trust continue to be at least equal to the remaining liabilities to depositors and that repayments have been properly made. The *firm* retains the ultimate responsibility to provide information to the *appropriate regulator*.

(3) The *appropriate regulator* may, however, require the inclusion of a clause in the trust deed requiring the trustee to provide such information as may be requested.

12. Entering into a trust arrangement does not "transfer" deposits or discharge the *firm's* contractual obligations to its depositors.

#### **Holding the funds in segregated accounts**

13. The *firm* may place and retain an amount at all times at least equal to its *deposit* liabilities in a segregated account with its usual bankers. The advantage of this course of action is that if all deposit liabilities are matched by funds in such an account, then the *firm* is not carrying on the *regulated activity* of *accepting deposits* in contravention of the *Act*.

14. Placing funds in a segregated account does not discharge a *firm's* contractual obligations to its depositors.

## Variation of permission application form

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Supervision forms* - [web address to be inserted]



## Cancellation of permission application form

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Cancellation of permission application form* - Forms/sup/cancellation\_form\_20130401.doc



# Chapter 7

## Individual requirements



## 7.1 Application and purpose

### Application

7.1.1

FCA

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This chapter applies to every *firm* which has a *Part 4A permission*.

7.1.2

FCA

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The application of this chapter to an *incoming EEA firm*, *incoming Treaty firm* or *UCITS qualifier* with a *Part 4A permission* (a "*top-up permission*") is limited as explained in ■ SUP 7.2.4 G.

### Purpose

7.1.3

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The *Handbook* primarily contains provisions which apply to all *firms* or to certain categories of *firm*. However, a *firm* may apply for a waiver or modification of *rules* in certain circumstances as set out in ■ SUP 8; or it may receive individual *guidance* on the application of the *rules*, as set out in ■ SUP 9.

7.1.4

FCA

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The *FCA*, in the course of its supervision of a *firm*, may sometimes judge it necessary or desirable to impose additional *requirements* on a *firm* or in some way amend or restrict the activities which the *firm* has *permission* to undertake. The *guidance* in this chapter describes when and how the *FCA* will seek to do this.

7.1.5

FCA

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By waiving or modifying the requirements of a *rule* or imposing an additional *requirement* or *limitation*, the *FCA* can ensure that the *rules*, and any other *requirements* or *limitations* imposed on a *firm*, take full account of the *firm's* individual circumstances, and so assist the *FCA* in meeting its *statutory objectives* under the *Act*.



## 7.2 The FCA's powers to set individual requirements and limitations on its own initiative

- 7.2.1**  
**FCA** **G** The FCA has the power under sections 55J and 55L of the Act to vary a firm's Part 4A permission and/or impose a requirement on a firm. Varying a firm's Part 4A permission includes imposing a limitation on that Part 4A permission.
- 7.2.2**  
**FCA** **G** The circumstances in which the FCA may vary a firm's Part 4A permission on its own initiative or impose a requirement on a firm under sections 55J or 55L of the Act include where it appears to the FCA that:
- (1) one or more of the threshold conditions for which the FCA is responsible is or is likely to be no longer satisfied; or
  - (2) it is desirable to vary a firm's permission in order to meet any of the FCA's statutory objectives under the Act; or
  - (3) a firm has not carried out a regulated activity to which its Part 4A permission applies for a period of at least 12 months.
- 7.2.3**  
**FCA** **G** The FCA may also use its own-initiative powers for enforcement purposes. ■ EG 8 sets out in detail the FCA's powers under sections 55J and 55L of the Act and the circumstances under which the FCA may use its own-initiative powers in this way, whether for enforcement purposes or as part of its day to day supervision of firms. This chapter provides additional guidance on when the FCA will use these powers for supervision purposes.
- 7.2.4**  
**FCA** **G** The FCA may use its own-initiative powers only in respect of a firm's Part 4A permission; that is, a permission granted to a firm under sections 55E or 55F of the Act (Giving permission) or having effect as if so given. In respect of an incoming EEA firm, an incoming Treaty firm, or a UCITS qualifier, this power applies only in relation to any top-up permission that it has. There are similar but more limited powers under Part XIII of the Act in relation to the permission of an incoming EEA firm or incoming Treaty firm under Schedules 3 or 4 to the Act (see ■ EG 8.26 to ■ EG 8.27 ).
- 7.2.4A**  
**FCA** **G** The FCA will consult the PRA before using its own-initiative powers in relation to a PRA-authorized person, or a member of a group which includes a PRA-authorized person.
- 7.2.4B**  
**FCA** **G** In the case of a dual-regulated PRA-authorized person, the FCA may exercise its own-initiative variation power to add a new regulated activity other than a PRA-regulated



*activity* to those activities already included in the *firm's Part 4A permission*, or to widen the description of a *regulated activity*, only after consulting with the *PRA*.

7.2.5  
FCA

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If the *FCA* exercises its *own-initiative powers*, it will do so by issuing a *supervisory notice*. The procedure that will be followed is set out in ■ DEPP 2 .

7.2.6  
FCA

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A *firm* has a right of referral to the *Tribunal* in respect of the *FCA* exercising its *own-initiative powers* on the *firm's Part 4A permission*.

## 7.3 Criteria for varying a firm's permission or imposing, varying or cancelling requirements on the FCA's own initiative

### 7.3.1

FCA

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The FCA expects to maintain a close working relationship with certain types of *firm* and expects that routine supervisory matters arising can be resolved during the normal course of this relationship by, for example, issuing individual *guidance* where appropriate (see ■ SUP 9.3). However, where the FCA deems it appropriate, it will exercise its *own-initiative powers*:

- (1) in circumstances where it considers it appropriate for the *firm* to be subject to a formal *requirement*, breach of which could attract enforcement action; or
- (2) if a variation is needed to enable the *firm* to comply with the *requirement*, due to agreements the *firm* may have with third parties. (For example a *firm* may be under a contractual obligation to do something, but only if it can do so lawfully. In this case, if the FCA considers the *firm* must not do it, then the FCA would need to prevent it doing so through a variation in its *Part 4A permission* to enable the *firm* to avoid breaching the contractual obligation.)

### 7.3.2

FCA

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The FCA may also seek to exercise its *own-initiative powers* in certain situations, including the following:

- (1) If the FCA determines that a *firm's* management, business or *internal controls* give rise to material risks that are not fully addressed by existing requirements, the FCA may seek to use its *own-initiative powers*.
- (2) If a *firm* becomes or is to become involved with new products or selling practices which present risks not adequately addressed by existing requirements, the FCA may seek to vary the *firm's Part 4A permission* in respect of those risks.
- (3) If there has been a change in a *firm's* structure, *controllers*, activities or strategy which generate material uncertainty or create unusual or exceptional risks, then the FCA may seek to use its *own-initiative powers*. (See also ■ SUP 11.7 for a description of the FCA's ability to impose a requirement on the acquisition of *control* of a *firm* under section 55O of the *Act*.)
- (4) At the request of, or to assist an overseas regulator as set out in section 55Q of the *Act*.

7.3.3  
FCA

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Pursuant to sections 55L, 55N, 55O, 55P and 55Q of the *Act*, within the scope of its functions and powers, the *FCA* may seek to impose *requirements* which include but are not restricted to:

- (1) requiring a *firm* to submit regular reports covering, for example, trading results, management accounts, *customer* complaints, connected party transactions;
- (2) where appropriate, requiring a *firm* to maintain prudential limits, for example on large *exposures*, foreign currency *exposures* or liquidity gaps;
- (3) requiring a *firm* to submit a business plan;
- (4) limiting the *firm's* activities;
- (5) requiring an *FCA-authorized person* to maintain a particular amount or type of financial resources.

7.3.4  
FCA

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The *FCA* will seek to give a *firm* reasonable notice of an intent to vary its *permission* or impose a requirement and to agree with the *firm* an appropriate timescale. However, if the *FCA* considers that a delay may create a risk to any of the *FCA's* *statutory objectives*, the *FCA* may need to act immediately using its powers under section 55J and/or 55L of the *Act* with immediate effect.

## Chapter 8

# Waiver and modification of rules



## 8.1 Application and purpose

8.1.1 **R** [deleted]

8.1.1-A **R** This chapter applies to every:

**FCA**

- (1) *firm* or *person* who is subject to *FCA rules* that wishes to apply for, consent to, or has been given a modification of or waiver of the *FCA's rules*;
- (2) *person*, as respects a particular *AUT* or *ICVC*, who wishes to apply for, consent to, or has been given a modification of or waiver of the *rules* in *COLL*.

8.1.1-B **R** This chapter applies to every *firm* or *person* who is subject to *PRA rules* that wishes to apply for, consent to, or has been given a modification of or waiver of the *PRA's rules*.

**PRA**

8.1.1A **G** This chapter is relevant to an applicant for a *Part 4A permission*, as if that applicant were a *firm*. Where the chapter refers to appropriate supervisory contact, the applicant should read this as being the usual supervisory contact at the *appropriate regulator*. Further, this chapter is relevant to a *person* who is subject to rules made by the *appropriate regulator* and where the chapter refers to a *firm*, this includes that person.

**FCA PRA**

8.1.2 **G** A *recognised body* should see **REC 3.3** for information on *waiivers of rules* in *REC* under section 294 of the *Act*.

**FCA**

8.1.3 **G** This chapter is not relevant to the functions of the *FCA* acting in its capacity as the *competent authority* for the purposes of Part VI of the *Act* (Official Listing).

**FCA**

### Purpose

8.1.4 **G** This chapter explains how the regime for the *waiiverof rules* works.

**FCA PRA**



## 8.2 Introduction

### Waivers under section 138A of the Act

8.2.1

FCA PRA

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Under section 138A of the *Act* (Modification or waiver of rules), the *appropriate regulator* may, on the application or with the consent of a *firm*, direct that its *rules* :

- (1) are not to apply to the *firm*; or
- (2) are to apply to the *firm* with such modifications as may be specified.

8.2.1A

FCA PRA

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■ SUP 8.2.1 G does not apply to:

- (1) *rules* made by either regulator under section 137O of the *Act*;
- (2) *rules* made by the *FCA* under sections 247 or 248 of the *Act*.

8.2.2

FCA PRA

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The directions referred to in ■ SUP 8.2.1 G (1) and ■ SUP 8.2.1 G (2) are collectively referred to in the *Handbook* as *waivers*.

### Waivers of rules in COLL

8.2.3

FCA

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Section 250 of the *Act* and regulation 7 of the *OEIC Regulations* allow the *FCA* to *waive* the application of certain *rules* in *COLL* to:

- (1) a *person*, as respects a particular *AUT* or *ICVC*, on the application or with the consent of that *person*; and
- (2) an *AUT* or *ICVC* on the application or with the consent of the *manager* and *trustee* (in the case of an *AUT*) or the *ICVC* and its *depository* (in the case of an *ICVC*).

8.2.4

FCA

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Those *persons* to whom section 250 and regulation 7 of the *OEIC Regulations* are relevant, but who are not *firms*, should follow SUP 8 as if they were *firms*.

8.2.5

FCA

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Section 250 of the *Act* and regulation 7 of the *OEIC Regulations* work by giving effect to section 138A of the *Act* in respect of *waivers* given under section 250(2) and (3) and regulation 7(1) and (2) of the *OEIC Regulations*.

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**Rules which can be waived**

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8.2.6 **G** [deleted]

8.2.7 **G** [deleted]

8.2.8 **G** [deleted]



## 8.3 Applying for a waiver

### Conditions for giving a waiver

8.3.1

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FCA PRA

Under section 138A(4) of the *Act*, the *appropriate regulator* may not give a *waiver* unless it is satisfied that:

- (1) compliance by the *firm* with the *rules*, or with the *rules* as unmodified, would be unduly burdensome, or would not achieve the purpose for which the *rules* were made; and
- (2) the *waiver* would not adversely affect the advancement of, in the case of the *PRA*, any of its objectives and, in the case of the *FCA*, any of its operational objectives.

8.3.1A

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FCA PRA

Even if the conditions in section 138A(4) of the *Act* are satisfied, the *appropriate regulator* will consider other relevant factors before giving a *waiver*, such as whether the *waiver* would be compatible with European law, including relevant EC Directives.

### Publication of waivers

8.3.2

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FCA PRA

The *appropriate regulator* is required by section 138B of the *Act* to publish a *waiver* unless it is satisfied that it is inappropriate or unnecessary to do so (see ■ SUP 8.6).

8.3.2A

G

FCA

The *FCA* must consult the *PRA* before publishing or deciding not to publish a *waiver* which relates to:

- (1) a *PRA-authorised person*; or
- (2) an *authorised person* who has as a member of its *immediate group* a *PRA-authorised person*;

unless the *waiver* relates to rules made by the *FCA* under sections 247 or 248 of the *Act*.

### Form and method of application

PAGE  
5

8.3.3

D

FCA PRA

A firm wishing to apply for a *waiver* must complete the application form in ■ SUP 8 Annex 2 D and submit it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

- (1) [deleted]



- (2) [deleted]
- (3) [deleted]
- (4) [Deleted]
- (5) [Deleted]
- (6) [Deleted]
- (7) [Deleted]
  - (a) [Deleted]
  - (b) [Deleted]

**8.3.3A**  
FCA PRA

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- (1) The *appropriate regulator's* preferred method of submission for *waiver* applications is by e-mail.
- (2) The form is available on the *appropriate regulator's* website.

**8.3.4**  
FCA PRA

G

Before sending in a *waiver* application, a *firm* may find it helpful to discuss the application with its appropriate supervisory contact . However, the *firm* should still ensure that all relevant information is included in the application.

**8.3.4A**  
FCA

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*Firms* or *persons* other than *PRA-authorized persons* should send applications for *waivers* or applications for variations of *waivers* to the *FCA*.

**8.3.4B**  
FCA PRA

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*PRA-authorized persons* should send applications for *waivers* or applications for variations of *waivers* to:

- (1) the *FCA* in respect of *rules* in the *FCA Handbook* applicable to that *PRA-authorized person*; and
- (2) the *PRA* in respect of *rules* in the *PRA Handbook*.

**Procedure on receipt of an application**

**8.3.5**  
FCA

G

The *appropriate regulator* will acknowledge an application promptly and if necessary will seek further information from the *firm*. The time taken to determine an application will depend on the issues it raises. However, the *appropriate regulator* will aim to give *waiver* decisions within 20 *business days* of receiving an application which includes sufficient information. If the *appropriate regulator* expects to take longer, it will tell the *firm* and give an estimated decision date. A *firm* should make it clear in the application if it needs a decision within a specific time.

**8.3.5A**  
FCA PRA

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The *appropriate regulator* will treat a *firm's* application for a *waiver* as withdrawn if it does not hear from the *firm* within 20 *business days* of sending a communication which requests or requires a response from the *firm*. The *appropriate regulator* will not do this if the *firm* has made it clear to the *appropriate regulator* in some other way that it intends to pursue the application.

**8.3.6** FCA PRA G In some cases, the *appropriate regulator* may give a modification of a *rule* rather than direct that the *rule* is not to apply. The *appropriate regulator* may also impose conditions on a *waiver*, for example additional reporting requirements. A *waiver* may be given for a specified period of time only, after which time it will cease to apply. A *firm* wishing to extend the duration of a *waiver* should follow the procedure in ■ SUP 8.3.3 D. A *waiver* will not apply retrospectively.

**8.3.7** FCA PRA G If the *appropriate regulator* decides not to give a *waiver*, it will give reasons for the decision.

**8.3.8** FCA PRA G A *firm* may withdraw its application at any time up to the giving of the *waiver*. In doing so, a *firm* should give the *appropriate regulator* its reasons for withdrawing the application.

**8.3.9** FCA PRA G If the *appropriate regulator* believes that a particular *waiver* given to a *firm* may have relevance to other *firms*, it may publish general details about the possible availability of the *waiver*. For example, IPRU(INV) 3-80(10)G explains that a *firm* that wishes to use its own internal model to calculate its position risk requirement (PRR) will need to apply for a *waiver* of the relevant *rules*.

**Giving a waiver with consent rather than on an application**

**8.3.10** FCA PRA G Under section 138A(1) of the *Act* the *appropriate regulator* may give a *waiver* with the consent of a *firm*. This power may be used by the *appropriate regulator* in exceptional circumstances where the *appropriate regulator* considers that a *waiver* should apply to a number of *firms* (for example, where a *rule* unmodified may not meet the particular circumstances of a particular category of *firm*). In such cases the *appropriate regulator* will inform the *firms* concerned that the *waiver* is available, either by contacting *firms* individually or by publishing details of the availability of the *waiver* on the *appropriate regulator's* website provided that the *FCA* must comply with ■ SUP 8.3.2A G. The *firms* concerned will not have to make a formal application but will have to give their written consent for the *waiver* to apply.

**Waiver of an evidential provision**

**8.3.11** FCA PRA G An application for a *waiver* of an *evidential provision* will normally be granted only if a breach of the underlying binding *rule* is actionable under section 138D of the *Act*. Individual *guidance* would normally be a more appropriate response (see ■ SUP 9 (Individual Guidance)) if there is no right of action.

**8.3.12** FCA PRA G An application for a *waiver* of the presumption of compliance created by an *evidential provision* would not normally be granted.

**8.3.13** FCA PRA G For an application for a *waiver* of the presumption of contravention of a binding *rule*, which is actionable under section 138D of the *Act*, the *appropriate regulator* would normally wish to be satisfied that the evidential *rule* is itself unduly burdensome or does not achieve the purpose of the *rule*.

**8.3.13A** FCA PRA G In accordance with section 138C(4) of the *Act*, in ■ SUP 8.3.11 G to ■ SUP 8.3.13 G, a reference to a *rule* does not include a *rule* made under:

- (1) section 137O of the *Act*; or

(2) section 192J of the *Act*.

**Waiver of a two-way evidential provision**

8.3.14

FCA PRA

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In the case of an application for a *waiver* of a two-way *evidential provision* relating to an actionable binding *rule*, the policy in ■ SUP 8.3.12 G would apply to the presumption of compliance and the policy in ■ SUP 8.3.13 G would apply to the presumption of contravention. In other words, any modification is likely to be in relation to the second presumption only.



## 8.4 Reliance on waivers

### Application of waived rules

8.4.1

FCA PRA

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If the *appropriate regulator* gives a *firm* a *waiver*, then the relevant *rule* no longer applies to the *firm*. But:

- (1) if a *waiver* directs that a *rule* is to apply to a *firm* with modifications, then contravention of the modified *rule* could lead to *appropriate regulator* enforcement action and (if applicable) a right of action under section 138D of the *Act* (Actions for damages); and
- (2) if a *waiver* is given subject to a condition, it will not apply to activities conducted in breach of the condition, and those activities, if in breach of the original *rule*, could lead to *appropriate regulator* enforcement action or such a right of action.

### The effect of rule changes on waivers

8.4.2

FCA PRA

G

Substantive changes to the *rules* (this would not include simple editorial changes) in the *Handbook* may affect existing *waivers*, changing their practical effect and creating a need for a change to the original *waiver*. The *appropriate regulator* will consult on proposed *rule* changes. A *firm* should note proposed *rule* changes and discuss the impact on a *waiver* with its appropriate supervisory contact .



## 8.5 Notification of altered circumstances relating to waivers

8.5.1

FCA PRA

R

A *firm* which has applied for or has been granted a *waiver* must notify the *appropriate regulator* immediately if it becomes aware of any matter which could affect the continuing relevance or appropriateness of the application or the *waiver*.

8.5.2

FCA PRA

G

*Firms* are also referred to ■ SUP 15.6 (Inaccurate, false or misleading information). This requires, in ■ SUP 15.6.4 R, a *firm* to notify the *appropriate regulator* if false, misleading, incomplete or inaccurate information has been provided. This would apply in relation to information provided in an application for a *waiver*.



## 8.6 Publication of waivers

### Requirement to publish

8.6.1

FCA PRA

G

The *appropriate regulator* is required by sections 138B(1) and (2) of the *Act* to publish a *waiver* unless it is satisfied that it is inappropriate or unnecessary to do so. If the *appropriate regulator* publishes a *waiver*, it will not publish details of why a *waiver* was required or any of the supporting information given in a *waiver* application.

8.6.1A

FCA

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The *FCA* must consult the *PRA* before publishing or deciding not to publish a *waiver* which relates to:

- (1) a *PRA-authorised person*; or
- (2) an *authorised person* who has as a member of its immediate *group* a *PRA-authorised person*;

unless the *waiver* relates to *rules* made by the *FCA* under sections 247 or 248 of the *Act*.

### Matters for consideration

8.6.2

FCA PRA

G

When considering whether it is satisfied under section 138B(2), the *appropriate regulator* is required by section 138B(3) of the *Act*:

- (1) to take into account whether the *waiver* relates to a *rule* contravention of which is actionable under section 138D of the *Act* (Actions for damages); Schedule 5 identifies such *rules*;
- (2) to consider whether its publication would prejudice, to an unreasonable degree, the commercial interests of the *firm* concerned, or any other member of its *immediate group*;
- (3) to consider whether its publication would be contrary to an international obligation of the *United Kingdom* (for example, the confidentiality obligations in the *Single Market Directives*); and
- (4) to consider whether the publication of the *waiver* would be detrimental to the stability of the *UK financial system*.

8.6.3

FCA PRA

G

*Waivers* can affect the legal rights of third parties, including *consumers*. In the *appropriate regulator's* view it is important that the fact and effect of such *waivers* should be transparent. So the fact that a *waiver* relates to a *rule* that is actionable under section 138D of the *Act* (see ■ SUP 8.6.2 G (1)) will tend to argue in favour of publication.

8.6.4

FCA

G

In making *waiver* applications under section 250 of the *Act* or regulation 7 of the *OEIC Regulations*, ■ SUP 8.6.2 G (2) should be read in application to *rules* in *COLL* as if the word "commercial" were omitted.

8.6.5

FCA

PRA

G

In considering whether commercial interests would be prejudiced to an unreasonable degree (see ■ SUP 8.6.2 G (2)), the *appropriate regulator* will weigh the prejudice to *firms'* commercial interests against the interests of *consumers*, markets and other third parties in disclosure. In doing so the *appropriate regulator* will consider factors such as the extent to which publication of the *waiver* would involve the premature release of proprietary information to commercial rivals, for example relating to a product innovation, or reveal information which could reasonably be regarded as the *firm's* own intellectual property. In line with section 138B(5) of the *Act*, the *appropriate regulator* will also consider whether prejudice to a *firm's* commercial interests could be avoided or mitigated by publication of the *waiver* without disclosing the identity of the *firm*.

8.6.6

FCA

PRA

G

The *appropriate regulator* may consider publication unnecessary where, for example, the *waiver* relates to a minor matter that does not affect any third party and is unlikely to be of relevance or interest to other *firms*.

#### Firm's objection to publication

8.6.7

FCA

PRA

G

If, after taking into account the matters in ■ SUP 8.3.3 D to ■ SUP 8.6.6 G, a *firm* believes there are good grounds for the *appropriate regulator* either to withhold publication or to publish the *waiver* without disclosing the identity of the *firm*, it should make this clear in its application . If the *appropriate regulator* proposes to publish a *waiver* against the wishes of the *firm*, the *appropriate regulator* will give the *firm* the opportunity to withdraw its application before the *waiver* is given.

#### Withholding publication for a limited period

8.6.8

FCA

PRA

G

A decision to withhold a *waiver* or identity of a *firm* from publication may be for a limited period only, usually as long as the duration of the relevant grounds for non-publication. If the *appropriate regulator* proposes to publish information about a *waiver* that had previously been withheld, it will first give the *firm* an opportunity to make representations.

#### Means of publication

8.6.9

FCA

PRA

G

The principal means of publication of *waiver* information will be the *appropriate regulator's* website.



## 8.7 Varying waivers

### 8.7.1

FCA PRA

G

Once the *appropriate regulator* has given a *waiver*, it may vary it with the *firm's* consent, or on the *firm's* application. If a *firm* wishes the *appropriate regulator* to vary a *waiver*, it should follow the procedures in ■ SUP 8.3.3 D, giving reasons for the application. In a case where a *waiver* has been given to a number of *firms* (see ■ SUP 8.3.10 G), if the *appropriate regulator* wishes to vary such *waivers* with the consent of those *firms*, it will follow the procedures in ■ SUP 8.3.10 G.

### 8.7.2

FCA PRA

G

If the *waiver* that has been varied has previously been published, the *appropriate regulator* will publish the variation unless it is satisfied that it is inappropriate or unnecessary to do so, having regard to any representation made by the *firm*.





## 8.8 Revoking waivers

### 8.8.1

FCA PRA

G

The *appropriate regulator* may revoke a *waiver* at any time. In deciding whether to revoke a *waiver*, the *appropriate regulator* will consider whether the conditions in section 138A(4) of the *Act* are no longer satisfied (see ■ SUP 8.3.1 G), and whether the *waiver* is otherwise no longer appropriate.

### 8.8.2

FCA PRA

G

If the *appropriate regulator* proposes to revoke a *waiver*, or revokes a *waiver* with immediate effect, it will:

- (1) give the *firm* written notice either of its proposal, or of its action, giving reasons;
- (2) state in the notice a reasonable period (usually 28 *days*) within which the *firm* can make representations about the proposal or action; if a *firm* wants to make oral representations, it should inform the *appropriate regulator* as quickly as possible, specify who will make the representations and which matters will be covered; the *appropriate regulator* will inform the *firm* of the time and place for hearing the representations and may request a written summary;
- (3) after considering any representations, in the case of a proposed revocation, give the *firm* written confirmation of its decision to revoke the *waiver* or not; or, in the case of a revocation that has already taken effect, either confirm the revocation or seek the *firm's* consent to a new *waiver*.

### 8.8.3

FCA PRA

G

If the *waiver* that has been revoked has previously been published, the *appropriate regulator* will publish the revocation unless it is satisfied that it is inappropriate or unnecessary to do so, having regard to any representations made by the *firm*.



## 8.9 Decision making

### 8.9.1

FCA PRA

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The *waivers* regime is overseen by a staff committee. Its responsibility is to ensure that the giving of *waivers* is in accordance with the requirements of the *Act*, of the *guidance* in ■ SUP 8 and of other relevant *guidance*. Decisions on individual applications are made under arrangements designed to result in rapid, responsive and well-informed decision making. The arrangements include arrangements for collective decision making to set general policies, and, as necessary, determine cases for applications with substantially common characteristics (for example, *waivers* in relation to the same *rule* or related *rules* or by *firms* in a similar position). It also includes arrangements for decision making by individuals within established precedents and policies.

### 8.9.2

FCA PRA

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If the *appropriate regulator*, in the course of carrying on supplementary supervision of a *financial conglomerate*, is considering exercising its powers under section 138A of the *Act* (Modification or waiver of rules), regulation 4 of the *Financial Groups Directive Regulations* contains special provisions. The *appropriate regulator* must, in broad terms, do two things. Where required by those regulations, it must obtain the consent of the relevant competent authorities of the group. And, where required by those Regulations, it must consult those competent authorities.



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**[Deleted]**



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## Application form for a waiver or modification of rules

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Waiver Application form* - Forms/sup/w\_form\_20130401.doc



## Chapter 9

# Individual guidance





## 9.1 Application and purpose

### Application

9.1.1

FCA

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- (1) This chapter applies to:
- (a) every *firm*;
  - (b) *persons* that are subject to the requirements of the *Part 6 rules*; and
  - (c) *persons* generally.
- (2) ■ SUP 9.3 (Giving individual guidance to a firm on the *FCA's* own initiative) is, however, only relevant to a *firm*.

### Purpose

9.1.2

FCA

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Individual *guidance* is *guidance* that is not given to *persons* or regulated *persons* generally or to a class of regulated *person*. It will normally be given to one particular *person*, which relates to its own particular circumstances or plans. It may be oral or written. Individual *guidance* will not be published but may at the *FCA's* discretion be converted to general *guidance* and published in the *Handbook*. Written individual *guidance* will often be labelled as such

9.1.3

FCA

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A *person* may need to ask the *FCA* for individual *guidance* on how the *rules* and general *guidance* in the *Handbook*, the *Act* or other regulatory requirements apply in their particular circumstances. This chapter describes how a *person* may do this. Section 139A of the *Act* gives the *FCA* the power to give *guidance* consisting of such information and advice as it considers appropriate.

9.1.4

FCA

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The *FCA* may at times also consider it appropriate to give a *firm* individual *guidance* on its own initiative, for example on how it considers a *firm* should comply with a *rule*. ■ SUP 9.3 describes when and how the *FCA* will seek to do this.



## 9.2 Making a request for individual guidance

### How to make a request

9.2.1  
FCA

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Requests for individual *guidance* may be made in writing or orally. Requests for individual *guidance* in relation to the *Part 6 rules* should be made in writing other than in circumstances of exceptional urgency or in the case of a request from a *sponsor* in relation to the provision of a *sponsor service*. If oral queries raise complex or significant issues, the *FCA* will normally expect the details of the request to be confirmed in writing. Simple requests for *guidance* may often be dealt with orally, although it is open to a *person* to seek a written confirmation from the *FCA* of oral *guidance* given by the *FCA*.

### Who to address a request to

9.2.2  
FCA

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A *firm* and its professional advisers should address requests for individual *guidance* to the *firm's* usual supervisory contact at the *FCA* , with the exception of requests for *guidance* on the *Code of Market Conduct* ( ■ MAR 1) which should be addressed to the specialist team within the Markets Division. A *firm* may wish to discuss a request for *guidance* with the relevant contact before making a written request.

9.2.3  
FCA

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A *person* who is not a *firm* should address his request for individual *guidance* to the appropriate department within the *FCA* . A *person* who is unsure of where to address his request may address his enquiry to the *FCA*, making clear the nature of the request.

### Discussions on a no-names basis

9.2.4  
FCA

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The *FCA* does not expect to enter into discussions on a 'no-name' basis about the affairs of an individual *person* .

9.2.4A

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[deleted]

### The FCA's response to a reasonable request

9.2.5  
FCA

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The *FCA* will aim to respond quickly and fully to reasonable requests. The *FCA* will give high priority to enquiries about areas of genuine uncertainty or about difficulties in relating established requirements to innovative practices or products. What constitutes a 'reasonable request' is a matter for the *FCA* . It will depend on the nature of the request and on the resources of the *firm* or other *person* making it. The *FCA* will expect the *person* to have taken reasonable steps to research and analyse a topic before approaching the *FCA* for individual *guidance*. The *FCA* should not be viewed as a first port of call for *guidance*, except where it is only the *FCA* that can give the *guidance*, for example in confirming non-standard reports that it wishes to receive from a *firm*.

9.2.6

FCA

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**Information required by the FCA**

The FCA will always need sufficient information and time before it can properly evaluate the situation and respond to a request. If a request is time-critical, the *person* or its professional adviser should make this clear. The more notice a *person* can give the FCA, the more likely it is that the FCA will be able to meet the *person's* timetable. However, the time taken to respond will necessarily depend upon the complexity and novelty of the issues involved. In making a request, a *person* should identify the *rule*, general *guidance*, or other matter on which individual *guidance* is sought, and provide a description of the circumstances relating to the request. The FCA may request further information if it considers that it does not have sufficient information.

### 9.3 Giving individual guidance to a firm on the FCA's own initiative

#### 9.3.1

FCA

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Business and internal control risks vary from *firm* to *firm*, according to the nature and complexity of the business. The *FCA's* assessment of these risks is reflected in how its *rules* apply to different categories of *firm* as well as in the use of its other regulatory tools. One of the tools the *FCA* has available is to give a *firm* individual *guidance* on the application of the requirements or standards under the *regulatory system* in the *firm's* particular circumstances.

#### 9.3.2

FCA

G

The *FCA* may give individual *guidance* to a *firm* on its own initiative if it considers it appropriate to do so. For example:

- (1) the *FCA* may consider that general *guidance* in the *Handbook* does not appropriately fit a *firm's* particular circumstances (which may be permanent or temporary) and therefore decide to give additional individual *guidance* to the *firm*;
- (2) some of the *FCA's* requirements are expressed in general terms; however, there may be times when the *FCA* will wish to respond to a *firm's* particular circumstances by giving individual *guidance* on the application of the general requirement in these circumstances;
- (3) the *FCA* may consider that a *firm* should be given more detailed *guidance* than that contained in the *FCA Handbook*; for example, where a *firm* holds positions in instruments of a non-standard form it may be appropriate to give the *firm* additional or more detailed *guidance* on how the *FCA* considers that it should calculate its financial resources requirement;
- (4) in some instances a *rule* allows a *firm* to select which requirement, within a range of alternative requirements, a *firm* should comply with; in many instances, the *FCA Handbook* gives *guidance* setting out the circumstances in which compliance with a particular requirement is appropriate; the *FCA* may sometimes consider it necessary to give additional individual *guidance* to tell a *firm* which requirement it considers appropriate;
- (5) in relation to the maintenance of adequate financial resources, the *FCA* may give a *firm* individual *guidance* on the amount or type of financial resources the *FCA* considers appropriate, for example *individual capital guidance* for BIPRU firms ; further *guidance* on how and when the *FCA* may give *individual capital guidance* on financial resources is contained in the Prudential Standards part of the *Handbook*:
  - (a) for a BIPRU firm: ■ GENPRU 1.2 and ■ BIPRU 2.2; and

- (b) [deleted]
- (c) for a *securities and futures firm* (or other *firm* required to comply with IPRU(INV) 3 ): IPRU(INV) 3-79R
- (d) [deleted]

9.3.3  
FCA

**G** If the *FCA* intends to give a *firm* individual *guidance* on its own initiative, it will normally seek to discuss the issue with the *firm* and agree suitable individual *guidance*.

9.3.4  
FCA

**G** Individual *guidance* given to a *firm* on the *FCA*'s own initiative will normally be given in writing.



## 9.4 Reliance on individual guidance

### Reliance by recipient of individual guidance

9.4.1  
FCA

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If a *person* acts in accordance with current individual written *guidance* given to him by the *FCA* in the circumstances contemplated by that *guidance*, then the *FCA* will proceed on the footing that the *person* has complied with the aspects of the *rule* or other requirement to which the *guidance* relates.

9.4.2  
FCA

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The extent to which a *person* can rely on individual *guidance* given to him will depend on many factors. These could include, for example, the degree of formality of the original query and the *guidance* given, and whether all relevant information was submitted with the request. Individual *guidance* is usually given in relation to a set of particular circumstances which exist when the *guidance* is given. If the circumstances later change, for example, because of a change in the circumstances of the *person* or a change in the underlying *rule* or other requirement, and the premises upon which individual *guidance* was given no longer apply, the *guidance* will cease to be effective.

9.4.3  
FCA

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If the circumstances relating to individual *guidance* change it will be open to a *person* to ask for further *guidance*.

9.4.4  
FCA

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### Effect on rights of third parties

Rights conferred on third parties (such as a *firm's* clients) cannot be affected by *guidance* given by the *FCA*. *Guidance* on rules, the *Act* or other legislation represents the *FCA* view, and does not bind the courts, for example in relation to an action for damages brought by a *private person* for breach of a *rule* (section 138D of the *Act* (Actions for damages)) or in relation to enforceability of a contract if the *general prohibition* is breached (sections 26 and 27 of the *Act* (Enforceability of agreements)). A *person* may need to seek his own legal advice.

## 9.5 Disputes as to the interpretation of the Part 6 rules

- 9.5.1**  
**FCA** **G** Where a *person* that is subject to any requirement of the *Part 6 rules* disagrees with the individual *guidance* given by the *FCA*, he can request that the *guidance* be reviewed at a meeting of senior *FCA* staff.
- 9.5.2**  
**FCA** **G** Upon receiving a request under **■ SUP 9.5.1 G** senior *FCA* staff will review:
- (1) the initial request for *guidance*;
  - (2) the individual circumstances of the *person* seeking the review; and
  - (3) the reasons why the *person* does not agree with the individual *guidance*.
- 9.5.3**  
**FCA** **G** The outcome of the senior *FCA* staff meeting will be communicated to the *person*.
- 9.5.4**  
**FCA** **G** A *person* that does not agree with the individual *guidance* that results from a senior *FCA* staff meeting, or a third party that is directly affected by that individual *guidance* may request that the *guidance* be reviewed by the Listing Authority Review Committee.
- 9.5.5**  
**FCA** **G** The Listing Authority Review Committee has powers, delegated by the *FCA* Board, to resolve disputes on the application and interpretation of the requirements set out in *LR*, *DTR* and *PR*. A managing *director* of the *FCA* sits as chairman of the Listing Authority Review Committee.
- 9.5.6**  
**FCA** **G** The *person* requesting the review can make representations to the Listing Authority Review Committee either orally or in writing.
- 9.5.7**  
**FCA** **G** All decisions of the Listing Authority Review Committee are final and are determinative of the *FCA*'s opinion as to the interpretation or application of the requirement in question.

# Chapter 10

## Approved persons [Deleted]





[Chapter Deleted]

# Chapter 10A

## FCA Approved Persons

## 10A.1 Application

### General

- 10A.1.1** **R** This chapter applies to every *firm*.  
FCA
- 10A.1.2** **G** This chapter is also relevant to every *FCA-approved person*.  
FCA
- 10A.1.3** **G** The *rules* in this chapter specify descriptions of *FCA controlled functions* under section 59 of the *Act* (Approval for particular arrangements).  
FCA
- 10A.1.4** **G** The directions in this chapter relate to the manner in which a *firm* must apply for the *FCA's* approval under section 59 of the *Act* and other procedures.  
FCA
- 10A.1.5** **R** This chapter does not apply to an *overseas firm* in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.  
FCA
- 10A.1.6** **R** Only the following *FCA controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:  
FCA

- (1) the *director function* where the *person* performing that function:
  - (a) has responsibility for the *regulated activities* of a *UK branch* which are likely to enable him to exercise significant influence over that *branch*; or
  - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that *branch*;
- (2) the *non-executive director function* where the *person* performing one of those functions:

- (a) has responsibility for the *regulated activities* of a *UK branch* which is likely to enable him to exercise significant influence over that *branch*; or
  - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that *branch*;
- (3) the *chief executive function*;
  - (4) the *FCA required functions*;
  - (5) the *systems and controls function*;
  - (6) the *significant management function* in so far as the function relates to:
    - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
    - (b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters in so far as this relates to *designated investment business*; and
  - (7) the *customer function*.

#### **Incoming EEA firms, incoming Treaty firms and UCITS qualifiers**

10A.1.7

FCA

R

This chapter does not apply to:

- (1) an *incoming EEA firm*; or
- (2) an *incoming Treaty firm*; or
- (3) a *UCITS qualifier*;

if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved, under any of the *Single Market Directives*, the *Treaty*, the *UCITS Directive* or the *auction regulation*, to an authority in a country or territory outside the *United Kingdom*.

10A.1.8

FCA

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■ SUP 10A.1.7 R reflects the provisions of section 59(8) of the *Act* and, in relation to an incoming *Treaty firm* and a *UCITS qualifier*, the *Treaty* and the *UCITS Directive*. It preserves the principle of *Home State* prudential regulation. In relation to an *incoming EEA firm* exercising an *EEA right*, or an *incoming Treaty firm* exercising a *Treaty right*, the effect is to reserve to the *Home State regulator* the assessment of the fitness and propriety of a *person* performing a function in the exercise of that right. A member of the *governing body*, or the notified *UK branch manager*, of an *incoming EEA firm*, acting in that capacity, will not therefore have to be approved by the *FCA* under the *Act*.

10A.1.9

FCA

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Notwithstanding ■ SUP 10A.1.8 G, an *incoming EEA firm* (other than an *EEA pure reinsurer*) or *incoming Treaty firm* will have had to consider the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An *incoming EEA firm* (other than an *EEA pure reinsurer*) will have been notified of those provisions under Part II of Schedule 3 to the *Act* in the course of satisfying the conditions for *authorisation* in the *United Kingdom*.

10A.1.10

FCA

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An *incoming EEA firm* will have to consider, for example, the position of a *branch manager* based in the *United Kingdom* who may also be performing a function in relation to the carrying on of a *regulated activity* not covered by the *EEA right* of the *firm*. In so far as the function is within the description of an *FCA controlled function*, the *firm* will need to seek approval for that *person* to perform that *FCA controlled function*.

#### **Incoming EEA firms: passported activities from a branch**

10A.1.11

FCA

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Only the following *FCA controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*:

- (1) the *money laundering reporting function*;
- (2) the *significant management function*, in so far as the function relates to:
  - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
  - (b) processing confirmations, payments, settlements, insurance claims, client money and similar matters, in so far as this relates to *designated investment business*; or
  - (c) the activity of *accepting deposits* from *banking customers* and activities substantially connected to that activity to the extent that it does not fall within (a) or (b); and
- (3) the *customer function* other than where this relates to the function in ■ SUP 10A.10.7R (4) and ■ (7).

10A.1.12

FCA

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If an *incoming EEA firm* is an *EEA pure reinsurer*, then ■ SUP 10A.1.11 R does not apply. Instead, none of the *FCA controlled functions* apply with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*.

10A.1.13

FCA

R

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

In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *FCA controlled functions* apply:

- (1) the *FCA required functions*, other than the *apportionment and oversight function* and the *compliance oversight function*;
- (2) the *significant management function*, in so far as it relates to:
  - (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
  - (b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters, in so far as this relates to *designated investment business*; or
  - (c) the activity of *accepting deposits* from *banking customers* and activities substantially connected to that activity to the extent that it does not fall within (a) or (b); and
- (3) the *customer function*.

10A.1.14

FCA

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A *person* does not perform the *significant management function* for a *firm* under ■ SUP 10A.1.11 R or ■ SUP 10A.1.13 R if that *person* would not have been treated as performing any *FCA controlled function* for that *firm* if that *firm* had been a *UK firm*.

**Appointed representatives**

10A.1.15

FCA

R

The descriptions of the following *FCA controlled functions* apply to an *appointed representative* of a *firm*, except an *introducer appointed representative*, as they apply to an *FCA-authorised person*:

- (1) the *FCA governing functions*, subject to ■ SUP 10A.1.16 R and except for a *tied agent* of an *EEA MiFID investment firm*; and
- (2) the *customer function* other than in relation to acting in the capacity of an *investment manager* (see ■ SUP 10A.10.7R (6)).

10A.1.16

FCA

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- (1) ■ SUP 10A.1.15 R is modified in relation to an *appointed representative* meeting the conditions in (2) so that only one of the following *FCA governing functions*:
  - (a) *director function*; or
  - (b) *chief executive function*; or
  - (c) *partner function*; or
  - (d) *director of unincorporated association function*;

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

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

#### Members of a profession

10A.1.17

FCA

R

- (1) This chapter, except in respect of the *FCA required functions*, does not apply to an *authorised professional firm* in respect of its *non-mainstream regulated activities*, subject to (2).
- (2) Where the *authorised professional firm* has appointed *FCA-approved persons* to perform the *FCA governing functions* with equivalent responsibilities for the *firm's non-mainstream regulated activities* and other *regulated activities*, for the *firm's non-mainstream regulated activities* this chapter applies with respect to the *FCA governing functions* and the *FCA required functions* (other than the *apportionment and oversight function*) only.

#### Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords and insurance intermediaries.

10A.1.18

FCA

R

The descriptions of *FCA significant-influence functions*, other than the *FCA required functions*, and, if the *firm* is a *MiFID investment firm*, the *FCA governing functions* do not extend to activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:

- (1) an *oil market participant*; or
- (2) a *service company*; or
- (3) an *energy market participant*; or
- (4) a wholly owned *subsidiary* of:
  - (a) a local authority; or
  - (b) a registered social landlord; or

- (5) a *firm* with *permission* to carry on *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity*.

10A.1.19

FCA

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It will be a matter of fact in each case whether, having regard to all the circumstances, including in particular where the balance of the business lies, a *firm's* principal purpose is to carry on activities other than *regulated activities*. If a *firm* wishes to rely on ■ SUP 10A.1.18 R, it should be in a position to demonstrate that its principal purpose is to carry on activities other than *regulated activities*.

### Insolvency practitioners

10A.1.20

FCA

R

This chapter does not apply to a function performed by:

- (1) a *person* acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or
- (2) a *person* acting as a nominee in relation to a voluntary arrangement under Parts I (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency Act 1986; or
- (3) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or
- (4) a *person* acting as a nominee in relation to a voluntary arrangement under Parts II (Company Voluntary Arrangements) and VIII (Individual Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

### Bidders in emissions auctions

10A.1.21

FCA

G

For a *firm* that is exempt from *MiFID* under article 2(1)(i) and whose only *permission* is *bidding in emissions auctions*, the only *FCA controlled functions* that apply to it are:

- (1) the *FCA governing functions*;
- (2) the *money laundering reporting function*;
- (3) the *customer function*; and
- (4) (where it has exercised an opt-in to CASS in accordance with ■ CASS 1.4.9 R and is a *CASS medium firm* or a *CASS large firm*) the *CASS operational oversight function*.

This is because the *FCA-approved person* regime specifies a number of functions by incorporation of requirements in SYSC; however, a *firm* carrying on *auction regulation bidding* is only subject to SYSC to a limited extent in relation to that activity. This means that the *FCA required functions* do not apply to *auction regulation bidding*, except for the *money laundering reporting function*. Similarly, the *significant management function* does not apply in relation to *auction regulation bidding* because, in carrying on that activity, a *firm* is not subject to ■ SYSC 2.1.1 R or ■ SYSC 4.1.1 R and is not undertaking *proprietary trading*.



**Territorial scope of SUP 10A in relation to benchmark submission**

10A.1.22

FCA

R

Notwithstanding anything to the contrary in ■ SUP 10A.1.5 R, ■ SUP 10A.1.6 R and ■ SUP 10A.1.13 R the application of ■ SUP 10A to the *benchmark submission function* is as set out in ■ MAR 8.2.3 R.

10A.1.23

FCA

G

■ MAR 8.2.3 R says that the obligation on a *benchmark submitter* to appoint a benchmark manager applies if it maintains an establishment in the *United Kingdom*. Therefore, ■ SUP 10A applies to the *benchmark submission function* whether or not the activity of *providing information in relation to a specified benchmark* (or any other regulated activity) or the *benchmark submission function* are carried on from that establishment.



10A.2 Purpose

10A.2.1  
FCA

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

10A.2.2  
FCA

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■ SUP 10A does not deal with the *PRA's approved persons* regime.

10A.2.3  
FCA

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The *FCA* has certain powers in relation to *PRA-approved persons*, such as the requirement to give its consent in certain cases to the *PRA* granting approval for the performance of a *PRA controlled function*. ■ SUP 10A does not deal with these.

## 10A.3 Provisions related to the Act

10A.3.1

FCA

R

A function is an *FCA controlled function* only to the extent that it is performed under an *arrangement* entered into by:

- (1) a *firm*; or
- (2) a contractor of the *firm*;

in relation to the carrying on by the *firm* of a *regulated activity*.

10A.3.2

FCA

G

Sections 59(1) and (2) of the *Act* provide that approval is necessary in respect of an *FCA controlled function* which is performed under an *arrangement* entered into by a *firm*, or its contractor (typically an *appointed representative*), in relation to a *regulated activity*.

10A.3.3

FCA

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

10A.3.4

FCA

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

10A.3.5

FCA

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The *arrangement* must be "in relation to" the carrying on of a *regulated activity*. *Regulated activities* are defined in the Glossary by reference to the *Regulated Activities Order*. This order prescribes the activities which are *regulated activities* for the purposes of the *Act*.



## 10A.4 Specification of functions

10A.4.1  
FCA

R

Each of the functions described in ■ SUP 10A.4.4 R (the table of FCA controlled function) is an *FCA controlled function*.

10A.4.2  
FCA

R

Part 1 of the table of *FCA controlled functions* applies in relation to an *FCA-authorized person*. It also applies in relation to an *appointed representative* for the purposes of ■ SUP 10A.1.15 R (Appointed representatives) whether its *principal* is an *FCA-authorized person* or a *PRA-authorized person*. Part 2 applies in relation to a *PRA-authorized person*.

10A.4.3  
FCA

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The fact that a *person* may be *FCA-approved* for one purpose does not have the effect of bringing all his activities within that *FCA controlled function*.

10A.4.4  
FCA

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### FCA controlled functions

Part 1 (FCA controlled functions for FCA-authorized persons and appointed representatives)

Type	CF	Description of FCA controlled function
<i>FCA governing functions*</i>	1	<i>Director function</i>
	2	<i>Non-executive director function</i>
	3	<i>Chief executive function</i>
	4	<i>Partner function</i>
	5	<i>Director of unincorporated association function</i>
	6	<i>Small friendly society function</i>
<i>FCA required functions*</i>	8	<i>Apportionment and oversight function</i>
	10	<i>Compliance oversight function</i>
	10A	<i>CASS operational oversight function</i>
	11	<i>Money laundering reporting function</i>
	40	<i>Benchmark submission function</i>

Part 1 (FCA controlled functions for FCA-authorized persons and appointed representatives)		
Type	CF	Description of FCA controlled function
	50	<i>Benchmark administration function</i>
<i>Systems and controls function*</i>	28	<i>Systems and controls function</i>
<i>Significant management function*</i>	29	<i>Significant management function</i>
<i>Customer-dealing functions</i>	30	<i>Customer function</i>
<i>*FCA significant-influence functions</i>		

Part 2 (FCA controlled functions for PRA-authorized persons)		
Type	CF	Description of FCA controlled function
<i>FCA required functions*</i>	8	<i>Apportionment and oversight function</i>
	10	<i>Compliance oversight function</i>
	10A	<i>CASS operational oversight function</i>
	11	<i>Money laundering reporting function</i>
	40	<i>Benchmark submission function</i>
	50	<i>Benchmark administration function</i>
<i>Significant management function*</i>	29	<i>Significant management function</i>
<i>Customer-dealing function</i>	30	<i>Customer function</i>
<i>*FCA significant-influence functions</i>		



## 10A.5 Significant-influence functions

### What are the FCA significant-influence functions?

10A.5.1  
FCA

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The *FCA significant-influence functions*, which are specified in ■ SUP 10A.4.1 R, comprise the *FCA governing functions* (■ SUP 10A.6), the *FCA required functions* (■ SUP 10A.7), the *systems and controls function* (■ SUP 10A.8) and the *significant management function* (■ SUP 10A.9). ■ SUP 10A.5 applies to each of the *FCA significant-influence functions*.

### Definition of FCA significant-influence function

10A.5.2  
FCA

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Each *FCA significant-influence function* is one which comes within the definition of a *significant-influence function*.

10A.5.3  
FCA

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Section 59(7B) of the *Act* says that a *significant-influence function*, in relation to the carrying on of a *regulated activity* by a *firm*, means a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *firm's* affairs, so far as relating to the activity.

10A.5.4  
FCA

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■ SUP 10A.5.2 R gives effect to section 59(5)(b) of the *Act*.

10A.5.5  
FCA

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Whether an *FCA controlled function* is likely to result in the *person* responsible for its performance exercising significant influence on the conduct of the *firm's* affairs is a question of fact in each case. The *FCA* has identified the *FCA significant-influence functions* as satisfying this condition.

### Periods of less than 12 weeks

10A.5.6  
FCA

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If:

- (1) a *firm* appoints an individual to perform a function which, but for this *rule*, would be an *FCA significant-influence function*;
- (2) the appointment is to provide cover for an *approved person* whose absence is:
  - (a) temporary; or
  - (b) reasonably unforeseen; and

(3) the appointment is for less than 12 weeks in a consecutive 12-month period;

the description of the relevant *FCA significant-influence function* does not relate to those activities of that individual.

10A.5.7

FCA

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



## 10A.6 FCA governing functions

### Introduction

10A.6.1

FCA

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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 functions*. 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.

10A.6.2

FCA

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A *sole trader* does not fall within the description of the *governing functions*.

### What the FCA governing functions include

10A.6.3

FCA

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Each of the *FCA governing functions* includes:

- (1) (where apportioned under ■ SYSC 2.1.1 R or ■ SYSC 4.3.1 R and ■ SYSC 4.4.3 R):
  - (a) the *systems and controls function* (if it applies to the *firm*); and
  - (b) the *significant management function*;
- (2) (in respect of *bidding in emissions auctions*) that part of the *customer function* specified in ■ SUP 10A.10.7R (7) (bidder's representative).

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

10A.6.4

FCA

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- (1) The effect of ■ SUP 10A.6.3 R is that a *person* who is approved to perform an *FCA governing function* will not have to be specifically *FCA-approved* to perform the *systems and controls function* or the *significant management function* or the part of the *customer function* specified in ■ SUP 10A.10.7R (7). However, a *person* who is approved to perform an *FCA governing function* will have to be additionally *FCA-approved* before he can perform any of the *FCA required functions* or the *customer function* (except the part specified in ■ SUP 10A.10.7R (7)).



(2) ■ SUP 10A.6.3 R does not apply to the *non-executive director function*. It does not apply to the *director function* if the only part of that function that the *FCA-approved person* is performing is the function described in ■ SUP 10A.6.8 R.

10A.6.5  
FCA

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A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* ( ■ MIPRU 2.2.1 R). ■ MIPRU 2.2.2 R (1) provides that the *firm* may allocate this responsibility to one or more of the *persons* performing an *FCA governing function* (other than the *non-executive director function*).

10A.6.6  
FCA

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Where a *person* performing a *governing function* is also responsible for the *firm's insurance mediation activity*, the words "(insurance mediation)" will be inserted after the relevant *FCA controlled function* (see ■ MIPRU 2.2.5 G).

**Director function (CF1)**

10A.6.7  
FCA

R

If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of a *director* (other than *non-executive director*) of that *firm*.

10A.6.8  
FCA

R

- (1) If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is also the function of acting in the capacity of a *person*:
  - (a) who is a *director*, partner, officer, member (if the *parent undertaking* or *holding company* is a *limited liability partnership*), *senior manager*, or employee of a *parent undertaking* or *holding company* of the *firm*; and
  - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.
- (2) (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
- (3) (1) does not apply to the function falling into ■ SUP 10A.6.13 R (*non-executive director* of the *parent undertaking* or *holding company*).

10A.6.9  
FCA

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Examples of where ■ SUP 10A.6.8 R might apply include (but are not limited to):

- (1) a chairman of an audit committee of a *parent undertaking* or *holding company* of a *UK firm* where that audit committee is working for that *UK firm* (that is, functioning as the audit committee for the *group*); or
- (2) a *director* (other than a *non-executive director*) of a *parent undertaking* or *holding company* of a *UK firm* exercising significant influence by way of his involvement in taking decisions for that *UK firm*; or

- (3) an individual (such as a *senior manager*) of a *parent undertaking* or *holding company* of a *UK firm* who is responsible for and/or has significant influence in setting the objectives for and the remuneration of executive *directors* of that *UK firm*; or
- (4) an individual who is a *director* (other than a *non-executive director*) or a *senior manager* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influencing the operations of that *UK firm*, and acts in a manner in which it can reasonably be expected that an executive *director* or *senior manager* of that *UK firm* would act; or
- (5) an individual of an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on, where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*.

10A.6.10  
FCA

**G** A *director* can be a *body corporate* and may accordingly require approval as an *FCA-approved person* in the same way as a natural *person* may require approval.

10A.6.11  
FCA

**G** The *director function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead.

**Non-executive director function (CF2)**

10A.6.12  
FCA

**R** If a *firm* is a *body corporate*, the *non-executive director function* is the function of acting in the capacity of a *non-executive director* of that *firm*.

10A.6.13  
FCA

- R**
- (1) If a *firm* is a *body corporate*, the *non-executive director function* is also the function of acting in the capacity of a *person*:
    - (a) who is a *non-executive director* of a *parent undertaking* or *holding company*; and
    - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.
  - (2) However, (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.

10A.6.14  
FCA

**G** Examples of where **■** SUP 10A.6.13 R might apply include (but are not limited to):

- (1) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* who takes an active role in the running of the business of a *UK firm*, for example, as a member of a board or committee (on audit or remuneration) of that *firm*; or
- (2) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* having significant influence in setting and monitoring the business strategy of the *UK firm*; or

- (3) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* of a *UK firm* involved in carrying out responsibilities such as scrutinising the approach of executive management, performance, or standards of conduct of the *UK firm*; or
- (4) an individual who is a *non-executive director* of a *parent undertaking* or *holding company* of a *UK firm* who is accustomed to influence the operations of the *UK firm*, and acts in a way in which it can reasonably be expected that a *non-executive director* of the *UK firm* would act; or
- (5) an individual who is a *non-executive director* of an *overseas firm* which maintains a *branch* in the *United Kingdom* from which *regulated activities* are carried on where that individual has responsibilities for those *regulated activities* which are likely to enable him to exercise significant influence over the *UK branch*.

10A.6.15 G  
FCA

The *non-executive director function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead.

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

10A.6.16 G  
FCA

- (1) This paragraph explains the basis on which the *director function* and the *non-executive director function* are applied to *persons* who have a position with the *firm's parent undertaking* or *holding company* under ■ SUP 10A.6.8 R or ■ SUP 10A.6.13 R.
- (2) The basic position is set out in ■ SUP 10A.3.4 G. As is the case with all *controlled functions*, ■ SUP 10A.6.8 R and ■ SUP 10A.6.13 R are subject to the overriding provisions in ■ SUP 10A.3.1 R, which sets out the requirements of section 59(1) and (2) of the *Act*. This means that unless the *firm* has an *arrangement* permitting the performance of these roles by the *persons* concerned, these *persons* will not be performing these *controlled functions*. Therefore, the *FCA* accepts that there will be cases in which a *person* performing these roles will not require approval. However where there is such an *arrangement* the function may apply.

**Chief executive function (CF3)**

10A.6.17 R  
FCA

The *chief executive function* is the function of acting in the capacity of a *chief executive* of a *firm*.

10A.6.18 G  
FCA

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

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

10A.6.19 G  
FCA

For a *branch* in the *United Kingdom* of an *overseas firm*, the *FCA* would not normally expect the overseas *chief executive* of the *firm* as a whole to be *FCA*-approved for this

function where there is a *senior manager* under him with specific responsibility for those activities of the *branch* which are subject to the *UK regulatory system*. In some circumstances, the *person* within the *firm* responsible for *UK operations* may, if the function is likely to enable him to exercise significant influence over the *branch*, also perform the *chief executive function* (see ■ SUP 10A.7.4 G).

10A.6.20

FCA

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A *person* performing the *chief executive function* may be a member of the *governing body* but need not be. If the chairman of the *governing body* is also the *chief executive*, he will be discharging this function. If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*. But if that responsibility is discharged jointly by more than one *person*, each of those *persons* will be performing the *chief executive function*.

10A.6.21

FCA

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Note that a *body corporate* may be a *chief executive*. If so, it will need to be approved (if the *firm* in question is an *FCA-authorised person*) to perform the *chief executive function*.

10A.6.22

FCA

G

The *chief executive function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead.

#### Partner function (CF4)

10A.6.23

FCA

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- (1) If a *firm* is a *partnership*, the *partner function* is the function of acting in the capacity of a *partner* in that *firm*.
- (2) If the principal purpose of the *firm* is to carry on one or more *regulated activities*, each *partner* performs the *partner function*.
- (3) If the principal purpose of the *firm* is other than to carry on *regulated activities*:
  - (a) a *partner* performs the *partner function* to the extent only that he has responsibility for a *regulated activity*; and
  - (b) a *partner* in a *firm* will be taken to have responsibility for each *regulated activity* except where the *partnership* has apportioned responsibility to another *partner* or group of *partners*.

10A.6.24

FCA

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Any apportionment referred to in ■ SUP 10A.6.23R (3)(b) will have taken place under ■ SYSC 2.1.1 R or ■ SYSC 4.3.1 R and ■ SYSC 4.4.3 R. The *FCA* may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see ■ SYSC 2.2).

10A.6.25

FCA

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The effect of ■ SUP 10A.1.17 R is that *regulated activity* in ■ SUP 10A.6.23 R (and elsewhere) is to be taken as not including an activity that is a *non-mainstream regulated activity*. Therefore, a *partner* whose only *regulated activities* are incidental to his professional services, in a *partnership* whose principal purpose is to carry on other than *regulated activities*, need not be an *FCA-approved person*. What amounts to the principal purpose of the *firm* is a matter of fact in each case having regard to all the circumstances, including

the activities of the *firm* as a whole. Any *regulated activities* which such a partner carries on are not within the description of the *partner function*.

**10A.6.26** **R** If a *firm* is a *limited liability partnership*, the *partner function* extends to the *firm* as if the *firm* were a *partnership* and a member of the *firm* were a *partner*.  
FCA

**10A.6.27** **R** If a *partnership* is registered under the Limited Partnership Act 1907, the *partner function* does not extend to any function performed by a limited partner.  
FCA

**10A.6.28** **G** The *partner function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead.  
FCA

#### **Director of unincorporated association function (CF5)**

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

**10A.6.30** **G** The *director of unincorporated association function* does not apply in relation to a *PRA-authorised person*. *PRA* approval is required instead.  
FCA

#### **Small friendly society function (CF6)**

**10A.6.31** **R**

- (1) If a *firm* is a *non-directive friendly society*, the *small friendly society function* is the function of directing its affairs, either alone or jointly with others.
- (2) If the principal purpose of the *firm* is to carry on *regulated activities*, each *person* with responsibility for directing its affairs performs the *FCA controlled function*.
- (3) If the principal purpose of the *firm* is other than to carry on *regulated activities*, a *person* performs the *small friendly society function* only to the extent that he has responsibility for a *regulated activity*.

**10A.6.32** **R**

- (1) Each *person* on the *non-directive friendly society's governing body* will be taken to have responsibility for its *regulated activities*, unless the *firm* has apportioned this responsibility to one particular individual to whom it is reasonable to give this responsibility.

(2) The individual need not be a member of the *governing body*.

**10A.6.33** **G** Typically a *non-directive friendly Society* will appoint a "committee of management" to direct its affairs. However, the governing arrangements may be informal and flexible. If this is the case, the *FCA* would expect the society to resolve to give responsibility for the carrying on of *regulated activities* to one individual who is appropriate in all  
FCA

the circumstances. That individual may, for example, have the title of *chief executive* or similar. The individual would have to be an *FCA-approved person* under ■ SUP 10A.6.31 R.

## 10A.6.34

FCA

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In practice, the *FCA* expects that most *non-directive friendly societies* will be *PRA-authorised persons*. Where that is the case, the *small friendly society function* will not apply. *PRA* approval is required instead.

## 10A.7 FCA required functions

### Apportionment and oversight function (CF8)

- 10A.7.1** **R** The *apportionment and oversight function* is the function of acting in the capacity of a *director or senior manager* responsible for either or both of the apportionment function and the oversight function set out in ■ SYSC 2.1.3 R or ■ SYSC 4.4.5 R.
- 10A.7.2** **G** In requiring someone to apportion responsibility, a *common platform firm* should not apply for that *person or persons* to be FCA-approved to perform the *apportionment and oversight function* (see ■ SUP 10A.7.1 R, ■ SYSC 2.1.3 R and ■ SYSC 1 Annex 1).
- 10A.7.3** **G** The fact that there is a *person* performing the *apportionment and oversight function*, and who has responsibility for activities subject to regulation by the FCA, may have a bearing on whether a manager who is based overseas will be performing an *FCA controlled function*. It is a factor to take into account when assessing the likely influence of the overseas manager.
- 10A.7.4** **G** Generally, in relation to a UK establishment of an *overseas firm* or a *firm* which is part of an overseas *group*, where an overseas manager's responsibilities in relation to the *United Kingdom* are strategic only, he will not need to be an *FCA-approved person*. However, where, in accordance with ■ SYSC 3 or ■ SYSC 4 to ■ SYSC 10, he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing an *FCA controlled function* for example, the *chief executive function* or a *PRA controlled function*.
- 10A.7.5** **G** A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director or senior manager* the responsibility for the *firm's insurance mediation activity* (■ MIPRU 2.2.1 R). ■ MIPRU 2.2.2 R (2) provides that the *firm* may allocate this responsibility to the *person* performing the *apportionment and oversight function*.
- 10A.7.6** **G** Where the *person* performing the *apportionment and oversight function* is also responsible for the *firm's insurance mediation activity*, the words "(insurance mediation)" will be inserted after this *FCA controlled function* (see ■ MIPRU 2.2.5 G).

**10A.7.7** **G** As explained in ■ SUP 10A.11 (Minimising overlap with the PRA approved persons regime), the application of the *apportionment and oversight function* is sometimes disapplied for a *PRA-authorized person*.  
**FCA**

#### **Compliance oversight function (CF10)**

**10A.7.8** **R** The *compliance oversight function* is the function of acting in the capacity of a *director* or *senior manager* who is allocated the function set out in ■ SYSC 3.2.8 R or ■ SYSC 6.1.4 R (2).  
**FCA**

#### **CASS operational oversight function (CF10a)**

**10A.7.9** **R** In relation to a *CASS medium firm* and a *CASS large firm*, the *CASS operational oversight function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in ■ CASS 1A.3.1A R.  
**FCA**

#### **Money laundering reporting function (CF11)**

**10A.7.10** **R** The *money laundering reporting function* is the function of acting in the capacity of the *money laundering reporting officer* of a *firm*.  
**FCA**

**10A.7.11** **G** A *firm's* obligations in respect of its *money laundering reporting officer* are set out elsewhere in the *Handbook* (see ■ SYSC 3.2.6I R and ■ SYSC 6.3.9 R and for their scope, see the application provisions in ■ SYSC 1 Annex 1).  
**FCA**

#### **Benchmark submission function (CF40)**

**10A.7.12** **R** The *benchmark submission function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in ■ MAR 8.2.3 R (1) (Organisational and governance arrangements).  
**FCA**

#### **Benchmark administration function (CF50)**

**10A.7.13** **R** The *benchmark administration function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in ■ MAR 8.3.5 R (1) (Requirements for benchmark administrators).  
**FCA**



## 10A.8 Systems and controls functions

### Systems and controls function (CF28)

10A.8.1

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The *systems and controls function* is the function of acting in the capacity of an *employee* of the *firm* with responsibility for reporting to the *governing body* of a *firm*, or the audit committee (or its equivalent) in relation to:

- (1) its financial affairs;
- (2) setting and controlling its risk exposure (see ■ SYSC 3.2.10 G and ■ SYSC 7.1.6 R);
- (3) adherence to internal systems and controls, procedures and policies (see ■ SYSC 3.2.16 G and ■ SYSC 6.2).

10A.8.2

FCA

R

The *systems and controls function* does not apply in relation to *bidding in emissions auctions* carried on by a *firm* that is exempt from MiFID under article 2(1)(i).

10A.8.3

FCA

G

The *systems and controls function* does not apply in relation to a *PRA-authorized person*. *PRA* approval is required instead.

10A.8.4

FCA

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Where an *employee* performs the *systems and controls function* the *FCA* would expect the *firm* to ensure that the *employee* had sufficient expertise and authority to perform that function effectively. A *director* or *senior manager* would meet this expectation.

## 10A.9 Significant management functions

### Application

10A.9.1

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■ SUP 10A.9 applies only to a *firm* which:

- (1) under ■ SYSC 2.1.1 R or, ■ SYSC 4.1.1 R, apportions a significant responsibility, within the description of the *significant management function*, to a *senior manager* of a significant business unit; or
- (2) undertakes *proprietary trading*; or
- (3) (in the case of an *EEA firm*) undertakes the activity of *accepting deposits from banking customers* and activities connected with this.

10A.9.2

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The *FCA* anticipates that there will be only a few *firms* needing to seek approval for an individual to perform the *significant management function* set out in ■ SUP 10A.9.1 R (1). In most *firms*, those approved for the *FCA governing functions*, *FCA required functions* and, where appropriate, the *systems and controls function* or the equivalent *PRA controlled functions*, are likely to exercise all the significant influence at senior management level.

10A.9.3

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A *proprietary trader* undertakes activities with the *firm's money* and has the ability to commit the *firm*. By virtue of this role, all *proprietary traders* have potential to be able to exercise significant influence on the *firm* for the purposes of the definition of *significant-influence function*. Therefore, it is the *FCA's* expectation that all *firms* will assess all their *proprietary traders* to ascertain the ones for whom approval is required.

10A.9.4

FCA

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The scale, nature and complexity of the *firm's* business may be such that a *firm* apportions, under ■ SUP 10A.9.1 R (1), a significant responsibility to an individual who is not approved to perform the *FCA governing functions*, *FCA required functions* or, where appropriate, the *systems and controls function* or the equivalent *PRA controlled functions*. If so, the *firm* should consider whether the functions of that individual fall within the *significant management function*. For the purposes of the description of the *significant management functions*, the following additional factors about the *firm* should be considered:

- (1) the size and significance of the *firm's* business in the *United Kingdom*; for example, a *firm* carrying on *designated investment business* may have a large number of *approved persons* (for example, in excess of 100 individuals); or a *firm* carrying on general insurance business may have gross written *premiums* in excess of £100m;

- (2) the number of *regulated activities* carried on, or proposed to be carried on, by the *firm* and (if relevant) other members of the *group*;
- (3) its *group* structure (if it is a member of a *group*);
- (4) its management structure (for example, matrix management); and
- (5) the size and significance of its international operations, if any.

## 10A.9.5

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When considering whether a business unit is significant, the *firm* should take into account all relevant factors in the light of the *firm's* current circumstances and its plans for the future, including:

- (1) the risk profile of the unit; or
- (2) its use or commitment of a *firm's* capital; or
- (3) its contribution to the profit and loss account; or
- (4) the number of *employees* or *approved persons* in the unit; or
- (5) the number of *customers* of the unit; or
- (6) any other factor which makes the unit significant to the conduct of the *firm's* affairs so far as relating to the *regulated activity*.

## 10A.9.6

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The question may arise whether a manager who is based overseas will be performing the *significant management function* under ■ SUP 10A.9.9 R and should, therefore, be an *FCA-approved person*. This is especially true where the *firm* operates matrix management. The fact there is a *person* performing the *apportionment and oversight function*, and who has responsibility for activities subject to regulation by the *FCA*, may have a bearing on this. It is a factor to take into account when assessing the likely influence of the overseas manager.

## 10A.9.7

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Generally, in relation to a *branch* of a *firm*, or a *firm* which is part of an overseas *group*, where an overseas *manager* is responsible for strategy, he will not need to be approved for the *significant management function*. However, where he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing that *FCA controlled function*.

## 10A.9.8

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See also ■ SUP 10A.7.3 G to ■ SUP 10A.7.6 G in relation to matrix management.

**Significant management function (CF29)**

10A.9.9

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The *significant management function* is the function of acting as a *senior manager* with significant responsibility for a significant business unit that:

- (1) carries on *designated investment business* or other activities not falling within (2) to (4);
- (2) *effects contracts of insurance* (other than *contractually based investments*);
- (3) makes material decisions on the commitment of a *firm's* financial resources, its financial commitments, its assets acquisitions, its liability management and its overall cash and capital planning;
- (4) processes confirmations, payments, settlements, insurance claims, *client money* and similar matters;
- (5) (in the case of an *EEA firm*) undertakes the activity of *accepting deposits* from *banking customers* and activities connected with this.

10A.9.10

FCA

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The *significant management function* also includes the function of acting as a *proprietary trader*.

10A.9.11

FCA

R

The *significant management function* does not include any of the activities described in any other *FCA controlled function* or *PRA controlled function* if that other *controlled function* applies to the *firm*.

10A.9.12

FCA

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A *senior manager* carrying on the *significant management function* under ■ SUP 10A.9.9 R with significant responsibility for a significant business unit that carries on activities other than *designated investment business* for the purposes of ■ SUP 10A.9.9 R (1) could, for example, be the head of a unit carrying on the activities of: retail banking, personal lending, corporate lending, salvage or loan recovery, or *proprietary trading*, or a member of a committee (that is, a *person* who, together with others, has authority to commit the *firm*) making decisions in these functions.

10A.9.13

FCA

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A *proprietary trader* also undertakes activities which may have a significant influence on the *firm*. Such activities may require approval for CF29 under ■ SUP 10A.9.10 R.

10A.9.14

FCA

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A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* (■ MIPRU 2.2.1 R). ■ MIPRU 2.2.2 R (3) provides that the *firm* may allocate this responsibility to the *person* performing the *significant management function*.

10A.9.15

FCA

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Where the *person* performing the *significant management function* is also responsible for the *firm's insurance mediation activity*, the words "(insurance mediation)" will be inserted after this *FCA controlled function* (see ■ MIPRU 2.2.5 G).

## 10A.10 Customer-dealing functions

### Introduction

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

**10A.10.2** **G** Without ■ SUP 10A.10.1 R, the description of the *customer function* would extend to this function wherever it was performed. The effect of ■ SUP 10A.10.1 R is that the description is limited, in relation to *regulated activities* with an overseas element, in a manner which is broadly consistent with the scope of conduct of business regulation.  
**FCA**

**10A.10.3** **G** The *customer function* has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; it has no application to banking business such as deposit taking and lending, nor to *general insurance business*.  
**FCA**

### The basic rule about the customer function

**10A.10.4** **R** The *customer function* is one which comes within the definition of a *customer-dealing function*.  
**FCA**

**10A.10.5** **G** Section 59(7A) of the *Act* (Approval for particular arrangements) says that the customer-dealing function, in relation to the carrying on of a *regulated activity* by a *firm* ("A"), means a function that will involve the *person* performing it in dealing with:  
**FCA**

- (1) customers of A; or
- (2) property of customers of A;

in a manner substantially connected with the carrying on of the activity.

**10A.10.6** **G** The *FCA* interprets the phrase "dealing with" as including having contact with *customers* and extending beyond "dealing" as used in the phrase "dealing in investments". "Dealing in" is used in Schedule 2 to the *Act* to describe in general terms the *regulated activities* which are specified in Part II of the *Regulated Activities Order*.  
**FCA**

**Customer function (CF 30)**

10A.10.7

**R**

FCA

The *customer function* is the function of:

- (1) *advising on investments* other than a *non-investment insurance contract* (but not where this is *advising on investments* in the course of carrying on the activity of giving *basic advice* on a *stakeholder product*) and performing other functions related to this such as *dealing* and *arranging*;
- (2) giving advice to *clients* solely in connection with *corporate finance business* and performing other functions related to this;
- (3) giving advice or performing related activities in connection with *pension transfers* or opt-outs for *retail clients*;
- (4) giving advice to a *person* to become, or continue or cease to be, a member of a particular Lloyd's syndicate;
- (5) *dealing*, as principal or as agent, and *arranging (bringing about) deals in investments* other than a *non-investment insurance contract* with, for, or in connection with *customers* where the *dealing* or *arranging deals* is governed by ■ COBS 11 (Dealing and managing);
- (6) acting in the capacity of an *investment manager* and carrying on functions connected to this;
- (7) in relation to *bidding in emissions auctions*, acting as a 'bidder's representative' within the meaning of subparagraph 3 of article 6(3) of the *auction regulation*.

10A.10.8

**R**

FCA

The *customer function* does not extend to an individual who is performing the functions in ■ SUP 10A.10.7 R (1) to ■ SUP 10A.10.7R (2) or ■ SUP 10A.10.7 R (5) to ■ (7) and who is based overseas and who, in a 12-month period, spends no more than 30 days in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function.

10A.10.9

**G**

FCA

The FCA would expect an individual from overseas to be accompanied on a visit to a *customer*. ■ TC 2.1.9 R (2) provides that the *firm* will have to be satisfied that the individual has at least three years of up-to-date, relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of ■ TC 2.1.9 R (2) are disappplied in these circumstances (except for an individual who gives advice to *retail clients* on *retail investment products* or is a *broker fund adviser*). The effect of this is that such individuals need not attain the relevant regulatory module of an appropriate qualification (see ■ TC 2.1.9 R (2)).

10A.10.10

**G**

FCA

The *customer function* in ■ SUP 10A.10.7 R (5) does not extend to the individual who, on the instructions of the *customer*, simply inputs the *customer's* instructions into an automatic

execution system where no discretion is or may be exercised by the individual performing the activity. Nor does it extend to merely introducing a *customer* to a *firm* or distributing advertisements.

**10A.10.11****G****FCA**

An individual may *advise on investments* prior to being assessed as competent in accordance with the *rules* in the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) and, where relevant, the Training and Competence sourcebook (*TC*). The *firm* should record when that *person* subsequently becomes competent.

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

### Introduction

- 10A.11.1** **FCA** **G** ■ SUP 10A.11 deals with how the *FCA's approved persons* regime applies to *PRA-authorised persons*. ■ SUP 10A.11 therefore only applies if the *firm* in question is a *PRA-authorised person*.
- 10A.11.2** **FCA** **G** Both the *FCA* and the *PRA* may specify a function as a *controlled function* in relation to a *PRA-authorised person*. However, only the *FCA* has power to specify a *customer-dealing function* as a *controlled function*.
- 10A.11.3** **FCA** **G** Therefore, if a *person's* job for a *firm* involves:
- (1) an *FCA controlled function*, the *firm* should apply to the *FCA* for approval;
  - (2) a *PRA controlled function*, the *firm* should apply to the *PRA* for approval;
  - (3) both an *FCA controlled function* and a *PRA controlled function*, the *firm* should apply to both the *FCA* and the *PRA* for approval (the purpose of ■ SUP 10A.11 is to cut down the need for this sort of dual approval).
- 10A.11.4** **FCA** **G** The *PRA* cannot give its approval for the performance of a *PRA controlled function* without the consent of the *FCA*. The *firm* does not need to apply to the *FCA* for that consent. The *PRA* must as soon as practicable notify the *FCA* of the receipt or withdrawal of an application to the *PRA*.
- 10A.11.5** **FCA** **G** Under section 59B of the *Act* (Role of *FCA* in relation to *PRA* decisions) the *FCA* may arrange with the *PRA* that in agreed cases the *PRA* may give approval without obtaining the consent of the *FCA*. No such arrangements are currently in force.
- 10A.11.6** **FCA** **G** The *FCA* and *PRA* have coordinated their *approved persons* regime to reduce the amount of overlap. These arrangements relate to *significant-influence functions* only.
- 10A.11.7** **FCA** **G** The *FCA* is under a duty under section 59A of the *Act* (Specifying functions as controlled functions: supplementary) to exercise the power to specify any *significant-influence function* as an *FCA controlled function* in a way that it considers will minimise the likelihood that approvals fall to be given by both the *FCA* and the *PRA* in respect of the performance by a *person of significant-influence functions* in relation to the same *PRA-authorised person*.



**Guidance on how SUP 10A.11 works**

**10A.11.8** **G**  
**FCA**

■ SUP 10A.11 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.11.11 R. Where this is the case 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.

**10A.11.9** **G**  
**FCA**

■ SUP 10A.11.10 G gives some examples of how ■ SUP 10A.11 works.

**10A.11.10** **G**  
**FCA**

Table: Examples of how the need for dual FCA and PRA approval in relation to PRA-authorized persons is reduced

Example	Whether FCA approval required	Whether PRA approval required	Comments
(1) A is being appointed <i>chief executive</i> and the <i>person</i> performing the <i>apportionment and oversight function</i> .	No.	Yes	The <i>PRA chief executive function</i> is expanded to include the <i>apportionment and oversight function</i> . To avoid the need for <i>FCA</i> approval, A's appointment as the <i>person</i> performing the <i>apportionment and oversight function</i> should not take effect before <i>PRA</i> approval for the chief executive role.
(2) Same as (1) but the application to the <i>PRA</i> does not mention that it is also intended that A is perform what would otherwise be the <i>apportionment and oversight function</i>	Yes	Yes	SUP 10A.11 does not apply if the application for <i>PRA</i> approval does not say that A will also be performing what would otherwise be the <i>apportionment and oversight function</i> .
(3) A is appointed as <i>chief executive</i> . Later, he is appointed to perform the <i>apportionment and oversight function</i> while carrying on as <i>chief executive</i> .	Yes, when he is appointed to perform the <i>apportionment and oversight function</i>	Yes, when he takes up the <i>chief executive</i> role	
(4) A is appointed to perform the <i>apportionment and oversight function</i> . He later becomes the <i>chief executive</i> .	Yes, when he is appointed to perform the <i>apportionment and oversight function</i> .	Yes, when he becomes the <i>chief executive</i>	When A is appointed as chief executive he retains his status as an <i>FCA-approved person</i> .

Example	Whether FCA approval required	Whether PRA approval required	Comments
<p>(5) A is being appointed as director and as the <i>person performing the apportionment and oversight function</i>. Later, he becomes chief executive (but carries on with the <i>apportionment and oversight function</i>).</p>	<p>On being appointed director, see the answers to (1) and (2). No <i>FCA</i> approval is needed when A becomes chief executive; the <i>apportionment and oversight function</i> remains switched off when A takes up the role of chief executive. The application to the PRA should say that A is performing what would otherwise be the <i>apportionment and oversight function</i>.</p>	<p>Yes</p>	
<p>(6) A is appointed as <i>chief executive</i> and to perform the <i>apportionment and oversight function</i> at the same time. Later, A gives up his role as <i>chief executive</i> but carries on performing the <i>apportionment and oversight function</i> role.</p>	<p>On A's first appointment, No. But when A gives up the role as <i>chief executive</i>, <i>FCA</i> approval is needed to perform the <i>apportionment and oversight function</i>. Form E should be used. The application should state that it is being made as a result of ceasing to perform a <i>PRA controlled function</i> when the rule in SUP 10B.7.4 R of the <i>PRA's Handbook</i> applies.</p> <p>Form A should be used if there have been changes in fitness of the <i>approved person</i> (SUP 10A.14.4 D (3)).</p>	<p>On his first appointment, Yes.</p>	<p>Performing the <i>apportionment and oversight function</i> requires <i>FCA</i> approval. A does not have that approval because A did not need it when he was first appointed. The combined effect of SUP 10A.11 and SUP 10B.7 of the <i>PRA's Handbook</i> is that the <i>firm</i> has three months to secure approval by the <i>FCA</i> for A's performance of the <i>apportionment and oversight function</i>. During that interim period, A keeps his status as a <i>PRA-approved person</i> performing the apportionment and oversight element of the <i>PRA chief executive function</i> which is included in that function under SUP 10B.7 of the <i>PRA's Handbook</i>. This is because SUP 10B.7.4 R in the <i>PRA's Handbook</i> says that during this transitional period he is still treated as performing the <i>PRA chief executive function</i> and SUP</p>

Example	Whether FCA approval required	Whether PRA approval required	Comments
			10A.11 says that for as long as he is performing a <i>PRA governing function</i> he does not perform the <i>apportionment and oversight function</i> .

**The main rule**

10A.11.11 **R**  
FCA

*A person* (referred to as A in this rule) is not performing the *apportionment and oversight function* 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 governing 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 governing function* in relation to B;
- (3) at the time of the *PRA* approval referred to in (1), A was not subject to a *current FCA approved person approval* to perform the *apportionment and oversight function* in relation to B; and
- (4) at the time of the *PRA* approval referred to in (1), A had not started to perform what would otherwise have been the *apportionment and oversight function* (the *FCA* function) and, as part of the application for the *PRA* approval referred to in (1), B notified the *PRA* that A would start to perform the *FCA* function at or around the time of the *PRA* approval in (1).



## 10A.12 Procedures relating to FCA-approved persons

### Forms

10A.12.1  
FCA

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The forms listed in ■ SUP 10A.12.2 G are referred to in ■ SUP 10A.12 (Procedures relating to FCA-approved persons) to ■ SUP 10A.17 (Further questions).

10A.12.2  
FCA

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Table: FCA-approved persons forms

Form		Purpose	Handbook requirement
the relevant Form A	The relevant online form on the <i>FCA</i> and <i>PRA's</i> ONA system or the form in SUP 10A Annex 4D (See Note)	Application to perform controlled functions under the approved persons regime	SUP 10A.13.3 D
Form B	SUP 10A Annex 5R	Notice to withdraw an application to perform controlled functions under the approved persons regime	SUP 10A.13.19 R
Form C	SUP 10A Annex 6R	Notice of ceasing to perform controlled functions	SUP 10A.14.8 R
Form D	SUP 10A Annex 7R	Notification of changes in personal information or application details	SUP 10A.14.15 R
Form E	The relevant online form on the <i>FCA</i> and <i>PRA's</i> ONA system or the form in SUP 10A Annex 8D (See Note)	Internal transfer of an <i>approved person</i>	SUP 10A.14.4 D

Note: The form in the SUP annex shown is to be used by *credit unions*, and by other *firms* only in the event of a failure of the information technology systems used by the *FCA*. See the relevant "Handbook requirement"

10A.12.3  
FCA

G

A summary of the forms and their purposes is in ■ SUP 10A Annex 2.

- 10A.12.4** **FCA** **G** Unless the context otherwise requires, in ■ SUP 10A.12 (Procedures relating to FCA-approved persons) to ■ SUP 10A.17 (Further questions) where reference is made to a *firm*, this also includes an applicant for *Part 4A permission*, and other *persons* seeking to carry on *regulated activities* as an *authorised person*.
- 10A.12.5** **FCA** **G** Forms B, C, D and E can only be submitted in respect of an *FCA-approved person* by the *firm* that submitted an *FCA-approved person's* original application (the relevant Form A).
- 10A.12.6** **FCA** **G** Copies of Forms A, B, C, D and E may be obtained from the *FCA* website. *Credit unions* can obtain copies from the *FCA's* Firm Contact Centre. To contact the *FCA's* Customer Contact Centre for *approved persons* enquiries:
- (1) telephone 0845 606 9966; or
  - (2) e-mail [fcc@fca.org.uk](mailto:fcc@fca.org.uk); or
  - (3) fax 020 7066 0017; or
  - (4) write to:  
  
Customer Contact Centre  
  
The Financial Conduct Authority  
  
25 The North Colonnade  
  
Canary Wharf  
  
LONDON E14 5HS.



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

### When to apply for approval

10A.13.1  
FCA

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In accordance with section 59 of the *Act* (Approval for particular arrangements), where a *candidate* will be performing one or more *FCA controlled functions*, a *firm* must take reasonable care to ensure that the candidate does not perform these functions unless he has prior approval from the *FCA*.

### Failure to apply for approval

10A.13.2  
FCA

G

If a *person* performs an *FCA controlled function* without approval it is not only the *firm* that is accountable. Under section 63A of the *Act* (Power to impose penalties), if the *FCA* is satisfied that:

- (1) a *person* ("P") has at any time performed an *FCA controlled function* without approval; and
- (2) at that time P knew, or could reasonably be expected to have known, that P was performing an *FCA controlled function* without approval;

it may impose a penalty on P of such amount as it considers appropriate.

### How to apply for approval

10A.13.3  
FCA

D

An application by a *firm* for the *FCA's* approval under section 59 of the *Act* (Approval for particular arrangements) must be made by completing Form A (except where ■ SUP 10A.14.4 D requires a Form E).

10A.13.4  
FCA

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■ SUP 10A.16.1 D explains how applications should be submitted.

### Who should make the application?

10A.13.5  
FCA

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

responsibility lies and whom the *FCA* anticipates will submit *FCA-approved persons* application forms. ■ SUP 10A.13.6 G describes some common situations. The *firm* which is outsourcing is referred to as "A" and the *person* to whom the performance of the *FCA controlled function* has been outsourced, or which makes the arrangement for the *FCA controlled function* to be performed, is referred to as "B". In each situation, A must take reasonable care to ensure that, in accordance with section 59(2) of the *Act*, no *person* performs an *FCA controlled function* under an arrangement entered into by its contractor in relation to the carrying on by A of a *regulated activity*, without approval from the *FCA*. See also ■ SYSC 3.2.4 G and ■ SYSC 8.1.1 R, and ■ SYSC 13.9 for *insurers*.

10A.13.6 G  
FCA

Outsourcing arrangements

Outsourcing arrangements	Submitting form
<i>Firm A to firm B</i>	The <i>FCA</i> will consider A to have taken reasonable care if it enters into a contract with B under which B is responsible for ensuring that the relevant <i>FCA controlled functions</i> are performed by <i>FCA-approved persons</i> , and that it is reasonable for A to rely on this
Outsourcing by A to B (both being a member of the same <i>United Kingdom</i> group and each having its registered office in the <i>United Kingdom</i> )	See SUP 10A.3.4 G
(i) A to B, where B is a non- <i>authorised person</i> not part of the same group as A	See SUP 15.7.8 G
(ii) A to B, where A is a <i>branch</i> of an <i>overseas firm</i> in the <i>United Kingdom</i> , and B is an <i>overseas undertaking</i> of the same <i>group</i>	Responsibility for (as opposed to the performance of) any activity outsourced to B will remain with A. See SYSC 3.2.4 G and SYSC 8
(iii) A to B, where A is a UK <i>authorised subsidiary</i> of an <i>overseas firm</i> and B is an <i>overseas undertaking</i> of the same <i>group</i>	A ensures that an individual approved by the <i>FCA</i> or the <i>PRA</i> under a controlled function that is a <i>significant-influence function</i> has responsibility for the <i>outsourced arrangement</i> and A submits a form in relation to that individual

10A.13.7 G  
FCA

Where the notification of an *appointed representative* ( ■ SUP 12.7.1 R) is linked to an application for approval ( ■ SUP 10A.13 (Applications for approval and withdrawing an application for approval)), any delay in receiving the notification under ■ SUP 12.7.1 R may delay the *FCA*'s approval of the individuals employed by that *appointed representative* who will be performing *FCA controlled functions* for the *firm*.

**Processing an application**

- 10A.13.8** **G** The *Act* sets out the time that the *FCA* has to consider an application and come to a decision.  
**FCA**
- 10A.13.9** **G** In any case where the application for approval is made by a *person* applying for *permission* under Part 4A of the *Act*, the *FCA* has until the end of whichever of the following periods ends last:  
**FCA**
- (1) the period within which an application for that *permission* must be determined; and
  - (2) the period of three months from the time it receives a properly completed application.
- 10A.13.10** **G** In any other case it is the period of three months from the time it receives a properly completed application.  
**FCA**
- 10A.13.11** **G** The *FCA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice* (see ■ DEPP 2). The *FCA* will deal with cases more quickly than this whenever circumstances allow and will try to meet the standard response times published on the website and in its Annual Report. However, if an application is incomplete when received, or the *FCA* has knowledge that, or reason to believe that, the information is incomplete, then the processing time will be longer than the published standard response times.  
**FCA**
- 10A.13.12** **G** Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. If forms are not completed fully and honestly, applications will be subject to investigation and the *FCA candidate's* suitability to be approved to undertake an *FCA controlled function* will be called into question. A *person* who provides information to the *FCA* that is false or misleading may commit a criminal offence, and could face prosecution under section 398 of the *Act* regardless of the status of their application.  
**FCA**
- 10A.13.13** **G** If there is a delay in processing the application within the standard response time, the *FCA* will tell the *firm* making the application as soon as this becomes apparent.  
**FCA**
- 10A.13.14** **G** Before making a decision to grant the application or give a *warning notice*, the *FCA* may ask the *firm* for more information about the *FCA candidate*. If it does this, the three-month period in which the *FCA* must determine a completed application:  
**FCA**
- (1) will stop on the day the *FCA* requests the information; and
  - (2) will start running again on the day on which the *FCA* finally receives all the requested information.
- 10A.13.15** **G** The *FCA* may grant an application only if it is satisfied that the *FCA candidate* is a fit and proper *person* to perform the *FCA controlled function* stated in the application form. Responsibility lies with the *firm* making the application to satisfy the *FCA* that the *FCA candidate* is fit and proper to perform the *FCA controlled function* applied for.



10A.13.16 G  
FCA

For further guidance on criteria for assessing whether a *FCA candidate* is fit and proper, see *FIT*.

**Decisions on applications**  
 .....  
 .....

10A.13.17 G  
FCA

Whenever it grants an application, the *FCA* will confirm this in writing to all *interested parties*.

10A.13.18 G  
FCA

If the *FCA* proposes to refuse an application in relation to one or more *FCA controlled functions*, it must follow the procedures for issuing *warning* and *decision notices* to all *interested parties*. The requirements relating to warning and decision notices are in ■ DEPP 2.

**Withdrawing an application for approval**  
 .....  
 .....

10A.13.19 R  
FCA

**A firm applying to withdraw an application for approval must notify the *FCA*, using Form B, in the form set out in ■ SUP 10A Annex 5R.**

10A.13.20 G  
FCA

Under section 61(5) of the *Act* (Determination of applications), the *firm* may withdraw an application only if it also has the consent of the *candidate* and the *person* by whom the *candidate* is or would have been employed, if this is not the *firm* making the application.

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

### Moving within a firm

10A.14.1

FCA

G

An *FCA-approved person's* job may change from time to time as a result, for instance, of a change in personal job responsibilities or a *firm's regulated activities*. Where the changes will involve the *person* performing one or more *FCA controlled functions* different from those for which approval has already been granted, then an application must be made to the *FCA* for approval for the *person* to perform those *FCA controlled functions*. The *firm* must take reasonable care to ensure that an individual does not begin performing an *FCA controlled function* until the *FCA* has granted *FCA-approved person* status to that individual in respect of that *FCA controlled function*. Similarly, a *firm* must get the *FCA's* approval if a *person* is to start performing an *FCA controlled function* in relation to that *firm* when he already has the *PRA's* approval to perform a *PRA controlled function* in relation to that *firm*.

10A.14.2

FCA

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If an *FCA-approved person* or a *PRA-approved person* is ceasing to perform *FCA controlled functions* or *PRA controlled function*, as well as applying for approval in respect of *FCA controlled functions*, ■ SUP 10A.14.4 D generally applies. Further details can be found in ■ SUP 10A Annex 2.

10A.14.3

FCA

G

If a *person* is to perform an *FCA controlled function* for a *firm* for which he already performs a *PRA controlled function* or *FCA controlled function* as an *approved person* but he is not at the same time ceasing to perform an *FCA controlled function* or *PRA controlled function*, a *firm* should use Form A. It is not mandatory to complete all parts of the form. See the notes relevant to each form for full details.

10A.14.4

FCA

D

- (1) A *firm* must use Form E where an *approved person* is both ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *FCA controlled functions* within the same *firm* or *group*.
- (2) A *firm* must not use Form E if the *approved person* has never before been approved to perform a *significant-influence function* for any *firm* or has not been subject to a *current approved person approval* from the *FCA* or *PRA* to perform a *significant-influence function* in relation to any *firm* for more than six months.
- (3) A *firm* must not use Form E if a notification has been made or should be made under ■ SUP 10A.14.17 R (Changes in fitness to be notified under Form D) or ■ SUP 10B.12.18 (the equivalent *PRA rule*) in relation to any *controlled functions* that that *person* is ceasing to perform (as referred

to in (1)) or any *controlled function* that he is continuing to perform in relation to that *firm* or a *firm* in the same *group*.

10A.14.5 **G**  
FCA

■ SUP 10A.16.1 D explains how applications should be submitted.

**Moving between firms**

10A.14.6 **G**  
FCA

If it is proposed that an *FCA-approved person* will no longer be performing an *FCA controlled function* under an *arrangement* entered into by one *firm* or one of its contractors, but will be performing the same or a different FCA controlled function under an *arrangement* entered into by a new *firm* or one of its contractors (whether or not the new *firm* is in the same *group* as the old *firm*), the new *firm* will be required to make a fresh application for the performance of the *FCA controlled function* by that *person*.

10A.14.7 **G**  
FCA

In certain circumstances, when the *FCA* already has the information it would usually require, a shortened version of the relevant Form A may be completed. See the notes relevant to each form for full details.

**Ceasing to perform an FCA controlled function**

10A.14.8 **R**  
FCA

A *firm* must submit to the *FCA* a completed Form C, in the form set out in ■ SUP 10A Annex 6R, no later than seven business days after an *FCA-approved person* ceases to perform an *FCA controlled function*. This does not apply if the *firm* has already notified the *FCA* of the proposal to do that using Form E in accordance with this chapter or has notified the *PRA* of the proposal to do that using the *PRA's* Form E in accordance with ■ SUP 10B of the *PRA's* Handbook.

10A.14.9 **G**  
FCA

■ SUP 10A.16.2 R explains how notifications should be submitted.

10A.14.10 **R**  
FCA

- (1) A *firm* must notify the *FCA* as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of an *FCA-approved person*.
- (2) Form C is qualified if the information it contains:
  - (a) relates to the fact that the *firm* has dismissed, or suspended, the *FCA-approved person* from its employment; or
  - (b) relates to the resignation by the *FCA-approved person* while under investigation by the *firm*, the *FCA* or any other *regulatory body*; or
  - (c) otherwise reasonably suggests that it may affect the *FCA's* assessment of the *FCA-approved person's* fitness and propriety.

10A.14.11 **G**  
FCA

Notification under ■ SUP 10A.14.10 R may be made by telephone, email or fax and should be made, where possible, within one *business day* of the *firm* becoming aware

of the information. If the *firm* does not submit Form C, it should inform the *FCA* in due course of the reason. This could be done using Form D, if appropriate.

10A.14.12 **G**  
FCA

A *firm* is responsible for notifying the *FCA* if any *FCA-approved person* has ceased to perform an *FCA controlled function* under an arrangement entered into by its *appointed representative* or former *appointed representative*

10A.14.13 **G**  
FCA

A *firm* can submit Form C or Form E to the *FCA* in advance of the cessation date. When a *person* ceases the arrangement under which he performs an *FCA controlled function*, he will automatically cease to be an *FCA-approved person* in relation to that *FCA controlled function*. A *person* can only be an *FCA-approved person* in relation to a specific *FCA controlled function*. Therefore, a *person* is not an *FCA-approved person* during any period between ceasing to perform one *FCA controlled function* (when he is performing no other *FCA controlled function*) and being approved in respect of another *FCA controlled function*.

10A.14.14 **G**  
FCA

Sending forms promptly will help to ensure that any fresh application can be processed within the standard response times.

**Changes to an approved person's personal details**

10A.14.15 **R**  
FCA

If an *FCA-approved person's* title, name or national insurance number changes, the *firm* for which the *person* performs an *FCA controlled function* must notify the *FCA* on Form D, in the form set out in ■ SUP 10A Annex 7R, of that change within seven *business days* of the *firm* becoming aware of the matter.

10A.14.16 **G**  
FCA

The duty to notify in ■ SUP 10A.14.15 R does not apply to changes to an *FCA-approved person's* private address.

10A.14.17 **R**  
FCA

If a *firm* becomes aware of information which would reasonably be material to the assessment of an *FCA-approved person's*, or a *FCA candidate's*, fitness and propriety (see *FIT*), it must inform the *FCA* on Form D, or (if it is more practical to do so and with the prior agreement of the *FCA*) by e-mail or fax, as soon as practicable.

10A.14.18 **G**  
FCA

■ SUP 10A.16.2 R applies to the submission of Form D.

10A.14.19 **G**  
FCA

Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

10A.14.20 **R**  
FCA

The duty to notify in ■ SUP 10A.14.17 R extends to any circumstances that would normally be declared when giving the information required for section 5 of Form A or matters considered in ■ FIT 2.

10A.14.21 **G**  
FCA

- (1) If, in relation to a *firm* which has completed the relevant Form A (■ SUP 10A Annex 4D), any of the details relating to arrangements and *FCA*

*controlled functions* are to change, the *firm* must notify the *FCA* on Form D (■ SUP 10A Annex 7R).

- (2) The notification under (1) must be made as soon as reasonably practicable after the *firm* becomes aware of the proposed change.
- (3) This also applies in relation to an *FCA controlled function* for which an application was made using Form E.
- (4) This *rule* also applies to a *firm* in respect of an *approved person*, to whom the grandfathering arrangements relating to the coming into force of the *Act* applied as if the *firm* had completed the relevant Form A for that *person*.

10A.14.22 G  
FCA

■ SUP 10A.16.2 R also applies to the submission of Form D under ■ SUP 10A.14.21 G.

10A.14.23 G  
FCA

An example of where a *firm* should use Form D is when an individual who is appointed by one *appointed representative* becomes employed by another *appointed representative* but continues to perform the *customer function* for the *firm*. The *firm* should notify the *FCA* by completing Section 1.07 of Form D.

#### Ongoing alerts for retail adviser complaints

10A.14.24 R  
FCA

- (1) A *firm* must notify the *FCA*, in the form set out in SUP 10 Annex 9R, where:
  - (a) in any twelve-month period, it has upheld three *complaints* about matters relating to the *retail investment activities* carried out by any one *retail investment adviser*; or
  - (b) it has upheld a *complaint* about matters relating to the *retail investment activities* carried out by a *retail investment adviser*, where the redress paid exceeds £50,000.
- (2) (a) Notifications made under (1)(a) must be made by the end of the period of 20 *business days*, beginning on the day in which the *firm* has upheld the third complaint.
- (b) Notifications made under (1)(b) must be made by the end of the period of 20 *business days*, beginning on the day in which the *firm* has upheld the complaint.

10A.14.25 G  
FCA

For the purpose of ■ SUP 10A.14.24 R:

- (1) when calculating the number of *complaints* in ■ SUP 10A.14.24 R (1)(a), the *firm* should exclude complaints previously notified to the *FCA* under this *rule*;
- (2) redress, under ■ SUP 10A.14.24 R (1)(b), should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:

- (a) amounts paid for distress and inconvenience;
  - (b) a free transfer out to another provider which transfer would normally be paid for;
  - (c) goodwill payments and goodwill gestures;
  - (d) interest on delayed settlements;
  - (e) waiver of an excess on an insurance policy; and
  - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred; and
- (3) if a *firm* reports on the amount of redress paid under ■ SUP 10A.14.24 R (1)(b), the redress should not include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy); the refund of the overcharge would not count as redress.

[Note: See ■ DISP 1.10.2A R for the duty to notify *complaints* under the *complaints reporting rules*]

10A.14.26

R

Notifications under ■ SUP 10A.14.24 R must be made electronically using a method of notification prescribed by the *FCA*.

FCA

## 10A.15 References and accurate information

### References

10A.15.1

R

FCA

(1) If a *firm* (A):

- (a) is considering appointing a *person* to perform any *FCA controlled function*;
- (b) requests another *firm* (B), as a current or former employer of that *person*, for a reference or other information in connection with that appointment; and
- (c) indicates to B the purpose of the request;

B must, as soon as reasonably practicable, give to A all relevant information of which it is aware.

(2) When giving the information to A under (1), B must have regard to the purpose of the request and, in particular, to:

- (a) any outstanding liabilities of that *person* from commission payments;
- (b) any relevant outstanding or upheld complaint from an *eligible complainant* against that *person*;
- (c) section 5 of the relevant Form A in ■ SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime);
- (d) ■ FIT 2 (Main assessment criteria); and
- (e) if ■ SUP 16.8.1 G (1) (Persistency reports from insurers) applies to B, the persistency of any *life policies* sold by that *person*.

10A.15.2

G

FCA

The requirement in ■ SUP 10A.15.1R (1) for *firm* (B) to give to *firm* (A) all relevant information of which it is aware concerning a *person* *firm* A is considering appointing to perform any of the *FCA controlled functions*, also applies where *firm* A has outsourced the collection of that information to another (unregulated) third party, where *firm* B has been made aware that the unregulated third party is acting on behalf of *firm* A.

10A.15.3

FCA

G

A *firm* supplying a reference in accordance with ■ SUP 10A.15.1 R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based.

**The need for complete and accurate information**

10A.15.4

FCA

G

The obligations to supply information to:

- (1) the *FCA* under either ■ SUP 10A.14.8 R or ■ SUP 10A.14.10 R;
- (2) another *firm* under ■ SUP 10A.15.1 R;

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.

10A.15.5

FCA

G

Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.



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

### 10A.16.1 **D** FCA

- (1) This direction applies to an application under Form A or Form E.
- (2) An application by a *firm* other than a *credit union* must be made by submitting the Form online at [fca.org.uk](http://fca.org.uk) using the form specified on the FCA's and PRA's ONA system.
- (3) An application by a credit union must be made using the form in ■ SUP 10A Annex 4D or ■ SUP 10A Annex 8D and must be submitted in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (4) Where a *firm* is obliged to submit an application online under (2), if the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must use the form in ■ SUP 10A Annex 4D or ■ SUP 10A Annex 8D and submit it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

### 10A.16.2 **R** FCA

- (1) This *rule* applies to a notification under Form C or Form D.
- (2) A notification must be made in accordance with ■ SUP 10A.16.1 D, except that the annexes to ■ SUP 10A in which the forms are to be found are ■ SUP 10A Annex 6R or ■ SUP 10A Annex 7, rather than the Annexes mentioned in ■ SUP 10A.16.1 D.

### 10A.16.3 **G** FCA

If the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, the FCA and PRA will endeavour to publish a notice on their websites confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 10A.16.1D (4) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification) should be used.

### 10A.16.4 **G** FCA

Where ■ SUP 10A.16.1D (4) or the equivalent situation under ■ SUP 10A.16.2 R applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.



## 10A.17 Further questions

**10A.17.1****G**

A list of frequently asked questions and answers is at ■ SUP 10A Annex 1.

**FCA****10A.17.2****G**

If the *firm* or its advisers have further questions, they should contact the FCA's Contact Centre (see ■ SUP 10A.12.6 G).

**FCA**

10A

## Frequently asked questions

FCA

	Question	Answer
<b>Requirements of the regime</b>		
1	Does pre-approval apply to individuals taking up a new <i>FCA controlled function</i> within the same <i>firm</i> ?	Yes. Pre-approval applies in all circumstances (see section 59 of the <i>Act</i> (Approval for particular arrangements)) except under the temporary (12 weeks) provision. See SUP 10A.5.6 R and question 2.
2	What are the procedures for 'emergency situations'?	Individuals may perform an <i>FCA significant-influence function</i> for up to 12 weeks in any consecutive 12-month period without requiring approval. When it becomes clear that a <i>person</i> will be performing the function on a permanent basis, then an application for approval should be made. However, there is no provision for individuals to perform the <i>customer function</i> on a continuing basis without approval (SUP 10A.5.6 R).
3	Can a <i>person</i> be approved for more than one <i>FCA controlled function</i> ?	Yes. A <i>firm</i> will need to seek approval in respect of each <i>FCA controlled function</i> a <i>person</i> is to perform.
4	Do the <i>FCA controlled functions</i> apply to an <i>incoming EEA firm</i> that is providing <i>cross border services</i> into the <i>United Kingdom</i> ?	No. The <i>FCA-approved persons</i> regime does not apply to <i>cross border services</i> (SUP 10A.1.5 R).
5	May any activity be outsourced by a <i>firm</i> ?	Yes. But if that activity constitutes a <i>regulated activity</i> , the <i>person</i> to whom it is outsourced will itself need permission.
6	Can an <i>FCA significant-influence function</i> be outsourced?	It is a question of fact in each case as to who is performing an <i>FCA significant-influence function</i> . These functions are mostly described at a high level of responsibility, for example, the <i>director</i> of a <i>company</i> or a <i>partner</i> in a <i>partnership</i> . The <i>persons</i> performing these functions cannot avoid their ultimate responsibility and, therefore, the need for approval. However, some of the <i>FCA significant-influence functions</i> may be performed by a <i>person</i> who is specifically brought in to do the job, for example the <i>chief executive function</i> (where it is to be performed by a <i>body corporate</i> ).
7	Do Lloyd's underwriting agents still require registration with Lloyd's?	Yes. Approval for a <i>controlled function</i> is not sufficient.
8	What should a <i>firm</i> do if it is unsure whether an individual needs approval?	The <i>firm</i> should contact the <i>FCA's</i> Customer Contact Centre. See SUP 10A.12.6 G.
<b>Submitting an application</b>		
9	Who applies for approval?	The <i>firm</i> . See section 60 of the <i>Act</i> (Applications for approval).

	Question	Answer
Requirements of the regime		
10	What is the role of the <i>FCA candidate</i> in the application process?	Before the <i>firm</i> submits the relevant Form A or Form E, it must verify the information contained in it. As part of this verification, the Form provides for the <i>FCA candidate</i> to confirm the accuracy of the information given by the <i>firm</i> so far as it relates to him.
11	What checks should a <i>firm</i> make on a <i>FCA candidate</i> before submitting an application for approval from the <i>FCA</i> ?	The <i>FCA</i> expects <i>firms</i> to perform due and diligent enquiries into their <i>FCA candidates</i> before they submit an application to the <i>FCA</i> for approval. The <i>FCA's</i> approval process is not a substitute for the checks that a <i>firm</i> should be carrying out on its prospective recruits. It is for the <i>firm</i> to determine what checks are appropriate but, in making its decision, a <i>firm</i> should have regard to the <i>FCA controlled function</i> to which the application relates. <i>Firms'</i> enquiries should include checks to verify relevant qualifications and previous employment. Note also the provisions of EG 6.
12	Should these checks include a check of criminal records?	It is for senior management to decide what checks should be made. In deciding if it is necessary to carry out a check of criminal records, the <i>firm</i> should consider that the <i>FCA</i> does not routinely carry out these checks during the approval process. By virtue of the <i>rehabilitation exceptions orders</i> , the <i>FCA</i> and the industry also have a right to ask about the spent criminal convictions specified in those Orders, as well as any unspent criminal convictions, in order to assess the suitability of <i>FCA candidates</i> for <i>approved person</i> status (see section 5 of the relevant Form A (Application to perform controlled functions under the approved persons regime)). Note also the provisions of EG 6(Publicity).
13	What is the "fit and proper" test for approval?	Section 61(1) of the <i>Act</i> (Determination of applications) provides that the <i>FCA</i> may grant an application only if it is satisfied that the <i>FCA candidate</i> is a fit and proper <i>person</i> to perform the relevant function. In determining this question, the <i>Act</i> sets out the matters to which the <i>FCA</i> may have regard (section 61(2)) and the <i>FCA</i> has given guidance on this in <i>FIT</i> .
14	If a <i>firm</i> is unsure whether or not something may have an impact upon an individual's fitness and propriety, should it be disclosed?	Yes, always. The deliberate non-disclosure of material facts is taken very seriously by the <i>FCA</i> as it is seen as possible evidence of current dishonesty. Therefore, if in doubt, disclose.
15	What happens if adverse information comes to light after the application form has been submitted or after the individual has been <i>FCA</i> -approved?	The <i>firm</i> must inform the <i>FCA</i> at the earliest opportunity. See SUP 10A.14.17 R.
16	Will the <i>FCA</i> consider an application in respect of a <i>FCA candidate</i> who has not yet signed a contract with the <i>firm</i> ?	Yes, as the <i>FCA</i> will consider the arrangement under which the <i>FCA candidate</i> will perform the function. However, the <i>FCA</i> will not consider speculative or provisional applications - such as for the <i>FCA candidates</i> in an election to a mutual society Board. The <i>FCA</i> must be informed immediately of any material changes to the information provided on the application form which

Question	Answer
Requirements of the regime	
	arises before the application has been determined. All changes must be communicated to the <i>FCA</i> by the <i>firm</i> making the application (see SUP 15.6.4 R). Failure to notify the <i>FCA</i> may result in a delay in processing or rejection or both.
17 How can <i>credit unions</i> get a supply of application forms (Forms A to F)?	These can be ordered from the <i>FCA</i> 's Customer Contact Centre. There is no charge for an application form.
18 Is there a separate fee for making an application for <i>FCA-approved person</i> status?	No.
19 Must all gaps in previous employment be explained?	Yes.
<b>FCA procedure</b>	
20 Does the <i>FCA</i> verify the information provided to it?	Yes, as far as possible, information is verified.
21 Will the <i>FCA</i> handle information confidentially?	Yes. The <i>FCA</i> is obliged to handle all information confidentially and is subject to the provisions of the Data Protection Act 1998.
22 How long will the <i>FCA</i> take to process an application for <i>FCA-approved person</i> status?	The length of time taken to process the application will vary as it is dependent upon the application under consideration. The <i>FCA</i> publishes standard response times on its website at <a href="http://www.fca.org.uk">www.fca.org.uk</a> setting out how long the application process is expected to take in practice. From time to time, the <i>FCA</i> also publishes its performance against these times. However, if, for example, information is missing from the application, or the information provided gives the <i>FCA</i> cause for concern, or the <i>FCA</i> already has in its possession relevant information which gives rise to concerns, processing time will almost always be longer. In each case, the <i>FCA</i> will notify the <i>firm</i> of any extension to the processing times.
23 Will the <i>firm</i> and individual be notified if there is a delay in processing the application form?	Yes. The <i>FCA</i> will contact the <i>firm</i> explaining the position and, where appropriate, giving the reasons for delay. It will then be the responsibility of the <i>firm</i> to keep the <i>FCA candidate</i> and any other <i>interested party</i> informed.
24 How are non-routine cases handled?	Refer to DEPP 2.
25 Can the <i>FCA</i> apply conditions to an <i>FCA-approved person</i> ?	No. The application can either be granted or refused. The <i>Act</i> provides no equivalent to the limitations or requirements which may be included in <i>permissions</i> . If the application is refused, the <i>firm</i> may re-apply in respect of the same individual but a different <i>FCA controlled function</i> . If it is considering doing this, the <i>firm</i> is encouraged to discuss the matter with the <i>FCA</i> . Where there are reasonable grounds for doing so, the <i>FCA</i> may require a <i>firm</i> to provide information about an <i>FCA-approved person</i> (see section 165 of the <i>Act</i> (Power to require information)).
26 Will the <i>firm</i> be issued with confirmation of approval?	Yes. The <i>firm</i> will be sent a letter setting out the effective date of approval together with the <i>FCA controlled function</i> for which the individual has been <i>FCA-approved</i> . It will then be the <i>firm's</i> responsibility to inform

Question	Answer
<b>Requirements of the regime</b>	
	the individual and any other <i>interested party</i> , for example any <i>appointed representative</i> .
<b>Withdrawing an application</b>	
27 Can a <i>firm</i> withdraw its application?	Yes, but only with the consent of the <i>FCA candidate</i> . See section 61(5) of the <i>Act</i> (Determination of applications).
28 What happens if the individual refuses to consent to the withdrawal of the application?	The <i>FCA</i> will consider with all <i>interested parties</i> what to do. If it proposes to refuse the application, it will give a <i>warning notice</i> to all <i>interested parties</i> . See section 62 of the <i>Act</i> (Applications for approval: procedure and right to refer to the Tribunal).
29 Can the <i>firm</i> withdraw only part of an application ? for instance, in relation to a specific <i>FCA controlled function</i> ?	The <i>FCA</i> will allow the <i>firm</i> to amend its application at any time before determination with the consent of all other <i>interested parties</i> . Whether the amendment will have the effect of amounting to a fresh application will be considered on a case by case basis.
<b>Conduct of FCA-approved persons</b>	
30 How and when must the <i>firm</i> report to the <i>FCA</i> potentially adverse information about an <i>FCA-approved person's</i> fitness and propriety?	Normally, the <i>firm</i> should report such matters to the <i>FCA</i> on Form D once it is reasonably satisfied as to the information's validity (SUP 10A.14.17 R). (See also, Chapter 11 of the Principle for Businesses sourcebook ( <i>PRIN</i> ) and Statement of Principle 4 in Chapter 2 of the Statements of Principle and Code of Practice for Approved Persons ( <i>APER</i> .) However, if an <i>FCA-approved person</i> is dismissed, is suspended, or resigns while under investigation by the <i>firm</i> , the <i>FCA</i> or another <i>regulatory body</i> , or there are any other matters that might affect the individual's fitness and propriety to perform an <i>FCA controlled function</i> , the <i>firm</i> should inform the <i>FCA</i> ( SUP 10A.14.10 R) that it will be submitting a Form C containing adverse information. Full details must then be provided within seven business days, on the Form C (SUP 10A.14.8 R).
31 For how long are individuals accountable to the <i>FCA</i> after ceasing to be an <i>FCA-approved person</i> ?	A <i>person</i> is guilty of misconduct if, while an <i>FCA-approved person</i> , he fails to comply with a <i>Statement of Principle</i> or is knowingly concerned in the contravention by a <i>firm</i> of a requirement in the <i>Act</i> or the <i>Handbook</i> or certain other requirements. But the <i>FCA</i> may not bring proceedings after three years from when it first knew of the misconduct.

How does the customer function relate to the training and competence requirements?			
Activity	Products/sectors in TC Appendix 1	FCA controlled function	SUP
Advising only,	2-9	<i>customer function</i> (CF 30)	10A.10.4 R
Undertaking an activity	10-11		
Advising and dealing	12-13		
Managing investments	14		





**Approved person regime: summary of forms and their use for applications for approval to perform an FCA-controlled function**

**FCA**

Function	Form	Submission
<i>person</i> about to perform an <i>FCA controlled function</i> if he has never been approved by the <i>FCA</i> or <i>PRA</i> before.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> is to perform an <i>FCA significant-influence function</i> and either has current approval to perform an <i>FCA significant-influence function</i> or a <i>PRA controlled function</i> , or has had such an approval within the previous six <i>months</i> .	Shortened Form A if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> is to perform the <i>customer function</i> and is either an <i>FCA-approved person</i> or a <i>PRA-approved person</i> , or was one within the previous six <i>months</i> .	Shortened Form A if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> ceased to be an <i>approved person</i> more than six <i>months</i> ago.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> is seeking to perform a <i>significant-influence function</i> for the first time or ceased to have approval from the <i>FCA</i> or <i>PRA</i> to perform such function more than six <i>months</i> ago.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Firm</i> applying for an outstanding application to perform an <i>FCA controlled function</i> to be withdrawn.	B	Submitted by the <i>firm</i> : signed by all <i>interested parties</i> .
<i>Person</i> ceasing to perform an <i>FCA controlled function</i> .	C (unless it should be notified under Form E)	Submitted by the <i>firm</i> within seven <i>business days</i> of <i>approved person</i> ceasing to perform <i>controlled function(s)</i> .
If an <i>FCA-approved person's</i> title, name or national insurance number changes, or there is information which may be material to the continuing assessment of an <i>approved person's</i> fitness and propriety.	D	Submitted by <i>firm</i> within seven <i>business days</i> of the <i>firm</i> becoming aware of the matter.
<i>Person</i> remaining with the same <i>firm</i> but changing <i>FCA controlled functions</i> (excluding where the <i>person</i> is changing from a <i>customer function</i> to a <i>significant-influence function</i> ).	E	Submitted by <i>firm</i> to the <i>FCA</i> before changes take place.
<i>Person</i> remaining with the same <i>firm</i> but changing from a <i>customer function</i> to an <i>FCA significant-influence function</i> .	A	See examples in this table relating to the use of Form A

Function	Form	Submission
<p><i>Person remaining with the same firm but giving up a PRA controlled function and taking up an FCA controlled function.</i></p>	<p>E</p>	<p>Submitted by <i>firm</i> to the <i>FCA</i> before changes take place.</p>
<p><i>Person remaining with the same firm in the circumstances described in Example 6 in the table in SUP 10A.11.10 G (giving up a PRA controlled function triggering need for FCA approval).</i></p>	<p>E</p>	<p>Submitted by <i>firm</i> to the <i>FCA</i> in hard copy in advance of giving up the <i>PRA governing function</i>.</p>
<p><i>Person remaining with the same firm but giving up an FCA significant-influence function and taking up a PRA controlled function.</i></p>	<p>E</p>	<p>Submitted by <i>firm</i> to the <i>PRA</i> before changes take place (see the <i>PRA's Handbook</i>).</p>

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[Not used]

FCA

[Not used]

10A



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**Form A: Application to perform controlled functions under the approved person regime**

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:  
*Supervision forms* - Notes from direction in SUP 10A.12



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**Form B: Notice to withdraw an application to perform controlled functions under the approved persons regime**

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:  
*Supervision forms* - SUP 10A Annex 5





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## Form C: Notice of ceasing to perform controlled functions

**FCA**

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/about-authorisation>

The forms are also to be found through the following address: *Supervision forms* - SUP 10A Annex 6



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**Form D: Notification of changes in personal information or application details****FCA**

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/about-authorisation>

The forms are also to be found through the following address: *Supervision forms* - SUP 10A Annex 7



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**Form E: Internal transfer of an approved person**

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address: *Supervision forms* - SUP 10A Annex 8



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## Form G: The Retail Investment Adviser Complaints Alerts Form

**FCA**

The Retail Investment Adviser Complaints Alerts Form G approved by the FSA for notifications under SUP 10.13.20A R may be found at the FCA's website: <http://www.fca.org.uk/firms/about-authorisation/apply>

The form can also be found through the following address: *Form G: The Retail Investment Adviser Complaints Alerts Form - SUP 10A Annex 9*





# Chapter 10B

## PRA Approved Persons

## 10B.1 Application

### General

- 10B.1.1** **R** This chapter applies to every *PRA-authorized person*.  
**PRA**
- 10B.1.2** **G** This chapter is also relevant to every *PRA-approved person*.  
**PRA**
- 10B.1.3** **G** The *rules* in this chapter specify descriptions of *PRA controlled functions* under section 59 of the *Act* (Approval for particular arrangements).  
**PRA**
- 10B.1.4** **G** The directions in this chapter relate to the manner in which a *firm* must apply for the *PRA's* approval under section 59 of the *Act* and other procedures.  
**PRA**

### Overseas firms: UK services

- 10B.1.5** **R** This chapter does not apply to an *overseas firm* in relation to *regulated activities* which are carried on in the *United Kingdom* other than from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.  
**PRA**

### Overseas firms: UK establishments

- 10B.1.6** **R** Only the following *PRA controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:  
**PRA**
- (1) the *director function* where the *person* performing that function:
    - (a) has responsibility for the *regulated activities* of a *UK branch* which are likely to enable him to exercise significant influence over that *branch*; or
    - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that branch;
  - (2) the *non-executive director function* where the *person* performing that function:

- (a) has responsibility for the *regulated activities* of a *UK branch* which is likely to enable him to exercise significant influence over that *branch*; or
- (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that branch;

(3) the *chief executive function*;

(4) the *PRA required functions*;

(5) the *systems and controls function*.

### Incoming EEA firms and incoming Treaty firms

10B.1.7

**R**

This chapter does not apply to:

**PRA**

- (1) an *incoming EEA firm*; or
- (2) an *incoming Treaty firm*;

if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved, under any of the *Single Market Directives*, the *Treaty* or the *auction regulation*, to an authority in a country or territory outside the *United Kingdom*.

10B.1.8

**G**

■ SUP 10B.1.7 R reflects the provisions of section 59(8) of the *Act* and, in relation to an *incoming Treaty firm* the *Treaty*. 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 *PRA* under the *Act*.

**PRA**

10B.1.9

**G**

Notwithstanding ■ SUP 10B.1.8 G, an *incoming EEA firm* (other than an *EEA pure reinsurer*) or *incoming Treaty firm* will have had to consider the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An *incoming EEA firm* (other than an *EEA pure reinsurer*) will have been notified of those provisions under Part II of Schedule 3 to the *Act* in the course of satisfying the conditions for *authorisation* in the *United Kingdom*.

**PRA**

10B.1.10

**G**

An *incoming EEA firm* will have to consider, for example, the position of a *branch manager* based in the *United Kingdom* who may also be performing a function in relation to the carrying on of a *regulated activity* not covered by the *EEA right* of the *firm*. In so far as the function is within the description of a *PRA controlled function*, the *firm* will need to seek approval for that *person* to perform that *PRA controlled function*.

**PRA**

10B

10B.1.11

PRA

R

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

None of the *PRA controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*.

10B.1.12

PRA

R

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

In relation to the activities of a *firm* for which it has a *top-up permission*, only the *PRA required functions* apply.

10B.1.13

PRA

R

**Committees of the Society of Lloyd's**

For the purpose of ■ SUP 10B.6.1 R (the *director function*), "*director*" includes an executive member of a committee to which the *Council* of the *Society of Lloyd's* directly delegates authority to carry out the *Society's* regulatory functions.

10B.1.14

PRA

R

For the purpose of ■ SUP 10B.6.3 R (the *non-executive director function*), "*non-executive director*" includes a non-executive member of a committee to which the *Council* of the *Society of Lloyd's* directly delegates authority to carry out the *Society's* regulatory functions.

10B.1.15

PRA

R

**Insolvency practitioners**

This chapter does not apply to a function performed by:

- (1) a *person* acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986; or
- (2) a *person* acting as a nominee in relation to a voluntary *arrangement* under Parts I (*Company Voluntary Arrangements*) and VIII (*Individual Voluntary Arrangements*) of the Insolvency Act 1986; or
- (3) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or
- (4) a *person* acting as a nominee in relation to a voluntary *arrangement* under Parts II (*Company Voluntary Arrangements*) and VIII (*Individual Voluntary arrangements*) of the Insolvency (Northern Ireland) Order 1989.

10B.1.16

PRA

G

**Appointed representatives**

The *PRA* has no special *rule* relating to *appointed representatives*. Therefore, ■ SUP 10B applies to an *appointed representative* of a *firm* in the same way as it does to any other contractor of the *firm* (see ■ SUP 10B.3.1 R). In practice in ■ SUP 10B the main application to *appointed representatives* of a *firm* will be to people seconded by the *appointed representative* to the *firm*.

PAGE  
4



## 10B.2 Purpose

10B.2.1

PRA

G

The immediate purpose of ■ SUP 10B.3 to ■ SUP 10B.9 is to specify, under section 59 of the *Act*, descriptions of the *PRA controlled functions* which are listed in ■ SUP 10B.4.3 R. The underlying purpose is to establish, and mark the boundaries of, the *PRA's "approved persons regime"*.

## 10B.3 Basic rules for all PRA controlled functions

### The need for an arrangement

10B.3.1  
PRA

**R** A function is a *PRA controlled function* only to the extent that it is performed under an *arrangement* entered into by:

- (1) a *firm*; or
- (2) a contractor of the *firm*;

in relation to the carrying on by the *firm* of a *regulated activity*.

10B.3.2  
PRA

**G** Sections 59(1) and (2) of the *Act* provide that approval is necessary in respect of a *PRA controlled function* which is performed under an *arrangement* entered into by a *firm*, or its contractor (typically an *appointed representative*), in relation to a *regulated activity*.

10B.3.3  
PRA

**G** *Arrangement* is defined in section 59(10) of the *Act* as any kind of *arrangement* for the performance of a function which is entered into by a *firm* or any of its contractors with another *person* and includes the appointment of a *person* to an office, his becoming a *partner*, or his employment (whether under a contract of service or otherwise). For the provisions in this chapter relating to outsourcing, see ■ SUP 10B.11.6 G and ■ SUP 10B.11.7 G.

10B.3.4  
PRA

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

10B.3.5  
PRA

**G** The *arrangement* must be "in relation to" the carrying on of a *regulated activity*. *Regulated activities* are defined in the *Glossary* by reference to the *Regulated Activities Order*. This order prescribes the activities which are *regulated activities* for the purposes of the *Act*.

### Significant-influence functions

10B.3.6  
PRA

**R** Each *PRA controlled function* is one which comes within the definition of a *significant-influence function*.

10B.3.7  
PRA

G

Section 59(6) of the *Act* says that the *PRA* may specify a description of function as a PRA controlled function only if, in relation to the carrying on of a *regulated activity* by a *firm*, it is satisfied that the function is a *significant-influence function*.

10B.3.8  
PRA

G

Section 59(7B) of the *Act* says that a significant-influence function, in relation to the carrying on of a *regulated activity* by a *firm*, means a function that is likely to enable the *person* responsible for its performance to exercise a significant influence on the conduct of the *firm's* affairs, so far as relating to the activity.

10B.3.9  
PRA

G

■ SUP 10B.3.6 R gives effect to sections 59(6) and 59(7B) of the *Act*.

10B.3.10  
PRA

G

Whether a function is likely to result in the *person* responsible for its performance exercising significant influence on the conduct of the *firm's* affairs is a question of fact in each case. The *PRA* has identified the *PRA controlled functions* as satisfying this condition.

**Actions for damages**

10B.3.11  
PRA

R

A contravention of the *rules* in ■ SUP 10B (other than ■ SUP 10B.1 to ■ SUP 10B.9) gives rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(1) of the *Act* as a provision giving rise to such a right of action).





**10B.4 Specification of functions**

**10B.4.1**  
**PRA**

**R** Each of the functions described in **■ SUP 10B.4.3 R** (the table of *PRA controlled functions*) is a *PRA controlled function*.

**10B.4.2**  
**PRA**

**G** The fact that a *person* may be approved for one purpose does not have the effect of bringing all his activities within that *PRA controlled function*.

**10B.4.3**  
**PRA**

**R** **PRA controlled functions**

Type	CF	Description of PRA controlled function
<i>PRA governing functions</i>	1	<i>Director function</i>
	2	<i>Non-executive director function</i>
	3	<i>Chief executive function</i>
	4	<i>Partner function</i>
	5	<i>Director of unincorporated association function</i>
	6	<i>Small friendly society function</i>
<i>PRA required functions</i>	12	<i>Actuarial function</i>
	12A	<i>With-profits actuary function</i>
	12B	<i>Lloyd's actuary function</i>
<i>Systems and controls function</i>	28	<i>Systems and controls function</i>

 10B.5 Temporary vacancies

10B.5.1

PRA

R

If:

- (1) a *firm* appoints an individual to perform a function which, but for this *rule*, would be a *PRA controlled function*;
- (2) the appointment is to provide cover for an *approved person* whose absence is:
  - (a) temporary; or
  - (b) reasonably unforeseen; and
- (3) the appointment is for less than 12 weeks in a consecutive 12-month period;

the description of the relevant *PRA controlled function* does not relate to those activities of that individual.

10B.5.2

PRA

G

■ SUP 10B.5.1 R enables cover to be given for holidays and emergencies and avoids the need for the precautionary approval of, for example, a deputy. However, as soon as it becomes apparent that a *person* will be performing a *PRA controlled function* for more than 12 weeks, the *firm* should apply for approval.



**10B.6 PRA governing functions**

**Director function (CF1)**

10B.6.1  
PRA

**R**

If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of a *director* (other than *non-executive director*) of that *firm*.

10B.6.2  
PRA

**R**

- (1) If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is also the function of acting in the capacity of a *person*:
  - (a) who is a *director*, partner, officer, member (if the *parent undertaking* or *holding company* is a *limited liability partnership*), *senior manager*, or *employee* of a *parent undertaking* or *holding company* of the *firm*; and
  - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.
- (2) (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.
- (3) (1) does not apply to the function falling into ■ SUP 10B.6.4 R (*non-executive director* of the *parent undertaking* or *holding company*).

**Non-executive director function**

10B.6.3  
PRA

**R**

If a *firm* is a *body corporate*, the *non-executive director function* is the function of acting in the capacity of a *non-executive director* of that *firm*.

10B.6.4  
PRA

**R**

- (1) If a *firm* is a *body corporate*, the *non-executive director function* is also the function of acting in the capacity of a *person*:
  - (a) who is a *non-executive director* of a *parent undertaking* or *holding company*; and
  - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.

(2) However, (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* or is regulated by an *EEA regulator*.

10B.6.5

PRA

R

If a *firm* is a *long-term insurer*, the *non-executive director function* is also the function of acting in the capacity of an individual who, as a member of a committee having the purpose of a *with-profits committee*, has responsibility in relation to governance arrangements for *with-profits business* under ■ COBS 20.3 (Principles and Practices of Financial Management). This does not apply to an individual performing the *director function*.

10B.6.6

PRA

G

A *firm* should notify the PRA if a *person* moves between certain roles making up the *non-executive director function* (■ SUP 10B.12.6 R).

### Chief executive function (CF3)

10B.6.7

PRA

R

The *chief executive function* is the function of acting in the capacity of a *chief executive* of a *firm*.

10B.6.8

PRA

G

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

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

10B.6.9

PRA

G

For a *branch* in the *United Kingdom* of an *overseas firm*, the PRA would not normally expect the overseas *chief executive* of the *firm* as a whole to be approved for this function where there is a *senior manager* under him with specific responsibility for those activities of the *branch* which are subject to the UK regulatory system. In some circumstances, the *person* within the *firm* responsible for UK operations may, if the function is likely to enable him to exercise significant influence over the *branch*, also perform the *chief executive function*.

10B.6.10

PRA

G

A *person* performing the *chief executive function* may be a member of the *governing body* but need not be. If the chairman of the *governing body* is also the *chief executive*, he will be discharging this function. If the responsibility is divided between more than one *person* but not shared, there is no *person* exercising the *chief executive function*. But if that responsibility is discharged jointly by more than one *person*, each of those *persons* will be performing the *chief executive function*.

10B.6.11

PRA

G

Note that a *body corporate* may be a *chief executive*. If so, it will need to be approved to perform the *chief executive function*.

### Partner function (CF4)

10B.6.12

PRA

R

If a *firm* is a *partnership*, the *partner function* is the function of acting in the capacity of a *partner* in that *firm*.

**10B.6.13** **R** If a *firm* is a *limited liability partnership*, the *partner function* extends to the *firm* as if the *firm* were a *partnership* and a member of the *firm* were a *partner*.  
**PRA**

**10B.6.14** **R** If a *partnership* is registered under the Limited Partnership Act 1907, the *partner function* does not extend to any function performed by a limited partner.  
**PRA**

#### Director of unincorporated association function (CF5)

**10B.6.15** **R** If a *firm* is an unincorporated association, the *Director of unincorporated association function* is the function of acting in the capacity of a *director* of the unincorporated association.  
**PRA**

#### Small friendly society function (CF6)

**10B.6.16** **R** (1) If a *firm* is a *non-directive friendly society*, the *small friendly society function* is the function of directing its affairs, either alone or jointly with others.  
**PRA**

(2) If the principal purpose of the *firm* is to carry on *regulated activities*, each *person* with responsibility for directing its affairs performs the *PRA controlled function*.

(3) If the principal purpose of the *firm* is other than to carry on *regulated activities*, a *person* performs the *small friendly society function* only to the extent that he has responsibility for a *regulated activity*.

**10B.6.17** **R** (1) Each *person* on the *non-directive friendly society's governing body* will be taken to have responsibility for its *regulated activities*, unless the *firm* has apportioned this responsibility to one particular individual to whom it is reasonable to give this responsibility.  
**PRA**

(2) The individual need not be a member of the *governing body*.

**10B.6.18** **G** (1) Typically a *non-directive friendly society* will appoint a "committee of management" to direct its affairs. However, the governing arrangements may be informal and flexible. If this is the case, the *PRA* would expect the society to resolve to give responsibility for the carrying on of *regulated activities* to one individual who is appropriate in all the circumstances. That individual may, for example, have the title of *chief executive* or similar. The individual would have to be a *PRA-approved person* under ■ SUP 10B.6.16 R.  
**PRA**

(2) The *PRA* expects that any apportionment of responsibilities will have taken place under ■ SYSC 2.1.1 R. The *PRA* may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see ■ SYSC 2.2).

**Insurance mediation**

10B.6.19

G

PRA

A *firm* carrying on *insurance mediation activity*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity* (■ MIPRU 2.2.1 R). ■ MIPRU 2.2.2 R (1) provides that the *firm* may allocate this responsibility to one or more of the *persons* performing a *governing function* (other than the *non-executive director function*).

10B.6.20

G

PRA

Where a *person* performing a *governing function* is also responsible for the *firm's insurance mediation activity*, the words "(insurance mediation)" will be inserted after the relevant *PRA controlled function* (see ■ MIPRU 2.2.5 G).



**10B.7 Other functions included in the governing functions**

**Systems and controls function**

10B.7.1  
PRA

**R** Each of the *PRA governing functions* includes, where apportioned under ■ SYSC 2.1.1 R, ■ SYSC 4.3.1 R or ■ SYSC 4.4.3 R, the *systems and controls function*. This does not apply to the *non-executive director function* or the function described in ■ SUP 10B.6.2 R.

10B.7.2  
PRA

**G** The effect of ■ SUP 10B.7.1 R is that a *person* who is approved to perform a *PRA governing function* (other than the *non-executive director function* or the function described in ■ SUP 10B.6.2 R) will not have to be specifically approved to perform the *systems and controls function*. A *person* who is approved to perform a *PRA governing function* will have to be additionally approved before he can perform any of the *PRA required functions*.

**The FCA's apportionment and oversight function (CF8)**

10B.7.3  
PRA

**R** If:

- (1) a *person* has been approved to perform a *PRA governing function* in relation to a *firm* and that approval is still in force;
- (2) that *person* is also performing a function that falls within the *apportionment and oversight function* in relation to that *firm* (or would do so except for ■ SUP 10A.11.11 R (*FCA rule* disapplying the *apportionment and oversight function* in relation to a *person* approved by the *PRA* to perform a *governing function*)); and
- (3) that *person* is not the subject of a *current FCA approved person approval* for the *apportionment and oversight function* in relation to that *firm*;

that *PRA governing function* includes the *apportionment and oversight function* (or, if there is more than one such *PRA governing function*, each them does).

10B.7.4  
PRA

**R** If in relation to a *firm*:

- (1) ■ SUP 10B.7.3 R has applied to a *PRA-approved person*;

- (2) that *person* has ceased to perform any *PRA governing function* (ignoring the expansion of that function by ■ SUP 10B.7.3 R); and
- (3) that *person* is still performing what would otherwise be the *apportionment and oversight function*;

■ SUP 10B.7.3 R continues to apply for three months after that *PRA-approved person* would otherwise have ceased to perform the *PRA controlled function* or, if sooner, until the *FCA* has approved the performance by that *person* of the *apportionment and oversight function* in relation to the *firm*.

10B.7.5

PRA

G

An example of the way ■ SUP 10B.7.4 R works is this. Say that a *person* (A) is appointed as *director* and the *person* who performs the *apportionment and oversight function*. A will be performing the *director function* but will not be performing the *apportionment and oversight function*. Say that later A gives up his role as *director* but remains as the *person* who performs *apportionment and oversight function*. If ■ SUP 10B.7.4 R (and the corresponding parts of the *FCA*'s Handbook) did not apply the result would be that A would cease to perform a *PRA controlled function* but would start performing the *apportionment and oversight function* before A had a chance to apply to the *FCA* for approval. The combined effect of ■ SUP 10B.7.4 R and ■ SUP 10A.11 of the *FCA*'s Handbook is that the *firm* has three months to secure approval by the *FCA* for A's performance of the *apportionment and oversight function* and during that interim period A keeps his status as a *PRA-approved person*.

10B.7.6

PRA

G

Further details of how ■ SUP 10B.7.3 R and ■ SUP 10B.7.4 R work can be found in ■ SUP 10A.11 of the *FCA*'s Handbook.





**10B.8 PRA required functions**

**Actuarial function (CF12)**

10B.8.1  
PRA

**R**

The *actuarial function* is the function of acting in the capacity of an *actuary* appointed by a *firm* under ■ SUP 4.3.1 R to perform the duties set out in ■ SUP 4.3.13 R.

**With-profits actuary function (CF12A)**

10B.8.2  
PRA

**R**

The *with-profits actuary function* is the function of acting in the capacity of an *actuary* appointed by a *firm* under ■ SUP 4.3.1 R to perform the duties set out in ■ SUP 4.3.16A R.

**Lloyd's actuary function (CF12B)**

10B.8.3  
PRA

**R**

The *Lloyd's actuary function* is the function of acting in the capacity of the *actuary* appointed under ■ SUP 4.6.1 R to perform the duties set out in ■ SUP 4.6.7 R.



**10B.9 Systems and controls function**

**Systems and controls function (CF28)**

**10B.9.1**  
**PRA**

**R**

The *systems and controls function* is the function of acting in the capacity of an *employee* of the *firm* with responsibility for reporting to the *governing body* of a *firm*, or the audit committee (or its equivalent) in relation to:

- (1) its financial affairs;
- (2) setting and controlling its risk exposure (see ■ SYSC 3.2.10 G and ■ SYSC 7.1.6 R); and
- (3) adherence to internal systems and controls, procedures and policies (see ■ SYSC 3.2.16 G and ■ SYSC 6.2).

**10B.9.2**  
**PRA**

**R**

The *systems and controls function* does not apply in relation to *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(i).

**10B.9.3**  
**PRA**

**G**

Where an *employee* performs the *systems and controls function* the *PRA* would expect the *firm* to ensure that the *employee* had sufficient expertise and authority to perform that function effectively. A *director* or *senior manager* would meet this expectation.



## 10B.10 Procedures relating to PRA-approved persons

### Forms

10B.10.1 **G**  
PRA

The forms listed in SUP **■** SUP 10B.10.2 **G** are referred to in **■** SUP 10B.11 (Application for approval and withdrawing an application for approval) to **■** SUP 10B.14 (How to apply for approval and give notifications).

10B.10.2 **G**  
PRA

Table PRA-approved persons forms

Form		Purpose	Handbook requirement
the relevant Form A	The relevant online form on the <i>FCA's</i> and <i>PRA's</i> ONA system or the form in SUP 10B Annex 4D (See Note)	Application to perform controlled functions under the approved persons regime	SUP 10B.11.4 D
Form B	SUP 10B Annex 5R	Notice to withdraw an application to perform controlled functions under the approved persons regime	SUP 10B.11.20 R
Form C	SUP 10B Annex 6R	Notice of ceasing to perform controlled functions	SUP 10B.12.10 R
Form D	SUP 10B Annex 7R	Notification of changes in personal information or application details	SUP 10B.12.16 R
Form E	The relevant online form on the <i>FCA's</i> and <i>PRA's</i> ONA system or the form in SUP 10B Annex 8D (See Note)	Internal transfer of an approved person	SUP 10B.12.4 D

Note: The form in the SUP annex shown is to be used by *credit unions*, and by other *firms* only in the event of a failure of the information technology systems used by the *PRA*. See the relevant "Handbook requirement".

- 10B.10.3** **G** A summary of the forms and their purposes is in ■ SUP 10B Annex 2G.  
**PRA**
- 10B.10.4** **G** Unless the context otherwise requires, in ■ SUP 10B.10 (Procedures relating to *PRA-approved person*) to ■ SUP 10B.14 (How to apply for approval and give notifications) where reference is made to a *firm*, this also includes an applicant for *Part 4A permission*, and other *persons* seeking to carry on *regulated activities* as an *authorised person*.  
**PRA**
- 10B.10.5** **G** Forms B, C, D and E can only be submitted in respect of a *PRA-approved person* by the *firm* that submitted a *PRA-approved person's* original application (the relevant Form A).  
**PRA**
- 10B.10.6** **G** Copies of Forms A, B, C, D and E may be obtained from the *PRA's* website. *Credit unions* can obtain copies by email at PRA-ApprovedPersons@bankofengland.co.uk. To contact the *PRA* for general *approved persons* enquiries please contact PRA Firm Enquiries:  
**PRA**
- (1) telephone: +44 (0) 20 3461 7000; or
  - (2) write to:  
  
PRA Firm Enquiries  
  
Prudential Regulation Authority  
  
20 Moorgate  
  
London EC2R 6DA; or
  - (3) e-mail: PRA-ApprovedPersons@bankofengland.co.uk.



## 10B.11 Application for approval and withdrawing an application for approval

### When to apply for approval

**10B.11.1** PRA G In accordance with section 59 of the *Act* (Approval for particular arrangements), where a *candidate* will be performing one or more *PRA controlled functions*, a *firm* must take reasonable care to ensure that the *candidate* does not perform these functions unless he has prior approval from the *PRA* with the consent of the *FCA*.

**10B.11.2** PRA G Under section 59B of the *Act* (Role of *FCA* in relation to *PRA* decisions) the *FCA* may arrange with the *PRA* that in agreed kinds of cases there is no need for the consent of the *FCA*. There are currently no such arrangements in place.

### Failure to apply for approval

**10B.11.3** PRA G If a *person* performs a *PRA controlled function* without approval it is not only the *firm* that is accountable. Under section 63A of the *Act* (Power to impose penalties) if the *PRA* is satisfied that:

- (1) a *person* ("P") has at any time performed a *PRA controlled function* without approval; and
- (2) at that time P knew, or could reasonably be expected to have known, that P was performing a *PRA controlled function* without approval;

it may impose a penalty on P of such amount as it considers appropriate.

### How to apply for approval

**10B.11.4** PRA D An application by a *firm* for the *PRA*'s approval under section 59 of the *Act* (Approval for particular arrangements) must be made by completing Form A (except where ■ SUP 10B.12.4 D requires a Form E).

**10B.11.5** PRA G ■ SUP 10B.14.1 D explains how applications should be submitted.

### Who should make the application?

**10B.11.6** PRA G

- (1) In accordance with section 60 of the *Act* (Applications for approval), applications must be submitted by, or on behalf of, the *firm* itself, not by:
  - (a) the *PRA candidate*; or
  - (b) (where the *PRA candidate* works for the *firm's parent undertaking* or *holding company*) by the *firm's parent undertaking* or *holding company*.

- (2) Usually this will be the *firm* that is employing the *PRA candidate* to perform the *PRA controlled function*. Where a *firm* has outsourced the performance of a *PRA controlled function*, the details of the outsourcing determine where responsibility lies and whom the *PRA* anticipates will submit *PRA-approved persons* application forms. ■ SUP 10B.11.7 G describes some common situations. The *firm* which is outsourcing is referred to as "A" and the *person* to whom the performance of the *PRA controlled function* has been outsourced, or which makes the arrangement for the *PRA controlled function* to be performed, is referred to as "B". In each situation, A must take reasonable care to ensure that, in accordance with section 59(2) of the Act, no *person* performs a *PRA controlled function* under an arrangement entered into by its contract or in relation to the carrying on by A of a *regulated activity*, without approval from the *PRA*. See also ■ SYSC 3.2.4 G and ■ SYSC 8.1.1 R, and ■ SYSC 13.9 for *insurers*.

10B.11.7

G

Outsourcing arrangements

PRA

Outsourcing arrangements	Submitting form
<i>Firm A to Firm B</i>	The <i>PRA</i> will consider A to have taken reasonable care if it enters into a contract with B under which B is responsible for ensuring that the relevant <i>PRA controlled functions</i> are performed by <i>PRA-approved persons</i> , and that it is reasonable for A to rely on this
Outsourcing by A to B (both being a member of the same <i>United Kingdom group</i> and each having its registered office in the <i>United Kingdom</i> )	See SUP 10B.3.4 G
(i) A to B, where B is a <i>non-authorized person</i> not part of the same <i>group</i> as A	See SUP 15.7.8 G
(ii) A to B, where A is a <i>branch</i> of an <i>overseas firm</i> in the <i>United Kingdom</i> , and B is an <i>overseas undertaking</i> of the same <i>group</i>	Responsibility for (as opposed to the performance of) any activity outsourced to B will remain with A. See SYSC 3.2.4 G and SYSC 8
(iii) A to B, where A is a UK authorised subsidiary of an <i>overseas firm</i> , and B is an <i>overseas undertaking</i> of the same <i>group</i>	A ensures that an individual approved under one of the <i>PRA controlled functions</i> has responsibility for the outsourced arrangement and A submits a form in relation to that individual

Processing an application

The *Act* sets out the time that the *PRA* has to consider an application and come to a decision.

10B.11.8

G

PRA

10B.11.9 PRA	G	<p>In any case where the application for approval is made by a <i>person</i> applying for <i>permission</i> under Part 4A of the <i>Act</i> the <i>PRA</i> has until the end of whichever of the following periods ends last:</p> <ol style="list-style-type: none"> <li>(1) the period within which an application for that <i>permission</i> must be determined; and</li> <li>(2) the period of three months from the time it receives a properly completed application.</li> </ol>
10B.11.10 PRA	G	<p>In any other case it is the period of three months from the time it receives a properly completed application.</p>
10B.11.11 PRA	G	<p>Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. If forms are not completed fully and honestly, applications will be subject to investigation and the <i>PRA candidate's</i> suitability to be approved to undertake a <i>PRA controlled function</i> will be called into question. A <i>person</i> who provides information to the <i>PRA</i> that is false or misleading may commit a criminal offence, and could face prosecution under section 398 of the <i>Act</i> regardless of the status of their application.</p>
10B.11.12 PRA	G	<p>The <i>PRA</i> will as soon as practicable notify the <i>FCA</i> of the receipt of an application to the <i>PRA</i>. There is no need for the <i>firm</i> to copy the application to the <i>FCA</i>.</p>
10B.11.13 PRA	G	<p>Before making a decision to grant the application or give a <i>warning notice</i>, the <i>PRA</i> may ask the <i>firm</i> for more information about the <i>PRA candidate</i>. If it does this, the period in which the <i>PRA</i> must determine a completed application:</p> <ol style="list-style-type: none"> <li>(1) will stop on the day the <i>PRA</i> requests the information; and</li> <li>(2) will start running again on the day on which the <i>PRA</i> finally receives all the requested information.</li> </ol>
10B.11.14 PRA	G	<p>The <i>FCA</i> may also ask the <i>firm</i> for more information about the <i>PRA candidate</i>. If it does this, the period in which the <i>PRA</i> must determine a completed application is extended in the same way as it is if the <i>PRA</i> asks for the information.</p>
10B.11.15 PRA	G	<p>The <i>PRA</i> may only grant an application (and the <i>FCA</i> may only give its consent) if it is satisfied that the <i>PRA candidate</i> is a fit and proper <i>person</i> to perform the <i>PRA controlled function</i> stated in the application form. Responsibility lies with the <i>firm</i> making the application to satisfy the <i>PRA</i> and the <i>FCA</i> that the <i>PRA candidate</i> is fit and proper to perform the <i>PRA controlled function</i> applied for.</p>
10B.11.16 PRA	G	<p>For further <i>guidance</i> on criteria for assessing whether a <i>PRA candidate</i> is fit and proper, see <i>FIT</i>.</p>

**Decisions on applications**

**10B.11.17** **G** The *PRA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice*.  
**PRA**

**10B.11.18** **G** Whenever it grants an application, the *PRA* will confirm this in writing to all *interested parties*.  
**PRA**

**10B.11.19** **G** If the *PRA* proposes to refuse an application in relation to one or more *PRA controlled functions*, it must follow the procedures for issuing warning and *decision notices*.  
**PRA**

**Withdrawing an application for approval**

**10B.11.20** **R** A *firm* applying to withdraw an application for approval must notify the *PRA*, using Form B, in the form set out in ■ SUP 10B Annex 5R.  
**PRA**

**10B.11.21** **G** Under section 61(5) of the *Act* (Determination of applications), the *firm* may withdraw an application only if it also has the consent of the *PRA candidate* and the *person* by whom the *PRA candidate* is or would have been employed, if this is not the *firm* making the application.  
**PRA**

**10B.11.22** **G** The *PRA* will as soon as practicable notify the *FCA* of the receipt of a notice of withdrawal. There is no need for the *firm* to copy the notice to the *FCA*.  
**PRA**





## 10B.12 Changes to a PRA-approved person's details

### Moving within a firm

10B.12.1 **G**  
PRA

A *PRA-approved person's* job may change from time to time as a result, for instance, of a change in personal job responsibilities or a *firm's regulated activities*. Where the changes will involve the *person* performing one or more *PRA controlled functions* different from those for which approval has already been granted, then an application must be made to the *PRA* for approval for the *person* to perform those *PRA controlled functions*. The *firm* must take reasonable care to ensure that an individual does not begin performing a *PRA controlled function* until the *PRA* has granted *approved person* status to that individual in respect of that *PRA controlled function*. Similarly, a *firm* must get the *PRA's* approval if a *person* is to start performing a *PRA controlled function* in relation to that *firm* when he already has the *FCA's* approval to perform an *FCA controlled function* in relation to that *firm*.

10B.12.2 **G**  
PRA

If an *FCA-approved person* or a *PRA-approved person* is ceasing to perform *FCA controlled functions* or *PRA controlled functions*, as well as applying for approval in respect of *PRA controlled functions*, **■ SUP 10B.12.4 D** generally applies. Further details can be found in **■ SUP 10B Annex 2G**.

10B.12.3 **G**  
PRA

If a *person* is to perform a *PRA controlled function* for a *firm* for which he already performs a *PRA controlled function* or *FCA controlled function* as an *approved person* but he is not at the same time ceasing to perform an *FCA controlled function* or *PRA controlled function*, a *firm* should use Form A rather than Form E. It is not mandatory to complete all parts of the form. See the notes relevant to each form for full details.

10B.12.4 **D**  
PRA

- (1) A *firm* must use Form E where an *approved person* is both ceasing to perform one or more controlled functions and needs to be approved in relation to one or more *PRA controlled functions* within the same *firm* or *group*.
- (2) A *firm* must not use Form E if the *approved person* has never before been approved to perform a *significant influence function* for any *firm* or has not been the subject of a *current approved person approval* from the *FCA* or *PRA* to perform a *significant influence function* in relation to any *firm* for more than six months.
- (3) A *firm* must not use Form E if a notification has been made or should be made under **■ SUP 10B.12.18 R** (Changes in fitness to be notified under Form D) or **■ SUP 10A.14.17 R** (the equivalent *FCA rule*) in relation to any *controlled functions* that, that *person* is ceasing to

perform (as referred to in (1)) or any *controlled function* that he is continuing to perform in relation to that *firm* or a *firm* in the same *group*.

10B.12.5

G

■ SUP 10B.14.1 D explains how applications should be submitted.

PRA

10B.12.6

R

If a *person* is performing the *non-executive director function* in relation to a *firm*, the *firm* must notify the *PRA* as soon as possible if that *person* begins to perform or ceases to perform any of the following functions:

PRA

- (1) the function of acting in the capacity of the chairman of the *governing body* of the *firm*; or
- (2) the function of acting as a *non-executive director* who has been appointed by the *non-executive directors* to act as the senior independent director of that *firm*; or
- (3) the function of acting in the capacity of the chairman of the *governing body* risk committee of the *firm* (if there is such a committee). For these purposes, the *governing body* risk committee means the committee described in ■ SYSC 21.1.5 G; or
- (4) the function of acting in the capacity of the chairman of the audit committee of the *governing body* of the *firm* (if there is such a committee); or
- (5) the function of acting in the capacity of the chairman of the remuneration committee of the *governing body* of the *firm* (if there is such a committee).

Any such notification must be e-mailed to the *PRA's approved persons mailbox* at [PRA-ApprovedPersons@bankofengland.co.uk](mailto:PRA-ApprovedPersons@bankofengland.co.uk)

10B.12.7

G

So for example if a *non-executive director* moves from being chair of the audit committee to chair of the risk committee or adds the role of chair of the audit committee to his existing role as chair of the risk committee he does not require approval from the *PRA*. However, the *firm* should notify the *PRA* of that change as soon as possible. If a *person* stops performing the *non-executive director function* altogether, ■ SUP 10B.12.4 D or ■ SUP 10B.12.10 R apply instead.

PRA

### Moving between firms

10B.12.8

G

If it is proposed that a *PRA-approved person* will no longer be performing a *PRA controlled function* under an *arrangement* entered into by one *firm* or one of its contractors, but will be performing the same or a different *PRA controlled function* under an *arrangement* entered into by a new *firm* or one of its contractors (whether or not the new *firm* is in the same *group* as the old *firm*), the new *firm* will be required to make a fresh application for the performance of the *PRA controlled function* by that *person*.

PRA

PAGE  
25

10B.12.9

G

In certain circumstances, when the *PRA* already has the information it would usually require, a shortened version of the relevant Form A may be completed. See the notes relevant to each form for full details.

PRA

**Ceasing to perform a PRA controlled function**

10B.12.10 **R**  
PRA

A *firm* must submit to the PRA a completed Form C, in the form set out in ■ SUP 10B Annex 6R no later than seven *business days* after a *PRA-approved person* ceases to perform a *PRA controlled function*. This does not apply if the *firm* has already notified the PRA of the proposal to do that using Form E in accordance with this chapter or has notified the FCA of the proposal to do using the FCA's Form E in accordance with ■ SUP 10A of the FCA's Handbook.

10B.12.11 **G**  
PRA

■ SUP 10B.14.1 D explains how notifications should be submitted.

10B.12.12 **R**  
PRA

- (1) A *firm* must notify the PRA as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of a *PRA-approved person*.
- (2) Form C is qualified if the information it contains:
  - (a) relates to the fact that the *firm* has dismissed, or suspended, the *PRA-approved person* from its employment; or
  - (b) relates to the resignation by the *PRA-approved person* while under investigation by the *firm*, the PRA or any other *regulatory body*; or
  - (c) otherwise reasonably suggests that it may affect the PRA's assessment of the *PRA-approved person's* fitness and propriety.

10B.12.13 **G**  
PRA

Notification under ■ SUP 10B.12.12 R may be made by telephone, fax or email and should be made, where possible, within one *business day* of the *firm* becoming aware of the information. If the *firm* does not submit Form C, it should inform the PRA in due course of the reason. This could be done using Form D, if appropriate.

10B.12.14 **G**  
PRA

A *firm* is responsible for notifying the PRA if any *PRA-approved person* has ceased to perform a *PRA controlled function* under an *arrangement* entered into by its *appointed representative* or former *appointed representative*.

10B.12.15 **G**  
PRA

A *firm* can submit Form C or Form E to the PRA in advance of the cessation date. When a *person* ceases the arrangement under which he performs a *PRA controlled function*, he will automatically cease to be a *PRA-approved person* in relation to that *PRA controlled function*. A *person* can only be a *PRA-approved person* in relation to a specific *PRA controlled function*. Therefore, a *person* is not a *PRA-approved person* during any period between ceasing to perform one *PRA controlled function* (when he is performing no other *PRA controlled function*) and being approved in respect of another *PRA controlled function*.

**Changes to a PRA-approved person's personal details**

- 10B.12.16** **R** **PRA** If a *PRA-approved person's* title, name or national insurance number changes, the *firm* for which the *person* performs a *PRA controlled function* must notify the *PRA* on Form D, in the form set out in **■ SUP 10B Annex 7R**, of that change within seven *business days* of the *firm* becoming aware of the matter.
- 10B.12.17** **G** **PRA** The duty to notify in **■ SUP 10B.12.16 R** does not apply to changes to a *PRA-approved person's* private address.
- 10B.12.18** **R** **PRA** If a *firm* becomes aware of information which would reasonably be material to the assessment of a *PRA-approved person's*, or a *PRA candidate's*, fitness and propriety (see *FIT*), it must inform the *PRA* on Form D, or (if it is more practical to do so and with the prior agreement of the *PRA*) by fax or e-mail, as soon as practicable.
- 10B.12.19** **G** **PRA** **■ SUP 10B.14.2 R** applies to the submission of Form D.
- 10B.12.20** **G** **PRA** Failing to disclose relevant information to the *PRA* may be a criminal offence under section 398 of the *Act*.
- 10B.12.21** **G** **PRA** The duty to notify in **■ SUP 10B.12.18 R** extends to any circumstances that would normally be declared when giving the information required for section 5 of Form A or matters considered in **■ FIT 2**.
- 10B.12.22** **R** **PRA**
- (1) If, in relation to a *firm* which has completed the relevant Form A (**■ SUP 10B Annex 4D**), any of the details relating to arrangements and *PRA controlled functions* are to change, the *firm* must notify the *PRA* on Form D (**■ SUP 10B Annex 7R**).
  - (2) The notification under (1) must be made as soon as reasonably practicable after the *firm* becomes aware of the proposed change.
  - (3) This also applies in relation to a *PRA controlled function* for which an application was made using Form E.
  - (4) This *rule* also applies to a *firm* in respect of an *approved person*, to whom the grandfathering arrangements relating to the coming into force of the *Act* applied as if the *firm* had completed the relevant Form A for that *person*.

## 10B.13 References and accurate information

### References

10B.13.1

R

PRA

(1) If a *firm* (A):

- (a) is considering appointing a *person* to perform any *PRA controlled function*;
- (b) requests another *firm* (B), as a current or former employer of that *person*, for a reference or other information in connection with that appointment; and
- (c) indicates to B the purpose of the request;

B must, as soon as reasonably practicable, give to A all relevant information of which it is aware.

(2) When giving the information to A under (1), B must have regard to the purpose of the request and in particular to:

- (a) any outstanding liabilities of that *person* from commission payments;
- (b) any relevant outstanding or upheld complaint from an *eligible complainant* against that *person*;
- (c) section 5 of the relevant Form A in ■ SUP 10B Annex 4 (Application to perform controlled functions under approved persons regime);
- (d) ■ FIT 2 (Main assessment criteria); and
- (e) if ■ SUP 16.8.1 G (1) (Persistency reports from *insurers* and data reports on stakeholder pensions) applies to B, the persistency of any *life policies* sold by that *person*.

10B.13.2

G

PRA

The requirement in ■ SUP 10B.13.1R (1) for *firm* (B) to give to *firm* (A) all relevant information of which it is aware concerning a *person* *firm* A is considering appointing to perform any of the *PRA controlled functions*, also applies where *firm* A has outsourced the collection of that information to another (unregulated) third party, where *firm* B has been made aware that the unregulated third party is acting on behalf of *firm* A.

10B.13.3  
PRA

G

A *firm* supplying a reference in accordance with ■ SUP 10B.13.1 R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based.

**The need for complete and accurate information**

10B.13.4  
PRA

G

The obligations to supply information to:

- (1) the *PRA* under either ■ SUP 10B.12.10 R or ■ SUP 10B.12.12 R; or
- (2) another *firm* under ■ SUP 10B.13.1 R;

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.

10B.13.5  
PRA

G

Failing to disclose relevant information to the *PRA* may be a criminal offence under section 398 of the Act.

## 10B.14 How to apply for approval and give notifications

### 10B.14.1 **D** PRA

- (1) This direction applies to an application under Form A or Form E.
- (2) An application by a *firm* other than a *credit union* must be made by submitting the Form online at [www.pra.org.uk](http://www.pra.org.uk) using the form specified on the *FCA's* and *PRA's* ONA system.
- (3) An application by a *credit union* must be made using the form in ■ SUP 10B Annex 4D or ■ SUP 10B Annex 8D and must be submitted in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (4) Where a *firm* is obliged to submit an application online under (2), if the information technology systems used by the *PRA* fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must use the form in ■ SUP 10B Annex 4D or ■ SUP 10B Annex 8D and submit it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

### 10B.14.2 **R** PRA

- (1) This *rule* applies to a notification under Form C or Form D.
- (2) A notification must be made in accordance with ■ SUP 10B.14.1 D except that the annexes to ■ SUP 10B in which the forms are to be found are ■ SUP 10B Annex 6R or ■ SUP 10B Annex 7R rather than the Annexes mentioned in ■ SUP 10B.14.1 D.

### 10B.14.3 **G** PRA

If the information technology systems used by the *PRA* fail and online submission is unavailable for 24 hours or more, the *FCA* and *PRA* will endeavour to publish a notice on their websites confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 10B.14.1D (4) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification) should be used.

### 10B.14.4 **G** PRA

Where ■ SUP 10B.14.1D (4) or the equivalent situation under ■ SUP 10B.14.2 R applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

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[Not used]

10B





**Approved person regime: summary of forms and their use for applications for approval to perform a PRA-controlled function**

**PRA**

Function	Form	Submission
<i>person</i> about to perform a <i>PRA controlled function</i> if he has never been approved by the <i>FCA</i> or <i>PRA</i> before.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> is to perform a <i>PRA controlled function</i> and either has current approval to perform an <i>FCA significant-influence function</i> or a <i>PRA controlled function</i> or has had such an approval within the previous six <i>months</i> .	Shortened Form A if conditions met	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> ceased to be an <i>approved person</i> more than six <i>months</i> ago.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Candidate</i> is seeking to perform a <i>significant-influence function</i> for the first time or ceased to have approval from the <i>FCA</i> or <i>PRA</i> to perform such a function more than six <i>months</i> ago.	A	Submitted by the <i>firm</i> making the application before activities requiring approval commence.
<i>Firm</i> applying for an outstanding application to perform a <i>PRA controlled function</i> to be withdrawn.	B	Submitted by the <i>firm</i> : signed by all <i>interested parties</i> .
<i>Person</i> ceasing to perform a <i>PRA controlled function</i> .	C (unless it should be notified under Form E)	Submitted by the <i>firm</i> within seven <i>business days</i> of <i>approved person</i> ceasing to perform <i>controlled function(s)</i> .
If a <i>PRA-approved person's</i> title, name or national insurance number changes, or there is information which may be material to the continuing assessment of an <i>approved person's</i> fitness and propriety.	D	Submitted by <i>firm</i> within seven <i>business days</i> of the <i>firm</i> becoming aware of the matter.
<i>Person</i> remaining with the same <i>firm</i> but changing <i>PRA controlled functions</i> .	E	Submitted by <i>firm</i> to the <i>PRA</i> before changes take place.
<i>Person</i> remaining with the same <i>firm</i> but giving up an <i>FCA significant-influence function</i> and taking up a <i>PRA controlled function</i> .	E	Submitted by <i>firm</i> to the <i>PRA</i> before changes take place.
<i>Person</i> remaining with the same <i>firm</i> in the circumstances described in SUP 10B.7.4 R (giving up a <i>PRA controlled</i>	E	Submitted by <i>firm</i> to the <i>FCA</i> in hard copy in advance of giving up the <i>PRA governing function</i> .

10B

Function	Form	Submission
<p><i>function</i> triggering need for <i>FCA</i> approval).</p>		
<p><i>Person</i> remaining with the same <i>firm</i> but giving up a <i>PRA controlled function</i> and taking up an <i>FCA significant-influence function</i>.</p>	<p>E</p>	<p>Submitted by <i>firm</i> to the <i>FCA</i> before changes take place (see the <i>FCA's Handbook</i>).</p>
<p><i>Person</i> being appointed to a <i>PRA governing function</i> role who is about to start a function that would otherwise have come within the <i>apportionment and oversight function</i>.</p>	<p>A or E as appropriate</p>	<p>The form should mention that the <i>person</i> is to perform what would otherwise have been the <i>apportionment and oversight function</i>. See SUP 10A.11.10 G (table in the <i>FCA's Handbook</i> of examples of how the need for dual <i>FCA</i> and <i>PRA</i> approval in relation to <i>PRA-authorised persons</i> is reduced).</p>
<p><i>Person</i> moving from one <i>PRA governing function</i> role to another while continuing to perform a function that would otherwise have come within the <i>apportionment and oversight function</i>.</p>	<p>See previous row</p>	<p>See previous row.</p>

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[Not used]

**PRA**

[Not used]

10B



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**Form A: Application to perform controlled functions under the approved person regime**

**PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:  
*Supervision forms* - Notes from direction in SUP 10B.12



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**Form B: Notice to withdraw an application to perform controlled functions under the approved persons regime**

**PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:  
*Supervision forms - SUP 10B Annex 5*





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## Form C: Notice of ceasing to perform controlled functions

**PRA**

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/about-authorisation>

The forms are also to be found through the following address: *Supervision forms* - SUP 10B Annex 6



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**Form D: Notification of changes in personal information or application details****PRA**

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/about-authorisation>

The forms are also to be found through the following address: *Supervision forms* - SUP 10B Annex 7



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**Form E: Internal transfer of an approved person**

**PRA**

This annex consists only of one or more forms. Forms are to be found through the following address: *Supervision forms* - SUP 10B Annex 8



# Chapter 11

## Controllers and close links





## 11.1 Application

### Application to firms

11.1.1

FCA PRA

R

This chapter applies to every *firm* except:

- (1) an *ICVC*;
- (2) an *incoming EEA firm*;
- (3) an *incoming Treaty firm*;
- (4) [deleted]
- (5) a *sole trader*;
- (6) a *UCITS qualifier*;

as set out in the table in ■ SUP 11.1.2 R.

11.1.2

FCA PRA

R

Table Applicable sections (see ■ SUP 11.1.1 R)

	Category of firm	Applicable sections
(1)	A <i>UK domestic firm other than a building society, a non-directive friendly society or a non-directive firm</i>	All except SUP 11.3, SUP 11.4.2A R and SUP 11.4.4 R
(1A)	A <i>building society</i>	(a) In the case of an exempt change in <i>control</i> (see Note), SUP 11.1, SUP 11.2 and SUP 11.9  (b) In any other case, all except SUP 11.3 and SUP 11.4.4 R
(2)	A <i>non-directive friendly society</i>	SUP 11.1, SUP 11.2, and SUP 11.9
(2A)	A <i>non-directive firm</i>	all except SUP 11.3, SUP 11.4.2 R, and SUP 11.4.4 R

Category of firm	Applicable sections
(3) <b>An overseas firm</b>	<b>All except</b> SUP 11.3, SUP 11.4.2 R, SUP 11.4.2A R, , SUP 11.4.9 G, SUP 11.5.8 G to SUP 11.5.10 G, SUP 11.6.2 R, SUP 11.6.3 R, , SUP 11.7
<b>Note</b>	<b>In row (1A), a change in control is exempt if the controller or proposed controller is exempt from any obligation to notify the appropriate regulator under Part XII of the Act ( Control Over Authorised Persons ) because of The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774 ). (See SUP 11.3.2A G).</b>

11.1.3

PRA

G

This chapter may apply to *directive friendly societies* in the circumstances described in ■ SUP 16.4.2 G (1) to (3).

**Application to controllers**

11.1.4

FCA PRA

D

■ SUP 11.1, ■ SUP 11.2.1 G, ■ SUP 11.3 and ■ SUP 11.7 apply to a *controller* or a proposed *controller* of a *UK domestic firm* not listed in ■ SUP 11.1.1 R (1) to ■ SUP 11.1.1 R (6).

11.1.5

PRA

G

This chapter may apply to *controllers* and *proposed controllers* of *directive friendly societies* in the circumstances described in SUP 16.4.2G (1) to (3).

## 11.2 Purpose

- 11.2.1** FCA PRA G Part XII of the *Act* ( Control Over Authorised Persons ) places an obligation on the *controllers* and proposed *controllers* of those *UK domestic firms* not listed in ■ SUP 11.1.1 R (1) to ■ SUP 11.1.1 R (6) to notify the *appropriate regulator* of changes in *control* , including acquiring, increasing or reducing *control* or ceasing to have *control* over a *firm*. Furthermore, those *persons* are required to obtain the *appropriate regulator's* approval before becoming a *controller* or increasing their *control* over a *firm* . ■ SUP 11.3 is intended to assist those *persons* in complying with their obligations under Part XII of the *Act* .
- 11.2.2** FCA PRA G The *rules* in ■ SUP 11.4 to ■ SUP 11.6 are aimed at ensuring that the *appropriate regulator* receives the information that it needs to fulfil its responsibility to monitor and, in some cases, give prior approval to *firms' controllers*.
- 11.2.2A** G [deleted]
- 11.2.3** FCA PRA G As the approval of the *appropriate regulator* is not required under the *Act* for a new *controller* of an *overseas firm*, the *notification rules* on such *firms* are less prescriptive than they are for *UK domestic firms*. Nevertheless, the *appropriate regulator* still needs to monitor such an *overseas firm's* continuing satisfaction of the *threshold conditions*, which normally includes consideration of a *firm's* connection with any *person*, including its *controllers* and *parent undertakings* (see the *threshold conditions* set out in paragraphs 3B, 4F and 5F of Schedule 6 to the *Act* ). The *appropriate regulator* therefore needs to be notified of *controllers* and *parent undertakings* of *overseas firms*.
- 11.2.4** FCA PRA G As part of the *appropriate regulator's* function of monitoring a *firm's* continuing satisfaction of the *threshold conditions*, the *appropriate regulator* needs to consider the impact of any significant change in the circumstances of one or more of its *controllers*, for example, in their financial standing and, in respect of corporate *controllers*, in their *governing bodies*. Consequently, the *appropriate regulator* needs to know if there are any such changes. ■ SUP 11.8 therefore requires a *firm* to tell the *appropriate regulator* if it becomes aware of particular matters relating to a *controller*.
- 11.2.5** FCA PRA G Similarly, the *appropriate regulator* needs to monitor a *firm's* continuing satisfaction of the *threshold conditions* set out in paragraphs 3B, 4F and 5F of Schedule 6 to the *Act* (as applicable) (in relation to *threshold conditions* for which the *FCA* is responsible, see ■ COND 2.3), which requires that a *firm's close links* are not likely to prevent the *appropriate regulator's* effective supervision of that *firm*. Accordingly the *appropriate*

*regulator* needs to be notified of any changes in a *firm's close links*. This requirement is contained in ■ SUP 11.9.

**11.2.6**

**FCA PRA**

**G**

Every *firm*, other than a *firm* listed in ■ SUP 11.1.1 R (1) to ■ SUP 11.1.1 R (6) or a *firm* excluded from the operation of ■ SUP 16.4 or ■ SUP 16.5 by ■ SUP 16.1.3 R, is required to submit an annual report on its *controllers* and *close links* as set out in ■ SUP 16.4 and ■ SUP 16.5.

**11.2.7**

**FCA PRA**

**G**

The requirements in ■ SUP 11 implement certain provisions relating to changes in *control* and *close links* required under the *Single Market Directives*.

**11.2.8**

**FCA PRA**

**G**

An event described in ■ SUP 11.4.2R, ■ SUP 11.4.2A R and ■ SUP 11.4.4R is referred to in this chapter as a "change in *control*".



## 11.3 Requirements on controllers or proposed controllers under the Act

11.3.1  
FCA PRA

G

The notification requirements are set out in sections 178, 179, 191D and 191E of the *Act* and holdings which may be disregarded are set out in section 184 of the *Act*. A summary of the notification requirements described in this section is given in

■ SUP 11 Annex 1.

11.3.1A  
FCA PRA

G

For the purposes of Part XII (Control over authorised persons) of the *Act*, and in particular, calculations relating to the holding of shares and/or voting power, the definitions of "shares" and "voting power" are set out in section 191G of the *Act*.

11.3.1B  
FCA PRA

G

■ SUP 11 Annex 6G provides *guidance* on when one *person's* holding of *shares* or *voting power* must be aggregated with that of another *person* for the purpose of determining whether an acquisition or increase of control will take place as contemplated by section 181 or 182 of the *Act* such that notice must be given to the *appropriate regulator* in accordance with section 178 of the *Act* before making the acquisition or increase. This will be:

- (1) where those *persons* are acting in concert, as contemplated by section 178(2) (Obligation to notify appropriate regulator : acquisitions of control) of the *Act*; or
- (2) in the case of voting power only, if any of the circumstances described in section 422(5) (Controller) of the *Act* apply.

### Requirement to notify a proposed change in control

11.3.2  
FCA PRA

G

Sections 178(1) and 191D(1) of the *Act* require a *person* (whether or not he is an *authorised person*) to notify the *appropriate regulator* in writing if he decides to acquire, increase or reduce *control* or to cease to have *control* over a *UK domestic firm* . Failure to notify is an offence under section 191 F of the *Act* (Offences under this Part).

11.3.2A  
FCA PRA

G

The Treasury have made the following exemptions from the obligations under section 178 of the *Act*:

- (1) *controllers* and potential *controllers* of *non-directive friendly societies* are exempt from the obligation to notify a change in *control* (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774 ));

- (2) *controllers* and potential *controllers* of *building societies* are exempt from the obligation to notify a change in *control* unless the change involves the acquisition of a holding of a specified percentage of a *building society's* capital or the increase or reduction by a specified percentage of a holding of a *building society's* capital (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774 .)). The "capital" of a *building society* for these purposes consists of:
  - (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which have been issued by the society (in practice, likely to be permanent interest bearing shares (PIBS)); and
  - (b) the general reserves of that *building society*;
  
- (3) potential *controllers* of *non-directive firms* ("A") are exempt from the obligation to notify a change in *control* unless the change results in the potential *controller* holding:
  - (a) 20% or more of the *shares* in A or in a *parent undertaking* of A ("P");
  - (b) 20% or more of the *voting power* in A or P; or
  - (c) *shares* or *voting power* in A or P as a result of which the *controller* is able to exercise significant influence over the management of A;

or where the change in *control* over A would lead to the *controller* ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).

11.3.3 [G] [deleted]

**Approval required before acquiring or increasing control**

11.3.4 [G] [FCA] [PRA] If a *person* decides to acquire *control* or increase *control* over a *UK domestic firm* in a way described in ■ SUP 11.4.2 R or acquire *control* in a way described in ■ SUP 11.4.2A R (1) , he must obtain the *appropriate regulator's* approval before doing so. Making an acquisition before the *appropriate regulator* has approved of it is an offence under section 191F of the *Act* (Offences under this Part).

11.3.5 [G] [FCA] [PRA] The *appropriate regulator's* approval is not required before a *controller* reduces *control* or ceases to have *control* over a *UK domestic firm*.

**Pre-notification and approval for fund managers**

11.3.5A [G] [FCA] [PRA] The *appropriate regulator* recognises that *firms* acting as *investment managers* may have difficulties in complying with the prior notification requirements in sections 178 and 191D of the *Act* as a result of acquiring or disposing of listed *shares* in the course of that fund management activity. To ameliorate these difficulties, the *appropriate regulator* may accept pre-notification of proposed changes in *control*, made in accordance with ■ SUP 11.3.5B D, and may grant approval of such changes for a period lasting up to a year.

11.3.5B  
FCA PRA

D

The *appropriate regulator* may treat as notice given in accordance with sections 178 and 191D of the *Act* a written notification from a *firm* which contains the following statements:

- (1) that the *firm* proposes to acquire and/or dispose of *control*, on one or more occasions, of any *UK domestic firm* whose *shares* or those of its ultimate *parent undertaking* are, at the time of the acquisition or disposal of *control*, *listed* or which are admitted to listing on a *designated investment exchange* ;
- (2) that any such acquisitions and/or disposals of *control* will occur only in the course of the *firm's* business as an *investment manager*;
- (3) that the level of *control* the *firm* so acquires in the pre-approval period will at all times remain less than 20% ; and
- (4) that the *firm* will not exercise any influence over the *UK domestic firm* in which the shares are held, other than by exercising its voting rights as a shareholder or by exercising influence intended to promote generally accepted principles of good corporate governance.

11.3.5C  
FCA PRA

G

Where the *appropriate regulator* approves changes in *control* proposed in a notice given under ■ SUP 11.3.5B D:

- (1) the *controller* remains subject to the requirement to notify the *appropriate regulator* when a change in *control* actually occurs; and
- (2) the notification of change in *control* should be made no later than five *business days* after the end of each *month* and set out all changes in the *controller's* control position for each *UK domestic firm* for the *month* in question.

At that stage, the *appropriate regulator* may seek from the *controller* further information.

11.3.6 G

[deleted]

11.3.6A G

[deleted]

11.3.6B G

[deleted]

11.3.6C G

[deleted]

### Forms of notifications when acquiring or increasing control

11.3.7  
FCA PRA

D

A *section 178 notice* given to the *appropriate regulator* by a *person* who is acquiring *control* or increasing his *control* over a *UK domestic firm*, in a way described in ■ SUP 11.4.2 R (1) to (4), or acquiring *control* in a way described in ■ SUP 11.4.2A R, must contain the information and be accompanied by such documents as are required by the controllers form approved by the *appropriate regulator* for the relevant application.

- 11.3.7A** G The *controllers* forms approved by the *appropriate regulator* may be found at the *appropriate regulator's* website [web address tbc].  
FCA PRA
- 11.3.8** D [deleted]
- 11.3.9** D [deleted]
- 11.3.10** D  
FCA PRA
- (1) A *person* who has submitted a *section 178 notice* under ■ SUP 11.3.7 D must notify the *appropriate regulator* immediately if he becomes aware, or has information that reasonably suggests, that he has or may have provided the *appropriate regulator* with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed, in a material particular. The notification must include:
    - (a) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;
    - (b) an explanation why such information was or may have been provided; and
    - (c) the correct information.
  - (2) If the information in (1) (c) cannot be submitted with the *section 178 notice* (because it is not immediately available), it must instead be submitted as soon as possible afterwards.
  - (3) The requirement in (1) ceases if the change in *control* occurs or will not take place.
- 11.3.11** G  
FCA PRA
- The *appropriate regulator* will inform a *section 178 notice* giver as soon as reasonably practicable if it considers the *section 178 notice* to be incomplete.
- 11.3.12** G  
FCA PRA
- The *appropriate regulator* has power, under section 179(3) of the *Act* ( Requirements for section 178 notices ), to vary or waive these requirements in relation to a *section 178 notice* in particular cases if it considers it appropriate to do so.
- 11.3.13** G  
FCA PRA
- Where a *controller* or proposed *controller* which is an *authorised person* is required to submit less information under ■ SUP 11.3.7 D than other *persons* , the *appropriate regulator* may ask for confirmation of details already held by it or any additional information required under ■ SUP 11.5.1R.
- 11.3.14** G  
FCA PRA
- Pursuant to section 188 of the *Act* (Assessment: consultation with EC competent authorities), the *appropriate regulator* is obliged to consult any appropriate *Home State regulator* before making a determination under section 185 of the *Act* (Assessment: general).
- 11.3.15** G  
FCA PRA
- Notification when reducing control**  
 .....  
 [deleted]



11.3.15A  
FCA PRA

D

A notice given to the *appropriate regulator* by a *person* who is reducing or ceasing to have *control* over a *UK domestic firm*, as set out in ■ SUP 11.4.2R or ■ SUP 11.4.2A R must:

- (1) be in writing; and
- (2) provide details of the extent of *control* (if any) which the *controller* will have following the change in *control*.

11.3.16

G

[deleted]

**Joint notifications**

11.3.17  
FCA PRA

G

Notifications to the *appropriate regulator* by proposed *controllers* and *controllers* under Part XII of the *Act* may be made on a joint basis outlined in ■ SUP 11.5.8 G to ■ SUP 11.5.10 G.

## 11.4 Requirements on firms

**11.4.1** **G** A summary of the notification requirements in this section is given in **■** SUP 11 Annex 1.  
**FCA PRA**

### Requirement to notify a change in control

**11.4.2** **R** A *UK domestic firm*, other than a *non-directive firm*, must notify the *appropriate regulator* of any of the following events concerning the *firm*:  
**FCA PRA**

- (1) a *person* acquiring *control* ;
- (2) an existing *controller* increasing *control*;
- (3) an existing *controller* reducing *control*;
- (4) an existing *controller* ceasing to have *control*.

**11.4.2A** **R** A *non-directive firm* must notify the *appropriate regulator* of any of the following events concerning the *firm*:  
**FCA PRA**

- (1) a *person* becoming *controller* of the *firm*; or
- (2) an existing *controller* ceasing to be *controller* of the *firm*.

**11.4.3** **G** [deleted]

**11.4.4** **R** An *overseas firm* must notify the *appropriate regulator* if a *person* becomes a *controller* of the *firm*, increases or reduces *control* over the *firm* or ceases to have *control* over the *firm*  
**FCA PRA**

**11.4.5** **G** [deleted]

**11.4.6** **G** If a *firm* is required to obtain approval from the *Society of Lloyd's* for any changes in its *controllers*, it should apply for this approval as well as notifying the *PRA*.  
**PRA**

11.4.7

FCA PRA

R

**Content and timing of the notification**

The notification by a *firm* under ■ SUP 11.4.2 R or ■ SUP 11.4.4 R must:

- (1) be in writing;
- (2) contain the information set out in:
  - (a) in the case of acquiring or increasing *control*, ■ SUP 11.5.1 R (subject to ■ SUP 11.5); or
  - (b) in the case of reducing *control*, ■ SUP 11.5.7 R; and
- (3) be made:
  - (a) as soon as the *firm* becomes aware that a *person* , whether alone or acting in concert, has decided to acquire *control* or to increase or reduce *control*; or
  - (b) if the change in *control* takes place without the knowledge of the *firm*, within 14 days of the *firm* becoming aware of the change in *control* concerned.

11.4.8

FCA PRA

G

*Principle 11* requires *firms* to be open and cooperative with the *appropriate regulator*. A *firm* should discuss with the *appropriate regulator* , at the earliest opportunity, any prospective changes of which it is aware, in a *controller's* or proposed *controller's* shareholdings or *voting power* (if the change is material). These discussions may take place before the formal notification requirement in ■ SUP 11.4.2 R or ■ SUP 11.4.4 R arises. (See also ■ SUP 11.3.2 G). As a minimum, the *appropriate regulator* considers that such discussions should take place before a *person*:

- (1) enters into any formal agreement in respect of the purchase of shares or a proposed acquisition or merger which would result in a change in *control* (whether or not the agreement is conditional upon any matter, including the *appropriate regulator's* approval); or
- (2) purchases any *share options*, *warrants* or other financial instruments, the exercise of which would result in the *person* acquiring *control* or any other change in *control*.

11.4.9

FCA PRA

G

The obligations in ■ SUP 11.4.2 R and ■ SUP 11.4.2A R apply whether or not the *controller* himself has given or intends to give a notification, in accordance with his obligations under the *Act*.

**Identity of controllers**

11.4.10

FCA PRA

R

A *firm* must take reasonable steps to keep itself informed about the identity of its *controllers*.

11.4.11

G

FCA PRA

The steps that the *appropriate regulator* expects a *firm* to take to comply with

■ SUP 11.4.10 R include, if applicable:

- (1) monitoring its register of shareholders (or equivalent);
- (2) monitoring notifications to the *firm* in accordance with Part 22 of the Companies Act 2006 ;
- (3) monitoring public announcements made under the relevant disclosure provisions of the *Takeover Code* or other rules made by the *Takeover Panel*;
- (4) monitoring the entitlement of delegates, or *persons* with voting rights in respect of group insurance contracts, to exercise or control *voting power* at general meetings.

## 11.5 Notifications by firms

**11.5.1** **R** Table Information to be submitted by the *firm* (see ■ SUP 11.4.7 R (2)(a))

**FCA** **PRA**

- (1) The name of the *firm*;
- (2) the name of the *controller* or proposed *controller* and, if it is a *body corporate* and is not an *authorised person*, the names of its *directors* and its *controllers*;
- (3) a description of the proposed event including the shareholding and *voting power* of the *person* concerned, both before and after the change in control; and
- (4) any other information of which the *appropriate regulator* would reasonably expect notice.

**11.5.2** **R** The notification from a *firm* under ■ SUP 11.4.7 R (2)(a) need only contain as much of the information set out in ■ SUP 11.5.1 R as the *firm* is able to provide, having made reasonable enquiries from *persons* and other sources as appropriate.

**FCA** **PRA**

**11.5.3** **G** [deleted]

**11.5.4** **G** *Firms* are reminded that a change in *control* may give rise to a change in the *group companies* to which the *appropriate regulator's* consolidated financial supervision requirements apply. Also, the *firm* may for the first time become subject to the *appropriate regulator's* requirements on consolidated financial supervision (or equivalent requirements imposed by another *EEA State*). This may apply, for example, if the *controller* is itself an authorised *undertaking*. The *appropriate regulator* may therefore request such a *firm*, *controller* or proposed *controller* to provide evidence that, following the change in *control*, the *firm* will meet the requirements of these *rules*, if appropriate.

**FCA** **PRA**

**11.5.4A** **G** *Firms* are also reminded that a change in *control* may give rise to a notification as a *financial conglomerate* or a change in the supplementary supervision of a *financial conglomerate* (see ■ GENPRU 3.1 (Cross sector groups) and ■ GENPRU 3.2 (Third country groups)).

**FCA** **PRA**

**11.5.5** **G** [deleted]

11.5.6 **G** [deleted]

### Form of notification when a person reduces control

11.5.7 **R** A notification of a proposed reduction in *control* must:

**FCA** **PRA**

- (1) give the name of the *controller*; and
- (2) provide details of the extent of *control* (if any) which the *controller* will have following the change in *control*.

### Joint notifications

11.5.8 **G** A *firm* and its *controller* or proposed *controller* may discharge an obligation to notify the *appropriate regulator* by submitting a single joint *section 178 notice* containing the information required from the *firm* and the *controller* or proposed *controller*. In this case, the *section 178 notice* may be used on behalf of both the *firm* and the *controller* or proposed *controller*.

**FCA** **PRA**

11.5.9 **G** If a *person* is proposing a change in *control* over more than one *firm* within a *group*, then the *controller* or proposed *controller* may submit a single *section 178 notice* to the *PRA* in respect of all those *firms* which are *PRA-authorised persons* and a single *section 178 notice* to the *FCA* in respect of all those *firms* which are not *PRA-authorised persons*. The *section 178 notice* should contain all the required information as if separate notifications had been made, but information and documentation need not be duplicated within the set of information sent to each regulator.

**FCA** **PRA**

11.5.10 **G** When an event occurs (for example, a *group* restructuring or a merger) as a result of which:

**FCA** **PRA**

- (1) more than one *firm* in a *group* would undergo a change in *control*; or
- (2) a single *firm* would experience more than one change in *control*;

then, to avoid duplication of documentation, all the *firms* and their *controllers* or proposed *controllers* may discharge their respective obligations to notify the *appropriate regulator* by submitting a single *section 178 notice* to the *PRA* containing one set of information in relation to all the *firms* which are *PRA-authorised persons* and a single *section 178 notice* to the *FCA* containing one set of information in relation to all the *firms* which are not *PRA-authorised persons*.



**11.6 Subsequent notification requirements by firms**

**Changes in the information provided to the appropriate regulator.....**

**11.6.1** **G**  
**FCA PRA**

*Firms* are reminded that ■ SUP 15.6.4 R requires them to notify the *appropriate regulator* if information notified under ■ SUP 11.4.2 R or ■ SUP 11.4.4 R was false, misleading, inaccurate, incomplete, or changes, in a material particular. This would include a *firm* becoming aware of information that it would have been required to provide under ■ SUP 11.5.1 R if it had been aware of it.

**11.6.2** **R**  
**FCA PRA**

After submitting a *section 178 notice* under ■ SUP 11.4.2 R or ■ SUP 11.4.2A R and until the change in *control* occurs (or is no longer to take place), ■ SUP 15.6.4 R and ■ SUP 15.6.5 R apply to a *UK domestic firm* in relation to any information its *controller* or proposed *controller* provided to the *appropriate regulator* under ■ SUP 11.5.1 R or ■ SUP 11.3.7 D.

**11.6.3** **R**  
**FCA PRA**

During the period in ■ SUP 11.6.2 R, a *UK domestic firm* must take reasonable steps to keep itself informed about the circumstances of the *controller* or the proposed *controller* to which the notification related.

**Notification that the change in control has taken place.....**

**11.6.4** **R**  
**FCA PRA**

A *firm* must notify the *appropriate regulator*:

- (1) when a change in *control* which was previously notified under ■ SUP 11.4.2 R, ■ SUP 11.4.2A R or ■ SUP 11.4.4 R has taken place; or
- (2) if the *firm* has grounds for reasonably believing that the event will not now take place.

**11.6.5** **R**  
**FCA PRA**

The notification under ■ SUP 11.6.4 R must be given within 14 *days* of the change in *control* or of having the grounds (as applicable).

**11.6.6** **G**

[deleted]



**11.7 Acquisition or increase of control:  
assessment process and criteria**

**11.7.1** **G** The assessment process and the assessment criteria are set out in sections 185 to 191 of the *Act*.  
**FCA PRA**

**11.7.2** **G** Section 191A deals with the procedure the *appropriate regulator* must follow where the *appropriate regulator* reasonably believes that:  
**FCA PRA**

- (1) there has been a failure to give notice under section 178(1) of the *Act* in circumstances where notice was required;
- (2) there has been a breach of a condition imposed under section 187 of the *Act*; or
- (3) there are grounds for objecting to control on the basis of the matters in section 186 of the *Act*.

**11.7.3** **G** The *appropriate regulator* may serve *restriction notices* in certain circumstances in accordance with section 191B of the *Act* .  
**FCA PRA**

**11.7.4** **G** The *appropriate regulator* may apply to the court for an order for the sale of *shares* in accordance with section 191C of the *Act* .  
**FCA PRA**

**11.7.5** **G** [deleted]

**11.7.6** **G** [deleted]

**11.7.7** **G** [deleted]

**11.7.8** **G** [deleted]

**11.7.9** **G** . [deleted]

**11.7.10** **G** [deleted]



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11.7.11	G	[deleted]
11.7.12	G	[deleted]
11.7.13	G	Before making a determination under section 185 orgiving a <i>warning notice</i> under section 191A , the <i>appropriate regulator</i> must comply with the requirements as to consultation with EC competent authorities set out in section 188 of the <i>Act</i> and with the other regulator set out in sections 187A, 187B and 191A of the <i>Act</i> , as applicable.
	FCA PRA	
11.7.14	G	[deleted]
11.7.15	G	[deleted]
11.7.16	G	[deleted]
11.7.17	G	[deleted]
11.7.18	G	[deleted]

## 11.8 Changes in the circumstances of existing controllers

### 11.8.1

FCA PRA

R

A *firm* must notify the *appropriate regulator* immediately it becomes aware of any of the following matters in respect of one or more of its *controllers*:

- (1) if a *controller*, or any entity subject to his *control*, is or has been the subject of any legal action or investigation which might put into question the integrity of the *controller*;
- (2) if there is a significant deterioration in the financial position of a *controller*;
- (3) if a corporate *controller* undergoes a substantial change or series of changes in its *governing body*;
- (4) if a *controller*, who is authorised in another *EEA State* as a *MiFID investment firm*, *BCD credit institution* or *UCITS management company* or under the *Insurance Directives* or the *Insurance Mediation Directive*, ceases to be so authorised (registered in the case of an *IMD insurance intermediary*).

### 11.8.2

FCA

G

In assessing whether a matter should be notified to the *appropriate regulator* under ■ SUP 11.8.1 R (1), ■ SUP 11.8.1 R (2) or ■ SUP 11.8.1 R (3), a *firm* should have regard to the *guidance* on satisfying the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 to the *Act* contained in ■ COND 2.5.

### 11.8.3

FCA PRA

G

In respect of ■ SUP 11.8.1 R (3), the *appropriate regulator* considers that, in particular, the removal or replacement of a majority of the members of a *governing body* (in a single event or a series of connected events) is a substantial change and should be notified.

### 11.8.4

FCA PRA

G

If a matter has already been notified to the *appropriate regulator* (for example, as part of the *firm's* application for a *Part 4A permission*), the *firm* need only inform the *appropriate regulator* of any significant developments.

### 11.8.5

FCA PRA

G

The level of a *firm's* awareness of its *controller's* circumstances will depend on its relationship with that *controller*. The *appropriate regulator* does not expect *firms* to implement systems or procedures so as to be certain of any changes in its *controllers'* circumstances. However, the *appropriate regulator* does expect *firms* to notify it of such matters if the *firm* becomes aware of them, and it expects *firms* to make enquiries of its

*controllers* if it becomes aware that one of the events in ■ SUP 11.8.1 R may occur or has occurred.

11.8.6

FCA PRA

G

The *appropriate regulator* may ask the *firm* for additional information following a notification under ■ SUP 11.8.1 R in order to satisfy itself that the *controller* continues to be suitable (see ■ SUP 2: Information gathering by the appropriate regulator on its own initiative).



## 11.9 Changes in close links

### Requirement to notify changes in close links

11.9.1

R

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

11.9.1A

FCA

R

- (1) A *firm* must notify the *FCA* that it has become or ceased to be *closely linked* with any *person*. The notification must be made by completing the Close Links Notification Form (see ■ SUP 11.9.3B G) and must include the information set out in ■ SUP 16.5.4 R (4).
- (2) If a *group* includes more than one *firm*, a single close links notification may be made by completing the Close Links Notification Form and so satisfy the notification requirement for all *firms* in the *group*. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each *firm* in the *group*.

11.9.1B

PRA

R

- (1) A *firm* must notify the *PRA* that it has become or ceased to be *closely linked* with any *person*. The notification must be made by completing the Close Links Notification Form (see ■ SUP 11.9.3C G) and must include the information set out in ■ SUP 16.5.4 R (4).
- (2) If a *group* includes more than one *firm*, a single close links notification may be made by completing the Close Links Notification Form and so satisfy the notification requirement for all *firms* in the *group*. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each *firm* in the *group*.

11.9.2

FCA

G

Guidance on what constitutes a *close link* is provided in ■ COND 2.3.

11.9.2A

FCA

PRA

G

A *firm* may elect not to include the following *close links* in the notification submitted under ■ SUP 11.9.1 R, ■ SUP 11.9.5 R or ■ SUP 16.5:

- (1) *shares* held in its capacity as custodian provided it can only exercise any voting rights attached to such *shares* under instructions given in writing or by *electronic means*;

(2) *shares* held in its capacity as collateral taker under a collateral transaction which involves the outright transfer of *securities* provided it does not declare any intention of exercising (and does not exercise) the voting rights attaching to such *shares*.

11.9.3 G [deleted]

11.9.3-A G The *FCA* may ask the *firm* for additional information following a notification under **■ SUP 11.9.1A R** in order to satisfy itself that the *firm* continues to satisfy the *threshold conditions* (see **■ SUP 2: Information gathering by the FCA and PRA on their own initiative**).

11.9.3-B G The *PRA* may ask the *firm* for additional information following a notification under **■ SUP 11.9.1B R** in order to satisfy itself that the *firm* continues to satisfy the *threshold conditions* (see **■ SUP 2: Information gathering by the FCA and PRA on their own initiative**).

**Form of notification**

11.9.3A G [deleted]

11.9.3B G The Close Links Notification Form approved by the *FCA* for notifications under **■ SUP 11.9.1A R**, **■ SUP 11.9.5A R** and **■ SUP 16.5.4 R (1)**, may be found at the *FCA* website.

11.9.3C G The Close Links Notification Form approved by the *PRA* for notifications under **■ SUP 11.9.1B R**, **■ SUP 11.9.5B R** and **■ SUP 16.5.4 R (1)**, may be found at the *PRA* website.

**Timing of notification requirement**

11.9.4 R [deleted]

11.9.4A R The *firm* must make a notification to the *FCA* under **■ SUP 11.9.1A R**:

- (1) as soon as reasonably practicable and no later than one *month* after it becomes aware that it has become or ceased to be closely linked with any *person*; or
- (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* by completing the Close Links Notification Form, including the information set out in **■ SUP 16.5.4 R(4)** for that *month* and must submit the *group* organisation chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the *FCA*, in which case the *group* organisation chart is not required.

- 11.9.4B** PRA R The *firm* must make a notification to the *PRA* under ■ SUP 11.9.1B R:
- (1) as soon as reasonably practicable and no later than one *month* after it becomes aware that it has become or ceased to be closely linked with any *person*; or
  - (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* by completing the Close Links Notification Form, including the information set out in ■ SUP 16.5.4 R (4) for that *month* and must submit the *group* organisation chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the *PRA*, in which case the *group* organisation chart is not required.

**Electing to notify changes in close links monthly**.....

- 11.9.5** R
- (1) [deleted]
  - (2) [deleted]

- 11.9.5A** FCA R
- (1) A *firm* elects to report changes in *close links* on a *monthly* basis by sending a written notice of election to the *firm's* usual supervisory contact at the *FCA*.
  - (2) An election to report changes in *close links* on a *monthly* basis will stand until such time as the *firm* gives its usual supervisory contact at the *FCA* at least one *month's* written notice of its intention to cease reporting changes in *close links* on a *monthly* basis.

- 11.9.5B** PRA R
- (1) A *firm* elects to report changes in *close links* on a *monthly* basis by sending a written notice of election to the *firm's* usual supervisory contacts at both the *PRA* and *FCA*.
  - (2) An election to report changes in *close links* on a *monthly* basis will stand until such time as the *firm* gives its usual supervisory contacts at both the *PRA* and *FCA* at least one *month's* written notice of its intention to cease reporting changes in *close links* on a *monthly* basis.

**11.9.6** G [deleted]

**11.9.6A** FCA G The *FCA* considers that *monthly* reporting of changes in *close links* will ordinarily only be appropriate for *firms* forming part of large *groups*.

**11.9.6B** PRA G The *PRA* considers that *monthly* reporting of changes in *close links* will ordinarily only be appropriate for *firms* forming part of large *groups*.



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## Summary of notification requirements

**FCA** **PRA**

SUP 11 Annex 1G





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## Aggregation of holdings for the purpose of prudential assessment of controllers

**FCA** **PRA**

**Q1:** What is this guidance about?

**A:** This guidance considers when one *person's* holding of shares or voting power must be aggregated with that of another *person* for the purpose of determining whether those persons have decided to acquire or increase control over a UK authorised person, as contemplated by section 181 or 182 of the *Act*, such that notice must be given to the *appropriate regulator* in accordance with section 178 (Obligation to notify the Authority: acquisitions of control) of the *Act* before making the acquisition or deciding to increase their control.

**Q2:** When are shares or voting power to be aggregated?

**A:** There are two situations which would require the holdings of two or more *persons* to be aggregated for the purpose of determining whether they are acquiring or increasing control within the meaning of section 181 or 182 of the *Act*. The first is where shares or voting power are held or to be held by persons 'acting in concert' - this is referred to in sections 178(2) and 422(3) of the *Act*. The second is where a *person* (H) is attributed with voting power in a *firm* through the application of any of the circumstances described in section 422(5)(a) of the *Act* ('deemed voting power') in addition to any other voting power that he holds (or is deemed to hold) in that *firm*. These two situations may apply concurrently. For example, H could be acting in concert pursuant to section 178(2) of the *Act* and have deemed voting power under section 422(5)(a)(i) of the *Act* where H has concluded an agreement that obliges him and a third party shareholder in the *firm* to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of that *firm*.

### Acting in Concert

**Q3:** What does 'acting in concert' mean for these purposes?

**A:** There is no definition of this phrase in the *Act*. The Glossary to the Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC (the 'Acquisitions Directive') published jointly by CEBS, CEIOPS and CESR (the 'Level 3 Guidelines') states that, for the purposes of the Acquisitions Directive, 'persons are "acting in concert" when each of them decides to exercise his rights linked to the shares he acquires in accordance with an explicit or implicit agreement made between them.' The relevant persons must therefore (1) hold shares and/or voting power in the *firm* or its *parent undertaking*, and (2) reach a decision to exercise the rights linked to those shares in accordance with an agreement (in writing or otherwise) between them.

While the rights 'linked to' shares for these purposes are most likely to be voting rights, persons may be 'acting in concert' where they decide to exercise other share-related rights, either in addition to or instead of voting rights, in accordance with an agreement made between them.

As indicated in the Level 3 Guidelines, persons will begin acting in concert when they take the decision to exercise their rights in accordance with an agreement between them. This decision may be taken before or after the time the relevant persons decide to purchase shares in the *firm*. The agreement need not require them always to exercise the rights attached to their respective shares in the same way - see, for example, the response to Question 11 in respect of passive shareholdings.

**Q4:** Does section 178(2) of the Act have the effect that two or more persons who already hold shares or voting power in a firm or its parent undertaking and who subsequently decide to exercise their voting or other rights in accordance with an agreement between them are required to give prior notice under section 178(1) of the Act, if their aggregated holdings fall within any of the cases set out in section 181(2) of the Act or increase by any of the steps set out in section 182(2) of the Act?

**A:** Yes. Section 178(1) of the Act applies when a *person* 'decides to acquire or increase control over a UK authorised person...'. For the purposes of Part XII of the Act, a *person's* acquisition of control of a *firm* is determined by virtue of his holdings of shares or voting power in that *firm* or in a *parent undertaking* of that *firm*. In determining whether control has been acquired, section 178(2) of the Act requires the holdings of shares or voting power of *persons* who are acting in concert to be aggregated. As noted in the response to Question 3, *persons* begin acting in concert when they decide to exercise their voting or other rights in accordance with an agreement between them. Once this decision has been taken, shares or voting rights must be aggregated to determine whether control has been or will be acquired. The same analysis applies to increases in control and reductions in control, as set out in sections 182 and 183 of the Act, respectively. Accordingly, the requirement to aggregate holdings of shares and/or voting power under section 178(2) of the Act may apply to existing holdings, as well as to new purchases, of shares and/or voting power.

**Q5:** What types of arrangement amount to acting in concert in acquiring or holding shares or voting power for the purposes of these Sections of the Act?

**A:** Although the term 'acting in concert' has a potentially wide meaning, not all common actions taken by shareholders in relation to shares or voting power will require the aggregation of holdings of shares or voting power for the purposes of section 178 of the Act. In particular, there are many circumstances in which *persons*, who between them hold 10% or more of the shares or voting power in a *firm* or its *parent undertaking*, may engage in a concerted exercise of voting power, without this amounting to 'acting in concert' in a manner requiring aggregation of their holdings under section 178(2) of the Act. An agreement by one shareholder to vote with other shareholders on a specific issue, for example, rather than on an ongoing or sustained basis, would not generally be regarded by the *appropriate regulator* as acting in concert so as to require a section 178 notice to be given by that group of shareholders, even where the group collectively holds 10% or more of the voting power in the *firm*. However, see further on this point in the response to Question 9.

Deemed voting power

**Q6 :** What is meant by 'deemed voting power'?

A: 'Deemed voting power' is the term used in this guidance to describe those cases set out in section 422(5)(a) of the *Act* in which one *person's* holding of voting power is attributed to another. There may be circumstances in which deemed voting power must be aggregated with other (actual or deemed) voting power for the purposes of determining whether section 181(2)(b) of the *Act* applies, but the cases set out in section 422(5)(a) may result in the attribution of voting power to a *person* (H) without aggregation where H holds no other actual or deemed voting power in the relevant firm and is not acting in concert with any other person (for example, where H exercises the voting power attaching to shares deposited with him pursuant to a discretion granted to him in the absence of (1) specific instructions from the actual shareholders, and (2) any agreement with the shareholders as to how he should exercise that voting power or any other rights attached to those shares - see section 422(5)(a)(vi) of the *Act*).

The provisions of section 422(5)(a) of the *Act* were transposed into the *Act* in order to implement Directive 2004/109/EC (the 'Transparency Directive'). These provisions have direct application to Part XII of the *Act*, and in particular to the meaning of 'voting power' for the purposes of that Part, by virtue of section 191G (Interpretation) of the *Act*.

In introducing the cases in which the voting power of a third party may be attributed to H, the Transparency Directive refers to the ability 'to acquire, to dispose of, or to exercise voting rights in any of the [relevant] cases or a combination of them.' No new purchase of shares is therefore required in order for these attribution provisions to apply.

Q7: Where X holds 10% of the voting power in a firm and X is the subsidiary of H, which itself has no holding at all directly in the firm, is H a controller?

A: Yes. This follows from section 422(5)(a)(v) of the *Act*, which provides that voting power includes, in relation to a *person* (H), voting power held by a subsidiary of H. The voting power held by X is attributed to H, making H a *controller*.

For the purposes of section 178 of the *Act*, both H and its subsidiary, would be required to notify and obtain the *appropriate regulator's* approval prior to acquiring or increasing control.

#### Practical application of aggregation of holdings

Q8: Does there need to be a new purchase of shares or voting rights in order for the notification requirement to arise?

A: No. As stated in the response to Question 4, the aggregation of shares and/or voting power is relevant to existing holdings of shares and/or voting power where no new purchase is to take place, as well as to new purchases.

Q9: Do the aggregation provisions apply to shareholders agreeing how they will vote on a particular issue, for example, for reasons of good corporate governance?

A: We would not generally regard shareholders as acting in concert for the purposes of section 178(2) of the *Act* or as having deemed voting power requiring aggregation pursuant to section 422(5)(a)(i) of the *Act* simply because they have agreed to vote together on a particular issue, for example:

- rejection of a proposal for the remuneration of directors;
- appointment/removal of a particular director; or
- approval/rejection of an acquisition or disposal proposed by the *firm's* board of directors.

However, there may be circumstances in which voting together on a specific issue would amount to acting in concert for these purposes. Where, for example, shareholders who have no previous agreement in relation to the exercise of their voting rights agree to act together for the purpose of voting through the resolution(s) required to enable them to obtain control of the board of a *firm*, that is likely to constitute acting in concert for these purposes, although it may not fall within section 422(5)(a)(i) of the *Act*, if those shareholders have no 'lasting common policy' towards the *firm's* management.

Those circumstances are likely to be exceptional and, while it is not possible in this guidance to give a definitive list of how they might arise, the *appropriate regulator* remains willing to provide *firms* with individual guidance on the point in cases of uncertainty.

**Q10:** What about agreements that specific issues will be put to a vote of shareholders?

**A:** An agreement that does no more than require particular management actions to be put to a vote of shareholders, such as major acquisitions, disposals or new issues of shares, would not of itself trigger the requirement to notify. This is because there is no agreement as to how the shareholders will exercise their rights on, or whether the shareholders will adopt a common policy towards, those proposals. An agreement which gives certain shareholders veto rights over key decisions by the *firm* may, however, bring those shareholders within the ambit of section 178(1) of the *Act* regardless of whether they are acting in concert, by virtue of their being able to exercise significant influence over the management of the *firm* - see section 181(2)(c) of the *Act*.

**Q11:** What about agreements as to how to exercise voting power on future issues generally?

**A:** This would involve acting in concert, and thus require the aggregation of holdings by the parties to the agreement, for the purposes of section 178 of the *Act*. It may also fall within the ambit of section 422(5)(a)(i) of the *Act*, but this will depend on whether the parties to the agreement have adopted a lasting common policy that relates to the management of the relevant undertaking.

Acting in concert not only covers agreements to exercise voting power, but may also arise as a result of 'passive shareholder agreements'. In these, a shareholder (the 'passive shareholder') agrees explicitly or implicitly with another shareholder or group of shareholders (the 'active shareholder') that it will not exercise its voting power. For example, where the passive shareholder holds 2% of the voting power and the active shareholder holds 9% of the voting power, each would be regarded as having control (11% of the voting power) because their holdings are required to be aggregated under the acting in concert provisions. However, persons that acquire shares as part of an investment or hedging programme and adhere consistently to a stated policy of not voting those shares would not, by reason of that policy alone, be regarded as having entered into an agreement with other shareholders and so would not be regarded as acting in concert with them.

**Q12:** Are multiple purchasers of shares, who are each party to a share purchase agreement and whose combined shareholding will fall within section 181(2) of the Act, required to give notice pursuant to section 178(1) of the Act, on the basis that the existence of the agreement means they are acting in concert?

**A:** If it is clear that the only 'agreement' between one or more persons consists in their being parties to the same share purchase agreement, the terms of which pertain strictly to the purchase of shares and do not govern or otherwise seek to regulate the purchasers' relationship with each other following completion of the share purchase, those purchasers would not be regarded by the *appropriate regulator* as acting in concert for the purpose of requiring notification under section 178 of the Act. If, however, the share purchase agreement contains provisions governing or otherwise regulating the exercise of the rights linked to the shares to be acquired by the purchasers (or the purchasers have entered into or propose to enter into a shareholders' or other agreement with similar effect), the proposed acquirers may be regarded by the *appropriate regulator* to be acting in concert for the purpose of requiring notification under section 178 of the Act, depending on the terms of the relevant agreement(s). Further guidance on the effect of some of the typical provisions included in shareholders' agreements is contained in the response to Question 14. Prospective shareholders who are uncertain as to the effect of any of the provisions of their agreement(s) in these circumstances may wish to seek (either formally or informally) individual guidance at an early stage from the *appropriate regulator*.

Where there is evidence to suggest that the parties do in fact intend to co-operate in relation to the exercise of voting or other rights relating to the shares they are acquiring, notwithstanding that no provisions to that effect appear in the share purchase or other written agreement, this may warrant the conclusion that there is an implicit agreement between them by virtue of which they are acting in concert.

**Q13:** What about agreements that are conditional on any necessary approval by the appropriate regulator?

**A:** Notice must be given under section 178(1) of the Act before control is acquired. The point in time at which this occurs may depend on a number of circumstances. In the context of a share purchase agreement that provides for *appropriate regulator* approval of the purchaser to be obtained before the acquisition is completed, the purchaser will not usually be required to give a section 178 notice prior to entering into the agreement. However, there may be circumstances in which control is actually acquired at the time the agreement is entered into, for example, where the parties have agreed that the purchaser will be entitled (whether by virtue of a power of attorney contained in the agreement or otherwise) to exercise the voting rights attached to the shares being acquired in the period between signing and completion. In that case, the purchaser will need to consider whether to give notice under section 178(1) prior to entering into the agreement.

**Q14:** What about pre-emption rights, 'drag along' rights and 'tag along' rights?

**PAGE 5** **A:** Typical examples of these arrangements are unlikely to trigger the requirement to notify under section 178(1) of the Act in themselves.

Bare pre-emption rights will simply indicate each shareholder's (the 'offeror') agreement to give fellow shareholders an option to purchase his shares, if he wishes to sell. The acquisition of

shares under these arrangements cannot take place until the offeror decides to sell his shares and other shareholders decide to buy them.

Shareholders will not usually be regarded as acting in concert in holding or acquiring shares simply by agreeing to give each other future pre-emption rights. In the event that some shareholders enter into an agreement to buy the offeror's shares, those shareholders are only likely to be regarded as acting in concert by virtue of that agreement in the circumstances described in the response to Question 12 above.

The existence of 'drag along' and 'tag along' rights in a shareholders' agreement designed to ensure equivalent treatment of shareholders of the same class in the event an offer is made, or to be made, by a non-shareholder to purchase the shares of any single shareholder in a private company would not, in and of themselves, result in the shareholders who have the benefit of those rights being considered to be acting in concert in their holding or acquiring of shares.

**Q15:** How does this guidance relate to the definition of 'acting in concert' in the Takeover Code (the 'Code')?

**A:** Although similar terminology may be used, the definition of 'acting in concert' in the Code derives from the Takeovers Directive and has particular relevance in determining whether the relationship between persons with interests in shares carrying voting rights is such as to require those rights to be aggregated for the purpose of assessing whether, under Rule 9.1, the threshold for the making of a mandatory offer to all other shareholders in a company to which the Code applies has been reached. The notes on the definition in the Code and on Rule 9.1 make clear that the Takeover Panel's views in relation to acting in concert '...relate only to the Code and should not be taken as guidance on any other statutory or regulatory provisions'.

This guidance is given for a quite different purpose. It is relevant to considering whether the holdings of persons who have reached an agreement in relation to the shares or voting rights they do or will hold must be aggregated for the purpose of determining whether they are subject to the requirements for prudential assessment specified in sections 185 *et seq* of the *Act*. This guidance has no relevance to how 'acting in concert' is to be interpreted in the context of the Code.

# Chapter 12

## Appointed representatives



## 12.1 Application and purpose

### Application

12.1.1

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(1) This chapter applies to a *firm* which is considering appointing, has decided to appoint or has appointed an *appointed representative*.

(1A) This chapter applies to a *UK MiFID investment firm* which is considering appointing, has decided to appoint or has appointed an *EEA tied agent*.

(2) This chapter does not apply to a *UCITS qualifier*.

(3) This chapter does not apply in relation to a *tied agent* acting on behalf of an *EEA MiFID investment firm* unless that *tied agent* is established in the *UK*.

### Purpose

12.1.2

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This chapter gives *guidance* to a *firm*, which is considering appointing an *appointed representative*, on how the provisions of section 39 of the *Act* (Exemption of appointed representatives) work. For example, it gives *guidance* on the conditions that must be satisfied for a *person* to be appointed as an *appointed representative*. It also gives *guidance* to a *firm* on the implications, for the *firm* itself, of appointing an *appointed representative*.

12.1.3

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The chapter also sets out the *FCA's rules*, and *guidance* on these *rules*, that apply to a *firm* before it appoints, when it appoints and when it has appointed an *appointed representative*. The main purpose of these *rules* is to place responsibility on a *firm* for seeking to ensure that:

(1) its *appointed representatives* are fit and proper to deal with *clients* in its name; and

(2) *clients* dealing with its *appointed representatives* are afforded the same level of protection as if they had dealt with the *firm* itself.

12.1.4

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The *FCA* has produced a leaflet entitled "Becoming an appointed representative" which provides a comprehensive summary of some of the main features of the appointed representative regime. You may download a copy of this leaflet from our website at

<http://www.fca.org.uk/your-fca/documents/factsheet-becoming-an-appointed-representative>

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### 12.1.5

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This chapter also sets out *guidance* about section 39A of the *Act*, which is relevant to a *UK MiFID investment firm* that is considering appointing an *FCA registered tied agent*. It also sets out the *FCA's rules*, and *guidance* on those *rules*, in relation to the appointment of an *EEA tied agent* by a *UK MiFID investment firm*.

## 12.2 Introduction

### What is an appointed representative?

#### 12.2.1

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- (1) Under section 19 of the *Act* (The general prohibition), no *person* may carry on a *regulated activity* in the *United Kingdom*, or purport to do so, unless he is an *authorised person*, or he is an *exempt person* in relation to that activity.
- (2) A *person* will be an *exempt person* if he satisfies the conditions in section 39(1) of the *Act*, *guidance* on which is given in ■ SUP 12.2.2 G. A *person* who is exempt as a result of satisfying these conditions is referred to in the *Act* as an *appointed representative*.
- (3) If an *appointed representative* is also a *tied agent* he must also satisfy the condition in section 39(1A) of the *Act* in order to be an *exempt person*. See ■ SUP 12.4.12 G for *guidance* on that condition and ■ SUP 12.2.16 G for more general *guidance* about *tied agents*.

#### 12.2.2

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- (1) A *person* must satisfy the conditions in section 39(1) of the *Act* to become an *appointed representative*. These are that:
  - (a) the *person* must not be an *authorised person*, that is, he must not have *permission* under the *Act* to carry on any *regulated activity* in his own right (section 39(1) of the *Act*);
  - (b) the *person* must have entered into a contract with an *authorised person*, referred to in the *Act* as the '*principal*', which:
    - (i) permits or requires him to carry on business of a description prescribed in the *Appointed Representatives Regulations* (section 39(1)(a)(i) of the *Act*) (see ■ SUP 12.2.7 G); and
    - (ii) complies with any requirements that may be prescribed in the *Appointed Representatives Regulations* (section 39(1)(a)(ii) of the *Act*) (see ■ SUP 12.5.2 G (1)); and
  - (c) the *principal* must have accepted responsibility, in writing, for the authorised activities of the *person* in carrying on the whole, or part, of the business specified in the contract.
- (2) The *appointed representative* is an *exempt person* in relation to any *regulated activity* comprised in the carrying on of the business for which his *principal* has accepted responsibility.

**Who can be an appointed representative?**

12.2.3

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As long as the conditions in section 39 of the *Act* are satisfied, any *person*, other than an *authorised person*, may become an *appointed representative*, including a *body corporate*, a *partnership* or an individual in business on his own account. However, an *appointed representative* cannot be an *authorised person* under the *Act*; that is, it cannot be exempt for some *regulated activities* and *authorised* for others.

**Can an appointed representative have more than one principal?**

12.2.4

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The *Act* and the *Appointed Representative Regulations* do not prevent an *appointed representative* from acting for more than one *principal*. However, ■ SUP 12.5.6A R (Prohibition of multiple principals for certain activities) prevents this for particular kinds of business.

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[deleted]

**What is a "network"?**

12.2.6

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A *firm* is referred to as a '*network*' if it appoints five or more *appointed representatives* (not counting *introducer appointed representatives*) or if it appoints fewer than five *appointed representatives* (again, not counting *introducer appointed representatives*) which have, between them, twenty-six or more *representatives*. However, a *network* does not include:

- (a) a *product provider*;
- (b) a *firm* which markets the *packaged products* of a *product provider* in the same *group* as the *firm* and which does so other than by selecting products from the whole market;
- (c) an *insurer* in relation to a *non-investment insurance contract*; or
- (d) a *home finance provider*.

**Business for which an appointed representative is exempt**

12.2.7

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- (1) The *Appointed Representatives Regulations* are made by the Treasury under section 39(1) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt, which is business which comprises any of:
  - (a) *dealing in investments as agent* (article 21 of the *Regulated Activities Order*) where the transaction relates to a *pure protection contract* (but only where the contract is not a *long-term care insurance contract*) or *general insurance contract*;
  - (aa) *bidding in emissions auctions* (article 24A of the *Regulated Activities Order*) where that activity does not consist either of *dealing on own account* or the *execution of orders on behalf of clients*;
  - (b) arranging (bringing about) deals in investments (article 25(1) of the *Regulated Activities Order*) (that is in summary, deals in a *designated investment*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);

- (c) *making arrangements with a view to transactions in investments* (article 25(2) of the *Regulated Activities Order*) (that is in summary, transactions in a *designated investment, funeral plan contract, pure protection contract, general insurance contract* or right to or interest in a funeral plan);
  - (d) *arranging* (bringing about) a *home finance transaction* (articles 25A(1), 25B(1) and 25C(1) of the *Regulated Activities Order*);
  - (e) *making arrangements with a view to a home finance transaction* (articles 25A(2), 25B(2) and 25C(2) of the *Regulated Activities Order*);
  - (f) *assisting in the administration and performance of a contract of insurance* (article 39A of the *Regulated Activities Order*);
  - (g) *arranging safeguarding and administration of assets* (part of article 40 of the *Regulated Activities Order*);
  - (h) giving *basic advice* on a *stakeholder product* (article 52B of the *Regulated Activities Order*);
  - (i) advising on *investments* (article 53 of the *Regulated Activities Order*) (that is in summary, on any *designated investment, funeral plan contract, pure protection contract, general insurance contract* or right to or interest in a funeral plan);
  - (j) *advising on a home finance transaction* ( articles 53A, 53B and 53C of the *Regulated Activities Order*); and
  - (k) *agreeing to carry on a regulated activity* (article 64 of the *Regulated Activities Order*) where the *regulated activity* is one of those in (a) to (h).
- (2) If the *appointed representative* is a *tied agent* of an *EEA firm*, the business for which the *appointed representative* may be exempt includes the following additional activities:
- (a) placing *financial instruments*;
  - (b) providing advice to *clients* or potential *clients* in relation to the placing of *financial instruments*.
- (3) [deleted]

### What is an introducer appointed representative?

- (1) An *introducer appointed representative* is an *appointed representative* appointed by a *firm* whose scope of appointment must, under ■ SUP 12.5.7 R, be limited to:
- (a) effecting introductions to the *firm* or other members of the *firm's group*; and
  - (b) distributing *non-real time financial promotions* which relate to products or services available from or through the *firm* or other members of the *firm's group*.
- (2) The permitted scope of appointment of an *introducer appointed representative* does not include in particular:

12.2.8

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- (a) dealing in investments as agent; or
  - (b) *arranging (bringing about) deals in investments* or arranging (bringing about) regulated mortgage contracts; or
  - (c) *assisting in the administration and performance of a contract of insurance*; or
  - (d) *advising on investments*, giving *basic advice* on a *stakeholder product* *advising on a home finance transaction* or other activity that might reasonably lead a *customer* to believe that he had received *basic advice* or *advice on investments* or on *home finance transactions* or that the *introducer appointed representative* is permitted to give *basic advice* or give *personal recommendations* on investments or on *home finance transactions*.
- (3) An *introducer appointed representative* may have more than one *principal*, but will need a contract with each *principal*.
- (4) The *approved persons* regime does not apply to an *introducer appointed representative* (see ■ SUP 10A.1.15 R).

12.2.9

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To become an *introducer appointed representative*, a *person* must meet the conditions in the *Act* to become an *appointed representative* (see ■ SUP 12.2.2 G).

12.2.10

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All *rules* in ■ SUP 12 apply in relation to *introducer appointed representatives* except for:

- (1) ■ SUP 12.4.2 R, ■ SUP 12.4.5B R and ■ SUP 12.4.5C, on the appointment of *appointed representatives*, which are replaced by ■ SUP 12.4.6 R;
- (2) ■ SUP 12.5.6A R on required contract terms, which is replaced by ■ SUP 12.5.7 R; and
- (3) ■ SUP 12.9.1 R (4) (Record keeping).

12.2.11

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If an *introducer appointed representative* is an individual in business on his own, then he will also be an *introducer* (see ■ SUP 12.2.13 G). This has certain implications in COBS.

**Introducers and representatives: what do these terms mean and what is the relationship with an appointed representative?**

12.2.12

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A *firm* or its *appointed representative* may appoint or employ individuals to act as *introducers* or *representatives* in respect of *designated investment business*.

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- (1) An *introducer* is an individual appointed by a *firm* or by an *appointed representative* of such a *firm* to carry out, in the course of *designated investment business*, either or both of the following activities:
  - (a) effecting introductions;
  - (b) distributing *non-real time financial promotions*.

12.2.14

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(2) An *introducer* is not an *exempt person* under section 39 of the *Act* (unless he is also an *introducer appointed representative*) and hence cannot benefit from the exemption to carry on *regulated activities* in his own right. As a result, an *introducer* that is not an *introducer appointed representative* works in the name of his *firm* or the *firm's appointed representative* but he does not fall within the scope of the *approved persons* regime as he does not, as such, perform a *controlled function*.

(1) A *representative* is an individual who is appointed by a *firm* or an *appointed representative*, to carry on any of the activities in (1)(a) to (c):

- (a) *advising on investments*;
- (b) *arranging (bringing about) deals in investments*;
- (c) *dealing in investments as agent*.

(2) If a *firm* appoints an *appointed representative* who is an individual in (1), that *appointed representative* will also be a *representative*. The individual may need to be approved to perform the *customer function*, (see ■ SUP 12.6.8 G and ■ SUP 12.6.9 G). In these circumstances, in addition to complying with the requirements of ■ SUP 12 and other regulatory requirements, the *firm* should ensure that the *rules for representatives* in ■ COBS 6 (Information about the firm, its services and remuneration) are complied with.

12.2.15

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12.2.16

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### What is a tied agent?

(1) A *tied agent* is a *person* who acts for and under the responsibility of a *MiFID investment firm* (or a *third country investment firm*) in respect of *MiFID business* (or the *equivalent business of the third country investment firm*). Most *tied agents* appointed by firms are also *appointed representatives*.

(2) Unless otherwise provided, this chapter applies to a firm that appoints a *tied agent* that is an *appointed representative* in the same way as it applies to the appointment of any other *appointed representative*.

(3) This chapter sets out the provisions which apply to *tied agents*:

- (a) established in the *UK*; or
- (b) established in another *EEA State* and appointed by a *UK MiFID investment firm*.

(4) A *tied agent* appointed by a *firm* to carry on *investment services and activities* or *ancillary services* on its behalf may not provide *cross border services* or establish a *branch* in another *EEA State* in its own right. This is because *tied agents* do not have *passporting rights*. The *tied agent* of a *MiFID investment firm* may, however, provide *cross border services* or establish a *branch* in another *EEA State* by availing itself of the appointing firm's *passport*. *MiFID investment firms* may also appoint *tied agents* established in different *EEA States*.

- (5) A *tier agent* will not be an *appointed representative* if it does not and is not likely to conduct any business as a *tier agent* in the UK. If such a *tier agent* is appointed by a UK MiFID investment firm it will be an EEA *tier agent*. EEA *tier agents* are either FCA registered *tier agent* or EEA registered *tier agents*.
- (6) This chapter only applies to a firm that appoints a *tier agent* that is not an *appointed representative* where it expressly refers to *tier agents*.
- (7) Under MiFID, an EEA State may prohibit the appointment of *tier agents* by MiFID investment firms for which it is the Home State. If a UK MiFID investment firm appoints a *tier agent* established in such an EEA State, the *tier agent* must be registered with the FCA. Such an EEA *tier agent* is referred to in the Handbook as an FCA registered *tier agent*.
- (8) If a UK MiFID investment firm appoints a *tier agent* established in an EEA State that allows MiFID investment firms for which it is the Home State to appoint *tier agents*, the *tier agent* must be registered with the competent authority of the EEA State in which it is established. Such an EEA *tier agent* is referred to in the Handbook as an EEA registered *tier agent*.





## 12.3 What responsibility does a firm have for its appointed representatives or EEA tied agent ?

### Responsibility for appointed representatives

- 12.3.1
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In determining whether a *firm* has complied with any provision in or under the *Act* such as any *Principle* or other *rule*, anything that an *appointed representative* has done or omitted to do as respects the business for which the *firm* has accepted responsibility will be treated as having been done or omitted to be done by the *firm* (section 39(4) of the *Act*).
- 12.3.2
FCA
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The *firm* is responsible, to the same extent as if it had expressly permitted it, for anything the *appointed representative* does or omits to do, in carrying on the business for which the *firm* has accepted responsibility (section 39(3) of the *Act*).
- 12.3.3
FCA
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In determining whether the *firm* has committed any *offence*, however, the knowledge or intentions of an *appointed representative* are not attributable to the *firm*, unless in all the circumstances it is reasonable for them to be attributed to it (section 39(6) of the *Act*).
- 12.3.4
FCA
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■ SYSC 6.1.1 R requires a *MiFID investment firm* to ensure the compliance of its *appointed representative* with obligations under the *regulatory system*. The concept of a *relevant person* in SYSC includes an officer or employee of a *tied agent*.

### Responsibility for EEA tied agents

- 12.3.5
FCA
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**A UK *MiFID investment firm* must not appoint an *EEA registered tied agent* or allow such an agent to continue to act for it unless it accepts or has accepted responsibility in writing for the agent's activities in acting as its *EEA registered tied agent*.**

[Note: paragraph 1 of article 23(2) of *MiFID*]

- 12.3.6
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The effect of section 39A(6)(b) of the *Act* is to prohibit a *UK MiFID investment firm* from appointing an *FCA registered tied agent* unless it has accepted responsibility in writing for the agent's activities in acting as a *tied agent*.



**12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?**

**The permission that the firm needs**

12.4.1

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12.4.1A

**FCA**

**G**

The effect of sections 20 (Authorised persons acting without permission) and 39(4) (Exemption of appointed representatives) of the *Act* is that the *regulated activities* covered by an *appointed representative's* appointment need to:

- (1) fall within the scope of the *principal's permission*; or
- (2) be excluded from being *regulated activities* when carried on by the *principal*, for example because they fall within article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party).

**Appointment of an appointed representative (other than an introducer appointed representative)**

12.4.2

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**R**

Before a *firm* appoints a *person* as an *appointed representative* (other than an *introducer appointed representative*) and on a continuing basis, it must establish on reasonable grounds that:

- (1) the appointment does not prevent the *firm* from satisfying and continuing to satisfy the *threshold conditions*;
- (2) the *person*:
  - (a) is solvent;
  - (b) is otherwise suitable to act for the *firm* in that capacity; and
  - (c) has no *close links* which would be likely to prevent the effective supervision of the *person* by the *firm*;
- (3) the *firm* has adequate:
  - (a) controls over the *person's regulated activities* for which the *firm* has responsibility (see ■ SYSC 3.1 or ■ SYSC 4.1); and
  - (b) resources to monitor and enforce compliance by the *person* with the relevant requirements applying to the *regulated activities* for which the *firm* is responsible and with which the

*person* is required to comply under its contract with the *firm* (see ■ SUP 12.5.3 G (2)); and

- (4) the *firm* is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

12.4.2A  
FCA

**R** A *firm* must ensure that a *tied agent* that is an *appointed representative* is of sufficiently good repute and that it possesses appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the *client* or potential *client*. This does not limit a *firm's* obligations under ■ SUP 12.4.2 R.

[Note: paragraphs 3 and 4 of article 23(3) of MiFID]

12.4.3  
FCA

**G** In assessing, under ■ SUP 12.4.2 R (2) (a) and (b), whether an *appointed representative* or prospective *appointed representative* is solvent and otherwise suitable, a *firm* should determine, among other matters, whether the *person* is likely to be adversely influenced by its financial position in the conduct of the business for which the *firm* is responsible. This might arise, for example, if the *person* has cashflow problems and is not able to service its debts. Guidance for *firms* on assessing the financial position of an *appointed representative* or prospective *appointed representative* is given in ■ SUP 12 Annex 1.

12.4.4  
FCA

**G** In assessing, under ■ SUP 12.4.2 R (2)(b), whether an *appointed representative* or prospective *appointed representative* is otherwise suitable to act for the *firm* in that capacity, a *firm* should consider:

- (1) whether the *person* is fit and proper; *guidance* on the information that *firms* should take reasonable steps to obtain and verify is given in ■ SUP 12 Annex 2; and
- (2) the fitness and propriety (including good character and competence) and financial standing of the *controllers, directors, partners, proprietors and managers* of the *person; firms* seeking *guidance* on the information which they should take reasonable steps to obtain and verify should refer to FIT and the questions in the relevant Form A (Application to perform controlled functions under the approved person regime) in ■ SUP 10A Annex 4 or ■ SUP 10B Annex 4

12.4.5  
FCA

**G** In determining, under ■ SUP 12.4.2 R (2)(c), whether an *appointed representative* or prospective *appointed representative* has any *close links* which would be likely to prevent the *firm's* effective supervision, a *firm* should consider the *guidance to threshold condition* 2C or 3B as applicable in ■ COND 2.3.

12.4.5A

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**Appointment representative who may be appointed by other principals**

If a *firm* proposes to appoint an *appointed representative*, but not to prohibit its appointment by any other *principals* (see ■ SUP 12.5.2 G (3)), the *firm* should, in particular:

- (1) require, in the contract, that the *appointed representative* notifies the *firm* about other *principals* (see ■ SUP 12.5.5 R (3)) and
- (2) unless the *appointed representative* is an *introducer appointed representative*:
  - (a) take reasonable steps to check whether the *appointed representative* is already appointed by one or more other *principals* and, if it is, contact those other *principals*; such steps should include asking the *appointed representative* and checking the *Financial Services Register* ;
  - (b) if there are any other *principals*, agree arrangements with the other *principals* (see ■ SUP 12.4.5B R) ; and
  - (c) establish effective systems and controls for ensuring that the *appointed representative* complies with all contractual restrictions imposed, including those relating to multiple *principals* under the *Appointed Representatives Regulations* and under ■ SUP 12.5.6A R (see ■ SUP 12.6.11A R).

12.4.5B

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**Multiple principals**

- (1) A *firm* must not appoint a *person* as its *appointed representative* until it has entered into a written agreement (a "multiple principal agreement") with every other *principal* the *person* may have; but this does not apply to the appointment of an *introducer appointed representative* nor does it require an agreement with another *principal* which has appointed a *person* as an *introducer appointed representative*.
- (2) A *firm* must not unreasonably decline to enter into a multiple principal agreement with any *principal* of his *appointed representative* unless the *firm* is relying on a prohibition on the *appointed representative* from representing any other *firms* (or is seeking to impose such a prohibition) as permitted by article 3 of the *Appointed Representative Regulations*.
- (3) A multiple principal agreement must contain all the provisions which are necessary or desirable to:
  - (a) set out the relationship between the *principals* of that *appointed representative*; and
  - (b) protect the interests of *clients*;
 including the matters set out in ■ SUP 12.4.5C.

12.4.5C

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**Table Multiple principal agreement**

Matter	Explanation
1. <b>Scope of appointment</b>	The scope of appointment given by each <i>principal</i> to the appointed representative.
2. <b>Complaints handling</b>	<p>The identity of the <i>principal</i> which will be the point of contact for a complaint from a <i>client</i> (referred to as the "lead-principal" in SUP 12.4.5D G to SUP 12.4.5E G).</p> <p>An agreement that each <i>principal</i> will co-operate with each other <i>principal</i> in resolving a complaint from a <i>client</i> in relation to the appointed representative's conduct.</p> <p>The arrangements for complaints handling, including arrangements for resolving disputes between the <i>principals</i> in relation to their liability to a <i>client</i> in respect of a complaint and arrangements for dealing with referrals to the <i>Financial Ombudsman Service</i>.</p>
3. <b>Financial promotions</b>	The arrangements for <i>approving financial promotion</i> .
4. <b>Control and monitoring</b>	The arrangements for the control and monitoring of the activities of the appointed representative (see in particular SUP 12.6.6 R (Regulated activities and investment services outside the scope of appointment) and SUP 12.6.7 G (Senior management responsibility for appointed representatives)).
5. <b>Approved person status</b>	The arrangements for making applications for <i>approved person</i> status (see SUP 10A and SUP 10B (Approved persons)).
6. <b>Training and competence</b>	The arrangements for training and competence (see <i>TC</i> ).
7. <b>Co-operation</b>	<p>The arrangements for co-operation over any other issues which may arise from the multiple appointments, including issues which may damage the interests of <i>clients</i> dealing with the appointed representative and administrative issues.</p> <p>An agreement by each <i>principal</i> to take reasonable steps to ensure that it does not cause the appointed representative or any of its other <i>principals</i> to be in breach of their obligations to each other or under the <i>regulatory system</i>.</p>
8. <b>Sharing information</b>	The arrangements for sharing information on matters relevant to the matters covered under the multiple principal agreement and each <i>principal's</i> obligations under SUP 12.6 (Continuing obligations of firms with appointed representatives).

Matter	Explanation
	<b>An agreement that each <i>principal</i> will notify each other <i>principal</i> of any information which is materially relevant to the multiple principal agreement.</b>

12.4.5D  
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One effect of the multiple principal agreement is to introduce a 'lead-principal' concept in relation to complaints handling for the benefit of the *client*. For example, where the *client* has been given advice by an *appointed representative* who has two *principals*, and the advice could have led to a transaction being arranged with either *principal*, the *client* will know that he may pursue his complaint with (but not necessarily against) one of the *principals*. Whether he later decides to refer his complaint to the *Financial Ombudsman Service*, and if so, against which *principal*, will depend on the circumstances.

12.4.5E  
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- (1) Under the relevant provisions in *COBS*, *ICOBS* and *MCOB*, the *customer* will receive details of how to complain to the *appointed representative* and, when a product is purchased, details of the complaints procedure for the *product provider*, *insurer* or *home finance provider*.
- (2) Under ■ DISP 1.2.1 R, a *firm* must among other things, supply summary details of its internal process for dealing promptly and fairly with *complaints* to the *customer* when it receives a *complaint*. In complying with ■ DISP 1.2.1 R, a *firm* should ensure that the "lead-principal" is clearly identified in the procedures.
- (3) The complaints procedure should also explain that the *customer* has a choice of whether to contact the *appointed representative*, the "lead-principal" or the *product provider*, *insurer* or *home finance provider* and that the "lead-principal" will be the appropriate point of contact where the *customer* does not wish to complain about a specific product or is unsure who to contact.
- (4) In other words, where the *customer*, has a doubt who to complain to the "lead-principal" is to be the point of contact for all complaints arising out of the activities of the *appointed representative*.

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FCA

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When considering the provisions for complaints handling (see ■ SUP 12.4.5C(2)) *firms* should consider the use of a mediation clause. If a complaint is made by a *client*, *principals* which are unable to resolve a dispute about liability to the *client* should consider all quick and effective ways of resolving the dispute, including referring the matter to the *Financial Ombudsman Service* and mediation.

12.4.5G  
FCA

G

It is for the *principals* to consider in each case whether it would be appropriate to show the multiple principal agreement to their *appointed representative*, or in some circumstances make their *appointed representative* a party to it.

**Appointment of an introducer appointed representative**

12.4.6  
FCA

**R**

Before a *firm* appoints a *person* as an *introducer appointed representative*, and on a continuing basis, it must take reasonable care to ensure that:

- (1) the *person* is suitable to act for the *firm* in that capacity (having regard, in particular, to other *persons* connected with the *person* who will be, or who are, directly responsible for its activities); and
- (2) the *firm* is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

12.4.7  
FCA

**G**

In assessing, under ■ SUP 12.4.6 R (1), whether an *introducer appointed representative* or prospective *introducer appointed representative* is otherwise suitable to act for the *firm* in that capacity, the *firm* should determine whether the *introducer appointed representative* and those *persons* who will be, or who are, directly responsible for its activities are of sufficiently good reputation and otherwise fit and proper for that appointment. The *firm* should, as a minimum, verify the identity of a prospective *introducer appointed representative* and relevant *persons* but need not carry out the more extensive due diligence required for the appointment of an *appointed representative* under ■ SUP 12.4.2 R.

12.4.8  
FCA

**G**

If a *firm* has doubts that a prospective *introducer appointed representative* or other *person* is of sufficiently good reputation and otherwise fit and proper, the *FCA* will expect it to resolve those doubts before appointing the prospective *introducer appointed representative*. For example, if a *firm* is aware that a *person's* previous appointment as an *introducer appointed representative* or *representative* was terminated, it should take reasonable steps to find out the reasons for the termination and the extent to which those reasons reflect on the *person* concerned.

**Appointed representative carrying on insurance mediation**

12.4.8A  
FCA

**R**

Before a *firm* appoints a *person* as an appointed representative to carry on *insurance mediation activity*, it must in relation to *insurance mediation activity* ensure that the *person* will comply on appointment, and will continue to comply with, the provisions of ■ MIPRU 2.3.1 R and ■ MIPRU 2.3.3 R (Knowledge and ability, and good repute) as if the appointed representative were a *firm*.

12.4.8B  
FCA

**G**

In assessing, under ■ SUP 12.4.8A R, whether an appointed representative, or prospective appointed representative, has established the knowledge and ability requirements for *persons* within its management structure and for those directly involved in its *insurance mediation activity*, a *firm* should refer to *TC*.

12.4.9  
FCA

**G**

- (1) An appointed representative must not commence an *insurance mediation activity* until he is included on the *Financial Services Register* as carrying on such activities (see ■ SUP 12.5.2 G (3)).
- (2) If an appointed representative's scope of appointment is to include an *insurance mediation activity*, the principal must notify the *FCA* of the

appointment before the appointed representative commences that activity (see ■ SUP 12.7.1 R (1)).

- (3) As an exception, pre-notification is not required if the appointed representative is already included on the *Financial Services Register* as carrying on *insurance mediation activities* in another capacity (for example, as the appointed representative of another *principal*).

12.4.10  
FCA

G

- (1) The *FCA* has the power to decide not to include on the *Financial Services Register* (or to remove from the *Financial Services Register*) an appointed representative whose scope of appointment includes an *insurance mediation activity*, if it appears to the *FCA* that he is not a fit and proper *person* to carry on those activities (article 95 of the *Regulated Activities Order*).
- (2) If the *FCA* proposes to use the power in (1), it must give the appointed representative a *warning notice*. If the *FCA* decides to proceed with its proposal, it must give the appointed representative a *decision notice*. The procedures followed by the *FCA* in relation to the giving of *warning notices* and *decision notices* are set out in ■ DEPP 2.
- (3) An appointed representative may apply to the *FCA* for a determination of the kind referred to in (1) to be revoked. If the *FCA* proposes to refuse the application, it must give the appointed representative a *warning notice*, and if the *FCA* decides to proceed with the refusal, it must give the appointed representative a *decision notice*.

**Appointment of an FCA registered tied agent**

12.4.11  
FCA

R

If a *UK MiFID investment firm* appoints an *FCA registered tied agent*, ■ SUP 12.4.2 R and ■ SUP 12.4.2A R apply to that firm as though the *FCA registered tied agent* were an *appointed representative*.

[Note: paragraphs 3 and 4 of article 23(3) of *MiFID*]

**Tied agents**

12.4.12  
FCA

G

- (1) A *tied agent* that is an *appointed representative* may not start to act as a *tied agent* until it is included on the applicable register (section 39(1A) of the *Act*). If the *tied agent* is established in the *UK*, the register maintained by the *FCA* is the applicable register for these purposes. If the *tied agent* is established in another *EEA State*, it should consult section 39(1B) of the *Act* to determine the applicable register.
- (2) A *UK MiFID investment firm* that appoints an *FCA registered tied agent* who is not registered with the *FCA* will, subject to certain conditions, be taken to have contravened a requirement imposed on it by or under the *Act* (see section 39A(6)(c) and (d) of the *Act*).
- (3) A *UK MiFID investment firm* that appoints an *EEA registered tied agent* will be required to register that agent with the *competent authority* of the *EEA State* in which it is established. This requirement will be imposed by the rules of that *EEA State*.



- (4) If the *tied agent* is not established in the *UK* and is appointed by an *EEA MiFID investment firm*, it cannot commence acting as a *tied agent* until it is included on the public register of *tied agents* in the *EEA State* in which it is established (or in certain cases, of the *Home State* of the *firm*).
- (5) If an *appointed representative's* scope of appointment is to include acting as a *tied agent*, the principal must notify the *FCA* of the appointment before the *appointed representative* starts acting as such (see ■ SUP 12.7.7 R (1A)).
- (6) A *tied agent* can only act as such for one *MiFID investment firm* or *third country investment firm* (see ■ SUP 12.5.6A R (1A)).



## 12.5 Contracts: required terms

### Required contract terms for all appointed representatives

12.5.1

FCA

G

The *Appointed Representative Regulations* include, among other things, the prescribed requirements applying to contracts between *firms* and *appointed representatives* for the purposes of section 39(1)(a)(ii) of the *Act*.

12.5.2

FCA

G

- (1) Regulations 3(1) and (2) of the *Appointed Representatives Regulations* make it a requirement that the contract between the *firm* and the *appointed representative* (unless it prohibits the *appointed representative* from representing other counterparties) contains a provision enabling the *firm* to:
  - (a) impose such a prohibition; or
  - (b) impose restrictions as to the other counterparties which the *appointed representative* may represent, or as to the types of *investment* in relation to which the *appointed representative* may represent other counterparties.
- (1A) The requirement described in paragraph (1) does not apply if the *firm* is an *EEA MiFID investment firm*.
- (2) Under the *Appointed Representative Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:
  - (a) makes arrangements (within article 25 of the *Regulated Activities Order*) for *persons* to enter into investment transactions with other counterparties; or
  - (b) *arranges the safeguarding and administration of assets* by other counterparties; or
  - (c) gives advice (within article 53 of the *Regulated Activities Order* (Advising on investments)) on the merits of entering into investment transactions with other counterparties;
  - (d) *assists in the administration and performance of a contract of insurance* (article 39A of the *Regulated Activities Order*);

where an "investment transaction" means a transaction to *buy, sell*, subscribe for or underwrite a *security* or a *relevant investment* (that is, a *designated investment, funeral plan contract, pure protection contract, general insurance contract* or right to or interest in a funeral plan; or

- (e) *arranges:*

- (i) for *persons* to enter (or with a view to *persons* entering) as customers into *home finance transactions* (or as plan providers in the case of a *home reversion plan*) with other counterparties;
  - (ii) for a *person* to vary a *home finance transaction* entered into by a *person* as customer (or as plan provider in the case of a *home reversion plan*) on or after 31 October 2004 (in the case of a *regulated mortgage contract*) or 6 April 2007 (in all other cases) with other counterparties;
- (f) gives advice (within articles 53A, 53B or 53C of the *Regulated Activities Order* ) on the merits of:
- (i) *persons* entering as customers into *home finance transactions* (or as plan provider in the case of a *home reversion plan*) with other counterparties;
  - (ii) *persons* varying *home finance transactions* entered into by them as customer (or as plan provider in the case of a *home reversion plan*) on or after 31 October 2004 (in the case of a *regulated mortgage contract*) or 6 April 2007 (in all other cases) with other counterparties ;
- (g) giving *basic advice* on a *stakeholder product*.
- (3) If the scope of appointment covers, in relation to a *contract of insurance, dealing in investments as agent, arranging, assisting in the administration and performance of a contract of insurance* or *advising on investments*, regulation 3(4) of the *Appointed Representatives Regulations* makes it a requirement that the contract between the *firm* and the appointed representative contains a provision providing that the appointed representative is not permitted or required to carry on such business unless he is included in the *Financial Services Register* as carrying on *insurance mediation activities*.

12.5.2A

FCA

G

If a *UK MiFID investment firm* or a *third country investment firm* appoints an *appointed representative* that is a *tier 1 agent*, regulation 3(6) of the *Appointed Representative Regulations* requires the contract between the *firm* and the *appointed representative* to contain a provision that the representative is only permitted to provide the services and carry on the activities referred to in Article 4(1)(25) of *MiFID* while he is entered on the Register.

12.5.3

FCA

G

A *firm* should satisfy itself that the terms of the contract with its *appointed representative* (including an *introducer appointed representative*):

- (1) are designed to enable the *firm* to comply properly with any *limitations or requirements* on its own *permission*;
- (2) require the *appointed representative* to cooperate with the *FCA* as described in ■ SUP 2.3.4 G (Information gathering by the *FCA* on its own initiative: cooperation by firms) and give access to its premises, as described in ■ SUP 2.3.5 R (2); and
- (3) require the *appointed representative* to give the *firm's* auditors the same rights as are provided by section 341 of the *Act*, as described in ■ SUP 3.6.6 G.

If the scope of appointment covers, in relation to a contract of insurance, dealing in investments as agent, arranging, assisting in the administration and performance of a contract of insurance or advising on investments, regulation 3(4) of the Appointed Representatives Regulations makes it a requirement that the contract between the firm and the appointed representative contains a provision providing that the appointed representative is not permitted or required to carry on such business unless he is included in the *FCA Register* as carrying on insurance mediation activities.

## 12.5.4

FCA

G

A *firm* should have the ability to terminate the contract with its *appointed representative* in the circumstances in ■ SUP 12.6.1 R (2). However, such a termination provision should not be automatic (see ■ SUP 12.8.3 R (1)).

## 12.5.5

FCA

R

A *firm* must ensure that its written contract with each of its *appointed representatives*:

- (1) complies with the requirements prescribed in regulation 3 of the *Appointed Representatives Regulations* (see ■ SUP 12.5.2 G);
- (2) requires the *appointed representative* to comply, and to ensure that any *persons* who provide services to the *appointed representative* under a contract of services or a contract for service comply, with the relevant requirements in or under the *Act* (including the *rules*) that apply to the activities which it carries on as *appointed representative* of the *firm*; and
- (3) (unless the written contract prohibits appointments by other *principals*) requires the *appointed representative* to notify the *firm*:
  - (a) that it is seeking appointment as an *appointed representative* of another *person*, who the *person* is and the business for which the other *person* will accept responsibility;
  - (b) (as soon as possible) of any change in the business notified under (a); and
  - (c) (as soon as possible) of the termination of any such appointment.

## 12.5.6

FCA

G

- (1) If the *appointed representative* is appointed to give *advice on investments* to *retail clients* concerning *packaged products*, the *firm* should also satisfy itself that the contract requires compliance with the *rules* in ■ COBS 6 (Information about the firm, its services and remuneration).
- (2) The contractual requirements in ■ SUP 12.5.5 R should extend to:
  - (a) the activities of the *appointed representative*, if the appointed representative is an individual; and
  - (b) the activities of the *employees* of, *representatives* and *introducers* appointed by, the *appointed representative*.

12.5.6A

FCA

R

### Prohibition of multiple principals for certain activities

- (1) A *firm* must ensure that, if appointing an *appointed representative* (other than an *introducer appointed representative*), to carry on any of the following regulated activities, its written contract prohibits the *appointed representative* from carrying on any of the specified activities as an *appointed representative* for another *firm*:
- (a) any *designated investment business for retail clients*: the prohibition must cover all *designated investment business for retail clients*;
  - (b) any *regulated mortgage activities* (other than in relation to *lifetime mortgages*): the prohibition must cover all regulated mortgage activities (other than *lifetime mortgages*);
  - (c) any *regulated mortgage activities* in relation to *lifetime mortgages*: the prohibition must cover all *lifetime mortgages* ;
  - (d) any *reversion activities*: the prohibition must cover all *reversion activities*;
  - (e) any *home purchase activities*: the prohibition must cover all *home purchase activities*.
- (1A) If the *appointed representative* is a *tied agent*, the prohibition must prevent the *appointed representative* acting as a *tied agent* for any other *MiFID investment firm* or *third country investment firm*.
- (2) As an exception to (1), if the *firm* is a *long-term insurer* or an *operator* of a *UCITS scheme*, it may permit an *appointed representative* to carry on *designated investment business* as the *appointed representative* of one or more other *firms* provided that:
- (a) each of those other *firms* is a *long-term insurer* or an *operator* of a *UCITS scheme*;
  - (b) the first *firm* and each of those other *firms* is a member of the same group; "group" means for this purpose a group of *bodies corporate* all having the same *holding company* including the *holding company*; and
  - (c) the scope of each appointment does not overlap, as to both activities and *investments*.

[Note: articles 4(1)(25) and 23(1) of *MiFID*]

12.5.6B

FCA

G

- (1) The effect of ■ SUP 12.5.6A R (1)(a) is that, in relation to *designated investment business with retail clients*, *appointed representatives* are restricted to one *principal*.
- (1A) The effect of ■ SUP 12.5.6A R (1A) is that *tied agents* are restricted to one *principal* when acting as such. A *tied agent* who has a *MiFID investment firm* or a *third country investment firm* as a principal may have other principals who are not *MiFID investment firms* or *third country investment firms*.
- (2) The effect of the *rule* prohibiting multiple principals for certain activities is that, in relation to *home finance activities*, *appointed representatives* are restricted to having four *principals*: one for *regulated mortgage contracts* other than *lifetime mortgages*, one for *lifetime mortgages*, one for *home reversion plans* and one for *home purchase plans*.

12.5.6C

FCA

G

As ■ SUP 12.5.6A R does not apply to *non-investment insurance contracts*, there are no restrictions on the number of *principals* an appointed representative may have in relation to those contracts.

**Required contract terms for an introducer appointed representative**

12.5.7

FCA

R

A *firm* must ensure that its written contract with each of its *introducer appointed representatives* limits the scope of the appointment to:

- (1) effecting introductions to the *firm* or other members of the *firm's group*; and
- (2) distributing *non-real time financial promotions* which relate to products or services available from or through the *firm* or other members of the *firm's group*.

**Required contract terms for EEA tied agents**

12.5.8

FCA

R

If a *UK MiFID investment firm* appoints an *EEA tied agent*, ■ SUP 12.5.6A R (1A) applies to that *firm* as though the *EEA tied agent* were an *appointed representative*.

[Note: articles 4(1)(25) and 23(1) of *MiFID*]

**Required contract terms for FCA registered tied agents**

12.5.9

FCA

G

Under section 39A(6)(a) of the *Act* a *UK MiFID investment firm* must ensure that the contract it uses to appoint an *FCA registered tied agent* complies with the requirements that would apply under the *Appointed Representative Regulations* if it were appointing an *appointed representative*.



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

### Suitability etc. of appointed representatives

12.6.1  
FCA

R

If at any time a *firm* has reasonable grounds to believe that the conditions in ■ SUP 12.4.2 R , ■ SUP 12.4.6 R or ■ SUP 12.4.8A R (as applicable) are not satisfied, or are likely not to be satisfied, in relation to any of its *appointed representatives*, the *firm* must:

- (1) take immediate steps to rectify the matter; or
- (2) terminate its contract with the *appointed representative*.

12.6.1A  
FCA

R

A *firm* that is a principal of a *tied agent* that is an *appointed representative* must monitor the activities of that *tied agent* so as to ensure the *firm* complies with obligations imposed under *MiFID* (or equivalent obligations relating to the *equivalent business of a third country investment firm*) when acting through that *tied agent*.

[Note: paragraph 3 of Article 23(2) of *MiFID*]

12.6.2  
FCA

G

The *FCA* would normally expect a *firm* to carry out a check on its *appointed representative's* financial position every year (more often, if necessary) and to review critically the information obtained. An appropriately experienced *person* (for example, a financial accountant) should carry out these checks.

12.6.3  
FCA

G

Consideration should be given, among other things, to the impact on the *appointed representative's* financial position of any debts owed to, or by, the *appointed representative*. Indicators that an *appointed representative* is experiencing financial problems may include failure to adhere to repayment schedules for any debts, failure to meet any other financial commitments or requests for advances of *commission*.

12.6.4  
FCA

G

A *firm* should look into any concerns that may arise at any time about an *appointed representative's* financial standing and take the necessary action. The necessary action may include, for example, increased monitoring or, if appropriate, suspension or termination of the appointment.

**Appointed representatives not to hold client money**

12.6.5

FCA

R

- (1) A *firm* must not permit an *appointed representative* to hold *client money* unless the *firm* is an *insurance intermediary* acting in accordance with ■ CASS 5.5.18 R to ■ CASS 5.5.23 R (which include provision for periodic segregation and reconciliation).
- (2) The *firm* must take reasonable steps to ensure that if *client money* is received by the *appointed representative*, it is paid into a *client bank account* of the *firm*, or forwarded to the *firm*, in accordance with :
  - (a) ■ CASS 4.3.15 R to ■ CASS 4.3.17 R; or
  - (b) ■ CASS 5.5.18 R to ■ CASS 5.5.21 R unless acting in accordance with ■ CASS 5.5.23 R (Periodic segregation and reconciliation) ; or
  - (c) the MiFID *client money segregation requirements*.

12.6.5A

FCA

G

When complying with the *MiFID client money segregation requirements*, *firms'* attention is drawn to the *guidance* in ■ CASS 7.4.24 G to ■ CASS 7.4.27 G.

**Regulated activities and investment services outside the scope of appointment**

12.6.6

FCA

R

A *firm* must take reasonable steps to ensure that each of its *appointed representatives*:

- (1) does not carry on *regulated activities* in breach of the *general prohibition* in section 19 of the *Act*; and
- (2) carries on the *regulated activities* for which the *firm* has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the *appointed representative's* other business:
  - (a) which is performed as an *appointed representative* of another *firm*; or
  - (b) which:
    - (i) is, or is held out as being, primarily for the purposes of investment or obtaining credit, or obtaining insurance cover; and
    - (ii) is not a *regulated activity*.

**Senior management responsibility for appointed representatives**

12.6.7

FCA

G

The senior management of a *firm* should be aware that the activities of *appointed representatives* are an integral part of the business that they manage. The responsibility for the control and monitoring of the activities of *appointed representatives* rests with the senior management of the *firm*.



12.6.8

FCA

G

### Obligations of firms under the approved persons regime

- (1) Some of the *controlled functions*, as set out in ■ SUP 10A.4.1 R , apply to an *appointed representative* of a *firm*, other than an *introducer appointed representative*, just as they apply to a *firm* (see ■ SUP 10A.1.15 R). These are the *governing functions* and the *customer function* . As explained in ■ SUP 10A.1.16 R and ■ SUP 10A.3.2 G respectively:
  - (a) the effect of ■ SUP 10A.1.16 R is that the *directors* (or their equivalent) and *senior managers* (or their equivalent) of an *appointed representative*, other than an *introducer appointed representative*, must also be approved under section 59 of the *Act* for the performance of certain *controlled functions*;
  - (b) although the *customer function* applies to an appointed representative, the descriptions of the functions themselves do not extend to *home finance mediation activity* or *insurance mediation activity*; and
  - (c) sections 59(1) and 59(2) of the *Act* (Approval for particular arrangements) provide that approval is necessary in respect of a *controlled function* which is performed under an *arrangement* entered into by a *firm*, or its contractors (typically an *appointed representative*), in relation to a *regulated activity*.
- (2) The *approved persons* regime applies differently to an appointed representative whose scope of appointment includes *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity* and whose principal purpose is to carry on activities other than *regulated activities*. These appointed representatives need only one *person* performing one of the *governing functions*. This means that only one *director* (or equivalent) of these appointed representatives must be approved under section 59 of the *Act* for the performance of the *director function*, the *chief executive function*, the *partner function* or the *director of unincorporated association function*, whichever is the most appropriate (see ■ SUP 10A.1.16 R ).

12.6.9

FCA

G

*Firms* should be aware that, under the *approved persons* regime, the *firm* is responsible for submitting applications to the *FCA* for the approval as an *approved person* of:

- (1) any individual who performs a *controlled function* and who is an *appointed representative*; and
- (2) any *person* who performs a *controlled function* under an *arrangement* entered into by any of the *firm's appointed representatives*.

Applications for approval should be submitted as early as possible since a *person* may not perform a *controlled function* if he has not been approved by the *FCA* (see ■ SUP 10A.13.1 G).

12.6.10

FCA

G

### Obligations of firms under the training and competence rules

The *rules* and *guidance* relating to training and competence in ■ SYSC 3 and ■ SYSC 5 and in *TC* for a *firm* carrying on retail business extend to any *employee* of the *firm* in respect of whom the relevant *rules* apply. For these purposes, an *employee* of a *firm* includes:

- (1) an individual who is an *appointed representative* of a *firm*; and
- (2) an individual who is employed or appointed by an *appointed representative* of a *firm* (whether under a contract of service or for services) in connection with the business of the *appointed representative* for which the *firm* has accepted responsibility.

12.6.11  
FCA

G

A *firm* should take reasonable care to ensure that:

- (1) it has satisfied ■ SYSC 3 or ■ SYSC 4 to ■ 9 and TC in respect of the relevant staff of the *appointed representative*; and
- (2) its *appointed representative* has adequate arrangements in respect of training and competence, which meet the requirements in SYSC and TC.

**Compliance by an appointed representative with the contract**

12.6.11A  
FCA

R

A *firm* must take reasonable steps to establish and maintain effective systems and controls for ensuring that each of its *appointed representatives* complies with those terms of its contract which are imposed under the requirements contained or referred to in ■ SUP 12.5 (Contracts: required times).

12.6.12

R

[Deleted]

**Continuing obligations of firms with tied agents**

12.6.13  
FCA

R

A *firm* must ensure that its *tied agent* discloses the capacity in which he is acting and the *firm* he is representing when contacting a *client* or potential *client* or before dealing with a *client* or potential *client*.

[Note: paragraph 1 of article 23(2) of MiFID]

12.6.14  
FCA

R

A *firm* must take adequate measures in order to avoid any negative impact of the activities of its *tied agent* not covered by the scope of MiFID (or relating to the *equivalent business of a third country investment firm*) could have on the activities carried out by the *tied agent* on behalf of the *firm*.

[Note: paragraph 1 of article 23(4) of MiFID]

**Continuing obligations of firms with EEA tied agents**

12.6.15  
FCA

R

If a UK MiFID investment *firm* appoints an EEA *tied agent*, ■ SUP 12.6.1 R, ■ SUP 12.6.1A R, ■ SUP 12.6.5 R and ■ SUP 12.6.11A R apply to that *firm* as though the EEA *tied agent* were an *appointed representative*.

## 12.7 Notification requirements

### Notification of appointment of an appointed representative

12.7.1

FCA

R

- (1) This *rule* applies to a *firm* which intends to appoint:
  - (a) an *appointed representative* to carry on *insurance mediation activities*; or
  - (b) a *tied agent* .
- (2) This *rule* also applies to a *firm* which has appointed an *appointed representative*.
- (3) A *firm* in (1) must complete and submit the form in ■ SUP 12 Annex 3 R before the appointment.
- (4) A *firm* in (2) must complete and submit the form in ■ SUP 12 Annex 3 R within ten *business days* after the commencement of activities.

12.7.1A

FCA

R

- (1) A *firm* other than a *credit union* must submit the form in ■ SUP 12 Annex 3 R online at <http://www.fca.org.uk> using the FCA's ONA system.
- (2) A *credit union* must submit the form in ■ SUP 12 Annex 3 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (3) Where a *firm* is obliged to submit an application online under (1), if the FCA's information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit the form in ■ SUP 12 Annex 3 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

[Note: See ■ SUP 12.7.10 G to ■ SUP 12.7.11 G regarding notification in the event of online failure.]

**12.7.2**  
**FCA** **G** A *firm's* notice under ■ SUP 12.7.1 R should give details of the *appointed representative* and the *regulated activities* which the *firm* is, or intends to, carry on through the *appointed representative*, including:

- (1) the name of the *firm's* new *appointed representative* (if the *appointed representative* is a *body corporate*, this is its registered name);
- (2) any trading name under which the *firm's* new *appointed representative* carries on a *regulated activity* in that capacity;
- (3) a description of the *regulated activities* which the *appointed representative* is permitted or required to carry on and for which the *firm* has accepted responsibility;
- (4) any restrictions imposed on the *regulated activities* for which the *firm* has accepted responsibility ; and
- (5) where the appointed representative is not an individual, the name of the individuals who are responsible for the management of the business carried on by the appointed representative so far as it relates to *insurance mediation activity*.

**12.7.3**  
**FCA** **G** A *firm* need not notify the *FCA* of any restrictions imposed on the *regulated activities* for which the *firm* has accepted responsibility (under ■ SUP 12.7.2 G (4)) if the *firm* accepts responsibility for the unrestricted scope of the *regulated activities*.

**12.7.3A**  
**FCA** **G** Where a notification is linked to an application for approval under section 59 of the *Act* (Approval for particular arrangements), see ■ SUP 10A.13.7 G.

**12.7.4** **G**

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

**12.7.5**  
**FCA** **G** To contact the Individuals, Mutuels and Policy Department:

- (1) telephone on 020 7066 0019 ; fax on 020 7066 1099; or
- (2) write to: Individuals, Mutuels and Policy Department , The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or
- (3) email iva@fca.org.uk.

**12.7.6** **G** [deleted]

**Notification of changes in information given to the FCA**

**12.7.7**  
**FCA** **R**

- (1) If:
  - (a) (i) the scope of appointment of an appointed representative is extended to cover *insurance mediation activities* for the first time; and

(ii) the appointed representative is not included on the *Financial Services Register* as carrying on *insurance mediation activities* in another capacity; or

(b) the scope of appointment of an appointed representative ceases to include *insurance mediation activity*;

the appointed representative's principal must give written notice to the *FCA* of that change before the appointed representative begins to carry on *insurance mediation activities* under the contract (see ■ SUP 12.4) or as soon as the scope of appointment of the appointed representative ceases to include *insurance mediation activities*.

(1A) If:

(a) (i) the scope of appointment changes such that the *appointed representative* acts as a *tied agent* for the first time; and

(ii) the *appointed representative* is not included on the *Financial Services Register*; or

(b) the *appointed representative* ceases to act as a *tied agent*;

the *appointed representative's* principal must give written notice to the *FCA* of that change before the *appointed representative* begins to act as a *tied agent* (see ■ SUP 12.4) or as soon as the *appointed representative* ceases to act as a *tied agent*.

(2) Where there is a change in any of the information provided to the *FCA* under ■ SUP 12.7.1 R or ■ SUP 12.7.7 R (1A), a *firm* must complete and submit to the *FCA* the form in ■ SUP 12 Annex 4 R (Appointed representative notification form) within ten *business days* of that change being made or, if later, as soon as the *firm* becomes aware of the change. The Appointed representative notification form must state that the information has changed.

(3) [deleted]

[Note: See ■ SUP 12.7.8A R regarding the method of submission for the form in ■ SUP 12 Annex 4 R.]

**Notification of changes in conditions of appointment**

(1) As soon as a *firm* has reasonable grounds to believe that any of the conditions in ■ SUP 12.4.2 R, ■ SUP 12.4.6 R or ■ SUP 12.4.8A R (as applicable) are not satisfied, or are likely not to be satisfied, in relation to any of its *appointed representatives*, it must complete and submit to the *FCA* the form in ■ SUP 12 Annex 4 R (Appointed representative notification form), in accordance with the instructions on the form.

12.7.8

FCA

R

- (2) In its notification under ■ SUP 12.7.8 R (1), the *firm* must state either:
  - (a) the steps it proposes to take to rectify the matter; or
  - (b) the date of termination of its contract with the *appointed representative* (see ■ SUP 12.8).
- (3) [deleted]

**Method of submission of the form in SUP 12 Annex 4R**

12.7.8A  
FCA

R

- (1) A *firm* other than a *credit union* must submit the form as set out in ■ SUP 12 Annex 4 R online at <http://www.fca.org.uk> using the FCA's ONA system.
- (2) A *credit union* must submit the form in ■ SUP 12 Annex 4 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (3) Where a *firm* is obliged to submit an application online under (1), if the FCA's information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit the form in ■ SUP 12 Annex 4 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

[Note: See ■ SUP 12.7.10 G to ■ SUP 12.7.11 G regarding notification in the event of online failure.]

**Notifications relating to EEA tied agents**

12.7.9  
FCA

R

If a UK MiFID investment firm appoints an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.

**Submission in the event of failure of FCA information technology systems**

12.7.10  
FCA

G

If the FCA's information technology systems fail and online submission is unavailable for 24 hours or more, the FCA will endeavour to publish a notice on its website confirming that online submission is unavailable and that firms, other than credit unions, should use the alternative methods of submission set out in ■ SUP 12.7.1AR (3) and ■ SUP 12.7.8AR (3) (as appropriate), and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G, addressing applications for the attention of the Individuals and Mutuals Team.

12.7.11  
FCA

G

Where ■ SUP 12.7.1AR (3) or ■ SUP 12.7.8AR (3) apply to a firm, ■ GEN 1.3.2 R (Emergency) does not apply.

## 12.8 Termination of a relationship with an appointed representative or EEA tied agent

### Notification of termination or prohibited amendment of the contract

12.8.1

FCA

R

If either the *firm* or the *appointed representative* notifies the other that it proposes to terminate the contract of appointment or to amend it so that it no longer meets the requirements contained or referred to in ■ SUP 12.5 (Contracts: required terms), the *firm* must:

- (1) complete and submit to the *FCA* the form in ■ SUP 12 Annex 5 R (Appointed representative termination form) in accordance with the instructions on the form and no more than ten *business days* after the date of the decision to terminate or so amend the contract or, if later, as soon as it becomes aware that the contract is to be or has been terminated or amended.
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]

12.8.1A

FCA

R

- (1) A *firm* other than a *credit union* must submit any notification under ■ SUP 12.8.1 R (1) in the form set out in ■ SUP 12 Annex 5 R, online at [www.fsa.gov.uk](http://www.fsa.gov.uk) using the *FCA's* ONA system.
- (2) A *credit union* must submit any notification under ■ SUP 12.8.1 R (1) in the form set out in ■ SUP 12 Annex 5 R and in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (3) Where a *firm* is obliged to submit a notification online under (1), if the *FCA's* information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit any notification in the form set out in ■ SUP 12 Annex 5 R and in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

12.8.1B

FCA

G

If the *FCA*'s information technology systems fail and online submission is unavailable for 24 hours or more, the *FCA* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 12.8.1AR(3) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification) should be used.

12.8.1C

FCA

G

Where ■ SUP 12.8.1AR (3) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

12.8.2

FCA

G

In assessing whether to terminate a relationship with an *appointed representative*, a *firm* should be aware that the *notification rules* in ■ SUP 15 require notification to be made immediately to the *FCA* if certain events occur. Examples include a matter having a serious regulatory impact or involving an *offence* or a breach of any requirement imposed by the *Act* or by regulations or orders made under the *Act* by the Treasury.

### Steps to be taken on termination or prohibited amendment of the contract

12.8.3

FCA

R

If a contract with an *appointed representative* is terminated, or if it is amended in a way which gives rise to a requirement to notify under ■ SUP 12.8.1 R, a *firm* must take all reasonable steps to ensure that:

- (1) if the termination is by the *firm*, the *appointed representative* is notified in writing before, or if not possible, immediately on, the termination of the contract and informed that it will no longer be an *exempt person* for the purpose of the *Act* because of the contract with the *firm*;
- (2) outstanding *regulated activities* and obligations to *customers* are properly completed and fulfilled either by itself or another of its *appointed representatives*;
- (3) where appropriate, *clients* are informed of any relevant changes; and
- (4) all the other *principals* of the *appointed representative* of which the *firm* is aware are notified.

### Notification of approved persons on termination

12.8.4

FCA

G

The *firm* is responsible for notifying the *FCA* of any *approved person* who no longer performs a *controlled function* under an *arrangement* entered into by a *firm* or its *appointed representative* (see ■ SUP 10.3).

### Removal of an appointed representative from the Register

12.8.5

FCA

G

The *FCA* has the power to remove from the *Financial Services Register* an appointed representative, whose scope of appointment covers *insurance mediation activities* (see ■ SUP 12.4.9 G and ■ SUP 12.4.10 G).



**Termination of a UK MiFID investment firm's relationship with an EEA tied agent**  
.....

12.8.6

FCA

**R**

If a *UK MiFID investment firm* has appointed an *EEA tied agent* this section applies to that *firm* as though the *EEA tied agent* were an *appointed representative*.

## 12.9 Record keeping

12.9.1

FCA

R

A *firm* must make the following records on each of its *appointed representatives*:

- (1) the *appointed representative's* name;
- (2) a copy of the original contract with the *appointed representative* and any subsequent amendments to it (including details of any restrictions placed on the activities which the *appointed representative* may carry on);
- (3) the date and reason for terminating or amending its contract with the *appointed representative*, whenever such termination or amendment gives rise to a requirement to notify under
  - SUP 12.8.1 R; and
- (4) any arrangements agreed with other *principals* under
  - SUP 12.4.5B R (Multiple principals).

12.9.2

FCA

R

A *firm* must retain these records for at least three years from the date of termination or the amendment of the contract with the *appointed representative* other than in respect of *tied agents* when the records must be retained for a period of five years.

12.9.3

FCA

G

The *firm* should also satisfy itself that:

- (1) the *appointed representative* is making and retaining records in accordance with the relevant record keeping *rules* in the *Handbook*, if these records are not maintained by the *firm*;
- (2) the *appointed representative* (other than an *introducer appointed representative*) is making and retaining records sufficient to disclose with reasonable accuracy the financial position of the *business* it carries on in its capacity as the *firm's appointed representative*; and
- (3) the *firm* has full access to the *appointed representative's* records under (1) and (2) and any other records relevant to the *regulated activities* that the *appointed representative* carries on in that capacity.

12.9.4

FCA

G

*Firms* are reminded that they should make and retain records in relation to any *person* who falls within the scope of the *rules* in *TC* or who performs a *controlled function* under an *arrangement* entered into by a *firm* or by an *appointed representative*. See ■ SUP 10 and *TC* for the applicable record keeping *rules*.

**Record keeping in relation to EEA tied agents**

12.9.5

FCA

R

If a *UK MiFID investment firm* appoints an *EEA tied agent* this section applies to that firm as though the *EEA tied agent* were an appointed representative.

**Guidance on steps a firm should take in assessing the financial position of an appointed representative (other than an introducer appointed representative). See ■ SUP 12.4.3 G**

**FCA**

1. The *guidance* in this annex applies to a *firm* which intends to appoint, or has appointed, an appointed representative (other than an *introducer appointed representative*).
2. All of the items in this annex should be applied, as appropriate, to an individual who is in business on his own.
3. *Partners in partnerships* (other than limited partners in *limited liability partnerships*) have joint and several unlimited liability. It follows that any assessment of the financial position of an appointed representative which is a *partnership* should take into account the final position of the individual *partners* as well as the *partnership* itself.

Ac- 1. Consider whether the type of accounts obtained is appropriate to the type of appointed representative (for ex- counts ample, *companies* should supply audited accounts prepared in accordance with Companies Act provisions while individuals in business on their own may only prepare unaudited accounts, for example, for submission to HM Revenue and Customs or their bankers).

2. Consider whether the accounts have been prepared on a timely basis. Consider the content of the audit report, including all detail and explanations given, and any qualifications which it may contain. Investigate any concerns.

3. If relevant, obtain the most recent management accounts to assess whether the appointed representative's financial position has changed materially since the most recent audited accounts.

4. If audited accounts are not available, be more circumspect about the accounts as they have not been independently audited. If necessary, consider obtaining third party verification of material balances.

Unusual 1. Investigate fully any unusual items - in particular any amounts outstanding with *directors, partners, connected items/re- persons or associates* and any guarantees.

cover- 2. Consider whether any amounts due to the appointed representative would be recoverable; and whether the ap- ability of pointed representative would be in a position to pay any debts if it were required to do so at short notice.

of 3. Any balance for goodwill should be ignored since this will normally represent a stream of potential future income debts/good- which may not be forthcoming if the equity interest in the appointed representative were sold.

Finan- 1. Critically review the accounts to ensure that the appointed representative is financially stable. The review cial sta- should take into account the overall position of the appointed representative and its cashflow. bility-

2. The review should also consider the nature of the appointed representative's assets and whether or not they are liquid and readily available to the appointed representative, if required. *Investments* in (for example) unquoted *companies* or *property* may be difficult to realise if there were a sudden need for *cash*.

Income 1. Assess the overall financial pressures on the appointed representative and *connected persons*. Account should / finan- be taken of the full range of the appointed representative's activities (and not merely those activities in which the appointed representative will be acting for the *firm*). Careful consideration should be given to any debts arising out of previous activities within the financial services industry.

2. If relevant, review the accounts of any *associates* where there is a possibility that their performance - or any commitments entered into in respect of them - may affect the financial position of the appointed representative.

cial pres-sures	3. Establish whether the appointed representative's income is sufficient both to service any debts and to provide an acceptable level of income to the proprietors.
Credit checks /deal-ings govern-ment bodies	<p>1. Undertake a <i>credit</i> reference check on the appointed representative itself (in the case of a <i>company</i>); on the <i>partners</i> (in the case of a partnership); or on the individual (in the case of a <i>sole trader</i>).</p> <p>2. Ask the appointed representative whether it is up to date in its dealings with HM Revenue and Customs (etc).</p>
Fore-casts	<p>1. If relevant, obtain a forecast of the next year's figures and review it to ensure that the appointed representative is likely to remain in a satisfactory financial position. This is particularly important where a material change is expected in the appointed representative's operations; or where the appointed representative has only recently been established so that accounts are not available for the previous three complete financial years.</p> <p>2. If the <i>firm</i> decides to appoint the appointed representative, the <i>firm</i> should keep the appointed representative's actual performance under close review so as to assess whether the forecasts were realistic and to enable any problems to be addressed.</p>

**Guidance on information firms should take reasonable steps to obtain to verify and to assess the fitness and propriety of an appointed representative (other than an introducer appointed representative). See ■ SUP 12.4.4 G (1).**

**FCA**

2.

1. The *guidance* in this annex applies to a *firm* which intends to appoint or has appointed an appointed representative (except an introducer appointed representative).
2. Items 1(c) and 1(d) in the following table will not be relevant in the case of an individual who is himself an appointed representative, unless, in the case of 1(d), the individual is in business on his own.
3. If the appointed representative is a *partnership*, the information a *firm* should obtain, having regard to SUP 12.4.4 G (1), is that contained in this annex on the basis that the information sought applies to each *partner*. When considering the fitness and propriety of each *partner*, having regard to SUP 12.4.4 G (1), information a firm should obtain will also include information in this annex. Therefore, a *firm* may wish to assess the fitness and propriety of *partners* as suggested in SUP 12.4.4 G (2) and then consider if any additional information is recommended under this annex.

(1) Information about the appointed representative	<ul style="list-style-type: none"> <li>(a) Name</li> <li>(b) Address, and, where applicable and different, address of the registered office and the principal place of business</li> <li>(c) full name of every <i>director</i>, senior manager and <i>controller</i></li> <li>(d) accounts (see SUP 12 Annex 1) for the last three complete financial years</li> </ul>
The appointed representative's professional reputation	<ul style="list-style-type: none"> <li>(a) Disciplinary proceedings                             <ul style="list-style-type: none"> <li>(i) whether the appointed representative has ever been publicly censured, disciplined, suspended or expelled by the <i>FCA</i>, another regulator, a <i>clearing house</i>, an exchange, a professional body, or a government body or agency;</li> <li>(ii) whether the appointed representative is currently the subject of any disciplinary proceedings by a body referred to in (i) above or is aware that such proceedings are pending;</li> <li>(iii) whether the appointed representative has ever been the subject of a formal investigation under the powers in the Companies Acts 1985 to 2006; and</li> <li>(iv) whether the appointed representative has had anything equivalent to (i) to (iii) above occur under relevant overseas provisions.</li> </ul> </li> </ul>
The appointed representative's professional reputation - continued	<ul style="list-style-type: none"> <li>(b) Criminal or civil proceedings Whether the appointed representative is a defendant in any current civil proceedings connected with professional activities in which an allegation of fraud or dishonesty is being made, the subject of any current criminal proceedings, or has been convicted of any criminal offence, either in the <i>United Kingdom</i> or overseas.</li> <li>(c) Insolvency, bankruptcy and winding up Whether the appointed representative has:                             <ul style="list-style-type: none"> <li>(i) been wound up or had a petition presented, or had a meeting called to consider a resolution, for winding it up; or</li> </ul> </li> </ul>

- (ii) in the case of a company, been the subject of an application to dissolve it or to strike it off the Register of Companies; or
- (iii) made, or proposed to make, a composition or voluntary arrangement with any one of more of its creditors; or
- (iv) had an administrator or trustee in bankruptcy appointed to it or had an application made for such an appointment; or
- (v) had a receiver appointed to it (whether an administrative receiver or a receiver appointed over particular property); or
- (vi) had an application for an interim order made against it under section 252 of the Insolvency Act 1986 (or, in Northern Ireland, section 227 of the Insolvency (Northern Ireland) Order 1989); or
- (vii) if it is a *sole trader*, been the subject of an application for a sequestration order or a petition for bankruptcy; or
- (vi- ii) ceased trading in circumstances in which any of its creditors did not receive full payment; or.
- (ix) had anything equivalent to (i) to (viii) above occur under relevant overseas law.

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## Appointed representative appointment form

**FCA**

This annex consists of only one or more forms. Forms can be completed online now by visiting:  
<http://www.fca.org.uk/firms/about-authorisation>

The forms are also to be found through the following address: -

*Appointed representative appointment form - SUP 12 Annex 3*





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## Appointed representative notification form

**FCA**

This annex consists of only one or more forms. Forms can be completed online now by visiting:  
<http://www.fca.org.uk/firms/about-authorisation>

The forms are also to be found through the following address:

*Appointed representative notification form - SUP 12 Annex 4*



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## Appointed representative termination form

**FCA**

This annex consists of only one or more forms. Forms can be completed online now by visiting:  
<http://www.fca.org.uk/firms/about-authorisation>

The forms are also to be found through the following address:

*Appointed representative termination form - SUP 12 Annex 5*



# Chapter 13

## Exercise of passport rights by UK firms

## 13.1 Application and purpose

### Application

13.1.1  
FCA PRA

G

This chapter applies to a *UK firm*, that is, a *person* whose head office is in the *United Kingdom* and which is entitled to carry on an activity in another *EEA State* subject to the conditions of a *Single Market Directive*. Such an entitlement is referred to in the *Act* as an *EEA right* and its exercise is referred to in the *Handbook* as passporting.

13.1.2  
FCA PRA

G

This chapter also applies to a *UK firm* which wishes to establish a *branch* in, or provide *cross border services* into, Gibraltar. The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 provides that a *UK firm* is to be treated as having an entitlement corresponding to its *EEA right*, to establish a *branch* in, or provide *cross border services* into, Gibraltar under any of the *Single Market Directives*. So, references in this chapter to an *EEA State* or an *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* respectively.

13.1.3  
FCA PRA

G

This chapter does not apply to:

- (1) a *firm* established in an *EEA State* other than the *United Kingdom*; passporting by such a *firm* in or into the *United Kingdom* is a matter for its *Home State regulator* although *guidance* is given in ■ SUP 13A (Qualifying for authorisation under the Act);
- (2) other *overseas firms* (that is, *overseas firms* established outside the *EEA*); such *firms* are not entitled to passport into another *EEA State* and, where relevant, may need to obtain authorisation in each *EEA State* in which they carry on business;
- (3) any insurance activity by way of provision of services which is provided by an *EEA firm* participating in a *community co-insurance operation* otherwise than as *leading insurer*; article 26.2 of the *Second Non-Life Directive* provides that only the *leading insurer* in such an operation is required to complete any passporting formalities (see also article 11 of the *Regulated Activities Order*); or
- (4) the marketing of the *units* of a *UCITS scheme* by its *management company* in another *EEA State* under the *UCITS Directive* (see paragraph 20B of Part III of Schedule 3 to the *Act* and ■ COLL 12.4 (UCITS product passport) ).

13.1.3A  
FCA

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Other than the notification requirements in ■ SUP 13.5.1AA R and ■ SUP 13.5.2-A R and the related guidance in ■ SUP 13.5.1B G, ■ SUP 13.5.2A G and ■ SUP 13.5.7 G, this chapter

does not apply to a *UK firm* in relation to its exercise of an *EEA right* under the *auction regulation* to provide services or establish a branch in another *EEA state*. This is because a *UK firm* is not subject to the requirements in Schedule 3 to the *Act* in respect of its exercise of that *EEA right*.

13.1.4

FCA PRA

G

■ SUP App 3 contains *guidance* on the *Single Market Directives*.

**Purpose**

13.1.5

FCA PRA

G

This chapter gives *guidance* on Schedule 3 to the *Act* for a *UK firm* which wishes to exercise its *EEA right* and establish a *branch* in, or provide *cross border services* into, another *EEA State*. That is, when a *UK firm* wishes to establish its first *branch* in, or provide *cross border services* for the first time into, a particular *EEA State*.

13.1.6

FCA PRA

G

The chapter also explains how a *UK firm* which has already established a *branch* in, or is providing *cross border services* into, another *EEA State*, may change the details of its *branch* or of the *cross border services* it is providing: for example, where a *UK firm* wishes to establish additional *branches* in an *EEA State* in which it has already established a *branch* where this would result in a change to the details provided previously. Such changes are governed by the *EEA Passport Rights Regulations*.



## 13.2 Introduction

### 13.2.1

FCA PRA

G

This chapter gives *guidance* to *UK firms*. In most cases *UK firms* will be *authorised persons* under the *Act*. However, under the *Banking Consolidation Directive*, a subsidiary of a *firm* which is a *credit institution* which meets the criteria set out in that Directive also has an *EEA right*. Such an unauthorised subsidiary is known as a *financial institution*. References in this chapter to a *UK firm* include a *financial institution*.

### 13.2.2

FCA PRA

G

A *UK firm* should be aware that the *guidance* is the *FSA's* interpretation of the *Single Market Directives*, the *Act* and the legislation made under the *Act*. The *guidance* is not exhaustive and is not a substitute for *firms* consulting the legislation or taking their own legal advice in the *United Kingdom* and in the relevant *EEA States*.

### 13.2.3

FCA PRA

G

In some circumstances, a *UK firm* that is carrying on business which is outside the scope of the *Single Market Directives* has a right under the *Treaty* to carry on that business. For example, for an *insurer* carrying on both direct insurance and *reinsurance* business, the *authorisation* of *reinsurance* business is not covered by the *Insurance Directives*. The *firm* may, however, have rights under the *Treaty* in respect of its *reinsurance* business. Such *UK firms* may wish to consult with the *appropriate UK regulator* on their particular circumstances (see ■ SUP 13.12.2 G).

### 13.2.4

FCA PRA

G

In ■ SUP 13 the "appropriate UK regulator" amounts to whichever of the *FCA* and the *PRA* is the competent authority for *authorising* the relevant *UK firm*.



## 13.3 Establishing a branch in another EEA State

### What constitutes a branch

13.3.1

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FCA PRA

Guidance on what constitutes a *branch* is given in ■ SUP App 3 . Note that if a UK MiFID investment firm is seeking to use a *tied agent* established in another EEA State, the rules in ■ SUP 13 will apply as if that firm were seeking to establish a *branch* in that EEA State unless the firm has already established a *branch* in that EEA State (paragraph 20A of Schedule 3 to the Act).

### The conditions for establishing a branch

13.3.2

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FCA PRA

A UK firm other than a UK pure reinsurer cannot establish a *branch* in another EEA State for the first time under an EEA right unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the Act are satisfied. It is an offence for a UK firm which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). These conditions are that:

- (1) the UK firm has given the *appropriate UK regulator*, in accordance with the *appropriate UK regulator's rules* (see ■ SUP 13.5.1 R), notice of its intention to establish a *branch* (known as a *notice of intention* ) which :
  - (a) identifies the activities which it seeks to carry on through the *branch*; and
  - (b) includes such other information as may be specified by the *appropriate UK regulator* (see ■ SUP 13.5.1 R);
- (2) the *appropriate UK regulator* has given notice (known as a *consent notice*) to the *Host State regulator*;
- (2A) if the UK firm's EEA right relates to providing *collective portfolio management services*, the FCA has provided to the *Host State regulator*:
  - (a) confirmation that the firm has been *authorised* as a *management company* under the provisions of the UCITS Directive;
  - (b) a description of the scope of the firm's *authorisation*; and
  - (c) details of any restriction on the types of EEA UCITS scheme that the firm is *authorised* to manage; and
- (3) (a) if the UK firm's EEA right derives from the Insurance Mediation Directive one month has elapsed beginning on the date on which the UK firm received notice that the *appropriate UK regulator* had given a *consent notice* as described in ■ SUP 13.3.6 G (1) (see ■ SUP 13.3.2A G);

- (b) in any other case:
  - (i) the *Host State regulator* has notified the *UK firm* (or, where the *UK firm* is passporting under the *Insurance Directives*, the *PRA*) of the *applicable provisions* or, in the case of a *UK firm* passporting under *MiFID* or the *UCITS Directive*, that the *branch* may be established ; or
  - (ii) two *months* have elapsed beginning with the date on which the *appropriate UK regulator* gave the *consent notice*.

13.3.2A  
FCA PRA

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If the *UK firm* is passporting under the *Insurance Mediation Directive* and the *EEA State* in which the *UK firm* is seeking to establish a *branch* has not notified the European Commission of its wish to be informed of the intention of *persons* to establish a *branch* in its territory in accordance with article 6(2) of that directive, ■ SUP 13.3.2 G (2) and ■ SUP 13.3.2 G (3) do not apply. Accordingly, the *UK firm* may establish the *branch* to which its *notice of intention* relates as soon as the conditions referred to in ■ SUP 13.3.2 G (1) are satisfied. The list of *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the *FCA's* website at [www.fca.org.uk](http://www.fca.org.uk).

13.3.2B  
FCA PRA

G

An *appointed representative* appointed by a *firm* to carry on *insurance mediation activity* on its behalf may establish a *branch* in another *EEA State* under the *Insurance Mediation Directive*. In this case, the *notice of intention* in ■ SUP 13.3.2 G (1) should be given to the *appropriate UK regulator* by the *firm* on behalf of the *appointed representative*.

13.3.2C  
FCA

G

An *exempt professional firm* which is included in the record of *unauthorised persons* carrying on *insurance mediation activity* maintained by the *FCA* under article 93 of the *Regulated Activities Order* may establish a *branch* in another *EEA State* under the *Insurance Mediation Directive* (see ■ PROF 7.2).

13.3.2D  
FCA PRA

G

A *tied agent* appointed by a *MiFID investment firm* to carry on *investment services and activities* (and *ancillary services* where relevant) does not have its own passporting right to establish a *branch* in another *EEA State*. However, a *MiFID investment firm* remains free to appoint a *tied agent* to do business in another *EEA State* and where it does so, the *tied agent* will benefit from its passport.

13.3.2E  
PRA

G

Once authorised in the *United Kingdom*, a *UK pure reinsurer* has an automatic *EEA right* to carry on *reinsurance* business in another *EEA State* by establishing a *branch* in that state or providing *cross border services* into that state. There are no additional requirements to be satisfied before the *firm* can commence business in that state.

13.3.3  
PRA

G

Where the *UK firm* is passporting under the *Insurance Directives* and the *Host State regulator* has notified the *PRA* of the *applicable provisions*, then under paragraph 19(9) of Part III of Schedule 3 to the *Act*, the *PRA* is required to inform the *firm* of these provisions.

13.3.3A

G

PRA

- (1) ■ SUP 13.3.3 G does not apply to *UK pure reinsurers* as they have automatic passport rights on the basis of their *Home State authorisation* under the *Reinsurance Directive*.
- (2) Under section 3 of Part III of the *General Protocol*, *Home State regulators* have agreed to inform *Host State regulators* if a *pure reinsurer* for which the *Home State* is responsible carries on business through a *branch* in the *Host State*. Therefore ■ SUP 13.5.1A R requires a *UK firm* passporting under the *Reinsurance Directive* to notify the *PRA* of certain information relating to the *branch*.

13.3.4

G

[deleted]

13.3.4A

G

[deleted]

### Issue of a consent notice to the Host State regulator

13.3.5

G

FCA PRA

- (1) If the *UK firm's EEA right* derives from the *Banking Consolidation Directive* or *MiFID*, the *appropriate UK regulator* will give the *Host State regulator* a *consent notice* within three *months* unless it has reason to doubt the adequacy of a *UK firm's* resources or its administrative structure. The *Host State regulator* then has a further two *months* to notify the *applicable provisions* (if any) and prepare for the supervision, as appropriate, of the *UK firm*, or in the case of a *MiFID investment firm*, to inform the *UK firm* that a *branch* can be established.
- (1A) If the *UK firm's EEA right* derives from the *UCITS Directive*, the *FCA* will give the *Host State regulator* a *consent notice* within two *months* unless it has reason to doubt the adequacy of the *UK firm's* resources or its administrative structure. The *Host State regulator* then has a further two *months* to prepare for the supervision of the *UK firm*.
- (2) (a) If the *UK firm's EEA right* derives from the *Insurance Directives*, the *PRA* will give the *Host State regulator* a *consent notice* within three *months* unless it has reason to:
  - (i) doubt the adequacy of the *UK firm's* resources or its administrative structure; or
  - (ii) question the reputation, qualifications or experience of the *directors* or managers of the *UK firm* or its proposed authorised agent;
 

in relation to the business the *UK firm* intends to conduct through the proposed *branch*. The *Host State regulator* then has a further two *months* to notify the *applicable provisions* (if any) and prepare for the supervision, as appropriate, of the *UK firm*.
- (b) In assessing the matters in (2)(a), the *PRA* may, in particular, seek further information from the *firm* or require a report from a *skilled person* (see ■ SUP 5 (skilled persons)).
- (c) If the *PRA* has required a financial recovery plan of a *UK firm* of the kind mentioned in paragraph 1 of article 38 of the *Consolidated Life Directive* or paragraph 1 of article 20a of the *First Non-Life Directive*, the *PRA* will not give a *consent notice* for so long as it considers that *policyholders* are threatened within the meaning of those provisions.
- (d) If the *UK firm's EEA right* derives from the *Insurance Mediation Directive* and ■ SUP 13.3.2 G (2) applies, the *appropriate UK regulator* will give the

*Host State regulator* a *consent notice* within one *month* of the date on which it received the *UK firm's notice of intention*. In cases where ■ SUP 13.3.2 G (2) does not apply (see ■ SUP 13.3.2A G), the *UK firm* may establish a *branch* as soon as it satisfies the conditions referred to in ■ SUP 13.3.2 G.

13.3.5A  
FCA PRA

G

Where the *PRA* is the *appropriate UK regulator*, it will consult the *FCA* before deciding whether to give a *consent notice*, except where paragraph 19(7A) of Part III of Schedule 3 to the *Act* applies. Where the *FCA* is the *appropriate UK regulator*, it will consult the *PRA* before deciding whether to give a *consent notice* in relation to a *UK firm* whose immediate group includes a *PRA-authorized person*.

13.3.6  
FCA PRA

G

- (1) If the *appropriate UK regulator* gives a *consent notice*, it will inform the *UK firm* in writing that it has done so.
- (2) The *consent notice* will contain, among other matters, the *requisite details* or, if the *firm* is passporting under the *Insurance Directives*, the *relevant EEA details* (see ■ SUP 13 Annex 1 R) provided by the *UK firm* in its *notice of intention* (see ■ SUP 13.5 (Notices of intention)).
- (3) Where a *consent notice* is given under the *UCITS Directive*, the *FCA* will at the same time:
  - (a) communicate to the *Host State regulator* details of the *compensation scheme* intended to protect investors; and
  - (b) enclose the information described at ■ SUP 13.3.2 G (2A).

13.3.7  
FCA PRA

G

- (1) If the *appropriate UK regulator* proposes to refuse to give a *consent notice*, then paragraph 19(8) of Part III of Schedule 3 to the *Act* requires the *appropriate UK regulator* to give the *UK firm* a *warning notice*.
- (2) If the *appropriate UK regulator* decides to refuse to give a *consent notice*, then paragraph 19(12) of Part III of Schedule 3 to the *Act* requires the *appropriate UK regulator* to give the *UK firm* a *decision notice* within three *months* of the date on which it received the *UK firm's notice of intention* (two *months* in the case of a *UK firm* which is a *UCITS management company*). The *UK firm* may refer the matter to the *Tribunal*.
- (3) [deleted]

13.3.7A  
FCA

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For details of the *FCA's* procedures for the giving of *warning notices* or *decision notices* see ■ DEPP 2 (Statutory notices and the allocation of decision making).

### UCITS management companies: other information to be provided to the Host State

13.3.8

G

A *UK firm* seeking to provide *collective portfolio management* services from a *branch* in another *EEA State*, is advised that it will need to refer to the rules of the *competent authority* of the *UCITS Home State* implementing article 20 of the *UCITS Directive*

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which will require it to submit to that *competent authority* information relating to its depositary agreement and certain delegation arrangements.

## 13.4 Providing cross border services into another EEA State

### Where is the service provided?

13.4.1

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Guidance on where a *cross border service* is provided is given in ■ SUP App 3 .

### The conditions for providing cross border services into another EEA State

13.4.2

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FCA PRA

A *UK firm*, other than a *UK pure reinsurer*, cannot start providing *cross border services* into another *EEA State* under an *EEA right* unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the *Act* and, if it derives its *EEA right* from the *Insurance Directives*, paragraph 20(4B) of Part III of Schedule 3 to the *Act*. It is an offence for a *UK firm* which is not an *authorised person* to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). The conditions are that:

- (1) the *UK firm* has given the *appropriate UK regulator*, in the way specified by *appropriate UK regulator's rules* (see ■ SUP 13.5.2 R), notice of its intention to provide *cross border services* (known as a *notice of intention* ) which:
  - (a) identifies the activities which it seeks to carry on by way of provision of *cross border services*; and
  - (b) includes such other information as may be specified by the *appropriate UK regulator* (see ■ SUP 13.5.2 R); and
- (2) if the *UK firm* is passporting under the *Insurance Directives*, the *firm* has received written notice from the *PRA* as described in ■ SUP 13.4.6 G; or
- (3) if the *UK firm* is passporting under the *Insurance Mediation Directive* and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of *persons* to provide *cross border services* in its territory in accordance with article 6(2) of that directive, one *month* has elapsed beginning with the date on which the *UK firm* received written notice from the *appropriate UK regulator* as described in ■ SUP 13.4.5 G (paragraph 20 (3B)(c) of Schedule 3 to the *Act*).

13.4.2A

G

FCA PRA

An *appointed representative* appointed by a *firm* to carry on *insurance mediation activity* on its behalf may provide *cross border services* in another *EEA State* under the *Insurance Mediation Directive*. In this case, the *notice of intention* in ■ SUP 13.4.2 G (1) should be given to the *appropriate UK regulator* by the *firm* on behalf of the *appointed representative* .

**13.4.2B** FCA G An *exempt professional firm* which is included in the record of *unauthorised persons* carrying on *insurance mediation activity* maintained by the FCA under article 93 of the *Regulated Activities Order* may provide *cross border services* in another *EEA State* under the *Insurance Mediation Directive* (see ■ PROF 7.2).

**13.4.2C** FCA PRA G A *tiered agent* appointed by a *MiFID investment firm* to carry on *investment services and activities* (and *ancillary services* where relevant) does not have its own passporting right to provide *cross border services* in another *EEA State*. However, a *MiFID investment firm* remains free to appoint a *tiered agent* to do business in another *EEA State* and where it does so, the *tiered agent* will benefit from its passport.

**13.4.2D** FCA PRA G A *MiFID investment firm* that wishes to obtain a passport for the activity of *operating an MTF* should follow the procedures described in this chapter. A UK *market operator* that operates a *recognised investment exchange*, a *recognised auction platform* (pursuant to the *RAP regulations*, the definition of *regulated market* in the *Act* is read for these purposes as including a *recognised auction platform*) or an *MTF* and wishes to provide *cross border services* into another *EEA State* should follow the procedure described in ■ REC 4.2B.

**13.4.2E** PRA G ■ SUP 13.4.2 G does not apply to UK *pure reinsurers* as they have automatic passport rights on the basis of their *Home State authorisation* under the *Reinsurance Directive*. No notification is required from UK *pure reinsurers* in respect of the provision of *cross border services*.

**13.4.3** G [deleted]

**13.4.3A** G [deleted]

**Issuing a consent notice or notifying the Host State regulator**

**13.4.4** FCA PRA G (1) If the UK firm's *EEA right* derives from *MiFID*, the *Banking Consolidation Directive* or the *UCITS Directive*, paragraph 20(3) of Part III of Schedule 3 to the *Act* requires the *appropriate UK regulator* to send a copy of the *notice of intention* to the *Host State Regulator* within one *month* of receipt . A UK firm passporting under the *Banking Consolidation Directive* may start providing *cross border services* as soon as it satisfies the relevant conditions (see ■ SUP 13.4.2 G).

- (2) (a) If the UK firm's *EEA right* derives from the *Insurance Directives*, paragraph 20(3A) of Part III of Schedule 3 to the *Act* requires the *PRA*, within one *month* of receiving the *notice of intention* , to:
  - (i) give notice in a specified form (known as a *consent notice*) to the *Host State regulator*; or
  - (ii) give written notice to the UK firm of its refusal to give a *consent notice* and the reasons for that refusal.

(b) The issue or refusal of a *consent notice* under paragraph 20(3A) of Part III of Schedule 3 to the *Act* is the consequence of a regulatory decision, and this *consent notice* (unlike the *consent notice* for establishment of a *branch*) is not a *statutory notice* as set out in section 395 of the *Act*. A UK firm



that receives notice that the PRA refuses to give a *consent notice* may refer the matter to the *Tribunal* under paragraph 20(4A) of Part III of Schedule 3 to the *Act*.

- (c) If the PRA has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the *Consolidated Life Directive* or paragraph 1 of article 20a of the *First Non-Life Directive*, the PRA will not give a *consent notice* for so long as it considers that *policyholders'* rights are threatened within the meaning of those provisions.
- (2A) (a) If the *UK firm's EEA right* derives from the *Insurance Mediation Directive*, and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of *persons* to provide *cross border services* in its territory in accordance with article 6(2) of that directive, paragraph 20(3B)(a) of Part III of Schedule 3 to the *Act* requires the *appropriate UK regulator* to send a copy of the *notice of intention* to the *Host State regulator* within one *month* of receipt. Otherwise, the *UK firm* may start providing *cross border services* as soon as it satisfies the relevant conditions (see ■ SUP 13.4.2 G).
- (b) The list of the *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the FCA's website at [www.fca.org.uk](http://www.fca.org.uk).
- (2B) Where a *consent notice* is given under the *UCITS Directive*, the FCA will at the same time:
- (a) communicate to the *Host State regulator* details of the *compensation scheme* intended to protect investors; and
  - (b) provide to the *Host State regulator*:
    - (i) confirmation that the *firm* has been *authorised* as a *management company* under the provisions of the *UCITS Directive*;
    - (ii) a description of the scope of the *firm's authorisation*; and
    - (iii) details of any restriction on the types of *EEA UCITS scheme* that the *firm* is *authorised* to manage.

13.4.4A

FCA PRA

G

Where the PRA is the *appropriate UK regulator*, it will consult the FCA before deciding whether to give a consent notice and where the FCA is the *appropriate UK regulator*, it will consult the PRA before deciding whether to give a consent notice in relation to a *UK firm* whose immediate group includes a *PRA-authorised person*.

13.4.5

FCA PRA

G

When the *appropriate UK regulator* sends a copy of a *notice of intention*, or if it gives a *consent notice* to the *Host State regulator*, it must inform the *UK firm* in writing that it has done so (paragraphs 20 (3B)(b) and (4) of Schedule 3 to the *Act*).

**Applicable provisions for cross border services**

13.4.6

PRA

G

- (1) [deleted]
- (2) If the *UK firm* is passporting under the *Insurance Directives*, then the *Host State regulator* may notify the *PRA* if there are any *applicable provisions*. If so, the *PRA* will inform the *UK firm* of the *applicable provisions*.
- (3) If a *UK firm* is not notified of the *applicable provisions*, it should, for its own protection, take all reasonable steps to determine the *applicable provisions* for itself.

**UCITS management companies: other information to be provided to the Host State**

13.4.7

FCA

G

A *UK firm* seeking to provide *collective portfolio management* services in another *EEA State* under the freedom to provide *cross border services*, is advised that it will need to refer to the rules of the *competent authority* of the *UCITS Home State* implementing article 20 of the *UCITS Directive* which will require it to submit to that *competent authority* information relating to its depositary agreement and certain delegation arrangements.



## 13.5 Notices of intention

### Specified contents: notice of intention to establish a branch

13.5.1

FCA PRA

R

A UK firm, other than a UK pure reinsurer, wishing to establish a branch in a particular EEA State for the first time under an EEA right other than under the auction regulation must submit a notice of intention in the form set out in ■ SUP 13 Annex 1 R.

(1) [deleted]

(2) [deleted]

13.5.1A

PRA

R

A UK pure reinsurer establishing a branch in a particular EEA state for the first time under the Reinsurance Directive must submit a notice in the form set out in ■ SUP 13 Annex 1 R. Whenever possible, this notification must be made as soon as the information specified in that form is known by the firm.

13.5.1AA

FCA

R

A UK firm establishing a branch in a particular EEA state for the first time under the auction regulation must submit a notice of intention in the form set out in ■ SUP 13 Annex 7R prior to its establishment of that branch or whenever possible thereafter.

13.5.1B

PRA

G

■ SUP 13.5.1 R does not apply to UK pure reinsurers or a UK firm exercising an EEA right under the auction regulation as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive or the auction regulation. However, the information required by ■ SUP 13.5.1A R and ■ SUP 13.5.1AA R assists the FSA's supervision of a branch in another EEA state.

### Specified contents: notice of intention to provide cross border services

13.5.2

PRA

R

A UK firm wishing to provide cross border services into a particular EEA State for the first time under an EEA right other than under the auction regulation must submit a notice in the form set out in:

(1) ■ SUP 13 Annex 2 R if the UK firm is passporting under MiFID;  
or

- (1A) ■ SUP 13 Annex 3 R if the *UK firm* is passporting under the *Insurance Directives*; or
- (2) ■ Sup 13 Annex 4 R if the *UK firm* is passporting under the *Banking Consolidation Directive*; or
- (3) ■ Sup 13 Annex 5 R if the *UK firm* is passporting under the *Insurance Mediation Directive*
- (4) ■ SUP 13 Annex 6 R, if the *UK firm* is a *management company* passporting under the *UCITS Directive*.

13.5.2-A  
FCA

R

- (1) A *UK firm* wishing to provide a service into a particular *EEA State* for the first time under the *auction regulation* must inform the *appropriate UK regulator* of the information in (2) by email to [emissionstrading@fca.org.uk](mailto:emissionstrading@fca.org.uk) prior to its provision of that service or whenever possible thereafter.
- (2) The information required by (1) is:
  - (a) name of the *firm* and the *firm* reference number;
  - (b) *EEA state* in which the service is or will be provided; and
  - (c) the proposed commencement date of the service or the date on which the service commenced.

13.5.2A  
FCA

G

■ SUP 13.5.2 R does not apply to *UK pure reinsurers* or a *UK firm* exercising an *EEA right* under the *auction regulation* as they have automatic passport rights on the basis of their *Home State authorisation* under the *Reinsurance Directive* or the *auction regulation*. However, the information required by ■ SUP 13.5.2-A R assists the *FSA's* supervision of a *UK firm's* provision of a service in another *EEA state* under the *auction regulation*.

**Method of submission of notices**

13.5.3  
FCA PRA

R

- (1) A *UK firm*, other than a *credit union*, must submit any notice under ■ SUP 13.5.1 R (1), ■ SUP 13.5.1A R or ■ SUP 13.5.2 R online at [www.fca.org.uk](http://www.fca.org.uk) using the ONA system.
  - (a) [deleted]
  - (b) [deleted]
- (2) [deleted]
  - (a) [deleted]
  - (b) [deleted]
  - (c) [deleted]
  - (d) [deleted]
  - (e) [deleted]

(f) [deleted]

(3) Where a *firm* is obliged to submit a notice in accordance with (1), if the information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit that notice in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

(4) [deleted]

13.5.3A  
PRA

G

A *credit union* must submit any notice under ■ SUP 13.5.1 R (1), ■ SUP 13.5.1A R or ■ SUP 13.5.2 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

13.5.4  
FCA PRA

G

(1) If the information technology systems fail and online submission is unavailable for 24 hours or more, the *appropriate UK regulator* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 13.5.3 R (3) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification) should be used.

(2) Where ■ SUP 13.5.3 R (3) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

13.5.4A

G

[deleted]

### Unregulated activities

13.5.5  
FCA PRA

G

A *notice of intention* (other than one to establish a branch or provide services in another *EEA state* under the *auction regulation*) may include activities within the scope of the relevant *Single Market Directive* which are not *regulated activities* (paragraphs 19(3) and 20(2) of Part III of Schedule 3 to the *Act*), although in the case of a *MiFID investment firm* a notice of intention may only include *ancillary services* which are to be carried on with one or more *investment services and activities* (paragraphs 19(5B) and 20(2A) of Part III of Schedule 3 to the *Act*). Regulation 19 of the *EEA Passport Rights Regulations* states that where a *UK firm* is able to carry on such an *unregulated activity* in the *EEA State* in question without contravening any law of the *United Kingdom* (or any part of the *United Kingdom*) the *UK firm* is treated, for the purposes of the exercise of its *EEA right*, as being *authorised* to carry on that activity.

### Translations

13.5.6  
PRA

G

(1) A *UK firm* passporting under the *Banking Consolidation Directive*, the *Insurance Directives* or the *Reinsurance Directive* may have to submit the *requisite details* or relevant details in the language of the *Host State* as well as in English. For a *UK firm* passporting under the *Insurance Directives* this translated document will not include the relevant UK details. Further information is available from the *PRA* authorisations team.

- (2) A UK firm may wish to discuss with the PRA authorisations team the appropriate time for providing the translations in (1), given that further information or clarification of the details provided may be required by the PRA.
- (3) A UK firm passporting under the Insurance Directives should keep the EEA and UK relevant details separate as, if the application is approved, only the former will be sent to the Host State regulator.

**Notifications to more than one EEA State**

13.5.7

FCA PRA

G

If a UK firm wishes to establish branches in, or provide cross border services into, more than one EEA State, a single notification may be provided but the relevant information for each EEA State should be clearly identifiable.



## 13.6 Changes to branches

13.6.1  
FCA PRA

G

Where a UK firm is exercising an EEA right, other than under the *Insurance Mediation Directive* (see ■ SUP 13.6.9A G) or the *Reinsurance Directive* (see ■ SUP 13.6.9B R), and has established a *branch* in another EEA State, any changes to the details of the *branch* are governed by the *EEA Passport Rights Regulations*. References to regulations in this section are to the *EEA Passport Rights Regulations*. A UK firm which is not an *authorised person* should note that, under regulation 18, contravention of the prohibition imposed by regulation 11(1), 13(1) or 15(1) is an offence. It is a defence, however, for the UK firm to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

13.6.2  
FCA PRA

G

UK firms should note that if a *branch* in another EEA State ceases to provide services, this may represent a change in *requisite details* or, if the firm is passporting under the *Insurance Directives*, the *relevant EEA details* or *relevant UK details*.

13.6.3  
FCA PRA

G

UK firms should also note that changes to the details of *branches* may lead to changes to the *applicable provisions* to which the UK firm is subject. These changes should be communicated to the UK firm either by the *Host State regulator*, or, if the firm is passporting under *Insurance Directives*, via the PRA.

### Firms passporting under the Banking Consolidation Directive and the UCITS Directive.

13.6.4  
FCA PRA

G

If a UK firm has exercised an EEA right, under the *Banking Consolidation Directive* or the *UCITS Directive*, and established a *branch* in another EEA State, regulation 11(1) states that the UK firm must not make a change in the *requisite details* of the *branch* (see ■ SUP 13 Annex 1), unless it has satisfied the requirements of regulation 11(2), or, where the change arises from circumstances beyond the UK firm's control, regulation 11(3) (see ■ SUP 13.6.10 G).

13.6.5  
FCA PRA

G

Where the change arises from circumstances within the control of the UK firm, the requirements in regulation 11(2) are that:

- (1) the UK firm has given notice to the *appropriate UK regulator* and to the *Host State regulator* stating the details of the proposed change;
- (2) the *appropriate UK regulator* has given the *Host State regulator* a notice informing it of the details of the change; and

- (3) either the *Host State regulator* has informed the *UK firm* that it may make the change, or the period of one *month* beginning with the day on which the *UK firm* gave the *Host State regulator* the notice in (1) has elapsed.

### Firms passporting under MiFID

13.6.5A

FCA PRA

G

If a *UK firm* has exercised an *EEA right* to establish a *branch* under *MiFID*, it must not make a change in the *requisite details* of the *branch* (see ■ SUP 13 Annex 1 R), use, for the first time, a *tied agent* established in the *EEA State* in which the *branch* is established, or cease to use a *tied agent* established in the *EEA State* in which the *branch* is established, unless it has satisfied the requirements of regulation 11A(2) (see ■ SUP 13.6.5B G).

13.6.5B

FCA PRA

G

The requirements of regulation 11A(2) are that:

- (1) the *UK firm* has given a notice to the *appropriate UK regulator* stating the details of the proposed change; and
- (2) the period of one *month* beginning with the day on which the *UK firm* gave the notice has elapsed.

### Firms passporting under the Insurance Directives

13.6.6

PRA

G

If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and established a *branch* in another *EEA State*, regulation 13(1) states that the *UK firm* must not make a change in the *relevant EEA details*, unless it has satisfied the requirements of regulation 13(2), or, where the change arises from circumstances beyond the *UK firm's* control, regulation 13(3) (see ■ SUP 13.6.10 G).

13.6.7

PRA

G

Where the change arises from circumstances within the control of the *UK firm*, the requirements in regulation 13(2) are that:

- (1) the *UK firm* has given notice to the *PRA* and to the *Host State regulator* stating the details of the proposed change;
- (2) the *PRA* has given the *Host State regulator* a notice informing it of the details of the proposed change;
- (3) the period of at least one *month* beginning on the day on which the *UK firm* gave the *PRA* the notice in (1) has elapsed; and
- (4) either:
  - (a) a further period of one *month* has elapsed; or
  - (b) the *PRA* has informed the *UK firm* of any consequential changes in the *applicable provisions* of which the *PRA* has been notified by the *Host State regulator*.

13.6.8

PRA

G

If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and established a *branch* in another *EEA State*, regulation 15(1) states that the *UK firm* cannot make a change in any of the *relevant UK details* unless the *UK firm* has given a notice to the *PRA* stating the details of the proposed change at least one *month* before the change is effected.



13.6.9

PRA

G

Where a *UK firm* with *Part 4A permission* to carry on both *long-term* and *general insurance business*, is passporting under the *Insurance Directives* and wishes to extend its *general insurance business* to include *long term insurance business* (or vice versa), it should complete a new *notice of intention* and not a change to details notice .

### Firms passporting under the Insurance Mediation Directive

13.6.9A

FCA PRA

G

A *UK firm* exercising its *EEA right* under the *Insurance Mediation Directive* to establish a *branch* in another *EEA State* is not required to supply a change to the details of *branches* notice .

### Firms passporting under the Reinsurance Directive

13.6.9B

PRA

R

A *UK firm* exercising its *EEA right* under the *Reinsurance Directive* to establish a *branch* in another *EEA State* must notify the *PRA* of any changes in the information specified in ■ SUP 13 Annex 1 R. Whenever possible, this notification must be made as soon as the change in information is known by the *firm*.

### Changes arising from circumstances beyond the control of a UK firm

13.6.10

FCA PRA

G

- (1) If the change arises from circumstances beyond the *UK firm's* control, the *UK firm*:
  - (a) is required by regulation 11(3) or regulation 13(3) to give a notice to the *appropriate UK regulator* and to the *Host State regulator* stating the details of the change as soon as reasonably practicable;
  - (b) may, if it is passporting under the *Insurance Directives*, make a change to its *relevant UK details* under regulation 15(1) if it has, as soon as practicable (whether before or after the change), given notice to the *PRA* stating the details of the change.
- (2) The *appropriate UK regulator* believes that for a change to arise from circumstances beyond the control of a *UK firm*, the circumstances should be outside the control of the *firm* as a whole and not just the *branch* in the *EEA State*.
- (3) Neither this *guidance* nor that set out at ■ SUP 13.6.4 G or ■ SUP 13.6.5 G is applicable to *MiFID investment firms*.

### The process

13.6.11

FCA PRA

G

When the *appropriate UK regulator* receives a notice from a *UK firm* other than a *MiFID investment firm* (see ■ SUP 13.6.5 G (1) and ■ SUP 13.6.7 G (1)) or a *pure reinsurer* (see ■ SUP 13.6.9B R) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one *month* from the day on which it received the notice.

13.6.12

FCA PRA

G

If the *appropriate UK regulator* consents to the change, then under regulations 11(5) and 13(5) it will:

- (1) give a notice to the *Host State regulator* informing it of the details of the change; and

- (2) inform the *UK firm* that it has given the notice, stating the date on which it did so.

13.6.12A

FCA PRA

G

Where the *PRA* is the *appropriate UK regulator*, it will consult the *FCA* before deciding whether to give consent to a change (or proposed change) and where the *FCA* is the *appropriate UK regulator*, it will consult the *PRA* before deciding whether to give consent in relation to a *UK firm* whose immediate group includes a *PRA-authorised person*.

13.6.13

PRA

G

If a *UK firm* is passporting under the *Banking Consolidation Directive*, then regulation 11(7) provides that the *PRA* may not refuse to consent to a change unless, having regard to the change and to the EEA activities the *UK firm* is seeking to carry on, it doubts the adequacy of the administrative structure or the financial situation of the *UK firm*. In reaching its determination, the *PRA* may have regard to the adequacy of management, systems and the presence of relevant skills needed for the EEA activities to be carried on.

13.6.14

PRA

G

If a *UK firm* is passporting under the *Insurance Directives*, then regulation 13(7) provides that the *PRA* may not refuse to consent to a change unless, having regard to the change, the *PRA* has reason:

- (1) to doubt the adequacy of the *UK firm's* administrative structure or financial situation; or
- (2) to question the reputation, qualifications or experience of the directors or managers of the firm or the authorised agent;

in relation to the business conducted, or to be conducted, through the branch.

13.6.15

FCA PRA

G

If the *appropriate UK regulator* refuses to consent to a change, then under regulations 11(6) and 13(6):

- (1) the *appropriate UK regulator* will give notice of the refusal to the *UK firm*, stating its reasons and giving an indication of the *UK firm's* right to refer the matter to the *Tribunal* and the procedures on such a reference; and
- (2) the *UK firm* may refer the matter to the *Tribunal*.

13.6.16

FCA PRA

G

Standard forms are available from the *FCA* and *PRA* authorisations teams (see ■ SUP 13.12 (Sources of further information)) to give the notices to the *appropriate UK regulator* described in ■ SUP 13.6.5 G (1), ■ SUP 13.6.5B G, ■ SUP 13.6.7 G (1), ■ SUP 13.6.8 G and ■ SUP 13.6.10 G (1).

### The process: MiFID investment firms

13.6.17

FCA PRA

G

When the *appropriate UK regulator* receives a notice from a *UK MiFID investment firm* (see ■ SUP 13.6.5B G (1)), it is required by regulation 11A(3) to inform the relevant *Host State regulator* of the proposed change as soon as reasonably practicable. The *firm* in question may make the change once the period of one *month* beginning with the day on which it gave notice has elapsed.



## 13.7 Changes to cross border services

13.7.1  
FCA PRA

G

Where a *UK firm* is exercising an *EEA right* under the *UCITS Directive*, *MiFID* or the *Insurance Directives* and is providing *cross border services* into another *EEA State*, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*. References to regulations in this section are to the *EEA Passport Rights Regulations*. A *UK firm* which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence. It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

13.7.2  
FCA PRA

G

*UK firms* should also note that changes to the details of *cross border services* may lead to changes to the *applicable provisions* to which the *UK firm* is subject.

### Firms passporting under the UCITS Directive

13.7.3  
FCA

G

If a *UK firm* is passporting under the *UCITS Directive*, regulation 12(1) states that the *UK firm* must not make a change in its programme of operations, or the activities to be carried on under its *EEA right*, unless the relevant requirements in regulation 12(2) have been complied with. These requirements are:

- (1) the *UK firm* has given a notice to the *FCA* and to the *Host State regulator* stating the details of the proposed change; or
- (2) if the change arises as a result of circumstances beyond the *UK firm's* control, the *UK firm* has as soon as practicable (whether before or after the change) given a notice to the *FCA* and to the *Host State regulator*, stating the details of the change.

Standard forms are available from the *FCA* authorisations team (see ■ SUP 13.12 (Sources of further information)) to give the notices to the *FCA* referred to in ■ SUP 13.7.3 G (1) and ■ SUP 13.7.3A G.

### Firms passporting under MiFID

13.7.3A  
FCA PRA

G

If a *UK firm* is providing *cross border services* in a particular *EEA State* in exercise of an *EEA right* deriving from *MiFID*, the *UK firm* must comply with the requirements of regulation 12A(2) before it makes a change to its programme of operations, including:

- (1) changing the activities to be carried on in exercise that *EEA right*;

- (2) using, for the first time, any *tied agent* to provide services in the territory of that *EEA State*; or
- (3) ceasing to use any *tied agent* to provide services in the territory of that *EEA State*.

13.7.3B  
FCA PRA

G The requirements of regulation 12A(2) are that:

- (1) the *UK firm* has given notice to the *appropriate UK regulator* stating the details of the proposed change; and
- (2) the period of one *month* beginning with the day on which the *UK firm* gave the notice mentioned in (1) has elapsed.

### Firms passporting under the Insurance Directives

13.7.4  
PRA

G If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and is providing *cross border services* into another *EEA State*, regulation 16(1) states that the *UK firm* must not make a change in the relevant details ( as defined in regulation 17 - see also ■ SUP 13 Annex 3) unless the relevant requirements in regulation 16(3) or, where the change arises from circumstances beyond the *UK firm's* control, regulation 16(4), have been complied with.

13.7.5  
PRA

G Regulation 16(3) provides that:

- (1) the *UK firm* has given a notice to the *PRA* stating the details of the proposed change; and
- (2) the *PRA* has given the *Host State regulator* a notice informing it of the details of the proposed change.

13.7.6  
PRA

G If the change arises from circumstances beyond the *UK firm's* control, the *UK firm* is required by regulation 16(4) to give a notice to the *PRA* stating the details of the change as soon as reasonably practicable (whether before or after the change). See also ■ SUP 13.6.10 G(2), as relevant to *cross border services*.

13.7.6A  
FCA PRA

G For further details on giving the notices to the *appropriate UK regulator*, as described in ■ SUP 13.7.3 G (1), ■ SUP 13.7.3A G, ■ SUP 13.7.3B G, ■ SUP 13.7.5 G (1) and ■ SUP 13.7.6 G, *UK firms* may wish to use the standard electronic form available from the *FCA* and *PRA* authorisation teams (see ■ SUP 13.12 (Sources of further information)) .

13.7.7  
PRA

G When the *appropriate UK regulator* receives a notice from a *UK firm* (see ■ SUP 13.7.5 G (1) and ■ SUP 13.7.6 G), it is required by regulations 16(5) to (6) either to refuse or consent to the change within one *month* of receipt.

13.7.7A  
FCA PRA

G Where the *PRA* is the *appropriate UK regulator*, it will consult the *FCA* before deciding whether to give consent to a change (or proposed change) and where the *FCA* is the *appropriate UK regulator*, it will consult the *PRA* before deciding whether to give consent in relation to a *UK firm* whose immediate group includes a *PRA-authorised person*.

13.7.8

PRA

G

If the *appropriate UK regulator* consents to the change it will:

- (1) give a notice to the *Host State regulator* informing it of the details of the proposed change; and
- (2) inform the *UK firm* that it has given the notice, stating the date on which it did so.

13.7.9

PRA

G

If the *appropriate UK regulator* refuses to consent to a change it is required by regulation 16(7) to give notice of the refusal to the *UK firm*, stating its reasons and giving an indication of the *UK firm's* right to refer the matter to the *Tribunal* and the procedures that apply to such a reference.

13.7.10

PRA

G

Where a *UK firm* with *Part 4A permission* to carry on both *long-term* and *general insurance business* is passporting under the *Insurance Directives* and wishes to extend its *general insurance business* to include *long term insurance business* (or vice versa), it should complete a new *notice of intention* and not a change to details notice .

#### Firms passporting under the Banking Consolidation Directive and Insurance Mediation Directive

13.7.11

G

A *UK firm* providing *cross border services* under the *Banking Consolidation Directive* or *Insurance Mediation Directive* is not required to supply a change to the details of *cross border services* notice .

#### Firms passporting under the Reinsurance Directive

13.7.12

G

A *UK firm* providing *cross border services* under the *Reinsurance Directive* is not required to supply notification of, or a change to the details of, its *cross border services*.

#### Liaison between regulators

13.7.13A

FCA PRA

G

Where the *PRA* is the *appropriate UK regulator*, it will consult the *FCA* before deciding whether to give consent to a change (or proposed change) and where the *FCA* is the *appropriate UK regulator*, it will consult the *PRA* before deciding whether to give consent in relation to a *UK firm* whose immediate group includes a *PRA-authorized person*.



## 13.8 Changes of details: provision of notices to the appropriate UK regulator

### 13.8.1

FCA PRA

R

(1) Where a *firm* is required to submit a notice of a change to a *branch* referred to in ■ SUP 13.6.5 G (1), ■ SUP 13.6.5B G (1), ■ SUP 13.6.7 G (1), ■ SUP 13.6.8 G , ■ SUP 13.6.9B R and ■ SUP 13.6.10 G (1) or a notice of a change to *cross border services* referred to in ■ SUP 13.7.3 G (1) , ■ SUP 13.7.3A G (1), ■ SUP 13.7.5 G (1) and ■ SUP 13.7.6 G it must complete and submit that notice in accordance with the procedures set out in ■ SUP 13.5 for notifying the establishing of a *branch* or the provision of *cross border services*.

(a) [deleted]

(b) [deleted]

(2) [deleted]

(a) [deleted]

(b) [deleted]

(c) [deleted]

(d) [deleted]

(e) [deleted]

(f) [deleted]

(3) [deleted]

(4) [deleted]

### 13.8.1A

FCA PRA

G

The effect of ■ SUP 13.8.1 R (1) is that a *firm* should submit any form, notice or application under ■ SUP 13.8.1 R (1) in the following ways:

(1) A UK *firm*, other than a *credit union*, should submit it online at [www.fca.org.uk](http://www.fca.org.uk) using the ONA system.

(2) If the information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* should submit it in the way set out in ■ SUP 13.5.3 R (3) and

- SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- GEN 1.3.2 R (Emergency) does not apply in these circumstances.

- (3) If the information technology systems fail and online submission is unavailable for 24 hours or more, the *appropriate UK regulator* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission should be used.
- (4) [deleted]

13.8.1B

PRA

G

A *credit union* should submit any form, notice or application under ■ SUP 13.8.1 R (1) in the way set out in ■ SUP 13.5.3 R (3) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

13.8.2

G

*UK firms* passporting under the *Banking Consolidation Directive* or the *Insurance Directives* may be required to submit the change to details notice in the language of the *Host State* as well as in English.



13.9 [Deleted]



## 13.10 Applicable provisions

- 13.10.1** G FCA PRA *UK firms* are reminded that conduct of business rules, and other rules made for the general good, may apply to business carried on in the *Host State* by a *UK firm*. These are known in the *Act* as the *applicable provisions* (paragraph 19(13) of Part III of Schedule 3 to the *Act*).
- 13.10.2** G PRA *UK firms* passporting under the *Banking Consolidation Directive* should note that, under the Directive, the *Host State* is responsible, together with the *PRA*, for monitoring the liquidity of a *branch* established by a *UK firm* in another *EEA State*.
- 13.10.3** G FCA PRA These *Host State* provisions often have requirements about the soliciting of business, for example, advertising and cold-calling rules. A *UK firm* should ensure it is familiar with, and acts in compliance with, the relevant requirements of its *Host State regulator*.

**13.11 Record keeping**

13.11.1

FCA PRA

R

- (1) A UK firm which is exercising an EEA right must make and retain a record of:
- (a) the services or activities it carries on from a branch in, or provides cross-border into, another EEA State under that EEA right; and
  - (b) the details relating to those services or activities (as set out in ■ SUP 13.6 and ■ SUP 13.7) .
- (2) The record in (1) must be kept for five years (for firms passporting under MiFID) or three years (for other firms) from the earlier of the date on which:
- (a) it was superseded by a more up-to-date record; or
  - (b) the UK firm ceased to have a branch in, or carry on cross border services into, any EEA State under an EEA right.

13.11.2

FCA PRA

G

The record in ■ SUP 13.11.1 R need not relate to the level of business carried on. A UK firm may comply with ■ SUP 13.11.1 R by, for example, keeping copies of all notices of intention and change to details notices.

13.11.3

FCA PRA

G

A UK firm should monitor the business carried on under an EEA right to ensure that any changes to details are notified as required by ■ SUP 13.6 (Changes to branches) and ■ SUP 13.7 (Changes to cross border services).

## 13.12 Sources of further information

### 13.12.1

FCA PRA

G

- (1) Given the complexity of issues raised by passporting, *UK firms* are advised to consult legislation and also to obtain legal advice at earliest opportunity. Firms are encouraged to contact their usual supervisory contact at the *appropriate UK regulator* to discuss their proposals. However, a *UK firm* which is seeking *guidance* on procedural or notification issues relating to passporting should contact the *FCA* and *PRA* authorisations teams, as and where appropriate.
- (2) An applicant for *Part 4A permission* which is submitting a *notice of intention* with its application for such *permission* should contact the *FCA* and *PRA* authorisations teams, as and where appropriate .

### 13.12.2

FCA PRA

G

To contact the *FCA* and/or *PRA* authorisations teams, please see the details provided on that regulator's website.

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## Passporting: Notification of intention to establish a branch in another EEA state

**FCA** **PRA**

This annex consists of only one or more forms. Forms can be completed online now by visiting:  
<http://www.fsa.gov.uk/Pages/doing/index.shtml>

The forms are also to be found through the following address:

*Passporting: Notification of intention to establish a branch in another EEA state - SUP 13  
Annex 1*



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## Passporting: Markets in Financial Instruments Directive

**FCA** **PRA**

This annex consists of only one or more forms. Forms can be completed online now by visiting:  
<http://www.fsa.gov.uk/Pages/doing/index.shtml>.

The forms are also to be found through the following address:

*Passporting: Markets in Financial Instruments Directive - SUP 13 Annex 2*



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## Passporting: Consolidated Life Directive and Third Non-Life Directive

**PRA**

This annex consists of only one or more forms. Forms can be completed online now by visiting:  
<http://www.fsa.gov.uk/Pages/doing/index.shtml>

The forms are also to be found through the following address:

*Passporting: Consolidated Life Directive and Third Non-Life Directive - SUP 13 Annex 3*





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## Passporting: Banking Consolidation Directive

**PRA**

This annex consists of only one or more forms. Forms can be completed online now by visiting:  
<http://www.fsa.gov.uk/Pages/doing/index.shtml>

The forms are also to be found through the following address:

*Passporting: Banking Consolidation Directive - SUP 13 Annex 4*



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## Passporting: Insurance Mediation Directive

**FCA** **PRA**

This annex consists of only one or more forms. Forms can be completed online now by <http://www.fsa.gov.uk/Pages/doing/index.shtml>

The forms are also to be found through the following address:

*Passporting: Insurance Mediation Directive - SUP 13 Annex 5*



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## Passporting: UCITS Directive

**FCA**

This annex consists of only one or more forms. Forms can be completed online now by <http://www.fsa.gov.uk/Pages/doing/index.shtml>

The forms are also to be found through the following address:

*Passporting: UCITS Directive - SUP 13 Annex 6*



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**Passporting: Emissions Trading. Notice of intention from a UK firm to exercise the right of establishment in another EEA Member State**

**FCA** **PRA**

This annex consists of only one or more forms. Forms can be completed online now by visiting <http://www.fsa.gov.uk/Pages/doing/index.shtml>

The forms are also to be found through the following address:

*Passporting: Emissions Trading. Notice of intention from a UK firm to exercise the right of establishment in another EEA Member State - SUP 13 Annex 7*





# Chapter 13A

## Qualifying for authorisation under the Act



## 13A.1 Application and purpose

### Application

13A.1.1  
FCA PRA

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- (1) This chapter applies to an *EEA firm* that wishes to exercise an entitlement to establish a *branch* in, or provide *cross border services* into, the *United Kingdom* under a *Single Market Directive* or the *auction regulation*. (The *Act* refers to such an entitlement as an *EEA right* and its exercise is referred to in the *Handbook* as "passporting".) (See ■ SUP App 3 (Guidance on passporting issues) for further *guidance* on passporting.)
- (2) This chapter also applies to:
  - (a) a *Treaty firm* that wishes to exercise rights under the *Treaty* in respect of *regulated activities*, those rights not being covered by passporting rights provided by the *Single Market Directives*, and qualifies for *authorisation* under Schedule 4 to the *Act* (Treaty Rights); and
  - (b) a *UCITS qualifier*, that is, an *operator, trustee or depositary* of a recognised *collective investment scheme*, constituted in another *EEA State*, and which qualifies for *authorisation* under Schedule 5 to the *Act* (Persons concerned in collective investment schemes).
- (3) The provisions implementing the *Single Market Directives* are within the coordinated field (see ■ PERG 2.9.18 G (1)). So, where an *incoming ECA provider* intends to provide *electronic commerce activity* that consists of activities that fall within one of the *Single Market Directives*, the passporting requirements on exercising an *EEA right* in this chapter will apply.

13A.1.2  
FCA PRA

G

This chapter does not apply to:

- (1) an *EEA firm* that wishes to carry on in the *United Kingdom* activities which are outside the scope of its *EEA right* and the scope of a *permission* granted under Schedule 4 to the *Act*; in this case the *EEA firm* requires a "*top-up permission*" under Part 4A of the *Act* (see the *appropriate UK regulator's* website <http://www.fca.org.uk/firms/about-authorisation/getting-authorised> for the *FCA* and [www.bankofengland.co.uk/pr/Pages/authorisations/new-firm/default.aspx](http://www.bankofengland.co.uk/pr/Pages/authorisations/new-firm/default.aspx) for the *PRA*); or
- (2) an *EEA firm* that carries on any insurance activity:
  - (a) by the provision of services; and

- (b) pursuant to a *community co-insurance operation* in which the *firm* is participating otherwise than as *leading insurer* (see Article 11 of the *Regulated Activities Order*); or
- (3) a *Treaty firm* that wishes to provide *electronic commerce activities* into the *United Kingdom* ; or
- (4) a *market operator* that operates a *regulated market* or an *MTF* in an *EEA State* other than the *UK* and wishes to make appropriate arrangements so as to facilitate access to and use of its system by remote users or participants in the *UK*. See ■ SUP App 3.6.25 G for *guidance*.

13A.1.3

FCA PRA

G

- (1) Under the *Gibraltar Order* made under section 409 of the *Act* , a *Gibraltar firm* is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:
  - (a) authorised in *Gibraltar* under the *Insurance Directives*; or
  - (aA) authorised in *Gibraltar* under the *Reinsurance Directive*; or
  - (b) authorised in *Gibraltar* under the *Banking Consolidation Directive* ; or
  - (c) authorised in *Gibraltar* under the *Insurance Mediation Directive*; or
  - (d) authorised in *Gibraltar* under the *MiFID*.

(1A) Similarly, an *EEA firm* which:

- (a) has satisfied the *Gibraltar establishment conditions* and has established a *branch* in the *UK*; or
- (b) has satisfied the *Gibraltar service conditions* and is providing *cross border services* into the *UK*;

is treated as having satisfied the *establishment conditions* or *service conditions* (as appropriate) under Schedule 3 to the *Act*. Regulations 4 to 7 of the *EEA Passport Rights Regulations* will apply to the establishment of the *branch* or the provision of *cross border services*.

- (2) *Gibraltar insurance companies, credit institutions, insurance intermediaries and investment firms* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in this chapter to *EEA State* or *EEA right* include references to *Gibraltar* and the entitlement under the *Gibraltar Order* where appropriate.
- (3) [deleted]

**Purpose**

13A.1.4

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- (1) This chapter explains how an *EEA firm* and a *Treaty firm* can qualify for *authorisation* under Schedules 3 and 4 to the *Act* and how a *UCITS qualifier* is *authorised* under Schedule 5 to the *Act*.
- (2) This chapter also provides *guidance* on Schedule 3 to the *Act* for an *incoming EEA firm* that wishes to establish a *branch* in the *United Kingdom* instead of, or in addition to, providing *cross border services* into the *United Kingdom* or vice versa.

13A.1.5

FCA PRA

G

- (1) *EEA firms* should note that this chapter only addresses the procedures which the *appropriate UK regulator* will follow under the *Act*. So, an *EEA firm* should consider this *guidance* in conjunction with the requirements with which it will have to comply in its *Home State*.
- (2) The *guidance* in this chapter represents the *appropriate UK regulator's* interpretation of the *Single Market Directives*, the *auction regulation*, the *Act* and the secondary legislation made under the *Act*. The *guidance* is not exhaustive and should not be seen as a substitute for a *person* consulting the legislation or taking legal advice.

## 13A.2 EEA firms and Treaty firms

### 13A.2.1

FCA PRA

G

A *person* will only be an *EEA firm* or a *Treaty firm* if it has its head office in an *EEA State* other than the *United Kingdom*. *EEA firms* and *Treaty firms* are entitled to exercise both the right of establishment and the freedom to provide services under the *Treaty*. The difference, however, is that an *EEA firm* has a right to passport under a *Single Market Directive* or the *auction regulation*, whereas a *Treaty firm* carries on activities for which the right to carry on those activities does not fall within the scope of a *Single Market Directive* or the *auction regulation*. An *EEA firm* may also be a *Treaty firm* if it carries on such activities. A *person* may be a *Treaty firm*, where, for example, it carries on business that includes *regulated activities*, the right to carry on which does not fall within the scope of the *Single Market Directive* or the *auction regulation* under which it is entitled to exercise an *EEA right*, for example, *reinsurance* in the case of a direct insurer to which the *Insurance Directives* apply.

(1) [deleted]

(2) [deleted]

### 13A.2.2

FCA PRA

G

An *EEA firm* may passport those activities which fall within the scope of the relevant *Single Market Directive* or the *auction regulation* as long as they are included in its *Home State authorisation*.



## 13A.3 Qualifications for authorisation under the Act

### EEA firms

13A.3.1  
FCA PRA

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Section 31 of the *Act* (Authorised persons) states that an *EEA firm* is *authorised* for the purposes of the *Act* if it qualifies for *authorisation* under Schedule 3 to the *Act* (EEA Passport Rights). Under paragraph 12 of Part II of that Schedule, an *EEA firm* that is an *EEA pure reinsurer*, or an *EEA firm* that has received authorisation under article 18 of the *auction regulation*, qualifies for *authorisation* without condition. Other than those two types of *EEA firm*, an *EEA firm* qualifies for *authorisation* if:

- (1) it is seeking to establish a *branch* in the *United Kingdom* in exercise of an *EEA right* and satisfies the *establishment conditions* (see ■ SUP 13A.4.1 G and ■ SUP 13A.4.2 G); or
- (2) it is seeking to provide *cross border services* into the *United Kingdom* in exercise of an *EEA right* and satisfies the *service conditions* (see ■ SUP 13A.5.3 G).

13A.3.1A  
FCA PRA

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If an *EEA MiFID investment firm* seeks to use a *tied agent* established in the *UK*, the *EEA MiFID investment firm* will be treated as if it were seeking to establish a *branch* and must satisfy the *establishment conditions* (see ■ SUP 13A.4.1 G).

13A.3.1B  
PRA

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A *pure reinsurer* with its head office in an *EEA State* that has not fully implemented the *Reinsurance Directive* may nevertheless be accepted as satisfying the conditions to be an *EEA pure reinsurer* if the *firm* provides satisfactory evidence that the prudential requirements of the *Reinsurance Directive* have been implemented by that *EEA State* and that they apply to the *firm*. The *firm* may then be deemed to be authorised under the *Reinsurance Directive* in that *EEA State*.

13A.3.1C  
FCA

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- (1) Under paragraph 15A(1) of Part II of Schedule 3 to the *Act*, an *EEA UCITS management company* intending to exercise an *EEA right* to provide *collective portfolio management services* for a *UCITS scheme* must, before it undertakes that activity, obtain the *FCA's* approval to manage that *UCITS scheme*. *Firms* should use the application form set out in ■ SUP 13A Annex 3 R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom) for this purpose.

- (1A) If the *firm's* immediate group includes a *PRA-authorised person*, the *FCA* will give the *PRA* a copy of the application referred to in (1).

- (2) If the *FCA* refuses the application referred to in (1), it will give a notice to the *firm* and the *firm's Home State regulator* in accordance with paragraph 15A of Part II of Schedule 3 to the *Act*. Before refusing an application, the *FCA* will consult with the *firm's Home State regulator*.
- (3) Under paragraph 15B(1) of Part II of Schedule 3 to the *Act*, if any representations are made to the *FCA* by a *firm* to which the notice referred to in (2) has been given, the *FCA* is required to decide whether to withdraw that notice. If the *FCA* decides not to withdraw that notice it must give the *firm* a *decision notice*.
- (4) [deleted]

13A.3.1D  
FCA

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For details of the *FCA's* procedures for the giving of notices see ■ DEPP 2 (Statutory notices and allocation of decision making).

13A.3.2  
FCA PRA

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- (1) On qualifying for *authorisation*, subject to ■ SUP 13A.3.1C G (1), an *EEA firm* (except for an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) will have *permission* to carry on each *permitted activity* (see (3) below) which is a *regulated activity*.
- (2) [deleted]
- (3) The *permitted activities* of an *EEA firm* (except for an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) are those activities identified in the consent notice, regulator's notice or notice of intention. Those *permitted activities* may include activities that are within the scope of a *Single Market Directive* but which are *unregulated activities* in the *United Kingdom*.
- (3A) An *EEA firm* that received authorisation under article 18 of the *auction regulation* has *permission* to carry on *bidding in emissions auctions*.
- (4) The *permission* will be treated as being on terms equivalent to those appearing in the consent notice, regulator's notice, notice of intention or (in respect of an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) to those appearing in the authorisation granted to the *EEA firm* under article 18 of the *auction regulation*. For example, it will reflect any limitations or requirements which are included in the *firm's Home State* authorisation.

13A.3.3  
FCA PRA

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An *EEA firm* which has qualified for *authorisation* is referred to in the *Handbook* as an *incoming EEA firm*.

**Treaty firms**

13A.3.4  
FCA PRA

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Under section 31 of the *Act*, a *Treaty firm* is *authorised* for the purposes of the *Act* if it qualifies for *authorisation* under Schedule 4 (Treaty Rights), that is:

- (1) the *Treaty firm* is seeking to carry on a *regulated activity*; and
- (2) the conditions set out in paragraph 3(1) of Schedule 4 to the *Act* are satisfied.



13A.3.5  
FCA PRA

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On qualifying for *authorisation* a *Treaty firm* will have *permission* to carry on each *permitted activity* which is a *regulated activity*. This *permission* will be treated on the same terms as those which apply to the *Treaty firm's Home State authorisation*. For example, it will reflect any limitations or requirements which are included in the *firm's Home State authorisation*.

13A.3.6  
FCA PRA

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The effect of paragraph 5(1) and 5(2) of Schedule 4 to the *Act* is that a *Treaty firm* which qualifies for *authorisation* under that Schedule must, at least seven *days* before it carries on any of the *regulated activities* covered by its *permission*, give the *appropriate UK regulator* written notice of its intention to do so. Failure to do so is a criminal offence under paragraph 6(1) of that Schedule.

13A.3.6A  
FCA PRA

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Where the *PRA* receives a notification, it will give a copy to the *FCA*, and where the *FCA* receives a notification, it will give a copy to the *PRA* where relevant.

13A.3.7  
FCA PRA

D

- (1) A written notice from a *Treaty firm* under paragraph 5(2) of Schedule 4 to the *Act* must be:
  - (a) addressed for the attention of the authorisations team in the *PRA* or *FCA*, as appropriate; and
  - (b) delivered to the *appropriate UK regulator* by one of the methods in (2).
- (2) The written notice may be delivered by:
  - (a) *post* to either of the following addresses, as appropriate:
    - (i) the address for notices to the *FCA*: The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS; or
    - (ii) the address for notices to the *PRA*: The Prudential Regulation Authority, 20 Moorgate, London, EC2R 6DA; or
  - (b) leaving the application at the address in ■ SUP 13A.3.9 G below and obtaining a time-stamped receipt; or
  - (c) hand delivery to a member of the authorisations team in the *PRA* or *FCA*, as appropriate.

13A.3.8  
FCA PRA

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The written notice required by paragraph 5(2) of Schedule 4 to the *Act* should be accompanied by confirmation of the *Treaty firm's* authorisation from the *Home State regulator*, as referred to in paragraph 3(2) of Schedule 4 to the *Act*.

13A.3.9  
FCA PRA

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- (1) For further information, a *Treaty firm* should contact the *FCA* and/or *PRA* authorisations teams using the details provided on that regulator's website.

13A.3.10  
FCA PRA

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- (1) The *guidance* in ■ PERG 2 is relevant to *Treaty firms* to help them determine if they require *authorisation* under the *Act*.
- (2) A *Treaty firm* which qualifies for *authorisation* is referred to in the *Handbook* as an *incoming Treaty firm*.

13A.3.11

PRA

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- (1) An EEA firm that is carrying on both direct insurance and *reinsurance* business will be entitled to passport under Schedule 3 to the Act in relation to the direct *insurance business*. It will also have a *Treaty right* under Schedule 4 to the Act in relation to the *reinsurance* business if the firm has received *Home State authorisation* for the *regulated activity* of effecting and/or carrying out the relevant class of *insurance business* that includes *reinsurance* business for that class and the relevant provisions of the law of the *Home State* satisfy the conditions laid down by the *Insurance Directives* relating to the carrying on of that activity (see ■ SUP App 3.10.13 G).
- (1A) An insurance company with its head office in an EEA State other than the *United Kingdom* that is carrying on pure *reinsurance* business in that State, and which has received authorisation (or is deemed to be authorised) under the *Reinsurance Directive* from its *Home State* (an EEA pure reinsurer), has an automatic EEA *right* to passport into the *United Kingdom* by establishing a *branch* in the *United Kingdom* or by the provision of *cross border services*. Under the *General Protocol*, *Home State regulators* have agreed to inform *Host State regulators* if a *pure reinsurer* carries on business through a *branch* in the *Host State*.
- (2) An insurance company with its head office in an EEA State other than the *United Kingdom* that is carrying on pure *reinsurance* business in that State, and which wishes to carry on such business in the *United Kingdom* and is authorised by its *Home State* but not yet under the *Reinsurance Directive*, is advised to discuss its particular requirements with the authorisations team in the PRA. It may be entitled to exercise a *Treaty right* provided it satisfies the conditions in paragraph 3(1) of Schedule 4 to the Act (see ■ SUP 13A.3.4 G). Otherwise, it will have to seek a *Part 4A permission* (see [www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx) ).

#### UCITS qualifiers

13A.3.12

FCA

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Under Schedule 5 to the Act (Persons concerned in collective investment schemes), a *person* who for the time being is an *operator*, *trustee* or *depository* of a *scheme* which is a *recognised scheme* under section 264 of the Act is an *authorised person*. Such a *person* is referred to in the *Handbook* as a *UCITS qualifier*.

13A.3.13

FCA

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A *UCITS qualifier* has *permission* under paragraph 2 of Schedule 5 to the Act, to carry on, as far as is appropriate to the capacity in which it acts in relation to the scheme:

- (1) the *regulated activity* of *establishing*, *operating* or *winding up* a *collective investment scheme*; and
- (2) any activity in connection with, or for the purposes of, the scheme.

13A.3.14

FCA

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A *UCITS qualifier* should refer to COLLG or to the following sections of COLL for requirements for *recognised schemes*:

- (1) ■ COLL 9.2.1 G for *guidance* on notifications;
- (2) ■ COLL 9.2.1 G for *guidance* on information and documentation requirements; and
- (3) ■ COLL 9.4 which includes *rules* on what facilities need to be maintained.



## 13A.4 EEA firms establishing a branch in the United Kingdom

### The conditions for establishing a branch

13A.4.1 G  
FCA

- (1) Before an *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) exercises an *EEA right* to establish a *branch* in the *United Kingdom* other than under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1) of Part II of Schedule 3 to the *Act*.
- (2) For the purposes of paragraph 13(1)(b)(iii) of Part II of Schedule 3 to the *Act*, the information to be included in the consent notice has been prescribed under regulation 2 of the *EEA Passport Rights Regulations*.

13A.4.1A G  
FCA

An *EEA UCITS management company* may not exercise an *EEA right* to provide *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom* until approved by the *FCA* to do so (see ■ SUP 13A.3.1C G).

13A.4.2 G  
FCA PRA

Where an *EEA firm* exercises its *EEA right* to establish a *branch* in the *United Kingdom* under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1A) of Part II of Schedule 3 to the *Act*.

13A.4.3 G  
FCA PRA

For the purposes of paragraph 13(2)(b) of Part II of Schedule 3 to the *Act*, the *applicable provisions* may include the *appropriate UK regulator's rules*. The *EEA firm* is required to comply with relevant *rules* when carrying on a *passported activity* through a *branch* in the *United Kingdom* as well as with relevant *UK legislation*.

13A.4.3A G  
FCA PRA

*Guidance* on the matters that are reserved to a *firm's Home State regulator* is located in ■ SUP 13A Annex 2 G.

### The notification procedure

13A.4.4 G  
FCA PRA

- (1) When the *appropriate regulator* receives a consent notice from the *EEA firm's Home State regulator*, it will, under paragraphs 13(2)(b), (c) and 13(3) of Part II of Schedule 3 to the *Act*, notify the *applicable provisions* (if any) to:
  - (a) the *EEA firm*; and
  - (b) in the case of an *EEA firm* passporting under the *Insurance Directives*, the *Home State regulator*;

within two *months* of the notice date .

- (1A) The notice date is:
  - (a) for a *MiFID investment firm*, the date on which the *Home State* gave the consent notice; and
  - (b) in any other case, the date on which the *appropriate UK regulator* received the consent notice.
  
- (2) Although the *appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA firm* passporting under the *Insurance Mediation Directive* or *MiFID*, these provisions are set out in ■ SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).

**13A.4.4A**  
FCA PRA

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- (1) Where the *PRA* receives a consent notice, it will give a copy to the *FCA* without delay, and where the *FCA* receives a consent notice it will give a copy to the *PRA*, where relevant, without delay.
  
- (2) In a case where the *FCA* is the *appropriate UK regulator*, the consent of the *PRA* is required for any notification by the *FCA* which relates to:
  - (a) a *PRA-regulated activity*;
  - (b) a *PRA-authorised person*; or
  - (c) a *person* whose immediate group includes a *PRA-authorised person*.

**Auction regulation bidding: notification rule and applicable provisions**

**13A.4.5**  
FCA

**R**

**An *incoming EEA firm* that is exercising an *EEA right* under the *auction regulation* to establish a branch in the *United Kingdom* must submit the form in ■ SUP 13A Annex 4 R prior to its establishment of that branch or whenever possible thereafter.**

**13A.4.6**  
FCA

**G**

The sole purpose of the notification in ■ SUP 13A.4.5 R is to enable the *FSA* to supervise the *UK branch* of the *incoming EEA firm's* compliance with the *applicable provisions* on an ongoing basis. The *applicable provisions* that apply to that branch are set out in ■ SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).



## 13A.5 EEA firms providing cross border services into the United Kingdom

### Is the service provided within the United Kingdom?

13A.5.1  
FCA PRA

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There is *guidance* for UK firms in ■ SUP Appendix 3.6 on when a service is provided cross border. EEA firms may find this of interest although they should follow the guidance of their *Home State regulators*.

13A.5.2  
FCA PRA

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An EEA firm ( other than an EEA pure reinsurer or an EEA firm that received authorisation under article 18 of the *auction regulation*) should note that the requirement under the *Single Market Directives* to give a notice of intention to provide *cross border services* applies whether or not:

- (1) it has established a *branch* in the *United Kingdom*; or
- (2) those *cross border services* are *regulated activities*.

### The conditions for providing cross border services into the United Kingdom

13A.5.3  
FCA PRA

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- (1) Before an EEA firm ( other than an EEA pure reinsurer or an EEA firm that has received authorisation under article 18 of the *auction regulation*) exercises an EEA right to provide *cross border services* into the *United Kingdom*, the Act requires it to satisfy the *service conditions*, as set out in paragraph 14 of Part II of Schedule 3 to the Act.
- (2) For the purposes of paragraph 14(1)(b) of Part II of Schedule 3 to the Act, the information to be contained in the regulator's notice has been prescribed under regulation 3 of the *EEA Passport Rights Regulations*.
- (3) An EEA UCITS management company may not exercise an EEA right to provide *collective portfolio management services* for a UCITS scheme on a *cross border services* basis until approved by the FCA to do so (see ■ SUP 13A.3.1C G).
- (4) An EEA firm that has received authorisation under article 18 of the *auction regulation* is not subject to the service conditions in its exercise of an EEA right under the *auction regulation* to provide services in the *United Kingdom*. The notification procedure in ■ SUP 13A.5.4 G does not apply to it and it does not need to notify the FCA prior to providing services into the *United Kingdom* because there are presently no *applicable provisions* that apply in these circumstances. Instead, its provision of these services is supervised by its *Home State regulator*.

**The notification procedure**

13A.5.4

FCA PRA

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- (1) Unless the *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that received authorisation under article 18 of the *auction regulation*) is passporting under the *Insurance Mediation Directive*, if the *appropriate UK regulator* receives a regulator's notice or, where no notice is required (in the case of an *EEA firm* passporting under the *Banking Consolidation Directive*), is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the *appropriate UK regulator* will, under paragraphs 14(2) and 14(3) of Part II of Schedule 3 to the *Act*, notify the *EEA firm* of the *applicable provisions* (if any) within two *months* of the *day* on which the *appropriate UK regulator* received the regulator's notice or was informed of the *EEA firm's* intention.
  
- (2) Although the *appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA Firm* passporting under the *Insurance Mediation Directive* or *MiFID*, these provisions are set out in ■ SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).

13A.5.4A

FCA PRA

G

Where the *PRA* receives a notice, it will give a copy to the *FCA* without delay and where the *FCA* receives a notice, it will give a copy to the *PRA* without delay, where relevant.

13A.5.5

FCA PRA

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An *EEA firm* (other than an *EEA UCITS management company*) that has satisfied the *service conditions* in paragraph 14 of Part II of Schedule 3 to the *Act* is entitled to start providing *cross border services* into the *United Kingdom*. In the case of an *EEA UCITS management company*, *FCA* approval must first be obtained, as explained in ■ SUP 13A.5.3 G (see also ■ SUP 13A.3.1C G). However, an *EEA firm* that wishes to start providing *cross border services* but has not yet received notification of the *applicable provisions* may wish to contact the authorisations team in the *FCA* or *PRA*, as appropriate (see ■ SUP 13A.8.1 G (2)).



## 13A.6 Which rules will an incoming EEA firm be subject to?

**13A.6.1** G  
FCA PRA

- (1) ■ SUP 13A Annex 1 G summarises how the *Handbook* applies to *incoming EEA firms*.
- (2) ■ SUP 13A Annex 2 G summarises the matters that are reserved to a *firm's Home State regulator*.

**13A.6.2** G  
FCA PRA

An *incoming EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation* and only provides services in the *United Kingdom*) or *incoming Treaty firm* carrying on business in the *United Kingdom* must comply with the *applicable provisions* (see ■ SUP 13A.4.4 G, ■ SUP 13A.4.6 G, and ■ SUP 13A.5.4 G) and other relevant *UK* legislation. For example where the business includes:

- (1) business covered by the Consumer Credit Act 1974, then an *incoming EEA firm* or *incoming Treaty firm* must comply with the provisions of that Act, as modified by paragraph 15(3) of Schedule 3 to the *Act*; or
- (2) effecting or carrying out contracts covering motor vehicle third party liability risks as part of direct *insurance business*, then an *incoming EEA firm* or *incoming Treaty firm* is required to become a member of the Motor Insurers' Bureau.

**13A.6.3** G  
FCA PRA

In particular, an *EEA firm* (other than an *EEA pure reinsurer*) or *Treaty firm* must comply with the *applicable provisions* in ■ SUP 10 (Approved persons). An *EEA firm* or *Treaty firm* should also refer to ■ SUP 10.1 (Application) which sets out the territorial provisions of the *approved persons* regime.

**13A.6.4** G  
FCA PRA

Under the *EEA Passport Rights Regulations*, references in section 60 of the *Act* (applications for approval for persons to perform controlled functions) to "the authorised person concerned" include :

- (1) an *EEA MiFID investment firm* whose *Home State regulator* has given a consent notice under paragraph 13 of Schedule 3 to the *Act* (see ■ SUP 13A.4.1G (1) and ■ SUP 13A.4.2 G) or a regulator's notice under paragraph 14 of that Schedule (see ■ SUP 13A.5.3G (1)), and which will be the *authorised person* concerned if the *EEA firm* qualifies for *authorisation* under that Schedule; and

- (2) any other *EEA firm* with respect to which the *appropriate UK regulator* has received a consent notice or regulator's notice under paragraph 13 of Schedule 3 to the *Act* (see ■ SUP 13A.4.1G (1) and ■ SUP 13A.4.2 G) or a regulator's notice under paragraph 14 of that Schedule (see ■ SUP 13A.5.3G (1)), and which will be the *authorised person* concerned if the *EEA firm* qualifies for *authorisation* under that Schedule.

**13A.6.5**

FCA PRA

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■ SUP 13A Annex 1 G does not apply to *incoming ECA providers* acting as such.





## 13A.7 Top-up permission

13A.7.1  
FCA PRA

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If a *person* established in the *EEA*:

- (1) does not have an *EEA right*;
- (2) does not have *permission* as a *UCITS qualifier*; and
- (3) does not have, or does not wish to exercise, a *Treaty right* (see ■ SUP 13A.3.4 G to ■ SUP 13A.3.11 G);

to carry on a particular *regulated activity* in the *United Kingdom*, it must seek *Part 4A permission* from the *appropriate UK regulator* to do so (see the *appropriate UK regulator's* website: <http://www.fca.org.uk/firms/about-authorisation/getting-authorised> for the *FCA* and [www.bankofengland.co.uk/pru/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pru/Pages/authorisations/newfirm/default.aspx) for the *PRA* ). This might arise if the activity itself is outside the scope of the *Single Market Directives*, or where the activity is included in the scope of a *Single Market Directive* but is not covered by the *EEA firm's Home State authorisation*. If a *person* also qualifies for *authorisation* under Schedules 3, 4 or 5 to the *Act* as a result of its other activities, the *Part 4A permission* is referred to in the *Handbook* as a *top-up permission*.

13A.7.2  
FCA PRA

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Where the *appropriate UK regulator* grants a *top-up permission* to an *incoming EEA firm* to carry on *regulated activities* for which it has neither an *EEA right* nor a *Treaty right*, the *appropriate UK regulator* is responsible for the prudential supervision of the *incoming EEA firm*, to the extent that the responsibility is not reserved to the *incoming EEA firm's Home State regulator*.

13A.7.3

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[deleted]

13A.7.4  
FCA PRA

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For *guidance* on how to apply for *Part 4A permission* under the *Act*, see the *appropriate UK regulator's* website: <http://www.fca.org.uk/firms/about-authorisation/getting-authorised> for the *FCA* and [www.bankofengland.co.uk/pru/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pru/Pages/authorisations/newfirm/default.aspx) for the *PRA*. If an *EEA firm* or *Treaty firm* wishes to make any subsequent changes to its *top-up permission*, it can make an application for variation of that *permission* (see ■ SUP 6 (Applications to vary and cancel *Part 4A permission*)).



## 13A.8 Sources of further information

### 13A.8.1

FCA PRA

G

For further information on *UK* regulation, an *EEA firm*, a *Treaty firm* or a *UCITS qualifier* should contact the authorisations team in the *FCA* or *PRA*, if and when appropriate. To contact the *FCA* and/or *PRA* authorisations teams, please see the details provided on that regulator's website.

**13A**



**13A.9 [Deleted]**

Application of the Handbook to Incoming EEA Firms

**FCA** **PRA**

1. The table below summarises the application of the *Handbook* to an *incoming EEA firm*. Where the table indicates that a particular module of the *Handbook* may apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to *incoming ECA providers*. These should refer to COBS 1 Annex 1 Part 3 section 7 for *guidance* on how *COBS* applies to them. The table does not apply to *EEA pure reinsurers* or to an *EEA firm* in relation to its exercise of an *EEA right* under the *auction regulation* to provide services in the *United Kingdom*.

2. In some cases, the application of the *Handbook* depends on whether responsibility for a matter is reserved under an *EU* instrument to the *incoming EEA firm's Home State regulator*. *Guidance* on the reservation of responsibility is contained in SUP 13A Annex 2 G (Matters reserved to a Home State regulator). *Guidance* on the territorial application of *MiFID* is contained in PERG 13.6 and PERG 13.7 and SUP 13A Annex 2 G.

3. For an *incoming EEA firm* which has *permission* for *cross-border services* only, many parts of the *Handbook* apply only if the *firm* carries on *regulated activities* in the *United Kingdom*. Those parts of the *Handbook* will therefore not apply if the *firm* confines its activities to those within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*, or which would not be regarded as carried on in the *United Kingdom*. Further *guidance* may be found in PERG 2.4 (Link between activities and the *United Kingdom*) and PERG 2.9.15 G to PERG 2.9.17 G (*Overseas persons*).

4. An *EEA firm* that exercises an *EEA right* under the *auction regulation* to establish a branch in the *United Kingdom* to provide *auction regulation bidding* is subject to a limited set of requirements in the *Handbook* that apply to that activity. These are the *rules* listed in paragraph 2.6A of SYSC 1 Annex 1, GEN 4 and SUP (in particular, the *money laundering reporting function* in SUP 10A and requirements to notify the *FCA*). Aside from this note, the table does not apply to those firms.

5. An *EEA firm* that exercises an *EEA right* under *MiFID* to carry on *MiFID business bidding* is subject to the *applicable provisions* relating to its carrying on of *MiFID business*.

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
PRIN	<p>The <i>Principles</i> apply only in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i> ( PRIN 3.1.1 R (1)).</p> <p>For an <i>incoming EEA firm</i> which is a <i>BCD credit institution</i> without</p>	<p>The <i>Principles</i> do not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (PRIN 3.1.1 R (2)).</p> <p>The <i>Principles</i> have limited application for activities which are not carried on from a <i>UK</i> establishment (see PRIN 3.1.1 R).</p>

SYSC

a *top-up permission*, Principle 4 applies only in relation to the liquidity of a branch established in the *United Kingdom* ( PRIN 3.1.1 R (2)).

SYSC 1 and SYSC 1 Annex 1 (Application of SYSC 2 and SYSC 3) contain application provisions only. SYSC 2 and SYSC 3 apply only to an *insurer*, a *managing agent* and the *Society* as set out in SYSC 1 Annex 1.1.R , which include the following exceptions:

(1) SYSC 2.1.1 R (1) and SYSC 2.1.2 G do not apply;

(2) SYSC 2.1.3 R to SYSC 2.2.3 G apply, but only in relation to allocation of the function in SYSC 2.1.3 R (2) and only in so far as responsibility for the matter in question is not reserved by an *EU* instrument to the *firm's Home State regulator*; and

(3) SYSC 3 applies, but only in so far as responsibility for the matter in question is not reserved by an *EU* instrument to the *firm's Home State regulator*. SYSC 1 Annex 1, Part 1, 1.8 R(Where?) further restricts the territorial application of SYSC 1 to SYSC 3 for an *incoming EEA firm*. Further *guidance* is contained in SYSC 2.1.6 G, Question 12. SYSC 18 applies to the extent that the Public Interest Disclosure Act 1998 applies to the *firm*.

The *common platform requirements* in SYSC 4 - 10 apply as set out in Part 2 of SYSC 1 Annex 1 (Application of the common platform requirement).

SYSC 1 Annex 1.2.7G reminds *EEA MiFID investment firms* that they must comply with the *common platform record-keeping requirements* in relation to a *branch* in the *United Kingdom*.

SYSC 1 Annex 1, Part 2, 2.7AG provides guidance on the application

Otherwise, see column (2).

SYSC 2 and SYSC 3 do not apply if the *firm* has *permission* only for *cross-border services* and does not carry on *regulated activities* in the *United Kingdom* ( SYSC 1 Annex 1.1.1 R). SYSC 2 and SYSC 3 have limited application for activities which are not carried on from a *UK* establishment (see SYSC 1 Annex 1.1.1 R (2A)).

Otherwise, see column (2).

The *common platform requirements* in SYSC 4 - SYSC 10 apply as set out in SYSC 1 Annex 1.2.2R.

SYSC 11 - SYSC 17 do not apply.

SYSC 18 applies.

SYSC 19A does not apply.

of the *common platform requirements* to the *UK branch* of an *EEA UCITS management company*.

SYSC 9 applies to activities carried on from an establishment in the *United Kingdom*, unless another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case the *common platform record-keeping requirements* apply with that wider scope in relation to the activity described in that *rule* ( SYSC 1 Annex 1.2.17R).

SYSC 12 does not apply (SYSC 12.1.3 R).

SYSC 13 does not apply (SYSC 13.1.1 G).

SYSC 14 does not apply (SYSC 14.1.1 R).

SYSC 15 does not apply (SYSC 15.1.1 G).

SYSC 16 does not apply (SYSC 16.1.1 G).

SYSC 17 does not apply (SYSC 17.1.1 G).

SYSC 18 applies.

SYSC 19A does not apply .

COND

COND does not apply if the *firm* As column (2). does not have, or apply for, a *top-up permission*.

Otherwise, the threshold conditions apply in a limited way

(1) in the case of a *top-up permission* under Part 4A of the *Act* (that is, a *permission* to carry on *regulated activities* in addition to those permitted through its *authorisation* under Schedule 3 to the *Act* (EEA Passport Rights)); and

(2) the exercise of the *FCA's* powers under sections 55J and 55L of

	the <i>Act</i> in relation to the <i>top-up permission</i> . (COND 1.2.4 G)	
APER	APER applies to <i>approved persons</i> (APER 1.1.1 G). See below under SUP 10 as to whether <i>controlled functions</i> are performed, and approval therefore required.	Not relevant because SUP 10 does not apply.
FIT	FIT applies to a <i>firm</i> wishing to establish a <i>branch</i> in the <i>United Kingdom</i> or to apply for a <i>top-up permission</i> in respect of any application that it makes for the approval of a <i>person</i> to perform a <i>controlled function</i> (FIT 1.1). See under SUP 10 below as to whether such approval is required.	Does not apply.
	FIT applies in a limited way in relation to an incoming <i>MiFID investment firm</i> (see FIT 1.2.4A G).	
GEN	GEN applies (GEN 1.1, GEN 2.1, GEN 4.1, GEN 5.1 and GEN 6.1). However, (a) GEN 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> (GEN 4.1.1 R(3)), and (b) GEN 6 only applies to business that can be regulated under sections 137A and 137G of the <i>Act</i> (The FCA's General rules) and (The PRA's General rules), respectively. It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by an <i>EU instrument</i> . Only GEN 4.5 applies in relation to <i>MiFID or equivalent third country business</i> (see GEN 4.1.1 R).	GEN 4 does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (see GEN 4.1.1 R).  Otherwise, as column (2).
FEES	Applies to the extent a <i>firm</i> is required to pay a fee in regards to carrying out any <i>regulated activity</i> in the <i>UK</i> , normally this would be the case when the <i>firm</i> holds a <i>top-up permission</i>	As column (2)
GENPRU	Does not apply.	Does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .
BIPRU	<i>EEA firms</i> are subject to the prudential standards of their home state regulator (BIPRU 1.1.7 R and BIPRU 1.1.9 G).	Does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .

	<p>However, BIPRU 12 applies to an <i>EEA firm</i> as respects the activities of its <i>UK branch</i>, but in relation to <i>liquidity risk</i> only.</p>	
MIPRU	<p>MIPRU 1 (Application and general provisions) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p> <p>MIPRU 2 (Responsibility for insurance mediation activity) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p> <p>MIPRU 3 (Requirement to hold professional indemnity insurance) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p> <p>MIPRU 4 (Requirement to hold capital resources) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p> <p>See MIPRU 4.1.2 G for more detailed <i>guidance</i>.</p> <p>MIPRU 5 (Insurance undertakings and mortgage lenders using insurance or mortgage mediation services) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p>	As column (2)
INSPRU	<p>INSPRU does not apply unless the <i>firm</i> is an <i>insurer</i> to which INSPRU 1.5.33R applies.</p>	
IPRU(FSOC)	<p>Does not apply because an <i>incoming EEA firm</i> cannot be a <i>friendly society</i> (IPRU(FSOC) 1.1).</p>	Does not apply because an <i>incoming EEA firm</i> cannot be a <i>friendly society</i> (IPRU(FSOC) 1.1).
IPRU(INV)	<p>IPRU(INV) does not apply unless the <i>firm</i>:</p> <p>(1) has a <i>top-up permission</i>;</p> <p>(2) is an <i>authorised professional firm, investment management firm, members' adviser, personal investment firm, securities and futures firm, service company</i> or <i>underwriting agent</i>; and</p> <p>(3) is not a <i>lead regulated firm</i>, a <i>media firm</i> or a <i>BIPRU investment firm</i>.</p> <p>(IPRU(INV) 1.1.1R and 1.2R)</p>	As column (2).



<i>COBS</i>	<i>Guidance</i> on the territorial application of <i>COBS</i> is contained in COBS 1 Annex 1 Part 3.	<i>Guidance</i> on the territorial application of <i>COBS</i> is contained in COBS 1 Annex 1 Part 3.
<i>ICOBS</i>	<i>ICOBS</i> applies except to the extent necessary to be compatible with European law. <i>Guidance</i> on the territorial application of <i>ICOBS</i> is contained in ICOBS 1 Annex 1 G Part 4.	ICOBS 8.4 applies except to the extent necessary to be compatible with European law. Other chapters of <i>ICOBS</i> do not apply, except to the extent necessary to be compatible with European law. <i>Guidance</i> on the territorial application of <i>ICOBS</i> is contained in ICOBS 1 Annex 1 G Part 4.
<i>MCOB</i>	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> or another <i>EEA State</i> at the time that the activity is carried on, but see the territorial scope in MCOB 3.3 (Application: where?).	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> at the time that the activity is carried on but see MCOB 1.3.4 R (Distance contracts entered into from an establishment in another EEA State) and MCOB 3.3 (Application: where?).
<i>CASS</i>	<i>CASS</i> does not apply with respect to the <i>firm's</i> <i>passported activities</i> unless the <i>firm</i> is an <i>insurer</i> (CASS 1.2.3 R (2)).	As column (2).
<i>MAR</i>	<b>MAR 1 (Code of market conduct)</b>  Applies if the <i>firm</i> is seeking <i>guidance</i> as to whether or not <i>behaviour</i> amounts to <i>market abuse</i> (MAR 1.1.1 G).  <b>MAR 2 (Price stabilising rules)</b>  Applies if the <i>firm</i> undertakes <i>stabilising action</i> and wishes to show that it has acted in conformity with <i>price stabilising rules</i> , or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118A(5)(a) of the <i>Act</i> (Market abuse) (MAR 2.1 Application).  [deleted]  <b>MAR 4 (Endorsement of the Take-over Code)</b>  Applies to <i>firms</i> whose <i>permission</i> includes, or ought to include, any <i>designated investment business</i> , except as set out in MAR 4.4.1 R.  MAR 5 ( Multilateral Trading Facilities)  Does not apply (MAR 5.1.1 R).	<b>MAR 1 (Code of market conduct)</b>  As column (2).  <b>MAR 2 (Price stabilising rules)</b>  Only applies in so far as the <i>firm</i> undertakes <i>stabilising action</i> and wishes to rely on a defence that it has acted in conformity with <i>price stabilising rules</i> , or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118A(5)(a) of the <i>Act</i> (Market abuse) (MAR 2.1 and in particular MAR 2.1.3 R).  [deleted]  <b>MAR 4 (Endorsement of the Take-over Code)</b>  Does not apply ( MAR 4.4.1 R (4)(b)).  <b>MAR 5 (Multilateral Trading Facilities)</b>  Does not apply ( MAR 5.1.1 R).

	<b>MAR 8 (Benchmarks)</b>	<b>MAR 8 (Benchmarks)</b>
	Applies only to <i>firms</i> whose <i>top-up permission</i> includes <i>providing information in relation to a regulated benchmark</i> .	As column (2)
<i>TC</i>	<i>TC</i> applies, but only in so far as responsibility for any matter it covers is not reserved by an <i>EU instrument</i> to the <i>firm's Home State regulator</i> .	<p><i>TC Appendix 1</i> sets out the activities to which <i>TC</i> applies.</p> <p><i>TC Appendix 2</i> sets out the sourcebook's territorial scope.</p> <p><i>TC Appendix 3</i> sets out the limitations on <i>TC App 2</i>.</p>
<i>SUP</i>	<b>SUP 1A (The FCA's approach to supervision)</b>	<b>SUP 1A (The FCA's approach to supervision)</b>
	Applies, but contains only <i>guidance</i> .	As column (2).
	<b>SUP 2 (Information gathering by the [FCA &amp; PRA] on its own initiative)</b>	<b>SUP 2 (Information gathering by the [FCA &amp; PRA] on its own initiative)</b>
	The application of this chapter is the same as for <i>Principle 11</i> (see under <i>PRIN</i> above).	As column (2)
	<b>SUP 3 (Auditors)</b>	<b>SUP 3 (Auditors)</b>
	Applies to the <i>firm</i> (and its auditor) only if the <i>firm</i> has a <i>top-up permission</i> .	As column (2)
	<b>SUP 4 (Actuaries)</b>	<b>SUP 4 (Actuaries)</b>
	Does not apply.	Does not apply.
	<b>SUP 5 (Skilled persons)</b>	<b>SUP 5 (Skilled persons)</b>
	Applies only if the <i>firm</i> is required by the <i>FCA</i> or <i>PRA</i> to provide a report under section 166 of the <i>Act</i> (Reports by skilled persons).	As column (2).
	<b>SUP 6 (Applications to vary and cancel Part 4A permission)</b>	<b>SUP 6 (Applications to vary and cancel Part 4A permission)</b>
	Applies only if the <i>firm</i> has a <i>top-up permission</i>	As column (2).
	<b>SUP 7 (Individual requirements)</b>	<b>SUP 7 (Individual requirements)</b>
	Applies only if the <i>firm</i> has a <i>top-up permission</i> . It contains only <i>guidance</i> on the exercise of the <i>FCA's</i> powers under sections 55J and 55L of the <i>Act</i> . The <i>FCA</i> has	As column (2).

similar, but more limited, powers of intervention under Part 13 of the *Act* in relation to the *permission* of the *firm* under Schedule 3 to the *Act* (see EG 8).

**SUP 8 (Waiver and modification of rules)**      **SUP 8 (Waiver and modification of rules)**

Applies only if the *firm* wishes to apply for, or consent to, or has been given, a *waiver* of the *appropriate regulator's* rules ( SUP 8.1.1 R).

As column (2).

**SUP 9 (Individual guidance)**      **SUP 9 (Individual guidance)**

Applies only if the *firm* wishes to obtain individual *guidance* from the *FCA* or if the *FCA* gives the *firm* individual *guidance* on its own initiative (SUP 9.1.1 G).

As column (2).

**SUP 10A (Approved persons)**      **SUP 10A (Approved persons)**

Applies, but the applicable *controlled functions* are limited. See SUP 10A.1 (Application) for more detailed *guidance*.

Does not apply ( SUP 10A.1.6 R).

**SUP 10B (Approved Persons)**      **SUP 10B (Approved Persons)**

Does not apply

As column (2)

**SUP 11 (Controllers and close links)**      **SUP 11 (Controllers and close links)**

Does not apply ( SUP 11.1.1 R (2)).

Does not apply ( SUP 11.1.1 R (2)).

**SUP 12 (Appointed representatives)**      **SUP 12 (Appointed representatives)**

Applies only if the *firm* has *permission* to carry on *designated investment business*, *insurance mediation activity* or *mortgage mediation activity* and wishes to appoint, or has appointed, an *appointed representative* (SUP 12.1.1 R (1)).

As column (2).

**SUP 13 (Exercise of passport rights by UK firms)**      **SUP 13 (Exercise of passport rights by UK firms)**

Does not apply.

Does not apply.

**SUP 13A (Qualifying for authorisation under the Act)**      **SUP 13A (Qualifying for authorisation under the Act)**

SUP 13A applies to the *firm* if it:

As column (2).

(1) is considering carrying on activities in the *United Kingdom* which may fall within the scope of the *Act* and is seeking *guidance* on whether it needs a *top-up permission*; or

(2) is, or is considering, applying to the *appropriate regulator* to carry on *regulated activities* in the *United Kingdom* under a *top-up permission*; or

(3) is, or is considering, establishing a *branch* or providing *cross-border services* into the *United Kingdom* using *EEA rights*.

**SUP 14 (Incoming EEA Firms: Changing detail and cancelling qualifications for authorisation)**

Applies.

**SUP 15 (Notifications to the FCA or PRA)**

Applies in full if the *firm* has a *top-up permission*. Otherwise, the application is modified as set out in SUP 15 Annex 1 R.

**SUP 16 (Reporting requirements)**

Parts of this chapter may apply if the *firm* has a *top-up permission* or if the *firm* is:

- (a) a *bank*; or
- (b) a *depository* of an *ICVC*; or
- (c) an *OPS firm*; or
- (d) a *trustee* of an *AUT*; or
- (e) an *insurer* with *permission* to effect or carry out *life policies*; or
- (f) a *firm* with *permission* to establish, operate or wind up a *personal pension scheme* or a *stakeholder pension scheme*; or

**SUP 14 (Incoming EEA Firms: Changing detail and cancelling qualifications for authorisation)**

Applies.

**SUP 15 (Notifications to the FCA or PRA)**

Does not apply if the *firm* has *permission* only for *cross border services* and does not carry on *regulated activities* in the *United Kingdom* (SUP 15 Annex 1 R).

Otherwise, as column (2).

**SUP 16 (Reporting requirements)**

Parts of this chapter may apply if the *firm* has a *top-up permission* or if the *firm* is:

- (a) a *depository* of an *ICVC*; or
- (b) an *OPS firm*; or
- (c) a *trustee* of an *AUT*; or
- (d) an *insurer* with *permission* to effect or carry out *life policies*; or
- (e) a *firm* with *permission* to establish, operate or wind up a *personal pension scheme* or a *stakeholder pension scheme*; or
- (f) a *firm* with *permission* to advise on investments, arrange (bring

(g) a firm with permission to advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets. ( SUP 16.1)

( SUP 16.1)

**SUP 17 (Transaction reporting) SUP 17 (Transaction reporting)**

Applies to UK branches of incoming EEA firms which are MiFID investment firms in respect of reportable transactions executed in the course of services provided, whether within in the United Kingdom and outside. (SUP 17.1.2 G and SUP 17.1.3A G)

Applies as appropriate to incoming EEA firms which are MiFID investment firms in respect of reportable transactions. ( SUP 17.1.1 R and SUP 17.1.4 R).

**SUP 18 (Transfers of business) SUP 18 (Transfers of business)**

SUP 18.4 does not apply. SUP 18.1, SUP 18.2 and SUP 18.3 may be relevant if the firm proposes to transfer the whole or part of its business by an insurance business transfer scheme or to accept such a transfer or proposes to accept certain transfers of insurance business taking place outside the United Kingdom. As column (2).

**SUP App 2 (Insurers: Scheme of operations) SUP App 2 (Insurers: Scheme of operations)**

Does not apply ( SUP App 2.1.1 R). Does not apply ( SUP App 2.1.1 R).

DEPP

DEPP applies and contains a description of the FCA's procedures for taking statutory notice decisions, the FCA's policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the Act has been given or the FCA is considering giving.

DEPP applies and contains a description of the FCA's procedures for taking statutory notice decisions, the FCA's policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the Act has been given or the FCA is considering giving.

DISP

Applies (DISP 1.1.1 G) and applies in a limited way in relation to MiFID business . Does not apply (DISP 1.1.1 G).

COMP

Applies, except in relation to the passported activities of a MiFID investment firm, a BCD credit institution (other than an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive that has the right to

Does not apply in relation to the passported activities of an MiFID investment firm, or a BCD credit institution, an IMD insurance intermediary or a UCITS management company acting in that capacity other than in relation to a UCITS scheme (see

benefit from the mutual recognition arrangements under the *Banking Consolidation Directive*), an *IMD insurance intermediary* or a *UCITS management company* acting in that capacity other than in relation to a *UCITS scheme* (see the definition of "*participant firm*"). However, a *MiFID investment firm*, *BCD credit institution*, an *IMD insurance intermediary* or a *UCITS management company* (when carrying on permitted *MiFID business*) may be able to apply for *top-up cover* in relation to its *passported activities* (see COMP 14 (Participation by EEA Firms)).

the definition of "*participant firm*"). Otherwise, *COMP* may apply, but the coverage of the *compensation scheme* is limited for non-UK activities (see COMP 5).

**COLL**

The following provisions of *COLL* apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme*:

As column (2)(d), (e), (f) and (g) and the other parts of *COLL* specified.

(a) *COLL 6.6A.2 R* (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);

(b) *COLL 6.6A.4 R* (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);

(c) *COLL 6.6A.5 R* (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);

(d) *COLL 12.3.4 R* (Provision of documentation to the FSA: EEA UCITS management companies);

(e) the *fund application rules* (see *COLL 12.3.5 R* (*COLL fund rules under the management company passport: the fund application rules*));

(f) *COLL 12.3.6 R* (Requirement to make information available to the public or the FSA);

(g) COLL 12.3.7 G (EEA UCITS management companies: compliance with FSA rules); and

(h) COLL 12.3.8 G (EEA UCITS management companies: conduct of business rules).

*An EEA UCITS management company providing collective portfolio management services for a UCITS scheme should be aware that it will be expected to comply with the above rules in relation to all aspects of the functioning of the relevant UCITS scheme where, for example, the firm:*

(a) [deleted]

(b) wishes to apply for an *authorisation order* to establish an *AUT* or *ICVC* as a *UCITS scheme*; or

(ba) is the *management company* of a *UCITS scheme* that wishes to exercise an *EEA right* to market its *units* in another *EEA State*; or

(c) is the *operator* of a *recognised scheme*.

<i>CREDS</i>	Does not apply.	Does not apply.
<i>PROF</i>	<i>PROF</i> applies only if the <i>firm</i> is an <i>authorised professional firm</i> .	As column (2).
<i>REC</i>	Does not apply.	Does not apply.
<i>LR</i>	<i>LR</i> (Listing Rules)	<i>LR</i> (Listing Rules)
	May apply if the <i>firm</i> is applying for <i>listing</i> in the <i>United Kingdom</i> , is a <i>listed issuer</i> in the <i>United Kingdom</i> , is a <i>sponsor</i> or is applying for approval as a <i>sponsor</i> .	As column (2).
<i>PR</i>	<i>PR</i> (Prospectus Rules)	<i>PR</i> (Prospectus Rules)
	May apply if the <i>firm</i> makes an <i>offer of transferable securities to the public</i> in the <i>United Kingdom</i> or is seeking the <i>admission to trading</i> of <i>transferable securities</i> on a <i>regulated market</i> situated or operating in the <i>United Kingdom</i> .	As column (2).

<p><i>DTR</i></p>	<p><i>DTR</i> (Disclosure Rules and Transparency Rules)</p> <p>May apply if the <i>firm</i> is an <i>issuer</i>, any class of whose <i>financial instruments</i> have been <i>admitted to trading</i> on a <i>regulated market</i>, or are the subject of an application for <i>admission to trading</i> on a <i>regulated market</i>, other than <i>issuers</i> who have not requested or approved admission of their <i>financial instruments</i> to trading on a <i>regulated market</i>.</p>	<p><i>DTR</i> (Disclosure Rules and Transparency Rules)</p> <p>As column (2).</p>
<p><i>EG</i></p>	<p><i>EG</i> describes the <i>FCA's</i> approach to exercising the main enforcement powers given to it by FSMA and by regulation 12 of the <i>Unfair Terms Regulations</i>. <i>EG</i> is a Regulatory Guide and as such does not form part of the Handbook.</p>	<p><i>EG</i> (Enforcement Guide) As column (2).</p>
<p><i>CONRED</i></p>	<p>Applies to a <i>firm</i> which made a <i>personal recommendation</i> in relation to an Arch cru fund, after which a <i>consumer</i> made an investment in the Arch cru fund, and to which the suitability requirements (specified at paragraph 5.1R of the instructions in CONRED 2 Annex 13 ) applied (CONRED 2.1.1R).</p>	<p>Does not apply</p>

**Notes to Annex 1**

Note 1: The following modules or chapters are relevant to *firms* in both the *PRA Handbook* and the *FCA Handbook*: *PRIN, SYSC, APER, FIT, GEN, FEES, GENPRU, BIPRU, MIPRU, IPRU(INV), SUP 2 to 6, 8, 11, 13 to 16, 18 & Appendix 2 and COMP*.

Note 2: The following modules or chapters are relevant in the *FCA Handbook* only: *COND, INSPRU, COBS, ICOBS, MCOB, CASS, MAR, TC, SUP 1A, 7, 9, 10A, 12 & 17, DEPP, DISP, COLL, PROF, LR, PR, DTR and EG*.





## Matters reserved to a Home State regulator

**FCA** **PRA**

### Introduction

1[FCA/PRA] The application of certain provisions in the *Handbook* to an *incoming EEA firm* or *incoming Treaty firm* depends on whether responsibility for the matter in question is reserved to the *firm's Home State regulator*. This annex contains *guidance* designed to assist such *firms* in understanding the application of those provisions. This annex is not concerned with the *FCA* or the *PRA's* rights to take enforcement action against an *incoming EEA firm* or an *incoming Treaty firm*, which, in the case of the *FCA*, are covered in the Enforcement Guide (*EG*), or with the position of a *firm* with a *top-up permission*.

### Requirements in the interest of the general good

2[FCA/PRA] The *Single Market Directives*, and the *Treaty* (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the *Home State regulator*. To summarise, the *FCA* or *PRA*, as *Host State regulator*, is entitled to impose requirements with respect to activities carried on within the *United Kingdom* if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the *Single Market Directives*:

- (1) the *Single Market Directives* expressly reserve responsibility for the prudential supervision of a *MiFID investment firm*, *BCD credit institution*, *UCITS management company* or passporting *insurance undertaking* to the *Firm's Home State regulator*. The *Insurance Mediation Directive* reaches the same position without expressly referring to the concept of prudential supervision. Accordingly, the *FCA*, as *Host State regulator*, is entitled to regulate only the conduct of the firm's business within the *United Kingdom*;
- (2) there is no "general good" provision in *MiFID*. Rather, *MiFID* states exactly what the *Host State regulator* regulates (see paragraphs 8 - 10);
- (3) for a *BCD credit institution*, the *PRA* or *FCA*, as *Host State regulator*, is jointly responsible with the *Home State regulator* under article 41 of the *Banking Consolidation Directive* for supervision of the liquidity of a *branch* in the *United Kingdom*;
- (4) for a *MiFID investment firm* including a *BCD credit institution* which is a *MiFID investment firm*), the protection of *clients' money* and *clients' assets* is reserved to the *Home State regulator* under *MiFID*; and
- (5) responsibility for participation in compensation schemes for *BCD credit institutions* and *MiFID investment firm* is reserved in most cases to the *Home State regulator* under the *Deposit Guarantee Directive* and the *Investor Compensation Directive*.

3. It is necessary to refer to the case law of the European Court of Justice to interpret the concept of the "general good". To summarise, to satisfy the general good test, *Host State* rules must come within a field which has not been harmonised at *EU* level, satisfy the general requirements that they pursue an objective of the general good, be non-discriminatory, be objectively necessary, be proportionate to the objective pursued and not already be safeguarded by rules to which the *firm* is subject in its *Home State*.

[FCA/PRA]

PAGE  
1

### Application of SYSC 2 and SYSC 3

4. SYSC 2 and SYSC 3 only apply to an *insurer*, a *managing agent* and the *Society*. See paragraph 8 below for a discussion of how the *common platform requirements* apply. SYSC 2.1.1 R and SYSC 2.1.2 G do not apply for a relevant *incoming Treaty firm*. The *FCA* and *PRA* consider that they are entitled, in the interests of the general good, to impose the requirements in SYSC 2.1.3 R to SYSC 2.2.3 G (in relation to the allocation of the function in

[FCA/PRA]

SYSC 2.1.3 R (2)) and SYSC 3 on an *incoming EEA firm* and an *incoming Treaty firm*; but only in so far as they relate to those categories of matter responsibility for which is not reserved to the *firm's Home State regulator*.

5. Should the *FCA* or *PRA* become aware of anything relating to an *incoming EEA firm* or *incoming Treaty firm* (whether or not relevant to a matter for which responsibility is reserved to the *Home State regulator*), the *PRA* or *FCA* may disclose it to the *Home State regulator* in accordance with any directive and the applicable restrictions in Part 23 of the Act (Public Record, Disclosure of Information and Co-operation).

6. This Annex represents the *FCA's* and *PRA's* views, but a *firm* is also advised to consult the relevant *EU* instrument and, where necessary, seek legal advice. The views of the European Commission in the banking and insurance sectors are contained in two Commission Interpretative Communications (Nos. 97/C209/04 and C(1999)5046).

7. [deleted]

Application of the common platform requirements in SYSC to *EEA MiFID investment firms*

8. Whilst the *common platform requirements* (located in SYSC 4 - SYSC 10) do not generally apply to *incoming EEA firms* (but for *EEA UCITS management companies*, see 8A below), *EEA MiFID investment firms* must comply with the *common platform record-keeping requirements* in relation to a *branch* in the *United Kingdom*.

Application of SYSC to *EEA UCITS management companies*

8A. SYSC 1 Annex 1 (Detailed application of SYSC), Part 2, 2.7AG provides guidance on the application of the *common platform requirements* to the *UK branch* of an *EEA UCITS management company*.

[FCA]

Requirements under MiFID

9. Article 31(1) of *MiFID* prohibits Member States from imposing additional requirements on a *MiFID investment firm* in relation to matters covered by *MiFID* if the *firm* is providing services on a cross-border basis. Such firms will be supervised by their Home State regulator.

10. Article 32 of *MiFID* requires the *FSA* as the *Host State regulator* to apply certain obligations to an *incoming EEA firm* with an establishment in the *UK*. In summary, these are Articles:

[FCA/PRA]

- (1) 19 (conduct of business obligations);
- (2) 21 (execution of orders on terms most favourable to the client);
- (3) 22 (client order handling);
- (4) 25 (upholding the integrity of markets, reporting transactions and maintaining records);
- (5) 27 (making public firm quotes); and
- (6) 28 (post-trade disclosure).

The remaining obligations under *MiFID* are reserved to the Home State regulator.

11. *MiFID* is more highly harmonising than other *Single Market Directives*. Article 4 of the *MiFID implementing Directive* permits Member States to impose additional requirements only where certain tests are met. The *FSA* has made certain requirements that fall within the scope of Article 4. These requirements apply to an *EEA MiFID investment firm* with an establishment in the *United Kingdom* as they apply to a *UK MiFID investment firm*, in the circumstances contemplated by article 32(7) *MiFID*.

[FCA/PRA]

Requirements under the UCITS Directive

11A Article 19(8) of the *UCITS Directive* prohibits an *EEA State* from imposing additional requirements on a *management company* providing *collective portfolio management* services for a *UCITS* in its territory on a cross-border basis by establishing a *branch* or under the freedom to provide *cross border services* in respect of the subject matter of the *UCITS Directive*, except in the cases expressly permitted (see 11C below).

[FCA]

11B A *management company* which provides *collective portfolio management* services on a cross-border basis by establishing a *branch* in another *EEA State* or under the freedom to provide services must comply with the *rules* of the *UCITS Home State* which relate to the constitution and functioning of the *UCITS*. Where the *UCITS Home State* is the *United Kingdom*, the applicable *rules* that the *EEA UCITS management company* must comply with are as follows:

[FCA]

- (1) COLL 12.3.4 R (Provision of documentation to the FCA: EEA UCITS management companies);
- (2) the *fund application rules* (see COLL 12.3.5 R (COLL fund rules under the management company passport: the fund application rules)); and
- (3) COLL 12.3.6 R (Requirement to make information available to the public or the FCA).

11C [FCA] A *management company*, however, which provides *collective portfolio management* services from a *branch* in another *EEA State*, is obliged under article 17(4) to comply with the applicable rules of the *Host State regulator* drawn up under article 14(1) that require a *management company* to:

- (1) act honestly and fairly in conducting its business activities in the best interests of the *UCITS* it manages and the integrity of the market;
- (2) act with due skill, care and diligence, in the best interests of the *UCITS* it manages and the integrity of the market;
- (3) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;
- (4) try to avoid conflicts of interests and, when they cannot be avoided, to ensure that the *UCITS* it manages is fairly treated; and
- (5) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

11D The *rules* implementing the requirements set out in paragraph 11C (1) to (5) are as follows:

[FCA]

- (1) SYSC, to the extent indicated in column A+ (Application to management company) of Part 3 of SYSC 1 Annex 1 (Detailed application of SYSC); and
- (2) COBS, to the extent indicated at paragraph 9.1 of Part 3 of COBS 1 Annex 1 (Application).
- (3) COLL 6.6A.2 R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders) (*branch* only);
- (4) COLL 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes) (*branch* only); and
- (5) COLL 6.6A.5 R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company) (*branch* only).

Territorial application of the *Handbook*

The auction regulation

11E [FCA/PRA] Where an *incoming EEA firm* exercises an *EEA right* under the *auction regulation* to provide services or establish a *branch* in the *United Kingdom*, it is carrying on *auction regulation bidding*. Authorisation and supervision of a *firm* under the *auction regulation* are almost exclusively matters reserved to the *Home State regulator*. The only requirements which the *FCA* has applied as *Host State regulator* under the *auction regulation* in respect of *auction regulation bidding* is on a *UK branch* in relation to safeguards against money laundering and financial crime as well as a statutory status disclosure obligation and requirements to notify the *FCA* (see Note 4 of SUP 13A Annex 1 G).

11F [FCA] An *incoming EEA firm* that carries on *MiFID business bidding* is exercising an *EEA right* under *MiFID* and is subject to the *applicable provisions* relating to its carrying on of *MiFID business*. The respective responsibilities of the *Home State regulator* and *Host State regulator* are the same as under *MiFID*.

12. Further *guidance* on the territorial application of the *Handbook* can be found at PERG 13.6 and PERG 13.7.

[FCA/PRA]

13. Examples of how SYSC 3 and/or the common platform provisions apply in practice.

[FCA/PRA]

- (1) The Prudential Standards part of the *Handbook* (with the exception of INSPRU 1.5.33 R on the payment of financial penalties and the Interim Prudential sourcebook (insurers) (IPRU(INS)) (rules 3.6 and 3.7) do not apply to an *insurer* which is an *incoming EEA firm*. Similarly, SYSC 3 does not require such a *firm*:
  - (a) to establish systems and controls in relation to financial resources (SYSC 3.1.1 R); or
  - (b) to establish systems and controls for compliance with that Prudential Standards part of the *Handbook* (SYSC 3.2.6 R); or
  - (c) to make and retain records in relation to financial resources (SYSC 3.2.20 R and SYSC 9.1.1 R to 9.1.4 G).
  
- (2) The Conduct of Business sourcebook (*COBS*) applies to an *incoming EEA firm*. Similarly, SYSC 3 and SYSC 4- 10 do require such a *firm*:
  - (a) to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of *COBS* ( SYSC 3.1.1 R and SYSC 4.1.1 R);
  - (b) to establish systems and controls for compliance with the applicable sections of *COBS* (SYSC 3.2.6 R and SYSC 6.1.1 R); and
  - (c) to make and retain records in relation to those aspects of the conduct of its business (SYSC 3.2.20 R and SYSC 9.1.1 R to 9.1.4 G).

See also Question 12 in SYSC 2.1.6 G for guidance on the application of SYSC 2.1.3 R (2)

## EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom

### **FCA**

Under paragraph 15A(1) of Part II of Schedule 3 to the *Act*, an *EEA UCITS management company* intending to exercise an *EEA right* to provide *collective portfolio management* services for a *UCITS scheme* must, before it undertakes that activity, obtain the *FCA's* approval to manage that *UCITS scheme*. *Firms* should use the application form below for this purpose. *Firms* may cross refer to other sources where the information has already been provided to the *FCA*.

**Application by an EEA UCITS management company to manage one or more UCITS schemes established in the United Kingdom (paragraph 15A(1) of Part II of Schedule 3 to the Financial Services and Markets Act 2000).**

**Name and registered address of *management company*:**

**Contact details for the person submitting the application (including telephone number and email address):**

***EEA State* in which *management company* is authorised:**

**Details of *competent authority* providing authorisation of the *management company*:**

**Set out details of the scope of authorisation of the *management company* including the type of funds for which authorisation to manage has been obtained and any limitations that apply to the authorisation:**

**Name of each *UCITS scheme* to which this application for approval relates:**

**Is the *management company* authorised to manage the type of *UCITS scheme* to which this approval relates? If not provide details:**

**Has the *management company* submitted the information required by **COLL 12.3.4 R** (Provision of documentation to the *FCA*:*EEA UCITS management companies*), including the depositary agreement and information on delegation arrangements? Provide details:**

**Signed by:**

**Title:**

**Dated:**

**When completed send this form to:**

**Investment Funds Team**

**The Financial Conduct Authority**

**25 the North Colonnade**

**London. E14 5HS**

**Or electronically to: [recognisedcis@fca.org.uk](mailto:recognisedcis@fca.org.uk)**

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**Passporting: Emissions Trading. Notice of intention to exercise the right of establishment in the United Kingdom**

**FCA**

This annex consists of only one or more forms. Forms can be completed online now by visiting: [www.fca.org.uk](http://www.fca.org.uk)

The forms are also to be found through the following address: *Passporting: Emissions Trading. Notice of intention to exercise the right of establishment in the United Kingdom - SUP 13A Annex 4 R*





## Chapter 14

# Incoming EEA firms changing details, and cancelling qualification for authorisation

## 14.1 Application and purpose

### Application

#### 14.1.1

FCA PRA

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This chapter applies to an *incoming EEA firm* other than an *EEA pure reinsurer* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* under one of the *Single Market Directives* or the *auction regulation* and, therefore, qualifies for *authorisation* under Schedule 3 to the *Act*.

#### 14.1.1A

FCA

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The *guidance* in ■ SUP 14.2 and ■ SUP 14.3 covers the *EEA Passport Rights Regulations*. It is not, however, relevant to an *EEA firm* exercising an *EEA right* under the *auction regulation*, except for ■ SUP 14.2.14 R which applies a separate notification requirement. Additionally, where an *EEA firm* is carrying on *MiFID business bidding*, that *firm* is exercising an *EEA right* under *MiFID* and so this chapter applies to that activity because it is *MiFID business*.

#### 14.1.2

FCA PRA

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■ SUP 14.6 (Cancelling qualification for authorisation), which sets out how to cancel qualification for *authorisation* under the *Act*, also applies to:

- (1) an *incoming Treaty firm* that qualifies for *authorisation* under Schedule 4 to the *Act*; and
- (2) a *UCITS qualifier* that is an *authorised person* under Schedule 5 to the *Act*; a *UCITS qualifier* should, however, refer to ■ COLLG 3.1.11 G for full details of applicable *rules* and *guidance*.

#### 14.1.3

FCA PRA

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- (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a *Gibraltar firm* is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:
  - (a) authorised in *Gibraltar* under the *Insurance Directives*; or
  - (b) authorised in *Gibraltar* under the *Banking Consolidation Directive* ;
  - (c) authorised in *Gibraltar* under the *Insurance Mediation Directive*; or
  - (d) authorised in *Gibraltar* under the *Investment Services Directive*.

(1A) Similarly, an *EEA firm* which:

- (a) has satisfied the *Gibraltar establishment conditions* and has established a *branch* in the *UK*; or
- (b) has satisfied the *Gibraltar service conditions* and is providing *cross border services* into the *UK*;

is treated as having satisfied the *establishment conditions* or *service conditions* (as appropriate) under Schedule 3 to the *Act*.

- (2) Gibraltar insurance companies, *credit institutions*, *insurance intermediaries* and *investment firms* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in ■ SUP 14 to *EEA State* or *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* where appropriate.

**Purpose**

14.1.4

FCA PRA

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This chapter gives *guidance* on the *Act* and the *EEA Passport Rights Regulations* made under the *Act*, for an *incoming EEA firm* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* and wishes to change the details of the *branch* or *cross border services*.

14.1.5

FCA PRA

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This chapter also explains how an *incoming EEA firm*, an *incoming Treaty firm* or a *UCITS qualifier* may cancel its qualification for *authorisation* under the *Act*.

14.1.6

FCA PRA

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This chapter does not, however, give *guidance* on the procedures for the establishment of a *branch* in, or the providing of *cross border services* into, the *United Kingdom* for the first time. So, an *incoming EEA firm* that wishes to change or supplement the nature of its operations in the *United Kingdom* from the providing of *cross border services* to the establishment of a *branch* (or vice versa) should refer to ■ SUP 13A (Qualifying for authorisation under the *Act*).

14.1.7

FCA PRA

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In addition, the chapter does not give *guidance* on the procedures for making an application for *top-up permission*, to carry on *regulated activities* in the *United Kingdom* which are outside the scope of the *Single Market Directives* and for which the firm cannot exercise *Treaty rights*. *Incoming EEA firms* seeking a *top-up permission* should refer to ■ SUP 13A.

14.1.8

FCA PRA

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The *FCA* and *PRA* will share with each other relevant information received, as necessary, in order to perform their respective functions.

## 14.2 Changes to branch details

### 14.2.1

**FCA PRA**

**G**

Where an *incoming EEA firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive*, and has established a *branch* in the United Kingdom, the *EEA Passport Rights Regulations* govern any changes to the details of that *branch*. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under Schedule 3 to the *Act* is to be treated as varied accordingly. All references to regulations in ■ SUP 14 are to the *EEA Passport Rights Regulations*.

### Firms passporting under the Banking Consolidation Directive and the UCITS Directive

### 14.2.2

**FCA PRA**

**G**

- (1) Where an *incoming EEA firm* passporting under the *Banking Consolidation Directive* or the *UCITS Directive* has established a *branch* in the United Kingdom, regulation 4 states that it must not make a change in the *requisite details* of the *branch* unless it has complied with the relevant requirements.
- (2) The relevant requirements are set out in regulation 4(4) or, where the change arises from circumstances beyond the *incoming EEA firm's* control, in regulation 4(5) (see ■ SUP 14.2.8 G).

### 14.2.3

**FCA PRA**

**G**

Where the change arises from circumstances within the control of the *incoming EEA firm*, the requirements in regulation 4(4) are that:

- (1) the *incoming EEA firm* has given notice to the *appropriate UK regulator* (see ■ SUP 14.4.1 G) and to its *Home State regulator* stating the details of the proposed change;
- (2) the *appropriate UK regulator* has received a notice stating those details; and
- (3) either:
  - (a) the *appropriate UK regulator* has informed the firm that it may make the change; or
  - (b) the period of one month beginning with the date on which the *incoming EEA firm* gave the *appropriate UK regulator* the notice mentioned in (1) has elapsed.

14.2.4

FCA PRA

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Changes to the *requisite details* may lead to changes to the *applicable provisions* to which the *incoming EEA firm* is subject. The *appropriate UK regulator* will, as soon as practicable after receiving a notice in ■ SUP 14.2.3 G or ■ SUP 14.2.8 G, inform the *incoming EEA firm* of any consequential changes in the *applicable provisions* (regulation 4(6)).

14.2.5

PRA

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**Firms passporting under the Insurance Directives**

- (1) Where an *incoming EEA firm*, passporting under the *Insurance Directives* has established a *branch* in the *United Kingdom*, regulation 6 states that it must not make a change to the information referred to in regulation 2(5)(a) to (c) unless it has complied with the relevant requirements.
- (2) The relevant requirements are set out in regulation 6(4) or, where the change arises from circumstances beyond the *incoming EEA firm's* control, regulation 6(5) (see ■ SUP 14.2.8 G).

14.2.6

PRA

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Where the change arises from circumstances within the control of the *incoming EEA firm*, the relevant requirements in regulation 6(4) are that:

- (1) the *incoming EEA firm* has given a notice to the *PRA* (see ■ SUP 14.4.1 G) and to its *Home State regulator* stating the details of the proposed change;
- (2) the *PRA* has received from the *Home State regulator* a notice stating that it has approved the proposed change;
- (3) the period of at least one month beginning with the day on which the *incoming EEA firm* gave the *PRA* the notice in (1) has elapsed; and
- (4) either:
  - (a) a further period of one month has elapsed; or
  - (b) the *PRA* has informed the *Home State regulator* of any consequential changes in the *applicable provisions*.

14.2.7

PRA

G

Under regulation 6(6) the *FSA* is required, as soon as practicable, to:

- (1) acknowledge receipt of the documents sent under regulation 6(4) or 6(5); and
- (2) in the case of a notice under regulation 6(5), inform the *incoming EEA firm's Home State regulator* of any consequential changes in the *applicable provisions*.

**Changes arising from circumstances beyond the control of an incoming EEA firm passporting under the Banking Consolidation Directive, UCITS Directive or Insurance Directive**

14.2.8

FCA PRA

G

If the change arises from circumstances beyond the *incoming EEA firm's* control, the *firm* is required by regulation 4(5) (see ■ SUP 14.2.2 G) or regulation 6(5) (see ■ SUP 14.2.5 G (2)) to give a notice to the *appropriate UK regulator* (see ■ SUP 14.4.1 G) and to its *Home State regulator* stating the details of the change as soon as reasonably practicable.

14.2.9  
FCA PRA

G

The *appropriate UK regulator* believes that for a change to arise from circumstances beyond the control of an *incoming EEA firm*, the circumstances should be outside the control of the *firm* as a whole and not just its UK branch. For example, the *appropriate UK regulator* considers that this provision would be unlikely to apply to circumstances in which lack of planning at the *incoming EEA firm's* head office resulted in a problem arising in a *UK branch* which was outside its control. In practice, therefore, use of this provision is likely to be rare.

14.2.10  
FCA PRA

G

#### **Firms passporting under MiFID**

Where an *EEA MiFID investment firm* has established a *branch* in the *UK*, regulation 4A states that it must not:

- (1) make a change in the requisite details of the *branch*; or
- (2) use, for the first time, any *tied agent* established in the *United Kingdom*; or
- (3) cease to use *tied agents* established in the *United Kingdom*;

unless it has complied with the relevant requirements in regulation 4A(3).

14.2.11  
FCA PRA

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The relevant requirements in regulation 4A(3) are that:

- (1) the *EEA MiFID investment firm* has given notice to its *Home State regulator* stating the details of the proposed change; and
- (2) the period of one *month* beginning with the date on which the *EEA MiFID investment firm* gave the notice mentioned in (1) has elapsed.

14.2.12  
FCA PRA

G

Changes to the *requisite details* may lead to changes to the applicable provisions to which the *EEA MiFID investment firm* is subject. The *appropriate UK regulator* will, as soon as practicable after receiving a notice in ■ SUP 14.2.11 G inform the *EEA MiFID investment firm* of any consequential changes in the applicable provisions.

14.2.13  
FCA PRA

G

■ SUP 14.2.10 G does not apply to a change occasioned by circumstances beyond the *incoming EEA firm's* control.

14.2.14  
FCA

R

#### **Firms passporting under the auction regulation**

An *EEA firm* that is exercising an *EEA right* to provide *auction regulation bidding* from a branch in the *United Kingdom* must notify the *FSA* of any change to the information submitted under ■ SUP 13A.4.5 R by email to [emissionstrading@fsa.gov.uk](mailto:emissionstrading@fsa.gov.uk) prior to the change or whenever possible thereafter.



## 14.3 Changes to cross border services

### 14.3.1

FCA PRA

G

Where an *incoming EEA firm* passporting under the *MiFID*, *UCITS Directive* or *Insurance Directives* is exercising an *EEA right* and is providing *cross border services* into the *United Kingdom*, the *EEA Passport Rights Regulations* govern any changes to the details of those services. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under Schedule 3 to the *Act* is to be treated as varied accordingly.

#### **Firms passporting under the UCITS Directive**

### 14.3.2

FCA

G

Where an *incoming EEA firm* passporting under the *UCITS Directive* is providing *cross border services* into the *United Kingdom*, it must not make a change in the details referred to in regulation 5(1A) unless it has complied with the relevant requirements in regulation 5(3).

### 14.3.3

FCA

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The relevant requirements in regulation 5(3) are that:

- (1) the *incoming EEA firm* has given a notice to the *FCA* (see ■ SUP 14.4.1 G) and to its *Home State regulator* stating the details of the proposed change;
- (2) if the change arises from circumstances beyond the *incoming EEA firm's* control, that firm has, as soon as practicable, given to the *appropriate UK regulator* and to its *Home State regulator* the notice in (1).

### 14.3.3A

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[deleted]

### 14.3.4

FCA PRA

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Under regulation 5(4), the *FCA* is required, as soon as practicable after receiving the notice in ■ SUP 14.3.3 G, to inform the *incoming EEA firm* of any consequential changes in the *applicable provisions*.

#### **Firms passporting under MiFID**

### 14.3.4A

FCA PRA

G

Where an *incoming EEA firm* passporting under *MiFID* is providing *cross border services* into the *United Kingdom*, it must not:

- (1) make a change in the details referred to in regulation 5A(1)(a); or
- (2) use, for the first time, any *tied agent* to provide services in the *United Kingdom*;  
or



(3) cease to use *tiered agents* to provide services in the *United Kingdom*;  
unless it has complied with the relevant requirements in regulation 5A(3).

**14.3.4B** **G**  
**FCA** **PRA**

The relevant requirements in regulation 5A(3) are that:

- (1) the incoming *EEA firm* has given notice to its *Home State regulator* stating the details of the proposed change; and
- (2) the period of one *month* beginning with the day on which the *incoming EEA firm* gave that notice has elapsed.

**14.3.4C** **G**  
**FCA**

Under regulation 5(4), the *FCA* is required, as soon as practicable after receiving the notice in **■ SUP 14.3.4B G**, to inform the *incoming EEA firm* of any consequential changes in the applicable provisions.

**14.3.4D** **G**  
**FCA** **PRA**

**■ SUP 14.3.4A G** does not apply to a change occasioned by circumstances beyond the *incoming EEA firm's* control.

#### **Firms passporting under the Insurance Directives**

**14.3.5** **G**  
**PRA**

If an *incoming EEA firm* passporting under the *Insurance Directives* is providing *cross border services* into the *United Kingdom*, it must not make a change to the details referred to in regulation 7(1) unless it has complied with the relevant provisions.

**14.3.6** **G**  
**PRA**

The relevant provisions are those set out in regulation 7(4), namely that:

- (1) the *incoming EEA firm* has given a notice to its *Home State regulator* stating the details of the proposed change; and
- (2) the *Home State regulator* has passed on to the *PRA* the information contained in that notice.

**14.3.7** **G**  
**PRA**

If the change arises from circumstances beyond the *incoming EEA firm's* control, the *incoming EEA firm* is required to comply with the relevant provisions referred to in **■ SUP 14.3.6 G** as soon as reasonably practicable (whether before or after the change). See also **■ SUP 14.2.9 G**, as relevant to *cross border services*.



## 14.4 Notices of proposed changes: form and delivery

### 14.4.1

**FCA** **PRA**

**G**

- (1) Regulation 7 to 9 of the Financial Services and Markets Act 2000 (Services of Notices) Regulations 2001 (SI2001/1420) govern the manner in which notices may be submitted to the regulators under the *EEA Passport Rights Regulations*. In summary, they should be delivered or posted to the *appropriate UK regulator's* address (See (2) below) and will be treated as given when received by the *appropriate UK regulator* . They should not be sent by fax or electronic mail.
- (2) [deleted]

### 14.4.1A

**FCA**

**G**

The address for *FCA* notices is: The Passport Notifications Unit, The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS.

### 14.4.1B

**PRA**

**G**

The address for *PRA* notices is: PRA authorisations team, The Prudential Regulation Authority, 20 Moorgate, London, EC2R 6DA.



**14.5**

**Variation of a top-up permission to carry on regulated activities outside the scope of the Single Market Directives or the auction regulation**

**14.5.1**

**FCA PRA**

**G**

Where an *incoming EEA firm* has been granted *top-up permission* by the *appropriate UK regulator* and wishes to vary that *permission*, the *Act* requires it to apply to the *appropriate UK regulator* for a variation of the *top-up permission*.

**14.5.2**

**FCA PRA**

**G**

*Guidance* on the procedures for applying for a variation of a *permission* granted under Part 4A of the *Act*, including a *top-up permission*, is given in ■ SUP 6 (Applications to vary and cancel Part 4A Permission).

## 14.6 Cancelling qualification for authorisation

### Incoming EEA firms

#### 14.6.1

FCA PRA

G

Section 34 of the *Act* states that an *incoming EEA firm* no longer qualifies for *authorisation* under Schedule 3 to the *Act* if it ceases to be an *incoming EEA firm* as a result of:

- (1) having its *EEA authorisation* withdrawn by its *Home State regulator*; or
- (2) ceasing to have an *EEA right* in circumstances in which *EEA* authorisation is not required; this is relevant to a *financial institution* that is a subsidiary of a *credit institution* (of the kind mentioned in Article 19 of the *Banking Consolidation Directive*) which fulfils the conditions in articles 18 and 19 of that *Directive*.

#### 14.6.2

FCA PRA

G

In addition, under section 34(2) an *incoming EEA firm* may ask the *appropriate UK regulator* to give a direction cancelling its *authorisation* under Schedule 3 to the *Act*.

#### 14.6.3

FCA PRA

G

Regulation 8 states that where an *incoming EEA firm* which qualifies for *authorisation* under Schedule 3:

- (1) has ceased, or is to cease, to carry on *regulated activities* in the *United Kingdom*; and
- (2) gives notice of that fact to the *appropriate UK regulator* ;

the notice is treated under regulation 8 as a request for cancellation of the *incoming EEA firm's* qualification for *authorisation* under Schedule 3 to the *Act* and so as a request under section 34(2) of the *Act*.

### Auction regulation bidding: notification rule

#### 14.6.3A

FCA

R

An *EEA firm* that has exercised an *EEA right* under the *auction regulation* to establish a branch in the *United Kingdom* must notify the *FCA* by email to [emissionstrading@fca.org.uk](mailto:emissionstrading@fca.org.uk) when it ceases to carry on *regulated activities* through a branch passport in the *United Kingdom* or whenever possible thereafter.

#### 14.6.3B

FCA

G

The sole purpose of the notification in ■ SUP 14.6.3A R is to inform the *FCA* that it may discontinue its supervision of the *UK* branch of the *incoming EEA firm's* compliance with the *applicable provisions*. The *applicable provisions* that apply to that branch are set out in ■ SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).

**Financial institutions giving up right to authorisation**

14.6.4  
PRA

G

Where a *financial institution* (that is, a subsidiary of a *credit institution*) is passporting under the *Banking Consolidation Directive* (see ■ SUP 14.6.1 G (2)), regulation 9(1) states that the *incoming EEA firm* may request the *PRA* to direct that its qualification for *authorisation* under Schedule 3 to the *Act* is cancelled from such date as may be specified in the direction.

14.6.5  
PRA

G

The *PRA* may not, however, give a direction referred to in ■ SUP 14.6.4 G unless:

- (1) the *incoming EEA firm* has given notice to its *Home State regulator*; and
- (2) the *PRA* has agreed with the *Home State regulator* that the direction should be given.

14.6.6  
PRA

G

Regulation 9(3) requires that the date specified by the *PRA* in a direction referred to in ■ SUP 14.6.4 G:

- (1) must not be earlier than the date requested in the application; but
- (2) subject to (1), is as agreed between the *PRA* and the *incoming EEA firm's Home State regulator*.

14.6.7  
PRA

G

The *PRA* is required to send, as soon as practicable, a copy of the direction to the *incoming EEA firm* and to its *Home State regulator* (regulation 9(4)).

14.6.8  
PRA

G

Where the *PRA* gives a direction referred to in ■ SUP 14.6.4 G, the *incoming EEA firm* may apply for *Part 4A permission* (see the *PRA* website [www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx) ) to take effect not earlier than the date that its qualification for *authorisation* is cancelled (as specified in the direction).

**Incoming Treaty firms**

14.6.9  
FCA PRA

G

Section 35 of the *Act* states that an *incoming Treaty firm* no longer qualifies for *authorisation* under Schedule 4 to the *Act* if its *Home State* authorisation is withdrawn.

14.6.10  
FCA PRA

G

In addition, under section 35(2) an *incoming Treaty firm* may ask the *appropriate UK regulator* to give a direction cancelling its *authorisation* under Schedule 4 to the *Act*.

**UCITS qualifiers**

14.6.11  
FCA

G

Section 36 of the *Act* states that a *UCITS qualifier* may ask the *FCA* to give a direction cancelling its *authorisation* under paragraph 1(1) of Schedule 5 to the *Act*. *UCITS qualifiers* should also refer to ■ COLLG 3.1.11 G (Revocation of recognition of overseas schemes (section 279)).



**14.7**

**Cancellation of a top-up permission to carry on regulated activities outside the scope of the Single Market Directives or the auction regulation**

**14.7.1**

**FCA PRA**

**G**

Where an *incoming EEA firm*, an *incoming Treaty firm* or a *UCITS qualifier* wishes to cancel its *top-up permission*, either with or without cancellation of its qualification for *authorisation* under Schedule 3, 4, or 5 to the *Act*, it should make an application following the procedures set out in **■ SUP 6** (Applications to vary and cancel Part 4A Permission).



## 14.8 Further guidance

### 14.8.1

**FCA** **PRA**

**G**

For further *guidance* on passporting procedures, an *incoming EEA firm* may contact the *FCA* or *PRA* authorisations team, or their usual supervisory contact at the *appropriate UK regulator*. *Incoming Treaty firms* and *UCITS qualifiers* may speak to their supervisory contact at the *appropriate UK regulator* in the first instance

# Chapter 15

## Notifications to the FCA or PRA





## 15.1 Application

### Who?

15.1.1

FCA PRA

R

This chapter applies to every *firm* except that:

- (1) only ■ SUP 15.10 applies to an *ICVC* or a *UCITS qualifier*; and
- (2) ■ SUP 15.3.22 D to ■ SUP 15.3.25 D apply only to the *Society*.

15.1.2

FCA PRA

R

The application of this chapter to an *incoming EEA firm* or an *incoming Treaty firm* is set out in ■ SUP 15 Annex 1.

15.1.3

FCA PRA

G

In some cases, the application of provisions set out in ■ SUP 15 Annex 1 depends on whether responsibility is reserved to a *Home State regulator*. ■ SYSC App 1 contains *guidance* on this.

### What?

15.1.4

FCA PRA

R

This chapter:

- (1) applies with respect to the carrying on of both *regulated activities* and *unregulated activities*; and
- (2) takes into account any activity of other members of a *group* of which the *firm* is a member.

### Where?

15.1.5

FCA PRA

G

*Firms* are reminded that , unless expressly stated otherwise, where a *rule* or *guidance* includes a reference to a *firm* this includes all *UK* and overseas branches and representative offices of that *firm*, whether or not those branches or offices carry on any *regulated activities*.

15.1.6

FCA

R

This chapter does not apply to an *incoming ECA provider* acting as such.



## 15.2 Purpose

### 15.2.1

FCA PRA

G

A *firm* is required to provide the *appropriate regulator* with a wide range of information to enable the *appropriate regulator* to meet its responsibilities for monitoring the *firm's* compliance with requirements imposed by or under the *Act*. Some of this information is provided through regular reports, including those set out in ■ SUP 16 (Reporting requirements) and ■ SUP 17 (Transaction reporting). In addition, other chapters in the *Handbook* set out specific notification and reporting requirements. *Principle 11* includes a requirement for a *firm* to disclose to the *appropriate regulator* appropriately anything relating to the *firm* of which the *appropriate regulator* would reasonably expect notice.

### 15.2.2

FCA PRA

G

This chapter sets out:

- (1) *guidance* on the type of event or change in condition which a *firm* should consider notifying in accordance with *Principle 11*; the purpose of this *guidance* is to set out examples and not to give comprehensive advice to *firms* on what they should notify in order to be in compliance with *Principle 11*;
- (2) *rules* on events and changes in condition that a *firm* must notify; these are the types of event that the *appropriate regulator* must be informed about, usually as soon as possible, if it is to be able to carry out its monitoring function effectively and react in good time to developments that may require a regulatory response;
- (3) *rules* on the core information that a *firm* must provide to the *appropriate regulator*, for example its name and address and the names of its other regulators, so that the *appropriate regulator* is able to maintain a relationship with the *firm* and with those regulators;
- (4) *rules* requiring a *firm* to ensure that information provided to the *appropriate regulator* is accurate and complete; section 398 of the *Act* makes it an offence knowingly or recklessly to provide the *appropriate regulator* with information which is false or misleading in a material particular, in purported compliance with any requirement imposed by or under the *Act*; the purpose of the *rules* in ■ SUP 15.6 is to ensure that *firms* take due care to ensure the accuracy of information and to require them to ensure that information is not only accurate but also complete ; and
- (5) material (in ■ SUP 15.10 (Notification of suspicious transactions (market abuse))) to implement the provisions of the *Market Abuse Directive* for the reporting of transactions about which there is reasonable suspicion of *market abuse*.

15.2.3

FCA PRA

G

*Rules and guidance* have also been included to set out how *firms* should make a notification and to determine when it may be appropriate to discuss matters with their usual supervisory contact at the *appropriate regulator* by telephone ( ■ SUP 15.7).

15.2.4

FCA PRA

G

Schedule 2 contains a consolidated summary of all the *notification rules* applicable to *firms* set out in the *Handbook*.

15.2.5

PRA

G

Where a *PRA-authorised person* is required to notify (a) the *appropriate regulator* by a *PRA Handbook* provision and (b) the *FCA* by the equivalent provision in the *FCA Handbook*, the *PRA-authorised person* is expected to comply with both provisions.



## 15.3 General notification requirements

### Matters having a serious regulatory impact

15.3.1

R

FCA PRA

A *firm* must notify the *appropriate regulator* immediately it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:

- (1) the *firm* failing to satisfy one or more of the *threshold conditions*;  
or
- (2) any matter which could have a significant adverse impact on the *firm's* reputation; or
- (3) any matter which could affect the *firm's* ability to continue to provide adequate services to its *customers* and which could result in serious detriment to a *customer* of the *firm*; or
- (4) any matter in respect of the *firm* which could result in serious financial consequences to the *UK financial system* or to other *firms*.

15.3.2

G

FCA PRA

The circumstances which may give rise to any of the events in ■ SUP 15.3.1 R are wide-ranging and the probability of any matter resulting in such an outcome, and the severity of the outcome, may be difficult to determine. However, the *appropriate regulator* expects *firms* to consider properly all potential consequences of events.

15.3.3

G

FCA PRA

In determining whether the *appropriate regulator* should be notified of an event that may occur in the foreseeable future, a *firm* should consider both the probability of the event happening and the severity of the outcome should it happen.

15.3.4

G

FCA

*Guidance* on satisfaction of the *threshold conditions* is given in COND.

PAGE  
5

15.3.5

G

FCA PRA

A *firm* making a notification in accordance with ■ SUP 15.3.1 R should consider the *guidance* in ■ SUP 15.7.2 G and notify the *appropriate regulator* by telephone if appropriate.

15.3.6  
PRA

G

An *insurer* or *friendly society* making a notification under ■ SUP 15.3.1 R (1) relating to satisfaction of the *threshold condition* set out in paragraph 4D of Schedule 6 to the *Act* should be aware of the requirements in ■ SUP App 2 (Scheme of operations).

**Communication with the appropriate regulator in accordance with Principle 11**

15.3.7  
FCA PRA

G

*Principle 11* requires a *firm* to deal with its regulators in an open and cooperative way and to disclose to the *appropriate regulator* appropriately anything relating to the *firm* of which the *appropriate regulator* would reasonably expect notice. *Principle 11* applies to *unregulated activities* as well as *regulated activities* and takes into account the activities of other members of a *group*.

15.3.7A  
FCA

G

Although *PRIN* does not apply to a *firm* in relation to its carrying on of *auction regulation bidding*, the *FCA* expects to be given notice of events that are material to the *FCA*'s supervision of that business and so *firms* carrying on that business should have regard to the *guidance* in ■ SUP 15.3.8 G to ■ SUP 15.3.10 G.

15.3.8  
FCA PRA

G

Compliance with *Principle 11* includes, but is not limited to, giving the *appropriate regulator* notice of:

- (1) any proposed restructuring, reorganisation or business expansion which could have a significant impact on the *firm's* risk profile or resources, including, but not limited to:
  - (a) setting up a new *undertaking* within a *firm's group*, or a new branch (whether in the *United Kingdom* or overseas); or
  - (b) commencing the provision of cross border services into a new territory; or
  - (c) commencing the provision of a new type of product or service (whether in the *United Kingdom* or overseas); or
  - (d) ceasing to undertake a *regulated activity* or *ancillary activity*, or significantly reducing the scope of such activities; or
  - (e) entering into, or significantly changing, a *material outsourcing* arrangement (a *bank*, a *building society* and a *dormant account fund operator* should also see ■ SYSC 3.2.4 G and ■ SYSC 8, and an *insurer* should also see ■ SYSC 13.9 for further details); or
  - (f) a substantial change or a series of changes in the *governing body* of an *overseas firm* (other than an *incoming firm*); or
  - (g) any change to the *firm's* prudential category or sub-category, as used in the Interim Prudential sourcebooks and *SUP* and on which *guidance* is given in ■ SUP App 1; or
  - (h) any proposed change which limits the liability of any of the *members* or *partners* of a *firm* such as a general *partner* becoming a limited *partner* or re-registration as a limited liability *company* of a *company* incorporated with unlimited liability; or
  - (i) in relation to a *dormant account fund operator*, notify the *appropriate regulator* when the operator intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities in connection

with *operating a dormant account fund* on a continuous and satisfactory basis;

- (2) any significant failure in the *firm's* systems or controls, including those reported to the *firm* by the *firm's* auditor;
- (3) any action which a *firm* proposes to take which would result in a material change in its capital adequacy or solvency, including, but not limited to:
  - (a) any action which would result in a material change in the *firm's* financial resources or financial resources requirement; or
  - (b) a material change resulting from the payment of a special or unusual dividend or the repayment of *share* capital or a subordinated loan; or
  - (c) for *firms* which are subject to the *rules* on consolidated financial supervision, any proposal under which another *group company* may be considering such an action; or
  - (d) significant trading or non-trading losses (whether recognised or unrecognised).

15.3.9

FCA PRA

G

The period of notice given to the *appropriate regulator* will depend on the event, although the *appropriate regulator* expects a *firm* to discuss relevant matters with it at an early stage, before making any internal or external commitments.

15.3.10

FCA PRA

G

A notification under *Principle 11* may be given orally or in writing (as set out in ■ SUP 15.7.1 R and ■ SUP 15.7.2 G), although the *appropriate regulator* may request written confirmation of a matter. However, it is the responsibility of a *firm* to ensure that matters are properly and clearly communicated to the *appropriate regulator*. A *firm* should provide a written notification if a matter either is complex or may be such as to make it necessary for the *appropriate regulator* to take action. A *firm* should also have regard to *Principle 11* and the *guidance* in ■ SUP 15.7.2 G in respect of providing important information promptly.

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

15.3.11

FCA PRA

R

- (1) A *firm* must notify the *appropriate regulator* of:
  - (a) a significant breach of a *rule* (which includes a *Principle*) or *Statement of Principle*; or
  - (b) a breach of any requirement imposed by the *Act* or by regulations or an order made under the *Act* by the Treasury (except if the breach is an *offence*, in which case (c) applies);
  - (c) the bringing of a prosecution for, or a conviction of, any *offence* under the *Act*;
  - (d) a breach of a directly applicable provision in the *MiFID Regulation*; or
  - (e) a breach of any requirement in regulation 4C(3) (or any successor provision) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007; or

- (ea) a breach of a directly applicable provision in the *auction regulation*; or
- (f) it exceeding (or becoming aware that it will exceed) the limit in ■ BIPRU 10.5.6 R;

by (or as regards (c) against) the *firm* or any of its *directors, officers, employees, approved persons, or appointed representatives* or, where applicable, *tied agents*.

- (2) A *firm* must make the notification in (1) immediately it becomes aware, or has information which reasonably suggests, that any of the matters in (1) has occurred, may have occurred or may occur in the foreseeable future.

15.3.11A  
FCA PRA

G

■ SUP 15.3.11 R(1)(e) relates to the standard requirement in the *permission* of those *firms* which fall outside *MiFID* because of the Treasury's implementation of Article 3 of *MiFID*. *Guidance* on how the Treasury has exercised the Article 3 exemption for the *United Kingdom* is given in Q48 and the following questions and answers in ■ PERG 13.5 (Exemptions from MiFID).

15.3.12  
FCA PRA

G

In ■ SUP 15.3.11 R(1)(a), significance should be determined having regard to potential financial losses to *customers* or to the *firm*, frequency of the breach, implications for the *firm's* systems and controls and if there were delays in identifying or rectifying the breach.

15.3.13  
FCA PRA

G

In assessing whether an event that may occur in the foreseeable future should be notified to the *appropriate regulator*, a *firm* should consider the *guidance* in ■ SUP 15.3.3 G.

15.3.14  
FCA PRA

G

A notification under ■ SUP 15.3.11 R should include:

- (1) information about any circumstances relevant to the breach or *offence*;
- (2) identification of the *rule* or requirement or *offence*; and
- (3) information about any steps which a *firm* or other *person* has taken or intends to take to rectify or remedy the breach or prevent any future potential occurrence.

**Civil, criminal or disciplinary proceedings against a firm**

15.3.15  
FCA PRA

R

A *firm* must notify the *appropriate regulator* immediately if:

- (1) civil proceedings are brought against the *firm* and the amount of the claim is significant in relation to the *firm's* financial resources or its reputation; or
- (2) any action is brought against the *firm* under section 71 of the *Act* (Actions for damages) or section 150 (Actions for damages); or

- (3) disciplinary measures or sanctions have been imposed on the *firm* by any statutory or regulatory authority, professional organisation or trade body (other than the *appropriate regulator*) or the *firm* becomes aware that one of those bodies has started an investigation into its affairs; or
- (4) the *firm* is prosecuted for, or convicted of, any *offence* involving fraud or dishonesty, or any penalties are imposed on it for tax evasion; or
- (5) it is an *OPS firm*, which is a trustee, and is removed as trustee by a court order.

15.3.16  
FCA PRA

G

A notification under ■ SUP 15.3.15 R should include details of the matter and an estimate of the likely financial consequences, if any.

**Fraud, errors and other irregularities**

15.3.17  
FCA PRA

R

A *firm* must notify the *appropriate regulator* immediately if one of the following events arises and the event is significant:

- (1) it becomes aware that an *employee* may have committed a fraud against one of its *customers*; or
- (2) it becomes aware that a *person*, whether or not employed by it, may have committed a fraud against it; or
- (3) it considers that any *person*, whether or not employed by it, is acting with intent to commit a fraud against it; or
- (4) it identifies irregularities in its accounting or other records, whether or not there is evidence of fraud; or
- (5) it suspects that one of its *employees* may be guilty of serious misconduct concerning his honesty or integrity and which is connected with the *firm's regulated activities* or *ancillary activities*.

15.3.18  
FCA PRA

G

In determining whether a matter is significant, a *firm* should have regard to:

- (1) the size of any monetary loss or potential monetary loss to itself or its *customers* (either in terms of a single incident or group of similar or related incidents);
- (2) the risk of reputational loss to the *firm*; and
- (3) whether the incident or a pattern of incidents reflects weaknesses in the *firm's internal controls*.

15.3.19  
FCA PRA

G

The notifications under ■ SUP 15.3.17 R are required as the *appropriate regulator* needs to be aware of the types of fraudulent and irregular activity which are being attempted or undertaken, and to act, if necessary, to prevent effects on *consumers* or other *firms*. A



notification under ■ SUP 15.7.3 G should provide all relevant and significant details of the incident or suspected incident of which the *firm* is aware.

15.3.20  
FCA PRA

G

In addition, the *firm* may have suffered significant financial losses as a result of the incident, or may suffer reputational loss, and the *appropriate regulator* will wish to consider this and whether the incident suggests weaknesses in the *firm's internal controls*.

**Insolvency, bankruptcy and winding up**

15.3.21  
FCA PRA

R

A *firm* must notify the *appropriate regulator* immediately of any of the following events:

- (1) the calling of a meeting to consider a resolution for winding up the *firm*; or
- (2) an application to dissolve the *firm* or to strike it off the Register of Companies; or
- (3) the presentation of a petition for the winding up of the *firm*; or
- (4) the making of, or any proposals for the making of, a composition or arrangement with any one or more of its creditors; or
- (5) an application for the appointment of an administrator or trustee in bankruptcy to the *firm*; or
- (6) the appointment of a receiver to the *firm* (whether an administrative receiver or a receiver appointed over particular property); or
- (7) an application for an interim order against the *firm* under section 252 of the Insolvency Act 1986 (or, in Northern Ireland, section 227 of the Insolvency (Northern Ireland) Order 1989); or
- (8) if the *firm* is a *sole trader*:
  - (a) an application for a sequestration order on the *firm*; or
  - (b) the presentation of a petition for bankruptcy; or
- (9) anything equivalent to (1) to (8) above occurring in respect of the *firm* in a jurisdiction outside the *United Kingdom*.

15.3.22

FCA PRA

D

Lloyd's of London

■ SUP 15.3.23 D to ■ SUP 15.3.25 D are given in relation to the exercise of the powers of the *Society* and of the *Council* generally, with a view to achieving the objective of enabling the *appropriate regulator* to:

- (1) comply with its general duty under section 314 of the *Act* ( Regulators' general duty);
- (2) determine whether *underwriting agents*, or *approved persons* acting for them or on their behalf, are complying with the requirements imposed on them by or under the *Act*;
- (3) enforce the provisions of the *Act*, or requirements made under the *Act*, by enabling the *appropriate regulator* to consider, where appropriate, whether it should use its powers, for example, to:
  - (a) vary or cancel the *permission* of an *underwriting agent*, under section 55J of the *Act* (Variation or cancellation on initiative of regulator );
  - (b) withdraw approval from an *approved person* acting for or on behalf of an *underwriting agent*, under section 63 of the *Act* (Withdrawal of approval) (see ■ EG 9 );
  - (c) prohibit an individual acting for or on behalf of an *underwriting agent* from involvement in *regulated activities*, under section 56 of the *Act* (Prohibition orders) (see ■ EG 9 );
  - (d) require an *underwriting agent* to make restitution, under section 384 of the *Act* (Power of FCA or PRA to require restitution) (see ■ EG 11 );
  - (e) discipline an *underwriting agent*, or an *approved person* acting for it or on its behalf, for a breach of a requirement made under the *Act*, including the *Principles*, *Statements of Principle* and *rules* (see ■ DEPP 6 and ■ EG 7 );
  - (f) apply to court for an *injunction*, restitution order or *insolvency order* (see ■ EG 10, ■ EG 11 and ■ EG 13 ); and
  - (g) prosecute any criminal offence that the *appropriate regulator* has power to prosecute under the *Act* (see ■ EG 12 ).

15.3.23

FCA PRA

D

The *Society* must immediately inform the *appropriate regulator* in writing if it becomes aware that any matter likely to be of material concern to the *appropriate regulator* may have arisen in relation to:

- (1) the *regulated activities* for which the *Society* has *permission*; or
- (2) *underwriting agents*; or
- (3) *approved persons* or individuals acting for or on behalf of *underwriting agents*.

15.3.24  
FCA PRA



The *Society* must inform the *appropriate regulator* if it commences investigations or disciplinary proceedings relating to apparent breaches:

- (1) of the *Act* or requirements made under the *Act*, including the *threshold conditions* or the *Principles* or other *rules*, by an *underwriting agent*; or
- (2) of the *Statements of Principle* by an individual or other *person* who carries out *controlled functions* for or on behalf of an *underwriting agent*.

15.3.25  
FCA PRA



The *Society* must inform the *appropriate regulator* if it commences investigations or disciplinary proceedings which do not fall within the scope of ■ SUP 15.3.24 D but which:

- (1) involve an *underwriting agent*, or an *approved person* who carries out *controlled functions* for it or on its behalf; or
- (2) may indicate that an individual acting for or on behalf of an *underwriting agent* may not be a fit and proper *person* to perform functions in relation to *regulated activities*.

**15.4 Notified persons**

**15.4.1**

**FCA PRA**

**R**

- (1) An *overseas firm*, which is not an *incoming firm*, must notify the *appropriate regulator* within 30 *business days* of any *person* taking up or ceasing to hold the following positions:
  - (a) the *firm's* worldwide chief executive (that is, the *person* who, alone or jointly with one or more others, is responsible under the immediate authority of the *directors* for the whole of its business) if the *person* is based outside the *United Kingdom*;
  - (b) the *person* within the *overseas firm* with a purely strategic responsibility for *UK* operations (see ■ SUP 10.7.4 G);
  - (c) for a *bank*: the two or more *persons* who effectively direct its business in accordance with ■ SYSC 4.2.2 R ;
  - (d) for an *insurer*: the *authorised UK representative*.
- (2) The notification in (1) must be submitted in the form set out in Form F (■ SUP 15 Ann 2 R). However, if the *person* is an *approved person*, notification giving details of his name, the *approved person's* individual reference number and the position to which the notification relates, is sufficient.

**15.4.2**

**FCA PRA**

**G**

■ SUP 15.4.1 R is not made under the powers conferred on the *appropriate regulator* by Part V of the *Act* (Performance of Regulated Activities). A *person* notified to the *appropriate regulator* under ■ SUP 15.4.1 R is not subject to the *Statements of Principle* or *Code of Practice for Approved Persons*, unless he is also an *approved person*.

**15.4.3**

**FCA PRA**

**R**

- (1) A *firm* other than a *credit union* must submit the form in ■ SUP 15 Ann 2 R online \_ using the *appropriate regulator's* ONA system.
- (2) A *credit union* must submit the form in ■ SUP 15 Ann 2 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).
- (3) Where a *firm* is obliged to submit an application online under (1), if the *appropriate regulator's* information technology systems fail

and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit the form in ■ SUP 15 Ann 2 R, in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

15.4.3A G  
FCA PRA

- (1) If the *appropriate regulator's* information technology systems fail and online submission is unavailable for 24 hours or more, the *appropriate regulator* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 15.4.3R(3) and ■ SUP 15.7.4R to ■ SUP 15.7.9G (Form and method of notification) should be used.
- (2) Where ■ SUP 15.4.3R (3) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

15.4.4 G  
FCA PRA

If adverse information is revealed about a *person* notified to the *appropriate regulator* under ■ SUP 15.4.1 R, the *appropriate regulator* may exercise its *own-initiative power* against the *firm* (see ■ SUP 7 (Individual requirements)).



## 15.5 Core information requirements

### Change in name

15.5.1

R

FCA PRA

A *firm* must give the *appropriate regulator* reasonable advance notice of a change in:

- (1) the *firm's* name (which is the registered name if the *firm* is a *body corporate*);
- (2) any business name under which the *firm* carries on a *regulated activity* or *ancillary activity* either from an establishment in the *United Kingdom* or with or for clients in the *United Kingdom*.

15.5.2

G

FCA PRA

A notification under ■ SUP 15.5.1 R should include the details of the proposed new name and the date on which the *firm* intends to implement the change of name.

15.5.3

G

FCA PRA

*Firms* are reminded that certain name changes (for example, to include 'Limited') may also require a notification under . ■ SUP 5.5.1 R

### Change in address

15.5.4

R

FCA PRA

A *firm* must give the *appropriate regulator* reasonable advance notice of a change in any of the following addresses, and give details of the new address and the date of the change:

- (1) the *firm's* principal place of business in the *United Kingdom*;
- (2) in the case of an *overseas firm*, its registered office (or head office) address.

### Change in telephone numbers

15.5.5

R

FCA PRA

A *firm* must give the *appropriate regulator* reasonable advance notice of a change in any of the following telephone numbers, and give details of the new telephone number and the date of the change:

- (1) the number of the *firm's* principal place of business in the *United Kingdom*;

(2) in the case of an *overseas firm*, the number of its head office.

15.5.6  
FCA PRA

G

■ SUP 15.5.4 R and ■ SUP 15.5.5 R mean that a *firm* should notify the *appropriate regulator* of a change in telephone number even if the address of the office is not changing.

**Other regulators**

15.5.7  
FCA PRA

R

A *firm* must notify the *appropriate regulator* immediately if it becomes subject to or ceases to be subject to the supervision of any *overseas regulator* (including a *Home State regulator*).

15.5.8  
FCA PRA

G

The *appropriate regulator's* approach to the supervision of a *firm* is influenced by the regulatory regime and any legislative or foreign provisions to which that *firm*, including its branches, is subject.

**Submitting notifications to the appropriate regulator**

15.5.9  
FCA PRA

R

(1) A *firm* other than a *credit union* must submit any notice under ■ SUP 15.5.1R, ■ SUP 15.5.4R and ■ SUP 15.5.5 R by submitting the form in ■ SUP 15 Ann 3R online at the *appropriate regulator's* website.

(2) A *credit union* must submit any notice under ■ SUP 15.5.1R, ■ SUP 15.5.4R, ■ SUP 15.5.5 R and ■ SUP 15.5.7R by submitting the form in ■ SUP 15 Ann 3R in the way set out in ■ SUP 15.7.4R to ■ SUP 15.7.9G (Form and method of notification).

(3) Where a *firm* is obliged to submit a notice online under (1), if the *appropriate regulator's* information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit any notice under ■ SUP 15.5.1R, ■ SUP 15.5.4R and ■ SUP 15.5.5 R in the form in ■ SUP 15 Ann 3R and in the way set out in ■ SUP 15.7.4R to ■ SUP 15.7.9G (Form and method of notification).

(4) A *firm* must submit any notice required under ■ SUP 15.5.7 R by submitting the form in ■ SUP 15 Ann 4 R in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

15.5.10  
FCA PRA

G

(1) If the *appropriate regulator's* information technology systems fail and online submission is unavailable for 24 hours or more, the *appropriate regulator* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 15.5.9R(3) and ■ SUP 15.7.4R to ■ SUP 15.7.9G (Form and method of notification) should be used.

(2) Where ■ SUP 15.5.9 R (2) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.



## 15.6 Inaccurate, false or misleading information

### 15.6.1

FCA PRA

R

A *firm* must take reasonable steps to ensure that all information it gives to the *appropriate regulator* in accordance with a *rule* in any part of the *Handbook* (including *Principle 11*) is:

- (1) factually accurate or, in the case of estimates and judgments, fairly and properly based after appropriate enquiries have been made by the *firm*; and
- (2) complete, in that it should include anything of which the *appropriate regulator* would reasonably expect notice.

### 15.6.2

FCA PRA

G

■ SUP 15.6.1 R applies also in relation to *rules* outside this chapter, and even if they are not *notification rules*. Examples of *rules* and chapters to which ■ SUP 15.6.1 R is relevant, are:

- (1) *Principle 11*, and the guidance on *Principle 11* in ■ SUP 2 (Information gathering by the FCA and PRA on their own initiative);
- (2) ■ SUP 15 (Notifications to the *appropriate regulator*);
- (3) ■ SUP 16 (Reporting requirements);
- (4) ■ SUP 17 (Transaction reporting);
- (5) any *notification rule* (see Schedule 2 which contains a consolidated summary of such *rules*);
- (6) ■ DISP 1.9 (Complaints record rule); and
- (7) ■ DISP 1.10 (Complaints reporting rule).

### 15.6.3

FCA PRA

G

If a *firm* is unable to obtain the information required in ■ SUP 15.6.1 R(2), then it should inform the *appropriate regulator* that the scope of the information provided is, or may be, limited.

### 15.6.4

FCA PRA

R

If a *firm* becomes aware, or has information that reasonably suggests that it has or may have provided the *appropriate regulator* with information which was or may have been false, misleading, incomplete or inaccurate,



or has or may have changed in a material particular, it must notify the *appropriate regulator* immediately. Subject to ■ SUP 15.6.5 R, the notification must include:

- (1) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;
- (2) an explanation why such information was or may have been provided; and
- (3) the correct information.

15.6.5

FCA PRA

R

If the information in ■ SUP 15.6.4 R (3) cannot be submitted with the notification (because it is not immediately available), it must instead be submitted as soon as possible afterwards.

15.6.6

FCA PRA

G

The *appropriate regulator* may request the *firm* to provide revised documentation containing the correct information, if appropriate.

15.6.7

FCA PRA

G

*Firms* are reminded that section 398 of the *Act* (Misleading the FCA or PRA: residual cases) makes it an *offence* for a *firm* knowingly or recklessly to provide the *appropriate regulator* with information which is false or misleading in a material particular in purported compliance with the *appropriate regulator's rules* or any other requirement imposed by or under the *Act*. An offence by a *body corporate, partnership* or unincorporated association may be attributed to an *officer* or certain other *persons* (section 400 of the *Act* (Offences by bodies corporate etc)).



## 15.7 Form and method of notification

### Form of notification: oral or written

15.7.1

FCA PRA

R

A notification required from a *firm* under any *notification rule* must be given in writing, and in English, and must be submitted on the form specified for that *notification rule*, or if no form is specified, on the form in ■ SUP 15 Ann 4 R (Notification form), and must give the *firm's* Firm Reference Number unless:

- (1) the *notification rule* states otherwise; or
- (2) the notification is provided solely in compliance with *Principle 11* (see ■ SUP 15.3.7 G).

15.7.2

FCA PRA

G

A *firm* should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *appropriate regulator* by telephone or by other prompt means of communication, before submitting a written notification. Oral notifications should be given directly to the *firm's* usual supervisory contact at the *appropriate regulator*. An oral notification left with another person or left on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

15.7.3

FCA PRA

G

The *appropriate regulator* is entitled to rely on any information it receives from a *firm* and to consider any notification received as being made by a *person* authorised by the *firm* to do so. A *firm* should therefore consider whether it needs to put procedures in place to ensure that only appropriate *employees* make notifications to the *appropriate regulator* on its behalf.

### Method of notification

15.7.4

FCA PRA

R

Unless stated in the *notification rule*, or on the relevant form (if specified), a written notification required from a *firm* under any *notification rule* must be:

- (1) given to or addressed for the attention of the *firm's* usual supervisory contact at the *appropriate regulator*; and
- (2) delivered to the *appropriate regulator* by one of the methods in ■ SUP 15.7.5A R or ■ SUP 15.7.5B R as applicable:

15.7.5 **R** Table

[deleted]

15.7.5A **R** Methods of notification

**FCA**

Method of delivery	
1.	<b>Post to the appropriate address in SUP 15.7.6A G</b>
2.	<b>Leaving the notification at the appropriate address in SUP 15.7.6A G and obtaining a time-stamped receipt</b>
3.	<b>Electronic mail to an address for the <i>firm's</i> usual supervisory contact at the <i>FCA</i> and obtaining an electronic confirmation of receipt</b>
4.	<b>Hand delivery to the <i>firm's</i> usual supervisory contact at the <i>FCA</i></b>
5.	<b>Fax to a fax number for the <i>firm's</i> usual supervisory contact at the <i>FCA</i> and receiving a successful transmission report for all pages of the notification</b>
6.	<b>Online submission via the <i>FCA's</i> website at [website TBC].</b>

15.7.5B **R** Methods of notification

**PRA**

Method of delivery	
1.	<b>Post to the appropriate address in SUP 15.7.6B G</b>
2.	<b>Leaving the notification at the appropriate address in SUP 15.7.6B G and obtaining a time-stamped receipt</b>
3.	<b>Electronic mail to an address for the <i>firm's</i> usual supervisory contact at the <i>PRA</i> and obtaining an electronic confirmation of receipt</b>
4.	<b>Hand delivery to the <i>firm's</i> usual supervisory contact at the <i>PRA</i></b>
5.	<b>Fax to a fax number for the <i>firm's</i> usual supervisory contact at the <i>PRA</i> and receiving a successful transmission report for all pages of the notification</b>
6.	<b>Online submission via the <i>PRA's</i> website at [website TBC].</b>

15.7.6 **G** [deleted]

15.7.6A **G** The current published address of the *FCA* for postal submission or hand delivery of notifications is:

**FCA**

(1) if the *firm's* usual supervisory contact at the *FCA* is based in London, or

(2) **The Financial Conduct Authority  
Quayside House 127**

Fountainbridge  
Edinburgh EH3 8DJ

if the *firm's* usual supervisory contact at the *FCA* is based in Edinburgh.

**15.7.6B** PRA G The current published address of the *PRA* for postal submission or hand delivery of notifications is:

**15.7.7** FCA PRA G If the *firm* or its *group* is subject to lead supervision arrangements by the *appropriate regulator*, the *firm* or *group* may give or address a notice under ■ SUP 15.7.4 R(1) to the supervisory contact at the *appropriate regulator*, designated as lead supervisor, if the *firm* has chosen to make use of the lead supervisor as a central point of contact (see ■ SUP 1.5).

**15.7.8** FCA PRA G If a *firm* is a member of a *group* which includes more than one *firm*, any one *undertaking* in the *group* may notify the *appropriate regulator* on behalf of all *firms* in the *group* to which the notification applies. In this way, that *undertaking* may satisfy the obligation of all relevant *firms* in the *group* to notify the *appropriate regulator*. Nevertheless, the obligation to make the notification remains the responsibility of the individual *firm* itself. See also ■ SUP 15.7.3 G.

**15.7.9** FCA PRA G *Firms* wishing to communicate with the *appropriate regulator* by electronic mail or fax should obtain the appropriate address or number from the *appropriate regulator*.

**Timely notification**

**15.7.10** FCA PRA R If a *notification rule* requires notification within a specified period:

- (1) the *firm* must give the notification so as to be received by the *appropriate regulator* no later than the end of that period; and
- (2) if the end of that period falls on a *day* which is not a *business day*, the notification must be given so as to be received by the *appropriate regulator* no later than the first *business day* after the end of that period.

**15.7.11** FCA PRA G If a *notification rule* does not require notification within a specified period, the *firm* should act reasonably in deciding when to notify.

**Underwriting agents: notification to the Society of Lloyd's**

**15.7.12** R (1) [deleted]  
(2) [deleted]

**15.7.13** G [deleted]

**15.7.14** FCA PRA G The *appropriate regulator* has made arrangements with the *Society of Lloyd's* with respect to the monitoring of *underwriting agents*. *Underwriting agents* should check whether

these arrangements provide for any notifications required under this chapter to be sent to the *Society* instead of to the *appropriate regulator*. [For further details see the *appropriate regulator's* website.]

**Consequences of breach of form and method rules**

15.7.15

FCA PRA

G

If a *firm* fails to comply with the *rules* in this section then the notification is invalid and there may be a breach of the *rule* that required the notification to be given.

**Service of Notices Regulations**

15.7.16

FCA PRA

G

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) contain provisions relating to the service of documents on the *appropriate regulator*. They do not apply to notifications required under *notification rules* because of the specific *rules* in this section.



**15.8 Notification in respect of particular products and services**

**Management of occupational pension scheme assets**

15.8.1  
FCA

R

A *firm* which manages the assets of an *occupational pension scheme* must notify the *FCA* as soon as reasonably practicable if it receives any request or instruction from a trustee which it:

- (1) knows; or
- (2) on substantial grounds:
  - (a) suspects; or
  - (b) has cause reasonably to suspect;

is at material variance with the trustee's duties.

**Individual Pension Accounts**

15.8.2  
FCA

R

If a *firm* begins or ceases to administer *individual pension accounts*, it must notify the *FCA* as soon as reasonably practicable that it has done so.

**Insurers' commission clawback**

15.8.3  
FCA

R

- (1) An *insurer* must notify the *FCA* in respect of any *firm* (the "intermediary") as soon as reasonably practicable if:
  - (a) any amount of *commission* due from the intermediary to the *insurer* in accordance with an indemnity commission clawback arrangement remains outstanding for four *months* after the date when the *insurer* gave notice to the intermediary that the relevant *premium* had not been paid; or
  - (b) any amount of *commission* due from the intermediary to the *insurer* as a result of either the cancellation of an investment agreement or overpayment of *commission* remains outstanding for four *months* after the date on which the *insurer* gave notice to the intermediary that cancellation or overpayment had occurred.

- (2) A notification in (1):

- (a) need not be given unless the total amounts outstanding under (1)(a) and (b) in respect of the intermediary exceed £1,000; and
  - (b) must give the identity of the intermediary and the amount of *commission* which remains outstanding.
- (3) In (1) an "indemnity commission clawback arrangement" is an arrangement under which:
- (a) an insurer pays *commission* to an intermediary before the date on which the *premium* is due under the relevant *investment agreement*; and
  - (b) the *insurer* requires repayment of the *commission*, if the *investment agreement* is terminated by reason of a failure to pay a premium.

**Money service business and trust or company service providers**

15.8.4  
FCA

G

- (1) In accordance with article 31 of the *Money Laundering Regulations*, with effect from 15 December 2007 , a *firm* is required to notify the *FCA*:
  - (a) before it begins or within 28 days of it beginning ; and
  - (b) immediately after it ceases;
 to operate a money service business or a trust or company service provider.
- (2) The notification referred to in (1) should be made in accordance with the requirements in ■ SUP 15.7 (Form and method of notification)

15.8.5  
FCA

G

A *firm* which is already operating a money service business or a trust or company service provider as at 15 December 2007 is required by the *Money Laundering Regulations* to notify the *FCA* of that fact and should do so in the manner specified in ■ SUP 15.8.4 G(2) before 15 January 2008 .

**Delegation by UK UCITS management companies**

15.8.6  
FCA

R

If a *UK UCITS management company* intends to delegate to a third party any one or more of its functions for the more efficient conduct of its business, it must first inform the *FCA* in an appropriate manner.

[Note: article 13(1)(a) of the *UCITS Directive*]

15.8.7  
FCA

G

A *UK UCITS management company* which delegates any of its functions to a third party must, as well as complying with ■ SUP 15.8.6 R, comply with the requirements in ■ SYSC 8.1.13 R (Additional requirements for a management company) and ■ COLL 6.6.15 A R.

**CTF providers**

15.8.8

FCA

**R**

- (1) If a *firm* begins or ceases to hold itself out as acting as a *CTF provider*, it must notify the *FCA* as soon as reasonably practicable that it has done so.
- (2) A *firm* that acts as a *CTF provider* must provide the *FCA*, as soon as reasonably practicable, with details of:
  - (a) any third party administrator that it engages;
  - (b) details of whether it intends to offer *HMRC allocated CTFs* ;  
and
  - (c) whether it intends to provide its own *stakeholder CTF* account.

15.8.9

FCA

PRA

**R**

A *BIPRU firm* must report to the *appropriate regulator* immediately any case in which its counterparty in a *repurchase agreement* or *reverse repurchase agreement* or *securities or commodities lending or borrowing transaction* defaults on its obligations.





## 15.9 Notifications by members of financial conglomerates

15.9.1

FCA PRA

R

A *firm* that is a *regulated entity* must notify the *appropriate regulator* immediately it becomes aware that any *consolidation group* of which it is a member:

- (1) is a *financial conglomerate*; or
- (2) has ceased to be a *financial conglomerate*.

15.9.2

FCA PRA

R

(1) A *firm* that is a *regulated entity* must establish whether or not any *consolidation group* of which it is a member:

- (a) is a *financial conglomerate*; or
- (b) has ceased to be a *financial conglomerate*;

if:

- (c) the *firm* believes; or
- (d) a reasonable *firm* that is complying with the requirements of the *regulatory system* would believe;

that it is likely that (a) or (b) is true.

(2) A *firm* does not need to determine whether (1)(a) is the case if the *consolidation group* is already being regulated as a *financial conglomerate*.

(3) A *firm* does not need to determine whether (1)(b) is the case if notification has already been given as contemplated by

■ SUP 15.9.4 R.

15.9.3

FCA PRA

G

A *firm* should consider the requirements in ■ SUP 15.9.2 R on a continuing basis, and in particular, when the *group* prepares its financial statements and on the occurrence of an event affecting the consolidated *group*. Such events include, but are not limited to, an acquisition, merger or sale.

15.9.4

FCA PRA

R

A *firm* does not have to give notice to the *appropriate regulator* under ■ SUP 15.9.1 R if it or another member of the *consolidation group* has already given notice of the relevant fact to:

- (1) the *appropriate regulator*; or
- (2) (if another *competent authority* is *co-ordinator* of the *financial conglomerate* ) that *competent authority*; or
- (3) (in the case of a *financial conglomerate* that does not yet have a *co-ordinator* ) the *competent authority* who would be *co-ordinator* under Article 10(2) of the *Financial Groups Directive* (Competent authority responsible for exercising supplementary supervision (the *co-ordinator*)).



## 15.10 Reporting suspicious transactions (market abuse)

### Application: where

15.10.1

FCA

R

This section applies in relation to activities carried on from an establishment maintained by the *firm* or its *appointed representative* in the *United Kingdom*. [Note: Article 7 2004/72/EC]

### Notification of suspicious transactions: general

15.10.2

FCA

R

A *firm* which *arranges* or *executes* a transaction with or for a client in a *qualifying investment* admitted to trading on a *prescribed market* and which has reasonable grounds to suspect that the transaction might constitute *market abuse* must notify the *FCA* without delay. [Note: Article 6(9) *Market Abuse Directive*]

### Notification of suspicious transactions: investment firms and credit institutions

15.10.3

FCA

R

A *firm*, that is an *investment firm* or a *credit institution*, must decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves *market abuse*, taking into account the elements constituting *market abuse*. [Note: Articles 1(3) and 7 2004/72/EC]

15.10.4

FCA

G

- (1) Notification of suspicious transactions to the *FCA* requires sufficient indications (which may not be apparent until after the transaction has taken place) that the transaction might constitute *market abuse*. In particular a *firm* will need to be able to explain the basis for its suspicion when notifying the *FCA* (see ■ SUP 15.10). Certain transactions by themselves may seem completely devoid of anything suspicious, but might deliver such indications of possible *market abuse*, when seen in perspective with other transactions, certain behaviour or other information (though *firms* are not expected to breach effective information barriers put in place to prevent and avoid conflicts of interest so as actively to seek to detect suspicious transactions). [Note: Recital 9 2004/72/EC]
- (2) Assistance in identifying the elements constituting *market abuse* may be derived from the *Code of Market Conduct* (■ MAR 1), and some example indications of *market abuse* are set out in ■ SUP 15 Ann 5 G. A fuller set of example indications is published by the Committee of European Securities Regulators (CESR).

15.10.5

FCA

R

**Timeframe for notification: investment firms and credit institutions**

If an *investment firm* or a *credit institution* becomes aware of a fact or information that gives reasonable ground for suspicion concerning a transaction, it must make its notification under this section without delay. [Note: Article 8 2004/72/EC]

15.10.6

FCA

R

**Content of notification: investment firms and credit institutions**

- (1) If an *investment firm* or a *credit institution* is obliged to make a notification to the FCA under this section, it must transmit to the FCA the following information:
  - (a) a description of the transaction, including the type of order (such as limit order, market order or other characteristics of the order) and the type of trading market (such as block trade); and
  - (b) the reasons for suspicion that the transaction might constitute *market abuse*.
- (2) In addition the following information must be provided to the FCA as soon as it becomes available:
  - (a) the means for identification of the *persons* on behalf of whom the transaction has been carried out, and of other *persons* involved in the relevant transaction;
  - (b) the capacity in which the *firm* operates (such as for own account or on behalf of third parties); and
  - (c) any other information which may have significance in reviewing the suspicious transaction. [Note: Article 9 2004/72/EC]

15.10.7

FCA

R

**Means of notification: investment firms and credit institutions**

An *investment firm* or a *credit institution* making a notification to the FCA under this section may do so:

- (1) by mail to:
 

Market Conduct Team

25 The North Colonnade

Canary Wharf London E14 5HS; or
- (2) by electronic mail to [market.abuse@fca.org.uk](mailto:market.abuse@fca.org.uk);
- (3) by facsimile to the Market Conduct Team on 020 7066 4091 ; or
- (4) by telephone to the market abuse helpline 020 7066 4900 . [Note: Article 10 2004/72/EC]

15.10.8

FCA

G

- (1) If a notification is made by telephone, the *FCA* may subsequently request confirmation of the notification in writing. [Note: Article 10 2004/72/EC]
- (2) When making a notification in writing it may be convenient to use the form for suspicious transaction reports provided on the *FCA*'s website. This form follows the common standard approved by *ESMA* (formerly known as *CESR*).

**Liability and professional secrecy: investment firms and credit institutions**

15.10.9

FCA

R

- (1) An *investment firm* or a *credit institution* which notifies the *FCA* under this section must not inform any other *person*, in particular the *persons* on behalf of whom the transaction has been carried out or parties related to those persons, of this notification, except in accordance with an obligation imposed by or under statute.
- (2) Notwithstanding any other provision of the *Handbook* a notification in good faith under this section to the *FCA* does not constitute a breach of any restriction on disclosure of information imposed by the *Handbook*. [Note: Article 11 2004/72/EC]

Note: Section 131A of the *Act* sets out additional protections from liability for a *person* who makes a notification to the *FCA* under this section (or who passes the relevant information to someone designated by his employer to do so).

Application of SUP 15 to incoming EEA firms and incoming Treaty firms

**FCA** **PRA**

- 1 . SUP 15 applies in full to an *incoming EEA firm*, or *incoming Treaty firm* , which has a *top-up permission*.
- 2 . [deleted]
- 2A [deleted]
- 3 . For any other *incoming EEA firm* or *incoming Treaty firm*, SUP 15 applies as set out in the following table.

Applicable sections		Application
SUP 15.1, SUP 15.2	Application, Purpose	Apply in full
SUP 15.3.1 R to SUP 15.3.6 G	Matters having a serious regulatory impact	SUP 15.3.1 R does not apply, otherwise apply in full
SUP 15.3.7 G to SUP 15.3.10 G	Communication with the <i>appropriate regulator</i> in accordance with Principle 11	Apply in so far as responsibility for the matter in question is not reserved by an <i>EU instrument</i> to the <i>firm's Home State regulator</i>
SUP 15.3.1 R to SUP 15.3.14 G	Breaches of rules and other requirements in or under the Act	Apply in full
SUP 15.3.1 R to SUP 15.3.16 G	Civil, criminal or disciplinary proceedings against a firm	Apply in so far as responsibility for the matter in question is not reserved by an <i>EU instrument</i> to the <i>firm's Home State regulator</i>
SUP 15.3.1 R to SUP 15.3.20 G	Fraud, errors and other irregularities	Apply in so far as responsibility for the matter in question is not reserved by an <i>EU instrument</i> to the <i>firm's Home State regulator</i>
SUP 15.3.2 G	Insolvency, bankruptcy and winding up	Apply in so far as responsibility for the matter in question is not reserved by an <i>EU instrument</i> to the <i>firm's Home State regulator</i>
SUP 15	Notified persons	Does not apply
SUP 15.5.1 R to SUP 15.5.3 G	Change in name	Apply in full
SUP 15.5.4 R	Change in address: principal place of business in the UK	Applies in full

Applicable sections		Application
SUP 15.5.4 R (2)	Change in address: registered office	Applies to an <i>incoming Treaty firm</i> . Does not apply to an <i>incoming EEA firm</i> , but see SUP 14 (Incoming EEA firms: changing authorisation and cancelling qualification for authorisation).
SUP 15.5.5 R to SUP 15.5.6 G	Change in telephone numbers	Applies in full
SUP 15.5.7 R and SUP 15.5.8 G	Other regulators	Apply in so far as responsibility for the matter in question is not reserved by an <i>EU instrument</i> to the <i>firm's Home State regulator</i>
SUP 15.6	Inaccurate, false or misleading information	Applies in full
SUP 15.7	Form and method of notification	Applies in full
SUP 15.8	Notifications in respect of particular products and services	Applies in full
SUP 15.10	Reporting suspicious transactions (market abuse)	Applies in relation to activities carried on from an establishment maintained by the firm or its <i>appointed representative in the United Kingdom</i> . [Note: Article 7 2004/72/EC]

**FCA**

- (1) ■ SUP 15 does not apply to an *incoming EEA firm* which has *permission* for *cross border services* only and which does not carry on *regulated activities* in the *United Kingdom*.
- (2) ■ SUP 15 does not apply to an *EEA pure reinsurer* which does not have a *top-up permission*.

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## Form F: Changes in notified persons

**FCA** **PRA**

This annex consists only of one or more forms. Forms can be completed online now by visiting: the *appropriate regulator's* website.

The forms are also to be found through the following address:

*Supervision forms - SUP 15 Annex 2*





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## Standing data form

**FCA** **PRA**

This annex consists only of one or more forms. Forms can be completed online now by visiting: the *appropriate regulator's* website.

The forms are also to be found through the following address:

*Standing Data* - SUP 15 Annex 3



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## Notification form

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Notifications Form* - SUP 15 Annex 4



## Indications of Possible Suspicious Transactions

### FCA

1. The following examples of indications are intended to be a starting point for consideration of whether a transaction is suspicious. They are neither conclusive nor comprehensive.

#### Possible Signals of Insider Dealing

2. A client opens an account and immediately gives an order to conduct a significant transaction or, in the case of a wholesale client, an unexpectedly large or unusual order, in a particular security - especially if the client is insistent that the order is carried out very urgently or must be conducted before a particular time specified by the client.
3. A transaction is significantly out of line with the client's previous investment behaviour (e.g. type of security; amount invested; size of order; time security held).
4. A client specifically requests immediate execution of an order regardless of the price at which the order would be executed (assuming more than a mere placing of 'at market' order by the client).
5. There is unusual trading in the shares of a company before the announcement of price sensitive information relating to the company.
6. An employee's own account transaction is timed just before clients' transactions and related orders in the same financial instrument.

#### Possible signals of Market Manipulation

7. An order will, because of its size in relation to the market in that security, clearly have a significant impact on the supply of or demand for or the price or value of the security, especially an order of this kind to be executed near to a reference point during the trading day - e.g. near the close.
8. A transaction appears to be seeking to modify the valuation of a position while not decreasing/increasing the size of that position.
9. A transaction appears to be seeking to bypass the trading safeguards of the market (e.g. as regards volume limits; bid/offer spread parameters; etc).



# Chapter 15A

## Application and notifications under EMIR





**15A.1 Application and notifications under EMIR**

**15A.1.1**  
**FCA**

**G**

Where a *person* intends to rely on article 4(2), 10(2) or 89(2) of *EMIR* for an exemption from the clearing obligation set out in article 4(1) or 10(1) of *EMIR*, the *person* should make their application or notification to the *FCA* in such manner, and by providing such information, as the *FCA* directs or requires.

**15A.1.2**  
**FCA**

**G**

Where a *person* makes a notification in respect of the obligation set out in article 10(1)(a) of *EMIR*, the *person* should make the notification to the *FCA* in such manner, and by providing such information, as the *FCA* directs or requires.

**15A.1.3**  
**FCA**

**G**

Where a *person* intends to rely on article 11(6), (7), (8), 9) or (10) for an exemption from the obligation to implement risk management procedures set out in article 11(3) of *EMIR*, the *person* should make their application or notification to the *FCA* in accordance with *EMIR requirements*.

**15A.1.4**  
**FCA**

**G**

The *FCA* may require any information referred to in ■ SUP 15A.1.1 G to ■ SUP 15A.1.3 G above to be provided in such form, or to be verified in such a way, as the *FCA* may reasonably direct.

**15A.1.5**  
**FCA**

**G**

At any time after receiving an application or notification for exemption from, or a notification in respect of, *EMIR requirements*, the *FCA* may require the *person* concerned to provide it with such further information as it reasonably considers necessary to enable it to determine the application or consider the notification.

# Chapter 16

## Reporting requirements



**16.1 Application**

**16.1.1**  
FCA PRA

**R**

This chapter applies to every *firm* within a category listed in column (2) of the table in ■ SUP 16.1.3 R and in accordance with column (3) of that table.

**16.1.1A**  
FCA

**D**

The directions and *guidance* in ■ SUP 16.13 apply to an *authorised payment institution* and a *small payment institution*.

**16.1.1B**  
FCA

**D**

The directions and *guidance* in ■ SUP 16.15 apply to *electronic money issuers* that are not *credit institutions*.

**16.1.2**  
FCA PRA

**G**

The only categories of *firm* to which no section of this chapter applies are:

- (1) an *ICVC*;
- (2) an *incoming EEA firm* or *incoming Treaty firm*, unless it is:
  - (a) a *firm* of a type listed in ■ SUP 16.1.3 R as a type of *firm* to which ■ SUP 16.6, ■ SUP 16.9 , ■ SUP 16.12, or ■ SUP 16.14 applies; or
  - (b) an *insurer* with *permission* to *effect* or *carry out life policies*;
  - (c) a *firm* with *permission* to *establish, operate or wind up a personal pension scheme* or a *stakeholder pension scheme*;
- (3) a *UCITS qualifier*.

**16.1.3**  
FCA PRA

**R**

**Table Application of different sections of SUP 16(excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17)**

(1) Sec- tion(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
SUP 16.1, SUP 16.2 and	<b>All categories of <i>firm</i> except:</b>	<b>Entire sections</b>

(1) Sec- tion(s)	(2) Categories of firm to which section applies		(3) Applicable rules and guidance
SUP 16.3			
	(a)	an <i>ICVC</i> ;	
	(b)	an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> , which is not:	
	(i)	a <i>firm</i> of a type to which SUP 16.6 or SUP 16.12 applies; or	
	(ii)	an <i>insurer</i> with <i>permission to effect or carry outlife policies</i> ; or	
	(iii)	a <i>firm</i> with <i>permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme</i> ;	
	(c)	a <i>UCITS qualifier</i> .	
SUP 16.4 and SUP 16.5	All categories of <i>firm</i> except:		Entire sections
	(-a)	a <i>credit union</i> ;	
	(a)	an <i>ICVC</i> ;	
	(b)	an <i>incoming EEA firm</i> ;	
	(c)	an <i>incoming Treaty firm</i> ;	
	(d)	a <i>non-directive friendly society</i> ;	
	(e)	[deleted]	
	(f)	a <i>sole trader</i> ;	
	(g)	a <i>service company</i> ;	
	(h)	a <i>UCITS qualifier</i> ;	
	(i)	a <i>firm</i> with <i>permission to carry on only retail investment activities</i> ;	
	(j)	a <i>firm</i> with <i>permission to carry on only insurance mediation activity</i> ,	

(1) Sec- tion(s)	(2) Categories of firm to which section applies		(3) Applicable rules and guidance
		<i>home finance mediation activity, or both;</i>	
	(k)	<i>a firm falling within both (i) and (j)</i>	
SUP 16.6	<i>Bank</i>		SUP 16.6.4 R to SUP 16.6.5 R
	<i>Depository of an ICVC</i>		SUP 16.6.6 R to SUP 16.6.9 G
	<i>OPS firm</i>		SUP 16.6.6 R to SUP 16.6.8 R
	<i>Trustee of an AUT</i>		SUP 16.6.6 R to SUP 16.6.9 G
SUP 16.8	<i>Insurer with permission to effect or carry out life policies, unless it is a non-directive friendly society</i>		Entire section
	<i>Firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme</i>		Entire section
SUP 16.9	<i>Firm with permission to advise on investments; arrange (bring about) deals in investments; make arrangements with a view to transactions in investments; or arrange safeguarding and administration of assets</i>		Entire section
SUP 16.10	All categories of <i>firm</i> except:		Entire section
	(a)	<i>an ICVC;</i>	
	(b)	<i>a UCITS qualifier;</i>	
	(c)	<i>a credit union; and</i>	
	(d)	<i>a dormant account fund operator.</i>	
SUP 16.11	A <i>firm</i> , other than a <i>managing agent</i> , which is:		Entire section
	(1)	<i>a home finance provider; or</i>	
	(2)	<i>an insurer; or</i>	

(1) Sec- tion(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
	(3) <b>the operator of a <i>regulated collective investment scheme</i> or an <i>investment trust savings scheme</i>; or</b>	
	(4) <b>a <i>person</i> who issues or manages the relevant assets of the issuer of a <i>structured capital-at-risk product</i>.</b>	
SUP 16.12	<b>A <i>firm</i> undertaking the <i>regulated activities</i> as listed in SUP 16.12.4 R, unless exempted in SUP 16.12.1 G</b>	<b>Sections as relevant to <i>regulated activities</i> as listed in SUP 16.12.4 R</b>
SUP 16.14	<b>A <i>CASS large firm</i> and a <i>CASS medium firm</i></b>	<b>Entire section</b>
<b>Note 1 [deleted]</b>		
<b>Note 2 = The application of SUP 16.13 is set out under SUP 16.13.1 G ; the application of SUP 16.15 is set out under SUP 16.15.1 G; the application of SUP 16.16 is set out SUP 16.16.1 R and SUP 16.16.2 R and the application of SUP 16.17 is set out in SUP 16.17.3 R and SUP 16.17.4 R .</b>		

16.1.4

FCA PRA

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- (1) This chapter contains requirements to report to the *appropriate regulator* on a regular basis. These requirements include reports relating to a *firm's* financial condition, and to its compliance with other *rules* and requirements which apply to the *firm*. Where the relevant requirements are set out in another section of the *Handbook*, this chapter contains cross references. An example of this is financial reporting for *insurers* and *friendly societies*.
- (2) Where such requirements already apply to a *firm* under legislation other than the *Act*, they are not referred to in this chapter. An example of this is reporting to the *appropriate regulator* by *building societies* under those parts of the Building Societies Act 1986 which have not been repealed.
- (3) Requirements for individual *firms* reflect:
  - (a) the category of *firm*;
  - (b) the nature of business carried on;
  - (c) whether a *firm* has its registered office (or if it does not have a registered office, its head office) in the *United Kingdom*;
  - (d) whether a *firm* is an *incoming EEA firm* or *incoming Treaty firm* ; and
  - (e) the regulated activities the *firm* undertakes.

16.1.5

G

[deleted]

16.1.6 G [deleted]

16.1.7 G Where a *PRA-authorized person* is required to notify or provide any information to (a) the *appropriate regulator* by a *PRA Handbook* provision and (b) the *FCA* by the equivalent provision in the *FCA Handbook*, the *PRA-authorized person* is expected to comply with both provisions.

FCA PRA

## 16.2 Purpose

### 16.2.1

FCA PRA

G

- (1) In order to discharge its functions under the *Act*, the *appropriate regulator* needs timely and accurate information about *firms*. The provision of this information on a regular basis enables the *appropriate regulator* to build up over time a picture of *firms'* circumstances and behaviour.
- (2) *Principle 11* requires a *firm* to deal with its regulators in an open and cooperative way, and to disclose to the *appropriate regulator* appropriately anything relating to the *firm* of which the *appropriate regulator* would reasonably expect notice. The reporting requirements are part of the *appropriate regulator's* approach to amplifying *Principle 11* by setting out in more detail the information that the *appropriate regulator* requires. They supplement the provisions of ■ SUP 2 (Information gathering by the appropriate regulator on its own initiative) and ■ SUP 15 (Notifications to the FCA or PRA ). The reports required under these *rules* help the *appropriate regulator* to monitor *firms'* compliance with *Principles* governing relationships between *firms* and their *customers*, with *Principle 4*, which requires *firms* to maintain adequate financial resources, and with other requirements and standards under the *regulatory system*.



## 16.3 General provisions on reporting

### 16.3.1

FCA PRA

G

#### Application

The effect of ■ SUP 16.1.1 R is that this section applies to every *firm* except:

- (1) an *ICVC*;
- (2) an *incoming EEA firm* or *incoming Treaty firm*, which is not:
  - (a) a *firm* of a type listed in ■ SUP 16.1.3 R as a *firm* to which section ■ SUP 16.6 or ■ SUP 16.12 applies;
  - (b) an *insurer* with *permission* to *effect* or *carry out life policies*;
- (3) a *UCITS qualifier*.

### 16.3.2

FCA PRA

G

#### Structure of the chapter

This chapter has been split into the following sections, covering:

- (1) annual controllers reports (■ SUP 16.4);
- (2) annual close links reports (■ SUP 16.5);
- (3) compliance reports (■ SUP 16.6);
- (4) [deleted]
- (5) persistency reports (■ SUP 16.8);
- (6) annual appointed representatives reports (■ SUP 16.9);
- (7) Verification of *standing data* (■ SUP 16.10);
- (8) product sales data reporting (■ SUP 16.11);
- (9) integrated regulatory reporting (■ SUP 16.12);
- (10) reporting under the *Payment Services Regulations* (■ SUP 16.13) ;

- (11) client money and asset return (■ SUP 16.14); and
- (12) reporting under the *Electronic Money Regulations* ( ■ SUP 16.15).
- (13) prudent valuation reporting (■ SUP 16.16);
- (14) remuneration reporting (■ SUP 16.17).

**16.3.3**  
FCA PRA

**G** The annual controllers, annual close links, persistency and annual appointed representatives reports sections are the same for all categories of *firm* to which they apply.

**16.3.4**  
FCA PRA

**G** The compliance section is set out by category of *firm*, with detailed requirements set out in tables giving:

- (1) a brief description of each report;
- (2) the frequency with which the report is required; and
- (3) the due date for submission of the report.

**16.3.5**  
FCA PRA

**G** Further requirements about the reports, such as form and content, are set out in the sections for each category of *firm*, where this is appropriate. In many cases, however, it is more appropriate to provide this information by means of a separate annex; in these cases the relevant section refers to the annex.

**How to submit reports**

**16.3.6**  
FCA PRA

**R** A periodic report required to be submitted under this chapter, or under any other *rule*, must be submitted in writing in accordance with ■ SUP 16.3.7 R to ■ SUP 16.3.10 G, unless:

- (1) a contrary intention appears; or
- (2) the report is required under the *listing rules*.

**16.3.7**  
FCA PRA

**R** A report or *data item* must:

- (1) give the firm reference number (or all the firm reference numbers in those cases where a report is submitted on behalf of a number of *firms*, as set out in ■ SUP 16.3.25 G) ; and
- (2) if submitted in paper form, be submitted with the cover sheet contained in ■ SUP 16 Annex 13 R fully completed .

**16.3.8**  
FCA PRA

**R** A written report must be delivered to the *appropriate regulator* by one of the methods listed in ■ SUP 16.3.9 R.

**16.3.9**  
FCA PRA

**R** Table Method of submission of reports (see ■ SUP 16.3.8 R)

Method of delivery

1. **Post to the published address of the *FCA* for postal submission of reports**
2. **Leaving the report marked for the attention of "Central Reporting" at the published address of the *FCA* for hand delivery of reports and obtaining a dated receipt**
3. **Electronic mail or fax to the published e-mail address or fax number of the *FCA*'s Central Reporting team**
4. **Online submission via the appropriate systems accessible from the *appropriate regulator*'s website**

16.3.10 G  
FCA PRA

(1) The current published address of the *FCA* for postal submission of reports is:

Central Reporting  
 The Financial Conduct Authority  
 PO BOX 35747  
 London E14 5WP

(2) The current published address of the *FCA* for hand delivery of reports is:

(a) 
 Central Reporting  
 The Financial Conduct Authority  
 25 The North Colonnade  
 Canary Wharf  
 London E14 5HS

if the *firm*'s usual supervisory contact at the *appropriate regulator* is based in London, or:

(b) 
 The Financial Conduct Authority  
 Quayside House  
 127 Fountainbridge  
 Edinburgh EH3 8DJ

if the *firm*'s usual supervisory contact at the *FCA* is based in Edinburgh.

(3) The current published email address and fax number for the *FCA*'s Central Reporting team is regulatory.reports@fca.org.uk and 020 7066 3905. The Central Reporting team does not handle general correspondence between *firms* and the *appropriate regulator* . Accordingly, *firms* should not make submissions to the Central Reporting team's email address or fax number other than as directed in ■ SUP 16.3.8 R.

16.3.11

FCA PRA

R

**Complete reporting**

A *firm* must submit reports required under this chapter to the *appropriate regulator* containing all the information required.

16.3.12

FCA PRA

G

■ SUP 15.6 refers to and contains requirements regarding the steps that *firms* must take to ensure that information provided to the *appropriate regulator* is accurate and complete. Those requirements apply to reports required to be submitted under this chapter.

16.3.13

FCA PRA

R

**Timely reporting**

- (1) A *firm* must submit a report required by this chapter in the frequency, and so as to be received by the *appropriate regulator* no later than the due date, specified for that report.
- (2) If the due date for submission of a report required by this chapter falls on a day which is not a *business day*, the report must be submitted so as to be received by the *appropriate regulator* no later than the first *business day* after the due date.
- (3) If the due date for submission of a report required by this chapter is a set period of time after the quarter end, the quarter ends will be the following dates, unless another *rule* or the reporting form states otherwise:
  - (a) the *firm's accounting reference date*;
  - (b) 3 months after the *firm's accounting reference date*;
  - (c) 6 months after the *firm's accounting reference date*; and
  - (d) 9 months after the *firm's accounting reference date*.
- (4) If the due date for submission of a report required by this chapter is a set period of time after the end of a half-year, a quarter, or a month, the dates will be determined by (a) or (b) below except where otherwise indicated:
  - (a) the *firm's accounting reference date*;
  - (b) monthly, 3 monthly or 6 months after the *firm's accounting reference date*, as the case may be.

16.3.14

FCA PRA

R

**Failure to submit reports**

- (1) If a *firm* does not submit a complete report by the date on which it is due in accordance with the *rules* in, or referred to in, this chapter or the provisions of relevant legislation and any prescribed submission procedures, the *firm* must pay an administrative fee of £250.
- (2) The administrative fee in (1) does not apply in respect of quarterly reports required to be submitted by *credit unions* whose liability

to pay a periodic fee under ■ FEES 4.2.1 R in respect of the A.1 activity group in ■ FEES 4 Annex 1A R and ■ FEES 4 Annex 1B R, for the financial year prior to the due date for submission of the report, was limited to the payment of the minimum fee .

16.3.14A  
FCA PRA

G

Failure to submit a report in accordance with the *rules* in , or referred to in, this chapter or the provisions of relevant legislation may also lead to the imposition of a financial penalty and other disciplinary sanctions . A *firm* may be subject to reporting requirements under relevant legislation other than the *Act*, not referred to in this chapter. An example of this is reporting to the *appropriate regulator* by *building societies* under those parts of the Building Societies Act 1986 which have not been repealed (see ■ SUP 16.1.4 G). If it appears to the *appropriate regulator* that, in the exceptional circumstances of a particular case, the payment of any fee would be inequitable, the *appropriate regulator* may reduce or remit all or part of the fee in question which would otherwise be payable (see ■ FEES 2.3).

16.3.15  
FCA PRA

G

The *appropriate regulator* may from time to time send reminders to *firms* when reports are overdue. *Firms* should not, however, assume that the *appropriate regulator* has received a report merely because they have not received a reminder.

16.3.16  
FCA PRA

G

The *firm* is responsible for ensuring delivery of the required report at the by the due date. If a report is received by the *appropriate regulator* after the due date and the *firm* believes its delivery arrangements were adequate, it may be required to provide proof of those arrangements. Examples of such proof would be:

- (1) "proof of posting" receipts from a UK post office or overseas equivalent which demonstrates that the report was posted early enough to allow delivery by the due date in accordance with the delivery service standards prescribed by the relevant postal authority; or
- (2) recorded postal delivery receipts showing delivery on the required day; or
- (3) records of a courier service provider showing delivery on the required day.

**Change of accounting reference date**

16.3.17  
FCA PRA

R

- (1) A *firm* must notify the *appropriate regulator* if it changes its *accounting reference date*.
- (2) When a *firm* extends its accounting period, it must make the notification in (1) before the previous *accounting reference date*.
- (3) When a *firm* shortens its accounting period, it must make the notification in (1) before the new *accounting reference date*.
- (4) ■ SUP 16.10.4A R to ■ SUP 16.10.4C G ( Requirement to check the accuracy of standing data and to report changes to the *appropriate regulator* ) apply to any notification made under (1).

16.3.18 **G**  
**FCA PRA**

■ SUP 16.2.1 G emphasises the importance to the *appropriate regulator* of timely and accurate information. The extension of a *firm's* accounting period to more than 15 months may hinder the timely provision of relevant and important information to the *appropriate regulator* . This is because many due dates for reporting to the *appropriate regulator* are linked to *firms' accounting reference dates*. Indeed, for some categories of *firm*, the only reports required by the *appropriate regulator* have due dates for submission which are linked to the *firm's accounting reference date*. If the extension of a *firm's* accounting period appears likely to impair the effectiveness of the *appropriate regulator's* supervisory work, the *appropriate regulator* may take action to ensure that it continues to receive the information it requires on a timely basis. This may include the use of any of the tools of supervision set out in ■ SUP 1.4.5 G.

16.3.19 **G**  
**FCA PRA**

If more than one *firm* in a *group* intends to change its *accounting reference date* at the same time, a single notification may be given to the *appropriate regulator* , as described in ■ SUP 15.7.8 G.

**Underwriting agents: submission to the Society of Lloyd's**

16.3.20 **R**

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

16.3.21 **G**

[deleted]

**Service of Notices Regulations**

16.3.22 **G**  
**FCA PRA**

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) contain provisions relating to the service of documents on the *appropriate regulator* . They do not apply to reports required under SUP 16, because of the specific *rules* in this section.

**Confidentiality and sharing of information**

16.3.23 **G**  
**FCA PRA**

When the *appropriate regulator* receives a report which contains confidential information and whose submission is required under this chapter, it is obliged under Part 23 of the Act (Public Record, Disclosure of Information and Co-operation) to treat that information as confidential. (See ■ SUP 2.2.4 G for the *FCA* and ■ SUP 2.2.4A G for the *PRA* )

16.3.24 **G**  
**FCA PRA**

■ SUP 2.3.12A G and ■ SUP 2.3.12B G state that the *appropriate regulator* may pass to other regulators information which it has in its possession. Such information includes information contained in reports submitted under this chapter. The *appropriate regulator's* disclosure of information to other regulators is subject to ■ SUP 2.2.4 G or ■ SUP 2.2.4A G (Confidentiality of information).

**Reports from groups**

PAGE  
13

16.3.25 **G**  
**FCA PRA**

If this chapter requires the submission of a report or *data item* covering a *group*, a single report or *data item* may be submitted, and so satisfy the requirements of all *firms* in the *group*. Such a report or *data item* should contain the information required from all of them, meet all relevant due dates and indicate all the *firms* on whose behalf it is submitted; if necessary a separate covering sheet should list the *firms* on whose behalf a report or *data item* is submitted. Nevertheless, the requirement to provide a report or *data item* ,

and the responsibility for the report or *data item*, remains with each *firm* in the *group*. However, reporting requirements that apply to a *firm*, by reason of the *firm* being a member of a *financial conglomerate*, are imposed on only one member of the *financial conglomerate* (see, for example, ■ SUP 16.12.32 R).

## 16.3.26

FCA PRA

G

Examples of reports covering a *group* are:

- (1) the compliance reports required from *banks* under ■ SUP 16.6.4 R;
- (2) annual controllers reports required under ■ SUP 16.4.5 R ;
- (3) annual close links reports required under ■ SUP 16.5.4 R
- (4) consolidated financial reports required from *banks* under ■ SUP 16.12.5 R;
- (5) consolidated reporting statements required from *securities and futures firms* under ■ SUP 16.12.11 R ;
- (6) reporting in relation to *defined liquidity groups* under ■ SUP 16.12.



## 16.4 Annual controllers report

### Application

16.4.1

FCA PRA

G

This section applies to every *firm* except those *firms* excluded from its operation by ■ SUP 16.1.1 R and ■ SUP 16.1.3 R.

16.4.2

FCA PRA

G

This section may be of relevance to a *directive friendly society*:

- (1) if it has 10 members or less;
- (2) if it has a delegate voting system and has 10 delegates or less; or
- (3) if it has 20 members or less and effects or carries out group insurance contracts where one person may exercise one vote on behalf of the members of a group and one vote in their private capacity; or

where a member or delegate, whether alone or acting in concert, is entitled to exercise, or control the exercise of, 10% or more of the total voting power.

16.4.2A

FCA PRA

G

This section may be of relevance to *non-directive firms*.

16.4.3

FCA PRA

G

Requirements for notifications of a change in *control* can be found in ■ SUP 11 (Controllers and close links).

### Purpose

16.4.4

FCA PRA

G

A *firm* and its *controllers* are required to notify certain changes in *control* ( see ■ SUP 11 (Controllers and close links)). The purpose of the *rules* and *guidance* in this section is:

- (1) to ensure that, in addition to such notifications, the *appropriate regulator* receives regular and comprehensive information about the identities of all of the *controllers* of a *firm*, which is relevant to a *firm's* continuing to satisfy the effective supervision *threshold conditions* ;
- (2) to implement certain requirements relating to annual reporting of *controllers* which must be imposed on *firms* under the *Investment Services Directive*, the *Banking Consolidation Directive*, the *Consolidated Life Directive* and the *Third Non-Life Directive*; and



16.4.5

FCA PRA

R

- (3) to support the regulatory functions under Part 12 of the *Act* ( Notices of acquisitions of control over UK authorised persons) (see *SUP 11* (Controllers and close links)).

#### Reporting requirement

- (1) A *firm* must submit a report to the *appropriate regulator* annually, containing the information in (3) or (4) (as applicable).
- (2) A *firm* must submit the report in (1) to the *appropriate regulator* within four months of the *firm's accounting reference date*.
- (3) If a *firm* is not aware:
- (a) that it has any *controllers*; or
  - (b) of any changes in the identity of its *controllers* since the submission of its previous report under (1); or
  - (c) of any changes in the percentage of shares or *voting power* in the *firm* held by any *controllers* (alone or acting in concert ) since the submission of its previous report;
- then the report in (1) must confirm this.
- (4) Unless (3) applies, the report in (1) must contain a list of all the *controllers* as at the *firm's accounting reference date* of which it is aware and, for each such *controller*, state:
- (a) its name;
  - (b) the percentage of *voting power* in the *firm*, or in the *firm's parent undertaking*, which it is entitled to exercise or control the exercise of, whether alone or acting in concert ;
  - (c) the percentage of shares in the *firm*, or in the *firm's parent undertaking*, which it holds, whether alone or acting in concert ;
  - (d) if the *controller* is a *body corporate*, its country of incorporation, address and registered number; and
  - (e) if the *controller* is an individual, his date and place of birth.
- (4A) A *firm* that is a *regulated entity* must include in its report to the *appropriate regulator* under (1) whether any *consolidation group* of which it is a member is a *third-country banking and investment group*.
- (4B) A *firm* does not have to give notice to the *appropriate regulator* under (4A) if it, or another member of the *third-country banking and investment group*, has already given notice to the *appropriate regulator* of the relevant fact.

(5) [deleted]

**16.4.6** G The information required by ■ SUP 16.4.5 R(4) may be provided in the form of a group organisation chart.  
FCA PRA

**16.4.7** G If a *group* includes more than one *firm*, a single annual controllers report may be submitted, and so satisfy the requirements of all *firms* in the *group*. Such a report should contain the information required from all of them, meet all relevant due dates, indicate all the *firms* on whose behalf it is submitted and give their firm reference numbers. Nevertheless, the requirement to provide a report, and the responsibility for the report, remain with each *firm* in the *group*.  
FCA PRA

**16.4.8** G A *firm* may submit a single report satisfying the requirements of its annual controllers report ( ■ SUP 16.4.5 R) and its annual close links report ( ■ SUP 16.5.4 R). Such a report should contain the information required on both *controllers* and *close links*.  
FCA PRA

**16.4.9** G *Firms* are reminded of the requirement in ■ SUP 11.4.10 R to take reasonable steps to keep themselves informed about the identity of their *controllers*.  
FCA PRA

**Exceptions: friendly societies and building societies**

**16.4.10** R If a *firm* is a *friendly society* or a *building society*, then it is required to submit a report under ■ SUP 16.4.5 R only if it is aware that it has a *controller*.  
FCA PRA

**16.4.11** R In ■ SUP 16.4.5 R and ■ SUP 16.4.10 R, a *building society* may regard a *person* as not being a *controller* if that *person* is exempt from the obligation to notify a change in *control* under The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774 ) (see ■ SUP 11.3.2A G (2)).  
FCA PRA

**Exception: insurers**

**16.4.12** R An *insurer* need not submit a report under ■ SUP 16.4.5 R to the extent that the information has already been provided to the *appropriate regulator* under IPRU(INS) 9.30R (Additional information on controllers).  
FCA PRA



## 16.5 Annual Close Links Reports

### Application

16.5.1  
FCA PRA

G

This section applies to every *firm* listed in ■ SUP 11.1.1 R (1) to ■ SUP 11.1.1 R (6), except those *firms* excluded from its operation by ■ SUP 16.1.1 R and ■ SUP 16.1.3 R or which have elected to report on a monthly basis in accordance with ■ SUP 11.9.5 R.

### Purpose

16.5.2  
FCA PRA

G

A *firm* is required to notify the *appropriate regulator* of changes to its *close links* (see ■ SUP 11.9). The effective supervision *threshold conditions* provide that, if a *firm* has *close links* with another *person*, the matters which are relevant in determining whether a *firm* satisfies the condition of being capable of being effectively supervised include:

- (1) the nature of the relationship between the *firm* and that *person*;
- (2) whether those links or that relationship are likely to prevent the *appropriate regulator's* effective supervision of the *firm*; and
- (3) if the *person* is subject to the laws, regulations or administrative provisions of a territory which is not an *EEA State*, whether those foreign provisions, or any deficiency in their enforcement, would prevent the *appropriate regulator's* effective supervision of the *firm*.

16.5.3  
FCA PRA

G

The purposes of the *rules* and *guidance* in this section are:

- (1) to ensure that, in addition to such notifications, the *appropriate regulator* receives regular and comprehensive information about the identities of all persons with whom a *firm* has *close links*, which is relevant to a *firm's* continuing to satisfy the effective supervision *threshold conditions* and to the protection of *consumers*; and
- (2) to implement certain requirements relating to the provision of information on *close links* which must be imposed on *firms* under the '*Post-BCCI Directive*'.

### Report

16.5.4  
FCA PRA

R

- (1) A *firm* must submit a report to the *appropriate regulator* annually by completing the Close Links Notification Form (see ■ SUP 11.9.3B G for the *FCA* and ■ SUP 11.9.3C G for the *PRA*)

and must include the information in (3) or (4) (as applicable) and (5).

- (2) A *firm* must submit the report in (1) to the *appropriate regulator* within four months of the *firm's accounting reference date*.
- (3) If a *firm* is not aware:
  - (a) that it has any *close links*; or
  - (b) of any material changes to the details in (4) (a) to (c) in respect of its *close links* since the submission of its previous report under (1);

then the report in (1) must confirm this.
- (4) Unless (3) applies, the report in (1) must contain a list of all *persons* with whom the *firm* has *close links* as at the *firm's accounting reference date* of which it is aware, and for each such *person* state:
  - (a) its name;
  - (b) the nature of the *close links*;
  - (c) if the *close link* is with a *body corporate*, its country of incorporation, address and registered number; and
  - (d) if the *close link* is with an individual, his date and place of birth.
- (5) The *firm* must also submit a *group* organisation chart.

16.5.5 [G] [deleted]

16.5.6 [G] [FCA] [PRA] If a *group* includes more than one *firm*, a single annual close links report may be submitted and so satisfy the requirements of all *firms* in the *group*. Such a report should contain the information required from all of them, meet all relevant due dates, indicate all the *firms* on whose behalf it is submitted and give their firm reference numbers. Nevertheless, the requirement to provide a report, and the responsibility for the report, remain with each *firm* in the *group*.

16.5.7 [G] [FCA] [PRA] A *firm* may submit a single report satisfying the requirements of its annual controllers report ( ■ SUP 16.4.5 R) and its annual close links report ( ■ SUP 16.5.4 R). Such a report should contain the information required on both *controllers* and *close links*.

16.5.8 [R] [FCA] [PRA] If a *firm* is an unincorporated *friendly society*, then it is only required to submit a report under ■ SUP 16.5.4 R if it is aware that it has *close links*.

## 16.6 Compliance reports

### Application

**16.6.1** FCA PRA G The effect of ■ SUP 16.1.1 R is that this section applies to every *firm* within a category listed in the left hand column of the table in ■ SUP 16.6.2 G.

**16.6.1A** FCA D The directions and *guidance* in SUP 16.13 apply to an *authorised payment institution* and a *small payment institution*.

**16.6.2** FCA PRA G Table Applicable provisions of this section (see ■ SUP 16.6.1 G)

Category of firm	Applicable provisions
<i>Bank</i>	SUP 16.6.4 R - SUP 16.6.5 R
<i>Trustee of an AUT</i>	SUP 16.6.6 R - SUP 16.6.9 G
<i>Depositary of an ICVC</i>	
<i>OPS firm</i>	SUP 16.6.6 R - SUP 16.6.8 R

### Purpose

**16.6.3** G [deleted]

**16.6.3A** FCA G The *FCA* performs part of its supervision work by reviewing and analysing information about *firms'* records of compliance with the requirements and standards under the *regulatory system*. The type of report the *FCA* requires will vary, depending on the type of business a *firm* undertakes. This information helps the *FCA* to determine whether a *firm* is complying with the requirements applicable to its business, and what procedures it is operating to ensure its compliance.

**16.6.3B** PRA G The *PRA* performs part of its supervision work by reviewing and analysing information about *firms'* records of compliance with prudential requirements and standards. The type of report the *PRA* requires will vary, depending on the type of business a *firm* undertakes. This information helps the *PRA* to determine whether a *firm* is complying with the requirements applicable to its business, and what procedures it is operating to ensure its compliance.

16.6.4

FCA PRA

R

**Banks**

A *bank* must submit compliance reports to the *appropriate regulator* in accordance with ■ SUP 16.6.5 R.

16.6.5

FCA PRA

R

Table Compliance reports from a bank (see ■ SUP 16.6.4 R)

Report	Frequency	Due date
List of all <i>overseas regulators</i> for each legal entity in the <i>firm's group</i>	Annually	6 months after the <i>firm's accounting reference date</i>
Organogram showing the <i>authorised entities</i> in the <i>firm's group</i>	Annually	6 months after the <i>firm's accounting reference date</i>

**Trustees of authorised unit trust schemes, depositaries of ICVCs, and OPS firms**

16.6.6

FCA

R

A *firm* within a category listed in the left-hand column of ■ SUP 16.6.7 R must submit compliance reports in accordance with ■ SUP 16.6.7 R.

16.6.7

FCA

R

Table Compliance reports from trustees of AUTs, depositaries of ICVCs, and OPS firms (see ■ SUP 16.6.6 R)

Report	Frequency	Due date
Report from a <i>trustee</i> of an <i>AUT</i> on <i>manager's</i> failures as set out in SUP 16.6.8 R (1)	Quarterly	1 month after quarter end (Note)
Report from a <i>depositary</i> of an <i>ICVC</i> on failures by the <i>authorised corporate director</i> as set out in SUP 16.6.8 R (2)	Quarterly	1 month after quarter end (Note)
<i>OPS firms</i> only: Annual accounts of each <i>occupational pension scheme</i> in respect of which the <i>firm</i> is acting	Annually	7 months after end of the scheme year
<i>OPS firms</i> only: Audited annual accounts of each <i>OPS collective investment scheme</i> in respect of which the <i>firm</i> is acting	Annually	7 months after end of the scheme year

Note = The quarter ends are 31 March, 30 June, 30 September, 31 December.

16.6.8

FCA

R

- (1) The report from a *trustee* of an *AUT* to the *FCA* must state, in relation to the *manager* of each *AUT* for which it is a *trustee*, the number of times during the quarter in which facts came to the *firm's* knowledge from which it appeared, or might have appeared, that the *manager* had failed (materially or otherwise) to:
- (a) give correct instructions to the *trustee* to create or cancel *units* in the *AUT* when the *manager* should have done so, and the error:
    - (i) resulted in the creation of too few *units* or in the cancellation of too many *units*; and
    - (ii) was not corrected in accordance with the *FCA's* *guidance* as set out in ■ COLL 6.2.12 G;
  - (b) price *units* in the *AUT* in accordance with ■ COLL 6.3 where the pricing error was:
    - (i) greater than 0.5% of the price of a *unit*; or
    - (ii) less than 0.5% of the price of a *unit*, and the *trustee* did not consider the *manager's* controls to be adequate;
- unless the failure was an isolated incident.
- (2) The report from a *depository* of an *ICVC* to the *FCA* must state, in relation to the *authorised corporate director* of each *ICVC* for which the *firm* is a *depository*, the number of times during the quarter in which facts came to the *firm's* knowledge from which it appeared, or might have appeared, that the *authorised corporate director* had failed (materially or otherwise) to:
- (a) arrange for the *issue* or cancellation of *shares* in the *ICVC* when the *authorised corporate director* should have done so, and the error:
    - (i) resulted in the creation of too few *shares* or in the cancellation of too many *shares*; and
    - (ii) was not corrected in accordance with the *FCA's* *guidance* as set out in ■ COLL 6.2.12 G;
  - (b) price *shares* in the *ICVC* in accordance with the provisions of ■ COLL 6.3 , where the pricing error was:
    - (i) greater than 0.5% of the price of a *share*; or
    - (ii) less than 0.5% of the price of a *share*, and the *depository* did not consider the *authorised corporate director's* controls to be adequate;

unless the failure was an isolated incident.

- (3) An *OPS firm* must notify the *FCA* of any change in the date of commencement of the scheme year of an *OPS* or *OPS collective investment scheme*, in respect of which the *firm* is acting, not less than 15 *business days* before the date on which such a change is to become effective.

16.6.9

FCA

G

■ SUP 16 Annex 12 provides *guidance* on the completion of the report from a *trustee* of an *AUT* on a *manager's* failures as set out in ■ SUP 16.6.8 R(1), and the report from a *depository* of an *ICVC* on failures by the *authorised corporate director* as set out in ■ SUP 16.6.8 R(2). This *guidance* includes suggested formats for the submission of the reports.





16.7 [Deleted]

## 16.8 Persistency reports from insurers and data reports on stakeholder pensions

### Application

16.8.1

FCA

G

The effect of ■ SUP 16.1.1 R is that this section applies to:

- (1) every *insurer* with *permission* to *effect* or *carry out life policies*, unless it is a *non-directive friendly society*; and
- (2) every *firm* with *permission* to establish, operate or wind up a *stakeholder pension scheme*.

### Purpose

16.8.2

FCA

G

The purpose of this section is to enable information on the persistency of life policies and data on stakeholder pensions to be prepared and provided to the *FCA* in a standard format. This information is used in the monitoring of *firms* both individually and collectively.

### Requirement to submit persistency and data reports

16.8.3

FCA

R

- (1) An *insurer* with *permission* to *effect* or *carry out life policies* must submit to the *FCA* a persistency report in respect of *life policies* by 30 April each year in accordance with this section.
- (2) A *firm* with *permission* to establish, operate or wind up a *stakeholder pension scheme* must submit to the *FCA*:
  - (a) a data report on stakeholder pensions by 30 April each year prepared in accordance with this section; and
  - (b) two extra data reports on stakeholder pensions prepared in accordance with this section as follows:
    - (i) by 31 October 2002, of the number effected in the period to 30 June 2001 and the number of those still in force 12 months after the contract was effected;
    - (ii) by 31 January 2003, of the number effected in the period 1 July 2001 to 30 September 2001 and the number of those still in force 12 months after the contract was effected.

16.8.4

FCA

R

**Interpretation of this section**

In this section, and Forms 1R(2) to (4) in ■ SUP 16 Annex 6R:

- (1) '12 month report' means the part of a persistency report or data report reporting on *life policies* or stakeholder pensions *effected* in Y-2, '24 month report' means the part of a persistency report or data report reporting on *life policies* or stakeholder pensions *effected* in Y-3, and so on;
- (2) 'CC' means the number of *life policies* or stakeholder pensions which:
  - (a) were effected during the period to which the calculation relates; and
  - (b) are reported on in the persistency report or data report (see ■ SUP 16.8.8 R to ■ SUP 16.8.15 R);
- (3) 'CF' means the number of *life policies* or stakeholder pensions within 'CC' which are treated as in force at the end of Y-1 or, for a report under ■ SUP 16.8.3 R (2) (b), the relevant 12 month period (see ■ SUP 16.8.16 R to ■ SUP 16.8.18 R);
- (4) 'contract anniversary' means the anniversary of the date on which the *life policy* or stakeholder pension was effected falling within Y-1;
- (5) 'data report' means a report in respect of stakeholder pensions complying with ■ SUP 16.8.19 R to ■ SUP 16.8.21 R;
- (6) Forms 1R(1), 1R(2), 1R(3) and 1R(4) mean the forms in ■ SUP 16 Annex 6;
- (7) 'group personal pension policy' means a *life policy* which is not a separate *pension scheme*, effected under a collecting arrangement made for the *employees* of a particular employer to participate in a personal pension arrangement on a group basis;
- (8) [deleted]
- (9) 'mortgage endowment' means an *endowment assurance effected* or believed to be *effected* for the purposes of paying off a loan on land;
- (10) 'new', in relation to a stakeholder pension, has the meaning given in ■ SUP 16.8.11 R (2);

- (11) 'ordinary assurance policy' means a *life policy* which is not an *industrial assurance policy*;
- (12) 'other life assurance' means a *life policy* other than a *pension policy, endowment assurance or whole life assurance*;
- (13) 'other pension policy' means a *pension policy* other than a *personal pension policy*;
- (14) 'persistency rate' means a rate calculated using this formula:  $CF \times 100/CC$  (see the example in ■ SUP 16.8.5 G);
- (15) 'persistency report' means a report in respect of life policies complying with ■ SUP 16.8.19 R to ■ SUP 16.8.21 R;
- (16) 'regular premium life policy' means a *life policy* where there is (or could be, or has been) a commitment by the policyholder to make a regular stream of contributions (for example by means of a direct debit mandate);
- (17) 'regular premium stakeholder pension' means a stakeholder pension where there is (or could be, or has been) a commitment by the policyholder to make a regular stream of contributions;
- (18) 'single premium life policy' means a *life policy* that is not a regular premium *life policy*, except that a recurrent single premium *life policy* must be treated as a regular premium *life policy*;
- (19) 'single premium stakeholder pension' means a stakeholder pension which is not a regular premium stakeholder pension, except that a recurrent single premium stakeholder pension must be treated as a regular premium stakeholder pension;
- (20) 'stakeholder pension' means an individual's rights under a *stakeholder pension scheme*;
- (21) 'substitute', in relation to stakeholder pension, has the meaning given in ■ SUP 16.8.11 R (2);
- (22) 'Y' means the year in which the report must be submitted, 'Y-1' means the preceding year, 'Y-2' means the next earlier year and so on;
- (23) 'year' means calendar year, unless ■ SUP 16.8.7 R applies.

Y (year of reporting)	Number of <i>life policies</i> which commenced during 1996	Number of 1996 <i>policies</i> that cease to be in force during Y-1	Deaths and retirements (not included in CC and CF)	CF	CC
1998	1000	143	2	1000 - 143 - 2 = 855	1000 - 2 = 998
1999	1000	25	1	1000 - 143 - 25 - 2 - 1 = 829	1000 - 2 - 1 = 997

Report submitted in 1998 Persistency rate for *life policies* that commenced during Y-2 (that is 1996)

Report submitted in 1999 Persistency rate for *life policies* that commenced during Y-3 (that is 1996)

**16.8.6**  
**FCA**

**G** *Firms* are reminded that annuity contracts other than deferred annuity contracts are not within the definition of '*life policy*'.

**16.8.7**  
**FCA**

**R** In relation to a persistency report, a *firm* may treat a 12-month period ending between 1 October and 31 March as a 'year' for the purposes of this section and Forms 1R(1) to (3):

- (1) if the *firm's* financial year does not end on 31 December; or
- (2) for *industrial assurance policy* business;

provided that the use of an alternative period is disclosed in the persistency report.

**Life policies and stakeholder pension to be reported on in the persistency or data reports**

**16.8.8**  
**FCA**

**R** A persistency report or data report must report on a *life policy* or stakeholder pension if:

- (1) it is not of a type listed in ■ SUP 16.8.13 R or ■ SUP 16.8.14 R;
- (2) it was effected by:
  - (a) the *firm* submitting the report; or
  - (b) an *unauthorised* member of the *group* of the *firm* submitting the report and in circumstances in which that *firm* was responsible for the promotion of that *life policy* or stakeholder pension; or

(c) another *firm*, but is being carried out by the *firm* submitting the report; and

(3) the *person* who sold it or who was responsible for its promotion was, in so doing, subject to *rules* in COBS .

16.8.9

FCA

G

*Life policies* and stakeholder pensions falling within ■ SUP 16.8.8 R (2) (c) are those which have been transferred from another *firm*, for example under an insurance business transfer scheme under Part 7 of the *Act* (Control of Business Transfers).

16.8.10

FCA

R

*Life policies* falling within ■ SUP 16.8.8 R, which were sold subject to the conduct of business rules of a *previous regulator*, need to be reported only if they were required to be reported on by the rules of the *previous regulator* of the *firm* submitting the report.

16.8.11

FCA

R

(1) A *life policy* or stakeholder pension which was issued in substitution for a similar contract may be treated as being effected on the inception date of the *previous life policy* or stakeholder pension, provided that the *firm* is satisfied that no loss to the *policyholder* is attributable to the substitution;

(2) A stakeholder pension which is treated as in (1) is a "substitute" stakeholder pension. A "new" stakeholder pension is any other stakeholder pension.

16.8.12

FCA

G

Examples of loss to the *policyholder* under ■ SUP 16.8.11 R are losses resulting from higher charges and more restrictive benefits and options.

16.8.13

FCA

R

A persistency or data report must not report on any of the following:

(1) a *life policy* or stakeholder pension that was cancelled from inception whether or not this was as a result of service of a notice under the *rules* on cancellation (■ COBS 15) ;

(2) [deleted]

(3) a *life policy* (excluding *income withdrawal*) or stakeholder pension which has terminated as a result of death, critical illness, retirement, maturity or other completion of the contract term;

(4) *income withdrawals* that have ceased as a result of the death of the *policyholder*;

(5) in the case of a persistency report only, a *life policy* which is a stakeholder pension;

(6) a *life policy* purchased by the trustees of an *occupational pension scheme* which is a *defined benefits pension scheme*;

(7) a *life policy* purchased by the trustees of an *executive money purchase occupational pension scheme*.

16.8.14  
FCA

**R** A persistency report required by ■ SUP 16.8.3 R (1) need not report on a *life policy* if the number of *life policies* on substantially the same terms effected by the relevant *firm* (or member of the *firm's group*) in the relevant year did not exceed the higher of fifty and 1% of the total reportable *life policies* effected by the *person* in that year.

16.8.15  
FCA

**R** If the term of an *endowment assurance* is less than five years, the *life policy* must only be included in a persistency report in respect of years up to and including the anniversary prior to maturity.

**Life policies and stakeholder pensions to be treated as in force**

16.8.16  
FCA

**R** Subject to ■ SUP 16.8.17 R and ■ SUP 16.8.18 R, a *life policy* or stakeholder pension must be treated as in force at the end of Y-1 (that is, included in CF) if and only if:

- (1) in the case of a regular premium life policy:
  - (a) in the case of an *industrial assurance policy* on which the *premiums* are paid at intervals of four weeks, the *premium* has been paid in respect of the four-week period in which the policy anniversary falls; or
  - (b) in any other case, the *premium* has been paid in respect of the month in which the policy anniversary falls;
- (2) in the case of a single premium life policy, the policy has not been surrendered as at the policy anniversary;
- (3) in the case of a regular premium stakeholder pension:
  - (a) for a report required by ■ SUP 16.8.3 R (2) (a), the premium has been paid in respect of the month in which the contract anniversary falls;
  - (b) for a report required by ■ SUP 16.8.3 R (2) (b), the premium has been paid in respect of the month 12 months after the contract was effected;
- (4) in the case of a single premium stakeholder pension:
  - (a) for a report required by ■ SUP 16.8.3 R (2)(a), the contract has not been surrendered as at the contract anniversary; or
  - (b) for a report required by ■ SUP 16.8.3 R (2)(b), the contract has not been surrendered as at the end of the 12 month period.

**16.8.17** **R** A cluster *life policy* must be reported as a single *life policy* and must be treated as in force (that is included in CF) even if some of the constituent *life policies* have been terminated.  
**FCA**

**16.8.18** **R** An *income withdrawal* that has terminated other than by death of the *policyholder* must be treated as not in force at the end of Y-1 (that is, not included in CF).  
**FCA**

**Contents of the persistency or data report**

**16.8.19** **R**  
**FCA**

- (1) A persistency report on life policies must be a report in the format of Forms 1R(1), (2) and (3).
- (2) A data report on stakeholder pensions must be a report in the format of Form 1R(4).
- (3) A persistency and a data report must include:
  - (a) for a report required by **■ SUP 16.8.3 R** (1) or (2) (a), a separate copy of each Form reporting on *life policies* or stakeholder pensions effected during each of Y-2, Y-3, Y-4, Y-5;
  - (b) for a persistency report, a separate copy of Forms IR(1) and IR(2) reporting on:
    - (i) regular premium life policies and single premium *life policies*; and
    - (ii) *life policies* classified as ordinary assurance policies and *industrial assurance policies* .

**16.8.20** **R** If, in relation to any Form, a *firm* has no *life policies* or stakeholder pensions to report on in a copy of that Form, the *firm* need not submit that copy provided that it confirms in writing to the *FCA*, as part of the persistency or data report, that it is not doing so and the reason for not doing so.  
**FCA**

**16.8.21** **R** The *firm* must, if a persistency report reports on;  
**FCA**

- (1) an *endowment assurance* with a term of five years or less:
  - (a) report on such a *policy* in Form 1R(2); and
  - (b) not report on such a *policy* in Form 1R(1);
- (2) a group personal pension policy, include the policy as a personal pension policy in Forms 1R(1) and 1R(3);
- (3) a mortgage endowment, also include the policy as an endowment assurance in Forms 1R(1) and 1R(3);



16.8.22  
FCA

G

(4) an *income withdrawal*, not include the policy under any other relevant category in Forms 1R(1) and 1R(3).

- (1) Under ■ SUP 16.8.16 R, a *life policy* must be treated as not in force if *premiums* have not been paid at the relevant date. Form 1R(3) seeks additional information on the number of *policies* treated as not in force which are subject to genuine contribution holidays.
- (2) A *firm* should treat a *life policy* as 'subject to a contribution holiday' if:
  - (a) the terms of the *policy* allow the *policyholder* to take a contribution holiday;
  - (b) the *policyholder* has opted to take a contribution holiday in accordance with those terms;
  - (c) the *policyholder* has clearly stated his intention to resume payments; and
  - (d) at the end of Y-1, not more than 12 months have elapsed from the date that *premiums* ceased to be paid.

**Records**

16.8.23  
FCA

R

A *firm* must make and retain such records as will enable it to:

- (1) monitor regularly the persistency of *life policies* and stakeholder pensions effected through each of its *representatives*; and
- (2) make persistency reports or data reports to the FCA in accordance with SUP 16.8.3R.

16.8.24  
FCA

G

In order to comply with ■ SUP 16.8.23 R, a *firm* will as a minimum need to make and retain separate records for:

- (1) *life policies* and stakeholder pensions originally promoted:
  - (a) *by representatives*; or
  - (b) *by independent intermediaries*; or
  - (c) through the *firm's* own *direct offer financial promotions*; or
  - (d) as adopted *packaged products*;
- (2) *life policies* and stakeholder pensions not within (1), including those *effected* as execution-only transactions, for inclusion in the relevant form under 'Otherwise';
- (3) *life policies* and stakeholder pensions written assuming the payment of:
  - (a) regular premiums;
  - (b) a single premium;
- (4) *life policies* written as:

- (a) ordinary assurance policies;
  - (b) *industrial assurance policies*;
- (5) the categories of *life policies* and stakeholder pensions referred to in Forms 1R(1) to (4).



**16.9 Appointed representatives annual report**

**Application**

**16.9.1**  
**FCA**

**G**

The effect of **■ SUP 16.1.1 R** is that this section applies to every *firm* with a *Part 4A permission to advise on investments, arrange (bring about) deals in investments, making arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.*

**Purpose**

**16.9.2**  
**FCA**

**G**

The purpose of the *rules and guidance* in this section is to ensure that, in addition to the notifications made under **■ SUP 12.7** (Appointed representatives; notification requirements), the *FCA* receives regular and comprehensive information about the *appointed representatives* engaged by a *firm*, so that the *FCA* is in a better position to pursue the *statutory objective* of the protection of *consumers*.

**16.9.3**  
**FCA**

**R**

- (1) A *firm* must:
  - (a) submit a report to the *FCA* annually, in the form of an amended copy of the relevant extract from the *Financial Services Register*, containing the information in (2);
  - (b) submit the report in (1) to the *FCA* within four *months* of the *firm's accounting reference date*.
- (2) The report in (1) must contain a list of all the current *appointed representatives* of the *firm* as at the *firm's accounting reference date*.
- (3) The report in (1) is not required if:
  - (a) the *firm* has no *appointed representatives* as at the *firm's accounting reference date*; and
  - (b) this is reflected in the relevant extract from the *Financial Services Register*.

**16.9.4**  
**FCA**

**G**

The *Financial Services Register* is maintained under section 347 of the *Act* (The record of authorised persons, etc.) and may be viewed at the *FCA's* website.

16.9.5 G [deleted]

16.9.6 G If a group includes more than one *firm*, a single annual *appointed representatives* report may be submitted on behalf of all *firms* in the *group*. Such a report should contain the information required from all the *firms*, meet all relevant due dates, indicate all the *firms* on whose behalf it is submitted and give their *Financial Services Register* firm reference numbers. The requirement to provide a report, and the responsibility for the report remains with each *firm* in the *group*.

FCA

## 16.10 Verification of standing data

### Application

#### 16.10.1

FCA PRA

G

The effect of ■ SUP 16.1.1 R is that this section applies to every *firm* except:

- (1) an *ICVC*; or
- (2) a *UCITS qualifier*; or
- (3) a *credit union*; or
- (4) a *dormant account fund operator*.

### Purpose

#### 16.10.2

FCA PRA

G

*Standing data* is used by the *appropriate regulator* :

- (1) to ensure that a *firm* is presented with the correct regulatory return when it seeks to report electronically;
- (2) in order to communicate with a *firm*;
- (3) as the basis for some sections of the *Financial Services Register*; and
- (4) in order to carry out thematic analysis across sectors and groups of *firms*.

#### 16.10.3

FCA PRA

G

In view of the importance attached to *standing data*, and the consequences which may result if it is wrong, this section provides the framework for a *firm* to check and correct it.

### Requirement to check the accuracy of standing data and to report changes to the appropriate regulator

#### 16.10.4

FCA PRA

R

- (1) Within 30 *business days* of its *accounting reference date*, a *firm* must check the accuracy of its *standing data* through the relevant section of the *appropriate regulator's* website.

- (2) [paragraph suspended by FSA 2004/79]

16.10.4A **R**  
**FCA** **PRA**

- (3) If any *standing data* is incorrect, the *firm* must submit the corrected *standing data* to the *appropriate regulator*, using the appropriate form set out in ■ SUP 15 Ann 3 R and in accordance with ■ SUP 16.10.4A R.
- (1) A *firm* other than a *credit union* must submit any corrected *standing data* under ■ SUP 16.10.4R (3) online at the *appropriate regulator's* website using the ONA system.
- (2) A *credit union* must submit any corrected *standing data* under ■ SUP 16.10.4R (3) to static.data@fca.org.uk or via post or hand delivery to the FCA marked for the attention of the 'Static Data team' .
- (3) Where a *firm* is obliged to submit corrected *standing data* online under (1), if the *FCA's* information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit its corrected *standing data* to static.data@fca.org.uk or via post or hand delivery to the FCA marked for the attention of the 'Static Data team' .

16.10.4B **G**  
**FCA** **PRA**

If the *FCA's* information technology systems fail and online submission is unavailable for 24 hours or more, the *FCA* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 16.3.9 R should be used.

16.10.4C **G**  
**FCA** **PRA**

Where ■ SUP 16.10.4AR (3) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

16.10.5 **G**  
**FCA** **PRA**

The *standing data* is made available to the *firm* when the *firm* logs into the appropriate section of the *appropriate regulator's* website. The *firm* should check the *standing data* and send any corrections to the *appropriate regulator* . The *appropriate regulator's* preferred method of receiving corrections to *standing data* is by the online forms available at the *appropriate regulator's* website.

16.10.6 **G**  
**FCA** **PRA**

A *firm* may check, and submit corrections to, its *standing data* more frequently than annually.

16.10.7 **G**

[deleted]



**16.11 Product Sales Data Reporting**

**Application**

16.11.1 **R**  
FCA

This section applies to a firm which is a *home finance provider*, or in respect of sales to a *retail client* or a *consumer*:

- (1) an *insurer*; or
- (2) the *operator* of a *regulated collective investment scheme*, an *investment trust savings scheme* , or a *personal pension scheme* ; or
- (3) a *person* who issues or manages the relevant assets of the issuer of a *structured capital-at-risk product*,

unless the *firm* is a *managing agent*.

**Purpose**

16.11.2 **G**  
FCA

- (1) The purpose of this section is to set out the requirements for *firms* in the retail mortgage, investment, and *pure protection contract* markets specified in ■ SUP 16.11.1 R to report individual product sales data to the *FCA*. In the case of *firms* in the sale and rent back market, there is a requirement to record, but not to submit, the data. These requirements apply whether the *regulated activity* has been carried out by the *firm*, or through an intermediary which has dealt directly with the *firm*.
- (2) The purpose of collecting this data is to assist the *FCA* in the ongoing supervision of *firms* engaged in retail activities and to enable the *FCA* to gain a wider understanding of market trends in the interests of protecting *consumers*.

**Reporting requirement**

16.11.3 **R**  
FCA

- (1) A *firm* must submit a report (the 'data report') containing the information required by ■ SUP 16.11.5 R quarterly, within 20 *business days* of the end of the quarter, unless (3) or (4) applies.
- (2) The reporting periods are the four calendar quarters of each year beginning on 1 January.

- (3) A *firm* need not submit a data report if no relevant sales have occurred in the quarter.
- (4) A *SRB agreement provider* must compile, and keep for at least five years from the end of the relevant quarter, a data report containing the information required by ■ SUP 16.11.5 R, but is not subject to the requirement in (1) to submit a data report (or to the requirement in ■ SUP 16.11.9 R).

16.11.4

G

- (1) A *firm* may submit a data report more frequently than quarterly if it wishes.
- (2) If it is easier and more practical for a *firm* to submit additional data relating to products other than those specified in ■ SUP 16.11.5 R, it may submit that additional data to the *FCA* in a data report.

FCA

**Content of the report**

16.11.5

R

The data report must contain sales data in respect of the following products:

- (1) *retail investments*;
- (2) *pure protection contracts*;
- (3) *regulated mortgage contracts* (but not further advances);
- (4) *home purchase plans*;
- (5) *home reversion plans*; and
- (6) *regulated sale and rent back agreements*.

FCA

16.11.6

G

Guidance on the type of products covered by ■ SUP 16.11.5 R is contained in ■ SUP 16 Annex 20 GG.

FCA

16.11.7

R

The data report must comply with the provisions of ■ SUP 16 Annex 21 RR.

FCA

16.11.8

R

The data report must relate both to transactions undertaken by the *firm* and to transactions undertaken by an intermediary which has dealt directly with the customer on the *firm's* behalf.

FCA

16.11.8A

G

Where the *operator* of a *collective investment scheme* receives business from a *firm* which operates a nominee account, the data report in respect of those transactions submitted by the *operator* should treat those transactions as transactions undertaken by the *operator* with the *firm*.

FCA

16.11.9

R

A *firm* must provide the data report to the *FCA* electronically in a standard format provided by the *FCA*.

FCA



16.11.10 G  
FCA

A data report will have been provided to the *FCA* in accordance with ■ SUP 16.11.9 R only if all mandatory data reporting fields (as set out in ■ SUP 16 Annex 21 RR) have been completed correctly and the report has been accepted by the relevant *FCA* reporting system.

**Use of reporting agents**  
 .....

16.11.11 R  
FCA

- (1) A *firm* may appoint another *person* to provide the data report on the *firm's* behalf if the *firm* has informed the *FCA* of that appointment in writing.
- (2) Where (1) applies, the *firm* must ensure that the data report complies with the requirements of ■ SUP 16.11 and identifies the originator of the transaction.

## 16.12 Integrated Regulatory Reporting

### Application

#### 16.12.1

FCA PRA

G

The effect of ■ SUP 16.1.1 R is that this section applies to every *firm* carrying on business set out in column (1) of ■ SUP 16.12.4 R except:

- (1) an *incoming EEA firm* with *permission* for *cross border services* only;
- (1A) an *incoming EEA firm* in relation to its carrying on of *bidding in emissions auctions*;
- (2) an *oil market participant* that is not subject to the requirements of *IPRU(INV)* Chapter 3;
- (3) an *authorised professional firm* (other than one that must comply with *IPRU(INV)* 3, 5 or 13 in accordance with *IPRU(INV)* 2.1.4R, where ■ SUP 16.12.4 R will apply in respect of the business the firm undertakes), which must comply with ■ SUP 16.12.30 R and ■ SUP 16.12.31 R; and
- (4) a *financial conglomerate*, which must comply with ■ SUP 16.12.32 R: *firms* that are members of a *financial conglomerate* will have their own reporting requirements under ■ SUP 16.12.32 R.

### Purpose

#### 16.12.2

FCA PRA

G

- (1) *Principle 4* requires *firms* to maintain adequate financial resources. The Interim Prudential sourcebooks, *BIPRU* and *GENPRU* set out the *appropriate regulator's* detailed capital adequacy requirements. By submitting regular data, *firms* enable the *appropriate regulator* to monitor their compliance with *Principle 4* and their prudential requirements in the *Handbook*.
- (2) The *data items* submitted help the *appropriate regulator* analyse *firms'* financial and other conditions and performance and to understand their business. By means of further collation and review of the data which the *data items* provide, the *appropriate regulator* also uses the *data items* to identify developments across the financial services industry and its constituent sectors.
- (3) The requirements in this section differ according to a *firm's regulated activity group (RAG)*, as different information is required to reflect different types of business. Standard formats are used for reporting, to assist compatibility between *firms* which carry on similar types of business. Timely submission is important to ensure the *appropriate regulator* has up-to-date information.

16.12.3

FCA PRA

R

## Reporting requirement

- (1) Any *firm* permitted to carry on any of the activities within each of the RAGs set out in column (1) of the table in ■ SUP 16.12.4 R must:
- (a) (i) unless (ii) or (iii) applies, submit to the *appropriate regulator* the duly completed *data items* or other items applicable to the *firm* as set out in the provision referred to in column (2) of that table;
- (ii) unless (iii) applies, where a *firm* is required to submit completed *data items* for more than one RAG, that *firm* must only submit the *data item* of the same name and purpose in respect of the lowest numbered RAG applicable to it, RAG 1 being the lowest and RAG 10 the highest;
- (iii) where a *firm* is, but for this *rule*, required to submit *data items* for more than one RAG and this includes the submission of *data items* in respect of fees, the FOS or FSCS levy, or threshold conditions, that *firm* must only submit these *data items* if they belong to the lowest numbered of the RAGs applicable to it;
- (iv) in the case of a *non-EEA bank*, or an *EEA bank* (whether or not it has *permission for accepting deposits*) other than one with *permission for cross border services* only, any *data items* submitted should, unless indicated otherwise, only cover the activities of the branch operation in the *United Kingdom*;
- in the format specified as applicable to the *firm* in the provision referred to in column (2);
- (b) submit this information at the frequency and in respect of the periods set out in the provision referred to in column (3); and
- (c) submit this information by the due date referred to in the provision referred to in column (4).
- (2) Unless (3) applies, any *data item* in (1) must be submitted by electronic means made available by the *appropriate regulator* ;
- (3) Paragraph (2) does not apply to:
- (a) *credit unions* solely in relation to the reporting requirement for RAG 1 activities where the following submission methods apply:
- (i) *Post* to the Bank of England for postal submission:

Regulatory Data Group

Statistics and Regulatory Data Division (HO5 A-B)

Bank of England

Threadneedle Street

London

EC2R 8AH

(ii) Leaving the report marked for the attention of "Regulatory Data Group, Statistics and Regulatory Data Division (HO 5 A-B) at the Bank of England, Threadneedle Street, London, EC2R 8AH, and obtaining a dated receipt

(iii) Electronic mail

(CreditUnionReporting@BankofEngland.co.uk) or fax (020 7601 3334) to the Regulatory Data Group of the Bank of England

(iv) Online submission via the appropriate systems accessible from the *appropriate regulator's* website;

(b) *firms* in RAG 2 in relation to the reporting requirements for RAG 2 activities; and

(c) those data items specified as "No standard format", where ■ SUP 16.3.6 R to ■ SUP 16.3.10 G will apply.

(4) A *firm* that is a member of a *financial conglomerate* must also submit financial reports as required by ■ SUP 16.12.32 R.

16.12.3A

FCA PRA

G

The following is designed to assist *firms* to understand how the reporting requirements set out in this chapter operate when the circumstances set out in ■ SUP 16.12.3 R (1)(a)(ii) apply.

(1) Example 1

A BIPRU 730K *firm* that undertakes activities in both RAG 3 and RAG 7

Overlaying the requirements of RAG 3 ( *data items* ) with the requirements of RAG 7 shows the following:

RAG 3 ( SUP 16.12.11 R ) data items	RAG 7 ( SUP 16.12.22A R ) data items
<i>Annual reports and accounts</i>	<i>Annual reports and accounts</i>
<i>Annual report and accounts of the mixed-activity holding company</i>	<i>Annual report and accounts of the mixed-activity holding company (note 10)</i>

RAG 3 (SUP 16.12.11 R) data items	RAG 7 ( SUP 16.12.22A R) data items
Solvency statement	Solvency statement
Balance sheet	Balance Sheet
Income statement	Income statement
Capital adequacy	Capital adequacy
Credit risk	Credit risk
Market risk	Market risk
Market risk - supplementary	Market risk - supplementary
Operational risk	Operational risk
Large exposures	Large exposures
UK integrated group large exposures	UK integrated group large exposures
Solo consolidation data	Solo consolidation data
Pillar 2 questionnaire	Pillar 2 questionnaire
Non-EEA sub-group	Non-EEA sub-group
	Professional indemnity insurance
	Threshold Conditions
	Training and Competence
	COBS data
Client money and client assets	Client money and client assets
	Fees and levies
CFTC	
IRB portfolio risk	IRB portfolio risk
Securitisation : non-trading book	Securitisation : non-trading book
Daily Flows (if it is an <i>ILAS BIPRU firm</i> )	
Enhanced Mismatch Report (if it is an <i>ILAS BIPRU firm</i> )	
Liquidity Buffer Qualifying Securities (if it is an <i>ILAS BIPRU firm</i> )	
Funding Concentration (if it is an <i>ILAS BIPRU firm</i> )	
Pricing data (if it is an <i>ILAS BIPRU firm</i> )	
Retail and corporate funding (if it is an <i>ILAS BIPRU firm</i> )	

RAG 3 (SUP 16.12.11 R) data items	RAG 7 ( SUP 16.12.22A R) data items
Currency Analysis (if it is a <i>ILAS BIPRU firm</i> )	
Systems and Controls Questionnaire (if it is a <i>non-ILAS BIPRU firm</i> )	
Securitisation: trading book	Securitisation: trading book

From this, the additional reports that are required are:

- (a) [deleted]
- (b) Professional indemnity insurance, where *RAG 7 firms* complete Section E of the *RMAR*, and therefore a *RAG 3 firm* should complete that;
- (c) [deleted]
- (d) Training and competence data, where *RAG 3 firms* should also complete Section G of *RMAR*;
- (e) Conduct of business data, where *RAG 3 firms* should complete Section H of *RMAR* .
- (f) [deleted]
- (g) [deleted]

The reporting frequency and submission times for items (b), (d) and (e) above are then derived from the rules applicable to *BIPRU firms* in ■ SUP 16.12.23 R and ■ SUP 16.12.24 R. Threshold conditions and fees and levies reports do not need to be submitted as they are not required under the lowest numbered of the two *RAGs* in this example, see ■ SUP 16.12.3 R (1)(a)(iii).

(2) Example 2

A *UK bank* in *RAG 1* that also carries on activities in *RAG 5*

Again, overlaying the *RAG 1* reporting requirements with the requirements for a *RAG 5 firm* gives the following :

RAG 1 requirements (SUP 16.12.5 R)	RAG 5 requirements (SUP 16.12.18A R)
<i>Annual report and accounts</i>	<i>Annual report and accounts</i>
<i>Annual report and accounts of the mixed-activity holding company</i> (note 9)	
Solvency statement (note 10)	
Balance sheet	Balance Sheet
Income statement	Income statement
Capital adequacy	Capital Adequacy
Credit risk	
Market risk	

RAG 1 requirements (SUP 16.12.5 R)	RAG 5 requirements (SUP 16.12.18A R)
<p>Market risk -supplementary</p> <p>Operational risk</p> <p>Large exposures</p> <p>UK integrated group large exposures</p> <p>Liquidity (other than stock)</p> <p>Liquidity - stock</p> <p>Forecast data</p> <p>Solo consolidation data</p> <p>Interest rate gap report</p> <p>[deleted]</p> <p>Non-EEA sub-group</p> <p>Sectoral information, including arrears and impairment</p> <p>IRB portfolio risk</p> <p>Securitisation: non-trading book</p> <p>Daily Flows (if it is an <i>ILAS BIPRU firm</i>)</p> <p>Enhanced Mismatch Report (if it is an <i>ILAS BIPRU firm</i>)</p> <p>Liquidity Buffer Qualifying Securities (if it is an <i>ILAS BIPRU firm</i>)</p> <p>Funding Concentration (if it is an <i>ILAS BIPRU firm</i>)</p> <p>Pricing data (if it is an <i>ILAS BIPRU firm</i>)</p> <p>Retail and corporate funding (if it is an <i>ILAS BIPRU firm</i>)</p> <p>Currency Analysis (if it is an <i>ILAS BIPRU firm</i>)</p> <p>Securitisation: trading book</p>	<p>Lending - Business flow and rates</p> <p>Residential Lending to individuals - New business profile</p> <p>Lending - Arrears analysis</p> <p>Mortgage administration - Business profile</p>

RAG 1 requirements (SUP 16.12.5 R)	RAG 5 requirements (SUP 16.12.18A R)
	Mortgage Administration - Arrears analysis
	Analysis of loans to customers
	Provisions analysis
	Fees and levies

In this case, it is more obvious that the firm's reporting requirement in RAG 1 is not all the data items listed above. However, for the purposes of this exercise, it is the list of potential data items that is important. Thus comparing RAG 1 with RAG 5, the additional reporting requirements are:

- (a) Lending - Business flow and rates, where Section D MLAR is required;
- (b) Residential Lending to individuals - New business profile, where Section E MLAR is required;
- (c) Lending - Arrears analysis, where Section F MLAR is required;
- (d) Mortgage administration - Business profile, where Section G MLAR is required;
- (e) Mortgage Administration - Arrears analysis, where Section H MLAR is required
- (f) Analysis of loans to customers, where section A3 of MLAR is required
- (g) Provisions analysis, where Section B2 of MLAR is required; and

Fees and levies are not applicable as they are not required to be submitted under the lowest numbered RAG in this example. The reporting frequency and submission times for items (a) to (g) above are then derived from the rules applicable to RAG 5 firms in ■ SUP 16.12.18 R.

16.12.3B  
FCA PRA

G

Firms' attention is drawn to ■ SUP 16.3.25 G regarding a single submission for all firms in the group.



16.12.4

FCA PRA

R

Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/ period	due date
<b>RAG 1</b>	<ul style="list-style-type: none"> <li>• <b>accepting deposits</b></li> <li>• <i>meeting of repayment claims</i></li> <li>• <i>managing dormant account funds (including the investment of such funds)</i></li> </ul>	SUP 16.12.5 R	SUP 16.12.6 R	SUP 16.12.7 R
<b>RAG 2.1</b>	<ul style="list-style-type: none"> <li>• <b>effecting contracts of insurance</b></li> <li>• <b>carrying out contracts of insurance</b></li> <li>• <b>entering as provider into a funeral plan contract</b></li> </ul>	SUP 16.12.8 R	SUP 16.12.8 R	SUP 16.12.8 R
<b>RAG 2.2</b>	<ul style="list-style-type: none"> <li>• <b>managing the under-writing capacity of a Lloyds syndicate as a managing agent at Lloyds</b></li> <li>• <b>advising on syndicate</b></li> </ul>	SUP 16.12.9 R	SUP 16.12.9 R	SUP 16.12.9 R

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable data items	reporting frequency/period	due date
RAG 3	<p><b>participation at Lloyds</b></p> <ul style="list-style-type: none"> <li>• <b>arranging deals in contracts of insurance written at Lloyds</b></li> </ul>			
	<ul style="list-style-type: none"> <li>• <b>dealing in investment as principal</b></li> </ul>	SUP 16.12.10 R SUP 16.12.11 R	SUP 16.12.10 R SUP 16.12.12 R	SUP 16.12.10 R SUP 16.12.13 R
	<ul style="list-style-type: none"> <li>• <b>dealing in investments as agent</b></li> <li>• <b>advising on investments (excluding retail investment activities)</b></li> <li>• <b>arranging (bringing about) deals in investments (excluding retail investment activities)</b></li> </ul>			
RAG 4	<ul style="list-style-type: none"> <li>• <b>managing investments</b></li> <li>• <b>establishing, operating or winding up a regulated collective investment scheme</b></li> </ul>	SUP 16.12.14 R SUP 16.12.15 R	SUP 16.12.14 R SUP 16.12.16 R	SUP 16.12.14 R SUP 16.12.17 R

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable data items	reporting frequency/ period	due date
	<ul style="list-style-type: none"> <li>• establishing, operating or winding up an unregulated collective investment scheme</li> <li>• establishing, operating or winding up a stakeholder pension scheme</li> <li>• establishing, operating or winding up a personal pension scheme</li> </ul>			
<b>RAG 5</b>	<ul style="list-style-type: none"> <li>• home finance administration or home finance providing activity</li> </ul>	SUP 16.12.18A R	SUP 16.12.18A R	SUP 16.12.18A R
<b>RAG 6</b>	<ul style="list-style-type: none"> <li>• acting as trustee of an authorised unit trust</li> <li>• safeguarding and administration of assets (without arranging)</li> </ul>	SUP 16.12.19 R	SUP 16.12.20 R	SUP 16.12.21 R

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable data items	reporting frequency/ period	due date
RAG 7	<ul style="list-style-type: none"> <li>• arranging safeguarding and administration of assets</li> <li>• acting as depository or sole director of an OEIC</li> </ul>	SUP 16.12.22A R	SUP 16.12.23 R	SUP 16.12.24 R
	<ul style="list-style-type: none"> <li>• retail investment activities</li> </ul>			
	<ul style="list-style-type: none"> <li>• advising on pensions transfers &amp; opt-outs</li> </ul>			
RAG 8	<ul style="list-style-type: none"> <li>• arranging (bringing about deals) in retail investments</li> </ul>	SUP 16.12.25A R	SUP 16.12.26 R	SUP 16.12.27 R
	<ul style="list-style-type: none"> <li>• making arrangements with a view to transactions in investments</li> </ul>			
RAG 9	<ul style="list-style-type: none"> <li>• operating a multilateral trading facility</li> </ul>	SUP 16.12.28A R	SUP 16.12.28A R	SUP 16.12.28A R
	<ul style="list-style-type: none"> <li>• home finance mediation activity</li> </ul>			
	<ul style="list-style-type: none"> <li>• insurance mediation ac-</li> </ul>			

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable data items	reporting frequency/period	due date
	<b>tivity (non-investment insurance contracts)</b>			
<b>RAG 10</b>	<b>• the activities of an RIE</b>	SUP 16.12.29 G	SUP 16.12.29 G	SUP 16.12.29 G
<b>RAG 11</b>	<b>bidding in emissions auctions</b>	SUP 16.12.29A R	SUP 16.12.29A R	SUP 16.12.29A R

16.12.4A PRA G

RAG 1 includes an *incoming EEA firm* exercising a *BCD* right through a *UK branch*.

16.12.4B FCA PRA G

**Group liquidity reporting**

Reporting at group level for liquidity purposes by *firms* falling within BIPRU 12 (Liquidity) is by reference to *defined liquidity groups*. *Guidance* about the different types of *defined liquidity groups* and related material is set out in ■ SUP 16 Annex 26 (Guidance on designated liquidity groups in ■ SUP 16.12).

16.12.5

FCA PRA

R

**Regulated Activity Group 1**

The applicable *data items* and forms or reports referred to in ■ SUP 16.12.4 R are set out according to *firm* type in the table below:

De- scrip- tion of da- ta item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	<i>UK bank</i>	<i>Build- ing soci- ety</i>	<i>Non- EEA bank</i>	<i>EEA bank that has per- mis- sion to accept de- posits, other than one with permis- sion for cross border services only</i>	<i>EEA bank that does not have permis- sion to accept de- posits, other than one with permis- sion for cross border services only</i>	[ <del>the</del> ed]	<i>Cred- it union</i>	<i>Dor- mant ac- count fund opera- tor</i>  (note 15)
<i>Annual report and ac- counts</i>	No stan- dard format		No stan- dard for- mat, but in En- glish					No stan- dard format
<i>Annual report and ac- counts of the mixed- activity holding compa- ny (note 9)</i>	No stan- dard format							

De- scrip- tion of <i>data</i> <i>item</i>	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	<i>UK bank</i>	<i>Build- ing soci- ety</i>	<i>Non- EEA bank</i>	<i>EEA bank that has permis- sion to accept de- posits, other than one with permis- sion for cross border ser- vices only</i>	<i>EEA bank that does not have permis- sion to accept de- posits, other than one with permis- sion for cross border ser- vices only</i>	<del>the</del> ed]	<i>Cred- it union</i>	<i>Dor- mant ac- count fund opera- tor</i>  (note 15)
<b>Solven- cy stan- state- ment (note 10)</b>	<b>No stan- dard for- mat</b>							
<b>Bal- ance sheet</b>	<b>FSA001 (note 2)</b>	<b>FSA001 (note 2)</b>					<b>CQ; CY</b>	
<b>In- come state- ment</b>	<b>FSA002 (note 2)</b>	<b>FSA002 (note 2)</b>	<b>FSA002</b>				<b>CQ; CY</b>	
<b>Capi- tal ade- quacy</b>	<b>FSA003 (note 2)</b>	<b>FSA003 (note 2)</b>					<b>CQ; CY</b>	
<b>Credit risk</b>	<b>FSA004 (note 2)</b>	<b>FSA004 (note 2)</b>						

Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has <i>permission</i> to accept deposits, other than one with <i>permission</i> for cross border services only	EEA bank that does not have <i>permission</i> to accept deposits, other than one with <i>permission</i> for cross border services only	[ <del>dit</del> ed]	Credit union	Dormant account fund operator  (note 15)
Market risk	FSA005 (notes 2, 4)	FSA005 (notes 2, 4)						
Market risk - supplementary	FSA006 (note 5)							
Operational risk	FSA007 (notes 2, 6)	FSA007 (notes 2, 6)						
Large exposures	FSA008 (note 2)	FSA008 (note 2)					CQ; CY	
UK integrated group large exposures	FSA018 (note 12)	FSA018 (note 12)						



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De- scrip- tion of <i>data</i> <i>item</i>	Prudential category of <i>firm</i> , applicable <i>data items</i> and report- ing format (Note 1)							
	<i>UK bank</i>	<i>Build- ing soci- ety</i>	<i>Non- EEA bank</i>	<i>EEA bank that has permis- sion to accept de- posits, other than one with permis- sion for cross border ser- vices only</i>	<i>EEA bank that does not have permis- sion to accept de- posits, other than one with permis- sion for cross border ser- vices only</i>	<del>[the ed]</del>	<i>Cred- it union</i>	<i>Dor- mant ac- count fund opera- tor</i>  (note 15)
<b>Liquid- ity (other than stock)</b>	<b>FSA011</b>							<b>CQ; CY</b>
<b>Fore- cast data</b>	<b>FSA014 (note 11)</b>	<b>FSA014 (note 11)</b>						
<b>Solo consoli- dation data</b>	<b>FSA016 (note 7)</b>	<b>FSA016 (note 7)</b>						
<b>Inter- est rate gap re- port</b>	<b>FSA017</b>	<b>FSA017</b>						
<b>Non- EEA</b>	<b>FSA028 (note 8)</b>							

Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	[deleted]	Credit union	Dormant account fund operator (note 15)

<b>sub-group</b>								
<b>Sec-toral infor-ma-tion, in-cluding arrears and im-pair-ment</b>	FSA015	FSA015						
	(Note 2)	(Note 2)						
<b>IRB portfo-lio risk</b>	FSA045	FSA045						
	(note 13)	(note 13)						
<b>Securi-tisa-tion: non-trading book</b>	FSA046	FSA046						
	(Notes 2 and 14)	(Notes 2 and 14)						

De- scrip- tion of <i>data</i> <i>item</i>	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	<i>UK bank</i>	<i>Build- ing soci- ety</i>	<i>Non- EEA bank</i>	<i>EEA bank that has permis- sion to accept de- posits, other than one with permis- sion for cross border ser- vices only</i>	<i>EEA bank that does not have permis- sion to accept de- posits, other than one with permis- sion for cross border ser- vices only</i>	[ <del>the</del> ed]	<i>Cred- it union</i>	<i>Dor- mant ac- count fund opera- tor</i>  (note 15)
<b>Daily Flows</b>	<b>FSA047</b> (Notes 16, 20 and 22)	<b>FSA047</b> (Notes 16, 20 and 22)	<b>FSA047</b> (Notes 16, 18, 20 and 22)	<b>FSA047</b> (Notes 16, 18, 20 and 22)	<b>FSA047</b> (Notes 16, 18, 20 and 22)			
<b>En- hanced Mis- match Report</b>	<b>FSA048</b> (Notes 16, 20 and 22)	<b>FSA048</b> (Notes 16, 20 and 22)	<b>FSA048</b> (Notes 16, 18, 20 and 22)	<b>FSA048</b> (Notes 16, 18, 20 and 22)	<b>FSA048</b> (Notes 16, 18, 20 and 22)			
<b>Liquid- ity Buffer Quali- fying Securi- ties</b>	<b>FSA050</b> (Notes 17, 21 and 22)	<b>FSA050</b> (Notes 17, 21 and 22)	<b>FSA050</b> (Notes 17, 19, 21 and 22)	<b>FSA050</b> (Notes 17, 19, 21 and 22)	<b>FSA050</b> (Notes 17, 19, 21 and 22)			
<b>Fund- ing Con-</b>	<b>FSA051</b> (Notes 17, 21	<b>FSA051</b> (Notes 17, 21	<b>FSA051</b> (Notes 17, 19,	<b>FSA051</b> (Notes 17, 19,	<b>FSA051</b> (Notes 17, 19,			

Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	[ <del>dit</del> ed]	Credit union	Dormant account fund operator (note 15)
centralisation	and 22)	and 22)	21 and 22)	21 and 22)	21 and 22)			
Pricing data	FSA052 (Notes 17, 22 and 24 )	FSA052 (Notes 17, 22 and 24 )	FSA052 (Notes 17, 19, 22 and 24 )	FSA052 (Notes 17, 19, 22 and 24 )	FSA052 (Notes 17, 19, 22 and 24 )			
Retail and corporate funding	FSA053 (Notes 17, 21 and 22)	FSA053 (Notes 17, 21 and 22)	FSA053 (Notes 17, 19, 21 and 22)	FSA053 (Notes 17, 19, 21 and 22)	FSA053 (Notes 17, 19, 21 and 22)			
Currency Analysis	FSA054 (Notes 17, 21 and 22)	FSA054 (Notes 17, 21 and 22)	FSA054 (Notes 17, 19, 21 and 22)	FSA054 (Notes 17, 19, 21 and 22)	FSA054 (Notes 17, 19, 21 and 22)			
Securitisation:	FSA058 (Notes 2 and 23)							

Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	[deleted]	Credit union	Dormant account fund operator (note 15)

**trading book**

**Note 1** When submitting the completed *data item* required, a *firm* must use the format of the *data item* set out in SUP 16 Annex 24 R, except for credit union reports that are in SUP 16 Annex 14 R. Guidance notes for completion of the data items are contained in SUP 16 Annex 25 G (or Ann 15 G for credit unions).

**Note 2** *Firms* that are members of a *UK consolidation group* subject to the capital resources requirement at stage 1 of BIPRU 8 Annex 5 R are also required to submit this data item on a *UK consolidation group* basis. *Firms'* attention is drawn to SUP 16.3.25 G regarding a single submission for all *firms* in the *group*.

**Note 3** [deleted]

**Note 4** This applies to a *firm* that is required to submit *data item* FSA003 and, at any time within the 12 months up to its latest *accounting reference date* ("the relevant period"), was reporting *data item* FSA005 ("Firm A") or not reporting this item ("Firm B"). In the case of Firm A it must report this *data item* if one or both of its last two submissions in the relevant period show that the

Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	[ <del>dit</del> ed]	Credit union	Dormant account fund operator (note 15)

threshold was exceeded. In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded. The threshold is exceeded where *data element* 93A in *data item* FSA003 is greater than £50 million, or its currency equivalent, at the relevant reporting date for the *firm*.

- Note 5** Only applicable to *firms* with a *VaR model permission*
- Note 6** This is only applicable to a *firm* that has adopted, in whole or in part, either the *standardised approach*, *alternative standardised approach*, or *advanced measurement approach* under BIPRU 6.
- Note 7** Only applicable to a *firm* that has a *solo consolidation waiver*.
- Note 8** This will be applicable to *firms* (other than building societies) that are members of a *UK consolidation group* on the reporting date.
- Note 9** Only applicable to a *firm* whose ultimate parent is a *mixed-activity holding company*.
- Note 10** Only applicable to a *firm* that is a *partnership*, when the report must be submitted by each *partner*.
- Note 11** Members of a *UK consolidation group* should only submit this *data item* at the *UK consolidation group* level.
- Note 12** Members of a *UK integrated group* should only submit this *data item* at the *UK integrated group* level.

De- scrip- tion of <i>data</i> <i>item</i>	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	<i>UK bank</i>	<i>Build- ing soci- ety</i>	<i>Non- EEA bank</i>	<i>EEA bank that has permis- sion to accept de- posits, other than one with permis- sion for cross border ser- vices only</i>	<i>EEA bank that does not have permis- sion to accept de- posits, other than one with permis- sion for cross border ser- vices only</i>	<del>[the</del> ed]	<i>Cred- it union</i>	<i>Dor- mant ac- count fund opera- tor</i>  (note 15)

**Note 13** Only applicable to *firms* that have an *IRB permission*

**Note 14** Only applicable to *firms* that hold *securitisation positions*, or are the *originator* or *sponsor* of *securitisations* of *non-trading book exposures*.

**Note 15** Only applies to a *dormant account fund operator* that does not fall into any of the other prudential categories in this table.

**Note 16** A *firm* must complete this item separately on each of the following bases that are applicable.

(1) It must complete it on a solo basis (including on the basis of the *firm's UK branch*). Therefore even if it has a *solo consolidation waiver* it must complete the item on an unconsolidated basis by reference to the *firm* alone.

(2) If it is a *group liquidity reporting firm* in a *DLG by default* and is a *UK lead regulated firm*, it must complete the item on the basis of that group.

(3) If it is a *group liquidity reporting firm* in a *UK DLG by modification*, it must complete the item on the basis of that group.

Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	[deleted]	Credit union	Dormant account fund operator (note 15)

**(4) If it is a group liquidity reporting firm in a non-UK DLG by modification, it must complete the item on the basis of that group.**

**Note 17** A firm must complete this item separately on each of the following bases that are applicable.

**(1) It must complete it on a solo basis (including on the basis of the firm's UK branch) unless it is a group liquidity reporting firm in a UK DLG by modification. Therefore even if it has a solo consolidation waiver it must complete the item on an unconsolidated basis by reference to the firm alone.**

**(2) If it is a group liquidity reporting firm in a UK DLG by modification, it must complete the item on the basis of that group.**

**Note 18** **(1) If the firm has a whole-firm liquidity modification it must complete this item on the basis of the whole firm (or at any other reporting level the whole-firm liquidity modification may require) and not just its UK branch.**

**(2) Otherwise the firm must complete this item by reference to the activities of its branch operation in the United Kingdom in accordance with SUP 16.12.3R (1)(a)(iv).**



Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	[ <del>the</del> ed]	Credit union	Dormant account fund operator (note 15)

**Note 19** (1) If the *firm* has a *whole-firm liquidity modification* there is no obligation to report this item.

(2) Otherwise the *firm* must complete this item by reference to the activities of its branch operation in the *United Kingdom* in accordance with SUP 16.12.3R (1)(a)(iv).

**Note 20** (1) This item must be reported in the reporting currency.

(2) If any *data element* is in a currency or currencies other than the reporting currency, all currencies (including the reporting currency) must be combined into a figure in the reporting currency.

(3) In addition, all *material currencies* (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:

(a) the reporting frequency is (whether under a *rule* or under a *waiver*) quarterly or less than quarterly; or

(b) the only *material currency* is the reporting currency;

Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	[dit ed]	Credit union	Dormant account fund operator (note 15)

(3) does not apply.

(4) If there are more than three *material currencies* for this *data item*, (3) only applies to the three largest in amount. A *firm* must identify the largest in amount in accordance with the following procedure.

(a) For each currency, take the largest of the asset or liability figure as referred to in the definition of *material currency*.

(b) Take the three largest figures from the resulting list of amounts.

(5) The date as at which the calculations for the purposes of the definition of *material currency* are carried out is the last day of the reporting period in question.

(6) The reporting currency for this *data item* is whichever of the following currencies the *firm* chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).

**Note 21** Note 20 applies, except that paragraphs (3), (4) and (5) do not apply, meaning that *material currencies* must not be recorded separately.

Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	[the ed]	Credit union	Dormant account fund operator (note 15)

**Note 22** Any changes to reporting requirements caused by a *firm* receiving an *intra-group liquidity modification* or a *whole-firm liquidity modification* (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the *data item* in question if the *firm* receives that *intra-group liquidity modification*, *whole-firm liquidity modification* or variation part of the way through such a period. If the change is that the *firm* does not have to report a particular *data item* or does not have to report it at a particular *reporting level*, the *firm* must nevertheless report that item or at that *reporting level* for any reporting period that has already begun. This paragraph is subject to anything that the *intra-group liquidity modification* or a *whole-firm liquidity modification* says to the contrary.

**Note 23** Only applicable to *firms* that hold *securitisation positions* in the *trading book* and/ or are the *originator* or *sponsor* of *securitisations* held in the *trading book*.

**Note 24** This *data item* must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8,

Description of data item	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	[deleted]	Credit union	Dormant account fund operator (note 15)

and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.

16.12.6 FCA PRA

**R** The applicable reporting frequencies for submission of *data items* and periods referred to in ■ SUP 16.12.5 R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	Unconsolidated UK banks and building societies	Solo consolidated UK banks and building societies	Report on a UK consolidation group or, as applicable, defined liquidity group basis by UK banks and building societies	Other members of RAG 1
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*Annual report and accounts* Annual Annual Annual

<i>Data item</i>	Unconsolidated UK banks and building societies	Solo consolidated UK banks and building societies	Report on a UK consolidation group or, as applicable, defined liquidity group basis by UK banks and building societies	Other members of RAG 1
<b>Annual report and accounts of the mixed-activity holding company</b>	<b>Annual</b>			
<b>Solvency statement</b>	<b>Annual</b>			
<b>CQ</b>				<b>Quarterly</b>
<b>CY</b>				<b>Annually (note 2)</b>
<b>FSA001</b>	<b>Quarterly</b>		<b>Half yearly</b>	
<b>FSA002</b>	<b>Quarterly</b>		<b>Half yearly</b>	<b>Half yearly</b>
<b>FSA003</b>	<b>Quarterly or monthly (note 1)</b>		<b>Half yearly</b>	
<b>FSA004</b>	<b>Quarterly</b>		<b>Half yearly</b>	
<b>FSA005</b>	<b>Quarterly</b>		<b>Half yearly</b>	
<b>FSA006</b>	<b>Quarterly</b>			
<b>FSA007</b>	<b>Annually</b>			
<b>FSA008</b>	<b>Quarterly</b>			
<b>FSA011</b>	<b>Quarterly</b>			
<b>FSA014</b>	<b>Half yearly</b>			
<b>FSA015</b>	<b>Quarterly</b>		<b>Half yearly</b>	
<b>FSA016</b>		<b>Half yearly</b>		
<b>FSA017</b>	<b>Quarterly</b>		<b>Half yearly</b>	
<b>FSA018</b>	<b>Quarterly</b>			

<i>Data item</i>	<i>Unconsolidated UK banks and building societies</i>	<i>Solo consolidated UK banks and building societies</i>	<i>Report on a UK consolidation group or, as applicable, defined liquidity group basis by UK banks and building societies</i>	<i>Other members of RAG 1</i>
<b>FSA028</b>	<b>Half yearly</b>			
<b>FSA045</b>	<b>Quarterly</b>		<b>Half yearly</b>	
<b>FSA046</b>	<b>Quarterly</b>		<b>Quarterly</b>	
<b>FSA047</b>	<b>Daily, weekly, monthly or quarterly (Notes 4, 6 and 9)</b>	<b>Daily, weekly, monthly or quarterly (Notes 4,5, 6 and 9)</b>	<b>Daily, weekly, monthly or quarterly (Notes 4, 8 and 9)</b>	<b>Daily, weekly, monthly or quarterly (Notes 4,7 and 9)</b>
<b>FSA048</b>	<b>Daily, weekly, monthly or quarterly (Notes 4, 6 and 9)</b>	<b>Daily, weekly, monthly or quarterly (Notes 4,5, 6 and 9)</b>	<b>Daily, weekly, monthly or quarterly (Notes 4, 8 and 9)</b>	<b>Daily, weekly, monthly or quarterly (Notes 4,7 and 9)</b>
<b>FSA050</b>	<b>Monthly (Note 4)</b>	<b>Monthly (Notes 4 and 5)</b>	<b>Monthly (Note 4)</b>	<b>Monthly (Note 4)</b>
<b>FSA051</b>	<b>Monthly (Note 4)</b>	<b>Monthly (Notes 4 and 5)</b>	<b>Monthly (Note 4)</b>	<b>Monthly (Note 4)</b>
<b>FSA052</b>	<b>Weekly or monthly (Notes 4 and 10)</b>	<b>Weekly or monthly (Notes 4, 5 and 10)</b>	<b>Weekly or monthly (Notes 4 and 11)</b>	<b>Weekly or monthly (Notes 4 and 10)</b>
<b>FSA053</b>	<b>Quarterly (Note 4)</b>	<b>Quarterly (Notes 4 and 5)</b>	<b>Quarterly (Note 4)</b>	<b>Quarterly (Note 4)</b>
<b>FSA054</b>	<b>Quarterly (Note 4)</b>	<b>Quarterly (Notes 4 and 5)</b>	<b>Quarterly (Note 4)</b>	<b>Quarterly (Note 4)</b>
<b>FSA058</b>	<b>Quarterly</b>		<b>Quarterly</b>	

<i>Data item</i>	Unconsolidated UK banks and building societies	Solo consolidated UK banks and building societies	Report on a UK consolidation group or, as applicable, defined liquidity group basis by UK banks and building societies	Other members of RAG 1
<b>Note 1</b>	<p><b>Monthly submission only applicable if the <i>firm</i> has been notified in writing that it is required to report (when, on an annual review, it has two consecutive quarterly submissions of FSA003 showing <i>data element</i> 93A being greater than £50 million, or its currency equivalent, and also greater than 50% of <i>data element</i> 70A .</b></p>			
<b>Note 2</b>	<p><b>The annual report required from a <i>credit union</i> by SUP 16.12.5 R must be made up for the same period as the audited accounts published by the <i>credit union</i> in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 or provided in accordance with article 49 of the Credit Unions (Northern Ireland) Order 1985 (as appropriate). CREDS 8.2.6 R (2)(a) states that the audited accounts referred to in SUP 16.12.5 R are to be made up for the period beginning with the date of the <i>credit union's</i> registration or with the date to which the <i>credit union's</i> last annual accounts were made up, and ending on the <i>credit union's</i> most recent financial year end.</b></p>			
<b>Note 3</b>	<p><b>[deleted]</b></p>			

<i>Data item</i>	Unconsolidated UK banks and building societies	Solo consolidated UK banks and building societies	Report on a UK consolidation group or, as applicable, defined liquidity group basis by UK banks and building societies	Other members of RAG 1
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**Note 4** Reporting frequencies and reporting periods for this *data item* are calculated on a calendar year basis and not from a *firm's accounting reference date*. In particular:

- (1) A week means the period beginning on Saturday and ending on Friday.
- (2) A month begins on the first day of the calendar month and ends on the last day of that month.
- (3) Quarters end on 31 March, 30 June, 30 September and 31 December.
- (4) Daily means each *business day*.

All periods are calculated by reference to London time.

Any changes to reporting requirements caused by a *firm* receiving an *intra-group liquidity modification* or a *whole-firm liquidity modification* (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the firm receives that *intra-group liquidity modification*, *whole-firm liquidity modification* or variation part of the way through such a period, unless the *whole-firm liquidity modification* or *intra-group liquidity modification* says otherwise.

**Note 5** As specified in SUP 16.12.5 R, solo consolidation has no application to liquidity reporting. Therefore it does not make any difference to the reporting of this item whether or not the *firm* is solo consolidated.



<i>Data item</i>	Unconsolidated UK banks and building societies	Solo consolidated UK banks and building societies	Report on a UK consolidation group or, as applicable, defined liquidity group basis by UK banks and building societies	Other members of RAG 1
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**Note 6** If the report is on a solo basis (and the *firm* is a UK firm) the reporting frequency is as follows:

(1) if the *firm* does not have an *intra-group liquidity modification* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(2) if the *firm* is a *group liquidity reporting firm* in a *non-UK DLG by modification (firm level)* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(3) the frequency is quarterly if the *firm* is a *group liquidity reporting firm* in a *UK DLG by modification*.

**Note 7** (1) If the report is on a solo basis (and the *firm* is not a UK firm) the reporting frequency is as follows:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*.

(2) If the *firm* has a *whole-firm liquidity modification* (1) does not apply and instead the frequency of solo reporting is quarterly (or whatever other frequency the *whole-firm liquidity modification* requires).

<i>Data item</i>	Unconsolidated <i>UK banks and building societies</i>	Solo consolidated <i>UK banks and building societies</i>	Report on a <i>UK consolidation group</i> or, as applicable, <i>defined liquidity group</i> basis by <i>UK banks and building societies</i>	Other members of <i>RAG 1</i>
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**Note 8**

(1) If the report is by reference to the *firm's DLG by default* the reporting frequency is:

- (a) weekly if the *group liquidity standard frequency reporting conditions* are met;
- (b) monthly if the *group liquidity low frequency reporting conditions* are met.

(2) If the report is by reference to the *firm's UK DLG by modification* the reporting frequency is:

- (a) weekly if the *group liquidity standard frequency reporting conditions* are met;
- (b) monthly if the *group liquidity low frequency reporting conditions* are met.

(3) If the report is by reference to the *firm's non-UK DLG by modification* the reporting frequency is quarterly.

**Note 9**

(1) If the reporting frequency is otherwise weekly, the item is to be reported on every *business day* if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm, branch* or group in question.

(2) If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm, branch* or group in question.

(3) A *firm* must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no *firm-specific liquidity stress* or *market liquidity stress* and none is expected.

<i>Data item</i>	Unconsolidated UK banks and building societies	Solo consolidated UK banks and building societies	Report on a UK consolidation group or, as applicable, defined liquidity group basis by UK banks and building societies	Other members of RAG 1
<b>Note 10</b>	<p>If the report is on a solo basis (including by reference to the <i>firm's UK branch</i>) the reporting frequency is as follows:</p> <p>(1) weekly if the <i>firm</i> is a <i>standard frequency liquidity reporting firm</i>; and</p> <p>(2) monthly if the <i>firm</i> is a <i>low frequency liquidity reporting firm</i>.</p>			
<b>Note 11</b>	<p>If the report is by reference to the <i>firm's UK DLG by modification</i> the reporting frequency is:</p> <p>(1) weekly if the <i>group liquidity standard frequency reporting conditions</i> are met;</p> <p>(2) monthly if the <i>group liquidity low frequency reporting conditions</i> are met.</p>			

16.12.7  
FCA PRA

**R**

The applicable due dates for submission referred to in ■ SUP 16.12.4 R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in ■ SUP 16.12.6 R, unless indicated otherwise.

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<i>Annual report and accounts</i>						80 business days (note 1)
						7 months (note 2)
<i>Annual report and accounts of</i>						7 months

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>the mixed-activity holding company</b>						
<b>Solvency statement</b>						<b>3 months</b>
<b>CQ</b>				<b>1 month</b>		
<b>CY</b>						<b>6 months</b>
<b>FSA001</b>				<b>20 business days</b>	<b>45 business days</b>	
<b>FSA002</b>				<b>20 business days</b>	<b>45 business days</b>	
<b>FSA003</b>			<b>15 business days</b>	<b>20 business days</b>	<b>45 business days</b>	
<b>FSA004</b>				<b>20 business days</b>	<b>45 business days</b>	
<b>FSA005</b>				<b>20 business days</b>	<b>45 business days</b>	
<b>FSA006</b>				<b>20 business days</b>		
<b>FSA007</b>						<b>6 months</b>
<b>FSA008</b>				<b>20 business days (note 3)</b>		
				<b>45 business days (note 4)</b>		
<b>[deleted]</b>				<b>[deleted]</b>		
<b>FSA011</b>				<b>15 business days</b>		
<b>[deleted]</b>					<b>[deleted]</b>	
<b>[deleted]</b>				<b>[deleted]</b>		

<i>Data item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
<b>FSA014</b>					<b>30 busi-ness days (note 3);</b>	
					<b>45 busi-ness days (note 4)</b>	
<b>FSA015</b>				<b>30 busi-ness days</b>	<b>45 busi-ness days</b>	
<b>FSA016</b>					<b>30 busi-ness days</b>	
<b>FSA017</b>				<b>20 busi-ness days</b>	<b>45 busi-ness days</b>	
<b>FSA018</b>				<b>45 busi-ness days</b>		
<b>FSA028</b>					<b>30 busi-ness days</b>	
<b>FSA045</b>				<b>20 busi-ness days</b>	<b>45 busi-ness days</b>	
<b>FSA046</b>				<b>20 busi-ness days (Note 3), 45 busi-ness days (Note 4)</b>		
<b>FSA047</b>	<b>22.00 hours (London time) on the busi-ness day immedi-ately fol-lowing the last day of the re-ported period for the</b>	<b>22.00 hours (London time) on the busi-ness day immedi-ately fol-lowing the last day of the re-ported period for the</b>	<b>15 busi-ness days</b>	<b>15 busi-ness days or one Month (Note 5)</b>		

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
	item in question	item in question				
FSA048	22.00 hours (London time) on the <i>business day</i> immediately following the last day of the reporting period for the item in question	22.00 hours (London time) on the <i>business day</i> immediately following the last day of the reporting period for the item in question	15 <i>business days</i>	15 <i>business days</i> or one <i>Month</i> (Note 5)		
FSA050			15 <i>business days</i>			
FSA051			15 <i>business days</i>			
FSA052		22.00 hours (London time) on the <i>second business day</i> immediately following the last day of the reporting period for the item in question	15 <i>business days</i>			
FSA053			15 <i>business days</i>			
FSA054			15 <i>business days</i>			

<i>Data item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
<b>FSA058</b>				<b>20 <i>business days</i></b> <b>(Note 3),</b> <b>45 <i>business days</i></b> <b>(Note 4)</b>		
<b>Note 1</b>	<b>Applicable to UK banks and dormant account fund operators.</b>					
<b>Note 2</b>	<b>Applicable to non-EEA banks</b>					
<b>Note 3</b>	<b>Applicable to unconsolidated and solo consolidated reports</b>					
<b>Note 4</b>	<b>Applicable to UK consolidation group reports</b>					
<b>Note 5</b>	<b>It is one <i>Month</i> if the report relates to a <i>non-UK DLG</i> by <i>modification</i> or the <i>firm</i> has a <i>whole-firm liquidity modification</i>.</b>					

16.12.8  
PRA

R

**Regulated Activity Group 2.1**

- (1) The financial reporting requirements for *RAG 2.1* activities for *insurers*, excluding *friendly societies*, are set out in *IPRU(INS)*.
- (2) The financial reporting requirements for *RAG 2.1* activities for *friendly societies* are set out in *IPRU(FSOC)*.
- (3) A *UK insurance special purpose vehicle* must submit a copy of its annual audited financial statements within 3 months of its *accounting reference date*, but the report is only required if it was audited as a result of a statutory provision other than under the *Act*.

16.12.9  
FCA

R

**Regulated Activity Group 2.2**

The applicable *data items* referred to in ■ SUP 16.12.4 R are set out according to type of *firm* in the table below .

The applicable reporting frequencies for submission of *data items* and periods referred to in ■ SUP 16.12.4 R are set out in the table below and are calculated from a *firm's accounting reference date*, unless indicated otherwise.

The applicable due dates for submission referred to in ■ SUP 16.12.4 R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

<i>Member's adviser</i>			<i>the Society (note 1)</i>		
<b>Description of data item and data item</b>	<b>Frequency</b>	<b>Submission deadline</b>	<b>Description of data item</b>	<b>Frequency</b>	<b>Submission deadline</b>
			<i>Annual re- port and ac- counts</i>	<b>Annually</b>	<b>6 month's after the Society's ac- counting reference date</b>
			<b>Annual Lloyd's re- turn</b>	<b>Annually</b>	<b>6 months after the Society's ac- counting reference date</b>
			<b>Syndicate accounts and reports (note 2)</b>	<b>Annually</b>	<b>6 months after the Society's ac- counting reference date</b>
<b>Quarterly reporting statement</b>	<b>Quarterly</b>	<b>15 business days after the quarter end</b>			
<b>Balance Sheet</b>					
<b>FSA001 (notes 15, 20) or</b>	<b>Quarterly or half yearly</b>	<b>(note 14)</b>			
<b>FSA029</b>	<b>Quarterly (note 14)</b>	<b>(note 14)</b>			
<b>Income Statement</b>					
<b>FSA002 (note 20), or</b>	<b>Quarterly or half yearly (note 14)</b>	<b>(note 14)</b>			
<b>FSA030</b>	<b>Quarterly</b>	<b>(note 14)</b>			
<b>Capital Adequacy</b>					
<b>FSA003 (notes 4, 20) or</b>	<b>Monthly, quarterly or half</b>	<b>(note 14)</b>			



	<i>Member's adviser</i>	<i>the Society (note 1)</i>
	yearly (note 14)	
FSA033 (note 12)	Quarterly (note 14)	
	or	
FSA034 (note 13)	Quarterly (note 14)	
	or	
FSA035 (note 13)	Quarterly (note 14)	
<b>Credit Risk</b>		
FSA004 (notes 5, 20)	Quarterly (note 14) or half yearly (note 14)	
<b>Market Risk</b>		
FSA005 (notes 6, 20)	Quarterly (note 14) or half yearly (note 14)	
<b>Large Exposures</b>		
FSA008 (Notes 20, 21)	Quarterly	20 <i>business days</i> (note 19)
Note 1	The <i>Society</i> must prepare its reports in the format specified in <i>IPRU(INS)</i> Appendix 9.11, unless Note 2 applies.	
Note 2	The <i>Society</i> must ensure that the annual syndicate accounts and reports are prepared in accordance with the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008 (S.I. 2008/1950).	
Note 3	[deleted]	
Note 4	Only <i>firms</i> subject to <i>IPRU(INV)</i> 4 report <i>data item</i> FSA003.	
Note 5	This applies to a <i>firm</i> that is required to submit <i>data item</i> FSA003 and, at anytime within the 12 <i>months</i> up to its latest <i>accounting reference date</i> ("the relevant period"), was re-	

	<i>Member's adviser</i>	the <i>Society</i> (note 1)
	<p>porting <i>data item</i> FSA004 ("Firm A") or not reporting this item ("Firm B").</p> <p>In the case of Firm A it must report this <i>data item</i> if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</p> <p>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</p> <p>The threshold is exceeded where <i>data element 77A</i> in <i>data item</i> FSA003 is greater than £10 million, or its currency equivalent, at the relevant reporting date for the <i>firm</i>.</p>	
Note 6	<p>This applies to a <i>firm</i> that is required to submit <i>data item</i> FSA003 and, at anytime within the 12 <i>months</i> up to its latest <i>accounting reference date</i> ("the relevant period"), was reporting <i>data item</i> FSA005 ("Firm A") or not reporting this item ("Firm B").</p> <p>In the case of Firm A it must report this <i>data item</i> if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</p> <p>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</p> <p>The threshold is exceeded where <i>data element 93A</i> in <i>data item</i> FSA003 is greater than £50 million, or its currency equivalent, at the relevant reporting date for the <i>firm</i>.</p>	
Note 7	[deleted]	
Note 8	[deleted]	
Note 9	[deleted]	
Note 10	[deleted]	
Note 11	[deleted]	
Note 12	FSA033 is only applicable to <i>firms</i> subject to <i>IPRU(INV)</i> 3	
Note 13	<p>Only applicable to <i>firms</i> subject to <i>IPRU(INV)</i> 5. FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(INV)</i> 5.2.3(2)R.</p> <p>FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(INV)</i> 5.2.3(2)R.</p>	

	<i>Member's adviser</i>	<i>the Society (note 1)</i>
<b>Note 14</b>	<b><i>BIPRU 50K firms report half yearly on 30 business days submission, all other BIPRU firms on unconsolidated basis report quarterly on 20 business days submission. All UK consolidation group reports report half yearly on 45 business days submission. All other firms report monthly on 20 business days submission.</i></b>	
<b>Note 15</b>	<b><i>This data item only applies to BIPRU firms.</i></b>	
<b>Note 16</b>	<b>[deleted]</b>	
<b>Note 17</b>	<b>[deleted]</b>	
<b>Note 18</b>	<b>[deleted]</b>	
<b>Note 19</b>	<b><i>UK consolidation group reports have 45 business days submission.</i></b>	
<b>Note 20</b>	<b><i>Firms that are members of a UK consolidation group are also required to submit FSA001, FSA002, FSA003, FSA004, FSA005 and FSA008 on a UK consolidation group basis.</i></b>	
<b>Note 21</b>	<b><i>This will not be applicable to BIPRU limited activity firms or BIPRU limited licence firms unless they have a waiver under BIPRU 6.1.2 G.</i></b>	

**16.12.9A** G  
FCA

A *Member's adviser* that is also a *BIPRU investment firm* will also fall under one of the higher number *RAGs* that apply to *BIPRU investment firms*. That means that it will have to report a number of *data items* in addition to the ones that it has to supply under *RAG 2.2*.

**16.12.10** R  
FCA PRA

**Regulated Activity Group 3**

- (1) ■ SUP 16.12.11 R to ■ SUP 16.12.13 R do not apply to:
  - (a) a *lead regulated firm* (except in relation to *data items 47 to 55 (inclusive)*);
  - (b) an *OPS firm*;
  - (c) a local authority;
  - (d) a *service company*.
- (2) A *lead regulated firm* and an *OPS firm* must submit a copy of its annual report and audited accounts within 80 *business days* from its *accounting reference date*.
- (3) A *service company* must submit a copy of its annual audited financial statements within 6 months from its *accounting reference date*. However, the *firm* need only submit this if the report was audited as a result of a statutory provision other than the *Act*.

16.12.11  
FCA PRA

R

The applicable *data items* referred to in ■ SUP 16.12.4 R are set out according to *firm* type in the table below:

De- scrip- tion of da- ta item	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCITS in- vest- ment firms	50K	IRUM Chap- ter 3	IRUM Chap- ter 5	IRUM Chap- ter 9	IRUM Chap- ter 13	UP- RU
<i>Annual report and accounts</i>	No standard format			No stan- dard format (note 19)	No standard for- mat		No stan- dard format	No stan- dard for- mat
<i>Annual report and accounts of the mixed-activity holding company</i> (note 10)	No standard format							
<i>Solvency statement</i>	No standard format (note 11)			No stan- dard format (note 20)	No stan- dard format (note 11)		No stan- dard for- mat (note 11)	
<i>Balance sheet</i>	FSA001 (note 2)	FSA001 (note 2)	FSA001 (note 2)	FSA029 (note 18)	FSA029	FSA029	FSA029 (note 15 ) or Section A RMAR (note 15 )	FSA029

De- scrip- tion of data item	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCIS investment firms	50K	<del>IRUN</del> Chapter 3	<del>IRUN</del> Chapter 5	<del>IRUN</del> Chapter 9	<del>IRUN</del> Chapter 13	UP-RU
In- come state- ment	FSA002 (note 2)	FSA002 (note 2)	FSA002 (note 2)	FSA030 (note 18)	FSA030	FSA030	FSA030 (note 15) or Section B RMAR (note 15)	FSA030
Capit- al ade- quacy	FSA003 (note 2)	FSA003 (note 2)	FSA003 (note 2)	FSA033 (note 18)	FSA034 or FSA035 (note 14)	FSA031	FSA032 (note 15) or Sections D1 and D2 RMAR (note 15)	FSA036
Credit risk	FSA004 (notes 2, 3)	FSA004 (notes 2, 3)	FSA004 (notes 2, 3)					
Mar- ket risk	FSA005 (notes 2, 4)	FSA005 (notes 2, 4)	FSA005 (notes 2, 4)					
Mar- ket risk - supple- men- tary	FSA006 (note 5)	FSA006 (note 5)	FSA006 (note 5)					

De- scrip- tion of da- ta item	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IRUM Chapter 3	IRUM Chapter 5	IRUM Chapter 9	IRUM Chapter 13	UP-RU
<b>Opera- tional risk</b>	FSA007 (notes 2, 6, 7)	FSA007 (notes 2, 6, 7)	FSA007 (notes 2, 6, 7)					
<b>Large expo- sures</b>	FSA008 (Notes 2, 6)	FSA008 (Notes 2, 6)	FSA008 (Notes 2, 6)					
<b>UK in- tegrat- ed group large expo- sures</b>	FSA018 (note 12)	FSA018 (note 12)	FSA018 (note 12)					
<b>Solo consoli- dation data</b>	FSA016 (note 25)	FSA016 (note 25)	FSA016 (note 25)					
<b>Pillar 2 ques- tion- naire</b>	FSA019 (note 8)	FSA019 (note 8)	FSA019 (note 8)					
<b>Non- EEA sub- group</b>	FSA028 (note 9)	FSA028 (note 9)	FSA028 (note 9)					
<b>Thresh- old condi- tions</b>								Section F RMAR (Note 15)
<b>Client money and</b>	FSA039	FSA039	FSA039	FSA039 (note 18)	FSA039	FSA039	FSA039	Section C RMAR

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De- scrip- tion of data item	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCIS in- vest- ment firms	50K	<del>IRU</del> Chap- ter 3	<del>IRU</del> Chap- ter 5	<del>IRU</del> Chap- ter 9	<del>IRU</del> Chap- ter 13	UP- RU
client assets								(Note 15) or FSA039
CFTC	FSA040	FSA040	FSA040	FSA040	FSA040	FSA040	FSA040	FSA040
	(note 24)	(note 24)	(note 24)	(note 24)	(note 24)	(note 24)	(note 24)	(note 24)
IRB portfolio risk	FSA045	FSA045	FSA045					
	(note 22)	(note 22)	(note 22)					
Securitized non-trading book	FSA046	FSA046	FSA046					
	(note 23)	(note 23)	(note 23)					
Daily Flows	FSA047 (Notes 26, 29, 31 and 33)							
Enhanced Match Report	FSA048 (Notes 26, 29, 31 and 33)							
Liquidity Buffer Qualifying Securities	FSA050 (Notes 27, 30, 31 and 33)							

De- scrip- tion of <i>da- ta item</i>	<i>Firms'</i> prudential category and applicable data items (note 1)							
	<i>BIPRU firms</i> (note 17)			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS <i>in- vest- ment firms</i>	50K	<i>IRU</i> Chap- ter 3	<i>IRU</i> Chap- ter 5	<i>IRU</i> Chap- ter 9	<i>IRU</i> Chap- ter 13	UP- RU

<b>Fund- ing Con- centra- tion</b>	FSA051 (Notes 27, 30, 31 and 33)							
<b>Pricing data</b>	FSA052 (Notes 27, 31, 33 and 34)							
<b>Retail and corpo- rate fund- ing</b>	FSA053 (Notes 27, 30, 31 and 33)							
<b>Curren- cy Analy- sis</b>	FSA054 (Notes 27, 30, 31 and 33)							
<b>Sys- tems and Con- trols Ques- tion- naire</b>	FSA055 (Notes 28 and 33)							
<b>Securi- tisa- tion: trading book</b>	FSA058 (Note 32)	FSA058 (Note 32)	FSA058 (Note 32)					
<b>Note 1</b>	When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in SUP 16 Annex 24 R. Guidance notes for completion of the data items are contained in SUP 16 Annex 25 G.							



De- scrip- tion of <i>data item</i>	<i>Firms'</i> prudential category and applicable data items (note 1)							
	<i>BIPRU firms</i> (note 17)			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCIS <i>in- vest- ment firms</i>	50K	<del>IRUN</del> Chap- ter 3	<del>IRUN</del> Chap- ter 5	<del>IRUN</del> Chap- ter 9	<del>IRUN</del> Chap- ter 13	UP- RU

**Note 2** *Firms* that are members of a *UK consolidation group* are also required to submit this report on a *UK consolidation group* basis.

**Note 3** This applies to a *firm* that is required to submit *data item* FSA003 and, at any time within the 12 *months* up to its latest *accounting reference date* ("the relevant period"), was reporting *data item* FSA004 ("Firm A") or not reporting this item ("Firm B").

In the case of Firm A it must report this *data item* if one or both of its last two submissions in the relevant period show that the threshold was exceeded.

In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.

The threshold is exceeded where *data element* 77A in *data item* FSA003 is greater than £10 million, or its currency equivalent, at the relevant reporting date for the *firm*.

**Note 4** This applies to a *firm* that is required to submit *data item* FSA003 and, at anytime within the 12 *months* up to its latest *accounting reference date* ("the relevant period"), was reporting *data item* FSA005 ("Firm A") or not reporting this item ("Firm B").

In the case of Firm A it must report this *data item* if one or both of its last two submissions in the relevant period show that the threshold was exceeded.

In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.

The threshold is exceeded where *data element* 93A in *data item* FSA003 is greater than £50 million, or its currency equivalent, at the relevant reporting date for the *firm* .

De- scrip- tion of da- ta item	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU Chapter 3	IPRU Chapter 5	IPRU Chapter 9	IPRU Chapter 13	UP-RU

- Note 5** Only applicable to firms with a VaR model permission.
- Note 6** This will not be applicable to BIPRU limited activity firms or BIPRU limited licence firms unless they have a waiver under BIPRU 6.1.2 G.
- Note 7** This is only applicable to a firm that has adopted, in whole or in part, either the standardised approach, alternative standardised approach, or advanced measurement approach under BIPRU 6
- Note 8** Only applicable to BIPRU investment firms that:
- (a) are subject to consolidated supervision under BIPRU 8, except those that are either included within the consolidated supervision of a group that includes a UK credit institution, or that have been granted an investment firm consolidation waiver; or
  - (b) have been granted an investment firm consolidation waiver; or
  - (c) are not subject to consolidated supervision under BIPRU 8.
- A BIPRU investment firm under (a) must complete the report on the basis of its UK consolidation group. A BIPRU investment firm under (b) or (c) must complete the report on the basis of its solo position.
- Note 9** This will be applicable to firms that are members of a UK consolidation group on the reporting date.
- Note 10** Only applicable to a firm whose ultimate parent is a mixed activity holding company.
- Note 11** Only applicable to a firm that is a sole trader or a partnership, when the report must be submitted by each partner.
- Note 12** Members of a UK integrated group should only submit this data item at the UK integrated group level.
- Note 13** This does not apply to a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm.

De- scrip- tion of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>							
	<i>BIPRU firms (note 17)</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCIS <i>in- vest- ment firms</i>	50K	<del>IRU</del> Chap- ter 3	<del>IRU</del> Chap- ter 5	<del>IRU</del> Chap- ter 9	<del>IRU</del> Chap- ter 13	UP- RU

- Note 14** FSA034 must be completed by a *firm* not subject to the exemption in *IPRU(INV) 5.2.3(2)R*.
- FSA035 must be completed by a *firm* subject to the exemption in *IPRU(INV) 5.2.3(2)R*.
- Note 15** FSA029, FSA030, FSA032 and FSA039 only apply to a *firm* subject to *IPRU(INV) Chapter 13* which is an *exempt CAD firm*. Sections A, B, C, D1, D2 and F RMAR only apply to a *firm* subject to *IPRU(INV) Chapter 13* which is not an *exempt CAD firm*.
- Note 16** [deleted]
- Note 17** An *exempt BIPRU commodity firm* will, by virtue of the definition of **BIPRU TP 15**, be exempt from completing FSA003 (and thus FSA004, FSA005, FSA006 and FSA007) for the duration of the transitional provision. It is however required to submit all other *data items* applicable according to the firm's *BIPRU* classification including, for the avoidance of doubt, **BIPRU TP 16**.
- Note 18** Except if the *firm* is an *adviser, local* or traded options market maker (as referred to in *IPRU(INV) 3-60(4)R*).
- Note 19** In the case of an *adviser, local* or traded options market maker (as referred to in *IPRU(INV) 3-60(4)R*), it is only required from *partnerships* and *bodies corporate*, and then only if the report was audited as a result of a statutory provision other than under the *Act*.
- Note 20** Only required in the case of an *adviser, local* or traded options market maker (as referred to in *IPRU(INV) 3-60(4)R*) that is a *sole trader*.
- Note 21** [deleted]
- Note 22** Only applicable to *firms* that have an *IRB permission*.

De- scrip- tion of da- ta item	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IRUM Chapter 3	IRUM Chapter 5	IRUM Chapter 9	IRUM Chapter 13	UP-RU

**Note 23** Only applicable to firms that hold securitisation positions, or are the originator or sponsor of securitisations, of non-trading book exposures.

**Note 24** Only applicable to firms granted a Part 30 exemption order and operating an arrangement to cover forward profits on the London Metals Exchange.

**Note 25** Only applicable to a firm that has a solo consolidation waiver.

**Note 26** A firm must complete this item separately on each of the following bases (if applicable).

(1) It must complete it on a solo basis. Therefore even if it has a solo consolidation waiver it must complete the item on an unconsolidated basis by reference to the firm alone.

(2) If it is a group liquidity reporting firm in a DLG by default and is a UK lead regulated firm, it must complete the item on the basis of that group.

(3) If it is a group liquidity reporting firm in a UK DLG by modification, it must complete the item on the basis of that group.

(4) If it is a group liquidity reporting firm in a non-UK DLG by modification, it must complete the item on the basis of that group.

**Note 27** A firm must complete this item separately on each of the following bases that are applicable.

(1) It must complete it on a solo basis unless it is a group liquidity reporting firm in a UK DLG by modification. Therefore even if it has a solo consolidation waiver it must complete the item on an unconsolidated basis by reference to the firm alone.

(2) If it is a group liquidity reporting firm in a UK DLG by modification, it must complete the item on the basis of that group.

De- scrip- tion of <i>data item</i>	<i>Firms'</i> prudential category and applicable data items (note 1)							
	<i>BIPRU firms</i> (note 17)			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCIS <i>in- vest- ment firms</i>	50K	<del>ILAS</del> Chap- ter 3	<del>ILAS</del> Chap- ter 5	<del>ILAS</del> Chap- ter 9	<del>ILAS</del> Chap- ter 13	UP- RU

**Note 28** If it is a *non-ILAS BIPRU firm*, it must complete it on a solo basis. Therefore even if it has a *solo consolidation waiver* it must complete the item on an unconsolidated basis by reference to the *firm* alone.

**Note 29** (1) This item must be reported in the reporting currency.

(2) If any *data element* is in a currency or currencies other than the reporting currency, all currencies (including the reporting currency) must be combined into a figure in the reporting currency.

(3) In addition, all *material currencies* (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:

(a) the reporting frequency is (whether under a *rule* or under a *waiver*) quarterly or less than quarterly; or

(b) the only *material currency* is the reporting currency;

(3) does not apply.

(4) If there are more than three *material currencies* for this *data item*, (3) only applies to the three largest in amount. A *firm* must identify the largest in amount in accordance with the following procedure.

(a) For each currency, take the largest of the asset or liability figure as referred to in the definition of *material currency*.

(b) Take the three largest figures from the resulting list of amounts.

De- scrip- tion of da- ta item	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IRUM Chapter 3	IRUM Chapter 5	IRUM Chapter 9	IRUM Chapter 13	UP-RU

(5) The date as at which the calculations for the purposes of the definition of *material currency* are carried out is the last day of the reporting period in question.

(6) The reporting currency for this *data item* is whichever of the following currencies the *firm* chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).

**Note 30** Note 29 applies, except that paragraphs (3), (4) and (5) do not apply, meaning that *material currencies* must not be recorded separately.

**Note 31** Any changes to reporting requirements caused by a *firm* receiving an *intra-group liquidity modification* (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the *data item* in question if the *firm* receives that *intra-group liquidity modification* or variation part of the way through such a period. If the change is that the *firm* does not have to report a particular *data item* or does not have to report it at a particular *reporting level*, the *firm* must nevertheless report that item or at that *reporting level* for any reporting period that has already begun. This paragraph is subject to anything that the *intra-group liquidity modification* says to the contrary.

**Note 32** Only applicable to *firms* that hold *securitisation positions* in the trading book and/ or are the *originator* or *sponsor* of *securitisations* held in the *trading book*.

**Note 33** FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an *ILAS BIPRU firm*. An *ILAS BIPRU firm* does not need to complete FSA055. A *non-ILAS BIPRU firm* must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.

**Note 34** This *data item* must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1

De- scrip- tion of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>							
	<i>BIPRU firms (note 17)</i>			<i>Firms other than BIPRU firms</i>				
	<i>730K</i>	<i>125K and UCITS investment firms</i>	<i>50K</i>	<i>ILAS Chapter 3</i>	<i>ILAS Chapter 5</i>	<i>ILAS Chapter 9</i>	<i>ILAS Chapter 13</i>	<i>UP-RU</i>

**to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.**

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G

The columns in the table in ■ SUP 16.12.11 R that deal with *BIPRU 50K firms* and *BIPRU 125K firms* cover some liquidity items that only have to be reported by an *ILAS BIPRU firm*. In fact a *BIPRU 50K firm* and a *BIPRU 125K firm* cannot be an *ILAS BIPRU firm*. One reason for drafting the table in this way is that the classification of *firms* into *ILAS BIPRU firms* and *non-ILAS BIPRU firms* is not based on the classification into *BIPRU 50K firms*, *BIPRU 125K firms* and *BIPRU 730K firms* and the drafting of the table emphasises that. Also, the table covers consolidated reports and the conditions about what sort of group has to supply what type of liquidity report do not always depend on how the individual *firm* is classified.

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R

The applicable reporting frequencies for *data items* referred to in ■ SUP 16.12.4 R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data Item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
<i>Annual report and accounts</i>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>		<b>Annually</b>
<i>Annual report and accounts of the mixed-activity</i>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>		

<i>Data Item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
<i>holding company</i>					
<b>Solvency statement</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>		<b>Annually</b>
<b>FSA001</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA002</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA003</b>	<b>Monthly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA004</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA005</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA006</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	
<b>FSA007</b>	<b>Annual (note 4)</b>	<b>Annual (note 4)</b>	<b>Annual (note 4)</b>	<b>Annual (note 4)</b>	
<b>FSA008</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	
<b>FSA016</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>		
<b>FSA018</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		
<b>FSA019</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>	
<b>FSA028</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>		
<b>FSA029</b>					<b>Quarterly</b>
<b>FSA030</b>					<b>Quarterly</b>
<b>FSA031</b>					<b>Quarterly</b>
<b>FSA032</b>					<b>Quarterly</b>
<b>FSA033</b>					<b>Quarterly</b>
<b>FSA034</b>					<b>Quarterly</b>
<b>FSA035</b>					<b>Quarterly</b>
<b>FSA036</b>					<b>Quarterly</b>
<b>FSA039</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>		<b>Half yearly</b>
<b>FSA040</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		<b>Quarterly</b>
<b>FSA045</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA046</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	
<b>FSA047</b>	<b>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</b>			<b>Daily, weekly, monthly or quarter-</b>	



<i>Data Item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
				ly (Notes 5, 7 and 8)	
<b>FSA048</b>	<b>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</b>			<b>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</b>	
<b>FSA050</b>	<b>Monthly (Note 5)</b>			<b>Monthly (Note 5)</b>	
<b>FSA051</b>	<b>Monthly (Note 5)</b>			<b>Monthly (Note 5)</b>	
<b>FSA052</b>	<b>Weekly or monthly (Notes 5 and 9)</b>			<b>Weekly or monthly (Notes 5 and 10)</b>	
<b>FSA053</b>	<b>Quarterly (Note 5)</b>			<b>Quarterly (Note 5)</b>	
<b>FSA054</b>	<b>Quarterly (Note 5)</b>			<b>Quarterly (Note 5)</b>	
<b>FSA055</b>	<b>Annually (Note 5)</b>			<b>Annually (Note 5)</b>	
<b>FSA058</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	
<b>Section A RMAR</b>					<b>Half yearly (note 2) Quarterly (note 3)</b>
<b>Section B RMAR</b>					<b>Half yearly (note 2) Quarterly (note 3)</b>
<b>Section C RMAR</b>					<b>Half yearly (note 2) Quarterly (note 3)</b>

<i>Data Item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
<b>Section D1 and D2 RMAR</b>					<b>Half yearly (note 2) Quarterly (note 3)</b>
<b>Section F RMAR</b>					<b>Half yearly</b>
<b>Note 1</b>	<b>[deleted]</b>				
<b>Note 2</b>	<b>Annual regulated business revenue up to and including £5 million.</b>				
<b>Note 3</b>	<b>Annual regulated business revenue over £5 million.</b>				
<b>Note 4</b>	<b>The reporting date for this <i>data item</i> is six months after a <i>firm's</i> most recent <i>accounting reference date</i>.</b>				
<b>Note 5</b>	<p><b>Reporting frequencies and reporting periods for this <i>data item</i> are calculated on a calendar year basis and not from a <i>firm's</i> <i>accounting reference date</i>. In particular:</b></p> <p><b>(1) A week means the period beginning on Saturday and ending on Friday.</b></p> <p><b>(2) A month begins on the first day of the calendar month and ends on the last day of that month.</b></p> <p><b>(3) Quarters end on 31 March, 30 June, 30 September and 31 December.</b></p> <p><b>(4) Daily means each <i>business day</i>.</b></p> <p><b>All periods are calculated by reference to London time.</b></p> <p><b>Any changes to reporting requirements caused by a <i>firm</i> receiving an <i>intra-group liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the <i>firm</i> receives that <i>intra-group liquidity modification</i> or variation part of the way through such a period, unless the <i>intra-group liquidity modification</i> says otherwise.</b></p>				

<i>Data Item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
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**Note 6** If the report is on a solo basis the reporting frequency is as follows:

(1) if the *firm* does not have an *intra-group liquidity modification* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(2) if the *firm* is a *group liquidity reporting firm in a non-UK DLG by modification (firm level)* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(3) the frequency is quarterly if the *firm* is a *group liquidity reporting firm in a UK DLG by modification*.

<i>Data Item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
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**Note 7**

(1) If the report is by reference to the *firm's DLG by default* the reporting frequency is:

(a) weekly if the *group liquidity standard frequency reporting conditions* are met;

(b) monthly if the *group liquidity low frequency reporting conditions* are met.

(2) If the report is by reference to the *firm's UK DLG by modification* the reporting frequency is:

(a) weekly if the *group liquidity standard frequency reporting conditions* are met;

(b) monthly if the *group liquidity low frequency reporting conditions* are met.

(3) If the report is by reference to the *firm's non-UK DLG by modification* the reporting frequency is quarterly.

**Note 8**

(1) If the reporting frequency is otherwise weekly, the item is to be reported on every *business day* if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm* or group in question.

(2) If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm* or group in question.

(3) A *firm* must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no *firm-specific liquidity stress* or *market liquidity stress* and none is expected.

<i>Data Item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
<b>Note 9</b>	<p>If the report is on a solo basis the reporting frequency is as follows:</p> <p>(1) weekly if the <i>firm</i> is a <i>standard frequency liquidity reporting firm</i>; and</p> <p>(2) monthly if the <i>firm</i> is a <i>low frequency liquidity reporting firm</i>.</p>				
<b>Note 10</b>	<p>If the report is by reference to the <i>firm's UK DLG by modification</i> the reporting frequency is:</p> <p>(1) weekly if the <i>group liquidity standard frequency reporting conditions</i> are met;</p> <p>(2) monthly if the <i>group liquidity low frequency reporting conditions</i> are met.</p>				

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**R**

The applicable due dates for submission referred to in ■ SUP 16.12.4 R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in ■ SUP 16.12.12 R, unless indicated otherwise.

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>Annual report and accounts</b>						<b>80 business days</b>
<i>Annual report and accounts of the mixed-activity holding company</i>						<b>7 months</b>

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>Solvency statement</b>						<b>3 months</b>
<b>FSA001</b>				<b>20 business days</b>	<b>30 business days (note 1)</b>	
					<b>45 business days (note 2)</b>	
<b>FSA002</b>				<b>20 business days</b>	<b>30 business days (note 1)</b>	
					<b>45 business days (note 2)</b>	
<b>FSA003</b>			<b>15 business days</b>	<b>20 business days</b>	<b>30 business days (note 1)</b>	
					<b>45 business days (note 2)</b>	
<b>FSA004</b>				<b>20 business days</b>	<b>30 business days (note 1)</b>	
					<b>45 business days (note 2)</b>	
<b>FSA005</b>				<b>20 business days</b>	<b>30 business days (note 1)</b>	
					<b>45 business days (note 2)</b>	
<b>FSA006</b>				<b>20 business days</b>		
<b>FSA007</b>						<b>2 months</b>

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>FSA008</b>				<b>20 business days (note 1);</b>		
				<b>45 business days (note 2)</b>		
<b>FSA016</b>					<b>30 business days</b>	
<b>FSA018</b>				<b>45 business days</b>		
<b>FSA019</b>						<b>2 months</b>
<b>FSA028</b>					<b>30 business days</b>	
<b>FSA029</b>				<b>20 business days</b>		
<b>FSA030</b>				<b>20 business days</b>		
<b>FSA031</b>				<b>20 business days</b>		
<b>FSA032</b>				<b>20 business days</b>		
<b>FSA033</b>				<b>20 business days</b>		
<b>FSA034</b>				<b>20 business days</b>		
<b>FSA035</b>				<b>20 business days</b>		
<b>FSA036</b>				<b>20 business days</b>		
<b>FSA039</b>					<b>30 business days</b>	
<b>FSA040</b>				<b>15 business days</b>		
<b>FSA045</b>				<b>20 business days</b>	<b>30 business days (note 1),</b>	<b>45 business days (note 2)</b>

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
FSA046				20 business days (Note 1), 45 business days (Note 2)		
FSA047	22.00 hours (London time) on the <i>business day</i> immediately following the last day of the reporting period for the item in question	22.00 hours (London time) on the <i>business day</i> immediately following the last day of the reporting period for the item in question	15 <i>business days</i>	15 <i>business days</i> or one <i>Month</i> (Note 3)		
FSA048	22.00 hours (London time) on the <i>business day</i> immediately following the last day of the reporting period for the item in question	22.00 hours (London time) on the <i>business day</i> immediately following the last day of the reporting period for the item in question	15 <i>business days</i>	15 <i>business days</i> or one <i>Month</i> (Note 3)		
FSA050			15 <i>business days</i>			
FSA051			15 <i>business days</i>			
FSA052		22.00 hours	15 <i>business days</i>			



<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
		(London time) on the second <i>business day</i> immediately following the last day of the reporting period for the item in question				
FSA053				15 <i>business days</i>		
FSA054				15 <i>business days</i>		
FSA055						15 <i>business days</i>
FSA058				20 <i>business days</i> (Note 1), 45 <i>business days</i> (Note 2)		
Section A RMAR				30 <i>business days</i>	30 <i>business days</i>	
Section B RMAR				30 <i>business days</i>	30 <i>business days</i>	
Section C RMAR				30 <i>business days</i>	30 <i>business days</i>	
Section D1 and D2 RMAR				30 <i>business days</i>	30 <i>business days</i>	
Section F RMAR					30 <i>business days</i>	

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>Note 1</b>	<b>For unconsolidated and solo-consolidated reports.</b>					
<b>Note 2</b>	<b>For UK consolidation group reports.</b>					
<b>Note 3</b>	<b>It is one <i>Month</i> if the report relates to a <i>non-UK DLG by modification</i>.</b>					

**Regulated Activity Group 4**

16.12.14

FCA

R

(1) ■ SUP 16.12.15 R to ■ SUP 16.12.17 R do not apply to:

- (a) a *lead regulated firm* (except in relation to *data items* 47 to 55 (inclusive));
- (b) an *OPS firm*;
- (c) a local authority.

(2) A *lead regulated firm* and an *OPS firm* must submit a copy of its annual report and audited accounts within 80 *business days* from its *accounting reference date*.

16.12.15

FCA PRA

R

The applicable *data items* referred to in ■ SUP 16.12.4 R according to type of *firm* are set out in the table below:

<i>Description of data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	70K	125K and UCIS investment firms	50K	<del>IPRU</del> Chapter 3	<del>IPRU</del> Chapter 5	<del>IPRU</del> Chapter 9	<del>IPRU</del> Chapter 13	UP-RU

**Annual report and accounts** No standard format (note 13)

**Annual report and accounts of the mixed-activity hold-** No standard format

De- scrip- tion of data item	Firms' prudential category and applicable data items (note 1)								
	BIPRU			Firms other than BIPRU firms					UP- RU
	730K	125K and UCIS in- vest- ment firms	50K	IRU(N) Chap- ter 3	IRU(N) Chap- ter 5	IRU(N) Chap- ter 9	IRU(N) Chap- ter 13		
<i>ing compa- ny (note 10)</i>									
<b>Solven- cy state- ment (note 11)</b>	<b>No standard for- mat</b>			<b>No stan- dard format</b>			<b>No stan- dard for- mat</b>		
<b>Bal- ance sheet</b>	<b>FSA001 (note 2)</b>	<b>FSA001 (note 2)</b>	<b>FSA001 (note 2)</b>	<b>FSA029</b>	<b>FSA029</b>	<b>FSA029</b>	<b>FSA029 (note 15 ) or Sec- tion A RMAR (note 15 )</b>	<b>FSA029</b>	
<b>In- come state- ment</b>	<b>FSA002 (note 2)</b>	<b>FSA002 (note 2)</b>	<b>FSA002 (note 2)</b>	<b>FSA030</b>	<b>FSA030</b>	<b>FSA030</b>	<b>FSA030 (note 15) or Section B RMAR (note 15 )</b>	<b>FSA030</b>	
<b>Capi- tal ade- quacy</b>	<b>FSA003 (note 2)</b>	<b>FSA003 (note 2)</b>	<b>FSA003 (note 2)</b>	<b>FSA033</b>	<b>FSA034 or FSA035 (note 14 )</b>	<b>FSA031</b>	<b>Section D1 and D2 RMAR or FSA032 (note 15)</b>	<b>FSA036</b>	

Description of data item	Firms' prudential category and applicable data items (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K and UCIS investment firms	50K	IPRU(N) Chapter 3	IPRU(N) Chapter 5	IPRU(N) Chapter 9	IPRU(N) Chapter 13	UP-RU
Credit risk	FSA004 (notes 2, 3)	FSA004 (notes 2, 3)	FSA004 (notes 2, 3)					
Market risk	FSA005 (notes 2, 4)	FSA005 (notes 2, 4)	FSA005 (notes 2, 4)					
Market risk - supplementary	FSA006 (note 5)	FSA006 (note 5)	FSA006 (note 5)					
Operational risk	FSA007 (notes 2, 6, 7)	FSA007 (notes 2, 6, 7)	FSA007 (notes 2, 6, 7)					
Large exposures	FSA008 (Notes 2, 6)	FSA008 (Notes 2, 6)	FSA008 (Notes 2, 6)					
UK integrated group large exposures	FSA018 (note 12)	FSA018 (note 12)	FSA018 (note 12)					
Solo consolidation data	FSA016 (note 20)	FSA016 (note 20)	FSA016 (note 20)					
Pillar 2 ques-	FSA019 (note 8)	FSA019 (note 8)	FSA019 (note 8)					

De- scrip- tion of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	<i>730K</i>	<i>125K and UCIS in- vest- ment firms</i>	<i>50K</i>	<i>IRUM Chap- ter 3</i>	<i>IRUM Chap- ter 5</i>	<i>IRUM Chap- ter 9</i>	<i>IRUM Chap- ter 13</i>	<i>UP- RU</i>
<b>tion- naire</b>								
<b>Non- EEA sub- group</b>	<del>FSA028</del>	<del>FSA028</del>	<del>FSA028</del>					
	(note 9)	(note 9)	(note 9)					
<b>Thresh- old condi- tions</b>							<b>Section F RMAR (note 15 )</b>	
<b>Vol- umes and type of busi- ness (note 21)</b>	<del>FSA038</del>	<del>FSA038</del>	<del>FSA038</del>	FSA038	FSA038	FSA038	FSA038	FSA038
<b>Client money and client assets</b>	<del>FSA039</del>	<del>FSA039</del>	<del>FSA039</del>	FSA039	FSA039	FSA039	<b>Section C RMAR (note 15 ) or FSA039</b>	FSA039
<b>Asset man- agers that use hedge fund tech- niques</b>	<del>FSA041</del>	<del>FSA041</del>	<del>FSA041</del>	FSA041	FSA041	FSA041	FSA041	FSA041

Description of data item	Firms' prudential category and applicable data items (note 1)								
	BIPRU			Firms other than BIPRU firms					
	730K	125K and UCIS investment firms	50K	IPRU(N) Chapter 3	IPRU(N) Chapter 5	IPRU(N) Chapter 9	IPRU(N) Chapter 13	UP-RU	
(note 21)	UCITS	FSA02	FSA02	FSA02	FSA042	FSA042	FSA042	FSA042	FSA042
(note 22)	IRB portfolio risk	FSA05 (note 18)	FSA05 (note 18)	FSA05 (note 18)					
	Securitized non-trading book	FSA06 (note 19)	FSA06 (note 19)	FSA06 (note 19)					
	Daily Flows	FSA047 (Notes 23, 26, 28 and 30)							
	Enhanced Mismatch Report	FSA048 (Notes 23, 26, 28 and 30)							
	Liquidity Buffer Qualifying Securities	FSA050 (Notes 24, 27, 28 and 30)							
	Funding Concentration	FSA051 (Notes 24, 27, 28 and 30)							

De- scrip- tion of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>								
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>					
	<i>730K</i>	<i>125K and UCIS in- vest- ment firms</i>	<i>50K</i>	<i>IRUM Chap- ter 3</i>	<i>IRUM Chap- ter 5</i>	<i>IRUM Chap- ter 9</i>	<i>IRUM Chap- ter 13</i>	<i>UP- RU</i>	

<b>Pricing data</b>	FSA052 (Notes 24, 28, 30 and 31)								
<b>Retail and corporate funding</b>	FSA053 (Notes 24, 27, 28 and 30)								
<b>Currency Analysis</b>	FSA054 (Notes 24, 27, 28 and 30)								
<b>Systems and Controls Questionnaire</b>	FSA055 (Notes 25 and 30)								
<b>Securitis- ation: trad- ing book</b>	FSA058 (Note 29)	FSA058 (Note 29)	FSA058 (Note 29)						
<b>Note 1</b>	When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in SUP 16 Annex 24 R. Guidance notes for completion of the <i>data items</i> are contained in SUP 16 Annex 25 G.								
<b>Note 2</b>	<i>Firms</i> that are members of a <i>UK consolidation group</i> are also required to submit this report on a <i>UK consolidation group</i> basis.								

Description of data item	Firms' prudential category and applicable data items (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K and UCIS investment firms	50K	IPRU Chapter 3	IPRU Chapter 5	IPRU Chapter 9	IPRU Chapter 13	UP-RU

**Note 3** This applies to a *firm* that is required to submit *data item* FSA003 and at anytime within the 12 months up to its latest *accounting reference date* ("the relevant period"), was reporting *data item* FSA004 ("Firm A") or not reporting this item ("Firm B").

In the case of Firm A it must report this *data item* if one or both of its last two submissions in the relevant period show that the threshold was exceeded.

In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.

The threshold is exceeded where *data element* 77A in *data item* FSA003 is greater than £10 million, or its currency equivalent, at the relevant reporting date for the *firm*.

**Note 4** This applies to a *firm* that is required to submit *data item* FSA003 and at any time within the 12 months up to its latest *accounting reference date* ("the relevant period"), was reporting *data item* FSA005 ("Firm A") or not reporting this item ("Firm B").

In the case of Firm A it must report this *data item* if one or both of its last two submissions in the relevant period show that the threshold was exceeded.

In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.

The threshold is exceeded where *data element* 93A in *data item* FSA003 is greater than £50 million, or its currency equivalent, at the relevant reporting date for the *firm*.

**Note 5** Only applicable to *firms* with a *VaR model permission*.

**Note 6** This will not be applicable to *BIPRU limited activity firms* or *BIPRU limited licence firms* unless they have a waiver under [BIPRU 6.1.2 G](#).



De- scrip- tion of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	<i>730K</i>	<i>125K and UCIS in- vest- ment firms</i>	<i>50K</i>	<i>IPRU (INV) Chap- ter 3</i>	<i>IPRU (INV) Chap- ter 5</i>	<i>IPRU (INV) Chap- ter 9</i>	<i>IPRU (INV) Chap- ter 13</i>	<i>UP- RU</i>

**Note 7** This is only applicable to a *firm* that has adopted, in whole or in part, either the *standardised approach*, *alternative standardised approach*, or *advanced measurement approach* under **BIPRU 6**.

**Note 8** Only applicable to *BIPRU investment firms* that :

(a) are subject to consolidated supervision under **BIPRU 8**, those that are either included within the consolidated supervision of a group that includes a *UK credit institution*, or that have been granted an *investment firm consolidation waiver*; or

(b) have been granted an *investment firm consolidation waiver*;

or

(c) are not subject to consolidated supervision under **BIPRU 8**.

A *BIPRU investment firm* under (a) must complete the report on the basis of its *UK consolidation group*. A *BIPRU investment firm* under (b) or (c) must complete the report on the basis of its solo position.

**Note 9** This will be applicable to firms that are members of a *UK consolidation group* on the reporting date.

**Note 10** Only applicable to a *firm* whose ultimate parent is a *mixed-activity holding company*.

**Note 11** Only applicable to a *firm* that is a *sole trader* or a *partnership*, when the report must be submitted by each *partner*.

**Note 12** Members of a *UK integrated group* should only submit this *data item* at the *UK integrated group level*.

**Note 13** This *data item* is applicable to all *firms* in this table except a *firm* subject to *IPRU(INV) Chapter 13* which is not an *exempt CAD firm*.

De- scrip- tion of da- ta item	Firms' prudential category and applicable data items (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K and UCIS in- vest- ment firms	50K	IPRU(INV) Chap- ter 3	IPRU(INV) Chap- ter 5	IPRU(INV) Chap- ter 9	IPRU(INV) Chap- ter 13	UP- RU
<b>Note 14</b>	<p>FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(INV)</i> 5.2.3(2)R.</p> <p>FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(INV)</i> 5.2.3(2)R.</p>							
<b>Note 15</b>	<p>FSA029, FSA030, FSA032 and FSA039 only apply to a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i>.</p> <p>Sections A, B, C, D1, D2 and F RMAR only apply to a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is not an <i>exempt CAD firm</i>.</p>							
<b>Note 16</b>	[deleted]							
<b>Note 17</b>	[deleted]							
<b>Note 18</b>	Only applicable to <i>firms</i> that have an <i>IRB permission</i> .							
<b>Note 19</b>	Only applicable to <i>firms</i> that hold <i>securitisation positions</i> , or are the <i>originator</i> or <i>sponsor</i> of <i>securitisations</i> of <i>non-trading book exposures</i> .							
<b>Note 20</b>	Only applicable to a <i>firm</i> that has a <i>solo consolidation waiver</i> .							
<b>Note 21</b>	Only applicable to <i>firms</i> that have a <i>managing investments permission</i> .							
<b>Note 22</b>	Only applicable to <i>firms</i> that have <i>permission</i> for <i>establishing, operating or winding up a regulated collective investment scheme</i> .							

De- scrip- tion of <i>data</i> <i>item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	<i>730K</i>	<i>125K and UCIS investment firms</i>	<i>50K</i>	<i>IRU(N) Chapter 3</i>	<i>IRU(N) Chapter 5</i>	<i>IRU(N) Chapter 9</i>	<i>IRU(N) Chapter 13</i>	<i>UP-RU</i>

**Note 23** A *firm* must complete this item separately on each of the following bases (if applicable).

(1) It must complete it on a solo basis. Therefore even if it has a *solo consolidation waiver* it must complete the item on an unconsolidated basis by reference to the *firm* alone.

(2) If it is a *group liquidity reporting firm* in a *DLG by default* and is a *UK lead regulated firm*, it must complete the item on the basis of that group.

(3) If it is a *group liquidity reporting firm* in a *UK DLG by modification*, it must complete the item on the basis of that group.

(4) If it is a *group liquidity reporting firm* in a *non-UK DLG by modification*, it must complete the item on the basis of that group.

**Note 24** A *firm* must complete this item separately on each of the following bases that are applicable.

(1) It must complete it on a solo basis unless it is a *group liquidity reporting firm* in a *UK DLG by modification*. Therefore even if it has a *solo consolidation waiver* it must complete the item on an unconsolidated basis by reference to the *firm* alone.

(2) If it is a *group liquidity reporting firm* in a *UK DLG by modification*, it must complete the item on the basis of that group.

**Note 25** If it is a *non-ILAS BIPRU firm*, it must complete it on a solo basis. Therefore even if it has a *solo consolidation waiver* it must complete the item on an unconsolidated basis by reference to the *firm* alone.

**Note 26** (1) This item must be reported in the reporting currency.

(2) If any *data element* is in a currency or currencies other than the reporting currency, all currencies (including the reporting

De- scrip- tion of da- ta item	Firms' prudential category and applicable data items (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K and UCIS in- vest- ment firms	50K	IPRU(N) Chap- ter 3	IPRU(N) Chap- ter 5	IPRU(N) Chap- ter 9	IPRU(N) Chap- ter 13	UP- RU

currency) must be combined into a figure in the reporting currency.

(3) In addition, all *material currencies* (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:

(a) the reporting frequency is (whether under a *rule* or under a *waiver*) quarterly or less than quarterly; or

(b) the only *material currency* is the reporting currency;

(3) does not apply.

(4) If there are more than three *material currencies* for this *data item*, (3) only applies to the three largest in amount. A *firm* must identify the largest in amount in accordance with the following procedure.

(a) For each currency, take the largest of the asset or liability figure as referred to in the definition of *material currency*.

(b) Take the three largest figures from the resulting list of amounts.

(5) The date as at which the calculations for the purposes of the definition of *material currency* are carried out is the last day of the reporting period in question.

(6) The reporting currency for this *data item* is whichever of the following currencies the *firm* chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).

Note 27 Note 26 applies, except that paragraphs (3), (4), and (5) do not apply, meaning that *material currencies* must not be recorded separately.

De- scrip- tion of <i>data</i> <i>item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	<i>730K</i>	<i>125K and UCIS investment firms</i>	<i>50K</i>	<i>IRUM Chapter 3</i>	<i>IRUM Chapter 5</i>	<i>IRUM Chapter 9</i>	<i>IRUM Chapter 13</i>	<i>UP-RU</i>

- Note 28** Any changes to reporting requirements caused by a *firm* receiving an *intra-group liquidity modification* (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the *data item* in question if the firm receives that *intra-group liquidity modification* or variation part of the way through such a period. If the change is that the *firm* does not have to report a particular *data item* or does not have to report it at a particular *reporting level*, the *firm* must nevertheless report that item or at that *reporting level* for any reporting period that has already begun. This paragraph is subject to anything that the *intra-group liquidity modification* says to the contrary.
- Note 29** Only applicable to *firms* that hold *securitisation positions* in the *trading book* and/ or are the *originator* or *sponsor* of *securitisations* held in the *trading book*.
- Note 30** FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an *ILAS BIPRU firm*. An *ILAS BIPRU firm* does not need to complete FSA055. A *non-ILAS BIPRU firm* must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.
- Note 31** This *data item* must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.

16.12.15A G  
FCA PRA

The columns in the table in ■ SUP 16.12.15 R that deal with *BIPRU 50K firms* and *BIPRU 125K firms* cover some liquidity items that only have to be reported by an *ILAS BIPRU firm*. In fact a *BIPRU 50K firm* and a *BIPRU 125K firm* cannot be an *ILAS BIPRU firm*. One reason for drafting the table in this way is that the classification of firms into *ILAS BIPRU firms* and *non-ILAS BIPRU firms* is not based on the classification into *BIPRU 50K firms*, *BIPRU 125K firms* and *BIPRU 730K firms* and the drafting of the table emphasises that. Also, the table covers consolidated reports and the conditions about what sort of group has to supply what type of liquidity report do not always depend on how the individual *firm* is classified.

16.12.16

FCA PRA

R

The applicable reporting frequencies for *data items* referred to in ■ SUP 16.12.15 R are set out in the table below according to *firm type*. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

16

Data item	Firms' prudential category				
	BIPRU 730K firm	BIPRU 125K firm and UCITS investment firm	BIPRU 50K firm	UK consolidation group or defined liquidity group	Firm other than BIPRU firms
Annual report and accounts	Annually	Annually	Annually		Annually
Annual report and accounts of the mixed-activity holding company	Annually	Annually	Annually		
Solvency statement	Annually	Annually	Annually		Annually
FSA001	Quarterly	Quarterly	Half yearly	Half yearly	
FSA002	Quarterly	Quarterly	Half yearly	Half yearly	
FSA003	Monthly	Quarterly	Half yearly	Half yearly	
FSA004	Quarterly	Quarterly	Half yearly	Half yearly	
FSA005	Quarterly	Quarterly	Half yearly	Half yearly	
FSA006	Quarterly	Quarterly	Quarterly	Quarterly	
FSA007	Annual(note 4)	Annual (note 4)	Annual (note 4)	Annual (note 4)	
FSA008	Quarterly	Quarterly	Quarterly	Quarterly	
FSA016	Half yearly	Half yearly	Half yearly		
FSA018	Quarterly	Quarterly	Quarterly		
FSA019	Annually	Annually	Annually	Annually	
FSA028	Half yearly	Half yearly	Half yearly		
FSA029					Quarterly
FSA030					Quarterly

<i>Data item</i>	<i>Firms' prudential category</i>				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
<b>FSA031</b>					<b>Quarterly</b>
<b>FSA032</b>					<b>Quarterly</b>
<b>FSA033</b>					<b>Quarterly</b>
<b>FSA034</b>					<b>Quarterly</b>
<b>FSA035</b>					<b>Quarterly</b>
<b>FSA036</b>					<b>Quarterly</b>
<b>FSA038</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>		<b>Half yearly</b>
<b>FSA039</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>		<b>Half yearly</b>
<b>FSA041</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>		<b>Annually</b>
<b>FSA042</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		<b>Quarterly</b>
<b>FSA045</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA046</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	
<b>FSA047</b>	<b>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</b>			<b>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</b>	
<b>FSA048</b>	<b>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</b>			<b>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</b>	
<b>FSA050</b>	<b>Monthly (Note 5)</b>			<b>Monthly (Note 5)</b>	
<b>FSA051</b>	<b>Monthly (Note 5)</b>			<b>Monthly (Note 5)</b>	
<b>FSA052</b>	<b>Weekly or monthly (Notes 5 and 9)</b>			<b>Weekly or monthly</b>	

Data item	Firms' prudential category				
	BIPRU 730K firm	BIPRU 125K firm and UCITS investment firm	BIPRU 50K firm	UK consolidation group or defined liquidity group	Firm other than BIPRU firms
				(Notes 5 and 10)	
FSA053	Quarterly (Note 5)			Quarterly (Note 5)	
FSA054	Quarterly (Note 5)			Quarterly (Note 5)	
FSA055	Annually (Note 5)			Annually (Note 5)	
FSA058	Quarterly	Quarterly	Quarterly	Quarterly	
Section A RMAR					Half yearly (note 2) Quarterly (note 3)
Section B RMAR					Half yearly (note 2) Quarterly (note 3)
Section C RMAR					Half yearly (note 2) Quarterly (note 3)
Section D1 and D2 RMAR					Half yearly (note 2) Quarterly (note 3)
Section F RMAR					Half yearly
Note 1	[deleted]				
Note 2	Annual regulated business revenue up to and including £5 million.				
Note 3	Annual regulated business revenue over £5 million.				
Note 4	The reporting date for this <i>data item</i> is six months after a <i>firm's</i> most recent <i>accounting reference date</i> .				



<i>Data item</i>	<i>Firms' prudential category</i>				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>

**Note 5** Reporting frequencies and reporting periods for this *data item* are calculated on a calendar year basis and not from a *firm's accounting reference date*. In particular:

- (1) A week means the period beginning on Saturday and ending on Friday.
- (2) A month begins on the first day of the calendar month and ends on the last day of that month.
- (3) Quarters end on 31 March, 30 June, 30 September and 31 December.
- (4) Daily means each *business day*.

All periods are calculated by reference to London time.

Any changes to reporting requirements caused by a *firm* receiving an *intra-group liquidity modification* (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the *firm* receives that *intra-group liquidity modification* or variation part of the way through such a period, unless the *intra-group liquidity modification* says otherwise.

<i>Data item</i>	<i>Firms' prudential category</i>				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>

**Note 6** If the report is on a solo basis the reporting frequency is as follows:

(1) if the *firm* does not have an *intra-group liquidity modification* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(2) if the *firm* is a *group liquidity reporting firm in a non-UK DLG by modification (firm level)* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(3) the frequency is quarterly if the *firm* is a *group liquidity reporting firm in a UK DLG by modification*.

<i>Data item</i>	<i>Firms' prudential category</i>				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>

**Note 7** (1) If the report is by reference to the *firm's DLG by default* the reporting frequency is:

- (a) weekly if the *group liquidity standard frequency reporting conditions* are met;
- (b) monthly if the *group liquidity low frequency reporting conditions* are met.

(2) If the report is by reference to the *firm's UK DLG by modification* the reporting frequency is:

- (a) weekly if the *group liquidity standard frequency reporting conditions* are met;
- (b) monthly if the *group liquidity low frequency reporting conditions* are met.

(3) If the report is by reference to the *firm's non-UK DLG by modification* the reporting frequency is quarterly.

**Note 8** (1) If the reporting frequency is otherwise weekly, the item is to be reported on every *business day* if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm* or group in question.

(2) If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm* or group in question.

(3) A *firm* must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no *firm-specific liquidity stress* or *market liquidity stress* and none is expected.

Data item	Firms' prudential category				
	BIPRU 730K firm	BIPRU 125K firm and UCITS investment firm	BIPRU 50K firm	UK consolidation group or defined liquidity group	Firm other than BIPRU firms
<b>Note 9</b>	<p>If the report is on a solo basis the reporting frequency is as follows:</p> <p>(1) weekly if the firm is a <i>standard frequency liquidity reporting firm</i>; and</p> <p>(2) monthly if the firm is a <i>low frequency liquidity reporting firm</i>.</p>				
<b>Note 10</b>	<p>If the report is by reference to the firm's <i>UK DLG by modification</i> the reporting frequency is:</p> <p>(1) weekly if the <i>group liquidity standard frequency reporting conditions</i> are met;</p> <p>(2) monthly if the <i>group liquidity low frequency reporting conditions</i> are met.</p>				

16.12.17  
FCA PRA

**R**

The applicable due dates for submission referred to in ■ SUP 16.12.4 R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in ■ SUP 16.12.16 R, unless indicated otherwise.

Data item	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<i>Annual report and accounts</i>						80 business days
<i>Annual report and accounts of the mixed-activity holding company</i>						7 months

<i>Data item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
<b>Solvency state-ment</b>						<b>3 months</b>
<b>FSA001</b>				<b>20 busi-ness days</b>	<b>30 busi-ness days (note 2); 45 busi-ness days (note 3)</b>	
<b>FSA002</b>				<b>20 busi-ness days</b>	<b>30 busi-ness days (note 2); 45 busi-ness days (note 3)</b>	
<b>FSA003</b>			<b>15 busi-ness days</b>	<b>20 busi-ness days</b>	<b>30 busi-ness days (note 2); 45 busi-ness days (note 3)</b>	
<b>FSA004</b>				<b>20 busi-ness days</b>	<b>30 busi-ness days (note 2); 45 busi-ness days (note 3)</b>	
<b>FSA005</b>				<b>20 busi-ness days</b>	<b>30 busi-ness days (note 2); 45 busi-ness days (note 3)</b>	
<b>FSA006</b>				<b>20 busi-ness days</b>		
<b>FSA007</b>						<b>2 months</b>
<b>FSA008</b>				<b>20 busi-ness days (note 2); 45 busi-ness days (note 3)</b>		

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>FSA016</b>				<b>30 business days</b>		
<b>FSA018</b>				<b>45 business days</b>		
<b>FSA019</b>						<b>2 months</b>
<b>FSA028</b>					<b>30 business days</b>	
<b>FSA029</b>				<b>20 business days</b>		
<b>FSA030</b>				<b>20 business days</b>		
<b>FSA031</b>				<b>20 business days</b>		
<b>FSA032</b>				<b>20 business days</b>		
<b>FSA033</b>				<b>20 business days</b>		
<b>FSA034</b>				<b>20 business days</b>		
<b>FSA035</b>				<b>20 business days</b>		
<b>FSA036</b>				<b>20 business days</b>		
<b>FSA038</b>					<b>30 business days</b>	
<b>FSA039</b>					<b>30 business days</b>	
<b>FSA041</b>						<b>30 business days</b>
<b>FSA042</b>				<b>20 business days</b>		
<b>FSA045</b>				<b>20 business days</b>	<b>30 business days (note 2); 45 business days (note 3)</b>	
<b>FSA046</b>				<b>20 business days</b>		

<i>Data item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
				(Note 2), 45 busi- ness days (Note 3)		
<b>FSA047</b>	<b>22.00</b> hours (London time) on the <i>busi- ness day</i> immedi- ately fol- lowing the last day of the re- porting period for the item in question	<b>22.00</b> hours (London time) on the <i>busi- ness day</i> immedi- ately fol- lowing the last day of the re- porting period for the item in question	<b>15 busi- ness days</b>	<b>15 busi- ness days</b> or one <i>Month</i> (Note 4)		
<b>FSA048</b>	<b>22.00</b> hours (London time) on the <i>busi- ness day</i> immedi- ately fol- lowing the last day of the re- porting period for the item in question	<b>22.00</b> hours (London time) on the <i>busi- ness day</i> immedi- ately fol- lowing the last day of the re- porting period for the item in question	<b>15 busi- ness days</b>	<b>15 busi- ness days</b> or one <i>Month</i> (Note 4)		
<b>FSA050</b>			<b>15 busi- ness days</b>			
<b>FSA051</b>			<b>15 busi- ness days</b>			
<b>FSA052</b>		<b>22.00</b> hours	<b>15 busi- ness days</b>			

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
		(London time) on the second <i>business day</i> immediately following the last day of the reporting period for the item in question				
FSA053				15 <i>business days</i>		
FSA054				15 <i>business days</i>		
FSA055						15 <i>business days</i>
FSA058				20 <i>business days</i> (Note 2), 45 <i>business days</i> (Note 3)		
Section A RMAR				30 <i>business days</i>	30 <i>business days</i>	
Section B RMAR				30 <i>business days</i>	30 <i>business days</i>	
Section C RMAR				30 <i>business days</i>	30 <i>business days</i>	
Section D1 and D2 RMAR				30 <i>business days</i>	30 <i>business days</i>	
Section F RMAR					30 <i>business days</i>	
Note 1	[deleted]					
Note 2		For unconsolidated and solo-consolidated reports.				



<i>Data item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
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**Note 3** For *UK consolidation group* reports.  
**Note 4** It is one *Month* if the report relates to a *non-UK DLG* by *modification*.

**Regulated Activity Group 5**

16.12.18 **R**  
 FCA PRA

- (1) ■ SUP 16.12.18A R does not apply to:
- (a) a *lead regulated firm*;
  - (b) an *OPS firm*;
  - (c) a local authority.
- (2) A *lead regulated firm* and an *OPS firm* must submit a copy of its annual report and audited accounts within 80 *business days* from its *accounting reference date*.

16.12.18A **R**  
 FCA PRA

The applicable *data items*, reporting frequencies and submission deadlines referred to in ■ SUP 16.12.4 R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency	Submission deadline
<i>Annual report and accounts</i>	No standard format	Annually	80 <i>business days</i>
Balance Sheet	Sections A.1 and A.2 MLAR	Quarterly	20 <i>business days</i>
Income Statement	Sections B.0 and B.1 MLAR	Quarterly	20 <i>business days</i>
Capital Adequacy	Section C MLAR	Quarterly	20 <i>business days</i>
Lending - Business flow and rates	Section D MLAR	Quarterly	20 <i>business days</i>
Residential Lending to individuals - New business profile	Section E MLAR	Quarterly	20 <i>business days</i>
Lending - Arrears analysis	Section F MLAR	Quarterly	20 <i>business days</i>

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency	Submission deadline
Mortgage administration - Business profile	Section G MLAR	Quarterly	20 <i>business days</i>
Mortgage Administration - Ar-rears analysis	Section H MLAR	Quarterly	20 <i>business days</i>
Analysis of loans to customers	Section A3 MLAR	Quarterly	20 <i>business days</i>
Provisions analysis	Section B2 MLAR	Quarterly	20 <i>business days</i>
Fees and levies	Section J MLAR	Annually	30 <i>business days</i>
Sale and rent back	Section K MLAR	Annually	30 <i>business days</i>
Note 1	When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in SUP 16 Annex 19A R. Guidance notes for the completion of the <i>data items</i> is set out in SUP 16 Annex 19B G.		

**Regulated Activity Group 6**

16.12.19

**R**

FCA

(1) ■ SUP 16.12.19A R to ■ SUP 16.12.21 R do not apply to:

- (a) a *lead regulated firm*;
- (b) an *OPS firm*;
- (c) a local authority.

(2) A *lead regulated firm* and an *OPS firm* must submit a copy of its annual report and audited accounts within 80 *business days* from its *accounting reference date*.

16.12.19A

**R**

FCA

The applicable *data items* referred to in ■ SUP 16.12.4 R are set out according to type of *firm* in the table below:

Description of <i>data item</i>	<i>Firm's</i> prudential category and applicable <i>data item</i> (note 1)				
	IPRU(INV) Chapter 3	IPRU(INV) Chapter 5	IPRU(INV) Chapter 9	IPRU(INV) Chapter 13	UPRU
<i>Annual report and accounts</i>	No standard format				

Description of data item	Firm's prudential category and applicable data item (note 1)				
	IPRU(INV) Chapter 3	IPRU(INV) Chapter 5	IPRU(INV) Chapter 9	IPRU(INV) Chapter 13	UPRU
<b>Solvency statement (note 6)</b>		<b>No standard format</b>			<b>No standard format</b>
<b>Balance sheet</b>	<b>FSA029</b>	<b>FSA029</b>	<b>FSA029</b>	<b>FSA029 or Section A RMAR (note 7)</b>	<b>FSA029</b>
<b>Income statement</b>	<b>FSA030</b>	<b>FSA030</b>	<b>FSA030</b>	<b>FSA030 or Section B RMAR (note 7)</b>	<b>FSA030</b>
<b>Capital adequacy</b>	<b>FSA033</b>	<b>FSA034 or FSA035 (note 4)</b>	<b>FSA031</b>	<b>FSA032 (note 5) or Section D1 and D2 RMAR (note 7)</b>	<b>FSA036</b>
<b>Threshold conditions</b>				<b>Section F RMAR (Note 7)</b>	
<b>Client money and client assets</b>	<b>FSA039</b>	<b>FSA039</b>	<b>FSA039</b>	<b>Section C RMAR (note 7) or FSA039</b>	<b>FSA039</b>
<b>Note 1</b>	<b>When submitting the completed data item required, a firm must use the format of the data item set out in SUP 16 Annex 24 R. Guidance notes for completion of the data items are contained in SUP 16 Annex 25 G.</b>				
<b>Note 2</b>	<b>[deleted]</b>				
<b>Note 3</b>	<b>[deleted]</b>				
<b>Note 4</b>	<b>FSA034 must be completed by a firm not subject to the exemption in IPRU(INV) 5.2.3(2)R.</b>				
	<b>FSA035 must be completed by a firm subject to the exemption in IPRU(INV) 5.2.3(2)R.</b>				
<b>Note 5</b>	<b>FSA032 must be completed by a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm.</b>				

Description of data item	Firm's prudential category and applicable data item (note 1)				
	IPRU(INV) Chapter 3	IPRU(INV) Chapter 5	IPRU(INV) Chapter 9	IPRU(INV) Chapter 13	UPRU
<b>Note 6</b>	<b>Only applicable to a firm that is a <i>partnership</i>, when the report must be submitted by each <i>partner</i>.</b>				
<b>Note 7</b>	<b>FSA029 , FSA030, FSA032 and FSA039 only apply to a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i> . Sections A, B, C, D1, D2 and F RMAR only apply to a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is not an <i>exempt CAD firm</i>.</b>				

16.12.20

FCA

R

The applicable reporting frequencies for submission of *data items* referred to in ■ SUP 16.12.4 R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Annual report and accounts</i>	Annually
Solvency statement	Annually
FSA029	Quarterly
FSA030	Quarterly
FSA031	Quarterly
FSA032	Quarterly
FSA033	Quarterly
FSA034	Quarterly
FSA035	Quarterly
FSA036	Quarterly
FSA039	Half yearly
Section A RMAR	Half yearly (note 2)
	Quarterly (note 3)
Section B RMAR	Half yearly (note 2)
	Quarterly (note 3)
Section C RMAR	Half yearly (note 2)
	Quarterly (note 3)
Section D1 and D2 RMAR	Half yearly (note 2)
	Quarterly (note 3)

Section F RMAR	Half yearly
Note 1	[deleted]
Note 2	Annual regulated business revenue up to and including £5 million.
Note 3	Annual regulated business revenue over £5 million.

16.12.21 **R**  
FCA

The applicable due dates for submission referred to in ■ SUP 16.12.4 R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in ■ SUP 16.12.20 R.

<i>Data item</i>	Quarterly	Half yearly	Annual
<i>Annual report and accounts</i>			80 business days
<i>Solvency statement</i>			3 months
FSA029	20 business days		
FSA030	20 business days		
FSA031	20 business days		
FSA032	20 business days		
FSA033	20 business days		
FSA034	20 business days		
FSA035	20 business days		
FSA036	20 business days		
FSA039		30 business days	
FSA040	15 business days		
Section A RMAR	30 business days	30 business days	
Section B RMAR	30 business days	30 business days	
Section C RMAR	30 business days	30 business days	
Section D1 and D2 RMAR	30 business days	30 business days	
Section F RMAR		30 business days	

**Regulated Activity Group 7**

16.12.22 **R**  
FCA

- (1) ■ SUP 16.12.22A R to ■ SUP 16.12.24 R do not apply to:
  - (a) a *lead regulated firm* (except in relation to *data items* 47 to 55 (inclusive));
  - (b) an *OPS firm*;

(c) a local authority.

(2) A lead regulated firm and an OPS firm must submit a copy of its annual report and audited accounts within 80 business days from its accounting reference date.

16.12.22A **R**  
**FCA** **PRA**

The applicable *data items* referred to in ■ SUP 16.12.4 R are set out according to type of *firm* in the table below:

Description of Data item	Firms' prudential category and applicable <i>data item</i> (note 1)					
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>Exempt CAD firms subject to IPRU(INV) Chapter 13</i>	<i>Firms (other than exempt CAD firms) subject to IPRU(INV) Chapter 13</i>	<i>Firms that are also in one or more of RAGs 1 to 6 and not subject to IPRU(INV) Chapter 13</i>
<i>Annual report and accounts</i>	No standard format			No standard format		
<i>Annual report and accounts of the mixed-activity holding company (note 10)</i>	No standard format					
<i>Solvency statement</i>	No standard format (note 11)					
<i>Balance Sheet</i>	FSA001 (note 2)	FSA001 (note 2)	FSA001 (note 2)	FSA029	Section A RMAR	
<i>Income Statement</i>	FSA002 (note 2)	FSA002 (note 2)	FSA002 (note 2)	FSA030	Section B RMAR	
<i>Capital Adequacy</i>	FSA003 (note 2)	FSA003 (note 2)	FSA003 (note 2)	FSA032	Section D1 and D2 RMAR	

Description of Data item	<i>Firms'</i> prudential category and applicable <i>data item</i> (note 1)					
<b>Credit risk</b>	<b>FSA004</b>	<b>FSA004</b>	<b>FSA004</b>	<b>(notes 2, 3)</b>	<b>(notes 2, 3)</b>	<b>(notes 2, 3)</b>
<b>Market risk</b>	<b>FSA005</b>	<b>FSA005</b>	<b>FSA005</b>	<b>(notes 2, 4)</b>	<b>(notes 2, 4)</b>	<b>(notes 2, 4)</b>
<b>Market risk - supplementary</b>	<b>FSA006</b>	<b>FSA006</b>	<b>FSA006</b>	<b>(note 5)</b>	<b>(note 5)</b>	<b>(note 5)</b>
<b>Operational risk</b>	<b>FSA007</b>	<b>FSA007</b>	<b>FSA007</b>	<b>(notes 2, 6, 7)</b>	<b>(notes 2, 6, 7)</b>	<b>(notes 2, 6, 7)</b>
<b>Large exposures</b>	<b>FSA008</b>	<b>FSA008</b>	<b>FSA008</b>	<b>(Notes 2, 6)</b>	<b>(Notes 2, 6)</b>	<b>(Notes 2, 6)</b>
<b>UK integrated group large exposures</b>	<b>FSA018</b>	<b>FSA018</b>	<b>FSA018</b>	<b>(note 12)</b>	<b>(note 12)</b>	<b>(note 12)</b>
<b>Solo consolidation data</b>	<b>FSA016</b>	<b>FSA016</b>	<b>FSA016</b>			
<b>Pillar 2 questionnaire</b>	<b>FSA019</b>	<b>FSA019</b>	<b>FSA019</b>	<b>(note 8)</b>	<b>(note 8)</b>	<b>(note 8)</b>
<b>Non-EEA subgroup</b>	<b>FSA028</b>	<b>FSA028</b>	<b>FSA028</b>	<b>(note 9)</b>	<b>(note 9)</b>	<b>(note 9)</b>
<b>Professional indemnity insurance (note 15)</b>	<b>Section E RMAR</b>	<b>Section E RMAR</b>	<b>Section E RMAR</b>		<b>Section E RMAR</b>	<b>Section E RMAR</b>
<b>Threshold Conditions</b>					<b>Section F RMAR</b>	<b>Section F RMAR</b>

Description of Data item	<i>Firms' prudential category and applicable data item (note 1)</i>					
<b>Training and Competence</b>	Section G RMAR	Section G RMAR	Section G RMAR	Section G RMAR	Section G RMAR	Section G RMAR
<b>COBS data</b>	Section H RMAR	Section H RMAR	Section H RMAR	Section H RMAR	Section H RMAR	Section H RMAR
<b>Client money and client assets</b>	Section C RMAR	Section C RMAR	Section C RMAR	Section C RMAR	Section C RMAR	
<b>Fees and levies</b>	Section J RMAR	Section J RMAR	Section J RMAR	Section J RMAR	Section J RMAR	
<b>Adviser charges</b>	Section K RMAR  (Note 26)	Section K RMAR  (Note 26)	Section K RMAR  (Note 26)	Section K RMAR  (Note 26)	Section K RMAR  (Note 26)	Section K RMAR  (Note 26)
<b>Consultancy charges</b>	Section L RMAR  (Note 27)	Section L RMAR  (Note 27)	Section L RMAR  (Note 27)	Section L RMAR  (Note 27)	Section L RMAR  (Note 27)	Section L RMAR  (Note 27)
<b>IRB portfolio risk</b>	FSA045 (note 13)	FSA045 (note 13)	FSA045 (note 13)			
<b>Securitisation: non-trading book</b>	FSA046 (note 14)	FSA046 (note 14)	FSA046 (note 14)			
<b>Daily Flows</b>	FSA047 (Notes 16, 19, 21 and 24)					
<b>Enhanced Mismatch Report</b>	FSA048 (Notes 16, 19, 21 and 24)					



Description of <i>Data item</i>	<i>Firms'</i> prudential category and applicable <i>data item</i> (note 1)
<b>Liquidity Buffer Qualifying Securities</b>	<b>FSA050 (Notes 17, 20, 21 and 24)</b>
<b>Funding Concentration</b>	<b>FSA051 (Notes 17, 20, 21 and 24)</b>
<b>Pricing data</b>	<b>FSA052 (Notes 17, 20, 24 and 25)</b>
<b>Retail and corporate funding</b>	<b>FSA053 (Notes 17, 20, 21 and 24)</b>
<b>Currentcy Analysis</b>	<b>FSA054 (Notes 17, 20, 21 and 24)</b>
<b>Systems and Controls</b>	<b>FSA055 (Notes 18 and 24)</b>
<b>Questionnaire</b>	
<b>Securitized trading book</b>	<b>FSA058 FSA058 FSA058 (Note 22) (Note 22) (Note 22)</b>
<b>Note 1</b>	<b>When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in SUP 16 Annex 24 R, or SUP 16 Annex 18A R in the case of the RMAR. Guidance notes for completion of the data items are contained in SUP 16 Annex 25 G, or SUP 16 Annex 18B G in the case of the RMAR.</b>
<b>Note 2</b>	<b><i>Firms</i> that are members of a <i>UK consolidation group</i> are also required to submit this report on a <i>UK consolidation group</i> basis.</b>
<b>Note 3</b>	<b>This applies to a <i>firm</i> that is required to submit <i>data item</i> FSA003 and, at any time within the 12 <i>months</i> up to its latest <i>accounting reference date</i> ("the relevant period"), was reporting <i>data item</i> FSA004 ("Firm A") or not reporting this item ("Firm B").</b>

Description of Data item	Firms' prudential category and applicable <i>data item</i> (note 1)
	<p>In the case of Firm A it must report this <i>data item</i> if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</p> <p>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</p> <p>The threshold is exceeded where <i>data element</i> 77A in data item FSA003 is greater than £10 million, or its currency equivalent, at the relevant reporting date for the <i>firm</i>.</p> <p><b>Note 4</b> This applies to a <i>firm</i> that is required to submit <i>data item</i> FSA003 and, at any time within the 12 months up to its latest <i>accounting reference date</i> ("the relevant period"), was reporting <i>data item</i> FSA005 ("Firm A") or not reporting this item ("Firm B").</p> <p>In the case of Firm A it must report this <i>data item</i> if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</p> <p>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</p> <p>The threshold is exceeded where <i>data element</i> 93A in <i>data item</i> FSA003 is greater than £50 million, or its currency equivalent, at the relevant reporting date for the <i>firm</i>.</p>
<b>Note 5</b>	Only applicable to <i>firms</i> with a <i>VaR model permission</i> .
<b>Note 6</b>	This will not be applicable to <i>BIPRU limited activity firms</i> or <i>BIPRU limited licence firms</i> unless they have a waiver under <a href="#">BIPRU 6.1.2 G</a> .
<b>Note 7</b>	This is only applicable to a <i>firm</i> that has adopted, in whole or in part, either the <i>standardised approach</i> , <i>alternative standardised approach</i> , or <i>advanced measurement approach</i> under <a href="#">BIPRU 6</a> .
<b>Note 8</b>	<p>Only applicable to <i>BIPRU investment firms</i> that:</p> <p>(a) are subject to consolidated supervision under <a href="#">BIPRU 8</a>, except those that are either included within the consolidated supervision of a group that includes a UK <i>credit institution</i>, or that have been granted an <i>investment firm consolidation waiver</i>; or</p>

Description of Data item	<i>Firms'</i> prudential category and applicable <i>data item</i> (note 1)
	<p>(b) have been granted an <i>investment firm consolidation waiver</i>; or</p> <p>(c) are not subject to consolidated supervision under <b>BIPRU 8</b>.</p> <p>A <i>BIPRU investment firm</i> under (a) must complete the report on the basis of its <i>UK consolidation group</i>. A <i>BIPRU investment firm</i> under (b) or (c) must complete the report on the basis of its solo position.</p> <p><b>Note 9</b> This will be applicable to <i>firms</i> that are members of a <i>UK consolidation group</i> on the reporting date.</p> <p><b>Note 10</b> Only applicable to a <i>firm</i> whose ultimate parent is a <i>mixed-activity holding company</i>.</p> <p><b>Note 11</b> Only applicable to a firm that is a <i>sole trader</i> or a <i>partnership</i>, when the report must be submitted by each <i>partner</i>.</p> <p><b>Note 12</b> Members of a <i>UK integrated group</i> should only submit this <i>data item</i> at the <i>UK integrated group</i> level.</p> <p><b>Note 13</b> Only applicable to <i>firms</i> that have an <i>IRB permission</i>.</p> <p><b>Note 14</b> Only applicable to <i>firms</i> that hold <i>securitisation positions</i>, or are the <i>originator</i> or <i>sponsor</i> of <i>securitisations</i> of <i>non-trading book exposures</i>.</p> <p><b>Note 15</b> This item only applies to <i>firms</i> that are subject to an <i>FSA</i> requirement to hold professional indemnity insurance and are not <i>exempt CAD firms</i>.</p> <p><b>Note 16</b> A <i>firm</i> must complete this item separately on each of the following bases (if applicable).</p> <p>(1) It must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm</i> alone.</p> <p>(2) If it is a <i>group liquidity reporting firm</i> in a <i>DLG by default</i> and is a <i>UK lead regulated firm</i>, it must complete the item on the basis of that group.</p> <p>(3) If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</p>

Description of Data item	Firms' prudential category and applicable <i>data item</i> (note 1)
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<p>Note 17</p>	<p>(4) If it is a <i>group liquidity reporting firm</i> in a <i>non-UK DLG by modification</i>, it must complete the item on the basis of that group.</p> <p>A <i>firm</i> must complete this item separately on each of the following bases that are applicable.</p> <p>(1) It must complete it on a solo basis unless it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm</i> alone.</p> <p>(2) If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</p>
<p>Note 18</p>	<p>If it is a <i>non-ILAS BIPRU firm</i>, it must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm</i> alone.</p>
<p>Note 19</p>	<p>(1) This item must be reported in the reporting currency.</p> <p>(2) If any <i>data element</i> is in a currency or currencies other than the reporting currency, all currencies (including the reporting currency) must be combined into a figure in the reporting currency.</p> <p>(3) In addition, all <i>material currencies</i> (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:</p> <p>(a) the reporting frequency is (whether under a <i>rule</i> or under a <i>waiver</i>) quarterly or less than quarterly; or</p> <p>(b) the only <i>material currency</i> is the reporting currency;</p> <p>(3) does not apply.</p>

Description of Data item	Firms' prudential category and applicable <i>data item</i> (note 1)
	<p>(4) If there are more than three <i>material currencies</i> for this <i>data item</i>, (3) only applies to the three largest in amount. A <i>firm</i> must identify the largest in amount in accordance with the following procedure.</p> <p>(a) For each currency, take the largest of the asset or liability figure as referred to in the definition of <i>material currency</i>.</p> <p>(b) Take the three largest figures from the resulting list of amounts.</p> <p>(5) The date as at which the calculations for the purposes of the definition of <i>material currency</i> are carried out is the last day of the reporting period in question.</p> <p>(6) The reporting currency for this <i>data item</i> is whichever of the following currencies the <i>firm</i> chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).</p> <p><b>Note 20</b> Note 19 applies, except that paragraphs (3), (4) and (5) do not apply, meaning that <i>material currencies</i> must not be recorded separately.</p> <p><b>Note 21</b> Any changes to reporting requirements caused by a <i>firm</i> receiving an <i>intra-group liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the <i>data item</i> in question if the <i>firm</i> receives that <i>intra-group liquidity modification</i> or variation part of the way through such a period. If the change is that the <i>firm</i> does not have to report a particular <i>data item</i> or does not have to report it at a particular <i>reporting level</i>, the <i>firm</i> must nevertheless report that item or at that <i>reporting level</i> for any reporting period that has already begun. This paragraph is subject to anything that the <i>intra-</i></p>

Description of Data item	<i>Firms'</i> prudential category and applicable <i>data item</i> (note 1)
	<p><i>group liquidity modification</i> says to the contrary.</p> <p><b>Note 22</b> Only applicable to <i>firms</i> that hold <i>securitisation positions</i> in the <i>trading book</i> and/ or are the <i>originator</i> or <i>sponsor</i> of <i>securitisations</i> held in the <i>trading book</i>.</p> <p><b>Note 24</b> FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an <i>ILAS BIPRU firm</i>. An <i>ILAS BIPRU firm</i> does not need to complete FSA055. A <i>non-ILAS BIPRU firm</i> must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.</p> <p><b>Note 25</b> This <i>data item</i> must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</p> <p><b>Note 26</b> This item only applies to <i>firms</i> that provide advice on <i>retail investment products</i>.</p> <p><b>Note 27</b> This item applies only to <i>firms</i> that provide advice and related services to employers on <i>group personal pension schemes</i> and/or <i>group stakeholder pension schemes</i>.</p>

16.12.22B

FCA PRA

G

The columns in the table in ■ SUP 16.12.22A R that deal with *BIPRU 50K firms* and *BIPRU 125K firms* cover some liquidity items that only have to be reported by an *ILAS BIPRU firm*. In fact a *BIPRU 50K firm* and a *BIPRU 125K firm* cannot be an *ILAS BIPRU firm*. One reason for drafting the table in this way is that the classification of *firms* into *ILAS BIPRU firms* and *non-ILAS BIPRU firms* is not based on the classification into *BIPRU 50K firms*, *BIPRU 125K firms* and *BIPRU 730K firms* and the drafting of the table emphasises that. Also, the table covers consolidated reports and the conditions about what sort of group has to supply what type of liquidity report do not always depend on how the individual *firm* is classified.

16.12.23

FCA PRA

R

The applicable reporting frequencies for *data items* referred to in ■ SUP 16.12.22A R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	Frequency				
	<i>Uncon- solidated BIPRU invest- ment firm</i>	<i>Solo con- solidated BIPRU invest- ment firm</i>	<i>UK Con- solida- tion Group or defined liquidity group</i>	<i>Annual regulated business revenue up to and in- cluding £5 mil- lion</i>	<i>Annual regulated business revenue over £5 million</i>
<i>Annual re- ports and accounts</i>	<b>Annually</b>			<b>Annually</b>	<b>Annually</b>
<i>Annual ac- counts of the mixed- activity holding company</i>	<b>Annually</b>			<b>Annually</b>	<b>Annually</b>
<i>Solvency statement</i>	<b>Annually</b>				
<b>FSA001</b>	<b>Quarterly or half yearly (note 1)</b>	<b>Quarterly or half yearly (note 1)</b>	<b>Half yearly</b>		
<b>FSA002</b>	<b>Quarterly or half yearly (note 1)</b>	<b>Quarterly or half yearly (note 1)</b>	<b>Half yearly</b>		
<b>FSA003</b>	<b>Monthly, quarterly or half yearly (note 2)</b>	<b>Monthly, quarterly or half yearly (note 2)</b>	<b>Half yearly</b>		
<b>FSA004</b>	<b>Quarterly or half yearly (note 1)</b>	<b>Quarterly or half yearly (note 1)</b>	<b>Half yearly</b>		
<b>FSA005</b>	<b>Quarterly or half yearly (note 1)</b>	<b>Quarterly or half yearly (note 1)</b>	<b>Half yearly</b>		
<b>FSA006</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		

<i>Data item</i>	Frequency				
	<i>Unconsolidated BIPRU investment firm</i>	<i>Solo consolidated BIPRU investment firm</i>	<i>UK Consolidation Group or defined liquidity group</i>	<i>Annual regulated business revenue up to and including £5 million</i>	<i>Annual regulated business revenue over £5 million</i>
<b>FSA007</b>	<b>Annually</b> (note 3)	<b>Annually</b> (note 3)	<b>Annually</b> (note 3)		
<b>FSA008</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		
<b>FSA016</b>		<b>Half yearly</b>			
<b>FSA018</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		
<b>FSA019</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>		
<b>FSA028</b>	<b>Half yearly</b>	<b>Half yearly</b>			
<b>FSA032</b>				<b>Quarterly</b>	<b>Quarterly</b>
<b>FSA045</b>	<b>Quarterly or half yearly</b> (note 1)	<b>Quarterly or half yearly</b> (note 1)	<b>Half yearly</b>		
<b>FSA046</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		
<b>FSA047</b>	<b>Daily, weekly, monthly or quarterly</b> (Notes 4, 5 and 7)	<b>Daily, weekly, monthly or quarterly</b> (Notes 4, 5, 7 and 10)	<b>Daily, weekly, monthly or quarterly</b> (Notes 4, 6 and 7)		
<b>FSA048</b>	<b>Daily, weekly, monthly or quarterly</b> (Notes 4, 5 and 7)	<b>Daily, weekly, monthly or quarterly</b> (Notes 4, 5, 7 and 10)	<b>Daily, weekly, monthly or quarterly</b> (Notes 4, 6 and 7)		
<b>FSA050</b>	<b>Monthly</b> (Note 4)	<b>Monthly</b> (Notes 4 and 10)	<b>Monthly</b> (Note 4)		
<b>FSA051</b>	<b>Monthly</b> (Note 4)	<b>Monthly</b> (Notes 4 and 10)	<b>Monthly</b> (Note 4)		



<i>Data item</i>	Frequency				
	<i>Uncon- solidated BIPRU invest- ment firm</i>	<i>Solo con- solidated BIPRU invest- ment firm</i>	<i>UK Con- solida- tion Group or defined liquidity group</i>	<i>Annual regulated business revenue up to and in- cluding £5 mil- lion</i>	<i>Annual regulated business revenue over £5 million</i>
<b>FSA052</b>	<b>Weekly or monthly (Notes 4 and 8)</b>	<b>Weekly or monthly (Notes 4, 8 and 10)</b>	<b>Weekly or monthly (Notes 4 and 9)</b>		
<b>FSA053</b>	<b>Quarterly (Note 4)</b>	<b>Quarterly (Notes 4 and 10)</b>	<b>Quarterly (Note 4)</b>		
<b>FSA054</b>	<b>Quarterly (Note 4)</b>	<b>Quarterly (Notes 4 and 10)</b>	<b>Quarterly (Note 4)</b>		
<b>FSA055</b>	<b>Annually (Note 4)</b>	<b>Annually (Notes 4 and 10)</b>	<b>Annually (Note 4)</b>		
<b>FSA058</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		
<b>Section A RMAR</b>				<b>Half yearly</b>	<b>Quarterly</b>
<b>Section B RMAR</b>				<b>Half yearly</b>	<b>Quarterly</b>
<b>Section C RMAR</b>				<b>Half yearly</b>	<b>Quarterly</b>
<b>Section D1 and D2 RMAR</b>				<b>Half yearly</b>	<b>Quarterly</b>
<b>Section E RMAR</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Quarterly</b>
<b>Section F RMAR</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>
<b>Section G RMAR</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>
<b>Section H RMAR</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>

<i>Data item</i>	Frequency				
	<i>Unconsolidated BIPRU investment firm</i>	<i>Solo consolidated BIPRU investment firm</i>	<i>UK Consolidation Group or defined liquidity group</i>	<i>Annual regulated business revenue up to and including £5 million</i>	<i>Annual regulated business revenue over £5 million</i>
<b>Section J RMAR</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>
<b>Section K RMAR</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>
<b>Section L RMAR</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>
<b>Note 1:</b>	<i>BIPRU 730K firms and BIPRU 125K firms - quarterly;</i>				
	<i>BIPRU 50K firms - half yearly.</i>				
<b>Note 2</b>	<i>BIPRU 730K firms - monthly;</i>				
	<i>BIPRU 125K firms - quarterly;</i>				
	<i>BIPRU 50K firms - half yearly.</i>				
<b>Note 3</b>	<b>The reporting date for this <i>data item</i> is six months after a <i>firm's</i> most recent <i>accounting reference date</i>.</b>				
<b>Note 4</b>	<b>Reporting frequencies and reporting periods for this <i>data item</i> are calculated on a calendar year basis and not from a <i>firm's</i> <i>accounting reference date</i>. In particular:</b>				
	<b>(1) A week means the period beginning on Saturday and ending on Friday.</b>				
	<b>(2) A month begins on the first day of the calendar month and ends on the last day of that month.</b>				
	<b>(3) Quarters end on 31 March, 30 June, 30 September and 31 December.</b>				
	<b>(4) Daily means each <i>business day</i>.</b>				
	<b>All periods are calculated by reference to London time.</b>				
	<b>Any changes to reporting requirements caused by a <i>firm</i> receiving an <i>intra-group liquidity modification</i> (or a variation to</b>				

<i>Data item</i>	Frequency				
	Uncon- solidated <i>BIPRU</i> <i>invest-</i> <i>ment</i> <i>firm</i>	Solo con- solidated <i>BIPRU</i> <i>invest-</i> <i>ment</i> <i>firm</i>	<i>UK Con-</i> <i>solidation</i> <i>Group</i> <i>defined</i> <i>liquidity</i> <i>group</i>	Annual regulated business revenue up to and in- cluding £5 mil- lion	Annual regulated business revenue over £5 million

one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the *firm* receives that *intra-group liquidity modification* or variation part of the way through such a period, unless the *intra-group liquidity modification* says otherwise.

**Note 5** If the report is on a solo basis the reporting frequency is as follows:

(1) if the *firm* does not have an *intra-group liquidity modification* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(2) if the *firm* is a *group liquidity reporting firm in a non-UK DLG by modification (firm level)* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(3) the frequency is quarterly if the *firm* is a *group liquidity reporting firm in a UK DLG by modification*.

<i>Data item</i>	Frequency				
	Unconsolidated <i>BIPRU investment firm</i>	Solo consolidated <i>BIPRU investment firm</i>	<i>UK Consolidation Group or defined liquidity group</i>	Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million

**Note 6**

(1) If the report is by reference to the *firm's DLG by default* the reporting frequency is:

- (a) weekly if the *group liquidity standard frequency reporting conditions* are met;
- (b) monthly if the *group liquidity low frequency reporting conditions* are met.

(2) If the report is by reference to the *firm's UK DLG by modification* the reporting frequency is:

- (a) weekly if the *group liquidity standard frequency reporting conditions* are met;
- (b) monthly if the *group liquidity low frequency reporting conditions* are met.

(3) If the report is by reference to the *firm's non-UK DLG by modification* the reporting frequency is quarterly.

**Note 7**

(1) If the reporting frequency is otherwise weekly, the item is to be reported on every *business day* if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm* or group in question.

(2) If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm* or group in question.

(3) A *firm* must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no *firm-specific liquidity stress* or *market liquidity stress* and none is expected.

Data item	Frequency				
	Unconsolidated BIPRU investment firm	Solo consolidated BIPRU investment firm	UK Consolidation Group or defined liquidity group	Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million
<b>Note 8</b>	<p>If the report is on a solo basis the reporting frequency is as follows:</p> <p>(1) weekly if the firm is a <i>standard frequency liquidity reporting firm</i>; and</p> <p>(2) monthly if the firm is a <i>low frequency liquidity reporting firm</i>.</p>				
<b>Note 9</b>	<p>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</p> <p>(1) weekly if the <i>group liquidity standard frequency reporting conditions</i> are met;</p> <p>(2) monthly if the <i>group liquidity low frequency reporting conditions</i> are met.</p>				
<b>Note 10</b>	<p>As specified in SUP 16.12.22A R, solo consolidation has no application to liquidity reporting. Therefore it does not make any difference to the reporting of this item whether or not the firm is solo consolidated.</p>				

16.12.24  
FCA PRA

**R**

The applicable due dates for submission referred to in ■ SUP 16.12.4 R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in ■ SUP 16.12.23 R, unless indicated otherwise.

Data Item	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<i>Annual reports and accounts</i>						<b>80 business days</b>
<i>Annual report</i>						<b>7 months</b>

<i>Data Item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
<i>and accounts of the mixed-activity holding company</i>						
<b>Solvency statement</b>						<b>3 months</b>
<b>FSA001</b>				<b>20 business days</b>	<b>30 business days (note 1); 45 business days (note 2)</b>	
<b>FSA002</b>				<b>20 business days</b>	<b>30 business days (note 1); 45 business days (note 2)</b>	
<b>FSA003</b>	<b>15 business days</b>			<b>20 business days</b>	<b>30 business days (note 1); 45 business days (note 2)</b>	
<b>FSA004</b>				<b>20 business days</b>	<b>30 business days (note 1); 45 business days (note 2)</b>	
<b>FSA005</b>				<b>20 business days</b>	<b>30 business days (note 1); 45 business days (note 2)</b>	
<b>FSA006</b>				<b>20 business days</b>		
<b>FSA007</b>						<b>2 months</b>

<i>Data Item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>FSA008</b>				<b>20 business days (note 1); 45 business days (note 2)</b>		
<b>FSA016</b>					<b>30 business days</b>	
<b>FSA018</b>				<b>45 business days</b>		
<b>FSA019</b>						<b>2 months</b>
<b>FSA028</b>					<b>30 business days</b>	
<b>FSA032</b>				<b>20 business days</b>		
<b>FSA045</b>				<b>20 business days</b>	<b>30 business days (note 1), 45 business days (note 2)</b>	
<b>FSA046</b>				<b>20 business days (Note 1), 45 business days (Note 2)</b>		
<b>FSA047</b>	<b>22.00 hours (London time) on the business day immediately following the last day of the reporting period for the</b>	<b>22.00 hours (London time) on the business day immediately following the last day of the reporting period for the</b>	<b>15 business days</b>	<b>15 business days or one Month (Note 3)</b>		

<i>Data Item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
	item in question	item in question				
FSA048	22.00 hours (London time) on the <i>business day</i> immediately following the last day of the reporting period for the item in question	22.00 hours (London time) on the <i>business day</i> immediately following the last day of the reporting period for the item in question	15 <i>business days</i>	15 <i>business days</i> or one <i>Month</i> (Note 3)		
FSA050			15 <i>business days</i>			
FSA051			15 <i>business days</i>			
FSA052		22.00 hours (London time) on the second <i>business day</i> immediately following the last day of the reporting period for the item in question	15 <i>business days</i>			
FSA053				15 <i>business days</i>		



<i>Data Item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>FSA054</b>				<b>15 business days</b>		
<b>FSA055</b>						<b>15 business days</b>
<b>FSA058</b>				<b>20 business days (Note 1), 45 business days (Note 2)</b>		
<b>Section A RMAR</b>				<b>30 business days</b>	<b>30 business days</b>	
<b>Section B RMAR</b>				<b>30 business days</b>	<b>30 business days</b>	
<b>Section C RMAR</b>				<b>30 business days</b>	<b>30 business days</b>	
<b>Section D1 and D2 RMAR</b>				<b>30 business days</b>	<b>30 business days</b>	
<b>Section E RMAR</b>				<b>30 business days</b>	<b>30 business days</b>	
<b>Section F RMAR</b>					<b>30 business days</b>	
<b>Section G RMAR</b>					<b>30 business days</b>	
<b>Section H RMAR</b>					<b>30 business days</b>	
<b>Section J RMAR</b>						<b>30 business days</b>
<b>Section K RMAR</b>					<b>30 business days</b>	
<b>Section L RMAR</b>					<b>30 business days</b>	
<b>Note 1</b>	<b>For unconsolidated and solo consolidated reports</b>					

<i>Data Item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>Note 2</b>	<b>For UK consolidation group reports</b>					
<b>Note 3</b>	<b>It is one <i>Month</i> if the report relates to a <i>non-UK DLG</i> by <i>modification</i>.</b>					

**Regulated Activity Group 8**

16.12.25

**R**

FCA

- (1) ■ SUP 16.12.25A R does not apply to:
  - (a) a *lead regulated firm* (except in relation to *data items* 47 to 55 (inclusive));
  - (b) an *OPS firm*;
  - (c) a local authority;
  - (d) a *service company*.
- (2) A *lead regulated firm* and an *OPS firm* must submit a copy of its annual report and audited accounts within 80 *business days* from its *accounting reference date*.
- (3) A *service company* must submit a copy of its annual audited financial statements (only if the report was audited as a result of a statutory provision other than under the *Act*) within 6 months from its *accounting reference date*.

16.12.25A

**R**

FCA PRA

The applicable *data items* referred to in ■ SUP 16.12.4 R are set out according to type of *firm* in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<del>PRU(N)</del> Chapter 3	<del>PRU(N)</del> Chapter 5	<del>PRU(N)</del> Chapter 9	<del>PRU(N)</del> Chapter 13	UP-RU

<i>Annual report and accounts</i>	<b>No standard format</b>							
<i>Annual report and accounts of the mixed-activity</i>	<b>No standard format</b>							

De- scrip- tion of <i>data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>								
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>					
	730K	125K	50K	<i>PRU(N)</i> Chap- ter 3	<i>PRU(N)</i> Chap- ter 5	<i>PRU(N)</i> Chap- ter 9	<i>PRU(N)</i> Chap- ter 13	UP- RU	
<i>hold- ing compa- ny (note 10)</i>									
<b>Solven- cy state- ment (note 11)</b>	<b>No standard for- mat</b>								<b>No stan- dard for- mat</b>
<b>Bal- ance sheet</b>	<b>FSA001 (note 2)</b>	<b>FSA001 (note 2)</b>	<b>FSA001 (note 2)</b>	<b>FSA029</b>	<b>FSA029</b>	<b>FSA029</b>	<b>Section A RMAR (note 17) or FSA029</b>		
<b>In- come state- ment</b>	<b>FSA002 (note 2)</b>	<b>FSA002 (note 2)</b>	<b>FSA002 (note 2)</b>	<b>FSA030</b>	<b>FSA030</b>	<b>FSA030</b>	<b>Section B RMAR (note 17) or FSA030</b>		<b>FSA030</b>
<b>Capi- tal ade- quacy</b>	<b>FSA003 (note 2)</b>	<b>FSA003 (note 2)</b>	<b>FSA003 (note 2)</b>	<b>FSA033</b>	<b>FSA034 or FSA035 (note 14)</b>	<b>FSA031</b>	<b>Section D1 and D2 RMAR (note 17) or FSA 032 (note 15)</b>		<b>FSA036</b>
<b>Credit risk</b>	<b>FSA004 (note 2, 3)</b>	<b>FSA004 (note 2, 3)</b>	<b>FSA004 (note 2, 3)</b>						
<b>Mar- ket risk</b>	<b>FSA005 (notes 2, 4)</b>	<b>FSA005 (notes 2, 4)</b>	<b>FSA005 (notes 2, 4)</b>						

Description of data item	Firms' prudential category and applicable data item (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K	50K	PRU(N) Chapter 3	PRU(N) Chapter 5	PRU(N) Chapter 9	PRU(N) Chapter 13	UP-RU
Market risk - supplementary	FSA006 (note 5)	FSA006 (note 5)	FSA006 (note 5)					
Operational risk	FSA007 (notes 2, 6, 7)	FSA007 (notes 2, 6, 7)	FSA007 (notes 2, 6, 7)					
Large exposures	FSA008 (Notes 2, 6)	FSA008 (Notes 2, 6)	FSA008 (Notes 2, 6)					
UK Integrated group large exposures	FSA018 (note 12)	FSA018 (note 12)	FSA018 (note 12)					
Solo consolidation data	FSA016 (note 20)	FSA016 (note 20)	FSA016 (note 20)					
Pillar 2 questionnaire	FSA019 (note 8)	FSA019 (note 8)	FSA019 (note 8)					
Non-EEA sub-group	FSA028 (note 9)	FSA028 (note 9)	FSA028 (note 9)					
Threshold conditions								Section F RMAR (note 17)

De- scrip- tion of <i>data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<i>PRU(N)</i> Chap- ter 3	<i>PRU(N)</i> Chap- ter 5	<i>PRU(N)</i> Chap- ter 9	<i>PRU(N)</i> Chap- ter 13	UP- RU
<b>Client money and client assets</b>	FSA039	FSA039	FSA039	FSA039	FSA039	FSA039	Section C RMAR (Note 13) or FSA039	FSA039
<b>IRB portfolio risk</b>	FSA045 (note 18)	FSA045 (note 18)	FSA045 (note 18)					
<b>Securitized non-trading book</b>	FSA046 (note 19)	FSA046 (note 19)	FSA046 (note 19)					
<b>Daily Flows</b>	FSA047 (Notes 21, 24, 26 and 28)							
<b>Enhanced Mismatch Report</b>	FSA048 (Notes 21, 24, 26 and 28)							
<b>Liquidity Buffer Qualifying Securities</b>	FSA050 (Notes 22, 25, 26 and 28)							
<b>Funding Concentration</b>	FSA051 (Notes 22, 25, 26 and 28)							
<b>Pricing data</b>	FSA052 (Notes 22, 26, 28 and 29)							

Description of data item	Firms' prudential category and applicable data item (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K	50K	PRU(N) Chapter 3	PRU(N) Chapter 5	PRU(N) Chapter 9	PRU(N) Chapter 13	UP-RU

Retail and corporate funding	FSA053 (Notes 22, 25, 26 and 28)							
Currency Analysis	FSA054 (Notes 22, 25, 26 and 28)							
Systems and Controls Questionnaire	FSA055 (Notes 23 and 28)							
Securitisations: trading book	FSA058 (Note 27)	FSA058 (Note 27)	FSA058 (Note 27)					

**Note 1:** When submitting the completed *data item* required, a *firm* must use the format of the *data item* set out in SUP 16 Annex 24 R. Guidance notes for completion of the data items are contained in SUP 16 Annex 25 G.

**Note 2** *Firms* that are members of a *UK consolidation group* are also required to submit this report on a *UK consolidation group* basis.

**Note 3** This applies to a *firm* that is required to submit *data item* FSA003 and, at any time within the 12 *months* up to its latest *accounting reference date* ("the relevant period"), was reporting *data item* FSA004 ("Firm A") or not reporting this item ("Firm B").

In the case of Firm A it must report this *data item* if one or both of its last two submissions in the relevant period show that the threshold was exceeded.

De- scrip- tion of <i>data</i> <i>item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<del>PRU</del> Chap- ter 3	<del>PRU</del> Chap- ter 5	<del>PRU</del> Chap- ter 9	<del>PRU</del> Chap- ter 13	UP- RU

In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.

The threshold is exceeded where *data element 77A* in *data item FSA003* is greater than £10 million, or its currency equivalent, at the relevant reporting date for the *firm*.

**Note 4** This applies to a *firm* that is required to submit *data item FSA003* and, at any time within the 12 months up to its latest *accounting reference date* ("the relevant period"), was reporting *data item FSA005* ("Firm A") or not reporting this item ("Firm B").

In the case of Firm A it must report this *data item* if one or both of its last two submissions in the relevant period show that the threshold was exceeded.

In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.

The threshold is exceeded where *data element 93A* in *data item FSA003* is greater than £50 million, or its currency equivalent, at the relevant reporting date for the *firm*.

**Note 5** Only applicable to *firms* with a *VaR model permission*.

**Note 6** This will not be applicable to *BIPRU limited activity firms* or *BIPRU limited licence firms* unless they have a waiver under **BIPRU 6.1.2 G**.

**Note 7** This is only applicable to a *firm* that has adopted, in whole or in part, either the *standardised approach*, *alternative standardised approach*, or *advanced measurement approach* under **BIPRU 6**.

**Note 8** Only applicable to *BIPRU investment firms* that :

(a) are subject to consolidated supervision under **BIPRU 8**, those that are either included within the consolidated supervision of a group that includes a UK *credit institution*, or that have been granted an *investment firm consolidation waiver*; or

(b) have been granted an *investment firm consolidation waiver*; or

Description of data item	Firms' prudential category and applicable <i>data item</i> (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K	50K	IPRU(INV) Chapter 3	IPRU(INV) Chapter 5	IPRU(INV) Chapter 9	IPRU(INV) Chapter 13	UP-RU

(c) are not subject to consolidated supervision under BIPRU 8.

A BIPRU investment firm under (a) must complete the report on the basis of its UK consolidation group. A BIPRU investment firm under (b) or (c) must complete the report on the basis of its solo position.

**Note 9** This will be applicable to firms that are members of a UK consolidation group on the reporting date.

**Note 10** Only applicable to a firm whose ultimate parent is a mixed-activity holding company.

**Note 11** Only applicable to a firm that is a sole trader or a partnership, when the report must be submitted by each partner.

**Note 12** Members of a UK integrated group should only submit this data item at the UK integrated group level.

**Note 13** FSA039 must only be completed by a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm. Section C RMAR must only be completed by a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm.

**Note 14** FSA034 must be completed by a firm not subject to the exemption in IPRU(INV) 5.2.3(2)R.

FSA035 must be completed by a firm subject to the exemption in IPRU(INV) 5.2.3(2) R.

**Note 15** FSA032 must be completed by a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm.

**Note 16** [deleted]

**Note 17** This is only applicable to a firm subject to IPRU(INV) Chapter 13 that is not an exempt CAD firm.

**Note 18** Only applicable to firms that have an IRB permission.

**Note 19** Only applicable to firms that hold securitisation positions, or are the originator or sponsor of securitisations of non-trading book exposures.



De- scrip- tion of <i>data</i> <i>item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<i>IRU(N)</i> Chap- ter 3	<i>IRU(N)</i> Chap- ter 5	<i>IRU(N)</i> Chap- ter 9	<i>IRU(N)</i> Chap- ter 13	UP- RU

**Note 20** Only applicable to a *firm* that has a *solo consolidation waiver*.

**Note 21** A *firm* must complete this item separately on each of the following bases (if applicable).

(1) It must complete it on a solo basis. Therefore even if it has a *solo consolidation waiver* it must complete the item on an unconsolidated basis by reference to the *firm* alone.

(2) If it a *group liquidity reporting firm* in a *DLG by default* and is a *UK lead regulated firm*, it must complete the item on the basis of that group.

(3) If it is a *group liquidity reporting firm* in a *UK DLG by modification*, it must complete the item on the basis of that group.

(4) If it is a *group liquidity reporting firm* in a *non-UK DLG by modification*, it must complete the item on the basis of that group.

**Note 22** A *firm* must complete this item separately on each of the following bases that are applicable.

(1) It must complete it on a solo basis unless it is a *group liquidity reporting firm* in a *UK DLG by modification*. Therefore even if it has a *solo consolidation waiver* it must complete the item on an unconsolidated basis by reference to the *firm* alone.

(2) If it is a *group liquidity reporting firm* in a *UK DLG by modification*, it must complete the item on the basis of that group.

**Note 23** If it is a *non-ILAS BIPRU firm*, it must complete it on a solo basis. Therefore even if it has a *solo consolidation waiver* it must complete the item on an unconsolidated basis by reference to the *firm* alone.

**Note 24** (1) This item must be reported in the reporting currency.

(2) If any *data element* is in a currency or currencies other than the reporting currency, all currencies (including the reporting currency) must be combined into a figure in the reporting currency.

De- scrip- tion of da- ta item	Firms' prudential category and applicable <i>data item</i> (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K	50K	PRU(N) Chap- ter 3	PRU(N) Chap- ter 5	PRU(N) Chap- ter 9	PRU(N) Chap- ter 13	UP- RU

(3) In addition, all *material currencies* (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:

(a) the reporting frequency is (whether under a *rule* or under a *waiver*) quarterly or less than quarterly; or

(b) the only *material currency* is the reporting currency;

(3) does not apply.

(4) If there are more than three *material currencies* for this *data item*, (3) only applies to the three largest in amount. A *firm* must identify the largest in amount in accordance with the following procedure.

(a) For each currency, take the largest of the asset or liability figure as referred to in the definition of *material currency*.

(b) Take the three largest figures from the resulting list of amounts.

(5) The date as at which the calculations for the purposes of the definition of *material currency* are carried out is the last day of the reporting period in question.

(6) The reporting currency for this *data item* is whichever of the following currencies the *firm* chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).

Note 25 Note 24 applies, except that paragraphs (3), (4) and (5) do not apply, meaning that *material currencies* must not be recorded separately.

Note 26 Any changes to reporting requirements caused by a *firm* receiving an *intra-group liquidity modification* (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the *data item* in question if the *firm* receives that *intra-group liquidity modification* or variation part of the way through such a period. If the change is that the *firm* does not have to report a particular *data item* or

De- scrip- tion of <i>data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<del>PRU</del> Chap- ter 3	<del>PRU</del> Chap- ter 5	<del>PRU</del> Chap- ter 9	<del>PRU</del> Chap- ter 13	UP- RU

**does not have to report it at a particular reporting level, the firm must nevertheless report that item or at that reporting level for any reporting period that has already begun. This paragraph is subject to anything that the *intra-group liquidity modification* says to the contrary.**

**Note 27** Only applicable to *firms* that hold *securitisation positions* in the *trading book* and/ or are the *originator* or *sponsor* of *securitisations* held in the *trading book*.

**Note 28** FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an *ILAS BIPRU firm*. An *ILAS BIPRU firm* does not need to complete FSA055. A *non-ILAS BIPRU firm* must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.

**Note 29** This *data item* must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.

16.12.25B G  
FCA PRA

The columns in the table in ■ SUP 16.12.25A R that deal with *BIPRU 50K firms* and *BIPRU 125K firms* cover some liquidity items that only have to be reported by an *ILAS BIPRU firm*. In fact a *BIPRU 50K firm* and a *BIPRU 125K firm* cannot be an *ILAS BIPRU firm*. One reason for drafting the table in this way is that the classification of *firms* into *ILAS BIPRU firms* and *non-ILAS BIPRU firms* is not based on the classification into *BIPRU 50K firms*, *BIPRU 125K firms* and *BIPRU 730K firms* and the drafting of the table emphasises that. Also, the table covers consolidated reports and the conditions about what sort of group has to supply what type of liquidity report do not always depend on how the individual *firm* is classified.

16.12.26 R  
FCA PRA

The applicable reporting frequencies for *data items* referred to in ■ SUP 16.12.25A R are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firms other than BIPRU firms</i>
<i>Annual reports and accounts</i>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>		<b>Annually</b>
<i>Annual report and accounts of the mixed-activity holding company</i>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>	
<b>Solvency statement</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>		<b>Annually</b>
<b>FSA001</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA002</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA003</b>	<b>Monthly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA004</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA005</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA006</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		
<b>FSA007</b>	<b>Annually(note 4)</b>	<b>Annually(note 4)</b>	<b>Annually(note 4)</b>	<b>Annually (note 4)</b>	
<b>FSA008</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	
<b>FSA016</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>		
<b>FSA018</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>		
<b>FSA019</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>	<b>Annually</b>	
<b>FSA028</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>		
<b>FSA029</b>					<b>Quarterly</b>
<b>FSA030</b>					<b>Quarterly</b>
<b>FSA031</b>					<b>Quarterly</b>
<b>FSA032</b>					<b>Quarterly</b>
<b>FSA033</b>					<b>Quarterly</b>
<b>FSA034</b>					<b>Quarterly</b>
<b>FSA035</b>					<b>Quarterly</b>

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firms other than BIPRU firms</i>
<b>FSA036</b>					<b>Quarterly</b>
<b>FSA039</b>	<b>Half yearly</b>	<b>Half yearly</b>	<b>Half yearly</b>		<b>Half yearly</b>
<b>FSA045</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Half yearly</b>	<b>Half yearly</b>	
<b>FSA046</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	
<b>FSA047</b>	<b>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</b>			<b>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</b>	
<b>FSA048</b>	<b>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</b>			<b>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</b>	
<b>FSA050</b>	<b>Monthly (Note 5)</b>			<b>Monthly (Note 5)</b>	
<b>FSA051</b>	<b>Monthly (Note 5)</b>			<b>Monthly (Note 5)</b>	
<b>FSA052</b>	<b>Weekly or monthly (Notes 5 and 9)</b>			<b>Weekly or monthly (Notes 5 and 10)</b>	
<b>FSA053</b>	<b>Quarterly (Note 5)</b>			<b>Quarterly (Note 5)</b>	
<b>FSA054</b>	<b>Quarterly (Note 5)</b>			<b>Quarterly (Note 5)</b>	
<b>FSA055</b>	<b>Annually (Note 5)</b>			<b>Annually (Note 5)</b>	
<b>FSA058</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	<b>Quarterly</b>	
<b>Section A RMAR</b>					<b>Half yearly (note 2) Quarterly (note 3)</b>

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firms other than BIPRU firms</i>
<b>Section B RMAR</b>					<b>Half yearly (note 2) Quarterly (note 3)</b>
<b>Section C RMAR</b>					<b>Half yearly (note 2) Quarterly (note 3)</b>
<b>Section D1 and D2 RMAR</b>					<b>Half yearly (note 2) Quarterly (note 3)</b>
<b>Section F RMAR</b>					<b>Half yearly</b>
<b>Note 1</b>	<b>[deleted]</b>				
<b>Note 2</b>	<b>Annual regulated business revenue up to and including £5 million.</b>				
<b>Note 3</b>	<b>Annual regulated business revenue over £5 million.</b>				
<b>Note 4</b>	<b>The reporting date for this <i>data item</i> is six months after a <i>firm's</i> most recent <i>accounting reference date</i>.</b>				

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firms other than BIPRU firms</i>
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**Note 5** Reporting frequencies and reporting periods for this *data item* are calculated on a calendar year basis and not from a *firm's accounting reference date*. In particular:

- (1) A week means the period beginning on Saturday and ending on Friday.
- (2) A month begins on the first day of the calendar month and ends on the last day of that month.
- (3) Quarters end on 31 March, 30 June, 30 September and 31 December.
- (4) Daily means each *business day*.

All periods are calculated by reference to London time.

Any changes to reporting requirements caused by a *firm* receiving an *intra-group liquidity modification* (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the *firm* receives that *intra-group liquidity modification* or variation part of the way through such a period, unless the *intra-group liquidity modification* says otherwise.

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firms other than BIPRU firms</i>
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**Note 6** If the report is on a solo basis the reporting frequency is as follows:

(1) if the *firm* does not have an *intra-group liquidity modification* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(2) if the *firm* is a *group liquidity reporting firm in a non-UK DLG by modification (firm level)* the frequency is:

(a) weekly if the *firm* is a *standard frequency liquidity reporting firm*; and

(b) monthly if the *firm* is a *low frequency liquidity reporting firm*;

(3) the frequency is quarterly if the *firm* is a *group liquidity reporting firm in a UK DLG by modification*.



<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firms other than BIPRU firms</i>
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**Note 7**

(1) If the report is by reference to the *firm's DLG by default* the reporting frequency is:

(a) weekly if the *group liquidity standard frequency reporting conditions* are met;

(b) monthly if the *group liquidity low frequency reporting conditions* are met.

(2) If the report is by reference to the *firm's UK DLG by modification* the reporting frequency is:

(a) weekly if the *group liquidity standard frequency reporting conditions* are met;

(b) monthly if the *group liquidity low frequency reporting conditions* are met.

(3) If the report is by reference to the *firm's non-UK DLG by modification* the reporting frequency is quarterly.

**Note 8**

(1) If the reporting frequency is otherwise weekly, the item is to be reported on every *business day* if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm* or group in question.

(2) If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a *firm-specific liquidity stress* or *market liquidity stress* in relation to the *firm* or group in question.

(3) A *firm* must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no *firm-specific liquidity stress* or *market liquidity stress* and none is expected.

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firms other than BIPRU firms</i>
<b>Note 9</b>	<p>If the report is on a solo basis the reporting frequency is as follows:</p> <p>(1) weekly if the <i>firm</i> is a <i>standard frequency liquidity reporting firm</i>; and</p> <p>(2) monthly if the <i>firm</i> is a <i>low frequency liquidity reporting firm</i>.</p>				
<b>Note 10</b>	<p>If the report is by reference to the <i>firm's UK DLG by modification</i> the reporting frequency is:</p> <p>(1) weekly if the <i>group liquidity standard frequency reporting conditions</i> are met;</p> <p>(2) monthly if the <i>group liquidity low frequency reporting conditions</i> are met.</p>				

16.12.27

FCA PRA

**R**

The applicable due dates for submission referred to in ■ SUP 16.12.4 R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in ■ SUP 16.12.26 R, unless indicated otherwise .

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<i>Annual accounts</i>						<b>80 business days</b>
<i>Annual reconciliation</i>						<b>80 business days</b>
<i>Annual reports and accounts of the mixed-activity holding company</i>						<b>7 months</b>

<i>Data item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
<b>Solvency state-ment</b>						<b>3 months</b>
<b>FSA001</b>				<i>20 busi-ness days</i>	<i>30 busi-ness days (note 1);45 business days (note 2)</i>	
<b>FSA002</b>				<i>20 busi-ness days</i>	<i>30 busi-ness days (note 1);45 business days (note 2)</i>	
<b>FSA003</b>				<i>20 busi-ness days</i>	<i>30 busi-ness days (note 1);45 business days (note 2)</i>	
<b>FSA004</b>				<i>20 busi-ness days</i>	<i>30 busi-ness days note 1);45 business days (note 2)</i>	
<b>FSA005</b>				<i>20 busi-ness days</i>	<i>30 busi-ness days (note 1);45 business days (note 2)</i>	
<b>FSA006</b>				<i>20 busi-ness days</i>	<i>30 busi-ness days (note 1);45 business</i>	

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
					<i>days (note 2)</i>	
<b>FSA007</b>						<b>2 months</b>
<b>FSA008</b>				<b>20 business days (note 1);45 business days (note 2)</b>		
<b>FSA016</b>					<b>30 business days</b>	
<b>FSA018</b>				<b>45 business days</b>		
<b>FSA019</b>						<b>2 months</b>
<b>FSA028</b>					<b>30 business days</b>	
<b>FSA029</b>				<b>20 business days</b>		
<b>FSA030</b>				<b>20 business days</b>		
<b>FSA031</b>				<b>20 business days</b>		
<b>FSA032</b>				<b>20 business days</b>		
<b>FSA033</b>				<b>20 business days</b>		
<b>FSA034</b>				<b>20 business days</b>		
<b>FSA035</b>				<b>20 business days</b>		
<b>FSA036</b>				<b>20 business days</b>		
<b>FSA039</b>					<b>30 business days</b>	
<b>FSA040</b>				<b>15 business days</b>		
<b>FSA045</b>			<b>20 business days</b>	<b>30 business days</b>		

<i>Data item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
<b>FSA046</b>				(note 1); 45 <i>busi-ness days</i> (note 2) 20 <i>busi-ness days</i> (Note 1), 45 <i>busi-ness days</i> (Note 2)		
<b>FSA047</b>	22.00 hours (London time) on the <i>busi-ness day</i> immedi-ately fol- lowing the last day of the re- porting period for the item in question	22.00 hours (London time) on the <i>busi-ness day</i> immedi-ately fol- lowing the last day of the re- porting period for the item in question	15 <i>busi-ness days</i>	15 <i>busi-ness days</i> or one <i>Month</i> (Note 3)		
<b>FSA048</b>	22.00 hours (London time) on the <i>busi-ness day</i> immedi-ately fol- lowing the last day of the re- porting period for the item in question	22.00 hours (London time) on the <i>busi-ness day</i> immedi-ately fol- lowing the last day of the re- porting period for the item in question	15 <i>busi-ness days</i>	15 <i>busi-ness days</i> or one <i>Month</i> (Note 3)		

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
<b>FSA050</b>			<b>15 business days</b>			
<b>FSA051</b>			<b>15 business days</b>			
<b>FSA052</b>		<b>22.00 hours (London time) on the second business day immediately following the last day of the reporting period for the item in question</b>	<b>15 business days</b>			
<b>FSA053</b>				<b>15 business days</b>		
<b>FSA054</b>				<b>15 business days</b>		
<b>FSA055</b>						<b>15 business days</b>
<b>FSA058</b>				<b>20 business days (Note 1), 45 business days (Note 2)</b>		
<b>Section A RMAR</b>				<b>30 business days</b>	<b>30 business days</b>	
<b>Section B RMAR</b>				<b>30 business days</b>	<b>30 business days</b>	
<b>Section C RMAR</b>				<b>30 business days</b>	<b>30 business days</b>	
<b>Section D1 and</b>				<b>30 business days</b>	<b>30 business days</b>	

<i>Data item</i>	Daily	Weekly	Month-ly	Quarter-ly	Half yearly	Annual
<b>D2 RMAR</b>						
<b>Section F RMAR</b>					<b>30 business days</b>	
<b>Note 1</b>	<b>For unconsolidated and solo consolidated reports.</b>					
<b>Note 2</b>	<b>For UK consolidation group reports</b>					
<b>Note 3</b>	<b>It is one Month if the report relates to a non-UK DLG by modification.</b>					

**Regulated Activity Group 9**

16.12.28 **R**  
FCA

- (1) ■ SUP 16.12.28A R does not apply to:
  - (a) a lead regulated firm;
  - (b) an OPS firm;
  - (c) a local authority;
  - (d) a third party processor in respect of any home finance activity.
  
- (2) A lead regulated firm and an OPS firm must submit a copy of its annual report and audited accounts within 80 business days from its accounting reference date.

16.12.28A **R**  
FCA

The applicable *data items*, reporting frequencies and submission deadlines referred to in ■ SUP 16.12.4 R are set out in the table below. Reporting frequencies are calculated from a firm's *accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of data item	Data item (note 1)	Frequency		Submission deadline
		Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million	
<b>Balance Sheet</b>	<b>Section A RMAR</b>	<b>Half yearly</b>	<b>Quarterly</b>	<b>30 business days</b>

Description of data item	Data item (note 1)	Frequency		Submission deadline
		Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million	
Income Statement	Section B RMAR	Half yearly	Quarterly	30 business days
Capital Adequacy	Section D1 RMAR	Half yearly	Quarterly	30 business days
Professional indemnity insurance	Section E RMAR	Half yearly	Quarterly	30 business days
(note 2)				
Threshold Conditions	Section F RMAR	Half yearly	Half yearly	30 business days
Training and Competence	Section G RMAR	Half yearly	Half yearly	30 business days
COBS data	Section H RMAR	Half yearly	Half yearly	30 business days
Supplementary product sales data	Section I RMAR	Half yearly	Annually	30 business days
Client money and client assets	Section C RMAR	Half yearly	Quarterly	30 business days
Fees and levies	Section J RMAR	Annually	Annually	30 business days
Note 1	When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in SUP 16 Annex 18A R. Guidance notes for the completion of the data items is set out in SUP 16 Annex 18B G.			
Note 2	This item only applies to <i>firms</i> that may be subject to an <i>FSA</i> requirement to hold professional indemnity insurance and are not <i>exempt CAD firms</i> .			

**Regulated Activity Group 10**

RIEs have separate reporting as set out in REC.

16.12.29

G

FCA



**Regulated Activity Group 11**

16.12.29A **R**  
FCA

A *firm* must submit the form contained in ■ SUP 16 Annex 32 R (Bidding in emissions auctions return) annually within 30 *business days* from its *accounting reference date* unless the *firm* did not carry on any *auction regulation bidding* during the year to which that form relates.

**Authorised professional firms**

16.12.30 **R**  
FCA

- (1) An *authorised professional firm*, other than one that must comply with IPRU(INV) 3, 5 or 13 in accordance with IPRU(INV) 2.1.4R, must submit an annual questionnaire, contained in ■ SUP 16 Annex 9 R, unless:
  - (a) its only *regulated activities* are one or more of:
    - (i) *insurance mediation*;
    - (ii) *mortgage mediation*;
    - (iii) *retail investment*;
    - (iv) *mortgage lending*;
    - (v) *mortgage administration*; or
  - (b) its "main business" as determined by IPRU(INV) 2.1.2R(3) is advising on, or *arranging deals* in, *packaged products*, or *managing investments* for *private customers*;

in which case the *authorised professional firm* must complete the appropriate report specified in ■ SUP 16.12.31 R.
- (2) The due date for submission of the annual questionnaire is four months after the *firm's accounting reference date*.
- (3) An *authorised professional firm* must also, where applicable, submit the other report to the FCA in accordance with ■ SUP 16.12.31 R in respect of the other *regulated activities* it undertakes under (1)(a).

16.12.30A **R**  
FCA

An *authorised professional firm* that must comply with IPRU(INV) 3, 5, 10 or 13 in accordance with IPRU(INV) 2.1.4R must submit the relevant reports in ■ SUP 16.12.4 R to ■ SUP 16.12.29 G, according to the *regulated activity groups* that its business falls into.

16.12.31 **R**  
FCA

Table of data items from an *authorised professional firm*

Report	Return (note 1)	Frequency (Note 4)	Due date
Adequate information relating to the following activities:	RMAR (Note 3)	Half yearly (quarterly for sections A to E)	For half yearly report: 30 <i>business days</i> after period end For

Report	Return (note 1)	Frequency (Note 4)	Due date
<p>(1) <i>insurance mediation activity</i>;</p> <p>(2) <i>mortgage mediation activity</i>;</p> <p>(3) <i>retail investment activity</i>;</p> <p>(4) <i>advising on, or arranging deals in, packaged products, or managing investments for private customers where these activities are the authorised professional firm's "main business" as determined by IPRU(INV) 2.1.2 R (3)</i></p>		<p>for larger firms, subject to Note 3 exemptions) (note 2)</p>	<p>quarterly report: 30 business days after quarter end</p>
<p>Adequate information relating to mortgage lending and mortgage administration.</p>	MLAR	Quarterly	20 business days after quarter end
Note 1	<p>When giving the report required, a <i>firm</i> must use the return indicated. The RMAR and MLAR are located at SUP 16 Annex 18A R and SUP 16 Annex 19A R respectively. Guidance on the completion of the <i>data items</i> are located at SUP 16 Annex 18B G and SUP 16 Annex 19B G respectively.</p>		
Note 2	<p>For the purposes of RMAR reporting, a larger <i>firm</i> is a <i>firm</i> whose annual regulated business revenue in its previous financial year was greater than £5m. Annual regulated business revenue for these purposes is a <i>firm's</i> total revenue relating to <i>insurance mediation activity, mortgage mediation activity and retail investment activity</i>.</p>		
Note 3	<p>A <i>firm</i> which submits an MLAR is not required to submit sections A and B of the RMAR.</p>		
Note 4	<p>Reporting dates are calculated from a <i>firm's</i> <i>accounting reference date</i>.</p>		

16.12.32 **R**  
 FCA PRA

**Financial conglomerates**

- (1) A *firm* that is a member of a *financial conglomerate* must submit financial reports to the *appropriate regulator* in accordance with the table in ■ SUP 16.12.33 R if:
  - (a) it is at the head of a *UK-regulated EEA financial conglomerate* ; or
  - (b) its *Part 4A permission* contains a relevant *requirement*.
- (2) In (1)(b), a relevant *requirement* is one which:
  - (a) applies ■ SUP 16.12.33 R to the *firm*; or
  - (b) applies ■ SUP 16.12.33 R to the *firm* unless the *mixed financial holding company* of the to which the *financial conglomerate firm* belongs submits the report required under this *rule* (as if the *rule* applied to it).

16.12.33 **R**  
 FCA PRA

Financial reports from a member of a financial conglomerate (see ■ SUP 16.12.32 R)

Content of Report	Form (Note 1)	Frequency	Due Date
Calculation of supplementary capital adequacy requirements in accordance with one of the four technical calculation methods	Note 2	Note 5	Note 5
Identification of significant <i>risk concentration</i> levels	Note 3	Yearly	4 months after year end
Identification of significant <i>intra-group transactions</i>	Note 4	Yearly	4 months after year end
Report on compliance with GENPRU 3.1.35 R where it applies	Note 6	Note 5	Note 5
Note 1	When giving the report required, a <i>firm</i> must use the form indicated, if any.		

Content of Report	Form (Note 1)	Frequency	Due Date
<p><b>Note 2</b></p>	<p><b>If Part 1 of GENPRU 3 Annex 1 R (method 1), Part 2 of GENPRU 3 Annex 1 R (method 2), or Part 3 of GENPRU 3 Annex 1 R (method 3) applies, there is no specific form. Adequate information must be provided, and each <i>financial conglomerate</i> for which the <i>appropriate regulator</i> is the <i>co-ordinator</i> must discuss with the <i>appropriate regulator</i> how to do this.</b></p> <p><b>If Part 4 of GENPRU 3 Annex 1 R applies (method 4):</b></p> <p><b>(1) a <i>banking and investment services conglomerate</i> must use FSA003; and</b></p> <p><b>(2) an <i>insurance conglomerate</i> must use:</b></p> <p><b>(a) (where SUP 16.12.32 R (1)(a) applies), Forms 1, 2 and 3 in Appendix 9.1 of <i>IPRU(INS)</i> prepared in accordance with IPRU (INS) 9.35(1); or</b></p> <p><b>(b) (in any other case), the Insurance Group Capital Adequacy Reporting Form (Form 95) in Appendix 9.9 of <i>IPRU(INS)</i></b></p> <p><b>For the purposes of (b), <i>rules 9.40(1), 9.40(1A), 9.40(3) and 9.40(4) of IPRU(INS)</i> apply as they would if the <i>insurance conglomerate</i> were an <i>insurance group</i>.</b></p>		
<p><b>Note 3</b></p>	<p><b>Rather than specifying a standard format for each <i>financial conglomerate</i> to use, each <i>financial conglomerate</i> for which the <i>appropriate regulator</i> is the <i>co-ordinator</i> must discuss with the <i>appropriate regulator</i> the form of the information to be reported. This should mean that usual information management systems of the <i>financial conglomerate</i> can be used to the extent possible to generate and analyse the information required.</b></p> <p><b>When reviewing the <i>risk concentration</i> levels, the <i>appropriate regulator</i> will in particular monitor the possible risk of contagion in the <i>financial conglomerate</i>, the risk of a conflict of interests, the risk of circumvention of sectoral <i>rules</i>, and the level or volume of risks.</b></p>		
<p><b>Note 4</b></p>	<p><b>For the purposes of this reporting requirement, an <i>intra-group transaction</i> will be presumed to be significant if its amount exceeds 5% of the total amount of capital adequacy requirements at the level of the <i>financial conglomerate</i>.</b></p>		

Content of Report	Form (Note 1)	Frequency	Due Date
<p>Note 5</p>	<p>Rather than specifying a standard format for each <i>financial conglomerate</i> to use, each <i>financial conglomerate</i> for which the <i>appropriate regulator</i> is the <i>co-ordinator</i> must discuss with the <i>appropriate regulator</i> the form of the information to be reported. This should mean that usual information management systems of the <i>financial conglomerate</i> can be used to the extent possible to generate and analyse the information required.</p> <p>When reviewing the <i>intra-group transactions</i>, the <i>appropriate regulator</i> will in particular monitor the possible risk of contagion in the <i>financial conglomerate</i>, the risk of a conflict of interest, the risk of circumvention of <i>sectoral rules</i>, and the level or volume of risks.</p>	<p>The frequency and due date will be as follows:</p> <p>(1) <i>banking and investment services conglomerate</i>: frequency is half-yearly with due date 45 <i>business days</i> after period end</p> <p>(2) <i>insurance conglomerate</i>: frequency is yearly with due date four months after period end for the capital adequacy return and three months after period end for the report on compliance with GENPRU 3.1.35 R where it applies.</p>	
<p>Note 6</p>	<p>Adequate information must be added as a separate item to the relevant form for sectoral reporting.</p>		



## 16.13 Reporting under the Payment Services Regulations

### Application

16.13.1  
FCA

G

This section applies to *authorised payment institutions* and *small payment institutions* (see ■ SUP 16.1.1A D).

### Purpose

16.13.2  
FCA

G

The purpose of this section is to give directions to *authorised payment institutions* and *small payment institutions* under regulation 82 (Reporting requirements) of the *Payment Services Regulations* in relation to:

- (1) the information in respect of their provision of *payment services* and their compliance with requirements imposed by or under Parts 2 to 6 of the *Payment Services Regulations* that they must provide to the *FCA*; and
- (2) the time at which and the form in which they must provide that information.

16.13.2A  
FCA

G

The purpose of this section is also to set out the rules applicable to *authorised payment institutions* and *small payment institutions* in relation to complete and timely reporting and failure to submit reports.

### Reporting requirement

16.13.3  
FCA

D

- (1) An *authorised payment institution* or a *small payment institution* must submit to the *FCA* the duly completed return applicable to it as set out in column (2) of the table in ■ SUP 16.13.4D.
- (2) An *authorised payment institution* or a *small payment institution* must submit the return referred to in (1):
  - (a) in the format specified as applicable in column (3) of the table in ■ SUP 16.13.4D;
  - (b) at the frequency and in respect of the periods specified in column (4) of that table;
  - (c) by the due date specified in column (5) of that table; and
  - (d) by electronic means made available by the *FCA*.

16.13.3A  
FCA

D

■ SUP 16.3.11 R (Complete reporting) and ■ SUP 16.3.13 R (Timely reporting) also apply to *authorised payment institutions* and *small payment institutions* as if a

reference to *firm* in these *rules* were a reference to *authorised payments institutions* and *small payment institutions*.

16.13.3B **R**  
FCA

■ SUP 16.3.14 R (Failure to submit reports) also applies to *authorised payment institutions* and *small payment institutions* as if a reference to *firm* in this *rule* were a reference to *authorised payments institutions* and *small payment institutions*.

16.13.4 **D**  
FCA

The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *authorised payment institutions* and *small payment institutions*.

(1)	(2)	(3)	(4)	(5)
Type of firm	Return	Format	Reporting Frequency	Due date
<i>Authorised Payment Institution</i>	Authorised Payment Institution Capital Adequacy Return	FSA056 (Note 1)	Annual (Note 2)	30 <i>business days</i> (Note 3)
<i>Small Payment Institution</i>	Payment Services Directive Transactions	FSA057 (Note 4)	Annual (Note 5)	1 month (Note 3)
Note 1	When submitting the completed return required, the <i>authorised payment institution</i> must use the format of the return set out in SUP 16 Annex 27A D. Guidance notes for the completion of the return are set out in SUP 16 Annex 27B G.			
Note 2	This reporting frequency is calculated from an <i>authorised payment institution's accounting reference date</i> .			
Note 3	The due dates are the last day of the periods given in column (5) of the table above following the relevant reporting frequency period set out in column (4) of the table above.			
Note 4	When submitting the completed return required, the <i>small payment institution</i> must use the format of the return set out in SUP 16 Annex 28A D. Guidance notes for the completion of the return are set out in SUP 16 Annex 28B G.			
Note 5	This reporting frequency is calculated from 31 December each calendar year.			

## 16.14 Client money and asset return

### Application

16.14.1

R

This section applies to a *CASS large firm* and a *CASS medium firm*.

FCA

### Purpose

16.14.2

G

The purpose of the *rules* and *guidance* in this section is to ensure that the *FCA* receives regular and comprehensive information from a *firm* which is able to hold *client money* and *safe custody assets* on behalf of its *clients*.

FCA

### Report

16.14.3

R

- (1) Subject to (3), a *firm* must submit a completed *CMAR* to the *FCA* within 15 *business days* of the end of each month.
- (2) In this *rule* month means a calendar month and ■ SUP 16.3.13 R (4) does not apply.
- (3) A *firm* which changes its 'CASS firm type' and notifies the *FCA* that it is a *CASS medium firm* or a *CASS large firm* in accordance with ■ CASS 1A.2.9 R is not required to submit a *CMAR* in respect of the month in which the change to its 'CASS firm type' takes effect in accordance with ■ CASS 1A.2.12 R, unless it was a *firm* to which the requirement in (1) applied immediately prior to that change taking effect.

FCA

16.14.4

R

For the purposes of the *CMAR*:

FCA

- (1) *client money* is that to which the *client money rules* in ■ CASS 7 apply; and
- (2) *safe custody assets* are those to which the *custody rules* in ■ CASS 6 apply but only in relation to the holding of *financial instruments* (in the course of *MiFID business*) and the *safeguarding and administration of assets (without arranging)* (in the course of business that is not *MiFID business*).



16.14.5

FCA

G

For the avoidance of doubt, the effect of ■ SUP 16.14.4 R is that the following are to be excluded from any calculations which the *CMAR* requires :

- (1) any *client money* held by the *firm* in accordance with ■ CASS 5;
- (2) any *safe custody assets* in respect of which the *firm* is merely *arranging safeguarding and administration of assets* in accordance with ■ CASS 6; and
- (3) any *client money* or *safe custody assets* in respect of which the *firm* merely has a *mandate* in accordance with ■ CASS 8.

#### Method of submission

---

16.14.6

FCA

R

A *CMAR* must be submitted by electronic means made available by the *FCA*.



## 16.15 Reporting under the Electronic Money Regulations

### Application

16.15.1  
FCA

G

This section applies to *electronic money issuers* that are not *credit institutions* (see ■ SUP 16.1.1B D).

### Purpose

16.15.2  
FCA

G

The purpose of this section is to give directions to the *electronic money issuers* referred to in ■ SUP 16.1.1B D under regulation 49 (Reporting requirements) of the *Electronic Money Regulations* in relation to:

- (1) the information in respect of their issuance of *electronic money* and provision of *payment services* and their compliance with requirements imposed by or under Parts 2 to 5 of the *Electronic Money Regulations* that they must provide to the *FCA*; and
- (2) the time at which and the form in which they must provide that information.

16.15.3  
FCA

G

The purpose of this section is also to set out the rules applicable to these types of *electronic money issuers* in relation to complete and timely reporting and, where relevant, the failure to submit reports.

### Reporting requirement

16.15.4  
FCA

D

An *electronic money issuer* that is not a *credit institution* must submit to the *FCA*:

- (1) the duly completed return applicable to it as set out in column (2) of the table in ■ SUP 16.15.8 D; and
- (2) the return referred to in (1):
  - (a) in the format specified as applicable in column (3) of the table in ■ SUP 16.15.8 D;
  - (b) at the frequency and in respect of the periods specified in column (4) of that table;
  - (c) by the due date specified in column (5) of that table; and
  - (d) by electronic means made available by the *FCA* where necessary.

**16.15.5** **D** ■ SUP 16.4.5 R (Annual Controllers Report) and ■ SUP 16.5.4 R (Annual Close Links Reports) apply to an *authorised electronic money institution* as if a reference to *firm* in these rules were a reference to an *authorised electronic money institution*.  
**FCA**

**16.15.6** **D** ■ SUP 16.3.11 R (Complete reporting) and ■ SUP 16.3.13 R (Timely reporting) apply to an *authorised electronic money institution* and a *small electronic money institution* as if a reference to *firm* in these rules were a reference to an *authorised electronic money institution* and a *small electronic money institution*.  
**FCA**

**16.15.7** **R** ■ SUP 16.3.14 R (Failure to submit reports) also applies to an *authorised electronic money institution* and a *small electronic money institution* as if a reference to *firm* in these rules were a reference to an *authorised electronic money institution* and a *small electronic money institution*.  
**FCA**

**16.15.8** **D** The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *electronic money issuers* that are not *credit institutions*.  
**FCA**

(1)	(2)	(3)	(4)	(5)
Type of <i>electronic money issuer</i>	Return	Format	Reporting Frequency	Due date (Note 4)
<i>Authorised electronic money institution</i> (Note 1)	Balance sheet	FSA059	Half yearly (Note 3)	30 <i>business days</i>
	Income statement	FSA060	Half yearly (Note 3)	30 <i>business days</i>
	Capital requirements	FSA061	Half yearly (Note 3)	30 <i>business days</i>
	Safeguarding	FSA062	Half yearly (Note 3)	30 <i>business days</i>
	Supplementary information	FSA063	Half yearly (Note 3)	30 <i>business days</i>
	<i>Annual report and accounts</i>	No standard format	Annual (Note 3)	80 <i>business days</i>
<i>Small electronic money institutions</i> (Note 2)	Return	FSA064	Half yearly (note 5)	30 <i>business days</i>
	Total electronic money outstanding @ 31st December	FSA065	Annual (Note 5)	1 month
	<i>Annual report and accounts</i>	No standard format	Annual (Note 5)	80 <i>business days</i>
(a) the Post Office Limited	<i>Average outstanding electronic money</i>	No standard format	Half yearly (Note 6)	30 <i>business days</i>

(1)	(2)	(3)	(4)	(5)
Type of <i>elec- tronic mon- ey issuer</i>	Return	Format	Reporting Frequency	Due date (Note 4)
(b) the Bank of England, the ECB and the national central banks of <i>EEA</i> States other than the <i>United Kingdom</i>				
(c) Government departments and local authorities				
(d) <i>credit unions</i>				
(e) municipal banks				
(f) the National Savings Bank				
Note 1	When submitting the completed returns required, the <i>authorised electronic money institution</i> must use the format of the returns set out in SUP 16 Annex 30A D to SUP 16 Annex 30E D.			
Note 2	When submitting the completed returns required, the <i>small electronic money institution</i> must use the format of the returns set out in SUP 16 Annex 30F D to SUP 16 Annex 30G D.			
Note 3	Where the <i>authorised electronic money institution's</i> reporting frequency is half yearly or annual, this field is calculated from the <i>authorised electronic money institution's accounting reference date</i> .			
Note 4	The due dates for returns are the last day of the periods given in column (5) of the table above following the relevant reporting frequency period set out in column (4) of the table above.			
Note 5	The reporting frequency in relation to FSA065 is calculated from 31 December each calendar year. Otherwise, where the <i>small electronic money institution's</i> reporting frequency is half yearly or annual, this field is calculated from the <i>small electronic money institution's accounting reference date</i> .			
Note 6	This is calculated from 31 December each calendar year.			



**16.16 Prudent valuation reporting**

**Application**

16.16.1  
FCA PRA

**R** This section applies to a *UK bank* or a *BIPRU 730k firm* which meets the condition in ■ SUP 16.16.2 R.

16.16.2  
FCA PRA

**R** The condition referred to in ■ SUP 16.16.1 R is that, on its last *accounting reference date*, the *firm* had balance sheet positions measured at fair value which, on a gross basis (the sum of the absolute value of each of the assets and liabilities), exceeded £3 billion.

**Purpose**

16.16.3  
FCA PRA

- G**
- (1) The purpose of this section is to set out the requirements for a *firm* specified in ■ SUP 16.16.1 R to report the outcomes of its prudent valuation assessments under the prudent valuation rules, in ■ GENPRU 1.3.4 R and ■ GENPRU 1.3.14 R to ■ GENPRU 1.3.34 R, to the *appropriate regulator* and to do so in a standard format.
  - (2) The purpose of collecting this data on the prudent valuation assessments made by a *firm* under ■ GENPRU 1.3.4 R and ■ GENPRU 1.3.14 R to ■ GENPRU 1.3.34 R is to assist the *appropriate regulator* in assessing the capital resources of *firms*, to enable the *appropriate regulator* to gain a wider understanding of the nature and sources of measurement uncertainty in fair-valued financial instruments, and to enable comparison of the nature and level of that measurement uncertainty across *firms* and over time.

**Reporting requirement**

16.16.4  
FCA PRA

- R**
- (1) ■ A *firm* to which this section applies must submit to the *appropriate regulator* quarterly (on a calendar year basis and not from a *firm's accounting reference date*), within six weeks of each quarter end, a Prudent Valuation Return in respect of its fair-value assessments under ■ GENPRU 1.3.4 R and ■ GENPRU 1.3.14 R to ■ GENPRU 1.3.34 R in the format set out in ■ SUP 16 Annex 31A R.
  - (2) A PRA-authorized person to which this section applies must submit the report via electronic mail to [prudentvaluationreturns@bankofengland.co.uk](mailto:prudentvaluationreturns@bankofengland.co.uk) or via post or hand delivery to Regulatory Data Group, Statistics and

Regulatory Data Division (HO5 A-B), Bank of England,  
Threadneedle Street, London EC2R 8AH; or via fax to the  
Regulatory Data Group of the Bank of England (020 7601 3334)

16.16.5

FCA PRA

R

Where a *firm* to which ■ SUP 16.16.4 R applies is a member of a *UK consolidation group*, the *firm* must comply with ■ SUP 16.16.4 R:

- (1) on a solo-consolidation basis if the *firm* has a *solo consolidation waiver*, or on an unconsolidated basis if the *firm* does not have a *solo consolidation waiver*; and
- (2) separately, on the basis of the consolidated financial position of the *UK consolidation group*. (*Firms'* attention is drawn to ■ SUP 16.3.25 G regarding a single submission for all *firms* in the *group*.)



**16.17 Remuneration reporting**

**Purpose**

16.17.1  
FCA PRA

G

The purpose of this section is to ensure that the *appropriate regulator* receives regular and comprehensive information about *remuneration* in a standard format to assist it to benchmark *remuneration* trends and practices and to collect *remuneration* information on *high earners*. It also takes account of the Capital Requirements (Amendment) Regulations 2012 (SI 2012/917) together with the European Banking Authority's Guidelines to article 22(3) and (5) of the *Banking Consolidation Directive*.

**Interpretation**

16.17.2  
FCA PRA

R

In this section "UK lead regulated group" means a *UK consolidation group* that is headed either by an *EEA parent institution* or by an *EEA parent financial holding company*.

**Remuneration Benchmarking Reporting Requirements**

16.17.3  
PRA

R

- (1) A *firm* to which this *rule* applies must submit a Remuneration Benchmarking Information Report to the *PRA* annually.
- (2) The *firm* must complete that report in the format set out in ■ SUP 16 Annex 33A R.
- (3) The *firm* must submit that report to the *PRA* within four months of the *firm's accounting reference date*.
- (4) A *firm* that:
  - (a) is not part of a UK lead regulated group must complete that report on an unconsolidated basis in respect of *remuneration* awarded to *employees* of the *firm* in the last completed financial year;
  - (b) is part of a UK lead regulated group must not complete that report on either a solo consolidation basis or an unconsolidated basis. The *firm* must complete that report on a consolidated basis in respect of *remuneration* awarded to all *employees* in the UK lead regulated group in the last completed financial year.

- (5) The *firm* must complete the report in the currency of its annual audited accounts.
- (6) A *firm* to which this *rule* applies on the date it comes into effect must submit two reports by 31 December 2012: one for each of the previous two complete financial years that ended before this *rule* came into effect.
- (7) This *rule* applies to:
- (a) a *BIPRU firm*; and
  - (b) a *third country BIPRU firm*;
- that:
- (c) is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*; and
  - (d) is not, and does not have, an *EEA parent institution* or an *EEA parent financial holding company*;
- and that *firm* had total assets equal to or greater than £50 billion on an unconsolidated basis on the *accounting reference date* immediately prior to the *firm's* last complete financial year.
- (8) This *rule* also applies to:
- (a) a *BIPRU firm*; and
  - (b) a *third country BIPRU firm*;
- that:
- (c) is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*; and
  - (d) is part of a UK lead regulated group;
- and that *firm* had total assets equal to or greater than £50 billion on an unconsolidated basis on the *accounting reference date* immediately prior to the *firm's* last complete financial year.
- (9) In this rule "total assets" means
- (a) in relation to a *BIPRU firm*, the *firm's* total assets as set out in its balance sheet on the relevant *accounting reference date*; and
  - (b) in relation to a *third country BIPRU firm*, the total assets of the *firm* as set out in its balance sheet on the relevant



16.17.4

FCA PRA

R

*accounting reference date* that cover the activities of the branch operation in the *United Kingdom*.

### High Earners Reporting Requirements

- (1) A *firm* to which this *rule* applies must submit a High Earners Report to the *appropriate regulator* annually.
- (2) The *firm* must submit that report to the *appropriate regulator* within four months of the end of the *firm's accounting reference date*.
- (3) A *firm* that is not part of a UK lead regulated group must complete that report on an unconsolidated basis in respect of *remuneration* awarded in the last completed financial year to all *high earners* of the *firm* who mainly undertook their professional activities within the *EEA*.
- (4) A *firm* that is part of a UK lead regulated group must not complete that report on either a solo consolidation basis or an unconsolidated basis. The *firm* must complete that report on a consolidated basis in respect of *remuneration* awarded in the last completed financial year to all *high earners* who mainly undertook their professional activities within the *EEA* at:
  - (a) the *EEA parent institution* or *EEA parent financial holding company* of the UK lead regulated group; and
  - (b) each *subsidiary* of the UK lead regulated group that has its registered office (or, if it has no registered office, its head office) in an *EEA State*; and
  - (c) each *branch* of the UK lead regulated group that is established or operating in an *EEA State*.
- (5) The *firm* must complete a separate template, in the format set out in ■ SUP 16 Annex 34A R, for each *EEA State* in which there is a *high earner*. Those templates together form the report.
- (6) *High earners* who carried out their professional activities in an *EEA State* should be classified under that *EEA State*.
- (7) *High earners* who carried out their professional activities in more than one *EEA State* should be classified under the *EEA State* where they mainly undertook their professional activities.
- (8) A *firm* to which this section applies on the date it comes into effect must submit two reports by 31 December 2012: one for each of the previous two complete financial years that ended before this section came into force.

- (9) The information in the report must be denominated in euros determined, if necessary, by reference to the conversion rate table specified from time to time by the European Banking Authority as applicable to that year's High Earners Report.
- (10) This *rule* applies to a *BIPRU firm* and a *third country BIPRU firm* that:
- (a) is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*; and
  - (b) is not, and does not have, an *EEA parent institution* or an *EEA parent financial holding company*.
- (11) This *rule* also applies to a *BIPRU firm* and a *third country BIPRU firm* that:
- (a) is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*; and
  - (b) is part of a UK lead regulated group.
- (12) This *rule* also applies to a *BIPRU limited licence firm* or a *BIPRU limited activity firm*:
- (a) that is part of a UK lead regulated group; and
  - (b) where that UK lead regulated group contains a *BIPRU firm* or a *third country BIPRU firm* that is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*.

16.17.5

FCA PRA

G

*Firms'* attention is drawn to ■ SUP 16.3.25 G regarding a single submission for all *firms* in a *group*.



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## Persistency report

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Persistency Report* - Forms/sup/sup\_chapter16\_annex6r\_20130401.pdf



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## Annual questionnaire for authorised professional firms

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

Annual Questionnaire for Authorised Professional Firms -  
Forms/sup/sup\_chapter16\_annex9r\_20130401.pdf



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## Reports from trustees of AUTs and depositaries of ICVCs

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Reports from trustees of AUTs and depositaries* - Forms/sup/sup\_chapter16\_annex12g\_20130401.pdf



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**Return cover sheet**

**FCA PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Return Cover Sheet - Forms/sup/sup\_chapter16\_annex13r.pdf*



## Quarterly and annual returns for Credit Unions

**PRA**

This annex consists only of one or more forms.

*Quarterly return (CQ) for credit unions, including the supplementary analysis of the CQ*

*Annual return (CY) for credit unions, including the supplementary analysis of the CY*



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## Notes on completing the quarterly and annual returns for Credit Unions

**PRA**

This annex consists only of one or more forms.

*Notes on completing the Quarterly Return (CQ) for credit unions, including notes on completing the supplementary analysis of the CQ*

*Notes on completing the Annual Return (CY) for credit unions, including notes on completing the supplementary analysis of the CY*





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**Standing data (See ■ SUP 16.10.4 R)****FCA** **PRA****A: Communications with a *firm***

1. Name of the *firm*
2. Trading name(s) of the *firm*
- 3.
4. Registered office
5. Principal place of business
6. Website address
7. Complaints contact and complaints officer
8. The name and email address of the primary compliance contact

**B: Information about a *firm* on the *Financial Services Register***

- 9.
- 10.
- 11.

**C: Other information about a *firm***

- 12.
- 13.
14. Name and address of *firm's* auditor
- 15.
16. *Accounting reference date*
17. *Locum*



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**Annex 18**





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## Retail Mediation Activities Return ('RMAR')

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Retail Mediation Activities Return ('RMAR') - SUP Chapter 16 Annex 18A R*



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## Notes for Completion of the Retail Mediation Activities Return ('RMAR')

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Notes for Completion of the Retail Mediation Activities Return ('RMAR')* - SUP Chapter 16 Annex 18b G



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## Mortgage Lending and Administration Return ('MLAR')

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Mortgage Lending and Administration Return ('MLAR') -  
Forms/sup/sup\_Chapter16\_annex19ar\_20130401.pdf*





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## Notes for Completion of the Mortgage Lending and Administration Return ('MLAR')

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Notes for Completion of the Mortgage Lending and Administration Return ('MLAR') -  
Forms/sup/sup\_Chapter16\_annex19bg\_20130401.pdf*



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## Products covered by the reporting requirement in SUP 16.11

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Products covered by the reporting requirement in SUP 16.11 - Sup Chapter 16 Annex 20 G*



## Reporting Fields

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Reporting Fields* - Forms/sup/sup\_Chapter16\_annex21r\_20130401.pdf



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## Data items for SUP 16.12

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Data items for SUP 16.12* Forms/sup/sup\_chapter16\_annex24r\_20130401.pdf



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## Guidance notes for data items in SUP 16 Annex 24R

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

Guidance notes for data items in SUP 16 Annex 24R - Forms/sup/sup\_chapter16\_annex25g\_20130401.pdf



Guidance on designated liquidity groups in SUP 16.12

**PRA**

Purpose of this guidance		
1.	G	The purpose of this Annex is to explain the different types of <i>defined liquidity group</i> dealt with in SUP 16.12 (Integrated Regulatory Reporting) and what a group liquidity reporting firm is.
2.	G	<i>Defined liquidity groups</i> are relevant to liquidity reporting by <i>ILAS BIPRU firms</i> . Liquidity reporting under SUP 16.12 relates to a <i>firm</i> on a solo or <i>branch</i> basis and in addition by reference to a <i>firm's defined liquidity group</i> .
The two main types of designated liquidity groups		
3.	G	<p><i>Defined liquidity groups</i> are divided into two types:</p> <ul style="list-style-type: none"> <li>(1) <i>a DLG by default</i>; and</li> <li>(2) <i>a DLG by modification</i> (this type is subdivided into other types as explained in this Annex).</li> </ul>
DLG by default		
4.	G	<p>Broadly speaking, a <i>firm's DLG by default</i> is made up of the members of the <i>firm's group</i> on which it relies for liquidity or that rely on the <i>firm</i>. It also includes certain funding vehicles. It covers each entity:</p> <ul style="list-style-type: none"> <li>(1) that provides or is committed to provide material support to the <i>firm</i> against <i>liquidity risk</i>; or</li> <li>(2) to which the <i>firm</i> provides or is committed to provide material support against <i>liquidity risk</i>; or</li> <li>(3) that has reasonable grounds to believe that the <i>firm</i> would supply such support, and vice versa.</li> </ul>
5.	G	Paragraph (b) of the definition of <i>DLG by default</i> deals with a case in which there are several <i>UK ILAS BIPRU firms</i> in the same <i>group</i> . The effect is this. Say that there are two <i>UK ILAS BIPRU firms</i> , A and B in the group. Say that A relies on, or is relied on by, companies M, N, O and P. B relies on, or is relied on by, companies P, Q, R and S. The result is that A and B have the same <i>DLG by default</i> , which is made up of companies A, B, M, N, O, P, Q, R and S.



6.	G	There is an exclusion relating to <i>participations</i> . Say that 70% of B is owned by unconnected third party shareholders and that A and B rely on each other. A will report on the basis of a group made up of A, B, M, N, O and P. B will report on the basis of a group made up of A, B, P, Q, R and S.
7.	G	The full definition is set out in the <i>Glossary</i> .
8.	G	The definition applies automatically. It does not depend, for example, on the <i>firm</i> getting a <i>waiver</i> under BIPRU 12 (Liquidity). However, in practice it is likely that the <i>firm</i> and the <i>PRA</i> will agree who is in the <i>firm's DLG by default</i> .
9.	G	A <i>DLG by default</i> is only relevant to a <i>UK lead regulated firm</i> .
10.	G	A <i>firm</i> may have a <i>DLG by default</i> and a <i>DLG by modification</i> at the same time.
Types of DLG by modification		
11.	G	A <i>DLG by modification</i> only applies to a <i>firm</i> with an <i>intra-group liquidity modification</i> . BIPRU 12.8 has more about <i>intra-group liquidity modifications</i> .
12.	G	Every <i>firm</i> subject to BIPRU 12 (Liquidity) is subject to the <i>overall liquidity adequacy rule</i> . The effect of that <i>rule</i> is that every <i>firm</i> is required to be self-sufficient in terms of liquidity adequacy and to be able to satisfy that <i>rule</i> relying on its own liquidity resources.
13.	G	The <i>PRA</i> recognises that a <i>firm</i> may be part of a wider <i>group</i> which manages its liquidity on a <i>group-wide</i> basis. This is recognised by an <i>intra-group liquidity modification</i> . A <i>DLG by modification</i> arises out of the <i>intra-group liquidity modification</i> .
14.	G	There are two types of <i>DLG by modification</i> : (1) a <i>DLG by modification (firm level)</i> ; and (2) a <i>non-UK DLG by modification (DLG level)</i> .
Types of DLG by modification (firm level)		
15.	G	If the <i>firm</i> obtains an <i>intra-group liquidity modification</i> it will permit the <i>firm</i> to rely on liquidity support from elsewhere in its <i>group</i> for the purposes of the <i>overall liquidity adequacy rule</i> . A <i>DLG by modification (firm level)</i> is made up of the <i>group</i> members on which the <i>firm</i> can rely for these purposes, together with the <i>firm</i> itself. It is called 'firm level' because it relates to the way that the <i>overall liquidity adequacy rule</i> is applied to the <i>firm</i> .
16.	G	There are two types of <i>DLG by modification (firm level)</i> : (1) a <i>UK DLG by modification</i> ; and (2) a <i>non-UK DLG by modification (firm level)</i> .
17.	G	It is not possible for a <i>firm</i> to have both types.

18.	G	<p>A <i>UK DLG by modification</i> is made up solely of <i>UK ILAS BIPRU firms</i>. That means that the <i>intra-group liquidity modification</i> will permit the <i>firm</i> to rely on liquidity support from other specified <i>UK ILAS BIPRU firms</i> elsewhere in its <i>group</i>, but no one else.</p>
19.	G	<p>A <i>non-UK DLG by modification (firm level)</i> is defined to mean any kind of <i>DLG by modification (firm level)</i> except for a <i>UK DLG by modification</i>. In practice though an <i>intra-group liquidity modification</i> setting up a <i>non-UK DLG by modification (firm level)</i> will be expected to allow the <i>firm</i> to rely on support from a <i>parent undertaking</i> which is constituted under the law of a country or territory outside the <i>United Kingdom</i> or on <i>subsidiary undertakings</i> of that parent which are themselves constituted under the law of a country or territory outside the <i>United Kingdom</i>. These parents and their subsidiaries (together with the <i>firm</i> itself) will make up the <i>non-UK DLG by modification (firm level)</i>. It is not envisaged that a <i>non-UK DLG by modification (firm level)</i> will include UK members (other than the <i>firm</i> itself). That is why this type of <i>defined liquidity group</i> is called a <i>non-UK DLG by modification (firm level)</i>.</p>
Non-UK DLG by modification (DLG level)		
20.	G	<p>It is envisaged that if a <i>firm</i> has a <i>UK DLG by modification</i>, the <i>intra-group liquidity modification</i> will apply the <i>overall liquidity adequacy rule</i> to the <i>UK DLG by modification</i> as a whole. The starting position is that the <i>UK DLG by modification</i> should be self-sufficient for liquidity purposes.</p>
21.	G	<p>However, the <i>intra-group liquidity modification</i> may permit the <i>UK DLG by modification</i> to rely on liquidity support from elsewhere in the <i>group</i>. In this case this other part of the <i>group</i>, together with the <i>UK DLG by modification</i>, forms the <i>non-UK DLG by modification (DLG level)</i>. It is called 'DLG level' because it relates to the way that the <i>overall liquidity adequacy rule</i> is applied to the <i>firm's DLG</i>.</p>
22.	G	<p>It is not envisaged that a <i>firm</i> with a <i>non-UK DLG by modification (firm level)</i> will have a <i>non-UK DLG by modification (DLG level)</i>.</p>
23.	G	<p>It is envisaged that the only <i>group</i> members on which the <i>non-UK DLG by modification (firm level)</i> will be able to rely for these purposes will be foreign parents and others described in paragraph 19 of SUP 16 Annex26G . That is why it is called a <i>non-UK DLG by modification (DLG level)</i>.</p>
Combinations of DLG		
24.	G	<p>That means that the types of <i>DLG by modification</i> a <i>firm</i> may have are these:</p> <ul style="list-style-type: none"> <li>(1) <i>a UK DLG by modification and nothing else; or</i></li> <li>(2) <i>a non-UK DLG by modification (firm level) and nothing else; or</i></li> </ul>

		(3)	a <i>UK DLG by modification</i> and <i>non-UK DLG by modification (DLG level)</i> .
Group liquidity reporting firm			
25.	G		The defined term <i>group liquidity reporting firm</i> is also used in connection with reporting at the level of a <i>defined liquidity group</i> . Its purpose is to identify the <i>firms</i> on which the reporting obligation falls.
26.	G		The general principle is that reporting is done by <i>UK ILAS BIPRU firms</i> . In the case of a <i>DLG by modification</i> , the reporting will be done by <i>UK ILAS BIPRU firms</i> that have been granted the <i>intra-group liquidity modification</i> .
27.	G		However there may be other types members of the <i>defined liquidity group</i> . For example, say that <i>UK ILAS BIPRU firm A</i> has a <i>defined liquidity group</i> made up of companies B, C, D and E. Say that B is an <i>authorised person</i> but is not a <i>UK ILAS BIPRU firm</i> , that C is a <i>UK company</i> that is not <i>authorised</i> and that D and E are foreign and not authorised. A, B, C, D and E are all members of the <i>defined liquidity group</i> . However B, C, D and E do not have to report on the <i>defined liquidity group</i> under SUP 16.12. That obligation falls on A. A is the <i>group liquidity reporting firm</i> .

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Annex 27



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## Authorised Payment Institution Capital Adequacy Return

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Authorised Payment Institution Capital Adequacy Return -  
Forms/sup/sup\_chapter16\_annex27ad\_20130401.pdf*



## Notes on Completing FSA056 (Authorised Payment Institution Capital Adequacy Return)

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Notes on Completing FSA056 (Authorised Payment Institution Capital Adequacy Return - Forms/sup/sup\_chapter16\_annex27bg\_20130401.pdf*





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SUP 16 Annex 28



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## Small Payment Institution Return

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Small Payment Institution Return - SUP 16 Annex 28A D*



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## Notes on Completing FSA057 (Payment Services Directive Transactions)

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Notes on Completing FSA057 (Payment Services Directive Transactions) -  
Forms/sup/sup\_chapter16\_annex28bg\_20130401.pdf*



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## Client Money and Asset Return (CMAR)

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Client Money and Asset Return (CMAR) - Forms/sup/sup\_chapter16\_annex29r\_20130401.pdf*





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## Guidance notes for the data item in SUP 16 Annex 29R

**FCA**

This annex consists only of Guidance notes for the data item in SUP 16 Annex 29R.

*Guidance notes for the data item in SUP 16 Annex 29R - Forms/sup/sup\_chapter16\_annex29ag\_20130401.pdf*



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## Electronic money: returns

**FCA**

The returns for electronic money institutions are set out in ■ SUP 16 Annex 30A D to ■ SUP 16 Annex 30G D.



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## Authorised electronic money institutions - balance sheet return

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*FSA059 Authorised electronic money institutions - balance sheet - SUP 16 Annex 30AD*



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## Authorised electronic money institutions - income statement

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*FSA060 Authorised electronic money institutions - income statement - SUP 16 Annex 30BD*





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## Authorised electronic money institutions - capital requirements return

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*FSA061 Authorised electronic money institutions - capital requirements - SUP 16 Annex 30CD*



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## Authorised electronic money institutions - safeguarding return

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*FSA062 Authorised electronic money institutions - safeguarding return - SUP 16 Annex 30DD*



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## Authorised electronic money institutions - supplementary information

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*FSA063 Authorised electronic money institutions - supplementary information - SUP 16 Annex 30ED*



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## Small electronic money institution return

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*FSA064 Small electronic money institution return* - SUP 16 Annex 30FD





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**Small electronic money institutions - total outstanding electronic money return**

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*FSA065 Small electronic money institutions - total electronic money outstanding @ 31st December - SUP 16 Annex 30GD*



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## Prudent Valuation Return

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Prudent Valuation Return* - SUP 16 Annex 31AR



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## Guidance notes for data items in SUP 16 Annex 31AR

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Guidance notes for data items in SUP 16 Annex 31AR - SUP 16 Annex 31BG*



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## Bidding in emissions auctions return

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Bidding in emissions auctions return* - SUP 16 Annex 32 R





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## Remuneration Benchmarking Information Report

**PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Remuneration Benchmarking Information Report - SUP 16 Annex 33AR*



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## Guidance notes for data items in SUP 16 Annex 33AR

**PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Guidance notes for data items in SUP 16 Annex 33AR - SUP 16 Annex 33BG*



## High Earners Report

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*High Earners Report* - SUP 16 Annex 34AR



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## Guidance notes for data items in SUP 16 Annex 34AR

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Guidance notes for data items in SUP 16 Annex 34AR - SUP 16 Annex 34BG*





# Chapter 17

## Transaction reporting

## 17.1 Application

### Who?

17.1.1

FCA

R

This chapter applies to:

- (1) a *MiFID investment firm*;
- (2) a *third country investment firm*; and to
- (3) a *person* who is the operator of an *approved reporting mechanism* or of a *regulated market* or *MTF* that is used by a *firm* to report *transactions* to the *FCA*; and
- (4) a *firm* acting in its capacity as a manager or operator of:
  - (a) a *collective investment undertaking*; or
  - (b) a *pension scheme*; or
  - (c) an *occupational pension scheme*; or
  - (d) a *personal pension scheme*; or
  - (e) a *stakeholder pension scheme*.

17.1.2

FCA

G

Article 32(7) of *MiFID* requires the *FCA* to apply the *transaction* reporting requirements in Article 25 to the *UK branches* of *EEA investment firms* and branches of *credit institutions* in respect of reportable transactions arising in the course of services provided in the UK.

17.1.3

FCA

G

Article 32(7) of *MiFID* provides that the branch of a *UK firm* operating from an establishment in another *EEA state* must satisfy the transaction reporting requirements of the *competent authority* in that other Member State in respect of reportable transactions arising in the course of services provided in that other Member State.

17.1.3A

FCA

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In line with guidance from CESR, the *FCA* acknowledges that, from a practical point of view, it would be burdensome for *branches* of *investment firms* to be obliged to report their *transactions* to two *competent authorities*. Therefore, all *transactions* executed by *branches* may be reported to the *competent authority* of the *Host State*, if the *investment firm* elects to do so. In these cases *transaction reports* should follow the rules of the *competent authority* to which the report is made. However, where an

*investment firm* chooses to report to two *competent authorities*, this choice will not be challenged by the *FCA*.

**What?**

17.1.4

FCA

R

A *firm* which executes a *transaction*:

- (1) in any *financial instrument* admitted to trading on a *regulated market* or a *prescribed market* (whether or not the *transaction* was carried out on such a market); or
- (2) in any *OTC derivative* the value of which is derived from, or which is otherwise dependent upon, an equity or debt-related *financial instrument* which is *admitted to trading* on a *regulated market* or on a *prescribed market*;

must report the details of the *transaction* to the *FCA*.

[Note: article 25(3) of *MiFID*].

17.1.4A

FCA

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■ SUP 17.1.4 R (2) does not apply to a transaction in any *OTC derivative* the value of which is derived from, or which is otherwise dependent upon, multiple equity or multiple debt-related *financial instruments* except where the multiple *financial instruments* are all issued by the same *issuer*.

**Where?**

17.1.5

FCA

R

This chapter applies in respect of *transactions* which are to be reported to the *FCA*.

**Status of EU provisions as rules in certain instances**

17.1.6

FCA

R

In this chapter, paragraphs marked "EU", including ■ SUP 17 Annex 1 EU, shall apply to a *firm* as if those provisions were *rules* to the extent that it executes a *transaction* in a *financial instrument* which is specified by ■ SUP 17.1.4 R. but which is beyond the scope of article 25(3) of *MiFID*.

**Guidance on the reporting of certain transactions**

17.1.7

FCA

G

- (1) The movement, reallocation or transfer of *financial instruments* within the accounts of one legal entity will be reportable where the movement, reallocation or transfer is as a result of an agreement to transfer rights in a *financial instrument* to which this chapter applies between *clients* of the *firm* or between the *firm* (or a member of its *group*) and a *client*, and where the movement, reallocation or transfer involves a transaction within the meaning of Article 5 of the *MiFID Regulation*.
- (2) For a rolling *spread bet*, only the initial opening of the betting contract and the final closure of the contract need to be reported. Openings and closings for technical purposes such as daily roll-over, which are intended to maintain a particular *spread bet* position, need not be reported. Final closings of a portion of a bet should be reported as required by ■ SUP 17.2.7 R.

## 17.2 Making transaction reports

### Transaction reports made through third party agents

**17.2.1** **R** A *firm* may rely on a third party acting on the firm's behalf to make a *transaction report* to the *FCA*.

**FCA**

[Note: article 25(5) of *MiFID*]

**17.2.2** **G** The *FCA* will treat a *firm* as acting in accordance with **■** SUP 17.2.1 R in circumstances where the *firm* enters into a *transaction* with another *person* in the course of providing a service of *portfolio management* on behalf of one or more clients, provided it:

**FCA**

- (1) enters into the *transaction* in the exercise of a discretion conferred on it by an investment mandate or does so having specifically recommended the *transaction* to its *client*;
- (2) has reasonable grounds to be satisfied that the other *person* will, in respect of the *transaction*, make a *transaction report* to the *FCA* (or to another *competent authority*) which, as to content, will include all such information as would have been contained in a *transaction report* by the *firm* (other than as to the identity of the *firm's client*).

### Approved reporting mechanisms, regulated markets or MTFs

**17.2.3** **R** A *firm* is relieved of its obligation to make a *transaction report* if the *transaction* is instead reported directly to the *FCA* by an *approved reporting mechanism*, or by a *regulated market* or *MTF* through whose systems the *transaction* was completed.

**FCA**

[Note: article 25(5) of *MiFID*]

**17.2.3A** **G** The *regulated markets* and *MTFs* that report *transactions* undertaken on their systems to the *FCA* are listed on the *FCA's* website at: <http://www.fca.org.uk/firms/systems-reporting/transaction-reporting/liffe-feed>.

**FCA**

### Verifying that transaction reports will be made

**17.2.4** **G** The *FCA* will expect a *firm* which seeks to rely upon the waiver in **■** SUP 17.2.3 R to take reasonable steps to verify that *transaction reports* will be made in accordance with the standards laid down in this chapter and in particular should ascertain and remain satisfied that:

**FCA**

- (1) the provider of the *transaction* reporting facility maintains an automated reporting system which the *firm* is able to access through the efficient inputting of *transactions* into the system;
- (2) the terms of the agreement between itself and the relevant trade matching or reporting system, *regulated market* or *MTF*, make appropriate provision obliging the provider of the transaction reporting service to make *transaction* reports on its behalf;
- (3) the arrangements provide for confirmation in each case that a *transaction* report has been made on its behalf.

### Compliance by approved reporting mechanisms or MTFs with the provisions of this Chapter

17.2.5

FCA

R

- (1) The operator of , an *approved reporting mechanism*, or the operator of an *MTF* or a *market operator* through whose systems a reportable *transaction* is to be completed and which has, pursuant to ■ SUP 17.2.3 R, agreed to make *transaction reports* to the *FCA* on behalf of a *firm*, must:
  - (a) make reports to the *FCA* in respect of each to which the agreement relates;
  - (b) ensure such reports contain the reporting fields specified in ■ SUP 17 Annex 1, where applicable; and
  - (c) ensure that, once received from the reporting *firm*, such reports are submitted to the *FCA* within the time limit for making reports.
- (2) The obligations of the operator under this rule do not affect the liability of the reporting *firm* for ensuring the accuracy of the information contained in the *transaction* report that it submits to the operator.

17.2.6

FCA

G

- (1) A *transaction* report should distinguish each individual *transaction*, using the *firm's* identifying code.
- (2) Reporting obligations under this chapter do not affect any obligation to report *transactions* under the rules of any market, trading system, matching or reporting system or exchange, whether or not that market, system or exchange is a *regulated market*.

### Time period for making reports

17.2.7

FCA

R

A *firm* must report the required details of the *transaction* to the *FCA* as quickly as possible and by not later than the close of the working day following the day upon which that *transaction* took place.

[Note: article 25(3) of *MiFID*]

**17.3 Reporting channels**

17.3.1

FCA



The reports of *transactions* in *financial instrument* shall be made in an electronic form except under exceptional circumstances, when they may be made in a medium which allows for the storing of the information in a way accessible for future reference by the competent authorities other than an electronic form, and the methods by which those reports are made shall satisfy the following conditions:

- (a) they ensure the safety and confidentiality of the data reported;
- (b) they incorporate mechanisms for identifying and correcting errors in a *transaction* report;
- (c) they incorporate mechanisms for authenticating the source of the *transaction* report;
- (d) they include appropriate precautionary measures to enable the timely resumption of reporting in the case of system failure;
- (e) they are capable of reporting the information required under Article 13 of the *MiFID Regulation* in the format specified in SUP 17 Annex 1 EU required by the *FCA* and in accordance with this paragraph, within the time-limits set out in SUP 17.2.7 R.

[Note: article 12(1) of the *MiFID Regulation*]

**Methods of a firm reporting transactions either directly or through a third party acting on its behalf**

17.3.2

G

[deleted]

**Approval and monitoring of trade matching and reporting systems**

17.3.3

FCA



A trade matching or reporting system shall be approved by the *FCA* for the purposes of Article 25(5) of *MiFID* if the arrangements for reporting *transactions* established by that system comply with SUP 17.3.1EU and are subject to monitoring by a *competent authority* in respect of their continuing compliance.

**[Note: article 12(2) of the MiFID Regulation]**

17.3.4

FCA

G

The *approved reporting mechanisms* are listed on the FCA's website at: <http://www.fca.org.uk/firms/systems-reporting/transaction-reporting/approved-reporting-mechanisms>.

[Note: These systems will be listed following the approval of a trade matching or reporting system].

17.3.5

FCA

G

Section 412A of the *Act* contains provisions which are concerned with the manner in which the FCA will carry out its approval and monitoring of trade matching or reporting systems.

**Receipt of transaction reports by the FCA**

17.3.6

FCA

G

A report is made to the FCA when it is received by the FCA. The delivery of a report by a *MiFID investment firm* to a reporting *person*, channel or system by the close of the working day following the day of the *transaction* does not amount to the making of a report to the FCA.





## 17.4 Information in transaction reports

### Information to appear in transaction reports

17.4.1  
FCA



Reports of *transactions* made in accordance with Articles 25 (3) and (5) of *MiFID* shall contain the information specified in SUP 17 Annex 1 EU which is relevant to the type of *financial instrument* in question and which the *FCA* declares is not already in its possession or is not available to it by other means.

[Note: article 13(1) of the *MiFID Regulation*.]

17.4.2  
FCA



The reports referred to in ■ SUP 17.4.1 EU shall, in particular include details of the names and the numbers of the instruments bought or sold, the quantity, the dates and times of execution and the *transaction* prices and means of identifying the *firms* concerned.

[Note: article 25(4) of *MiFID*]

### Data retention

17.4.3  
FCA



A *firm* must keep at the disposal of the *FCA*, for at least five years, the relevant data relating to all *transactions* in *financial instruments* which it has carried out, whether on own account or on behalf of a *client*. In the case of *transactions* carried out on behalf of *clients*, the records shall contain all the information and details of the identity of the *client*, and the information required under the *money laundering directive*.

[Note: article 25(2) of *MiFID*]

### Maintenance of information by firm

17.4.4  
FCA



The requirement to keep information at the disposal of the *FCA* means that a *firm* should maintain that information in such a form that it can readily be gathered and transmitted to the *FCA* upon request. Where more than one *firm* has given effect to a *transaction*, each *firm* should be considered to have carried out the *transaction* for the purposes of ■ SUP 17.4.3 R and should keep the records, even where only one *firm* makes a *transaction* report as contemplated in this Chapter.

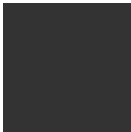
17.4.5  
17.4.6

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17.4.7 [Deleted]  
17.4.8 [Deleted]  
17.4.9 [Deleted]



17.5 [Deleted]



17.6 [Deleted]



17.7 [Deleted]

**Minimum content of a transaction report**

**FCA**

List of fields for reporting purposes

[Note: This table includes information required under *MiFID* Article 25(4) and contains additional *FCA* requirements permitted under Articles 13(3) and (4) of the *MiFID Regulation*]

Where appropriate, *firms* should complete these fields in the formats described, or these formats must be contained in the fields that their *approved reporting mechanism* will use when sending a *transaction report* to the *FCA* on behalf of a *firm*.

Field Identifier	Description
EU	<b>1. Reporting Firm Identification</b>
G	A unique code to identify the <i>firm</i> which executed the <i>transaction</i> .  This code should be the firm reference number of the <i>firm</i> or the Swift Bank Identifier Code (BIC).
EU	<b>2. Trading Day</b>
EU	<b>3. Trading Time</b>
G	The trading day on which the <i>transaction</i> was executed.  The time at which the <i>transaction</i> was executed, reported in London local time.  The time should be specified in hours, minutes and seconds (hhmmss). Where it is not possible to input seconds, '00' may be entered in this field.
EU	<b>4. Buy/Sell Indicator</b>
EU	<b>5. Trading Capacity</b>
G	Identifies whether the <i>transaction</i> was a buy or sell from the perspective of the reporting <i>MiFID investment firm</i> .  Identifies whether the <i>firm</i> executed the <i>transaction</i> <ul style="list-style-type: none"> <li>- on its own account (either on its own behalf or on behalf of a <i>client</i>) (that is as principal);</li> <li>- for the account and on behalf of a <i>client</i> (that is as agent);</li> <li>- [text moved to row below]</li> <li>- Where the <i>firm</i> has executed a <i>transaction</i> in an agency cross capacity (that is where the <i>firm</i> has acted as agent for both the selling and the buying counterparties) and the <i>firm</i> has chosen to submit a single report to the <i>FCA</i> representing both of these <i>transactions</i> this field should be used to indi-</li> </ul>

Field Identifier	Description
	<p>cate that the <i>firm</i> has executed the <i>transaction</i> in such a capacity.</p>
G	<p>Where a <i>firm</i> has executed a <i>transaction</i> in an agency cross capacity, it may submit two reports rather than a single report, in which case this field should indicate that the <i>firm</i> is acting on behalf of a <i>client</i>.</p>
G	<ul style="list-style-type: none"> <li>- Where the <i>firm</i> has executed a <i>transaction</i> in a principal cross capacity (that is where the <i>firm</i> has simultaneously executed a buy and sell <i>transaction</i> as principal in a single product at the same price and quantity) and the <i>firm</i> has chosen to submit a single report to the <i>FCA</i> representing both of these <i>transactions</i> this field should be used to indicate that the <i>firm</i> has executed the <i>transaction</i> in such a capacity.</li> </ul>
G	<p>Where a <i>firm</i> has executed a transaction in a principal cross capacity, and prefers to submit two reports rather than a single report, this field should indicate that the <i>firm</i> is acting on its own account.</p>
EU	<p><b>6. Instrument Identification</b></p> <p>This shall consist of:</p> <ul style="list-style-type: none"> <li>- a unique code, decided by the <i>FCA</i>, identifying the <i>financial instrument</i> which is the subject of the <i>transaction</i>;</li> </ul>
G	<p>The unique code should be an ISO 6166 ISIN. This code must always be used for, but is not limited to, reporting transactions in warrants.</p>
EU	<ul style="list-style-type: none"> <li>- or, if the <i>financial instrument</i> in question does not have a unique identification code, the report must include the name of the instrument or, in the case of a <i>derivative</i> contract; the characteristics of the <i>derivative</i>.</li> </ul>
G	<p>The <i>FCA</i> considers that where the financial instrument in question (which includes derivatives) is admitted to trading on a market where the ISO 6166 ISIN is not the industry method of identification, it will be sufficient to insert in this field the code assigned to the instrument by that market.</p>
R	<ul style="list-style-type: none"> <li>- or, in the case of an <i>OTC derivative</i>, the characteristics of the <i>OTC derivative</i>.</li> </ul>
G	<p>Where an <i>OTC derivative</i> is the subject of the <i>transaction</i> a full description of the <i>OTC derivative</i> should be provided.</p>
EU	<p><b>7. Instrument code type</b></p> <p>The code type used to report the instrument.</p>

Field Identifier	Description
G	Where the subject of the <i>transaction</i> is a <i>financial instrument admitted to trading</i> on a market this field should indicate whether that <i>financial instrument</i> has been identified using an ISO 6166 ISIN or, where the ISIN is not the industry method of identification for that market, a code assigned to that <i>financial instrument</i> by that market.
EU	<b>8. Underlying Instrument Identification</b>
G	The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security included within article 4(1)(18(c)) of <i>MiFID</i> .
G	This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> and the underlying is a single equity or single debt <i>financial instrument admitted to trading on a regulated market or prescribed market</i> .
EU	<b>9. Underlying instrument identification code type</b>
G	The code type used to report the underlying instrument. <i>Firms</i> do not need to complete this field since the <i>FCA</i> already has access to this information.
EU	<b>10. Instrument Type</b>
G	The harmonised classification of the financial instrument that is the subject of the transaction.
G	This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification. This field must be used to indicate the instrument type of the underlying <i>financial instrument</i> , e.g. equity, bond, index, or other.
EU	<b>11. Maturity Date</b>
G	The maturity date of a bond or other form of securitized debt, or the exercise date / maturity date of a derivative contract.
G	This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification. Where the derivative type is spreadbet on an equity option or contract for difference on an equity option, this field must be used to indicate the expiry of the option.
EU	<b>12. Derivative Type</b>
G	The harmonised description of the derivative type.
G	This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification, and must indicate the derivative type, e.g. option, future, contract for difference (other than a contract for difference on an equity option),



Field Identifier	Description
	<p>contract for difference on an equity option, complex derivative, warrant, spreadbet (other than a spreadbet on an equity option), spreadbet on an equity option, credit default swap or other swap.</p>
<p>EU 13. Put/Call</p>	<p>Specification whether an option or any other <i>financial instrument</i> is a put or call.</p>
<p>G</p>	<p>This field is only mandatory when (i) the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification; and (ii) the <i>derivative</i> type is option , warrant, spreadbet on an equity option or contract for difference on an equity option. Where the <i>financial instrument</i> is a spreadbet on an equity option or a contract for difference on an equity option this field should be used to indicate the put/call status of the equity option.</p>
<p>EU 14. Strike Price</p>	<p>The strike price of an option or other <i>financial instrument</i>.</p>
<p>G</p>	<p>This field is only mandatory when (i) the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification; and (ii) the <i>derivative</i> type is option , warrant, spreadbet on an equity option or contract for difference on an equity option. Where the <i>financial instrument</i> is a spreadbet on an equity option or a contract for difference on an equity option this field should be used to indicate the strike price of the equity option.</p>
<p>EU 15. Price Multiplier</p>	<p>The number of units of the <i>financial instrument</i> in question which are contained in a trading lot; for example, the number of derivatives or securities represented by one contract.</p>
<p>G</p>	<p>This field is only mandatory where the transaction involves an <i>OTC derivative</i>.</p>
<p>EU 16. Unit Price</p>	<p>The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.</p>
<p>EU 17. Price Notation</p>	<p>The currency in which the price is expressed. If, in the case of a bond or other form of securitized debt, the price is expressed as a percentage, that percentage shall be included.</p>
<p>G</p>	<p>The ISO 4217 currency code must be used. The major currency must be used (e.g. pounds rather than pence).</p>

Field Identifier	Description
EU 18. Quantity	<p>If the price is expressed as a percentage of nominal value then the ISO 4217 currency code of the nominal value must be used.</p> <p>The number of units of the <i>financial instruments</i>, the nominal value of bonds, or the number of derivative contracts included in the <i>transaction</i>.</p>
EU 19. Quantity notation	<p>An indication as to whether the quantity is the number of units of <i>financial instruments</i>, the nominal value of bonds, or the number of derivative contracts.</p>
G	<p><i>Firms</i> do not need to complete this field since the <i>FCA</i> already has access to this information.</p>
EU 20. Counterparty	<p>Identification of the counterparty to the <i>transaction</i>. That identification shall consist of:</p> <ul style="list-style-type: none"> <li>- where the counterparty is a <i>MiFID investment firm</i>, a unique code for that firm, to be determined by the <i>FCA</i>; or</li> <li>- where the counterparty is a <i>regulated market</i> or <i>MTF</i> or an entity acting as its central counterparty, the unique harmonised identification code for that market, <i>MTF</i> or entity acting as central counterparty, as specified in the list published by the competent authority of the <i>home Member State</i> of that entity in accordance with Article 13(2).</li> </ul>
G	<p>The <i>FCA</i> has determined that where an firm reference number or a Swift Bank Identification Code (BIC) exists for the counterparty, one of these codes must be used, or in the case that a counterparty has neither an firm reference number or a BIC, a unique internal code allocated by the reporting <i>firm</i> must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.</p>
EU 21. Venue Identification	<p>Identification of the venue where the <i>transaction</i> was executed. That identification shall consist in:</p> <ul style="list-style-type: none"> <li>- where the venue is a trading venue: its unique harmonised identification code,</li> </ul>
G	<p>Where the venue is a <i>regulated market</i>, <i>prescribed market</i> or an <i>MTF</i> (or, where appropriate, an equivalent venue outside the <i>EEA</i>), the four character Swift Market Identifier Code ISO 10383 must be used. However, where the venue has been identified as a <i>systematic internaliser</i>, a Swift Bank Identification Code (BIC) should be used.</p>

Field Identifier		Description
EU		- where the <i>transaction</i> is made off market or the subject of the <i>transaction</i> is an <i>OTC derivative</i> this should be made clear.
EU	<b>22. Transaction Reference Number</b>	<b>A unique identification number for the <i>transaction</i> provided by the <i>MiFID investment firm</i> or a third party reporting on its behalf</b>
EU	<b>23. Cancellation Flag</b>	<b>An indication as to whether the <i>transaction</i> was cancelled.</b>
EU	<b>24. Customer/Client Identification</b>	<b>This field contains the identification of the <i>client</i> or customer on whose behalf the reporting <i>firm</i> was acting.</b>
G		<b>For agency transactions a customer/<i>client</i> identifier is required to identify the <i>client</i> on whose behalf the <i>transaction</i> has been conducted. Where an firm reference number or a Swift Bank Identification Code (BIC) exists, one of these codes must be used or, in the case that a customer/<i>client</i> has neither an firm reference number or a BIC, a unique internal code allocated by the reporting <i>firm</i> must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.</b>
EU	<b>25. Any other fields</b>	<b>Any other mandatory fields required by the reporting system.</b>

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# Chapter 18

## Transfers of business



## 18.1 Application

18.1.1 G  
FCA PRA

This chapter provides *guidance* in relation to business transfers.

- (1) ■ SUP 18.2 applies to any *firm* or to any *underwriting member* or any former *member* of Lloyd's proposing to transfer the whole or part of its business by an *insurance business transfer scheme* or to accept such a transfer. Some of the *guidance* in this chapter, for example, at ■ SUP 18.2.31 G to ■ SUP 18.2.41 G also applies to the *independent expert* making the *scheme report*.
- (2) ■ SUP 18.3 applies to any *firm* proposing to accept certain transfers of *insurance business* taking place outside the *United Kingdom*.
- (3) ■ SUP 18.4 applies to any *friendly societies* proposing to amalgamate under section 85 of the Friendly Societies Act 1992, to any *friendly society* proposing to transfer engagements under section 86 of that Act to another body and to any body (whether or not it is a *friendly society*) proposing to accept such a transfer. ■ SUP 18.4 also provides *guidance* to those wishing to make representations to the appropriate authority about an application for confirmation of an amalgamation or transfer.

### Interpretation

18.1.1A G  
FCA PRA

The 'appropriate authority' in this chapter means the regulator within the meaning of section 119 of the Friendly Societies Act 1992.

18.1.1B G  
FCA PRA

References to the 'regulator' and 'regulators' in this chapter means the *FCA* and/or the *PRA*.

18.1.1C G  
FCA PRA

References to the 'Memorandum of Understanding' in this chapter is to the memorandum of understanding in force between the regulators under section 3E of the *Act*.

18.1.2 G

[deleted]

**Introduction**

**18.1.3**

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*Insurance business transfers* are subject to Part VII of the *Act* and must be approved by the court under section 111. The following statutory pieces of legislation also apply:

- (1) The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625), as amended by the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) (Amendment) Regulations 2008 (SI 2008/1467) and the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 (SI 2008/1468);
- (2) the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001(SI 2001/3626), as amended by The Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order (2008/1725); and
- (3) the Reinsurance Directive Regulations 2007 (SI 2007/3253) and the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (SI 2007/3255),

These regulations set out minimum requirements for publicising schemes, notifying certain interested parties directly (subject to the discretion of the court), and giving information to anyone who requests it.

**18.1.4**

**FCA PRA**

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An *insurance business transfer scheme* is defined in section 105 of the *Act* and the definition has been extended to transfers from *underwriting members* and former *members* of Lloyd's

- (1) [deleted]
  - (a) [deleted]
  - (b) [deleted]
  - (c) [deleted]
- (2) [deleted]

The business transferred may include liabilities and potential liabilities on expired *policies*, liabilities on current *policies* and liabilities on contracts to be written in the period until the transfer takes effect. The parties to schemes approved under foreign legislation or involving novations of reinsurance or a captive *insurer* can apply to the court for an order sanctioning the scheme.

**18.1.5**

**FCA PRA**

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The regulators are likely to consider a novation or a number of novations as amounting to an *insurance business transfer* only if their number or value were such that the novation was to be regarded as a transfer of part of the business. A novation is an agreement between the *policyholder* and two *insurers* whereby a contract with one *insurer* is replaced by a contract with the other. If an *insurer* agrees to meet the liabilities (this may include undertaking the administration of the *policies*) of another *insurer* by means of a reinsurance contract, including Lloyd's *reinsurance to close*, this would not constitute an *insurance business transfer* because the contractual liability remains with the original *insurer*; nor would an arrangement whereby an *insurer* offers to renew the *policies* of another *insurer* on their expiry date.

18.1.6

FCA PRA

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Under section 112 of the *Act*, the court has wide discretion to transfer property and liabilities to the transferee and to make orders in relation to incidental, consequential and supplementary matters.

18.1.7

FCA PRA

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Amalgamations of *friendly societies* and transfers of engagements from *friendly societies* to other bodies (whether or not *friendly societies*) are governed by part VIII of the Friendly Societies Act 1992 and Schedule 15 to that Act applies.

18.1.8

FCA PRA

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Legislation in respect of other transactions, for example, cross-border mergers, does not negate the requirements under Part VII of the *Act*. It is for the *firms* participating in such transactions to determine whether or not the proposed transfer gives rise to an *insurance business transfer*. The regulators expect *firms* proposing such transactions to discuss the proposal with them as soon as practicable.



## 18.2 Insurance business transfers

### Purpose

18.2.1

FCA PRA

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Transfers may enable *firms* to manage their affairs more effectively. However they represent an interference in the contracts between a *firm* and its *customers*, without the consent of each *customer*, , and may also affect the rights of third parties. An important protection is the requirement for the consent of the court.

### The regulators

18.2.1A

FCA PRA

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- (1) Part VII of the *Act* prescribes certain statutory functions in relation to *insurance business transfer schemes* for both the *PRA* and the *FCA*. In accordance with the *Act*, the *PRA* and the *FCA* maintain a Memorandum of Understanding, which describes each regulator's role in relation to the exercise of its functions under the *Act* relating to matters of common regulatory interest and how each regulator intends to ensure the coordinated exercise of such functions. Under the Memorandum of Understanding, the *PRA* will lead the process for *insurance business transfers* and will be responsible for specific regulatory functions connected with Part VII applications, including the provision of certificates under section 111 of the *Act*. Further, the *PRA* will consult with the *FCA* both at the outset and throughout the *insurance business transfer* process. As such, the scheme promoters should first approach the *PRA* but should also consider whether any aspect of their proposals should be discussed with the *FCA* at an early stage. Scheme promoters should also consider ■ SUP 18.2.13 G.
- (2) By virtue of section 110 of the *Act*, both the *PRA* and the *FCA* are entitled to be heard in the proceedings. The Memorandum of Understanding confirms that both the *PRA* and the *FCA* may provide the court with written representations setting out their views on the proposed transfer scheme, for example, by way of a report to the court. Each regulator will decide in relation to each *insurance business transfer* whether it is necessary or appropriate to prepare a report bearing in mind its objectives and other relevant matters.
- (3) As set out in the Memorandum of Understanding, before nominating or approving an *independent expert* under section 109(2)(b) of the *Act* or approving the form of a *scheme report* under section 109(3) the *PRA* will first consult the *FCA*. Further, where the *PRA* is the *appropriate regulator* it will consult appropriately with the *FCA* before approving the notices required under the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001(SI 2001/3625).

18.2.1B

FCA PRA

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In exercising its functions under the *Act*, each regulator will, so far as is reasonably possible, act in a way which is compatible with, and most appropriate for advancing, its



*statutory objectives* as set out in the *Act* and will have regard to the regulatory principles in section 3B of the *Act*.

18.2.2 G [deleted]

18.2.3 G [deleted]

18.2.4 G [deleted]

18.2.5 G Transfers may have both positive and negative effects on individual *consumers*. A key concern in this regard for each regulator will be to satisfy itself that each *consumer* has adequate information and reasonable time within which to determine whether or not he is adversely affected and, if adversely affected, whether to make representations to the court.

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18.2.6 G [deleted]

18.2.7 G [deleted]

18.2.8 G [deleted]

18.2.9 G [deleted]

18.2.10 G [deleted]

18.2.11 G [deleted]

**Procedure: initial steps**

18.2.12 G When an *insurance business transfer scheme* is being considered, the scheme promoters should discuss the scheme with the *appropriate regulator* as soon as reasonably practical, to enable the regulators to consider what issues are likely to arise, and to enable a practical timetable for the scheme to be established.

FCA PRA

- (1) [deleted]
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]

**18.2.13** G The initial documentary information on the scheme should be provided to the *PRA*, who will share it with the *FCA*, and should include its broad outline and its purpose. Each regulator may indicate to the promoters how closely it wishes to monitor the progress of the scheme, including the extent to which it wishes to see draft documentation.

FCA PRA

### Independent expert: qualifications

**18.2.14** G Under section 109(2) of the *Act* a *scheme report* may only be made by a *person*:

FCA PRA

- (1) appearing to the *appropriate regulator* to have the skills necessary to enable him to make a proper report; and
- (2) nominated or approved for the purpose by the *appropriate regulator* .

**18.2.14A** G The promoters should ensure that any relevant fees are paid before any application will be considered.

FCA PRA

**18.2.15** G The general principles set out in ■ SUP 5.4.8 G, for suitability of a *skilled person*, apply also to the *independent expert*. The regulators expect the *independent expert* making the *scheme report* to be a natural person, who:

FCA PRA

- (1) is independent, that is any direct or indirect interest or connection he has or has had in either the transferor or transferee should not be such as to prejudice his status in the eyes of the court; and
- (2) has relevant knowledge, both practical and theoretical, and experience of the types of *insurance business* transacted by the transferor and transferee.

**18.2.16** G For a transfer of *long-term insurance business* the *independent expert* should be an *actuary* familiar with the role and responsibilities of the *actuarial function* holder and (if the relevant *insurance business* includes *with-profits insurance business*) a *with-profits actuary*.

FCA PRA

**18.2.17** G For a transfer of *general insurance business* the *independent expert* should normally be competent at assessing technical provisions and the uncertainties of the liabilities they represent (such as an *actuary*). Exceptionally, where issues other than the ability of the transferee to meet the liabilities to be transferred are much more significant in assessing the likely effects of the scheme, this criterion might not be applied. In such a case the *independent expert* would be expected to take advice from an appropriately qualified practitioner about the adequacy of the financial resources of the transferee.

FCA PRA

**18.2.18** G The *independent expert* would not normally be expected to be knowledgeable:

FCA PRA

- (1) about *general insurance business* if the business being transferred is *long-term insurance business* only; nor
- (2) about *long-term insurance business* if the business being transferred is *general insurance business* only;

but, where either the transferor or transferee is a composite, he should understand the relevance of the *general insurance business* to the security of the *long-term insurance business policyholders* and vice versa and may need to seek independent specialist advice.

### Independent expert: appointment

18.2.19

FCA PRA

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The suitability of a *person* to act as an *independent expert* depends on the nature of the scheme and the *firms* concerned. On the basis of the preliminary information supplied by the scheme promoters (and any other knowledge it has of the circumstances and the *firms*), the *appropriate regulator* will consider what skills are needed to make a proper report on the scheme and what criteria should therefore be applied to the choice of *independent expert*. The *appropriate regulator* will inform the promoters of any such criteria it is minded to apply.

18.2.20

FCA PRA

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Under section 107(2) of the *Act*, the application to the court may be made by the transferor or the transferee or both. As soon as reasonably practical, the intended applicant should choose their nominee for *independent expert* in the light of any criteria advised by the *appropriate regulator*. The intended applicant(s) should then advise the *appropriate regulator* of their choice, unless the *appropriate regulator* wishes them to defer nomination or to make its own nomination. The notification should be accompanied by reasons why the party considers the nominee to be a suitable *person* to act as *independent expert*. Relevant details provided should usually include information about the nominee's experience and qualifications; the proposed terms and conditions of the nominee's appointment, including any *remuneration* arrangements; and any current or previous professional or commercial arrangements with the transferor or transferee or their associated companies, including the remuneration (direct or indirect) for those arrangements with the nominee and/or with any *professional firm* or company in which the nominee has or has had any interest.

18.2.21

FCA PRA

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The regulators may wish to have preliminary discussions with the nominee about the transfer before the *appropriate regulator* determines if he is suitably qualified to address issues arising from the transfer. The regulators will consider the suitability of the nominee and the *appropriate regulator* will inform the *firm* that nominated him whether he has been approved. Since the nature of the scheme is a factor in determining the suitability of the nominee, the *appropriate regulator* cannot approve a nominee before the broad outlines of the scheme have been determined.

18.2.22

FCA PRA

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The *appropriate regulator* may itself nominate the *independent expert*, either where it indicates that a nomination is not required by the parties, or where it does not approve the parties' own nomination. In either case the *appropriate regulator* will inform the promoters of its nominee.

18.2.23

FCA PRA

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*Firms* should co-operate fully with the *independent expert* and provide him with access to all relevant information and appropriate staff.

### Consultation with EEA regulators and/or other foreign regulators

18.2.23A

FCA PRA

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Under the terms of the Memorandum of Understanding, the *PRA* will lead when carrying out consultation with *EEA regulators* and/or other foreign regulators.

18.2.24

FCA PRA

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The *guidance* set out in ■ SUP 18.2.25 G to ■ SUP 18.2.30 G derives from the requirements of the *Insurance Directives*, the *Reinsurance Directive* and the associated agreements between *EEA regulators*. Schedule 12 of the *Act* implements some of these requirements.

## 18.2.25

FCA PRA

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- (1) If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on *insurance business* under the *Insurance Directives*) or a *Swiss general insurance company*, then the *appropriate regulator* has to consult the transferee's *Home State regulator*, who has 3 months to respond. It will be necessary for the *appropriate regulator* to obtain from the transferee's *Home State regulator* a certificate confirming that the transferee will meet the *Home State's* solvency margin requirements (if any) after the transfer.
- (1A) If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on *insurance business* under the *Reinsurance Directive*) it will be necessary for the *appropriate regulator* to obtain from the transferee's *Home State regulator* a certificate confirming that the transferee will meet the *Home State's* solvency margin requirements (if any) after the transfer.
- (2) If the transferee is *authorised* in the *United Kingdom*, the *appropriate regulator* will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the *appropriate regulator* has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the Consolidated Life Directive (2002/83/EC) or paragraph 1 of article 20a of the *First Non-Life Directive*, or paragraphs 1 and 2 of article 43 of the *Reinsurance Directive*, the *appropriate regulator* will not issue a certificate for so long as it considers that *policyholders'* rights are threatened within the meaning of these paragraphs.

## 18.2.26

FCA PRA

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The transferor will need to provide the *appropriate regulator* with the information that the *Home State regulator* requires from the *appropriate regulator* . This information includes:

- (1) the transfer agreement or a draft, with:
  - (a) the names and addresses of the transferor and transferee; and
  - (b) the *classes of insurance business* and details of the nature of the risks or commitments to be transferred;
- (2) for the business to be transferred (both before and after reinsurance):
  - (a) the amount of technical provisions;
  - (b) the amount of *premiums* (in the most recent financial period); and
  - (c) for *general insurance business*, the *claims* incurred (in the most recent financial period);
- (3) details of assets to be transferred;
- (4) details of any guarantees (including reinsurance arrangements), whether provided by the transferor or a third party, to protect the provisions for the business transferred against deterioration; and
- (5) the *states of the risks* or the *states of the commitments* of the business being transferred.

## 18.2.27

FCA PRA

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If the transferee is not (and will not be) *authorised* and will be neither an *EEA firm* nor a *Swiss general insurance company*, then the *appropriate regulator* will need to consult

the transferee's insurance supervisor in the place where the business is to be transferred. The *appropriate regulator* will need confirmation from this supervisor that the transferee will meet his solvency margin requirements there (if any) after the transfer.

18.2.28

FCA PRA

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If the transferor is a *UK insurer* (other than a *pure reinsurer*) and the business to be transferred includes business carried on from a branch in another *EEA State*, then the *appropriate regulator* has to consult the *Host State regulator*, who has 3 months to respond. The *appropriate regulator* will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information, and describe arrangements for settling *claims* if the branch is to be closed.

18.2.29

FCA PRA

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If the transferor is a *UK insurer* and the business to be transferred includes a long-term insurance contract (other than reinsurance) for which the *state of the commitment* is an *EEA state* other than the *United Kingdom*, then the *appropriate regulator* has to consult the *Host State regulator*. If the transferor is a *UK insurer* and the business to be transferred includes a general insurance contract (other than reinsurance) for which the *state of the risk* is an *EEA state* other than the *United Kingdom*, then the *appropriate regulator* must consult the *Host State regulator*. The *appropriate regulator* will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be helpful (especially for *long-term insurance business*) if a draft of the *scheme report* was also available. The *appropriate regulator* will also need to have sufficient information about the business proposed to be transferred to be satisfied that the applicants have undertaken sufficient steps to identify the *state of the risk* or the *state of the commitment*, as the case may be. The consent of the *Host State regulator* to the transfer is required, unless he does not respond within 3 months.

18.2.30

FCA PRA

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Where the transferor is a *UK-deposit insurer* and, following the transfer, it will no longer be carrying on *insurance business* in the *United Kingdom*, the *appropriate regulator* will need to collaborate with *regulatory bodies* in the other *EEA States* in which it is carrying on business to ensure that effective supervision of the business carried on in the *EEA* continues. The transferor should cooperate with the *appropriate regulator* and the other *regulatory bodies* in this process and demonstrate that it will meet the requirements of its regulators following the transfer.

### Form of scheme report

18.2.31

FCA PRA

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Under section 109 of the *Act*, a *scheme report* must accompany an application to the court to approve an *insurance business transfer scheme*. This report must be made in a form approved by the *appropriate regulator*. The *appropriate regulator* would generally expect a *scheme report* to contain at least the information specified in ■ SUP 18.2.33 G before giving its approval.

18.2.31A

FCA PRA

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When the *appropriate regulator* has approved the form of a *scheme report*, the scheme promoter may expect to receive written confirmation to that effect from that regulator.

18.2.32

FCA PRA

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There may be matters relating to the scheme or the parties to the transfer that the regulators wish to draw to the attention of the *independent expert*. The regulators may also wish the report to address particular issues. The *independent expert* should

therefore contact the regulators at an early stage to establish whether there are such matters or issues. The *independent expert* should form his own opinion on such issues, which may differ from the opinion of the regulators .

18.2.33

FCA PRA

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The *scheme report* should comply with the applicable rules on expert evidence and contain the following information:

- (1) who appointed the *independent expert* and who is bearing the costs of that appointment;
- (2) confirmation that the *independent expert* has been approved or nominated by the *appropriate regulator* ;
- (3) a statement of the *independent expert's* professional qualifications and (where appropriate) descriptions of the experience that fits him for the role;
- (4) whether the *independent expert* has, or has had, direct or indirect interest in any of the parties which might be thought to influence his independence, and details of any such interest;
- (5) the scope of the report;
- (6) the purpose of the scheme;
- (7) a summary of the terms of the scheme in so far as they are relevant to the report;
- (8) what documents, reports and other material information the *independent expert* has considered in preparing his report and whether any information that he requested has not been provided;
- (9) the extent to which the *independent expert* has relied on:
  - (a) information provided by others; and
  - (b) the judgment of others;
- (10) the people on whom the *independent expert* has relied and why, in his opinion, such reliance is reasonable;
- (11) his opinion of the likely effects of the scheme on *policyholders* (this term is defined to include *persons* with certain rights and contingent rights under the *policies*), distinguishing between:
  - (a) transferring *policyholders*;
  - (b) *policyholders* of the transferor whose contracts will not be transferred; and
  - (c) *policyholders* of the transferee;
- (11A) his opinion on the likely effects of the scheme on any *reinsurer* of a transferor, any of whose contracts of *reinsurance* are to be transferred by the scheme;
- (12) what matters (if any) that the *independent expert* has not taken into account or evaluated in the report that might, in his opinion, be relevant to *policyholders'* consideration of the scheme; and

- (13) for each opinion that the *independent expert* expresses in the report, an outline of his reasons.

18.2.34  
FCA PRA

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The purpose of the *scheme report* is to inform the court and the *independent expert*, therefore, has a duty to the court. However reliance will also be placed on it by *policyholders*, by *reinsurers*, by others affected by the scheme and by the regulators . The amount of detail that it is appropriate to include will depend on the complexity of the scheme, the materiality of the details themselves and the circumstances.

18.2.35  
FCA PRA

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The summary of the terms of the scheme should include:

- (1) a description of any reinsurance arrangements that it is proposed should pass to the transferee under the scheme; and
- (2) a description of any guarantees or additional reinsurance that will cover the transferred business or the business of the transferor that will not be transferred.

18.2.36  
FCA PRA

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The *independent expert's* opinion of the likely effects of the scheme on *policyholders* should:

- (1) include a comparison of the likely effects if it is or is not implemented;
- (2) state whether he considered alternative arrangements and, if so, what;
- (3) where different groups of *policyholders* are likely to be affected differently by the scheme, include comment on those differences he considers may be material to the *policyholders*; and
- (4) include his views on:
  - (a) the effect of the scheme on the security of *policyholders'* contractual rights, including the likelihood and potential effects of the insolvency of the *insurer*;
  - (b) the likely effects of the scheme on matters such as investment management, new business strategy, administration, expense levels and valuation bases in so far as they may affect:
    - (i) the security of *policyholders'* contractual rights;
    - (ii) levels of service provided to *policyholders*; or
    - (iii) for *long-term insurance business*, the reasonable expectations of *policyholders*; and
  - (c) the cost and tax effects of the scheme, in so far as they may affect the security of *policyholders'* contractual rights, or for *long-term insurance business*, their reasonable expectations.

18.2.37  
FCA PRA

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The *independent expert* is not expected to comment on the likely effects on new *policyholders*, that is, those whose contracts are entered into after the effective date of the transfer.

18.2.38

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FCA PRA

For any mutual *company* involved in the scheme, the report should:

- (1) describe the effect of the scheme on the proprietary rights of members of the *company*, including the significance of any loss or dilution of the rights of those members to secure or prevent further changes which could affect their entitlements as *policyholders*;
- (2) state whether, and to what extent, members will receive compensation under the scheme for any diminution of proprietary rights; and
- (3) comment on the appropriateness of any compensation, paying particular attention to any differences in treatment between members with voting rights and those without.

18.2.39

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FCA PRA

For a scheme involving *long-term insurance business*, the report should:

- (1) describe the effect of the scheme on the nature and value of any rights of *policyholders* to participate in profits;
- (2) if any such rights will be diluted by the scheme, how any compensation offered to *policyholders* as a group (such as the injection of funds, allocation of shares, or cash payments) compares with the value of that dilution, and whether the extent and method of its proposed division is equitable as between different classes and generations of *policyholders*;
- (3) describe the likely effect of the scheme on the approach used to determine:
  - (a) the amounts of any non-guaranteed benefits such as bonuses and *surrender values*; and
  - (b) the levels of any discretionary charges;
- (4) describe what safeguards are provided by the scheme against a subsequent change of approach to these matters that could act to the detriment of existing *policyholders* of either *firm*;
- (5) include the *independent expert's* overall assessment of the likely effects of the scheme on the reasonable expectations of *long-term insurance business policyholders*;
- (6) state whether the *independent expert* is satisfied that for each *firm* the scheme is equitable to all classes and generations of its *policyholders*; and
- (7) state whether, in the *independent expert's* opinion, for each relevant *firm* the scheme has sufficient safeguards (such as principles of financial management or certification by a *with-profits actuary* or *actuarial function holder*) to ensure that the scheme operates as presented.

PAGE  
13

18.2.40

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FCA PRA

Where the transfer forms part of a wider chain of events or corporate restructuring, it may not be appropriate to consider the transfer in isolation and the *independent expert* should seek sufficient explanations on corporate plans to enable him to understand the wider picture. Likewise he will need information on the operational plans of the transferee and, if only part of the business of the transferor is transferred, of the transferor. These



will need to have sufficient detail to allow him to understand in broad terms how the business will be run.

18.2.41  
FCA PRA

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A transfer may provide for benefits to be reduced for some or all of the *policies* being transferred. This might happen if the transferor is in financial difficulties. If there is such a proposal, the *independent expert* should report on what reductions he considers ought to be made, unless either:

- (1) the information required is not available and will not become available in time for his report, for instance it might depend on future events; or
- (2) otherwise, he is unable to report on this aspect in the time available.

Under such circumstances, the transfer might be urgent and it might be appropriate for the reduction in benefits to take place after the event, by means of an order under section 112 of the *Act*. Each regulator would wish to consider any such reduction against its *statutory objectives* and section 113 of the *Act* allows the court, on the application of either regulator, to appoint an independent *actuary* to report on any such post-transfer reduction in benefits.

**Notice provisions**

18.2.42  
FCA PRA

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Under the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001 (SI 2001/3625), unless the court directs otherwise, notice of the application must be sent to all *policyholders* of the parties and *reinsurers* (or a person acting on its behalf) any of whose contracts of *reinsurance* are proposed to be transferred as part of the *insurance business transfer scheme*.

It may also be appropriate to give notice to others affected, for example, to anyone with an interest in the *policies* being transferred who has notified the transferor of their interest.

18.2.43  
FCA PRA

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The regulations referred to in ■ SUP 18.2.42 G require that notice of the application must be published in:

- (1) the London, Edinburgh and Belfast Gazettes; and
- (2) unless the court directs otherwise, in accordance with requirements in those regulations.

Wider publication may be appropriate in some circumstances .

18.2.44  
FCA PRA

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The regulations referred to in ■ SUP 18.2.42 G require that the *appropriate regulator* approves in advance the notices sent to *policyholders* and published in the press.

18.2.45  
FCA PRA

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Where a transfer involves *underwriting members* of Lloyd's as transferor or transferee, any notice requirements of the *Society* will also apply.

18.2.46  
FCA PRA

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The regulators are entitled to be heard by the court on any application for a transfer. A consideration for the regulators in determining whether to oppose a transfer would be their view on whether adequate steps had been taken to tell *policyholders* and, as

appropriate, other affected *persons*, about the transfer and whether they had adequate information and time to consider it. The regulators would not normally consider adequate a period of less than six weeks between sending notices to *policyholders* and the date of the court hearing. Therefore it would be sensible, before requesting from the court a waiver of the publication requirements or the requirement to send statements direct to *policyholders*, to consult the regulators on their views about what waivers might be appropriate and what substitute arrangements might be made. The regulators will take into account the practicality and costs of sending notices to *policyholders* (especially for *firms* in financial difficulty), the likely benefits for *policyholders* of receiving notices and the efficacy of other arrangements proposed for informing *policyholders* (including additional advertising or, where appropriate, electronic communication).

18.2.47

FCA PRA

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As the consent (or presumed consent) of the *Host State* is required for a transfer covering contracts for which another *EEA State* is the *state of the risk* (for *general insurance business*) or the *state of the commitment* (for *long-term insurance business*), it is advisable to obtain the consent of *regulatory body* in the *Host State* to any waiver of publication in that state. The approval of the court will still be required.

### Statement to policyholders

18.2.48

FCA PRA

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It would normally be appropriate to include with the notice referred to in ■ SUP 18.2.42 G a statement setting out the terms of the scheme and containing a summary of the *scheme report*. Ideally every recipient should understand in broad terms from the summary how the scheme is likely to affect him. This objective will be most nearly achieved if the summary is clear and concise while containing sufficient detail for the purpose. A lengthy summary or one that was hard to understand would not be appropriate. Regulations require the *scheme report*, the notice and the statement to be made available to anyone requesting them. The internet can be used for this purpose if it is suitable for the *person* making the request.

18.2.49

FCA PRA

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Where the transferee is a *friendly society*, the notice should include information about the meeting at which a special resolution in accordance with paragraph 7 of Schedule 12 to the Friendly Societies Act 1992 is to be voted on, including the date of the meeting, how notice of the meeting is to be given to members and the terms of the special resolution. After the meeting the *friendly society* should inform the *appropriate regulator* whether the special resolution has been passed. The court will also need to be informed, so one way of informing the *appropriate regulator* may be to include it in the affidavit to the court.

18.2.50

FCA PRA

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The regulators should be given the opportunity to comment on the statement referred to in ■ SUP 18.2.48 G before it is sent, unless the promoters have been informed in writing that this is not necessary .

### Assessment of scheme and the regulators' report(s) to the court

18.2.51

FCA PRA

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The assessment is a continuing process, starting when the scheme promoters first approach the *appropriate regulator* about a proposed scheme. Each regulator will have an interest in assessing the scheme. Among the considerations that may be relevant to both the depth of consideration each gives to, and each regulator's opinion on, a scheme are:

- (1) the potential risk posed by the transfer to its *statutory objectives* ;
- (2) the purpose of the scheme;

- (3) how the security of *policyholders'* (who include *persons* with certain rights and contingent rights under the *policies*) contractual rights appears to be affected;
- (4) how the scheme compares with possible alternatives, particularly those that do not require approval (whether by the court or the *appropriate regulator*);
- (5) how *policyholders'* rights and reasonable expectations appear to be affected;
- (6) the compensation offered to *policyholders* for any loss of rights or expectations;
- (6A) how any *reinsurer* of a transferor, any of whose contracts of *reinsurance* are to be transferred by the scheme may be affected;
- (7) how for other *persons* (besides *policyholders* and *reinsurers*) who have an interest in *policies*, their rights and the security of those rights appear to be affected;
- (8) the opportunity given to *policyholders* and other persons affected by the scheme to consider the scheme, that is whether they have been properly notified, whether they have had adequate information and whether they have had adequate time to consider that information;
- (9) the opinion of the *independent expert*;
- (10) for a transfer that involves *underwriting members* or *former members* of Lloyd's as transferor or transferee, the effect on the *Society*;
- (11) the views of other *regulatory bodies* consulted in connection with the proposed transfer; and
- (12) any views expressed by *policyholders*, *reinsurers* or any other affected parties

**18.2.52**

FCA PRA

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The *scheme report* will be an important factor in the view each of the regulators forms on a scheme. Considerable reliance will be placed on the opinions of the *independent expert* and the reasons for them. However each regulator will form its own view taking into account other relevant information and having regard to its *statutory objectives*.

**18.2.53**

FCA PRA

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The regulators are likely to object to a scheme if they conclude that it is unfair to a class of *policyholders*, unless the *policyholders* of that class have approved the scheme on the basis of information the regulators consider to be adequate, clear and accurate.

**18.2.53A**

FCA PRA

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If at any time the regulators, or either of them, conclude that *policyholders* and/or, as appropriate, other relevant affected *persons* have not had adequate information and/or sufficient time to consider information, they will seek to resolve such issues with the scheme promoters. This may require further notification. If either regulator remains unsatisfied that such *policyholders* and/or other persons have received adequate information and sufficient time to consider it they are likely to object to a transfer.

- 18.2.54** G Either regulator may exercise its other powers under the *Act*, if it considers this a more effective method of advancing its *statutory objectives* .  
FCA PRA
- 18.2.55** G Neither regulator is required under its *statutory objectives* to object to a scheme merely because some other scheme might have been in the better interests of *policyholders*, if the scheme itself is not adverse to their interests. However there may be circumstances where either regulator might require a *firm* to consider or to implement an alternative scheme.  
FCA PRA
- 18.2.56** G Where a transfer involves *underwriting members* or *former members* of Lloyd's as transferor or transferee, the *appropriate regulator* will consult the *Society*. Where the business of a *syndicate* is being transferred, the transfer involves all *members* participating in the relevant *syndicate years*.  
FCA PRA
- 18.2.57** G Regulations require that copies of the application to the court, the *scheme report* and the statement for *policyholders* referred to in ■ SUP 18.2.48 G are also given to the *appropriate regulator*.  
FCA PRA
- 18.2.57A** G The provision of reports from one or other (or both) regulators to assist the court is common practice. In most cases, a first report will be provided to the court in advance of the directions hearing and a second report will be provided to the court in advance of the final hearing. Where additional information needs to be given to the court by either regulator, this will be provided using the most appropriate format for the circumstances in each case, and may include the provision of one or more additional reports to the court.  
FCA PRA
- 18.2.57B** G When assessing a proposed scheme under Part VII of the *Act* each regulator will, taking into account all relevant matters in each case, consider whether it should provide a report to the court. As it will lead the Part VII process for *insurance business transfers*, the *PRA* will usually provide such a report.  
FCA PRA
- 18.2.57C** G In order to enable each of the regulators to assess the scheme and to facilitate the process, the parties to the proposed scheme will need to ensure timely provision of all relevant information to each regulator for its consideration of that scheme.  
FCA PRA
- 18.2.57D** G In relation to the matters at ■ SUP 18.2.57A G to ■ SUP 18.2.57C G above and to facilitate the provision to the court of a first report in advance of a directions hearing, near final versions of relevant documents will need to be made available to each of the regulators as soon as practicable. Scheme promoters should be aware that where such documents are produced less than six weeks before the date set for the hearing the regulators will be less likely to be in a position to complete their assessment in advance of the hearing. Final versions of any such documents should be provided as soon as they are available.  
FCA PRA
- 18.2.57E** G Relevant documents in ■ SUP 18.2.57D G above will usually include:  
FCA PRA
- (1) the *scheme report*;
  - (2) if the business to be transferred includes *long-term insurance business*, copies of reports on the transfer by the *actuarial function holder* and (if the *insurance business* includes *with-profits business*) the *with-profits actuary* of both *firms*;

- (3) draft notices under article 3 of the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001(SI 2001/3625), as amended by the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) (Amendment) Regulations 2008 (SI 2008/1467) and the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 (SI 2008/1468);
- (4) where a proposed transfer involves an *underwriting member* or *former underwriting member* of the *Society* as transferor or transferee, a copy of the resolution or certificate required by article 4 of the Financial Services and Markets Act 2000(Control of Transfers of Business Done at Lloyd's) Order 2001 (SI 2001/3626), as amended by the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order 2008 (SI 2008/1725;
- (5) any witness statements or other evidence which the parties to the proposed transfer intend to submit to the court for the directions hearing;
- (6) the draft order.

**18.2.57F** G  
FCA PRA

Matters included at ■ SUP 18.2.57EG (5) should include sufficient information to enable:

- (1) the *appropriate regulator* to decide which other non-UK regulators must be consulted. This information should be provided to the *appropriate regulator* as soon as it is available;
- (2) the *appropriate regulator* to decide whether to approve the notices at ■ SUP 18.2.57EG (3); and
- (3) each regulator to form an opinion on any matters arising in connection with press advertising and notifications, including in relation to any waivers the parties to the proposed transfer intend to seek from the court under article 4 of those regulations.

**18.2.57G** G  
FCA PRA

A copy of any order made at the directions hearing should be provided by the applicant to the *appropriate regulator* as soon as it is available.

**18.2.57H** G  
FCA PRA

In relation to the matters at ■ SUP 18.2.57A G to ■ SUP 18.2.57C G and to facilitate the provision to the court of a second or final report in advance of the final hearing, near-final versions of relevant documents will need to be made available to each of the regulators as soon as practicable. Scheme promoters should be aware that where such documents are produced less than six weeks before the date set for that hearing, the regulators will be less likely to be in a position to complete their assessment in advance of the hearing. Final versions of any such documents should be provided as soon as they are available.

**18.2.58** G

[deleted]

**18.2.58A** G Relevant documents in ■ SUP 18.2.57H G will usually include:

FCA PRA

- (1) any witness statements or other evidence which the parties to the proposed transfer intend to submit to the court for the final hearing;
- (2) the notice or notices published and sent in accordance with the order of the court at ■ SUP 18.2.57G G;
- (3) proof of publication of the notice or notices at (2);
- (4) any final and/or additional reports of the *independent expert*;
- (5) any objections or other representations received from *policyholders* and/or other affected persons together with any responses to any such objections or representations;
- (6) the draft final order.

**18.2.59** G [deleted]

**18.2.59A** G Provided that any necessary consents have been obtained in respect of confidential information, where either regulator has made a report it will give a copy of its report to the court and will give a copy of its report as filed with the court to each of the parties to the proposed transfer as soon as practicable after such filing.

FCA PRA

**18.2.59B** G Provided that any necessary consents have been obtained in respect of confidential information, the parties to the proposed transfer should give a copy of any report at ■ SUP 18.2.59A G to the *independent expert*.

FCA PRA

**18.2.59C** G The parties to the proposed transfer should, in each case, consider whether it would facilitate the effective running of the process to give copies to any other person, including any person who alleges that he would be adversely affected by the carrying out of the scheme and intends to be heard in accordance with section 110 of the *Act*. Where any such provision is to be made, any necessary consents should first be obtained in respect of confidential information.

FCA PRA

**18.2.59D** G The court is likely to wish to know the opinion of each of the regulators. Each regulator will decide in each case, taking all relevant matters into account, the most effective method to make known to the court its opinion.

FCA PRA

**18.2.59E** G Where either regulator has indicated to the parties to the proposed transfer that it intends to appear at any hearing before the court in relation to a proposed scheme under Part VII of the *Act* a copy set of the bundle of documents filed with the court should be provided to it as soon as practicable.

FCA PRA

**Post-transfer advertising**

**18.2.60** G [deleted]

18.2.61  
 FCA PRA

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Under section 114 of the *Act* the court must direct that notice of the transfer be published by the transferee in any *EEA State* other than the United Kingdom which is the *state of the commitment* or the *state of the risk* as regards any policy included in the transfer which evidences a contract of insurance (other than a contract of reinsurance). The regulators would expect the transferee to publish notice in at least one national newspaper in each relevant *EEA State*. Such publication should include the notification of the transfer to the policyholders in the *state of the commitment* or the *state of the risk*. The parties should also be mindful of relevant provisions of the national laws of the relevant *state of the commitment* or the *state of the risk*.

18.2.62  
 FCA PRA

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Under section 114A of the *Act* the court may direct that notice of a transfer be published by the transferee in any *EEA State* which is the *state of the commitment* or the *state of the risk* as regards any *policy* included in the transfer which evidences a contract of *reinsurance*.

18



## 18.3 Insurance business transfers outside the United Kingdom

### Purpose

18.3.1

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FCA PRA

Under section 115 of the *Act*, the *appropriate regulator* has the power to give a certificate confirming that a *firm* possesses any *required minimum margin*, to facilitate an *insurance business* transfer to the *firm* under overseas legislation from a firm authorised in another *EEA State* or from a *Swiss general insurance company*. This section provides *guidance* on how the *appropriate regulator* would exercise this power and on related matters.

### Appropriate regulator response to proposal

18.3.1A

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FCA PRA

Unless otherwise expressly stated by the *appropriate regulator*, all the procedural aspects for dealing with *insurance business transfers* outside the *United Kingdom* should be discussed by *firms* with the *PRA* in the first instance.

18.3.2

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FCA PRA

Under cooperation agreements between *EEA regulators*, if it has serious concerns about the proposed transferee, the *appropriate regulator* should inform the *regulatory body* of the transferor within 3 months of the original request from that *regulatory body*. The *appropriate regulator* is not obliged to reply, but if it does not, its opinion is taken to be favourable. Although the protocol does not apply to Switzerland, the *appropriate regulator* is required to cooperate with the Swiss *regulatory body* and would apply similar principles to a proposed transfer from a *Swiss general insurance company*.

18.3.3

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FCA PRA

The information that the *regulatory body* of the transferor is required to supply will normally be sufficient for the *appropriate regulator* to determine whether the transfer is likely to have a material effect on the transferee.

18.3.4

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FCA PRA

If the effect of the transfer is not likely to be material and the *appropriate regulator* does not already have serious concerns about the transferee, the *appropriate regulator* can reply favourably.

18.3.5

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FCA PRA

If the effect of the transfer may be material, the *appropriate regulator* will need to consider whether to request a *scheme of operations* or other information from the proposed transferee to assist in determining whether the likely effect of the transfer is such that the *appropriate regulator* should have serious concerns.

18.3.6

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FCA PRA

If the effect of the transfer may have a material adverse effect on the transferee or the security of *policyholders*, the *appropriate regulator* will consider whether it is appropriate to exercise its powers under the *Act* to achieve its *statutory objectives*.





## 18.4 Friendly Society transfers and amalgamations

### Purpose

18.4.1 FCA PRA G

It is for the committee of management of a *friendly society* to decide whether to recommend an amalgamation or a transfer of engagements to the society's members. This section provides some *guidance* on the procedures to be followed and the information to be provided to a *friendly society's* members so that they are appropriately informed before they exercise their right to vote on the proposals.

### General considerations

18.4.1A FCA PRA G

In general, although the legislation governing transfers of engagements involves *friendly societies* is the Friendly Societies Act 1992, similar issues arise in these transfers as in *insurance business transfers* under Part VII of the *Act* and so the regulators would expect *firms* to be subject to a similar process followed under the *Act*. Accordingly, *firms* should usually first discuss the procedural aspects for dealing with *friendly society* transfers and amalgamations with the *PRA*. The *PRA* will consult the *FCA* as required by the Friendly Societies Act 1992, or as may otherwise appear to be appropriate.

18.4.2 FCA PRA G

*Friendly societies* are encouraged to discuss a proposed transfer or amalgamation with the appropriate authority, at an early stage to help ensure that a workable timetable is developed. This is particularly important where there are notification requirements for supervisory authorities in *EEA States* other than the *United Kingdom*, or for an amalgamation where additional procedures are required.

18.4.3 FCA PRA G

The regulators will want to satisfy themselves that after an amalgamation or a transfer the business will be prudently managed and continue to comply with all applicable requirements.

18.4.4 FCA PRA G

For a transfer to another *friendly society*, if the conditions of 87(1) and 87(2) of the Friendly Societies Act 1992 are met a report is required from the *appropriate actuary* of the transferee to confirm that it will meet the necessary margin of solvency. Where the conditions of 87(1) and 87(3) are met the appropriate authority may require a report from the *appropriate actuary* of the transferee to confirm that it will have an excess of assets over liabilities.

18.4.5 FCA PRA G

For a transfer of *long-term insurance business*, the appropriate authority may, under section 88 of the Friendly Societies Act 1992, require a report from an independent *actuary* on the terms of the proposed transfer and on his opinion of the likely effects of the transfer on long-term *policyholder* members of either the transferor or (if it is

a *friendly society*) the transferee. A summary is included in the statement sent to members (see ■ SUP 18.4.13 G) and the full report is required to be made available to anyone on payment of a reasonable fee. The general principles in ■ SUP 18.2.32 G to ■ SUP 18.2.40 G apply to the independent *actuary's* report.

18.4.6

FCA PRA

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Under the Friendly Societies Act 1992 the appropriate authority is required to confirm a proposed transfer of engagements . It will do so only where it is satisfied that the transfer is in the interests of the members of each *friendly society* participating in the transfer (see ■ SUP 18.4.25 G (2)(b)). The appropriate authority will therefore ask that the participating societies' *actuaries* confirm that the transfer is in the interests of the members.

18.4.7

FCA PRA

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Under the Friendly Societies Act 1992, members will normally have the opportunity to vote on a proposed transfer or amalgamation ( ■ SUP 18.4.11 G and ■ SUP 18.4.12 G describe exceptions). A *friendly society* has to ensure that, before casting their votes, its members are clearly and fully informed of the terms on which the amalgamation or transfer of engagements is to take place and that they have all the information needed to understand how their interests will be affected. If the society's rules permit, delegates can vote except on an "affected members' resolution" under section 86. The appropriate authority may not confirm an amalgamation or a transfer if it considers that information material to the members' decision was not made available to all the members eligible to vote.

18.4.8

FCA PRA

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Amendments to a *friendly society's* registered rules may be necessary to permit a transfer to it. The FCA will need to be consulted in the usual way about registration of the appropriate rules. Similarly for an amalgamation, each of the amalgamating societies has to approve the memorandum and rules of the new society and the requirements of schedule 3 to the Friendly Societies Act 1992 have to be met. It will be necessary to allow adequate time for these processes.

18.4.9

FCA PRA

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For an amalgamation the successor society, and for a transfer the transferee, may need to apply for *permission*, or to vary its *permission*, under Part 4A of the *Act*. The regulators will need sufficient time before a transfer is confirmed to consider whether any necessary *permission* or variation should be given. If the transferee is an *EEA firm* or a *Swiss general insurance company*, then confirmation will be needed from its *Home State regulator* that it meets the *Home State's* solvency margin requirements (see ■ SUP 18.4.25 G (3)).

18.4.10

FCA PRA

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It is likely that the information sent to members will include a statement explaining the reasons for the amalgamation or transfer and the choice of partner. Although this is not a statutory statement and not subject to either regulator's approval, the regulator's views on the content of the statement will be a factor that the appropriate authority will take into account before considering whether to confirm the amalgamation or transfer. A *friendly society* will therefore find it helpful to consult the regulators about the content of such a statement.

**Exercise of discretion by the appropriate authority**

18.4.11

FCA PRA

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The appropriate authority has discretion under section 86(3)(b) of the Friendly Societies Act 1992 to allow a transferee society to resolve to undertake to fulfil the engagements of a transferor society by resolution of the committee of management, rather than by special resolution. Among the issues on which the appropriate authority will wish to be satisfied before exercising this discretion, are that the transfer will be in the interests of the members of both societies and that the transfer will not mean a change of policy by

the transferee society. The appropriate authority is unlikely to exercise this discretion unless the transferee is significantly larger than the business to be transferred.

18.4.12  
FCA PRA

G

The appropriate authority has discretion under section 89 of the Friendly Societies Act 1992 to modify some of the requirements for a transfer of engagements from a *friendly society*, on the application of a specified number of its members, if it is satisfied that it is expedient to do so in the interests of its members or potential members.

**Schedule 15 statement to members**

18.4.13  
FCA PRA

G

Schedule 15 to the Friendly Societies Act 1992 requires a statement to be sent to every member of a *friendly society* entitled to vote on a transfer or amalgamation. Among other matters this statement has to cover the financial position of the *friendly society* and every other participant in the transfer or amalgamation. The members should be provided with sufficient financial information about the respective financial positions of the participants to gain an understanding of the relative financial strengths and *key features* of the participants. The statement has to include a summary of any *actuary's* report under section 88, though the appropriate authority may direct that the summary is to be provided separately if inclusion appears impractical.

18.4.14  
FCA PRA

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The financial information provided under ■ SUP 18.4.13 G would normally contain comparative statements of balance sheets at the same date, and include main investments, reserves and funds or technical provisions, with details of the number of members of each participant as at the balance sheet date and the *premium* income of the relevant fund of each participant during the financial year to which the balance sheet relates. ■ SUP 18.4.15 G to ■ SUP 18.4.18 G give further *guidance* on the financial information to be included.

18.4.15  
FCA PRA

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If the information relates to a position some time in the past, the information should state that there has been no significant change or include a clear description of the changes. Differences in accounting *policies* and reporting requirements could lead to the loss of some comparability between participants. Such differences and their estimated financial effects (if any) should be explained.

18.4.16  
FCA PRA

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The information should state whether any of the participants has any significant future capital commitments. The appropriate authority will require it to state that the transfer of engagements or amalgamation will not conflict with any contractual commitment by a society, any *subsidiary* or any body jointly controlled by it and others.

18.4.17  
FCA PRA

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Brief details should be given of the date of the last actuarial valuation and the position revealed (surplus/deficit, necessary margin of solvency and free assets) for each participant.

18.4.18  
FCA PRA

G

The appropriate authority may require confirmation from the auditors of either *friendly society* involved in the transfer or amalgamation about the reasonableness of any part of the information in the statement. For instance such confirmation would normally be required if the financial information relates to a date more than six months previously.

18.4.19

FCA PRA

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The statement is required to include particulars of:

- (1) any interest of the members of the committee of management in the amalgamation or transfer; and
- (2) any compensation or other consideration proposed to be paid to committee members or other *officers* of the society and to the *officers* of every other society or *person* participating in the amalgamation or transfer.

Under section 92 of the Friendly Societies Act 1992, any compensation must be approved by a special resolution, separate from any resolution approving other terms of the amalgamation or transfer. This enables members to vote on this as a separate issue.

18.4.20

FCA PRA

G

Under schedule 15 to the Friendly Societies Act 1992, the appropriate authority may require the statement to include any other matter. Under this provision, inclusion of the terms on which the amalgamation or the transfer of engagements is to be made will usually be required.

18.4.21

FCA PRA

G

The statement should be clearly separate from other information sent to members. It has to be approved by the appropriate authority and if it is not in a self-contained document, the approved element should appear in a separate section.

18.4.22

FCA PRA

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■ SUP 18 Annex 1 provides an example of the information for members required by Schedule 15.

**Confirmation procedures and criteria**

18.4.23

FCA PRA

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Under the Friendly Societies Act 1992:

- (1) when the members of a transferor society have approved the transfer of its engagements by passing a special resolution and the transferee has approved the transfer (by passing a resolution where the transferee is a *friendly society*); or
- (2) when two or more societies have approved a proposed amalgamation by passing a special resolution;

it, or they jointly, must then obtain confirmation by the appropriate authority of the transfer. Notice of the application will need to be published in one or more of the London, Edinburgh or Belfast Gazettes and other newspapers as directed by the appropriate authority . If the appropriate authority confirms a transfer, then the *FCA* will register the society's instrument of transfer after receiving an application on the appropriate form by the transferor society and the transferee. If the appropriate authority confirms an amalgamation, the *FCA* will register the successor society. All the property, rights and liabilities pass on the transfer date specified by the appropriate authority.

PAGE 25

18.4.24

FCA PRA

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For a *directive friendly society*, if the transfer or amalgamation includes *policies* where the *state of the risk* or the *state of the commitment* is an *EEA State* other than the *United Kingdom*, consultation with the *Host State regulator* is required and ■ SUP 18.2.25 G to ■ SUP 18.2.29 G apply (for an amalgamation they apply as if the business of the amalgamating societies is to be transferred to the successor society). Paragraph 6(1) of Schedule 15 to the Friendly Societies Act 1992 requires publication of the application to the appropriate authority for confirmation of an amalgamation or transfer and the

## 18.4.25

FCA PRA

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appropriate authority may require the notice of the application to be published in two national newspapers in the *Host State*.

The criteria that the appropriate authority must use in determining whether to confirm a proposed amalgamation or transfer are set out in schedule 15 to the Friendly Societies Act 1992. These criteria include that:

- (1) confirmation must not be given if the appropriate authority considers that:
  - (a) there is a substantial risk that the successor society or transferee will be unable lawfully to carry out the engagements to be transferred to it;
  - (b) information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote;
  - (c) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or
  - (d) some relevant requirement of the Friendly Societies Act 1992 or the rules of any of the participating societies was not fulfilled (but it can modify some requirements and direct that certain failures may be disregarded, see ■ SUP 18.4.12 G and ■ SUP 18.4.27 G);
- (2) the appropriate authority must be satisfied that:
  - (a) the transferee or successor society will have any *permissions* necessary under Part 4A of the *Act*;
  - (b) for a transfer, it is in the interests of the members of each *friendly society* participating in it (see ■ SUP 18.4.6 G); and
  - (c) for a *directive friendly society* where a transfer includes *policies* where the *state of the risk* or the *state of the commitment* is an *EEA State* other than the *United Kingdom*, the *Host State regulator* has been notified of the transfer and has consented or has not refused consent to the transfer; and
- (3) for a transfer, the transferee possesses the necessary margin of solvency after taking the proposed transfer into account or, where it is not required to maintain a necessary margin of solvency, possesses an excess of assets over liabilities (for a transferee that is a *Swiss general insurance company* or an *EEA firm*, this is evidenced by a certificate from its *home state regulator*).

## 18.4.26

FCA PRA

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If *authorisation* or a *Part 4A permission* is needed, the appropriate authority will need to consider the application for *authorisation* or *permission* in the usual way. If the *authorisation* or *permission* is refused, confirmation cannot be given even if all the other criteria are met.

## 18.4.27

FCA PRA

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The appropriate authority may (as an alternative to refusing confirmation) direct the society or societies to remedy certain procedural defects in a proposed transfer or amalgamation, and after they have been remedied confirm the application. If it appears to the appropriate authority that failure to meet a "relevant requirement" of the Friendly Societies Act 1992 or the rules of the *friendly society* could not be material to the members' decision, then it may direct that this failure is to be disregarded.

**Confirmation procedures: representations**

18.4.28

FCA PRA

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Any interested party has the right to make representations to the appropriate authority about an application for confirmation of a transfer or amalgamation. This includes any *person* (whether a member of the *friendly society* or not) who claims that he would be adversely affected by the amalgamation or transfer. The *person* making the representations should state clearly why he or she claims to be an interested party and the ground or grounds to which the representations are directed.

18.4.29

FCA PRA

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Written representations, or written notice of a *person's* intention to make oral representations, or both, are required to reach the appropriate authority by the date published in the relevant Gazettes and other newspapers. Those giving notice of intent to make oral representations are advised to state the nature and general grounds of the oral representations they intend to make. *Persons* who make written representations but subsequently decide also to make oral representations are required, nevertheless, to give notice of that intention, in writing, to the appropriate authority by the same date.

18.4.30

FCA PRA

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The appropriate authority will send copies of all written representations to the society(ies), and will afford them an opportunity to comment on the representations. It may consider the written representations and a society's response to them, before the date set for hearing oral representations. A synopsis of the written representations (probably in the form of a summary of each of the points made and the numbers of *persons* making each point) and a society's responses will be made available to those participating in the hearing. This is intended to inform those making oral representations of the points already being considered by the appropriate authority .

18.4.31

FCA PRA

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The regulators expect that any documents referred to in a society's comments will be made available by the society for inspection at its registered office and, if reasonably possible, at the venue of the hearing on the date of the hearing. However if a society applies to put documents which it considers to be sensitive to the regulator(s) in confidence, the regulators will balance any disadvantage this might cause interested parties in making representations against the commercial damage that publication of the documents might cause, and the appropriate authority may permit the documents or sensitive parts of them not to be available for inspection.

**Confirmation hearing**

18.4.32

FCA PRA

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Interested parties may be represented and may make collective representations. Such arrangements should be notified to the appropriate authority in advance to enable it to make appropriate arrangements.

18.4.33

FCA PRA

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The hearing referred to in ■ SUP 18.4.30 G will be at a time and place that will be notified to the participants and will be conducted by the appropriate authority's representatives. The hearing may last longer than one day and may be adjourned. The appropriate authority will try to tell participants when they may expect to make their representations and when the society may be expected to respond.

18.4.34

FCA PRA

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The appropriate authority expects that oral hearings will be held in public though this is not required. At the start members of the general public and the press will be asked to wait outside while participants are asked if any of them has good reason to object to the admission of the general public or the press. Unless an objection by a participant is upheld by the appropriate authority's representatives, the press and the general public will then be admitted, within the limits of the space available. However, the appropriate authority's

representatives may decide that parts of the hearing will be in private if that appears to them to be desirable.

**18.4.35****FCA PRA****G**

The procedure will be informal. All participants will be expected to speak concisely and avoid repetition. The appropriate authority will, as far as practicable, help those who are not professionally represented. Those taking the hearing may question the participants. The sequence of events will normally be broadly:

- (1) any preliminary matters (such as the admission of the public or other procedural questions) will be dealt with;
- (2) the chair of the hearing will introduce the proceedings;
- (3) the society representatives will be invited to speak on the application, including a description of the events at the meeting at which the resolution to amalgamate or transfer was put to the members, a statement of the voting on the resolution, and any other matters which they wish to introduce at that stage;
- (4) the other participants will be invited to speak to their representations. The appropriate authority expects to call them in order of a list arranged, so far as possible, by subject matter;
- (5) the society representatives will be invited to reply to, or comment on, the points made by the other participants; and
- (6) the other participants will be invited to comment on the society replies.

**18.4.36****FCA PRA****G**

The above procedure may be varied according to the circumstances at the hearing, and is intended only as a guide. The hearing may be adjourned if the appropriate authority's representatives consider that necessary to enable facts to be checked or additional information to be obtained.

**18.4.37****FCA PRA****G**

The appropriate authority will not decide whether to confirm the transfer or amalgamation at the hearing. A copy of its written decision, including its findings on the points made in representations, will be sent to the society(ies) and to those making representations. It will also be available to any other *person* on request and may be published.

**Friendly Society transfer or amalgamation (Information requirements related to Schedule 15 Friendly Societies Act 1992) (This belongs to SUP 18.4.22G)**

**FCA PRA**

**Transfer/Amalgamation of [Society A] to/with [Society B]**

Proposed effective date:

**Comparative financial positions**

(a) Balance Sheet as at 31 December 20-

	Society A	Society B
<b>ASSETS</b>		
Land and buildings (4)		
Government securities		
Equities		
Other investments (6)		
Fixed assets		
Other assets		
Cash at bank and in hand		
	_____	_____
	_____	_____
<b>LIABILITIES</b>		
Benefit funds [technical provisions] (7)		
[Management fund]		
Other liabilities and provisions		
Reserve funds [Reserves] (8)		
	_____	_____
	_____	_____

**NOTES**

- (1) The above figures are extracted from the audited accounts [unaudited accounts] of [Society A and Society B] for the year [period] ended:
- (2) There has been no significant change in the financial position of the [participants] [except for ]
- (3) The future capital commitments of [the participants] are: [None of [the participants] has any significant future capital commitments.]
- (4) Land and buildings have been brought into account on the following bases: (include statement of any differences in accounting policies and where material any estimated financial effects)
- (5) Investments have been brought into account on the following bases: (include statement of any differences in accounting policies and where material any estimated financial effects)



- (6) Other investments comprise: (include statement of any differences in accounting policies and where material any estimated financial effects)
- (7) Benefit Funds [Technical Provisions] comprise:(include statement of any differences in accounting policies and where material any estimated financial effects)
- (8) Reserve Funds [Reserves] comprise:
  - (9) The membership at [ ] and premium income received during [ ] for each [participant] were:
- (10) Brief summary of the financial position of each [participant] as shown in the last actuarial investigation:
- (11) Summary of independent actuary's report under section 88 of the Friendly Societies Act 1992:
- (12) The interests of committee members of the [participants] in the transfer [amalgamation] are:
- (13) Proposed compensation to be paid to committee members and[/or] to other officers is:
- (14) The terms of the transfer[amalgamation] are:

# Chapter 19

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# Chapter 20

## Fees Rules



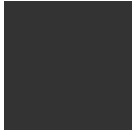
**20.1 The periodic fees rules are set out in FEES 4 (Periodic fees)**

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**20.2 The periodic fees rules are set out in FEES 4 (Periodic fees)**

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- 20.2.8 [Deleted]
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**20.3 The periodic fees rules are set out in FEES 4 (Periodic fees)**

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**20.4 The periodic fees rules are set out in FEES 4 (Periodic fees)**

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**20.5 The periodic fees rules are set out in FEES 4 (Periodic fees)**

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**20.6 The periodic fees rules are set out in FEES 4 (Periodic fees)**

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**20.7 The periodic fees rules are set out in FEES 4 (Periodic fees)**

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- 20.7.3

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**The provisions relating to periodic fees rules are set out in FEES 4 (Periodic fees)**



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**The provisions relating to periodic fees rules are set out in FEES 4 (Periodic fees)**



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The provisions relating to periodic fees rules are set out in FEES 4 (Periodic fees)





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**These provisions have been moved to FEES 3 Annex 6R**



# Chapter 21

## Waiver



## 21.1 Form of waiver for energy market participants

21.1.1  
FCA

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■ SUP 21 Annex 1 sets out a form of *waiver* that the *FCA* will be minded to give to *energy market participants* in the exercise of its statutory discretion under sections 138A and 138B of the *Act* to grant a *waiver* of its *rules*.

21.1.2  
FCA

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*Energy market participants* should bear in mind that Section 138A of the *Act* requires that in order to give a *waiver* of particular *rules*, the *FCA* must be satisfied that:

- (1) compliance with the *rules*, or with the *rules* as unmodified, would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and
- (2) the *waiver* would not adversely affect the advancement of any of the *FCA*'s operational objectives.

21.1.3  
FCA

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Accordingly, the *FCA* must be satisfied that the statutory criteria will be met in each case where an *energy market participant* applies for a waiver in the form in ■ SUP 21 Annex 1.

21.1.4  
FCA

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In particular, clause 4 of the form of *waiver* in ■ SUP 21 Annex 1 will not ordinarily be inserted in *waivers* for *energy market participants* that will not, at the time the *waiver* will take effect, clearly satisfy the conditions set out in that clause. For these purposes the *FCA* will take into account the relative proportions of the *energy market participant's* assets and revenues that are referable to the various parts of its business, as well as to any other factor that the *FCA* considers is relevant to an assessment of the prudential risk presented by the *energy market participant*.

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Form of Waiver: Energy Market Participant - FSA/docs/sup/sup\_chapter 21*



# Appendix 1

## Prudential categories and sub-categories

### 1.1 Application

**App 1.1.1** **G** This appendix applies to every *firm*.

### 1.2 Purpose

**App 1.2.1** **G** The purpose of this appendix is to give *guidance* on the prudential categories and sub-categories of *firm* used in the Interim Prudential sourcebooks and the Supervision manual. The prudential categories are defined in the *Glossary*, and some of the sub-categories are defined there and some in the glossaries of the Interim Prudential sourcebooks.

**App 1.2.2** **G** Prudential requirements for *firms* are set out in the Prudential Standards part of the *Handbook* according to their prudential category. Certain reporting requirements and other prudential material are contained in the Supervision manual, for example **■** SUP 16 (Reporting requirements).

**App 1.2.3** **G** If there is any doubt about prudential categorisation, a *firm* should seek individual *guidance* from its usual supervisory contact at the *FSA* and an applicant for authorisation should seek *guidance* from the Corporate Authorisation department.

### 1.3 Prudential categories and sub-categories

PAGE  
1

**App 1.3.1** **G** Table Prudential categories and sub-categories used in the Prudential sourcebooks and the Supervision manual



<i>Prudential categories (Note 1)</i>	<i>Applicable prudential requirements (Note 2)</i>	<i>Prudential sub-categories</i>
<i>Authorised professional firm*</i>	<i>IPRU(INV) 1 and 2</i>	
<i>Bank*</i>	<i>GENPRU, BIPRU and IPRU(BANK)</i>	<i>EEA bank Overseas bank UK bank</i>
<i>BIPRU investment firm</i>	<i>GENPRU and BIPRU</i>	<i>Full scope BIPRU investment firm</i> <i>BIPRU limited licence firm</i> <i>BIPRU limited activity firm</i>
<i>Building society*</i>	<i>GENPRU, BIPRU and IPRU(BSOC)</i>	
<i>Credit union</i>	<i>CREDS 3 5, 6 and 7</i>	<i>Version 1 credit union</i> <i>Version 2 credit union</i>
<i>Friendly society</i>	<i>IPRU(FSOC)</i>	<i>Directive friendly society</i> <i>Incorporated friendly society</i> <i>Non-directive friendly society</i> <i>Registered friendly society</i> <i>Flat rate benefits business friendly society</i>
<i>Home finance administrator</i>	<i>MIPRU</i>	
<i>Home finance intermediary</i>	<i>MIPRU</i>	
<i>Home finance provider</i>	<i>MIPRU</i>	
<i>ICVC*</i>	<i>None, but see COLL</i>	
<i>Incoming EEA firm</i>	<i>GENPRU, BIPRU, INSPRU and IPRU(BANK)</i>	<i>EEA bank</i>
<i>Incoming Treaty firm</i>	<i>None (unless another prudential category applies)</i>	
<i>Insurance intermediary</i>	<i>MIPRU</i>	
<i>Insurer*</i>	<i>IPRU(INS) or IPRU(FSOC), GENPRU, INSPRU and MIPRU</i>	<i>Long term insurer</i> <i>General insurer</i> <i>Friendly society (see above)</i>

Prudential categories (Note 1)	Applicable prudential requirements (Note 2)	Prudential sub-categories
<i>Investment management firm*</i>	IPRU(INV) 1 and 5	<p><i>Exempt CAD firm</i> (see also IPRU(INV) 9)</p> <p><i>OPS firm</i></p> <p>Non-OPS life office</p> <p>Non-OPS local authority</p> <p>Individuals admitted to authorisation collectively</p> <p>Individual whose sole investment business is giving investment advice to institutional or corporate investors</p> <p>Other</p>
<i>Lead regulated firm</i>	None (unless another prudential category applies)	
<i>Media firm*</i>	None	
<i>Members' adviser</i>	IPRU(INV) 1 and 4	
<i>Personal investment firm*</i>	IPRU(INV) 1 and 13	<p>Category B firm</p> <p>Category B1 firm</p> <p>Category B2 firm</p> <p>Category B3 firm</p> <p><i>Exempt CAD firm</i></p> <p>Low resource firm</p> <p><i>Network</i></p> <p><i>Small personal investment firm</i></p>

Prudential categories (Note 1)	Applicable prudential requirements (Note 2)	Prudential sub-categories
<i>Securities and futures firm*</i>	<p><i>IPRU(INV)</i> 1 and either 3 or 9</p> <p>There is a special transitional regime for <i>ex-section 43 lead regulated firms</i> - see transitional rules to <i>IPRU(INV)</i>.</p>	<p><i>IPRU(INV)</i> 3:</p> <p><i>Adviser</i></p> <p><i>Arranger</i></p> <p><i>Broad scope firm</i></p> <p><i>Corporate finance advisory firm</i></p> <p><i>Dematerialised instruction transmitter</i></p> <p><i>Derivative fund manager</i></p> <p><i>Energy market participant</i></p> <p><i>Exempt BIPRU commodities firm</i></p> <p><i>Local</i></p> <p><i>Oil market participant</i></p> <p><i>Venture capital firm</i></p> <p>Other</p> <p><i>IPRU(INV)</i> 9:</p> <p><i>Exempt CAD firm</i></p>
<i>Service company*</i>	<i>IPRU(INV)</i> 1 and 6	
<i>Society of Lloyd's*</i>	<i>INSPRU</i> and <i>IPRU(INS)</i>	
<i>UCITS firm*</i>	<i>UPRU</i>	
<i>UCITS investment firm</i>	<i>GENPRU</i> and <i>BIPRU</i>	
<i>UCITS qualifier</i>	None (unless another prudential category applies)	
<i>UK ISPV</i>		
<i>Underwriting agent</i>	<i>IPRU(INV)</i> 1 and 4	<p><i>Managing agent</i></p> <p><i>Members' agent</i></p>
<p>Note 1 = It is possible for a <i>firm</i> to have more than one prudential category. But it cannot have more than one of the prudential categories marked with a '*'. </p>		
<p>Note 2 = Only the requirements in the Prudential sourcebooks, and <i>CREDS</i> are listed in the column. Requirements in other parts of the <i>Handbook</i> will also apply.</p>		

## 1.4 Relevance of prudential categories

**App 1.4.1** **G** Many, but not all, of the categories are used only in the the Prudential Standards part of the *Handbook* and the Supervision manual. The prudential category of a *firm* will normally determine:

- (1) which module of the Prudential Standards part of the *Handbook* is applicable to the *firm*;
- (2) if the *firm* is subject to the *IPRU(INV)*, which chapter of that sourcebook is applicable to the *firm*;
- (3) whether particular chapters of the Supervision manual are applicable to the *firm*; and
- (4) if the *firm* is subject to ■ SUP 3 (Auditors), ■ SUP 16 (Reporting) or ■ SUP 17 (Transaction reporting), which parts of those chapters apply to the *firm*.

**App 1.4.2** **G** In some cases, a *firm* may also fall within a prudential sub-category. This will determine which provisions within a particular sourcebook or chapter apply to the *firm*.

**App 1.4.3** **G** If a *firm* is part of a *group*, each *authorised* member of the *group* will have its own prudential category. *Firms* should refer to the provisions of the relevant module of the Prudential Standards part of the *Handbook* to determine whether and, if so, how consolidated supervision applies.

## 1.5 Determining the prudential categories of a firm

**App 1.5.1** **G** This appendix includes flow diagrams (Figures 1 and 2) to assist in determining the prudential category of a *firm*.

**App 1.5.2** **G** For a *firm* which became an *authorised person* after *commencement*, the *FSA* will have confirmed the applicable prudential category of the *firm* as part of the *authorisation* process.

**App 1.5.3** **G** For a *firm* with automatic *authorisation* by passporting under the *Single Market Directives*, exercising rights under the *Treaty* or as a *UCITS qualifier*, the *FSA* will have notified the *firm* of its prudential category at the same time as the *FSA* notified it of the *applicable provisions* to which it is subject (see ■ SUP 13A for further details on inward passporting). If it has a *top-up permission*, then ■ SUP App 1.5.2 G may also apply.

## 1.6 Changing prudential category after authorisation

**App 1.6.1** **G** A *firm's* prudential category may change in the following circumstances:

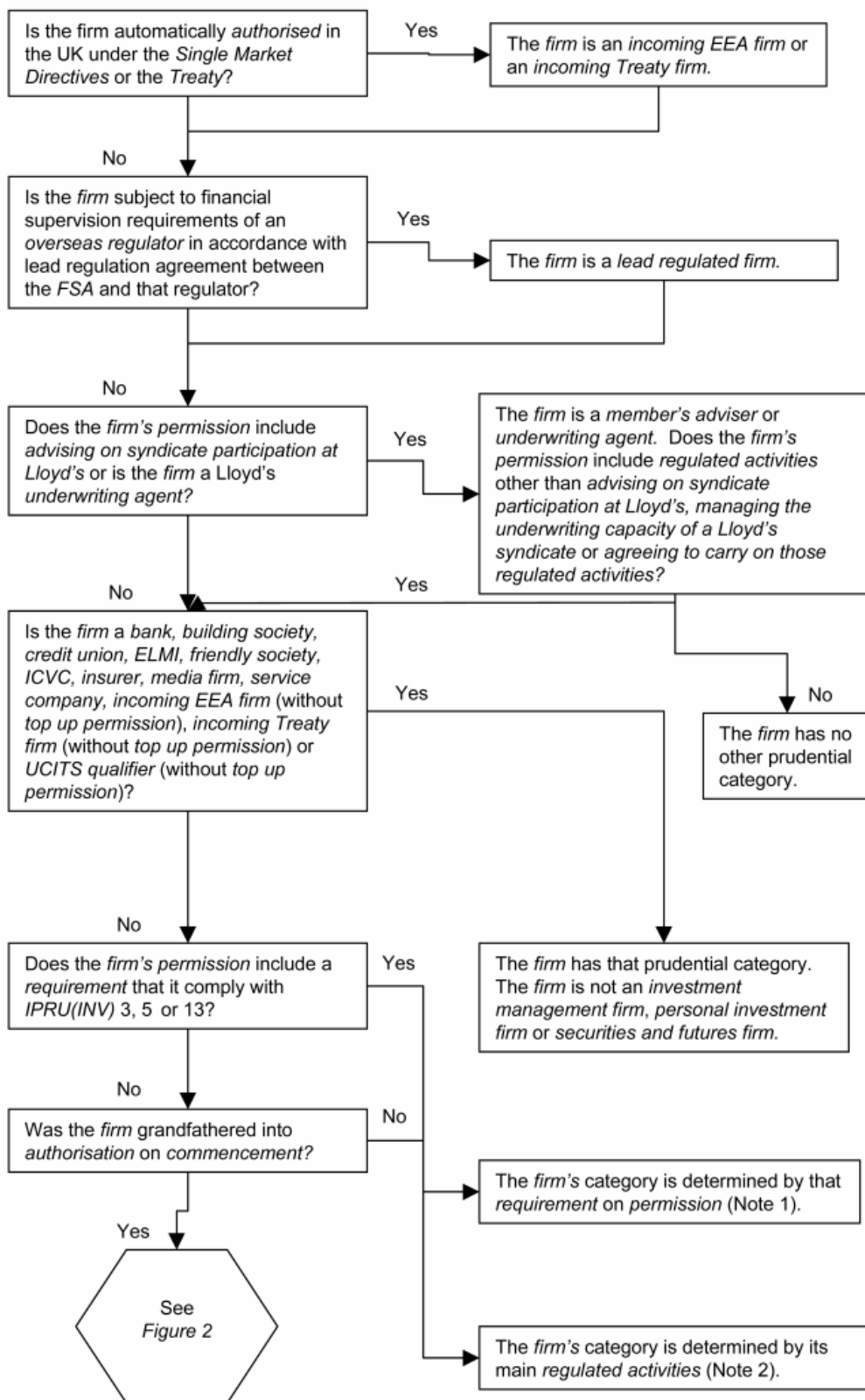
- (1) A variation in the *firm's permission* may, in some cases, lead to an automatic change in the *firm's* prudential category or sub-category because of the way those categories are defined. For example, if an *investment management firm* is granted *permission* to *accept deposits*, it may become a *bank* and cease to be an *investment management firm*. Figures 1 and 2 may be used, even if a *firm's permission* is varied after *commencement*. They should enable a *firm* to determine whether any variation in its *permission* will lead to a change in prudential category.
- (2) The *FSA* may vary the *firm's permission* and thereby require a *firm* to comply with the *rules* applicable to a different prudential category, either through using its *own-initiative power* or on the application of the *firm*.

**App 1.6.2** **G** A *firm* should notify the *FSA* immediately if it believes that its prudential category or sub-category has changed (see ■ SUP 15.3.8 G (1)(g)), or if there has been an expansion or reduction in its business that could be relevant to its prudential categorisation or sub-categorisation (see ■ SUP 15.3.8 G).

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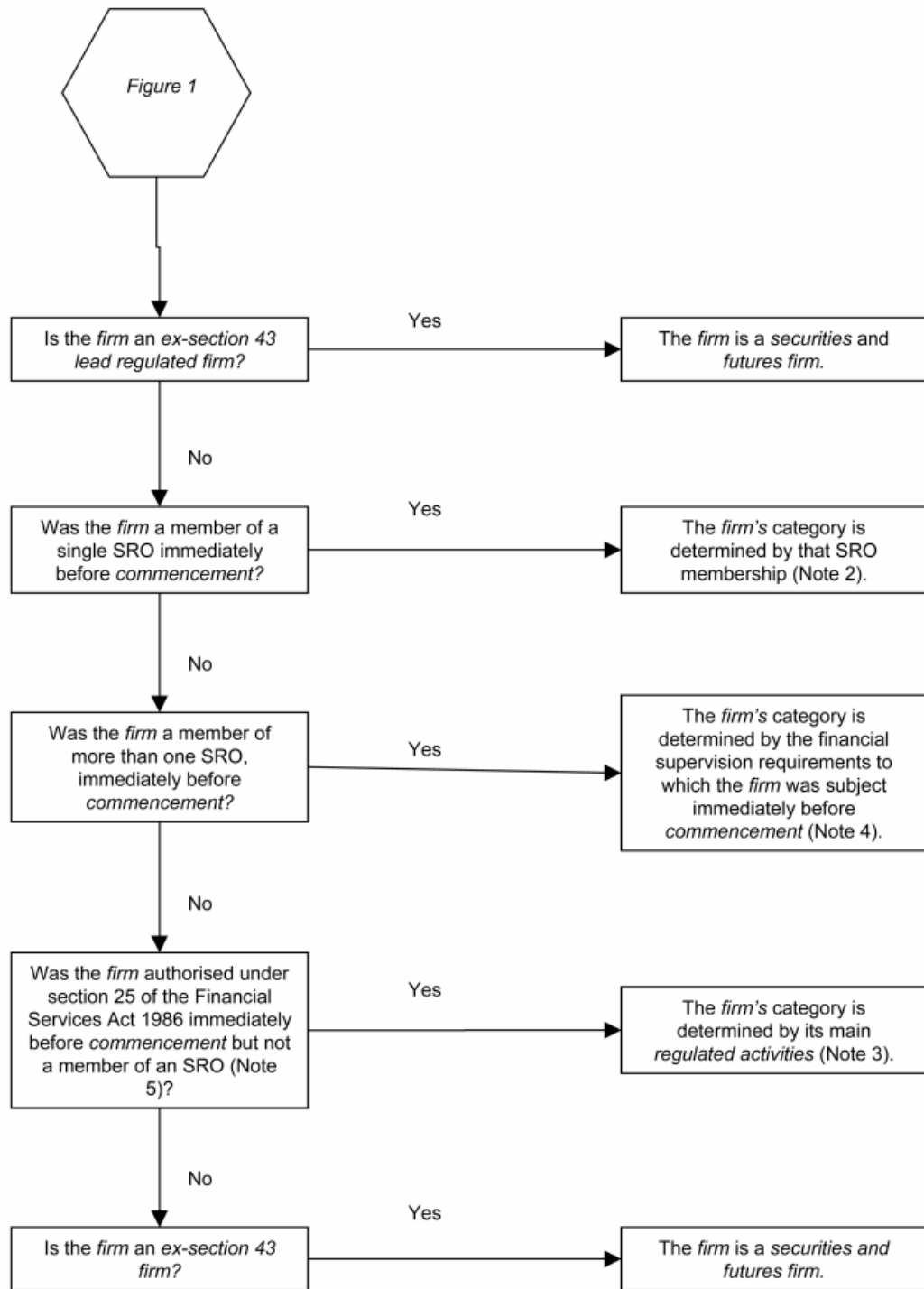
## 1.7 Prudential categories and sub-categories

**FigApp 1.7.1** **G** Figure 1: Determination of a firm's prudential category - general



FigApp1.7.2 **G**

Figure 2: Determination of a firm's prudential category (cont'd)



1.8 Notes to Figures 1 and 2

App 1.8.1 **G** Table Note 1



Chapter of IPRU(INV) that requirement on permission requires the firm to comply with	Firm's prudential category
Chapter 3	<i>Securities and futures firm</i>
Chapter 5	<i>Investment management firm</i>
Chapter 13	<i>Personal investment firm</i>

App 1.8.2 **G**

Table Note 2

The table below shows how a *firm's* main *regulated activities* determine its prudential category. A *firm's* main *regulated activities* in this context are the *regulated activities* included in the *firm's* Part IV permission from which the *firm* derives or is expected to derive the most substantial part of its gross income, including *commissions*. The aggregate gross income from all of the activities listed against each prudential category should be considered to determine which source is the most substantial.

The gross income is based on the business plan submitted as part of the *firm's* application for a Part IV permission (for a *firm* given a Part IV permission after commencement) or on the *firm's* financial year preceding its *authorisation* under the Act (for a *firm* authorised under section 25 of the Financial Services Act 1986 prior to commencement).

If the *firm's* prudential categorisation is not clear, please consult the FSA for guidance.

Activities from which the most substantial part of the firm's gross income, (including commissions), from designated investment business is derived	Firm's prudential category
(i) <i>Managing investments</i> other than for retail clients or if the assets managed are primarily derivatives;	<i>Investment management firm</i>
(ii) <i>OPS activity</i> ;	
(iii) acting as the <i>manager</i> or <i>trustee</i> of an <i>AUT</i> ;	
(iv) acting as the <i>ACD</i> or <i>depository</i> of an <i>ICVC</i> ;	
(v) <i>establishing, operating or winding up a collective investment scheme</i> other than an <i>AUT</i> or <i>ICVC</i> ;	
(va) <i>establishing, operating or winding up a personal pension scheme</i> ; and	
(vi) <i>safeguarding and administering investments</i> .	<i>Personal investment firm</i>
(i) <i>Advising on investments, arranging (bringing about) deals in investments, or making arrangements with a view to transactions in investments in relation to packaged products</i> ; and	

The table below shows how a *firm's* main *regulated activities* determine its prudential category. A *firm's* main *regulated activities* in this context are the *regulated activities* included in the *firm's* Part IV *permission* from which the *firm* derives or is expected to derive the most substantial part of its gross income, including *commissions*. The aggregate gross income from all of the activities listed against each prudential category should be considered to determine which source is the most substantial.

The gross income is based on the business plan submitted as part of the *firm's* application for a Part IV *permission* (for a *firm* given a Part IV *permission* after *commencement*) or on the *firm's* financial year preceding its *authorisation* under the *Act* (for a *firm* authorised under section 25 of the Financial Services Act 1986 prior to *commencement*).

If the *firm's* prudential categorisation is not clear, please consult the FSA for *guidance*.

Activities from which the most substantial part of the firm's gross income, (including commissions), from designated investment business is derived	Firm's prudential category
---	----------------------------

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>(ii) <i>managing investments</i> for <i>private customers</i>.</li> <li>(i) An activity carried on as a member of an <i>exchange</i>;</li> <li>(ii) making a market in <i>securities</i> or <i>derivatives</i>;</li> <li>(iii) <i>corporate finance business</i>;</li> <li>(iv) <i>dealing</i> (excluding, in the case of a <i>home finance provider</i>, <i>dealing as principal</i> in <i>contractually based investments</i> where this <i>activity</i> is carried out for risk management purposes and would have been excluded under article 16 of the <i>Regulated Activities Order</i> if the <i>firm</i> were an <i>unauthorised person</i> or under article 19 of the <i>Regulated Activities Order</i>), <i>arranging (bringing about) deals in investments</i>, or <i>making arrangements with a view to transactions in investments</i> in <i>securities</i> or <i>derivatives</i>;</li> <li>(v) the provision of clearing services as a <i>clearing firm</i>;</li> <li>(vi) <i>managing investments</i> where the assets managed are primarily <i>derivatives</i>; and</li> <li>(vi) activities relating to <i>spread bets</i>;</li> </ul> | <p><i>Securities and futures firm</i></p> |
|--|---|

Single SRO membership	Firm's prudential category
<i>IMRO</i>	<i>Investment management firm</i>
<i>PIA</i>	<i>Personal investment firm</i>
<i>SFA</i>	<i>Securities and futures firm</i>

App 1.8.4 **G**

Table Note 4

SRO to whose Financial Supervision requirements the firm was subject	Firm's prudential category
<i>IMRO</i>	<i>Investment management firm</i>
<i>PIA</i>	<i>Personal investment firm</i>
<i>SFA</i>	<i>Securities and futures firm</i>

App 1.8.5 **G**

Note 5

Only a small number of *firms* are expected to be authorised under section 25 of the Financial Services Act 1986 immediately prior to *commencement* and not be a member of one of the SROs. These *firms* are directly regulated by the *FSA* under the Financial Services Act 1986.

# Appendix 2

## Insurers: Regulatory intervention points and run-off plans

### 2.1 Application

App 2.1.1 **R**  
FCA PRA

■ SUP App 2.1 to ■ 2.15 apply to an *insurer*, unless it is:

- (1) a *Swiss general insurer*; or
- (2) an *EEA-deposit insurer*; or
- (3) an *incoming EEA firm*; or
- (4) an *incoming Treaty firm*.

App 2.1.2 **G**  
FCA PRA

■ SUP App 2.1 to ■ 2.15 apply to every *friendly society* that is an insurer.

App 2.1.3 **R**  
PRA

■ SUP App 2.16 applies to the *Society*.

App 2.1.4 **G**  
FCA PRA

■ SUP App 2.15 applies to an *insurer* carrying on *with-profits business*, but only if ■ COBS 20.2.53 R (Ceasing to effect new contracts of insurance in a with-profits fund) also applies.

App 2.1.5 **G**  
FCA

■ SUP App 2.7.1 G is made by the *FCA* for the purpose of its application to *dormant account fund operators*, rather than *insurers*.

## 2.2 Interpretation

### App 2.2.1 **R**

**FCA** **PRA**

For the purpose of ■ SUP App 2.1 to ■ 2.14 :

- (1) "capital resources":
  - (a) in relation to a *non-directive friendly society*, has the meaning given to "margin of solvency" in rule 4.1(4) of IPRU(FSOC);
  - (b) in relation to a *participating insurance undertaking*, means P+T, where P and T have the meanings given by ■ INSPRU 6.1.45 R (3)(a) and (e) respectively, as calculated in accordance with ■ INSPRU 6.1.43 R ; and
  - (c) in relation to any other *firm*, means the *firm's capital resources* as calculated in accordance with ■ GENPRU 2.2.17 R;
  
- (2) "guarantee fund":
  - (a) in relation to a *non-directive friendly society*, has the meaning given to that term in IPRU(FSOC);
  - (b) in relation to a *participating insurance undertaking*, means the amount of capital resources which that *firm* must hold to comply with ■ INSPRU 6.1.45 R (2);
  - (c) in relation to a *firm* which is not covered by (a) or (b), carrying on *general insurance business*, means the amount of capital resources which that *firm* must hold to comply with ■ GENPRU 2.2.34 R ; and
  - (d) in relation to a *firm* which is not covered by (a) or (b), carrying on *long-term insurance business*, means the amount of capital resources which that *firm* must hold to comply with ■ GENPRU 2.2.33 R ;
  
- (3) "material transaction" means a transaction (when aggregated with any similar transactions) in which:
  - (a) the price actually paid or received for the transfer of assets or liabilities or the performance of services; or
  - (b) the price which would have been paid or received had that transaction been negotiated at arm's length between unconnected parties;

exceeds:

  - (c) in the case of a *firm* which carries on *long-term insurance business*, but not *general insurance business*, the sum of €20,000 and 5% of the *firm's liabilities* arising from its *long-term insurance business*,

- excluding *property-linked liabilities* and net of *reinsurance ceded*;  
or
- (d) in the case of a *firm* which carries on *general insurance business*, but not *long-term insurance business*, the sum of €20,000 and 5% of the *firm's* liabilities arising from its *general insurance business*, net of *reinsurance ceded*; or
  - (e) in the case of a *firm* which carries on both *long-term insurance business* and *general insurance business*:
    - (i) where the transaction is in connection with the *firm's long-term insurance business*, the sum of €20,000 and 5% of the *firm's* liabilities arising from its *long-term insurance business*, excluding *property-linked liabilities* and net of *reinsurance ceded*; and
    - (ii) in all other cases, the sum of €20,000 and 5% of the *firm's* liabilities arising from its *general insurance business*, net of *reinsurance ceded*; and
- (4) "required margin of solvency":
- (a) in relation to a *non-directive friendly society*, has the meaning given to that term in *IPRU(FSOC)*;
  - (b) in relation to a *participating insurance undertaking*, means R-S-U, where R, S and U have the meanings given by ■ *INSPRU 6.1.45 R (3)(c)*, ■ (d) and ■ (f) respectively;
  - (c) in relation to a *firm* which is not covered by (a) or (b), carrying on *general insurance business*, means the *general insurance capital requirement* applicable to that *firm*; and
  - (d) in relation to a *firm* which is not covered by (a) or (b), carrying on *long-term insurance business*, means the *long-term insurance capital requirement* applicable to that *firm*.

App 2.2.2 G

PRA

The calculation of each of the *base capital resources requirement*, the *long-term insurance capital requirement* and the *general insurance capital requirement* is set out in ■ *GENPRU 2.1*. The calculation of each of the "guarantee fund" and "required margin of solvency" for *non-directive friendly societies* is set out in chapter 4 of *IPRU(FSOC)*.

## App 2.2.3

[Deleted]

## App 2.2.4

[Deleted]

## 2.3

## Purpose

App 2.3.1 G

PRA

To fulfil its obligations under the *Insurance Directives*, and as part of the *PRA's* risk-based approach to supervision, there are certain times when the *PRA* needs to monitor a *firm* more closely than it normally would. This is so the *PRA* can fulfil its function of supervising the safety

and soundness of *firms* properly and meet the *statutory objective* of securing an appropriate degree of protection for *policyholders* .

**App 2.3.2** **G**  
**PRA**

The *rules* in ■ SUP App 2.1 to ■ 2.14 require a *firm* to submit reports and information to the PRA when:

- (1) a *firm* is failing to satisfy *threshold condition* 4D or 5D as applicable , and its capital resources have fallen below its required margin of solvency, or its guarantee fund; or
- (2) the capital resources of a *firm* have fallen below its *capital resources requirement*; or
- (3) a *firm* has decided to cease to effect new *contracts of insurance*; or
- (4) a *firm* is going through periods of potential uncertainty, for example, when it has come under the *control* of a new *parent undertaking* or following the grant or variation of *permission*.

**App 2.3.3** **G**  
**PRA**

The PRA may also ask a *firm* to submit reports and information to it when the *firm's* capital resources fall below the level advised in *individual capital guidance* given to the *firm*.

**App 2.3.4** **G**  
**PRA**

In accordance with the *Insurance Directives*, a *firm* whose capital resources have fallen below its required margin of solvency, or its guarantee fund, is required, by the *rule* set out in this appendix, to submit a *scheme of operations*, together with an explanation of how its capital resources will be adequately restored. In order to secure an appropriate degree of protection for *policyholders* , the PRA applies the *rule* in this appendix to *firms* to which the provisions of the *Insurance Directives* would not otherwise apply.

**App 2.3.5** **G**  
**PRA**

A *firm* which is entering into run-off is required to submit a *scheme of operations*, including an explanation of how its *liabilities to policyholders* will be met in full. Where the capital resources of such a *firm* subsequently fall below its required margin of solvency, the *firm* is required to submit a plan for restoration.

**App 2.3.6** **G**  
**PRA**

Following a change in *control*, or the grant or variation of *permission*, the reports submitted help the PRA to identify when a *firm* departs from the *scheme of operations* submitted as part of the notification of a change in *control*, or an application for the grant or variation of *permission*, and on which basis such notification or application was approved.

**App 2.3.7** **G**  
**PRA**

*Principle 4* of the PRA's Principles for Businesses provides that *firm's* should hold adequate financial resources, while ■ GENPRU 1.2.26 R requires a *firm* to maintain overall financial resources which are adequate to ensure that there is no significant risk that it cannot meet its liabilities as they fall due. In considering these requirements, a *firm* may decide to maintain capital resources above the level advised in *individual capital guidance* given by the PRA , or, if no *individual capital guidance* has been given, above its *capital resources requirement*. The amount of any such additional capital resources held is at the discretion of the *firm*. However, the extent to which a *firm* matches these additional capital resources to the volatility of its capital base, in conjunction with the strength of its systems and controls environment, is likely to affect the frequency with which it is subject to intervention under this appendix.

App 2.3.8 **G**  
**FCA** **PRA**

In relation to a *firm* carrying on *with-profits insurance business*, action which it takes either to restore its capital resources to the levels set by the intervention points in this appendix, or to prevent its capital resources falling below those points, should be consistent with *Principle 6* of the *FCA's Principles for Businesses*. The *FCA's Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly.

App 2.3.9 **G**  
**PRA**

These *rules* are in addition to the other *rules* and *guidance* in *SUP*, in particular **■ SUP 2** (Information gathering by the *appropriate regulator* on its own initiative), **■ SUP 15** (Notifications to the *FCA* or *PRA*), **SUP 16** (Reporting requirements) and the *Principles for Businesses (PRIN)*.

## 2.4 Capital resources below guarantee fund

App 2.4.1 **R**  
**PRA**

If a *firm's* capital resources fall below its guarantee fund, it must, within 14 days of the *firm* becoming aware of this event, submit to the *PRA* a short-term financial plan, including:

- (1) a *scheme of operations* (see **■ SUP App 2.12**); and
- (2) an explanation of how, if at all, and by when, it expects its capital resources to be adequately restored to the *guarantee fund*.

App 2.4.2 **G**  
**PRA**

See **■ SUP App 2.11.2 G** for guidance on the period that the *scheme of operations* should cover.

## 2.5 Capital resources below required margin of solvency

App 2.5.1 **R**  
**PRA**

Unless **■ SUP App 2.5.3 R** applies:

- (1) if a *firm's* capital resources are such that they no longer equal or exceed its required margin of solvency; or
- (2) if a *firm* no longer complies with **■ GENPRU 2.2.32 R** and **■ GENPRU 2.2.28 R**, or **■ INSPRU 6.1.45 R (1)(a)** and **■ INSPRU 6.1.45 R (1)(b)**, as applicable;

it must, within 28 days of becoming aware of this event, submit to the *PRA* a plan for the restoration of a sound financial position, including:

- (3) a *scheme of operations*; and
- (4) an explanation of how, if at all, and by when:



- (a) it expects its capital resources to be restored to the required margin of solvency; or
- (b) as the case may be, it expects to comply with ■ GENPRU 2.2.32 R and ■ GENPRU 2.2.28 R, or ■ INSPRU 6.1.45 R (1)(a) and ■ INSPRU 6.1.45 R (1)(b), as applicable.

App 2.5.2 **G**  
PRA

See ■ SUP App 2.11.2 G for *guidance* on the period that the *scheme of operations* should cover.

App 2.5.3 **R**  
PRA

If a *firm*:

- (1) falls into ■ SUP App 2.5.1 R (1) or ■ SUP App 2.5.1 R (2); and
- (2) it has previously submitted either a run-off plan in accordance with ■ SUP App 2.8.1 R or a *scheme of operations* in accordance with ■ SUP App 2.5.1 R;

it must, within 28 days of becoming aware that it falls into ■ SUP App 2.5.1 R (1) or ■ SUP App 2.5.1 R (2):

- (3) notify the PRA; and
- (4) submit a plan for restoration which:
  - (a) explains why the *firm's* capital resources have fallen below its required margin of solvency or, as the case may be, it no longer complies with ■ GENPRU 2.2.32 R or ■ GENPRU 2.2.28 R, or ■ INSPRU 6.1.45 R (1)(a) and ■ INSPRU 6.1.45 R (1)(b), as applicable; and
  - (b) demonstrates how, if at all, and by when, the *firm* will restore it or, as the case may be, resume compliance with ■ GENPRU 2.2.32 R and ■ GENPRU 2.2.28 R, or ■ INSPRU 6.1.45 R (1)(a) and ■ INSPRU 6.1.45 R (1)(b) , as applicable.

App 2.5.4

[Deleted]

App 2.5.5

[Deleted]

2.6

Capital resources below capital resources requirement

App 2.6.1 **R**  
PRA

Unless any of ■ SUP App 2.4.1 R, ■ SUP App 2.5.1 R or ■ SUP App 2.5.3 R applies, if a *firm's* capital resources fall below its *capital resources requirement*, it must, within 28 days of becoming aware of this event:

- (1) notify the PRA; and

- (2) submit a plan for restoration, which:
- (a) explains why the *firm's* capital resources have fallen below its *capital resources requirement*; and
  - (b) demonstrates how, if at all, and by when, the *firm* will restore it.

## 2.7 Capital resources below the level of individual capital guidance

**App 2.7.1** G  
FCA PRA

Unless any of ■ SUP App 2.4.1 R, ■ SUP App 2.5.1 R, ■ SUP App 2.5.3 R or ■ SUP App 2.6.1 R applies, if a *firm's* circumstances change, such that its capital resources have fallen, or are expected to fall, below the level advised in *individual capital guidance* given to the *firm* by the *appropriate regulator*, then, consistent with ■ PRIN 2.1.1 R *Principle 11* (Relations with regulators), a *firm* should inform the *appropriate regulator* of this fact as soon as practicable, explaining why capital resources have fallen, or are expected to fall, below the level advised in *individual capital guidance*, and:

- (1) what action the *firm* intends to take to increase its capital resources; or
- (2) what modification the *firm* considers should be made to the *individual capital guidance* which it has been given.

**App 2.7.2** G  
PRA

In the circumstance set out in ■ SUP App 2.7.1 G, the *PRA* may ask a *firm* for alternative or more detailed proposals and plans or further assessments and analyses of capital adequacy and risks faced by the *firm*. The *PRA* will seek to agree with the *firm* appropriate timescales and scope for any such additional work, in light of the circumstances which have arisen.

**App 2.7.3** G  
FCA PRA

In relation to a *firm* carrying on *with-profits insurance business*, if it intends either (a) to remedy a fall in the level of capital resources advised in its *individual capital guidance*, or (b) to prevent a fall in the level advised in that *guidance*, for example, in either case, by taking management action to de-risk a *with-profits fund* or by reducing non-contractual benefits for *policyholders*, it should explain to the *appropriate regulator* how such proposed actions are consistent with the *firm's* obligations under the *FCA's Principle 6* (Customers' interests).

**App 2.7.4** G  
PRA

If a *firm's* capital resources fall below the level advised in *individual capital guidance* given to the *firm* and, at the same time, any one or more of ■ SUP App 2.4.1 R, ■ SUP App 2.5.1 R, ■ SUP App 2.5.3 R or ■ SUP App 2.6.1 R applies, the *firm* should first comply with those *rules*. Those *rules* are concerned with circumstances where capital resources are likely to have fallen to levels much lower than the level advised in *individual capital guidance* and are, in some cases, requirements imposed by the *Insurance Directives*.

**App 2.7.5** G  
PRA

If a *firm* has not accepted *individual capital guidance* given by the *PRA* it should, nevertheless, inform the *PRA* as soon as practicable if its capital resources have fallen below the level suggested by that *individual capital guidance*. In such circumstances, the *PRA* may ask the *firm* for further explanation as to why it does not consider the *individual capital guidance* to be appropriate. The *PRA* may also consider using its powers under section 55M of the *Act* to, on its own initiative, require a *firm* to hold such capital as the *PRA* considers is necessary for the firm to comply with ■ GENPRU 1.2.26 R.

## 2.8 Ceasing to effect contracts of insurance

**App 2.8.1** R  
FCA PRA If a *firm* decides to cease to effect new *contracts of insurance*, it must, within 28 days of that decision, submit a run-off plan to the *appropriate regulator* including:

- (1) a *scheme of operations*; and
- (2) an explanation of how, or to what extent, all liabilities to *policyholders* (including, where relevant, liabilities which arise from the regulatory duty to treat *customers* fairly in setting discretionary benefits) will be met in full as they fall due.

**App 2.8.2** G  
PRA ■ SUP App 2.8.1 R only applies if a *firm* ceases to *effecting new contracts of insurance* in respect of the whole of its *insurance business*.

**App 2.8.3** G  
PRA For the purposes of ■ SUP App 2.8.1 R, a new *contracts of insurance* excludes contracts effected under a term in a subsisting *contract of insurance*.

**App 2.8.4** G  
FCA PRA Under *Principle 11*, the *appropriate regulator* normally expects to be notified by a *firm* when it decides to cease *effecting new contracts of insurance* in respect of one or more *classes of contract of insurance* (see ■ SUP 15.3.8 G). At the same time, the *appropriate regulator* would normally expect the *firm* to discuss with it the need for the *firm* to apply to vary its *permission* (see ■ SUP 6.2.6 G and ■ SUP 6.2.7 G) and, if appropriate, to submit a *scheme of operations* in accordance with ■ SUP App 2.8.1 R.

**App 2.8.5** G  
PRA See ■ SUP App 2.11.2 G for *guidance* on the period that the *scheme of operations* should cover.

## 2.9 Under control of a new parent undertaking

**App 2.9.1** G [deleted]

**App 2.9.2** [Deleted]

**App 2.9.3** [Deleted]

**App 2.9.4** [Deleted]

**App 2.9.5** [Deleted]

**App 2.9.6** [Deleted]

**App 2.9.7** [Deleted]

**App 2.9.8** [Deleted]

**App 2.9.9** [Deleted]

## 2.10 Grant or variation of permission

**App 2.10.1** **G**  
**FCA PRA** The *PRA* may ask a *firm* seeking a grant or variation of *permission* to provide a *scheme of operations* as part of the application process (see ■ SUP 6.3.25 G). Such a *firm* is not required to submit a further *scheme of operations* under this appendix unless ■ SUP App 2.4, ■ SUP App 2.5 or ■ SUP App 2.8 applies. ■ SUP App 2.13 and ■ SUP 6 Annex 4 do, however, apply to such a *firm*.

**App 2.10.2** [Deleted]

**App 2.10.3** [Deleted]

**App 2.10.4** [Deleted]

## 2.11 Submission of a scheme of operations or a plan for restoration

**App 2.11.1** **G**  
**PRA** A *firm* should discuss its plan in draft with the *PRA* before submitting it. If a plan is submitted which does not satisfy the *PRA* that the *firm* can restore its capital resources (as appropriate), or meet its liabilities as they fall due, the *PRA* may use its *own-initiative power* to vary or cancel the *firm's* permission. If a *firm* submitting a plan is part of a *group of companies*, the *PRA* may ask that *firm* to provide additional information in relation to other *companies* in the *group*, if this is necessary to establish how the *firm* will restore its own sound financial position. The *firm* should agree in discussion with the *PRA* the nature of such additional information.

**App 2.11.2** **G**  
**PRA** The schemes of operations required when a *firm's* capital resources have fallen below its required margin of solvency or its guarantee fund (see ■ SUP App 2.5.1 R and ■ SUP App 2.4.1 R, respectively) should cover a period which is sufficient to demonstrate that the *firm's* capital resources will be adequately restored. Typically this would be a period of at least three years. However, if a scheme of operations has expired, but ■ SUP App 2.4.1 R or ■ SUP App 2.5.1 R continues to apply, the *firm* should submit a new *scheme of operations*. The *scheme of operations* required by ■ SUP App 2.8.1 R, when a *firm* ceases to *effect new contracts of insurance*, should cover the run-off period until all *liabilities to policyholders* are met.

**App 2.11.3** **G**  
**PRA** The period to be covered by, and the details to be included in, the plan for restoration required by ■ SUP App 2.5.3 R will depend on the circumstances of the *firm*, why its capital resources have fallen below its required margin of solvency and the degree of risk that that fall will be repeated, even if the *firm* restores its capital resources in accordance with its plan.

**App 2.11.4** **G**  
**FCA PRA** In relation to a *firm* which carries on *with-profits insurance business* and which submits a plan, the *appropriate regulator* would expect an explanation of how any actions it plans to take to restore capital resources to the level of the guarantee fund, required margin of solvency or *capital resources requirement* are consistent with the *firm's* obligations under the *FCA's Principle 6* (Customers' interests).

## 2.12 Content of a scheme of operations

### App 2.12.1 R

PRA

A *scheme of operations* must:

- (1) describe the *firm's* business strategy;
- (2) include financial projections (including appropriate scenarios and stress-tests) as follows:
  - (a) a forecast summary profit and loss account in accordance with
    - SUP App 2.12.7 R;
  - (b) a forecast summary balance sheet in accordance with
    - SUP App 2.12.8 R; and
  - (c) a forecast statement of capital resources in accordance with
    - SUP App 2.12.9 R; and
- (3) as at the end of each *financial year* which falls (in whole or part) within the period to which the *scheme of operations* relates:
  - (a) describe the assumptions which underlie those forecasts and the reasons for adopting those assumptions; and
  - (b) identify any material transactions proposed to be effected or carried out with, or in respect of, any *associate*.

### App 2.12.2 G

PRA

The business strategy referred to at ■ SUP App 2.12.1 R (1) should include a description of the nature of the risks which the *firm* is underwriting, or intends to underwrite. It should also give an explanation of the *firm's* strategy for managing the risks associated with carrying on *insurance business* (including, in particular, *reinsurance*).

### App 2.12.3 G

PRA

The amount of detail to be given on the *firm's* business strategy required by ■ SUP App 2.12.1 R (1) should be appropriate to the scale and complexity of the *firm's* operations and the degree of risk involved.

### App 2.12.4 R

PRA

The information required by ■ SUP App 2.12.1 R (1) must reflect the nature and content of the *rules* relating to capital resources applicable to a *firm*.

### App 2.12.5 G

PRA

In relation to *firms* covered by ■ SUP App 2.1 to ■ 2.14, IPRU(FSOC) 4.1 sets out the *rules* relating to capital resources for *non-directive friendly societies* and ■ GENPRU 2.1, ■ GENPRU 2.2 and ■ INSPRU 6.1 set out the *rules* relating to capital resources for every other *firm*. The capital resources which a *firm* is required to maintain vary according to whether the *firm* has its head office in the *United Kingdom* or overseas, and depending on the nature of the *insurance business* it carries on. The information which a *firm* is required to submit under ■ SUP App 2.12.1 R should reflect the nature and content of the *rules* relating to capital resources identified above. For example, in order to satisfy ■ SUP App 2.12.1 R, a *firm* with its head office outside the *United*

*Kingdom* which is carrying on direct *insurance business* in the *United Kingdom* should submit separate information concerning its world-wide activities and its *UK* activities.

App 2.12.6 **G**

PRA

To reflect its obligations under ■ GENPRU 2.2.22 G or IPRU(FSOC) 4.1(2) (as applicable), in order to comply with ■ SUP App 2.12.1 R, a *firm* which carries on both *long-term insurance business* and *general insurance business* should submit separate information for each type of *insurance business*.

App 2.12.7 **R**

PRA

Summary profit and loss account (see ■ SUP App 2.12.1 R (2)(a))

- (1) **Premiums and claims (gross and net of reinsurance) analysed by accounting class of insurance business**
- (2) **Investment return**
- (3) **Expenses**
- (4) **Other charges and income**
- (5) **Taxation**
- (6) **Dividends paid and accrued**

App 2.12.8 **R**

PRA

Summary balance sheet (see ■ SUP App 2.12.1 R (2)(b))

- (1) **Investments analysed by type**
- (2) **Assets held to cover linked liabilities**
- (3) **Other assets and liabilities separately identifying cash at bank and in hand**
- (4) **Capital and reserves analysed into called up *share* capital or equivalent funds, share premium account, revaluation reserve, other reserves and profit and loss account**
- (5) **Subordinated liabilities**
- (6) **The fund for future appropriations**
- (7) **Technical provisions gross and net of *reinsurance* analysed by accounting class of insurance business and separately identifying the provision for linked liabilities, *unearned premiums*, unexpired risks and equalisation**
- (9) **Other liabilities and credits**

App 2.12.9 **R**

PRA

A forecast statement of capital resources (under ■ SUP App 2.12.1 R (2)(c)) must include the forecast capital resources and the forecast required margin of solvency at the end of each *financial year* or part *financial year*.

## 2.13 Obligations on firms which have previously submitted a scheme of operations

App 2.13.1 **R**  
PRA

A *firm* which has submitted a *scheme of operations* to the *PRA*, whether required by ■ SUP App 2.4, ■ SUP App 2.5 or ■ SUP App 2.8, or as part of an application under ■ SUP 6.3 (see ■ SUP 6.3.25 G), ■ SUP 6.4 (see ■ SUP 6 Annex 4), or ■ SUP 11.5 (see ■ SUP 11.5.5 G), or an amended *scheme of operations*, must during the period covered by that *scheme of operations*:

- (1) notify the *PRA* at least 28 days before entering into or carrying out any material transaction with, or in respect of, an *associate*, unless that transaction is in accordance with a *scheme of operations* which has been submitted to the *PRA*;
- (2) submit a quarterly financial return to the *PRA* which must include for, or as at the end of, each quarter:
  - (a) a summary profit and loss account prepared in accordance with ■ SUP App 2.12.7 R;
  - (b) a summary balance sheet prepared in accordance with ■ SUP App 2.12.8 R; and
  - (c) a statement of capital resources prepared in accordance with ■ SUP App 2.12.9 R;

and which must identify and explain differences between the actual results and the forecasts submitted in the *scheme of operations*; and
- (3) notify the *PRA* promptly of any matter which has either happened or is likely to happen and which represents a significant departure from the *scheme of operations*; the *firm* must either:
  - (a) explain the nature of the departure and the reasons for it and provide revised forecast financial information in the *scheme of operations* for its remaining term; or
  - (b) include an amended *scheme of operations* and explain the amendments and the reasons for them.

App 2.13.2 **R**  
PRA

A report under ■ SUP App 2.13.1 R (2) must be submitted in accordance with the *rules* in SUP 16.3.6R to SUP 16.3.13R.

App 2.13.3 **G**  
PRA

For the purpose of ■ SUP App 2.13.1 R (1), the *PRA* considers that transactions with, or in respect of, *associates* include:

- (1) contracting (as either party), advancing, repaying, writing off or agreeing to change the terms of any loan;

- (2) entering into (in any capacity), releasing, calling upon or agreeing to change the terms of any guarantee, pledge, security, charge or any off-balance-sheet transaction;
- (3) entering into agreements to acquire or dispose of property or which otherwise affect the nature or value of the *firm's* assets;
- (4) making an investment (directly or indirectly) in an *associate*;
- (5) entering into (as either party), commuting or agreeing to change the terms of, any contract of *reinsurance*; and
- (6) entering into, or changing the terms of, any agreement to give or provide services or to share costs.

App 2.13.4 **G**

PRA

The PRA considers that a significant departure referred to in ■ SUP App 2.13.1 R (3) includes:

- (1) entry or withdrawal from a line of *insurance business*;
- (2) significant revision of the *firm's* strategy for managing risks, in particular the basis upon which risks are reinsured;
- (3) forecast *premiums* being exceeded, by more than 10%, for a single *financial year* (or part year if the period covered by the *scheme of operations* is or includes part of a *financial year*);
- (4) *claims* experience being significantly worse than forecast for a single *financial year* (or part year if the period covered by the *scheme of operations* is or includes part of a *financial year*);
- (5) the actual level of capital resources being significantly worse than forecast;
- (6) paid or proposed dividends being greater than those forecast; and
- (7) any other transaction or circumstance which is likely to have a material effect upon available assets (as defined in *IPRU(INS)* 11.1).

## 2.14 Financial Recovery Plan

App 2.14.1 **G**

PRA

When:

- (1) the PRA has required a financial recovery plan within the meaning of article 20a of the *First Non-Life Directive*;
- (2) the PRA is of the view that *policyholders'* rights are threatened because the financial position of the *firm* is deteriorating; and
- (3) the PRA decides to require the *firm* to hold more capital than would otherwise be required under the *Handbook* to ensure that the *firm* will be able to fulfil the required margin of solvency in the near future;



any such higher capital requirement will be based on the financial recovery plan.

## 2.15 Run-off plans for closed with-profits funds

App 2.15.1 **G**  
FCA

The run-off plan required by ■ COBS 20.2.53 R should include the information described in ■ SUP App 2.15.2 G to ■ SUP App 2.15.13 G in respect of the relevant *with-profits fund*.

### Funding

App 2.15.2 **G**  
FCA

A *firm's* run-off plan should describe how the *firm* proposes to manage the run-off of the *with-profits fund*. That description should include:

- (1) details of the expected duration and costs of fully running off the fund's liabilities;
- (2) an explanation as to how a solvent run-off will be funded; and
- (3) details of the *firm's* future strategy for managing the risks associated with the run-off of the fund.

### Investment risk

App 2.15.3 **G**  
FCA

A *firm's* run-off plan should include an explanation of its future investment strategy, including:

- (1) its strategy for matching the *with-profits fund's* liabilities with appropriate assets; and
- (2) any changes it expects to make to the *with-profits fund's* investment strategy as a result of the closure of the *with-profits fund*, including any changes to the proportions of different types of investments.

### Credit risk

App 2.15.4 **G**  
FCA

A *firm's* run-off plan should include an explanation of its strategy for managing the *with-profits fund's* counterparty and *credit* risk, both within and external to the *firm's group*.

### Operational risk

App 2.15.5 **G**  
FCA

A *firm's* run-off plan should show how it will address any additional operational risks that may flow from the closure of the *with-profits fund*, including:

- (1) any changes that it proposes to make to staffing arrangements for the run-off;
- (2) an estimate of the cost of proposed operational changes, including redundancy costs; and
- (3) any *material outsourcing* arrangements it proposes to enter into, explaining how the *firm* will address any specific operational risks created by those arrangements.

## Reinsurance

App 2.15.6 G

FCA

A *firm's* run-off plan should explain how it will use and manage *reinsurance* (if it will), including:

- (1) any new inwards or outwards *reinsurance* it proposes to enter into as a result of the closure of the *with-profits fund* identifying, in each case, the proposed counterparty and the counterparty's relationship to the *firm's group* (if any); and
- (2) how it will manage the risk that the *reinsurance* in (1) will not perform as expected.

## Governance and impact on policy holders

App 2.15.7 G

FCA

A *firm's* run-off plan should include:

- (1) details of any changes that will be made to the *firm's* corporate governance arrangements as a consequence of closure;
- (2) an explanation of how costs charged to the *with-profits fund* may change in the light of closure;
- (3) an explanation of any changes it will make, as a consequence of closure, to any charges for guarantees, including:
  - (a) the circumstances in which those charges may be varied in the future; or
  - (b) the manner by which the level of any appropriate variation to those charges may be determined;
- (4) an explanation of any actual or potential changes in the maturity payment or surrender payment target ranges that the *firm* will apply to determine benefits under its *with-profits policies*;
- (5) an explanation of any actual or potential changes in the *firm's* smoothing policy as a consequence of closure;
- (6) an explanation of any changes to the *firm's projection* rates as a consequence of closure;
- (7) details of any new deductions to be made from the *firm's* surrender payments, together with an explanation as to how those deductions are consistent with:
  - (a) *Principle 6* (Customers' interests); and
  - (b) ■ COBS 20.2.11 G to ■ COBS 20.2.16 R (Amounts payable under with-profits policies: Surrender payments);
- (8) if there are groups of unitised *with-profits policies* in the *with-profits fund* with similar market value reduction free dates, an explanation as to whether:
  - (a) the *firm* expects surrenders to peak around any of those dates; and
  - (b) if it does, how it proposes to deal with those peaks;
- (9) details of the information that the *firm* gives to its *with-profits policyholders* about their right (if any) to use the proceeds of a *personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity* contract or *pension buy-out contract* to purchase an annuity on the open market when the relevant contracts or schemes vest

or mature and any changes that will be made to that information as a result of the closure;

- (10) details of how the *firm* will deal with any potential mis-selling costs that may arise in the future in respect of *contracts of insurance* effected in the *with-profits fund*;
- (11) an explanation of how the *firm*:
- (a) anticipates capital will become available for distribution to *policyholders* (and shareholders where appropriate); and
  - (b) will ensure a full and fair distribution of the closed *with-profits fund*, including any *inherited estate*;
- including details of:
- (c) how the *firm* plans to provide in the long term for *annuity* payments on any *with-profits* and non-profits *policies* under which benefits have vested;
  - (d) how the *firm* will address future adverse circumstances in relation to these (e.g. increased annuitant longevity); and
  - (e) details of the *firm's* plans for distributing the embedded value in any major *subsidiaries* held in or by the closed *with-profits fund*;
- (12) an explanation of any material differences between the *firm's* run-off plan and relevant parts of its *PPFM*, together with details of any changes that will be made to the *PPFM* as a consequence of closure (The *firm* should provide the *FCA* with a copy of the revised sections of its *PPFM* when it submits its run-off plan.);
- (13) an explanation of whether the *firm* will be seeking to expand any other business following closure of the *with-profits fund*. (This explanation should include whether the *firm* will effect any new *with-profits policies* in a different *with-profits fund* and whether it will seek to expand its unit-linked or *non-profit insurance business*. It should also include an explanation of how such plans will impact on the closed *with-profits fund*. For example, will the *firm* offer *policyholders* in the closed *with-profits fund* the opportunity to switch into another with-profits fund or into unit-linked business?)

### Financial projections

#### App 2.15.8 G

FCA

A *firm's* run-off plan should include:

- (1) a forecast summary revenue account for the *with-profits fund*, in the form of ■ SUP App 2.15.9 G Table 1;
  - (2) a forecast summary balance sheet and statement of solvency for the *with-profits fund*, which has been prepared in the form of ■ SUP App 2.15.9 G Table 2 and on a regulatory basis; and
  - (3) a forecast summary balance sheet and statement of solvency for the entire *firm*, which has been prepared in the form of ■ SUP App 2.15.9 G Table 3 and on a regulatory basis;
- in each case, for at least a three year period, beginning on the date of closure; and
- (4) a description of the assumptions underlying the forecasts at (1) to (3) and the reasons for adopting those assumptions.

App 2.15.9 G

FCA

These tables belong to ■ SUP App 2.15.8 G

**Table 1 - forecast summary revenue account for the relevant with-profits fund**

- (1) *Premiums and claims* (gross and net of *reinsurance*) analysed by major *class of insurance business*
- (2) Investment return
- (3) Expenses
- (4) Other charges and income
- (5) Taxation
- (6) Increase (decrease) in fund in financial year
- (7) Fund brought forward
- (8) Fund carried forward

**Table 2 - forecast summary balance sheet and statement of solvency for the relevant with-profits fund**

- Assets analysed by type (excluding *implicit items*):
- (1) Equities
  - (2) Land and buildings
  - (3) Fixed interest investments
  - (4) All other assets
  - (5) Total assets (excluding *implicit items*)
  - (6) *Policyholder* liabilities
  - (7) Other liabilities
  - (8) Total liabilities
  - (9) Excess/(deficiency) of assets over liabilities before *implicit items*
  - (10) *Implicit items* allocated to the *with-profits fund*
  - (11) *Long-term insurance capital requirement* for the *with-profits fund*
  - (12) *Resilience capital requirement* for the *with-profits fund*
  - (13) *With-profits insurance capital component* (for *realistic basis life firms* only)
  - (14) Net excess/(deficiency) of assets in the *with-profits fund*

**Table 3 - forecast summary balance sheet and statement of solvency for the firm**

- L1 Surplus *long-term insurance assets, with-profit fund(s)*
- L2 Surplus *long-term insurance assets, non-profit fund(s)*
- L3 Total *long-term insurance assets* L1+L2
- L4 Total *long-term insurance liabilities* (excluding *resilience capital requirement*)
- L5 Total *long-term insurance fund surplus* L3-L4
- L6 Shareholder fund assets
- L7 *Implicit items*

Table 3 - forecast summary balance sheet and statement of solvency for the firm

L8	Long-term insurance capital requirement	
L9	Excess of regulatory assets over long-term insurance capital requirement	L5+L6+L7-L8
L10	With-profits insurance capital component	For realistic basis life firms only.
L11	Resilience capital requirement	
L12	Net excess assets	L9-L10-L11
L13	FTSE level at which the long-term insurance capital requirement would be breached	

App 2.15.10 **G**  
FCA

If a firm is a realistic basis life firm, its run-off plan should include:

- (1) a realistic balance sheet and statement of solvency position in the form of **■** SUP App 2.15.9 G Table 2, if the financial position of the relevant *with-profits fund* would, when stated in that form, be materially different from the firm's most recent realistic solvency submission for that fund; or
- (2) a statement that the firm is satisfied that the closure of the *with-profits fund* will not materially affect the realistic solvency position of that fund, as reflected in the firm's most recent realistic solvency submission for that fund.

App 2.15.11 **G**  
FCA

A firm's run-off plan should include:

- (1) a revised individual capital assessment for the firm (see INSPRU 7.1 ), which reflects the impact of the closure of the relevant *with-profits fund*; or
- (2) a statement that the firm is satisfied that the closure will not materially affect the firm's most recent assessment.

App 2.15.12 **G**  
FCA

A firm's run-off plan should include details of any:

- (1) intra-group balances held by the *with-profits fund*;
- (2) group company investments held by the *with-profits fund*; and
- (3) guarantees given by the firm;

which, in each case, have a value in excess of 5% of the firm's gross technical provisions.

App 2.15.13 **G**  
FCA

A firm's run-off plan should include any other information that the firm considers relevant to the run-off of the closed *with-profits fund*.

App 2.15.14 **G**  
FCA

Either regulator may request additional information and explanations from the firm. (See section 165 (Regulators' power to require information) of the Act.)

App 2.15.15 **G**  
FCA

Significant changes to, or departures from, a *firm's* run-off plan are likely to trigger one or more of the *firm's* obligations to notify the FCA. (See, for example, *Principle 11* (Relations with regulators). The guidance in ■ SUP 15.3 (General notification requirements) may also be relevant.)

## 2.16 Regulatory intervention points for Lloyd's

### Application

App 2.16.1 **R**  
PRA

The *rules and guidance* in ■ SUP App 2 apply to the *Society*:

- (1) with the modifications set out in ■ SUP App 2.16.2 R to ■ SUP App 2.16.5 R; but
- (2) except ■ SUP App 2.8.1 R to ■ SUP App 2.8.5 G, ■ SUP App 2.9.1 G, ■ SUP App 2.10.1 G, ■ SUP App 2.12.1 R (2)(a), ■ SUP App 2.12.2 G and ■ SUP App 2.12.7 R.

### Interpretation

App 2.16.2 **R**  
PRA

For the purpose of ■ SUP App 2.16 and the application of ■ SUP App 2 to the *Society*:

- (1) "capital resources", as the context requires:
  - (a) in relation to the *Society's* own *capital resources*, means its own capital resources calculated in accordance with the *capital resources table*;
  - (b) in relation to a *member's capital resources*, means the *member's capital resources* calculated in accordance with ■ GENPRU 2.3.22 R;
  - (c) in relation to the aggregate *capital resources* of the *Society* and the *members* supporting the *insurance business* of the *members*, means the aggregate of the *capital resources* in (1)(a) and (b) but excluding the *Society's callable contributions*;
- (2) "guarantee fund":
  - (a) in relation to the *general insurance business* carried on by *members*, means the amount of capital resources required in order to comply with ■ GENPRU 2.2.26 R, ■ GENPRU 2.3.17 G and ■ GENPRU 2.3.26 R; and the "*member's share of the guarantee fund*" for *general insurance business* means the result of the calculation set out in ■ GENPRU 2.3.27 R;
  - (b) in relation to the *long-term insurance business* carried on by *members*, means the amount of capital resources required in order to comply with ■ GENPRU 2.2.25 R and ■ GENPRU 2.3.17 G; and the "*member's share of the guarantee fund*" for *long-term insurance*

*business* means the result of the calculation set out in  
 ■ GENPRU 2.3.25 R;

- (3) "required margin of solvency":
  - (a) in relation to the *general insurance business* carried on by *members*, means the higher of the *Society GICR* and the *general insurance capital requirement* for the *members* in aggregate; and
  - (b) in relation to the *long-term insurance business* carried on by *members*, means the *long-term insurance capital requirement* for the *members* in aggregate.

**Capital resources below guarantee fund**

App 2.16.3 R  
 PRA

For the purposes of ■ SUP App 2.4.1 R and ■ SUP App 2.4.2 G, *capital resources* will have fallen below the guarantee fund if the *Society's* own capital resources are such that they are no longer sufficient to meet the aggregate of, for each *member*, the amount, if any, by which the *member's* capital resources fall short of the *member's* share of the guarantee fund.

**Capital resources below required margin of solvency**

App 2.16.4 R  
 PRA

For the purposes of ■ SUP App 2.5.1 R to ■ SUP App 2.5.3 R, capital resources will be such that they no longer equal or exceed the required solvency margin if the *Society's* own capital resources are insufficient to meet the aggregate of, for each *member*, the amount, if any, by which the *member's* capital resources fall short of the *member's* share of the required solvency margin.

**Capital resources below capital resources requirement**

App 2.16.5 R  
 PRA

For the purposes of ■ SUP App 2.6.1 R, capital resources will have fallen below the *capital resources requirement* if the *Society's* own capital resources are insufficient to meet the aggregate of, for each *member*, the amount, if any, by which the *member's* capital resources fall short of the *member's* share of the *capital resources requirement* for the *members* in aggregate.

**Capital resources below the level of individual capital guidance**

App 2.16.6 G  
 PRA

For the purposes of ■ SUP App 2.7.1 G to ■ SUP App 2.7.5 G, capital resources will have fallen below the level of *individual capital guidance* if the *Society's* own capital resources have fallen below the level advised in *individual capital guidance* given to the *Society* in respect of those capital resources.

# Appendix 3

## Guidance on passporting issues

### 3.1 Application

App 3.1.1 G  
FCA PRA

This appendix applies to all *firms* when carrying on a *passporting activity*, except for a *firm* which is only carrying on a *passporting activity* under the *auction regulation*.

### 3.2 Purpose

App 3.2.1 G  
FCA PRA

The purpose of this appendix is to give *guidance*:

- (1) to *UK firms* on some of the issues that arise when carrying on *passporting activities* (see ■ SUP App 3.5 and ■ SUP App 3.6 );
- (2) to all *firms* on the relationship between *regulated activities* and activities passported under the *Single Market Directives* (see ■ SUP App 3.9 and ■ SUP App 3.10 ).

### 3.3 Background

#### The Treaty on the Functioning of the European Union

App 3.3.1 G  
FCA PRA

- (1) The *Treaty* establishes in *EU law* the rights of freedom of establishment and freedom to provide services in the *EU*.
- (2) The *Treaty* lays down central principles governing the legal framework for freedom of establishment and the free movement of services in the *EU*. There are, however, a number of areas where the legal position is not clear. This includes, for example, identifying whether a service is provided through an establishment, where the issues involved are complex. Therefore, this Appendix is intended to provide *guidance* but



cannot be regarded as comprehensive. Ultimately, the construction of the *Treaty* and relevant Directive provisions is a matter for the European Court of Justice.

App 3.3.2 **G**  
FCA PRA

The *Treaty* provides the framework for the provision of banking, insurance business, investment business, UCITS management services and insurance mediation, while the *Single Market Directives* clarify the rights and freedoms within that framework.

## EU and EEA

App 3.3.3 **G**  
FCA PRA

The agreement on the *European Economic Area*, signed at Oporto on 2 May 1992, extends certain *EU* legislation to those *EEA States* that are not Member States of the *EU*.

## Interpretative communications

App 3.3.4 **G**  
FCA PRA

In 1997, the European Commission published an interpretative communication (Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)) (the text of this directive and the First Banking Directive is now consolidated in the *Banking Consolidation Directive*). The European Commission's objective in publishing this communication was to explain and clarify the *EU* rules. The European Commission deemed it desirable "to restate in a Communication the principles laid down by the Court of Justice and to set out its position regarding the application of these Principles to the specific problems raised by the Second Banking Directive".

App 3.3.5 **G**  
FCA PRA

In 2000, the European Commission published a further interpretative communication (Freedom to provide services and the general good in the insurance sector (2000/C43/03)). This allowed the European Commission to publicise its own interpretation of the rules on the freedom to provide services.

App 3.3.6 **G**  
FCA PRA

- (1) The European Commission has not produced an interpretative communication on *MiFID*. It is arguable, however, that the principles in the communication on the Second Banking Directive can be applied to *investment services and activities*. This is because Chapter II of Title II of *MiFID* (containing provisions relating to operating conditions for investment firms) also applies to the *investment services and activities* of firms operating under the *Banking Consolidation Directive*.
- (2) The European Commission has not produced an interpretative communication on either the *Insurance Mediation Directive* or on the *UCITS Directive*.

App 3.3.7 **G**  
FCA PRA

In giving its views, communications made by the European Commission have the status of guidance and are not binding on the national courts of *EEA States*. This is because it is the European Court of Justice that has ultimate responsibility for interpreting the *Treaty* and secondary legislation. Accordingly, the communications "do not prejudice the interpretation that the Court of Justice ..., which is responsible in the final instance for interpreting the *Treaty* and secondary legislation, might place on the matter at issue." (European Commission interpretative communication: Freedom to provide services and the general good in the insurance sector (C(99) 5046). However, the Courts may take account of European Commission communications when interpreting the *Treaty* and secondary legislation.

App 3.3.8 **G**  
FCA PRA

*Firms* should also note that European Commission communications do not necessarily represent the views taken by all *EEA States*.

## E-Commerce

App 3.3.9 G  
FCA PRA

The *E-Commerce Directive* covers services provided at a distance by means of electronic equipment for the processing (including digital compression) and storage of data. The services would normally be provided in return for remuneration and must be provided at the individual request of a recipient (see recital 17 of the *E-Commerce Directive*). The Directive implements the *country of origin* approach to regulation. This approach makes *firms* subject to the conduct of business requirements of the *EEA State* from which the service is provided. This is subject to certain derogations (see ■ SUP App 3.3.11 G).

App 3.3.10 G  
FCA PRA

The *E-Commerce Directive* does not affect the responsibilities of *Home State* under the *Single Market Directives*. This includes the obligation of a *Home State regulator* to notify the *Host State regulator* of a *firm's* intention to establish a *branch* in, or provide *cross border services* into, the other *EEA State*.

App 3.3.11 G  
FCA PRA

There are, however, general derogations from the internal market provisions under article 3(3) of the *E-Commerce Directive*. The derogations include consumer contracts, the permissibility of unsolicited e-mail and certain insurance services (both life and non-life). Where these derogations apply, the *EEA States* in which the recipients of the service are based may continue to be able to impose their own requirements.

App 3.3.12 G

[deleted]

## Notification of establishing a branch or of providing cross border services

App 3.3.13 G  
FCA PRA

The *Single Market Directives* require *credit institutions*, *insurance undertakings* (other than *reinsurance undertakings*), *MiFID investment firms*, *UCITS management companies* and *insurance intermediaries* to make a notification to the *Home State* before establishing a *branch* or providing *cross border services*.

■ SUP 13.5 (Notices of intention) sets out the notification requirements for a *firm* seeking to establish a *branch* or provide *cross border services*. As *firms* will note, the decision whether a passport notification needs to be made will be a matter of interpretation. The onus is on *firms* to comply with the requirements of the *Act* and, where relevant, the laws of other *EEA States*. So, in cases of doubt, *firms* should obtain their own legal advice on the specific issues involved.

App 3.3.14 G  
FCA PRA

Blanket notification is the practice of the *Home State regulator* notifying all *Host State regulators* in respect of all activities regardless of any genuine intention to carry on the activity. This practice is discouraged by the *FCA* and *PRA*. However, a *firm* may be carrying on activities in the *United Kingdom* or elsewhere in a way that necessarily gives rise to a real possibility of the provision of services in other *EEA States*. In such cases, the *firm* should consider with its advisers whether it should notify the relevant authorities and include that possibility in its business plan.

3.4 [Deleted]

3.5 [Deleted]

### 3.6 Freedom to provide services

App 3.6.1 **G**  
FCA PRA

Article 56 (Services) of the *Treaty* grants to *EEA* nationals established in one *EEA State* the freedom to provide *cross border services* to other *EEA States*.

#### How services may be provided

App 3.6.2 **G**  
FCA PRA

Under the *Treaty*, the freedom to provide services within the EC may be exercised in three broad ways:

- (1) where the provider of a service moves temporarily to another *EEA State* in order to provide the service;
- (2) where the service is provided without either the provider or the recipient moving (in this situation the provision, and receipt, of the service may take place by post, telephone or fax, through computer terminals or by other means of remote control);
- (3) where the recipient of a service moves temporarily to another *EEA State* in order to receive (or, perhaps, commission the receipt of) the service within that State.

App 3.6.3 **G**  
FCA PRA

Under the *Single Market Directives*, however, *EEA rights* for the provision of services are concerned only with services provided in one of the ways referred to in ■ SUP App 3.6.2 G (1) and ■ (2) (How services may be provided).

App 3.6.4 **G**

[deleted]

#### Place of supply

App 3.6.5 **G**  
FCA PRA

In the opinion of the European Commission (and in the wording of the *Single Market Directives*) "only activities carried on within the territory of another Member State should be the subject of prior notification" (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)). In determining, for the purposes of notification, whether a service is to be provided 'within' another *EEA State*, it is necessary to determine the place of supply of the service.

App 3.6.6 G  
FCA PRA

An *insurance undertaking* that effects *contracts of insurance* covering risks or commitments situated in another *EEA State* should comply with the notification procedures for the provision of services within that *EEA State*. The location of risks and commitments is found by reference to the rules set out in paragraph 6 of schedule 12 to the *Act*, which derive from article 1 of the *Consolidated Life Directive* and article 2 of the *Second Non-Life Directive*. It may be appropriate for *insurers* to take legal advice as to how these rules are interpreted and applied in other *EEA States*. The need to passport may arise because of only one of the risks covered by an insurance policy. This includes, for example, where a policy covers a number of property risks and one of those properties is in another *EEA State*.

App 3.6.7 G  
FCA PRA

In respect of banking services, the European Commission believes that "...to determine where the activity was carried on, the place of provision of what may be termed the 'characteristic performance' of the service i.e. the essential supply for which payment is due, must be determined" (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)). In the view of the *FCA* and *PRA*, this requires consideration of where the service is carried out in practice.

App 3.6.8 G  
FCA PRA

The *FCA* and *PRA* are of the opinion that *UK firms* that are *credit institutions* and *MiFID investment firms* should apply the 'characteristic performance' test (as referred to in ■ SUP App 3.6.7 G) when considering whether prior notification is required for services business. *Firms* should note that other *EEA States* may take a different view. Some *EEA States* may apply a solicitation test. This is a test as to whether it is the consumer or the provider that initiates the business relationship.

App 3.6.9 G  
FCA PRA

In the case of a *UK firm* conducting portfolio management, for example, this would mean looking at where the investment decisions and management are actually carried on in order to determine where the service is undertaken. Similarly, a *UK stockbroker* that receives orders by telephone from a *customer* in France for execution on a *UK exchange* may be deemed to be dealing or receiving and transmitting orders within the territory of the *United Kingdom*. In such a case, whether the *firm* solicited the overseas investor would be irrelevant.

App 3.6.10 G  
FCA PRA

Where, however, a *credit institution* or *MiFID investment firm*:

- (1) intends to send a member of staff or a temporarily authorised intermediary to the territory of another *EEA State* on a temporary basis to provide financial services; or
- (2) provides advice, of the type that requires notification under either *MiFID* or the *Banking Consolidation Directive*, to *customers* in another *EEA State*;

the *firm* should make a prior notification under the freedom to provide services.

### Temporary activities

App 3.6.11 G  
FCA PRA

The key distinction in relation to temporary activities is whether a *firm* should make its notification under the freedom of establishment in a *Host State*, or whether it should notify under the freedom to provide services into a *Host State*. It would be inappropriate to discuss such a complex issue in *guidance* of this nature. It is recommended that, where a *firm* is unclear on the distinction, it should seek appropriate advice. In either case, where a *firm* is carrying on activities in another *EEA State* under a *Single Market Directive*, it should make a notification.

App 3.6.12 G

[deleted]

App 3.6.13 **G** [deleted]

App 3.6.14 **G** [deleted]

### Monitoring procedures

App 3.6.15 **G**

**FCA** **PRA**

The *FCA* and *PRA* consider that, in order to comply with *Principle 3: Management and control* (see ■ PRIN 2.1.1 R), a *firm* should have appropriate procedures to monitor the nature of the services provided to its *customers*. Where a *UK firm* has non-resident *customers* but has not notified the *EEA State* in which the *customers* are resident that it wishes to exercise its freedom to provide services, the *FCA* and *PRA* would expect the *firm's* systems to include appropriate controls. Such controls would include procedures to prevent the supply of services covered by the *Single Market Directives* in the *EEA State* in which the *customers* are resident if a notification has not been made and it is proposed to provide services otherwise than by remote communication. In respect of *insurance business*, the *insurer's* records should identify the location of the risk at the time the policy is taken out or last renewed. That will, in most cases, remain the location of the risk thereafter, even if, for example, the *policyholder* changes his habitual residence after that time.

App 3.6.16 **G** [deleted]

App 3.6.17 **G** [deleted]

App 3.6.18 **G** [deleted]

App 3.6.19 **G** [deleted]

App 3.6.20 **G** [deleted]

App 3.6.21 **G** [deleted]

App 3.6.22 **G** [deleted]

App 3.6.23 **G** [deleted]

App 3.6.24 **G** [deleted]

### Membership of regulated markets

App 3.6.25 **G**

**FCA** **PRA**

- (1) The *FCA* and *PRA* are of the opinion that where a *UK firm* becomes a member of:
  - (a) a *regulated market* that has its registered office or, if it has no registered office, its head office, in another *EEA State*; or
  - (b) an *MTF* operated by a *MiFID investment firm* or a *market operator* in another *EEA State*,

the same principles as in the 'characteristic performance' test should apply. Under this test, the fact that a *UK firm* has a screen displaying the *regulated market's* or the *MTF's* prices in its UK office does not mean that it is *dealing* within the territory of the *Home State* of the *regulated market* or of the *MTF*.

- (2) In such a case, the *FCA* and *PRA* would consider that:
- (a) the *market operator* operating the *regulated market* or the *MTF* is providing a *cross-border service* into the *UK* and so, provided it has given notice to its *Home State regulator* in accordance with articles 42(6) or 31(5) *MiFID*, it will be exempt from the *general prohibition* in respect of any *regulated activity* carried on as part of the business of the *regulated market* or of *operating an MTF* (see section 312A of the *Act*);
  - (b) the *MiFID investment firm* operating the *MTF* is providing a *cross-border service* into the *UK* and so needs to comply with ■ SUP 13A.

**App 3.6.26** G *Firms* are reminded of their rights, under article 33 of *MiFID*, to become members of, or have access to, the *regulated markets* in other Member States.

FCA PRA

**App 3.6.27** G *Firms* should note that, in circumstances where the *FCA* or *PRA* take the view that a notification would not be required, other *EEA States* may take a different view.

FCA PRA

**App 3.6.28** G [deleted]

**App 3.6.29** G [deleted]

**App 3.6.30** G [deleted]

**App 3.6.31** G [deleted]

3.7 [Deleted]

3.8 [Deleted]

### 3.9 Mapping of MiFID , Banking Consolidation Directive , UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

App 3.9.1 G  
FCA PRA

The following Tables 1 , 2, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passporting activities* under the *Banking Consolidation Directive* , *MiFID* , the *UCITS Directive* and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

App 3.9.2 G  
FCA PRA

The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the *Banking Consolidation Directive* , *MiFID*, the *UCITS Directive* or the *Insurance Mediation Directive*. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a *passporting activity* will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

App 3.9.3 G  
FCA PRA

In considering the issues raised in the tables, *firms* should note that:

- (1) article 64 of the *Regulated Activities Order* (Agreeing to carry on specific kinds of activity) applies in respect of agreeing to undertake the specified activity; and
- (2) article 89 of the *Regulated Activities Order* (Rights to or interests in investments) applies in respect of rights to and interests in the types of *investments* to which the category applies.

App 3.9.4 G  
FCA PRA

Table Activities set out in Annex I of the BCD

Table 1: BCD activities		Part II RAO Activities	Part III RAO Investments
1.	Acceptance of deposits and other repayable funds from the public	Article 5	Article 74
2.	Lending	Article 61, 64	Article 88

Table 1: BCD activities	Part II RAO Activities	Part III RAO Investments
3. Financial leasing		
4. Money transmission services		
5. Issuing and administering means of payment (eg credit cards, travellers' cheques and bankers' drafts)		
6. Guarantees and commitments		
7. Trading for own account or for account of customers in:	Article 14, 21, 25 (see Note 1), 64	Article 77, 78, 80, 83-85, 89
(a) money market instruments	Article 14, 21, 25, 64	Article 83-85, 89
(b) foreign exchange	Article 14, 21, 25, 64	Article 83-85, 89
(c) financial futures and options	Article 14, 21, 25, 64	Article 83-85, 89
(d) exchange and interest rate instruments	Article 14, 21, 25, 64	Article 76-81, 89
(e) transferable securities		
8. Participation in share issues and the provision of services relating to such issues	Article 14, 21, 25, 53, 64	Article 76-81, 89
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53, 64	Article 76-80, 83-85, 89
10. Money broking	Article 25, 64	Article 77, 78, 89
11. Portfolio management and advice	Article 14, 21, 25, 37, 53, 64	Article 76-81, 83-85, 89
12. Safekeeping and administration of securities	Article 40, 45, 64	Article 76-81, 83-85, 89
13. Credit reference services		
14. Safe custody services		

Note 1: The services and activities provided for in Sections A and B of Annex I of *MiFID* when referring to the *financial instruments* provided for in Section C of Annex I of that Directive are subject to mutual recognition according to the BCD from 1 November 2007. See the table at SUP App 3.9.5 G below for mapping of *MiFID investment services and activities*. For further details relating to this residual category, please see the "Banking Consolidation Directive" section of the passporting forms entitled "Notification of intention to establish a branch in another EEA State" and "Notification of intention to provide cross border services in another EEA State".

App 3.9.5 **G**

Table Services set out in Annex I to MiFID

Table 2: <i>MiFID investment services and activities</i>	Part II RAO Investments	Part III RAO Investments
<i>A MiFID investment services and activities</i>		



1.	Reception and transmission of orders in relation to one or more financial instruments	Article 25	Article 76-81, 83-85, 89
2.	Execution of orders on behalf of clients	Article 14, 21	A Article 76-81, 83-85, 89
3.	Dealing on own account	Article 14	Article 76-81, 83-85, 89
4.	Portfolio management	Article 37 (14, 21, 25 - see Note 1)	Article 76-81, 83-85, 89
5.	Investment advice	Article 53	Article 76-81, 83-85, 89
6.	Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	Article 14, 21	Article 76-81, 83-85, 89
7.	Placing of financial instruments without a firm commitment basis	Article 21, 25	Article 76-81, 83-85, 89
8.	Operation of Multilateral Trading Facilities	Article 25D (see Note 2)	Article 76-81, 83-85, 89
	Ancillary services	Part II RAO Activities	Part III RAO Investments
1.	Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management	Article 40, 45, 64	Article 76-81, 83-85, 89
2.	Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the relevant instruments where the firm granting the credit or loan is involved		
3.	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53, 64	Article 76-80, 83-85, 89
4.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, 53, 64	Article 83-85, 89
5.	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments	Article 53, 64	Article 76-81, 83-85, 89
6.	Services related to underwriting	Article 25, 53, 64	Article 76-81, 83-85, 89
7.	Investment services and activities as well as ancillary ser-	Article 14, 21, 25, 25D, 37, 53, 64	Article 83 and 84

vices of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10-where these are connected to the provision of investment or ancillary services.

Note 1. A *firm* may also carry on these other activities when it is *managing investments*.

Note 2. A *firm* operating an *MTF* under article 25D does not need to have a *permission* covering other *regulated activities*, unless it performs other *regulated activities* in addition to *operating an MTF*.

App 3.9.6 G

FCA

Table Activities set out in Article 6(2) and (3) of the UCITS Directive

Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
1.	The management of UCITS in the form of unit trusts / common funds or of investment companies; this includes the function mentioned in Annex II of the <i>UCITS Directive</i> (see Note 2).	Articles 14, 21, 25, 37, 51, 53, 64	Articles 76-81, 83-85, 89
2.	Managing portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 14, 21, 25, 37, 53, 64	Articles 76-81, 83-85, 89
3.	Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 53, 64	Articles 76-81, 83-85, 89
4.	Safekeeping and administration services in relation to units of collective investment undertakings.	Articles 40, 45, 64	Articles 76-81, 83-85, 89

Note 1. A *UCITS management company* can only exercise passport rights under the *UCITS Directive* (article 2(1)(h) of *MiFID*). A *UCITS management company* can only be authorised to carry on the non-core services set out in rows (3) and (4) of Table 2A if it is also *authorised* to carry on the activity set out in row (2) of the table.

Note 2. The functions set out in Annex 2 to the *UCITS Directive* are:

1. Investment management.
2. Administration:
  - a. legal and fund management accounting services;
  - b. customer inquiries;
  - c. valuation and pricing (including tax returns);
  - d. regulatory compliance monitoring;
  - e. maintenance of unit-holder register;
  - f. distribution of income;

Table 2A: UCITS Directive activities	Part II RAO Activities	Part III RAO Investments
g.	unit issues and redemptions;	
h.	contract settlements (including certificate dispatch);	
i.	record keeping.	
3. Marketing.		

App 3.9.7 **G**

FCA PRA

Table Activities set out in Article 2(3) of the IMD

Table 2B: Insurance Mediation Directive Activities	Part II RAO Activities	Part III RAO Investments
1. Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance.	Articles 25, 53 and 64	Articles 75, 89 (see Note 1)
2. Concluding contracts of insurance	Articles 21, 25, 53 and 64	Articles 75, 89
3. Assisting in the administration and performance of contracts of insurance, in particular in the event of a claim.	Articles 39A, 64	Articles 75, 89

Note 1. Rights to or interests in *life policies* are *specified investments* under Article 89 of the *Regulated Activities Order*, but rights to or interests in *general insurance contracts* are not.

### 3.10 Mapping of Insurance Directives to the Regulated Activities Order

#### Introduction

App 3.10.1 **G**

FCA PRA

The *guidance* in Table 3 describes in broad outline the relationship between:

- (1) the insurance-related *regulated activities* specified in the *Regulated Activities Order*; and
- (2) the activities within the scope of the *Insurance Directives*

App 3.10.2 **G**

FCA PRA

This is a guide only and should not be used as a substitute for legal advice in individual cases.

Table 3: Insurance Directive activities	Part II RAO Activities	Part III RAO Investments
<b>1. Non-life Insurance Directive activities</b>		
1. Taking up and carrying on direct non-life insurance business	Article 10	Article 75

Table 3: Insurance Directive activities		Part II RAO Activities	Part III RAO Investments
2.	Classes 1 to 18 of direct non-life insurance business in Point A of the Annex to the First Directive		Corresponding paragraphs 1 to 18 of Schedule 1, Part I
<b>2. Consolidated Life Directive activities</b>			
1.	Taking up and carrying on direct life insurance business	Article 10	Article 75
2.	Classes I to IX of direct life insurance business in the Annex 1 to the Consolidated Life Directive		Corresponding paragraphs I to IX of Schedule 1, Part II

**Meaning of contract of insurance**

App 3.10.3 G

FCA PRA

The meaning of *contract of insurance* is set out in article 3(1) of the *Regulated Activities Order* (Interpretation). It does not include benefit-in-kind funeral plans, which are specified in article 60 of the *Regulated Activities Order* (plans covered by insurance or trust arrangements). Such funeral plans (to the extent that they are insurance) are also excluded from the *Insurance Directives*. It covers some contracts which might not otherwise be viewed as insurance in the *United Kingdom* (for example, contracts of guarantee). These contracts are also governed by the *Insurance Directives*. For the purpose of the *Regulated Activities Order*, a *contract of insurance* includes a contract of reinsurance as well as a contract of direct insurance.

**The Insurance Directives**

App 3.10.4 G

FCA PRA

Article 1 of the *First Non-Life Directive* and article 2 of the *Consolidated Life Directive* provides that the Directives "concern the taking up and pursuit of the self-employed activity of direct insurance". By contrast, article 10 of the *Regulated Activities Order* (Effecting and carrying out contracts of insurance) also covers reinsurance.

App 3.10.5 G

FCA PRA

Articles 2, 3 and 4 of the *First Non-Life Directive* and article 3 of the *Consolidated Life Directive* set out certain exclusions by reference to:

- (1) types of insurance;
- (2) types of insurer;
- (3) particular conditions under which insurance activities are carried out.
- (4) annual income; and
- (5) particular identified institutions.

PAGE  
13

App 3.10.6 G

FCA PRA

Some of the exclusions referred to in mirror exclusions in the *Regulated Activities Order*. So, the exclusion for breakdown insurance in article 2(3) of the *First Non-Life Directive* is matched by a slightly narrower exclusion in article 12 of the *Regulated Activities Order* (Breakdown insurance). The separate treatment of benefit-in-kind funeral plans under the *Regulated Activities Order* (see ■ SUP App 3.10.4 G) is matched by their exclusion on a slightly wider basis in article 3(5) of the *Consolidated Life Directive*. Other requirements from these Directives are also excluded from regulation by the *Exemption Order*.

App 3.10.7 **G**  
**FCA** **PRA**

Most of the exclusions under the Directives, however, are not excluded from being *regulated activities*. For example, article 3 of the *Consolidated Life Directive* and article 3 of the *Non-Life Directive* exclude certain mutual associations whose annual contribution income falls below a defined threshold. In the *United Kingdom*, these include certain smaller *friendly societies* commonly referred to as "*non-directive friendly societies*". The activities of such societies are regulated under the *Act*, on a "lighter basis" than the activities of other insurers.

### **Territorial scope of the Regulated Activities Order and the Directives**

App 3.10.8 **G**  
**FCA** **PRA**

Under the *Act* and the *Regulated Activities Order*, the activities of *effecting* and *carrying out contracts of insurance* are treated as being carried on in the *United Kingdom* on the basis of legal tests under which the location of the risk is only one factor. If the risk is located in the *United Kingdom*, then (other relevant factors being taken into account) the activity will, in the vast majority of cases, also be viewed as carried on in the *United Kingdom*. There are exceptions, however, and overseas insurers may insure risks in the *United Kingdom* without carrying on business here and so without requiring to be regulated (although the *financial promotion* regime may apply). By contrast, under the Directives, the responsibility, as between *EEA States*, for regulating the conduct of passported insurance services is determined by reference to the location of the risk or commitment, as defined in article 1 of the *Consolidated Life Directive* and article 2 of the *Second Non-Life Directive*.

App 3.10.9 **G**  
**FCA** **PRA**

So, the effect of App 3.12.1 is that an insurer may be carrying on *insurance business* in the *United Kingdom* which is to be treated as a *regulated activity* under article 10 to the *Regulated Activities Order* (Effecting and carrying out contracts of insurance) in circumstances where the risks covered are treated as located in another *EEA State*. In that event, the *insurer* is required by Schedule 3 to the *Act* to passport into the State concerned and may be subject to conduct of business requirements in that State (see ■ SUP 13.10 (Applicable provisions)).

App 3.10.10 **G**  
**FCA** **PRA**

An *insurer* authorised in another *EEA State* who is insuring *UK* risks and so passports on a services basis under the *Insurance Directives* into the *United Kingdom* (see ), may not be carrying on a *regulated activity* in the *United Kingdom*. But, if it passports into the *United Kingdom*, it will qualify for *authorisation* under paragraph 12 of Schedule 3 to the *Act* (Firms qualifying for authorisation). Where this is the case, the *insurer* will be subject to conduct of business requirements in the *United Kingdom* (see ■ SUP 13A.6 (Which rules will an incoming EEA firm be subject to?)).

### **Activities carried on by incoming EEA firms in connection with insurance business.**

App 3.10.11 **G**  
**FCA** **PRA**

Although the *Insurance Directives* are concerned with the *regulated activities* of *effecting* and *carrying out contracts of insurance*, an *incoming EEA firm* passported under the *Insurance Directives* will be entitled to carry on certain other *regulated activities* without the need for *top-up permission*. This is where the *regulated activities* are carried on for the purposes of or in connection with the *incoming EEA Firm's insurance business*. These *regulated activities* may include:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments;*
- (4) *making arrangements with a view to transactions in investments;*
- (5) *managing investments;*

- (6) *safeguarding and administering investments;*
- (7) *advising on investments;*
- (8) *agreeing to carry on a regulated activity of the above kind.*

### **Financial promotion**

App3.10.12 G

FCA PRA

The *financial promotion* regime under section 21 of the *Act* (Restrictions on financial promotion) may also apply to *EEA insurance undertakings* regardless of whether they carry on a *regulated activity* in the *United Kingdom* or passport into the *United Kingdom*.

### **Position of EEA insurers carrying out both direct and reinsurance business**

App3.10.13 G

PRA

The *Insurance Directives* do not apply to the authorisation to carry on *reinsurance*. But, the *Insurance Directives* do not prevent *insurance undertakings* authorised under those Directives from carrying out *reinsurance* as well as direct insurance business. Article 13(2) of the *First Non-Life Directive* and article 10(2) of the *Consolidated Life Directive* state that financial supervision of *insurance undertakings* "shall include verification, with respect to the *insurance undertaking's* entire business, of its state of solvency, of the establishment of technical provisions and of the assets covering them". On that basis, *an insurance undertaking* authorised in another *EEA State* which carries on a mixed direct insurance and *reinsurance* business, and is, therefore, subject to the requirements of the Directives, will generally be treated as satisfying the conditions laid down by an *EU* instrument relating to the carrying on of the *regulated activity* of *effecting or carrying out contracts of insurance*. This is for the purpose of paragraph 3 of Schedule 4 to the *Act* (Exercise of treaty rights). The *insurance undertaking* will, therefore, generally be able to qualify for *permission* as a *Treaty firm* for its *reinsurance* business if it follows the procedure provided for by Schedule 4 (see ■ SUP 13A.3.4 G to ■ SUP 13A.3.11 G (Treaty Firms) ). This will be in addition to the *insurance undertaking* being an *EEA firm* under Schedule 3 of the *Act* for its direct insurance business.



## Supervision

### SUP TP 1 Transitional provisions

FCA PRA

#### 1 Transitional provisions applying to the Supervision manual only

Definitions for these transitional provisions, additional to those in the *Glossary*, are provided at paragraph 16 of the table.

FCA PRA

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	SUP 3.3.2 R (1)	R	A <i>firm</i> will not contravene SUP 3.3.2 R (1), if the office of auditor is filled at <i>commencement</i> . The auditor filling the office at that time will be deemed to be appointed under SUP 3.3.2 R.	From <i>commencement</i>	<i>Commencement</i>
2	SUP 3.9 and SUP 3.10	R	Expired		
3	SUP 3.9.4 R	R		Expired	
3A	SUP 3.10	R		Expired	
3B	SUP 3.10.6 R, SUP 3.10.7 R	G	Expired		
3C	SUP 3.10	R		Expired	
4	SUP 4.3.1 R (1) and SUP 4.4.1 R (1)	R	A <i>firm</i> will not contravene SUP 4.3.1 R (1) or SUP 4.4.1 R (1) to the extent that the office of <i>actuarial function holder</i> , <i>with-profits actuary</i> or <i>appropriate</i>	From <i>commencement</i>	<i>Commencement</i>



(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<i>actuary</i> is filled by an <i>actuary</i> appointed on or before 31 December 2004, provided that that <i>actuary</i> was appointed in accordance with the statutory requirements, or the requirements of the <i>regulatory system</i> , in force at that time.		
4A	SUP 4	R	Anything done before 31 December 2004 for the purposes of an amended provision in SUP 4 has effect as if done under that provision.	From 31 December 2004	31 December 2004
4B	[deleted]				
4BA	SUP 4.3.16AR(3) and SUP 4.3.16AR(4)	R	The <i>rules</i> apply in respect of each financial year commencing on or after 1 January 2005.	From 31 December 2004	31 December 2004
4C	[deleted]				
4D	[deleted]				
4E	[deleted]				
5	SUP 4.3.3 R	R	If a <i>firm's actuary</i> has been appointed by a <i>previous regulator</i> under statutory or contractual powers and remains in office immediately before <i>commencement</i> , that appointment will be deemed to have been made under SUP 4.3.3 R, but on the terms of the actual appointment.	From <i>commencement</i>	<i>Commencement</i>
6	SUP 8.6.1 G	R	Expired		
6A[FCA]	SUP 9.4	G		From 19 July 2001	21 June 2001
			(1) If a <i>person</i> acts in accordance with individual written guidance:		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				(a) given to him by any <i>previous regulator</i> (or body whose functions were assumed by a <i>previous regulator</i> );		
				(b) relating to any pre-commencement provision; and		
				(c) in the circumstances contemplated by that guidance;		
			then the <i>FCA</i> will proceed on the footing that the <i>person</i> has complied with the aspects of any provision in or under the <i>Act</i> (including a <i>rule</i> or <i>guidance</i> in the <i>Handbook</i> ) to which the guidance relates if:			
				(d) that provision is substantially similar to the pre-commencement provision in relation to the matter with which the guidance is concerned;		
				(e) the guidance was current immediately be-		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				fore commencement; and		
			(f)	the guidance has not been superseded.		
			(2)	SUP 9.4.2 G - SUP 9.4.4 G are relevant for individual guidance in (1) in the same way as for individual written <i>guidance</i> given by the <i>FCA</i> .		
			(3)	References to "individual written guidance" in (1) and (2) include a written concession from a pre-commencement provision which is substantially similar to <i>guidance</i> in the <i>Handbook</i> .		
8	SUP 10.13.6 R	R	Expired			
8A	SUP 10.4.1 R	R	(1) An application made under section 60 of the <i>Act</i> received before 31 October 2007 will be taken to relate to the <i>controlled function</i> existing at the date of determination.		From 1 November 2007	From 1 November 2007
			(2) The <i>controlled functions</i> CF 13 ( <i>finance function</i> ), CF 14 ( <i>risk assessment function</i> ) and CF 15 ( <i>internal audit function</i> ) are subsumed in the new <i>controlled function</i> CF 28 ( <i>systems and controls function</i> ) to the extent that they fall		On 1 November 2007	On 1 November 2007

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			within the description of the <i>systems and controls function</i> .		
			(3) The <i>controlled functions</i> CF 16 ( <i>significant management (designated investment business) function</i> ), CF 17 ( <i>significant management (other business operations) function</i> ), CF 18 ( <i>significant management (insurance underwriting) function</i> ), CF 19 ( <i>significant management (financial resources) function</i> ) and CF 20 ( <i>significant management (settlements) function</i> ) are subsumed in the new <i>controlled function</i> CF 29 ( <i>significant management function</i> ) to the extent that they fall within the description of the <i>significant management function</i> .	On 1 November 2007	On 1 November 2007
			(4) The <i>controlled functions</i> CF 21 ( <i>investment adviser function</i> ), CF 22 ( <i>investment adviser (trainee) function</i> ), CF 23 ( <i>corporate finance adviser function</i> ), CF 24 ( <i>pension transfer specialist function</i> ), CF 25 ( <i>adviser on syndicate participation at Lloyd's function</i> ), CF 26 ( <i>customer trading function</i> ) and CF 27 ( <i>investment management function</i> ) are subsumed in the new <i>controlled function</i> CF 30 ( <i>customer function</i> ) to the extent that they fall within the description of the <i>customer function</i> .	On 1 November 2007	On 1 November 2007
8B		G	(1) The effect of TP 8AR is that if immediately prior to 1		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>November 2007 a <i>person</i> was an <i>approved person</i> in relation to any of the <i>controlled functions</i> to be subsumed into the <i>systems and controls function</i> the original grant of approval by the <i>FSA</i> will remain valid in relation to the <i>systems and controls function</i> and no new approval to perform that <i>controlled function</i> will be required.</p>		
			<p>(2) The effect of TP 8AR is that if immediately prior to 1 November 2007 a <i>person</i> was an <i>approved person</i> in relation to any of the <i>controlled functions</i> to be subsumed into the <i>significant management function</i> the original grant of approval by the <i>FSA</i> will remain valid in relation to the <i>significant management function</i> and no new approval to perform that <i>controlled function</i> will be required.</p>		
			<p>(3) The effect of TP 8AR is that if immediately prior to 1 November 2007 a <i>person</i> was an <i>approved person</i> in relation to any of the <i>controlled functions</i> to be subsumed into the <i>customer function</i> the original grant of approval by the <i>FSA</i> will remain valid in relation to the <i>customer function</i> and no new approval to perform controlled function will be required.</p>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
8C		G	<p><i>Firms</i> are reminded of their obligation under SUP 10.13.16 R to notify the <i>FSA</i> if the <i>firm</i> becomes aware of information which would be reasonably material to the continuing assessment of an <i>approved person's</i> fitness and propriety and in particular their competence to perform a function.</p>		
8D	<p>SUP 10.13.6 R (Ceasing to perform a controlled function) and SUP 10.13.3 D (Moving within a firm)</p>	R	<p>The obligation to submit Form C or Form E does not apply in relation to a person who:</p> <p>(a) ceases to perform a <i>controlled function</i> because that <i>controlled function</i> ceases to exist on 1 February 2007; or</p> <p>(b) performs a function which falls within the description of a different <i>controlled function</i> after 1 November 2007 as a result of TP 8AR.</p>	<p>From 1 February 2007 in relation to the <i>sole trader function</i> and 1 November 2007 in all other cases.</p>	<p>From 1 February 2007 in relation to the <i>sole trader function</i> and 1 November 2007 in all other cases.</p>
8E	<p>SUP 10.6.4 R (2)</p>	R	<p>(1) This <i>rule</i> deals with a <i>person</i> (a "director") who would otherwise have been performing the <i>director function</i> for a <i>firm</i> under SUP 10.6.4 R (2) on 6 August 2009 but who was not otherwise performing the <i>director function</i> for that <i>firm</i> at that date. This <i>rule</i> only applies if he was not approved at that date to perform the <i>director function</i> for that <i>firm</i>.</p> <p>(2) Between the dates in column (5), the functions described in SUP 10.6.4 R (2) are</p>	<p>6 August 2009 to 6 February 2010</p>	<p>6 February 2010</p>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>not treated as forming part of the <i>director function</i> as respects that <i>firm</i> and that director unless they also fall under SUP 10.6.4 R (1).</p> <p>(3) If this transitional <i>rule</i> has not already expired under column (5), this rule comes to an end as respects that director and that <i>firm</i> if and when an application is made for the director to perform the <i>director function</i> for that <i>firm</i> and that application is granted.</p>		
8F	SUP 10.6.8 R (1)(b)	R	<p>(1) This <i>rule</i> deals with a <i>person</i> (a "<i>non-executive director</i>") who would otherwise have been performing the <i>non-executive director function</i> for a <i>firm</i> under SUP 10.6.8 R (1)(b) on 6 August 2009 but who was not otherwise performing the <i>non-executive director function</i> for that <i>firm</i> at that date. This <i>rule</i> only applies if he was not approved at that date to perform the <i>non-executive director function</i> for that <i>firm</i>.</p> <p>(2) Between the dates in column (5), the functions described in SUP 10.6.8 R (1)(b) are not treated as forming part of the <i>non executive director function</i> as respects that <i>firm</i> and that <i>non executive director</i> unless they also fall under SUP 10.6.8 R (1)(a).</p>	6 August 2009 to 6 February 2010	6 February 2010

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>(3) If this transitional <i>rule</i> has not already expired under column (5), this <i>rule</i> comes to an end as respects that <i>non executive director</i> and that <i>firm</i> if and when an application is made for the <i>non executive director</i> to perform the <i>non-executive director function</i> for that <i>firm</i> and that application is granted.</p>		
8G	SUP 10.9.1 R (2)	R	<p>(1) This <i>rule</i> deals with a <i>person</i> (a "proprietary trader") who would otherwise have been performing the <i>significant management function</i> for a <i>firm</i> under SUP 10.9.10 R (1A) on 6 August 2009 but who was not otherwise performing the <i>significant management function</i> for that <i>firm</i> at that date. This <i>rule</i> only applies if he was not approved at that date to perform the <i>significant management function</i> for that <i>firm</i>.</p> <p>(2) Between the dates in column (5), the functions described in SUP 10.9.10 R (1A) are not treated as forming <i>significant management function</i> part of the as respects the <i>firm</i> and that proprietary trader unless they also fall under SUP 10.9.10 R (1).</p> <p>(3) If this transitional <i>rule</i> has not already expired under column (5), this <i>rule</i> comes to an end as respects that proprietary trader and that <i>firm</i> if and when</p>	6 August 2009 to 6 February 2010	6 February 2010



(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>an application is made for the proprietary trader to perform the <i>significant management function</i> for that <i>firm</i> and that application is granted.</p>		
8H	SUP 10.1.7 R (1)	R	<p>(1) This <i>rule</i> deals with the application of the <i>director function</i> under SUP 10.1.7 R (1) to a <i>person</i> (a "director") who would otherwise have been performing the <i>director function</i> on 6 August 2009 in an <i>overseas firm</i> which maintains an establishment in the <i>United Kingdom</i> from which <i>regulated activities</i> are carried on (or would have been doing so but for a <i>waiver</i>).</p> <p>(2) Between the dates in column (5), the functions described in SUP 10.1.7 R (1) are not treated as forming part of the <i>director function</i> as respects that establishment in the <i>United Kingdom</i>, and that director.</p> <p>(3) If this transitional rule has not already expired under column (5), this <i>rule</i> comes to an end as respects that director and that establishment in the <i>United Kingdom</i>, if and when an application is made for the director to perform the <i>director function</i> for that establishment in the <i>United Kingdom</i> and that application is granted.</p>	6 October 2009 to 6 February 2010	6 February 2010

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
8I	SUP 10.1.7 R (2)	R	<p>(1) This <i>rule</i> deals with the application of the <i>non-executive director function</i> under SUP 10.1.7 R (2) to a <i>person</i> (a "non-executive director") who would otherwise have been performing the <i>non-executive director function</i> on 6 August 2009 in an <i>overseas firm</i> which maintains an establishment in the <i>United Kingdom</i> from which <i>regulated activities</i> are carried on (or would have been doing so but for a <i>waiver</i>).</p> <p>(2) Between the dates in column (5), the functions described in SUP 10.1.7 R (2) are not treated as forming part of the <i>non-executive director function</i> as respects that establishment in the <i>United Kingdom</i>, and that non-executive director.</p> <p>(3) If this transitional rule has not already expired under column (5), this <i>rule</i> comes to an end as respects that non-executive director and that establishment in the <i>United Kingdom</i>, if and when an application is made for the non-executive director to perform the <i>non-executive director function</i> for that establishment in the <i>United Kingdom</i> and that application is granted.</p>	6 October 2009 to 6 February 2010	6 February 2010
8J	SUP 10.1.7 R (5)	R	(1) This <i>rule</i> deals with the application of the <i>systems and controls function</i> under	6 October 2009 to 6 February 2010	6 February 2010

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>SUP 10.1.7 R (5) to <i>persons</i> who would otherwise have been performing the <i>systems and controls function</i> on 6 August 2009 in an <i>overseas firm</i> which maintains an establishment in the <i>United Kingdom</i> from which <i>regulated activities</i> are carried on (or would have been doing so but for a <i>waiver</i>).</p> <p>(2) Between the dates in column (5), the functions described in SUP 10.1.7 R (5) are not treated as forming part of the <i>systems and controls function</i> as respects that establishment in the <i>United Kingdom</i> and that person.</p> <p>(3) If this transitional rule has not already expired under column (5), this <i>rule</i> comes to an end as respects that person and that establishment in the <i>United Kingdom</i>, if and when an application is made for that person to perform the <i>systems and controls function</i> for that establishment in the <i>United Kingdom</i> and that application is granted.</p>		
8K	SUP 10.1.13 R to SUP 10.1.14 R	R	(1) This <i>rule</i> deals with the extension of the <i>significant management function</i> through the amendment to SUP 10.1.13 R (Incoming EEA firms: passported activities from a branch) and SUP 10.1.14 R (Incoming EEA firms etc with	1 May 2011 to 31 October 2011	1 November 2011

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>top-up permission activities from a UK branch) by the Controlled Functions (Amendment) Instrument 2010 as amended by the Controlled Functions (Amendment No 2) Instrument 2011.</p> <p>(2) This <i>rule</i> applies to a <i>person</i> who would otherwise have been performing the <i>significant management function</i> with respect to a <i>firm</i> immediately before the first date in column (5) if the extension described in (1) had been in force then.</p> <p>(3) The functions that would otherwise have formed part of the <i>significant management function</i> because of the extension described in (2), as respects that <i>person</i> and that <i>firm</i>, are not treated as forming part of <i>significant management function</i>.</p> <p>(4) If this transitional <i>rule</i> has not already expired under column (5), this <i>rule</i> comes to an end as respects that <i>person</i> and that <i>firm</i> if and when an application is made for the person to perform the <i>significant management function</i> for that <i>firm</i> and that application is granted.</p> <p>(5) If the <i>FSA</i> has received a completed application for that <i>person</i> to perform the <i>significant management function</i> no later than three months after the</p>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>first date in column (5) and that application has not been finally decided by the time that the transitional period in column (5) would otherwise have come to an end, that transitional period is extended until the application has been finally decided.</p> <p>(6) An application for a <i>person</i> to perform a <i>controlled function</i> is finally decided on the earliest of the following dates:</p> <p>(a) when the application is withdrawn;</p> <p>(b) when the <i>FSA</i> grants approval;</p> <p>(c) where the <i>FSA</i> has refused the application and the matter is not referred to the <i>Tribunal</i>, on the date on which the right to refer the matter to the <i>Tribunal</i> expires;</p> <p>(d) where the <i>FSA</i> has refused the application and the matter is referred to the <i>Tribunal</i>, when the reference is determined by the <i>Tribunal</i> and the time for bringing an appeal has expired;</p> <p>(e) if the application is determined by the court, when the court makes that determination.</p>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
8L		G	<p>SUP TP 1 8KR provides a period in which applications can be made. It says that if an application for approval is still being processed at the end of the transitional period, the <i>person</i> is still able to carry on performing the function while the approval is being processed. However, this only applies if the application for approval is made within a specified period. If the application is made later than that there is a risk that the application will not have been decided before the end of the transitional period, in which case the <i>person</i> will have to stop carrying out the function.</p>		
8M [FCA]	SUP 10A.14.24 R	R	<p>This rule applies to <i>complaints</i> upheld on or after 31 December 2012.</p>	From 31/12/2012	31/12/2012
9	<p>SUP 12.5.5 R SUP 12.5.7 R</p>	R	Expired		
9A	SUP 15.8.4 G	R		From 13 February 2004 to 13 February 2007	13 February 2004
			<p>(1) <b>Subject to (2), SUP 15.8.4 G does not apply to a UCITS management company which became authorised before 13 February 2004.</b></p>		
			<p>(2) <b>Paragraph (1) does not apply in relation to any UK firm which</b></p>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p><b>exercises an EEA right under the UCITS Directive (in which event the rule applies in relation to acts of delegation occurring on or after the date on which the firm begins to exercise such rights).</b></p>		
9B	SUP 12.5	<b>R</b>	<p><b>A firm conducting designated investment business need not amend its written contract with an appointed representative (appointed before 15 January 2004) to take account of amendments to SUP 12.5 coming into force between 30 June 2004 and 30 June 2005, until 30 June 2005 or the date on which the contract is next updated (whichever is earlier).</b></p>	From 30 June 2004 until 30 June 2005, that is, 12 months.	Commencement, and as amended with effect from 30 June 2004
10	SUP 16.4.5 R SUP 16.5.5 G	<b>R</b>	Expired		
10A	SUP 16.4 SUP 16.5	<b>R</b>	<p>SUP 16.4 (Annual controllers report) and SUP 16.5 (Annual close links report) do not apply to a firm with permission to carry on only insurance mediation activity, mortgage mediation activity, or both.</p>	<p>(1) in respect of mortgage mediation activities, 31 October 2004 - 31 March 2005;</p> <p>(2) in respect of insurance mediation activities, 14 January 2005</p>	1 April 2005

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				- 31 March 2005,	
11	SUP 16.6 SUP 16.7 SUP 16.8	R	Expired		
12	SUP 16.7.7 R; SUP 16.7.9 R, SUP 16.7.11 R, SUP 16.7.16 R, SUP 16.7.24 R, SUP 16.7.26 R, SUP 16.7.35 R, SUP 16.7.44 R, SUP 16.7.46 R, SUP 16.7.48 R, SUP 16.7.57 R	R	Expired		
12A			[deleted]		
12B	SUP 16.7.54 R; SUP 16.7.76 R SUP 16.7.79 R SUP 16.7.80 R	R	(1) Where a <i>rule</i> in SUP 16.7 requires a <i>firm</i> to submit information using the <i>RMAR</i> on a half-yearly basis, and the <i>firm</i> has:	From 1 April 2005	1 April 2005
			(a)	annual income of less than £5m but more than	



(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				£60,000 in total from <i>insurance mediation activity, mortgage mediation activity</i> and its <i>permitted activities</i> as a <i>personal investment firm</i> , and		
				(b) an <i>accounting reference date</i> which		
				(i) falls between 31 December 2004 and 31 March 2005; or		
				(ii) falls between 30 June 2005 and 30 September 2005		
				this must be read as a reference to providing the first return in accordance with SUP TR 12CR.		
			(2) Where a <i>rule</i> in SUP 16.7 requires a <i>firm</i> to submit information using the			

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<i>RMAR</i> on a half-yearly basis, and the <i>firm</i> has:		
			(a) annual income of less than £5m but more than £60,000 in total from <i>insurance mediation activity, mortgage mediation activity</i> and its <i>permitted activities</i> as a <i>personal investment firm</i> , and		
			(b) an <i>accounting reference date</i> which is not within (1)(b);		
			the first return must cover the <i>firm's</i> first full financial half-year which starts on or after 1 April 2005 and be submitted 30 <i>business days</i> after period end.		
			(3) Where a <i>firm</i> is carrying on <i>regulated activities</i> before 1 April 2005 and is required under a <i>rule</i> in SUP 16.7 to submit information using the MLAR, the first return must cover the <i>firm's</i> first full financial quarter which starts on or after this date and be submitted		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				20 <i>business days</i> after period end.	
			(4)	Where a <i>rule</i> in SUP 16.7 requires a <i>firm</i> to submit information using the <i>RMAR</i> on a half-yearly basis, and the <i>firm</i> has:	
			(a)	annual income of less than £60,000 in total from <i>insurance mediation activity</i> , <i>mortgage mediation activity</i> and its <i>permitted activities</i> as a <i>personal investment firm</i> , and	
			(b)	an <i>accounting reference date</i> which falls between 31 December 2004 and 30 December 2005,	
				the relevant <i>rule</i> must be read as requiring the first return to be provided in accordance with SUP TR 12DR.	
			(5)	Where a rule in SUP 16.7 requires a <i>firm</i> to submit information using the <i>RMAR</i> on a quarterly	

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision				(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			basis, and the firm has an <i>accounting reference date</i> which falls between 31 December 2004 and 30 December 2005 the relevant <i>rule</i> must be read as requiring the first return to be provided with <i>SUP TR 14B</i> .					
12C		R	If SUP TR 12B R (1) - (3) applies, the <i>firm's</i> first return must be provided as follows:					
			<i>Accounting reference date</i>	Reporting period starts	Reporting period ends	Return to be provided		
			Between 30 June 2005 and 30 September 2005	1 April 2005	<i>Accounting reference date</i> within 2005	30 <i>business days</i> after period end.		
			31 December 2004	1 April 2005	30 June 2005	30 <i>business days</i> after the period end		
			Between 1 January 2005	1 April 2005	6 months after the <i>accounting</i>	30 <i>business days</i> after period end		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision				(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			and 31 March 2005		<i>ing reference date within 2005</i>			
12D		R	(1)	If SUP TR 12BR (4)SUP TR 12BR (4) applies, the <i>firm's</i> first return must be provided as follows:				
			<i>Accounting reference date</i>	Re- port- ing peri- od starts	Re- port- ing peri- od ends	Return to be provided		
			31 December 2004	1 April 2005	30 June 2005	30 <i>business days</i> after period end  (Note 1)		
			Between 1 January 2005 and 31 March 2005	1 April 2005	6 months after the <i>accounting reference date</i> within 2005	30 <i>business days</i> after period end  (Note 1)		
			Between 1	the day fol-	6 months after	30 <i>business days</i> af-		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision				(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			April 2005 and 29 June 2005	following the <i>accounting reference date</i> within 2005	the <i>accounting reference date</i> within 2005	ter period end (Note 1)		
			Between 30 June 2005 and 29 September 2005	1 April 2005	<i>Accounting reference date</i> within 2005	30 <i>business days</i> after period end		
			Between 30 September 2005 and 30 December 2005	The day after 6 months preceding the <i>accounting reference date</i> within 2005	<i>Accounting reference date</i> within 2005	30 <i>business days</i> after period end		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision				(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
12E		R	(2)	If SUP TR 12BR (4) applies, the <i>firm's</i> second return must be provided as follows:				
			<i>Accounting reference date</i>	<i>Reporting period starts</i>	<i>Reporting period ends</i>	<i>Return to be provided</i>		
			Between 30 June 2005 and 29 September 2005	the following day	6 months after the <i>accounting reference date</i> within 2005	30 <i>business days</i> after period end (Note 1)		
12F	SUP 16.7.77 R	R	A <i>mortgage administrator</i> or <i>mortgage lender</i> must submit an annual report and audited accounts annually, 3 months after the <i>firm's accounting reference date</i>				31 October 2004 - 31 March 2005	1 April 2005
12G	SUP 16.7.7 R; SUP 16.7.9 R; SUP 16.7.11 R; SUP 16.7.16 R; SUP 16.7.20 R; SUP 16.7.24 R;	R	(1) Where a <i>rule</i> in SUP 16.7 requires a <i>firm</i> to submit information using the <i>RMAR</i> on a half yearly basis the relevant <i>rule</i> must be read as requiring the first return to be provided				From 1 January 2007 - 31 December 2007	1 January 2007

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force							
	SUP 16.7.26 R; SUP 16.7.28 R; SUP 16.7.35 R; SUP 16.7.57 R; SUP 16.7.62 R; SUP 16.7.65 R; SUP 16.7.73 R;		in accordance with SUP TR 12HR.  (2) Where a <i>firm</i> is carrying on <i>regulated activities</i> on or before 1 January 2007 and is required under a <i>rule</i> in SUP 16.7 to submit information using the <i>MLAR</i> , the first return must cover the <i>firm's</i> first full financial quarter which starts on or after this date and be submitted 20 <i>business days</i> after period end.									
12H		R	If SUP TR 12G R (1) applies, the <i>firm's</i> first return must be provided as follows:									
			<table border="1"> <thead> <tr> <th data-bbox="596 1160 699 1518"><i>Accounting reference date</i> (dates inclusive)</th> <th data-bbox="699 1160 778 1518"><i>Reporting period starts</i></th> <th data-bbox="778 1160 880 1518"><i>Reporting period ends</i></th> <th data-bbox="880 1160 1002 1518"><i>Return to be provided</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="596 1518 699 2022">Between 1 January and 31 March</td> <td data-bbox="699 1518 778 2022">The day after the <i>accounting reference date</i> within 2007</td> <td data-bbox="778 1518 880 2022">6 months after the <i>accounting reference date</i> within 2007</td> <td data-bbox="880 1518 1002 2022">30 <i>business days</i> after period end.</td> </tr> </tbody> </table>	<i>Accounting reference date</i> (dates inclusive)	<i>Reporting period starts</i>	<i>Reporting period ends</i>	<i>Return to be provided</i>	Between 1 January and 31 March	The day after the <i>accounting reference date</i> within 2007	6 months after the <i>accounting reference date</i> within 2007	30 <i>business days</i> after period end.	
<i>Accounting reference date</i> (dates inclusive)	<i>Reporting period starts</i>	<i>Reporting period ends</i>	<i>Return to be provided</i>									
Between 1 January and 31 March	The day after the <i>accounting reference date</i> within 2007	6 months after the <i>accounting reference date</i> within 2007	30 <i>business days</i> after period end.									



(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision				(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			Between 1 April and 30 June	1 January 2007	<i>Accounting reference date</i> within 2007	30 <i>business days</i> after period end.		
			Between 1 July and 30 September	The day after 6 months preceding the <i>accounting reference date</i> within 2007	<i>Accounting reference date</i> within 2007	30 <i>business days</i> after period end.		
			Between 1 October and 31 December	1 January 2007	6 months before the <i>accounting reference date</i> within 2007	30 <i>business days</i> after period end.		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
12I	SUP 16.7.54 R	R	Until 6 September 2006, an <i>authorised professional firm</i> will not contravene SUP 16.7.54 R if it submits to the FSA the annual questionnaire that was contained in SUP 16 Annex 9 R immediately prior to 6 July 2006.	6 July 2006 - 6 September 2006	6 July 2006
12J	(1) SUP 16.7.24 R, SUP 16.7.25 R and 16.7.25A R, SUP 16.7.27 R and 16.7.27A R	R	A <i>securities and futures firm</i> that is a <i>BIPRU investment firm</i> is not required to submit the Annual Reporting Statement, the Annual Reconciliation and the Consolidated Supervision Return under SUP 16.7.25 R and SUP 16.7.27 R (as appropriate).	1 January 2007 to 31 December 2007	<i>Commencement</i> and 1 January 2007
	(2) SUP 16.7.35 R, SUP 16.7.36 R and SUP 16.7.36A R	R	An <i>investment management firm</i> that is a <i>BIPRU investment firm</i> is not required to submit the Annual Financial Return, the Consolidated Supervision Return and the Consolidated Financial Resources Return under SUP 16.7.36 R.	1 January 2007 to 31 December 2007	<i>Commencement</i> and 1 January 2007
	(3) SUP 16.7.67 R, SUP 16.7.68 R and SUP 16.7.68A R	R	A <i>UCITS investment firm</i> is not required to submit the Annual Financial Return and the Consolidated Supervision Return under SUP 16.7.68 R.	1 January 2007 to 31 December 2007	13 February 2004 and 1 January 2007
	(4) SUP 16.7.76 R, SUP 16.7.77 R and SUP 16.7.77A R	R	A <i>personal investment firm</i> that is a <i>BIPRU investment firm</i> is not required to submit the Consolidated Supervision Return under SUP 16.7.77 R.	1 January 2007 to 31 December 2007	1 April 2005 and 1 January 2007

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	(5) SUP 16.7.16 R and SUP 16.7.17 R	R	A <i>building society</i> will not be required to submit reports MFS1, MFS1 Supp, MFS2 and QFS2 for reporting dates after 1 January 2008	From 1 January 2008	<i>Commencement</i>
12K	SUP 16.7.7 R, SUP 16.7.8 R, SUP 16.7.9 R, SUP 16.7.10 R, SUP 16.7.11 R, SUP 16.7.12 R, SUP 16.7.16 R, SUP 16.7.17 R, SUP 16.7.24 R, SUP 16.7.25 R, SUP 16.7.26 R, SUP 16.7.27 R, SUP 16.7.28 R, SUP 16.7.29 R, SUP 16.7.35 R, SUP 16.7.36 R, SUP 16.7.54 R, SUP 16.7.54A R, SUP 16.7.57 R, SUP 16.7.58 R, SUP 16.7.62 R, SUP 16.7.63 R, SUP 16.7.65 R, SUP 16.7.66 R. SUP 16.7.73 R, SUP 16.7.74 R, SUP 16.7.75 R, SUP 16.7.76 R and SUP 16.7.77 R,	R	Solely in respect of information regarding any <i>reversion activity</i> or <i>home purchase activity</i> required to be reported in the <i>RMAR</i> and <i>MLAR</i> , a <i>firm</i> :	1 April 2007 to 31 December 2008	<i>Commencement</i>
			(1) is not required to include such information in respect of the applicable reporting periods (as set out in		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			the relevant provisions in SUP 16.7) ending before 1 October 2007;		
			(2) must include such information in respect of reporting periods ending on or after 1 October 2007;		
			(3) must include such information under existing mortgage headings (for the <i>RMAR</i> ) or loan headings (for the <i>MLAR</i> ) as set out in the guidance in SUP 16 Annex 18B G and SUP 16 Annex 19B G respectively.		
12L	(1)  SUP 16.7.7 R, SUP 16.7.8 R, SUP 16.7.8A R, SUP 16.7.16 R, SUP 16.7.17 R, SUP 16.7.17A R, SUP 16.7.24 R, SUP 16.7.25 R, SUP 16.7.25A R, SUP 16.7.26 R, SUP 16.7.27 R, SUP 16.7.27A R, SUP 16.7.30 R, SUP 16.7.35 R, SUP 16.7.36 R, SUP 16.7.36AR, SUP 16.7.67R, SUP	R	Except to the extent required by a transitional provision in TP12M, a <i>BIPRU firm</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007, but will instead report under SUP 16.12.	1 January 2008 to 1 April 2009	1 January 2008

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	16.7.68R, SUP 16.7.68AR, SUP 16.7.76R, SUP 16.7.77R, SUP 16.7.77AR				
	(2)  SUP 16.7.9 R, SUP 16.7.10 R	R	Except to the extent required by a transitional provision in TP12M, an <i>EEA Bank</i> , other than one with <i>permission</i> for <i>cross border services</i> only, will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under SUP 16.12.5 R.	1 January 2008 to 1 April 2009	1 January 2008
	(3)  SUP 16.12.11 R, SUP 16.7.12 R	R	Except to the extent required by a transitional provision in TP12M, a <i>bank</i> established outside the <i>EEA</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under SUP 16.12.5 R.	1 January 2008 to 1 April 2009	1 January 2008
	(4)  SUP 16.7.62R SUP 16.12.5 R, SUP 16.7.63R	R	A <i>credit union</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under SUP 16.12.5R.	1 January 2008 to 1 April 2009	1 January 2008
	(5) [deleted]				

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	(6) SUP 16.7.82R, SUP 16.7.83R	R	(1) A <i>firm</i> that is a member of a <i>financial conglomerate</i> :  (a) that is at the head of an <i>FSA regulated EEA financial conglomerate</i> ; or  (b) whose <i>Part IV permission</i> contains a relevant <i>requirement</i> ; will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under SUP 16.12.32R and SUP 16.12.33R.  (2) In (1)(b), a relevant <i>requirement</i> is one as set out in SUP 16.7.82R (2).	1 January 2008 to 1 April 2009	1 January 2008
	(7) [deleted]				
12M [FCA] [PRA]	(1)[deleted]				
	(2) [deleted]				
	(3) [deleted]				
	(4) [deleted]				
	(5) [deleted]				
	(6) [deleted]				
	(7) [deleted]				
	(8) [deleted]				
	(9) [deleted]				
	(10) [deleted]				
	(11)[deleted]				
	(12)[deleted]				

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	(13)[deleted]				
	(14)[deleted]				
	(15)[deleted]				
	(16)[deleted]				
	(17)[deleted]				
	(18) [deleted] [deleted]				
	(19)				
	(20) [deleted]				
	(20A) SUP 16.12.22A R	R	(1) Where a <i>firm</i> is required under SUP 16.12.22A R to submit information on <i>adviser charges</i> in Section K of the RMAR or <i>consultancy charges</i> in Section L of the RMAR the <i>firm</i> is not required to report information collected prior to 31 December 2012.  (2) The first reporting period for Section K or Section L of the RMAR begins on the first day of the <i>firm's</i> first full reporting period (as specified in SUP 16.12) after 31 December 2012.	31/12/2012 to 30/06/2013	31/12/2012
	(21) [deleted]				
12N	(1) SUP 16.7.36 R	R	(1) Subject to (2), SUP 16.7.36 R does not apply from 6 April 2007 to 30 August 2008 to an <i>investment management firm</i> which:	6 April 2007 to 30 August 2008	6 April 2007

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			(a)	was not a <i>firm</i> before 6 April 2007; and		
			(b)	carries on only the activity of <i>establishing, operating or winding up a personal pension scheme</i> .		
			(2)	Notwithstanding (1), a <i>firm</i> described in (1) with an <i>accounting reference date</i> of between 6 April 2007 and 30 August 2008 (inclusive) must submit a copy of its annual accounts to the <i>FSA</i> in accordance with SUP 16.7.36 R, unless (3) applies. The annual accounts must give a true and fair view of the state of affairs of the <i>firm</i> and of the <i>firm's</i> profit or loss.		
120	(1)	[deleted]				
	(2) SUP 16.7.24 R, SUP 16.7.25 R, SUP 16.7.27 R	R	A <i>securities and futures firm</i> which is either		1 November 2007 to 31 December 2008	<i>Commencement</i> and 1 November 2007
			(1)	an <i>exempt CAD firm</i> , or		
			(2)	an <i>exempt BIPRU commodity firm</i> to which the require-		



(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			ments of <i>IPRU(INV)</i> Chapter 3 apply		
			is not required to submit the Annual Reporting Statement and the Annual Reconciliation under SUP 16.7.25 R and SUP 16.7.27 R (as appropriate).		
	(3) SUP 16.7.35 R, SUP 16.7.36 R	R	An <i>investment management firm</i> which is an <i>exempt CAD firm</i> is not required to submit the Annual Financial Return under SUP 16.7.36 R.	1 November 2007 to 31 December 2008	<i>Commencement</i> and 1 November 2007
	(4) SUP 16.7.67 R, SUP 16.7.68 R	R	A <i>UCITS firm</i> which is an <i>exempt CAD firm</i> is not required to submit an Annual Financial Return under SUP 16.7.68R, Note 3.	1 November 2007 to 31 December 2008	13 February 2004 and 1 November 2007
	(5) SUP 16.12.11R, SUP 16.12.12R	R	An <i>exempt BIPRU commodity firm</i> that does not meet the conditions in <i>BIPRU TP 16</i> is not required to submit FSA008 for reporting dates prior to 30 June 2008.	1 January 2008 to 29 June 2008	1 January 2008
12P	(1) SUP 16.7.20R, SUP 16.7.21R, SUP 16.7.21AR, SUP 16.7.21BR, SUP 16.7.26R, SUP 16.7.27R, SUP 16.7.28R,	R	Except to the extent required by a transitional provision in TP 12Q, a <i>firm</i> , other than a <i>BIPRU firm</i> , will not be required to report under these rules in respect of reporting dates after 31 December 2007, but will instead report under SUP 16.12.	1 January 2008 to 31 March 2009	1 January 2008

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	SUP 16.7.29R, SUP 16.7.30R, SUP 16.7.35R, SUP 16.7.36R, SUP 16.7.54R, SUP 16.7.54AR, SUP 16.7.55R, SUP 16.7.56R, SUP 16.7.57R, SUP 16.7.58R, SUP 16.7.67R, SUP 16.7.68R, SUP 16.7.76R, SUP 16.7.77R				
12Q	(1)  SUP 16.12.11R	R	<i>Firms in Regulated Activity Group 3:</i>	1 January 2008 to 30 August 2008	1 January 2008
			(1) are not required to submit the following data items for reporting dates falling prior to 31 August 2008:  FSA029  FSA030		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			FSA031 FSA032 FSA033 FSA034 FSA035 FSA036 FSA037 FSA039 FSA040		
			(2) are instead required to report as set out TP 12Q (5).		
	(2) SUP 16.12.14R	R	<i>Firms in Regulated Activity Group 4:</i>	1 January 2008 to 30 August 2008	1 January 2008
			(1) are not required to submit the following data items for reporting dates falling prior to 31 August 2008: FSA029 FSA030 FSA031 FSA032 FSA033		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			FSA034 FSA035 FSA036 FSA037 FSA038 FSA039 FSA040 FSA041 FSA042		
			(2) are instead required to report as set out TP 12N (1), TP 12Q (5) or TP 12R (1).		
	(3) SUP 16.12.19R	R	<i>Firms in Regulated Activity Group 6:</i>	1 January 2008 to 30 August 2008	1 January 2008
			(1) are not required to submit the following data items for reporting dates falling prior to 31 August 2008:  FSA029 FSA030 FSA031 FSA032 FSA033		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			FSA034 FSA035 FSA036 FSA037 FSA039 FSA040		
			(2) are instead required to report as set out TP 12Q (5).		
	(4) SUP 16.12.25R	R	<i>Firms in Regulated Activity Group 8:</i>	1 January 2008 to 30 August 2008	1 January 2008
			(1) are not required to submit the following data items for reporting dates falling prior to 31 August 2008: FSA029 FSA030 FSA031 FSA032 FSA033 FSA034 FSA035 FSA036		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>FSA037</p> <p>FSA039</p> <p>FSA040</p>		
			(2) are instead required to report as set out TP 12Q (5).		
	(5) SUP 16.12.11R, SUP 16.12.14R , SUP 16.12.19R, SUP 16.12.25R	R	(1) <i>A securities and futures firm</i> that is:	1 January 2008 to 30 August 2008	1 January 2008
			(a) not a <i>BIPRU firm</i> , an <i>exempt CAD firm</i> or an <i>exempt BIPRU commodity firm</i> must submit the quarterly reporting statement in the manner and to the timescales set out in SUP 16.7.27R, and SUP 16.7.31R to SUP 16.7.34G;		
			(b) an <i>exempt CAD firm</i> must submit the quarterly reporting statement in the		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				manner and to the timescales set out in SUP 16.7.27R, and SUP 16.7.31R to SUP 16.7.34G;		
			(c)	an <i>exempt BIPRU commodity firm</i> (to which the requirements of IPRU(INV) Chapter 3 apply) must submit the quarterly reporting statement in the manner and to the timescales set out in SUP 16.7.27R, and SUP 16.7.31R to SUP 16.7.34G;		
			(2)	except in the case of an <i>investment management firm</i> that is not a <i>BIPRU firm</i> , is not an <i>exempt CAD firm</i> and is authorised by the FSA after 5 April 2007, an <i>investment management firm</i> that is:		
			(a)	neither a <i>BIPRU firm</i> nor an <i>exempt CAD firm</i> must submit the		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				quarterly financial return in the manner and to the timescales set out in SUP 16.7.36R to SUP 16.7.38R;		
			(b)	an <i>exempt CAD firm</i> must submit the quarterly financial return in the manner and to the timescales set out in SUP 16.7.36R to SUP 16.7.38R, and FSA043 in the manner and to the timescale set out in SUP 16.7.36BR;		
			(3)	a <i>UCITS firm</i> :		
			(a)	other than an <i>exempt CAD firm</i> must submit the Quarterly Financial Return in the manner and to the timescales set out in SUP 16.7.68R and SUP 16.7.69R;		
			(b)	that is an <i>exempt CAD firm</i> must submit the Quarterly Financial Return in		



(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				the manner and to the timescales set out in SUP 16.7.68R and SUP 16.7.69R and FSA043 in the manner and to the timescale set out in SUP 16.7.68BR; and		
			(4)	a <i>firm</i> that satisfies the criteria in SUP 16.7.76R and is:		
			(a)	neither a <i>BIPRU investment firm</i> nor an <i>exempt CAD firm</i> must submit the RMAR and MLAR in the manner and to the timescales set out in SUP 16.7.77R;		
			(b)	that is an <i>exempt CAD firm</i> must submit the RMAR and MLAR in the manner and to the timescales set out in SUP 16.7.77R and FSA043 in the manner and to the timescale set out in SUP 16.7.77BR.		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
12R	(1)		[deleted]		
	(2)  SUP 16.12.11R	R	An <i>exempt BIPRU commodity firm</i> that, at the reporting date for large exposures <i>data item</i> FSA008, satisfies the conditions of BIPRU TP 16 is not required to submit FSA008 for that reporting date.	30 June 2008 to 31 December 2010	30 June 2008
12S	(1)  SUP 16.12.15, SUP 16.12.16, SUP 16.12.17	R	In the case of an <i>exempt BIPRU commodity firm</i> that is subject to the requirements of <i>IPRU(INV)</i> Chapter 3, it is required to submit the capital adequacy <i>data item</i> FSA033 in the manner and to the frequency and timescales set out for <i>firms</i> other than <i>BIPRU firms</i> that are subject to <i>IPRU(INV)</i> Chapter 3 in SUP 16.12.15R to SUP 16.12.17R.	1 January 2009 to 31 December 2010	1 January 2009
12T	SUP 16.12.5 R to SUP 16.12.7 R;  SUP 16.12.10 R to SUP 16.12.17 R;  SUP 16.12.22 R to SUP 16.12.27 R	R	(1) This <i>rule</i> deals with:	As set out in column (4)	As set out in column (4)
			(a) the date (the "start date") on which the requirements (the "new requirements") relating to <i>data items</i> FSA047 to FSA055 (inclusive) (the "new <i>data items</i> ") made by the Supervi-		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>sion Manual (Integrated Regulatory Reporting of Liquidity for Banks, Building Societies and Investment Firms) Instrument 2009 (the "instrument") begin;</p>		
			<p>(b) the date on which the requirements relating to <i>data items</i> FSA010 and FSA013 end; and</p>		
			<p>(c) the date on which the changes in the requirements relating to <i>data item</i> FSA011 made by the instrument take effect.</p>		
			<p>(2) The start date for reporting on a solo basis for a <i>firm</i> that as at 30 November 2009 or, as the case may be, 1 December 2009, or as the case may be, 30 November 2009 and 1 June 2010, falls into one of the classes covered by BIPRU TP 26.2 (Transitional rules for quantitative aspects of BIPRU 12 that apply to all <i>firms</i> to which BIPRU 12 applies) is the day immediately following the last day on which that transitional provision is in</p>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				force as specified in column (5) of BIPRU TP 26.2.	
			(3)	The start date for reporting on a solo basis for other <i>firms</i> (other than a <i>non-ILAS BIPRU firm</i> ) is 1 December 2009.	
			(4)	The reporting period for the first report on a solo basis for <i>non-ILAS BIPRU firms</i> ends on 31 December 2010.	
			(5)	Reporting on the basis of a <i>defined liquidity group</i> applies for all reporting periods beginning on or after 1 November 2010.	
			(6)	For a <i>firm</i> falling into paragraph (2), the following start dates apply to the following <i>data items</i> .	
				(a) The date for <i>data items</i> FSA047, FSA048 and FSA052 is 1 June 2010.	
				(b) The date for data items FSA050, FSA051, FSA053 and FSA054 is 1 November 2010.	
			(7)	For a <i>firm</i> falling into paragraph (3), the fol-	

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			lowing start dates apply to the following <i>data items</i> .		
			(a) The date for <i>data items</i> FSA047 and FSA048 is 1 December 2009.		
			(b) The date for <i>data item</i> FSA052 is 1 June 2010.		
			(c) The date for <i>data items</i> FSA050, FSA051, FSA053 and FSA054 is 1 November 2010.		
			(8) If the start date under paragraphs (6) or (7) (taking into account paragraph (9)) falls before the start date in paragraphs (2) or (3), the dates in paragraphs (2) or (3) apply. However if the start date in paragraphs (6) or (7) (taking into account paragraph (9)) fall after the dates in paragraphs (2) or (3), the start dates in paragraphs (6) or (7) apply.		
			(9) If the start date for a new <i>data item</i> occurs part of the way through what would have been a reporting period for that <i>data</i>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p><i>item</i> under SUP 16.12 if the relevant part of SUP 16.12 had been in force, the first reporting period for that <i>data item</i> begins on the first day ("the first day") of what would have been that reporting period (as specified in SUP 16.12), even though the first day falls before the start date. The time for submission of the <i>data item</i> and the length of the reporting period are calculated as if the new requirements relating to that <i>data item</i> had been in force from the first day.</p>		
			(10) (a) The requirements relating to <i>data items</i> FSA010 and FSA013 are as follows.		
			(b) If a <i>firm</i> does not fall into <i>RAG 1</i> as at 30 November 2009, it does not have to submit these <i>data items</i> .		
			(c) Otherwise, the last reporting period for the <i>data item</i> concerned ends on the first date when the start date for that <i>firm</i> in relation to both <i>data item</i> FSA047 and FSA048 has occurred. That last		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			reporting period for <i>data item</i> FSA010 or FSA013 is shortened accordingly if necessary.		
			(d) Any notes in SUP 16.12 relating to those <i>data items</i> continue in force as long as required by (a) to (c).		
			(11) The changes to <i>data item</i> FSA011 only take effect with respect reporting periods beginning on or after the commencement date for those changes as specified in the instrument (1 October 2010).		
12U	SUP 16.12.5 R to SUP 16.12.7 R; SUP 16.12.10 R to SUP 16.12.17 R; SUP 16.12.22 R to SUP 16.12.27 R	G	The effect of paragraph 12T is that a <i>firm</i> which becomes an <i>ILAS BIPRU firm</i> or <i>non-ILAS BIPRU firm</i> after 1 December 2009 and before the end of the transitional period which would otherwise have applied will be expected to comply with the requirements listed in column (2) from the date on which it becomes either an <i>ILAS BIPRU firm</i> or a <i>non-ILAS BIPRU firm</i> (as the case may be). However such a <i>firm</i> does have the benefit of the delayed start dates as specified in paragraphs (4), (5) and (7) of paragraph 12T.		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
12V	SUP 16.12.5 R to SUP 16.12.7 R; SUP 16.12.10 R to SUP 16.12.17 R; SUP 16.12.22 R to SUP 16.12.27 R	G	An example of how paragraph 12T(6) and (9) work is as follows. Say that the start date for a <i>firm</i> under paragraph 12T(2) is 1 June 2010. If the <i>firm</i> reports <i>data item</i> FSA047 weekly, the first reporting period for that <i>data item</i> starts on Saturday 29 May 2010 and ends on Friday 4 June 2010. It has to be submitted to the <i>FSA</i> by 2200 on Monday 7 June.		
12W [PRA]	SUP 16.12.5 R to SUP 16.12.7 R	R	If BIPRU TP 30.4 R (Liquidity floor for certain banks) applies to a <i>firm</i> the regulatory intervention point mentioned in that <i>rule</i> is added to the list in paragraph (a) of the definition of <i>firm-specific liquidity stress</i> in the case of that <i>firm</i> for as long as BIPRU TP 30.4 R applies to it.	For as long as BIPRU TP 30.4 R applies to the <i>firm</i>	At the end of period set out in column (5)
12X	SUP 16.12.5 R to SUP 16.12.7 R	R	(1) This <i>rule</i> deals with the effect of the abolition of <i>data item</i> FSA044 by the Liquidity Standards (Miscellaneous Amendments) Instrument 2010 and of changes to the definition of <i>DLG by default</i> made by that instrument.	See column 4	See column 4
			(2) The abolition of that <i>data item</i> does not have effect in relation to a <i>firm's</i> reporting period for that <i>data item</i> that has begun but not ended as at 1 January 2011.		



(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			(3) The changes to the definition of <i>DLG by default</i> do not have effect in relation to the reporting period of a <i>firm</i> that has begun but not ended as at 1 November 2010.		
13	SUP 16.8	R	In Forms 1R(1) to (3) in SUP 16 Annex 6 R , for any <i>life policy</i> promoted before <i>commencement</i> , a reference to "direct offer financial promotion" must be read as a reference to "direct offer advertisement", as defined in the rule-book of the <i>PIA</i> at the time the <i>policy</i> was promoted.	From <i>commencement</i> for 6 years	<i>Commencement</i>
13A	(1) SUP 3.1.2 R	R	In relation to an <i>investment management firm</i> which carries on only the activity of <i>establishing, operating or winding up a personal pension scheme</i> and which is authorised by the <i>FSA</i> after 6 April 2007, SUP 3.9 will not apply to the <i>firm's</i> auditor.	6 April 2007 to 31 December 2008	6 April 2007
13B	[deleted]				
14	SUP 16.8	R	SUP 16.8 does not apply to an <i>insurer</i> (including a <i>friendly society</i> ) which was not a member of the <i>PIA</i> immediately before <i>commencement</i> .	From <i>commencement</i> for 6 years	<i>Commencement</i>
14A	SUP 16.11.7 R	R	Until 1 July 2006, a <i>firm</i> will not contravene SUP 16.11.7 R if it does not complete the data reporting field 'Advice at the point of sale' (see SUP 16 Annex 21 R).	<b>1 April 2005 - 30 June 2006</b>	<b>1 April 2005</b>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision				(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
14B		<b>R</b>	If SUP TR 12B R (5) applies, the <i>firm's</i> first return must be provided as follows:					
			<i>Accounting reference date</i>	Re-reporting period starts	Re-reporting period ends	Return to be provided		
			31 December 2004	1 April 2005	30 June 2005	30 <i>business days</i> after period end		
			Between 1 January 2005 and 31 March 2005	1 April 2005	6 months after the <i>accounting reference date</i> within 2005	30 <i>business days</i> after period end (Note 2)		
			Between 1 April 2005 and 29 June 2005	The day following the <i>accounting reference date</i> with-	3 months after the <i>accounting reference date</i> within 2005	30 <i>business days</i> after period end (Note 2)		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision			(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
				in 2005			
			Between 30 June 2005 and 29 September 2005	1 April 2005	Accounting reference date within 2005	30 business days after period end (Note 2)	
			Between 30 September 2005 and 30 December 2005	The day after 6 months preceding the accounting reference date within 2005	3 months preceding the accounting reference date within 2005	30 business days after period end (Note 3)	
14C	16.10.4	<b>R</b>	A firm whose accounting reference date falls between 1 April 2005 and 30 June 2005 (inclusive) need not comply with SUP 16.10.4 R until its accounting reference date in 2006.			1 April 2005-30 June 2005	1 April 2005

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
14D	16.11.3	<b>R</b>	The report under SUP 16.11.3 R (1) for the quarter 1 April to 30 June 2005, together with the report for the quarter 1 July to 30 September 2005 must be submitted within 20 <i>business days</i> after the end of the 1 July-30 September 2005 quarter.	1 April 2005-30 June 2005	1 April 2005
15			[deleted]		
15A	<i>Rules in SUP 20</i>	<b>R</b>	Expired		
15B	Transitional rule SUP 15A	<b>G</b>	Expired		
15C	The Supervision manual (SUP)		<p><i>A regulated sale and rent back firm</i> need not comply with the rules in this sourcebook to the extent that they carry on <i>regulated sale and rent back activity</i>, provided that within a period of 3 months after submitting an application for interim authorisation in accordance with article 32 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342), and every 6 months after such date until 30 June 2010, they provide to the <i>FSA</i> for the relevant period the following information:</p> <p>(a) management accounts for the <i>firm</i>, including a balance sheet, profit/loss statement and management report;</p>	1 July 2009 to 30 June 2010	1 July 2009

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>(b) details of the <i>firm's</i> funding arrangements; and</p> <p>(c) where the <i>firm</i> is a <i>SRB agreement provider</i>, the number of <i>regulated sale and rent back agreements</i> it has entered into in that period, distinguishing between direct sales (both advised and non-advised) and indirect sales (advised and non-advised).</p>		
15D	SUP 16	R	<p>A <i>regulated sale and rent back firm</i> need not comply with the rules in SUP 16 to the extent that they carry on <i>regulated sale and rent back activity</i>. A <i>regulated sale and rent back firm</i> must instead:</p> <p>(a) within a period of 3 months from becoming authorised (for previously <i>unauthorised persons</i>); or</p> <p>(b) according to their existing reporting schedules (for <i>firms</i> that previously held an interim authorisation or interim variation of permission in accordance with article 32 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342) or hold a <i>Part IV permission</i> to carry on <i>regulated sale and rent back activity</i> as a result of having made a variation of permission application that has been approved by the <i>FSA</i>);</p>	30 June 2010 to 29 June 2011	30 June 2010

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>and every 6 months after such date until 30 June 2011 (unless otherwise advised by the <i>FSA</i>), provide to the <i>FSA</i> for the relevant period the following information:</p> <p>(i) management accounts for the <i>firm</i>, including a balance sheet, profit/loss statement and management report;</p> <p>(ii) details of the <i>firm's</i> funding arrangements; and</p> <p>(iii) where the <i>firm</i> is a <i>SRB agreement provider</i>, the number of <i>regulated sale and rent back agreements</i> it has entered into in that period, distinguishing between direct and indirect sales.</p> <p>If a <i>firm</i> does not submit a complete report by the date on which it is due in accordance with this transitional provision, the <i>firm</i> must pay an administrative fee of £250.</p>		
16	Paragraphs 1 to 15	R		From <i>commencement</i>	<i>Commencement</i>
			In these transitional provisions:		
			<p>(1) "pre-commencement provision" means a provision repealed or revoked by or under the <i>Act</i> or a rule or guidance of the <i>firm's previous regulator</i>, including (where the</p>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			context permits) any relevant provision which it replaced before <i>commencement</i> ; and		
			(2) "substantially similar" means substantially similar in purpose and effect.		
17	SUP 20.4.4 R (4)	R	The periodic fee modification set out in SUP 20.4.4 R (4) does not apply to the A.2, A.18 and A.19 activity groups until 1 April 2005.	From 31 October 2004 to 31 March 2005	1 April 2002
	SUP	G	GEN contains some technical transitional provisions that apply throughout the <i>Handbook</i> and which are designed to ensure a smooth transition at <i>commencement</i> . These include transitional provisions relevant to record keeping and notification rules.	From commencement of the relevant provision in SUP	Various dates

Note 1 = The return need not provide data for sections A, B, C, D, E of the RMAR.

Note 2 = Sections A, B, C, D, E of the RMAR should be reported for the 3 months to the reporting end date.

Note 3 = This should only cover sections A, B, C, D, E of the RMAR

FCA PRA FCA PRA FCA

3 [deleted]

FCA PRA FCA PRA FCA

4 [deleted]

FCA PRA FCA PRA FCA

1	R	(1)	A <i>firm</i> may, in the written contract with its <i>introducer appointed representative</i> , extend the scope of appointment to include:
		(a)	receiving and forwarding to an <i>insurer</i> or <i>insurance intermediary</i> an application by a <i>customer</i> for a <i>connected travel insurance contract</i> together with any associated documentation; and
		(b)	receiving <i>client money</i> from a <i>customer</i> in respect of a <i>connected travel insurance contract</i> , and holding that <i>client money</i> .
		(2)	The extension of the scope of the appointment must apply only where the receipt of an application or of <i>client money</i> results from documentation given to a <i>customer</i> , where the deadline for submission of this documentation to the publishers for publishing was on or before 15 November 2008.
		(3)	This <i>rule</i> applies until 31 December 2009.

FCA PRA FCA PRA FCA

6 [deleted]

FCA

7 Client assets report

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook provision: coming into force
1	The <i>rules and guidance</i> in SUP 3.10	R	In relation to an auditor of a <i>firm</i> whose client assets report period ends on or before 29 September 2011, that auditor may comply with SUP 3.10 as it was in force on 31 May 2011.	From 1 June 2011	1 June 2011
2	The <i>rules and guidance</i> in SUP 3.11	R	In relation to a <i>firm</i> whose client assets report period ends on or before 29 September 2011, the <i>rules and guidance</i> to which	From 1 June 2011	1 June 2011



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(1)	(2)	(3)	(4)	(5)	(6)
			column (2) refers do not apply.		

## Supervision

### SUP TP 3

### Transitional provisions relating to SUP 10A and SUP 10B: Transition from the FSA to the FCA and PRA

<b>TP 3</b>	<b>Transitional provisions relating to SUP 10A and SUP 10B: Transition from the FSA to the FCA and PRA</b>	
<b>TP 3.1</b>	<b>Transition to the FCA</b>	
3.1.1	R	An <i>approved person</i> who was, as at <i>cutover</i> , approved by the <i>FSA</i> to perform a <i>controlled function</i> specified by the <i>FSA</i> set out in column 1 of the table in SUP TP 3.1.2 R in relation to a <i>firm</i> , is deemed to continue to be approved by the <i>FCA</i> to perform the <i>FCA-controlled function</i> in the same row of column 2 in that table in relation to that <i>firm</i> . Column 3 states whether this applies in relation to all <i>firms</i> or just <i>FCA-authorised persons</i> .
[FCA]		
3.1.2	R	Table: FSA controlled functions transitioned to the FCA
[FCA]		

FSA controlled function	FCA controlled function into which approved person transitioned	Firms to which transitional relates
Director function (CF1)	<i>Director function</i> (CF1)	<i>FCA-authorised persons</i> only
Non-executive director function (CF2)	<i>Non-executive director function</i> (CF2)	<i>FCA-authorised persons</i> only
Chief executive function (CF3)	<i>Chief executive function</i> (CF3)	<i>FCA-authorised persons</i> only
Partner function (CF4)	<i>Partner function</i> (CF4)	<i>FCA-authorised persons</i> only
Director of unincorporated association function (CF5)	<i>Director of unincorporated association function</i> (CF5)	<i>FCA-authorised persons</i> only
Small friendly society function (CF6)	<i>Small friendly society function</i> (CF6)	<i>FCA-authorised persons</i> only
Apportionment and oversight function (CF8)	<i>Apportionment and oversight function</i> (CF8)	All <i>firms</i>
Compliance oversight function (CF10)	<i>Compliance oversight function</i> (CF10)	All <i>firms</i>
CASS operational oversight function (CF10A)	<i>CASS operational oversight function</i> (CF10A)	All <i>firms</i>

FSA controlled function	FCA controlled function into which approved person transitioned	Firms to which transitional relates
Money laundering reporting function (CF11)	<i>Money laundering reporting function</i> (CF11)	All firms
Systems and controls function (CF28)	<i>Systems and controls function</i> (CF28)	FCA- <i>authorised persons</i> only
Significant management function (CF29)	<i>Significant management function</i> (CF29)	All firms
Customer function (CF30)	<i>Customer function</i> (CF30)	All firms

### TP 3.2 Transition to the PRA

3.2.1 R An *approved person* who was, as at *cutover*, approved by the FSA to perform, in relation to a PRA-*authorised person*, a *controlled function* specified by the FSA set out in column 1 of the table in SUP TP 3.2.2R is deemed to be approved by the PRA to perform the PRA-*controlled function* in the same row of column 2 in that table in relation to that *firm*.

3.2.2[PRA] R Table: FSA controlled functions transitioned to the PRA

FSA controlled function	PRA controlled function
Director function (CF1)	<i>Director function</i> (CF1)
Non-executive director function (CF2)	<i>Non-executive director function</i> (CF2)
Chief executive function (CF3)	<i>Chief executive function</i> (CF3)
Partner function (CF4)	<i>Partner function</i> (CF4)
Director of unincorporated association function (CF5)	<i>Director of unincorporated association function</i> (CF5)
Small friendly society function (CF6)	<i>Small friendly society function</i> (CF6)
Actuarial function (CF12)	<i>Actuarial function</i> (CF12)
With-profits actuary function (CF12A)	<i>With-profits actuary function</i> (CF12A)
Lloyd's actuary function (CF12B)	<i>Lloyd's actuary function</i> (CF12B)
Systems and controls function (CF28)	<i>Systems and controls function</i> (CF28)

### TP 3.3 Amalgamation of functions

3.3.1 G In the case of an FCA-*authorised person*, if SUP 10.6.2 R (each of the FSA's governing functions includes the FSA's systems and controls function and significant management function) applied immediately before *cutover*, SUP 10A.6.3 R (the equivalent FCA rule) applies to the same extent following *cutover*.

3.3.2 [PRA]	G	In the case of a <i>PRA-authorized person</i> , if SUP 10.6.2 R (each of the <i>FSA's</i> governing functions includes the <i>FSA's</i> systems and controls function and significant management function) applied immediately before <i>cutover</i> , SUP 10B.7.1R (the equivalent <i>PRA rule</i> ) applies following <i>cutover</i> in relation to the <i>systems and controls function</i> .
3.3.3 [FCA] [PRA]	G	In the case of a <i>PRA-authorized person</i> , if a <i>person</i> was approved by the <i>FSA</i> to perform one of the <i>FSA's</i> governing functions and the <i>FSA's</i> apportionment and oversight function in relation to a <i>firm</i> , the effect of SUP TP 3 is that he will be deemed to be approved by the <i>FCA</i> for the <i>apportionment and oversight function</i> and by the <i>PRA</i> for the appropriate <i>governing function</i> in relation to that <i>firm</i> . SUP 10A.11.11 R (disapplication of the apportionment and oversight function if approved for a <i>PRA governing function</i> ) and SUP 10B.7.3 R (functions making up the <i>apportionment and oversight function</i> if approved for a <i>PRA governing function</i> ) do not apply.

#### TP 3.4 Changes to approved persons details

3.4.1 [FCA]	G	<i>Firms</i> are reminded that an effect of the transitional provisions in SUP TP 2.2 is that SUP 10A.14.15 R to SUP 10A.14.21 G (notifications relating to changes to the details relating to <i>approved persons</i> and <i>candidates</i> and new information relating to them) apply to changes and new information as compared to the position before <i>cutover</i> .
3.4.2 [PRA]	G	<i>Firms</i> are reminded that an effect of the transitional provisions in SUP TP 2.2 is that SUP 10B.14.16R to SUP 10B.14.22R (notifications relating to changes to the details relating to <i>approved persons</i> and <i>candidates</i> and new information relating to them) apply to changes and new information as compared to the position before <i>cutover</i> .

#### TP 3.5 Transitional provisions relating to bidding in emissions auctions

3.5.1 [FCA]	R	SUP TP 3.5 deals with an <i>approved person</i> in relation to a <i>PRA-authorized person</i> who: <ol style="list-style-type: none"> <li>(1) immediately before <i>cutover</i>, fell within SUP 10.6.2A R (<i>FSA's</i> governing functions include certain functions relating to <i>bidding in emissions auctions</i>); and</li> <li>(2) immediately before <i>cutover</i> was not approved to perform the <i>FSA's</i> customer controlled function in relation to that <i>firm</i>.</li> </ol>
3.5.2 [FCA]	R	SUP 10A.10.7 R (7) does not apply in relation to that <i>person</i> and that <i>firm</i> until that <i>person</i> stops performing that function.
3.5.3 [FCA]	G	Under the <i>FSA's</i> <i>approved persons</i> regime a <i>person</i> acting as a bidder's representative within the meaning of subparagraph 3 of article 6(3) of the <i>auction regulation</i> did not require approval to perform the <i>FSA's</i> customer controlled function if that <i>person</i> had approval for one of the <i>FSA's</i> governing functions. If a <i>person</i> was in this position immediately before <i>cutover</i> , acting as a bidder's representative is not

included in the *customer function* following *cutover*. It is not included in any *PRA controlled function* either. This only applies in relation to the *firm* for which that *person* was performing that role immediately before *cutover*. Furthermore if that *person* stops performing that role and later takes it up again for the same *firm* he will require approval.

3.5.4 G This transitional does not apply in relation to an *FCA-authorised person*.

[FCA]

### TP 3.6 General

3.6.1[FCA] G References in SUP TP 3 to a *person* being approved for the purposes of section 59 of the *Act* (approval for particular arrangements) or being an *approved person* includes someone being taken to be approved for the purposes of that section by virtue of an order made under the *Act* relating to transitional matters, such as one relating to the bringing into force of the *Act*.

## Supervision

### SUP TP 4 Transitional provisions relating to SUP 10A

#### TP 4.1 Transitional provisions relating to LIBOR submitters

4.1.1 R SUP TP 4.1 applies to a *firm* with a *permission* under article 7 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (*Part 4A permission* to carry on the activity of *providing information in relation to a specified benchmark*).

4.1.2 R The *benchmark submission function* does not apply during the first transitional period.

[FCA]

4.1.3 R The first transitional period is the period of two weeks beginning on 2 April 2013. However, if an application has been made to the *FCA* for the approval of the performance by a *person* of the *benchmark submission function* in relation to a *firm*, and that application is approved before the end of that two-week period, then the first transitional period ends, for that *person* and *firm*, when the application is approved.

[FCA]

4.1.4 R The *benchmark submission function* does not apply in relation to a particular *person* and particular *firm* during the second transitional period if:

[FCA]

- (1) an application has been made to the *FCA* for the approval of the performance by that *person* of the *benchmark submission function* in relation to that *firm* during the first transitional period; and
- (2) that application has not been finally decided before the end of the first transitional period.

4.1.5 R The second transitional period begins when the first transitional period ends.

[FCA]

4.1.6 R The second transitional period ends, in relation to a particular *person* and *firm*, on the earlier of the following dates:

[FCA]

- (1) the end of the six *month* period beginning on 2 April 2013; and
- (2) the date on which the application referred to in SUP TP 4.1.4 is granted

4.1.7 R An application is finally decided for the purpose of SUP TP 4.1:

[FCA]

- (1) when the application is withdrawn;

- (2) when the *FCA* grants the application for approval under section 62 of the *Act* (applications for approval: procedure and right to refer to the *Tribunal*);
- (3) where the *FCA* has refused an application and the matter is not referred to the *Tribunal*, when the time for referring the matter to the *Tribunal* has expired;
- (4) where the *FCA* has refused an application and the matter is referred to the *Tribunal*, when:
  - (a) if the reference is determined by the *Tribunal*, the time for bringing an appeal has expired; or
  - (b) on an appeal from a determination by the *Tribunal*, the Court itself determines the application.

#### TP 4.2 Transitional provisions relating to LIBOR administration: New firm

4.2.1 R SUP TP 4.2 applies to a *firm* that immediately before it was granted an interim *part 4A permission* under article 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (Interim *permission* in relation to *administering a specified benchmark*) did not hold a *part 4A permission*.

4.2.2 R No *controlled function* applies during the first transitional period.

[FCA]

4.2.3 R The first transitional period is the period of two weeks beginning on 2 April 2013. However, if an application has been made to the *FCA* for the approval of the performance by a *person* of a *controlled function* in relation to the *firm*, and that application is approved before the end of that two-week period, then the first transitional period ends, for that *person*, *firm* and *controlled function*, when the application is approved.

4.2.4 R A *controlled function* does not apply in relation to a particular *person* and *firm* during the second transitional period if:

[FCA]

- (1) an application has been made to the *FCA* for the approval of the performance by that *person* of that *controlled function* in relation to the *firm* during the first transitional period; and
- (2) that application has not been finally decided before the end of the first transitional period.

4.2.5 R The second transitional period begins when the first transitional period ends.

[FCA]

4.2.6 R The second transitional period ends, in relation to a particular *person* and *firm*, on the earlier of the following dates:

[FCA]

- (1) the end of the six-month period beginning on 2 April 2013;
- (2) the date on which the application referred to in SUP TP 4.2.4R is finally decided; or

(3) the date on which the *firm's* interim permission lapses as set out in Article 8(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013

4.2.7 R An application for approval of the performance of a *controlled function* is finally decided for the purpose of SUP TP 4.2 in the circumstances described in SUP TP 4.1.7R.  
[FCA]

TP 4.3 Transitional provisions relating to LIBOR administration: Existing firm

4.3.1 R SUP TP 4.3 applies to a *firm* that was granted an interim *Part 4A permission* under article 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (*Interim permission* in relation to *administering a specified benchmark*) and already held a *Part 4A permission*.  
[FCA]

4.3.2 R The *benchmark administration function* does not apply during the first transitional period.  
[FCA]

4.3.3 R The first transitional period is the period of two weeks beginning on 2 April 2013. However, if an application has been made to the *FCA* for the approval of the performance by a *person* of the *benchmark administration function* in relation to the *firm*, and that application is approved before the end of that two-week period, then the first transitional period ends, for that *person* and *firm*, when the application is approved.  
[FCA]

4.3.4 R The *benchmark administration function* does not apply in relation to a particular *person* and *firm* during the second transitional period if:  
[FCA]

- (1) an application has been made to the *FCA* for the approval of the performance by that *person* of the *benchmark administration function* in relation to the *firm* during the first transitional period; and
- (2) that application has not been finally decided before the end of the first transitional period.

4.3.5 R The second transitional period begins when the first transitional period ends.  
[FCA]

4.3.6 R The second transitional period ends, in relation to a particular *person* and *firm*, on the earlier of the following dates:  
[FCA]

- (1) the end of the six-month period beginning on 2 April 2013;
- (2) the date on which the application referred to in SUP TP 4.3.4R is finally decided; or
- (3) the date on which the *firm's* interim permission lapses as set out in Article 8(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013

4.3.7 R An application for approval of the performance of a *controlled function* is finally decided for the purpose of SUP TP 4.3 in the circumstances described in SUP TP 4.1.7R.  
[FCA]





## Supervision

### Schedule 1 Record keeping requirements

#### Sch 1.1 G

**FCA** **PRA**

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

#### Sch 1.2 G

**FCA** **PRA**

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SUP 4.3.17 R (3)	Data for <i>actuary</i> (or <i>actuaries</i> ) appointed under SUP 4 (Actuaries)	Such data as the <i>actuary</i> (or <i>actuaries</i> ) appointed under SUP 4 (Actuaries) reasonably require	Not specified	Not specified
SUP 12.9.1 R, SUP 12.9.2 R,	<i>Appointed representatives</i>	(1) <i>Appointed representative's</i> name	On appointment, amendment of contract or termination of contract	3 years from termination or amendment of the contract, other than in respect of <i>tied agents</i> when period is five years.
SUP 12.9.5 R	<i>EEA tied agents</i>	If a UK MiFID investment firm appoints an <i>EEA tied agent</i> the record keeping requirements in SUP 12.9 applies to that <i>firm</i> as though the <i>EEA tied agent</i> were an <i>appointed representative</i> .  (2) Copy of the original contract with the <i>appointed representative</i> and any subsequent		

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SUP 13.11	<i>UK firm</i> exercising <i>EEA right</i>	<p>amendments to it (including details of any restrictions placed on the activities which the <i>appointed representative</i> may carry on)</p> <p>(3) Date and reason for terminating or amending the contract</p> <p>(4) arrangements agreed with other <i>principals</i> under SUP 12.4.5B R</p>	Not specified	<p>Three years from the earlier of the date on which:(a) it was superseded by a more up-to-date record; or</p> <p>(a) the <i>UK firm</i> ceased to have a <i>branch</i> in, or carry <i>cross border services</i> into, any <i>EEA State</i> under an <i>EEA right</i></p>
SUP 13.11.1 R	Exercise of passport rights by <i>UK firms</i>	<p>(1) Services or activities carried on from a <i>branch</i> in, or provided cross-border into, another <i>EEA State</i> under an <i>EEA right</i></p> <p>(2) The details relating to those services or activities (as set out in SUP 13.6 and SUP 13.7).</p>	Not specified	<p>Five years (for <i>firms</i> passporting under <i>MiFID</i>) or three years (for other <i>firms</i>) from earlier of:(1) record being superseded;</p> <p>(2) <i>firm</i> ceasing to have any <i>EEA branches</i> or cross-border services.</p>
SUP 16.8.23 R	Persistency reports and data reports	Records to enable the <i>firm</i> to monitor regularly the persistency of <i>life policies</i> and stakeholder pensions effected through each of its <i>rep-</i>	Not specified	Not specified

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Handbook refer- ence	Subject of record	Contents of record	When record must be made	Retention period
		<i>representatives</i> and make the required reports to the <i>FCA</i> .		



## Supervision

### Schedule 2 Notification requirements

#### Sch 2.1 G

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.

It is not a complete statement of those requirements and should not be relied on as if it were.

#### Sch 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 3.3.2 R (2)	Vacancy in the office of auditor.	The fact of the vacancy and the reason for it.	Vacancy in the office of auditor will arise or has arisen.	Without delay.
SUP 3.3.2 R (5)	Appointment of auditor.	The fact of the appointment, name and business address of the auditor and the date the appointment takes effect.	Appointment of auditor.	Not specified.
SUP 3.3.5 R	Vacancy in the office of auditor to a Lloyd's <i>underwriting agent</i> or the auditor of the <i>insurance business</i> of a Lloyd's <i>syndicate</i> .	The fact of the vacancy and the reason for it	Vacancy in the office of auditor will arise or has arisen.	Without delay.
SUP 3.5.3 R	Appointment of auditor by Lloyd's <i>underwriting agent</i> .	The fact of the appointment, name and business address of the auditor and the date the appointment takes effect.	Appointment of auditor.	Not specified.
SUP 3.5.3 R	Auditor not independent of the <i>firm</i> .	The fact of the lack of independence.	<i>Firm</i> aware that its auditor not independent of the <i>firm</i> .	A reasonable time.
SUP 3.7.2 G (1)	Expectation that auditor will qualify	Fact of expectation.	<i>Firm</i> decides qualification or explanatory paragraph is	Not specified.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 3.7.2 G (2)	his report on the audited annual financial statements or add an explanatory paragraph.  The <i>firm</i> receives a written communication from its auditor commenting on <i>internal controls</i> .	Content of written communication.	probable and the matter justifies notifying the <i>FSA</i> .  <i>Firm</i> receives written communication and decides that it is appropriate that the <i>FSA</i> should be informed.	Not specified.
SUP 3.8.10 G	Matters requiring reporting under sections 342(5) and 343(5) of the <i>Act</i> .	Information on or the auditor's opinion on the matters which have caused the auditor to believe the circumstances set out in Statutory Instrument 2001 No. 2587 apply.	Auditor believes that the circumstances set out in Statutory Instrument 2001 No.2587 paragraph 2 apply.	Not specified.
SUP 3.8.11 R	Auditor: termination of office.	The fact of the termination.	Auditor removed from office by the <i>firm</i> , resigns before his term of office expires or is not re-appointed by the <i>firm</i> .	Without delay.
SUP 3.8.12 R	Auditor: termination of office.	Any matter connected with ceasing which he thinks ought to be drawn to the <i>FSA's</i> attention; or the fact that there is no such matter.	Auditor ceasing to be (or being formally notified that he will cease to be) auditor of the <i>firm</i> .	Without delay.
SUP 3.10.4 R	Auditor: client assets report.	Either: (1) a report which states the matters set out in SUP 3.10.5 R and which specifies the matters to which SUP 3.10.9 R and SUP 3.10.9A R refer; or  (2) if the <i>firm</i> claims not to hold <i>client money</i> or <i>custody assets</i> , a report which states whether anything has come to the auditor's attention that causes him to believe that they were held during the period covered by the report.	The obligation in SUP 3.10.7 R to submit a report within a specified period of time.	Other than in the case of the auditor of a <i>firm</i> falling within category (10) of SUP 3.1.2 R, four months from the end of the period covered by the report.
SUP 3.10.8 R (1)	Expectation by auditor	Auditor to report the fact of its expected failure to comply and a	The expected failure by the auditor	No later than the end of the

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	that it will fail to comply with SUP 3.10.7 R.	full account of the reasons for its expected failure.	to comply with SUP 3.10.7 R.	four month period in question.
SUP 3.10.8 R (2)	Failure by auditor to comply with SUP 3.10.7 R.	Auditor to report the fact of its failure and a full account of the reasons for its failure.	Failure to comply with SUP 3.10.7 R.	Promptly.
SUP 4.3.1 R (2)	Vacancy in the office of <i>actuary</i> .	The fact of the vacancy and the reason for it.	Vacancy in the office of <i>actuary</i> will arise or has arisen.	Without delay.
SUP 4.3.1 R (3) and SUP 4.3.2 G	Appointment of <i>actuary</i> .	Matters specified in SUP 10 (because the <i>actuarial function</i> and the <i>with-profits actuary function</i> are specified as <i>controlled functions</i> ).	Appointment of <i>actuary</i> .	Before appointment.
SUP 4.5.9 R	<i>Actuary</i> : termination of office.	The fact of the termination.	<i>Actuary</i> removed from office by the <i>firm</i> , resigns before his term of office expires or is not re-appointed by the <i>firm</i> .	Without delay.
SUP 4.5.10 R	<i>Actuary</i> : ceasing to hold office.	Any matter connected with ceasing which he thinks ought to be drawn to the <i>FSA's</i> attention; or the fact that there is no such matter.	<i>Actuary</i> ceasing to be (or being formally notified that he will cease to be) <i>actuary</i> of the <i>firm</i> .	Without delay.
SUP 4.5.11 G	<i>Actuary</i> : ceasing to hold office.	Matters specified in SUP 10.13.6 R and SUP 10.13.7 R (because the <i>actuarial function</i> and the <i>with-profits actuary function</i> are specified as <i>controlled functions</i> ).	<i>Actuary</i> ceasing to hold office.	Seven <i>business days</i> ; or, if <i>approved persons</i> Form C is qualified, as soon as reasonably practicable.
SUP 4.6.1 R	Vacancy in the office of <i>Lloyd's actuary</i> will arise or has arisen.	Fact of the vacancy and the reason for the vacancy.	The <i>Society of Lloyd's</i> becomes aware that a vacancy will arise or has arisen.	Without delay.
SUP 4.6.17 R	<i>Syndicate actuary</i> of a <i>general insurance business syndicate</i> will or may be unable to produce an unqualified	Fact that the <i>syndicate actuary</i> will or may be unable to produce an unqualified opinion (to be notified by the <i>managing agent</i> to the <i>FSA</i> ).	The <i>managing agent</i> becomes aware that the <i>syndicate actuary</i> will or may be unable to produce an unqualified opinion.	Notification to be made promptly.



Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 5.4.12 G	opinion under SUP 4.6.16 R.  Delay in producing a <i>skilled person</i> report.	<i>Skilled person</i> : inform the <i>FSA</i> and the <i>person</i> in SUP 5.2.1 G that the report may not be delivered on time.	The <i>skilled person</i> becomes aware that the report may not be delivered on time.	As soon as possible.
SUP 5.5.1 R	Matters which the <i>skilled person</i> is required and permitted to report to the <i>FSA</i> .	As set out in SUP 5.5.1 R.	<i>Skilled person</i> becomes aware of reportable matter.	Not specified.
SUP 5.5.8 G	Cost of <i>skilled person</i> report.	As set out in SUP 5.5.8 G.	On request.	Not specified.
SUP 6.2.6 G	<i>Firm</i> seeking to vary its <i>Part IV permission</i> substantially or cancel its <i>Part IV permission</i> .	The fact of seeking such applications to initiate discussion.	<i>Firm</i> seeking to vary its <i>Part IV permission</i> substantially or cancel its <i>Part IV permission</i> .	As early as possible before making the application.
SUP 6.2.7 G	<i>Firm</i> intending to cease carrying on one or more <i>regulated activities</i> permanently.	The fact of intending to cease carrying on one or more <i>regulated activities</i> permanently.	<i>Firm</i> intending to cease carrying on one or more <i>regulated activities</i> permanently.	Prompt notice.
SUP 6.2.10 G	<i>Firm</i> winding down (running off) its activities.	The fact of winding down (running off) its activities.	<i>Firm</i> winding down (running off) its activities.	Before making an application for variation of or <i>cancellation</i> of <i>Part IV permission</i> .
SUP 6.3.15 D	Variation of <i>permission</i> .	The desired variation and the <i>regulated activity</i> or <i>regulated activities</i> which the <i>firm</i> proposes to carry on. The <i>FSA</i> will advise the <i>firm</i> of any additional information required (see SUP 6.3.15 D to SUP 6.3.27 G).	<i>Firm</i> wishes to vary its <i>Part IV permission</i> .	Before variation is required; the <i>FSA</i> has six months to consider a completed application.
SUP 6.3.15 D (3)	Variation of <i>permission</i> .	Any significant change in the information given in the application.	Until the application has been deter-	Immediately.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	any significant change in information provided.		mined, a change in information provided on the application for variation of <i>Part IV permission</i> .	
SUP 6.4.5 D	Cancellation of <i>Part IV permission</i> .	Reasons for the application, the date on which the <i>firm</i> has ceased, or expects to cease, to carry on <i>regulated activities</i> and an explanation of the full circumstances of its application.  The <i>FSA</i> will advise the <i>firm</i> of any additional information required (see SUP 6.4.8 G to SUP 6.4.17 G).	<i>Firm</i> wishes to cancel its <i>Part IV permission</i> .	Before cancellation is required; the <i>FSA</i> has six months to consider a completed application. See SUP 6.4.3 G.
SUP 6.4.5 D (4)	Cancellation of <i>Part IV permission</i> —any significant change in information provided.	Any significant change in the information given in the application.	Until the application has been determined, a change in information provided on the application for a cancellation of <i>Part IV permission</i> .	Immediately.
SUP 8.3.3 D	Application for a <i>waiver</i> .	The form in SUP 8 Annex 2 (Application form for a waiver or modification).	<i>Firm</i> seeks a <i>waiver</i> .	Before the <i>waiver</i> is required; the <i>FSA</i> will aim to give a <i>waiver</i> decision within 20 <i>business days</i> of receiving the application.
SUP 8.5.1 R	<i>Waiver</i> : altered circumstances.	The matter that affects the continuing relevance or appropriateness of the application or <i>waiver</i> .	<i>Firm</i> that has applied for or has been granted a <i>waiver</i> becoming aware of any matter which could affect the continuing relevance or appropriateness of the application or <i>waiver</i> .	Immediately.
SUP 9.2.6 G	<i>Guidance</i> request.	Sufficient information to enable the <i>FSA</i> to properly evaluate the situation and respond. In particular, identification of the <i>rule</i> , general <i>guidance</i> or other matter on which the individual <i>guidance</i> is sought and a description of the circumstances relating to the request.	A <i>firm</i> seeks individual <i>guidance</i> .	Before individual <i>guidance</i> required (the <i>FSA</i> will aim to respond quickly and fully to reasonable request).

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 10.12.2 D	<i>Approved persons- application.</i>	<i>Approved persons</i> the relevant Form A Application to perform <i>controlled functions</i> under the <i>approved persons</i> regime (see SUP 10 Annex 4).	<i>Firm</i> wishes to appoint a <i>person</i> to a <i>controlled function</i> .	Before appointment takes effect (the <i>FSA</i> has three months to consider a properly completed application but will deal with cases more quickly whenever circumstances allow).
SUP 10.12.13 R	<i>Approved persons- withdrawal of an application.</i>	<i>Approved persons</i> Form B Notice to withdraw an application to perform <i>controlled functions</i> under the <i>approved persons</i> regime (see SUP 10 Annex 5).	<i>Firm</i> wishes to withdraw an application for <i>approved person</i> status.	Not specified.
SUP 10.13.1 G	<i>Approved persons- moving within a firm.</i>	<i>Approved persons</i> Form E Internal transfer of an <i>approved person</i> (see SUP 10 Annex 8).	An <i>approved person</i> is both ceasing to perform one or more <i>controlled functions</i> and needs to be approved in relation to one or more new <i>controlled functions</i> within the same <i>firm</i> .	Before appointment takes effect (the <i>FSA</i> has three months to consider a properly completed application but will deal with cases more quickly whenever circumstances allow).
SUP 10.13.6 R	<i>Approved persons- ceasing to perform a controlled function.</i>	<i>Approved persons</i> Form C Notice of ceasing to perform <i>controlled functions</i> (see SUP 10 Annex 6).	An <i>approved person</i> ceasing to perform a <i>controlled function</i> .	Seven <i>business days</i> after an <i>approved person</i> ceases to perform a <i>controlled function</i> .
SUP 10.13.7 R	<i>Approved persons- ceasing to perform a controlled function- qualified withdrawal.</i>	The fact of the qualified withdrawal.	An <i>approved person</i> ceasing to perform a <i>controlled function</i> and the <i>firm</i> becoming aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of that <i>approved person</i> (qualified defined in	As soon as practicable ( <i>guidance</i> in SUP 10.13.8G states, where possible, within one <i>business day</i> ).

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 10.13.14 R	<i>Approved persons</i> -change to personal details - title, name or national insurance number.	<i>Approved persons</i> Form D Notification of changes in personal information or application details (see SUP 10 Annex 7).	SUP 10.13.7 R (2): <i>approved person</i> dismissed; <i>approved person</i> under investigation; <i>approved person's</i> fitness and propriety affected). An <i>approved person's</i> title, name or national insurance number changes.	Seven <i>business days</i> of the <i>firm</i> becoming aware.
SUP 10.13.16 R	<i>Approved persons</i> -change to personal details - information reasonably material to fitness and propriety.	<i>Approved persons</i> Form D Notification of changes in personal information or application details (see SUP 10 Annex 7).	<i>Firm</i> becomes aware of information which would reasonably be material to the assessment of an <i>approved person's</i> , or a <i>candidate's</i> , fitness and propriety.	As soon as practicable.
SUP 10.13.20A R	<i>Retail investment advisers</i> (RIA) - if a <i>firm</i> has upheld a <i>complaint</i> and paid redress of over £50,000, or has upheld 3 <i>complaints</i> in the last 12 <i>months</i> , about matters relating to the <i>retail investment activities</i> carried out by a <i>retail investment adviser</i>	Approved Persons Form G Retail Investment Adviser Complaints Alerts Form (see SUP 10 Annex 9 R)	A <i>complaint</i> is upheld with a claim value of over £50,000 or three <i>complaints</i> are upheld in a 12 <i>month</i> period about matters relating to the <i>retail investment activities</i> carried out by a <i>retail investment adviser</i>	By the end of the period of 20 <i>business days</i> beginning on the day on which the matter to be notified occurs
SUP 11.3.7 D	<i>Controllers</i> - proposing to acquire or increase <i>con-</i>	If the <i>controller</i> or proposed <i>controller</i> is an <i>authorised person</i> : those sections of <i>Controllers Form A</i> which deal with details of the proposed change in <i>control</i> , joint	Proposing to take a step which would result in acquiring the specified <i>control</i> .	Before acquiring <i>control</i> (the <i>FSA</i> has up to three <i>months</i> to consider

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	<i>control</i> -notification from <i>controller</i> or proposed <i>controller</i> .	<p>notifications and supplementary information (see SUP 11 Annex 4D)</p> <p>If the <i>controller</i> or proposed <i>controller</i> is an <i>authorised person</i> and a <i>fund manager</i> which satisfies SUP 11.3.5 G: notification in accordance with SUP 11.3.5 G.</p> <p>In other cases: all of Controllers Form A (see SUP 11 Annex 4) and one or more of Controllers Form B (see SUP 11 Annex 5) for relevant individuals (see SUP 11.3.8 D).</p>		whether to approve <i>control</i> ).
SUP 11.3.10 D	<i>Controllers</i> -correction to previously submitted information by <i>controller</i> .	Details of the information which may be false, misleading, incomplete or inaccurate, or has or may have changed.	A <i>person</i> who submitted a notification under SUP 11.3.7 D becoming aware, or has information which reasonably suggests, that he has or may have provided the <i>FSA</i> with information which was or may have been false, misleading, incomplete or inaccurate or has or may have changed, in a material particular.	Immediately.
SUP 11.3.15 G	<i>Controllers</i> -proposing to reduce <i>control</i> -notification from <i>controller</i> .	<p>Extent of <i>control</i> (if any) which the <i>controller</i> will have following the change in <i>control</i></p> <p>If the <i>controller</i> is a fund manager which satisfies SUP 11.3.5 G: notification in accordance with SUP 11.3.5 G.</p>	Reduction in <i>control</i> .	Before reducing <i>control</i> .
SUP 11.3.16 G	<i>Controllers</i> -change in <i>control</i> occurs - notification from <i>controller</i> .	Date relevant change of <i>control</i> occurred. If a <i>person</i> has reduced <i>control</i> , details of the extent of <i>control</i> retained (if any).	Change in <i>control</i> has occurred.	Not specified.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 11.4.2 R	<p><i>Controllers-</i> proposed change of <i>control-</i> notification from a <i>UK domestic firm</i>.</p>	<p>When acquiring or increasing <i>control</i>:</p> <p>(1) the name of the <i>firm</i>;</p> <p>(2) the name of the <i>controller</i> or proposed <i>controller</i> and, if it is a <i>body corporate</i> and is not an <i>authorised person</i>, the names of its <i>directors</i> and its <i>controllers</i>;</p> <p>(3) a description of the proposed event including the shareholding and <i>voting power</i> of the <i>person</i> concerned, both before and after the proposed event; and</p> <p>(4) any other information of which the <i>FSA</i> would reasonably expect notice, including information which could have a material impact on any of the approval requirements in section 186(2) of the <i>Act</i> and any relevant supporting documentation.</p> <p>The notification need only contain as much of the information the <i>firm</i> is able to provide, having made reasonable enquiries from <i>persons</i> and other sources as appropriate.</p> <p>When reducing <i>control</i>:</p> <p>(1) the name of the <i>controller</i>; and</p> <p>(2) details of the extent of <i>control</i> (if any) which the <i>controller</i> will have following the change in <i>control</i>.</p>	<p>(1) a <i>person</i> acquiring <i>control</i> or ceasing to have <i>control</i>;</p> <p>(2) an existing <i>controller</i> acquiring an additional <i>kind of control</i> or ceasing to have a <i>kind of control</i>;</p> <p>(3) an existing <i>controller</i> increasing or decreasing a kind of <i>control</i> which he already has so that the percentage of shares or <i>voting power</i> concerned becomes or ceases to be equal to or greater than 20, 33 or 50</p> <p>(4) an existing <i>controller</i> becoming or ceasing to be a <i>parent undertaking</i>.</p>	<p>As soon as the <i>firm</i> becomes aware that a <i>person</i> is proposing to take a step that would result in the event concerned; or if the event takes place without the knowledge of the <i>firm</i>, within 14 <i>days</i> of the <i>firm</i> becoming aware of the event concerned.</p>
SUP 11.4.2A R	<p><i>Controllers -</i> proposed change of <i>control</i> notification from a <i>UK insurance intermediary</i>.</p>	<p>When acquiring <i>control</i>:</p> <p>(1) the name of the <i>firm</i>;</p> <p>(2) the name of the <i>controller</i> or proposed <i>controller</i> and, if it is a <i>body corporate</i> and is not an <i>authorised person</i>, the names of its <i>directors</i> and its <i>controllers</i>;</p> <p>(3) a description of the proposed event including the shareholding</p>	<p>(1) a <i>person</i> acquiring <i>control</i> or ceasing to have <i>control</i>;</p> <p>(2) a <i>person</i> becoming or ceasing to be a <i>parent undertaking</i>.</p>	<p>As soon as the <i>firm</i> becomes aware that a <i>person</i> is proposing to take such a step that would result in the event concerned; or if the event takes place without the knowledge</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		<p>and <i>voting power</i> of the <i>person</i> concerned, both before and after the proposed event; and</p> <p>(4) any other information of which the <i>FSA</i> would reasonably expect notice, including information which could have a material impact on any of the approval requirements in section 186(2) of the <i>Act</i> and any relevant supporting documentation.</p> <p>The notification need only contain as much of the information the <i>firm</i> is able to provide, having made reasonable enquiries from <i>persons</i> and other sources as appropriate.</p> <p>When reducing <i>control</i>:</p> <p>(1) name of the <i>controller</i>; and</p> <p>(2) details of the extent of <i>control</i> (if any) which the <i>controller</i> will have following the change in <i>control</i>.</p>		<p>of the <i>firm</i>, 14 <i>days</i> of the <i>firm</i> becoming aware of the event concerned.</p>
SUP 11.4.4 R	<p><i>Controllers-proposed change of control-</i> notification from an <i>overseas firm</i>.</p>	<p>When acquiring or increasing <i>control</i>: (1) the name of the <i>firm</i>;</p> <p>(2) the name of the <i>controller</i> or proposed <i>controller</i> and, if it is a <i>body corporate</i> and is not an <i>authorised person</i> the names of its <i>directors</i> and its <i>controllers</i>;</p> <p>(3) a description of the proposed event including the shareholding and <i>voting power</i> of the <i>person</i> concerned, both before and after the proposed event; and</p> <p>(4) any other information of which the <i>FSA</i> would reasonably expect notice, including information which could have a material impact on any of the approval requirements in section 186(2) of the <i>Act</i> and any relevant supporting documentation.</p>	<p>(1) a <i>person</i> acquiring <i>control</i> or ceasing to have <i>control</i>;</p> <p>(2) an existing <i>controller</i> becoming or ceasing to be a <i>parent undertaking</i>.</p>	<p>As soon as the <i>firm</i> becomes aware that a <i>person</i> is proposing to take a step that would result in the event concerned; or if the event takes place without the knowledge of the <i>firm</i>, within 14 <i>days</i> of the <i>firm</i> becoming aware of the event concerned.</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 11.4.8 G	<p><i>Controllers-notification under Principle 11 by firms.</i></p>	<p>The notification need only contain as much of the information the <i>firm</i> is able to provide, having made reasonable enquiries from <i>firm</i> and other sources as appropriate.</p> <p>When reducing <i>control</i>:</p> <p>(1) the name of the <i>controller</i>; details of the extent of <i>control</i> (if any) which the <i>controller</i> will have following the change in control.</p> <p>Proposed change of <i>control</i>.</p>	<p>Any prospective changes of which the <i>firm</i> is aware, in <i>controllers'</i> or proposed <i>controllers'</i> shareholdings or <i>voting power</i> (if the change is material).</p>	<p>The earliest opportunity and before the formal notifications . As a minimum, the <i>FSA</i> considers such discussions should take place before a <i>person</i>:</p> <p>(1) enters into any formal agreement in respect of the purchase of <i>shares</i> or a proposed acquisition or merger which would result in a change in <i>control</i> (whether or not the agreement is conditional upon any matter, including the <i>FSA's</i> approval) or</p> <p>(2) purchases any <i>shareoptions</i>, <i>warrants</i> or other financial instruments, the exercise of which would result in the <i>person</i> acquiring <i>control</i> or any</p>



Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 11.6.2 R to SUP 11.6.5 R	<i>Controllers</i> -change in information provided by a UK domestic firm.	(1) Details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed  (2) An explanation why such information was or may have been provided; and  (3) The correct information.	After submitting a notification under SUP 11.4.2 R or SUP 11.4.2A R and until the change in <i>control</i> occurs, the <i>firm</i> becomes aware, or has information that reasonably suggests, that information provided by the <i>controller</i> or proposed <i>controller</i> is false, misleading, incomplete or inaccurate, or has or may have changed in a material particular.	other changes in <i>control</i> .  Immediately.
SUP 11.6.4 R	<i>Controllers</i> -change in notification has taken place - notification by <i>firm</i> .	The fact that the change in <i>control</i> has taken place or that there are grounds for reasonably believing that the event will not now take place.	A change in <i>control</i> previously notified under SUP 11.4.2 R, SUP 11.4.2A R, SUP 11.4.4 R or taking place; or the <i>firm</i> having grounds for reasonably believing that the event will not now take place.	14 days of the change in <i>control</i> or having grounds for reasonably believing that the event will not now take place.
SUP 11.8.1 R	<i>Controllers</i> -changes in the circumstances of existing <i>controllers</i> .	The fact of:  (1) a <i>controller</i> , or any entity subject to his <i>control</i> , being the subject of any legal action or investigation which might put into question the integrity of the controller;  (2) a significant deterioration in the financial position of a controller;	The <i>firm</i> becoming aware of:  (1) a <i>controller</i> , or any entity subject to his <i>control</i> , is or has been the subject of any legal action or investigation which might put into question the integrity of the <i>controller</i> ;  (2) a significant deterioration in the financial position of a controller;	Immediately.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		<p>(3) a corporate <i>controller</i> undergoing a substantial change or series of changes in its <i>governing body</i>;</p> <p>(4) a <i>controller</i>, who is authorised in another <i>EEA State</i> as an <i>MiFID investment firm</i> or <i>BCD credit institution</i> or under the <i>Insurance Directives</i> or the <i>Insurance Mediation Directive</i>, ceasing to be so authorised (registered in the case of an <i>IMD insurance intermediary</i>).</p>	<p>(3) a corporate <i>controller</i> undergoing a substantial change or series of changes in its governing body;</p> <p>(4) a <i>controller</i>, who is authorised in another <i>EEA State</i> as an <i>MiFID investment firm</i> or <i>BCD credit institution</i> or under the <i>Insurance Directives</i> or the <i>Insurance Mediation Directive</i>, ceasing to be so authorised (registered in the case of an <i>IMD insurance intermediary</i>).</p>	
<p>SUP 11.9.1 R</p>	<p><i>Close links.</i></p>	<p>(a) the name of the <i>person</i> ;</p> <p>(b) the nature of the <i>close links</i>;</p> <p>(c) if the <i>close link</i> is with a <i>body corporate</i>, its country of incorporation, address and registered number;</p> <p>(d) if the <i>close link</i> is with an individual, his date and place of birth; and</p> <p>(e) group organisation chart (required only quarterly if the <i>firm</i> has elected to report <i>monthly</i>).</p>	<p>The <i>firm</i> becoming aware that it has become or ceased to be <i>closely linked</i> with any <i>person</i>.</p>	<p>As soon as reasonably practicable and no later than one <i>month</i> after the <i>firm</i> becomes aware that it has become or ceased to be <i>closely linked</i> or if the <i>firm</i> has elected to report <i>monthly</i>, within 15 <i>business days</i> of the end of each <i>month</i> (see SUP 11.9.4 R).</p>
<p>SUP 12.7.1 R</p>	<p><i>Appointed representatives.</i></p>	<p>The notification should give details of the <i>appointed representative</i> and the <i>regulated activities</i> which the <i>firm</i> is, or intends to, carry on through the <i>appointed representative</i>, including:</p> <p>(1) the name of the <i>firm's</i> new <i>appointed representative</i> (if the <i>appointed representative</i> is a <i>body corporate</i>, this is its registered name)</p>	<p>A <i>firm</i> appointing an <i>appointed representative</i>.</p>	<p>(1) (if the appointment covers <i>insurance mediation activities</i> and the <i>appointed representative</i> is not included on the <i>Register</i> as carrying on such activities in another</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		<p>(2) any trading name under which the <i>firm's</i> new <i>appointed representative</i> carries on a <i>regulated activity</i> in that capacity;</p> <p>(3) a description of the <i>regulated activities</i> which the <i>appointed representative</i> is permitted or required to carry on and for which the <i>firm</i> has accepted responsibility.</p>		<p>er capacity) before; or</p> <p>(2) if the <i>firm</i> appoints a <i>tied agent</i> and the <i>tied agent</i> is not included in the <i>Register</i> (see SUP 12.4.11 R), before; or</p> <p>(3) (otherwise) ten <i>business days</i> after;</p> <p>the <i>appointed representative</i> begins to carry on <i>regulated activities</i> under the contract.</p>
SUP 12.7.7 R (1)	<i>Appointed representative</i> - extension of scope of appointment to cover <i>insurance mediation activities</i> for the first time.	That fact.	Extension of scope of appointment to cover <i>insurance mediation activities</i> for the first time and the <i>appointed representative</i> is not included on the <i>Register</i> as carrying on <i>insurance mediation activities</i> in another capacity.	Before the <i>appointed representative</i> begins to carry on <i>insurance mediation activities</i> under the contract.
SUP 12.7.7 R (1A)	<i>Appointed representatives</i> - commencing as <i>tied agent</i> .	That fact.	Change of scope of <i>tied agent's</i> appointment.	Notification must be made prior to <i>tied agent</i> acting.
SUP 12.7.7 R (2)	<i>Appointed representatives</i> - change in other information.	The information that has changed.	A change being made to other information provided under SUP 12.7.1 R or the <i>firm</i> becoming aware of the change.	Ten <i>business days</i> of a change being made, or if later, as soon as it becomes aware of the change.
SUP 12.7.8 R	<i>Appointed representative</i>	The fact that the <i>firm</i> has reasonable grounds for believing that the appointment conditions are not being met; and:	The <i>firm</i> having reasonable grounds for believing that	As soon as the <i>firm</i> has reasonable grounds

Handbook refer- ence	Matter to be noti- fied	Contents of notification	Trigger event	Time al- lowed
	<p><i>tives</i>- belief that appoint- ment condi- tions not met.</p>	<p>(a) the steps the <i>firm</i> proposes to take to rectify the matter; and  (b) the date of the termination of the contract with the <i>appointed representative</i>.</p>	<p>the conditions in SUP 12.4.2 R , SUP 12.4.6 R or SUP 12.4.8A R are not being satisfied.</p> <p>The SUP 12.4.2 R conditions are that:</p> <p>(1) the appointment does not prevent the <i>firm</i> from satisfying and continuing to satisfy the threshold conditions;</p> <p>(2) the <i>threshold conditions representative</i>: (a) is sol-vent;</p> <p>(b) is suitable to act for the <i>firm</i> in that capacity;</p> <p>(c) has no <i>close links</i> which would be likely to prevent the effective super- vision of the <i>ap- pointed representa- tive</i> by the <i>firm</i>; and</p> <p>(3) the <i>firm</i> has ade- quate:</p> <p>(a) <i>controls</i> over the <i>appointed repre- sentative's regulated activities</i> for which the <i>firm</i> has respon- sibility (see SYSC 3.1); and</p> <p>(b) resources to monitor and en- force compliance by the <i>appointed representative</i> with the relevant require- ments applying to the <i>regulated activi- ties</i> for which the <i>firm</i> is responsible</p>	<p>for believing that the <i>ap- proval</i> condi- tions have not been met.</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			and with which the <i>appointed representative</i> is required to comply under its contract with the <i>firm</i> (see SUP 12.5.3 G (2)).	
			The SUP 12.4.6 R conditions are that: On a continuing basis the <i>firm</i> must take reasonable care to ensure that the <i>appointed representative</i> is suitable to act for the <i>firm</i> in that capacity (having regard, in particular, to other <i>persons</i> connected with the <i>appointed representative</i> who will be, or who are, directly responsible for its activities).	
SUP 12.7.9 R	<i>EEA tied agents.</i>	If a UK MiFID investment firm appoints an <i>EEA tied agent</i> the notification requirements in SUP 12.7 apply to that <i>firm</i> as though the <i>EEA tied agent</i> were an <i>appointed representative</i> .		
SUP 12.8.6 R	<i>EEA tied agents.</i>	If a UK MiFID investment firm appoints an <i>EEA tied agent</i> the notification requirements in SUP 12.8 apply to that <i>firm</i> as though the <i>EEA tied agent</i> were an <i>appointed representative</i> .		
SUP 12.8.1 R	<i>Appointed representatives- termination of appointment.</i>	(1) Written notice of the notification by the <i>firm</i> or the <i>appointed representative</i>  (2) The reason for the termination or amendment, if the termination or amendment is due to misconduct or the <i>appointed representative</i> is resigning while under investigation by the <i>firm</i> , the <i>FSA</i> , another regulator, a <i>clearing house</i> ,	Either the <i>firm</i> or the <i>appointed representative</i> notifying the other that it proposes to terminate the contract of appointment or to amend it so that it no longer meets the requirements contained in or re-	Ten <i>business days</i> after the date of the decision to terminate or so amend the contract or, if later, as soon as the <i>firm</i> becomes aware that the contract is to be or has been ter-

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		an exchange, a <i>designated professional body</i> , or a government body or agency	ferred to in SUP 12.5.	minated or amended.
		(3) If relevant, details of action taken by the <i>firm</i> and, if applicable, its outcome.		
SUP 12.8.1 R	<i>Appointed representatives- termination of appointment.</i>	(1) Written notice of the notification by the <i>firm</i> or the <i>appointed representative</i>  (2) The reason for the termination or amendment, if the termination or amendment is due to misconduct or the <i>appointed representative</i> is resigning while under investigation by the <i>firm</i> , the <i>FSA</i> , another regulator, a <i>clearing house</i> , an exchange, a <i>designated professional body</i> , or a government body or agency  (3) If relevant, details of action taken by the <i>firm</i> and, if applicable, its outcome.	Either the <i>firm</i> or the <i>appointed representative</i> notifying the other that it proposes to terminate the contract of appointment or to amend it so that it no longer meets the requirements contained in or referred to in SUP 12.5.	Ten <i>business days</i> after the date of the decision to terminate or so amend the contract or, if later, as soon as the <i>firm</i> becomes aware that the contract is to be or has been terminated or amended.
SUP 12.8.4 G	<i>Appointed representatives- termination of appointment -approved persons.</i>	<i>Approved persons</i> Form C Notice of ceasing to perform <i>controlled functions</i> (see SUP 10 Annex 6).	An <i>approved person</i> ceasing to perform a <i>controlled function</i> under an <i>arrangement</i> entered into by a <i>firm</i> or its <i>appointed representative</i> .	Seven <i>business days</i> after an <i>approved person</i> ceases to perform a <i>controlled function</i> .
SUP 12.8.4 G	<i>Appointed representatives- termination of appointment -approved persons (qualified withdrawal).</i>	The fact of the qualified withdrawal.	An <i>approved person</i> ceasing to perform a <i>controlled function</i> under an <i>arrangement</i> entered into by a <i>firm</i> or its <i>appointed representative</i> and the <i>firm</i> becoming aware, or has information which reasonably suggest, that it will submit a qualified Form C in respect of that <i>approved person</i>	As soon as practicable <i>guidance</i> (in SUP 10.13.8G states, where possible, within one <i>business day</i> ).

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 13.3.2 G (1)	Intention to establish a <i>branch</i> in another <i>EEA State</i> .	(a) activities which it seeks to carry on through <i>branch</i> (b) other information as specified in SUP 13.5.1 R.	(qualified defined in SUP 10.13.7 R (2); <i>approved person</i> dismissed, <i>approved person</i> under investigation, <i>approved person's</i> fitness and propriety affected). Decision to establish a <i>branch</i> in other <i>EEA State</i> .	Before establishing a <i>branch</i> .
SUP 13.4.2 G (1)	Intention to provide <i>cross border services</i> into another <i>EEA State</i> .	(a) identifies activities which it seeks to carry on by way of provision of <i>cross border services</i> (b) other information as specified in SUP 13.5.2 R.	Decision to provide <i>cross border services</i> into another <i>EEA State</i> .	Before providing <i>cross border services</i> .
SUP 13.5.1A R	<i>UK pure reinsurer</i> establishing a <i>branch</i> in another <i>EEA State</i> .	(a) the address of the <i>branch</i> (b) the name of the <i>firm's</i> authorised agent (c) whether the <i>firm</i> will be, or is, carrying on life or non-life <i>reinsurance</i> business, or both  (d) confirmation that the <i>firm</i> fulfils the solvency requirements of the <i>Reinsurance Directive</i> .	Decision to establish a <i>branch</i> in other <i>EEA State</i> .	Whenever possible, as soon as the information specified in SUP 13 Annex 1 R is known by the <i>firm</i> .
SUP 13.6.5 G (1)	Changes to <i>branches</i> ( <i>Firms</i> passporting under the <i>UCITS Directive</i> and <i>Banking Consolidation Directive</i> ).	Details of proposed change.	Change in circumstances within control of <i>UK firm</i> .	Before making change.
SUP 13.6.5B G	Changes to <i>branches</i> ( <i>Firms</i> passporting under <i>MiFID</i> ).	Details of proposed change.	Change in circumstances, including using for the first time or ceasing to use a <i>tiered agent</i> established in the <i>EEA State</i> in which	Before making change.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 13.6.7 G (1)	Changes to relevant <i>EEA</i> details of <i>branches</i> (Firms passporting under the <i>Insurance Directives</i> ).	Details of proposed change.	the <i>branch</i> is established. Change in circumstances within control of <i>UK firm</i> .	Before making change.
SUP 13.6.8 G	Changes to relevant <i>UK</i> details of <i>branches</i> (Firms passporting under the <i>Insurance Directives</i> ).	Details of proposed change.	Change arising from circumstances within control of <i>UK firm</i> .	At least one month before change is effected.
SUP 13.6.10 G	Changes to <i>branches</i> (not <i>firms</i> passporting under <i>MiFID</i> ).	Details of change.	Changes to <i>branch</i> arising from circumstances beyond control of a <i>UK firm</i> .	As soon as reasonably practicable.
SUP 13.7.3 G	<i>Firms</i> passporting under the <i>UCITS Directive</i> : Change in program of operations, or activities to be carried on under its <i>EEA right</i> .	Details of proposed change.	Change in programme of operations, or activities to be carried on under its <i>EEA right</i> .	(a) change arises from circumstances within control of <i>firm</i> : before making change.  (b) change arises from circumstances beyond <i>UK firm's</i> control: as soon as practicable (whether before or after change).
SUP 13.7.3B G	<i>Firms</i> passporting under <i>MiFID</i> ( <i>cross-border services</i> ): Change in program of operations, or activities to be carried on under its <i>EEA right</i> .	Details of proposed change.	Change in activities to be carried on, using for the first time or ceasing to use a <i>tier agent</i> .	Before making change.



Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 13.7.4 G	<i>Firms</i> passporting under <i>Insurance Directive</i> (providing <i>cross border services</i> ) - change in relevant details.	Details of proposed change.	Change in relevant details.	(a) change arises from circumstances within control of <i>firm</i> : at least one month before proposed change  (b) change arises from circumstances beyond <i>UK firm's</i> control: as soon as reasonably practicable.
SUP 13A.3.6 G - SUP 13A.3.8 G	Intention of <i>incoming Treaty firm</i> to carry on a <i>regulated activity</i> in the <i>United Kingdom</i> .	Matters relevant to the notice as indicated in SUP 13A.3.6 G.	Intention to carry on a <i>regulated activity</i> .	At least seven <i>days</i> in advance.
SUP 14.2.3 G	Change to <i>branch</i> details in circumstances within control of the <i>firm</i> ( <i>firms</i> passporting under the <i>UCITS Directive</i> and <i>Banking Consolidation Directive</i> ).	Details of proposed change.	Change to <i>branch</i> details.	Before making the change.
SUP 14.2.6 G	Change to <i>branch</i> details in circumstances within control of the <i>firm</i> ( <i>firms</i> passporting under the <i>Insurance Directives</i> ).	Details of proposed change.	Change to <i>branch</i> details.	Before making the change.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 14.2.8 G	Changes to <i>branch</i> details arising from circumstances beyond control of incoming <i>EEA firm</i> .	Change to <i>branch</i> details.	Details of the change.	As soon as reasonably practicable.
SUP 14.2.11 G	Changes to <i>UK branch</i> details for <i>EEA MiFID investment firms</i> .	Details of proposed change.	Changes to <i>branch</i> details.	Before making the change.
SUP 14.3.3 G	Changes to <i>cross border services</i> ( <i>firms</i> passporting under the <i>UCITS Directive</i> ).	Details of proposed change.	Changes to <i>cross border services</i> .	(a) change arises from circumstances within control of <i>firm</i> : before making change  (b) change arises from circumstances beyond <i>UK firm's</i> control: as soon as reasonably practicable.
SUP 14.3.3A G	<i>Incoming EEA firm</i> passporting under <i>MiFID</i> .	Details of the proposed change to <i>cross-border services</i> .	Change in details.	Before the change.
SUP 14.6.3 G	Incoming <i>EEA firm</i> - cancelling qualification for <i>authorisation</i> .		Incoming <i>firm</i> ceased, or intends to cease, to carry on <i>regulated activity</i> in the <i>United Kingdom</i> .	
SUP 15.3.1 R	Notifications - matters having a serious regulatory impact.	The fact of any of the trigger events occurring.	Becoming aware or having information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:  (1) the <i>firm</i> failing to satisfy one or	Immediately.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 15.3.7 G and SUP 15.3.8 G	Notifications - anything relating to the <i>firm</i> of which the <i>FSA</i> would expect notice.	The matters specified in 'trigger events' which must be disclosed appropriately.	<p>more of the <i>threshold conditions</i>;</p> <p>(2) any matter which could have a significant adverse impact on the <i>firm's</i> reputation;</p> <p>(3) any matter which could affect the <i>firm's</i> ability to continue to provide adequate services to its <i>customers</i> and which could result in serious detriment to a <i>customer</i> of the <i>firm</i>;</p> <p>or</p> <p>(4) any matter in respect of the <i>firm</i> which could result in serious financial consequences to the <i>UK financial system</i> or to other <i>firms</i>.</p> <p>A <i>firm</i> must deal with its regulators in an open and co-operative way, and must disclose to the <i>FSA</i> appropriately anything relating to the <i>firm</i> of which the <i>FSA</i> would reasonably expect notice. (<i>Principle 11</i> and SUP 15.3.7 G ) Compliance with <i>Principle 11</i> includes, but is not limited to, giving the <i>FSA</i> notice of:</p> <p>(1) any proposed restructuring, reorganisation or business expansion</p>	<p>A <i>firm</i> should have regard to the urgency and significance of a matter. ( SUP 15.7.2 G )</p> <p>The period of notice will depend on the event, although the <i>FSA</i> expects a <i>firm</i> to discuss relevant matters with it at an early stage, before making any internal or external commitments. (SUP 15.3.9 G).</p>

Handbook refer- ence	Matter to be noti- fied	Contents of notification	Trigger event	Time al- lowed
			<p>which could have a significant impact on the <i>firm's</i> risk profile or resources, including, but not limited to:</p> <p>(a) setting up a new <i>undertaking</i> within a firm's group, or a new <i>branch</i> (whether in the <i>UK</i> or overseas); or</p> <p>(b) commencing the provision of <i>cross border services</i> into a new territory;</p> <p>(c) commencing the provision of a new type of product or service (whether in the <i>UK</i> or over- seas);</p> <p>(d) ceasing to under- take a <i>regulated ac- tivity</i> or <i>ancillary activity</i>, or signifi- cantly reducing the scope of such activ- ities;</p> <p>or</p> <p>(e) entering into, or significantly chang- ing, a <i>material out- sourcing</i> arrange- ment; or</p> <p>(f) a substantial change or a series of changes in the <i>governing body</i> of an <i>overseas firm</i> (other than an <i>in- coming firm</i>); or</p> <p>(g) any change to the <i>firm's</i> prudential</p>	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			<p>category or sub-category, as used in the Interim Prudential source-books and the Supervision manual and on which <i>guidance</i> is given in SUP App 1;</p> <p>(2) any significant <i>failure</i> in the <i>firm's</i> systems or <i>controls</i>, including those reported to the <i>firm</i> by the <i>firm's</i> auditor;</p> <p>(3) any action which a <i>firm</i> proposes to take which would result in a material change in its capital adequacy or solvency, including, but not limited to:</p> <p>(a) any action which would result in a material change in the <i>firm's</i> financial resources or financial resources requirement; or</p> <p>(b) a material change resulting from the payment of a special or unusual dividend or the repayment of <i>share</i> capital or a subordinated loan; or</p> <p>(c) for <i>firms</i> which are subject to the <i>rules</i> on consolidated financial supervision, any proposal under which another <i>group</i> company may be consider-</p>	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 15.3.11 R	Notifications - breaches of <i>rules</i> and other requirements in or under the <i>Act</i> .	<p>(1) information about any circumstances relevant to the breach or offence;</p> <p>(2) identification of the <i>rule</i> or <i>requirement</i> or offence; and</p> <p>(3) information about any steps which a <i>firm</i> or other <i>person</i> has taken or intends to take to rectify or remedy the breach or prevent any future potential occurrence.</p>	<p>ing such an action; or</p> <p>(d) significant trading or non-trading losses (whether recognised or unrecognised).</p> <p>Becoming aware, or having information which reasonably suggests, that any of the following matters has occurred, may have occurred or may occur in the foreseeable future as regards the <i>firm</i>, any of its <i>directors</i>, officers, employees, <i>approved persons</i>, <i>appointed representatives</i>, or <i>tied agents</i></p> <p>(a) a significant breach of a <i>rule</i> (which includes a <i>Principle</i>) or <i>Statement of Principle</i>; or</p> <p>(b) a breach of any requirement imposed by the <i>Act</i> or by regulations or an order made under the <i>Act</i> by the Treasury (except if the breach is an offence, in which case (c) applies);</p> <p>(c) the bringing of a prosecution for, or a conviction of, any offence under the <i>Act</i>.</p>	Immediately.
SUP 15.3.15 R	Notifications - civil, criminal or disciplinary	Details of the matter and an estimate of the likely financial consequences, if any.	(1) Civil proceedings being brought against the <i>firm</i> and	Immediately.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	<p>iplinary proceedings against a <i>firm</i>.</p>		<p>the amount of the claim being significant in relation to the <i>firm's</i> financial resources or its reputation; or</p> <p>(2) any action being brought against the <i>firm</i> under section 71 of the <i>Act</i> (Actions for damages) or section 150 (Actions for damages); or</p> <p>(3) disciplinary measures or sanctions being imposed on the <i>firm</i> by any statutory or regulatory authority, professional organisation or trade body (other than the <i>FSA</i>) or the <i>firm</i> becoming aware that one of those bodies has started an investigation into its affairs: or</p> <p>(4) the <i>firm</i> being prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties being imposed on it for tax evasion; or</p> <p>(5) if it is an <i>OPS firm</i>, which is a trustee, being removed as trustee by a court order.</p>	
<p>SUP 15.3.17 R</p>	<p>Notifications - Fraud, errors and other irregularities.</p>	<p>All relevant and significant details of the incident or suspected incident of which the <i>firm</i> is aware.</p>	<p>The following events arising, if significant:</p> <p>(1) the <i>firm</i> becoming aware that an <i>employee</i> may</p>	<p>Immediately.</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 15.3.21 R	Notifications - insolvency, bankruptcy and winding up.	The fact of the event.	<p>have committed a fraud against one of its <i>customers</i>; or</p> <p>(2) the <i>firm</i> becoming aware that a <i>person</i>, whether or not employed by it, may have committed a fraud against it; or</p> <p>(3) the <i>firm</i> considering that any <i>person</i>, whether or not employed by it, acting with intent to commit a fraud against it; or</p> <p>(4) the <i>firm</i> identifying irregularities in its accounting or other records, whether or not there is evidence of fraud; or</p> <p>(5) the <i>firm</i> suspecting that one of its <i>employees</i> may be guilty of serious misconduct concerning his honesty or integrity and which is committed with the firm's regulated activities or <i>ancillary activities</i>.</p> <p>(1) the calling of a meeting to consider a resolution for winding up the <i>firm</i>;</p> <p>(2) an application to dissolve the <i>firm</i> or to strike it off the Register of Companies;</p> <p>(3) the presentation of a petition for the winding up of the <i>firm</i>;</p>	Immediately.



Handbook refer- ence	Matter to be no- tified	Contents of notification	Trigger event	Time al- lowed
SUP 15.3.23 D	Any matter likely to be	Details of the matters arisen.	<p>(4) the making of, or any proposals for the making of, a composition or arrangement with any one or more of its creditors;</p> <p>(5) an application for the appointment of an administrator or trustee in bankruptcy to the <i>firm</i>;</p> <p>(6) the appointment of a receiver to the <i>firm</i> (whether an administrative receiver or receiver appointed over particular property): or</p> <p>(7) an application for an interim order against the <i>firm</i> under section 252 of the Insolvency Act 1986 (or, in Northern Ireland, section 227 of the Insolvency (Northern Ireland) Order 1989); or</p> <p>(8) if the <i>firm</i> is a <i>sole trader</i>:</p> <p>(a) an application for a sequestration order; or</p> <p>(b) the presentation of a petition for bankruptcy; or</p> <p>(9) anything equivalent to (1) to (8) above in respect of the <i>firm</i> in a jurisdiction outside the <i>UK</i>.</p>	Immediately.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	<p>of material concern in relation to the <i>FSA</i> which may have arisen in relation to:</p> <p>(1) the <i>regulated activities</i> for which the <i>Society</i> has <i>permission</i>; or</p> <p>(2) <i>underwriting agents</i>; or</p> <p>(3) <i>approved persons</i> or individuals acting for or on behalf of <i>underwriting agents</i>.</p>			
SUP 15.3	Commencement, continuation and cessation of relevant investigations and disciplinary proceedings	Commencement, continuation and cessation of relevant investigations and disciplinary proceedings listed in SUP 15.3.24 D and SUP 15.3.25 D.	Commencement of proceedings.	Not specified.
SUP 15.4.1 R	Notifications - notified <i>person - overseas firm</i> which is not an <i>incoming firm</i> .	Form F Changes in notified <i>person</i> (see SUP 15 Ann 2 R) However, if the <i>person</i> is an <i>approved person</i> , notification giving details of his name, the <i>approved person's</i> FSA individual reference number and the position to which the notification relates, is sufficient.	Any <i>person</i> taking up or ceasing to hold the following positions:  (a) the <i>firm's</i> worldwide <i>chief executive</i> (that is, the <i>person</i> who, alone or jointly with one or more others, is responsible under the immediate authority of the <i>person</i> for the whole of its business) if the <i>person</i> is based outside the <i>UK</i> ;  (b) the <i>person</i> within the <i>overseas firm</i>	30 <i>business days</i> .

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 15.5.1 R	Notifications - change in name.	Details of the proposed new name and the date on which the <i>firm</i> intends to implement the change of name.	<p>with a purely strategic responsibility for <i>UK</i> operations;</p> <p>(c) for a <i>bank</i>: the two or more <i>persons</i> who effectively direct its business in accordance with SYSC 4.2.2 R ;</p> <p>(d) for an <i>insurer</i>: the <i>authorised UK representative</i>.</p> <p>A change in:(1) the <i>firm's</i> name (which is the registered name if the <i>firm</i> is a <i>body corporate</i>);</p> <p>(2) any business name under which the <i>firm</i> carries on a <i>regulated activity</i> or <i>ancillary activity</i> either from an establishment in the <i>UK</i> or with or for clients in the <i>UK</i>.</p>	Reasonable advance notice.
SUP 15.5.4 R	Notifications - change in address.	Details of the new address and the date of the change.	<p>A change in any of the following addresses:</p> <p>(1) the <i>firm's</i> principal place of business in the <i>UK</i>;</p> <p>(2) in the case of an <i>overseas firm</i>, its registered office (or head office) address.</p>	Reasonable advance notice.
SUP 15.5.5 R	Change to certain telephone numbers.	Details of the new number and the date of the change.	Change to certain telephone numbers.	Reasonable advance notice.
SUP 15.5.7 R	Notifications - other regulators.	The fact of becoming subject to or ceasing to be subject to the supervision of any <i>overseas regulator</i>	A <i>firm</i> becoming subject to or ceasing to be subject to	Immediately.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(including a <i>Home State regulator</i> ).	the supervision of any <i>overseas regulator</i> (including a <i>Home State regulator</i> ).	
SUP 15.6.4 R	Notification - inaccurate, false or misleading information.	(1) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;  (2) an explanation why such information was or may have been provided; and  (3) the correct information.	A <i>firm</i> becoming aware, or having information that reasonably suggests that it has or may have provided the <i>FSA</i> with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed in a material particular.	Immediately If the information required cannot be submitted with the notification (because it is not immediately available), it must instead be submitted as soon as possible afterwards.
SUP 15.8.1 R	Notification - management of <i>occupational pension scheme</i> assets.	The fact of receiving the request or instruction.	A <i>firm</i> which manages the assets of an <i>occupational pension scheme</i> receiving a request or instruction from a trustee which it knows or on substantial grounds suspects or has cause reasonably to suspect is at material variance with the trustee's duties.	As soon as reasonably practical .
SUP 15.8.2 R	Administration of individual pension accounts.	If a <i>firm</i> begins or ceases to administer individual pension accounts, notify the <i>FSA</i> .	Event of beginning or ceasing to administer <i>individual pension accounts</i> .	As soon as reasonably practicable.
SUP 15.8.3 R	Insurers' commission clawback.	As set out in SUP 15.8.3 R.	Any amount of <i>commission</i> due from an intermediary remaining outstanding for four <i>months</i> after date when <i>insurer</i> gave notice to the intermediary that	As soon as reasonably practicable.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(a) relevant <i>premium</i> had not been paid or	
			(b) that cancellation or overpayment has occurred.	
SUP 15.8.4 G	Operating a bureau de change .	That the <i>firm</i> intends to operate a bureau de change.	Intending to operate a bureau de change.	Before the <i>firm</i> begins to operate a bureau de change.
SUP 15.8.4 G	Operating a bureau de change.	That the <i>firm</i> has ceased to operate a bureau de change.	Ceasing to operate a bureau de change.	As soon as reasonably practicable.
SUP 15.8.6 R	Delegation by <i>UCITS management company</i> .	The fact that a function of the <i>UCITS management company</i> has been delegated together with (a) the identity of the party to whom the function has been delegated and (b) the period during which the delegation will apply.	The delegation of a function by a <i>UCITS management company</i> .	As soon as reasonably practicable.
SUP 15.8.8 R	<i>CTF provider</i> status.	The fact of the <i>firm</i> beginning or ceasing to hold itself out as a <i>CTF provider</i> .	<i>Firm</i> beginning or ceasing to hold itself out as a <i>CTF provider</i> .	As soon as reasonably practicable.
	<i>CTF</i> third party administrator.	Engagement of third party administrator.	Third party administrator engaged.	As soon as reasonably practicable.
	Intention to offer <i>HMRC allocated CTFs</i> .	Whether it intends to offer <i>HMRC allocated CTFs</i> .	Becoming a <i>CTF provider</i> .	As soon as reasonably practicable.
	Intention to provide <i>stakeholder CTF</i> .	Whether it intends to provide its own <i>stakeholder CTFs</i> .	Becoming a <i>CTF provider</i> .	As soon as reasonably practicable.
SUP 15.8.9 R	Default by counterparty on its obligations in a transaction of a type specified in SUP 15.8.9 R.	The fact of the default.	Default by counterparty on its obligations in a <i>repurchase agreement</i> or <i>reverse repurchase agreement</i> or <i>securities or commodities lending or borrowing transaction</i> .	Immediately.
SUP 15.9.1 R	Being or ceasing to be a <i>financial</i>	The fact of being or ceasing to be a <i>financial conglomerate</i> .	Being or ceasing to be a <i>financial conglomerate</i> .	Immediately.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 15.9.2 R	Reasonable likelihood of becoming or ceasing to be a <i>financial conglomerate</i> .	Reasonable likelihood of becoming or ceasing to be a <i>financial conglomerate</i> .	Reasonable likelihood of becoming or ceasing to be a <i>financial conglomerate</i> .	Immediately.
SUP 16.3.17 R	Reporting - change of <i>accounting reference date</i> .	The fact of a change in <i>accounting reference date</i> .	A change in <i>accounting reference date</i> .	<p>If extending its accounting reference period, before the previous <i>accounting reference date</i></p> <p>If shortening its accounting period, it must make the notification in (1) before the new <i>accounting reference date</i>.</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.4.5 R	Reporting - annual controller report - every firm except:  (1) an ICVC;  (2) an incoming EEA firm;  (3) an incoming Treaty firm;  (4) a non-directive friendly Society;  (5) a partnership;  (6) a sole trader;  (7) a service company;  (8) a UCITS qualifier.	<p>If the <i>firm</i> is not aware:</p> <p>(a) that it has any <i>controllers</i>; or</p> <p>(b) of any changes in the identity of its <i>controllers</i> since the submission of its previous report; or</p> <p>If the above does not apply, the report must contain a list of all the <i>controllers</i> as at the firm's <i>accounting reference date</i> of which the <i>firm</i> is aware and, for each such <i>controller</i>, state:</p> <p>(a) its name;</p> <p>(b) the percentage of <i>voting power</i> in the <i>firm</i>, or in the firm's <i>parent undertaking</i>, which it is entitled to exercise or control the exercise of, whether alone or with any associate;</p> <p>(c) the percentage of shares in the <i>firm</i>, or in the firm's <i>parent undertaking</i>, which it holds, whether alone or with any associate;</p> <p>(d) if the <i>controller</i> is a <i>body corporate</i>, its country of incorporation, address and registered number; and</p> <p>(e) if the <i>controller</i> is an individual, his date and place of birth.</p> <p>This information may be provided in the form of a group organisation chart.</p>	<p>Annually from the <i>accounting reference date</i></p> <p>If a <i>firm</i> is a <i>friendly society</i> or a <i>building society</i>, then it is required to submit a report only if it is aware that it has a <i>controller</i>.</p>	Four months.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.5.4 R	Reporting - annual <i>close links</i> report - every <i>firm</i> except:  (1) an <i>ICVC</i> ;  (2) an <i>incoming EEA firm</i> ;  (3) an <i>incoming Treaty firm</i> ;  (4) a <i>non-directive friendly society</i> ;  (5) a <i>partnership</i> ;  (6) a <i>sole trader</i> ;  (7) a <i>service company</i> ;  (8) a <i>UCITS qualifier</i> .	If a <i>firm</i> is not aware:  (a) that it has <i>close links</i> ; or  (b) of any material changes to the details since the last report; then confirmation of this.  If the above does not apply, the report must contain a list of all <i>persons</i> with whom the <i>firm</i> has <i>close links</i> as at the <i>firm's accounting reference date</i> of which it is aware, and for each such <i>person</i> state:  (a) its name;  (b) the nature of the <i>close links</i> ;  (c) if the <i>close link</i> is with a <i>body corporate</i> , its country of incorporation, address and registered number;  (d) if the <i>close link</i> is with an individual, his date and place of birth ; and  (e) a group organisation chart.	Annually from the <i>accounting reference date</i>  If a <i>firm</i> is an unincorporated <i>friendly society</i> , then it is only required to submit a report if it is aware that it has <i>close links</i> .	Four months.
SUP 16.6.5 R	Reporting - compliance reports - <i>bank-</i> list of <i>overseas regulators</i> .	List of all <i>overseas regulators</i> for each legal entity in the <i>firm's group</i> .	Annually from the <i>accounting reference date</i> .	Six months.
SUP 16.6.5 R	Reporting - compliance reports - <i>bank-authorized entities</i> in the <i>firm's group</i> .	Organogram showing the <i>authorized entities</i> in the <i>firm's group</i> .	Annually from the <i>accounting reference date</i> .	Six months.
SUP 16.6.6 R	Reporting - compliance reports - <i>trustee</i> of an <i>AUT</i>	In relation to the <i>manager</i> of each <i>AUT</i> for which it is a <i>trustee</i> , the number of times during the quarter in which facts came to the <i>firm's</i> knowledge from which it appeared, or might have appeared, that the	Quarterly (the quarter ends are 31 March, 30 June, 30 September, 31 December).	One month.



Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.6.6 R	Reporting - compliance reports - <i>depository</i> of an <i>ICVC</i> .	<p><i>manager</i> had failed (materially or otherwise) to:</p> <p>(a) give correct instructions to the <i>trustee</i> to create or cancel <i>units</i> in the <i>AUT</i> when the <i>manager</i> should have done so, and the error:</p> <p>(i) resulted in the creation of too few <i>units</i> or in the cancellation of too many <i>units</i>; and</p> <p>(ii) was not corrected in accordance with the <i>FSA's guidance</i> as set out in COLL 6.2.12 G ;</p> <p>(b) price <i>units</i> in the <i>AUT</i> in accordance with COLL 6 , where the pricing error was:</p> <p>(i) greater than 0.5% of the price of a <i>unit</i>; or</p> <p>(ii) less than 0.5% of the price of a <i>unit</i>, and the <i>trustee</i> did not consider the <i>manager's</i> controls to be adequate; unless the failure was an isolated incident.</p> <p>In relation to the <i>authorised corporate director</i> of each <i>ICVC</i> for which it is a <i>depository</i>, the number of times during the quarter in which facts came to the <i>firm's</i> knowledge from which it appeared, that the <i>authorised corporate director</i> had failed (materially or otherwise) to:</p> <p>(a) arrange for the <i>issuer</i> cancellation of <i>shares</i> in the <i>ICVC</i> when the <i>authorised corporate director</i> should have done so, and the error:</p> <p>(i) resulted in the creation of too few <i>shares</i> or in the cancellation of too many <i>shares</i>; and</p> <p>(ii) was not corrected in accordance with the <i>FSA's guidance</i> as set out in COLL 6.2.12 G</p> <p>(b) price <i>shares</i> in the <i>ICVC</i> in accordance with COLL 6 , where the pricing error was:</p>	Quarterly (the quarter ends are 31 March, 30 June, 30 September, 31 December).	One month.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		<p>(i) greater than 0.5% of the price of a <i>share</i>; or</p> <p>(ii) less than 0.5% of the price of a <i>share</i>, and the <i>depository</i> did not consider the <i>authorised corporate director's</i> controls to be adequate;</p> <p>unless the failure was an isolated incident.</p>		
SUP 16.6.6 R	Reporting - compliance reports -OPS firms.	Annual accounts of each <i>occupational pension scheme</i> in respect of which the <i>firm</i> is acting.	Annually.	Seven months after the end of the scheme year.
SUP 16.6.6 R	Reporting - compliance reports -OPS firms.	Audited annual accounts of each <i>OPS collective investment scheme</i> in respect of which the <i>firm</i> is acting.	Annually.	Seven months after the end of the scheme year.
SUP 16.6.8 R (3)	Reporting - compliance reports -OPS firms.	Any change in the date of commencement of the scheme year of an OPS or <i>OPS collective investment scheme</i> , in respect of which the <i>firm</i> is acting, not less than 15 <i>business days</i> before the date on which such a change is to become effective.		15 <i>business days</i> before the date on which such a change is to become effective.
SUP 16.8	Reporting - persistency reports from insurers	<p>Persistency report. The report must report on every <i>life policy</i> which was promoted subject to <i>rules</i> in COB or COBS, is not a life policy of a type listed in SUP 16.8.13 R or SUP 16.8.14 R, and which:</p> <p>(1) was effected by the <i>firm</i> submitting the report; or</p> <p>(2) was effected by a member of the <i>firm's group</i>, which is not an <i>authorised person</i>, and in circumstances in which the <i>firm</i> submitting the report was responsible for promoting that <i>life policy</i>; or</p> <p>(3) was effected by another <i>firm</i>, but is carried out by the <i>firm</i> submitting the report.</p> <p>The report must be in the format of Forms 1R(1), (2) and (3) in SUP 16 Annex 6 R.</p>	Annually	By 30 April each year
SUP 16.9.3 R	Details of appointed representatives.	A list of all the current <i>appointed representatives</i> of the <i>firm</i> as at the <i>firm's accounting reference date</i> . A	Annually	Four months

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	Every firm with a <i>Part IV permission</i> to advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.	report is not required if a <i>firm</i> has no <i>appointed representatives</i> as at the firm's <i>accounting reference date</i> and this is reflected in the relevant extract from the <i>FSA Register</i> .		
SUP 16.10.4 R	Verification of <i>standing data</i> items	Correction of inaccuracies in <i>standing data</i>	<i>Accounting reference date</i>	30 <i>business days</i> after <i>accounting reference date</i>
SUP 16.13.3 D to SUP 16.13.4 D	Reporting - <i>authorised payment institution</i>	FSA056 Capital Adequacy Return	Annually	30 <i>business days</i>
SUP 16.13.3 D to SUP 16.13.4 D	Reporting - <i>small payment institution</i>	FSA057 Payment Services Directive Transactions	Annually	1 month
SUP 16.14.5 G	<i>CMAR</i>	The items listed in the form contained in SUP 16 Annex 29 R	For <i>CASS large firms</i> and <i>CASS medium firms</i> , the end of each <i>month</i> .	For <i>CASS large firms</i> and <i>CASS medium firms</i> , within 15 <i>business days</i> of the end of each <i>month</i> .
SUP 16.16.4 R	Reporting - Prudent Valuation Return - <i>UK banks</i> and <i>BIPRU 730k firms</i> which meet the condition in SUP 16.16.2 R.	The items listed in the form contained in SUP 16 Annex 31A R.	Quarterly (the quarter ends are 31 March, 30 June, 30 September and 31 December).	Six weeks

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 17	Transaction reporting This applies to (a) a <i>Mi-FID investment firm</i> ; (b) a <i>third country investment firm</i> ; (c) a <i>person</i> who is the operator of an <i>approved reporting mechanism</i> or of a <i>regulated market</i> or <i>MTF</i> that is used by a <i>firm</i> to report transactions to the <i>FSA</i> ; or (d) a <i>firm</i> acting in its capacity as a manager or operator of a collective investment undertaking, <i>pension scheme</i> , <i>occupational pension scheme</i> , a <i>personal pension scheme</i> or a <i>stakeholder pension scheme</i> .	A <i>transaction report</i> as specified in SUP 17.1.4 R, SUP 17.4.1 EU and SUP 17.4.2 R.	Executing a <i>transaction</i> , subject to the exceptions in SUP 17.2.1 R and SUP 17.2.3 R.	As quickly as possible and by not later than the close of the working day following the day upon which that <i>transaction</i> took place.
SUP 18.2.12 G	Possible proposal for <i>insurance business transfer scheme</i>	The broad outline of the scheme and its purpose	When an <i>insurance business transfer scheme</i> is being considered	As soon as reasonably practical
SUP 18.2.26 G	The <i>FSA</i> has to be informed to enable it to consult the transferee's <i>Home</i>	As set out in 18.2.26 G	If the transferee is (or will be) an <i>EEA firm</i> (authorised in its <i>Home State</i> to carry on <i>insurance business</i> under the <i>Insurance Direc-</i>	Not specified

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 18.2.28 G	<p><i>State regulator</i></p> <p>The <i>FSA</i> has to be informed to enable it to consult the <i>Host State regulator</i></p>	As set out in 18.2.28 G	<p><i>tives) or a Swiss general insurance company</i></p> <p>If the transferor is an <i>UK insurer</i> and the business to be transferred includes business carried on from a branch in another <i>EEA State</i>,</p>	Not specified
SUP 18.2.29 G	<p>The <i>FSA</i> has to be informed to enable it to consult the <i>Host State regulator</i></p>	Should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be helpful if a draft of the <i>scheme report</i> was also available.	<p>If the transferor is an <i>UK insurer</i> and the business to be transferred includes a long-term insurance contract (other than reinsurance) for which the <i>state of the commitment</i> is an <i>EEA state</i> other than the <i>United Kingdom</i>,</p> <p>If the transferor is an <i>UK insurer</i> and the business to be transferred includes a general insurance contract (other than reinsurance) for which the <i>state of the risk</i> is an <i>EEA state</i> other than the <i>United Kingdom</i>,</p>	Not specified
SUP 18.2.31 G	<p><i>Scheme report</i> in a form approved by the <i>FSA</i></p>	As set out in SUP 18.2.33 G	Decision to apply to the court to approve an <i>insurance business transfer scheme</i>	Not specified
SUP 18.2.32 G	<p>Fact of the <i>independent expert</i> producing a <i>scheme report</i></p>		<i>Independent expert</i> appointed to produce a <i>scheme report</i>	At an early stage
SUP 18.2.42 G	<p>Notice of the application to be sent to</p>	In addition to the notice it would normally be appropriate to include a statement setting out the terms	Decision to apply to the court for approval of an <i>insurance business</i>	At least six weeks before court hearing

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	<p>all <i>policyholders</i> of the parties. It may also be appropriate to give notice to others affected, in particular to: (1) reinsurers of the transferor where it is proposed that benefits or liabilities under their contracts should pass to the transferee (2) anyone with an interest in the <i>policies</i> being transferred who has notified the transferor of their interest.</p>	<p>of the scheme and containing a summary of the <i>scheme report</i>.</p>	<p><i>transfer scheme</i> (unless the court directs otherwise)</p>	
<p>SUP App 2.3.1 R</p>	<p><i>Insurers: scheme of operations-</i> an <i>insurer</i> which is not an <i>incoming EEA firm</i> or an <i>incoming Treaty firm - Margin of solvency</i> below required level</p>	<p>A plan for the restoration of a sound financial position including: (1) a <i>scheme of operations</i> (see SUP App 2.9); and (2) an explanation of how, if at all, and by when it expects its <i>margin of solvency</i> to be adequately restored to the <i>required margin of solvency</i></p>	<p>The firm becoming aware that its <i>margin of solvency</i> has fallen below its <i>required margin of solvency</i></p>	<p>28 days</p>
<p>SUP App 2.4.1 R</p>	<p><i>Insurers: scheme of operations-</i> an <i>insurer</i> which is not an <i>incoming EEA firm</i> or an <i>incoming Treaty firm - Margin of solvency</i> be-</p>	<p>A short term financial plan including: (1) a <i>scheme of operations</i> (see SUP App 2.9 and (2) an explanation of how, if at all, and by when it expects its <i>margin of solvency</i> to be adequately restored to the <i>guarantee fund</i></p>	<p>The firm becoming aware that its <i>margin of solvency</i> has fallen below its <i>guarantee fund</i></p>	<p>14 days</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP App 2.5.1 R	low <i>guarantee fund</i>  <i>Insurers: scheme of operations-an insurer which is not an incoming EEA firm or an incoming Treaty firm- ceasing to effect contracts of insurance</i>	A run-off plan including:  (1) a <i>scheme of operations</i> (see SUP App 2.9); and  (2) an explanation of how, or to what extent, all liabilities to <i>policy-holders</i> (including where relevant, reasonable bonus expectations) will be met in full as they fall due	The <i>firm</i> deciding to cease to effect new <i>contracts of insurance</i>	28 days
[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
SUP App 2.10.1 R (2) and SUP App 2.10.2 R	<i>Insurers: scheme of operations-an insurer which is not an incoming EEA firm or an incoming Treaty firm-obligations on insurers which have previously submitted a scheme of operations</i>	Quarterly financial return: (a) a summary profit and loss account prepared in accordance with SUP App 2.9.7 R; (b) a summary balance sheet prepared in accordance with SUP App 2.9.8 R; and (c) a statement of solvency prepared in accordance with SUP App 2.9.9 R;  and which must identify and explain differences between the actual results and the forecasts submitted in the <i>scheme of operations</i>	The end of each quarter	Not specified
SUP App 2.10.1 R (3)	<i>Insurers: scheme of operations-an insurer which is not an incoming EEA firm or an incoming Treaty firm-obligations on insurers which have previously submitted a scheme of operations</i>	(a) Explanation of the nature of the departure and the reasons for it and provide revised forecast financial information in the <i>scheme of operations</i> for its remaining term; or (b) an amended <i>scheme of operations</i> and explanation of the amendments and the reasons for them	Any matter which has either happened or is likely to happen and which represents a significant departure from the <i>scheme of operations</i>	Promptly

## Supervision

### Schedule 4 Powers exercised

#### Sch 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *SUP*:

Section 59 (Approval for particular arrangements)  
Section 118(8) (Market abuse)  
Section 138 (General rule-making power)  
Section 139(1) and (4) (Miscellaneous ancillary matters)  
Section 141 (Insurance business rules)  
Section 144 (Price stabilising rules)  
Section 145 (Financial promotion rules)  
Section 146 (Money laundering rules)  
Section 147 (Control of information rules)  
Section 149 (Evidential provisions)  
Section 150(2) (Actions for damages)  
Section 156 (General supplementary powers)  
Section 178 (Obligation to notify the Authority: acquisitions of control)  
Section 191D (Obligation to notify the Authority: dispositions of control)  
Section 238(5) (Restrictions on promotion)  
Section 247 (Trust scheme rules)  
Section 293 (Notification requirements)  
Section 318(1) (Exercise of powers through Council)  
Section 340 (Appointment)  
Section 341 (Access to books etc.)  
Paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority)  
Paragraphs 19 (Establishment) and 20 (Services) of Schedule 3 (EEA Passport Rights)  
Regulations 6(1) (FSA rules) and 12 (applications for authorisation) of the *OEIC Regulations*  
Article 4(1) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Rules) Order 2001(SI 2001/1534)



**Sch 4.2 G**

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to give the *guidance* in *SUP*:

Section 157(1) (Guidance)

Article 11(1) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings)(Rules) Order 2001 (SI 2001/1534)

**Sch 4.3 G**

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* in *SUP* to direct or require:

Section 51 (Applications under this Part)

Section 60 (Applications for approval)

Section 148(3) (Modification or waiver of rules)

Section 182 (Notification)

Section 250(4) and (5) (Modification or waiver of rules)

Section 294 (Modification or waiver of rules)

Section 316 (Direction by Authority)

Paragraph 5(4) (Notice of Authority) of Schedule 4 (Treaty Rights)

Regulation 7(3) and (4) (Modification or waiver of FSA rules) of the *OEIC Regulations*

**Sch 4.4 G**

The following additional powers and related provisions have been exercised by the *FSA* to give the directions and make the *guidance* in *SUP*:

Regulation 82 (Reporting requirements) of the *Payment Services Regulations*

Regulation 93 (Guidance) of the *Payment Services Regulations*

Regulation 49 (Reporting requirements) of the *Electronic Money Regulations*

Regulation 60 (Guidance) of the *Electronic Money Regulations*

## Supervision

### Schedule 5 Rights of actions for damages

**Sch 5.1 G**

**FCA**

- 1 The table below sets out the *rules* in *SUP* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
- 2 If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
- 3 The column headed "For other person?" indicates whether the rule is actionable by a *person* other than a *private person* (or his fiduciary or representative). If so, an indication of the type of *person* by whom the *rule* is actionable is given.

**Sch 5.2 G**

**FCA**

Right of action under section 138D					
Chapter/Appendix	Section/Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
All <i>rules</i> in <i>SUP</i> with the status letter "E"			No	No	No
3	8	All <i>rules</i> in the section	No	No	No
4	3	13	No	No	No
4	5	All <i>rules</i> in the section	No	No	No
10A	All <i>rules</i> in sections SUP 10A.1 to SUP 10A.10		No	No	No
All other <i>rules</i> in <i>SUP</i>			Yes	No	No



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## Supervision

### Schedule 5A Rights of actions for damages

#### Sch 5A.1 G

**PRA**

The table below sets out the *rules* in *SUP* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

#### Sch 5A.2 G

**PRA**

Chapter/Appendix	Section/Annex	Paragraph
10B	All <i>rules</i> other than those in sections SUP 10B.1 to SUP 10B.9	



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## Supervision

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

[deleted]

#### Sch 6.1A G

**FCA**

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

#### Sch 6.1B G

**PRA**

As a result of section 138A of the *Act* (Modification or waiver of rules) the *PRA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code). However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *PRA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.



# Decision Procedure and Penalties Manual



## Decision Procedure and Penalties Manual

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# Chapter 1

## Application and Purpose

## 1.1 Application and Purpose

### Application

1.1.1  
FCA

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This manual (*DEPP*) is relevant to *firms*, *approved persons* and other *persons*, whether or not they are regulated by the *FCA*. It sets out:

- (1) the *FCA*'s decision-making procedure for giving *statutory notices*. These are *warning notices*, *decision notices* and *supervisory notices* ( ■ DEPP 1.2 to ■ DEPP 5);
- (1A) the *FCA*'s decision-making procedure in cases where the *PRA* is required to seek the *FCA*'s consent before approving an application (a) for *Part 4A permission*; (b) for the variation of a *Part 4A permission*; or (c) to perform a *controlled function* (see ■ DEPP 2.5.7A G);
- (1B) the *FCA*'s decision-making procedure where it is deciding under section 391(1)(c) of the *Act* to publish information about the matter to which a *warning notice* relates (see ■ DEPP 3.2.14A G to ■ DEPP 3.2.14H G);
- (2) the *FCA*'s policy with respect to the imposition and amount of penalties under the *Act* (see ■ DEPP 6);
- (2A) the *FCA*'s policy with respect to the imposition of suspensions or restrictions, and the period for which those suspensions or restrictions are to have effect, under the *Act* (see ■ DEPP 6A);
- (3) the *FCA*'s policy with respect to the conduct of interviews by investigators appointed in response to a request from an overseas regulator or an *EEA regulator* (■ DEPP 7).

### Purpose

1.1.2  
FCA

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The purpose of *DEPP* is to satisfy the requirements of sections 63C(1), 69(1), 88C(1), 89S(1), 93(1), 124(1), 131FA, 131J(1), 169(9), 192N(1), 210(1), 312J(1), 345D(1) and 395 of the *Act* that the *FCA* publish the statements of procedure or policy referred to in ■ DEPP 1.1.1 G.



## 1.2 Introduction to statutory notices

### Statutory and related notices

1.2.1

FCA

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Section 395 of the *Act* (The *FCA*'s and *PRA*'s procedures) requires the *FCA* to publish a statement of its procedure for the giving of *statutory notices*. The procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give a *statutory notice* is taken by a person not directly involved in establishing the evidence on which that decision is based or by two or more persons who include a person not directly involved in establishing that evidence. The types of *statutory notices* and related notices, and the principal references to them in the *Act* and *DEPP* are set out in

■ DEPP 1.2.2 G.

1.2.2

FCA

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Table: Summary of statutory and related notices

Notice	Description	Act reference	Further information
<i>Warning notice</i>	Gives the recipient details about action that the <i>FCA</i> proposes to take and about the right to make representations.	Section 387	DEPP 2.2
<i>Decision notice</i>	Gives the recipient details about action that the <i>FCA</i> has decided to take. The <i>FCA</i> may also give a further <i>decision notice</i> if the recipient of the original <i>decision notice</i> consents.	Section 388	DEPP 2.3
<i>Notice of discontinuance</i>	Identifies proceedings set out in a <i>warning notice</i> or <i>decision notice</i> and which are not being taken or are being discontinued.	Section 389	DEPP 1.2.4 G and DEPP 3.2.26 G
<i>Final notice</i>	Sets out the terms of the action that the <i>FCA</i> is taking.	Section 390	DEPP 1.2.4 G
<i>Supervisory notice</i>	Gives the recipient details about action that	Section 395(13)	DEPP 2.2 and DEPP 2.3

Notice	Description	Act reference	Further information
	the <i>FCA</i> has taken or proposes to take, for example to vary a <i>Part 4A permission</i> .		

1.2.3  
FCA

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In *DEPP* the *supervisory notice* about a matter first given to the recipient is referred to as the "first *supervisory notice*" and the *supervisory notice* given after consideration of any representations is referred to as the "second *supervisory notice*".

1.2.4  
FCA

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The requirement in section 395 of the *Act* to publish a procedure for the giving of notices does not extend to the giving of a *notice of discontinuance* or a *final notice*. Neither of these notices is a *statutory notice* for the purposes of *DEPP*; nor is the decision to give such a notice a *statutory notice associated decision*.

**Decisions relating to applications for authorisation or approval made to the PRA**

1.2.4A  
FCA

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Section 395 of the *Act* also requires the *FCA* to publish a statement of its procedure for decisions which gives rise to an obligation for the *PRA* to include a statement under section 387(1A) in a *warning notice* or a statement under section 388(1A) in a *decision notice* as follows:

- (1) Section 387(1A) provides that where the *FCA* proposes to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5) or 55I(8), the *warning notice* given by the *PRA* must (a) state that fact, and (b) give the reasons for the *FCA*'s proposal.
- (2) Section 388(1A) provides that where the *FCA* has decided to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5) or 55I(8), the *decision notice* given by the *PRA* must (a) state that fact, and (b) give the reasons for the *FCA*'s decision.

1.2.4B  
FCA

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Where an application for *Part 4A permission* is made to the *PRA* as the appropriate regulator (section 55A(2)(a) of the *Act*), the *PRA* may only give permission with the consent of the *FCA* (section 55F of the *Act*). *FCA* consent can be conditional on the *PRA* imposing limitations or specifying the permission is for certain regulated activities only.

1.2.4C  
FCA

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Where an application to vary a *Part 4A permission* is made to the *PRA* as the appropriate regulator (section 55A(2)(a) of the *Act*), the *PRA* may only give permission with the consent of the *FCA* (section 55I of the *Act*). The *FCA* may withhold its consent to a proposed variation if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives. *FCA* consent can be conditional on the *PRA* imposing limitations, or the *PRA* specifying the permission is for certain regulated activities only.

1.2.4D

FCA

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Where an application to perform a *controlled function* is made to the *PRA* as the appropriate regulator, the *PRA* can only approve a person to perform a *controlled function* with the consent of the *FCA* (section 59(4)(b)) of the *Act*.

1.2.4E

FCA

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The procedure must be designed to secure, among other things, that the decision is taken by a person not directly involved in establishing the evidence on which that decision is based, or by two or more persons who include a person not directly involved in establishing that evidence.

### The decision makers

1.2.5

FCA

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Decisions on whether to give a *statutory notice* will be taken by a 'decision maker'. The *FCA*'s assessment of who is the appropriate decision maker is subject to the requirements of section 395 of the *Act* and will depend upon the nature of the decision, including its complexity, importance and urgency. References to the 'decision maker' in *DEPP* are to:

- (1) the *Regulatory Decisions Committee (RDC)*; or
- (2) *FCA* staff under *executive procedures*; or
- (3) *FCA* staff under the *settlement decision procedure*.

1.2.6

FCA

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The decision maker will also take decisions associated with a *statutory notice* (a '*statutory notice associated decision*'). *Statutory notice associated decisions* include decisions:

- (1) to set or extend the period for making representations;
- (2) on whether the *FCA* is required to give a copy of the *statutory notice* to any third party and, if so, the period for the third party to make representations; and
- (3) on whether to refuse access to *FCA* material, relevant to the relevant *statutory notice*, under section 394 of the *Act*.

1.2.6A

FCA

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*Statutory notice associated decisions* do not include decisions relating to the publication of a *statutory notice*.

1.2.7

FCA

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In each case, the decision maker will make decisions by applying the relevant statutory tests, having regard to the context and nature of the matter, that is, the relevant facts, law, and *FCA* priorities and policies (including on matters of legal interpretation).

1.2.8

FCA

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The *FCA* will make and retain appropriate records of those decisions, including records of meetings and the representations (if any) and materials considered by the decision makers.

1.2.9

FCA

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■ DEPP 2 to ■ DEPP 5 set out:

- (1) which decisions require the giving of statutory notices and who takes them (■ DEPP 2);



- (2) the nature and procedures of the *RDC* (■ DEPP 3);
- (3) the procedure for decision making by *FCA* staff under *executive procedures* (■ DEPP 4);
- (4) the procedure for decision making by *FCA* staff under the *settlement decision procedure* (■ DEPP 5).

## Chapter 2

# Statutory notices and the allocation of decision making



## 2.1 Statutory notices

### When statutory notices are required

2.1.1  
FCA

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The circumstances in which the *warning notice* and *decision notice* procedure apply are set out in ■ DEPP 2 Annex 1 G.

2.1.2  
FCA

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The circumstances in which the *supervisory notice* procedure apply are set out in ■ DEPP 2 Annex 2 G.

2.1.3  
FCA

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■ DEPP 2 Annex 1 G and ■ DEPP 2 Annex 2 G identify the provisions of the *Act* or other enactment giving rise to the need for the relevant notice, and whether the decision maker is the *RDC* or *FCA* staff under *executive procedures* in each case.

### Consistent decision making

2.1.4  
FCA

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*FCA* staff responsible for the taking of a *statutory notice* decision under *executive procedures* may refer the matter to the *RDC* for the *RDC* to decide whether to give the statutory notice if:

- (1) the *RDC* is already considering, or is shortly to consider, a closely related matter; and
- (2) the relevant *FCA* staff believe, having regard to all the circumstances, that the *RDC* should have responsibility for the decision. The relevant considerations might include:
  - (a) the desirability of consistency in *FCA* decision making;
  - (b) potential savings in the time and cost of reaching a decision;
  - (c) the factors identified in ■ DEPP 3.3.2 G as relevant to an assessment of whether a decision should be regarded as straightforward.



## 2.2 Warning notices and first supervisory notices

2.2.1  
FCA

**G** If *FCA* staff consider that action requiring a *warning notice* or first *supervisory notice* is appropriate, they will recommend to the relevant decision maker that the notice be given.

2.2.2  
FCA

**G** For first *supervisory notices*, the *FCA* staff will recommend whether the action should take effect immediately, on a specified date, or when the matter is no longer open to review (see ■ DEPP 2.2.5 G).

2.2.3  
FCA

**G** The decision maker will:

- (1) consider whether the material on which the recommendation is based is adequate to support it; the decision maker may seek additional information about or clarification of the recommendation, which may necessitate additional work by the relevant *FCA* staff;
- (2) satisfy itself that the action recommended is appropriate in all the circumstances;
- (3) decide whether to give the notice and the terms of any notice given.

2.2.4  
FCA

**G** If the *FCA* decides to take no further action and the *FCA* had previously informed the *person* concerned that it intended to recommend action, the *FCA* will communicate this decision promptly to the *person* concerned.

2.2.5  
FCA

**G** A matter is open to review (as defined in section 391(8) (Publication) of the *Act*) (in relation to a *supervisory notice* which does not take effect immediately or on a specified date) when:

- (1) the period during which any *person* may refer a matter to the *Tribunal* is still running; or
- (2) the matter has been referred to the *Tribunal* but has not been dealt with; or
- (3) the matter has been referred to the *Tribunal* and dealt with but the period during which an appeal may be brought against the *Tribunal's* decision is still running; or
- (4) such an appeal has been brought but has not been determined.



## 2.3 Decision notices and second supervisory notices

### Approach of decision maker

2.3.1  
FCA

G

If a decision maker is asked to decide whether to give a *decision notice* or second *supervisory notice*, it will:

- (1) review the material before it;
- (2) consider any representations made (whether written, oral or both) and any comments by *FCA* staff or others in respect of those representations;
- (3) decide whether to give the notice and the terms of any notice given.

### Default procedures

2.3.2  
FCA

G

If the *FCA* receives no response or representations within the period specified in a *warning notice*, the decision maker may regard as undisputed the allegations or matters in that notice and a *decision notice* will be given accordingly. A *person* who has received a *decision notice* and has not previously made any response or representations to the *FCA*, may nevertheless refer the *FCA*'s decision to the *Tribunal*.

2.3.3  
FCA

G

If the *FCA* receives no response or representations within the period specified in a first *supervisory notice*, the *FCA* will not give a second *supervisory notice*. The outcome depends on when the relevant action took or takes effect (as stated in the notice). If the action:

- (1) took effect immediately, or on a specified date which has already passed, it continues to have effect (subject to any decision on a referral to the *Tribunal*); or
- (2) was to take effect on a specified date which is still in the future, it takes effect on that date (subject to any decision on a referral to the *Tribunal*); or
- (3) was to take effect when the matter was no longer *open for review*, it takes effect when the period to make representations (or the period for referral to the *Tribunal*, if longer) expires, unless the matter has been referred to the *Tribunal*.

2.3.4  
FCA

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In exceptional cases, the decision maker may permit representations from a *person* who has received a *decision notice* (or a second *supervisory notice*) or against whom action, detailed in a first *supervisory notice*, has taken effect, and shows on reasonable

grounds that he did not receive the *warning notice* (or first *supervisory notice*), or that he had reasonable grounds for not responding within the specified period. In these circumstances, the decision maker may decide to give a further *decision notice* (or a written notice or a *supervisory notice*).

**Further decision notice**

2.3.5

FCA

G

Under section 388(3) of the *Act*, following the giving of a *decision notice* but before the *FCA* takes action to which the *decision notice* relates, the *FCA* may give the *person* concerned a further *decision notice* relating to different action concerning the same matter. Under section 388(4) of the *Act*, the *FCA* can only do this if the *person* receiving the further *decision notice* gives its consent. In these circumstances the following procedure will apply:

- (1) *FCA* staff will recommend to the decision maker that a further *decision notice* be given, either before or after obtaining the *person's* consent;
- (2) the decision maker will consider whether the action proposed in the further *decision notice* is appropriate in the circumstances;
- (3) if the decision maker decides that the action proposed is inappropriate, he will decide not to give the further *decision notice*. In this case, the original *decision notice* will stand and the *person's* rights in relation to that notice will be unaffected. If the *person's* consent has already been obtained, the *FCA* will notify the *person* of the decision not to give the further *decision notice*;
- (4) if the decision maker decides that the action proposed is appropriate then, subject to the *person's* consent being (or having been) obtained, a further *decision notice* will be given;
- (5) a *person* who had the right to refer the matter to the *Tribunal* under the original *decision notice* will have that right under the further *decision notice*. The time period in which the reference to the *Tribunal* may be made will begin from the date on which the further *decision notice* is given.

2.3.6

FCA

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For the purpose of establishing whether the *person* receiving the further *decision notice* gives its consent, the *FCA* will normally require consent in writing.

## 2.4 Third party rights and access to FCA material

### 2.4.1 FCA

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Sections 393 (Third party rights) and 394 (Access to *FCA* material) of the *Act* confer additional procedural rights relating to third parties and to disclosure of *FCA* material. These rights apply in certain *warning notice* and *decision notice* cases referred to in section 392 of the *Act* (Application of sections 393 and 394). The cases in which these additional rights apply are identified in ■ DEPP 2 Annex 1 G by asterisks; these are generally cases in which the *warning notice* or *decision notice* is given on the *FCA*'s own initiative rather than in response to an application or notification made to the *FCA*.



## 2.5 Provision for certain categories of decision

### Purpose

2.5.1  
FCA

G

Some of the decisions referred to in ■ DEPP 2 Annex 1 G and ■ DEPP 2 Annex 2 G share similar characteristics. For convenience, ■ DEPP 2.5 sets out some of these and the particular features they have.

### Different decision makers

2.5.2  
FCA

G

The decision to give a *warning notice* and a *decision notice* in a particular matter will often not be taken by the same decision maker. Certain types of action require that the *warning notice* decision be taken by FCA staff under *executive procedures* and the *decision notice* decision be taken by the RDC. Similarly, in enforcement cases the RDC might take the decision to give a *warning notice*, but the decision to give a *decision notice* could be taken by the *settlement decision makers* on the basis that the *person* concerned does not contest the action proposed (see ■ DEPP 5).

### Decisions relating to applications for FCA authorisation or approval

2.5.3  
FCA

G

FCA staff under *executive procedures* will take the decision to give a *warning notice* if the FCA proposes to:

- (1) refuse an application for a *Part 4A permission* or to refuse an application to cancel a *Part 4A permission*;
- (2) impose a limitation or a requirement which was not applied for, or specify a narrower description of regulated activity than that applied for, on the grant of a *Part 4A permission* ;
- (3) refuse an application to vary a *Part 4A permission*, or to restrict a *Part 4A permission* on the grant of a variation (by imposing a limitation or a requirement which was not applied for or by specifying a narrower description of regulated activity than that applied for);
- (3A) refuse an application to vary a *requirement* imposed under section 55L of the *Act*, or to impose a new *requirement*;
- (3B) exercise its power under section 55L(1) of the *Act* in connection with an application to the PRA for a *Part 4A permission* or the variation of a *Part 4A permission*;
- (4) refuse *approved person* status;



2.5.4  
FCA

G

If no representations are made in response to a *warning notice* proposing the action set out at ■ DEPP 2.5.3 G within the period specified, a *decision notice* will be given accordingly: see ■ DEPP 2.3.2 G (Default procedures).

- (5) refuse an application for a *small e-money issuer certificate* (see ■ ELM 8 (Small e-money issuers));
- (6) refuse an application for variation or rescission of a requirement imposed on an *incoming EEA firm*.

2.5.5  
FCA

G

If representations are made in response to a *warning notice* proposing the action set out at ■ DEPP 2.5.3 G (1), ■ DEPP 2.5.3 G (4) or ■ DEPP 2.5.3 G (5), then the RDC will take the decision to give a *decision notice*.

2.5.5A  
FCA

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If representations are made in response to a *warning notice* proposing the action set out at ■ DEPP 2.5.3G (3B), FCA staff under *executive procedures* will take the decision to give a *decision notice*.

2.5.6  
FCA

G

If representations are made in response to a *warning notice* proposing the action set out at ■ DEPP 2.5.3 G (2), ■ DEPP 2.5.3 G (3), ■ DEPP 2.5.3G (3A), or ■ DEPP 2.5.3 G (6), then the RDC will take the decision to give a *decision notice* if the action involves a fundamental variation or requirement (see ■ DEPP 2.5.8 G). Otherwise, the decision to give the *decision notice* will be taken by FCA staff under *executive procedures*.

**Decisions relating to applications for PRA authorisation or approval**

2.5.6A  
FCA

G

FCA staff under *executive procedures* will take the decision where the FCA is proposing or deciding to:

- (1) refuse its consent to the granting by the PRA of an application for a *Part 4A permission*, or give its consent subject to conditions;
- (2) refuse its consent to the granting by the PRA of an application for the variation of a *Part 4A permission*, or give its consent subject to conditions; or
- (3) refuse its consent to the granting by the PRA of an application to perform a *controlled function*.

**FCA's own-initiative powers**

2.5.7  
FCA

G

The RDC will take the decision to give a *supervisory notice* exercising the FCA's *own-initiative powers* (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity) if the action involves a fundamental variation or requirement (see ■ DEPP 2.5.8 G). Otherwise, the decision to give the *supervisory notice* will be taken by FCA staff under *executive procedures*.

**2.5.7A**  
**FCA**

**G**

Notwithstanding ■ DEPP 2.5.7 G, FCA staff under *executive procedures* will be the decision maker whenever a *firm* agrees not to contest the FCA's exercise of its *own-initiative powers*, including where the FCA's action involves a fundamental variation or requirement.

**2.5.8**  
**FCA**

**G**

A fundamental variation or requirement means:

- (1) removing a type of activity or *investment* from the *firm's permission*; or
- (2) refusing an application to include a type of activity or *investment*; or
- (3) [deleted]
- (4) imposing or varying an assets requirement (as defined in section 55P of the *Act* (Prohibitions and restrictions)), or refusing an application to vary or cancel such a requirement.

**Decisions relating to listing of securities**

**2.5.9**  
**FCA**

**G**

FCA staff under *executive procedures* will take the following *statutory notice* decisions:

- (1) the refusal of an application for listing of securities;
- (2) the suspension of *listing* on the FCA's own initiative or at the request of the issuer;
- (3) [deleted]
- (4) the discontinuance of *listing* of securities at the issuer's request;
- (5) the exercise of any of the powers in sections 87K or 87L of the *Act* in respect of a breach of any applicable provision; and
- (6) [deleted]
- (7) the refusal of an application by an issuer for cancellation of a suspension of *listing* made under section 77 of the *Act*.

**2.5.10**  
**FCA**

**G**

The RDC will take *statutory notice decisions* relating to the discontinuance of listing of securities on the FCA's own initiative.

**2.5.11**  
**FCA**

**G**

If securities have matured or otherwise ceased to exist the FCA will remove any reference to them from the official list. This is a purely administrative process, and not a discontinuance of listing in the sense used in Part 6 of the *Act*.

Decisions relating to imposition of limitations or other restrictions of sponsors and primary information providers.

**Decisions relating to imposition of limitations or other restrictions of sponsors and primary information providers**

**2.5.11A** **G**  
**FCA** Under section 88(4)(aa) of the *Act*, if the *FCA* proposes to impose limitations or other restrictions on the services to which a *sponsor's* approval relates, it must give him a *warning notice*. If, after considering any representations made in response to the *warning notice*, the *FCA* decides to impose limitations or other restrictions on the services to which a *sponsor's* approval relates, it must give him a *decision notice*. Where the *sponsor* has requested or otherwise agrees to the limitation or other restriction, *FCA* staff under *executive procedures* will take the decision to give the *warning notice* and *decision notice*. Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.

**2.5.11B** **G**  
**FCA** If the *FCA* is proposing or deciding to refuse a *sponsor's* application for the withdrawal or variation of a limitation or other restriction on the services to which a *sponsor's* approval relates under section 88(8)(d) of the *Act*, the decision maker will be *FCA* staff under executive procedures where *FCA* staff decided to impose the limitation or other restriction. Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.

**2.5.11C** **G**  
**FCA** Under section 89P(5)(b) of the *Act*, if the *FCA* proposes to impose limitations or other restrictions on the dissemination of *regulated information* to which a *primary information provider's* approval relates, it must give him a *warning notice*. If, after considering any representations made in response to the *warning notice*, the *FCA* decides to impose limitations or other restrictions on the dissemination of *regulated information* to which a *primary information provider's* approval relates, it must give him a *decision notice*. Where the *primary information provider* has requested or otherwise agrees to the limitation or other restriction, *FCA* staff under *executive procedures* will take the decision to give the *warning notice* and *decision notice*. Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.

**2.5.11D** **G**  
**FCA** Under section 89P(9)(d) of the *Act*, if the *FCA* is proposing or deciding to refuse a *primary information provider's* application for the withdrawal or variation of a limitation or other restriction on the dissemination of *regulated information* to which a *primary information provider's* approval relates, the decision maker will be *FCA* staff under *executive procedures* where *FCA* staff decided to impose the limitation or other restriction. Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.

**Modified procedures in collective investment scheme and certain other cases**

**2.5.12** **G**  
**FCA** *FCA* staff will usually inform or discuss with the *person* concerned any action they contemplate before they recommend to the *RDC* that the *FCA* takes formal action. The *FCA* may also be invited to exercise certain powers by the *persons* who would be affected by the exercise of those powers. In these circumstances if the *person* concerned has agreed to or accepted the action proposed then the decisions referred to in **DEPP 2.5.13 G** will be taken by *FCA* staff under *executive procedures* rather than by the *RDC*.

2.5.13

FCA

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The decisions referred to in ■ DEPP 2.5.12 G are:

- (1) the decision to give a *supervisory notice* pursuant to section 259(3), (8) or 9(b) (directions on authorised unit trust schemes); section 268(3), 7(a) or 9(a) (directions in respect of recognised overseas schemes); or section 282(3), (6) or (7)(b) (directions in respect of relevant recognised schemes) of the *Act*;
- (2) the decision to give a *warning notice* or *decision notice* pursuant to section 280(1) or (2)(a) (revocation of recognised investment scheme) of the *Act*;
- (3) the decision to give a *supervisory notice* in accordance with regulation 27(3), (8) or 9(b) of the *OEIC Regulations*; and
- (4) the decision to give a *warning notice* or *decision notice* pursuant to regulation 24 or regulation 28 of the *OEIC Regulations*.
- (5) [deleted]
- (6) [deleted]

2.5.14

FCA

G

In determining whether there is agreement to or acceptance of the action proposed, an indication by the following *persons* will be regarded as conclusive:

- (1) in relation to an authorised unit trust, the manager and trustee;
- (2) in relation to an *ICVC*, the directors and the depositary;
- (3) in relation to a *recognised scheme*, the *operator* and, if any, the trustee or *depositary*.

2.5.15

FCA

G

A decision to give a *warning notice* or *decision notice* refusing an application for an *authorisation order* declaring a unit trust scheme to be an *AUT* or *ICVC* will be taken by the *RDC* only if the application is by an *authorised fund manager* who is not the *operator* of an existing *AUT* or *ICVC*. Otherwise, the decision to give the *warning notice* or *decision notice* will be taken by *FCA* staff under *executive procedures*.

2.5.16

FCA

G

A notice under paragraph 15A(4) of Schedule 3 to the *Act* relating to the application by an *EEA firm* for approval to manage a *UCITS scheme* is not a *warning notice*, but the *FCA* will operate a procedure for this notice which will be similar to the procedure for a *warning notice*.

**Notices under other enactments**

2.5.17

FCA

G

The *FCA* expects to adopt a procedure in respect of notices under enactments other than the *Act* which is similar to that for *statutory notices* under the *Act*, but which recognises any differences in the legislative framework and requirements. ■ DEPP 2 Annex 1 G and ■ DEPP 2 Annex 2 G therefore identify notices to be given pursuant to other enactments and the relevant *FCA* decision maker.

2.5.18

FCA

G

Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

- (1) [deleted]
- (2) [deleted]
- (3) Friendly Societies Act 1992, section 58A : The *warning notice* and *decision notice* must set out the terms of the direction which the *FCA* proposes or has decided to give and any specification of when the friendly society is to comply with it. A *decision notice* given under section 58A(3) must give an indication of the society's right, given by section 58A(5), to have the matter referred to the *Tribunal*. A *decision notice* under section 58A(3) may only relate to action under the same section of the Friendly Societies Act 1992 as the action proposed in the *warning notice*. A *final notice* under section 390 of the *Act* must set out the terms of the direction and state the date from which it takes effect. Section 392 of the *Act* is to be read as if it included references to a *warning notice* given under section 58A(1) and a *decision notice* given under section 58A(3).

Warning notices and decision notices under the Act and certain other enactments

**FCA**

Note: Third party rights and access to FCA material apply to the powers listed in this Annex where indicated by an asterisk \* (see ■ DEPP 2.4)

Section of the Act	Description	Handbook reference	Decision maker
55X(1)(a) and(b)	when the FCA is proposing to grant an application for a Part 4A permission with a limitation or a requirement which was not applied for, or with a narrower description of regulated activity than that applied for	SUP 6	Executive procedures
55X(1)(c) and (d)	when the FCA is proposing to grant an application to vary a firm's Part 4A permission but, other than as part of the application, to restrict the Part 4A permission (either by imposing a limitation or requirement which was not applied for or by specifying a narrower description of regulated activity than that applied for)		Executive procedures
55X(1)(e)	when the FCA is proposing to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission		Executive procedures
55X(2)	when the FCA is proposing to refuse an application for a Part 4A permission		Executive procedures
55X(2)	when the FCA is proposing to refuse an application to vary a firm's Part 4A permission	SUP 6	Executive procedures
55X(2)	when the FCA is proposing to refuse an application to cancel a firm's Part 4A permission	SUP 6	Executive procedures
55X(2)	when the FCA is proposing to refuse an application for the variation of a requirement imposed under section 55L or for the imposition of a new requirement		RDC or executive procedures See DEPP 2.5.6 G
55X(4)(a)	when the FCA is deciding to grant an application for a Part 4A permission with a limitation or a requirement which was not applied for, or with a narrower description of regulated activity than that applied for		RDC or executive procedures
55X(4)(b)	when the FCA is deciding to grant an application for a Part 4A permission with a limitation or a requirement which was not applied for, or with a narrower description of regulated activity than that applied for		See DEPP 2.5.6 G
55X(4)(c)	when the FCA is deciding to grant an application to vary a firm's Part 4A permission but, other than as part of the application, to restrict the Part 4A permission (either by imposing a limitation or requirement which was not applied for or by specifying a narrower description of regulated activity than that applied for)	SUP 6	RDC or executive procedures
55X(4)(d)	when the FCA is deciding to grant an application to vary a firm's Part 4A permission but, other than as part of the application, to restrict the Part 4A permission (either by imposing a limitation or requirement which was not applied for or by specifying a narrower description of regulated activity than that applied for)		See DEPP 2.5.6 G

Section of the Act	Description	Handbook reference	Decision maker
55X(4)(e)	when the <i>FCA</i> is deciding to exercise its power under section 55L(1) in connection with an application to the <i>PRA</i> for a <i>Part 4A permission</i> or the variation of a <i>Part 4A permission</i>		<i>Executive procedures</i>
55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application for a <i>Part 4A permission</i>		<i>RDC</i> or <i>executive procedures</i>  See DEPP 2.5.5 G
55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application to vary a <i>firm's Part 4A permission</i>	SUP 6	<i>RDC</i> or <i>executive procedures</i>  See DEPP 2.5.6 G
55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application to cancel a <i>firm's Part 4A permission</i>	SUP 6	<i>RDC</i> or <i>executive procedures</i>  See DEPP 2.5.5 G
55X(4)(f)	When the <i>FCA</i> is deciding to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a new <i>requirement</i>		<i>RDC</i> or <i>executive procedures</i> See DEPP 2.5.6 G
55Z(1)	when the <i>FCA</i> is proposing or deciding to cancel a <i>firm's Part 4A permission</i> otherwise than at its request *		<i>RDC</i>
55Z(2)			
57(1)(3)	when the <i>FCA</i> is proposing or deciding to make a <i>prohibition order</i> against an individual*		<i>RDC</i>
58(3)/(4)	when the <i>FCA</i> is proposing or deciding to refuse an application for the variation or revocation of a <i>prohibition order</i>		<i>RDC</i>
62(2)	when the <i>FCA</i> is proposing to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i>	SUP 10	<i>Executive procedures</i>
62(3)	when the <i>FCA</i> is deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i>	SUP 10	<i>RDC</i> or <i>executive procedures</i>  See DEPP 2.5.5 G
63(3)/(4)	when the <i>FCA</i> is proposing or deciding to withdraw approval from an <i>approved person</i> *		<i>RDC</i>
63B(1)/(3)	when the <i>FCA</i> is proposing or deciding to impose a penalty on a <i>person</i> under section 63A*		<i>RDC</i>
67(1)/(4)	when the <i>FCA</i> is proposing or deciding to take action against an <i>approved person</i> by exercising the disciplinary powers conferred by section 66*		<i>RDC</i>
76(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse an application for <i>listing</i> of securities	LR 2 and LR 3	<i>Executive procedures</i>

Section of the Act	Description	Handbook reference	Decision maker
78(10)/(11)(a)	when the <i>FCA</i> has suspended, on its own initiative, the <i>listing of securities</i> and is proposing or deciding to refuse an application by an issuer for cancellation of the suspension	LR 5	<i>Executive procedures</i>
78A(4)/(5)	When the <i>FCA</i> is proposing or deciding to refuse an application by the <i>issuer</i> of the <i>securities</i> for the discontinuance or suspension of the <i>listing</i> of the <i>securities</i>	LR 5	<i>Executive procedures</i>
78A(7)/(8)(a)	When the <i>FCA</i> has suspended the <i>listing of securities</i> on the application of the <i>issuer</i> of the <i>securities</i> and is proposing or deciding to refuse an application by the <i>issuer</i> for the cancellation of the suspension	LR 5	<i>Executive procedures</i>
87M(2)/(3)	when the <i>FCA</i> is proposing or deciding to publish a statement censuring an issuer of <i>transferable securities</i> , a <i>person</i> offering <i>transferable securities</i> to the public or a <i>person</i> requesting the admission of <i>transferable securities</i> to trading on a <i>regulated market</i>		<i>RDC</i>
88(4)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>person's</i> application for approval as a <i>sponsor</i>	LR 8	<i>RDC</i>
88(6)(a)			
88(8)(a)			
88(4)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>sponsor's</i> application for the suspension of an approval as a <i>sponsor</i>		<i>Executive procedures</i>
88(6)(a)			
88(8)(b)			
88(4)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>sponsor's</i> application for the withdrawal of the suspension of an approval as a <i>sponsor</i>		<i>Executive procedures</i>
88(6)(a)			
88(8)(c)			
88(4)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>sponsor's</i> application for the withdrawal or variation of a limitation, or other restriction on the services to which a <i>sponsor's</i> approval relates		<i>RDC or executive procedures</i>
88(6)(a)			See DEPP 2.5.11B G
88(8)(d)			
88(4)(aa)	when the <i>FCA</i> is proposing or deciding to impose limitations or restrictions on the services to which a <i>sponsor's</i> approval relates		<i>RDC or executive procedures</i>
88(6)(aa)			See DEPP 2.5.11A G
88(4)(b)	when the <i>FCA</i> is proposing or deciding to cancel a <i>sponsor's</i> approval as a <i>sponsor</i> otherwise than at the <i>sponsor's</i> request*		<i>RDC</i>
88(6)(b)			
88B(1)	when the <i>FCA</i> is proposing or deciding to take action against a <i>sponsor</i> by exercising the disciplinary powers conferred by section 88A*		<i>RDC</i>



Section of the Act	Description	Handbook reference	Decision maker
88B(5)			
89K(2)/(3)	when the <i>FCA</i> is proposing or deciding to publish a statement that an <i>issuer</i> of <i>securities</i> admitted to trading on a <i>regulated market</i> is failing or has failed to comply with an applicable transparency obligation		RDC
89P(5)(a)	when the <i>FCA</i> is proposing or deciding to refuse a person's application for approval as a <i>primary information provider</i>		RDC
89P(7)(a)			
89P(9)(a)			
89P(5)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>primary information provider's</i> application for the suspension of an approval as a <i>primary information provider</i>		Executive procedures
89P(7)(a)89P(9)(b)			
89P(5)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>primary information provider's</i> application for the withdrawal of the suspension of an approval as a <i>primary information provider</i>		Executive procedures
89P(7)(a)			
89P(9)(c)			
89P(5)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>primary information provider's</i> application for the withdrawal or variation of a limitation or other restriction on the dissemination of <i>regulated information</i> to which a <i>primary information provider's</i> approval relates		RDC or executive procedures
89P(7)(a)			See DEPP 2.5.11D G
89P(9)(d)			
89P(5)(b)	when the <i>FCA</i> is proposing or deciding to impose <i>limitations</i> or other restrictions on the dissemination of <i>regulated information</i> to which a <i>primary information provider's</i> approval relates.		RDC or executive procedures
89P(7)(b)			See DEPP 2.5.11A G
89P(5)(c)	when the <i>FCA</i> is proposing or deciding to cancel a <i>person's</i> approval as a <i>primary information provider</i> otherwise than at the <i>primary information provider's</i> request		RDC
89P(7)(c)			
89R(1)	when the <i>FCA</i> is proposing or deciding to take action against a <i>primary information provider</i> by exercising the disciplinary powers conferred by section 89Q		RDC
89R(5)			
92(1)/(4)	when the <i>FCA</i> is proposing or deciding to take action against any person under section 91 for breach of Part 6 rules*		RDC
126(1)/ 127(1)	when the <i>FCA</i> is proposing or deciding to impose a sanction for <i>market abuse</i> *		RDC
131H(1)/ (4)	when the <i>FCA</i> is proposing or deciding to take action against a <i>person</i> under section 131G*		RDC
189(4)/(7)	when the <i>FCA</i> is proposing or deciding to object to a change in <i>control</i> following receipt of a <i>section 178 notice</i>	SUP 11	Executive procedures

Section of the Act	Description	Handbook reference	Decision maker
189(4)/(7)	when the <i>FCA</i> is proposing or deciding to approve a change in <i>control</i> with conditions, following receipt of a <i>section 178 notice</i>	SUP 11	<i>Executive procedures</i>
187(1)/(3) and 188(1)191A(4)/(6)	when the <i>FCA</i> is proposing or deciding to object to a <i>person</i> who has acquired or increased control without giving a <i>section 178 notice</i>	SUP 11	<i>Executive procedures</i>
191A(4)/(6)	when the <i>FCA</i> is proposing or deciding to object to a <i>person's control</i> on the basis of the matters in section 186	SUP 11	<i>Executive procedures</i>
191A(4)/(6)	when the <i>FCA</i> is proposing or deciding to object to a <i>person's control</i> on the grounds that he is in breach of a condition imposed under section 187	SUP 11	<i>Executive procedures</i>
192L(1)	when the <i>FCA</i> is proposing or deciding to take action against a qualifying parent undertaking by exercising the disciplinary powers conferred by section 192K*		RDC
192L(4)			
200(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse an application for variation or rescission of a requirement imposed on an <i>EEA incoming firm</i>		RDC or <i>executive procedures</i>  See DEPP 2.5.6 G
207(1)/ 208(1)	when the <i>FCA</i> is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a <i>permission</i> or impose a restriction in relation to the carrying on of a <i>regulated activity</i> (under section 206A) . This applies in respect of an <i>authorised person</i> , or an <i>unauthorised person</i> to whom section 404C applies.*		RDC
245(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation</i> order declaring a <i>unit trust scheme</i> to be an <i>AUT</i>	COLL 2	RDC or <i>executive procedures</i>  See DEPP 2.5.15 G
249	when the <i>FCA</i> is proposing or deciding to take action against an auditor by exercising the disciplinary powers conferred by section 249*		RDC
345B(1)/(4)			
252(1)/(4)	when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal to replace the <i>trustee</i> or <i>manager</i> of an <i>AUT</i>	COLL 2	<i>Executive procedures</i>
252A(4)(b)/(6)(a)	when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal by the <i>manager</i> of a <i>feeder UCITS</i> to make an alteration to the <i>trust deed</i> to enable the <i>feeder UCITS</i> to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i>	COLL 11	<i>Executive procedures</i>
255(1)/(2)	when the <i>FCA</i> is proposing or deciding to make an order under section 254 revoking the <i>authorisation order</i> of an <i>AUT</i> *	None, but see Chapter 14 of the Regulatory Guide EG.	RDC
256(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>AUT</i>		RDC

Section of the Act	Description	Handbook reference	Decision maker
260(1)/(2)	when the <i>FCA</i> , on an application to revoke or vary a direction under section 257, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application		<i>RDC</i>
264(2)/ 265(4)	[deleted]		
269(1)/(2)	when the <i>FCA</i> , on an application under section 267(4) or (5) by an <i>operator</i> of a section 264 <i>recognised scheme</i> to revoke or vary a direction that the promotion of the <i>scheme</i> be suspended, proposes or decides to refuse the application or to vary the direction otherwise than in accordance with the application		<i>RDC</i>
271(1)/(3)	when the <i>FCA</i> is proposing or deciding to refuse approval of a <i>collective investment scheme</i> as a <i>recognised scheme</i> under section 270	COLL 9	<i>Executive procedures</i>
276(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an order declaring a <i>collective investment scheme</i> to be a <i>recognised scheme</i> under section 272	COLL 9	<i>Executive procedures</i>
280(1)/(2)	when the <i>FCA</i> is proposing or deciding to direct that a section 270 <i>recognised scheme</i> is to cease to be recognised or to revoke a section 272 order in respect of a <i>recognised scheme</i> *		<i>RDC</i>
301G(3)(b)/(5)	when the <i>FCA</i> is proposing or deciding to object to a proposed acquisition of a <i>UK RIE</i> following receipt of a section 301A notice .	REC 4.2C	<i>Executive procedures</i>
301I(3)/(4)	when the <i>FCA</i> is proposing or deciding to object to a <i>person</i> who has acquired or increased <i>control</i> in a <i>UK RIE</i> without giving a section 301 notice	REC 4.2C	<i>Executive procedures</i>
301I(3)/(4)	when the <i>FCA</i> is proposing or deciding to object to a <i>person's</i> control in a <i>UK RIE</i> on the basis of the approval requirement in section 301F(4)	REC 4.2C	<i>Executive procedures</i>
312G(1)	when the <i>FCA</i> is proposing or deciding to take action against a <i>recognised investment exchange</i> by exercising the disciplinary powers conferred by sections 312E and 312F*		<i>RDC</i>
312H(1)			
313B(9)	[deleted]		
313B(10)/(11)	[deleted]		
313BB(5)/ 313BC(5)	when, upon the application of an institution, the <i>FCA</i> is proposing or deciding not to revoke a requirement imposed on an institution under section 313A or is proposing or deciding that a requirement imposed on a class of institutions under section 313A will continue to apply to the applicant	REC 4.2D	<i>Executive procedures</i>
313BD(5)/ 313BE(4)	when, upon the application of an <i>issuer</i> , the <i>FCA</i> is proposing or deciding not to revoke a requirement imposed on an institution or a class of institutions	REC 4.2D	<i>Executive procedures</i>

Section of the Act	Description	Handbook reference	Decision maker
	under section 313A or to revoke a requirement imposed on a class of institutions under section 313A in relation to the class apart from one or more specified members of it, or one or more specified members of the class only		
331(1)/(3)	when the <i>FCA</i> is proposing or deciding to make an order disapplying the exemption from the <i>general prohibition</i> under section 327*		<i>RDC</i>
331(7)/(8)	when the <i>FCA</i> is proposing or deciding to refuse an application for the variation or revocation of an order made under section 329*		<i>RDC</i>
345B(1)	when the <i>FCA</i> is proposing or deciding to disqualify an auditor or actuary from being the auditor of, or acting as an actuary for, any <i>authorised person</i> or class of <i>authorised person</i> or from being the auditor of any <i>AUT</i> or <i>ICVC</i> *		<i>RDC</i>
345B(4)			
345B(1)	when the <i>FCA</i> is proposing or deciding to disqualify an auditor from being the auditor of any <i>recognised investment exchange</i> or any class of <i>recognised investment exchange</i> *		<i>RDC</i>
345B(4)			
345B(1)	when the <i>FCA</i> is proposing or deciding to take action against an auditor or <i>actuary</i> by exercising the disciplinary powers conferred by sections 345(2)(c) or (d)*		<i>RDC</i>
345B(4)			
385(1)/ 386(1)	when the <i>FCA</i> is proposing or deciding to exercise the power under section 384(5) to require a <i>person</i> to pay restitution*		<i>RDC</i>
404A(8)(a)	In connection with a <i>consumer redress scheme</i> , when the <i>FCA</i> is proposing to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a <i>consumer</i> , or what the redress should be in respect of the failure	<i>CONRED</i>	<i>Executive procedures</i>
404A(8)(a)	In connection with a <i>consumer redress scheme</i> , when the <i>FCA</i> is deciding to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a <i>consumer</i> , or what the redress should be in respect of the failure	<i>CONRED</i>	<i>Executive procedures</i>
412B(2)/(3)	when the <i>FCA</i> is proposing/deciding to refuse to approve a relevant system as defined in section 412A(9) of the <i>Act</i>		<i>Executive procedures</i>
412B(4)/(5)	when the <i>FCA</i> is proposing/deciding to suspend or withdraw its approval in relation to a relevant system as defined in section 412A(9) of the <i>Act</i> *		<i>Executive procedures</i>
412B(8)/(9)	when the <i>FCA</i> is proposing/deciding to refuse an application to cancel the suspension of approval in relation to a relevant system as defined in section 412A(9) of the <i>Act</i> *		<i>Executive procedures</i>

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Section of the Act	Description	Handbook reference	Decision maker
Paragraph 15A(4) of Schedule 3	when the <i>FCA</i> is notifying an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i>	SUP 13A See DEPP 2.5.16 G	<i>Executive procedures</i>
Paragraph 15A(5) of Schedule 3	[deleted]		
Paragraph 15B(2) (a) of Schedule 3	when the <i>FCA</i> is deciding not to withdraw a notice issued to an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and to its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i>	SUP 13A	<i>Executive procedures</i>
Paragraph 19(8)/ (12) of Schedule 3	when the <i>FCA</i> is proposing or deciding to refuse to give a <i>consent notice</i> to a <i>UK firm</i> wishing to establish a <i>branch</i> under an <i>EEA right</i>	SUP 13	<i>RDC</i>

Section of the Credit Unions Act 1979	Description	Handbook reference	Decision maker
20	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>credit union</i> or to petition for the winding up of a <i>credit union</i>		<i>RDC</i>

Articles of the Credit Unions (Northern Ireland) Order 1985	Description	Handbook reference	Decision maker
60(1), 61(1) and 63	where the <i>FCA</i> is proposing to consent to the Registrar of Credit Unions for Northern Ireland cancelling or suspending the registration of a <i>Northern Ireland credit union</i> , or petitioning for the winding up of a <i>Northern Ireland credit union</i>		<i>RDC</i>

Section of the Friendly Societies Act 1992	Description	Handbook reference	Decision maker
58A(1)(a)/(3)(a)	when the <i>FCA</i> is proposing or deciding to give a direction under section 54 or section 55 requiring a <i>friendly society</i> to take or refrain from taking steps where certain activities have become disproportionate to those of the <i>friendly society</i> group or, as the	See DEPP 2.5.18 G (3)	<i>RDC</i>

Section of the Friendly Societies Act 1992	Description	Handbook reference	Decision maker
58A(1)(b)/(3)(b)	case may be, the society, or varying such a direction other than at the request of the society* when the <i>FCA</i> is proposing or deciding to give a direction under section 90 providing for a transfer of the engagements of a <i>friendly society</i> *		<i>RDC</i>
85(4A)	when the <i>FCA</i> , on an amalgamation between <i>friendly societies</i> each of which has a <i>Part 4A permission</i> , notifies the successor society of the terms of its <i>Part 4A permission</i>		<i>RDC</i> or <i>executive procedures</i>  See DEPP 2.5.12 G

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 16(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> in respect of a proposed <i>ICVC</i>	COLL 2	<i>RDC</i> or <i>executive procedures</i>  See DEPP 2.5.15 G
Regulation 22(1)/(2)/(4)/(5)	when the <i>FCA</i> is proposing to refuse approval of (or, having given a <i>warning notice</i> , deciding to refuse) a proposal to replace the <i>depository</i> or director of an <i>ICVC</i> , or any other proposal or decision falling within regulation 21	COLL 2	<i>Executive procedures</i>
Regulation 22A(5)(b)/(8)(a)	when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal by an <i>ICVC</i> which is a <i>feeder UCITS</i> to make an alteration to its <i>instrument of incorporation</i> to enable it to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i>	COLL 11	<i>Executive procedures</i>
Regulation 24(1)/(2)	when the <i>FCA</i> is proposing or deciding to revoke an <i>authorisation order</i> relating to an <i>ICVC</i> under regulation 23(1)*		<i>RDC</i>
Regulation 28(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application to revoke or vary a direction in accordance with a request under regulation 25(7) or to vary the direction in accordance with the application		<i>RDC</i>
Paragraph 20 of Schedule 5	when the <i>FCA</i> is proposing or deciding to use the disqualification powers under section 249(1)*		<i>RDC</i>

Regulated Activities Order	Description	Handbook reference	Decision maker
Article 95(2)/(3)	when the <i>FCA</i> is proposing or deciding not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	SUP 12.4.10 G	<i>RDC</i>
Article 95(7)/(8)	when the <i>FCA</i> is proposing or deciding to refuse an application to revoke a determination not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	SUP 12.4.10 G	<i>RDC</i>

Payment Services Regulations	Description	Handbook reference	Decision maker
Regulations 9(7) and 14	when the <i>FCA</i> is proposing to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration as a <i>small payment institution</i> , or to impose a requirement, or to refuse an application to vary an authorisation		<i>Executive procedures</i>
Regulations 9(8)(a) and 14	when the <i>FCA</i> is deciding to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration of a <i>small payment institution</i> , or to impose a requirement, or to refuse an application to vary an authorisation		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 10(2) and 10(3)(a) and 14	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution's</i> registration, otherwise than at that institution's own request*		<i>RDC</i>
Regulation 24(2)	when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch</i>		<i>Executive procedures</i>
Regulation 24(3)(a)	when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 24(2) and 24(3)(a)	when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch</i> *		<i>RDC</i>
Regulation 29(9)	when the <i>FCA</i> is proposing to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i>
Regulation 29(10)(a)	when the <i>FCA</i> is deciding to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 30(2) and 30(3)(a)	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of a <i>payment institution</i> *		<i>RDC</i>
Regulations 86(1) and 86(3)	when the <i>FCA</i> is proposing, or deciding, to impose a financial penalty*		<i>RDC</i>
Regulations 86(1) and 86(3)	when the <i>FCA</i> is proposing, or deciding, to publish a statement that a <i>payment service provider</i> has contravened the <i>Payment Services Regulations</i> *		<i>RDC</i>
Regulations 89(1) and 89(3)	when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution*		<i>RDC</i>

Payment Services Regulations	Description	Handbook reference	Decision maker
Regulation 121(7)	when the <i>FCA</i> is proposing to decide that it has not received the required information or that the required conditions are not met as concerns deemed authorisation		<i>Executive Procedures</i>
Regulation 121(8)	when the <i>FCA</i> is deciding that it has not received the required information or that the required conditions are not met as concerns deemed authorisation		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Schedule 5 paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Payment Services Regulations</i> (Note 2)		<i>RDC</i>
Schedule 5 paragraph 1	when the <i>FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 3)		<i>RDC</i>
Notes:			
(2) The <i>Payment Services Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.			
(3) The <i>Payment Services Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.			

Regulated Covered Bonds Regulations 2008	Description	Handbook reference	Decision maker
Regulation 13(4)/(5)(a)	when the <i>FCA</i> is proposing or deciding to refuse an application under regulation 8	RCB 6	<i>Executive procedures</i>
Regulation 20(5)/(6)(a)	when the <i>FCA</i> is proposing or deciding not to approve a material change	RCB 6	<i>Executive procedures</i>
Regulation 25(5)/(6)(a)	when the <i>FCA</i> is proposing or deciding not to approve a change of ownership	RCB 6	<i>Executive procedures</i>
Regulation 32(1)(a)/(2)(a)	before the <i>FCA</i> gives a direction under regulation 30 or when it decides to make the direction	RCB 6	<i>Executive procedures</i>
Regulation 32(1)(b)/(2)(b)	before the <i>FCA</i> removes an <i>issuer</i> from the register of <i>issuers</i> under regulation 31 or when it decides to remove the <i>issuer</i> from the register of <i>issuers</i> *	RCB 6	<i>Executive procedures</i>
Regulation 35(1)/(3)	when the <i>FCA</i> is proposing or deciding to impose a penalty on a person under regulation 34*	RCB 6	<i>RDC</i>



Cross-Border Payments in Euro Regulations 2010	Description	Handbook reference	Decision maker
Regulations 7(1) and 7(3)	when the <i>FCA</i> is proposing or deciding to impose a financial penalty*		<i>RDC</i>
Regulations 7(1) and 7(3)	when the <i>FCA</i> is proposing or deciding to publish a statement that a <i>payment service provider</i> has contravened the <i>EU Cross-Border Regulation</i> *		<i>RDC</i>
Regulations 10(1) and 10(3)	when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution*		<i>RDC</i>
Schedule paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>EU Cross-Border Regulation</i> (Note 1)		<i>RDC</i>
Schedule paragraph 1	when the <i>FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 1)		<i>RDC</i>
Note:			
(1) The <i>Cross-Border Payments in Euro Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.			

Electronic Money Regulations	Description	Handbook reference	Decision maker
Regulations 9(6) and 15	where the <i>FCA</i> is proposing to refuse an application for authorisation as an <i>authorised electronic money institution</i> , or for registration as a <i>small electronic money institution</i> , or impose a requirement, or refuse to vary an authorisation or registration		<i>Executive procedures</i>
Regulations 9(7)(a) and 15	when the <i>FCA</i> is deciding to refuse an application for authorisation as an <i>authorised electronic money institution</i> , or for registration as a <i>small electronic money institution</i> , or impose a requirement or refuse to vary an authorisation or registration		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 10(4), 10(5)(a) and 15	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised electronic money institution's</i> authorisation, or to cancel a <i>small electronic money institution's</i> registration otherwise than at that institution's own request *		<i>RDC</i>
Regulations 11(6), 11(9), 11(10)(b) and 15	when the <i>FCA</i> is exercising its powers to vary an <i>electronic money institution's</i> authorisation or vary a <i>small electronic money institution's</i> registration on its own initiative		<i>RDC</i> or <i>Executive procedures</i> (Note 1)
Regulation 29(2)	when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch of an authorised electronic money institution</i>		<i>Executive procedures</i>

Electronic Money Regulations	Description	Handbook reference	Decision maker
Regulation 29(3)(a)	when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch of an authorised electronic money institution</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulation 29(2) and Regulation 29(3)(a)	when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch of an authorised electronic money institution*</i>		<i>RDC</i>
Regulation 34(9)	when the <i>FCA</i> is proposing to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i>
Regulation 34(10)(a)	when the <i>FCA</i> is deciding to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 35(2) and 35(3)(a)	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of the <i>electronic money institution *</i>		<i>RDC</i>
Regulations 53(1) and 53(3)	when the <i>FCA</i> is proposing, or deciding, to publish a statement that an <i>electronic money issuer</i> has contravened the <i>Electronic Money Regulations *</i>		<i>RDC</i>
Regulations 53 (1) and 53 (3)	when the <i>FCA</i> is proposing or deciding, to impose a financial penalty *		<i>RDC</i>
Regulations 53(1) and 53(3)	When the <i>FCA</i> is proposing or deciding to suspend the authorisation of an <i>authorised electronic money institution</i> or registration of a <i>small electronic money institution</i> , or to limit or otherwise restrict the carrying on of <i>electronic money issuance</i> or <i>payment services</i> business by an <i>electronic money institution *</i>		<i>RDC</i>
Regulations 56(1) and 56(3)	when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution *		<i>RDC</i>
Regulation 74(7)	when the <i>FCA</i> is proposing to decide not to include a person on the register		<i>Executive procedures</i>
Regulation 74(8) (a)	when the <i>FCA</i> is deciding not to include a person on the register		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Schedule 3, paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Electronic Money Regulations</i> (Note 2)		<i>RDC</i>

Electronic Money Regulations	Description	Handbook reference	Decision maker
<p>Schedule 3, paragraph 1</p> <p>Notes:</p> <p>(1) The <i>RDC</i> will take the decision to give the notice exercising the <i>FCA's</i> own-initiative power if the action involves:</p> <p>(a) removing a type of activity from an authorisation or registration; or</p> <p>(b) refusing an application to include a type of activity in an authorisation or registration; or</p> <p>(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or</p> <p>(d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.</p> <p>(2) The <i>Electronic Money Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.</p>	<p>when the <i>FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 2)</p>		<p><i>RDC</i></p>
Recognised Auction Platforms Regulations 2011	Description	Handbook reference	Decision maker
<p>Regulation 5A</p>	<p>where the <i>FCA</i> is proposing or deciding to publish a statement censuring an <i>RAP</i>, or to impose a financial penalty on an <i>RAP</i></p>	<p>REC 2A.4</p>	<p><i>RDC</i></p>

Supervisory notices

**FCA**

Section of the Act	Description	Handbook reference	Decision maker
55Y(4)	when the <i>FCA</i> is exercising its <i>own-initiative variation power</i> to vary a firm's <i>Part 4A permission</i>	SUP 7	<i>RDC</i> or <i>executive procedures</i>
55Y(7)			See DEPP 2.5.7 G
55Y(8)(b)			
55Y(4)	when the <i>FCA</i> is exercising its <i>own-initiative requirement power</i>		<i>RDC</i> or <i>executive procedures</i>
55Y(7)			See DEPP 2.5.7 G
55Y(8)(b)			
78(2)/(5)	when the <i>FCA</i> is proposing to discontinue or discontinues the <i>listing</i> of a security	LR 5	<i>RDC</i> or <i>executive procedures</i>
			See DEPP 2.5.9 G (4) and DEPP 2.5.10 G
78(2)/(5)	when the <i>FCA</i> is proposing to suspend or suspends the <i>listing</i> of a security	LR 5	<i>Executive procedures</i>
78A(2)/(8)(b)	when the <i>FCA</i> discontinues or suspends the <i>listing</i> of a security on the application of the <i>issuer</i> of the security	LR 5	<i>Executive procedures</i>
87O(2)/(5)	when the <i>FCA</i> is proposing or deciding to exercise or deciding to maintain, vary or revoke any of the powers in sections 87K or 87L in respect of an infringement of any applicable provision.	PR 5	<i>Executive procedures</i>
88F(2)/(5)/(6)(b)	when the <i>FCA</i> is proposing or deciding to take action to suspend, limit or restrict a <i>sponsor's</i> approval under section 88E		<i>Executive procedures</i>
89V(2)	when the <i>FCA</i> is proposing or deciding to take action to suspend, limit or restrict a <i>primary information provider's</i> approval under section 89U		<i>Executive procedures</i>
89V(5)			
89 V(6)(b)			
96C	when the <i>FCA</i> is proposing to suspend or suspends trading in a <i>financial instrument</i>	DTR	<i>Executive procedures</i>
137Q(5)	when the <i>FCA</i> gives a direction under section 137Q		<i>Executive procedures</i>
137Q(8)(a)			

Section of the Act	Description	Handbook reference	Decision maker
191B(1)	when the <i>FCA</i> gives a <i>restriction notice</i> under section 191B		<i>Executive procedures</i>
197(3)/(6)/(7)(b)	when the <i>FCA</i> is exercising its power of intervention in respect of an <i>incoming firm</i>	SUP 14	<i>RDC</i> or <i>executive procedures</i>  See DEPP 2.5.7 G and 2.5.7A G
259(3)/(8)/ (9) (b)	when the <i>FCA</i> is exercising its power to give or, on its own initiative, to vary a direction to the <i>manager</i> and <i>trustee</i> of an <i>AUT</i>	COLL	<i>RDC</i>
268(3)/ (7)(a) or (9)(a) (as a result of (8)(b)/(13))	when the <i>FCA</i> is proposing or deciding to give or, on its own initiative, to vary a direction to the <i>operator</i> of a <i>recognised scheme</i>	COLL	<i>RDC</i>
282 (3)/(6)/ (7)(b)	when the <i>FCA</i> is exercising its power to give a direction to an <i>operator</i> , <i>trustee</i> or <i>depository</i> of a <i>recognised scheme</i>	COLL	<i>RDC</i>
301J(1)	when the <i>FCA</i> gives a <i>restriction notice</i> under section 301J		<i>Executive procedures</i>
321(2)/(5)	when the <i>FCA</i> is exercising its power to impose a requirement on a former underwriting member of Lloyd's		<i>RDC</i>

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 27	when the <i>FCA</i> is exercising its power to give or, on its own initiative, to vary a direction to an <i>ICVC</i> and its <i>depository</i>	COLL	<i>RDC</i>

Payment Services Regulations	Description	Handbook reference	Decision maker
11(6)	When the <i>FCA</i> is exercising its powers to vary a person's authorisation on its own initiative		<i>RDC</i> or <i>Executive procedures</i> See also DEPP 3.4 (Note 1)
11(9)			
11(10)(b)			
14			
Notes:			
(1) The <i>RDC</i> will take the decision to give a notice exercising the <i>FCA's</i> own initiative power if the action involves:			
(a) removing a type of activity from an authorisation or registration; or			
(b) refusing an application to include a type of activity in an authorisation or registration; or			
(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or			

d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.

For all other types of action the decision to give a notice will be taken by *FCA* staff under *executive procedures*.



## Chapter 3

# The nature and procedure of the RDC





### 3.1 The Regulatory Decisions Committee

3.1.1  
FCA

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The *Regulatory Decisions Committee (RDC)* is a committee of the *FCA Board*. It is part of the *FCA*. It exercises certain regulatory powers on behalf of the *FCA* and is accountable to the *FCA Board* for its decisions generally.

3.1.2  
FCA

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- (1) The *RDC* is separate from the *FCA's* executive management structure. Apart from its Chairman, none of the members of the *RDC* is an *FCA* employee.
- (2) All members of the *RDC* are appointed for fixed periods by the *FCA Board*. The *FCA Board* may remove a member of the *RDC*, but only in the event of that member's misconduct or incapacity.

3.1.3  
FCA

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The *RDC* has its own legal advisers and support staff. The *RDC* staff are separate from the *FCA* staff involved in conducting investigations and making recommendations to the *RDC*.



## 3.2 The operation of the RDC

### RDC meetings and composition of panels

3.2.1  
FCA

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The *RDC* meets as often as necessary to discharge its functions. It may do so, in appropriate cases, in writing or by telephone or email or other electronic means. The *RDC* meets in private.

3.2.2  
FCA

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The *RDC* may meet as a full committee, but will ordinarily meet in panels. Each meeting of the *RDC* will generally include:

- (1) its Chairman or a Deputy Chairman (who will chair the meeting); and
- (2) at least two other members.

3.2.3  
FCA

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The composition and size of panels of the *RDC* may vary depending on the nature of the particular matter under consideration. In cases in which representations are made, it will be usual for the panel that is to consider the representations and decide whether to give a *decision notice* to include additional members of the *RDC* who have not previously considered the matter.

### Conflicts of interest

3.2.4  
FCA

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The *RDC* will seek not to invite a member to join a panel to consider a matter in which he has a potential conflict of interest.

3.2.5  
FCA

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- (1) If a member of the *RDC* has a potential conflict of interest in any matter in which he is asked to participate he will disclose the conflict to the *RDC* Office, and disclose it:
  - (a) in the case of the Chairman of the *RDC*, to the Chairman or Deputy Chairman of the *FCA*; or
  - (b) in the case of a Deputy Chairman of the *RDC*, to the Chairman of the *RDC*, or if he is unavailable to the Chairman or Deputy Chairman of the *FCA*; or
  - (c) in the case of any other member, to the Chairman or a Deputy Chairman of the *RDC*.
- (2) If the *person* to whom a conflict has been disclosed in accordance with (1)(a) to (c) considers it reasonable and appropriate, he will require the member of

the RDC to stand down from consideration of that matter. He may ask another member of the RDC to assist him in considering the potential conflict.

3.2.6  
FCA

G The RDC Office will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

**Procedure: general**

3.2.7  
FCA

G The RDC will follow the procedure described in this section, but subject to that it will conduct itself in the manner the RDC Chairman or a Deputy Chairman considers suitable in order to enable the RDC to determine fairly and expeditiously the matter which it is considering.

3.2.8  
FCA

G Each member of the RDC present is entitled to vote on the matter under consideration. The chairman of the meeting will have a vote as a member of the RDC and will have the casting vote in a tie.

3.2.9  
FCA

G The RDC Chairman or a Deputy Chairman may, acting alone, decide:

- (1) matters relating to the arrangements for an RDC meeting, including its timing; and
- (2) the composition of the panel to consider a particular matter.

3.2.10  
FCA

G If the RDC considers it relevant to its consideration, it may ask FCA staff to explain or provide any or all of the following:

- (1) additional information about the matter (which FCA staff may seek by further investigation); or
- (2) further explanation of any aspect of the FCA staff recommendation or accompanying papers; or
- (3) information about FCA priorities and policies (including as to the FCA's view on the law or on the correct legal interpretation of provisions of the Act).

3.2.11  
FCA

G The RDC has no power under the Act to require persons to attend before it or provide information. It is not a tribunal and will make a decision based on all the relevant information available to it, which may include views of FCA staff about the relative quality of witness and other evidence.

**Procedure: warning notices and first supervisory notices**

3.2.12  
FCA

G If FCA staff consider that action is appropriate in a matter for which the RDC is the decision maker, they will make a recommendation to the RDC that a warning notice or a supervisory notice should be given.

- 3.2.13**  
**FCA** **G** In accordance with ■ DEPP 2.2 the RDC will consider whether it is right in all the circumstances to give the statutory notice.
- 3.2.14**  
**FCA** **G** If the RDC decides that the FCA should give a *warning notice* or a first *supervisory notice*:
- (1) the RDC will settle the wording of the *warning notice* or first *supervisory notice*, and will ensure that the notice complies with the relevant provisions of the *Act*;
  - (2) the RDC will make any relevant *statutory notice associated decisions*;
  - (3) the RDC staff will make appropriate arrangements for the notice to be given; and
  - (4) the RDC staff will make appropriate arrangements for the disclosure of the substantive communications between the RDC and the FCA staff who made the recommendation on which the RDC's decision is based. This may include providing copies in electronic format.
- 3.2.14A**  
**FCA** **G** If FCA staff consider that it is appropriate to publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the *Act* relates, they will make a recommendation to the RDC that such information should be published.
- 3.2.14B**  
**FCA** **G** The RDC will consider whether it is appropriate in all the circumstances to publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the *Act* relates. The FCA's policy on publishing such information is set out in ■ EG 6.
- 3.2.14C**  
**FCA** **G** If the RDC proposes that the FCA should publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the *Act* relates:
- (1) the RDC will settle the wording of the statement it proposes the FCA should publish (*warning notice statement*);
  - (2) the RDC staff will make appropriate arrangements for the *warning notice statement* it proposes the FCA should publish to be given to the persons to whom the *warning notice* was given or copied;
  - (3) the proposed *warning notice statement* will specify the time allowed for the recipient to respond in writing to the RDC. This will normally be 14 *days*;
  - (4) the recipient of a proposed *warning notice statement* may request an extension of the time allowed for its response. Such a request must normally be made within seven days of the proposed *warning notice statement* being given; and
  - (5) the RDC will not normally grant a request by a person to whom the *warning notice statement* was given to make his response in person.
- 3.2.14D**  
**FCA** **G** If no response to the proposed *warning notice statement* is received, the FCA will make appropriate arrangements to publish the *warning notice statement*.

**3.2.14E** **FCA** **G** However, if the *RDC* receives a response from the person to whom the proposed warning notice statement was given, the *RDC* will consider their response and decide whether it is appropriate in all the circumstances to publish information about the matter to which the *warning notice* relates.

**3.2.14F** **FCA** **G** If the *RDC* decides that the *FCA* should publish a warning notice statement:

- (1) the *RDC* will settle the wording of the warning notice statement; and
- (2) the *FCA* will make appropriate arrangements for the warning notice statement to be published.

**3.2.14G** **FCA** **G** If the *RDC* decides that the *FCA* should not publish a warning notice statement the *RDC* staff will notify the relevant parties (including the relevant *FCA* staff) in writing of that decision.

**3.2.14H** **FCA** **G** References to the *RDC* in ■ DEPP 3.2.14A G to ■ DEPP 3.2.14G G are to the Chairman of the *RDC* panel which issued the *warning notice* or, if he is unavailable, either the Chairman of the *RDC* or a Deputy Chairman of the *RDC*.

**Procedure: representations**

**3.2.15** **FCA** **G** (1) A *warning notice* or a first *supervisory notice* will (as required by the *Act*) specify the time allowed for making representations. This will not be less than 14 days.

(2) The *FCA* will also, when giving a *warning notice* or a first *supervisory notice*, specify a time within which the recipient is required to indicate whether he wishes to make oral representations.

**3.2.16** **FCA** **G** (1) The recipient of a *warning notice* or a first *supervisory notice* may request an extension of the time allowed for making representations. Such a request must normally be made within sevendays of the notice being given.

(2) If a request is made, the Chairman or a Deputy Chairman of the *RDC* will decide whether to allow an extension, and, if so, how much additional time is to be allowed for making representations. In reaching his decision he may take account of any relevant comments from the *FCA* staff responsible for the matter.

(3) The *RDC* staff will notify the relevant party and the *FCA* staff responsible for the matter of the decision in writing.

**3.2.17** **FCA** **G** (1) If the recipient of a *warning notice* or a first *supervisory notice* indicates that he wishes to make oral representations, the *RDC* staff, in conjunction with the Chairman or a Deputy Chairman of the *RDC*, will fix a date or dates for a meeting at which the relevant *RDC* members will receive those representations.

(2) In making those arrangements the *RDC* staff will draw the Chairman's or Deputy Chairman's attention to any particular issues about the timing of

the meeting which have been raised by the recipient of the notice or the relevant FCA staff.

3.2.18  
FCA

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The chairman of the relevant meeting will ensure that the meeting is conducted so as to enable:

- (1) the recipient of the *warning notice* or first *supervisory notice* to make representations;
- (2) the relevant FCA staff to respond to those representations;
- (3) the RDC members to raise with those present any points or questions about the matter (whether in response to particular representations or more generally about the matter); and
- (4) the recipient of the notice to respond to points made by FCA staff or the RDC;

but the chairman may ask the recipient of the notice or FCA staff to limit their representations or response in length or to particular issues arising from the *warning notice* or first *supervisory notice*.

3.2.19  
FCA

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The recipient of the *warning notice* or *supervisory notice* may wish to be legally represented at the meeting, but this is not a requirement.

3.2.20  
FCA

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In appropriate cases, the chairman of a meeting for oral representations may ask those present to provide additional information in writing after the meeting. If he does so, he will specify the time within which that information is to be provided.

3.2.21  
FCA

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The RDC will not, after the FCA has given a *warning notice* or a first *supervisory notice*, meet with or discuss the matter whilst it is still ongoing with the FCA staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.

**Procedure: decision notices and second supervisory notices**

3.2.22  
FCA

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If no representations are made in response to the *warning notice* or first *supervisory notice*, the FCA will regard as undisputed the allegations or matters set out in the notice and the default procedure will apply: see ■ DEPP 2.3.2 G to ■ DEPP 2.3.4 G.

3.2.23  
FCA

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However, if representations are made, in accordance with ■ DEPP 2.3.1 G the RDC will consider whether it is right in all the circumstances to give the *decision notice* or a second *supervisory notice* (as appropriate).

PAGE 7  
3.2.24  
FCA

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If the RDC decides that the FCA should give a *decision notice* or a second *supervisory notice*:

- (1) the RDC will settle the wording of the notice which will include a brief summary of the key representations made and how they have been dealt with, and will ensure that the notice complies with the relevant provisions of the *Act*;

- (2) the RDC will make any relevant *statutory notice associated decisions*, including whether the FCA is required to give a copy of the notice to a third party; and
- (3) the RDC staff will make appropriate arrangements for the notice to be given.

3.2.25

FCA

G

If the RDC decides that the FCA should not give a *decision notice* or a second *supervisory notice* the RDC staff will notify the relevant parties (including the relevant FCA staff) in writing of that decision.

**Discontinuance of FCA action**

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3.2.26

FCA

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FCA staff responsible for recommending action to the RDC will continue to assess the appropriateness of the proposed action in the light of new information or representations they receive and any material change in the facts or circumstances relating to a particular matter. It may be therefore that they decide to give a *notice of discontinuance* to a *person* to whom a *warning notice* or *decision notice* has been given. The decision to give a *notice of discontinuance* does not require the agreement of the RDC, but FCA staff will inform the RDC of the discontinuance of the proceedings.

**Tribunal proceedings**

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3.2.27

FCA

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A decision by the RDC to give a *decision notice* or *supervisory notice* may lead to a reference to the *Tribunal* under the *Act*. The conduct of proceedings before the *Tribunal* is not however a matter for the RDC.



### 3.3 Straightforward decisions

3.3.1  
FCA

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In *statutory notice* cases for which the RDC is the decision-maker, the Chairman or a Deputy Chairman of the RDC may take a straightforward decision to give the *statutory notice*.

3.3.2  
FCA

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The Chairman or, if he is unavailable, a Deputy Chairman will decide whether a decision is straightforward. In doing so he will have regard to all the circumstances. These may include:

- (1) the significance of the decision to those who would be affected by it;
- (2) its novelty in the light of stated policy and established practice;
- (3) the complexity of the relevant considerations, including whether representations have been made;
- (4) the range of alternative options;
- (5) the extent to which the facts relating to the decision are or may be disputed.

3.3.3  
FCA

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The RDC Chairman or a Deputy Chairman may, notwithstanding the fact that a decision is straightforward, take the decision to give the *statutory notice* jointly with one or more other members of the RDC if he considers it appropriate to do so.





### 3.4 Urgent supervisory notice cases

3.4.1  
FCA

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In urgent *supervisory notice* cases for which the RDC is the decision maker, the decision to give the *supervisory notice* may be taken by the RDC Chairman or, if he is unavailable, a Deputy Chairman, and, if it is practicable, one or more other RDC members.

3.4.2  
FCA

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The RDC Chairman or Deputy Chairman will take such a decision only if satisfied that the action proposed should occur before it is practicable to convene an RDC panel.

3.4.3  
FCA

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In an exceptionally urgent case the decision to give a *supervisory notice* may be taken by a member of the FCA's executive of at least director of division level if:

- (1) FCA staff consider that the action should be taken before a recommendation to the Chairman or a Deputy Chairman of the RDC can be made; and
- (2) an urgent decision on the proposed action is necessary to protect the interests of consumers.

3.4.4  
FCA

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In the circumstances described in ■ DEPP 3.4.3 G, the FCA considers that it may be necessary for an FCA director of division to take the decision to give the *supervisory notice* even if he has been involved in establishing the evidence on which the decision is based, as permitted by section 395(3) of the Act. Where practicable, however, FCA staff will seek to ensure that the FCA director has not been so involved.

## Chapter 4

# Decisions by FCA staff under executive procedures



## 4.1 Executive decision maker

### Who takes the decision

4.1.1  
FCA

G

All *statutory notice decisions* under *executive procedures* and decisions referred to in ■ DEPP 2.5.6A G will be taken either by a *senior staff committee* or by an individual FCA staff member.

4.1.2  
FCA

G

In the case of a *senior staff committee*, the decision will be taken by FCA staff who have not been directly involved in establishing the evidence on which the decision is based or by two or more FCA staff who include a person not directly involved in establishing that evidence, except in accordance with section 395(3) of the *Act*.

4.1.2A  
FCA

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In the case of an individual FCA staff member, the decision will be taken by someone who has not been directly involved in establishing the evidence on which the decision is based, except in accordance with section 395(3) of the *Act*.

### Decisions by senior staff committee

4.1.3  
FCA

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The FCA's senior executive committee will from time to time determine that particular categories of *statutory notice decision* to be taken under *executive procedures* and decisions referred to in ■ DEPP 2.5.6A G will be taken by a *senior staff committee*.

4.1.4  
FCA

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A *senior staff committee* will consist of such FCA staff members as the FCA's senior executive committee may from time to time determine. The FCA's senior executive committee may authorise the chairman of a *senior staff committee* to select its other members. A *senior staff committee* is accountable for its decisions to the FCA's senior executive committee and, through it, to the FCA Board.

4.1.5  
FCA

G

A *senior staff committee* may operate through standing or specific sub-committees to consider particular decisions or classes of decision, for which accountability will lie through the committee. Each meeting of a *senior staff committee*, or sub-committee, will include:

- (1) an individual with authority to act as its chairman; and
- (2) at least two other members.

4.1.6

FCA

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A *senior staff committee* will operate on the basis of a recommendation from an *FCA* staff member of at least the level of associate, and with the benefit of legal advice from an *FCA* staff member of at least the level of associate.

**Decisions by individual FCA staff members**

4.1.7

FCA

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*Statutory notice decisions* to be taken under *executive procedures* and decisions referred to in ■ DEPP 2.5.6A G, and not falling within the responsibility of a *senior staff committee*, will be taken by an individual *FCA* staff member. The decision will be:

- (1) made by an executive director of the *FCA* Board or his delegate (who will be of at least the level of associate);
- (2) on the recommendation of an *FCA* staff member of at least the level of associate; and
- (3) with the benefit of legal advice from an *FCA* staff member of at least the level of associate.

except for decisions made in relation to consumer redress schemes pursuant to provisions of the Consumer Redress Schemes sourcebook (*CONRED*), where (1) will apply, but not (2) or (3).

4.1.8

FCA

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The individual who takes a decision under *executive procedures* is accountable to the *FCA* Board directly (if an executive director) or otherwise through line management responsible for the decision concerned.

4.1.9

FCA

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An *FCA* staff member who considers that a *statutory notice decision* or a decision referred to in ■ DEPP 2.5.6A G should be taken above his own level is free to refer that decision to a more senior level. If an *FCA* staff member consults another staff member about a decision, the decision remains the independent decision of the *FCA* staff member who consults his colleague, unless it is agreed that the decision should instead be taken by the colleague, and the colleague has the delegated authority to do so.

4.1.10

FCA

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If an individual responsible for a decision under *executive procedures* (or a more senior *FCA* staff member with responsibilities in relation to the decision concerned) considers that it warrants collective consideration, the individual may:

- (1) take the decision himself, following consultation with other *FCA* staff members, as above; or
- (2) refer it to a *senior staff committee*, which will take the decision itself.

**Conflicts of interest**

4.1.11

FCA

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- (1) *FCA* staff are required by their contract of employment to comply with a code of conduct which imposes strict rules to cover the handling of conflicts of interest which may arise from personal interests or associations. *FCA* staff subject to a conflict of interest must declare that interest to the *person* to whom they are immediately responsible for a decision.

- (2) If a member of a *senior staff committee* has a potential conflict of interest in any matter in which he is asked to participate he will disclose the conflict to the secretariat of the *senior staff committee*, and disclose it:
  - (a) in the case of the chairman of the senior staff committee, to a member of the *FCA's* senior executive committee or, if the *person* with the conflict is the chairman of the *FCA's* senior executive committee, to the Chairman of the *FCA*;
  - (b) in the case of the deputy chairman of the senior staff committee, to the chairman of the committee, or if he is unavailable, to a member of the *FCA's* senior executive committee;
  - (c) in the case of any other member to the chairman or deputy chairman of the *senior staff committee*.
- (3) If the person to whom the conflict has been disclosed in accordance with ■ DEPP 4.1.11 G (2) considers it reasonable and appropriate, he will require the member of the *senior staff committee* to stand down from consideration of the matter.

4.1.12  
FCA

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The secretariat to the *senior staff committee* will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

4.1.13  
FCA

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### Procedure

The procedure for taking decisions under *executive procedures* will generally be less formal and structured than that for decisions by the *RDC*. Broadly, however, *FCA* staff responsible for taking *statutory notice* decisions under *executive procedures* will follow a procedure similar to that described at ■ DEPP 3.2.7 G to ■ DEPP 3.2.27 G for the *RDC* except that:

- (1) in a case where the decision will be taken by a *senior staff committee*:
  - (a) the chairman or deputy chairman of the *senior staff committee* will perform the role of the Chairman of the *RDC*; and
  - (b) the secretariat to the *senior staff committee* will perform the role of the *RDC* staff;
- (2) in a case where the decision will be taken by individual members of *FCA* staff, the distinction between the role of the *RDC*, its Chairman and the *RDC* staff has no application;
- (3) the *FCA* staff responsible for taking the *statutory notice decision* may be advised by legal advisers who have also advised *FCA* staff recommending action by the *FCA*;
- (4) the *FCA* will not normally disclose the communications between the *FCA* staff recommending that action be taken and those responsible for the decision to give the *statutory notice* unless the *FCA* has stated publicly that it will adopt a practice of disclosing such communications, or a class of communications, in respect of particular categories of decision taken by *FCA* staff under *executive procedures*; and
- (5) ■ DEPP 3.2.11 G and ■ DEPP 3.2.21 G will not apply.

4.1.14

FCA

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Broadly, FCA staff responsible for taking decisions referred to in ■ DEPP 2.5.6A G will follow a procedure similar to that described at ■ DEPP 3.2.7 G to ■ DEPP 3.2.27 G for the RDC (subject to the exceptions in ■ DEPP 4.1.13 G (1) to ■ DEPP 4.1.13 G (5) which also reflects that these decisions are not *statutory notice* decisions.

## 4.2 Urgent statutory notice cases

### 4.2.1 FCA

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If FCA staff recommend that action be taken and they consider that the decision falls within the responsibility of a *senior staff committee*:

- (1) in general the FCA staff's recommendation will go before the *senior staff committee*;
- (2) in urgent *statutory notice* cases for which a *senior staff committee* is responsible, the decision to give the *statutory notice* may be taken by the chairman or, if he is unavailable, a deputy chairman of the *senior staff committee*, and, if it is practicable, one or more other members of the committee;
- (3) the chairman or deputy chairman of the senior staff committee will take such a decision only if satisfied that the action proposed should occur before it is practicable to convene a meeting of the senior staff committee;
- (4) in an exceptionally urgent *statutory notice* case, if in the FCA staff's opinion:
  - (a) the action should be taken before a recommendation to the chairman or a deputy chairman of the *senior staff committee* could be made; and
  - (b) an urgent decision on the proposed action is necessary to protect the interests of consumers;

the decision may be taken by a member of the FCA's executive of at least director of division level (which may include an acting director) or, in the case of a *senior staff committee* which reports directly to the FCA's senior executive committee, by a member of that committee.

### 4.2.2 FCA

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In the circumstances described in ■ DEPP 4.2.1 G (4) the FCA considers that it may be necessary for an FCA director of division or member of a *senior staff committee* to take the decision to give a *supervisory notice* even if he has been involved in establishing the evidence on which the decision is based, as permitted by section 395(3) of the *Act*. Where practicable, however, FCA staff will seek to ensure that the FCA director or committee member has not been so involved.

## Chapter 5

# Settlement decision procedure



## 5.1 Settlement decision makers

### Introduction

5.1.1  
FCA

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- (1) A *person* subject to enforcement action may agree to a financial penalty or other outcome rather than contest formal action by the *FCA*.
- (2) The fact that he does so will not usually obviate the need for a statutory notice recording the *FCA*'s decision to take that action. Where, however, the *person* subject to enforcement action agrees not to contest the content of a proposed *statutory notice*, the decision to give that statutory notice will be taken by senior *FCA* staff.
- (3) The decision will be taken jointly by two members of the *FCA*'s senior management, one of whom will be of at least director of division level (which may include an acting director) and the other of whom will be of at least head of department level (the "*settlement decision makers*").
- (4) At least one of the *settlement decision makers* will not be from the Enforcement and Financial Crime Division. The other *settlement decision maker* will usually be, but need not be, from the Enforcement and Financial Crime Division. A *settlement decision maker* will not have been directly involved in establishing the evidence on which the decision is based.
- (5) "Statutory notice" for these purposes:
  - (a) means any *statutory notice* the giving of which would otherwise require a decision by the *RDC*;
  - (b) includes a *statutory notice associated decision*.

### Procedure: general

5.1.2  
FCA

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A *person* who is or may be subject to enforcement action may wish to discuss the proposed action with *FCA* staff through settlement discussions.

5.1.3  
FCA

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Settlement discussions may take place at any time during the enforcement process if both parties agree. This might be before the giving of a *warning notice*, before a *decision notice*, or even after referral of the matter to the *Tribunal*. But the *FCA* would not normally agree to detailed settlement discussions until it has a sufficient understanding of the nature and gravity of the suspected misconduct or issue to make a reasonable assessment of the appropriate outcome. Settlement after a *decision notice* will be rare.

5.1.4

FCA

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*FCA* staff and the *person* concerned may agree that neither the *FCA* nor the *person* concerned would seek to rely against the other on any admissions or statements made in the course of their settlement discussions if the matter is considered subsequently by the *RDC* or the *Tribunal*.

#### **Procedure: participation of decision makers in discussions**

5.1.5

FCA

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- (1) The *settlement decision makers* may, but need not, participate in the discussions exploring possible settlement.
- (2) If the *settlement decision makers* have not been involved in the discussions, but an agreement has been reached, they may ask to meet the relevant *FCA* staff or the *person* concerned in order to assist in the consideration of the proposed settlement.

5.1.6

FCA

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The terms of any proposed settlement:

- (1) will be put in writing and be agreed by *FCA* staff and the *person* concerned;
- (2) may refer to a draft of the proposed *statutory notices* setting out the facts of the matter and the *FCA*'s conclusions;
- (3) may, depending upon the stage in the enforcement process at which agreement is reached, include an agreement by the *person* concerned to:
  - (a) waive and not exercise any rights under sections 387 (Warning notices) and 394 (Access to Authority material) of the *Act* to notice of, or access to, material relied upon by the *FCA* and any secondary material which might undermine the *FCA* decision to give the *statutory* notice;
  - (b) waive and not exercise any rights under section 387 of the *Act* or otherwise to make representations to the *RDC* in respect of a *warning notice* or first *supervisory notice*;
  - (c) not object to the giving of a *decision notice* before the expiry of the 14 day period after the giving of a *warning notice* specified under section 387 of the *Act*;
  - (d) not dispute with the *FCA* the facts and matters set out in a *warning notice*, *decision notice*, *supervisory notice* or *final notice* and to waive and not exercise any right under section 208 (Decision notice) of the *Act* to refer the matter to the *Tribunal*.

5.1.7

FCA

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The *settlement decision makers* may:

- (1) accept the proposed settlement by deciding to give a *statutory notice* based on the terms of the settlement; or
- (2) decline the proposed settlement;

whether or not the *settlement decision makers* have met with the relevant *FCA* staff or the *person* concerned.

5.1.8

FCA

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- (1) Where the *settlement decision makers* decline to issue a *statutory notice* despite the proposed settlement, they may invite *FCA* staff and the *person* concerned to enter into further discussions to try to achieve an outcome the *settlement decision makers* would be prepared to endorse.
- (2) However, if the proposed action by the *FCA* has been submitted to the *RDC* for consideration, it will be for the *RDC* to decide:
  - (a) whether to extend the period for representations in response to a *warning notice* or first *supervisory notice*; or
  - (b) if representations have been made in response to a *warning notice* or first *supervisory notice*, whether to proceed to give a *decision notice* or second *supervisory notice*.

### Settlement by mediation

5.1.9

FCA

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The *FCA* and other parties may agree to mediation as a way of facilitating settlement in appropriate cases.

### Third party rights

5.1.10

FCA

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- (1) ■ DEPP 2.4 sets out the *FCA*'s approach to giving third parties copies of *statutory notices* pursuant to section 393 (Third party rights) of the *Act*.
- (2) The decision to give a *warning notice* or a *decision notice* to a third party is a *statutory notice associated decision*.
- (3) In cases therefore where the decision to give a *warning notice* or *decision notice* is taken by *settlement decision makers*, those decision makers will decide whether a copy of the notice should be given to a third party in accordance with section 393 of the *Act*. Any representations made by the third party in response to a *warning notice* will be considered by the *settlement decision makers*

# Chapter 6

# Penalties



## 6.1 Introduction

### 6.1.1

FCA

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■ DEPP 6 includes the *FCA's* statement of policy with respect to the imposition and amount of penalties under the *Act*, as required by sections 63C(1), 69(1), 88C, 89S, 93(1), 124(1), 131J(1), 192N, 210(1), 312J and 345D of the *Act*.

### 6.1.2

FCA

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The principal purpose of imposing a financial penalty or issuing a *public censure* is to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches*, helping to deter other *persons* from committing similar *breaches*, and demonstrating generally the benefits of compliant behaviour. Financial penalties and *public censures* are therefore tools that the *FCA* may employ to help it to achieve its *statutory objectives* .

## 6.2 Deciding whether to take action

### 6.2.1

FCA

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The FCA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or *public censure*. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

- (1) The nature, seriousness and impact of the suspected *breach*, including:
  - (a) whether the *breach* was deliberate or reckless;
  - (b) the duration and frequency of the *breach*;
  - (c) the amount of any benefit gained or loss avoided as a result of the *breach*;
  - (d) whether the *breach* reveals serious or systemic weaknesses of the management systems or *internal controls* relating to all or part of a *person's* business;
  - (e) the impact or potential impact of the *breach* on the orderliness of markets including whether confidence in those markets has been damaged or put at risk;
  - (f) the loss or risk of loss caused to *consumers* or other market users;
  - (g) the nature and extent of any *financial crime* facilitated, occasioned or otherwise attributable to the *breach*; and
  - (h) whether there are a number of smaller issues, which individually may not justify disciplinary action, but which do so when taken collectively.
- (2) The conduct of the *person* after the *breach*, including the following:
  - (a) how quickly, effectively and completely the *person* brought the *breach* to the attention of the FCA or another relevant regulatory authority;
  - (b) the degree of co-operation the *person* showed during the investigation of the *breach*;
  - (c) any remedial steps the *person* has taken in respect of the *breach*;
  - (d) the likelihood that the same type of *breach* (whether on the part of the *person* under investigation or others) will recur if no action is taken;
  - (e) whether the *person* concerned has complied with any requirements or rulings of another regulatory authority relating to his *behaviour* (for example, where relevant, those of the *Takeover Panel* or an *RIE*); and

- (f) the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the *FCA*.
- (3) The previous disciplinary record and compliance history of the *person* including:
  - (a) whether the *FCA* (or any *previous regulator*) has taken any previous disciplinary action resulting in adverse findings against the *person*;
  - (b) whether the *person* has previously undertaken not to do a particular act or engage in particular *behaviour*;
  - (c) whether the *FCA* (or any *previous regulator*) has previously taken protective action in respect of a *firm*, using its own initiative powers, by means of a variation of a *Part 4A permission* or otherwise, or has previously requested the *firm* to take remedial action, and the extent to which such action has been taken; and
  - (d) the general compliance history of the *person*, including whether the *FCA* (or any *previous regulator*) has previously issued the *person* with a private warning.
- (4) *FCA guidance* and other published materials:

The *FCA* will not take action against a person for *behaviour* that it considers to be in line with *guidance*, other materials published by the *FCA* in support of the *Handbook* or *FCA*-confirmed Industry Guidance which were current at the time of the *behaviour* in question. (The manner in which *guidance* and other published materials may otherwise be relevant to an enforcement case is described in ■ EG 2.)

- (5) Action taken by the *FSA* or *FCA* in previous similar cases.
- (6) Action taken by other domestic or international regulatory authorities:

Where other regulatory authorities propose to take action in respect of the *breach* which is under consideration by the *FCA*, or one similar to it, the *FCA* will consider whether the other authority's action would be adequate to address the *FCA*'s concerns, or whether it would be appropriate for the *FCA* to take its own action.

### 6.2.2 FCA

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When deciding whether to take action for *market abuse* or *requiring or encouraging*, the *FCA* may consider the following additional factors:

- (1) The degree of sophistication of the users of the market in question, the size and liquidity of the market, and the susceptibility of the market to *market abuse*.
- (2) The impact, having regard to the nature of the *behaviour*, that any financial penalty or *public censure* may have on the financial markets or on the interests of *consumers*:
  - (a) a penalty may show that high standards of market conduct are being enforced in the financial markets, and may bolster market confidence;

- (b) a penalty may protect the interests of *consumers* by deterring future *market abuse* and improving standards of conduct in a market;
- (c) in the context of a *takeover bid*, the *FCA* may consider that the impact of the use of its powers is likely to have an adverse effect on the timing or outcome of that bid, and therefore it would not be in the interests of financial markets or *consumers* to take action for *market abuse* during the *takeover bid*. If the *FCA* considers that the proposed use of its powers may have that effect, it will consult the *Takeover Panel* and give due weight to its views.

## 6.2.2A

FCA

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The factors to which the *FCA* will have regard when deciding whether to impose a penalty under regulation 34 of the *RCB Regulations* are set out in ■ RCB 4.2.3 G.

### Discipline for breaches of FCA rules on systems and controls against money laundering

## 6.2.3

FCA

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The *FCA*'s rules on systems and controls against *money laundering* are set out in ■ SYSC 3.2 and ■ SYSC 6.3. The *FCA*, when considering whether to take action for a financial penalty or censure in respect of a breach of those rules, will have regard to whether a *firm* has followed relevant provisions in the Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.

### Action against approved persons under section 66 of the Act

## 6.2.4

FCA

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The primary responsibility for ensuring compliance with a *firm*'s regulatory obligations rests with the *firm* itself. However, the *FCA* may take disciplinary action against an *approved person* where there is evidence of personal culpability on the part of that *approved person*. Personal culpability arises where the *behaviour* was deliberate or where the *approved person*'s standard of *behaviour* was below that which would be reasonable in all the circumstances at the time of the conduct concerned.

## 6.2.5

FCA

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In some cases it may not be appropriate to take disciplinary measures against a *firm* for the actions of an *approved person* (an example might be where the *firm* can show that it took all reasonable steps to prevent the *breach*). In other cases, it may be appropriate for the *FCA* to take action against both the *firm* and the *approved person*. For example, a *firm* may have breached the *rule* requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (■ SYSC 3.1.1 R or ■ SYSC 4.1.10 R), and an *approved person* may have taken advantage of those deficiencies to front run orders or misappropriate assets.

## 6.2.6

FCA

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In addition to the general factors outlined in ■ DEPP 6.2.1 G, there are some additional considerations that may be relevant when deciding whether to take action against an *approved person* pursuant to section 66 of the *Act*. This list of those considerations is non-exhaustive. Not all considerations below may be relevant in every case, and there may be other considerations, not listed, that are relevant.

- (1) The *approved person*'s position and responsibilities. The *FCA* may take into account the responsibility of those exercising *significant influence functions* in the *firm* for the conduct of the *firm*. The more senior the *approved person* responsible for the misconduct, the more seriously the *FCA* is likely to view the misconduct, and therefore the more likely it is to take action against the *approved person*.



- (2) Whether disciplinary action against the *firm* rather than the *approved person* would be a more appropriate regulatory response.
- (3) Whether disciplinary action would be a proportionate response to the nature and seriousness of the breach by the *approved person*.

## 6.2.7

FCA

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The *FCA* will not discipline *approved persons* 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 4.6.13 G and ■ APER 4.6.14 G). 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 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 3.1.8 G).

## 6.2.8

FCA

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An *approved person* will not be in breach if he has exercised due and reasonable care when assessing information, has reached a reasonable conclusion and has acted on it.

## 6.2.9

FCA

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Where disciplinary action is taken against an *approved person* the onus will be on the *FCA* to show that the *approved person* has been guilty of misconduct.

### Action under section 63A of the Act against persons that perform a controlled function without approval

## 6.2.9A

FCA

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In addition to the general factors outlined in ■ DEPP 6.2.1 G, there are some additional considerations that the *FCA* will have regard to when deciding whether to take action against a *person* that performs a *controlled function* without approval contrary to section 63A of the *Act*.

- (1) The conduct of the *person*. The *FCA* will take into consideration whether, while performing *controlled functions* without approval, the *person* committed misconduct in respect of which, if he had been approved, the *FCA* could have taken action pursuant to section 66 of the *Act* and, if so, the seriousness of that misconduct.
- (2) The extent to which the *person* could reasonably be expected to have known that he was performing a *controlled function* without approval. The circumstances in which the *FCA* would expect to be satisfied that a *person* could reasonably be expected to have known that he was performing a *controlled function* without approval include:
  - (a) the *person* had previously performed a similar role at the same or another *firm* for which he had been approved;
  - (b) the *person's firm* or another *firm* had previously applied for approval for the *person* to perform the same or a similar *controlled function*;
  - (c) the *person's* seniority or experience was such that he could reasonably be expected to have known that he was performing a *controlled function* without approval; and
  - (d) the *person's firm* had clearly apportioned responsibilities so that the *person's* role, and the responsibilities associated with it, were clear.

- (3) The length of the period during which the *person* performed a *controlled function* without approval.
- (4) Whether the *person* is an individual.
- (5) The appropriateness of taking action against the *person* instead of, or in addition to, taking action against an *authorised person*. In assessing this, the *FCA* will take into consideration the extent of the culpability of an *authorised person* for the *person* performing a *controlled function* without approval. For example, a relevant factor may be that an *authorised person* decided that the *person* did not need to obtain approval and it was reasonable for the *person* to rely on the *authorised person's* judgment.
- (6) The *person's* position and responsibilities. The more senior the *person* that performs a *controlled function* without approval, the more seriously the *FCA* is likely to view his behaviour, and therefore the more likely it is to take action against the *person*.

**Action against directors, former directors and persons discharging managerial responsibilities for breaches under Part VI of the Act**

6.2.10  
FCA

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The primary responsibility for ensuring compliance with Part VI of the *Act*, the *Part 6 rules*, the *prospectus rules* or a provision otherwise made in accordance with the *Prospectus Directive* or a requirement imposed under such provision rests with the persons identified in section 91(1) and section 91(1A) (Penalties for breach of Part 6 rules) of the *Act* respectively. Normally therefore, any disciplinary action taken by the *FCA* for contraventions of these obligations will in the first instance be against those persons.

6.2.11  
FCA

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However, in the case of a contravention by a *person* referred to in section 91(1)(a) or section 91(1)(b) or section 91(1A) of the *Act* ("P"), where the *FCA* considers that another *person* who was at the material time a *director* of P was knowingly concerned in the contravention, the *FCA* may take disciplinary action against that *person*. In circumstances where the *FCA* does not consider it appropriate to seek a disciplinary sanction against P (notwithstanding a breach of relevant requirements by such person), the *FCA* may nonetheless seek a disciplinary sanction against any other person who was at the material time a *director* of P and was knowingly concerned in the contravention.

6.2.12  
FCA

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*Persons* discharging managerial responsibilities within an issuer and their *connected persons*, who have requested or approved the admission of a *financial instrument* to trading on a *regulated market*, and *connected persons* have their own responsibilities under the *disclosure rules*, as set out in ■ DTR 3, for which they are primarily responsible. Accordingly, disciplinary action for a breach of the *disclosure rules* will not necessarily involve the issuer.

**[Note: In paragraph 6.2.12, 'connected person' has the meaning in relation to a *person discharging managerial responsibilities within an issuer* attributed to it in subsection (5) of the definition of 'connected person' in the Handbook Glossary.]**

6.2.13  
FCA

G

In deciding whether to take action, the *FCA* will consider the full circumstances of each case. Factors that may be relevant for this purpose include, but are not limited to, the factors at ■ DEPP 6.2.1 G.

### Discipline for breaches of the Principles for Businesses

6.2.14  
FCA

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The *Principles* are set out in ■ PRIN 2.1.1 R. The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. The *Principles* derive their authority from the *FCA*'s rule-making powers set out in section 137A (General rule-making power) of the *Act*. A breach of a *Principle* will make a *firm* liable to disciplinary action. Where the *FCA* considers this is appropriate, it will discipline a *firm* on the basis of the *Principles* alone.

6.2.15  
FCA

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In determining whether a *Principle* has been breached, it is necessary to look to the standard of conduct required by the *Principle* in question at the time. Under each of the *Principles*, the onus will be on the *FCA* to show that a *firm* has been at fault in some way.

### Discipline for breaches of the Listing Principles

6.2.16  
FCA

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The Listing Principles are set out in ■ LR 7. The Listing Principles are a general statement of the fundamental obligations of *listed companies*. The Listing Principles derive their authority from the *FCA*'s rule making powers set out in section 73A(1) (Part 6 Rules) of the *Act*. A breach of a Listing Principle will make a *listed company* liable to disciplinary action by the *FCA*.

6.2.17  
FCA

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In determining whether a Listing Principle has been broken, it is necessary to look to the standard of conduct required by the Listing Principle in question. Under each of the Listing Principles, the onus will be on the *FCA* to show that a *listed company* has been at fault in some way. This requirement will differ depending upon the Listing Principle.

6.2.18  
FCA

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In certain cases, it may be appropriate to discipline a *listed company* on the basis of the Listing Principles alone. Examples include the following:

- (1) where there is no detailed listing rule which prohibits the *behaviour* in question, but the *behaviour* clearly contravenes a Listing Principle;
- (2) where a *listed company* has committed a number of breaches of detailed rules which individually may not merit disciplinary action, but the cumulative effect of which indicates the breach of a Listing Principle.

### Action involving other regulatory authorities or enforcement agencies

6.2.19  
FCA

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Some types of *breach* may potentially result not only in action by the *FCA*, but also action by other domestic or overseas regulatory authorities or enforcement agencies.

6.2.20  
FCA

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When deciding how to proceed in such cases, the *FCA* will examine the circumstances of the case, and consider, in the light of the relevant investigation, disciplinary and enforcement powers, whether it is appropriate for the *FCA* or another authority to take action to address the *breach*. The *FCA* will have regard to all the circumstances of the case including whether the other authority has adequate powers to address the *breach* in question.

- 6.2.21**  
**FCA** **G** In some cases, it may be appropriate for both the *FCA* and another authority to be involved, and for both to take action in a particular case arising from the same facts. For example, a breach of *RIE* rules may be so serious as to justify the *FCA* varying or cancelling the *firm's Part IV permission*, or withdrawing approval from *approved persons*, as well as action taken by the *RIE*. In such cases, the *FCA* will work with the relevant authority to ensure that cases are dealt with efficiently and fairly, under operating arrangements in place (if any) between the *FCA* and the relevant authority.
- 6.2.22**  
**FCA** **G** In relation to *behaviour* which may have happened or be happening in the context of a *takeover bid*, the *FCA* will refer to the *Takeover Panel* and give due weight to its views. Where the *Takeover Code* has procedures for complaint about any *behaviour*, the *FCA* expects parties to exhaust those procedures. The *FCA* will not, save in exceptional circumstances, take action under any of section 123 (*FCA's* power to impose penalties), section 129 (Power of court to impose penalties), section 381 (Injunctions), sections 383 or 384 (Restitution) in respect of *behaviour* to which the *Takeover Code* is relevant before the conclusion of the procedures available under the *Takeover Code*.
- 6.2.23**  
**FCA** **G** The *FCA* will not take action against a *person* over *behaviour* which (a) conforms with the *Takeover Code* or rules of an *RIE* and (b) falls within the terms of any provision of the *Code of Market Conduct* which states that *behaviour* so conforming does not amount to *market abuse*. The *FCA* will seek the *Takeover Panel's* or relevant *RIE's* views on whether *behaviour* complies with the *Takeover Code* or *RIE* rules and will attach considerable weight to its views.
- 6.2.24**  
**FCA** **G** If any of the circumstances in **DEPP 6.2.26 G** apply, and the *FCA* considers that the use of its disciplinary powers under section 123 or section 129, or of its injunctive powers under section 381 or of its powers relating to restitution under section 383 or 384 is appropriate, it will not take action during an offer to which the *Takeover Code* applies except in the circumstances set out in **DEPP 6.2.27 G**.
- 6.2.25**  
**FCA** **G** In any case where the *FCA* considers that the use of its powers under any of sections 123, 129, 381, 383 or 384 of the *Act* may be appropriate, if that use may affect the timetable or outcome of a *takeover bid* or where it is appropriate in the context of any exercise by the *Takeover Panel* of its powers and authority, the *FCA* will consult the *Takeover Panel* before using any of those powers.
- 6.2.26**  
**FCA** **G** Where the *behaviour* of a *person* which amounts to *market abuse* is *behaviour* to which the *Takeover Code* is relevant, the use of the *Takeover Panel's* powers will often be sufficient to address the relevant concerns. In cases where this is not so, the *FCA* will need to consider whether it is appropriate to use any of its own powers under the *market abuse regime*. The principal circumstances in which the *FCA* is likely to consider such exercise are:
- (1) where the *behaviour* falls within sections 118(2), 118(3) or 118(4) of the *Act*;
  - (2) where the *FCA's* approach in previous similar cases (which may have happened otherwise than in the context of a *takeover bid*) suggests that a financial penalty should be imposed;
  - (3) where the *behaviour* extends to *securities* or a class of *securities* which may be outside the *Takeover Panel's* jurisdiction;

- (4) where the *behaviour* threatens or has threatened the stability of the *financial system*; and
- (5) where for any other reason the *Takeover Panel* asks the *FCA* to consider the use of any of its powers referred to in ■ DEPP 6.2.22 G.

**[Note: In this section, 'securities' has the same meaning given in subsection (1) of the definition of 'security' in the Handbook Glossary]**

6.2.27

FCA

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The exceptional circumstances in which the *FCA* will consider the use of powers during a *takeover bid* are listed in ■ DEPP 6.2.26 G (1), ■ DEPP 6.2.26 G (3) and ■ DEPP 6.2.26 G (4), and, depending on the circumstances, ■ DEPP 6.2.26 G (5).

6.2.28

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[deleted]

## 6.3 Penalties for market abuse

### 6.3.1

FCA

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Section 123(2) of the *Act* states that the *FCA* may not impose a penalty on a *person* if there are reasonable grounds to be satisfied that:

- (1) the *person* concerned believed, on reasonable grounds, that his *behaviour* did not amount to *market abuse* or *requiring or encouraging*; or
- (2) the *person* concerned took all reasonable precautions and exercised all due diligence to avoid engaging in *market abuse* or *requiring or encouraging*.

### 6.3.2

FCA

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The factors which the *FCA* may take into account when deciding whether either of the two conditions in ■ DEPP 6.3.1 G are met include, but are not limited to:

- (1) whether, and if so to what extent, the *behaviour* in question was or was not analogous to *behaviour* described in the *Code of Market Conduct* (see ■ MAR 1) as amounting or not amounting to *market abuse* or *requiring or encouraging*;
- (2) whether the *FCA* has published any *guidance* or other materials on the *behaviour* in question and if so, the extent to which the *person* sought to follow that *guidance* or take account of those materials (see the Reader's Guide to the *Handbook* regarding the status of *guidance*.) The *FCA* will consider the nature and accessibility of any *guidance* or other published materials when deciding whether it is relevant in this context and, if so, what weight it should be given;
- (3) whether, and if so to what extent, the *behaviour* complied with the rules of any relevant *prescribed market* or any other relevant market or other regulatory requirements (including the *Takeover Code*) or any relevant codes of conduct or best practice;
- (4) the level of knowledge, skill and experience to be expected of the *person* concerned;
- (5) whether, and if so to what extent, the *person* can demonstrate that the *behaviour* was engaged in for a legitimate purpose and in a proper way;
- (6) whether, and if so to what extent, the *person* followed internal consultation and escalation procedures in relation to the *behaviour* (for example, did the *person* discuss the *behaviour* with internal line management and/or internal legal or compliance departments);
- (7) whether, and if so the extent to which, the *person* sought any appropriate expert legal or other expert professional advice and followed that advice; and

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- (8) whether, and if so to what extent, the *person* sought advice from the market authorities of any relevant *prescribed market* or, where relevant, consulted the *Takeover Panel*, and followed the advice received.

## 6.4 Financial penalty or public censure

### 6.4.1

FCA

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The *FCA* will consider all the relevant circumstances of the case when deciding whether to impose a penalty or issue a *public censure*. As such, the factors set out in ■ DEPP 6.4.2 G are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

### 6.4.2

FCA

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The criteria for determining whether it is appropriate to issue a *public censure* rather than impose a financial penalty include those factors that the *FCA* will consider in determining the amount of penalty set out in ■ DEPP 6.5 A to ■ DEPP 6.5 D. Some particular considerations that may be relevant when the *FCA* determines whether to issue a *public censure* rather than impose a financial penalty are:

- (1) whether or not deterrence may be effectively achieved by issuing a *public censure*;
- (2) if the *person* has made a profit or avoided a loss as a result of the *breach*, this may be a factor in favour of a financial penalty, on the basis that a *person* should not be permitted to benefit from its *breach*;
- (3) if the *breach* is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the *breach*; other things being equal, the more serious the *breach*, the more likely the *FCA* is to impose a financial penalty;
- (4) if the *person* has brought the *breach* to the attention of the *FCA*, this may be a factor in favour of a *public censure*, depending upon the nature and seriousness of the *breach*;
- (5) if the *person* has admitted the *breach* and provides full and immediate co-operation to the *FCA*, and takes steps to ensure that those who have suffered loss due to the *breach* are fully compensated for those losses, this may be a factor in favour of a *public censure*, rather than a financial penalty, depending upon the nature and seriousness of the *breach*;
- (6) if the *person* has a poor disciplinary record or compliance history (for example, where the *FSA* or *FCA* has previously brought disciplinary action resulting in adverse findings in relation to the same or similar *behaviour*), this may be a factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases;
- (7) the *FSA*'s or *FCA*'s approach in similar previous cases: the *FCA* will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a *public censure*; and



- (8) the impact on the *person* concerned. It would only be in an exceptional case that the *FCA* would be prepared to agree to issue a *public censure* rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include :
- (a) where the application of the *FCA*'s policy on serious financial hardship (set out in ■ DEPP 6.5D) results in a financial penalty being reduced to zero;
  - (b) where there is verifiable evidence that the *person* would be unable to meet other regulatory requirements, particularly financial resource requirements, if the *FCA* imposed a financial penalty at an appropriate level; or
  - (c) in Part VI cases in which the *FCA* may impose a financial penalty, where there is the likelihood of a severe adverse impact on a *person's* shareholders or a consequential impact on market confidence or market stability if a financial penalty was imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a *person's* shareholders.



## 6.5 Determining the appropriate level of financial penalty

6.5.1

FCA

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For the purpose of ■ DEPP 6.5 to ■ DEPP 6.5D and ■ DEPP 6.6.2 G, the term "firm" means *firms*, *sponsors*, *primary information providers*, *recognised investment exchanges*, qualifying parent undertakings, *actuaries*, auditors and those *unauthorised persons* who are not individuals.

6.5.2

FCA

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The FCA's penalty-setting regime is based on the following principles:

- (1) Disgorgement - a firm or individual should not benefit from any *breach*;
- (2) Discipline - a firm or individual should be penalised for wrongdoing; and
- (3) Deterrence - any penalty imposed should deter the firm or individual who committed the *breach*, and others, from committing further or similar *breaches*.

6.5.2A

6.5.3

FCA

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[Deleted]

- (1) The total amount payable by a person subject to enforcement action may be made up of two elements: (i) disgorgement of the benefit received as a result of the *breach*; and (ii) a financial penalty reflecting the seriousness of the *breach*. These elements are incorporated in a five-step framework, which can be summarised as follows:
  - (a) Step 1: the removal of any financial benefit derived directly from the *breach*;
  - (b) Step 2: the determination of a figure which reflects the seriousness of the *breach*;
  - (c) Step 3: an adjustment made to the Step 2 figure to take account of any aggravating and mitigating circumstances;
  - (d) Step 4: an upwards adjustment made to the amount arrived at after Steps 2 and 3, where appropriate, to ensure that the penalty has an appropriate deterrent effect; and
  - (e) Step 5: if applicable, a settlement discount will be applied. This discount does not apply to disgorgement of any financial benefit derived directly from the *breach*.
- (2) These steps will apply in all cases, although the details of Steps 1 to 4 will differ for cases against firms (■ DEPP 6.5A), cases against individuals (■ DEPP 6.5B) and *market abuse* cases against individuals (■ DEPP 6.5C).

- (3) The *FCA* recognises that a penalty must be proportionate to the *breach*. The *FCA* may decrease the level of the penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the *breach* concerned. For cases against firms, the *FCA* will have regard to whether the *firm* is also an individual (for example, a sole trader) in determining whether the figure arrived at after applying Step 2 is disproportionate.
- (4) The lists of factors and circumstances in ■ DEPP 6.5A to ■ DEPP 6.5D are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.
- (5) The *FCA* may decide to impose a financial penalty on a mutual (such as a *building society*), even though this may have a direct impact on that mutual's *customers*. This reflects the fact that a significant proportion of a mutual's *customers* are shareholder-members; to that extent, their position involves an assumption of risk that is not assumed by *customers* of a firm that is not a mutual. Whether a firm is a mutual will not, by itself, increase or decrease the level of a financial penalty.
- (6) Part III (Penalties and Fees) of Schedule 1ZA to the *Act* specifically provides that the *FCA* may not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.

## 6.5A The five steps for penalties imposed on firms

### Step 1 - disgorgement

6.5A.1

FCA

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- (1) The FCA will seek to deprive a firm of the financial benefit derived directly from the *breach* (which may include the profit made or loss avoided) where it is practicable to quantify this. The FCA will ordinarily also charge interest on the benefit.
- (2) Where the success of a firm's entire business model is dependent on breaching FCA rules or other requirements of the *regulatory system* and the *breach* is at the core of the firm's *regulated activities*, the FCA will seek to deprive the firm of all the financial benefit derived from such activities. Where a firm agrees to carry out a redress programme to compensate those who have suffered loss as a result of the *breach*, or where the FCA decides to impose a redress programme, the FCA will take this into consideration. In such cases the final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

[Note: For the purposes of ■ DEPP 6.5A, "firm" has the special meaning given to it in ■ DEPP 6.5.1 G]

### Step 2 - the seriousness of the breach

6.5A.2

FCA

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- (1) The FCA will determine a figure that reflects the seriousness of the *breach*. In many cases, the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its *breach* may cause, and in such cases the FCA will determine a figure which will be based on a percentage of the firm's revenue from the relevant products or business areas. The FCA also believes that the amount of revenue generated by a firm from a particular product or business area is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. However, the FCA recognises that there may be cases where revenue is not an appropriate indicator of the harm or potential harm that a firm's *breach* may cause, and in those cases the FCA will use an appropriate alternative.
- (2) In those cases where the FCA considers that revenue is an appropriate indicator of the harm or potential harm that a firm's *breach* may cause, the FCA will determine a figure which will be based on a percentage of the firm's "relevant revenue". "Relevant revenue" will be the revenue derived by the firm during the period of the *breach* from the products or business areas to which the *breach* relates. Where the *breach* lasted less than 12 months, or was a one-off event, the relevant revenue will be that derived by the firm in the 12 months preceding the end of the *breach*. Where the firm was in existence for less than 12 months,

its relevant revenue will be calculated on a pro rata basis to the equivalent of 12 *months*' relevant revenue.

- (3) Having determined the relevant revenue, the *FCA* will then decide on the percentage of that revenue which will form the basis of the penalty. In making this determination the *FCA* will consider the seriousness of the *breach* and choose a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the *breach*. The more serious the *breach*, the higher the level. For penalties imposed on firms there are the following five levels:
  - (a) level 1 - 0%;
  - (b) level 2 - 5%;
  - (c) level 3 - 10%;
  - (d) level 4 - 15%; and
  - (e) level 5 - 20%.
- (4) The *FCA* will assess the seriousness of a *breach* to determine which level is most appropriate to the case.
- (5) In deciding which level is most appropriate to a case involving a firm, the *FCA* will take into account various factors, which will usually fall into the following four categories:
  - (a) factors relating to the impact of the *breach*;
  - (b) factors relating to the nature of the *breach*;
  - (c) factors tending to show whether the *breach* was deliberate; and
  - (d) factors tending to show whether the *breach* was reckless.
- (6) Factors relating to the impact of a *breach* committed by a firm include:
  - (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the firm from the *breach*, either directly or indirectly;
  - (b) the loss or risk of loss, as a whole, caused to *consumers*, investors or other market users in general;
  - (c) the loss or risk of loss caused to individual *consumers*, investors or other market users;
  - (d) whether the *breach* had an effect on particularly vulnerable people, whether intentionally or otherwise;
  - (e) the inconvenience or distress caused to *consumers*; and
  - (f) whether the *breach* had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.
- (7) Factors relating to the nature of a *breach* by a firm include:
  - (a) the nature of the *rules*, requirements or provisions breached;
  - (b) the frequency of the *breach*;

- (c) whether the *breach* revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business;
  - (d) whether the firm's senior management were aware of the *breach*;
  - (e) the nature and extent of any *financial crime* facilitated, occasioned or otherwise attributable to the *breach*;
  - (f) the scope for any potential *financial crime* to be facilitated, occasioned or otherwise occur as a result of the *breach*;
  - (g) whether the firm failed to conduct its business with integrity;
  - (h) whether the firm, in committing the *breach*, took any steps to comply with *FSA rules*, and the adequacy of those steps; and
  - (i) in the context of contraventions of Part VI of the *Act*, the extent to which the *behaviour* which constitutes the contravention departs from current market practice.
- (8) Factors tending to show the *breach* was deliberate include:
- (a) the *breach* was intentional, in that the firm's senior management, or a responsible individual, intended or foresaw that the likely or actual consequences of their actions or inaction would result in a *breach*;
  - (b) the firm's senior management, or a responsible individual, knew that their actions were not in accordance with the firm's internal procedures;
  - (c) the firm's senior management, or a responsible individual, sought to conceal their misconduct;
  - (d) the firm's senior management, or a responsible individual, committed the *breach* in such a way as to avoid or reduce the risk that the *breach* would be discovered;
  - (e) the firm's senior management, or a responsible individual, were influenced to commit the *breach* by the belief that it would be difficult to detect;
  - (f) the *breach* was repeated; and
  - (g) in the context of a contravention of any *rule* or requirement imposed by or under Part VI of the *Act*, the firm obtained reasonable professional advice before the contravention occurred and failed to follow that advice. Obtaining professional advice does not remove a *person's* responsibility for compliance with applicable *rules* and requirements.
- (9) Factors tending to show the *breach* was reckless include:
- (a) the firm's senior management, or a responsible individual, appreciated there was a risk that their actions or inaction could result in a *breach* and failed adequately to mitigate that risk; and
  - (b) the firm's senior management, or a responsible individual, were aware there was a risk that their actions or inaction could result in a *breach* but failed to check if they were acting in accordance with the firm's internal procedures.
- (10) Additional factors to which the *FCA* will have regard when determining the appropriate level of financial penalty to be imposed under regulation 34 of the *RCB Regulations* are set out in ■ RCB 4.2.5 G.

- (11) In following this approach factors which are likely to be considered 'level 4 factors' or 'level 5 factors' include:
- (a) the *breach* caused a significant loss or risk of loss to individual *consumers*, investors or other market users;
  - (b) the *breach* revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business;
  - (c) *financial crime* was facilitated, occasioned or otherwise attributable to the *breach*;
  - (d) the *breach* created a significant risk that *financial crime* would be facilitated, occasioned or otherwise occur;
  - (e) the firm failed to conduct its business with integrity; and
  - (f) the *breach* was committed deliberately or recklessly.
- (12) Factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors' include:
- (a) little, or no, profits were made or losses avoided as a result of the *breach*, either directly or indirectly;
  - (b) there was no or little loss or risk of loss to *consumers*, investors or other market users individually and in general;
  - (c) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the *breach*;
  - (d) there is no evidence that the *breach* indicates a widespread problem or weakness at the firm; and
  - (e) the *breach* was committed negligently or inadvertently.
- (13) In those cases where revenue is not an appropriate indicator of the harm or potential harm that a firm's *breach* may cause, the *FCA* will adopt a similar approach, and so will determine the appropriate Step 2 amount for a particular *breach* by taking into account relevant factors, including those listed above. In these cases the *FCA* may not use the percentage levels that are applied in those cases in which revenue is an appropriate indicator of the harm or potential harm that a firm's *breach* may cause.

### Step 3 - mitigating and aggravating factors

6.5A.3  
FCA

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- (1) The *FCA* may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the *breach*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- (2) The following list of factors may have the effect of aggravating or mitigating the *breach*:
- (a) the conduct of the firm in bringing (or failing to bring) quickly, effectively and completely the *breach* to the *FCA*'s attention (or the attention of other regulatory authorities, where relevant);

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- (b) the degree of cooperation the firm showed during the investigation of the *breach* by the *FCA*, or any other regulatory authority allowed to share information with the *FCA*;
- (c) where the firm's senior management were aware of the *breach* or of the potential for a *breach*, whether they took any steps to stop the *breach*, and when these steps were taken;
- (d) any remedial steps taken since the *breach* was identified, including whether these were taken on the firm's own initiative or that of the *FCA* or another regulatory authority; for example, identifying whether *consumers* or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems cannot arise in the future. The size and resources of the firm may be relevant to assessing the reasonableness of the steps taken;
- (e) whether the firm has arranged its resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- (f) whether the firm had previously been told about the *FCA*'s concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- (g) whether the firm had previously undertaken not to perform a particular act or engage in particular behaviour;
- (h) whether the firm concerned has complied with any requirements or rulings of another regulatory authority relating to the *breach*;
- (i) the previous disciplinary record and general compliance history of the firm;
- (j) action taken against the firm by other domestic or international regulatory authorities that is relevant to the *breach* in question;
- (k) whether *FCA guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and
- (l) whether the *FCA* publicly called for an improvement in standards in relation to the behaviour constituting the *breach* or similar behaviour before or during the occurrence of the *breach*.

#### Step 4 - adjustment for deterrence

6.5A.4

FCA

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- (1) If the *FCA* considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the *breach*, or others, from committing further or similar breaches then the *FCA* may increase the penalty. Circumstances where the *FCA* may do this include:
  - (a) where the *FCA* considers the absolute value of the penalty too small in relation to the *breach* to meet its objective of credible deterrence;
  - (b) where previous *FCA* action in respect of similar *breaches* has failed to improve industry standards. This may include similar *breaches* relating to different products (for example, action for mis-selling or claims handling failures in respect of 'x' product may be relevant to a case for mis-selling or claims handling failures in respect of 'y' product);
  - (c) where the *FCA* considers it is likely that similar *breaches* will be committed by the firm or by other firms in the future in the absence of such an increase to the penalty; and



- (d) where the *FCA* considers that the likelihood of the detection of such a *breach* is low.

### Step 5 - settlement discount

6.5A.5

FCA

G

The *FCA* and the firm on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, ■ DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FCA* and the firm concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

## 6.5B The five steps for penalties imposed on individuals in non-market abuse cases

### Step 1 - disgorgement

6.5B.1

FCA

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The *FCA* will seek to deprive an individual of the financial benefit derived directly from the *breach* (which may include the profit made or loss avoided) where it is practicable to quantify this. The *FCA* will ordinarily also charge interest on the benefit. Where the success of a firm's entire business model is dependent on breaching *FCA rules* or other requirements of the *regulatory system* and the individual's *breach* is at the core of the firm's *regulated activities*, the *FCA* will seek to deprive the individual of all the financial benefit he has derived from such activities.

[Note: For the purposes of ■ DEPP 6.5B, "firm" has the special meaning given to it in ■ DEPP 6.5.1 G.]

### Step 2 - the seriousness of the breach

6.5B.2

FCA

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- (1) The *FCA* will determine a figure which will be based on a percentage of an individual's "relevant income". "Relevant income" will be the gross amount of all benefits received by the individual from the employment in connection with which the *breach* occurred (the "relevant employment"), and for the period of the *breach*. In determining an individual's relevant income, "benefits" includes, but is not limited to, salary, bonus, pension contributions, *share* options and *share* schemes; and "employment" includes, but is not limited to, employment as an adviser, *director*, partner or contractor.
- (2) Where the *breach* lasted less than 12 *months*, or was a one-off event, the relevant income will be that earned by the individual in the 12 *months* preceding the end of the *breach*. Where the individual was in the relevant employment for less than 12 months, his relevant income will be calculated on a pro rata basis to the equivalent of 12 *months'* relevant income.
- (3) This approach reflects the *FCA's* view that an individual receives remuneration commensurate with his responsibilities, and so it is reasonable to base the amount of penalty for failure to discharge his duties properly on his remuneration. The *FCA* also believes that the extent of the financial benefit earned by an individual is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. The *FCA* recognises that in some cases an individual may be approved for only a small part of the work he carries out on a day-to-day basis. However, in these circumstances the *FCA* still considers it appropriate to base the relevant income figure on all of the benefit that an individual gains from the relevant employment, even if his employment is not totally related to a controlled function.

- (4) Having determined the relevant income the *FCA* will then decide on the percentage of that income which will form the basis of the penalty. In making this determination the *FCA* will consider the seriousness of the *breach* and choose a percentage between 0% and 40%.
- (5) This range is divided into five fixed levels which reflect, on a sliding scale, the seriousness of the *breach*. The more serious the *breach*, the higher the level. For penalties imposed on individuals there are the following five levels:
- (a) level 1 - 0%;
  - (b) level 2 - 10%;
  - (c) level 3 - 20%;
  - (d) level 4 - 30%; and
  - (e) level 5 - 40%.
- (6) The *FCA* will assess the seriousness of a *breach* to determine which level is most appropriate to the case.
- (7) In deciding which level is most appropriate to a case against an individual, the *FCA* will take into account various factors which will usually fall into the following four categories:
- (a) factors relating to the impact of the *breach*;
  - (b) factors relating to the nature of the *breach*;
  - (c) factors tending to show whether the *breach* was deliberate; and
  - (d) factors tending to show whether the *breach* was reckless.
- (8) Factors relating to the impact of a *breach* committed by an individual include:
- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the *breach*, either directly or indirectly;
  - (b) the loss or risk of loss, as a whole, caused to *consumers*, investors or other market users in general;
  - (c) the loss or risk of loss caused to individual *consumers*, investors or other market users;
  - (d) whether the *breach* had an effect on particularly vulnerable people, whether intentionally or otherwise;
  - (e) the inconvenience or distress caused to *consumers*; and
  - (f) whether the *breach* had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.
- (9) Factors relating to the nature of a *breach* by an individual include:
- (a) the nature of the *rules*, requirements or provisions breached;
  - (b) the frequency of the *breach*;
  - (c) the nature and extent of any *financial crime* facilitated, occasioned or otherwise attributable to the *breach*;

- (d) the scope for any potential *financial crime* to be facilitated, occasioned or otherwise occur as a result of the *breach*;
- (e) whether the individual failed to act with integrity;
- (f) whether the individual abused a position of trust;
- (g) whether the individual committed a breach of any professional code of conduct;
- (h) whether the individual caused or encouraged other individuals to commit *breaches*;
- (i) whether the individual held a prominent position within the industry;
- (j) whether the individual is an experienced industry professional;
- (k) whether the individual held a senior position with the firm;
- (l) the extent of the responsibility of the individual for the product or business areas affected by the *breach*, and for the particular matter that was the subject of the *breach*;
- (m) whether the individual acted under duress;
- (n) whether the individual took any steps to comply with *FCA rules*, and the adequacy of those steps;
- (o) in the context of contraventions of Part VI of the *Act*, the extent to which the *behaviour* which constitutes the contravention departs from current market practice ;
- (p) in relation to a contravention of section 63A of the *Act*, whether the individual's only misconduct was to perform a *controlled function* without approval;
- (q) in relation to a contravention of section 63A of the *Act*, whether the individual performed *controlled functions* without approval and, while doing so, committed misconduct in respect of which, if the individual had been an *approved person*, the *FCA* would have been empowered to take action pursuant to section 66 of the *Act*; and
- (r) in relation to a contravention of section 63A of the *Act*, the extent to which the individual could reasonably be expected to have known that he was performing a *controlled function* without approval. The circumstances in which the *FCA* would expect to be satisfied that a *person* could reasonably be expected to have known that he was performing a *controlled function* without approval include:
  - (i) the *person* had previously performed a similar role at the same or another *firm* for which he had been approved;
  - (ii) the *person's firm* or another *firm* had previously applied for approval for the *person* to perform the same or a similar *controlled function*;
  - (iii) the *person's* seniority or experience was such that he could reasonably be expected to have known that he was performing a *controlled function* without approval; and
  - (iv) the *person's* firm had clearly apportioned responsibilities so the *person's* role, and the responsibilities associated with it, were clear.

(10) Factors tending to show the *breach* was deliberate include:

- (a) the *breach* was intentional, in that the individual intended or foresaw that the likely or actual consequences of his actions or inaction would result in a *breach*;
  - (b) the individual intended to benefit financially from the *breach*, either directly or indirectly;
  - (c) the individual knew that his actions were not in accordance with his firm's internal procedures;
  - (d) the individual sought to conceal his misconduct;
  - (e) the individual committed the *breach* in such a way as to avoid or reduce the risk that the *breach* would be discovered;
  - (f) the individual was influenced to commit the *breach* by the belief that it would be difficult to detect;
  - (g) the individual knowingly took decisions relating to the *breach* beyond his field of competence; and
  - (h) the individual's actions were repeated.
- (11) Factors tending to show the *breach* was reckless include:
- (a) the individual appreciated there was a risk that his actions or inaction could result in a *breach* and failed adequately to mitigate that risk; and
  - (b) the individual was aware there was a risk that his actions or inaction could result in a *breach* but failed to check if he was acting in accordance with internal procedures.
- (12) In following this approach factors which are likely to be considered 'level 4 factors' or 'level 5 factors' include:
- (a) the *breach* caused a significant loss or risk of loss to individual *consumers*, investors or other market users;
  - (b) *financial crime* was facilitated, occasioned or otherwise attributable to the *breach*;
  - (c) the *breach* created a significant risk that *financial crime* would be facilitated, occasioned or otherwise occur;
  - (d) the individual failed to act with integrity;
  - (e) the individual abused a position of trust;
  - (f) the individual held a prominent position within the industry; and
  - (g) the *breach* was committed deliberately or recklessly.
- (13) Factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors' include:
- (a) little, or no, profits were made or losses avoided as a result of the *breach*, either directly or indirectly;
  - (b) there was no or little loss or risk of loss to *consumers*, investors or other market users individually and in general;
  - (c) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the *breach*;

- (d) the *breach* was committed negligently or inadvertently; and
- (e) in relation to a contravention of section 63A of the *Act*, the individual's only misconduct was to perform a *controlled function* without approval.

### Step 3 - mitigating and aggravating factors

6.5B.3

FCA

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- (1) The *FCA* may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the *breach*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- (2) The following list of factors may have the effect of aggravating or mitigating the *breach*:
  - (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the *breach* to the *FCA*'s attention (or the attention of other regulatory authorities, where relevant);
  - (b) the degree of cooperation the individual showed during the investigation of the *breach* by the *FCA*, or any other regulatory authority allowed to share information with the *FCA*;
  - (c) whether the individual took any steps to stop the *breach*, and when these steps were taken;
  - (d) any remedial steps taken since the *breach* was identified, including whether these were taken on the individual's own initiative or that of the *FCA* or another regulatory authority;
  - (e) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
  - (f) whether the individual had previously been told about the *FCA*'s concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
  - (g) whether the individual had previously undertaken not to perform a particular act or engage in particular behaviour;
  - (h) whether the individual has complied with any requirements or rulings of another regulatory authority relating to the *breach*;
  - (i) the previous disciplinary record and general compliance history of the individual;
  - (j) action taken against the individual by other domestic or international regulatory authorities that is relevant to the *breach* in question;
  - (k) whether *FCA guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials;
  - (l) whether the *FCA* publicly called for an improvement in standards in relation to the behaviour constituting the *breach* or similar behaviour before or during the occurrence of the *breach*;
  - (m) whether the individual agreed to undertake training subsequent to the *breach* ; and
  - (n) in relation to a contravention of section 63A of the *Act*, whether the *person's* firm or another firm has previously withdrawn an application for the *person*

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to perform the same or a similar *controlled function* or has had such an application rejected by the *FCA*.

#### Step 4 - adjustment for deterrence

6.5B.4

FCA

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- (1) If the *FCA* considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the *breach*, or others, from committing further or similar *breaches* then the *FCA* may increase the penalty. Circumstances where the *FCA* may do this include:
  - (a) where the *FCA* considers the absolute value of the penalty too small in relation to the *breach* to meet its objective of credible deterrence;
  - (b) where previous *FCA* action in respect of similar *breaches* has failed to improve industry standards. This may include similar *breaches* relating to different products (for example, action for mis-selling or claims handling failures in respect of 'x' product may be relevant to a case for mis-selling or claims handling failures in respect of 'y' product);
  - (c) where the *FCA* considers it is likely that similar *breaches* will be committed by the individual or by other individuals in the future;
  - (d) where the *FCA* considers that the likelihood of the detection of such a *breach* is low; and
  - (e) where a penalty based on an individual's income may not act as a deterrent, for example, if an individual has a small or zero income but owns assets of high value.

#### Step 5 - settlement discount

6.5B.5

FCA

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The *FCA* and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, ■ DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FCA* and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

## 6.5C The five steps for penalties imposed on individuals in market abuse cases

### Step 1 - disgorgement

6.5C.1

FCA

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The *FCA* will seek to deprive an individual of the financial benefit derived as a direct result of the *market abuse* (which may include the profit made or loss avoided) where it is practicable to quantify this. The *FCA* will ordinarily also charge interest on the benefit.

### Step 2 - the seriousness of the market abuse

6.5C.2

FCA

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- (1) The *FCA* will determine a figure dependent on the seriousness of the *market abuse* and whether or not it was referable to the individual's employment. This reflects the *FCA*'s view that where an individual has been put into a position where he can commit *market abuse* because of his employment the fine imposed should reflect this by reference to the gross amount of all benefits derived from that employment.
- (2) In cases where the *market abuse* was referable to the individual's employment, the figure for the purpose of Step 2 will be the greater of:
  - (a) a figure based on a percentage of the individual's "relevant income". The percentage of relevant income which will apply is explained in paragraphs (6) and (8) to (16) below;
  - (b) a multiple of the profit made or loss avoided by the individual for his own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the *market abuse* (the "profit multiple"). The profit multiple which will apply is explained in paragraphs (6) and (8) to (16) below; and
  - (c) for *market abuse* cases which the *FCA* assesses to be seriousness level 4 or 5, £100,000. How the *FCA* will assess the seriousness level of the *market abuse* is explained in paragraphs (9) to (16) below. The *FCA* usually expects to assess *market abuse* committed deliberately as seriousness level 4 or 5.
- (3) In cases where the *market abuse* was not referable to the individual's employment, the figure for the purpose of Step 2 will be the greater of:
  - (a) a multiple of the profit made or loss avoided by the individual for his own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the *market abuse* (the "profit multiple"). The profit multiple which will apply is explained in paragraphs (7) to (16) below; and
  - (b) for *market abuse* cases which the *FCA* assesses to be seriousness level 4 or 5, £100,000. How the *FCA* will assess the seriousness level of the *market*



*abuse* is explained in paragraphs (9) to (16) below. The FCA usually expects to assess *market abuse* committed deliberately as seriousness level 4 or 5.

- (4) An individual's "relevant income" will be the gross amount of all benefits received by the individual from the employment in connection with which the *market abuse* occurred (the "relevant employment") for the period of the *market abuse*. In determining an individual's relevant income, "benefits" includes, but is not limited to, salary, bonus, pension contributions, *share* options and *share* schemes; and "employment" includes, but is not limited to, employment as an adviser, *director*, partner or contractor.
- (5) Where the *market abuse* lasted less than 12 *months*, or was a one-off event, the relevant income will be that earned by the individual in the 12 *months* preceding the final *market abuse*. Where the individual was in the relevant employment for less than 12 *months*, his relevant income will be calculated on a pro rata basis to the equivalent of 12 *months*' relevant income.
- (6) In cases where the *market abuse* was referable to the individual's employment:
  - (a) the FCA will determine the percentage of relevant income which will apply by considering the seriousness of the *market abuse* and choosing a percentage between 0% and 40%; and
  - (b) the FCA will determine the profit multiple which will apply by considering the seriousness of the *market abuse* and choosing a multiple between 0 and 4.
- (7) In cases where the *market abuse* was not referable to the individual's employment the FCA will determine the profit multiple which will apply by considering the seriousness of the *market abuse* and choosing a multiple between 0 and 4.
- (8) The percentage range (where the *market abuse* was referable to the individual's employment) and profit multiple range (in all cases) are divided into five fixed levels which reflect, on a sliding scale, the seriousness of the *market abuse*. The more serious the *market abuse*, the higher the level. For penalties imposed on individuals for *market abuse* there are the following five levels (the percentage figures only apply where the *market abuse* was referable to the individual's employment):
  - (a) level 1 - 0%, profit multiple of 0;
  - (b) level 2 - 10%, profit multiple of 1;
  - (c) level 3 - 20%, profit multiple of 2;
  - (d) level 4 - 30%, profit multiple of 3; and
  - (e) level 5 - 40%, profit multiple of 4.
- (9) The FCA will assess the seriousness of the *market abuse* to determine which level is most appropriate to the case.
- (10) In deciding which level is most appropriate to a *market abuse* case, the FCA will take into account various factors which will usually fall into the following four categories:

- (a) factors relating to the impact of the *market abuse*;
  - (b) factors relating to the nature of the *market abuse*;
  - (c) factors tending to show whether the *market abuse* was deliberate; and
  - (d) factors tending to show whether the *market abuse* was reckless.
- (11) Factors relating to the impact of the *market abuse* include:
- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the *market abuse*, either directly or indirectly;
  - (b) whether the *market abuse* had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk; and
  - (c) whether the *market abuse* had a significant impact on the price of *shares* or other *investments*.
- (12) Factors relating to the nature of the *market abuse* include:
- (a) the frequency of the *market abuse*;
  - (b) whether the individual abused a position of trust;
  - (c) whether the individual caused or encouraged other individuals to commit *market abuse*;
  - (d) whether the individual has a prominent position in the market;
  - (e) whether the individual is an experienced industry professional;
  - (f) whether the individual held a senior position with the firm; and
  - (g) whether the individual acted under duress.
- (13) Factors tending to show the *market abuse* was deliberate include:
- (a) the *market abuse* was intentional, in that the individual intended or foresaw that the likely or actual consequences of his actions would result in *market abuse*;
  - (b) the individual intended to benefit financially from the *market abuse*, either directly or indirectly;
  - (c) the individual knew that his actions were not in accordance with exchange rules, *share* dealing rules and/or the firm's internal procedures;
  - (d) the individual sought to conceal his misconduct;
  - (e) the individual committed the *market abuse* in such a way as to avoid or reduce the risk that the *market abuse* would be discovered;
  - (f) the individual was influenced to commit the *market abuse* by the belief that it would be difficult to detect;
  - (g) the individual's actions were repeated;
  - (h) for *market abuse* falling within section 118(2) of the *Act*, the individual knew or recognised that the information on which the *dealing* was based was *inside information*; and

- (i) for *market abuse* falling within section 118(4) of the *Act*, the individual's behaviour was based on information which he knew or recognised was not generally available to those using the market, and the individual regarded the information as relevant when deciding the terms on which transactions in qualifying *investments* should be effected.

(14) Factors tending to show the *market abuse* was reckless include:

- (a) the individual appreciated there was a risk that his actions could result in *market abuse* and failed adequately to mitigate that risk; and
- (b) the individual was aware there was a risk that his actions could result in *market abuse* but failed to check if he was acting in accordance with internal procedures.

(15) In following this approach factors which are likely to be considered 'level 4 factors' or 'level 5 factors' include:

- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, directly by the individual from the *market abuse* was significant;
- (b) the *market abuse* had a serious adverse effect on the orderliness of, or confidence in, markets;
- (c) the *market abuse* was committed on multiple occasions;
- (d) the individual breached a position of trust;
- (e) the individual has a prominent position in the market; and
- (f) the *market abuse* was committed deliberately or recklessly.

(16) In following this approach factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors' include:

- (a) little, or no, profits were made or losses avoided as a result of the *market abuse*, either directly or indirectly;
- (b) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the *market abuse*; and
- (c) the *market abuse* was committed negligently or inadvertently.

[Note: For the purposes of ■ DEPP 6.5C, "firm" has the special meaning given to it in ■ DEPP 6.5.1 G.]

### Step 3 - mitigating and aggravating factors

6.5C.3

FCA

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- (1) The *FCA* may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the *market abuse*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- (2) The following list of factors may have the effect of aggravating or mitigating the *market abuse*:

- (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the *market abuse* to the *FCA*'s attention (or the attention of other regulatory authorities, where relevant);
- (b) the degree of cooperation the individual showed during the investigation of the *market abuse* by the *FCA*, or any other regulatory authority allowed to share information with the *FCA*;
- (c) whether the individual assists the *FCA* in action taken against other individuals for *market abuse* and/or in criminal proceedings;
- (d) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- (e) whether the individual had previously been told about the *FCA*'s concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- (f) the previous disciplinary record and general compliance history of the individual;
- (g) action taken against the individual by other domestic or international regulatory authorities that is relevant to the *market abuse* in question;
- (h) whether *FCA guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and
- (i) whether the individual agreed to undertake training subsequent to the *market abuse*.

#### Step 4 - adjustment for deterrence

6.5C.4

FCA

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- (1) If the *FCA* considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the *market abuse*, or others, from committing further or similar abuse then the *FCA* may increase the penalty. Circumstances where the *FCA* may do this include:
  - (a) where the *FCA* considers the absolute value of the penalty too small in relation to the *market abuse* to meet its objective of credible deterrence;
  - (b) where previous *FCA* action in respect of similar *market abuse* has failed to improve industry standards; and
  - (c) where the penalty may not act as a deterrent in light of the size of the individual's income or net assets.

#### Step 5 - settlement discount

6.5C.5

FCA

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The *FCA* and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, ■ DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FCA* and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

## 6.5D Serious financial hardship

### 6.5D.1

FCA

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- (1) The *FCA's* approach to determining penalties described in ■ DEPP 6.5 to ■ DEPP 6.5C is intended to ensure that financial penalties are proportionate to the *breach*. The *FCA* recognises that penalties may affect persons differently, and that the *FCA* should consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of enforcement action serious financial hardship.
- (2) Where an individual or firm claims that payment of the penalty proposed by the *FCA* will cause them serious financial hardship, the *FCA* will consider whether to reduce the proposed penalty only if:
  - (a) the individual or firm provides verifiable evidence that payment of the penalty will cause them serious financial hardship; and
  - (b) the individual or firm provides full, frank and timely disclosure of the verifiable evidence, and cooperates fully in answering any questions asked by the *FCA* about their financial position.
- (3) The onus is on the individual or firm to satisfy the *FCA* that payment of the penalty will cause them serious financial hardship.

[Note: For the purposes of ■ DEPP 6.5D, "firm" has the special meaning given to it in ■ DEPP 6.5.1 G.]

### Individuals

### 6.5D.2

FCA

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- (1) In assessing whether a penalty would cause an individual serious financial hardship, the *FCA* will consider the individual's ability to pay the penalty over a reasonable period (normally no greater than three years). The *FCA's* starting point is that an individual will suffer serious financial hardship only if during that period his net annual income will fall below £14,000 and his capital will fall below £16,000 as a result of payment of the penalty. Unless the *FCA* believes that both the individual's income and capital will fall below these respective thresholds as a result of payment of the penalty, the *FCA* is unlikely to be satisfied that the penalty will result in serious financial hardship.
- (2) The *FCA* will consider all relevant circumstances in determining whether the income and capital threshold levels should be increased in a particular case.

- (3) The *FCA* will consider agreeing to payment of the penalty by instalments where the individual requires time to realise his assets, for example by waiting for payment of a salary or by selling property.
- (4) For the purposes of considering whether an individual will suffer serious financial hardship, the *FCA* will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), *investments* and land. The *FCA* will normally consider as capital the equity that an individual has in the home in which he lives, but will consider any representations by the individual about this; for example, as to the exceptionally severe impact a sale of the property might have upon other occupants of the property or the impracticability of re-mortgaging or selling the property within a reasonable period.
- (5) The *FCA* may also consider the extent to which the individual has access to other means of financial support in determining whether he is able to pay the penalty without being caused serious financial hardship.
- (6) Where a penalty is reduced it will be reduced to an amount which the individual can pay without going below the threshold levels that apply in that case. If an individual has no income, any reduction in the penalty will be to an amount that the individual can pay without going below the capital threshold.
- (7) There may be cases where, even though the individual has satisfied the *FCA* that payment of the financial penalty would cause him serious financial hardship, the *FCA* considers the *breach* to be so serious that it is not appropriate to reduce the penalty. The *FCA* will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
  - (a) the individual directly derived a financial benefit from the *breach* and, if so, the extent of that financial benefit;
  - (b) the individual acted fraudulently or dishonestly with a view to personal gain;
  - (c) previous *FCA* action in respect of similar *breaches* has failed to improve industry standards; or
  - (d) the individual has spent money or dissipated assets in anticipation of *FCA* or other enforcement action with a view to frustrating or limiting the impact of action taken by the *FCA* or other authorities.

### Prohibition orders and withdrawal of approval

In cases against individuals, including *market abuse* cases, the *FCA* may make a *prohibition order* under section 56 of the *Act* or withdraw an individual's approval under section 63 of the *Act*, as well as impose a financial penalty. Such action by the *FCA* reflects the *FCA*'s assessment of the individual's fitness to perform *regulated activity* or suitability for a particular role, and does not affect the *FCA*'s assessment of the appropriate financial penalty in relation to a *breach*. However, the fact that the *FCA* has made a *prohibition order* against an individual or withdrawn his approval, as a result of which the individual may have less earning potential, may be relevant in assessing whether the penalty will cause the individual serious financial hardship.

6.5D.3

FCA

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### Firms

6.5D.4

FCA

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- (1) The *FCA* will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the *FCA* will take into consideration the firm's financial circumstances, including whether the penalty would render the firm insolvent or threaten the firm's solvency. The *FCA* will also take into account its statutory objectives, for example in situations where *consumers* would be harmed or market confidence would suffer, the *FCA* may consider it appropriate to reduce a penalty in order to allow a firm to continue in business and/or pay redress.
- (2) There may be cases where, even though the firm has satisfied the *FCA* that payment of the financial penalty would cause it serious financial hardship, the *FCA* considers the *breach* to be so serious that it is not appropriate to reduce the penalty. The *FCA* will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
  - (a) the firm directly derived a financial benefit from the *breach* and, if so, the extent of that financial benefit;
  - (b) the firm acted fraudulently or dishonestly in order to benefit financially;
  - (c) previous *FCA* action in respect of similar *breaches* has failed to improve industry standards; or
  - (d) the firm has spent money or dissipated assets in anticipation of *FCA* or other enforcement action with a view to frustrating or limiting the impact of action taken by the *FCA* or other authorities.

### Withdrawal of authorisation

6.5D.4A

FCA

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The *FCA* may withdraw a firm's *authorisation* under section 33 of the *Act*, as well as impose a financial penalty. Such action by the *FCA* does not affect the *FCA*'s assessment of the appropriate financial penalty in relation to a *breach*. However, the fact that the *FCA* has withdrawn a firm's *authorisation*, as a result of which the firm may have less earning potential, may be relevant in assessing whether the penalty will cause the firm serious financial hardship.

### Transfers of assets

6.5D.5

FCA

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Where the *FCA* considers that, following commencement of an *FCA* investigation, an individual or firm has reduced their solvency in order to reduce the amount of any disgorgement or financial penalty payable, for example by transferring assets to third parties, the *FCA* will normally take account of those assets when determining whether the individual or firm would suffer serious financial hardship as a result of the disgorgement and financial penalty.

## 6.6 Financial penalties for late and incomplete submission of reports

### 6.6.1

FCA

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- (1) The *FCA* attaches considerable importance to the timely submission by *firms* of reports. This is because the information that they contain is essential to the *FCA*'s assessment of whether a *firm* is complying with the requirements and standards of the *regulatory system* and to the *FCA* understanding of that *firm*'s business.
- (2) ■ DEPP 6.6.1 G to ■ DEPP 6.6.5 G set out the *FCA*'s policy in relation to financial penalties for late submission of reports and is in addition to the *FCA*'s policy relating to financial penalties as set out in ■ DEPP 6.5 to ■ DEPP 6.5D.

### 6.6.2

FCA

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In addition to the factors considered in Step 2 for cases against firms ( ■ DEPP 6.5A) and cases against individuals ( ■ DEPP 6.5B), the following considerations are relevant.

- (1) In general, the *FCA*'s approach to disciplinary action arising from the late submission of a report will depend upon the length of time after the due date that the report in question is submitted.
- (2) If the *person* concerned is an individual, it is open to him to make representations to the *FCA* as to why he should not be the subject of a financial penalty, or why a lower penalty should be imposed. If he does so, the matters to which the *FCA* will have regard will include the matters set out in ■ DEPP 6.5B . It should be noted that an administrative difficulty such as pressure of work does not, in itself, constitute a relevant circumstance for this purpose.
- (3) The *FCA* will have regard to repeated failures to submit reports on time. In the majority of cases involving such repeated failure, the *FCA* considers that it will be appropriate to seek more serious disciplinary sanctions or other enforcement action, including seeking to apply for the cancellation of the firm's permission.
- (4) The *FCA* will also have regard to the submission frequency of the late report when assessing the seriousness of the contravention. For example, a short delay in submitting a weekly or monthly report can have serious implications for the supervision of the firm in question. Such a delay may therefore be subject to a higher penalty than might otherwise be the case.

[Note: For the purposes of ■ DEPP 6.6.2 G, "firm" has the special meaning given to it in ■ DEPP 6.5.1.]



6.6.3

FCA

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In addition, in appropriate cases, the *FCA* may bring disciplinary action against the *approved persons* within the *firm's* management who are ultimately responsible for ensuring that the *firm's* reports are completed and returned to the *FCA*.

6.6.4

FCA

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In applying the *guidance* in this section, the *FCA* may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate. For the purposes of the *guidance*, the *FCA* may also treat a report as not received where the method by which it is submitted to the *FCA* does not comply with the prescribed method of submission.

6.6.5

FCA

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In most late reporting cases, it will not be necessary for the *FCA* to appoint an investigator since the fact of the breach will be clear. It follows that the *FCA* will not usually send the *firm* concerned a preliminary findings letter for late-reporting disciplinary action.

## 6.7 Discount for early settlement

### 6.7.1

FCA

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*Persons* subject to enforcement action may be prepared to agree the amount of any financial penalty, or the length of any period of suspension or restriction, and other conditions which the *FCA* seeks to impose by way of such action. Such conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The *FCA* recognises the benefits of such agreements, in that they offer the potential for securing earlier redress or protection for consumers and the saving of cost to the *person* concerned and the *FCA* itself in contesting the financial penalty, suspension or restriction. The penalty that might otherwise be payable, or the length of the period of suspension or restriction that might otherwise be imposed, in respect of a *breach* by the *person* concerned will therefore be reduced to reflect the timing of any settlement agreement.

### The settlement discount scheme applied to financial penalties

### 6.7.2

FCA

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In appropriate cases the *FCA*'s approach will be to negotiate with the *person* concerned to agree in principle the amount of a financial penalty having regard to the *FCA*'s statement of policy as set out in ■ DEPP 6.5 to ■ DEPP 6.5D and ■ DEPP 6.6 . (This starting figure will take no account of the existence of the *settlement discount scheme* described in this section.) Such amount ("A") will then be reduced by a percentage of A according to the stage in the process at which agreement is reached. The resulting figure ("B") will be the amount actually payable by the *person* concerned in respect of the *breach*. However, where part of a proposed financial penalty specifically equates to the disgorgement of profit accrued or loss avoided then the percentage reduction will not apply to that part of the penalty.

### 6.7.3

FCA

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- (1) The *FCA* has identified four stages of an action for these purposes:
  - (a) the period from commencement of an investigation until the *FCA* has:
    - (i) a sufficient understanding of the nature and gravity of the *breach* to make a reasonable assessment of the appropriate penalty; and
    - (ii) communicated that assessment to the *person* concerned and allowed a reasonable opportunity to reach agreement as to the amount of the penalty ("stage 1");
  - (b) the period from the end of stage 1 until the expiry of the period for making written representations or, if sooner, the date on which the written representations are sent in response to the giving of a *warning notice* ("stage 2");
  - (c) the period from the end of stage 2 until the giving of a *decision notice* ("stage 3");

- (d) the period after the end of stage 3, including proceedings before the *Tribunal* and any subsequent appeals ("stage 4").
- (2) The communication of the *FCA*'s assessment of the appropriate penalty for the purposes of ■ DEPP 6.7.3 G (1)(a) need not be in a prescribed form but will include an indication of the *breaches* alleged by the *FCA*. It may include the provision of a draft *warning notice*.
- (3) The reductions in penalty will be as follows:

Stage at which agreement reached	Percentage reduction
Stage 1	30
Stage 2	20
Stage 3	10
Stage 4	0

- (1) Any settlement agreement between the *FCA* and the *person* concerned will therefore need to include a statement as to the appropriate penalty discount in accordance with this procedure.
- (2) In certain circumstances the *person* concerned may consider that it would have been possible to reach a settlement at an earlier stage in the action, and argue that it should be entitled to a greater percentage reduction in penalty than is suggested by the table at ■ DEPP 6.7.3 G (3). It may be, for example, that the *FCA* no longer wishes to pursue its action in respect of all of the acts or omissions previously alleged to give rise to the *breach*. In such cases, the *person* concerned might argue that it would have been prepared to agree an appropriate penalty at an earlier stage and should therefore benefit from the discount which would have been available at that time. Equally, *FCA* staff may consider that greater openness from the *person* concerned could have resulted in an earlier settlement.
- (3) Arguments of this nature risk compromising the goals of greater clarity and transparency in respect of the benefits of early settlement, and invite dispute in each case as to when an agreement might have been possible. It will not usually be appropriate therefore to argue for a greater reduction in the amount of penalty on the basis that settlement could have been achieved earlier.
- (4) However, in exceptional cases the *FCA* may accept that there has been a substantial change in the nature or seriousness of the action being taken against the *person* concerned, and that an agreement would have been possible at an earlier stage if the action had commenced on a different footing. In such cases the *FCA* and person concerned may agree that the amount of the reduction in penalty should reflect the stage at which a settlement might otherwise have been possible.

6.7.4  
FCA

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6.7.5  
FCA

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In cases in which the *settlement discount scheme* is applied, the fact of settlement and the level of the discount to the financial penalty imposed by the *FCA* will be set out in the *final notice*.

6.7.6

FCA

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**The settlement discount scheme applied to suspensions and restrictions**

The *settlement discount scheme* which applies to the amount of a financial penalty, described in ■ DEPP 6.7.2 G to ■ DEPP 6.7.5 G, also applies to the length of the period of a suspension or restriction, having regard to the *FCA's* statement of policy as set out in ■ DEPP 6A.3.

6



## Chapter 6A

# The power to impose a suspension or restriction

## 6A.1 Introduction

6A.1.1  
FCA

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■ DEPP 6A sets out the FCA's statement of policy with respect to the imposition of suspensions or restrictions, and the period for which those suspensions or restrictions are to have effect, under the Act, as required by sections 69(1), 88C(1), 89S(1) and 210(1) of the Act.

6A.1.2  
FCA

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- (1) For the purposes of ■ DEPP 6A, "suspension" refers to the suspension of:
  - (a) any *permission* which an *authorised person* has to carry on a *regulated activity* (under section 206A of the Act),
  - (b) any approval of the performance by an *approved person* of any function to which the approval relates (under section 66 of the Act),
  - (c) a *sponsor's* approval (under section 88A(2)(b) of the Act),
  - (d) and a *primary information provider's* approval (under section 89Q(2)(b) of the Act); and
- (2) "restriction" refers to limitations or other restrictions in relation to:
  - (a) the carrying on of a *regulated activity* by an *authorised person* (under section 206A of the Act),
  - (b) the performance by an *approved person* of any function to which any approval relates (under section 66 of the Act),
  - (c) the performance of services to which a *sponsor's* approval relates (under section 88A(2)(c) of the Act), and
  - (d) the dissemination of *regulated information* by a *primary information provider* (under section 89Q(2)(c) of the Act).

6A.1.3  
FCA

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The power to impose a suspension or a restriction is a disciplinary measure which the FCA may use in addition to, or instead of, imposing a financial penalty or issuing a *public censure*. The principal purpose of imposing a suspension or a restriction is to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches*, helping to deter other *persons* from committing similar *breaches*, and demonstrating generally the benefits of compliant behaviour. Suspensions and restrictions are therefore tools that the FCA may employ to help it to achieve its *statutory objectives*. Examples of restrictions that we may impose include:

- (1) we may limit an *authorised person's* carrying on of a *regulated activity* so that they can only sell certain products or provide certain services;
- (2) we may restrict an *approved person's* performance of their *controlled functions* so that they can only give advice to *consumers* or deal in certain products if they are appropriately supervised.

6A.1.4

FCA

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The powers to impose a suspension or a restriction in relation to *authorised persons* and *approved persons* are disciplinary measures; where the *FCA* considers it necessary to take action, for example, to protect *consumers* from an *authorised person*, the *FCA* will seek to cancel or vary the *authorised person's permissions*. If the *FCA* has concerns with a *person's* fitness to be approved, and considers it necessary to take action, the *FCA* will seek to prohibit the *approved person* or withdraw its approval. While the powers to impose a suspension or a restriction in relation to *sponsors* and *primary information providers* under sections 88A(2)(b)/(c) and 89Q(2)(b)/(c) of the *Act* are disciplinary measures, the *FCA* can impose suspensions, limitations or other restrictions in relation to *sponsors* and *primary information providers* in other circumstances.



## 6A.2 Deciding whether to take action

6A.2.1  
FCA

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The *FCA* will consider the full circumstances of each case and determine whether it is appropriate to impose a suspension or restriction. The *FCA* will usually make this decision at the same time as it determines whether or not to impose a financial penalty or a *public censure*.

6A.2.2  
FCA

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The *FCA* will take into account relevant factors in deciding whether it is appropriate to impose a suspension or restriction. These may include factors listed in ■ DEPP 6.2. There may also be other factors, not listed in ■ DEPP 6.2, that are relevant.

6A.2.3  
FCA

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The *FCA* will consider it appropriate to impose a suspension or restriction where it believes that such action will be a more effective and persuasive deterrent than the imposition of a financial penalty alone. This is likely to be the case where the *FCA* considers that direct and visible action in relation to a particular *breach* is necessary. Examples of circumstances where the *FCA* may consider it appropriate to impose a suspension or restriction include:

- (1) where the *FCA* (or any *previous regulator*) has taken any previous disciplinary action resulting in adverse findings against the *person*;
- (2) where the *FCA* has previously taken action in respect of similar *breaches* and has failed to improve industry standards;
- (3) where the *person* has failed properly to carry out an agreed redress package or other agreed remedial measures;
- (4) where the misconduct appears to be widespread across a number of individuals across a particular business area (suggesting a poor compliance culture);
- (5) where the *person's* competitive position in the market has improved as a result of the *breach*;
- (6) if, in accordance with ■ DEPP 6.5D, the *FCA* considers that a proposed penalty would cause the subject of enforcement action serious financial hardship and that it is appropriate to reduce the proposed penalty.

6A.2.4  
FCA

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The *FCA* expects usually to suspend or restrict a *person* from carrying out activities directly linked to the *breach*. However, in certain circumstances the *FCA* may also suspend or restrict a *person* from carrying out activities that are not directly linked to

the *breach*, for example, where an *authorised person's* relevant business area no longer exists or has been restructured.

6A.2.5

FCA

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For the purposes of section 89S(1)(d) of the *Act*, the *FCA* expects usually to suspend the approval of a *primary information provider*.

### 6A.3 Determining the appropriate length of the period of suspension or restriction

6A.3.1  
FCA

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The FCA will consider all the relevant circumstances of a case when it determines the length of the period of suspension or restriction (if any) that is appropriate for the *breach* concerned, and is also a sufficient deterrent. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

6A.3.2  
FCA

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The following factors may be relevant to determining the appropriate length of the period of suspension or restriction to be imposed on a *person* under the *Act*:

(1) Deterrence

When determining the appropriate length of the period of suspension or restriction, the FCA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches* and helping to deter other *persons* from committing similar *breaches*, as well as demonstrating generally the benefits of compliant business.

(2) The seriousness of the breach

The FCA will have regard to the seriousness of the *breach*. In assessing this, it will consider the impact and nature of the *breach*, and whether it was committed deliberately or recklessly. Where the *breach* was committed by an *authorised person*, relevant factors may include those listed in ■ DEPP 6.5A.2 G (6) to ■ (9). Where the *breach* was committed by an *approved person*, relevant factors may include those listed in ■ DEPP 6.5B.2 G (8) to ■ (11). There may also be other factors, not listed in these sections, that are relevant.

(3) Aggravating and mitigating factors

The FCA will have regard to factors that may aggravate or mitigate a *breach*. Where the breach was committed by an *authorised person*, *sponsor* or *primary information provider*, relevant factors may include those listed in ■ DEPP 6.5A.3 G (2). Where the *breach* was committed by an *approved person*, relevant factors may include those listed in ■ DEPP 6.5B.3 G (2). There may also be other factors, not listed in these sections, that are relevant.

(4) The impact of suspension or restriction on the person in breach

The following considerations may be relevant to the assessment of the impact of suspension or restriction on an *authorised person, sponsor or primary information provider*:

- (a) the *authorised person's, sponsor's or primary information provider's* expected lost revenue and profits from not being able to carry out the suspended or restricted activity;
- (b) the cost of any measures the *authorised person, sponsor or primary information provider* must undertake to comply with the suspension or restriction;
- (c) potential economic costs, for example, the payment of salaries to employees who will not work during the period of suspension or restriction or the payment of compensation to *consumers* who will suffer loss as a result of the suspension or restriction;
- (d) the effect on other areas of the *authorised person's, sponsor's or primary information provider's* business; and
- (e) whether the suspension or restriction would cause the *authorised person, sponsor or primary information provider* serious financial hardship.

The following considerations may be relevant to the assessment of the impact of suspension or restriction on an *approved person*:

- (f) the *approved person's* expected lost earnings from not being able to carry out the suspended or restricted activity; and
- (g) whether the suspension or restriction would cause the *approved person* serious financial hardship.

- (5) The impact of suspension or restriction on persons other than the person in breach

The following considerations may be relevant to the assessment of the impact of suspension or restriction on *persons* other than the *person in breach*:

- (a) the extent to which *consumers* may suffer loss or inconvenience as a result of the suspension or restriction. For example, if it is difficult for *consumers* to switch to a competitor, a longer period of suspension or restriction is likely to have more impact; and
- (b) the impact of the suspension or restriction on markets.

6A.3.3

FCA

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The *FCA* may delay the commencement of the period of suspension or restriction. In deciding whether this is appropriate, the *FCA* will take into account all the circumstances of a case. Considerations that may be relevant in respect of an *authorised person, sponsor or primary information provider* include:

- (1) the impact of the suspension or restriction on consumers;
- (2) any practical measures the *authorised person, sponsor or primary information provider* needs to take before the period of suspension or restriction begins, for example, changes to its systems and controls to enable it to stop or limit the activity in question;

- (3) the impact of the suspension or restriction on other costs incurred by the *authorised person, sponsor or primary information provider*, for example, cancelling suppliers or suspending employees.

6A.3.4

FCA

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The *FCA* and the *person* on whom a suspension or restriction is to be imposed may seek to agree the length of the period of suspension or restriction and other terms. In recognition of the benefits of such agreements, ■ DEPP 6.7 provides that the length of a period of suspension or restriction which might otherwise have been imposed will be reduced to reflect the stage at which the *FCA* and the *person* concerned reached an agreement.

## 6A.4 The interaction between the power to impose suspensions or restrictions and the power to impose penalties or public censures

### 6A.4.1

FCA

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The deterrent effect and impact on a *person* of a suspension or restriction, by itself or in combination with a financial penalty, may be greater than where only a financial penalty is imposed. The *FCA* will consider the overall impact and deterrent effect of the sanctions it imposes when determining the level of penalty and the length of suspension or restriction.

### 6A.4.2

FCA

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The *FCA* expects usually to take the following approach in respect of the interaction between a suspension or restriction and a financial penalty or *public censure*:

- (1) The *FCA* will determine which sanction, or combination of sanctions, is appropriate for the *breach*.
- (2) If the *FCA*, following the approach set out in ■ DEPP 6.2, considers it appropriate to impose a financial penalty, it will calculate the appropriate level of the financial penalty, following the approach set out in ■ DEPP 6.5 to ■ DEPP 6.5D.
- (3) If the *FCA*, following the approach set out in ■ DEPP 6A.2, considers it appropriate to impose a suspension or restriction, it will calculate the appropriate length of the period of suspension or restriction, following the approach set out in ■ DEPP 6A.3.
- (4) Where the *FCA* considers it appropriate to impose both a financial penalty and a suspension or restriction, it will decide whether the combined impact on the *person* is likely to be disproportionate in respect to the *breach* and the deterrent effect of the sanctions.
- (5) If the *FCA* considers the combined impact on the *person* is likely to be disproportionate, it will decide whether to reduce the period of suspension or restriction, the amount of the financial penalty or both, so that the combined impact of the sanctions is proportionate in relation to the *breach* and the deterrent effect of the sanctions. The *FCA* will decide which sanction to reduce after considering all the circumstances of the case.
- (6) In deciding the final level of the financial penalty and the length of the period of suspension or restriction, the *FCA* will also take into account any representations by the *person* that the combined impact will cause them serious financial hardship. The *FCA* will take the approach set out in ■ DEPP 6.5D in assessing this.

6A.4.3

FCA

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The *FCA* may depart from the approach set out in ■ DEPP 6A.4.2 G. For example, the *FCA* may at the outset consider that a financial penalty is the only appropriate sanction for a *breach* but, having determined the appropriate level of financial penalty, may consider it appropriate to reduce the amount of the financial penalty for serious financial hardship reasons. In such a situation, the *FCA* may consider it appropriate to impose a suspension or restriction even if the *FCA* at the outset did not consider such a sanction to be appropriate. The *FCA* will take into account whether the *person* would suffer serious financial hardship in deciding the length of the period of suspension or restriction, and may decide not to impose a suspension or restriction if it considers such action would result in serious financial hardship.

## Chapter 7

# Statement of policy on interviews conducted on behalf of overseas and EEA regulators





## 7.1 Application and purpose

### Application

7.1.1  
FCA

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■ DEPP 7 applies when the *FCA*:

- (1) has appointed an investigator at the request of an *overseas regulator*, under section 169(1)(b) (Assistance to overseas regulators) or of an *EEA regulator* under section 131FA of the *Act*; and
- (2) has directed, or is considering directing, the investigator, under section 169(7) or section 131FA of the *Act*, to permit a representative of the *overseas regulator* or of the *EEA regulator* to attend, and take part in, any interview conducted for the purposes of the investigation.

7.1.2  
FCA

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In ■ DEPP 7, a " requested interview" means any interview conducted for the purposes of an investigation under section 169(1)(b) or section 131FA of the *Act* in relation to which the *FCA* has given a direction under section 169(7) or section 131FA of the *Act*.

### Purpose

7.1.3  
FCA

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The purpose of ■ DEPP 7 is to set out the *FCA*'s statement of policy on the conduct of interviews to which a direction under section 169(7) or section 131FA has been given or the *FCA* is considering giving. The *FCA* is required to prepare and publish this statement of policy by section 169(9) and (11) and section 131FA of the *Act*. As required by section 169(10) and section 131FA of the *Act*, the Treasury has approved the statement of policy.

7.1.4  
FCA

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The *FCA* is keen to promote co-operation with *overseas regulators* and *EEA regulators* . It views provision of assistance to *overseas regulators* and *EEA regulators* as an essential part of discharging its general functions.



## 7.2 Interviews

### **Appointment of investigator and confidentiality of information**

7.2.1

FCA

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Under section 169(1)(b) and section 131FA of the *Act*, the *FCA* may appoint an investigator to investigate any matter at the request of an *overseas regulator* or *EEA regulator*. The powers of the investigator appointed by the *FCA* (referred to here as the '*FCA's* investigator') include the power to require *persons* to attend at a specified time and place and answer questions (the compulsory interview power).

7.2.2

FCA

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Where the *FCA* appoints an investigator in response to a request from an *overseas regulator* or *EEA regulator* it may, under section 169(7) or section 131FA of the *Act*, direct him to permit a representative of that regulator to attend and take part in any interviews conducted for the purposes of the investigation. The *FCA* may only give a direction under section 169(7) or section 131FA if it is satisfied that any information obtained by an *overseas regulator* or *EEA regulator* as a result of the interview will be subject to the safeguards equivalent to those contained in Part XXIII (Public Record, Disclosure of Information and Cooperation) of the *Act*.

7.2.3

FCA

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Part XXIII of the *Act* contains restrictions on the disclosure of confidential information. The restrictions are subject to exceptions contained in regulations made by the Treasury under section 349.

### **Policy on use of investigative powers**

7.2.4

FCA

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The *FCA's* policy on how it will use its investigative powers, including its power to appoint investigators, in support of *overseas regulators* and *EEA regulators*, is set out in the *FCA's* Enforcement Guide (*EG*).

### **Use of direction powers**

7.2.5

FCA

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The *FCA* may need to consider whether to use its direction power at two stages of an investigation:

- (1) at the same time that it considers the request from the *overseas regulator* or *EEA regulator* to appoint investigators;
- (2) after it has appointed investigators, either at the request of the *overseas regulator* or *EEA regulator* or on the recommendation of the investigators.

7.2.6  
FCA

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Before making a direction under section 169(7) or section 131FA the *FCA* will discuss and determine with the *overseas regulator* or *EEA regulator* how this statement of policy will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the *FCA* will at this stage determine the extent to which the representative of the *overseas regulator* or *EEA regulator* will be able to participate in the interview. The *overseas regulator* or *EEA regulator* will be notified of this determination on the issuing of the direction.

7.2.7  
FCA

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The direction will contain the identity of the representative of the *overseas regulator* or *EEA regulator* that is permitted to attend any interview and the role that he will play in the interview. If the *FCA* envisages that there will be more than one interview in the course of the investigation, the direction may also specify which interview(s) the representative is allowed to attend.

### Conduct of interview

7.2.8  
FCA

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In circumstances where an interview is to be conducted as part of the investigation, the *FCA*'s investigator will have conduct of the interview. In general, the *FCA*'s investigators will be employees of the *FCA*, but in appropriate cases the *FCA* may appoint *persons* who are not its employees. In those cases, the *FCA* may choose to require that an *FCA* employee is present at the interview and may choose to appoint that *person* as an investigator.

7.2.9  
FCA

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The *FCA*'s investigator will act on behalf of the *FCA* and under its control. He may be instructed to permit the representative of the *overseas regulator* or *EEA regulator* to assist in the preparation of the interview. Where the *FCA* considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted according to the terms of the direction and the notification referred to in ■ DEPP 7.2.6 G.

7.2.10  
FCA

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If the direction does permit the representative of an *overseas regulator* or *EEA regulator* to attend the interview and ask the interviewee questions, the *FCA*'s investigator will retain control of the interview throughout. Control of the interview means the following will apply:

- (1) The *FCA*'s investigator instigates and concludes the interview, introduces everyone present and explains the procedure of the interview. He warns the interviewee of the possible consequences of refusing to answer questions and the uses to which any answers that are given can and cannot be put. The *FCA*'s investigator will always ask preliminary questions, such as those establishing the identity of the interviewee.
- (2) The *FCA*'s investigator determines the duration of the interview and when, if at all, there should be any breaks in the course of it.
- (3) The *FCA*'s investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the *overseas regulator* or *EEA regulator* was either present or not present.
- (4) Where the *FCA*'s investigator considers it appropriate, he may either suspend the interview, ask the overseas representative to leave the interview, or terminate the interview and reschedule it for another occasion. In making

that decision he will bear in mind the terms of the direction, any agreement made with the *overseas regulator* or *EEA regulator* as to the conduct of the interview and the contents of this statement of policy.

7.2.11

FCA

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The *FCA* will in general provide written notice of the appointment of an investigator to the *person* under investigation pursuant to the request of an *overseas regulator* or *EEA regulator* . Whether or not the interviewee is the *person* under investigation, the *FCA*'s investigator will inform the interviewee of the provisions under which he has been appointed, the identity of the requesting authority and general nature of the matter under investigation. The interviewee will also normally be informed if a representative of the *overseas regulator* or *EEA regulator* is to attend and take part in the interview. Notification of any of these matters may not be provided in advance of the interview if the *FCA* believes that the circumstances are such that notification would be likely to result in the investigation being frustrated.

7.2.12

FCA

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The interviewee will normally be given a copy of the direction issued under section 169(7) or section 131FA in advance of the interview unless to do so would be likely to result in the investigation being frustrated. The interviewee will also be provided with a copy of this statement of policy.

7.2.13

FCA

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The *FCA*'s investigator will determine the venue and timing of the interview. The interviewee will be notified of the venue and timing of the interview in advance and in writing.

7.2.14

FCA

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When the *FCA*'s investigator has exercised the compulsory interview power, at the outset of the interview the interviewee will be given an appropriate warning. The warning, amongst other things, must state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the *overseas regulator* or *EEA regulator* . It will also state that in criminal proceedings or proceedings for *market abuse* the *FCA* will not use as evidence against the interviewee any information obtained under compulsion during the interview.

7.2.15

FCA

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The *FCA*'s investigator may decide which documents or other information may be put to the interviewee, and whether it is appropriate to give the interviewee sight of the *documents* before the interview takes place. Where the *overseas regulator* or *EEA regulator* wishes to ask questions about *documents* during the interview and the *FCA*'s investigator wishes to inspect those *documents* before the interview, he will be given the opportunity to do so. If the *FCA*'s investigator wishes to inspect them and has not been able to do so before the interview, he may suspend the interview until he has had an opportunity to inspect them.

7.2.16

FCA

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When the *FCA*'s investigator has exercised the compulsory interview power, the *FCA*'s investigator will require the *person* attending the interview to answer questions. Where appropriate, questions may also be posed by the representative of the *overseas regulator* or *EEA regulator* . The interviewee will also be required to answer these questions. The *FCA*'s investigator may intervene at any stage during questioning by the representative of the *overseas regulator* or *EEA regulator* .

**Language**

7.2.17

FCA

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Interviews will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for his answers to be translated back into English. If a translator is employed at the request of the representative of the *overseas regulator* or *EEA regulator* then the translation costs will normally be met by the *overseas regulator* or *EEA regulator* . Where interviews are being conducted in pursuance of an *EU* law obligation these costs will be met by the *FCA*. In any event, the meeting of costs in relation to translators and, where applicable, the translation of *documents* will always be agreed in advance with the *overseas regulator* or *EEA regulator* .

**Tape-recording**

7.2.18

FCA

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All compulsory interviews will be tape-recorded. The method of recording will be decided on and arranged by the *FCA*'s investigator. Costs will be addressed similarly to that set out in the preceding paragraph. The *FCA* will not provide the *overseas regulator* or *EEA regulator* with transcripts of the tapes of interviews unless specifically agreed to, but copies of the tapes will normally be provided where requested. The interviewee will be provided with a copy of tapes of the interview but will only be provided with transcripts of the tapes or translations of any transcripts if he agrees to meet the cost of producing them.

**Representation**

7.2.19

FCA

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The interviewee may be accompanied at the interview by a legal adviser or a non-legally qualified observer of his choice. The costs of any representation will not be met by the *FCA*. The presence at the interview of a representative of the *overseas regulator* or *EEA regulator* may mean that the interviewee wishes to be represented or accompanied by a *person* either from or familiar with that regulator's jurisdiction. As far as practical the arrangements for the interview should accommodate this wish. However, the *FCA* reserves the right to proceed with the interview if it is not possible to find such a *person* within a reasonable time or no such *person* is able to attend at a suitable venue.

7.2.20

FCA

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In relation to the publication of investigations by *overseas regulators* or *EEA regulators* , the *FCA* will pursue a policy similar to the policy that relates to its own investigations.

## Decision Procedure and Penalties Manual

### DEPP TP 1

## Transitional provisions applying to the Decision Procedure and Penalties Manual

### 1. Table DEPP TP 1

**FCA**

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision dates in force:	Handbook provision coming into force
1	DEPP	G	GEN contains some transitional provisions that apply throughout the <i>Handbook</i> and which are designed to ensure a smooth transition at <i>commencement</i> .	From <i>commencement</i>	(Various dates)
2	DEPP 6.7 (Discount for early settlement),	G	These provisions (in summary, relating to the discount scheme) apply only to cases where investigators are appointed on or after 20 October 2005.	From 20 October 2005	20 October 2005
3	DEPP	G	<p>DEPP 1 to DEPP 5 take effect on 28 August 2007, save to the extent described below:</p> <p>DEPP 1 to DEPP 5 do not apply to any <i>statutory notice</i> or related notice issued on or after 28 August where a <i>warning notice</i>, first <i>supervisory notice</i> or <i>decision notice</i> was given by the <i>FCA</i> before 28 August in relation to the same matter. The procedure to be followed in respect of such <i>statutory notices</i> or related notices given on or after 28 August will be the same as that described in the Decision making manual</p>	From 28 August 2007	28 August 2007

(1) Material to which the transitional provision applies	(2)	(3) Transitional provision	(5) Transitional provision dates in force:	(6) Handbook provision coming into force
4	DEPP	<p>(DEC) immediately before <i>DEPP</i> comes into effect.</p> <p>G DEPP 6 takes effect on 28 August 2007, save to the extent described below.</p> <p>The <i>FCA's</i> policy in respect of the imposition and amount of penalty will continue to be as described in the Enforcement manual (ENF) in relation to any <i>statutory notice</i> or related notice given on or after 28 August where a <i>warning notice</i>, first <i>supervisory notice</i> or <i>decision notice</i> was given by the <i>FCA</i> before 28 August in relation to the same matter.</p>	From 28 August 2007	28 August 2007

# Decision Procedure and Penalties Manual

## Schedule 1 Record keeping requirements

### Sch 1.1 G

There are no record-keeping requirements in *DEPP*.





## Decision Procedure and Penalties Manual

### Schedule 2 Notification requirements

#### Sch 2.1 G

There are no notification requirements in *DEPP*.



## Decision Procedure and Penalties Manual

### Schedule 3 Fees and other required payments

#### Sch 3.1 G

FCA

There are no requirements for fees in *DEPP*.

#### Sch 3.2 G

FCA

The *FCA's* power to impose financial penalties is contained in:

- Section 63A (Power to impose penalties) of the *Act*
- Section 66 (Disciplinary powers) of the *Act*
- Section 88A (Disciplinary powers: contravention of s.88(3)(c) or (e)) of the *Act*
- Section 89Q (Disciplinary powers: contravention of s.89P(4)(b) or (d)) of the *Act*
- Section 91 (Penalties for breach of Part 6 Rules) of the *Act*
- Section 123 (Power to impose penalties in cases of market abuse) of the *Act*
- section 131G (Power to impose penalty or issue censure) of the *Act*
- Section 192K (Power to impose penalty or issue censure) of the *Act*
- Section 206 (Financial penalties) of the *Act*
- Section 249 (Disciplinary measures) of the *Act*
- Section 312F (Financial penalties) of the *Act*
- Section 345 (Disciplinary measures) of the *Act*
- Part III of Schedule 1ZA (The Financial Conduct Authority) to the *Act*
- the *Money Laundering Regulations*
- the *Transfer of Funds (Information on the Payer) Regulations 2007 (SI 2007/3298)*
- the *RCB Regulations*
- the *Payment Services Regulations*
- the *Cross-Border Payments in Euro Regulations*
- the *OTC derivatives, CCPs and trade repositories regulation*



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## Decision Procedure and Penalties Manual

### Schedule 4 Powers Exercised

#### Sch 4.1 G

**FCA**

The following powers and related provisions in or under the *Act* have been exercised by the *FCA* to make the statements of policy in *DEPP*:

Section 63C (Statement of policy)

Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the *Payment Services Regulations* and by paragraph 1 of the Schedule to the *Cross-Border Payments in Euro Regulations*)

Section 88C (Action under s.88A: statement of policy)

Section 89S (Action under s. 89Q: statement of policy)

Section 93(1) (Statement of policy)

Section 124(1) (Statement of policy)

Section 131J (Impositions of penalties under section 131G: statement of policy)

Section 139A (Power of the FCA to give guidance)

Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the *Payment Services Regulations*)

Section 192N (Imposition of penalties under section 192K: statement of policy)

Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the *Payment Services Regulations* and by paragraph 3 of the Schedule to the *Cross-Border Payments in Euro Regulations*)

Section 249 (Disciplinary measures)

Section 312J (Statement of policy)

Section 345D (Imposition of penalties on auditors or actuaries: statement of policy)

Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the *Payment Services Regulations* and by paragraph 5 of the Schedule to the *Cross-Border Payments in Euro Regulations*)

Paragraph 16 (Penalties) of Schedule 1 (The Financial Services Authority)

#### Sch 4.2 G

**FCA**

The following additional powers and related provisions have been exercised by the *FCA* to make the statements of policy in *DEPP*:

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Regulation 42 (Guidance) of the *RCB Regulations*

Regulation 44 (Warning notices and decision notices) of the *RCB Regulations*

Regulation 86 (Proposal to take disciplinary measures) of the *Payment Services Regulations*

Regulation 93 (Guidance) of the *Payment Services Regulations*

Regulation 14 (Guidance) of the *Cross-Border Payments in Euro Regulations*

## Decision Procedure and Penalties Manual

### Schedule 5 Rights of action for damages

#### Sch 5.1 G

There are no rules in *DEPP*.





## Decision Procedure and Penalties Manual

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

There are no rules in *DEPP*.