

PS 16/3 Strengthening accountability in banking

Feedback on CP15/22 (July 2015) and
CP15/31 (October 2015); rules on extending
the certification regime to wholesale market
activities and interim rules on referencing

4 February 2016



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In this Policy Statement we report on the main issues arising from Consultation Paper CP15/22, *Strengthening accountability in banking: Final rules (including feedback on CP14/31 and CP15/5) and consultation on extending the Certification Regime to wholesale market activities* (July 2015) and publish the final rules. We also provide initial feedback on CP15/31 *Strengthening accountability in banking and insurers: regulatory references* and introduce our interim rules for references.

Please send any comments or queries to:

Laura Royle
Policy Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 1000
Email: cp15-22@fca.org.uk

You can download this Policy Statement from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.

Abbreviations used in this document

CBA	Cost Benefit Analysis
CP	Consultation Paper
CR	Certification Regime
FCA	Financial Conduct Authority
MRTs	Material Risk Takers
NED	Non-executive Director
PRA	Prudential Regulation Authority
PS	Policy Statement
RAP	Relevant Authorised Person
SHF	Significant Harm Function
SIMF	Senior Insurance Management Functions
SIMR	Senior Insurance Managers Regime
SM&CR	Senior Managers and Certification Regime
SMF	Senior Management Function
SMR	Senior Managers Regime
The Act	The Financial Services (Banking Reform) Act 2013

1. Overview

Introduction

- 1.1** In this Policy Statement (PS) we, the Financial Conduct Authority (FCA), set out final rules for the new accountability framework for individuals performing certain wholesale market activities working in banks, building societies and credit unions (collectively known as Relevant Authorised Persons (RAPs)) which we consulted on in July 2015. We also provide initial feedback on CP15/31 *Strengthening accountability in banking and insurance: regulatory references* (October 2015) as well as our final rules on an interim regime for referencing pending a permanent set of rules for references, including transitional arrangements, which we aim to publish in the summer.
- 1.2** As well as ensuring that, in future, senior managers can be held accountable for any misconduct that falls within their area of responsibility, our regime aims to hold individuals working at all levels in banks and other relevant firms to appropriate standards of conduct.

Extension of the Certification Regime (CR) to wholesale market activities

- 1.3** In July 2015 we issued our final rules in respect of the Accountability Regime, and simultaneously consulted on extending the regime to additional wholesale market activities as well as some changes to the territorial scope of the regime (CP15/22)¹. This PS responds to feedback to that Consultation Paper (CP), and makes our final rules.
- 1.4** In CP15/22 we consulted on removing the territorial limitation for Material Risk Takers (MRTs) in the application of the Certification Regime (CR) and the Conduct Rules. This would mean that, unlike other Significant Harm Functions, all individuals identified as MRTs would be caught in the CR regardless of their location or client interactions. These proposals applied to both UK RAPs and non-UK RAPs (i.e. Foreign Branches) and sought to align the scope of the FCA's rules for this function with the Prudential Regulation Authority's (PRA).
- 1.5** Some responses to CP15/22 stated that the combined effect of the near-final rules for incoming branches and the draft wholesale trading rules will create a wide, extra-territorial scope for the CR and Conduct Rules. Respondents highlighted that a potentially large number of individuals based overseas could be caught by the rules, even where there was not a clear link to the activities of the UK branch.

¹ CP 15/22 *Strengthening accountability in banking: final rules (including feedback on CP14/31 and CP 15/5) and consultation on extending the Certification Regime to wholesale market activities*

- 1.6** As this feedback was predominantly in relation to non-UK RAPs, it was addressed within the final rules on Foreign Branches, PS15/30 published in December 2015², and some scope changes were introduced as an interim measure. Therefore, some of the changes in this PS are to be consistent with the approach taken in those final rules for Foreign Branches.

Regulatory references

- 1.7** In October 2015 we consulted jointly with the PRA on new referencing requirements for candidates applying for the following roles within RAPs, Solvency II insurers and large non-directive insurers:

- Senior Management Functions (SMFs) and Significant Harm Functions (SHFs) under the Senior Managers and Certification Regime (SM&CR);
- PRA Senior Insurance Management Functions (SIMF) under the Senior Insurance Managers Regime (SIMR);
- FCA insurance controlled functions;
- Notified Non-Executive Director (NED) roles and NED roles in credit unions; and
- Key function holders.

- 1.8** We received considerable feedback to our proposals and we are in the process of reviewing this. Whilst most respondents were broadly supportive of the principles, some key areas were challenged as well as a number of legal issues raised. Firms were also concerned about the timetable for implementation and their ability to put in place the necessary systems and processes in time for commencement of the new regime. This PS:

- responds to the issue of implementation timing;
- confirms our interim position for commencement of the SM&CR on 7 March 2016; and
- sets out our plans to provide feedback on other issues and to publish details of the final referencing regime after commencement.

Who does this affect?

- 1.9** Our feedback on CP15/22 and final rules will be of primary interest to banks, building societies, credit unions and PRA-designated investment firms. The referencing requirements will also be of interest to all firms and in particular Solvency II and large non-directive insurers.
- 1.10** Both UK RAPs and Foreign Branches should consider this in conjunction with our other publications on the Accountability Regime.

² PS15/30 *Strengthening accountability in banking: UK branches of foreign banks (final rules)* (December 2015).

Is this of interest to consumers?

- 1.11** This PS will primarily be of interest to firms. Consumers may be interested in how individual accountability is being enhanced within relevant firms, or how staff that they interact with will be required to comply with the Conduct Rules. More generally, the changes in this PS are part of a broader initiative to improve the culture and governance of banks and other relevant firms, which should bring significant benefits to consumers.

Context

- 1.12** The Financial Services (Banking Reform) Act 2013 (the Act) created the legislative framework that underpins our SM&CR. This followed on from the publication of recommendations by the Parliamentary Commission on Banking Standards³, which was appointed to consider and report on professional standards and culture within the UK banking sector in the wake of problems in areas such as benchmark setting, corporate governance, transparency and conflicts of interest.
- 1.13** Furthermore, last year, the Fair and Effective Markets Review (FEMR)⁴ published a series of recommendations aiming to raise standards in fixed income, currency and commodity markets. Central to its recommendations is the potential for expansion of the SM&CR to these markets. FEMR recommended that “the FCA and the PRA should consult on a mandatory form for regulatory references, to help firms prevent the ‘recycling’ of individuals with poor conduct records between firms, with a view to having a template ready for the commencement of the SM&CR in March 2016”. We will seek to address the FEMR recommendations in our final regulatory references regime post-commencement.
- 1.14** This consultation forms part of the wider package of reforms that aim to improve accountability in RAPs and insurers.

Summary of feedback and our response to extending the CR to wholesale market activities (CP15/22)

- 1.15** This PS outlines our final rules for the extension of the CR to wholesale market activities for both UK RAPs and Foreign Branches and our final rules for the territorial scope of the CR and Conduct Rules for MRTs.
- 1.16** We received substantial feedback from firms in response to CP15/22, both formally and through round table meetings with firms and trade bodies. In particular, firms commented on the territorial scope of our rules, both in respect of UK RAPs and Foreign Branches. As mentioned previously, the latter has been dealt with in PS15/30, *Strengthening accountability in banking: UK branches of foreign banks (final rules)* (December 2015), where we introduced our final rules for the regime as it applies to branches.
- 1.17** In CP15/22 we asked for views on our proposals to extend the CR to include two new functions, the ‘client-dealing’ function and the ‘algorithmic trading’ function, for both UK RAPs and Foreign Branches. The client-dealing function encompasses individuals involved in wholesale or retail activities, such as trading. CP15/22 proposed including in the new client dealing function

³ *Changing banking for good: Report of the Parliamentary Commission on Banking Standards (June 2013)*.

⁴ <http://www.bankofengland.co.uk/markets/Documents/femrjun15.pdf>

all dealing and arranging activities regardless of who they are with, thereby going beyond the existing Glossary definition of 'client' to more broadly include wholesale activities. This was because we considered that these contacts could pose a risk of 'significant harm' to the firm or any of its customers, which is the underlying test in the Act. Figure 1 in Chapter 2 illustrates how employees are captured by the new client-dealing function.

- 1.18** We also proposed to reflect this broader meaning of 'client' in the tests used to determine the territorial scope of the wider CR and Conduct Rules for UK RAPs and Foreign Branches. Firms felt that this extension was disproportionate and presented practical implementation and enforcement challenges. Whilst this is no longer applicable to Foreign Branches following the removal of the UK client test in PS15/30, we agree that the test could be disproportionate for staff based outside the UK. We have therefore reverted to the existing Handbook Glossary definition of 'client' for the territoriality test. We consider this is a pragmatic solution and as discussed in Chapter 2, we plan to revisit territoriality in due course after commencement.
- 1.19** These changes and the effect of the final rules are discussed in more detail in Chapter 2.
- 1.20** We consulted on removing the territorial limitation for MRTs in the application of the CR and the Conduct Rules. This proposal was to ensure that the regime covers individuals who could affect the FCA's objectives, wherever they are geographically based. It also sought to align the scope of the FCA's rules on MRTs with the PRA's. The majority of the feedback supported this policy, citing the importance of ensuring consistency between the FCA's approach and the PRA's approach. However, given the feedback on territorial scope of Foreign Branches and the final rules in PS15/30, we have removed the territorial limitation for UK RAPs only. Practically, this means that if a UK RAP identifies a staff member as an MRT, then they are subject to the Certification Regime irrespective of geographical location or interactions with clients.
- 1.21** Firms asked us to provide guidance on what we meant by 'material' in the new Algorithmic Trading Function, as they felt that it was a confusing and/or challenging test. We agree and have therefore removed the reference to 'material'.
- 1.22** Firms argued that we should mirror the existing '30-day rule' in the Approved Persons Regime in order to allow for a grace period for individuals moving in and out of the UK at the last minute and/or for a very short period of time. We agreed, and so have implemented an equivalent grace period of 30 days for all Certification functions, except MRTs in UK RAPs.
- 1.23** Firms also asked us to provide a transitional period given the short period between publication of the final rules and the start of the new regime. We agree that it would be disproportionate to require firms to identify staff captured by these new functions and train them in respect of the Conduct Rules in a short window. We have therefore allowed a transitional period of 6 months, allowing firms until 7 September 2016 to identify staff as either a client-dealing SHF or an algorithmic trading SHF and train the staff in respect of the Conduct Rules.
- 1.24** Additionally, in response to questions from firms, we have clarified that certificates can be issued for a shorter period than one year. Other areas of feedback are covered in Chapter 2.

Summary of feedback and our response to CP15/31

- 1.25** The responses to the regulatory references consultation paper CP15/31 raised a number of complex issues as well as legal concerns which require further deliberation.
- 1.26** In the Consultation Paper we stated that we wanted the final rules to be in place for the start of the new Accountability Regime in March 2016. However, given the complexity of the concerns raised in the feedback, this will not be possible. To allow time to fully consider the issues raised in feedback, and to take account of these when finalising our approach, we will delay finalising the new regulatory referencing regime until after commencement.
- 1.27** Regulatory references remain a key priority for us and we remain committed to the principles of regulatory references as outlined in CP15/31. We will aim to confirm our final policy and rules in the summer.
- 1.28** Respondents also highlighted that they would need sufficient time to implement the full regulatory references regime and suggested the need for transitional arrangements, for example a phased or delayed implementation, to allow them to set up systems and processes to support the new requirements. Our final rules will therefore be accompanied by a transition period to allow firms time to implement any changes.
- 1.29** We have decided to retain the existing referencing rules for RAPs and insurers from 7 March 2016. This will ensure that the existing requirements remain in place whilst we consider the feedback to our proposals.

Cost benefit analysis

Extension of the Certification Regime to wholesale market activities

- 1.30** In CP15/22 we set out a cost benefit analysis (CBA) of the proposed rules for extension of the CR to wholesale market activities. We have made three key changes to the scope, which impact the CBA.
- 1.31** First, in CP15/22 we proposed removing the territorial limitation for MRTs in both UK RAPs and Foreign Branches⁵. The final rules in this PS removed the territorial limitation for UK RAPs only. Keeping a territorial limitation for Foreign Branches is in line with our final rules on Foreign Branches, issued in December 2015 (PS15/30), which implement a narrower territorial scope for Foreign Branches than for UK firms. Although this will result in a corresponding reduction in both costs and benefits, it will not move these costs and benefits outside ranges estimated in CP15/22.
- 1.32** Secondly, as explained in Chapter 2, we are reverting to the Glossary definition of 'client' for the purposes of the territorial test 'dealing with a UK client'. As with our final rules on Foreign Branches, this is an interim position, and we plan to revisit territoriality post-commencement to ensure that the regime adequately captures those individuals who could affect the FCA's objectives. Any further changes to the final rules for Certification or the Conduct Rules for UK RAPs will be subject to the normal consultation process and a revised CBA.

⁵ CP15/22 proposed to retain the territorial limitation for EEA branches.

- 1.33** Thirdly, as explained in Chapter 2, we are introducing a 30 day grace period for Certified staff in order to allow for the smooth functioning of cross-border business and ensure our rules are proportionately applied to staff based outside the UK.
- 1.34** The change in respect of the 30 day grace period, together with the revised territorial limitation for MRTs and the interim changes to the territorial test 'dealing with a UK client', seek to address the potentially wide extra-territorial impact of our draft rules as previously consulted on in CP 15/22 and, in doing so, aim to address the concerns raised by firms. These specific rule changes will reduce the costs and benefits in comparison with those rules as originally drafted in CP15/22. However these changes will not move the overall costs and benefits outside the ranges estimated in the CBA for that consultation.
- 1.35** We do not consider there to be any material change to the compatibility statements that we published in CP15/22. However, the changes to territorial scope and the focus on proportionality are relevant to our duty to have regard to the desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons.

Regulatory references

- 1.36** In CP15/31 we set out a CBA which built on the original research carried out by Europe Economics in CP14/13 *Strengthening accountability in banking: a new regulatory framework for individuals* (July 2014). We received feedback that we underestimated the costs associated with implementing the proposals. Implementing interim requirements for commencement, which largely reflect existing referencing requirements for authorised firms, will allow us time to consider this and other feedback to the consultation. The interim requirements will not accrue the costs or benefits highlighted in CP15/31.
- 1.37** The interim position maintains the pre-commencement position for firms in relation to candidates seeking pre-approved roles. As such it reflects the pre-commencement position for firms recruiting or providing references for such candidates. However, under the SM&CR a portion of individuals will no longer be performing a controlled function, and will instead be performing a significant harm function under the CR. We have not extended the interim requirement to candidates for these roles at this stage.
- 1.38** Without the interim requirements set out in this PS, there would be no requirement on RAPs to provide references for any roles following commencement. The FCA considers that should there be any costs imposed by the interim requirements as compared with having no requirements for RAPs, during the interim period, they will be of minimal significance. This is because we expect that in practice RAPs will still request references for those they wish to employ, and most firms will reply, regardless of the requirements of the regulator. This view is supported by the generally positive reception firms gave to the notion of regulatory references in their responses to the CP. We consider these interim requirements a pragmatic solution in the short term, which ensures the existing obligation on RAPs to provide a reference will also apply at commencement of the SM&CR. This change is significantly different from the consulted on position, but it is an interim position only.
- 1.39** It is the FCA's opinion that the impact of the interim final regulatory reference rules on mutuals is not significantly different from the impact on other firms.

Next steps

What do you need to do next?

1.40 If your firm is affected by the SM&CR, you will need to ensure that you are ready for when they come into force on 7 March 2016. We provide a summary of the key implementation dates below.

- Firms are required to submit grandfathering notifications for existing approved persons who will be performing Senior Management Functions under the new regime by 8 February 2016;
- Firms must identify individuals subject to the CR and train them in respect of the Conduct Rules, which will apply when the new regime begins on 7 March 2016;
- A firm has until 7 September 2016 to identify staff under the new client-dealing SHF or the new algorithmic trading SHF and to train them in respect of the Conduct Rules, which will also apply from 7 September 2016;
- Firms will have one year, until 7 March 2017, to prepare for the wider application of the Conduct Rules to other staff; and
- The deadline for firms issuing certificates for individuals under the CR is 7 March 2017.

2. Feedback responses to CP15/22

- 2.1** In this section of the PS we address key areas of feedback that we received through the consultation exercise and set out our responses.
- 2.2** As part of the consultation, we received feedback in respect of Foreign Branches specifically. This feedback has not been included here, and was discussed instead in PS15/30.

'30 day' grace period

- 2.3** The existing FCA Approved Persons Regime allows for a grace period for individuals based outside the UK performing a customer function for less than 30 days in any 12 month period, on the condition that the individual is supervised. The existing rule is in SUP 10A.10.8R:
- 'The customer function does not extend to an individual who is performing the functions in SUP 10A.10.7R (1) to SUP 10A.10.7R (2) or SUP 10A.10.7R (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.'*
- 2.4** CP15/22 did not replicate this rule. The original 30-day rule was introduced so that firms could move staff in and out of the regime without being subject to the FCA's pre-approval process, and so it was considered proportionate to introduce a grace period. However, as the CR no longer requires FCA pre-approval, it was considered unnecessary to reintroduce this rule.
- 2.5** The impact of not replicating this rule is that anyone entering the UK for a short period and/or at short notice must be certified as fit and proper and issued with a certificate. Firms told us that this is a time-consuming process even when managed by the firm. Furthermore, firms felt that the existing emergency provision in SYSC 5.2.27 was too narrow and would not allow grace periods for the majority of short-term business moves.

Our response:

We have considered the feedback from firms and agree that there is a justification for reintroducing a grace period for firms where staff are making short-term moves, in order to allow for the smooth functioning of cross-border business. Therefore we have introduced an equivalent 30-day grace period for FCA Significant Harm Functions (based on the drafting of the 30-day rule for the customer function). The 30 day grace period does not apply to the Material Risk Taker SHF for UK RAPs, as this function has no territorial limitation.

The FCA has also replicated the supervision requirement, i.e. making the rule contingent on the individual being supervised by one of the firm's SMF managers or a certified employee whose certificate covers the SHF being undertaken by the individual in question.

Firms should note that this rule does not impact on the existing 'emergency appointments' rule in SYSC 5.2.27R and the two rules continue to operate separately.

Transitional periods

- 2.6** The date for commencement of the CR is 7 March 2016. However, as the FCA consultation on extending the CR to wholesale market activities did not close until September 2015, firms expressed concern that the window between the FCA issuing final rules and commencement would be small. In particular, it would be challenging for firms to identify individuals to which the new client-dealing and algorithmic trading functions would apply, and to train these individuals in respect of the Conduct Rules.

Our response:

We want to ensure that firms identify the right staff and train them appropriately. Furthermore, we are sympathetic to firms' representations on this issue and agree that allowing a month from our final rules until commencement is not proportionate. In order to facilitate this, we have introduced a transitional period – firms will have until 7 September 2016 to identify staff for the client-dealing function in SYSC 5.2.44R, and the algorithmic trading function in SYSC 5.2.49R. Firms will also have until this date to train these staff in respect of the Conduct Rules. Firms must continue to identify staff in scope of the other SHFs by 7 March 2016.

The requirement to have certificates for all those identified as SHFs (including the new client-dealing and algorithmic trading functions) by 7 March 2017 will remain unaffected.

Materiality in the algorithmic trading function

- 2.7** In CP15/22 we introduced a new algorithmic trading function, which specified in SYSC 5.2.49R that anyone approving the deployment of an algorithm must be captured under that SHF. In particular, we drafted this rule to cover 'a material part' of an algorithm, or a 'material amendment'.
- 2.8** Firms challenged us on what we meant by 'material' and asked whether we would issue further guidance on this point.

Our response:

Our intention is to capture in the CR individuals approving changes to an algorithm, as any change can affect that algorithm's compliance. However, we agree that the inclusion of the word 'material' may create confusion.

On reflection, given the complex nature of algorithms and the iterative nature of the development process, we do not believe specifying a materiality threshold would be meaningful. Iterative changes when considered in isolation may appear minor and unlikely to breach any materiality threshold; however when considering several iterations together the net impact on the algorithm could be substantive. This means the distinction of a 'material' change is not meaningful in practice.

For these reasons we have removed the reference to 'materiality' in the final rules.

Our rules do not require the person making a change to an algorithm to be captured as an SHF. The policy intention is to identify those approving such changes, which as clarified by our guidance in SYSC 5.2.55G is the most senior decision-taker.

Scope of the client-dealing SHF and territorial scope of CR and Conduct Rules

- 2.9** As noted in CP15/9, *Strengthening accountability in banking: a new regulatory framework for individuals* (March 2015), following feedback from firms we became aware that the original proposals for the scope of the CR as consulted on in July 2014 resulted in an inconsistent approach to individuals involved in wholesale activities, including trading. In particular, more junior wholesale staff and individuals currently captured under CF30 but not subject to a qualification requirement would not necessarily be captured.
- 2.10** In order to address this inconsistency, CP15/22 introduced a new client-dealing SHF. The new category of SHF⁶ will include:
- a.** advising on investments other than a non-investment insurance contract and performing other functions related to this, such as dealing and arranging;
 - b.** dealing, as principal or agent, and arranging (bringing about) deals in investments;
 - c.** acting in the capacity of an investment manager and functions connected with this; and
 - d.** acting as a bidder's representative.

⁶ To some extent this new function overlaps with the 'functions requiring qualifications' SHF.

- 2.11** We drafted the function scope to capture activities conducted with anyone rather than just with a client in the ordinary Glossary sense. We did this by extending our definition of 'client'. This would therefore capture all 'clients' beyond traditional retail clients, including those currently excluded under the Glossary definition, such as wholesale counterparties or venture capital contacts. Such contacts could also pose a risk of significant harm to the firm or its customers and therefore we did not consider it appropriate to limit the function.
- 2.12** In order to maintain simplicity and consistency within the CR, in CP15/22 we also proposed using this extended definition of 'client' for the 'dealing with a UK client' part of the territoriality test. The effect of this would be to capture contact with anyone in the UK wherever the employee is based.
- 2.13** With regard to staff based overseas, firms challenged us on the extra-territorial impact of extending the territorial test to capture contact with anyone in the UK. By capturing activities regardless of who they are with, many more interactions are captured and therefore more staff are brought within the scope of the CR. Feedback indicated that this extension was disproportionate and presents practical implementation and enforcement challenges.
- 2.14** Firms also asked us to clarify our extension of the definition of 'client' to include 'regulated and other activities'.

Our response:

In respect of territorial scope, we agree that extending the scope to capture individuals dealing with anyone in the UK may in practice capture a wide range of staff outside of the UK. Therefore, as an interim measure for staff based outside the UK, we have reverted back to our previous position on territorial scope by only capturing these individuals when they are dealing with a UK 'client' (as defined in the FCA Handbook Glossary).

We consider this a pragmatic solution in the short term; however, as indicated in PS15/30, we plan to revisit territoriality after commencement to ensure that the regime adequately captures those individuals who could impact upon the FCA's objectives. Any further changes to the final rules for UK RAPs will be subject to the normal consultation process.

In respect of the client-dealing SHF, we will maintain all dealing or arranging activities regardless of who with, as we believe it important to capture all contacts who may pose a risk of significant harm to the firm or its customers. Practically speaking therefore, there is no definition of 'client' for the purposes of the client-dealing SHF as it focusses instead on activities, whoever they are conducted with.

We have also removed the part of the rule that refers to 'other activities' and made it clear that the function does not extend to unregulated activity.

Territorial limitation for MRTs

- 2.15** CP15/22 proposed to remove the territorial limitation for MRTs, meaning that once a non-EEA branch or UK RAP identifies an individual as an MRT, they are captured by the CR irrespective of their activities or geographical location.
- 2.16** The final rules in this Policy Statement implement the proposal to remove the territorial limitation for MRTs in UK firms. This brings the scope of the FCA's rules for MRTs more closely in line with that of the PRA for UK firms.
- 2.17** As discussed in our final rules for Foreign Branches (PS15/30), we revised our scope for non-UK RAPS so that only staff based in the UK are captured by the CR. To continue with our proposal to remove the territorial limitation for MRTs in Foreign Branches would be inconsistent with this approach and therefore the final rules implementing the proposals of CP15/22 keep the territorial limitation for MRTs in Foreign Branches.

Our response:

Almost all respondents to CP15/22 supported the proposed changes to the scope of MRTs, citing the importance of ensuring consistency between the FCA approach and the PRA approach. We therefore propose to implement our consultation proposal to remove the territorial limitation for UK RAPs only.

Other areas of feedback

- 2.18** Firms asked us to clarify whether certificates for SHFs can be issued for less than one year. Firms felt this would be helpful in order to provide an additional level of control for staff moving in and out of the UK on a short-term basis.

Our response:

Whilst the Act does not specify that a CR certificate can be issued for a period of less than 12 months, we believe that it is in the spirit of the overall regime and is pursuant to our objective of improving systems and controls. Therefore we have included guidance to say that a certificate can be issued for less than 12 months if it is deemed appropriate by the firm.

- 2.19** In respect of the new algorithmic trading SHF, firms were concerned that approving and monitoring trading algorithms would result in individuals in the 2nd or 3rd lines of defence being captured.

Our response:

Our rules specify that the person with ultimate sign-off should be captured as a SHF and it is the responsibility of the firm to identify that individual irrespective of where they sit within the firm's internal business structure. Whilst we would usually consider it inappropriate for such an individual to be located within the 3rd line of defence, for example in internal audit, it would not be appropriate for us to mandate a particular structure, therefore the rule focuses on the individual who should be captured.

- 2.20** Some firms asked us how the new rules on algorithmic trading would impact upon the likely new rules contained within MiFID II.

Our response:

In order to have a complete regime for commencement on 7 March 2016, and due to the timing uncertainties with MiFID II, we are not linking the introduction of the algorithmic trading function to commencement of MiFID II. We will review the final rules in MiFID II and consider whether there are any impacts on our algorithmic trading SHF or whether any harmonisation would be required/appropriate.

- 2.21** Firms asked us to clarify that the CR captures a wider scope of 'employees' than conferred by the employment law definition of 'employee' – for example the CR captures secondees/3rd parties.

Our response:

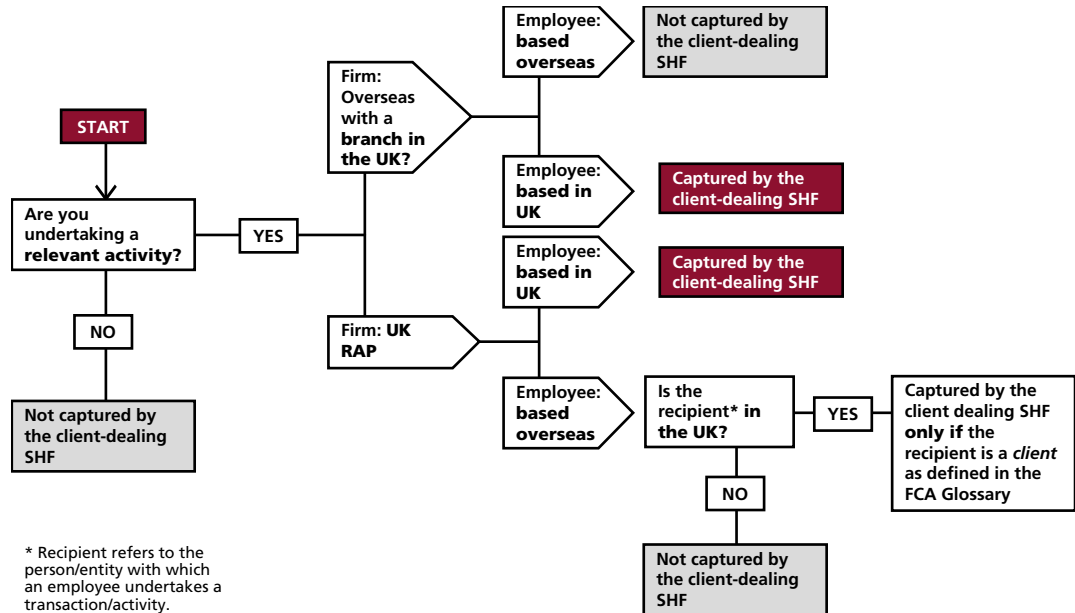
The FCA is bound by the definition of 'employee' as enshrined within the Act. This is indeed wider than the definition of 'employee' as defined in employment law. Guidance on this point is contained within our final rules for UK RAPs in CP15/22.

- 2.22** Firms also asked us what the impact on remote booking would be for Foreign Branches.

Our response:

Our response is as set on in FS15/3. In summary, where a senior manager has local responsibility for transactions that are remote booked into the branch, they will need to be satisfied that there are appropriate systems and controls in place to ensure this is controlled effectively, in line with the Senior Manager Conduct Rules.

Figure 1 – Identifying an employee as a client-dealing SHF



Overview of **relevant activities** (see SYSC 5.2.45R for full details):

- advising on investments other than a non-investment insurance contract
- taking part in the firm's dealing and arranging activities in investments other than a non-investment insurance contract
- giving advice in connection with corporate finance business
- taking part in investment management activities
- acting as a 'bidder's representative' in relation to bidding in emissions auctions

3.

Feedback to regulatory references CP15/31

- 3.1** In this section of the PS, we discuss some of the key feedback received in response to CP15/31 and set out our response to the feedback on transitional periods, and next steps. A full Policy Statement on regulatory references covering all other matters will follow after commencement.
- 3.2** Our consultation closed in December 2015 and there has been significant feedback to our proposals, with 30 responses in all. Though respondents were supportive of the proposals in general, a number of issues were raised including:
- legal considerations, for example about data protection;
 - the practicalities of updating historic references;
 - the rationale of applying the references to intra-group moves; and
 - concerns regarding proportionality and the basis of our cost benefit analysis.
- 3.3** Additionally, there was also concern regarding the timetable for implementation, and the ability of firms to put in place the necessary systems and processes in time for the start of the new regime in early March, given that final rules would only be available shortly before then.
- 3.4** In the CP we stated that we wanted the final rules to be in place for the start of the new Accountability Regime in March 2016. However, given the complexity of the concerns raised in the feedback, we intend to delay finalising the new referencing regime until after commencement. This will allow time to fully consider the issues raised in feedback, and to take account of these when finalising our approach.
- 3.5** We also recognise the feedback that firms would need sufficient time to implement the full referencing regime. We therefore agree that transitional arrangements will be necessary.
- 3.6** The FCA remains committed to the principles of regulatory references as outlined in CP15/31. We will return to this issue as a priority post-commencement of the new Accountability Regime. In the interim, we are implementing rules to cover the gap that would otherwise be caused by the fact that the existing referencing requirements for pre-approved roles are in a part of the Handbook (chapter 10A of the Supervision Manual) that will not apply to RAPs after the SM&CR commences in March 2016.
- Transitional period**
- 3.7** The majority of respondents suggested that there should be a transitional period in implementing the proposals. Firms felt that a transitional period would allow them to establish the requisite systems and processes needed to implement the proposals.

- 3.8** This concern was highlighted as significant given that finalised rules would not be made available until shortly before commencement of the new regime, and in light of the recently-proposed legislative changes regarding the removal of requirements to report suspected and confirmed breaches of the conduct rules.
- 3.9** Some firms suggested that a 12-month transition period be granted to delay implementation until March 2017, or that the new requirements should be introduced on a phased basis over a period of time. It was also suggested that starting with a narrower population, for example, candidates for SMF or SIMF, would allow firms to test and develop appropriate systems.

Our response:

We agree with firms that a transition period is likely to be needed following the publication of the final rules. Further work is required to fully address the complex concerns raised in the feedback, and as part of that we will consider how the transition arrangement should operate.

We will respond on these issues and finalise the new approach for regulatory references as soon as it is practical to do so after commencement.

As an interim measure, we have added rules that apply the existing reference requirements to RAPs (i.e. on receipt of a request for a reference in relation to candidates seeking pre-approved roles, a RAP will be required to provide a reference and include all relevant information). The interim position ensures that the existing obligation to provide a reference will also apply at commencement of the SM&CR.

Under the SM&CR a portion of individuals will no longer be performing a controlled function, and will instead be performing a Significant Harm Function under the CR. We have not extended the interim measure to candidates of these roles. We consider this a pragmatic solution in the short term, while we consider the feedback received to CP15/31.

We will aim to publish our full PS on Regulatory References in the summer.

4. Other consequential amendments

Whistleblowing

- 4.1** The FCA published its final Whistleblowing rules in October 2015 as part of PS15/24⁷ having previously consulted on those rules in FCA CP15/04 / PRA CP6/15⁸.
- 4.2** The new Whistleblowing rules are set out in SYSC 18 and will come into effect on 7 March 2016 and 7 September 2016. The new rules will apply to 'firms'. For the purposes of SYSC 18, the Handbook Glossary definition of 'firm' encompasses 'relevant authorised persons except small deposit-takers' (as well as some insurers). At the time of making the rules, the Glossary definition of 'relevant authorised person' was limited to UK entities (as opposed to overseas firms) and the Whistleblowing rules were therefore limited to UK entities. This was in line with the policy intention set out in CP15/04 and confirmed in PS15/24.
- 4.3** However, the Glossary definition of 'relevant authorised person' has since been amended by the recent Foreign Branches Rules (Instrument 2015/67, published in PS15/30)⁹. The definition now encompasses some overseas firms and it is therefore necessary to make a consequential amendment to the definition of 'firm' (in SYSC 18) to ensure that the Whistleblowing rules are limited to UK entities in line with the policy intent. The instrument published as part of this PS makes those consequential changes. We have also taken the opportunity to make minor corrections to some cross-references in SYSC 18. Finally, although the Whistleblowing rules are currently limited to UK entities, firms should note that we stated in PS14/24 that we would explore application of the Whistleblowing rules to UK branches of overseas banks in a future consultation.

Proprietary traders

- 4.4** We have updated a cross reference in the Glossary definitions of 'proprietary trader' and 'proprietary trading', to take account of the final rules on the SM&CR published in July 2015¹⁰. The changes to the definitions ensure the correct cross references to the new SM&CR rules will be in place for 7 March 2016.

⁷ PS15/24, *Whistleblowing in deposit-takers, PRA-designated investment firms and insurers* (October 2015).

⁸ FCA CP15/4 / PRA CP6/15, *Whistleblowing in deposit-takers, PRA-designated investment firms and insurers* (February 2015).

⁹ PS15/30, *Strengthening accountability in banking: UK branches of foreign banks (final rules)* (December 2015).

¹⁰ CP15/22 *Strengthening accountability in banking: final rules (including feedback on CP14/31 and CP 15/5) and consultation on extending the Certification Regime to wholesale market activities* (July 2015).

Appendix 1: List of non-confidential respondents to CP15/22

EA Change Group

Nationwide Building Society

HSBC

Association of Foreign Banks

Lloyds Banking Group

AFME/ BBA

Investment Association

Standard Chartered Bank

Annex 1: Individual Accountability (Extension of Scope) and Whistleblowing (Amendment) Instrument 2016

**INDIVIDUAL ACCOUNTABILITY (EXTENSION OF SCOPE) AND
WHISTLEBLOWING (AMENDMENT) INSTRUMENT 2016**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 63E (Certification of employees by relevant authorised persons);
 - (2) section 63F (Issuing of certificates);
 - (3) section 64A (Rules of conduct);
 - (4) section 137A (The FCA’s general rules);
 - (5) section 137T (General supplementary powers);
 - (6) section 138C (Evidential provisions); and
 - (7) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:

Annex	Date comes into force
Part 2 of Annex A	7 September 2016
Part 2 of Annex B	7 September 2016
Annex E	7 September 2016
The remainder of this instrument	7 March 2016

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Code of Conduct sourcebook (COCON)	Annex C
Training and Competence sourcebook (TC)	Annex D
Prudential sourcebook for Investment Firms (IFPRU)	Annex E

Citation

- E. This instrument may be cited as the Individual Accountability (Extension of Scope) and Whistleblowing (Amendment) Instrument 2016.

By order of the Board
28 January 2016

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 7 March 2016

<i>proprietary trader</i>	(in <u>SYSC 5.2 (Certification regime)</u> , SUP 10 <u>10A (FCA Approved Persons)</u> , <u>COCON</u> and <u>APER</u>) a person (A) whose responsibilities include committing another <i>person</i> (B) as part of B's <i>proprietary trading</i> .
<i>proprietary trading</i>	(in <u>SYSC 5.2 (Certification regime)</u> , <u>SUP 10A (FCA Approved Persons)</u> , <u>COCON</u> and <u>APER</u>) <i>dealing in investments as principal</i> as part of a business of trading in <i>specified investments</i>
<i>whistleblowers' champion</i>	(a) (in SYSC 4.5 <u>4.7</u>) an individual appointed by a <i>firm</i> under SYSC 4.5.25R(1) <u>4.7.5R(1)</u> with the allocated responsibilities in SYSC 18.4.4R;
	(b) (in SYSC 18) (Whistleblowing) an individual appointed by a <i>firm</i> under either SYSC 4.5.25R(1) <u>4.7.5R(1)</u> or SYSC 18.4.2R, as applicable, with the allocated responsibilities in SYSC 18.4.4R.

Part 2: Comes into force on 7 September 2016

<i>Firm</i>	...
	(8) (in SYSC 18 with the exception of the guidance in SYSC 18.3.9G):
	(a) a <u>UK relevant authorised person</u> except a <i>small deposit taker</i> ; and
	...

Annex B

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

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

Part 1: Comes into force on 7 March 2016

5.2 Certification regime

...

Issuing and renewing certificates

...

- 5.2.12 G (1) ~~A~~ The Act says that a certificate is valid for a period of 12 months, beginning with the day on which it is issued.
- (2) The FCA believes that the Act allows a firm to draft a certificate to expire after fewer than 12 months. The FCA interprets the Act in this way because to require a firm to make a certificate last longer than the firm thinks best is likely to make it harder for the firm to ensure the fitness of its certification employees. That would undermine the purpose of the certification regime in the Act.
- (3) A certificate cannot be drafted to last more than 12 months.

...

5.2.17 G ...

- 5.2.17A G (1) This paragraph gives further guidance on the flexibility a firm has in drafting its certificates.
- (2) A certificate may cover functions that a certification employee is not currently performing, as long as the firm has assessed the employee's fitness for these additional functions. This is subject to (3).
- (3) When a firm is deciding what a certificate can cover beyond the functions that the certification employee is currently performing, it should take the factors in SYSC 5.2.17G(1) into account. A certificate should not normally cover an additional function if SYSC 5.2.17G(1) would require the firm to consider the employee's fitness before allowing them to perform it.
- (4) A firm may, if it wishes, restrict a certificate to the functions that the certification employee is currently performing rather than drafting the

certificate more widely as described in (2) and (3).

- (5) SYSC 5.2.12G deals with the flexibility a *firm* has in choosing the period for which a certificate lasts.

...

Scope: territorial scope

- 5.2.19 R (1) ...
- (2) ...
- (3) Paragraph (1) does not apply to *FCA-specified significant-harm function (7)* (material risk takers). For a *UK relevant authorised person*, *FCA-specified significant-harm function (7)* applies without any territorial limitation.

5.2.20 G ...

5.2.20A G The FCA interprets the phrase ‘a *client* of the *firm* in the *United Kingdom*’ in SYSC 5.2.19R as referring to:

- (1) for a *client* which is a body corporate, its office or *branch* in the *United Kingdom*; or
- (2) for a *client* who is an individual, a *client* who is in the *United Kingdom* at the time of the dealing.

Scope: employees

5.2.21 G ...

5.2.22 G ...

Scope: effect of PRA requirements

5.2.23 G ...

...

5.2.28 G ...

Scope: temporary UK role (the 30-day rule)

- 5.2.28A R (1) None of the *FCA-specified significant-harm functions* extend to an individual (“P”) in relation to a *firm* if:
- (a) P is based outside the *United Kingdom* for the *firm*; and
- (b) in a 12-month period, P spends no more than 30 days performing what would otherwise be an *FCA-specified significant-harm function* for that *firm* within the territorial scope of this section as

described in SYSC 5.2.19R.

- (2) Paragraph (1) only applies to the extent that P is appropriately supervised by:
- (a) one of the firm's SMF managers; or
 - (b) one of the firm's certification employees whose certificate covers the FCA-specified significant-harm function that is to be disapplied under (1).
- (3) This rule does not apply to any FCA-specified significant-harm function to the extent that it involves:
- (a) giving advice or performing related activities in connection with pension transfers, pension conversions or pension opt-outs for retail clients; or
 - (b) giving advice to a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate.
- (4) In the case of a UK relevant authorised person, this rule does not apply to FCA-specified significant-harm function (7) (material risk takers).

5.2.28B G SYSC 5 Annex 1G gives examples of how SYSC 5.2.28AR works.

- 5.2.28C G (1) The FCA would expect an individual from overseas using the temporary UK role rule in SYSC 5.2.28AR to be accompanied on a visit to a customer in the United Kingdom.
- (2) An individual benefiting from the temporary UK role rule in SYSC 5.2.28AR may still be subject to the requirements of TC (Training and competence). However, TC 2.1.9R gives an exemption from certain qualification requirements in TC to an individual benefiting from the temporary UK role rule.

Scope: FCA-specified significant-harm functions

...

5.2.31 G ...

- (3) Another example is the rule about the territorial scope of this section (SYSC 5.2.19R) for a UK relevant authorised person. For example, if a person's job involves both FCA-specified significant-harm function (5) (functions requiring qualifications) and (7) (material risk takers), the territorial restriction in that rule does not apply to that job. Instead, this section applies without any territorial limitation.
- (4) The reason for (3) is that SYSC 5.2.19R(3) says that there is no territorial limitation on FCA-specified significant-harm function (7) for a UK relevant authorised person. As explained in (1), it does not

matter that the job also involves *FCA-specified significant-harm function* (5), to which the territorial limitation does apply.

...

After SYSC 5.1 insert the following new Annex. The text is not underlined.

5 Annex 1G Examples of how the temporary UK role rule in SYSC 5.2.28A (the 30-day rule) works

Example	How the temporary UK role rule applies
(1) A spends 20 days in the <i>UK</i> performing the proprietary trader <i>FCA-specified significant-harm function</i> for Firm X and wishes to spend another 20 days in the <i>UK</i> performing the significant management <i>FCA-specified significant-harm function</i> for Firm X.	The <i>rule</i> does not allow this. There is a single 30-day allowance, not a separate 30-day allowance for each <i>FCA-specified significant-harm function</i>
(2) A spends 20 days in the <i>UK</i> performing an <i>FCA-specified significant-harm function</i> for Firm X (which is a <i>UK relevant authorised person</i>) and wishes to spend another 20 days dealing with Firm X's <i>clients</i> in the <i>UK</i> from the overseas office of Firm X in which A is based.	The <i>rule</i> does not allow this. There is a single 30-day limit for both types of contact with the <i>UK</i> .
(3) A wishes to spend 40 days dealing with Firm X's <i>clients</i> in the <i>UK</i> from the overseas office of Firm X (which is a <i>UK relevant authorised person</i>) in which A is based. However the total time spent doing that will only be a few hours overall.	The <i>rule</i> does not allow this. If A deals with a <i>UK client</i> on one day, that uses up one day of the 30-day allowance, however short the time for which the contact lasts.
(4) A spends 25 days in calendar year one for Firm X in the <i>UK</i> and 25 days in calendar year two. However A spends 40 days in the <i>UK</i> for Firm X between June in calendar year 1 and June in calendar year 2.	The <i>rule</i> does not allow this. This is because the 30-day annual allowance relates to any 12-month period and not just a calendar year.

<p>(5) Firm X is a <i>non-UK relevant authorised person</i>. A is <i>employed</i> by Firm X and is based in one of its offices outside the UK. A wants to work in the UK branch for 10 days.</p>	<p>The <i>rule</i> applies to <i>non-UK relevant authorised persons</i>.</p> <p>It does not matter that A is not <i>employed</i> by the UK branch and instead is <i>employed</i> by another part of Firm X.</p> <p>It does not make a difference whether A is based in an office of Firm X in its home state or one in a third country.</p>
<p>(6) A is based in one of Firm X's overseas offices. Firm X then decides to relocate A to the UK, where A will be certified to perform an <i>FCA-specified significant-harm function</i> for Firm X. Firm X wants to rely on the temporary UK role <i>rule</i> for the first 30 days while Firm X goes through the certification process for A.</p>	<p>The <i>rule</i> does not allow this. A is no longer based in an overseas office and so the <i>rule</i> does not apply.</p>
<p>(7) A is based in the overseas branch of a <i>UK relevant authorised person</i>. A is to be promoted, so that A will be performing the material risk taker <i>FCA-specified significant-harm function</i>. Firm X wants to rely on the temporary UK role <i>rule</i> for the first 30 days while Firm X goes through the certification process for A.</p>	<p>The <i>rule</i> does not allow this because it does not apply to the material risk taker <i>FCA-specified significant-harm function</i> when it is performed for a <i>UK relevant authorised person</i>.</p>
<p>A reference in this table to an <i>FCA-specified significant-harm function</i> is to a function that would have been an <i>FCA-specified significant-harm function</i> but for SYSC 5.2.28AR (temporary UK role).</p>	

Amend the following as shown.

18.4 The whistleblowers' champion

- 18.4.1 G (1) A UK relevant authorised person is required under SYSC ~~4.5.25R(1)~~
4.7.5R(1) to allocate the FCA-prescribed senior management
responsibility for acting as the *firm's whistleblowers' champion*.

...

Part 2: Comes into force on 7 September 2016

5.2 Certification regime

...

Scope: FCA-specified significant-harm functions

...

5.2.30 R Table: FCA-specified significant-harm functions

Function	Where defined
...	
(7)
<u>(8) Client-dealing</u>	<u>SYSC 5.2.44R</u>
<u>(9) Algorithmic trading</u>	<u>SYSC 5.2.49R</u>

...

5.2.43 G ...

Client-dealing function

5.2.44 R A person (“P”) performs the client-dealing FCA-specified significant-harm function for a firm if:

- (1) P is carrying out any of the activities in the table in SYSC 5.2.45R; and
 - (2) those activities will involve P dealing with:
 - (a) a person with or for whom those activities are carried out; or
 - (b) the property of any such person;
- in a manner substantially connected with the carrying on of regulated activities by the firm.

5.2.45 R Table: Activities covered by the client-dealing FCA-specified significant-harm function

<u>Activity</u>	<u>Comments</u>
(1) <u>The following activities:</u> (a) <u>advising on investments other than a non-</u>	(a) <u>does not include advising on investments in the course of carrying on the activity of giving basic advice</u>

<p><u>investment insurance contract; or</u></p> <p>(b) <u>performing other functions related to this, such as <i>dealing</i> and <i>arranging</i>.</u></p>	<p><u>on a stakeholder product.</u></p>
<p>(2) <u>The following activities:</u></p> <p>(a) <u>giving advice in connection with <i>corporate finance business</i>; or</u></p> <p>(b) <u>performing other functions related to this.</u></p>	
<p>(3) <u>If the <i>firm</i> does any of the following activities:</u></p> <p>(a) <u><i>dealing</i>, as principal or as agent; or</u></p> <p>(b) <u><i>arranging (bringing about) deals in investments</i>;</u></p> <p><u>taking part in those activities is included.</u></p>	<p>(a) and (b) do not include <u><i>dealing or arranging (bringing about) deals in investments in a non-investment insurance contract.</i></u></p> <p>For the activity in this row (3), <u>SYSC 5.2.44R(2)(a) and (b) are expanded to cover also:</u></p> <p>(a) <u>a <i>person</i> in connection with whom the activities in the first column of this row are carried out; and</u></p> <p>(b) <u>the property of any such <i>person</i>.</u></p>
<p>(4) <u>If the <i>firm</i> is acting in the capacity of an <i>investment manager</i> the following are included:</u></p> <p>(a) <u>taking part in that activity; and</u></p> <p>(b) <u>carrying on functions connected to this.</u></p>	
<p>(5) <u>Acting as a 'bidder's representative' in relation to <i>bidding in emissions auctions</i>.</u></p>	<p><u>Acting as a 'bidder's representative' has the meaning in subparagraph 3 of article 6(3) of the <i>auction regulation</i>.</u></p>

- 5.2.46 G SYSC 5.2.20G (the FCA interprets the phrase ‘dealing with’ as including having contact with and extending beyond ‘dealing’ as used in ‘dealing in investments’) applies to SYSC 5.2.44R.
- 5.2.47 G The client-dealing FCA-specified significant-harm function generally involves dealing with any person with or for whom the activities in the table in SYSC 5.2.45R are carried out (or their property). That person need not be a client of the firm.
- 5.2.48 G The restrictions in SYSC 5.2.18R (FCA-specified significant-harm function should require the person performing it to be involved in one or more aspects of the firm’s affairs so far as they relate to regulated activities) also applies to the client-dealing FCA-specified significant-harm function.

Algorithmic trading function

- 5.2.49 R (1) Each of the following is an FCA-specified significant-harm function:
- (a) approving the deployment of:
 - (i) a trading algorithm or a part of one; or
 - (ii) an amendment to a trading algorithm or a part of one; or
 - (iii) a combination of trading algorithms; and
 - (b) each of the following functions:
 - (i) having significant responsibility for the management of monitoring whether or not a trading algorithm; and
 - (ii) deciding whether or not a trading algorithm;

is, or remains, compliant with the firm’s obligations.
- (2) The firm’s obligations in (1)(b) include:
- (a) the firm’s regulatory obligations; and
 - (b) the rules and requirements of the trading venues to which the firm’s trading systems are connected.
- 5.2.50 R (1) A trading algorithm means a computer algorithm used in algorithmic trading.
- (2) Algorithmic trading has the meaning in Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.
- 5.2.51 G Algorithmic trading is not limited to high-frequency algorithmic trading.
- 5.2.52 G Deploying a trading algorithm includes deploying one on a trading venue on

which the *firm* has not traded before where the *firm* is already using that trading algorithm on another *trading venue*.

- 5.2.53 G SYSC 5.2.49R(1)(b) (monitoring or deciding whether or not a trading algorithm is compliant) includes testing, such as validation and stress testing.
- 5.2.54 G (1) Sometimes an approval or a decision involves sign-off from different people about different aspects of the decision or approval.
 (2) If this is the case, all will have given the approval or decision for the purposes of SYSC 5.2.49R.
- 5.2.55 G (1) Sometimes an approval or decision involves sign-off by a number of people of different levels of seniority about the same aspects of the decision.
 (2) If this is the case, only the most senior decision-taker gives the approval or decision for the purposes of SYSC 5.2.49R.
 (3) Where the *firm*'s procedures do not require the more senior person to carry out a detailed review of the decision of the more junior, both the junior and the senior person will give the approval or decision.
- 5.2.56 G A *firm* may have deployed an algorithm even though:
 (1) it has not yet actually been used in the generation or acceptance of orders; or
 (2) it is not actually being used in the generation or acceptance of orders at the moment; or
 (3) it is not currently being used in the generation or acceptance of orders because the circumstances have not arisen for it to start doing so.
- 5.2.57 G In the examples in SYSC 5.2.56G the algorithm is capable of being used in the generation or acceptance of orders but is not actually generating or accepting them at the moment. However, a *firm* does not deploy an algorithm if the algorithm is not yet capable of generating or accepting orders because, for example, it is still in development.

...

18 Whistleblowing

18.1 Application and Purpose

...

- 18.1.1A A G *Firms* are reminded that for the purpose of SYSC 18 (except for SYSC 18.3.9G) "*firm*" has the specific meaning set out in paragraph (8) of that definition in the *Glossary*, namely:

(a) a UK relevant authorised person except a small deposit taker; and

...

...

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

...

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

Provision in the Act or the Handbook	What that provision is about	How it applies in the transitional period
...		
SYSC 5.2.18R to SYSC 5.2.43G <u>5.2.57G</u>
...		

...

Annex C

Amendments to the Code of Conduct sourcebook (COCON)

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

Comes into force on 7 March 2016

1 Application and purpose

1.1 Application

...

To whom does it apply?

1.1.2 R (1) *COCON* applies to:

...

- (e) an *employee* of a *relevant authorised person* who would be a *certification employee* but for *SYSC 5.2.27R(1)* (Scope: emergency appointments) or *SYSC 5.2.28AR* (Scope: temporary UK role); and

...

Where does it apply?

1.1.9 R (1) *COCON* applies to the conduct of ~~a *senior conduct rules staff member*~~ set out in (2) wherever it is performed.

(2) This rule applies to:

- (a) a *senior conduct rules staff member*; and
- (b) a *certification employee* performing *FCA-specified significant-harm function (7)* (material risk takers) in the table in *SYSC 5.2.30R* for a *UK relevant authorised person*.

1.1.10 R (1) This rule applies to members of a *firm's conduct rules staff* apart from *conduct rules staff* in *COCON 1.1.9R*. Subject to (2), ~~*COCON* only applies to the conduct of *persons* other than *senior conduct rules staff members* if that conduct:~~

- (a) ~~is performed from an establishment maintained in the *United Kingdom* by:~~
- (i) ~~(for a *relevant authorised person*) that *person's employer*; or~~

- (ii) ~~(for a Solvency II firm) the firm in relation to whom that person carries out controlled functions; or~~
 - (b) ~~involves dealing with a client in the United Kingdom from an establishment overseas.~~
- (2) ~~Paragraph (1)(b) does not apply to non-UK relevant authorised persons. Subject to (3), COCON only applies to the conduct of persons to whom this rule applies (as set out in (1)) if that conduct:~~
- (a) is performed from an establishment maintained in the United Kingdom by:
 - (i) (for a relevant authorised person) that person's employer; or
 - (ii) (for a Solvency II firm) the firm in relation to whom that person carries out controlled functions; or
 - (b) involves dealing with a client of the firm in the United Kingdom from an establishment overseas.
- (3) Paragraph (2)(b) only applies to a UK relevant authorised person.

1.1.11 G ...

1.1.11A G The FCA interprets the phrase 'a client of the firm in the United Kingdom' in COCON 1.1.10R as referring to:

- (1) for a client which is a body corporate, its office or branch in the United Kingdom; or
- (2) for a client who is an individual, a client who is in the United Kingdom at the time of the dealing.

Annex D

Amendments to the Training and Competence sourcebook (TC)

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

Comes into force on 7 March 2016

2 Competence

2.1 Assessing and maintaining competence

...

Exemption from appropriate qualification requirements

2.1.9 R ...

(2) The conditions are that a *firm* should be satisfied that an *employee*:

- (a) has at least three years' up-to-date relevant experience in the activity in question obtained while employed outside the *United Kingdom*;
- (b) has not previously been required to comply fully with the relevant qualification requirements in *TC 2.1.1R*; and
- (c) has passed the relevant regulatory module of an appropriate qualification;

but (b) and (c) do not apply to an *employee* who is benefiting from the "30-day rule" exemption in *SUP 10A.10.8R* or in SYSC 5.2.28AR, unless the *employee* benefits from that *rule* because he is advising *retail clients* on *retail investment products* or is a *broker fund adviser*.

...

Annex E

Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

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

Comes into force on 7 September 2016

2 Supervisory processes and governance

...

2.4 Reporting of breaches

...

- 2.4.2 G *SYSC 18 (Whistleblowing) contains requirements on UK relevant authorised persons and certain *insurers* (see SYSC 18.1.1AR) in relation to the adoption and communication of appropriate internal procedures for handling *reportable concerns* as part of an effective risk management system. SYSC 18.1.1CG provides that *firms* not otherwise subject to SYSC 18 may nonetheless wish to adopt the provisions in that chapter as best practice.*

Annex 2: Individual Accountability (Regulatory References) (Interim Requirements) Instrument 2016

INDIVIDUAL ACCOUNTABILITY (REGULATORY REFERENCES) (INTERIM REQUIREMENTS) INSTRUMENT 2016

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Individual Accountability (Regulatory References) (Interim Requirements) Instrument 2016.

By order of the Board
28 January 2016

Annex A

Amendments to the Glossary of definitions

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

Amend the following definitions as shown.

<i>employee</i>	<p>...</p> <p>(4) (for the purposes of <i>SUP</i> 15.11 (Notification of conduct rule breaches and disciplinary action), <i>SYSC</i> 5.3 (References and accurate information) and <i>COCON</i>) has the meaning in section 64A(6) of the <i>Act</i> (Rules of conduct) which, in summary, says an employee of a person (the 'employer') includes a reference to a <i>person</i> who:</p> <p>...</p> <p>...</p>
<i>employer</i>	<p>(for the purposes of <i>SUP</i> 15.11 (Notification of conduct rule breaches and disciplinary action), <i>SYSC</i> 5.3 (References and accurate information) and <i>COCON</i>, and as defined in more detail in section 64A of the <i>Act</i> (Rules of conduct)), the <i>person</i> described as the “employer” in paragraph (4) of the <i>Glossary</i> definition of <i>employee</i>.</p>

Annex B

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

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

...

1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
...		
2.13D	R	SYSC 4.5 (Management responsibilities maps for relevant authorised persons), SYSC 4.7 (Senior management responsibilities for relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material), <u>and</u> SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) also:
		...
...		
2.15	R	The <i>common platform requirements</i> , except the <i>common platform record-keeping requirements</i> , apply to a <i>firm</i> in relation to activities carried on by it from an establishment in the <i>United Kingdom</i> . However, SYSC 4.5 (Management responsibilities maps for relevant authorised persons), SYSC 4.7 (Senior management responsibilities for relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material), <u>and</u> SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) apply in accordance with the <i>rules</i> in those sections.
...		
2.18	R	The <i>common platform organisational requirements</i> , except the <i>common platform requirements on financial crime</i> , also apply in a <i>prudential context</i> to a <i>UK domestic firm</i> and to an <i>overseas firm</i> (other than an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i>) with respect to activities wherever they are carried on. However, SYSC 4.5 (Management responsibilities maps for relevant authorised persons), SYSC 4.7 (Senior management responsibilities for relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material), <u>and</u> SYSC 5.2 (Certification regime) and SYSC 5.3 (References and accurate information) apply in accordance with the <i>rules</i> in those sections.

...		
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...

Part 3	Tables summarising the application of the common platform requirements to different types of firm	
...		

Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
<i>SYSC 5.3</i>	Whole section applies to <i>relevant authorised persons only</i> . All <i>rules</i> apply as <i>rules</i> and not as <i>guidance</i> .	Not applicable	Not applicable	Whole section applies to <i>relevant authorised persons only</i> . All <i>rules</i> apply as <i>rules</i> and not as <i>guidance</i> .

...

[*Editor's Note:* This instrument revokes the contents of SYSC 5.2.9G (made by the Individual Accountability Instrument 2015 (FCA 2015/31) which was otherwise due to come into force on 7 March 2016.)

5.2 Certification regime

...

- 5.2.9 G ~~SYSC 5.3 (References and accurate information) deals with obtaining references from a previous *employer* when a *firm* is planning to appoint someone to perform a *specified significant harm function* as part of its assessment of whether that *person* is fit and proper. [Not used]~~

Annex C

Amendments to the Supervision manual (SUP)

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

10A FCA Approved Persons

...

10A.15 References and accurate information

References

...

10A.15.3 G ...

10A.15.3 G SUP 10A.15.1R applies even if A (the *firm* asking for a reference) is a *firm* to which SUP 10C (FCA senior management regime for approved persons in relevant authorised persons) applies rather than this chapter.

...

[*Editor's Note:* This instrument revokes the contents of SUP 10C.10.23R (made by the Individual Accountability Instrument 2015 (FCA 2015/31) which was otherwise due to come into force on 7 March 2016.)

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

...

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

...

~~Application for approval: References~~

10C.10.23 G ~~Please see SYSC 5.3 (References and accurate information) about the requirement for a *firm* to ask for references from previous employers. [Not used]~~

...

After SUP 10C.15 insert the following new section. The text is not underlined.

10C.16 References and accurate information

References

- 10C.16.1 R (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 16.8.1G(1) (Persistency reports from insurers) applies to B, the persistency of any *life policies* sold by that *person*.
- 10C.16.2 G The requirement in SUP 10C.16.1R(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.
- 10C.16.3 G A *firm* supplying a reference in accordance with SUP 10C.16.1R 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.

- 10C.16.4 G *SUP* 10C.16.1R applies even if A (the *firm* asking for a reference) is a *firm* to which *SUP* 10A (FCA approved persons) applies rather than this chapter.

The need for complete and accurate information

- 10C.16.5 G (1) The obligations to supply information to:
- (a) the *FCA* under this chapter;
 - (b) another *firm* under *SUP* 10C.16.1R;
- apply notwithstanding any:
- (c) agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)); or
 - (d) any other arrangements entered into by a *firm* and an *employee* upon termination of the *employee's* employment.
- (2) A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this chapter.
- 10C.16.6 G Failing to disclose relevant information to the *FCA* may be a criminal offence under section 398 of the *Act*.

Financial Conduct Authority



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25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
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