

Policy Statement | PS16/15

Strengthening individual accountability in banking: responses to CP14/14, CP28/14 and CP7/15

July 2015



BANK OF ENGLAND
PRUDENTIAL REGULATION
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This policy statement contains the second set of final rules to implement the Senior Managers and Certification Regimes for UK banks, building societies, credit unions and PRA-designated investment firms.

Contents

1	Introduction	5
2	Responses to CP14/14	6
3	Responses to CP28/14	7
4	Responses to CP7/15	11
5	Cost benefit analysis	14

Appendices	15
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1 Introduction

1.1 This Prudential Regulation Authority (PRA) policy statement provides feedback on those aspects of CP14/14 'Strengthening accountability in banking: a new regulatory framework for individuals'⁽¹⁾ which were not dealt with in PS3/15 'Strengthening individual accountability in banking and insurance — responses to CP14/14 and CP26/14'.⁽²⁾ It also provides feedback on responses to the proposals in CP28/14 'Strengthening accountability in banking: forms, consequential and transitional aspects',⁽³⁾ and the proposals relating to banking (but not insurance) firms in CP7/15 'Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms'.⁽⁴⁾

1.2 Appendix 1 to this policy statement contains a set of final PRA rules (further to those published in PS3/15) to implement the Senior Managers Regime (SMR) and Certification Regime for UK banks, building societies, credit unions and PRA-designated investment firms. These firms are collectively referred to in the Financial Services and Markets Act 2000 (FSMA) and in this policy statement as 'Relevant Authorised Persons'. Also published alongside this policy statement is a supervisory statement setting out the PRA's expectations of firms in relation to the new regimes (SS28/15);⁽⁵⁾ this combines the draft supervisory statements consulted on in CP14/14 and CP7/15 and, where appropriate, updates them to take account of feedback to the consultations and/or the PRA's final rules and policy (as set out in PS3/15 and this policy statement).⁽⁶⁾ The PRA is also publishing a final statement of policy on the PRA's use of the power to impose conditions and time limits on an approval to perform a Senior Management Function (SMF) — a draft of which was consulted on in CP14/14.⁽⁷⁾

1.3 This policy statement does not contain further substantive rules on the regulatory references to be issued by a current or former employer when a new firm is considering appointing a person to a Senior Manager or certified role (other than to extend the basic requirement to require a reference from former employers issued in PS3/15 to also cover former non-executive director (NED) roles). On 10 June 2015 the Fair and Effective Markets Review (FEMR) issued recommendations about the form and content of such references, and the PRA wishes to consider these recommendations further before finalising its approach to regulatory references.⁽⁸⁾ It is expected that the PRA's original proposals, as consulted on in CP14/14, will need to be amended in order to implement the FEMR recommendations in this area, and the PRA therefore expects to issue a further consultation on additional proposals for regulatory references later in the summer. The PRA intends that its final rules on references will be made before the commencement of the SMR and Certification regimes in March 2016.

1.4 The PRA plans to issue a further policy statement that will provide feedback on responses to CP9/15 'Strengthening accountability in banking: UK branches of foreign banks'⁽⁹⁾ and include final and near-final rules on the application of the new regimes to UK branches of non-EEA firms (incoming branches) later in 2015. That policy statement will include an updated version of SS28/15 setting out the PRA's expectations of how incoming branches should comply with the new regimes. The PRA cannot make all of the relevant final rules applying the regime in full to incoming branches until the necessary secondary legislation has been approved by Parliament. HM Treasury has publicly announced its intention to lay the relevant secondary legislation (under section 71A of FSMA) but has not yet done so.⁽¹⁰⁾

1.5 It may be necessary for the PRA to make consequential amendments to the rules published with this policy statement, in particular to any cross-references, in order to reflect the rules made (or subsequently made to implement the outstanding aspects of the regime). Any such consequential amendments will be addressed when the PRA makes its consequential amendments further to CP28/14.

1.6 The PRA is required by FSMA to have regard to any representations made to the proposals in a consultation, and publish an account, in general terms, of those representations and its response to them.⁽¹¹⁾ That account is set out as follows:

- Chapter 2 sets out some of the issues raised in the feedback received to CP14/14 which were not already addressed in PS3/15.
- Chapter 3 sets out responses to issues raised in the feedback to CP28/14 on transitional arrangements and forms.

(1) *PRA Consultation Paper CP14/14*, 'Strengthening accountability in banking: a new regulatory framework for individuals', July 2014; www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp1414.aspx.

(2) *PRA Policy Statement PS3/15*, 'Strengthening individual accountability in banking and insurance — responses to CP14/14 and CP26/14', March 2014; www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps315.aspx.

(3) *PRA Consultation Paper CP28/14*, 'Strengthening accountability in banking: forms, consequential and transitional aspects', December 2014; www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2814.aspx.

(4) *PRA Consultation Paper CP7/15*, 'Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms', February 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp715.aspx.

(5) *PRA Supervisory Statement 28/15*, 'Strengthening individual accountability in banking', July 2015; www.bankofengland.co.uk/pr/Pages/publications/ss/2015/ss2815.aspx.

(6) The PRA has also made amendments to the supervisory statement material on the ring-fencing prescribed responsibility in response to comments received to *PRA Consultation Paper CP19/14*, 'The implementation of ring-fencing: consultation on legal structure, governance and the continuity of services and facilities', October 2014; www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp1914.aspx.

(7) *PRA Statement of Policy*, 'Conditions, time limits and variations of approval', July 2015; www.bankofengland.co.uk/pr/Pages/publications/sop/2015/conditions.aspx.

(8) *Fair and Effective Markets Review: Final Report*, June 2015; www.bankofengland.co.uk/markets/Documents/femrjun15.pdf.

(9) *PRA Consultation Paper CP9/15*, 'Strengthening accountability in banking: UK branches of foreign banks', March 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp915.aspx.

(10) www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150303/wmstext/150303m0001.htm.

(11) Section 138f of FSMA.

- Chapter 4 sets out the feedback received to CP7/15 on the expectations of NEDs in Relevant Authorised Persons, the requirements for NEDs who will fall outside the SMR (notified NEDs), and the PRA's application of the presumption of responsibility to Senior Managers in Relevant Authorised Persons.

2 Responses to CP14/14

Summary of original proposals

2.1 CP14/14 proposed:

- a set of PRA SMFs, which would be subject to pre-approval by the PRA;
- rules on the allocation of responsibilities to Senior Managers, including a set of 'Prescribed Responsibilities', which firms would be required to allocate to individuals approved as Senior Managers by the PRA or FCA (except individuals approved as what was subsequently renamed the FCA's Other Overall Responsibility function (SMF18));
- a statement of policy describing how the PRA intended to use its new powers to impose conditions, time limits and variations on approvals to perform an SMF;
- the set of 'certification functions' which would fall within the PRA's Certification Regime;
- rules and a supervisory statement describing how firms should assess the fitness and propriety of individuals performing SMFs or certification functions; and
- a set of Conduct Rules and supervisory statement to apply to Senior Managers and employees in the PRA's Certification Regime.

2.2 Rules on the majority of these issues were made and published in March 2015 in PS3/15. PS3/15 did not contain the Conduct Rules, nor did it contain the Statement of Policy on conditional approvals or any supervisory statements. This chapter sets out the feedback received on these issues, and describes the PRA's response to them and its final policy in these areas.

2.3 The PRA and FCA received 77 responses to CP14/14 from a range of respondents, including Relevant Authorised Persons, trade bodies, law firms and professional services firms. Set out below are the remainder of the PRA's responses to the issues raised in the feedback to CP14/14, noting those areas where the PRA is making changes to the policy proposals contained in the CP.⁽¹⁾

Conduct Rules

2.4 The PRA has not made any changes to the content or scope of the Conduct Rules proposed in CP14/14.

2.5 Respondents generally supported the content of the proposed Conduct Rules. Respondents also supported the PRA's approach of applying them directly to individuals performing an SMF specified by the PRA or FCA and employees performing a certification function specified by the PRA.

2.6 CP14/14 also contained proposals on how firms should meet the requirements set out in FSMA to notify the regulator of known or suspected breaches of the Conduct Rules. The PRA subsequently amended these proposals, in particular the period in which notifications of a breach by a certified employee must be made to the PRA, and consulted on new proposals in CP28/14. That revised proposal, and the consultation responses to it, are discussed in Chapter 3 of this policy statement.

Statement of policy on conditional approval

2.7 CP14/14 contained a draft statement of policy setting out how the PRA intends to use its new FSMA powers to impose conditions, time limits and variations on approvals to perform an SMF.⁽²⁾ Respondents to CP14/14 generally agreed with the draft statement. The PRA is therefore proceeding with its original proposals. Consequently, the final statement of policy, which is published alongside this policy statement, has not changed significantly from the consultation draft. It has been updated to reflect that it is now a final version rather than a draft for consultation, and to update cross-references to other aspects of the regime.

Regulatory references

2.8 CP14/14 proposed that firms should have to request references before certifying individuals as fit and proper or putting them forward for approval to perform an SMF, and to provide references on past employees. In PS3/15 the PRA issued rules requiring firms to take reasonable steps to obtain references as part of their assessment of a person's fitness and propriety, but did not make rules setting out the detail of the information which firms providing such a reference must include.

2.9 On 10 June, FEMR issued a number of recommendations, including in relation to the form and content of regulatory references. These recommendations reflected the considerable feedback that FEMR received from the industry on this issue. Given this additional information, including the

(1) This does not include the PRA's response on regulatory references, as this will be subject to a further consultation in light of the recommendations in the Fair and Effective Markets Review.

(2) The PRA is required to prepare and consult on such a statement of policy by sections 63ZD and 63ZE of FSMA.

strong appetite from some industry participants for greater standardisation of references, the PRA has decided not to make any further rules on regulatory references at this stage, and instead intends to consult on further proposals in this area. Subject to the outcome of this proposed consultation, the PRA expects that its final rules on references will be made before the commencement of the SMR and Certification regimes in March 2016.

3 Responses to CP28/14

Summary of original proposals

3.1 CP28/14 was published jointly with the Financial Conduct Authority (FCA) in December 2014 and proposed:

- (a) a set of PRA and FCA rules which, alongside a Transitional Provisions Order made by HM Treasury, would create the arrangements for the transition to the new regimes, including the 'grandfathering' of existing approved persons into equivalent SMFs;
- (b) new and updated Forms for firms to make applications and notifications to the regulators, including the form for the statement of responsibilities in which firms must set out clearly the areas of a firm's regulated activities for which each Senior Manager is responsible; and
- (c) consequential amendments to the PRA Rulebook, Handbook and supervisory statements to reflect the introduction of the new regime and the changes of terminology it will bring.

3.2 The PRA and FCA received 17 responses to the CP from a number of firms ranging from major banks to credit unions, industry bodies and law firms.

3.3 Set out below are the PRA's responses to the most significant issues raised in the feedback to CP28/14, noting those areas where the PRA is making changes to the policy proposals contained in the CP.

3.4 The main issues raised by respondents relate to transitional arrangements, the format and content of statements of responsibilities and the PRA's proposed deadline for reporting breaches of the Conduct Rules by employees in scope of the PRA Certification regime.

Transitional arrangements

3.5 The PRA proposals were based on the premise that HM Treasury would provide for individuals currently approved under the Approved Persons Regime (APR) to be able to 'grandfather' into the SMR — ie they would be able to perform an SMF which is equivalent to the role they are currently approved for without requiring further approval. Respondents to the CP generally welcomed the transitional proposals for

grandfathering, but raised queries on the issues set out below. The PRA has not made any significant changes to its proposed approach to transitional arrangements, but is clarifying some aspects to address the queries raised and making appropriate amendments to ensure that the PRA transitional rules are consistent with the Treasury Transitional Order which was made on 4 March 2015.⁽¹⁾

Equivalent functions

3.6 Individuals are eligible for grandfathering if the role they are performing (and have approval to perform) immediately before the commencement of the new regime on 7 March 2016 is an 'equivalent function' to the SMF they wish to perform under the new regime in **Table 2.A**.⁽²⁾ The PRA and FCA's rules set out that the existing functions in column 1 are 'equivalent' to the SMFs which appear in the same row in column 2 (PRA SMFs) or column 3 (FCA SMFs).

3.7 A number of respondents asked the PRA to confirm that where individuals are taking on new responsibilities as a result of the SMR, including PRA Prescribed Responsibilities, this would not affect their eligibility for grandfathering provided that they continue performing the same role.

3.8 The PRA confirms that the allocation of new responsibilities to an individual will not, in itself, make them ineligible for grandfathering. The PRA recognises that, as a result of the new regime, some individuals may take on new responsibilities (or become formally responsible for areas they are already responsible for in practice). The PRA may, however, question the allocation of certain responsibilities to a particular Senior Manager where they appear to be inconsistent with the overall nature and responsibilities of that function.

3.9 However, if an individual is taking on new responsibilities that will involve them performing an SMF which is not equivalent to the function he or she is approved to perform prior to commencement, he or she will not be eligible for grandfathering in respect of that new SMF. Rather, a new application for approval will be required in order for the individual to be able to perform that new SMF following commencement of the new regime. For example, a CEO who is currently approved as CF3 (Chief Executive) and who is allocated a new responsibility for overseeing the adoption of the firm's culture and values, is eligible to grandfather into SMF1 (Chief Executive), notwithstanding the new responsibility. But an individual who is currently approved only as CF1 (Director), and who is given the responsibility in relation to culture and values as part of being promoted to

(1) The Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015; www.legislation.gov.uk/uksi/2015/492/pdfs/ukxi_20150492_en.pdf.

(2) A similar table also forms part of the 'Senior Managers Regime — Transitional Arrangements' Part of the PRA Rulebook (which can be found in Appendix 1 of this policy statement).

Table 2.A Equivalent functions

Column 1	Column 2	Column 3
Pre-implementation PRA Controlled Function	PRA Senior Management Function	FCA-designated Senior Management Function
All firms apart from credit unions		
Director (CF1)	Chief Finance function (SMF2)	Executive Director (SMF3)
Partner (CF4)	Chief Risk function (SMF4)	
Director of unincorporated association (CF5)	Head of Internal Audit (SMF5)	
	Head of Key Business Area (SMF6)	
	Group Entity Senior Manager (SMF7)	
Non-executive director (CF2)	Group Entity Senior Manager (SMF7)	Chair of the Nominations Committee (SMF13)
	Chairman (SMF9)	
	Chair of the Risk Committee (SMF10)	
	Chair of the Audit Committee (SMF11)	
	Chair of the Remuneration Committee (SMF12)	
	Senior independent director (SMF14)	
Chief executive (CF3)	Chief executive (SMF1)	
Systems and Controls (CF28)	Chief Finance function (SMF2)	
	Chief Risk function (SMF4)	
	Head of Internal Audit (SMF5)	
Significant management (CF29)	Head of Key Business Area (SMF6)	Overall responsibility (SMF18)
	Group Entity Senior Manager (SMF7)	
All firms to which the function in the first column applies		
Compliance oversight function (CF10)		Compliance oversight function (SMF16)
CASS operational oversight function (CF 10A)		Other overall responsibility function (SMF18)
Money laundering reporting function (CF11)		Money laundering reporting function (SMF17)
Credit unions		
Pre-implementation PRA Controlled Function	PRA Senior Management Function	FCA Function
Director (CF1)	Credit Union Senior Manager (SMF8)	Executive Director (SMF3)
Non-executive director (CF2)	Credit Union Senior Manager (SMF8)	Chair of the Nominations Committee (SMF13)
Chief executive (CF3)	Credit Union Senior Manager (SMF8)	

CEO, would not be eligible for grandfathering, as CF1 (Director) is not equivalent to SMF1 (Chief Executive).

Individuals based in parent entities

3.10 Some respondents asked if individuals based in a parent entity who, on and after 7 March 2016, will be performing a Senior Management Function in relation to the subsidiary (for example Chair of Risk Committee), but are not currently approved in relation to the subsidiary, could nevertheless be grandfathered.

3.11 'Grandfathering' of this kind is not envisaged by the Treasury Order. The approach requested would go beyond the principle of people being grandfathered on the basis of their existing approvals within a specific firm. In many cases, individuals based in a subsidiary's parent or group entity are already approved in relation to the subsidiary (because they exercise significant influence over its activities) and will therefore be eligible to grandfather into their corresponding SMF. But where the individual is not already approved, the

subsidiary firm will need to make an application for his or her approval. An application to perform a new SMF can be made in advance from 1 January 2016 (such applications will be treated as if they were made on 7 March but will be considered earlier to allow for such persons to be approved in a timely manner).

Credit union functions

3.12 Some credit unions queried the proposed mapping between old and new functions that would have applied to larger credit unions, on the basis that the distinction made between executive and non-executive roles did not reflect the way individuals are currently approved in credit unions. However, the final PRA rules on the scope of the SMR published in PS3/15 mean that in all credit unions (no longer just the smaller ones) individuals will in future be performing a specific Credit Union Senior Manager function. Individuals who are currently approved either as executives (CF1) or non-executives (CF2) will be eligible to grandfather into this Credit Union Senior Manager function.

The process for grandfathering

3.13 The Treasury Transitional Order established the conditions and timing for grandfathering. Firms are required to submit their grandfathering notifications to the FCA and PRA by 8 February 2016.⁽¹⁾ The Order also requires that firms must at the same time submit a 'statement of responsibilities' for each person who is grandfathering into an SMF. Each statement of responsibilities should be signed by the individual whose responsibilities it describes. As was proposed in CP28/14, firms should submit grandfathering notifications using Form K, with one form submitted per firm.

Submitting applications ahead of commencement

3.14 The PRA recognises that firms will need to continue to recruit new individuals in the run up to commencement. For individuals who will not begin performing their role until 7 March or afterwards, the PRA and FCA will make the new application Forms available from 1 January 2016. Applications made on these new forms should be not be included in the firm's grandfathering notification. Firms should note that applications for the new SMFs will only formally be determined at the commencement date, so in cases where they wish a candidate to begin his or her role before 7 March, they should continue to apply for the existing controlled functions using the current forms. Such persons, if approved, will then be eligible for grandfathering, and should be included on the firm's grandfathering notification.

3.15 Where an application has been made for an existing function but has not been determined by 7 March (a so-called 'in-flight' application), the approach set out in CP28/14 will apply. That is, the application will be treated as if it has been made under the new regime for an equivalent function as defined in **Table 2.A**. Firms will, however, need to include a list of any such outstanding applications on their Form K, identify the equivalent new SMFs and provide a statement of responsibilities for each individual concerned. The requirements of the new regime will apply in relation to such in flight applications, eg the firm should obtain a criminal records check for the individual concerned.

3.16 One effect of the Treasury Transitional Order is that the statutory deadline for determining applications is suspended for applications made for existing controlled functions until a grandfathering notification is submitted in respect of that application. Notwithstanding this provision, the PRA does not intend to delay determining all such applications as a matter of course. Therefore, firms should not feel compelled to submit their grandfathering notifications earlier than they would otherwise have done, simply to 'restart the clock' on applications made for existing significant influence functions.

Other transitional arrangements

3.17 Firms will need to have identified those individuals who are performing certification functions by 7 March 2016, as

they will be subject to Conduct Rules from that date. The Treasury's Order commencing the new regimes provides that firms have until 7 March 2017 (a year after the main commencement date) to actually issue certificates to individuals performing certification functions.⁽²⁾ This should allow firms to make the necessary assessment of fitness and propriety and issue the certificate as part of their annual performance management process.

3.18 As proposed in CP28/14, the requirement for a firm to obtain references as part of its initial assessment of fitness and propriety will not apply where the individual performing the certification function performed the same function on and immediately before 7 March 2016, or where the individual is being grandfathered into a new SMF. Similarly, the requirement to obtain criminal records checks for Senior Managers and notified NEDs will not apply where the person is being grandfathered into an SMF or was approved as a NED immediately prior to 7 March 2016.

Statements of responsibilities

3.19 Firms are required to submit a 'statement of responsibilities' with each application for approval as a Senior Manager, and to update the statement of responsibilities whenever there is a significant change in the Senior Manager's responsibilities. CP28/14 contained a draft template and some proposals on how the statement of responsibilities should be drafted in order to ensure that a Senior Manager's responsibilities are set out clearly and concisely, which the PRA considers vital to the effective operation of the new regime. These included a suggested (but not mandatory) 300-word limit on the amount of free text that firms can use to provide further details on each of the responsibilities allocated to a Senior Manager (including PRA Prescribed Responsibilities); and a requirement that statements of responsibilities be stand-alone documents which do not refer or link to other documents.⁽³⁾

3.20 A number of respondents, especially larger firms, expressed concern at the suggested 300-word limit, saying that the responsibilities of Senior Managers are in reality complex, and it would not be possible to describe them accurately in 300 words. Respondents noted that if the 300-word limit were retained, the statement of responsibilities would need to refer to other documents, which would undermine their usefulness and the original rationale for introducing the document.

(1) These notifications may be updated until the new regime commences on 7 March 2016.

(2) The Financial Services (Banking Reform) Act 2013 (Commencement No. 9) Order 2015 can be found at: www.legislation.gov.uk/uksi/2015/490/pdfs/ukxi_20150490_en.pdf.

(3) In PS3/15 the PRA published rules setting out the 'prescribed responsibilities' which firms will be required to allocate to a Senior Manager.

3.21 The PRA's view is that a 300-word limit per responsibility should generally be sufficient, and would emphasise that statements of responsibilities are primarily about recording what a Senior Manager is responsible for, and less about how they will deliver those responsibilities. In many cases, simply allocating a PRA Prescribed Responsibility (as set out in the rules) to a Senior Manager should suffice to identify that person clearly and formally as responsible for that area with no further elaboration required. Even where a firm adds additional Responsibilities to a statement of responsibilities or where the precise nature of a given Senior Manager's responsibilities requires explanation — which will be the case with, for example, Heads of Key Business Area and Group Entity Senior Manager — it should be possible for firms to do so in 300 words or fewer.

3.22 The PRA recognises that a Senior Manager's personal objectives, and certain details of how their responsibilities are meant to be discharged, may be contained in separate documents. However, this information must not dilute or undermine the Prescribed Responsibilities set out in the statement of responsibilities. As explained in Section 3 of the statement of responsibilities form, the statement of responsibilities should be consistent with the firm's management responsibilities map and must be a self-contained document.

Reporting breaches of the Conduct Rules Seven day notification period

3.23 Some respondents expressed concern at the proposal in CP28/14 to reduce the period for notification of a breach or suspected breach of the Conduct Rules by a PRA-certified employee from quarterly to within seven business days (in line with the deadline already proposed for notifying equivalent breaches by Senior Managers). This was partly due to concerns about PRA and FCA having different requirements for certified staff, and partly because firms felt that seven business days was not sufficient time to properly investigate a potential breach.

3.24 The PRA has decided to continue with the seven business days period for notification. All of the individuals within the SMR and PRA Certification Regime are by definition capable of causing significant harm to a firm, so the PRA believes it is proportionate to know about potential misconduct within a short timeframe. By contrast, the FCA's Conduct Rules apply to a far wider set of individuals.

3.25 The PRA recognises that firms may need some time to determine whether or not they know or suspect that a person has breached the conduct rules. Accordingly, the notification rules have been amended to clarify that the period of seven business days begins to run from the point at which the firm determines that a conduct rule has been (or is suspected to

have been) breached. Firms must not unreasonably delay making this determination.

Defining a 'suspected' breach

3.26 Respondents requested further guidance on the threshold for 'suspecting' a breach of the Conduct Rules. The term 'suspects' is used in section 64B(5) of FSMA and the PRA does not have the power to define it further in rules.⁽¹⁾ It is for firms to decide whether they suspect a breach of the rules.

3.27 In response to some of the queries respondents raised, it may be helpful to remind firms that under section 64A of FSMA the Conduct Rules only apply to 'qualifying functions',⁽²⁾ and are therefore limited to a person's conduct in relation to the activities which that person performs in their capacity as an employee or Senior Manager of the firm. Therefore a person's behaviour outside of work is, in many cases, unlikely to involve a breach of the Conduct Rules and would not require a notification under section 64B(5) of FSMA (although firms would be required to notify the PRA of any matters of which it was aware that were relevant to the assessment of the fitness and propriety of a Senior Manager). This point is addressed in the Chapter 5 of supervisory statement SS28/15, which deals with Conduct Rules and associated notifications.

Other issues with proposed Forms

3.28 Some firms queried the reference to including 'handover certificates' as part of the 'Form A' application for approval, noting that handover certificates are not compulsory and also that handover notes may not be available at the point an application is being made.

3.29 The PRA and FCA have amended the wording in the Form A to clarify that the intention is for any handover material firms already have available to be included with the application, but that this does not create a requirement to produce such material or to have it available earlier in the process.

3.30 Some respondents to the consultation raised issues in relation to some questions in Forms A and D. As a result the PRA and FCA have decided to review some of the questions in the forms. Pending that review, the regulators have amended the drafts of Form A (for Relevant Authorised Persons only) and Form D as consulted on in PRA CP28/14 and FCA CP14/31, to omit certain questions regarding criminal investigations and charges. Depending on the outcome of the review, the PRA and FCA may consider whether to reinsert those or similar questions or make other changes to forms (including existing forms) having consulted where necessary.

(1) Section 64B of FSMA requires firms to notify the regulators of instances where they know or suspect that an individual has failed to comply with any Conduct Rules.

(2) See section 64A (4) – (5) of FSMA.

3.31 The PRA and FCA have also amended the consultation draft of Form D so that the final version follows more closely the wording of the existing Form D. This should help minimise the changes which firms will need to adapt to. Some other formatting and typographical errors noted on the Forms have also been corrected.

Consequential amendments

3.32 There were no significant comments made on the proposed consequential amendments. The PRA will make its consequential amendments to the PRA Handbook, the PRA Rulebook and existing supervisory statements after the remaining rules for the Senior Managers and Certification Regimes and the Senior Insurance Managers Regime (SIMR) have been made. This will include repealing with effect from 7 March 2016 certain provisions of the PRA Handbook such as APER, FIT and SUP10B once new rules have been made for all relevant firms including incoming branches, Solvency II firms and non-directive insurance firms. As noted in paragraph 3.3 of PS3/15, the PRA will also make consequential amendments to ensure that all cross-references to the FCA Handbook are accurate and to update any cross-references to the PRA Handbook that have been superseded by PRA Rulebook provisions.

3.33 As a result of changes to the definition of a material risk taker in the Remuneration Part of the Rulebook published in PS12/15,⁽¹⁾ the PRA also intends to consult on an amendment to the definition of material risk taker in the Certification Part of the Rulebook. Having previously made clear that its intention is to align the scope of the Certification regime as closely as possible with the material risk taker population, the PRA intends to consult on amending the definition of a 'significant risk taker' in the Certification rules to include any employee whose professional activities have a material impact on the firm's risk profile, including any employee who is deemed to have a material impact on the firm's risk profile in accordance with criteria set out in Articles 3 to 5 of the Material Risk Takers Regulation. The FCA has also aligned this aspect of the scope of its certification regime to the scope of its Remuneration rules (see SYSC 5.2.42 of the FCA Handbook).

4 Responses to CP7/15

Summary of original proposals

4.1 CP7/15 was published jointly with the FCA in February 2015. In it the PRA consulted on:

- (a) the introduction of an assessment and notification regime for NEDs outside the SMR; and
- (b) a draft supervisory statement, addressing:
 - (i) the PRA's approach to NEDs in the SMR, and

- (ii) the PRA's intended approach to the presumption of responsibility.

4.2 The CP also contained proposals for the application of the SIMR to NEDs in insurers subject to the Solvency II Directive (Solvency II firms). This policy statement does not deal with the responses to those proposals or make any rules for Solvency II firms. These will be addressed in a separate policy statement later in the year.

4.3 The PRA received 30 responses. Around a third of these focused solely on the proposals for Solvency II firms. The PRA has not made any significant changes to the policy proposed in CP7/15, but has refined the drafting of the supervisory statement in response to some of the suggestions received from respondents.

The PRA's approach to NEDs in the SMR

4.4 CP7/15 confirmed that the PRA will include some, but not all, NEDs in the SMR, and consulted on a draft supervisory statement which set out the responsibilities and accountability of NEDs in scope of the SMR.

4.5 Respondents generally welcomed the PRA's approach and the clarification provided. Some amendments were suggested to the supervisory statement, including to align it further with the UK Corporate Governance Code published by the Financial Reporting Council (FRC Code).⁽²⁾ While the PRA has not significantly changed its proposed approach to NEDs in the SMR, it agrees with some of the changes suggested by respondents and has incorporated these into the final version of supervisory statement SS28/15.

4.6 While the majority of respondents supported the decision to leave NEDs without specific responsibilities, such as chairing a committee, outside of scope of the SMR, several noted that the revised scope of the SMR could have unintended consequences on board behaviours and dynamics. In particular, they warned that the SMR could lead to the emergence of 'two-tier boards' comprising those directors who will be in scope of the SMR on the one hand, and notified NEDs on the other.

4.7 As SS28/15 clarifies, although the SMR will only apply to some NEDs who will be required to take on a limited number of tailored individual responsibilities, the PRA views the regime and its application as consistent with the principle of collective decision-making underpinning unitary boards.

(1) PRA Policy Statement PS12/15, 'Strengthening the alignment of risk and reward: new remuneration rules', June 2015; www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps1215.aspx.

(2) www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-2014.pdf.

4.8 The individual accountability of directors in scope of the SMR will be additional and complementary to the collective responsibilities shared by all directors under UK company law and well-established corporate governance principles, such as the FRC Code. In particular, the SMR will operate alongside the statutory and fiduciary duties of directors under UK company law including section 172(1) of the Companies Act, which requires all directors to act in the best interests of the company. All directors, irrespective of whether they are in scope of the SMR, remain accountable under the Companies Act and, in listed firms, subject to the principles in the FRC Code on a comply-or-explain basis.

4.9 Moreover, regardless of the fact that some NEDs will be subject to enhanced individual accountability to the PRA and FCA under the SMR, the PRA considers it vital that boards as a whole understand the Threshold Conditions, Fundamental Rules and more detailed underlying rules in the PRA Rulebook, and establish within their firms a culture that supports adherence to the spirit and letter of these requirements.

4.10 On 21 May 2015, the PRA published CP18/15 'Corporate Governance: Board responsibilities',⁽¹⁾ which consults on a draft supervisory statement on the PRA's expectations of boards. The draft statement underscores the collective responsibilities shared by board members, and as such, complements the individual accountabilities introduced by the SMR. By emphasising the collective responsibilities shared by board members, in addition to the responsibilities of individual Senior Managers, the final supervisory statement should reduce the concerns expressed by some respondents over a 'two-tier' board developing.

4.11 Some respondents also queried when the criminal offence in section 36 of the Financial Services (Banking Reform) Act 2013 could apply to a NED. The conditions for the offence to apply are set out in the 2013 Act and the PRA does not consider that it would be appropriate to publish hypothetical scenarios in which those conditions would be met.

The PRA's assessment and notification regime for NEDs outside the SMR (notified NEDs)

4.12 CP7/15 consulted on an assessment and notification regime for notified NEDs (referred to as 'standard NEDs' in that consultation paper). This regime will enable the United Kingdom to ensure that it continues to meet EU obligations to ensure that all members of the management bodies of credit institutions are fit and proper. The regime would not apply to credit unions.

4.13 Respondents generally recognised that such a regime was necessary as the alternative to including all NEDs in the SMR and welcomed the proposed requirements. Respondents

sought further clarity on how the regime would operate in practice, including on:

- the timing and process for the notification;
- the criteria that firms must use for assessing the fitness and propriety of notified NEDs;
- the conduct standards that firms must apply to notified NEDs;
- transitional arrangements for existing NEDs who will become notified NEDs; and
- how the PRA will use the notifications and the type of action it could take if it has concerns about a notified NED.

Timing and process for the notification

4.14 The PRA does not require advance notification of planned appointments, but must be notified when the appointment is confirmed, for example when a letter of appointment is issued and accepted. As appointments of new NEDs will alter the composition of the management body, such notifications should be accompanied by an updated management responsibilities map. The PRA proposed in CP7/15 that the same Form would be used for notifying of NEDs in banking firms and Solvency II firms. The PRA will finalise and publish the Form when it publishes feedback and final rules on the aspects of CP7/15 which dealt with the SIMR.

4.15 Firms may also, as at present, wish to have discussions with their supervisors in advance of recruiting new board members about the composition of their boards and the skills and knowledge that a new board member should possess.

4.16 Some respondents requested clarification regarding the situation where a NED who is in scope of the SMR as a result of chairing a particular committee subsequently steps down from the chair role and thereby becomes a notified NED, and queried whether the firm would be required to submit information on the person's fitness and propriety again. The PRA confirms that such information will not be required, as the person's fitness and propriety will already have been assessed. The PRA will of course need to be notified that the person's role has changed and that he or she has ceased to perform the relevant SMF, which a firm would do by submitting Form C.

Criteria firms should use to assess fitness and propriety

4.17 Firms will need to have regard to the same high-level criteria in assessing the fitness and propriety of a notified NED as they would when assessing a Senior Manager or employee

(1) PRA Consultation Paper 18/15, 'Corporate governance: Board responsibilities', May 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp1815.aspx.

performing a Certification function — ie the criteria set out in the new Fitness and Propriety Part of the PRA Rulebook, an amended version of which is set out in Appendix 1. The expectations of a particular individual will of course depend on the exact nature of their role; for example the Chair of the Audit Committee will be expected to have additional knowledge about audit matters which a notified NED may not require. The draft supervisory statement consulted on in CP18/15 includes an overview of the PRA's expectations regarding overall board composition. The amended PRA Rulebook also provides that in addition to obtaining references from past employers, references should also be sought from organisations where the person has held a NED role. As stated above, in the light of the FEMR report, the PRA and FCA are not making new substantive rules in relation to regulatory references at this stage and intend to consult on further requirements later in the year.

Conduct standards for notified NEDs and other members of the management body

4.18 A firm must require all members of its management body — including notified NEDs — to observe Individual Conduct Rules 1–3 and Senior Management Conduct Rule 4.⁽¹⁾ These require each member of the management body to:

- (a) act with integrity;
- (b) act with due skill, care and diligence;
- (c) be open and co-operative with the FCA, the PRA and other regulators; and
- (d) disclose appropriately any information to the FCA or PRA which they would reasonably expect notice.

4.19 The PRA has updated the requirement proposed in CP7/15 to clarify that this should be a contractual requirement: that is to say that a firm should be able to enforce these standards. A firm could for instance write a requirement into its Staff Handbook or Code or otherwise make it a condition of employment or appointment. As contracts normally expressly allow for any amendments necessary to meet regulatory requirements this provision should not be onerous. In addition, the standards that the PRA is requiring firms to impose are ones with which members of the management body will be very familiar.

4.20 Therefore the PRA expects that notified NEDs will observe the same fundamental standards as other members of the management body. The PRA cannot apply these rules directly to notified NEDs in the way that they apply to a person performing an SMF or certification function. However, firms are required to ensure that all members of their management body, including the notified NEDs, are fit and proper on an ongoing basis, and the PRA would expect firms to consider whether their notified NEDs have complied with these fundamental conduct standards as part of assessing

whether those individuals continue to meet that 'fit and proper' standard.

Transitional arrangements for notified NEDs

4.21 Some respondents asked about the transitional arrangements for NEDs who are already approved persons. NEDs who are approved as CF2 immediately prior to commencement of the new regime will not need to go through the full assessment and notification procedure.⁽²⁾ Instead, firms will need to notify the PRA which of their existing CF2s will be notified NEDs once the SMR comes into effect — ie those NEDs who will be remaining as NEDs and not performing an SMF. This reflects the approach to grandfathering the PRA has taken for Senior Managers. This notification should be made using Form K, the same Form that firms will use to notify the PRA and the FCA of the approved persons who are becoming Senior Managers.

The PRA's powers in relation to notified NEDs

4.22 A number of respondents asked what action the PRA would take if it was not satisfied that a notified NED was fit and proper. Generally, where the PRA has concerns about the membership of a firm's board; it would raise those concerns with the firm's Chairman, who has responsibility for the composition and functioning of the board. The PRA also has a range of other options, ranging from seeking additional information, through to use of the prohibition power in section 56 of FSMA where necessary. The PRA will consider the most appropriate course of action based on the nature, severity and urgency of its concerns.

The presumption of responsibility

4.23 The draft supervisory statement consulted on in CP7/15 also set out how the PRA intends to use the presumption of responsibility — that is to take disciplinary action under Condition C in section 66B of FSMA.

4.24 The majority of respondents supported the PRA's proposed approach and welcomed the clarifications and examples in the draft supervisory statement. Some respondents asked the PRA to expressly commit to only applying the presumption of responsibility where there was a material or significant breach of a 'relevant requirement'. Section 66B(5) of FSMA applies to any breach of a relevant requirement and the PRA cannot change this by imposing a materiality or *de minimis* threshold for applying the Presumption of Responsibility in its rules. However, in practice, the PRA is likely to take into account the nature and seriousness of the contravention in exercising its statutory powers under section 66B(5) of FSMA.

(1) This requirement is set out in Chapter 3 of the Fitness and Propriety Part, which is issued alongside this policy statement.

(2) This is set out in Chapter 4 of the Fitness and Propriety Part of the PRA Rulebook.

4.25 Respondents also asked the PRA to clarify in which circumstances it would look beyond statements of responsibilities and management responsibilities maps to identify the Senior Manager(s) responsible for the area where the breach occurred. Given that the purpose of statements of responsibilities and responsibilities maps is precisely to provide clarity of which senior managers are responsible for the main areas of a firm, it follows that accurate, clear and up-to-date statements of responsibility and responsibilities maps should identify which senior managers are responsible. However, in principle, the PRA can consider all relevant information to assist it in making this determination and will do so if necessary.

4.26 Finally, respondents encouraged the PRA not to follow a tick-box approach when considering whether a Senior Manager has taken reasonable steps to prevent a breach within the meaning of section 66B of FSMA. The PRA confirms that the examples of possible reasonable steps in the supervisory statement are indicative and non-exhaustive and that it will consider all relevant facts and circumstances in determining whether a Senior Manager took reasonable steps to prevent a breach of a relevant requirement in a particular case.

5 Cost benefit analysis

5.1 Section 138J(5) of FSMA requires the PRA to publish a cost benefit analysis of any changes to the consultation proposals which the PRA considers to be significant.

5.2 The PRA considers that the final rules published in this policy statement do not differ significantly from the drafts published for consultation. In response to feedback from respondents, the PRA has sought to provide additional clarification on certain aspects of the regime, both in the rules themselves and in this policy statement and accompanying supervisory statement, which should enhance the clarity and transparency of some of the requirements. By doing so, the PRA promotes the effectiveness of the proposed regime through eliminating potential ambiguity and confusion, and mitigates the associated costs.

Impact on mutuals

5.3 The PRA does not consider that the changes between the draft published for consultation and the final rules published here will have a significantly different impact on mutuals compared to other types of firm.

Appendices

-
- 1 PRA Rulebook: CRR Firms Non-CRR Firms: Individual Accountability Instrument (No 2) 2015

 - 2 PRA Supervisory Statement 28/15: Strengthening individual accountability in banking
(see SS28/15 landing page:
www.bankofengland.co.uk/pr/Pages/publications/ss/2015/ss2815.aspx)

 - 3 Statement of policy: Conditions, time limits and variations of approval
(see statement of policy landing page:
www.bankofengland.co.uk/pr/Pages/publications/sop/2015/conditions.aspx)

**PRA RULEBOOK: CRR FIRMS NON-CRR FIRMS: INDIVIDUAL ACCOUNTABILITY INSTRUMENT
(NO 2) 2015**

Powers exercised

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

- (1) section 59 (Approval for particular arrangements);
- (2) section 60 (Applications for approval);
- (3) section 60A (Vetting of candidates by relevant authorised persons);
- (4) section 61 (Determination of applications);
- (5) section 62A (Changes of responsibilities of senior managers);
- (6) section 63F (Issuing of certificates);
- (7) section 64A (Rules of conduct);
- (8) section 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action);
- (9) section 137G (The PRA’s general rules);
- (10) section 137T (General supplementary powers); and

in exercise of the powers and related provisions in Articles, 2, 5, 6, 7, 8, 13, 15, 17, 19 and 20 of the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015 (SI 2015/492).

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

Pre-conditions to making

C. In accordance with section 138J of the Act (Consultation by the PRA), and Article 5, Article 13 and Article 22 of the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015, the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: CRR Firms Non-CRR Firms: Individual Accountability Instrument (No 2) 2015

D. The PRA makes the rules in Annexes A to I of this instrument.

Commencement

E. Annexes A to H come into force on 7 March 2016. Annex I comes into force on 13 July 2015.

Citation

F. This instrument may be cited as the PRA Rulebook: CRR Firms Non-CRR Firms: Individual Accountability Instrument (No 2) 2015.

By order of the Board of the Prudential Regulation Authority

26 June 2015

Annex A

Amendments to the Glossary

In the Glossary Part of the PRA Rulebook, insert the following new definitions:

credit union non-executive director

means a non-executive director of a credit union who is not an approved person in relation to that credit union.

notified non-executive director

means a non-executive director of a CRR firm who is not an approved person in relation to that firm.

Annex B

In this Annex, the deleted text is struck through and new text is underlined.

Part

SENIOR MANAGEMENT FUNCTIONS

Chapter content

1. APPLICATION AND DEFINITIONS
2. GENERAL
3. EXECUTIVE
4. OVERSIGHT
5. GROUP ENTITIES
6. CREDIT UNIONS
7. COMBINATION OF SENIOR MANAGEMENT FUNCTIONS

Links

1 APPLICATION AND DEFINITIONS

....

1.2 In this Part, the following definitions shall apply:

...

FCA activities

means a function which would, except for SUP10C.9.8R of the *FCA Handbook*, be an FCA governing function.

FCA responsibilities

means any of ~~any of the functions referred to in~~

(1) the responsibilities referred to SYSC 4.7.7R (Table of FCA prescribed senior management responsibilities) of the *FCA Handbook*; and

(2) the responsibilities allocated under SYSC 4.7.8R of the *FCA Handbook* SYSC 4Annex 1G (The main business areas and management functions of a relevant authorised person).

~~of the *FCA Handbook*~~

....

1.3 This Part does not apply to a function performed by:

...

(11) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989; or

(12) a *person* acting as a nominee in relation to a voluntary arrangement under Part II (5 Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

2 GENERAL

...

2.4 (1) If a *person* has been approved to perform a *PRA senior management function* in relation to a *firm* and also performs a function which would, except for SUP10C.9.8R of the *FCA Handbook*, be an FCA governing function (~~such function, the *FCA activities*~~), performance of the *PRA senior management function* will include the performance of those *FCA activities*, provided the following conditions are met:

(a) the *PRA*'s approval to perform a *PRA senior management function* has been granted and continues in force;

(b) at the time of approval being granted by the *PRA*, that *person* was not subject to an *FCA approval* to perform ~~the~~ that particular *FCA governing function*;

- (c) the *firm* made the notification required by SUP10C.9.8 R (4) of the *FCA Handbook*; and
- (d) that *person* performs and is continuing to perform the ~~these~~ *FCA activities*.

....

2.6 If a *PRA approved person*:

- (1) (other than in the circumstances set out in 2.4 or 2.5), performs one or more *FCA responsibilities* ~~allocated under SYSC 4.7.5R of the *FCA Handbook*~~;

...

4 OVERSIGHT

....

4.3 The *Chairman of Risk Committee function* (SMF10) is the function of having responsibility for chairing, and overseeing the performance of any committee responsible for the oversight of the risk management systems, policies and procedures of a *firm* specified in Risk Control 2 SYSC 7.1 of the *PRA Handbook*, including where applicable to the *firm*, a committee established in accordance with Risk Control 3.1 SYSC 7.1.18R of the *PRA Handbook*.

4.4 The *Chairman of Audit Committee function* (SMF11) is the function of having responsibility for chairing, and overseeing the performance of any committee responsible for the oversight of the internal audit system of a *firm* specified in Compliance and Internal Audit 2 SYSC 6.2 of the *PRA Handbook*.

4.5 The *Chairman of Remuneration Committee function* (SMF12) is the function of having responsibility for chairing, and overseeing the performance of any committee responsible for the oversight of the design and the implementation of the remuneration policies of a *firm*, including where applicable to the *firm*, a committee established in accordance with Remuneration 7.4 SYSC 19A.3.12R of the *PRA Handbook*.

...

Annex C

In this Annex, the deleted text is struck through and new text is underlined.

Part

ALLOCATION OF RESPONSIBILITIES

Chapter content

- 1. APPLICATION AND DEFINITIONS**
- 2. STATEMENT OF RESPONSIBILITIES**
- 3. ALLOCATION OF RESPONSIBILITIES**
- 4. PRESCRIBED RESPONSIBILITIES**
- 5. PRESCRIBED RESPONSIBILITIES: SMALL FIRMS**
- 6. RECORDS**
- 7. CHAIRMAN'S OFFICE**

Links

1 APPLICATION AND DEFINITIONS

....

1.2 In this Part, the following definitions shall apply:

~~*ancillary services*~~

~~means any of the services listed in Section B of Annex I to *MiFID*.~~

...

~~*FCA other overall responsibility significant responsibility senior management function*~~

~~means the *FCA controlled function* specified in SUP10C.7.1R of the *FCA Handbook*.~~

~~*FCA business functions*~~

~~means any of the functions set out in SUP10C Annex 1R of the *FCA Handbook*.~~

~~*FCA responsibilities*~~

~~means any of the functions set out in~~

~~(1) any of the responsibilities set out in SYSC 4.7.7R (Table of FCA Prescribed senior management responsibilities) of the *FCA Handbook*; and~~

~~(2) any responsibility allocated under SYSC 4.7.8R of the *FCA Handbook* (SYSC 4 Annex 1G (The main business activities and functions of a relevant authorised person).~~

~~of the *FCA Handbook*.~~

....

~~*ring-fencing obligation requirement*~~

~~means any obligation, prohibition or other requirement imposed on a *ring-fenced body* by or under *FSMA*, by virtue as a consequence of it being a *ring-fenced body*, including any statutory instrument made under *FSMA* and any ring-fencing rule, but not including any rule made by the *FCA ring-fencing rule* or under s142G of *FSMA*.~~

....

1.3 This Part does not apply to a function performed by:

...

(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 Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989.

2 STATEMENT OF RESPONSIBILITIES

...

- 2.4 (1) A firm must have, at all times, a complete set of current and up to date statements of responsibilities for all persons approved to perform a PRA senior management function on its behalf.
- (2) A firm must prepare a statement of responsibilities for each PRA approved person as a single document covering every PRA senior management function and FCA designated senior management function for which
- (a) the PRA approved person has approval from the PRA or the FCA, as the case may be, to perform; or
- (b) an application for approval is being made.

3 ALLOCATION OF RESPONSIBILITIES

....

- 3.4 A firm which is a ring-fenced body must ensure that the ring-fenced body prescribed responsibility is allocated to each person who:
- (1) performs a PRA senior management function or, subject to 3.5(1), an FCA designated senior management function; and
- (2) is responsible for managing any area of the ring-fenced body's business that is subject to a ring-fencing ~~obligation requirement~~
- on behalf of the firm.
- 3.5 (1) A firm must not allocate a prescribed responsibility to a person who performs an FCA ~~other overall significant~~ responsibility senior management function.
- (2) A small CRR firm or a credit union must not allocate a small firm prescribed responsibility to a person who performs an FCA ~~other overall significant~~ responsibility senior management function.

4 PRESCRIBED RESPONSIBILITIES

- 4.1 Each of the responsibilities set out in this rule is a prescribed responsibility:

...

- (4) ~~responsibility for the allocation of all prescribed responsibilities in accordance with 3.1;~~

responsibility for the firm's performance of its obligations under Fitness and Propriety in respect of its notified non-executive directors;

...

- (15) responsibility for safeguarding the independence of, and overseeing the performance of, the internal audit function, including the performance of a *person* approved to perform the *Head of Internal Audit function* on behalf of the *firm*, in accordance with Compliance and Internal Audit 3 SYSC 6.2 (audit) of the PRA Handbook;
- (16) responsibility for safeguarding the independence of, and overseeing the performance of, the compliance function, including the performance of a *person* approved by the *FCA* to perform the *compliance oversight function* on behalf of the *firm*, in accordance with Compliance and Internal Audit 2 SYSC 6.1 (Compliance) of the PRA Handbook;
- (17) responsibility for safeguarding the independence of, and overseeing of the performance of, the risk function, including the performance of a *person* approved to perform the *Chief Risk function* on behalf of the *firm*, in accordance with Risk Control 3.4 and 3.5 SYSC 7.1.21R and SYSC 7.1.22R (Risk control) of the PRA Handbook;
- (18) responsibility for ~~overseeing the development of, developing and overseeing~~ implementation of the *firm's* remuneration policies and practices in accordance with Remuneration;
- ...
- (20) responsibility for the allocation of all prescribed responsibilities in accordance with 3.1.

4.2 Each of the responsibilities set out in this rule is a *prescribed responsibility* in the circumstances specified:

- ...
- (2) if the *firm* does not have a *person* who performs the *Chief Risk function*, responsibility for the compliance of the *firm's* risk management systems, policies and procedures with the requirements of Risk Control 2.1 to 2.4 SYSC 7.1.2R to SYSC 7.1.5R of the PRA Handbook;
- ...
- (4) if the *firm* is a *ring-fenced body*, responsibility for ensuring that those aspects of the *firm's* affairs for which a *person* is responsible for managing are in compliance with the *ring-fencing obligations requirements*.
- ...

6 RECORDS

6.2 A *management responsibilities map* must in particular include:

- (1) the names of all the *firm's approved persons* (including *FCA approved persons*), *notified non-executive directors, credit union non-executive directors and senior management* and the responsibilities held by each, including all ~~*FCA business functions and FCA responsibilities*~~;

....

Annex D

Amendments to the Certification Part

In this Annex, new text is underlined and deleted text is struck through.

Part

CERTIFICATION

Chapter content

- 1. APPLICATION AND DEFINITIONS**
- 2. PERFORMANCE OF CERTIFICATION FUNCTIONS**

Links

1 APPLICATION AND DEFINITIONS

1.1 ...

...

1.3 This Part does not apply to a function performed in relation to the firm by:

...

(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 Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989;

(5) a *PRA approved person*;

(6) a *person who performs an FCA controlled function*; or

(7) a *non-executive director* in relation to their *non-executive director* function.

...

Annex E

Amendments to the Fitness and Propriety Part

In this Annex, new text is underlined and deleted text is struck through.

Part

FITNESS AND PROPRIETY

Chapter content

1. APPLICATION AND DEFINITIONS
2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS
3. CONDUCT STANDARDS
4. NOTIFIED NON-EXECUTIVE DIRECTORS – NOTIFICATIONS
5. [REGULATORY REFERENCES - not yet in force]
6. FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS

Links

1 APPLICATION AND DEFINITIONS

...

1.3 In this Part, the following definitions shall apply:

continued approval

has the meaning in Senior Managers Regime – Transitional Provisions 1.2.

...

2 FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

2.1 ~~(1)~~ A firm must not make a *senior management application* in relation to a *person* unless it is satisfied that *person* is fit and proper to perform the *PRA senior management function* to which the application relates.

2.2 ~~(2)~~ A firm must not issue a *certificate* in relation to a *person*, unless it is satisfied that *person* is fit and proper to perform the *certification function* to which the *certificate* relates.

2.3 A firm must not appoint a *person* as a *notified non-executive director* or *credit union non-executive director*, unless it is satisfied that *person* is fit and proper to perform that *non-executive director* role.

2.4 A firm must ensure that each member of its *management body* is at all times fit and proper.

[Article 91(1) CRD IV]

2.5 ~~(3)~~ In deciding whether a *person* is fit and proper, a *firm* must be satisfied that the *person*:

...

2.6 Before deciding whether a *person* is fit and proper, a *firm* must take reasonable steps to obtain appropriate references covering at least the past 5 years from that *person's* current and previous employers, and from organisations at which that *person* served as, or is currently, a non-executive director.

2.7 ~~(5)~~ In deciding whether a *person* (P) is fit and proper in connection with a *senior management application* or on appointment as a *notified non-executive director* or *credit union non-executive director*, a *firm* must:

...

2.8 If a firm engages a person for a continuous period of time it is only required to comply with 2.6 and 2.7 the first time it determines that person is fit and proper in relation to a senior management function, non-executive director function or certification function.

3 CONDUCT STANDARDS

- 3.1 A firm must contractually require any PRA approved person, notified non-executive director or credit union non-executive director to:
- (a) act with integrity;
 - (b) act with due skill, care and diligence;
 - (c) be open and co-operative with the FCA, the PRA and other regulators; and
 - (d) disclose appropriately any information to the FCA or PRA which they would reasonably expect notice.
- 3.2 A firm must contractually require any PRA approved person to:
- (a) take reasonable steps to ensure that the business of the firm for which they are responsible is controlled effectively;
 - (b) take reasonable steps to ensure that the business of the firm for which they are responsible complies with relevant requirements and standards of the regulatory system; and
 - (c) take reasonable steps to ensure that any delegation of their responsibilities is to an appropriate person and that they oversee the discharge of the delegated responsibility effectively.

4 NOTIFIED NON-EXECUTIVE DIRECTORS - NOTIFICATIONS

- 4.1 This chapter applies to CRR firms only.
- 4.2 A firm must notify the PRA when a person becomes a notified non-executive director and shall provide the PRA with all of the information needed to assess whether that person is fit and proper.
- 4.2 If the notification referred to in 4.2 is in respect of a person who, on becoming a notified non-executive director, ceases to perform a PRA senior management function or an FCA designated senior management function, the firm is not required to provide information needed to assess the fitness and propriety of that person unless there has been a change in the information provided in respect of that person regarding fitness and propriety provided to the PRA or the FCA at the time the application for the approval for performance of the PRA senior management function or the FCA designated senior management function was made.
- 4.3 If a firm becomes aware of information which would reasonably be material to the assessment of a current or former notified non-executive director's fitness and propriety under this Part, it must inform the PRA in writing as soon as practicable.
- 4.4 Where a firm replaces an notified non-executive director because the firm considers that person no longer fulfils the requirements of 2.4, the firm must notify the PRA as soon as reasonably practicable.
- 4.5 Where a notified non-executive director assumes a new role with the firm or ceases to be a director of the firm, the firm must notify the PRA in writing as soon as reasonably practicable.

5 [NOT YET IN FORCE]

6 FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS

- 6.1 The requirement to obtain regulatory references in accordance with 2.6 does not apply to a *firm* in respect of any *person* to the extent that:
- (a) the *firm* is deciding whether the *person* is fit and proper for the purpose of issuing a *certificate*;
 - (b) the *person* will be performing a *certification function* from 7 March 2016; and
 - (c) immediately prior to 7 March 2016, the *person* performed the same function for the *firm*.
- 6.2 The requirement to obtain regulatory references in accordance with 2.6 does not apply to a *firm* in respect of any *person* who has *continued approval*.
- 6.3 The requirements of 2.3, 2.6, 2.7 and 4.2 do not apply to a *director* who, in relation to the *firm*:
- (a) on 7 March 2016 is a *notified non-executive director* or *credit union non-executive director*; and
 - (b) immediately prior 7 March 2016, was approved as a *non-executive director* or *credit union non-executive director*.
- 6.4 A *CRR firm* must notify the PRA before 7 March 2016 of any *director* who, in relation to the *firm*, will be a *notified non-executive director* on 7 March 2016 and who immediately prior to 7 March 2016 was approved as a *non-executive director*.

Annex F

In this Annex, the text is all new and is not underlined.

Part

CONDUCT RULES

Chapter content

- 1. APPLICATION AND DEFINITIONS**
- 2. INDIVIDUAL CONDUCT RULES**
- 3. SENIOR MANAGER CONDUCT RULES**

Links

1 APPLICATION AND DEFINITIONS

- 1.1 (1) This Part applies to every function a *person* (P) performs in relation to a *firm* (A) that is:
- (a) a *CRR firm*;
 - (b) a *credit union*; or
 - (c) [not yet in force].
- (2) This Part only applies if P:
- (a) is approved under section 59 of *FSMA* to perform a *senior management function* in relation to A;
 - (b) is an *employee* of A that should have been so approved;
 - (c) is an *employee* who is performing a function that would have been a controlled function but for *Senior Management Functions 2.3*; or
 - (d) performs a *certification function* in relation to A.
- (3) Chapter 3 only applies to a *person* in (2)(a) or (b).

1.2 In this Part, the following definitions shall apply:

employee

has the meaning given in Certification 1.3.

FCA designated senior management function

means an *FCA controlled function* specified in *SUP 10C.4.3R* of the *FCA Handbook*.

senior management function

means either a *PRA senior management function* or an *FCA designated senior management function*.

2 INDIVIDUAL CONDUCT RULES

- 2.1 **Individual Conduct Rule 1:** You must act with integrity.
- 2.2 **Individual Conduct Rule 2:** You must act with due skill, care and diligence.
- 2.3 **Individual Conduct Rule 3:** You must be open and co-operative with the *FCA*, the *PRA* and other regulators.

3 SENIOR MANAGER CONDUCT RULES

- 3.1 **Senior Manager Conduct Rule 1:** You must take reasonable steps to ensure that the business of the *firm* for which you are responsible is controlled effectively.
- 3.2 **Senior Manager Conduct Rule 2:** You must take reasonable steps to ensure that the business of the *firm* for which you are responsible complies with the relevant requirements and standards of the *regulatory system*.
- 3.3 **Senior Manager Conduct Rule 3:** You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate *person* and that you oversee the discharge of the delegated responsibility effectively.
- 3.4 **Senior Manager Conduct Rule 4:** You must disclose appropriately any information of which the *FCA* or *PRA* would reasonably expect notice.

Annex G

Amendments to Notifications Part

In this Annex, new text is underlined.

Part

NOTIFICATIONS

Chapter content

1. APPLICATION AND DEFINITIONS
2. GENERAL NOTIFICATION REQUIREMENTS
3. LLOYD'S OF LONDON
4. NOTIFIED PERSONS
5. CORE INFORMATION REQUIREMENTS
6. INACCURATE, FALSE OR MISLEADING INFORMATION
7. FORM AND METHOD OF NOTIFICATION
8. SPECIFIC NOTIFICATIONS
9. FINANCIAL CONGLOMERATE NOTIFICATIONS
10. FORMS
11. CONDUCT RULES: NOTIFICATIONS

Links

Annex B
Amendments to Notifications Part

In the Notifications Part of the PRA Rulebook, insert the following new definitions in 1.2 and new chapter 11.

1 APPLICATION AND DEFINITIONS

1.2 disciplinary action

has the meaning given in section 64C of FSMA.

conduct rules

means the rules in Conduct Rules 2 and 3.

...

11 CONDUCT RULES: NOTIFICATIONS

11.1 This Chapter applies to every firm that is:

(a) a CRR firm;

(b) a credit union; or

(c) [not yet in force].

11.2 If a firm knows or suspects that a person has failed to comply with any conduct rules it must notify the PRA.

11.3 If a firm is required to notify the PRA in compliance with 11.2 based on a suspicion, it must notify the PRA of any subsequent determination it makes in relation to that matter.

11.4 If a firm is required to notify the PRA in compliance with 11.2 to 11.3 based on a determination, it must notify the PRA of any different determination it subsequently makes in relation to that matter.

11.5 If a firm takes disciplinary action against a person relating to any action, failure to act, or circumstance that amounts to a breach of any conduct rule it must notify the PRA.

11.6 If a firm is required to notify the PRA under 11.2 to 11.5 in respect of persons performing certification functions, it must do so within seven business days of the point at which it determined the relevant requirement applied, by submitting Form L. A firm must not unreasonably delay its determination of whether or not the requirement applies.

11.7 If a firm is required to notify the PRA under 11.2 – 11.5 in respect of a person performing a senior management function, it must do so within seven business days of the point at which it determined the relevant requirement applied, by submitting:

(1) if the circumstances set out in Senior Managers Regime – Applications and Notifications 5.2 apply, Form C;

(2) and in all other cases, Form D.

A firm must not unreasonably delay its determination of whether or not the requirement applies.

11.8 If a firm becomes aware of information which would reasonably be material to the assessment of the fitness and propriety of a PRA approved person, or a person in respect of whom an application for approval to perform a PRA senior management function has been made, 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.

11.9 A firm other than a credit union must submit:

- (1) Form C and Form D using the ONA system; and
- (2) Form L using the PRA email address specified in Form L.

11.10 A credit union must submit:

- (1) Form C and Form D using the ONA system or in the manner set out in Notifications 7;
- (2) Form L using the PRA email address specified in Form L.

11.11 If, under any rule in this Chapter:

- (1) a firm is required to make a notification; and
- (2) 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 submit the specified form in the way set out in Notifications 7.

11.12 (1) Form C may be found [here](#).

(2) Form D may be found [here](#).

(3) Form L may be found [here](#).

Annex H

In this Annex, the text is all new and is not underlined.

Part

SENIOR MANAGERS REGIME – APPLICATIONS AND NOTIFICATIONS

Chapter content

1. APPLICATION AND DEFINITIONS
2. APPLICATION TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION
3. APPLICATION TO VARY A CONDITIONAL APPROVAL
4. WITHDRAWAL OF A SENIOR MANAGEMENT APPROVAL APPLICATION OR AN APPLICATION TO VARY A CONDITIONAL APPROVAL
5. CEASING TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION
6. CHANGE IN DETAILS OR RESPONSIBILITIES RELATING TO PRA APPROVED PERSON
7. PROCEDURE FOR MAKING APPLICATIONS AND NOTIFICATIONS
8. FORMS

Links

Annex

Senior Managers Regime – Applications and Notifications Part

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to every *firm* that is

- (1) a *CRR firm*; and
- (2) a *credit union*:

1.2 In this Part, the following definitions shall apply:

commencement date

means 7 March 2016.

current approved person approval

means

- (1) an approval granted to a *person* under section 59 of *FSMA* (Approval for particular arrangements):
 - (a) by the *PRA* for the performance of a *PRA senior management function*; or
 - (b) by the *FCA* for the performance for the performance of an *FCA designated senior management function* or a *significant influence function*;
- (2) a deemed approval given by either the *PRA* following the submission of a *grandfathering notification* under Senior Managers Regime (Transitional Provisions) or by the *FCA* under any equivalent rules in the *FCA Handbook*; or
- (3) for the purposes of 2.5(2) and 2.6(1)(a), an approval granted to that *person* under section 59 of *FSMA* by either the *PRA* or the *FCA* to perform a *controlled function* as defined in section 59 of *FSMA* prior to the *commencement date* but which ceased (i) on or before the *commencement date*; and (ii) during the period specified in 2.5(2) or 2.6(1)(a), as the case may be.

FCA designated senior management function

means an *FCA controlled function* specified in in *SUP 10C.4.3R* of the *FCA Handbook*.

grandfathering notification

has the meaning given in Senior Managers Regime – Transitional Provisions.

management responsibilities map

has the meaning given in Allocation of Responsibilities 6.

regulatory body

means any authority, body or *person* having, or who has had, responsibility for the supervision or regulation of any *regulated activities* or other financial services, whether within the *United Kingdom* or overseas.

PRA senior management approval application

means an application for approval to perform a *PRA senior management function* under section 59 of *FSMA*.

significant influence function

has the meaning given in the *FCA Handbook*.

statement of responsibilities

has the meaning given in Allocation of Responsibilities 1.

2 APPLICATION TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION

- 2.1 The *PRA* directs that a *firm* must make a *PRA senior management approval application* in accordance with 2.2, before the activities requiring approval commence.
- 2.2 The *PRA* directs that a *firm* must use form A (long form) for a *PRA senior management approval application* unless
- (1) the *firm* must use Form E under 2.3; or
 - (2) the *firm* must use Form A (shortened form) under 2.6.
- 2.3 The *PRA* directs that, subject to 2.4 and 2.5, a *firm* must use Form E for a *PRA senior management approval application* if the *PRA senior management approval application* is in respect of a *person* who has a *current approved person approval* and is either:
- (1) ceasing to perform a *PRA senior management function* and taking up a new *PRA senior management function* for the same *firm* or another member of its *group*; or
 - (2) ceasing to perform an *FCA designated senior management function* or *significant influence function* and taking up a *PRA senior management function* for the *firm* or another member of its *group*.
- 2.4 The *PRA* directs that a *firm* must not use Form E for a *PRA senior management approval application* if:
- (1) a notification has been made or should be made to the *PRA* or *FCA* under any of the following:
 - (a) section 63(2A) of *FSMA* (Duty to notify regulator of grounds for withdrawal of approval);
 - (b) section 64B(5) of *FSMA* (Notification of non-compliance with Conduct Rules or equivalent *FCA* rules);
 - (c) section 64C of *FSMA* (Requirement for relevant authorised persons to notify regulator of disciplinary action);

- (2) a notification has been made or should be made to the *PRA* under any of the rules in Notifications 11 or to the *FCA* under any equivalent provisions of the *FCA Handbook*; or
- (3) any of the circumstances in 5.2 apply in relation to:
 - (a) any *PRA senior management function* or *FCA designated senior management function* or *significant influence function* that that *person* is ceasing to perform; or
 - (b) any *PRA senior management function* or *FCA designated senior management function* or *significant influence function* that the *person* is continuing to perform in relation to that *firm* or a *firm* in the same *group*.

2.5 The *PRA* directs that a *firm* must not use form E if the *person* to whom the *PRA senior management approval application* relates:

- (1) has never before been approved:
 - (a) by the *PRA* to perform a *PRA senior management function*; or
 - (b) by the *FCA* to perform an *FCA designated senior management function* or a *significant influence function*for any *firm*;
or
- (2) has not been the subject of a *current approved person approval* in relation to any *firm* for more than six *months* prior to the date of application.

- 2.6 (1) The *PRA* directs that a *firm* must use form A (shortened form) for a *PRA senior management approval application* if
- (a) the *person* to whom the application relates:
 - (a) has at the time of application a *current approved person's approval*; or
 - (b) has had a *current approved person's approval* within the previous six months; and
 - (b) there have been no matters arising in relation to the fitness and propriety of the *person* to whom the *PRA senior management approval application* relates which mean that the information provided to the *FCA* or *PRA* regarding fitness and propriety in connection with a *current approved person's approval* may have changed since the application for the *current approved person's approval* was made.
- (2) A *firm* must not use Form A (shortened form) if the circumstances set out in 2.3 apply.
- 2.7 (1) The *PRA* directs that the form submitted for a *PRA senior management approval application* must be accompanied by a *statement of responsibilities* in accordance with Allocation of Responsibilities 2.1.

(2) A *statement of responsibilities* must be in the form set out [here](#).

2.8 A *firm* must (as part of its assessment of whether a *person* is a fit and proper *person* to perform a *PRA senior management function* and in order to verify the information contained in the application to carry out the *PRA senior management function*) obtain the fullest information that it is lawfully able to obtain about the *person* under Part V of the Police Act 1997 (Certificates of Criminal records, etc.) and related subordinated legislation of the *UK* or any part of the *UK* before making the application.

3 APPLICATION TO VARY A CONDITIONAL APPROVAL

3.1 A *firm* making an application to the *PRA* under section 63ZA of *FSMA* (for the variation of a conditional approval) must do so by submitting

(1) Form I; and

(2) a *statement of responsibilities* for the *PRA-approved person* concerned.

4 WITHDRAWAL OF A PRA SENIOR MANAGEMENT APPROVAL APPLICATION OR OF AN APPLICATION TO VARY A CONDITIONAL APPROVAL

4.1 The *PRA* directs that a *firm* withdrawing an outstanding *PRA senior management approval application* must do so using Form B.

4.2 A *firm* withdrawing an application made under section 63ZA of *FSMA* (Variation of senior managers approval at request of relevant authorised person) must do so using Form B.

5 CEASING TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION

5.1 (1) A *firm* must notify the *PRA* no later than seven *business days* after a *person* ceases to perform a *PRA senior management function*, using:

(a) Form E if a *person* ceases to perform a *PRA senior management function* and the *firm* is also making an application for the same *person* to perform another *PRA senior management function*; and

(b) in all other cases, Form C.

5.2 (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;

(b) relates to the resignation by the *PRA approved person* while under investigation by the *firm*, the *PRA* or any other *regulatory body*;

(c) includes a notification under any of the provisions set out in 2.4(1) and (2); or

(d) otherwise reasonably suggests that it may affect the *PRA's* assessment of the *PRA approved person's* fitness and propriety.

- 5.3 If a *PRA approved person* ceases to perform a *PRA senior management function* for a *firm* but continues to perform one or more *PRA senior management function* for the same *firm*, the *firm* must submit a revised *statement of responsibilities* for the remaining *PRA senior management function(s)*, using Form J.

6 CHANGE IN DETAILS OR RESPONSIBILITIES RELATING TO PRA APPROVED PERSONS

- 6.1 If a *PRA approved person's* title, name or national insurance number changes, the *firm* for which the *person* performs a *PRA senior management function* must notify the *PRA* of that change within seven *business days* of the *firm* becoming aware of the matter, using Form D.
- 6.2 If, in relation to a *firm* which has submitted an application on either Form A or Form E, as required by 2.2, any of the details relating to arrangements and *PRA senior management functions* are to change, the *firm* must notify the *PRA* using Form D as soon as reasonably practicable after the *firm* becomes aware of the proposed change.
- 6.3 (1) The *PRA* directs that if a *firm* is required to submit a revised *statement of responsibilities* under section 62A of FSMA, it must do so by submitting Form J with the revised *statement of responsibilities*.
- (2) A *firm* must not use Form J where the revisions are to be made as part of arrangements involving an application:
- (a) for approval for the *person* performing the *PRA senior management function* concerned to perform another *PRA senior management function* or *FCA designated senior management function* for the same *firm*; or
 - (b) to vary (under section 63ZA of FSMA) an approval for the *person* performing the *PRA senior management function* concerned to perform another *PRA senior management function* or *FCA designated senior management function* for the same *firm*.

7 PROCEDURE FOR MAKING APPLICATIONS AND NOTIFICATIONS

- 7.1 (1) The *PRA* directs that:
- (a) a *firm* other than a *credit union* must make any applications, notifications or submissions required by this Part by submitting the form specified using the *ONA system*; and
 - (b) a *credit union* must make any applications, notifications or submissions required by this Part by submitting the form specified:
 - (i) using the *ONA system*; or
 - (ii) in the manner set out in Notifications 7.
- 7.2 If, under any direction or rule in this Chapter:
- (1) a *firm* is required to make an application, notification or submission online; and

- (2) 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 submit the specified form in the way set out in Notifications 7.

8 FORMS

- 8.1 (1) Form A may be found [here](#).
- (2) Form B may be found [here](#).
- (3) Form C may be found [here](#).
- (4) Form D may be found [here](#).
- (5) Form E may be found [here](#).
- (6) Form I may be found [here](#).
- (7) Form J may be found [here](#).
- (8) Form L may be found [here](#).

Annex I

In this Annex, the text is all new and is not underlined.

Part

SENIOR MANAGERS REGIME -TRANSITIONAL PROVISIONS

Chapter content

1. APPLICATION AND DEFINITIONS
2. GENERAL
3. GRANDFATHERING NOTIFICATION REQUIREMENTS
4. PROCEDURE FOR MAKING GRANDFATHERING NOTIFICATIONS
5. UPDATING A GRANDFATHERING NOTIFICATION
6. TABLE OF FUNCTIONS FOR GRANDFATHERING
7. APPLICATIONS TO TAKE EFFECT FROM THE COMMENCEMENT DATE
8. FORMS

Links

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*; or
- (2) a *credit union*.

1.2 In this Part, the following definitions shall apply:

candidate

means a *person* in respect of whom a *firm* has made a *pending application*.

commencement date

means 7 March 2016.

continued approval

means approval to perform a *PRA senior management function* under section 59 of FSMA, granted pursuant to a *grandfathering notification*.

equivalent function

means a *PRA senior management function* or *FCA-designated senior management function* that is specified in 6 as equivalent for the purposes of articles 2(3)(b) and 11(c) of the *Transitional Order*, to a *pre-implementation controlled function*.

FCA controlled function

means a *controlled function* specified by the *FCA* under section 59 of *FSMA*.

FCA-designated senior management function

means any of the functions specified in column 3 (FCA-designated senior management functions) of the table set out in 6.

grandfathering notification

means a notice required to be sent to the *PRA* under article 2(1) or 11(b) of the *Transitional Order*, including any update to such a notice.

management responsibilities map

has the meaning given in Allocation of Responsibilities 6.

pending application

means an application for approval under section 60 of *FSMA* which:

- (1) has been received by the *FCA* or *PRA* from the *firm* on or before the *commencement date*, and
- (2) has not been determined or withdrawn.

PRA senior management function

means a function specified as a *controlled function* in Senior Management Functions 2 in relation to the carrying on of a *regulated activity* by a *firm*.

pre-implementation controlled function

means any of the *controlled functions* listed in column 1 of the table in 6.

statement of responsibilities

means a statement pursuant to article 2(3)(c) or 11(d) of the *Transitional Order* setting out the aspects of the affairs of the *firm* which it is intended that each relevant *person* will be responsible for managing in performing the notified functions.

Transitional Order

means the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015 (SI 2015/492).

2 GENERAL

- 2.1 The *PRA* directs that a *firm* must make a *grandfathering notification* using Form K before 8 February 2016.
- 2.2 The *PRA* directs that the notice required by article 6(1) of the *Transitional Order* must be provided to the *PRA* using Form K.
- 2.3 The *PRA* directs that the notice required by article 11(b) of the *Transitional Order* in respect of a *candidate* for whom *continued approval* is sought must be provided to the *PRA* in Form K as part of a *grandfathering notification*.

3 GRANDFATHERING NOTIFICATION REQUIREMENTS

- 3.1 A *firm* must ensure that the *grandfathering notification* sets out, in respect of each *approved person* or *candidate*:
- (1) each of the *pre-implementation controlled functions* for which the *person* is approved, or (in the case of a *candidate*) has a *pending application*, in relation to the *firm*;
 - (2) each *PRA senior management function* to be performed by the *person* on and after the *commencement date* in relation to the *firm*; and
 - (3) each *FCA-designated senior management function* (if any) to be performed by the *person* on and after the *commencement date* in relation to the *firm*.
- 3.2 The *PRA* directs that a *firm* must not specify in a *grandfathering notification* a *PRA senior management function* or an *FCA-designated senior management function* for a *person* which is not an *equivalent function* in the table in 6 or the table in FCA SUP TP 6.2.7 in relation to:
- (1) (for an *approved person*) any *pre-implementation controlled functions* for which the *person* has approval in relation to the *firm*; or
 - (2) (for a *candidate*) any *pre-implementation controlled functions* in respect of which there is a *pending application*.

3.3 The *PRA* directs that:

- (1) a *statement of responsibilities* must be submitted with the *grandfathering notification* in respect of each *approved person* or *candidate* for whom *continued approval* is sought; and
- (2) the *firm* must submit a *management responsibilities map*, showing the role of each *approved person* or *candidate* as at the *commencement date*, including the *person(s)* subject to the *grandfathering notification*.

3.4 The *PRA* directs that a *firm* must list in the *grandfathering notification* each *approved person* or *candidate* who, on the *commencement date*, will be acting in the capacity of a *non-executive director* but who will not be performing a *PRA senior management function* or *FCA designated senior management function*.

4 PROCEDURE FOR MAKING GRANDFATHERING NOTIFICATIONS

4.1 The *PRA* directs that, save as required by 4.2 :

- (1) A *firm* other than a *credit union* must make any applications, notifications or submissions, including updates, required by this Part using the *ONA system*; and
- (2) a *credit union* must make any applications, notifications or submissions, including updates, required by this Part:
 - (a) using the *ONA system*; or
 - (b) in the manner set out in Notifications 7.

4.2 If, under any direction or rule in this Chapter,

- (1) a *firm* is required to make an application, notification or submission online; and
- (2) 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* may submit the specified form in accordance with Notifications 7 (Form and method of notification).

5 UPDATING A GRANDFATHERING NOTIFICATION

5.1 The *PRA* directs that if, before the *commencement date*, there has been a significant change to the matters covered by any *statement of responsibilities* or the *management responsibilities map* provided pursuant to 3.3, the *firm* must provide a revised version to the *PRA* in accordance with the procedure in 4.

6 TABLE OF EQUIVALENT FUNCTIONS FOR GRANDFATHERING

6.1 The *PRA senior management functions* set out in column 2 of the table are specified as *equivalent functions*, in each case in relation to the *pre-implementation controlled functions* set out in the corresponding row of column 1 of the table below.

6.2 The *FCA functions* set out in column 3 of the table are specified as *equivalent functions*, in each case, in relation to the *pre-implementation controlled functions* set out in the corresponding row of column 1 of the table below.

Column 1	Column 2	Column 3
Pre-implementation PRA or FCA Controlled Function	PRA Senior Management Function	FCA-designated Senior Management Function
All firms apart from credit unions		
Director (CF1) Partner (CF4) Director of unincorporated association (CF5)	Chief Finance function (SMF2) Chief Risk function (SMF4) Head of Internal Audit (SMF5) Head of Key Business Area (SMF6) Group Entity Senior Manager (SMF7)	Executive Director (SMF3)
Non-executive director (CF2)	Group Entity Senior Manager (SMF7) Chairman (SMF9) Chair of the Risk Committee (SMF10) Chair of the Audit Committee (SMF11) Chair of the Remuneration Committee (SMF12) Senior independent director (SMF14)	Chair of the Nominations Committee (SMF13)
Chief executive (CF3)	Chief executive (SMF1)	
Systems and Controls (CF28)	Chief Finance function (SMF2) Chief Risk function (SMF4) Head of Internal Audit (SMF5)	
Significant management (CF29)	Head of Key Business Area (SMF6) Group Entity Senior Manager (SMF7)	Overall responsibility (SMF18)
Credit unions		

Column 1	Column 2	Column 3
PRA or FCA Controlled Function	PRA Senior Management Function	FCA-designated Senior Management Function
Director (CF1)	Credit Union Senior Manager (SMF8)	Executive Director (SMF3)
Non-executive director (CF2)	Credit Union Senior Manager (SMF8)	Chair of the Nominations Committee (SMF13)
Chief executive (CF3)	Credit Union Senior Manager (SMF8)	

- 6.3 The *PRA* directs that a *firm* must not specify in the *grandfathering notification* that any *person* shall perform any combination of *PRA senior management functions* which is prohibited by any other provision of the *PRA Rulebook* or the *FCA Handbook*.

7 APPLICATIONS TO TAKE EFFECT FROM THE COMMENCEMENT DATE

- 7.1 The *PRA* directs that a *firm* must not submit any application pursuant to Senior Managers Regime – Applications and Notifications 2, for a *person* to perform a *PRA senior management function*, before 1 January 2016.
- 7.2 The *PRA* directs that any application to perform a *PRA senior management function* which is made between 1 January 2016 and the day before the *commencement date* must:
- (a) be made on the correct form as directed by Senior Managers Regime – Applications and Notifications 2 (as if those provisions were in force); and
 - (b) be submitted as directed by Senior Managers Regime – Applications and Notifications 7 (as if those provisions were in force).
- 7.3 An application to perform a *PRA senior management function* which is made between 1 January 2016 and the day before the *commencement date* is made on the basis that it is treated as being made on the *commencement date*.

8 FORMS

- 8.1 Form K may be found [here](#)