

Chapter 22

Regulatory references

22.7 Getting references: additional rules and guidance for SMCR firms

Intra-group transfers

- 22.7.1 **R**
- (1) This *rule* applies when:
 - (a) an *SMCR firm* (A) would otherwise have to ask another *person* (B) for a reference under ■ SYSC 22.2.1R; and
 - (b) A and B are in the same *group*.
 - (2) A need not ask for a reference from B if there are adequate arrangements in place under which A has access to the same information sources as B to the extent that they are relevant to things A has to ask B under ■ SYSC 22.2.1R (Obligation to obtain references).
 - (3) If A only has access to some of the information sources in (2), A may ask for a reference that only covers the sources to which A does not have such access.
 - (4) If A, in accordance with this rule, does not ask for a reference or a full reference it must access the information resources referred to in this *rule* and get the relevant information within the time specified by ■ SYSC 22.2.3R.

- 22.7.2 **G**
- (1) ■ SYSC 22.7.1R means that a *firm* recruiting someone from another member of its *group* is not required to request a reference from the other where the *group* has centralised records or alternative measures in place to ensure sharing of relevant information between its members.
 - (2) The recruiting *firm* should be satisfied that the centralised or alternative measures ensure relevant information is made available as part of the fit and proper assessment of the recruit.

Who should be asked to give a reference

- 22.7.3 **G**
- The *Glossary* definition of *employer* covers more than just a conventional employer and so it may not always be obvious who a *person's employer* is. Therefore an *SMCR firm* appointing someone to a position that requires a reference may have to get the *employee's* help in identifying their previous *employers*.

- 22.7.4 **G**
- (1) ■ SYSC 22.2.1R (Obligation of an *SMCR firm* to try to obtain a reference) applies even if the *ex-employer* is not a *firm*.
 - (2) An *SMCR firm* should take all reasonable steps to try to obtain the reference in these circumstances. However, the *FCA* accepts that the previous *employer* may not be willing to give sufficient information.

Asking for a reference to be updated

- 22.7.5 **G**
- (1) ■ SYSC 22.2.1R (Obligation of an *SMCR firm* to try to obtain a reference) applies even if the *employer* has already got a reference for the *employee*. For example:
 - (a) an *SMCR firm* should have a reference whenever it renews the certificate of a *certification employee*; and
 - (b) changing jobs within the same *SMCR firm* may require a reference.
 - (2) However, the *SMCR firm* does not necessarily need to obtain a new reference each time (a) or (b) above occurs. That is because an existing reference will very often still be appropriate for the purpose (see ■ SYSC 22.7.6G to ■ SYSC 22.7.8G).

- 22.7.6 **G**
- If an *SMCR firm* (A):
- (1) appoints someone (P) to a *certification function* position;
 - (2) obtains a reference from an *ex-employer*; and
 - (3) later wishes to renew P's certificate under the certification regime;

it is unlikely that A will need to ask for another reference from that *ex-employer* or ask for it to be reissued unless there is a change in P's role of the type described in ■ SYSC 27.2.15G (major changes in role).

- 22.7.7 **G**
- (1) If an *SMCR firm* (A):
 - (a) appoints someone (P) to a *certification function* or an *approved person* position;
 - (b) obtains a reference from an *ex-employer* (B); and
 - (c) later wishes to:
 - (i) appoint P to another *certification function* or *approved person* position; or
 - (ii) keep P in the same *certification function* but make a change in P's role of the type described in ■ SYSC 27.2.15G (major changes in role), whether that change is made at a time when the certificate has not yet come up for renewal or at the time it is being reissued; or
 - (iii) move P from a *certification function* to an *approved person* position or vice versa;

A should consider whether to ask B to reissue or amend its reference.

22.7.8

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If:

- (2) A may decide that it is not necessary to ask B to reissue or amend its reference. For example, A may decide that:
 - (a) the existing reference already covers everything necessary; or
 - (b) (where B is not a *firm*) B will not give any further information.

- (1) a *firm* (A) appoints someone (P) to a *certification function* or *approved person* position;
- (2) A obtains a reference from an *ex-employer* (B);
- (3) later P transfers to a *certification function* or an *approved person* position with an *SMCR firm* in A's group (C);
- (4) B's reference is:
 - (a) addressed to all *firms* in A's group; or
 - (b) otherwise drafted so that it is clear that C may rely on it; and
- (5) C does not need to ask for the reference to be reissued or amended, taking account of ■ SYSC 22.7.6G and ■ SYSC 22.7.7G;

C may be able to rely on that reference without asking B to give another one.

When references are to be obtained

22.7.9

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If an *SMCR firm* is unable to obtain a reference by the time in column two of the table in ■ SYSC 22.2.3R, it should still try to obtain the reference as soon as possible afterwards.

22.7.10

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- (1) Where an *SMCR firm* needs to fill a vacancy for a *certification function* which could not have reasonably been foreseen, the *FCA* recognises that it may not be reasonable to expect the *SMCR firm* to obtain references prior to issuing a certificate.
- (2) In such cases, the *SMCR firm* should take up the reference as soon as reasonably possible.
- (3) If a reference obtained later raises concerns about the person's fitness and propriety, the *SMCR firm* should revisit its decision to issue the person with a certificate.

22.7.11

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- (1) Although this chapter (see ■ SYSC 22.2.3R) only requires an *SMCR firm* to try to get a reference for a *person* it is recruiting to perform an *FCA controlled function* or a *PRA controlled function* towards the end of the application process, the *FCA* would normally expect a *firm* to have obtained the reference before the application for approval is made.

- (2) The main examples of circumstances in which it would be reasonable for a *firm* to delay getting a reference are where asking for a reference earlier will create a serious risk of:
 - (a) breaching the confidentiality of a wider commercial or corporate transaction;
 - (b) prematurely triggering the need for a public announcement; or
 - (c) the *candidate* not applying for the position in the first place because it would reveal to the *candidate's* current *employer* the proposed move too soon.
- (3) The *FCA* may consider that it needs to see the information in a reference before it reaches a decision. If so, it may formally ask for that information and extend the time period in which it has to make its decision until it gets the reference. ■ SUP 10C.10.28G gives additional details about requests for further information and the effect they have on the period of time the *FCA* has to make a decision about an application.
- (4) *SMCR firm* are reminded that the *Act* itself requires a *firm* to be satisfied that a *candidate* is fit and proper before it makes an application for approval (see ■ SUP 10C.10.14G for more detail). ■ SYSC 22.7.11G(2) does not affect that obligation.