

Chapter 22

Regulatory references

22.7 Getting references: additional rules and guidance for SMCR firms

22.7.1 **R** (1) [deleted] [*Editor's note*: The text of this provision has been moved to ■ SYSC 22.8A.1R]

22.7.2 **G** [deleted] [*Editor's note*: The text of this provision has been moved to ■ SYSC 22.8A.2G]

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 a *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 to obtain a reference) applies even if the *ex-employer* is not a *firm*.

(2) A *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 to obtain references) applies even if the *employer* has already got a reference for the *employee*. For example:

(a) a *firm* should have a reference whenever it renews the certificate of a *certification employee*; and

(b) changing jobs within the same *firm* may require a reference.

(2) However, the *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 a *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

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- (1) If a 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.

- (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.

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[deleted] [Editor’s note: The text of this provision has been moved to ■ SYSC 22.8A.3G]

When references are to be obtained

22.7.9

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If a 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 a 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 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 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 a *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) *Firms* 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.