

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(EXTENSION OF COMMON PLATFORM PROVISIONS) INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 141 (Insurance business rules);
 - (c) section 145 (Financial promotion rules);
 - (d) section 145 (Money laundering rules);
 - (e) section 147 (Control of information rules);
 - (f) section 150(2) (Actions for damages);
 - (g) section 156 (General supplementary powers); and
 - (h) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2009.

Amendments to the Handbook and related material

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

(1)	(2)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex B
The Fit and Proper test for Approved Persons (FIT)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Interim Prudential sourcebook for Building Societies (IPRU(BSOC))	Annex E
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Insurance: Conduct of Business sourcebook (ICOBS)	Annex H
Supervision manual (SUP)	Annex I
Collective Investment Schemes sourcebook (COLL)	Annex J
Credit Unions sourcebook (CRED)	Annex K

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex M to this instrument.

Notes

- F. In this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Senior Management Arrangements Systems and Controls (Extension of Common Platform Provisions) Instrument 2008.

By order of the Board
25 September 2008

Annex A

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

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

SYSC 1.1 is moved to become Part 1 of SYSC 1 Annex 1 and is amended as shown there.

Delete SYSC 1.1. The deleted text is not shown.

Insert the following new section.

1.1A Application

1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

<u>Type of firm</u>	<u>Applicable chapters</u>
<u>Insurer</u>	<u>Chapters 2, 3, 11 to 18</u>
<u>Managing agent</u>	<u>Chapters 2, 3, 11, 12, 18</u>
<u>Society</u>	<u>Chapters 2, 3, 12, 18</u>
<u>Every other firm</u>	<u>Chapters 4 to 12, 18</u>

Amend SYSC 1.2 as shown.

1.2 Purpose

1.2.1 G The purposes of SYSC are:

- (1) to encourage *firms' directors* and *senior managers* to take appropriate practical responsibility for their *firms'* arrangements on matters likely to be of interest to the *FSA* because they impinge on the *FSA's* functions under the *Act*;
- (2) to increase certainty by amplifying *Principle 3*, under which a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
- (3) to encourage *firms* to vest responsibility for effective and responsible organisation in specific *directors* and *senior managers*; and

- (4) to create a common platform of organisational and systems and controls requirements for all firms subject to the ~~CRD and/or MiFID;~~ and.
- (5) ~~to set out high level organisational and systems and controls requirements for insurers.~~ [deleted]

SYSC 1.3 is moved to become Part 2 of SYSC 1 Annex 1 and is amended as shown there.

Delete SYSC 1.3. The text is not shown.

Insert the following new Annex at the end of SYSC 1. The text of this Annex 1 is made up of text taken from SYSC 1.1 and 1.3. The underlining and striking through shown below indicate the changes made to the text of SYSC 1.1 and 1.3 as a result of its inclusion in SYSC 1 Annex 1.

SYSC 1 Annex 1: Detailed application of SYSC

1.1 **Application of SYSC 2 and SYSC 3 to an insurer, a managing agent and the**
Part 1 **Society of Lloyd's**

~~Purpose of this section~~

- ~~1.1.2~~ G ~~[deleted]~~
- ~~1.1.4~~ G ~~[deleted]~~

Who?

- 1.1.1 R SYSC 2 and SYSC 3 only apply to an insurer, a managing agent and the Society of Lloyd's every firm except that:
 - (1) for an *incoming EEA firm* or an *incoming Treaty firm*:
 - (a) SYSC 2.1.1R and SYSC 2.1.2G do not apply;
 - (b) SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the *firm's Home State regulator*; and
 - (c) SYSC 3 applies, but only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the *firm's Home State regulator*;
 - (2) for an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*, SYSC 2 and SYSC 3 do not apply;

- ~~(2A)~~ for an *incoming Treaty firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*, SYSC 3.2.6AR to SYSC 3.2.6JG do not apply;
- ~~(3)~~
- ~~(3)~~ for a *sole trader*;
- ~~(4)~~
- (a) SYSC 2 does not apply as long as he does not employ applies but only if he employs any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements);
- (b) SYSC 3.2.6IR does not apply if he has no *employees*; and
- ~~(4)~~ for a *UCITS qualifier*;
- (a) SYSC 2.1.1R and SYSC 2.1.2G do not apply;
- (b) SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and only with respect to the activities in SYSC 1.1.4R;
- (c) SYSC 3 applies, but only with respect to the activities in SYSC 1.1.4R;
- ~~(5)~~ for an *authorised professional firm* when carrying on *non-mainstream regulated activities*, SYSC 3.2.6AR to SYSC 3.2.6JG do not apply;
- ~~(6)~~ for a *common platform firm*, SYSC 2 and 3 do not apply; and
- ~~(7)~~ SYSC 2 and SYSC 3 do not apply to an *incoming ECA provider* acting as such.
- ~~(5)~~

- 4.1.2 G (1) Question 12 in SYSC 2.1.6G contains guidance on SYSC 1 Annex 1.1.1R(1)(b) and (c).
- (2) SYSC 1 Annex ~~1.1.7R~~ 1.1.8R and SYSC 1.1.10R further restricts the territorial application of SYSC 2 and SYSC 3 for an *incoming EEA firm*; or an incoming Treaty firm ~~or UCITS qualifier~~.
- (3) SYSC 1 Annex 1.1.1R~~(4)~~(3) puts an incoming EEA firm on an equal footing with unauthorised *overseas persons* who utilise the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*.
- (4) Further *guidance* on which matters are reserved to a *firm's Home State regulator* can be found at SUP 13A Annex 2G.

What?

- 4.1.3 R SYSC 2 and SYSC 3 apply with respect to the carrying on of:

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
- (3) *ancillary activities* in relation to *designated investment business*, *home finance activity* and *insurance mediation activity*;

except that SYSC 3.2.6AR to SYSC 3.2.6JG do not apply as described in SYSC ~~1.1.3AR~~ 1 Annex 1.1.4R.

1.1.3A R SYSC 3.2.6AR to SYSC 3.2.6JG do not apply:
1.4

- (1) with respect to the activities described in SYSC 1 Annex 1.1.3R(2) and (3); or
- (2) in relation to the following *regulated activities*:
 - (a) *general insurance business*;
 - (b) *insurance mediation activity* in relation to a *general insurance contract* or *pure protection contract*;
 - (c) *long-term insurance business* which is outside the *Consolidated Life Directive* (unless it is otherwise one of the *regulated activities* specified in this rule);
 - (d) business relating to contracts which are within the *Regulated Activities Order* only because they fall within paragraph (e) of the definition of “contract of insurance” in article 3 of that Order;
 - (e)
 - (i) arranging, by the ~~Society of Lloyd’s~~, of deals in *general insurance contracts* written at Lloyd’s; and
 - (ii) *managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s*;
 - (f) ~~*mortgage mediation activity and administering a regulated mortgage contract*~~;
 - (gf) *home purchase finance mediation activity and administering a home purchase plan finance transaction*; and
 - (hg) *reversion activity*.

1.1.4 R SYSC 2 and SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also apply with
1.5 respect to the *communication* and *approval* of *financial promotions* which:

- (1) if *communicated* by an *unauthorised person* without *approval* would contravene section 21(1) of the *Act* (Restrictions on financial promotion); and
- (2) may be *communicated* by a *firm* without contravening section 238(1) of the *Act* (Restrictions on promotion of collective investment schemes).

~~4.1.5~~
1.6 R SYSC 2 and SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also:

- (1) apply with respect to the carrying on of *unregulated activities* in a *prudential context*; and
- (2) take into account any activity of other members of a *group* of which the *firm* is a member.

~~4.1.6~~
1.7 G SYSC ~~4.1.5R(2)~~ 1 Annex 1.1.6R(2) does not mean that inadequacy of a *group* member's systems and controls will automatically lead to a *firm* contravening, for example, SYSC 3.1.1R. Rather, the potential impact of a *group* member's activities, including its systems and controls, and any systems and controls that operate on a *group* basis, will be relevant in determining the appropriateness of the *firm's* own systems and controls.

Where?

~~4.1.7~~
1.8 R SYSC 2 and SYSC 3 apply with respect to activities carried on from an establishment maintained by the *firm* (or its *appointed representative* or, where applicable, its *tied agent*) in the *United Kingdom* unless another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case SYSC 2 and SYSC 3 apply with that wider scope in relation to the activity described in that *rule*.

~~4.1.8~~ G ~~An example of the type of rule referred to in SYSC 1.1.7R with a different territorial scope is the custody rules in the non-directive custody chapter. These rules apply, for certain UK firms, to activities carried on from branches in other EEA States as well as UK establishments (CASS 1.3.3R (General application where?)). Therefore SYSC 2 and SYSC 3 apply to the custody activities described in the non-directive custody chapter carried on from such a branch by such a UK firm. The UK firm must, for example, take reasonable care to establish systems and controls under SYSC 3.1.1R as are appropriate to those activities carried on from its EEA branches as well as from its UK establishments.~~

~~4.1.9~~ R SYSC 2 and SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also apply in a *prudential context* to a *UK domestic firm* with respect to activities wherever they are carried on.

~~4.1.10~~ R SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also applies in a *prudential context* to an *overseas firm* (other than an *incoming EEA firm*; or an incoming Treaty firm or UCITS qualifier) with respect to activities wherever

they are carried on.

- 4.1.11 G (1) In considering whether to take regulatory action under SYSC 2 or SYSC 3 in relation to activities carried on outside the *United Kingdom*, the FSA will take into account the standards expected in the market in which the *firm* is operating.
- (2) Most of the *rules* in SYSC 3 are linked to other requirements and standards under the *regulatory system* which have their own territorial limitations so that those SYSC *rules* are similarly limited in scope.

4.1.11A G ~~{deleted}~~

Actions for damages

- 4.1.12 R A contravention of the *rules* in SYSC 2 and SYSC 3 does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

Part 2 Application of the common platform requirements (SYSC 4 to 10)

Who?

- 4.3.1
2.1 R The *common platform requirements* apply to ~~a common platform firm~~ every *firm* apart from an *insurer*, a *managing agent* and the *Society of Lloyd's* unless provided otherwise in a specific *rule*.

2.2 R For an *incoming EEA firm* or an *incoming Treaty firm*:

- (1) the *rule* on responsibility of senior personnel (SYSC 4.3) does not apply;
- (2) the *common platform requirements* apply only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the *firm's Home State regulator*;
- (3) for an *incoming EEA firm* which has *permission only for cross-border services* and which does not carry on *regulated activities* in the *United Kingdom*, the *common platform requirements* do not apply;
- (4) for an *incoming Treaty firm* which has *permission only for cross-border services* and which does not carry on *regulated activities* in the *United Kingdom*, the *common platform requirements on financial crime* do not apply.

2.3 R For a *sole trader*:

- (1) SYSC 4.3 and 4.4 do not apply as long as he does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements);
- (2) SYSC 4.1.4R and SYSC 6.3.9R do not apply if he has no employees.
- 2.4 R For a UCITS qualifier:
- (1) the rule on responsibility of senior personnel (SYSC 4.3) does not apply; and
- (2) the common platform requirements apply in relation to the communication and approval of financial promotions only as set out in SYSC 1 Annex 1.2.12R.
- [Note: section 266 of the Act.]
- 2.5 R For an authorised professional firm when carrying on non-mainstream regulated activities, the common platform requirements on financial crime, conflicts of interest and Chinese walls do not apply.
- 2.6 R The common platform requirements do not apply to an incoming ECA provider acting as such.
- 1.3.1B G ~~Whilst the common platform requirements do not generally apply to~~
2.7 ~~incoming EEA firms, EEA MiFID investment firms are reminded in~~
particular that they must comply with the common platform record-keeping requirements in relation to a branch in the *United Kingdom*.
- What?
- 1.3.2 R The common platform organisational requirements apply with respect to the
2.8 carrying on of the following (unless provided otherwise within a specific rule):
- (1) *regulated activities;*
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc);
- (3) *ancillary activities;* and
- (4) in relation to *MiFID business, ancillary services*.
- 1.3.3 G The application of the provisions on the conflicts of interest in SYSC 10 is
2.9 set out in SYSC 10.1.1R and SYSC 10.2.1R.
- 1.3.4 R The provisions on record-keeping in SYSC 9 apply as set out in SYSC ~~1.3.2R~~
2.10 1 Annex 1.2.8R, except that they only apply to the carrying on of *ancillary activities* that are performed in relation to:

- (1) *designated investment business;*
- (2) *home finance activity;* and
- (3) *insurance mediation activity.*

1.3.5
2.11

R The *common platform requirements on financial crime* apply as set out in SYSC ~~1.3.2R~~ 1 Annex 1.2.8R, except that they do not apply:

- (1) with respect to:
 - (a) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
 - (b) *ancillary activities*; or
- (2) in relation to the following *regulated activities*:
 - (a) *general insurance business*;
 - (b) *insurance mediation activity* in relation to a *general insurance contract* or *pure protection contract*;
 - (c) *long-term insurance business* which is outside the *Consolidated Life Directive* (unless it is otherwise one of the *regulated activities* specified in this rule);
 - (d) business relating to contracts which are within the *Regulated Activities Order* only because they fall within paragraph (e) of the definition of “contract of insurance” in article 3 of that Order;
 - (e)
 - (i) arranging by the *Society of Lloyd’s* of deals in *general insurance contracts* written at Lloyd’s; and
 - (ii) *managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s*; ~~and~~
 - (f) *home finance mediation activity* and *administering a home finance transaction*; and
 - (g) *reversion activity.*

1.3.6
2.12

R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also apply with respect to the *communication and approval of financial promotions* which:

- (1) if *communicated* by an *unauthorised person* without *approval* would contravene section 21(1) of the Act (Restrictions on financial promotion); and

- (2) may be *communicated* by a *firm* without contravening section 238(1) of the *Act* (Restrictions on promotion of collective investment schemes).

1.3.7
2.13

R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also:

- (1) apply with respect to the carrying on of *unregulated activities* in a *prudential context*; and
- (2) take into account any activity of other members of a *group* of which the *firm* is a member.

1.3.8
2.14

G SYSC ~~1.3.7R(2)~~ 1 Annex 1.2.13R(2) does not mean that inadequacy of a *group* member's systems and controls will automatically lead to a *firm* contravening any of the *common platform organisational requirements*. Rather, the potential impact of a *group* member's activities, including its systems and controls, and any systems and controls that operate on a *group* basis, will be relevant in determining the appropriateness of the *firm's* own systems and controls.

Where?

1.3.9
2.15

R The *common platform requirements*, except the *common platform record-keeping requirements*, apply to a ~~*common platform firm*~~ in relation to activities carried on by it from an establishment in the *United Kingdom*.

1.3.10
2.16

R The *common platform requirements*, except the *common platform requirements on financial crime* and the *common platform record-keeping requirements*, apply to a ~~*common platform firm*~~ in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.

1.3.10A
2.17

R The *common platform record-keeping requirements* apply to activities carried on by:

- (1) a ~~*common platform firm*~~; ~~or~~
- (2) an ~~*EEA MiFID investment firm*~~;

from an establishment maintained in the *United Kingdom*, unless another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case the *common platform record-keeping requirements* apply with that wider scope in relation to the activity described in that *rule*.

[**Note:** article 13(9) of *MiFID*]

1.3.11
2.18

R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also apply in a *prudential context* to a *UK domestic firm* and to an *overseas firm* (other than an *incoming EEA firm* or an *Incoming Treaty firm*) with respect to activities wherever they are carried on.

Actions for damages

- 4.3.12 R A contravention of a *rule* in the *common platform requirements* does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

Insert the following new text in SYSC 1 Annex 1, which is not shown underlined:

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

- 3.1 G The *common platform requirements* apply in the following two ways (subject to the provisions in Part 2 of this Annex).
- 3.2 G For a *common platform firm*, they apply in accordance with Column A in the table below.
- 3.3 G For all other *firms* apart from *insurers, managing agents* and the *Society*, they apply in accordance with Column B in the table below. For these *firms*, where a *rule* is shown modified in Column B as ‘Guidance’, it should be read as *guidance* (as if “should” appeared in that rule instead of “must”) and should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm’s business.

Provision	COLUMN A	COLUMN B
SYSC 4	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents</i> and the <i>Society</i>
SYSC 4.1.1R	Rule	Rule
SYSC 4.1.2R	Rule	Guidance
SYSC 4.1.2AG	Not applicable	Guidance
SYSC 4.1.3R	Rule applies only to a <i>BIPRU firm</i>	Not applicable
SYSC 4.1.4R	Rule	(1) and (3) Guidance (2) Rule
SYSC 4.1.4AG	Not applicable	Guidance
SYSC 4.1.5R	Rule applies only to a <i>MiFID investment firm</i>	Not applicable
SYSC 4.1.6R	Rule	Guidance
SYSC 4.1.7R	Rule	Guidance
SYSC 4.1.7AG	Not applicable	Guidance
SYSC 4.1.8G	Guidance	Guidance
SYSC 4.1.9R	Rule	Not applicable

SYSC 4.1.10R	Rule	Guidance – except reference to SYSC 4.1.9R which does not apply to these <i>firms</i>
SYSC 4.1.10AG	Not applicable	Guidance
SYSC 4.1.11G	Guidance	Guidance
SYSC 4.2.1R	Rule	<ul style="list-style-type: none"> • UK branch of <i>non-EEA bank</i> – rule applies. • Other <i>firms</i> – Guidance
SYSC 4.2.1AG	Not applicable	<ul style="list-style-type: none"> • Guidance
SYSC 4.2.2R	Rule	<ul style="list-style-type: none"> • UK branch of a <i>non-EEA bank</i> – Rule applies • Other <i>firms</i> – this provision does not apply
SYSC 4.2.3G – 4.2.5G	Guidance	<ul style="list-style-type: none"> • UK branch of a <i>non-EEA bank</i> – Guidance • Other <i>firms</i> – these provisions do not apply
SYSC 4.2.6R	Rule	<ul style="list-style-type: none"> • UK branch of a <i>non-EEA bank</i> – Rule applies • Other <i>firms</i> – this provision does not apply
SYSC 4.3.1R	Rule	Rule (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYSC 4.3.2R	Rule	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYSC 4.3.2AG	Not applicable	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYSC 4.3.3G	Guidance	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)

SYSC 4.4.1R	Not applicable	Rule applies this section only to: (1) an <i>authorised professional firm</i> in respect of its <i>non-mainstream regulated activities</i> unless the <i>firm</i> is also conducting other <i>regulated activities</i> and has appointed <i>approved persons</i> to perform the <i>governing functions</i> with equivalent responsibilities for the <i>firm's non-mainstream regulated activities</i> and other <i>regulated activities</i> ; (2) an <i>oil market participant</i> ; (3) a <i>service company</i> ; (4) an <i>energy market participant</i> ; (5) a wholly-owned subsidiary of: <ul style="list-style-type: none"> ○ a local authority ○ a registered social landlord; (6) a <i>firm</i> with <i>permission</i> to carry on <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts</i> but no other <i>regulated activity</i> ; (7) an <i>incoming Treaty firm</i> , an <i>incoming EEA firm</i> and a <i>UCITS qualifier</i> , (but only SYSC 4.4.5 R(2) applies for these <i>firms</i>); and (8) a <i>sole trader</i>
SYSC 4.4.2G	Not applicable	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.3R	Not applicable	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.4G	Not applicable	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.5R	Not applicable	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R

Provision	COLUMN A	COLUMN B
SYSC 5	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 5.1.1R	Rule	Rule
SYSC 5.1.2G	Guidance	Guidance
SYSC 5.1.3G	Guidance	Guidance

SYSC 5.1.4G	Guidance	Guidance
SYSC 5.1.4AG	Guidance	Guidance
SYSC 5.1.5G	Guidance	Guidance
SYSC 5.1.5AG	Guidance	Guidance
SYSC 5.1.6R	Rule	Guidance
SYSC 5.1.7R	Rule	Guidance
SYSC 5.1.7AG	Not applicable	Guidance
SYSC 5.1.8G	Guidance	Guidance
SYSC 5.1.9G	Guidance	Guidance
SYSC 5.1.10G	Guidance	Guidance
SYSC 5.1.11G	Guidance	Guidance
SYSC 5.1.12R	Rule	Guidance
SYSC 5.1.12AG	Not applicable	Guidance
SYSC 5.1.13R	Rule	Rule
SYSC 5.1.14R	Rule	Guidance
SYSC 5.1.15G	Not applicable	Guidance

Provision	COLUMN A	COLUMN B
SYSC 6	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 6.1.1R	Rule	Rule
SYSC 6.1.2R	Rule	Guidance
SYSC 6.1.2AG	Not applicable	Guidance
SYSC 6.1.3R	Rule	<ul style="list-style-type: none"> • Guidance • This provision shall be read with the following additional sentence at the start. “Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to have a separate compliance function. Where a <i>firm</i> has a separate compliance function, the <i>firm</i> should also take into account 6.1.3R and 6.1.4R as guidance.”
SYSC 6.1.3AG	Not applicable	Guidance

SYSC 6.1.4R	Rule	(1) (3) and (4) Guidance (2) <ul style="list-style-type: none"> • Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for retail clients or professional clients. • Guidance for all other <i>firms</i>.
SYSC 6.1.5R	Rule	<ul style="list-style-type: none"> • Guidance • “<i>investment services and activities</i>” shall be read as “<i>financial services and activities</i>”
SYSC 6.1.6G	Not applicable	Guidance
SYSC 6.2.1R	Rule	Guidance
SYSC 6.2.1AG	Not applicable	Guidance
SYSC 6.2.2G	Guidance	Guidance
SYSC 6.3.1R	Rule	Rule
SYSC 6.3.2G	Guidance	Guidance
SYSC 6.3.3R	Rule	Rule
SYSC 6.3.4G	Guidance	Guidance
SYSC 6.3.5G	Guidance	Guidance
SYSC 6.3.6G	Guidance	Guidance
SYSC 6.3.7G	Guidance	Guidance
SYSC 6.3.8R	Rule	Rule
SYSC 6.3.9R	Rule	Rule
SYSC 6.3.10G	Guidance	Guidance

Provision	COLUMN A	COLUMN B
SYSC 7	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 7.1.1G	Guidance	Guidance
SYSC 7.1.2 R	Rule	Guidance
SYSC 7.1.2AG	Not applicable	Guidance
SYSC 7.1.3R	Rule	Guidance
SYSC 7.1.4R	Rule	Guidance
SYSC 7.1.4AG	Not applicable	Guidance
SYSC 7.1.5R	Rule	Guidance
SYSC 7.1.6R	Rule	Guidance
SYSC 7.1.7R	Rule	Guidance
SYSC 7.1.7AG	Not applicable	Guidance
SYSC 7.1.8G(1), (2)	(1) Guidance applies only to a <i>BIPRU firm</i> (2) Guidance	(1) Not applicable (2) Guidance
SYSC 7.1.9R	Rule applies only to a <i>BIPRU firm</i>	Not applicable

SYSC 7.1.10R	Rule applies only to a <i>BIPRU firm</i>	Not applicable
SYSC 7.1.11R	Rule applies only to a <i>BIPRU firm</i>	Not applicable
SYSC 7.1.12G	Guidance applies only to a <i>BIPRU firm</i>	Not applicable
SYSC 7.1.13R – 7.1.16R	Rule applies only to a <i>BIPRU firm</i>	Not applicable

Provision	COLUMN A	COLUMN B
SYSC 8	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 8.1.1R	Rule	Guidance
SYSC 8.1.1AG	Not applicable	Guidance
SYSC 8.1.2G	Guidance	Guidance
SYSC 8.1.3G	Guidance	Guidance
SYSC 8.1.4R	Rule	Guidance
SYSC 8.1.5R	Rule	Guidance
SYSC 8.1.5AG	Not applicable	Guidance
SYSC 8.1.6R	Rule	Rule
SYSC 8.1.7R	Rule	Guidance
SYSC 8.1.8R	Rule	Guidance
SYSC 8.1.9R	Rule	Guidance
SYSC 8.1.10R	Rule	Guidance
SYSC 8.1.11R	Rule	Guidance
SYSC 8.1.11AG	Not applicable	Guidance
SYSC 8.1.12G	Guidance	Guidance
SYSC 8.2	<i>MiFID investment firms</i> only	Not applicable
SYSC 8.3	<i>MiFID investment firms</i> only	Not applicable

Provision	COLUMN A	COLUMN B
SYSC 9	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 9.1.1R	Rule	Rule
SYSC 9.1.2R	Rule applies only in relation to <i>MiFID business</i>	Not applicable
SYSC 9.1.3R	Rule applies only in relation to <i>MiFID business</i>	Not applicable
SYSC 9.1.4G	Guidance	Guidance
SYSC 9.1.5G	Guidance	Guidance
SYSC 9.1.6G	Guidance	Guidance
SYSC 9.1.7G	Guidance applies only in relation to <i>MiFID business</i>	Not applicable

Provision SYSC 10	Column A Application to a <i>common platform firm</i>	Column B Application to all other <i>firms apart from insurers, managing agents and the Society</i>
SYSC 10.1.1R	Rule	Rule
SYSC 10.1.2G	Guidance	Guidance
SYSC 10.1.3R	Rule	Rule
SYSC 10.1.4R	Rule	Guidance – but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>
SYSC 10.1.4AG	Not applicable	Guidance
SYSC 10.1.5G	Guidance	Guidance
SYSC 10.1.6R	Rule	Guidance – but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>
SYSC 10.1.6AG	Not applicable	Guidance
SYSC 10.1.7R	Rule	Rule
SYSC 10.1.8R	Rule	Rule
SYSC 10.1.8AR	Rule	Rule
SYSC 10.1.9G	Guidance	Guidance
SYSC 10.1.10R	Rule	Guidance – but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>
SYSC 10.1.11R	Rule	Guidance – but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>
SYSC 10.1.11AG	Not applicable	Guidance

SYSC 10.1.12G – SYSC 10.1.15G	Guidance	Guidance
SYSC 10.1.16R	Not applicable	Rule
SYSC 10.2.1R	Rule	Rule
SYSC 10.2.2R	Rule	Rule
SYSC 10.2.3G	Guidance	Guidance
SYSC 10.2.4R	Rule	Rule
SYSC 10.2.5G	Guidance	Guidance

Amend SYSC 2 as shown.

2.1.6 G Frequently asked questions about allocation of functions in SYSC 2.1.3R

This table belongs to SYSC 2.1.5G

	Question	Answer
	...	
11	How does the requirement to allocate the functions in SYSC 2.1.3R apply to an <i>overseas firm</i> which is not an <i>incoming EEA firm</i> , <i>incoming Treaty firm</i> or <i>UCITS qualifier</i> ?	<p>The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 2.1.4R, but:</p> <p>(1) The responsibilities that must be apportioned and the systems and controls that must be overseen are those relating to activities carried on from a <i>UK</i> establishment with certain exceptions (see SYSC 4.1.7R-1 Annex 1.1.7R). Note that SYSC 4.1.10R-1 Annex 1.1.10R does not extend the territorial scope of SYSC 2 for an <i>overseas firm</i>.</p> <p>...</p>
12	How does the requirement to allocate the functions in SYSC 2.1.3R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	<p>SYSC 4.1.1R(2)-1 Annex 1.1.1R and SYSC 4.1.7R-1 Annex 1.1.8R restrict the application of SYSC 2.1.3R for such a <i>firm</i>. Accordingly:</p> <p>...</p>
...		

Amend SYSC 4 as shown (unamended paragraphs are included to assist readers).

4.1 General requirements

- 4.1.1 R A ~~common platform~~ firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

[**Note:** article 22(1) of the *Banking Consolidation Directive*, article 13(5) second paragraph of *MiFID*]

- 4.1.2 R ~~The~~ For a *common platform firm*, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R must be comprehensive and proportionate to the nature, scale and complexity of the *common platform firm's* activities and must take into account the specific technical criteria described in SYSC 4.1.7R, SYSC 5.1.7R and SYSC 7.

[**Note:** article 22(2) of the *Banking Consolidation Directive*]

- 4.1.2A G Other firms should take account of the comprehensiveness and proportionality rule (SYSC 4.1.2R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 4.1.3 R A *BIPRU firm* must ensure that its internal control mechanisms and administrative and accounting procedures permit the verification of its compliance with *rules* adopted in accordance with the *Capital Adequacy Directive* at all times.

[**Note:** article 35(1) final sentence of the *Capital Adequacy Directive*]

- 4.1.4 R A ~~common platform~~ firm (with the exception of a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the *firm*, and the nature and range of the (for a common platform firm) investment services and activities or (for every other firm) financial services and activities undertaken in the course of that business:

- (1) (if it is a common platform firm) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- (2) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and

procedures at all levels of the *firm*; and

- (3) (if it is a *common platform firm*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*.

[**Note:** articles 5(1) final paragraph, 5(1)(a), 5(1)(c) and 5(1)(e) of the *MiFID implementing Directive*]

4.1.4A G A *firm* that is not a *common platform firm* should take into account the decision-making procedures and effective internal reporting rules (SYSC 4.1.4R(1) and (3)) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

4.1.5 R A *MiFID investment firm* must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[**Note:** article 5(2) of the *MiFID implementing Directive*]

Business continuity

4.1.6 R A *common platform firm* must take reasonable steps to ensure continuity and regularity in the performance of its *regulated activities*. To this end the *common platform firm* must employ appropriate and proportionate systems, resources and procedures.

[**Note:** article 13(4) of *MiFID*]

4.1.7 R A *common platform firm* must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its *regulated activities*, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its *regulated activities*.

[**Note:** article 5(3) of the *MiFID implementing Directive* and annex V paragraph 13 of the *Banking Consolidation Directive*]

4.1.7A G Other *firms* should take account of the business continuity rules (SYSC 4.1.6R and 4.1.7R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

4.1.8 G The matters dealt with in a business continuity policy should include:

- (1) resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;
- (2) the recovery priorities for the *firm's* operations;
- (3) communication arrangements for internal and external concerned

- parties (including the *FSA*, *clients* and the press);
- (4) escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;
 - (5) processes to validate the integrity of information affected by the disruption; and
 - (6) regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with SYSC 4.1.10R.

Accounting policies

- 4.1.9 R A *common platform firm* must establish, implement and maintain accounting policies and procedures that enable it, at the request of the *FSA*, to deliver in a timely manner to the *FSA* financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

[**Note:** article 5(4) of the *MiFID implementing Directive*]

Regular monitoring

- 4.1.10 R A *common platform firm* must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with SYSC 4.1.4R to SYSC 4.1.9R and take appropriate measures to address any deficiencies.

[**Note:** article 5(5) of the *MiFID implementing Directive*]

- 4.1.10A G Other firms should take account of the regular monitoring rule (SYSC 4.1.10R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R, but ignoring the cross-reference to SYSC 4.1.5R and 4.1.9R.

Audit committee

- 4.1.11 G Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to form an audit committee. An audit committee could typically examine management’s process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the *regulatory system*, oversee the functioning of the internal audit function (if applicable) and provide an interface between management and external auditors. It should have an appropriate number of *non-executive directors* and it should have formal terms of reference.

4.2 Persons who effectively direct the business

- 4.2.1 R The *senior personnel* of a *common platform firm* or of the *UK branch of a non-EEA bank* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.
- [**Note:** article 9(1) of *MiFID* and article 11(1) second paragraph of the *Banking Consolidation Directive*]
- 4.2.1A G Other *firms* should take account of the senior personnel rule (SYSC 4.2.1R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- 4.2.2 R A *common platform firm* and the *UK branch of a non-EEA bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R.
- [**Note:** article 9(4) first paragraph of *MiFID* and article 11(1) first paragraph of the *Banking Consolidation Directive*]
- 4.2.3 G In the case of a *body corporate*, the persons referred to in SYSC 4.2.2R should either be executive *directors* or persons granted executive powers by, and reporting immediately to, the *governing body*. In the case of a *partnership*, they should be active *partners*.
- 4.2.4 G At least two independent minds should be applied to both the formulation and implementation of the policies of a *common platform firm* and the *UK branch of a non-EEA bank*. Where such a *common platform firm* nominates just two individuals to direct its business, the *FSA* will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence on, the way in which strategy is being implemented through day-to-day policy.
- 4.2.5 G Where there are more than two individuals directing the business of a *common platform firm* or the *UK branch of a non-EEA bank*, the *FSA* does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. However, at least two individuals should be involved in all such decisions. Both individuals’ judgement should be engaged so that major errors leading to difficulties for the *firm* are less likely to occur. Similarly, each individual should have sufficient experience and knowledge of the business and the necessary personal qualities and skills to detect and resist any imprudence, dishonesty or other irregularities by the other individual. Where a single individual, whether a chief executive, managing *director* or otherwise, is particularly dominant in such a *firm* this will raise doubts about whether SYSC 4.2.2R is met.

4.2.6 R If a *common platform firm* (other than a *credit institution*) or the *UK branch of a non-EEA bank* is:

- (1) a natural person; or
- (2) a legal person managed by a single natural person;

it must have alternative arrangements in place which ensure sound and prudent management of the *firm*.

[**Note:** article 9(4) second paragraph of *MiFID*]

4.3 Responsibility of senior personnel

4.3.1 R A *common platform firm* (with the exception of a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)), when allocating functions internally, must ensure that *senior personnel* and, where appropriate, the *supervisory function*, are responsible for ensuring that the *firm* complies with its obligations under the *regulatory system*. In particular, *senior personnel* and, where appropriate, the *supervisory function* must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the *firm's* obligations under the *regulatory system* and take appropriate measures to address any deficiencies.

[**Note:** article 9(1) of the *MiFID implementing Directive*]

4.3.2 R A *common platform firm* (with the exception of a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)), must ensure that:

- (1) ~~that~~ its *senior personnel* receive on a frequent basis, and at least annually, written reports on the matters covered by SYSC 6.1.2R to SYSC 6.1.5R, SYSC 6.2.1R and SYSC 7.1.2R, SYSC 7.1.3R and SYSC 7.1.5R to SYSC 7.1.7R, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies; and
- (2) the *supervisory function*, if any, ~~must receive~~ receives on a regular basis written reports on the same matters.

[**Note:** article 9(2) and article 9(3) of the *MiFID implementing Directive*]

4.3.2A G Other *firms* should take account of the written reports rule (SYSC 4.3.2R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

4.3.3 G The *supervisory function* does not include a general meeting of the

shareholders of a ~~common-platform~~ firm, or equivalent bodies, but could involve, for example, a separate supervisory board within a two-tier board structure or the establishment of a non-executive committee of a single-tier board structure.

4.3.4 G [deleted]

Insert the following new section after SYSC 4.3. The text is not shown underlined.

4.4 Apportionment of responsibilities

Application

- 4.4.1 R This section applies to:
- (1) an *authorised professional firm* in respect of its *non-mainstream regulated activities* unless the *firm* is also conducting other *regulated activities* and has appointed *approved persons* to perform the *governing functions* with equivalent responsibilities for the *firm's non-mainstream regulated activities* and other *regulated activities*;
 - (2) an *oil market participant*;
 - (3) a *service company*;
 - (4) an *energy market participant*;
 - (5) a wholly-owned subsidiary of:
 - (a) a local authority; or
 - (b) a registered social landlord;
 - (6) a *firm* with *permission* to carry on *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity*;
 - (7) an *incoming Treaty firm*, an *incoming EEA firm* or a *UCITS qualifier* (but only SYSC 4.4.5R(2) applies for these *firms*); and
 - (8) a *sole trader*, but only if he employs any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements).
- 4.4.2 G This section does not apply to a *common platform firm*.
- Maintaining a clear and appropriate apportionment
- 4.4.3 R A *firm* must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its *directors* and *senior managers* in such a way that:
- (1) it is clear who has which of those responsibilities; and
 - (2) the business and affairs of the *firm* can be adequately monitored and controlled by the *directors*, relevant *senior managers* and *governing body* of the *firm*.

4.4.4 G The role undertaken by a *non-executive director* will vary from one *firm* to another. Where a *non-executive director* is an *approved person*, for example where the *firm* is a *body corporate*, his responsibility and therefore liability will be limited by the role that he undertakes. Provided that he has personally taken due care in his role, a *non-executive director* would not be held disciplinarily liable either for the failings of the *firm* or for those of individuals within the *firm*. The *non-executive director* function, for the purposes of the *approved persons* regime is described in SUP 10.

Allocating functions of apportionment and oversight

4.4.5 R A *firm* must appropriately allocate to one or more individuals, in accordance with the following table, the functions of:

- (1) dealing with the apportionment of responsibilities under SYSC 4.4.3R; and
- (2) overseeing the establishment and maintenance of systems and controls under SYSC 4.1.1R.

1: Firm type	2: Allocation of both functions must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:
(1) A <i>firm</i> which is a <i>body corporate</i> and is a member of a <i>group</i> , other than a <i>firm</i> in row (2)	(1) the <i>firm's chief executive</i> (and all of them jointly, if more than one); or	the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and (2) <i>senior managers</i>
	(2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of: (a) the <i>group</i> ; or (b) a <i>group</i> division within which some or all of the <i>firm's regulated activities</i> fall	
(2) An <i>incoming EEA firm</i> or <i>incoming Treaty</i>	(not applicable)	the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and

<i>firm</i> (note: only the functions in SYSC 4.4.5R(2) must be allocated)		(2) <i>senior managers</i>
(3) Any other <i>firm</i>	the <i>firm's chief executive</i> (and all of them jointly, if more than one)	the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and (2) <i>senior managers</i>
Note: Column 2 does not require the involvement of the <i>chief executive</i> or other executive <i>director</i> or <i>senior manager</i> in an aspect of corporate governance if that would be contrary to generally accepted principles of good corporate governance.		

4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
1	Does an individual to whom a function is allocated under SYSC 4.4.5R need to be an <i>approved person</i> ?	An individual to whom a function is allocated under SYSC 4.4.5R will be performing the <i>apportionment and oversight function</i> (CF 8, see SUP 10.7.1R) and an application must be made to the FSA for approval of the individual before the function is performed under section 59 of the Act (Approval for particular arrangements). There are exceptions from this in SUP 10.1 (Approved persons - Application).
2	If the allocation is to more than one individual, can they perform the functions, or aspects of the functions, separately?	If the functions are allocated to joint <i>chief executives</i> under SYSC 4.4.5R, column 2, they are expected to act jointly. If the functions are allocated to an individual under SYSC 4.4.5R, column 2, in addition to individuals under SYSC 4.4.5R, column 3, the former may normally be expected to perform a leading role in relation to the functions that reflects his position. Otherwise, yes.
3	What is meant by “appropriately allocate” in this context?	The allocation of functions should be compatible with delivering compliance with <i>Principle 3</i> , SYSC 4.4.3R and SYSC 4.1.1R. The FSA considers that allocation to one or two individuals is likely to be appropriate for most <i>firms</i> .

4	If a committee of management governs a <i>firm</i> or <i>group</i> , can the functions be allocated to every member of that committee?	Yes, as long as the allocation remains appropriate (see Question 3). If the <i>firm</i> also has an individual as <i>chief executive</i> , then the functions must be allocated to that individual as well under SYSC 4.4.5R, column 2 (see Question 7).
5	Does the definition of <i>chief executive</i> include the possessor of equivalent responsibilities with another title, such as a managing <i>director</i> or managing <i>partner</i> ?	Yes.
6	Is it possible for a <i>firm</i> to have more than one individual as its <i>chief executive</i> ?	Although unusual, some <i>firms</i> may wish the responsibility of a <i>chief executive</i> to be held jointly by more than one individual. In that case, each of them will be a <i>chief executive</i> and the functions must be allocated to all of them under SYSC 4.4.5R, column 2 (see also Questions 2 and 7).
7	If a <i>firm</i> has an individual as <i>chief executive</i> , must the functions be allocated to that individual?	<p>Normally, yes, under SYSC 4.4.5R, column 2.</p> <p>But if the <i>firm</i> is a <i>body corporate</i> and a member of a <i>group</i>, the functions may, instead of being allocated to the <i>firm's chief executive</i>, be allocated to a <i>director</i> or <i>senior manager</i> from the <i>group</i> responsible for the overall management of the <i>group</i> or of a relevant <i>group</i> division, so long as this is appropriate (see Question 3). Such individuals will nevertheless require approval by the <i>FSA</i> (see Question 1).</p> <p>If the <i>firm</i> chooses to allocate the functions to a <i>director</i> or <i>senior manager</i> responsible for the overall management of a relevant <i>group</i> division, the <i>FSA</i> would expect that individual to be of a seniority equivalent to or greater than a <i>chief executive</i> of the <i>firm</i> for the allocation to be appropriate.</p> <p>See also Question 14.</p>
8	If a <i>firm</i> has a <i>chief executive</i> , can the functions be allocated to other individuals in	Yes. SYSC 4.4.5R, column 3, permits a <i>firm</i> to allocate the functions, additionally, to the <i>firm's</i> (or where applicable the <i>group's</i>) <i>directors</i> and <i>senior managers</i> as long as this is

	addition to the <i>chief executive</i> ?	appropriate (see Question 3).
9	What if a <i>firm</i> does not have a <i>chief executive</i> ?	<p>Normally, the functions must be allocated to one or more individuals selected from the <i>firm's</i> (or where applicable the <i>group's</i>) <i>directors</i> and <i>senior managers</i> under SYSC 4.4.5R, column 3.</p> <p>But if the <i>firm</i>:</p> <p>(1) is a <i>body corporate</i> and a member of a <i>group</i>; and</p> <p>(2) the <i>group</i> has a <i>director</i> or <i>senior manager</i> responsible for the overall management of the <i>group</i> or of a relevant <i>group</i> division;</p> <p>then the functions must be allocated to that individual (together, optionally, with individuals from column 3 if appropriate) under SYSC 4.4.5R, column 2.</p>
10	What do you mean by “ <i>group</i> division within which some or all of the <i>firm's regulated activities</i> fall”?	<p>A “division” in this context should be interpreted by reference to geographical operations, product lines or any other method by which the <i>group's</i> business is divided.</p> <p>If the <i>firm's regulated activities</i> fall within more than one division and the <i>firm</i> does not wish to allocate the functions to its <i>chief executive</i>, the allocation must, under SYSC 4.4.5R, be to:</p> <p>(1) a <i>director</i> or <i>senior manager</i> responsible for the overall management of the <i>group</i>; or</p> <p>(2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of one of those divisions;</p> <p>together, optionally, with individuals from column 3 if appropriate. (See also Questions 7 and 9.)</p>
11	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>overseas firm</i> which is not an <i>incoming EEA firm</i> , <i>incoming Treaty firm</i> or	<p>The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 4.4.5R, but:</p> <p>(1) The responsibilities that must be apportioned and the systems and controls that must be overseen are those relating to activities</p>

	<p><i>UCITS qualifier?</i></p>	<p>carried on from a <i>UK</i> establishment with certain exceptions (see <i>SYSC 1 Annex 1.1.8R</i>). Note that <i>SYSC 1 Annex 1.1.10R</i> does not extend the territorial scope of <i>SYSC 4.4</i> for an <i>overseas firm</i>.</p> <p>(2) The <i>chief executive</i> of an <i>overseas firm</i> is the <i>person</i> responsible for the conduct of the <i>firm's</i> business within the <i>United Kingdom</i> (see the definition of "<i>chief executive</i>"). This might, for example, be the manager of the <i>firm's UK</i> establishment, or it might be the <i>chief executive</i> of the <i>firm</i> as a whole, if he has that responsibility.</p> <p>The <i>apportionment and oversight function</i> applies to such a <i>firm</i>, unless it falls within a particular exception from the <i>approved persons</i> regime (see Question 1).</p>
12	<p>How does the requirement to allocate the functions in <i>SYSC 4.4.5R</i> apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i>?</p>	<p><i>SYSC 1 Annex 1.1.1R(2)</i> and <i>SYSC 1 Annex 1.1.8R</i> restrict the application of <i>SYSC 4.4.5R</i> for such a <i>firm</i>. Accordingly:</p> <p>(1) Such a <i>firm</i> is not required to allocate the function of dealing with apportionment in <i>SYSC 4.4.5R(1)</i>.</p> <p>(2) Such a <i>firm</i> is required to allocate the function of oversight in <i>SYSC 4.4.5R(2)</i>. However, the systems and controls that must be overseen are those relating to matters which the <i>FSA</i>, as <i>Host State regulator</i>, is entitled to regulate (there is <i>guidance</i> on this in <i>SUP 13A Annex 2G</i>). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the <i>firm's</i> activities carried on from its <i>UK branch</i>.</p> <p>(3) Such a <i>firm</i> need not allocate the function of oversight to its <i>chief executive</i>; it must allocate it to one or more <i>directors</i> and <i>senior managers</i> of the <i>firm</i> or the <i>firm's group</i> under <i>SYSC 4.4.5R</i>, row (2).</p> <p>(4) An <i>incoming EEA firm</i> which has provision only for <i>cross border services</i> is not required to allocate either function if it does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>; for example if they fall within the overseas persons exclusions in article 72 of the <i>Regulated</i></p>

		<p><i>Activities Order.</i></p> <p>See also Questions 1 and 15.</p>
13	<p>What about a <i>firm</i> that is a <i>partnership</i> or a <i>limited liability partnership</i>?</p>	<p>The <i>FSA</i> envisages that most if not all <i>partners</i> or members will be either <i>directors</i> or <i>senior managers</i>, but this will depend on the constitution of the <i>partnership</i> (particularly in the case of a limited <i>partnership</i>) or <i>limited liability partnership</i>. A <i>partnership</i> or <i>limited liability partnership</i> may also have a <i>chief executive</i> (see Question 5). A <i>limited liability partnership</i> is a <i>body corporate</i> and, if a member of a <i>group</i>, will fall within <i>SYSC</i> 4.4.5R, row (1) or (2).</p>
14	<p>What if generally accepted principles of good corporate governance recommend that the <i>chief executive</i> should not be involved in an aspect of corporate governance?</p>	<p>The Note to <i>SYSC</i> 4.4.5R provides that the <i>chief executive</i> or other executive director or <i>senior manager</i> need not be involved in such circumstances. For example, the Combined Code developed by the Committee on Corporate Governance recommends that the board of a listed company should establish an audit committee of non-executive directors to be responsible for oversight of the audit. That aspect of the oversight function may therefore be allocated to the members of such a committee without involving the <i>chief executive</i>. Such individuals may require approval by the <i>FSA</i> in relation to that function (see Question 1).</p>
15	<p>What about <i>incoming electronic commerce activities</i> carried on from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i>?</p>	<p><i>SYSC</i> does not apply to an <i>incoming ECA provider</i> acting as such.</p>

Amend SYSC 5 as shown (unamended paragraphs are included to assist readers).

5.1 Skills, knowledge and expertise

5.1.1 R A ~~common platform~~ firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

[**Note:** article 5(1)(d) of the *MiFID implementing Directive*]

5.1.2 G A firm's systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it. This includes assessing an individual's honesty and competence. This assessment should normally be made at the point of recruitment. An individual's honesty need not normally be revisited unless something happens to make a fresh look appropriate.

5.1.3 G Any assessment of an individual's suitability should take into account the level of responsibility that the individual will assume within the firm. The nature of this assessment will generally differ depending upon whether it takes place at the start of the individual's recruitment, at the end of the probationary period (if there is one) or subsequently.

5.1.4 G The Training and Competence sourcebook (*TC*) contains additional *rules* and *guidance* relating to specified retail activities undertaken by a firm.

5.1.4A G Firms which are carrying on activities that are not subject to *TC* may nevertheless wish to take *TC* into account in complying with the training and competence requirements in *SYSC*.

5.1.5 G The requirements on firms with respect to *approved persons* are in Part V of the *Act* (Performance of regulated activities) and *SUP* 10.

5.1.5A G If a firm requires *employees* who are not subject to an examination requirement in *TC* to pass a relevant examination from the list of recommended examinations maintained by the Financial Services Skills Council, the *FSA* will take that into account when assessing whether the firm has ensured that the *employee* satisfies the knowledge component of the *competent employees rule*.

Segregation of functions

5.1.6 R A common platform firm must ensure that the performance of multiple functions by its *relevant persons* does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally.

[**Note:** article 5(1)(g) of the *MiFID implementing Directive*]

5.1.7 R The *senior personnel* of a common platform firm must define arrangements concerning the segregation of duties within the firm and the prevention of conflicts of interest.

[**Note:** annex V paragraph 1 of the *Banking Consolidation Directive*]

- 5.1.7A G Other *firms* should take account of the segregation of functions rules (SYSC 5.1.6R and 5.1.7R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- 5.1.8 G The effective segregation of duties is an important element in the *internal controls* of a *firm* in the *prudential context*. In particular, it helps to ensure that no one individual is completely free to commit a *firm’s* assets or incur liabilities on its behalf. Segregation can also help to ensure that a *firm’s governing body* receives objective and accurate information on financial performance, the risks faced by the *firm* and the adequacy of its systems.
- 5.1.9 G A ~~*common platform*~~ *firm* should normally ensure that no single individual has unrestricted authority to do all of the following:
- (1) initiate a transaction;
 - (2) bind the *firm*;
 - (3) make payments; and
 - (4) account for it.
- 5.1.10 G Where a ~~*common platform*~~ *firm* is unable to ensure the complete segregation of duties (for example, because it has a limited number of staff), it should ensure that there are adequate compensating controls in place (for example, frequent review of an area by relevant *senior managers*).
- 5.1.11 G Where a *common platform firm* outsources its internal audit function, it should take reasonable steps to ensure that every individual involved in the performance of this service is independent from the individuals who perform its external audit. This should not prevent services from being undertaken by a *firm’s* external auditors provided that:
- (1) the work is carried out under the supervision and management of the *firm’s* own internal staff; and
 - (2) potential conflicts of interest between the provision of external audit services and the provision of internal audit are properly managed.

Awareness of procedures

- 5.1.12 R A *common platform firm* must ensure that its *relevant persons* are aware of the procedures which must be followed for the proper discharge of their responsibilities.

[**Note:** article 5(1)(d) of the *MiFID implementing Directive*]

- 5.1.12A G Other *firms* should take account of the *rule concerning awareness of procedures* (SYSC 5.1.12R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex

1.3.3R.

General

- 5.1.13 R The systems, internal control mechanisms and arrangements established by a *firm* in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of (for a *common platform firm*) investment services and activities or (for every other *firm*) financial services and activities undertaken in the course of that business.

[**Note:** article 5(1) final paragraph of the *MiFID implementing Directive*]

- 5.1.14 R A *common platform firm* must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter, and take appropriate measures to address any deficiencies.

[**Note:** article 5(5) of the *MiFID implementing Directive*]

- 5.1.15 G Other *firms* should take account of the *rule* requiring monitoring and evaluation of the adequacy and effectiveness of systems (SYSC 5.1.14R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

Amend SYSC 6 as shown (unamended paragraphs are included to assist readers).

6.1 Compliance

- 6.1.1 R A ~~*common platform firm*~~ must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* (or where applicable, *tied agents*) with its obligations under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.

[**Note:** article 13(2) of *MiFID*]

- 6.1.2 R A *common platform firm* must, taking ~~in to~~ into account the nature, scale and complexity of its business, and the nature and range of *investment services and activities* undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the *FSA* to exercise its powers effectively under the *regulatory system* and to enable any other *competent authority* to exercise its powers effectively under *MiFID*.

[**Note:** article 6(1) of the *MiFID implementing Directive*]

- 6.1.2A G Other firms should take account of the adequate policies and procedures rule (SYSC 6.1.2R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- 6.1.3 R A *common platform firm* must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
- (1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with SYSC 6.1.2R, and the actions taken to address any deficiencies in the *firm’s* compliance with its obligations;
- (2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm’s* obligations under the *regulatory system*.
- [**Note:** article 6(2) of the *MiFID implementing Directive*]
- 6.1.3A G (1) Other firms should take account of the compliance function rule (SYSC 6.1.3R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- (2) Notwithstanding SYSC 6.1.3R, as it applies under (1), depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. Where a firm has a separate compliance function the firm should also take into account SYSC 6.1.3R and 6.1.4R as guidance.
- 6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a *common platform firm* must ensure that the following conditions are satisfied:
- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
- (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by SYSC 4.3.2R;
- (3) the *relevant persons* involved in the compliance functions must not be involved in the performance of services or activities they monitor;
- (4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.
- [**Note:** article 6(3) first paragraph of the *MiFID implementing Directive*]
- 6.1.4A R (1) A firm which is not a common platform firm and which carries on designated investment business with or for retail clients or

professional clients must allocate to a *director* or *senior manager* the function of:

- (a) having responsibility for oversight of the *firm's* compliance; and
- (b) reporting to the *governing body* in respect of that responsibility.

(2) In SYSC 6.1.4AR(1) “compliance” means compliance with the rules in:

- (a) COBS (Conduct of Business sourcebook);
- (b) COLL (Collective Investment Schemes sourcebook) and CIS (Collective Investment Schemes sourcebook) (where appropriate); and
- (c) CASS (Client Assets sourcebook).

6.1.5 R A *common platform firm* need not comply with SYSC 6.1.4R(3) or SYSC 6.1.4R(4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of (for a *common platform firm*) investment services and activities or (for every other *firm*) financial services and activities, the requirements under those *rules* are not proportionate and that its compliance function continues to be effective.

[**Note:** article 6(3) second paragraph of the *MiFID implementing Directive*]

6.1.6 G Other *firms* should take account of the proportionality rule (SYSC 6.1.5R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

6.2 Internal audit

6.2.1 R A *common platform firm* must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of *investment services and activities* undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the *firm* and which has the following responsibilities:

- (1) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the *firm's* systems, internal control mechanisms and arrangements;
- (2) to issue recommendations based on the result of work carried out in accordance with (1);
- (3) to verify compliance with those recommendations;

- (4) to report in relation to internal audit matters in accordance with SYSC 4.3.2R.

[**Note:** article 8 of the *MiFID implementing Directive*]

- 6.2.1A G Other firms should take account of the internal audit rule (SYSC 6.2.1R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- 6.2.2 G The term ‘internal audit function’ in SYSC 6.2.1R (and SYSC 4.1.11G) refers to the generally understood concept of internal audit within a *common platform firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).
- 6.3 Financial crime**
- 6.3.1 R A *common platform firm* must ensure the policies and procedures established under SYSC 6.1.1R include systems and controls that:
- (1) enable it to identify, assess, monitor and manage *money laundering risk*; and
 - (2) are comprehensive and proportionate to the nature, scale and complexity of its activities.
- 6.3.2 G “*Money laundering risk*” is the risk that a firm may be used to further *money laundering*. Failure by a firm to manage this risk effectively will increase the risk to society of crime and terrorism.
- 6.3.3 R A *common platform firm* must carry out a regular assessment of the adequacy of these systems and controls to ensure that ~~it continues~~ they continue to comply with SYSC 6.3.1R.
- 6.3.4 G A *common platform firm* may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the Money Laundering Regulations. SYSC 6.1.1R and SYSC 6.3.1R to SYSC 6.3.10G are not relevant for the purposes of regulation 3(3) of the Money Laundering Regulations, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.
- 6.3.5 G The FSA, when considering whether a breach of its rules on systems and controls against *money laundering* has occurred, will have regard to whether a *common platform firm* has followed relevant provisions in the guidance for the *United Kingdom* financial sector issued by the Joint Money Laundering Steering Group.
- 6.3.6 G In identifying its *money laundering risk* and in establishing the nature of

these systems and controls, a ~~common platform~~ firm should consider a range of factors, including:

- (1) its customer, product and activity profiles;
- (2) its distribution channels;
- (3) the complexity and volume of its transactions;
- (4) its processes and systems; and
- (5) its operating environment.

6.3.7 G A ~~common platform~~ firm should ensure that the systems and controls include:

- (1) appropriate training for its employees in relation to *money laundering*;
- (2) appropriate provision of information to its *governing body* and senior management, including a report at least annually by that *firm's money laundering reporting officer (MLRO)* on the operation and effectiveness of those systems and controls;
- (3) appropriate documentation of its risk management policies and risk profile in relation to *money laundering*, including documentation of its application of those policies (see SYSC 9);
- (4) appropriate measures to ensure that *money laundering* risk is taken into account in its day-to-day operation, including in relation to:
 - (a) the development of new products;
 - (b) the taking-on of new customers; and
 - (c) changes in its business profile; and
- (5) appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to its services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.

6.3.8 R A ~~common platform~~ firm must allocate to a *director* or *senior manager* (who may also be the *money laundering reporting officer*) overall responsibility within the *firm* for the establishment and maintenance of effective anti-*money laundering* systems and controls.

The money laundering reporting officer

6.3.9 R A ~~common platform~~ firm (with the exception of a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular purposes)) must:

- (1) appoint an individual as *MLRO*, with responsibility for oversight of its compliance with the *FSA's rules* on systems and controls against *money laundering*; and
 - (2) ensure that its *MLRO* has a level of authority and independence within the *firm* and access to resources and information sufficient to enable him to carry out that responsibility.
- 6.3.10 G The job of the *MLRO* within a *firm* is to act as the focal point for all activity within the *firm* relating to *anti-money laundering*. The *FSA* expects that a *firm's MLRO* will be based in the *United Kingdom*.

Amend SYSC 7 as shown (unamended paragraphs are included to assist readers).

7.1 Risk control

7.1.1 G SYSC 4.1.1R requires a ~~*common platform firm*~~ *firm* to have effective processes to identify, manage, monitor and report the risks it is or might be exposed to.

7.1.2 R A *common platform firm* must establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identify the risks relating to the *firm's* activities, processes and systems, and where appropriate, set the level of risk tolerated by the *firm*.

[**Note:** article 7(1)(a) of the *MiFID implementing Directive*, article 13(5) second paragraph of *MiFID*]

7.1.2A G Other *firms* should take account of the risk management policies and procedures rule (SYSC 7.1.2R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

7.1.3 R A *common platform firm* must adopt effective arrangements, processes and mechanisms to manage the risk relating to the *firm's* activities, processes and systems, in light of that level of risk tolerance.

[**Note:** article 7(1)(b) of the *MiFID implementing Directive*]

7.1.4 R The *senior personnel* of a *common platform firm* must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the *firm* is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

[**Note:** annex V paragraph 2 of the *Banking Consolidation Directive*]

7.1.4A G Other *firms* should take account of the risk management rules (SYSC 7.1.3R and SYSC 7.1.4R) as if they were *guidance* (and as if “should” appeared in

those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 7.1.5 R A *common platform firm* must monitor the following:
- (1) the adequacy and effectiveness of the *firm’s* risk management policies and procedures;
 - (2) the level of compliance by the *firm* and its *relevant persons* with the arrangements, processes and mechanisms adopted in accordance with SYSC 7.1.3R;
 - (3) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the *relevant persons* to comply with such arrangements or processes and mechanisms or follow such policies and procedures.

[**Note:** article 7(1)(c) of the *MiFID implementing Directive*]

- 7.1.6 R A *common platform firm* must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the *investment services and activities* undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:
- (1) implementation of the policies and procedures referred to in SYSC 7.1.2R to SYSC 7.1.5R; and
 - (2) provision of reports and advice to *senior personnel* in accordance with SYSC 4.3.2R.

[**Note:** *MiFID implementing Directive* Article 7(2) first paragraph]

- 7.1.7 R Where a *common platform firm* is not required under SYSC 7.1.6R to maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with SYSC 7.1.2R to SYSC 7.1.5R satisfy the requirements of those *rules* and are consistently effective.

[**Note:** article 7(2) second paragraph of the *MiFID implementing Directive*]

- 7.1.7A G Other firms should take account of the risk management rules (SYSC 7.1.5R to 7.1.7R) as if they were guidance (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 7.1.8 G (1) SYSC 4.1.3G requires a *BIPRU firm* to ensure that its internal control mechanisms and administrative and accounting procedures permit the verification of its compliance with *rules* adopted in accordance with the *Capital Adequacy Directive* at all times. In complying with this obligation, a *BIPRU firm* should document the organisation and responsibilities of its risk management function and it should document its risk management framework setting out how the risks

in the business are identified, measured, monitored and controlled.

- (2) The term ‘risk management function’ in SYSC 7.1.6R and SYSC 7.1.7R refers to the generally understood concept of risk assessment within a ~~common platform~~ firm, that is, the function of setting and controlling risk exposure. The risk management function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).

Credit and counterparty risk

- 7.1.9 R A *BIPRU firm* must base credit-granting on sound and well-defined criteria and clearly establish the process for approving, amending, renewing, and re-financing credits.

[**Note:** annex V paragraph 3 of the *Banking Consolidation Directive*]

- 7.1.10 R A *BIPRU firm* must operate through effective systems the ongoing administration and monitoring of its various credit risk-bearing portfolios and exposures, including for identifying and managing problem credits and for making adequate value adjustments and provisions.

[**Note:** annex V paragraph 4 of the *Banking Consolidation Directive*]

- 7.1.11 R A *BIPRU firm* must adequately diversify credit portfolios given its target market and overall credit strategy.

[**Note:** annex V paragraph 5 of the *Banking Consolidation Directive*]

- 7.1.12 G The documentation maintained by a *BIPRU firm* under SYSC 4.1.3R should include its policy for credit risk, including its risk appetite and provisioning policy and should describe how it measures, monitors and controls that risk. This should include descriptions of the systems used to ensure that the policy is correctly implemented.

Residual risk

- 7.1.13 R A *BIPRU firm* must address and control by means of written policies and procedures the risk that recognised credit risk mitigation techniques used by it prove less effective than expected.

[**Note:** annex V paragraph 6 of the *Banking Consolidation Directive*]

Market risk

- 7.1.14 R A *BIPRU firm* must implement policies and processes for the measurement and management of all material sources and effects of market risks.

[**Note:** annex V paragraph 10 of the *Banking Consolidation Directive*]

Interest rate risk

- 7.1.15 R A *BIPRU* firm must implement systems to evaluate and manage the risk arising from potential changes in interest rates as they affect a *BIPRU firm's* non-trading activities.

[**Note:** annex V paragraph 11 of the *Banking Consolidation Directive*]

Operational risk

- 7.1.16 R A *BIPRU firm* must implement policies and processes to evaluate and manage the exposure to operational risk, including to low-frequency high severity events. Without prejudice to the definition of *operational risk*, *BIPRU firms* must articulate what constitutes operational risk for the purposes of those policies and procedures.

[**Note:** annex V paragraph 12 of the *Banking Consolidation Directive*]

Amend SYSC 8 as shown (unamended paragraphs are included to assist readers).

8.1 General outsourcing requirements

- 8.1.1 R A *common platform firm* must:
- (1) when relying on a third party for the performance of operational functions which are critical for the performance of *regulated activities, listed activities* or *ancillary services* (in this chapter “relevant services and activities”) on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk;
 - (2) not undertake the *outsourcing* of important operational functions in such a way as to impair materially:
 - (a) the quality of its internal control; and
 - (b) the ability of the *FSA* to monitor the *firm's* compliance with all obligations under the *regulatory system* and, if different, of a *competent authority* to monitor the *firm's* compliance with all obligations under *MiFID*.

[**Note:** article 13(5) first paragraph of *MiFID*]

- 8.1.1A G Other firms should take account of the outsourcing rule (SYSC 8.1.1R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 8.1.2 G The application of SYSC 8.1 to relevant services and activities (see SYSC 8.1.1R(1)) is limited by SYSC ~~4.3~~ 1 Annex 1 (Part 2) (Application of the common platform requirements).

8.1.3 G SYSC 4.1.1R requires a ~~common-platform~~ firm to have effective processes to identify, manage, monitor and report risks and internal control mechanisms. Except in relation to those functions described in SYSC 8.1.5R, where a firm relies on a third party for the performance of operational functions which are not critical or important for the performance of relevant services and activities (see SYSC 8.1.1R(1)) on a continuous and satisfactory basis, it should take into account, in a manner that is proportionate given the nature, scale and complexity of the *outsourcing*, the *rules* in this section in complying with that requirement.

8.1.4 R For the purposes of this chapter an operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a *common platform firm* with the conditions and obligations of its *authorisation* or its other obligations under the *regulatory system*, or its financial performance, or the soundness or the continuity of its relevant services and activities.

[**Note:** article 13(1) of the *MiFID implementing Directive*]

8.1.5 R Without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:

- (1) the provision to the *firm* of advisory services, and other services which do not form part of the relevant services and activities of the *firm*, including the provision of legal advice to the *firm*, the training of personnel of the *firm*, billing services and the security of the *firm's* premises and personnel;
- (2) the purchase of standardised services, including market information services and the provision of price feeds.

[**Note:** article 13(2) of the *MiFID implementing Directive*]

8.1.5A G Other firms should take account of the critical functions rules (SYSC 8.1.4R and SYSC 8.1.5R) as if they were guidance (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

8.1.6 R If a ~~common-platform~~ firm *outsources* critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the *regulatory system* and must comply, in particular, with the following conditions:

- (1) the *outsourcing* must not result in the delegation by *senior personnel* of their responsibility;
- (2) the relationship and obligations of the *firm* towards its *clients* under the *regulatory system* must not be altered;
- (3) the conditions with which the *firm* must comply in order to be *authorised*, and to remain so, must not be undermined;

- (4) none of the other conditions subject to which the *firm's* *authorisation* was granted must be removed or modified.

[**Note:** article 14(1) of the *MiFID implementing Directive*]

- 8.1.7 R A *common platform firm* must exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the *outsourcing* to a service provider of critical or important operational functions or of any relevant services and activities.

[**Note:** article 14(2) first paragraph of the *MiFID implementing Directive*]

- 8.1.8 R A *common platform firm* must in particular take the necessary steps to ensure that the following conditions are satisfied:
- (1) the service provider must have the ability, capacity, and any *authorisation* required by law to perform the *outsourced* functions, services or activities reliably and professionally;
 - (2) the service provider must carry out the *outsourced* services effectively, and to this end the *firm* must establish methods for assessing the standard of performance of the service provider;
 - (3) the service provider must properly supervise the carrying out of the *outsourced* functions, and adequately manage the risks associated with the *outsourcing*;
 - (4) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
 - (5) the *firm* must retain the necessary expertise to supervise the *outsourced* functions effectively and manage the risks associated with the *outsourcing* and must supervise those functions and manage those risks;
 - (6) the service provider must disclose to the *firm* any development that may have a material impact on its ability to carry out the *outsourced* functions effectively and in compliance with applicable laws and regulatory requirements;
 - (7) the *firm* must be able to terminate the arrangement for the *outsourcing* where necessary without detriment to the continuity and quality of its provision of services to *clients*;
 - (8) the service provider must co-operate with the *FSA* and any other relevant *competent authority* in connection with the *outsourced* activities;
 - (9) the *firm*, its auditors, the *FSA* and any other relevant *competent authority* must have effective access to data related to the *outsourced*

activities, as well as to the business premises of the service provider; and the *FSA* and any other relevant *competent authority* must be able to exercise those rights of access;

- (10) the service provider must protect any confidential information relating to the *firm* and its *clients*;
- (11) the *firm* and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary having regard to the function, service or activity that has been *outsourced*.

[**Note:** article 14(2) second paragraph of the *MiFID implementing Directive*]

- 8.1.9 R A *common platform firm* must ensure that the respective rights and obligations of the *firm* and of the service provider are clearly allocated and set out in a written agreement.

[**Note:** article 14(3) of the *MiFID implementing Directive*]

- 8.1.10 R If a *common platform firm* and the service provider are members of the same *group*, the *firm* may, for the purpose of complying with SYSC 8.1.7R to SYSC 8.1.11R and SYSC 8.2 and SYSC 8.3, take into account the extent to which the *common platform firm controls* the service provider or has the ability to influence its actions.

[**Note:** article 14(4) of the *MiFID implementing Directive*]

- 8.1.11 R A *common platform firm* must make available on request to the *FSA* and any other relevant *competent authority* all information necessary to enable the *FSA* and any other relevant *competent authority* to supervise the compliance of the performance of the *outsourced* activities with the requirements of the *regulatory system*.

[**Note:** article 14(5) of the *MiFID implementing Directive*]

- 8.1.11A G Other *firms* should take account of the outsourcing of important operational functions rules (SYSC 8.1.7R to SYSC 8.1.11R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 8.1.12 G As SUP 15.3.8G explains, a ~~*common platform firm*~~ *firm* should notify the *FSA* when it intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities on a continuous and satisfactory basis.

[**Note:** recital 20 of the *MiFID implementing Directive*]

8.2 Outsourcing of portfolio management for retail clients to a non-EEA State

- 8.2.1 R (1) In addition to the requirements set out in the *MiFID outsourcing rules*, when a *MiFID investment firm* outsources the *investment service of portfolio management to retail clients* to a service provider located in a *non-EEA state*, it must ensure that the following conditions are satisfied:
- (a) the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;
 - (b) there must be an appropriate cooperation agreement between the *FSA* and the supervisor in the *non-EEA state*;

(in this chapter the “conditions”).

[**Note:** article 15(1) of the *MiFID implementing Directive*]

- (2) In addition to complying with the *common platform outsourcing rules*, if one or both of the conditions are not satisfied, a *MiFID investment firm* may enter into such an *outsourcing* only if it gives prior notification in writing to the *FSA* containing adequate details of the proposed *outsourcing* and the *FSA* does not object to that arrangement within a reasonable time following receipt of that notification.

[**Note:** article 15(2) and (4) of the *MiFID implementing Directive*]

- (3) For the purposes of this *rule* a “reasonable time” is within one month of receipt of a notification. However, the *FSA* may seek further information from the *MiFID investment firm* in relation to the *outsourcing* proposal if this is necessary to enable the *FSA* to make a decision. Any effect this may have on the *FSA*’s response time will be notified to the *MiFID investment firm* and that revised response time will constitute a reasonable time for the purposes of this *rule*.

8.2.2 [intentionally blank]

8.2.3 G The conditions do not apply if the *outsourcing* only concerns ancillary activities connected with *portfolio management*, for example IT processes or execution only activities.

8.2.4 G If a *firm* has received no notice of objection or no request for further information from the *FSA* within one month of the *FSA* receiving the notification, it may *outsource* the *portfolio management* on the basis set out in the notification.

8.2.5 G The *FSA* would use its powers under section 45 of the *Act* to vary a *firm*’s *permission* if it objected to such a notification.

Notification requirements: timing of notification

- 8.2.6 G A *firm* should only make an *outsourcing* proposal notification to the *FSA* after it has carried out due diligence on the service provider and has had regard to the guidance set out in *SYSC* 8.3. The *FSA* will expect a firm to only submit an *outsourcing* proposal notification in respect of a service provider that the *firm* has determined is suitable to carry on the *outsourcing* activity.

Notification requirements: content

- 8.2.7 G The *guidance* set out in *SYSC* 8.3 includes information on what the *FSA* will expect a firm to check before the submission of a notification.
- 8.2.8 G A notification under this section should include:
- (1) details on which of the conditions is not met;
 - (2) if applicable, details and evidence of the service provider's authorisation or regulation including the regulator's contact details;
 - (3) the *firm's* proposals for meeting its obligations under this chapter on an ongoing basis;
 - (4) why the *firm* wishes to *outsource* to the service provider;
 - (5) a draft of the *outsourcing* agreement between the service provider and the *firm*;
 - (6) the proposed start date of the *outsourcing*; and
 - (7) confirmation that the *firm* has had regard to the *guidance* in *SYSC* 8.3, or if it has not, why not.

Notification requirements - additional guidance

- 8.2.9 G Where the *FSA* has not objected to the *outsourcing* agreement, the *firm* should have regard to its obligations under *SUP* 15 which include making the *FSA* aware of any matters which could affect the *firm's* ability to provide adequate services to its *customers* or could result in serious detriment to its *customers* or where there has been material change in the information previously provided to the *FSA* in relation to the *outsourcing*.

8.3 Guidance on outsourcing portfolio management for retail clients to a non-EEA State

- 8.3.1 G This *guidance* is relevant regardless of whether a *firm* *outsources* portfolio management directly or indirectly via a third party. However, *firms* should note that they may notify a secondary or indirect *outsourcing* in the same

notification as the direct *outsourcing*.

- 8.3.2 G This *guidance* sets out examples of the type of actions that a firm proposing to *outsource* should have undertaken when assessing the suitability of the service provider and its ability to carry on the outsourced activity.

[**Note:** article 15(3) of the *MiFID implementing Directive*]

- 8.3.3 G If a *firm* can demonstrate that it has taken the following guidance into account and has satisfactorily concluded that it would be able to continue to satisfy the common platform *outsourcing* rules and provide adequate protection for consumers despite not satisfying the conditions, the FSA would not be likely to object to that *outsourcing*.

- 8.3.4 G If the *outsourcing* allows the service provider to sub-contract any of the services to be provided under the *outsourcing*, any such sub-contracting shall not affect the service provider's responsibilities under the *outsourcing* agreement.

- 8.3.5 G The *outsourcing* agreement should entitle the *firm* to terminate the *outsourcing* if the service provider undergoes a change of control or becomes insolvent, goes into liquidation or receivership (or equivalent in its home state) or is in persistent material default under the agreement.

- 8.3.6 G The following should be taken into account where the service provider is not authorised or registered in its home country and/or not subject to prudential supervision.

- (1) The *firm* should examine, and be able to demonstrate, to what extent the service provider may be subject to any form of voluntary regulation, including self-regulation in its home state.
- (2) The *firm* should be able to satisfy the *FSA* that the service provider is committed for the term of the *outsourcing* agreement to devoting sufficient, competent resources to providing the service.
- (3) In addition to the requirement to ensure that a service provider discloses any developments that may have a material impact on its ability to carry out the *outsourcing* (*SYSC* 8.1.8R(6)), where the conditions are not met the developments to be disclosed should include, but are not limited to:
 - (a) any adverse effect that any laws or regulations introduced in the service provider's home country may have on its carrying on the *outsourced* activity; and
 - (b) any changes to its capital reserve levels or its prudential risks.
- (4) The *firm* should satisfy itself that the service provider is able to meet its liabilities as they fall due and that it has positive net assets.

- (5) The *firm* should require that the service provider prepares annual reports and accounts which:
 - (a) are in accordance with the service provider's national law which, in all material respects, is the same as or equivalent to the *international accounting standards*;
 - (b) have been independently audited and reported on in accordance with the service provider's national law which is the same as or equivalent to international auditing standards.
- (6) The *firm* should receive copies of each set of the audited annual report and accounts of the service provider. If the service provider expects or knows its auditor will qualify his report on the audited report and accounts, or add an explanatory paragraph, the service provider should be required to notify the *firm* without delay.
- (7) The *firm* should satisfy itself, and be able to demonstrate, that it has in place appropriate procedures to ensure that it is fully aware of the service provider's controls for protecting confidential information.
- (8) In addition to the requirement at SYSC 8.1.8R(10) that the service provider must protect any confidential information relating to the *firm* or its *clients*, the *outsourcing* agreement should require the service provider to notify the *firm* immediately if there is a breach of confidentiality.
- (9) The *outsourcing* agreement should be governed by the law and subject to the jurisdiction of an *EEA state*.

8.3.7 G The following should be taken into account by a *firm* where there is no cooperation agreement between the *FSA* and the supervisory authority of the service provider or there is no supervisory authority of the service provider.

- (1) The *outsourcing* agreement should ensure the *firm* can provide the *FSA* with any information relating to the *outsourced* activity the *FSA* may require in order to carry out effective supervision. The *firm* should therefore assess the extent to which the service provider's regulator and/or local laws and regulations may restrict access to information about the *outsourced* activity. Any such restriction should be described in the notification to be sent to the *FSA*.
- (2) The *outsourcing* agreement should require the service provider to provide the *firm's* offices in the ~~UK~~ *United Kingdom* with all requested information required to meet the *firm's* regulatory obligations. The *FSA* should be given an enforceable right under the agreement to obtain such information from the *firm* and to require the service provider to provide the information directly.

Amend SYSC 9 as shown (unamended paragraphs are included to assist readers).

9.1 General rules on record-keeping

9.1.-1 R [deleted]

9.1.-2 R [deleted]

9.1.1 R A *firm* must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FSA* or any other relevant *competent authority* under *MiFID* to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

[**Note:** article 13(6) of *MiFID* and article 5(1)(f) of the *MiFID implementing Directive*]

9.1.2 R A *common platform firm* must retain all records kept by it under this chapter in relation to its *MiFID business* for a period of at least five years.

[**Note:** article 51 (1) of the *MiFID implementing Directive*]

9.1.3 R In relation to its *MiFID business*, a *common platform firm* must retain records in a medium that allows the storage of information in a way accessible for future reference by the *FSA* or any other relevant *competent authority* under *MiFID*, and so that the following conditions are met:

- (1) the *FSA* or any other relevant *competent authority* under *MiFID* must be able to access them readily and to reconstitute each key stage of the processing of each transaction;
- (2) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and amendments, to be easily ascertained;
- (3) it must not be possible for the records otherwise to be manipulated or altered.

[**Note:** article 51(2) of the *MiFID implementing Directive*]

Guidance on record-keeping

9.1.4 G Subject to any other record-keeping *rule* in the *Handbook*, the records required under the *Handbook* should be capable of being reproduced in the English language on paper. Where a *firm* is required to retain a record of a communication that was not made in the English language, it may retain it in that language. However, it should be able to provide a translation on request. If a *firm's* records relate to business carried on from an establishment in a country or territory outside the *United Kingdom*, an

official language of that country or territory may be used instead of the English language.

- 9.1.5 G In relation to the retention of records for non-*MiFID business*, a *firm* should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the *firm* may fulfil its regulatory and statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made.
- 9.1.6 G Schedule 1 to each module of the *Handbook* sets out a list summarising the record-keeping requirements of that module.
- [**Note:** article 51(3) of *MiFID implementing Directive*]
- 9.1.7 G The Committee of European Securities Regulators (CESR) has issued recommendations on the list of minimum records under Article 51(3) of the *MiFID implementing Directive*. This can be found at: http://www.fsa.gov.uk/pubs/other/CESR_Minimum_List_Recommendations.pdf.

Amend SYSC 10 as shown (unamended paragraphs are included to assist readers).

10.1 Conflicts of interest

Application

- 10.1.1 R This section applies to a ~~*common platform*~~ *firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities* or providing *ancillary services* (but only where the *ancillary services* constitute *MiFID business*).

Requirements only apply if a service is provided

- 10.1.2 G The requirements in this section only apply where a service is provided by a ~~*common platform*~~ *firm*. The status of the *client* to whom the service is provided (as a *retail client*, *professional client* or *eligible counterparty*) is irrelevant for this purpose.

[**Note:** Recital 25 of *MiFID implementing Directive*]

Identifying conflicts

- 10.1.3 R A ~~*common platform*~~ *firm* must take all reasonable steps to identify conflicts of interest between:
- (1) the *firm*, including its managers, employees, *appointed representatives* (or, where applicable, *tied agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the

firm; or

- (2) one *client* of the *firm* and another *client*;

that arise or may arise in the course of the *firm* providing any service referred to in SYSC 10.1.1R.

[**Note:** Article 18(1) of *MiFID*]

Types of conflicts

- 10.1.4 R For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may entail a material risk of damage to the interests of a *client*, a *common platform firm* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:
- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;
 - (2) has an interest in the outcome of a service provided to the *client* or of a transaction carried out on behalf of the *client*, which is distinct from the *client*'s interest in that outcome;
 - (3) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interests of the *client*;
 - (4) carries on the same business as the *client*; or
 - (5) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service.

The conflict of interest may result from the *firm* or *person* providing a service referred to in SYSC 10.1.1R or engaging in any other activity.

[**Note:** Article 21 of *MiFID implementing Directive*]

- 10.1.4A G Other *firms* should take account of the *rule* on the types of conflicts (see SYSC 10.1.4R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R, except when they produce or arrange the production of *investment research* in accordance with COBS 12.2, or produce or disseminate *non-independent research* in accordance with COBS 12.3 (see SYSC 10.1.16R).

- 10.1.5 G The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the *firm* or certain *persons* connected to the *firm* or the *firm*'s *group* and the duty the *firm* owes to a *client*; or between the differing interests of two or more of its *clients*, to whom the *firm* owes in each case a duty. It is not

enough that the *firm* may gain a benefit if there is not also a possible disadvantage to a *client*, or that one *client* to whom the *firm* owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such *client*.

[**Note:** Recital 24 of *MiFID implementing Directive*]

Record of conflicts

- 10.1.6 R A *common platform firm* must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of the *firm* in which a conflict of interest entailing a material risk of damage to the interests of one or more *clients* has arisen or, in the case of an ongoing service or activity, may arise.

[**Note:** Article 23 of *MiFID implementing Directive*]

- 10.1.6A G Other *firms* should take account of the *rule* on records of conflicts (see SYSC 10.1.6R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”, as explained in SYSC 1 Annex 1.3.3R), except when they produce or arrange the production of *investment research* in accordance with COBS 12.2, or produce or disseminate *non-independent research* in accordance with COBS 12.3 (see SYSC 10.1.16R).

Managing conflicts

- 10.1.7 R A *common platform firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in SYSC 10.1.3R from constituting or giving rise to a material risk of damage to the interests of its *clients*.

[**Note:** Article 13(3) of *MiFID*]

Disclosure of conflicts

- 10.1.8 R (1) If arrangements made by a *common platform firm* under SYSC 10.1.7R to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must clearly disclose the general nature and/or sources of conflicts of interest to the *client* before undertaking business for the *client*.
- (2) The disclosure must:
- (a) be made in a *durable medium*; and
 - (b) include sufficient detail, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the service in the context of which the conflict of interest arises.

[**Note:** Article 18(2) of *MiFID* and Article 22(4) of *MiFID implementing Directive*]

10.1.8A R The obligation in SYSC 10.1.8R(2)(a) does not apply to a firm when carrying on insurance mediation activity.

10.1.9 G ~~Common platform firms~~ Firms should aim to identify and manage the conflicts of interest arising in relation to their various business lines and their *group's* activities under a comprehensive *conflicts of interest policy*. In particular, the disclosure of conflicts of interest by a *firm* should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements under SYSC 10.1.7R. While disclosure of specific conflicts of interest is required by SYSC 10.1.8R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

[**Note:** Recital 27 of *MiFID implementing Directive*]

Conflicts policy

- 10.1.10 R (1) A *common platform firm* must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
- (2) Where the *common platform firm* is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

[**Note:** Article 22(1) of *MiFID implementing Directive*]

Contents of policy

- 10.1.11 R (1) The *conflicts of interest policy* must include the following content:
- (a) it must identify in accordance with SYSC 10.1.3R and SYSC 10.1.4R, by reference to the specific services and activities carried out by or on behalf of the *common platform firm*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*; and
- (b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- (2) The procedures and measures provided for in paragraph (1)(b) must:
- (a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of

the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the *common platform firm* and of the *group* to which it belongs, and to the materiality of the risk of damage to the interests of *clients*; and

- (b) include such of the following as are necessary and appropriate for the *common platform firm* to ensure the requisite degree of independence:
 - (i) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more *clients*;
 - (ii) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;
 - (iii) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - (iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant person* carries out services or activities;
 - (v) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in separate services or activities where such involvement may impair the proper management of conflicts of interest.
- (3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a *common platform firm* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

[**Note:** Article 22(2) and (3) of *MiFID implementing Directive*]

10.1.11A G Other *firms* should take account of the *rules* relating to *conflicts of interest policies* (see SYSC 10.1.10R and SYSC 10.1.11R) as if they were *guidance*

(and as if “should” appeared in those rules instead of “must”, as explained in SYSC 1 Annex 1.3.3R), except when they produce or arrange the production of investment research in accordance with COBS 12.2, or produce or disseminate non-independent research in accordance with COBS 12.3 (see SYSC 10.1.16R).

- 10.1.12 G In drawing up a *conflicts of interest policy* which identifies circumstances which constitute or may give rise to a conflict of interest, a ~~common platform~~ firm should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the firm or a person directly or indirectly linked by *control* to the firm performs a combination of two or more of those activities.

[Note: Recital 26 of MiFID implementing Directive]

Corporate finance

- 10.1.13 G This section is relevant to the management of a *securities* offering by a ~~common platform~~ any firm.
- 10.1.14 G A ~~common platform~~ firm will wish to note that when carrying on a mandate to manage an offering of *securities*, the firm’s duty for that business is to its corporate finance *client* (in many cases, the corporate issuer or seller of the relevant *securities*), but that its responsibilities to provide services to its investment *clients* are unchanged.
- 10.1.15 G Measures that a ~~common platform~~ firm might wish to consider in drawing up its *conflicts of interest policy* in relation to the management of an offering of *securities* include:
- (1) at an early stage agreeing with its corporate finance *client* relevant aspects of the offering process such as the process the firm proposes to follow in order to determine what recommendations it will make about allocations for the offering; how the target investor group will be identified; how recommendations on allocation and pricing will be prepared; and whether the firm might place *securities* with its investment *clients* or with its own proprietary book, or with an associate, and how conflicts arising might be managed; and
 - (2) agreeing allocation and pricing objectives with the corporate finance *client*; inviting the corporate finance *client* to participate actively in the allocation process; making the initial recommendation for allocation to *retail clients* of the firm as a single block and not on a named basis; having internal arrangements under which senior personnel responsible for providing services to *retail clients* make the initial allocation recommendations for allocation to *retail clients* of the firm; and disclosing to the *issuer* details of the allocations actually made.

[**Note:** The provisions in SYSC 10.1 also implement *BCD* Article 22 and *BCD* Annex V paragraph 1]

Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research

- 10.1.16 R The *rules* relating to:
- (1) types of conflict (see SYSC 10.1.4R);
 - (2) records of conflicts (see SYSC 10.1.6R); and
 - (3) conflicts of interest policies (see SYSC 10.1.10R and SYSC 10.1.11R);
- also apply to a firm which is not a common platform firm when it produces, or arranges for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public in accordance with COBS 12.2, and when it produces or disseminates non-independent research in accordance with COBS 12.3.

10.2 Chinese walls

Application

- 10.2.1 R This section applies to ~~a common platform~~ any firm.

Control of information

- 10.2.2 R (1) When a ~~common platform~~ *firm* establishes and maintains a *Chinese wall* (that is, an arrangement that requires information held by a *person* in the course of carrying on one part of the business to be withheld from, or not to be used for, *persons* with or for whom it acts in the course of carrying on another part of its business) it may:
- (a) withhold or not use the information held; and
 - (b) for that purpose, permit *persons* employed in the first part of its business to withhold the information held from those employed in that other part of the business;
- but only to the extent that the business of one of those parts involves the carrying on of *regulated activities*, *ancillary activities* or, in the case of *MiFID business*, the provision of *ancillary services*.
- (2) Information may also be withheld or not used by a ~~common platform~~ *firm* when this is required by an established arrangement maintained between different parts of the business (of any kind) in the same *group*. This provision does not affect any requirement to transmit or use information that may arise apart from the *rules* in *COBS*.

- (3) For the purpose of this *rule*, “maintains” includes taking reasonable steps to ensure that the arrangements remain effective and are adequately monitored, and must be interpreted accordingly.
- (4) For the purposes of section 118A(5)(a) of the *Act*, behaviour conforming with paragraph (1) does not amount to market abuse.

Effect of rules

- 10.2.3 G SYSC 10.2.2R is made under section 147 of the *Act* (Control of information rules). It has the following effect:
- (1) acting in conformity with SYSC 10.2.2R(1) provides a defence against proceedings brought under section 397(2) or (3) of the *Act* (Misleading statements and practices) – see sections 397(4) and (5)(c);
 - (2) behaviour in conformity with SYSC 10.2.2R(1) does not amount to *market abuse* (see SYSC 10.2.2R(4)); and
 - (3) acting in conformity with SYSC 10.2.2R(1) provides a defence for a firm against *FSA* enforcement action, or an action for damages under section 150 of the *Act*, based on a breach of a relevant requirement to disclose or use this information.

Attribution of knowledge

- 10.2.4 R When any of the *rules* of *COBS* or *CASS* apply to a *common platform firm* that acts with knowledge, the *firm* will not be taken to act with knowledge for the purposes of that *rule* if none of the relevant individuals involved on behalf of the *firm* acts with that knowledge as a result of arrangements established under SYSC 10.2.2R.
- 10.2.5 G When a *common platform firm* manages a conflict of interest using the arrangements in SYSC 10.2.2R which take the form of a *Chinese wall*, individuals on the other side of the wall will not be regarded as being in possession of knowledge denied to them as a result of the *Chinese wall*.

Amend the following SYSC chapter titles as shown.

- 13 **Operational risk: systems and controls for insurers**
- 14 **Prudential risk management and associated systems and controls for insurers**
- 15 **Credit risk management systems and controls for insurers**
- 16 **Market risk management systems and controls for insurers**

Insert the following new Transitional Provision after TP1. The text is not underlined.

SYSC TP2

Firms other than common platform firms, insurers, managing agents and the Society

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: Coming into force
2.1	SYSC 8.1	R	If a <i>firm</i> other than a <i>common platform firm, insurer, managing agent</i> or the <i>Society</i> has in force on 1 April 2009 <i>outsourcing</i> arrangements which would be covered by SYSC 8.1 it need not amend those contracts to comply with these provisions but should comply with the new rules and guidance in respect of any <i>outsourcing</i> contracts which are entered into, or materially amended, on or after 1 April 2009.	1 April 2009 indefinitely	1 April 2009

Amend SYSC Schedule 5 as shown.

SYSC Sch 5 Rights of action for damages

...

SYSC Sch 5.4G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 150		
			For private person	Removed?	For other person?
SYSC 2 and SYSC 3			No	Yes SYSC 1.1.12R SYSC 1 Annex <u>1.1.12R</u>	No
SYSC 4 to SYSC 10			No	Yes SYSC 1.3.12R SYSC 1 Annex <u>1.2.19R</u>	No
SYSC 11 to SYSC 18			No	Yes SYSC 1.4.2R	No

Annex B

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

3.1.7 G *Statements of Principle 1 to 4 apply to all approved persons. In the Statements of Principle and in the Code of Practice for Approved Persons, a reference to “his controlled function” is a reference to the controlled function to which the approval relates. A person performing a significant influence function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that controlled function. Those responsible under SYSC 2.1.3R or SYSC 4.4.5R (Apportionment of responsibilities) for the firm’s apportionment obligation will be specifically subject to Statement of Principle 5 (and see in particular APER 4.5.6E). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see in particular APER 4.7.3E).*

...

4.5.6 E In the case of an *approved person* who is responsible under SYSC 2.1.3R(1) or SYSC 4.4.5R(1) for dealing with the apportionment of responsibilities under SYSC 2.1.1R or SYSC 4.4.3R, failing to take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among the *firm’s directors* and senior managers falls within APER 4.5.2E.

...

4.7.3 E Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the *regulatory system* in respect of its *regulated activities* falls within APER 4.7.2E. In the case of an *approved person* who is responsible, under SYSC 2.1.3R(2) or SYSC 4.4.5R(2), with overseeing the *firm’s* obligation under SYSC 3.1.1R or SYSC 4.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2E.

...

4.7.9 E In the case of the *money laundering reporting officer*, failing to discharge the responsibilities imposed on him by the *firm* in accordance with SYSC 3.2.6IR or SYSC 6.3.9R falls within APER 4.7.2E.

4.7.10 E In the case of an *approved person* performing a *significant influence function* responsible for compliance under SYSC 3.2.8R, SYSC 6.1.4R or

SYSC 6.1.4AR, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within *APER 4.7.2E* (see *APER 4.7.14G*).

Annex C

Amendments to the Fit and Proper test for Approved Persons (FIT)

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

- 2.2.1 G In determining a *person's* competence and capability, the *FSA* will have regard to matters including but not limited to:
- ...
- (2) whether the *person* has demonstrated by experience and training that the *person* is ~~able~~ suitable, or will be ~~able~~ suitable if approved, to perform the *controlled function*.

Annex D

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

In this Annex, underlining indicates new text.

2.3.5 G *Firms* are reminded that *Principle 3* requires *firms* to take reasonable care to organise and control their affairs responsibly and effectively. *Principle 3* is amplified by the *rule* which requires *firms* to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1R and SYSC 4.1.1R). A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (SYSC 3.2.13G and SYSC 5.1.2G). This includes the assessment of an individual's honesty and competence. In addition, the *competent employees rule* (SYSC 3.1.6R and SYSC 5.1.1R) sets out a high-level competence requirement which every *firm* should follow.

...

5.1.3 G This chapter supports the more general duties in *Principles 2* and *3*, and the relevant *rule* in the Senior Management Arrangements, Systems and Controls sourcebook (see SYSC 3.1.1R and SYSC 4.1.1R).

Annex E

Amendments to the Interim Prudential sourcebook for Building Societies (IPRU(BSOC))

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

- 4.1.1A G As part of the implementation of the Capital Adequacy Directive (CAD), the Banking Consolidation Directive (BCD) and the Markets in Financial Instruments Directive (MiFID), provisions relating to a firm's organisational and risk systems and controls have been introduced in *SYSC 4*, *SYSC 5*, *SYSC 6*, and *SYSC 7*. ~~Whilst some of the material in *SYSC* applies to all societies, some applies only to societies that are subject to MiFID.~~ The guidance in this chapter generally explains the application of the high level requirements in *SYSC 4*, *SYSC 5*, *SYSC 6*, and *SYSC 7* (even if there may not be a specific cross reference) in the context of financial risk management.

Annex F

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

In this Annex, striking through indicates deleted text.

1.2.3A	R	The record-keeping requirements listed in the table at <i>IPRU(INV)</i> 1.2.3BR do not apply to common platform firms.	
1.2.3B	R	Table: List of <i>IPRU(INV)</i> record-keeping requirements that do not apply to common platform firms.	
		IPRU(INV)	Provision
		Chapter 3	3-10(1)R to 3-10(3)R 3-12(1)R to 3-12(2)R 3-13(1)R to 3-13(5)R
		Chapter 5	5.3.1(1)R to 5.3.1(6)R
		Chapter 13	13.1.10R to 13.1.17R

...

3-6 G The financial and non-financial resources rules for an *exempt CAD firm* are set out in *IPRU(INV)* chapter 9. As such, rules 3-61 to 3-182 do not apply to an *exempt CAD firm* unless it carries on any *regulated activity* other than *MiFID business* (see *IPRU(INV)* 9.2.3R).

3-10 **Keeping of records**

Records to be up-to-date

3-10(1) R A *firm* must keep accounting records in accordance with rules 3-10 to 3-13 on a continual basis so that at all times records are up-to-date or able to be brought up-to-date within a reasonable time.

Adequacy of records

- 3-10(2) R A *firm* must keep accounting records in such a manner that they are sufficient to show and explain the *firm's* transactions and commitments (whether effected on its own behalf or on behalf of others) and in particular so that these records:
- (a) disclose with reasonable accuracy the financial position of the *firm* at any point in time within the previous six years when the *firm* was a member of the *FSA* or a predecessor regulator;
 - (b) demonstrate whether or not the *firm* is or was at that time complying with its *financial resources requirement*; and
 - (c) enable the *firm* to prepare within a reasonable time any *financial reporting statement* as at the close of business of any date within the previous six years when the *firm* was regulated by the *FSA* or a predecessor regulator, and such that the statement complies with the requirements of the rules of the *FSA*.

Content of records

- 3-10(3) A *firm* must ensure that its accounting records shall as a minimum contain:
- (a) entries from day to day of all sums of money received and expended by the *firm* whether on its behalf or on behalf of others, and the matters in respect of which the receipt and expenditure takes place;
 - (b) a record of all income and expenditure of the *firm* explaining its nature;
 - (c) a record of all assets and liabilities of the *firm* including any commitments or *contingent liabilities*;
 - (d) entries from day to day of all purchases and sales of *investments* by the *firm* distinguishing those which are made by the *firm* on its own account and those which are made by or on behalf of others;
 - (e) entries from day to day of the receipt and dispatch of *documents of title* which are in the possession or control of the *firm*; and
 - (f) a record of all *investments* or *documents of title* in the possession or control of the *firm* showing the physical location, the beneficial owner, the purpose for which they are held and whether they are subject to any charge.

- G The *FSA* does not consider it possible to prepare an exhaustive and prescriptive list of record keeping requirements applicable to all *firms*. The detailed requirements will vary according to the manner in which the business is structured, organised and managed; its size; and the nature, volume and complexity of its transactions and commitments. The overriding principle, however, is that the records and systems must be adequate to fulfil the general requirements set out in rule 3-10.

3-11 **Reconciliation of firm's balances**

Reconciliation

- 3-11(1) R (b) ~~A firm must reconcile all balances and positions with exchanges, approved exchanges, clearing houses and intermediate brokers as recorded by the firm to the balance or position on a statement or circularisation obtained by the firm from the exchange etc and must correct any differences by agreement with the exchange etc on a timely basis.~~
- (c) ~~A firm must perform reconciliations under (b) above as frequently as is appropriate for the volume of transactions on the accounts and in any event not less than once every five weeks.~~
- (d) ~~A firm must reconcile all balances and securities positions with each eligible counterparty which is a member of an exchange or approved exchange as recorded by the firm to the balance or position on a statement or circularisation obtained by the firm from the eligible counterparty except to the extent that the balances and securities positions due to and from the eligible counterparty have been agreed by other means, and must correct any differences by agreement with the eligible counterparty on a timely basis.*~~
- (e) ~~A firm must perform reconciliations under (d) above as frequently as is appropriate for the volume of transactions on the accounts and in any event not less than once every year.~~

Circularisation

- 3-11(2) ~~A firm must circularise or request statements from banks, building societies, exchanges, approved exchanges, clearing houses, intermediate brokers and market counterparties which are members of exchanges or approved exchanges in good time in order to be able to comply with (1) above.~~

Response to requests

* For guidance notes on the reconciliation of a firm's balances with market counterparties see, **Appendix**

3-11(3) ~~A firm must use its best endeavours to respond within one month of receipt to any circularisation from another firm requesting confirmation of outstanding balances.~~

3-12 **Risk management and internal control**

Exposure limits

3-12(1) R ~~A firm must ensure that its accounting and other records contain details of exposure limits for trading positions, and for commitments under its ACP, which are appropriate to the type, nature and volume of business undertaken and that the information contained in the records is capable of being summarised in such a way as to enable actual exposures to be measured readily and regularly against these limits.~~

Management information

3-12(2) R ~~A firm must maintain its records in a manner such that they disclose, or are capable of disclosing, in a prompt and appropriate fashion, the financial and business information which will enable the firm's management to:~~

- ~~(a) identify, quantify, control and manage the firm's risk exposures;~~
- ~~(b) make timely and informed decisions;~~
- ~~(c) monitor the performance of all aspects of the firm's business on an up-to-date basis;~~
- ~~(d) monitor the quality of the firm's assets; and~~
- ~~(e) safeguard the assets of the firm, including assets for which the firm is responsible belonging to customers and other persons.~~

3-13 **Nature, accessibility and retention of records**

Nature of records

3-13(1) R (a) ~~A firm may keep a record in a form other than a document or copy of a document provided that the record can be reproduced in hard printed form.~~

(b) ~~Where all the records relating to a counterparty are not kept together, a firm must ensure that each location where documents relating to that counterparty are retained contains an indication that other records relating to that counterparty exist and how access to them can be obtained.~~

- (c) ~~A firm may accept and rely on records supplied by a third party so long as those records are capable of being and are reconciled with records held by the firm.~~
- (d) ~~A firm's records must generally be in English but may be in another language if the firm has facilities for producing a translation of the record into English within a reasonable time of any request for production of such a translation being made by the FSA or the firm's auditor or reporting accountant.~~

Audit trail

- 3-13(3) ~~A firm must record the information required by rules 3-10 to 3-13 in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the firm, in particular in such manner as to enable early identification of aggregates and of the particular items which have contributed to those aggregates.~~

Prompt access

- 3-13(3) R ~~A firm must ensure that all records are arranged, filed and indexed so as to permit prompt access to any particular record.~~

Retention of records

- 3-13(4) R (a) ~~A firm must keep all records required by rules 3-10 to 3-13 as well as any working papers necessary to show the preparation of any reporting statement or any other periodic return to the FSA.~~
- (b) ~~A firm must keep these records and working papers for a period of six years after the date on which they are first made or prepared.~~
- (c) ~~During the most recent of those years, a firm must keep these records and working papers either at a place where the firm carries on business or in such a manner that they can be produced at such a place within 24 hours of their being requested and after the first year in such a manner that they can be produced at a place of business of the firm within 48 hours.~~

Security of records

- 3-13(5) R ~~A firm must maintain adequate procedures for the maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the firm or others so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction.~~

...

5.3.1

Records

Recording requirements

- 5.3.1(1) R ~~A firm must ensure that it maintains adequate accounting records and must prepare and submit such reports as are required by the FSA in a timely manner. A firm's records must:~~
- ~~(1) be up to date and must disclose, with reasonable accuracy, at any time, the firm's financial position at that time;~~
 - ~~(2) enable the firm to demonstrate its continuing compliance with its financial resources requirements; and~~
 - ~~(3) provide the information:~~
 - ~~(a) which the firm needs to prepare such financial statements and periodical reports as may be required by the FSA; and~~
 - ~~(b) which the firm's auditor (where the FSA requires one to be appointed) needs to form an opinion on any statements of the firm on which the auditor is required to report.~~
- 5.3.1(2) G ~~Where a firm appoints a third party to maintain the firm's accounting records, these records remain the responsibility and property of the firm, which must ensure that they are maintained in accordance with the rules.~~
- ~~Firm's own transactions~~
- 5.3.1(3) R ~~A firm must ensure that proper accounting records are kept in English to show and explain the firm's own account transactions, distinguishing between trading book and non trading book transactions.~~
- ~~Customers' accounting records~~
- 5.3.1(4) R ~~A firm must ensure that proper accounting records are kept in English which:~~
- ~~(1) record all purchases and sales of customers' assets effected by the firm;~~
 - ~~(2) record all receipts and payments of money belonging to customers which arise from transactions effected by the firm;~~
 - ~~(3) in relation to client money; have regard to the requirements of the Client Money Rules;~~
 - ~~(4) disclose the assets and liabilities of a firm's customers individually and collectively, to the extent that they are managed by the firm;~~
 - ~~(5) record all customers' assets (including customer investments) in the possession of the firm or of another person who is holding such assets for, or to the order of, the firm, showing the location of the assets, their beneficial owner and the extent to which they are subject to any charge of which the firm has been notified.~~

5.3.1(5) G ~~The requirement to maintain adequate records of movements and holdings of *client money* and any interest paid on *client money* balances, are set out in CASS 4.1 to 4.3 (with respect of *designated investment business* that is not *MiFID* business) and in CASS 7.1 to 7.8 (with respect of *MiFID* business).~~

~~Retention of accounting records~~

5.3.1(6) R ~~The accounting records required by rule 5.3.1(1) to (4) must be maintained for a minimum period of six years. During the first two of these years they must be kept either at a place where the *firm* carries on business or in such a manner that they can be produced at such a place within 24 hours of their being requested.~~

...

~~Record Keeping Requirements~~

13.1.10 R ~~A *firm* must take reasonable steps to ensure that it:~~

~~(1) keeps records which are sufficient to show at any time that it has complied with the requirements of this chapter; and~~

~~(2) establish procedures and controls to ensure that those records are made promptly and accurately and, where appropriate, brought up-to-date at regular and frequent intervals.~~

13.1.11 G ~~When establishing record keeping systems *firms* are expected to bear in mind the advantage of records which will enable them to demonstrate easily their compliance with the *rules* and the effectiveness of their own procedures and controls.~~

13.1.12 R ~~A *firm* must ensure that its records are kept up-to-date and:~~

~~(1) show with reasonable accuracy at any time the *firm's* financial position at that time;~~

~~(2) enable the *firm* to demonstrate its continuing compliance with the applicable financial resource requirements; and~~

~~(3) provide the information needed to enable~~

~~(a) the *firm* to prepare the financial statements and reports required by or under the *rules*; and~~

~~(b) any auditor required to report on the *firm's* financial statement to form an opinion on them in accordance with the relevant requirements.~~

13.1.13 G ~~Records should be capable of presenting a clear picture of the *firm's* financial viability.~~

- 13.1.14 R (1) A *firm* may hold its records in any form but it must
- (a) keep them in English and up to date, and
 - (b) be able to produce them promptly at its business premises on paper at the *FSA's* request.
- (2) If a *firm* retains records away from the place or places at which it conducts business, it must notify the *FSA* in accordance with the provisions of *SUP 15* of the address and telephone number of the place or places at which they are kept.
- (3) The *firm* must keep its records in such a way that
- (a) any particular record is promptly accessible, and
 - (b) any particular transaction is clearly shown, easily traceable through the *firm's* accounting records and sufficiently explained.
- (4) If the *firm* does not keep all records relating to financial resource requirements in one place, the *firm* must ensure that there is a clear indication that this is the case and provide accessible and adequate means of tracing all relevant records.

Reliance on Third Parties

- 13.1.15 R A *firm* may rely on records provided by a third party provided that the *firm* reconciles those records with its own.

Security

- 13.1.16 R A *firm* must take reasonable steps to protect its records at all times against loss, unauthorised access, alteration or destruction.

Retention of Records

- 13.1.17 R A *firm* must retain any record required by the *rules* or the rules of a *previous regulator* for a period of six years after the time the record is made.

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

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

9.5.1 G ~~For its *MiFID business*, a A firm to which SYSC 9 applies is required to keep orderly records of its business and internal organisation (see SYSC 9, General rules on record-keeping). For other business, a *firm* is~~ Other firms ~~are~~ required to take reasonable care to establish and maintain such systems and controls as are appropriate to ~~its~~ their business (see SYSC 3, Systems and controls). The records may be expected to reflect the different effect of the *rules* in this chapter depending on whether the *client* is a *retail client* or a *professional client*: for example, in respect of the information about the *client* which the *firm* must obtain and whether the *firm* is required to provide a *suitability report*.

...

10.7.1 G ~~For its *MiFID business*, a A firm is required to keep orderly records of its business and internal organisation, including all services and transactions undertaken by it (see SYSC 9, General rules on record-keeping). For other business, a *firm* is required to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (see SYSC 3, Systems and controls). The records may be expected to include the *client* information a *firm* obtains to assess appropriateness and should be adequate to indicate what the assessment was.~~

...

Governance arrangements for with-profits business

20.3.2 G In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering (*SYSC 3.2.6R* or *SYSC 6.1.1R*), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records any applicable *PPFM*. These arrangements should:

...

...

COBS TP 2: Other Transitional Provisions					
(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
2.8D	COBS 18	G	<p>If a <i>firm</i> carrying out the activities set out in TP 2.8AR decides to comply with COBS before 1 May 2008 the following provisions of COB will continue to apply to it in accordance with transitional rules TP 2.12R and TP 2.13R if the <i>firm</i> is not a <i>common platform firm</i>:</p> <p>(1) COB 2.4 (Chinese walls);</p> <p>(2) COB 5.10 (Corporate finance business issues);</p> <p>and</p> <p>(3) COB 7.1 (Conflicts of interest and material interest). [deleted]</p>	From 1 November 2007 to 30 April 2008	1 November 2007
...					
2.12	COBS	R	<p>COB 2.4 (Chinese walls) and COB 7.1 (Conflicts of interest) as they were in force on 31 October 2007 continue to apply to <i>designated investment business</i> carried on by a <i>firm</i> which is not a <i>common platform firm</i>. [deleted]</p>	From 1 November 2007 indefinitely	1 November 2007
2.13	COBS	R	<p>COB 5.10 (Corporate finance business issues) as</p>	From 1 November 2007	1 November 2007

			it was in force on 31 October 2007 continues to apply to <i>corporate finance business</i> carried on by a <i>firm</i> which is not a <i>common platform firm</i> . <u>[deleted]</u>	indefinitely	
--	--	--	---	--------------	--

Annex H

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

8.3 Insurance intermediaries (and insurers handling claims on another insurer's policy)

...

Conflicts of interest

- 8.3.3 G (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly. *SYSC 10* also requires an *insurance intermediary* to take all reasonable steps to identify conflicts of interest, and maintain and operate effective organisational and administrative arrangements to prevent conflicts of interest from constituting or giving rise to a material risk of damage to its *clients*.
- (2) ~~Generally, this means that a *firm* handling a claim should not put itself in a position where its own interest or its duty to anyone for whom it acts, conflicts with its duty to a *customer*. If it does so, it should have the *customer's* prior informed consent. [deleted]~~
- (3) If a *firm* acts for a *customer* in arranging a policy, it is likely to be the *customer's* agent (and that of any other *policyholders*). If the *firm* intends to be the *insurance undertaking's* agent in relation to claims, it needs to consider the risk of becoming unable to act without breaching its duty to either the *insurance undertaking* or the *customer* making the *claim*. It should also inform the *customer* of its intention.
- (4) ~~A *firm* should consider whether it is possible to manage such a conflict through disclosure and consent. A *firm* should in particular consider whether declining to act would be the most reasonable step where it is not possible to manage a conflict.~~ As, for example, where ~~these are unlikely to be sufficient~~ is where the *firm* knows both that its *customer* will accept a low settlement to obtain a quick payment, and that the *insurance undertaking* is willing to settle for a higher amount.

Annex I

Amendments to the Supervision manual (SUP)

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

Members of a profession

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

What the governing functions include

- 10.6.2 R Each of the *governing functions* (other than the *non-executive director function*) includes where apportioned under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R:
- (1) the *systems and controls function*; and
- (2) the *significant management function*.

...

- 10.6.19 G Any apportionment referred to in SUP 10.6.17R(3)(b) will have taken place under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R. The FSA may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see SYSC 2.2).

...

Apportionment and oversight function (CF8)

- 10.7.1 R The *apportionment and oversight function* is the function of acting in the capacity of a *director* or *senior manager* responsible for either or both of the apportionment function and the oversight function set out in SYSC 2.1.3R or SYSC 4.4.5R.

...

- 10.7.13A G A *firm's* obligations in respect of its *money laundering reporting officer* are set out elsewhere in the *Handbook* (see SYSC 3.2.6IR and SYSC 6.3.9R and for their scope, see the application provisions in ~~SYSC 1.1 and SYSC 1.3~~ SYSC 1 Annex 1).

...

Application

- 10.9.1 R SUP 10.9 applies only to a *firm* which, under SYSC 2.1.1R or SYSC 4.4.3R, apportions a significant responsibility, within the description of the *significant management function*, to a *senior manager* of a significant business unit.

...

- 10.9.3 G However, the scale, nature and complexity of the *firm's* business may be such that a *firm* apportions, under SYSC 2.1.1R or SYSC 4.4.3R, a significant responsibility to an individual who is not approved to perform the *governing functions, required functions* or, where appropriate, the *systems and controls function*. If so, the *firm* should consider whether the functions of that individual fall within the *significant management function*. For the purposes of the description of the *significant management functions*, the following additional factors about the *firm* should be considered:

- (1) the size and significance of the *firm's* business in the *United Kingdom*; for example, a *firm* carrying on *designated investment business* may have a large number of *approved persons* (for example, in excess of 100 individuals); or a *firm* carrying on *general insurance business* may have gross written *premiums* in excess of £100mn;
- (2) the number of *regulated activities* carried on, or proposed to be carried on, by the *firm* and (if relevant) other members of the *group*;
- (3) its *group* structure (if it is a member of a *group*);
- (4) its management structure (for example matrix management); and
- (5) the size and significance of its international operations, if any.

...

Appointment of an appointed representative (other than an introducer appointed representative)

- 12.4.2 R Before a *firm* appoints a *person* as an *appointed representative* (other than an *introducer appointed representative*) and on a continuing basis, it must establish on reasonable grounds that:

- (1) the appointment does not prevent the *firm* from satisfying and

continuing to satisfy the *threshold conditions*;

- (2) the *person*:
 - (a) is solvent;
 - (b) is otherwise suitable to act for the *firm* in that capacity; and
 - (c) has no *close links* which would be likely to prevent the effective supervision of the *person* by the *firm*;
- (3) the *firm* has adequate:
 - (a) controls over the *person's regulated activities* for which the *firm* has responsibility (see SYSC 3.1 or SYSC 4.1); and
 - (b) resources to monitor and enforce compliance by the *person* with the relevant requirements applying to the *regulated activities* for which the *firm* is responsible and with which the *person* is required to comply under its contract with the *firm* (see SUP 12.5.3G(2)); and
- (4) the *firm* is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

...

12.6.11 G A *firm* should take reasonable care to ensure that:

- (1) it has satisfied SYSC 3 ~~or 5~~ or SYSC 4 to 9 and TC in respect of the relevant staff of the *appointed representative*; and
- (2) its *appointed representative* has adequate arrangements in respect of training and competence, which meet the requirements in SYSC and TC.

...

13A Annex 1G Application of the Handbook to Incoming EEA Firms

1. The table below summarises the application of the *Handbook* to an *incoming EEA firm*. Where the table indicates that a particular module of the *Handbook* may apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to *incoming ECA providers*. These should refer to COBS 1 Annex 1 Part 3 section 7 for *guidance* on how COBS applies to them.

2. In some cases, the application of the *Handbook* depends on whether responsibility for a matter is reserved under a European Community instrument to the *incoming EEA firm's Home State regulator*. *Guidance* on the

reservation of responsibility is contained in *SUP* 13A Annex 2G (Matters reserved to a Home State regulator). *Guidance* on the territorial application of *MiFID* is contained in *PERG* 13.6 and 13.7 and *SUP* 13A Annex 2G.

3. For an *incoming EEA firm* which has *permission* for *cross-border services* only, many parts of the *Handbook* apply only if the *firm* carries on *regulated activities* in the *United Kingdom*. Those parts of the *Handbook* will therefore not apply if the *firm* confines its activities to those within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*, or which would not be regarded as carried on in the *United Kingdom*. Further *guidance* may be found in *PERG* 2.4 (Link between activities and the *United Kingdom*) and *PERG* 2.9.15G to *PERG* 2.9.17G (Overseas persons).

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
<i>PRIN</i>	...	
<i>SYSC</i>	<u><i>SYSC</i> 1 and <i>SYSC</i> 1 Annex 1 (Application of <i>SYSC</i> 2 and <i>SYSC</i> 3) contains</u> application provisions only. <i>SYSC</i> 2 and <i>SYSC</i> 3 apply <u>only to an <i>insurer</i>, a <i>managing agent</i> and the <i>Society</i> as set out in <i>SYSC</i> 1.1.1R(1) 1 Annex 1.1.1 R, which include the following exceptions:</u>	<i>SYSC</i> 2 and 1 to <i>SYSC</i> 3 do not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (<i>SYSC</i> 1.1.1R(2) 1 Annex 1.1.1 R).

	<p>(1) SYSC 2.1.1 R(1) and SYSC 2.1.2G do not apply;</p> <p>(2) SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the <i>firm's Home State regulator</i>; and</p> <p>(3) SYSC 3 applies, but only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the <i>firm's Home State regulator</i>.</p> <p>SYSC 1.1.7R (Where?) further restricts the territorial application of SYSC 1 to SYSC 3 for an <i>incoming EEA firm</i>. Further <i>guidance</i> is contained in SYSC 2.1.6G, Question 12.</p> <p>SYSC 18 applies to the extent that the Public Interest Disclosure Act 1998 applies to the <i>firm</i>.</p> <p>The <i>common platform requirements</i> in SYSC 4 - 10 apply as set out in SYSC 1.3.1R and SYSC 1.3.1BG <u>Part 2 of SYSC 1 Annex 1 (Application of the common platform requirement)</u>.</p>	<p>SYSC 2 and 4 to SYSC 3 have limited application for activities which are not carried on from a <i>UK establishment</i> (see SYSC 1.1.7 R 1 <u>Annex 1.1.1R (2A)</u>).</p> <p>Otherwise, see column (2). The <i>common platform requirements</i> in SYSC 4 - SYSC 10 apply as set out in SYSC 1.3.1 R and SYSC 1.3.1BG <u>1 Annex 1.2.2R</u>. SYSC 9 does not apply. SYSC 11 - SYSC 17 do not apply. SYSC 18 SYSC 18 applies.</p>
--	--	--

	<p>SYSC 1.3.1BG states that whilst the common platform requirements do not generally apply to incoming EEA firms, SYSC 1 Annex 1.2.7 G reminds EEA MiFID investment firms that they must comply with the common platform record-keeping requirements in relation to a branch in the United Kingdom.</p> <p>SYSC 9 applies to activities carried on from an establishment in the <i>United Kingdom</i>, unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> (SYSC 1.3.10AR 1 Annex 1.2.17 R).</p>	
	<p>SYSC 11 applies to an <i>incoming EEA firm</i> which:</p> <ul style="list-style-type: none"> (1) is a <i>full BCD credit institution</i>; and (2) has a <i>branch</i> in the <i>United Kingdom</i> (SYSC 11.1.1R(3)). <p>SYSC 12 does not apply (SYSC 12.1.3R).</p> <p>SYSC 13 does not apply (SYSC 13.1.1G).</p> <p>SYSC 14 does not apply (SYSC 14.1.1R).</p> <p>SYSC 15 does not apply (SYSC 15.1.1G).</p>	

	<p>SYSC 16 does not apply (SYSC 16.1.1G).</p> <p>SYSC 17 does not apply (SYSC 17.1.1G).</p> <p>SYSC 18 applies.</p>	
...		

13A Annex 2G Matters reserved to a Home State regulator

...	
Application of SYSC 2 and SYSC 3	
4.	<p>SYSC 2 and SYSC 3 do not apply to a UK MiFID investment firm. They only apply to an EEA MiFID investment firm on a limited basis. This is explained more fully in PERG 13.7 Q. 70 (systems and controls) only apply to an insurer, a managing agent and the Society. See paragraph 8 below for a discussion of how the <i>common platform requirements</i> apply to an EEA MiFID investment firm. <u>SYSC 2.1.1R and SYSC 2.1.2G do not apply for a relevant incoming Treaty firm.</u> The FSA considers that it is entitled, in the interests of the general good, to impose the requirements in SYSC 2.1.3R to SYSC 2.2.3G (in relation to the allocation of the function in SYSC 2.1.3R(2)) and SYSC 3 on an <i>incoming EEA firm</i> and an <i>incoming Treaty firm</i>; but only in so far as they relate to those categories of matter responsibility for which is not reserved to the <i>firm's Home State regulator</i>.</p>
5.	<p>Should the FSA become aware of anything relating to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> (whether or not relevant to a matter for which responsibility is reserved to the <i>Home State regulator</i>), the FSA may disclose it to the <i>Home State regulator</i> in accordance with any applicable directive and the applicable restrictions in Part XXIII of the Act (Public Record, Disclosure of Information and Co-operation).</p>
6.	<p>This Annex represents the FSA's views, but a <i>firm</i> is also advised to consult the relevant European Community instrument and, where necessary, seek legal advice. The views of the European Commission in the banking and insurance sectors are contained in two Commission Interpretative Communications (Nos. 97/C209/04 and C(1999)5046).</p>
7.	<p>Examples of how the FSA considers that SYSC 3 will apply in practice to an incoming EEA firm are as follows:</p>

	(1)	The Prudential Standards part of the <i>Handbook</i> (with the exception of <i>INSPRU</i> 1.5.33R on the payment of financial penalties and the Interim Prudential sourcebook (insurers) (<i>IPRU(INS)</i>) (rules 3.6 and 3.7) do not apply to an <i>insurer</i> which is an <i>incoming EEA firm</i> . Similarly, <i>SYSC</i> 3 does not require such a <i>firm</i> :
		(a) to establish systems and controls in relation to financial resources (<i>SYSC</i> 3.1.1R); or
		(b) to establish systems and controls for compliance with that Prudential Standards part of the <i>Handbook</i> (<i>SYSC</i> 3.2.6R); or
		(c) to make and retain records in relation to financial resources (<i>SYSC</i> 3.2.20R).
	(2)	The Conduct of Business sourcebook (<i>COBS</i>) applies to an <i>incoming EEA firm</i> . Similarly, <i>SYSC</i> 3 does require such a <i>firm</i> :
		(a) to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of <i>COBS</i> (<i>SYSC</i> 3.1.1R);
		(b) to establish systems and controls for compliance with the applicable sections of <i>COBS</i> (<i>SYSC</i> 3.2.6R); and
		(c) to make and retain records in relation to those aspects of the conduct of its business (<i>SYSC</i> 3.2.20R). [deleted]
See also Question 12 in <i>SYSC</i> 2.1.6G for guidance on the application of <i>SYSC</i> 2.1.3R(2)		
Application of the common platform requirements in <i>SYSC</i> to <u><i>EEA MiFID investment firms</i></u>		
8.	Whilst the <i>common platform requirements</i> (located in <i>SYSC</i> 4 - <i>SYSC</i> 10) do not generally apply to <i>incoming EEA firms</i> , <i>EEA MiFID investment firms</i> must comply with the <i>common platform record-keeping requirements</i> in relation to a <i>branch</i> in the <i>United Kingdom</i> .	
Requirements under MiFID		
9.	Article 31(1) of <i>MiFID</i> prohibits Member States from imposing additional requirements on a <i>MiFID investment firm</i> in relation to matters covered by <i>MiFID</i> if the <i>firm</i> is providing services on a cross-border basis. Such firms will be supervised by their Home	

	State regulator.	
10.	Article 32 of <i>MiFID</i> requires the <i>FSA</i> as the <i>Host State regulator</i> to apply certain obligations to an <i>incoming EEA firm</i> with an establishment in the <i>UK</i> . In summary, these are Articles:	
	(1)	19 (conduct of business obligations);
	(2)	21 (execution of orders on terms most favourable to the client);
	(3)	22 (client order handling);
	(4)	25 (upholding the integrity of markets, reporting transactions and maintaining records);
	(5)	27 (making public firm quotes); and
	(6)	28 (post-trade disclosure).
	The remaining obligations under <i>MiFID</i> are reserved to the Home State regulator.	
11.	<i>MiFID</i> is more highly harmonising than other <i>Single Market Directives</i> . Article 4 of the <i>MiFID implementing Directive</i> permits Member States to impose additional requirements only where certain tests are met. The <i>FSA</i> has made certain requirements that fall within the scope of Article 4. These requirements apply to an <i>EEA MiFID investment firm</i> with an establishment in the <i>United Kingdom</i> as they apply to a <i>UK MiFID investment firm</i> .	
12.	Further <i>guidance</i> on the territorial application of the <i>Handbook</i> can be found at <i>PERG</i> 13.6 and 13.7.	
13.	<u>Examples of how SYSC 3 and/or the common platform provisions apply in practice.</u>	
	(1)	<u>The Prudential Standards part of the <i>Handbook</i> (with the exception of <i>INSPRU</i> 1.5.33R on the payment of financial penalties and the Interim Prudential sourcebook (insurers) (<i>IPRU(INS)</i>) (rules 3.6 and 3.7) do not apply to an <i>insurer</i> which is an <i>incoming EEA firm</i>. Similarly, <i>SYSC</i> 3 does not require such a <i>firm</i>:</u>
	(a)	<u>to establish systems and controls in relation to financial resources (<i>SYSC</i> 3.1.1R); or</u>
	(b)	<u>to establish systems and controls for compliance with that Prudential Standards part of the <i>Handbook</i> (<i>SYSC</i> 3.2.6R); or</u>
	(c)	<u>to make and retain records in relation to financial resources (<i>SYSC</i> 3.2.20R and <i>SYSC</i></u>

			9.1.1R to 9.1.4G).
	(2)	<u>The Conduct of Business sourcebook (COBS) applies to an incoming EEA firm. Similarly, SYSC 3 and SYSC 4-10 do require such a firm:</u>	
		(a)	<u>to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of COBS (SYSC 3.1.1R and SYSC 4.1.1R);</u>
		(b)	<u>to establish systems and controls for compliance with the applicable sections of COBS (SYSC 3.2.6R and SYSC 6.1.1R); and</u>
		(c)	<u>to make and retain records in relation to those aspects of the conduct of its business (SYSC 3.2.20R and SYSC 9.1.1R to 9.1.4G).</u>
<u>See also Question 12 in SYSC 2.1.6G for guidance on the application of SYSC 2.1.3R(2)</u>			

Annex J

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Risk management process

5.2.25 G ...

- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by ~~SYSC 3.1 (Systems and controls)~~ 4.1 (General requirements).

...

...

Risk management process

5.6.17 G ...

- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its ~~sw~~ business as required by ~~3.1 (Systems and controls)~~. SYSC 4.1 (General requirements).

...

...

Delegation: guidance

- 6.6.16 G (1) ~~SYSC 3.2 (Areas covered by systems and controls)~~ 4.1 (General requirements and SYSC 8 (outsourcing)) contains *guidance* relating to delegation, including external delegation. ~~SYSC 3.2.4G(1) 8.1.6R~~ states that a *firm cannot contract out of its regulatory obligations remains fully responsible for disclosing all of its obligations under the regulatory system even if it outsources crucial or important operational functions.*

...

...

Delegation and responsibility for regulatory obligations

- 8.5.6 G SYSC 3.2.8 contains *guidance* relating to delegation including external delegation, and SYSC 3.2.4G(1) 8.1.6R states that a *firm cannot contract out of its regulatory obligations* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.

Annex K

Amendments to the Credit Union sourcebook (CRED)

In this Annex, underlining indicates new text and striking through indicates deleted text. (Some unamended paragraphs are included to assist readers.)

- 4.1.3 G ~~SYSC 1 to SYSC 3~~ and SYSC 4 to 10 apply to all *credit unions* in respect of the carrying on of their *regulated activities* and unregulated activities in a *prudential context*. SYSC 18 applies to all *credit unions* without restriction.
- ...
- 4.1.7 G ~~SYSC 3.1.2G(3) states that detailed requirements regarding systems and controls relevant to particular types of firm may be covered elsewhere in the Handbook. This chapter includes all such~~ summarises all the specific requirements for systems and controls relevant to credit unions.
- 4.1.8 G SYSC 18 reminds *firms* of the provisions of the Public Interest Disclosure Act 1998 and encourages them to consider adopting appropriate internal whistleblowing procedures. This applies equally to *credit unions* but is not the subject of further *guidance* in this chapter.

4.2 Apportionment of responsibilities

- 4.2.1 G Under ~~SYSC 2.1.1R~~ 4.3.1R every *firm* is required to take reasonable care to maintain an appropriate apportionment of significant responsibilities among its *directors* and *senior managers*, so that it is clear who has those responsibilities and so the *firm* can be governed adequately.
- 4.2.2 G In order to comply with the requirements, a *credit union* will need to be clear who is responsible for which significant matters within the *credit union*.
- 4.2.3 G Among the significant responsibilities to be apportioned will be responsibility for:
- (1) finance;
 - (2) lending;
 - (3) arrears control;
 - (4) *money laundering* reporting;
 - (5) complaints handling.
- 4.2.4 G ~~SYSC 2.1.3R requires that the actual task of apportioning significant~~

responsibilities to different people must itself be allocated by the *credit union* to one or more individuals to carry out. The task of overseeing the establishment and maintenance of the *credit union's* systems and controls would normally be allocated to the same individual or individuals. However, it would be possible to allocate the overseeing function to different individuals as long as this was appropriate. [deleted]

- 4.2.5 G Together these tasks are known as the *apportionment and oversight function*. [deleted]
- 4.2.6 G An individual to whom a function is allocated under SYSC 2.1.3R will be performing the *apportionment and oversight function* (see CRED 6.3.8G) and an application must be made to the FSA for approval of the individual before the function is performed (see CRED 13.7). [deleted]
- 4.2.7 G CRED 2.1.4 requires that the *apportionment and oversight function* must be allocated to the *credit union's chief executive* where there is one. 'Chief executive' in this context means an *employee* who alone, or jointly with others, is responsible under the immediate authority of the committee of management for the conduct of the whole business of the *credit union*. In smaller *credit unions*, this would include any *manager* or *person* who is entrusted with the whole of the day to day running of the *credit union* even if the title 'chief executive' is not used. [deleted]
- 4.2.8 G The *apportionment and oversight function* may be allocated to one or more members of the *credit union's* committee of management in addition to the *chief executive*, or where there is no *chief executive* (see also CRED 4.3.17G). [deleted]
- 4.2.9 G The allocation of the *apportionment and oversight function* to one or two individuals is likely to be appropriate for most *firms*, including many *credit unions*. However, it would be possible to allocate the function to every member of the *credit union's* committee of management as long as that allocation remained appropriate. [deleted]
- 4.2.10 G If the allocation is to more than one *person* they may perform the *apportionment and oversight function*, or aspects of the function, separately. So, for example, one individual may have specific responsibility for the apportionment of responsibilities, whilst somebody else may have specific responsibility for overseeing the establishment and maintenance of the *credit union's* systems of control. [deleted]
- 4.2.11 G Under SYSC 2.2.1R, all *credit unions* are required to maintain a record of the arrangements they have made to satisfy the requirements to apportion significant responsibilities and allocate the *apportionment and oversight function*. Where responsibilities have been allocated to more than one *person*, the record will need to show clearly how those responsibilities are shared or divided. These records must be retained for six years after being replaced by a more up-to-date record. [deleted]
- 4.2.12 G Most *credit unions* should be able to comply with the requirements of SYSC

~~2.2.1R by means of records they already keep for their own purposes (for example, job descriptions, organisation charts, committee constitutions and terms of reference). [deleted]~~

4.3 Systems and Controls

General

- 4.3.1 G ~~SYSC 3.1.1R~~ 4.1.1R requires that every *firm*, including a *credit union*, takes reasonable care to establish and maintain such systems and controls as are appropriate to its business.
- 4.3.2 G ~~SYSC 3.1.1R~~ 4.1.1R is a high level *rule* which allows *firms* to put in place the systems and controls that are appropriate and effective for their particular circumstances. What is appropriate for a particular *credit union* will depend upon such matters as the nature, scale, and complexity of its business, the volume and size of its *transactions*, and the level of risk associated with its operations.
- 4.3.3 G A small *version 1 credit union* will not be expected to have the same systems and controls as a large *version 2 credit union*.
- 4.3.4 G ~~SYSC 3.2~~ 4.1 deals with the areas to be covered by systems and controls. *Guidance* on how this applies to *credit unions* is provided below.
- ...
- 4.3.11 E (1) A *credit union* should have an internal audit function (this may be either in house or outsourced to a third party).
- (2) Contravention of ~~CRED 4.3.11E(1)~~ may be relied on as tending to establish contravention of ~~SYSC 3.1.1R~~ 4.1.1R (see *CRED* 4.3.1G).
- 4.3.12 G The term ‘internal audit function’ in *CRED* 4.3.11E refers to the generally understood concept of internal audit within a *firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28). *Guidance* on internal audit is given in *CRED* 4.3.50 G to *CRED* 4.3.60G.
- 4.3.13 E (1) ~~A credit union should ensure appropriate segregation of duties in order to minimise the risk of financial crime or contravention of requirements and standards under the regulatory system.~~
- (2) ~~Contravention of CRED 4.3.13E(1) may be relied on as tending to establish contravention of SYSC 3.1.3G. [deleted]~~
- 4.3.13A G A credit union should ensure appropriate segregation of duties in order to minimise the risk of financial crime or contravention of requirements and

standards under the regulatory system.

- 4.3.14 G *Guidance* on segregation of duties is given in *CRED* 4.3.26G = and *CRED* 4.3.27G.

Committee of management

- 4.3.15 G Under Schedule 1 to the Credit Unions Act 1979, a *credit union* is required to have a committee of management. The committee of management should be competent to control the affairs of a *credit union*, and have an appropriate range of skills and experience having regard to the activities carried on by the *credit union*.
- 4.3.16 G *CRED* 6.2 provides additional guidance for *credit unions* on the Statements of Principle for *Approved Persons* (see also *APER* 2.1.2P). In accordance with *Statement of Principle* 7, it is the responsibility of each individual member of the committee of management to understand, and ensure that the *credit union* complies with, the requirements of all the relevant Acts, secondary legislation, and *rules*.
- 4.3.17 G As the *credit union's governing body*, the committee of management has responsibility for ensuring that the *credit union* complies with the requirements of ~~*SYSC* 3.1.1R~~ 4.1.1R (see *CRED* 4.3.1G and *CRED* 4.3.2G). Accordingly, the committee of management has overall responsibility for the following matters:

...

...

Organisation

- 4.3.19 G ~~*Guidance on Provisions relating to organisational arrangements is*~~ are located in ~~*SYSC* 3.2.2G~~ *SYSC* 3.2.5G 4.
- 4.3.20 G A *credit union* should have clearly defined organisational arrangements and procedures. These arrangements and procedures should be properly documented.
- 4.3.21 G Those *credit unions* that do not have a permanent place of business or permanent full-time staff should take particular care to ensure that their organisational arrangements are robust and clear.
- 4.3.22 G The delegation of functions and tasks should take place within an appropriate framework. This should distinguish between those decisions reserved for the committee of management and those delegated to sub-committees, volunteers or *employees*.
- 4.3.23 G There should be arrangements to supervise delegation. This should include establishing appropriate reporting mechanisms and procedures for monitoring.

- 4.3.24 G Reporting lines should be clear and appropriate having regard to the nature, scale, and complexity of the *credit union* and its business.
- 4.3.25 G ~~SYSC 3.2.4G~~ 8.1 specifically covers the issue of outsourcing. *Guidance* relevant to delegation within a *credit union* is also relevant to external delegation (“outsourcing”). A *credit union* cannot contract out its regulatory obligations, and remains ultimately responsible for any activities or functions that are outsourced. A *credit union* should therefore take reasonable care to supervise any outsourced activities, and obtain sufficient information to be able to assess the impact of outsourcing on its systems and controls.

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Accounting records and systems

- 4.3.32 G ~~SYSC 3.2.20R~~ 9.1.1R requires that a *credit union* takes reasonable care to make and retain adequate records of all matters governed by the *Act*, secondary legislation under the *Act*, or *rules* (including accounting records). These records must be capable of being reproduced in the English language and on paper.

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Systems and controls in relation to compliance and financial crime

- 4.3.37 G ~~SYSC 3.2.6R~~ 6.1.1R requires all *credit unions* to take reasonable care to establish and maintain effective systems and controls for compliance with all regulatory requirements (in other words, the relevant Acts, secondary legislation, and *rules*) and for countering the risk of *financial crime*.
- 4.3.37A G ~~SYSC 3.2.6AR~~ 6.1.1R and ~~SYSC 6.3.1R~~ requires require a *credit union* to ensure that these systems and controls:
- (1) enable it to identify, assess, monitor and manage *money laundering* risk; and
 - (2) are comprehensive and proportionate to the nature, scale and complexity of that *credit union's* activities.
- 4.3.37B G ‘*Money laundering* risk’ is the risk that a *credit union* may be used to further *money laundering*. Failure by a *credit union* to manage this risk effectively will increase the risk to society of crime and terrorism.
- 4.3.37C G ~~SYSC 3.2.6CR~~ 6.3.3R requires a *credit union* to carry out regular assessments of the adequacy of these systems and controls to ensure that they continue to meet this requirement.
- 4.3.37D G A *credit union* may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the *Money Laundering Regulations*. ~~SYSC 3.2.6R to~~

~~3.2.6JG~~ 6.1.1R and SYSC 6.3.1R to SYSC 6.3.10G are not relevant guidance for the purposes of regulation 3(3) of the *Money Laundering Regulations*, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.

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- 4.3.37G G A *credit union* should ensure that these systems and controls include:
- (1) appropriate training for that *credit union's* employees in relation to *money laundering*;
 - (2) appropriate provision of information to that *credit union's* governing body and senior management, including a report at least annually by that *credit union's* *money laundering reporting officer* on the operation and effectiveness of those systems and controls;
 - (3) appropriate documentation of that *credit union's* risk management policies and risk profile in relation to *money laundering*, including documentation of that *credit union's* application of those policies (see ~~SYSC 3.2.20R~~ to ~~SYSC 3.2.22G~~ 9);
 - (4) appropriate measures to ensure that *money laundering* risk is taken into account in the day-to-day operation of that *credit union*, including in relation to:
 - (a) the development of new products;
 - (b) the taking-on of new customers; and
 - (c) changes in its business profile; and
 - (5) appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to that *credit union's* services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.

- 4.3.37H G ~~SYSC 3.2.6HR~~ 6.1.1R and ~~SYSC 6.3.8R~~ requires require a *credit union* to allocate to a *director* or *senior manager* (who may also be the *money laundering reporting officer*) overall responsibility within the *credit union* for the establishment and maintenance of effective anti-*money laundering* systems and controls.

The money laundering reporting officer

- 4.3.37I G ~~SYSC 3.2.6IR~~ 6.1.1R and ~~SYSC 6.3.9R~~ requires require a *credit union* to:
- (1) appoint a *money laundering reporting officer*, who shall be responsible for oversight of that *credit union's* compliance with the *FSA's* rules on systems and controls against *money laundering*; and
 - (2) ensure that its *money laundering reporting officer* has a level of

authority and independence within that *credit union* and access to resources and information sufficient to enable him to carry out that responsibility.

- 4.3.37J G The job of the *money laundering reporting officer* within a *credit union* is to act as the focal point for all activity within that *credit union* relating to anti-*money laundering*. The *FSA* expects that a *credit union's money laundering reporting officer* will be based in the *United Kingdom*.

The compliance function

- 4.3.37K G Depending on the nature, scale and complexity of its business, it may be appropriate for a *credit union* to have a separate compliance function. The organisation and responsibilities of a compliance function should be documented. A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. It should be adequately resourced and should have unrestricted access to the *credit union's* relevant records as well as ultimate recourse to its *governing body*.

- 4.3.38 G *Guidance* on compliance is located in ~~SYSC 3.2.8R~~ ~~SYSC 3.2.9G~~ 6.1.3R.

[Note: As explained in SYSC 1 Annex 1.3.3G, SYSC 6.1.3R is to be read as *guidance* rather than as a *rule*, and as if “should” appeared in that provision instead of “must”.]

- 4.3.39 G ~~SYSC 3.2.8R is unlikely to be relevant to a *credit union* as it is relevant only to *firms carrying on designated investment business*. [deleted]~~

- 4.3.40 G Some important compliance issues include:

- (1) insurance against fraud and dishonesty;
- (2) arrangements for the prevention, detection and reporting of *money laundering*;
- (3) establishing and maintaining a satisfactory system of control;
- (4) keeping proper books of account;
- (5) computation and application of profits;
- (6) investment of surplus funds;
- (7) capital requirements;
- (8) liquidity requirements;
- (9) limits on shares and loans;
- (10) maintenance of membership records;

- (11) submission of financial reports to the regulator;
- (12) *approved persons* regime;
- (13) payment of regulatory fees.

Management information

- 4.3.41 G *Guidance* on management information is located in *SYSC 3.2.11G* ~~*SYSC 3.2.12G*~~ 7.1.4R.

[Note: As explained in SYSC 1 Annex 1.3.3G, SYSC 7.1.4R is to be read as *guidance* rather than as a *rule*, and as if “should” appeared in that provision instead of “must”.]

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Personnel

- 4.3.47 G *Guidance* on *employees* and agents is located in *SYSC 3.2.13G* ~~*SYSC 3.2.14G*~~ 5.1.2G.

- 4.3.48 G A *credit union* should identify present and future staffing requirements (including volunteers and paid staff) and make appropriate plans for their recruitment and training.

- 4.3.49 G A *credit union* should have appropriate systems and controls in place to satisfy itself as to the suitability of its staff, including the competence and honesty of such staff. Any assessment of suitability should take into account the nature of the position and the level of responsibility that the individual would hold.

Internal Audit

- 4.3.50 G *CRED 4.3.11E* states that a *credit union* should have an internal audit function (see also *CRED 4.3.12G*).

- 4.3.51 G *Guidance* on internal audit and audit committees (otherwise known as the supervisory committee) is located in *SYSC 6* and *SYSC 3.2.15G* ~~*SYSC 3.2.16G*~~ 4.1.11G.

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- 4.3.63 G *Guidance* on business strategy is located in *SYSC 3.2.17G* 6.1.2R and 7.1.2R.

[Note: As explained in SYSC 1 Annex 1.3.3G, SYSC 6.1.2R and SYSC 7.1.2R are to be read as *guidance* rather than as *rules*, and as if “should” appeared in those provisions instead of “must”.]

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Business continuity

- 4.3.72 G *Guidance* on business continuity is located in SYSC ~~3.2.19G~~ 4.1.6R to 4.1.8G.

[Note: As explained in SYSC 1 Annex 1.3.3G, SYSC 4.1.6R is to be read as *guidance* rather than as a *rule*, and as if “should” appeared in that provision instead of “must”.]

Annex L

Amendments to the Electronic Money sourcebook (ELM)

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

1.5.2 G Application of other parts of the Handbook to ELMIs

High level standards
	Senior management arrangements, systems and controls (<i>SYSC</i>)	<i>SYSC</i> 1 (Application and purpose), <i>SYSC</i> 2 (Senior management arrangements), <i>SYSC</i> 3 (Systems and controls) <u>4 to 10 (common platform requirements)</u> , <i>SYSC</i> 12.1 (Group risk systems and control requirement) and <i>SYSC</i> 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) apply to every <i>ELMI</i> .
...		

...

2.5.7 G The effect of the *rules* in *SYSC* ~~3~~ 4 is that a *firm* should take reasonable care to establish and maintain systems and controls that ensure that the *firm* will know as soon as reasonably possible if the projections referred to in *ELM* 2.5.4R(1) have proved to be significantly incorrect or if it is reasonably likely that those projections will prove to be significantly incorrect.

...

5.2.5 G The purpose of this chapter is to amplify the requirements of *Principle* 3 for *firms* in specific areas and thus make it more likely that *firms* will have adequate systems and controls. It also increases certainty by providing *guidance* on some of the specific ways in which the *rules* in *SYSC* ~~3~~ 4 to 10 apply in relation to *issuing e-money*. This chapter also helps to establish a *firm's* compliance with *threshold conditions* 4 and 5.

...

5.4.1 G The *guidance* in *ELM* 5.4 is *guidance* on the *rules* in *SYSC* ~~3~~ 4 to 10 as they apply to *issuing e-money*. It is in addition to the *guidance* in *SYSC* itself.

5.4.2 G Under ~~SYSC 3.2.3G and SYSC 3.2.4G~~ 8.1.6R and 8.1.8R, a *firm* should carry out appropriate due diligence on any *person* to whom it outsources any function or task and keep the suitability of that *person* for that task or function under review. A *firm* should monitor the performance by that *person* of the outsourced tasks and functions.

5.4.3 G A *firm* should, to the degree appropriate in the light of the factors listed in ~~SYSC 3.1.2G(1)~~ 4.1.2R:

...

5.4.4 G The risks of ~~regulatory concern~~ referred to in ~~SYSC 3.2.11G~~ 7.1.4R and 7.1.5R relating to *e-money* include the following risks:

...

Annex M

Amendments to the Perimeter Guidance manual (PERG)

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

Exclusion: administration pursuant to agreement with authorised person

- 4.8.7 G Under article 63 of the *Regulated Activities Order*, a *person* who is not an *authorised person* does not *administer a regulated mortgage contract* if he administers the contract under an agreement with a *firm* with *permission* to *administer a regulated mortgage contract*. A *firm* with *permission* to *administer a regulated mortgage contract* may thus outsource or delegate the administration function to an unauthorised third party. A *firm* that proposes to do this should however note, as set out in ~~SYSC 3.2.4G(1)~~, 8.1.6R and 8.1.8R, that the *FSA* will continue to hold it responsible for the way in which the administration is carried on.

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13.7 ...

Q70. How are the high level standards, like the Principles, affected by MiFID?

The position is summarised in the table below.

	Subject matter	References	Summary
1	The Principles	PRIN 3.1.6R (Who?)	A firm is not subject to the Principles to the extent that it would be contrary to MiFID (and the other Single Market Directives).
2		PRIN 4.1.2G (Where?)	The territorial scope of some Principles has been extended and others narrowed according to the type of firm.

3	Systems and controls	<p>SYSC 1.1.1R(6) and SYSC 1.3.9R to SYSC 1.3.11R</p> <p>SYSC 1.1.1R (1)(a), SYSC 1.1.7R and SYSC 1.3.10AR</p> <p><u>SYSC 1 Annex 1.2.15R to 1.2.18R</u></p>	<p>A UK MiFID investment firm is a common platform firm. It is subject to the common platform requirements in SYSC 4 to SYSC 10 and is not subject to the requirements in SYSC 2 and SYSC 3. The common platform requirements generally apply in relation to activities conducted from an establishment in the United Kingdom or another EEA State. However, this is subject to some modification, for example in relation to requirements on record keeping and financial crime. Most of the common platform requirements also apply in a prudential context to the activities of a UK MiFID investment firm from an establishment outside the EEA.</p> <p>An EEA MiFID investment firm is not a common platform firm and is therefore not subject to the common platform requirements. However, it is subject to the common platform record keeping requirements. Some provisions in SYSC 2 and SYSC 3 <u>9</u> will apply to the UK establishment of an EEA MiFID investment firm but only in respect of matters that are not reserved to the Home State regulator. This is particularly relevant to the provisions on systems and controls concerning financial crime and money laundering in SYSC 3 <u>6.3</u>.</p>
...			

Q71. What is the position in relation to record keeping in branches?

The effect of article 13(9) of MiFID is also to shift the default position (of regulation by the Home State) to regulation by the Host State for the record-keeping requirements imposed on a branch (see ~~SYSC 1.3.10AR~~ 1 Annex 1.2.17R).

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