

## ACCOUNTABILITY AND WHISTLEBLOWING INSTRUMENT 2015

### Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 64A (Rules of conduct);
  - (3) section 137A (The FCA’s general rules);
  - (4) section 137T (General supplementary powers);
  - (5) section 138C (Evidential provisions);
  - (6) section 139A (Power of the FCA to give guidance); and
  - (7) section 395 (The FCA’s and PRA’s procedures).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on as follows:
- (1) Part 1 of Annex A (Glossary) and Part 1 of Annex B (SYSC) come into force on 7 March 2016;
  - (2) Part 2 of Annex A (Glossary), Part 2 of Annex B (SYSC) and Annex C (IFPRU) come into force on 7 September 2016.

### Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Prudential sourcebook for Investment Firms (IFPRU)	Annex C

### Citation

- E. This instrument may be cited as the Accountability and Whistleblowing Instrument 2015.

By order of the Board  
24 September 2015

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text, unless otherwise stated.

#### Part 1: Comes into force on 7 March 2016

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

- protected disclosure*
- (a) a “qualifying disclosure” as defined in section 43B of the Employment Rights Act 1996 (and summarised in (b) below) made by a *worker* in accordance with sections 43C to 43H of the Employment Rights Act 1996;
  - (b) a qualifying disclosure is, in summary, a disclosure, made in the public interest, of information which, in the reasonable belief of the *worker* making the disclosure, tends to show that one or more of the following (a “failure”) has been, is being, or is likely to be, committed:
    - (i) a criminal offence; or
    - (ii) a failure to comply with any legal obligation; or
    - (iii) a miscarriage of justice; or
    - (iv) the putting of the health and safety of an individual in danger; or
    - (v) damage to the environment; or
    - (vi) deliberate concealment relating to any of (i) to (v);

it is immaterial whether the failure occurred, occurs or would occur in the *United Kingdom* or elsewhere, and whether the law applying to it is that of the *United Kingdom* or of any other country or territory.
- reportable concern*
- a concern held by any *person* in relation to the activities of a *firm*, including:
- (a) anything that would be the subject-matter of a *protected disclosure*, including breaches of *rules*;
  - (b) a breach of the *firm’s* policies and procedures; and
  - (c) behaviour that harms or is likely to harm the reputation or financial well-being of the *firm*.
- settlement*
- (in SYSC 18) (Whistleblowing) an agreement between the *firm* and a

- agreement*                    *worker* which sets out the terms and conditions agreed by these parties for the purposes of settling a potential employment tribunal claim, other court proceedings or employment disputes.
- whistleblower*            any *person* that has disclosed, or intends to disclose, a *reportable concern*:
- (a)    to a *firm*; or
  - (b)    to the *FCA* or the *PRA*; or
  - (c)    in accordance with Part 4A (Protected Disclosures) of the Employment Rights Act 1996.
- A person is not necessarily a *whistleblower* if they use a channel other than the internal arrangements set out in SYSC 18.3.
- whistleblowers’  
champion*            (a)    (in SYSC 4.5) an individual appointed by a *firm* under SYSC 4.5.25R(1) with the allocated responsibilities in SYSC 18.4.4R;
- (b)    (in SYSC 18) (Whistleblowing) an individual appointed by a *firm* under either SYSC 4.5.25R(1) or SYSC 18.4.2R, as applicable, with the allocated responsibilities in SYSC 18.4.4R.
- worker*                        a “worker” defined in section 230(3), and as extended under section 43K, of the Employment Rights Act 1996.

**Part 2:                    Comes into force on 7 September 2016**

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

- small deposit  
taker*                        (in SYSC 18) (Whistleblowing) a *firm* whose *Part 4A permission* includes *accepting deposits* and which has total gross assets of £250 million or less, determined on the basis of the annual average amount of gross assets calculated across a rolling period of five years or, if it has been in existence for less than five years, across the period during which it has existed (in each case, calculated with reference to the *firm’s* annual accounting reference date).

Amend the following as shown.

- firm*                        ...
- (8)    (in SYSC 18 with the exception of the guidance in SYSC 18.3.9G):
    - (a)    a relevant authorised person except a small deposit taker; and
    - (b)    a firm as referred to in Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing Instrument 2015.

## Annex B

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

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

**Part 1: Comes into force on 7 March 2016**

**4 General organisational requirements**

...

**4.7 Senior management responsibilities for relevant authorised persons: allocation of responsibilities**

...

4.7.7 R Table: FCA – prescribed senior management responsibilities

<b>FCA-prescribed service management responsibility</b>	<b>Explanation</b>	<b>Equivalent PRA-prescribed senior management responsibility</b>
...		
(4) ...	<del>(A)</del> <u>(1)</u> ... <del>(B)</del> <u>(2)</u> ... <del>(C)</del> <u>(3)</u> ...	
<u>(4A) Acting as the firm's whistleblowers' champion</u>	<u>The whistleblowers' champion's allocated responsibilities are set out in SYSC 18.4.4R</u>	
...		

After SYSC 18.2 insert the following new section. The text is not underlined. (SYSC 18.3 is inserted by Part 2 of this instrument.)

#### **18.4 The whistleblowers' champion**

- 18.4.1 G (1) *A relevant authorised person is required under SYSC 4.5.25R(1) to allocate the FCA-prescribed senior management responsibility for acting as the firm's whistleblowers' champion.*
- (2) *SYSC 18.4.2R requires the appointment by an insurer of a director or senior manager as its whistleblowers' champion.*
- (3) *This section sets out the role of the whistleblowers' champion.*
- (4) *The FCA expects that a firm will appoint a non-executive director as its whistleblowers' champion. A firm that does not have a non-executive director would not be expected to appoint one just for this purpose.*
- 18.4.2 R *An insurer must appoint a director or senior manager as its whistleblowers' champion.*
- 18.4.3 R *A firm must assign the responsibilities set out in SYSC 18.4.4R to its whistleblowers' champion.*
- 18.4.4 R *A firm must allocate to the whistleblowers' champion the responsibility for ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing (see SYSC 18.3 (Internal Arrangements)) including those policies and procedures intended to protect whistleblowers from being victimised because they have disclosed reportable concerns.*
- 18.4.5 G The whistleblowers' champion:
- (1) *should have a level of authority and independence within the firm and access to resources (including access to independent legal advice and training) and information sufficient to enable him to carry out that responsibility;*
- (2) *need not have a day-to-day operational role handling disclosures from whistleblowers; and*
- (3) *may be based anywhere provided he can perform his function effectively.*
- 18.4.6 G *The role of a whistleblowers' champion, before the introduction of his responsibilities under those provisions of SYSC 18 which are to come into force on 2 October 2016, includes oversight of the firm's transition to its new arrangements for whistleblowing.*

**Part 2: Comes into force on 7 September 2016**

**18 ~~Guidance on Public Interest Disclosure Act: Whistleblowing~~**

**18.1 Application and Purpose**

Application

18.1.1 G ~~This chapter is relevant to every *firm* to the extent that the Public Interest Disclosure Act 1998 (“PIDA”) applies to it. [deleted]~~

18.1.1A R This chapter applies to:

(1) a *firm*;

(2) in relation to the guidance in SYSC 18.3.9G to every *firm*.

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

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

(b) a *firm* as referred to in Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing Instrument 2015.”

18.1.1B R In this chapter, a reference to a provision of the Employment Rights Act 1996 includes a reference to the corresponding provision of the Employment Rights (Northern Ireland) Order 1996.

18.1.1C G A *firm* not referred to in SYSC 18.1.1AR may adopt the *rules* and *guidance* in this chapter as best practice. If so, it may tailor its approach in a manner that reflects its size, structure and headcount.

Purpose

18.1.2 G (1) The purposes of this chapter are to:

(a) to remind *firms* of the provisions of PIDA set out the requirements on *firms* in relation to the adoption, and communication to UK-based *employees*, of appropriate internal procedures for handling *reportable concerns* made by *whistleblowers* as part of an effective risk management system (SYSC 18.3); and

(b) to encourage *firms* to consider adopting and communicating to workers appropriate internal procedures for handling workers' concerns as part of an effective risk management system set out the role of the *whistleblowers' champion* (SYSC 18.4);

(c) require *firms* to ensure that *settlement agreements* expressly state that *workers* may make *protected disclosures* (SYSC 18.5) and do

not include warranties related to *protected disclosures*;

(d) outline best practice for *firms* which are not required to apply the measures set out in this chapter but which wish to do so; and

(e) outline the link between effective whistleblowing measures and fitness and propriety.

(2) ~~In this chapter "worker" includes, but is not limited to, an individual who has entered into a contract of employment. [deleted]~~

18.1.3 G ~~The *guidance* in this chapter concerns the effect of PIDA in the context of the relationship between *firms* and the *FCA*. It is not comprehensive guidance on PIDA itself. [deleted]~~

Delete SYSC 18.2 (Practical measures) in its entirety. The deleted text is not shown.

After SYSC 18.2 (deleted) insert the following new sections. The text is not underlined.

### **18.3 Internal arrangements**

Arrangements to be appropriate and effective

- 18.3.1 R (1) A *firm* must establish, implement and maintain appropriate and effective arrangements for the disclosure of *reportable concerns* by *whistleblowers*.
- (2) The arrangements in (1) must at least:
- (a) be able effectively to handle disclosures of *reportable concerns* including:
    - (i) where the *whistleblower* has requested confidentiality or has chosen not to reveal their identity; and
    - (ii) allowing for disclosures to be made through a range of communication methods;
  - (b) ensure the effective assessment and escalation of *reportable concerns* by *whistleblowers* where appropriate, including to the *FCA* or *PRA*;
  - (c) include reasonable measures to ensure that if a *reportable concern* is made by a *whistleblower* no *person* under the control of the *firm* engages in victimisation of that *whistleblower*;
  - (d) provide feedback to a *whistleblower* about a *reportable concern* made to the *firm* by that *whistleblower*, where this is feasible and

appropriate;

- (e) include the preparation and maintenance of:
  - (i) appropriate records of *reportable concerns* made by *whistleblowers* and the *firm's* treatment of these reports including the outcome; and
  - (ii) up-to-date written procedures that are readily available to the *firm's* UK-based *employees* outlining the *firm's* processes for complying with this chapter;
- (f) include the preparation of the following reports:
  - (i) a report made at least annually to the *firm's* governing body on the operation and effectiveness of its systems and controls in relation to whistleblowing (see SYSC 18.3.1R); this report must maintain the confidentiality of individual *whistleblowers*; and
  - (ii) prompt reports to the *FCA* about each case the *firm* contested but lost before an employment tribunal where the claimant successfully based all or part of their claim on either detriment suffered as a result of making a protected disclosure in breach of section 47B of the Employment Rights Act 1996 or being unfairly dismissed under section 103A of the Employment Rights Act 1996;
- (g) include appropriate training for:
  - (i) UK-based *employees*;
  - (ii) *managers* of UK-based *employees* wherever the *manager* is based; and
  - (iii) *employees* responsible for operating the *firms'* internal arrangements.

- 18.3.2 G (1) When establishing internal arrangements in line with SYSC 18.3.1R a *firm* may:
- (a) draw upon relevant resources prepared by whistleblowing charities or other recognised standards setting organisations; and
  - (b) consult with its UK-based *employees* or those representing these *employees*.
- (2) In considering if a *firm* has complied with SYSC 18.3.1R the *FCA* will take into account whether the *firm* has applied the measures in (1).
- (3) A *firm* may wish to clarify in its written procedures for the purposes of SYSC 18.3.1R(2)(e)(ii), that:

- (a) there may be other appropriate routes for some issues, such as employee grievances or consumer complaints, but internal arrangements as set out in SYSC 18.3.1R(2) can be used to blow the whistle after alternative routes have been exhausted, in relation to the effectiveness or efficiency of the routes; and
  - (b) nothing prevents *firms* taking action against those who have made false and malicious disclosures.
- 18.3.3 G (1) A *firm* may wish to operate its arrangements under SYSC 18.3.1R internally, within its *group* or through a third party.
- (2) *Firms* will have to consider how to manage any conflicts of interest.
- (3) If the *firm* uses another member of its *group* or a third party to operate its arrangements under SYSC 18.3.1R it will continue to be responsible for complying with that *rule*.

#### Training and development

- 18.3.4 G A *firm's* training and development in line with SYSC 18.3.1R(2)(g) should include:
- (1) for all *UK-based employees*:
    - (a) a statement that the *firm* takes the making of *reportable concerns* seriously;
    - (b) a reference to the ability to report *reportable concerns* to the *firm* and the methods for doing so;
    - (c) examples of events that might prompt the making of a *reportable concern*;
    - (d) examples of action that might be taken by the *firm* after receiving a *reportable concern* by a *whistleblower*, including measures to protect the *whistleblower's* confidentiality; and
    - (e) information about sources of external support such as whistleblowing charities;
  - (2) for all managers of *UK-based employees* wherever the *manager* is based:
    - (a) how to recognise when there has been a disclosure of a *reportable concern* by a *whistleblower*;
    - (b) how to protect *whistleblowers* and ensure their confidentiality is preserved;
    - (c) how to provide feedback to a *whistleblower*, where appropriate;

- (d) steps to ensure fair treatment of any *person* accused of wrongdoing by a *whistleblower*; and
  - (e) sources of internal and external advice and support on the matters referred to in (a) to (d);
- (3) all *employees* of the *firm*, wherever they are based, responsible for operating the *firm's* arrangements under SYSC 18.3.1R, how to:
- (a) protect a *whistleblower's* confidentiality;
  - (b) assess and grade the significance of information provided by *whistleblowers*; and
  - (c) assist the *whistleblowers' champion* (see SYSC 18.4) when asked to do so.
- 18.3.5 G Where a *firm* operates its arrangements under SYSC 18.3.1R through another member of its *group* or a third party it should consider providing the training referred to in SYSC 18.3.4G(3) to the *persons* operating the arrangements by the *group* member or third party.

#### Reporting of concerns by employees to regulators

- 18.3.6 R (1) A *firm* must, in the manner described in (2), communicate to its *UK-based employees* that they may disclose *reportable concerns* to the *PRA* or the *FCA* and the methods for doing so. A *firm* must make clear that:
- (a) reporting to the *PRA* or to the *FCA* is not conditional on a report first being made using the *firm's* internal arrangements;
  - (b) it is possible to report using the *firm's* internal arrangements and also to the *PRA* or *FCA*; these routes may be used simultaneously or consecutively; and
  - (c) it is not necessary for a disclosure to be made to the *firm* in the first instance.
- (2) The communication in (1) must be included in the *firm's* employee handbook or other equivalent *document*

- 18.3.7 R *Firms* must ensure that their *appointed representatives* or, where applicable, their *tied agents*, inform any of their *UK-based employees* who are *workers* that, as *workers*, they may make *protected disclosures* to the *FCA*.

#### Appointed representatives and tied agents

- 18.3.8 G *Firms* are encouraged to invite their *appointed representatives* or, where applicable, their *tied agents* to consider adopting appropriate internal procedures which will encourage *workers* with concerns to blow the whistle internally about matters which are relevant to the functions of the *FCA* or

*PRA.*

Link to fitness and propriety

- 18.3.9 G The *FCA* would regard as a serious matter any evidence that a *firm* had acted to the detriment of a *whistleblower*. Such evidence could call into question the fitness and propriety of the *firm* or relevant members of its staff, and could therefore, if relevant, affect the *firm's* continuing satisfaction of *threshold condition 5* (Suitability) or, for an *approved person* or a *certification employee*, their status as such.

...

## 18.5 Settlement agreements with workers

- 18.5.1 R A *firm* must include a term in any *settlement agreement* with a *worker* that makes clear that nothing in such an agreement prevents a *worker* from making a *protected disclosure*.
- 18.5.2 E (1) *Firms* may use the following wording, or alternative wording which has substantively the same meaning, in any *settlement agreement*:
- “For the avoidance of doubt, nothing precludes [name of worker] from making a “protected disclosure” within the meaning of Part 4A (Protected Disclosures) of the Employment Rights Act 1996. This includes protected disclosures made about matters previously disclosed to another recipient.”
- (2) Compliance with (1) may be relied on as tending to establish compliance with SYSC 18.5.1R.
- 18.5.3 R (1) *Firms* must not request that *workers* enter into warranties which require them to disclose to the *firm* that:
- (a) they have made a *protected disclosure*; or
- (b) they know of no information which could form the basis of a *protected disclosure*.
- (2) *Firms* must not use measures intended to prevent *workers* from making *protected disclosures*.

## Annex C

### Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

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

## 2 Supervisory processes and governance

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### 2.4 Reporting of breaches

...

- 2.4.2 G ~~SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing)~~ contains further ~~guidance on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between firms and the FCA~~ requirements on relevant authorised persons and certain insurers (see SYSC 18.1.1AR) in relation to the adoption and communication of appropriate internal procedures for handling reportable concerns as part of an effective risk management system. SYSC 18.1.1CG provides that firms not otherwise subject to SYSC 18 may nonetheless wish to adopt the provisions in that chapter as best practice.