

**INDIVIDUAL ACCOUNTABILITY (EXTENSION OF SCOPE) AND  
WHISTLEBLOWING (AMENDMENT) INSTRUMENT 2016**

**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 63E (Certification of employees by relevant authorised persons);
  - (2) section 63F (Issuing of certificates);
  - (3) section 64A (Rules of conduct);
  - (4) section 137A (The FCA’s general rules);
  - (5) section 137T (General supplementary powers);
  - (6) section 138C (Evidential provisions); and
  - (7) section 139A (Power of the FCA to give guidance).
- 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 as follows:

Annex	Date comes into force
Part 2 of Annex A	7 September 2016
Part 2 of Annex B	7 September 2016
Annex E	7 September 2016
The remainder of this instrument	7 March 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
Code of Conduct sourcebook (COCON)	Annex C
Training and Competence sourcebook (TC)	Annex D
Prudential sourcebook for Investment Firms (IFPRU)	Annex E

**Citation**

- E. This instrument may be cited as the Individual Accountability (Extension of Scope) and Whistleblowing (Amendment) Instrument 2016.

By order of the Board  
28 January 2016

## Annex A

### Amendments to the Glossary of definitions

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

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

<i>proprietary trader</i>	(in <u>SYSC 5.2 (Certification regime)</u> , <del>SUP 10</del> <u>10A (FCA Approved Persons)</u> , <u>COCON</u> and <u>APER</u> ) a person (A) whose responsibilities include committing another <i>person</i> (B) as part of B's <i>proprietary trading</i> .
<i>proprietary trading</i>	(in <u>SYSC 5.2 (Certification regime)</u> , <u>SUP 10A (FCA Approved Persons)</u> , <u>COCON</u> and <u>APER</u> ) <i>dealing in investments as principal</i> as part of a business of trading in <i>specified investments</i> . ...
<i>whistleblowers' champion</i>	<p>(a) (in <del>SYSC 4.5</del> <u>4.7</u>) an individual appointed by a <i>firm</i> under <del>SYSC 4.5.25R(1)</del> <u>4.7.5R(1)</u> with the allocated responsibilities in SYSC 18.4.4R;</p> <p>(b) (in SYSC 18) (Whistleblowing) an individual appointed by a <i>firm</i> under either <del>SYSC 4.5.25R(1)</del> <u>4.7.5R(1)</u> or SYSC 18.4.2R, as applicable, with the allocated responsibilities in SYSC 18.4.4R.</p>

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

<i>Firm</i>	<p>...</p> <p>(8) (in SYSC 18 with the exception of the guidance in SYSC 18.3.9G):</p> <p>(a) a <u>UK relevant authorised person</u> except a <i>small deposit taker</i>; and</p> <p>...</p>
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## 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

## 5.2 Certification regime

...

Issuing and renewing certificates

...

- 5.2.12 G (1) ~~A~~ The Act says that a certificate is valid for a period of 12 months, beginning with the day on which it is issued.
- (2) The FCA believes that the Act allows a firm to draft a certificate to expire after fewer than 12 months. The FCA interprets the Act in this way because to require a firm to make a certificate last longer than the firm thinks best is likely to make it harder for the firm to ensure the fitness of its certification employees. That would undermine the purpose of the certification regime in the Act.
- (3) A certificate cannot be drafted to last more than 12 months.

...

5.2.17 G ...

- 5.2.17A G (1) This paragraph gives further guidance on the flexibility a firm has in drafting its certificates.
- (2) A certificate may cover functions that a certification employee is not currently performing, as long as the firm has assessed the employee's fitness for these additional functions. This is subject to (3).
- (3) When a firm is deciding what a certificate can cover beyond the functions that the certification employee is currently performing, it should take the factors in SYSC 5.2.17G(1) into account. A certificate should not normally cover an additional function if SYSC 5.2.17G(1) would require the firm to consider the employee's fitness before allowing them to perform it.
- (4) A firm may, if it wishes, restrict a certificate to the functions that the certification employee is currently performing rather than drafting the

certificate more widely as described in (2) and (3).

- (5) SYSC 5.2.12G deals with the flexibility a firm has in choosing the period for which a certificate lasts.

...

Scope: territorial scope

- 5.2.19 R (1) ...
- (2) ...
- (3) Paragraph (1) does not apply to FCA-specified significant-harm function (7) (material risk takers). For a UK relevant authorised person, FCA-specified significant-harm function (7) applies without any territorial limitation.

5.2.20 G ...

5.2.20A G The FCA interprets the phrase ‘a client of the firm in the United Kingdom’ in SYSC 5.2.19R as referring to:

- (1) for a client which is a body corporate, its office or branch in the United Kingdom; or
- (2) for a client who is an individual, a client who is in the United Kingdom at the time of the dealing.

Scope: employees

5.2.21 G ...

5.2.22 G ...

Scope: effect of PRA requirements

5.2.23 G ...

...

5.2.28 G ...

Scope: temporary UK role (the 30-day rule)

- 5.2.28A R (1) None of the FCA-specified significant-harm functions extend to an individual (“P”) in relation to a firm if:
- (a) P is based outside the United Kingdom for the firm; and
- (b) in a 12-month period, P spends no more than 30 days performing what would otherwise be an FCA-specified significant-harm function for that firm within the territorial scope of this section as

described in SYSC 5.2.19R.

- (2) Paragraph (1) only applies to the extent that P is appropriately supervised by:
- (a) one of the firm's SMF managers; or
  - (b) one of the firm's certification employees whose certificate covers the FCA-specified significant-harm function that is to be disappplied under (1).
- (3) This rule does not apply to any FCA-specified significant-harm function to the extent that it involves:
- (a) giving advice or performing related activities in connection with pension transfers, pension conversions or pension opt-outs for retail clients; or
  - (b) giving advice to a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate.
- (4) In the case of a UK relevant authorised person, this rule does not apply to FCA-specified significant-harm function (7) (material risk takers).

5.2.28B G SYSC 5 Annex 1G gives examples of how SYSC 5.2.28AR works.

- 5.2.28C G (1) The FCA would expect an individual from overseas using the temporary UK role rule in SYSC 5.2.28AR to be accompanied on a visit to a customer in the United Kingdom.
- (2) An individual benefiting from the temporary UK role rule in SYSC 5.2.28AR may still be subject to the requirements of TC (Training and competence). However, TC 2.1.9R gives an exemption from certain qualification requirements in TC to an individual benefiting from the temporary UK role rule.

Scope: FCA-specified significant-harm functions

...

5.2.31 G ...

- (3) Another example is the rule about the territorial scope of this section (SYSC 5.2.19R)) for a UK relevant authorised person. For example, if a person's job involves both FCA-specified significant-harm function (5) (functions requiring qualifications) and (7) (material risk takers), the territorial restriction in that rule does not apply to that job. Instead, this section applies without any territorial limitation.
- (4) The reason for (3) is that SYSC 5.2.19R(3)) says that there is no territorial limitation on FCA-specified significant-harm function (7) for a UK relevant authorised person. As explained in (1), it does not

matter that the job also involves *FCA-specified significant-harm function* (5), to which the territorial limitation does apply.

...

After SYSC 5.1 insert the following new Annex. The text is not underlined.

**5 Annex 1G Examples of how the temporary UK role rule in SYSC 5.2.28A (the 30-day rule) works**

<b>Example</b>	<b>How the temporary UK role rule applies</b>
(1) A spends 20 days in the <i>UK</i> performing the proprietary trader <i>FCA-specified significant-harm function</i> for Firm X and wishes to spend another 20 days in the <i>UK</i> performing the significant management <i>FCA-specified significant-harm function</i> for Firm X.	The <i>rule</i> does not allow this. There is a single 30-day allowance, not a separate 30-day allowance for each <i>FCA-specified significant-harm function</i>
(2) A spends 20 days in the <i>UK</i> performing an <i>FCA-specified significant-harm function</i> for Firm X (which is a <i>UK relevant authorised person</i> ) and wishes to spend another 20 days dealing with Firm X's <i>clients</i> in the <i>UK</i> from the overseas office of Firm X in which A is based.	The <i>rule</i> does not allow this. There is a single 30-day limit for both types of contact with the <i>UK</i> .
(3) A wishes to spend 40 days dealing with Firm X's <i>clients</i> in the <i>UK</i> from the overseas office of Firm X (which is a <i>UK relevant authorised person</i> ) in which A is based. However the total time spent doing that will only be a few hours overall.	The <i>rule</i> does not allow this. If A deals with a <i>UK client</i> on one day, that uses up one day of the 30-day allowance, however short the time for which the contact lasts.
(4) A spends 25 days in calendar year one for Firm X in the <i>UK</i> and 25 days in calendar year two. However A spends 40 days in the <i>UK</i> for Firm X between June in calendar year 1 and June in calendar year 2.	The <i>rule</i> does not allow this. This is because the 30-day annual allowance relates to any 12-month period and not just a calendar year.

<p>(5) Firm X is a <i>non-UK relevant authorised person</i>. A is <i>employed</i> by Firm X and is based in one of its offices outside the UK. A wants to work in the UK branch for 10 days.</p>	<p>The <i>rule</i> applies to <i>non-UK relevant authorised persons</i>.</p> <p>It does not matter that A is not <i>employed</i> by the UK branch and instead is <i>employed</i> by another part of Firm X.</p> <p>It does not make a difference whether A is based in an office of Firm X in its home state or one in a third country.</p>
<p>(6) A is based in one of Firm X's overseas offices. Firm X then decides to relocate A to the UK, where A will be certified to perform an <i>FCA-specified significant-harm function</i> for Firm X. Firm X wants to rely on the temporary UK role <i>rule</i> for the first 30 days while Firm X goes through the certification process for A.</p>	<p>The <i>rule</i> does not allow this. A is no longer based in an overseas office and so the <i>rule</i> does not apply.</p>
<p>(7) A is based in the overseas branch of a <i>UK relevant authorised person</i>. A is to be promoted, so that A will be performing the material risk taker <i>FCA-specified significant-harm function</i>. Firm X wants to rely on the temporary UK role <i>rule</i> for the first 30 days while Firm X goes through the certification process for A.</p>	<p>The <i>rule</i> does not allow this because it does not apply to the material risk taker <i>FCA-specified significant-harm function</i> when it is performed for a <i>UK relevant authorised person</i>.</p>
<p>A reference in this table to an <i>FCA-specified significant-harm function</i> is to a function that would have been an <i>FCA-specified significant-harm function</i> but for SYSC 5.2.28AR (temporary UK role).</p>	

Amend the following as shown.

#### 18.4 The whistleblowers' champion

- 18.4.1 G (1) A UK relevant authorised person is required under SYSC 4.5.25R(1) 4.7.5R(1) to allocate the FCA-prescribed senior management responsibility for acting as the *firm's whistleblowers' champion*.



...

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

**5.2 Certification regime**

...

**Scope: FCA-specified significant-harm functions**

...

5.2.30 R Table: FCA-specified significant-harm functions

Function	Where defined
...	
(7) ...	...
<u>(8) Client-dealing</u>	<u>SYSC 5.2.44R</u>
<u>(9) Algorithmic trading</u>	<u>SYSC 5.2.49R</u>

...

5.2.43 G ...

Client-dealing function

5.2.44 R A person (“P”) performs the client-dealing FCA-specified significant-harm function for a firm if:

- (1) P is carrying out any of the activities in the table in SYSC 5.2.45R; and
  - (2) those activities will involve P dealing with:
    - (a) a person with or for whom those activities are carried out; or
    - (b) the property of any such person;
- in a manner substantially connected with the carrying on of regulated activities by the firm.

5.2.45 R Table: Activities covered by the client-dealing FCA-specified significant-harm function

<u>Activity</u>	<u>Comments</u>
(1) <u>The following activities:</u>  (a) <u>advising on investments other than a non-</u>	(a) <u>does not include advising on investments in the course of carrying on the activity of giving basic advice</u>

<p><u>investment insurance contract</u>; or</p> <p>(b) <u>performing other functions related to this, such as <i>dealing</i> and <i>arranging</i>.</u></p>	<p><u>on a stakeholder product.</u></p>
<p>(2) <u>The following activities:</u></p> <p>(a) <u>giving advice in connection with <i>corporate finance business</i>; or</u></p> <p>(b) <u>performing other functions related to this.</u></p>	
<p>(3) <u>If the <i>firm</i> does any of the following activities:</u></p> <p>(a) <u><i>dealing</i>, as principal or as agent; or</u></p> <p>(b) <u><i>arranging (bringing about) deals in investments</i>;</u></p> <p><u>taking part in those activities is included.</u></p>	<p>(a) and (b) do not include <u><i>dealing or arranging (bringing about) deals in investments in a non-investment insurance contract.</i></u></p> <p>For the activity in this row (3), <u><i>SYSC 5.2.44R(2)(a) and (b)</i> are expanded to cover also:</u></p> <p>(a) <u>a <i>person</i> in connection with whom the activities in the first column of this row are carried out; and</u></p> <p>(b) <u>the property of any such <i>person</i>.</u></p>
<p>(4) <u>If the <i>firm</i> is acting in the capacity of an <i>investment manager</i> the following are included:</u></p> <p>(a) <u>taking part in that activity; and</u></p> <p>(b) <u>carrying on functions connected to this.</u></p>	
<p>(5) <u>Acting as a 'bidder's representative' in relation to <i>bidding in emissions auctions</i>.</u></p>	<p><u>Acting as a 'bidder's representative' has the meaning in subparagraph 3 of article 6(3) of the <i>auction regulation</i>.</u></p>

- 5.2.46 G SYSC 5.2.20G (the FCA interprets the phrase ‘dealing with’ as including having contact with and extending beyond ‘dealing’ as used in ‘dealing in investments’) applies to SYSC 5.2.44R.
- 5.2.47 G The client-dealing FCA-specified significant-harm function generally involves dealing with any person with or for whom the activities in the table in SYSC 5.2.45R are carried out (or their property). That person need not be a client of the firm.
- 5.2.48 G The restrictions in SYSC 5.2.18R (FCA-specified significant-harm function should require the person performing it to be involved in one or more aspects of the firm’s affairs so far as they relate to regulated activities) also applies to the client-dealing FCA-specified significant-harm function.

Algorithmic trading function

- 5.2.49 R (1) Each of the following is an FCA-specified significant-harm function:
- (a) approving the deployment of:
    - (i) a trading algorithm or a part of one; or
    - (ii) an amendment to a trading algorithm or a part of one; or
    - (iii) a combination of trading algorithms; and
  - (b) each of the following functions:
    - (i) having significant responsibility for the management of monitoring whether or not a trading algorithm; and
    - (ii) deciding whether or not a trading algorithm;

is, or remains, compliant with the firm’s obligations.
- (2) The firm’s obligations in (1)(b) include:
- (a) the firm’s regulatory obligations; and
  - (b) the rules and requirements of the trading venues to which the firm’s trading systems are connected.
- 5.2.50 R (1) A trading algorithm means a computer algorithm used in algorithmic trading.
- (2) Algorithmic trading has the meaning in Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.
- 5.2.51 G Algorithmic trading is not limited to high-frequency algorithmic trading.
- 5.2.52 G Deploying a trading algorithm includes deploying one on a trading venue on

which the *firm* has not traded before where the *firm* is already using that trading algorithm on another *trading venue*.

- 5.2.53 G SYSC 5.2.49R(1)(b) (monitoring or deciding whether or not a trading algorithm is compliant) includes testing, such as validation and stress testing.
- 5.2.54 G (1) Sometimes an approval or a decision involves sign-off from different people about different aspects of the decision or approval.  
 (2) If this is the case, all will have given the approval or decision for the purposes of SYSC 5.2.49R.
- 5.2.55 G (1) Sometimes an approval or decision involves sign-off by a number of people of different levels of seniority about the same aspects of the decision.  
 (2) If this is the case, only the most senior decision-taker gives the approval or decision for the purposes of SYSC 5.2.49R.  
 (3) Where the *firm's* procedures do not require the more senior person to carry out a detailed review of the decision of the more junior, both the junior and the senior person will give the approval or decision.
- 5.2.56 G A *firm* may have deployed an algorithm even though:  
 (1) it has not yet actually been used in the generation or acceptance of orders; or  
 (2) it is not actually being used in the generation or acceptance of orders at the moment; or  
 (3) it is not currently being used in the generation or acceptance of orders because the circumstances have not arisen for it to start doing so.
- 5.2.57 G In the examples in SYSC 5.2.56G the algorithm is capable of being used in the generation or acceptance of orders but is not actually generating or accepting them at the moment. However, a *firm* does not deploy an algorithm if the algorithm is not yet capable of generating or accepting orders because, for example, it is still in development.

...

## 18 Whistleblowing

### 18.1 Application and Purpose

...

- 18.1.1A A 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 UK relevant authorised person except a small deposit taker; and

...

...

**TP 5 Financial Services (Banking Reform) Act 2013: Certification**

...

5.3.4 G Table: How the certification regime applies in the transitional period

Provision in the Act or the Handbook	What that provision is about	How it applies in the transitional period
...		
SYSC 5.2.18R to SYSC 5.2.43G <u>5.2.57G</u>	...	...
...		

...



## Annex C

## Amendments to the Code of Conduct sourcebook (COCON)

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

## Comes into force on 7 March 2016

## 1 Application and purpose

## 1.1 Application

...

To whom does it apply?

1.1.2 R (1) *COCON* applies to:

...

- (e) an *employee* of a *relevant authorised person* who would be a *certification employee* but for *SYSC 5.2.27R(1)* (Scope: emergency appointments) or *SYSC 5.2.28AR* (Scope: temporary UK role); and

...

Where does it apply?

1.1.9 R (1) *COCON* applies to the conduct of ~~a *senior conduct rules staff member*~~ set out in (2) wherever it is performed.

(2) This rule applies to:

- (a) a *senior conduct rules staff member*; and
- (b) a *certification employee* performing *FCA-specified significant-harm function* (7) (material risk takers) in the table in *SYSC 5.2.30R* for a *UK relevant authorised person*.

1.1.10 R (1) This rule applies to members of a *firm's conduct rules staff* apart from *conduct rules staff* in *COCON 1.1.9R*. Subject to (2), *COCON* only applies to the conduct of *persons* other than ~~*senior conduct rules staff members*~~ if that conduct:

- (a) ~~is performed from an establishment maintained in the *United Kingdom* by:~~
- (i) ~~(for a *relevant authorised person*) that *person's employer*; or~~



- (ii) ~~(for a *Solvency II firm*) the *firm* in relation to whom that *person* carries out *controlled functions*; or~~
  - (b) ~~involves dealing with a *client* in the *United Kingdom* from an establishment overseas.~~
- (2) ~~Paragraph (1)(b) does not apply to *non-UK relevant authorised persons*. Subject to (3), *COCON* only applies to the conduct of *persons* to whom this rule applies (as set out in (1)) if that conduct:~~
- (a) ~~is performed from an establishment maintained in the *United Kingdom* by:~~
    - (i) ~~(for a *relevant authorised person*) that *person's* employer; or~~
    - (ii) ~~(for a *Solvency II firm*) the *firm* in relation to whom that *person* carries out *controlled functions*; or~~
  - (b) ~~involves dealing with a *client* of the *firm* in the *United Kingdom* from an establishment overseas.~~
- (3) ~~Paragraph (2)(b) only applies to a *UK relevant authorised person*.~~

1.1.11 G ...

1.1.11A G The FCA interprets the phrase ‘a *client* of the *firm* in the *United Kingdom*’ in *COCON* 1.1.10R as referring to:

- (1) for a *client* which is a body corporate, its office or *branch* in the *United Kingdom*; or
- (2) for a *client* who is an individual, a *client* who is in the *United Kingdom* at the time of the dealing.

## Annex D

### Amendments to the Training and Competence sourcebook (TC)

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

**Comes into force on 7 March 2016**

## 2 Competence

### 2.1 Assessing and maintaining competence

...

Exemption from appropriate qualification requirements

#### 2.1.9 R ...

(2) The conditions are that a *firm* should be satisfied that an *employee*:

- (a) has at least three years' up-to-date relevant experience in the activity in question obtained while employed outside the *United Kingdom*;
- (b) has not previously been required to comply fully with the relevant qualification requirements in *TC 2.1.1R*; and
- (c) has passed the relevant regulatory module of an appropriate qualification;

but (b) and (c) do not apply to an *employee* who is benefiting from the "30-day rule" exemption in *SUP 10A.10.8R* or in *SYSC 5.2.28AR*, unless the *employee* benefits from that *rule* because he is advising *retail clients* on *retail investment products* or is a *broker fund adviser*.

...

## Annex E

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

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

**Comes into force on 7 September 2016**

## **2 Supervisory processes and governance**

...

### **2.4 Reporting of breaches**

...

- 2.4.2 G *SYSC 18 (Whistleblowing) contains requirements on UK 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.*