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AUTHORITY



Consultation Paper | FCA CP15/5\*\*\*  
| PRA CP7/15

# Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms

February 2015



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The FCA is asking for comments on this Consultation Paper by 27 April 2015.

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You can download this Consultation Paper from our website: [www.fca.org.uk](http://www.fca.org.uk).

The Bank of England and the Prudential Regulation Authority (PRA) reserve the right to publish any information which it may receive as part of this consultation.

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This Consultation Paper proposes changes to the PRA Rulebook.

Please address responses, comments or enquiries by 27 April 2015 to: [CP7\\_15@bankofengland.gsi.gov.uk](mailto:CP7_15@bankofengland.gsi.gov.uk)

## Abbreviations used in this document

|                           |  |
|---------------------------|--|
| <b>Banking Reform Act</b> | Financial Services (Banking Reform) Act 2013                                 |
| <b>APER</b>               | Statements of Principle and Code of Practice for Approved Persons (Handbook) |
| <b>APR</b>                | Approved Persons Regime  |
| <b>AR</b>                 | Appointed representative   |
| <b>CBA</b>                | Cost benefit analysis  |
| <b>C-CON</b>              | FCA conduct rules  |
| <b>Conduct Rules</b>      | Conduct rules made by either regulator under Section 64A FSMA                |
| <b>CF</b>                 | Controlled function  |
| <b>CP</b>                 | Consultation paper   |
| <b>CRD</b>                | Capital Requirements Directive   |
| <b>EEA</b>                | European Economic Area   |
| <b>FCA</b>                | Financial Conduct Authority  |
| <b>FSA</b>                | Financial Services Authority   |
| <b>FSMA</b>               | Financial Services and Markets Act 2000                                      |
| <b>NED</b>                | Non-executive director   |
| <b>PCBS</b>               | Parliamentary Commission on Banking Standards                                |
| <b>PRA</b>                | Prudential Regulation Authority  |
| <b>SID</b>                | Senior Independent Director  |
| <b>SIF</b>                | Significant influence function   |
| <b>SMF</b>                | Senior management function   |
| <b>SIMR</b>               | Senior Insurance Managers Regime   |
| <b>SMR</b>                | Senior Managers Regime   |
| <b>SUP</b>                | Supervision manual (Handbook)  |
| <b>SYSC</b>               | Senior Management Arrangements, Systems and Controls (Handbook)              |

# 1. Overview

## Introduction

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- 1.1** This paper sets out the Prudential Regulation Authority's (PRA) and Financial Conduct Authority's (FCA) revised approach to independent non-executive directors ('NEDs') in UK banks, building societies, credit unions and PRA-designated investment firms<sup>1</sup> (collectively 'relevant authorised persons'<sup>2</sup>) and Solvency II firms.
- 1.2** Under the revised approach, the PRA and FCA will only make the following NEDs subject to approval and inclusion in the Senior Managers Regime (SMR) for relevant authorised persons:
- Chairman
  - Chair of the Risk Committee
  - Chair of the Audit Committee
  - Chair of the Remuneration Committee
  - Chair of the Nomination Committee
  - Senior Independent Director
- 1.3** The regulators' revised approach takes into account feedback to the consultation on 'Strengthening accountability in banking: a new regulatory framework for individuals', published in July 2014 (the 'July 2014 CP'), which expressed concern about the proposed approach to NEDs under the SMR as set out in that CP. Feedback is limited to this specific issue for this paper, and further feedback on the SMR and the wider regime as set out in the July and December 2014 CPs will be provided over the coming months.

This paper also consults on:

- the approach to NEDs in the approval and individual accountability regime for Solvency II firms, which the PRA and FCA propose to align to the scope of the SMR for relevant authorised persons as far as NED functions are concerned (Chapter 3).
- the PRA's proposed fitness and propriety and notification requirements for those NEDs in relevant authorised persons who will not be in scope of the SMR (Chapter 4)

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1 For information on the PRA's designation criteria for investment firms, see 'Statement of Policy: Designation of investment firms for prudential supervision by the Prudential Regulation Authority' [www.bankofengland.co.uk/publications/Documents/other/pradesignationofinvestmentfirms.pdf](http://www.bankofengland.co.uk/publications/Documents/other/pradesignationofinvestmentfirms.pdf)

2 In the context of the definition of 'Relevant Authorised Person', the word 'person' relates to legal as opposed to natural persons i.e. firms as opposed to individuals.

- a draft PRA Supervisory Statement clarifying the role and responsibilities of NEDs in scope of the SMR and how the PRA intends to apply sections 66B (5) and (6) of FSMA ('collectively the 'presumption of responsibility')<sup>3</sup> (Chapters 2 and 5 and Appendix 2)
  - FCA guidance on the role and responsibilities of NEDs (Chapters 2 and 3 and Appendix 3). The FCA will also consult on guidance on how the presumption of responsibility will apply to all Senior Managers shortly.
- 1.4** In addition to the July 2014 CP, the proposals in this paper build on the following previous consultations on individual accountability:
- the PRA's consultation on the 'Senior insurance managers regime: a new regulatory framework for individuals' (PRA CP26/14), published in November 2014
  - the FCA's consultation on 'Changes to the Approved Persons Regime for Solvency II firms' (FCA CP14/25), also published in November 2014
  - the PRA's and FCA's joint consultation on 'Strengthening accountability in banking: forms, consequential and transitional aspects', published in December 2014, which consulted on a number of technical aspects required to implement the new regimes in relevant authorised persons including forms and transitional arrangements (the December 2014 CP)
- 1.5** The PRA and FCA work closely together when approving individuals and supervising firms' governance arrangements. It is therefore important for firms to consider the overall effect of their combined regimes. For that reason, and following the approach in the July and December 2014 CPs, the PRA and FCA have chosen to set out their respective proposals in a single document.

### The July 2014 CP

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- 1.6** The July 2014 CP proposed changes to the way individuals working for relevant authorised persons are assessed and held accountable for the roles they perform.
- 1.7** These proposals reflected the recommendations of the Parliamentary Commission on Banking Standards (PCBS) and sought to implement the changes required by the amendments which the Financial Services (Banking Reform) Act 2013 (Banking Reform Act)<sup>4</sup> made to the Financial Services and Markets Act 2000 (FSMA), including the establishment of the SMR to replace the Significant Influence Function (SIF) element of the Approved Persons Regime (APR).
- 1.8** The SMR seeks to:
- promote a clear allocation of responsibilities to the most senior individuals in relevant authorised persons (referred to as 'Senior Managers' throughout this paper)
  - strengthen Senior Managers' individual accountability through:

<sup>3</sup> Under sections 66A (5) and (6) and 66B (5) and (6) of FSMA, as amended by the Banking Reform Act, if a Relevant Authorised Person contravenes a relevant requirement (as defined in sections 66A and 66B of FSMA), the Senior Manager with management responsibility for any of the firm's activities in relation to the contravention which occurred, is guilty of misconduct unless he satisfies the relevant regulator that he took such steps as a person in his position could reasonably be expected to take to avoid the contravention occurring (or continuing).

<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2013/33/section/18/enacted>

- a robust initial and ongoing assessment of their fitness and propriety (by both firms and the regulators)
  - strengthened powers of approval and enforcement for the regulators
- 1.9** The new statutory accountability measures for Senior Managers in relevant authorised persons include the presumption of responsibility and criminal liability for individual Senior Managers in cases of firm failure (except those in credit unions).<sup>5</sup>
- 1.10** The Banking Reform Act enabled the regulators to include the whole Board in the SMR, although regulators were given the flexibility to determine the scope of the SMR in line with their statutory objectives. In the July 2014 CP, the PRA proposed to require pre-approval only in relation to a limited number of NEDs with specific responsibilities as Senior Managers: the Chairman, the Senior Independent Director (SID) and the Chairs of the Audit, Remuneration and Risk Committees.
- 1.11** The FCA’s proposals were made on the basis that all members of a relevant authorised person’s Board should be included in the SMR, and therefore the FCA proposed to require pre-approval in relation to all NEDs not otherwise approved by the PRA as Senior Managers, including the Chair of the Nominations Committee and NEDs without specific responsibilities (‘Standard NEDs’).
- 1.12** The regulators received a significant amount of feedback on the scope of the SMR, including around designating Standard NEDs as Senior Managers. Some respondents supported the inclusion of Standard NEDs in the SMR while others argued against it, highlighting in particular their concerns that the presumption of responsibility would apply to NEDs who do not have day-to-day responsibility for the activities of the firm.

#### FCA CP14/25 and PRA CP26/14

- 1.13** FCA CP14/25 and PRA CP26/14 proposed changes required to implement the Solvency II Directive’s provisions relating to governance and the fitness and propriety of individuals defined as ‘key function holders’ in insurance firms. The CPs also proposed changes designed to broadly align the approval regime for Solvency II firms (renamed the ‘Senior Insurance Managers Regime’ (SIMR) by the PRA) to the SMR while recognising the differences in legislation, business models and the risks posed to the regulators’ objectives by insurers.
- 1.14** In these two consultations the PRA and FCA noted that they would consult separately on the scope of the insurance regime in relation to NEDs to enable them to take into account the arguments that were received in response to the July CP.
- 1.15** Relevant authorised persons and Solvency II firms that are subsidiaries of another entity or part of a group occasionally have individuals employed by a parent or group company approved as NEDs (CF2s) under the APR. These individuals tend to play a different role to independent NEDs – namely, to represent the interests of the shareholder/parent in Board discussions. Depending on the nature of their influence over the relevant authorised person, these individuals may be deemed to be performing the Group Entity Senior Manager function under the SMR or Group Entity Senior Insurance Manager function under the SIMR. This means they will remain within the scope of the SMR or SIMR and will not be affected by the proposals in this paper.

<sup>5</sup> The presumption of responsibility does not apply in relation to the criminal offence, to which the standard of proof in criminal cases will apply.



## Summary of PRA and FCA proposals

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- 1.16** In light of responses to the July 2014 CP, the **PRA** proposes to:
- Only require prior approval of Chairmen, SIDs and the Chairs of the Audit, Remuneration and Risk Committees in relevant authorised persons (as originally proposed in the July 2014 CP) and Solvency II firms
  - Require firms to:
    - apply the same fitness and propriety standards on all NEDs in relevant authorised persons, irrespective of whether they are in scope of the SMR or not
    - comply with certain notification requirements relating to the appointment of NEDs which are not in scope of the SMR
  - issue a Supervisory Statement, a draft of which is set out in Appendix 2, setting out:
    - the limited nature of the individual responsibilities and accountability of those NEDs who fall within scope of the SMR
    - the PRA's proposed approach to the application of the presumption of responsibility to Senior Managers in relevant authorised persons
  - revise the Supervisory Statement included in Appendix 2 of PRA CP26/14 (a revised draft of which is set out in Appendix 4) to set out the limited individual responsibilities and accountability of those NEDs who fall in scope of the SIMR
- 1.17** Approval of all Senior Management Functions (SMFs) specified by the PRA, including the Chairman, SID and the Chairs of the Audit, Risk and Remuneration Committees, will continue to be subject to FCA consent. The PRA and FCA will also have the same enforcement powers over all Senior Managers, including those performing an SMF specified by the other regulator.
- 1.18** In light of responses to the July 2014 CP, the **FCA** proposes to specify only the Chair of the Nomination Committee in addition to the PRA non-executive functions. The FCA considers that the arguments in favour of excluding Standard NEDs from the SMR outweigh those in favour of including them. The revised regime reflects the fundamental difference in the role played by Standard NEDs in comparison to other board directors, who have specific responsibilities. The FCA agrees with concerns expressed during consultation that including Standard NEDs in the SMR, and therefore applying the presumption of responsibility, could encourage Standard NEDs to take on a more 'executive' role contrary to their purpose as independent members of the Board. Having a narrower SMR will also allow the FCA to focus regulatory resources on those responsible for key business areas and board committees.
- 1.19** To achieve consistency between the regimes, the FCA is also proposing to take a similar approach for Solvency II firms. Therefore, in this paper the FCA proposes to:
- Only specify one additional NED function for prior approval under the SMR, namely the Chair of the Nominations Committee. The FCA will not require the prior approval of any Standard NEDs as Senior Managers in relevant authorised persons.

- Take a similar approach in Solvency II firms, designating a Chair of the Nominations Committee function but no additional NED functions (beyond those already designated by the PRA).
  - Issue guidance on the role of a NED. The FCA will also consult shortly on guidance on how the presumption of responsibility under the SMR will apply to all Senior Managers (including in-scope NEDs).
- 1.20** The combined effect of the regulators' proposals will be that Standard NEDs will not be included in the combined SMR or the regime for individuals in Solvency II firms and therefore will not be subject to pre-approval by the regulators.
- 1.21** Solvency II requires firms in scope to ensure, at all times, the fitness and propriety of all persons who effectively run the undertaking or have other key functions. It also requires them to notify supervisory authorities of any changes to the identity of the persons who effectively run the undertaking or are responsible for other key functions ('key function holders'), along with all information needed to assess whether any new persons appointed to these positions are fit and proper. Firms will be required to assess the fitness and propriety of each such individual on an ongoing basis and provide the PRA with relevant information about them.
- 1.22** For those functions in Solvency II firms that are subject to regulatory pre-approval under section 59 of FSMA, the approval process will inherently satisfy these directive requirements. In addition, in PRA CP 26/14, the PRA consulted on an assessment and notification process for those individuals who will be key function holders under Solvency II but do not exercise a function subject to pre-approval by the PRA or FCA (see paragraph 2.23, 2.36 and 2.37 of PRA CP26/14).
- 1.23** The PRA proposes to adopt a similar fitness requirement and notification process for Standard NEDs in relevant authorised persons as an alternative to pre-approval (set out in Chapter 4). The proposed process is linked to the UK's obligations to ensure the fitness and propriety of all members of the management body in Capital Requirements Regulation (CRR) and Markets in Financial Instruments Directive (MiFID) firms. Appendix 5 sets out the form to be used for these purposes.
- 1.24** As this process relates to EU obligations in respect of dual-regulated firms where the PRA is the primary interface with the relevant European Supervisory Authorities (ESAs), namely the European Banking Authority (EBA) and European Insurance and Occupational Pensions Authority (EIOPA), the FCA does not propose to replicate these requirements.

### Who does this paper affect?

- 1.25** This paper affects relevant authorised persons and Solvency II firms. However, certain sections only apply to one type of firm or the other. For instance, given the inapplicability of the presumption of responsibility to insurance firms, Chapter 5 only applies to relevant authorised persons.
- 1.26** This paper does not affect insurance firms that are not subject to the Solvency II directive ('non-directive firms'). It applies to UK branches of Solvency II firms that are headquartered overseas ('incoming Solvency II branches') but not to UK branches of relevant authorised persons that are headquartered overseas ('incoming relevant authorised person branches'). In November 2014, HM Treasury published a consultation on draft secondary legislation to bring incoming

relevant authorised person branches into the statutory scope of the new accountability regimes for relevant authorised persons. That consultation closed on 30 January 2015. Subject to the outcome of that consultation, the PRA and FCA plan to consult on the application of the individual accountability regimes to incoming relevant authorised person branches shortly.

### Is this of interest to consumers?

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- 1.27** This paper will primarily be of interest to firms and individuals who work in them.

### Competition

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- 1.28** The PRA and FCA consider that the proposals in this paper should help enhance the effectiveness of the SMR which, in turn, should facilitate effective competition. A robust individual accountability regime should discourage reckless decision-making and mismanagement.
- 1.29** The proposals in this paper also seek to align the scope of the SMR and SIMR as far as NEDs are concerned, taking into account the different legal requirements and business models of Solvency II firms. This should help mitigate any potential impact on competition between banking and insurance firms stemming from the SMR.

### Equality and diversity considerations

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- 1.30** The PRA and FCA have considered the equality and diversity implications of this paper. For both relevant authorised persons and Solvency II firms, the combined result of the regulators' proposals will be to make certain NEDs subject to more stringent regulatory requirements. However the application of these requirements will depend on individuals' roles and responsibilities rather than their age, disability status, gender (including transgender), maternity, pregnancy, race, religion and belief or sexual orientation.
- 1.31** By designating a narrower scope of non-executive functions in these firms, the regulators will not have the power to pre-approve certain NEDs where overall board diversity may be a consideration. However, the regulators will retain their powers to place requirements on the firm.
- 1.32** The regulators do not therefore expect the proposals to result in direct discrimination against any protected groups.

### Next steps

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- 1.33** The regulators are seeking feedback on the proposals set out in this paper and the Annexes and Appendices.
- 1.34** In particular, the PRA is seeking feedback on:
- all PRA questions in the main body of the paper and in Annex 5

- the draft PRA rules in Appendix 1
- the draft PRA Supervisory Statement in Appendix 2
- the new sections in the draft PRA Supervisory Statement in Appendix 4 (underlined for ease of reference)
- Draft PRA form 'Notification of the appointment of a non-executive director or key function holder' in Appendix 5

**1.35** The FCA is seeking feedback on:

- all FCA questions in the main body of the paper and as listed in Annex 5
- the draft guidance on the role and responsibilities of NEDs in Appendix 3
- the draft FCA rules for Solvency II firms in Appendix 3

Responses should be received by 27 April 2015 (this is an 9 week consultation period).

### What do you need to do next?

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**1.36** Please send your responses to both regulators at the following addresses: CP7\_15@bankofengland.gsi.gov.uk and cp15-05@fca.org.uk. The regulators will share responses with each other and publicly, unless the respondent specifically asks for their response to remain confidential.

### What will the PRA and FCA do?

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**1.37** The PRA and FCA each plan to publish the following documents over the coming months as part of the consultation and implementations processes of the proposed accountability regimes in both relevant authorised persons and Solvency II firms.

- For relevant authorised persons, a consultation on the application of the individual accountability regimes to incoming branches.
- For relevant authorised persons, a feedback statement and, in the PRA's case, some final rules, relating to some of the proposals in the July 2014 CP.
- For Solvency II firms and following from PRA CP26/14 and FCA CP14/25, a consultation on consequential amendments to the PRA Rulebook and FCA Handbook, forms, further governance issues and transitional arrangements.
- For non-directive insurers, a consultation on individual accountability.

**1.38** The regulators also intend to publish final policy statements and rules for both relevant authorised persons and Solvency II firms later in the spring.

## 2. Scope of the Senior Managers Regime for relevant authorised persons

### Feedback received on the July 2014 CP

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- 2.1** Over half of the responses received by the PRA and FCA to the July 2014 CP commented on the inclusion of, and proposed approach to, NEDs in the SMR. A number of these noted that unless the regulators clarified the responsibilities of NEDs and the extent of their potential accountability under the SMR, the proposed regime could:
- limit the ability of relevant authorised persons to attract and retain high-quality NEDs
  - prompt NEDs to take on executive responsibilities, which would compromise their independence
  - undermine the principle of collective decision-making
- 2.2** Some responses questioned whether Standard NEDs should be within the scope of the SMR at all and argued that the regime should be limited to senior executives and NEDs with specific responsibilities (such as Chairmen and chairs of key committees).
- 2.3** A number of responses to the July 2014 CP also asked the PRA and FCA to clarify how they intended to apply the presumption of responsibility to all Senior Managers (executive and non-executive) in relevant authorised persons.

### Options available under FSMA

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- 2.4** FSMA, as amended by the Banking Reform Act, has two characteristics which are relevant to the approach to NEDs under the SMR:
- The presumption of responsibility and criminal offence apply to all individuals performing an SMF specified by either regulator in a relevant authorised person (except for Senior Managers in credit unions, who are exempt from the criminal offence).
  - In addition to specifying a function as an SMF in relevant authorised persons, FSMA allows the FCA (but not the PRA) to specify functions in relevant authorised persons as non-SMF Controlled Functions (CFs) under the APR. However, if the FCA is satisfied that a CF meets the definition of an SMF in section 59ZA of FSMA, it must make that function an SMF.

Section 59ZA of FSMA:

- (1) This section has effect for determining whether a function is for the purposes of section 59(6) or (6A) a senior management function.
- (2) A function is a "senior management function", in relation to the carrying on of a regulated activity by an authorised person, if –
  - (a) the function will require the person performing it to be responsible for managing one or more aspects of the authorised person's affairs, so far as relating to the activity, and
  - (b) those aspects involve, or might involve, a risk of serious consequences –
    - (i) for the authorised person, or
    - (ii) for business or other interests in the United Kingdom.
- (3) In subsection (2)(a) the reference to managing one or more aspects of an authorised person's affairs includes a reference to taking decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on."

**2.5** Section 59ZA(3) of FSMA makes it clear that the definition of a SMF includes individuals who participate in collective decision-making, such as NEDs.

**2.6** Therefore, this means that the PRA and/or FCA must either:

- include (some or all) NEDs within the SMR, which would necessarily entail not just pre-approval but also the applicability of the presumption of responsibility and the criminal offence; or
- leave (some or all) NEDs out of scope of the SMR and the associated measures, including regulatory pre-approval.

### **PRA response to the feedback received and new proposals**

**2.7** The PRA considers that the scope of the SMR proposed in the July 2014 CP (i.e. Chairmen, SIDs and Chairs of the Audit, Remuneration and Risk Committees) captures those NEDs whose role in taking decisions involves, or might involve, a risk of serious consequences for a firm's safety and soundness. The PRA is therefore not proposing to change the scope of its SMR. However, the PRA is proposing to require firms to ensure that all board members, regardless of whether they are senior managers, observe the Conduct Rules.

**2.8** The PRA recognises that the actual responsibilities of NEDs within the scope of the SMR differ from those of executive Senior Managers and they should be clarified and limited accordingly.

**2.9** The PRA is therefore consulting on a Supervisory Statement (set out in Appendix 2), Part 1 of which clarifies the responsibilities and accountability of NEDs who are within scope of the SMR. In particular, the draft Supervisory Statement notes that:

- NEDs within the SMR are neither required nor expected to assume executive responsibilities but are required to take on certain non-executive responsibilities, which are either inherent in their particular chairmanship roles or derive from them
- The Statements of Responsibilities of NEDs within the SMR are expected to be less extensive than those of executive Senior Managers
- The potential accountability under the presumption of responsibility of NEDs within the SMR is correspondingly restricted to those areas for which they are responsible

**Q1:** [PRA] Do you agree with the content of Part 1 of the PRA's draft Supervisory Statement (in Appendix 2) regarding the responsibilities and accountability of NEDs within the Senior Managers Regime?

### FCA response to the feedback received and new proposals

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**2.10** Some respondents argued that, given the way the SMR is designed in legislation, including Standard NEDs within the scope of the SMR may force those NEDs to adopt a more executive-type role, thus becoming more closely involved in the day-to-day management of the firm. Respondents felt that this would undermine the key role of Standard NEDs, which is generally well understood and established and includes providing independent oversight and constructive challenge. The FCA agrees that, in response to more explicit accountability, including Standard NEDs in the SMR could introduce an incentive for them to seek more direct influence over executive decisions. This could in turn lead Standard NEDs to take on, or attempt to take on, 'quasi-executive' responsibilities, further eroding the clarity of accountability sought by the regulators.

**2.11** The context of our policy recognises the fundamentally different roles of executives and non-executives. The primary role of all NEDs is independent oversight and challenge of the Executive. We further recognise that within the non-executive there are a range of roles and therefore responsibilities. The Chairman, SIDs and Committee Chairmen have a specifically defined mandate, therefore the FCA considers it important that the SMR regime as a whole captures these key NEDs within its scope.

**2.12** The FCA expects NEDs in these Senior Manager roles to have sufficient oversight and influence over the activities they are responsible for. The primary responsibility for ensuring good governance should rest with the committee chair and they should be clear that this is the case.

**2.13** However, we also recognise that Standard NEDs play a different, but nevertheless important, role. Some respondents argued that it would be disproportionate to apply the presumption of responsibility and the criminal offence to Standard NEDs, and that it would deter good candidates from applying for such roles. Whilst the FCA is not convinced that including Standard NEDs within the scope of the SMR would have a material impact on the recruitment of NEDs, it has sympathy with the arguments around proportionality, for the reasons set out above.

- 2.14** As is currently the case under the APR, approval of all SMFs specified by the PRA, including the Chairman, SID and the Chairs of the Audit, Risk and Remuneration Committee, will remain subject to FCA consent. The PRA and FCA will have the same enforcement powers over all Senior Managers, including those performing an SMF specified by the other regulator. Beyond these functions and the Chair of the Nomination Committee – which will be subject to FCA approval only - the FCA will not approve Standard NEDs as Senior Managers in relevant authorised persons. The FCA is consulting on additional guidance on the role of a NED as part of this paper and will also consult shortly on how the presumption of responsibility will apply under the SMR (including in-scope NEDs).
- 2.15** The FCA is not re-consulting on the revised scope of the SMR. However, it is consulting on draft guidance on the role and responsibilities of those NEDs within the FCA SMR. This guidance is set out in Appendix 3. This guidance is separate to the PRA’s Supervisory Statement in Appendix 2 and should be read alongside this. The PRA’s Supervisory Statement and the FCA’s guidance together seek to clarify the role and responsibilities of NEDs within scope of the SMR in the context of each regulator’s respective remit and objectives. The FCA’s guidance includes:
- The FCA’s view that NEDs individually do not manage a firm’s business in the same way as executive directors.
  - The FCA’s view of the role of a NED in the capacity of a board director, consistent with the duties of directors in the Companies Act and the description of the role of a NED in the UK Corporate Governance Code (the Code).
  - The FCA’s position that it does not require or expect a firm to allocate responsibility for any of its specific required responsibilities or key business functions to FCA-designated NEDs, although this does not prevent a firm from doing so.
  - The FCA’s expectation that Statements of Responsibilities for NEDs within the SMR will generally be less extensive than those of executive Senior Managers. However, the Statement of Responsibilities are not limited to those responsibilities and key business functions specified by the regulators. Firms should highlight any additional responsibilities specific to NEDs that may have been introduced at the firm’s own initiative - for example, succession planning
- 2.16** In making these revised proposals the FCA has sought to address the strong feedback that the regime should reflect the different roles and expectations of Standard NEDs and other directors in practice. The revised proposals therefore take a more proportionate approach in terms of scope, while providing additional guidance on the treatment of those NEDs that will remain in scope of the SMR.
- 2.17** This improved alignment should help to drive the behavioural changes that are at the heart of the regime, and is in line with the statement that the former members of the PCBS issued in November 2014 on the progress of the implementation of the proposed reforms, which noted: ‘... the Commission envisaged a scope for the criminal sanction similar to the scope proposed by the PRA for the SMR ... The legislation could ... in theory, open up all Senior Managers — even those without particular responsibilities for specific activities or business areas — up to the reversal of the burden of proof in civil misconduct cases. Regulators need to remedy these problems. The most appropriate route would be to narrow markedly the coverage of the SMR proposed by the FCA. Instead of being included by default, board members should only fall within scope of the SMR if they hold specific responsibilities — for example, chair of the audit



or remuneration committees — for specific areas or activities of the firm, for which sanction in the event of failure would be appropriate.<sup>6</sup>

- 2.18** This approach is also in line with the objective of focusing the SMR on a narrower set of functions, and will allow the FCA to focus resources in a more effective way. This will allow for a greater intensity of scrutiny on the individuals with greatest potential to adversely affect consumers and markets.
- 2.19** Consequently, Standard NEDs will not be within the SMR and will not be subject to any of its legal and regulatory requirements, including:
- prior approval by one of the regulators
  - the requirement to provide a Statement of Responsibilities (although the FCA would still expect details of all members of the board to be included in firms' Responsibilities Maps as part of a firm's management and governance arrangements)
  - any of the Conduct Rules<sup>7</sup>
  - the presumption of responsibility
  - the criminal offence in section 36 of the Banking Reform Act
- 2.20** Regulators will, however, retain the ability to prohibit NEDs who are outside the scope of the SMR under section 56 of FSMA. In addition, the regulators retain the ability to take action against firms and their Senior Managers for governance failings.
- 2.21** Some feedback to the July 2014 CP suggested that Standard NEDs should fall into the Certification Regime. FSMA establishes that to come within the Certification Regime, individuals must be 'employees' of the firm (as defined in section 63E(9) of FSMA). The FCA and PRA consider that NEDs will not generally meet this definition. It is possible that they may do in certain circumstances – for example if a NED were to have a contract of employment. However, the FCA's view is that it would be unacceptable to seek to apply this on a case-by-case basis, as this would introduce an inappropriate degree of uncertainty and inconsistency into the regulatory regime for these individuals. Therefore, the FCA will not seek to require NEDs to be part of the Certification Regime.
- 2.22** Likewise, the statutory scope of the Conduct Rules covers either individuals subject to regulatory approval or employees (as defined in section 64A (6) of FSMA, which mirrors the definition of employee in section 63 E(9) of FSMA). By the same reasoning as paragraph 2.21 above, the FCA's view is that Conduct Rules should only be applied to NEDs who are in scope of the SMR.
- 2.23** Therefore, the FCA does not generally propose to require NEDs who are outside the scope of the SMR to be directly subject to the Certification Regime or any of the Conduct Rules. However, where a standard NED is an employee and is knowingly concerned in the contravention of any requirement imposed by FSMA on the firm, then the FCA will be able to bring enforcement action against that individual.

**Q2: [FCA]:** Do you agree with the guidance in Appendix 3 concerning the role and responsibilities of NEDs within the FCA SMR?

<sup>6</sup> Paragraphs 37 and 38 of the Statement by former Members of the PCBS, November 2014 [http://www.parliament.uk/documents/commons-committees/treasury/Statement\\_by\\_former\\_Members\\_of\\_PCBS.pdf](http://www.parliament.uk/documents/commons-committees/treasury/Statement_by_former_Members_of_PCBS.pdf)

<sup>7</sup> As noted in the July 2014 CP, the word 'conduct' in this context relates to professional conduct in an ordinary, wider sense i.e. it is not limited to conduct of business and includes activities relevant to the PRA as well as the FCA.

**Combined scope of the SMR for non-executive directors**

**2.24** The effect of these changes is that the FCA Non-Executive Director (SMF15) function will be removed from the SMR, and the scope of non-executive SMFs will be:

| PRA non-executive Senior Management Functions  | FCA non-executive Senior Management Functions |
|--|---|
| Chairman (SMF9)                                | Chair of the Nomination Committee (SMF13)     |
| Chairman of the Audit Committee (SMF10)        |   |
| Chairman of the Risk Committee (SMF11)         |   |
| Chairman of the Remuneration Committee (SMF12) |   |
| Senior Independent Director (SMF14)            |   |

**2.25** The regulators will publish updated forms reflecting the above changes to the lists of senior management functions as part of their final policy and rules on the SMR. The proposed arrangements for grandfathering individuals to the SMR was set out in the December 2014 CP. Where a Standard NED will continue to perform a Standard NED role post-commencement, a grandfathering notification (Form K) should be submitted and details provided in section 2.04 of Form K. As for persons who transition into the SMR, the regulatory reference and criminal record check requirements will not apply to any approved standard NED who continues to perform a standard NED role post commencement.

## 3. Scope of the regime for Solvency II firms

### Proposed PRA approach to NEDs under the Senior Insurance Managers Regime

- 3.1** The PRA proposes to align the scope of its pre-approval regimes for individuals for Solvency II firms and relevant authorised persons as far as NEDs are concerned. Although Senior Insurance Managers are subject to fewer and less onerous statutory obligations than Senior Managers in relevant authorised persons, the PRA considers that the same NED functions in Solvency II firms can take decisions that affect a firm's safety and soundness or the protection of policyholders. Moreover, the PRA sees value in consistent pre-approval regimes for all the firms it supervises.
- Consequently, the PRA proposes to approve the following NEDs in insurers:
  - Chairman (SIMF 9 )
  - Chairman of the Risk Committee (SIMF 10)
  - Chairman of the Audit Committee (SIMF 11)
  - Chairman of the Remuneration Committee (SIMF 12)
  - Senior Independent Director (SIMF 14)
- 3.2** As is the case with relevant authorised persons, it is proposed that all Solvency II firms (other than incoming third country Solvency II branches) will be required to have a Chairman (in addition to any executive functions subject to approval) but will only be required to have other NED functions within the SIMR where UK or EU legislation or guidelines require them to establish certain board committees. For instance, when the UK implements the new EU regulatory framework for statutory audit, all insurance undertakings will be required to establish an Audit Committee.<sup>8</sup>
- 3.3** In addition, and in line with the proposed approach for relevant authorised persons, the PRA proposes to make NEDs in group, holding or parent companies who exercise significant influence on the affairs of the insurer subject to approval by the PRA as a Group Entity Senior Insurance Managers (SIMF 7). Whether a Solvency II insurance firm that is part of a group is required to have individuals approved to perform this SIMF will depend on its particular group governance arrangements.
- 3.4** The PRA is not proposing to require NEDs in incoming third country Solvency II branches to be pre-approved, except where justified in light of the nature of the undertaking's business and the organisation and management of its affairs.

<sup>8</sup> The Chair of Audit Committee function may also become mandatory when the EU Audit Directive is implemented.

**Q3:** **[PRA]:** Do you agree with the PRA's proposed scope for the SIMR as far as NEDs are concerned? In particular, please consider the:

- decision to align the scope of the SIMR and the SMR
- inclusion of NEDs within the Group Entity Senior Insurance Manager function
- proposed proportionate application of the regime?

**3.5** In CP26/14, the PRA set out a list of Prescribed Responsibilities which firms will be required to allocate to one or more individuals who have been approved by either the PRA or the FCA (see paragraph 2.21).

**3.6** In light of the proposal to bring certain NED functions into scope of the SIMR, the PRA proposes to:

- require firms to allocate the following two Prescribed Responsibilities to a NED within the SIMR:
  - maintenance of the independence, integrity and effectiveness of the whistleblowing procedures, and the protection of staff raising concerns
  - oversight of the firm's remuneration policies and practices
- allow firms to allocate any other Prescribed Responsibilities to either a NED or an executive subject to the SIMR

**3.7** As is the case with the SMR, the allocation of specific responsibilities to individuals subject to the SIMR is not intended to undermine the fiduciary, legal, and regulatory responsibilities of the board, which will retain ultimate decision-making power and authority over all aspects of the firm's affairs.

**Application of Conduct Standards to NEDs in scope of the SIMR**

**3.8** In CP26/14, the PRA proposed to require all individuals subject to approval by the PRA or FCA for a relevant senior management function to comply with the following Conduct Standards, which will be enforceable against those individuals.

1. You must act with integrity.
2. You must act with due skill, care and diligence.
3. You must be open and co-operative with the FCA, the PRA and other regulators.
4. You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
5. You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.

6. You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
  7. You must disclose appropriately any information of which the FCA or the PRA would reasonably expect to have notice.
  8. When exercising your responsibilities, you must pay due regard to the interests of current and potential future policyholders in ensuring the provision by the firm of an appropriate degree of protection for their insured benefits.
- 3.9** In light of the proposal to bring certain NEDs into scope of the SIMR, the PRA proposes to apply the Conduct Standards above as enforceable rules on all NEDs who are Senior Managers subject to regulatory pre-approval. References 'to the business of the firm for which you are responsible' in Conduct Standards 4 and 5 should be interpreted widely to include the chairmanship of a relevant board committee when applied to a NED within the SMR.
- 3.10** In addition, as proposed in CP 26/14, firms and groups will have to require all individuals performing key functions, including NEDs not subject to pre-approval under section 59 of FSMA, to observe the first three Conduct Standards and consider the extent to which they have done so when assessing their fitness and propriety on an ongoing basis.
- 3.11** The PRA considers that a requirement on all board members to proactively discuss issues and concerns of potential regulatory interest with the PRA and/or FCA is integral to effective governance. Therefore, firms will also be required to ensure that NEDs not subject to pre-approval under section 59 of FSMA observe Conduct Standard 7, which will require them and Senior Insurance Managers 'to disclose appropriately any information of which the FCA or the PRA would reasonably expect to have notice'. In addition, insurance firms will be required to ensure that all NEDs observe Conduct Standard 8 which relates to the PRA's insurance objective.

**Q4:** [PRA]: Do you agree with the PRA's proposals for the:

- allocation of core responsibilities to NEDs within the SIMR
- application of the Conduct Standards to NEDs within the SIMR; and
- requirement for firms to ensure that NEDs outside the scope of the SIMR observe the Conduct Standards 1-3 and 7 and 8?

### **Proposed FCA Approach to NEDS under the regime for Solvency II firms**

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- 3.12** The SMR applies to those firms deemed capable of posing the greatest potential risk to consumers, notably relevant authorised persons. The FCA's view is that it would be disproportionate to subject Standard NEDs in Solvency II firms to stricter regulation. The FCA also considers it desirable to adopt a consistent approach for Solvency II firms given that PRA CP26/14 and FCA CP14/25 proposed that certain aspects of the SMR should also apply to Solvency II firms.
- 3.13** While many of the elements linked to the SMR, such as the presumption of responsibility and criminal offence in section 36 of the Banking Reform Act, will not apply to Solvency II firms,

the principle that the fundamentally different role and expectations of Standard NEDs should be reflected in the regulatory regime applies equally to Solvency II firms.

- 3.14** The FCA therefore proposes to specify the Chair of the Nominations Committee function in the APR for Solvency II firms, but no additional NED roles. The guidance proposed in Appendix 3 on the role and responsibilities of NEDs will also apply to individuals performing the Chair of the Nomination Committee function in Solvency II insurers, except where the guidance refers to requirements under the SMR.
- 3.15** The regulators will consider the approach to all other firms besides relevant authorised persons and Solvency II firms in due course.

**Q5: [FCA]:** Do you agree with the FCA's proposed approach to NEDs under the APR for Solvency II firms?

#### **Incoming EEA Solvency II branches**

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- 3.16** The FCA's current APR for EEA branches, including Solvency II firms, does not include NEDs as this is a matter for the home member state. The FCA is not proposing to change this position.

**Q6: [FCA]:** Do you agree with the FCA's approach to NEDs in incoming EEA Solvency II branches?

- 3.17** In CP14/25, the FCA proposed to continue approving the same Controlled Functions in incoming non-EEA Solvency II branches as it had been approving under Solvency II, which can sometimes include NEDs (although this is rare in practice). The FCA proposes to more closely align with the approach for UK-incorporated Solvency II firms and no longer approve any NEDs in incoming non-EEA Solvency II branches.

**Q7: [FCA]:** Do you agree with the FCA's approach to NEDs in incoming non-EEA Solvency II branches?

### Combined scope of the regime for non-executive directors in Solvency II firms

The effect of these changes is that the current PRA Non-Executive Director (CF2) function will be replaced by the following functions:

| Approved Persons Regime <sup>8</sup> | Proposed approval regime for Solvency II firms   |  |
|--------------------------------------|--|--|
| Current PRA/FCA Controlled Function  | PRA Approved Persons (Senior Insurance Managers)   | FCA Approved Persons                     |
| PRA NED (CF2)                        | Chairman (SIMF 9)<br>Chair of the Risk Committee (SIMF 10)<br>Chair of the Audit Committee (SIMF 11)<br>Chair of the Remuneration Committee (SIMF 12)<br>Senior Independent Director (SIMF 14) | Chair of the Nomination Committee (CF 7) |

- 3.18** The regulators will consult on updated Forms A and E with the above changes to the lists of functions for Solvency II firms as part of the separate consultation on consequential amendments to the PRA Rulebook/ FCA Handbook, forms, further governance issues and transitional arrangements.

<sup>9</sup> Functions CF 4 (Partner), CF 5 (Director of an unincorporated association) and CF 6 (Small friendly society) are not applicable to Solvency II firms

## 4.

# Assessment and notification of fitness for Standard NEDs in relevant authorised persons and Solvency II firms

- 4.1** The UK regulatory regime is required under a number of EU Directives and guidelines to ensure that all members of the management bodies of relevant authorised persons and Solvency II firms are fit and proper. These include:
- Capital Requirements Directive IV (CRDIV) (Articles 13, 88 and 91)<sup>10</sup>
  - MiFID (Article 9)<sup>11</sup>
  - Solvency II (Article 42)<sup>12</sup>
  - the EBA Guidelines on the assessment of the suitability of members of the management body and key function-holders appointment (EBA Suitability guidelines)<sup>13</sup>
- 4.2** CRDIV requires member states to ensure that board members of CRR firms 'at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties'. According to the EBA Suitability Guidelines, this includes ensuring the appointment of all board members is subject to a regulatory approval or notification process. The EBA Suitability Guidelines do recognise that as members of the management body have specific roles, the assessment process and criteria can differ.
- 4.3** If Standard NEDs cease to be subject to regulatory approval under the SMR and the regime for Solvency II firms, the PRA will need to make them subject to an alternative regulatory application or notification process to continue meeting the UK's EU obligations.
- 4.4** The assessment and notification process for Solvency II firms proposed in CP26/14 aims to ensure that all key function holders, including those not subject to approval by the PRA or FCA, are subject to notification requirements in line with Article 42 of Solvency II and will automatically apply to Standard NEDs if they cease to be subject to pre-approval. This paper is

<sup>10</sup> Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0338:0436:EN:PDF>

<sup>11</sup> Directive 2004/39/on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:145:0001:0044:EN:PDF>

<sup>12</sup> Directive 2014/51/EU of the European Parliament and of the Council, amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No. 1060/2009, (EU) No. 1094/2010 and (EU) No. 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority). <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0051&from=EN>

<sup>13</sup> <https://www.eba.europa.eu/documents/10180/106695/EBA-GL-2012-06--Guidelines-on-the-assessment-of-the-suitability-of-persons-.pdf>



therefore not consulting on any additional approval or notification process for Standard NEDs in Solvency II firms beyond the one proposed in CP26/14.

- 4.5** The PRA consider that a notification requirement identical or similar to the one proposed for key function holders in Solvency II firms could also be appropriate for Standard NEDs in relevant authorised persons which are also CRR and/or MiFID firms. This process would allow these firms to:
- Assess the fitness and propriety of all NEDs not subject to regulatory approval before appointing them and periodically thereafter.
  - Notify the PRA that such NEDs have been deemed fit and proper, and provide the PRA with the information set out in the proposed form in Appendix 5.
  - Notify the regulators of any other information which would be reasonably material to the assessment of a NED's fitness and propriety.
- 4.6** The EU obligations listed above do not apply to credit unions. Consequently, the PRA and FCA are not proposing to make the appointment of Standard NEDs in credit unions subject to pre-approval or notification.
- 4.7** FSMA requires firms to assess the fitness and propriety of all individuals subject to approval in relevant authorised persons. The PRA proposes to require firms to ensure that the assessment of fitness and propriety of Standard NEDs, both prior to appointment and on an ongoing basis, is as rigorous as that applied to Senior Managers. The PRA will amend its rules and Supervisory Statement on Fitness and Propriety (including those relating to criminal record checks and regulatory references) to cover Standard NEDs. These requirements will not place any additional requirements on firms above those consulted on in the July 2014 CP.
- 4.8** In addition, the PRA is proposing to introduce an additional prescribed responsibility which will require relevant authorised persons which are also CRR and/or MiFID firms to make a Senior Manager responsible for overseeing the assessment of the fitness and propriety of all board members (including Standard NEDs) and the firm's compliance with the proposed fitness assessment and notification process.
- 4.9** The PRA also proposes to require firms to require all members of the management body to observe Conduct Rules 1-3 and SM4 and consider the extent to which each member has done so when assessing their fitness and propriety on an ongoing basis. As noted in Chapter 3 and in the PRA Approach Documents, 'independent directors should stand ready to have an open exchange of views with the PRA on the performance of senior management.' Consequently, a requirement to proactively share relevant issues with the regulator(s) is a pivotal and pervasive responsibility of all NEDs, irrespective of whether they are Senior Managers or not.
- 4.10** The PRA proposes a new notification form (set out in Appendix 5) covering both the appointment of Standard NEDs in relevant authorised persons, and key function holders (including Standard NEDs) in Solvency II firms who do not exercise a function subject to pre-approval by the PRA or FCA (see paragraph 2.23 of PRA CP26/14). Firms are not required to submit a notification of the fitness assessment in respect of any NED who is approved by the PRA or the FCA under section 59 of FSMA.
- 4.11** As this process relates to EU obligations in respect of dual-regulated firms, where the PRA is the primary interface with the relevant European Supervisory Authorities, the FCA does not propose to replicate these notification requirements.

- 4.12** The PRA and the FCA will continue to coordinate and share information as appropriate regarding the assessment of fitness of individuals in dual regulated firms, including Standard NEDs and other key function holders.
- 4.13** As there is a risk that some standard NEDs may have contracts of employment with the firm, it would be arbitrary to make a distinction between those individuals and standard NEDs who do not have employment contracts with the firm. On that basis, the PRA proposes to exclude employees who are standard NEDs from the scope of the certification regime in respect of their standard NED function. This will require all standard NEDs to be subject to the same notification requirements.

**Q8:** **[PRA]:** Do you agree with the proposed notification requirement for Standard NEDs in relevant authorised persons, including the draft form set out in Appendix 5?

## 5. Application of the presumption of responsibility to Senior Managers in relevant authorised persons by the PRA

- 5.1** Under the presumption of responsibility, which was introduced by the Banking Reform Act, when a relevant authorised person contravenes a relevant requirement, the Senior Manager(s) responsible for the management of any of the authorised person's activities in relation to which the contravention occurred, will be guilty of misconduct unless he satisfies the relevant regulator that he took such steps as a person in his position could reasonably be expected to take to avoid the contravention occurring (or continuing). Some respondents to the July 2014 CP asked for further guidance on:
- the circumstances in which the regulators would seek to apply the presumption of responsibility;
  - how the regulators would apply it; and
  - the steps that a Senior Manager should be reasonably expected to take to rebut the presumption of responsibility.
- 5.2** The PRA and FCA have therefore decided to consult on the PRA Supervisory Statement and FCA guidance respectively on the presumption of responsibility. The PRA is seeking feedback on the draft supervisory statement in Appendix 2 as part of this paper. The FCA will consult on its proposed guidance shortly.
- 5.3** The PRA proposals relate to relevant authorised persons, and will apply to individuals performing an SMF specified by either regulator on behalf of a relevant authorised person whether physically based in the UK or overseas. Unless a NED holds one of the FCA- or PRA-specified non-executive functions as set out in Chapter 2, he will not be performing an SMF and will therefore not be subject to the presumption of responsibility.

### **PRA draft Supervisory Statement**

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- 5.4** Part 2 of the PRA's draft Supervisory Statement (set out in Appendix 2 of this paper) clarifies the PRA's expectations. In terms of reasonable steps, the draft Supervisory Statement sets out indicative, non-exhaustive examples of:
- the circumstances which may inform the PRA's consideration of whether an individual took reasonable steps;
  - the actions which may be relevant to this determination; and

- the evidence which the PRA may rely on.
- 5.5** The concept of “reasonable steps” is already used in the existing APR and applies to all firms supervised by the PRA, including insurers (see Statements of Principles 5 and 7 in Statements of Principle and Code of Practice for Approved Persons (APER) 2.1. APER 3.3 sets out certain evidential factors which the PRA takes into account in that context.
- 5.6** Whilst the examples set out in Part 2 of the Supervisory Statement, which applies only to relevant authorised persons, are more extensive than the evidential factors in APER 3.3.2 (3) and although the Statements of Principle will be replaced by new Conduct Rules, the PRA’s general approach as to what may constitute ‘reasonable steps’ in the context of the Conduct Rules) or ‘steps [which] a person in [the Senior Manager’s position] could reasonably be expected to take’ in the context of the presumption of responsibility, will be consistent with each other and with the existing framework under APER.
- 5.7** In order to rebut the presumption of responsibility, FSMA requires the PRA to be satisfied that the Senior Manager(s) in questions took ‘such steps’ as were reasonable, and we consider this both in terms of the nature of those steps and the number of steps taken – it may be that in some circumstances several or all feasible steps ought reasonably to have been taken.

**Q9: [PRA]:** Do you agree with the clarifications and expectations set out in Part 2 of the Supervisory Statement in Appendix 2 regarding the PRA’s proposed application of the presumption of responsibility?

# Annex 1

## PRA Cost benefit analysis

### Cost Benefit Analysis

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#### Senior Managers Regime

1. The July 2014 CP proposed a new Senior Managers Regime (SMR) which aims to promote firms' safety and soundness by enhancing the accountability of key decision-makers.
2. By clarifying the responsibilities and accountability of those NEDs who will be in scope of the SMR, this paper should help enhance the effectiveness and proportionality of the proposed SMR.
3. Likewise, by clarifying how the PRA intends to apply the presumption of responsibility, this paper should address industry concerns about how this statutory provision will operate in practice, which may in turn mitigate the potential impact of the SMR on the ability of relevant authorised persons to attract and retain quality Senior Managers. As the Supervisory Statement in Appendix 2 clarifies, Senior Managers who act reasonably in the discharge of their responsibilities should not experience a material impact as a result of the presumption of responsibility.
4. The proposed assessment and notification process for Standard NEDs in relevant authorised persons seeks to ensure that the UK remains compliant with its EU obligations following the decision to take Standard NEDs out of scope of the SMR. These costs are unlikely to be higher than those which would have resulted from making all NEDs Senior Managers.

#### Senior Insurance Managers Regime

5. The PRA expects the incremental costs of its proposed approach to NEDs in Solvency II firms to be minimal. The narrower scope of the proposed regime compared to the scope of the current APR should help reinforce the particular importance of roles subject to regulatory pre-approval and lead to a more focused scrutiny of those roles by the PRA.
6. The proposed requirements regarding the allocation of certain responsibilities to NEDs subject to pre-approval should clarify the individual responsibilities of key decision-makers in Solvency II firms, strengthen their personal accountability and differentiate executive and non-executive responsibilities more clearly.
7. It is expected that additional costs associated with the application of the proposed three generic conduct standards to NEDs will be minimal, as all NEDs are currently subject to the APER, which impose similar obligations.

## Annex 2

# FCA Cost benefit analysis

1. The FCA is required to carry out and publish a cost benefit analysis (CBA) when proposing draft rules (sections 138I and 138J of FSMA).

### **Senior Managers Regime for relevant authorised persons**

2. The FCA is not proposing any draft rules for relevant authorised persons as part of this paper.
3. The FCA is consulting on draft guidance on the role and responsibilities of NEDs within the SMR for relevant authorised persons and the APR for Solvency II firms. This guidance seeks to clarify the proposed regime and does not reflect any additional requirements on firms, and therefore will not involve any additional cost to firms or the FCA.

### **Regime for Solvency II firms**

4. The FCA considered the potential costs to firms of the proposed changes to the APR in CP 14/25 and concluded that the incremental costs would be minimal. The individuals that will be subject to the Chair of the Nomination Committee function would currently be subject to pre-approval by both the PRA and FCA as Non-Executive Directors (CF2) under the APR. Individuals performing 'Standard' NED functions will no longer be subject to pre-approval. Therefore, in practice the number of non-executives that will be subject to pre-approval will decrease, and so the FCA considers that the proposals in this paper will not involve any additional costs to firms or the FCA.

### **Benefits**

5. For both relevant authorised persons and Solvency II firms, the proposals will enable the FCA to focus resources more effectively on those individuals with specific responsibilities, and help maintain the fundamental oversight and challenge role of Standard NEDs.
6. The proposed guidance should provide additional clarity as to the FCA's expectations, increasing the effectiveness of the regime and reducing uncertainty for firms. This, along with the revised scope of the FCA SMR, may reduce the costs for firms involved in attracting and retaining suitable NED candidates.

## Annex 3

# PRA Compatibility Statement

1. The PRA is required, by section 138J(2)(d) of FSMA, to explain its reasons for believing that making the proposed rules are compatible with:
  - i. its duty to act in a way which advances its general objective (i.e. to promote the safety and soundness of PRA-authorized persons, and, specifically for insurers, to contribute to the securing of an appropriate degree of protection for policyholders.); and
  - ii. its duty to act, so far as is reasonably possible, in a way which, as a secondary objective, facilitates effective competition in the markets and services provided by PRA-authorized persons in carrying on regulated activities.
2. The Banking Reform Act and the July 2014 CP set out a new regime which aims to help promote firms' safety and soundness by improving the clarity of their governance arrangements and encouraging personal accountability for senior individuals by holding them to account when their firms fail.
3. The proposals in this paper:
  - confirm the PRA's proposed scope of the SMR;
  - consult on the proposed scope for the SIMR;
  - consult on a new notification process for NEDs outside the scope of the SMR/SIMR aimed at ensuring the UK's continuing performance of its obligations under EU law;
  - clarify the individual responsibilities of NEDs in scope of both regimes; and
  - consult on how the PRA intends to apply presumption of responsibility.
4. These proposals are compatible with the PRA's general duty in that they provide clarity and ensure expectations for the operation of the wider accountability regime and therefore help to deliver the benefits of the new accountability regime.
5. In developing the proposals in this paper, the PRA has had regard to the eight Regulatory Principles in section 3B of FSMA.

**(a) *The need to use the resources of each regulator in the most efficient and economic way***

The PRA has used its internal and external resources in a way it considers to be both effective and commensurate with the impact and magnitude of the proposals in this paper. The PRA has relied on relevant data and feedback from the industry to inform

its policy proposals and collaborated closely with the FCA to optimise each regulator's individual resources.

***(b) The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction***

1. The aim of the PRA's proposals is to promote efficiency in governance, and strengthen individual accountability amongst Senior Managers.
2. The PRA's clarifications show that proposals have been designed proportionately with the intention of minimising the burden associated with the new regime. Only NEDs in scope of the SMR and SIMR will be held accountable.
3. The proposition of a Notification Process to capture standard NEDs that are outside the SMR might create an additional administrative burden, but it is necessary to do so to abide by a number of EU Directives and guidelines that require the PRA to ensure the fitness and propriety of all members of the management body.

***(c) The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term***

The PRA does not consider this to be directly relevant for this paper.

***(d) The general principle that consumers should take responsibility for their decisions***

The PRA does not consider this to be relevant for this paper.

***(e) The responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements***

The key objective of the PRA's proposals in this paper is to promote personal accountability of senior managers by clarifying the responsibilities of Senior Managers and Senior Insurance Managers, in particular NEDs, and the potential accountability of Senior Managers in relevant authorised persons under the Senior Managers Regime. This objective is directly related to this Regulatory principle.

***(f) The desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act [FSMA]***

The approach that the PRA has taken aims to reconcile the SMR and SIMR, to the extent permitted, for consistency of the approval regimes; it recognises, however, the differences in the legislation, as well as the different business models, and the risks posed to the regulator's objectives by Solvency II firms.



***(g) The desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives***

The PRA has the power to publish certain information relating to investigations into firms and individuals. The Statement of the PRA's Approach to Publicity of Regulatory Action (April 2013) deals with the PRA's approach to publication of disciplinary and other enforcement actions. The proposals contained in this paper do not provide for any changes in this regard.

***(h) The principle that the regulators should exercise their functions as transparently as possible***

The PRA has obtained industry feedback and engaged with relevant external stakeholders to the appropriate extent. In this paper, the PRA sets out all the key information relevant to its proposals and gives respondents the opportunity to comment on the proposals, and accompanying rules.

**Mutuals**

6. The PRA has a statutory requirement under section 138K(2) of FSMA to state whether the impact on mutual societies will be significantly different from the impact on other firms. The PRA considers that mutuals are not expected to be affected differently, or in a disproportionate way, from other firms. The rules in this paper clarify the regulators' expectations, and confirm the proposals in the July 2014 paper where proportionality considerations were taken into account in the design of the proposed accountability regimes.

## Annex 4

# FCA Compatibility Statement

### Compatibility with the FCA's general duties

1. This Annex set out how the proposals in this CP are compatible with the general duties and regulatory principles of the FCA.
2. The FCA is required, by section 138I of FSMA, to explain why making the proposed rules is compatible with its strategic objective, advances its operational objectives, and has regard to the regulatory principles in section 3B of FSMA. This Compatibility statement relates to the FCA's proposals for NEDs in Solvency II firms and the draft guidance on the role and responsibilities of NEDs.

### The FCA's strategic objective and regulatory principles

3. The proposals set out in this CP are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. The table below sets out how the FCA's proposals have regard for each of the regulatory principles set out in section 3B of FSMA:

| Regulatory principle  | Compatibility  |
|---|--|
| Efficiency and economy<br>The need to use FCA resourced in the most efficient and economical way  | The proposals in this paper will reduce the number of NEDs in Solvency II firms that are subject to regulatory pre-approval and other regulatory requirements, which will enable the FCA to focus resources in a more effective way.   |
| Proportionality<br>A burden or restriction should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction | The proposals in this paper take a more proportionate approach to the FCA's scope of NED functions in Solvency II firms, instead focusing the regimes on those individuals with specific responsibilities.   |
| Sustainable growth<br>The desirability of sustainable growth in the UK economy in the medium or long term   | The proposals seek to preserve the important oversight and challenge role performed by Standard NEDs, while maintaining regulatory focus on those individuals with specific responsibilities. This should have a positive impact on governance, behaviour and culture, which will contribute to the advancement of this objective. |
| Consumer responsibility<br>Consumers should take responsibility for their decisions   | The proposals in this paper concern the internal organisation of firms and requirements applying to their staff. These are not matters over which consumers can have any influence.  |

| <b>Regulatory principle</b>  | <b>Compatibility</b>   |
|--|--|
| <p>Senior Management responsibility</p> <p>The responsibilities of senior management or persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements</p> | <p>The proposals in this paper aim to ensure that senior individuals are fit and proper, with additional focus on those individuals with specific responsibilities and preserving the important oversight and challenge role of other non-executives.</p>  |
| <p>Recognising the differences in the businesses carried on by different regulated persons</p>   | <p>The SMR applies to those firms deemed capable of posing the greatest potential risk to consumers, notably relevant authorised persons. The proposals ensure that the regulatory regime for individuals is not stricter for Solvency II firms than for relevant authorised persons.</p>  |
| <p>Openness and disclosure</p> <p>The desirability of publishing information relating to persons</p>   | <p>The FCA will not normally make public the fact that it is (or is not) investigating a particular matter or any of its findings or conclusions of an investigation except as set out in Chapter 6 of the Enforcement Guide. The proposals contained in this CP do not change that position. Going forward, the FCA will hold significantly less information on those NEDs that are outside the scope of the regimes.</p> |
| <p>Transparency</p> <p>The FCA should exercise its functions as transparently as possible</p>  | <p>The FCA is an open and transparent regulator. For Solvency II firms, the FCA will engage with relevant external stakeholders as part of this consultation process. In response to feedback received to the July CP, the FCA is providing additional guidance to clarify the expectations and requirements that apply to those NEDs within scope of the FCA SMR.</p>   |

### **The FCA's operational objectives**

#### ***Consumer protection and market integrity***

4. The objective of the proposals in this paper are to focus the FCA's regulatory regime for individuals on those senior individuals with direct influence over, and specific responsibility for, key areas of the firm's business. This, combined with the objective of preserving the important oversight and challenge role of other non-executives, should support the improvement of governance, culture and behaviours within firms. We therefore consider that these aims and objectives support the FCA's Consumer Protection and Market Integrity objectives.

#### ***Promoting competition***

5. In preparing this paper the FCA has had regard to its duty to promote effective competition in the interests of consumers under section 1B(4) of FSMA. The FCA has considered the different business models and risks posed by the different types of firms within the scope of this consultation, and the proposals ensure that the regulatory regime for individuals is not stricter for Solvency II firms in comparison to relevant authorised persons, which were the focus of the original Parliamentary Commission on Banking Standards report. The FCA does not consider that these proposals – which relate primarily to the scope of individuals that will be subject to pre-approval and, for relevant authorised persons, the SMR – are likely to have any adverse impact on effective competition.

#### ***Mutuals***

6. The FCA also has a statutory requirement under section 138K(2) of FSMA to state whether the impact on mutual societies will be significantly different from the impact on other firms. The FCA considers that mutuals are not expected to be affected differently, or in a disproportionate way, from other firms.

## Annex 5

# List of Questions

- Q1:** **[PRA]:** Do you agree with the content of Part 1 of the PRA's draft Supervisory Statement (in Appendix 2) regarding the responsibilities and accountability of NEDs in scope of the Senior Managers Regime?
- Q2:** **[FCA]:** Do you agree with the guidance in Appendix 3 concerning the role and responsibilities of NEDs within the FCA SMR?
- Q3:** **[PRA]:** Do you agree with the PRA's proposed scope for the SIMR as far as NEDs are concerned? In particular, please consider the:
- decision to align the scope of the SIMR and the SMR
  - inclusion of NEDs within the Group Entity Senior Insurance Manager function
  - proposed proportionate application of the regime
- Q4:** **[PRA]:** Do you agree with the PRA's proposals for the:
- allocation of core responsibilities to NEDs within the SIMR
  - application of the Conduct Standards to NEDs within the SIMR
  - requirement for firms to ensure that NEDs outside the scope of the SIMR observe
  - the Conduct Standards 1-3, 7 and 8?
- Q5:** **[FCA]:** Do you agree with the FCA's proposed approach to NEDs under the APR for Solvency II firms?
- Q6:** **[FCA]:** Do you agree with the FCA's approach to NEDs in incoming EEA Solvency II branches?
- Q7:** **[FCA]:** Do you agree with the FCA's approach to NEDs in incoming non-EEA Solvency II branches?

- Q8:** **[PRA]:** Do you agree with the proposed notification requirement for Standard NEDs in relevant authorised persons, including the draft form set out in Appendix 5?
- Q9:** **[PRA]:** Do you agree with the clarifications and expectations set out in Part 2 of the Supervisory Statement in Appendix 2 regarding the PRA's proposed application of the presumption of responsibility?

# Appendix 1

## PRA Rulebook: CRR firms and Solvency II firms: non-executive directors' instrument

**PRA RULEBOOK: CRR FIRMS AND SOLVENCY II FIRMS: NON-EXECUTIVE DIRECTORS  
INSTRUMENT [DATE]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) 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 60 (Applications for approval);
  - (3) section 60A (Vetting candidates by relevant authorised persons);
  - (4) section 61 (Determination of applications);
  - (5) section 63F (Issuing of certificates);
  - (6) section 64A (rules of conduct)
  - (7) section 137G (the PRA’s general rules); and
  - (8) section 137T (general supplementary powers).

- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

- C. In accordance with section 138J of the Act (consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

**PRA Rulebook: CRR Firms and Solvency II Firms: Non-Executive Directors Instrument [Date]**

- D. The PRA makes the rules in Annexes A to H of this instrument.

**Commencement**

- E. This instrument comes into force on [DATE].

**Citation**

- F. This instrument may be cited as the CRR Firms and Solvency II Firms: Non-Executive Directors Instrument [Date].

**By order of the Board of the Prudential Regulation Authority**

[DATE]

Annex A

**Amendments to the Allocation of Responsibilities Part**

[For this consultation, new text added to the rules consulted on in Strengthening accountability in banking: a new regulatory framework for individuals (CP14/14) is underlined and deleted text is struck through.]

Part

## **ALLOCATION OF RESPONSIBILITIES**

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Chapter content

1. APPLICATION AND DEFINITIONS
2. STATEMENT OF RESPONSIBILITIES
3. ALLOCATION OF RESPONSIBILITIES
4. PRESCRIBED RESPONSIBILITIES
5. PRESCRIBED RESPONSIBILITIES: CREDIT UNIONS
6. RECORDS
7. CHAIRMAN'S OFFICE

Links



## 1 APPLICATION AND DEFINITIONS

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1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*; or
- (2) a *credit union*.

1.2 In this Part, the following definitions shall apply:

*ancillary activity*

means an activity which is not a *regulated activity* but which is:

- (1) carried on in connection with a *regulated activity*; or
- (2) held out as being for the purposes of a *regulated activity*.

*ancillary services*

means any of the services listed in Section B of Annex I to *MiFID*.

*certification rules*

means the rules set out in Certification of Employees.

*Chairman function*

has the meaning given in Senior Management Functions 4.2.

*Chief Risk function*

has the meaning given in Senior Management Functions 3.3.

*credit union prescribed responsibility*

means the responsibilities in 5.2.

*Credit Union Senior Executive function*

has the meaning given in Senior Management Functions 6.2.

*FCA approved person*

means a *person* approved to perform an *FCA controlled function* by the *FCA* under section 59 of *FSMA*.

*FCA Chairman of nominee committee function*

means an *FCA controlled function* specified in SUP 10C.5.3 R of the *FCA Handbook*.

*FCA designated senior management function*

means an *FCA controlled function* specified in SUP 10C.4.3R of the *FCA Handbook*;

*FCA significant responsibility senior management function*

means the *FCA controlled function* specified in SUP 10C.7.1R of the *FCA Handbook*.

*FCA non-executive director function*

means the *FCA controlled function* specified in SUP10C.5.2 R of the *FCA Handbook*.

*FCA business functions*

means any of the functions set out in SUP 10C Annex 1R of the *FCA Handbook*.

*FCA responsibilities*

means any of the functions set out in

- (1) SYSC 4.5.16R (Table of senior management responsibilities); and
- (2) SUP 10C Annex 1R (The main business areas and management functions of a relevant authorised person),

of the *FCA Handbook*.

*Group Entity Senior Manager function*

has the meaning given in Senior Management Functions 5.2.

*management responsibilities map*

has the meaning given in 6.

*non-executive director*

means a director of a firm who does not perform an executive function in relation to that firm.

*oversight PRA senior management function*

means a *PRA senior management function* set out in Senior Management Functions 4.

*prescribed responsibility*

means the responsibilities in 4.

*proprietary trading*

means the *regulated activity of dealing in investments as principal* as specified in Article 14 of the *Regulated Activities Order* (Dealing in investments as principal), disregarding the exclusion in Article 15 of the *Regulated Activities Order* (Absence of holding out etc.), *ancillary activities* and (in relation to *MiFID business*) *ancillary services*.

*recovery plan*

has the meaning given in Recovery and Resolution Rules 1.2.

*resolution pack*

has the meaning given in Recovery and Resolution Rules 1.2.

*Senior Independent Director function*

has the meaning given in Senior Management Functions 4.6.

*senior personnel*

has the meaning given in the Glossary of the *FCA Handbook*.

*senior management regime*

means the requirements of the *regulatory system* to *relevant authorised persons* insofar as they relate to *approved persons* performing *PRA senior management functions* and *FCA designated senior management functions*, including Senior Management Functions and Allocation of Responsibilities.

*statement of responsibilities*

means a statement of the affairs of a *relevant authorised person* for which it is intended that a *person* who performs (or is subject to an application to perform) a *PRA senior management function* is (or will be) responsible.

*unapproved non-executive director*

means a *non-executive director* of a *firm* who is not an *approved person* in relation to that *firm*.

*unapproved non-executive director notification rules*

means the rules set out in Fitness and Propriety 4.

## 2 STATEMENT OF RESPONSIBILITIES

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- 2.1 A *firm* must ensure that any application it makes for the approval of a *person* to perform a *PRA senior management function* is accompanied by a *statement of responsibilities*.
- 2.2 A *firm* must ensure that the *statement of responsibilities* accompanying an application for approval to perform a *PRA senior management function* in relation to it includes any *prescribed responsibilities*, *credit union prescribed responsibilities*, *FCA responsibilities* allocated to, and which are to form part of the responsibilities of, that *person*.
- 2.3 A *firm* must ensure that any responsibilities allocated to, and that form part of the responsibilities of, a *person* who performs a *PRA senior management function* in relation to it are consistent with the scope of that *PRA senior management function* and of any *prescribed responsibilities*, *credit union prescribed responsibilities* and *FCA responsibilities* allocated to that *person*.

## 3 ALLOCATION OF RESPONSIBILITIES

---

- 3.1 A *firm* (other than a *small credit union*) must allocate each of the *prescribed responsibilities* set out in Chapter 4 (other than 4.1(56) to (89) and 4.1 ((2021) to one or more *persons* who perform:
- (1) a *PRA senior management function*; or

- (2) subject to 3.4, an *FCA designated senior management function*.
- 3.2 A firm (other than a *small credit union*) must allocate each of the *prescribed responsibilities* in 4.1(56) to (89) and 4.1 (2021) to one or more *persons* who perform:
- (1) an *oversight PRA senior management function*;
- (2) the *FCA non-executive director function*; or
- (32) the *FCA Chairman of nominee committee function*.
- 3.3 A *small credit union* must allocate each of the *credit union prescribed responsibilities* to one or more *persons* who perform:
- (1) the *Credit Union Senior Executive function*; or
- (2) subject to 3.4, an *FCA designated senior management function*.
- 3.4 A firm must not allocate a *prescribed responsibility* (or in the case of a *small credit union*, a *credit union prescribed responsibility*) to a *person* who performs an *FCA significant responsibility senior management function*.

#### 4 PRESCRIBED RESPONSIBILITIES

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- 4.1 Each of the responsibilities set out in this rule is a *prescribed responsibility*:
- (1) responsibility for the *firm's* performance of its obligations under the *senior management regime*, including implementation and oversight;
- (2) responsibility for the *firm's* performance of its obligations in respect of (i) assessing the fitness and propriety of its *unapproved non-executive directors* and (ii) the *unapproved non-executive directors notification rules*;
- (3) responsibility for the *firm's* performance of its obligations under the *certification rules*;
- (4) responsibility for compliance with the *firm's* obligations in relation to its *management responsibilities map*;
- (5) responsibility for the induction, training and professional development of all *persons* performing *PRA senior management functions* on behalf of the *firm* and all members of the *firm's management body*;
- (6) responsibility for ensuring and overseeing the integrity and independence of the internal audit function in accordance with SYSC 6.2 (Internal audit) of the *PRA Handbook*;
- (7) responsibility for ensuring and overseeing the integrity and independence of the compliance function in accordance with SYSC 6.1 (Compliance) of the *PRA Handbook*;
- (8) responsibility for ensuring and overseeing the integrity and independence of the risk function in accordance with SYSC 7.1.21R and SYSC 7.1.22R (Risk control) of the *PRA Handbook*;

- (9) responsibility for maintenance of the independence, integrity and effectiveness of the *firm's* policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment;
- (10) responsibility for the allocation of all *prescribed responsibilities* in accordance with 3.1;
- (11) responsibility for leading the development of the *firm's* culture and standards in relation to the carrying on of its business and the behaviours of its staff;
- (12) responsibility for embedding the *firm's* culture and standards in relation to the carrying on of its business and the behaviours of its staff in the day-to-day management of the *firm*;
- (13) responsibility for the development and maintenance of the *firm's* business model;
- (14) responsibility for management of the allocation and maintenance of capital, funding and liquidity;
- (15) responsibility for the *firm's* treasury management functions;
- (16) responsibility for the production and integrity of the *firm's* financial information and its regulatory reporting in respect of its *regulated activities*;
- (17) responsibility for the *firm's recovery plan* and *resolution pack* and for overseeing the internal processes regarding their governance.
- (18) if the firm carries out *proprietary trading*, responsibility for the *firm's proprietary trading* activities;
- (19) if the *firm* does not have a *person* who performs the *Chief Risk function*, responsibility for overseeing and demonstrating that the risk management policies and procedures which the *firm* has adopted in accordance with SYSC 7.1.2R to SYSC 7.1.5R of the *PRA Handbook* satisfy the requirements of those rules and are consistently effective in accordance with SYSC 4.1.1R of the *PRA Handbook*;
- (20) if the *firm* outsources its internal audit function, responsibility for taking reasonable steps to ensure that every *person* involved in the performance of that function is independent from the *persons* who perform external audit, including:
  - (a) supervision and management of the work of outsourced internal auditors; and
  - (b) management of potential conflicts of interest between the provision of external audit and internal audit services;
- (21) if the *firm* does not have a *person* who performs the *Senior Independent Director function*, responsibility for:
  - (a) carrying out oversight of the person who performs the *Chairman function*; and
  - (b) oversight of the adequacy and quality of the resources available to the office of that person to enable the role to be fulfilled within the *firm*.

## 5 PRESCRIBED RESPONSIBILITIES: CREDIT UNIONS

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5.1 This Chapter applies only to *small credit unions*.

- 5.2 Each of the responsibilities listed in this rule is a *credit union prescribed responsibility*:
- (1) responsibility for providing the committee of management with an up-to-date business plan and all relevant management information;
  - (2) responsibility for management of the *small credit union's* financial resources;
  - (3) responsibility for ensuring the committee of management is informed of its legal and regulatory obligations; and
  - (4) responsibility for oversight of systems and controls proportionate to the nature, scale, and complexity of the risks inherent in the business model of the *small credit union's* activities.

## 6 RECORDS

---

- 6.1 A *firm* must at all times have a comprehensive and up-to-date single document (a *management responsibilities map*) that describes the *firm's* management and governance arrangements including:
- (1) details of the reporting lines and the lines of responsibility;
  - (2) reasonable details about the *persons* who are part of these arrangements; and
  - (3) the responsibilities of those *persons*.
- 6.2 Where responsibilities covered by a *firm's management responsibility map* have been allocated to more than one *person*, the *firm* must show clearly how those responsibilities are shared or divided between the *persons* concerned in its *management responsibilities map*.
- 6.3 A *management responsibilities map* must in particular include:
- (1) the names of all the *firm's approved persons* (including *FCA approved persons*), *unapproved non-executive directors*, *senior management*, and *senior personnel* and the responsibilities held by each;
  - (2) all responsibilities included in any current *statement of responsibilities*;
  - (3) details of the management and governance arrangements relating to all of the *prescribed responsibilities* (or in the case of a *small credit union*, the *credit union prescribed responsibilities*);
  - (4) the *FCA business functions* the *firm* has and details of the *persons* performing them and the *persons* having overall responsibility for them;
  - (5) details of any other *FCA responsibilities* allocated by the *firm* and of the *persons* to whom they are allocated;
  - (6) matters reserved to the *management body* (including its committees);
  - (7) where the *firm* is a member of a *group*;
    - (a) how the *firm's* management and governance arrangements fit together with those of its *group* and the extent to which the *firm's* management and governance arrangements are provided by or shared with other members of its *group*; and

- (b) details of the reporting lines and the lines of responsibility (if any) to *persons* who are *employees* or officers of other *group* members or to committees or other bodies of the *group* or of other *group* members;
  - (8) reasonable details about the *persons* described or identified in the *management responsibilities map*, including whether they are *employees* of the *firm*, whether they perform a *certification function* for the *firm* and the responsibilities they have in relation to other *group* members; and
  - (9) details of how the matters set out in (1) to (8) fit into the *firm's* management and governance arrangements as a whole.
- 6.4 If a *firm* assigns responsibility for any of the *prescribed responsibilities* or overall responsibility for an *FCA business function* to more than one *person* jointly or divides overall responsibility for it between different *persons*, the *firm* must record in its *management responsibilities map* how and why this has been done.
- 6.5 If the content of a *statement of responsibilities* is modified or revised, a *firm* must send a copy of that revised *statement of responsibilities* to the *PRA* as soon as possible.
- 6.6 A *firm* must retain a copy of each version of:
- (1) its *management responsibilities map*; and
  - (2) the *statement of responsibilities* for each person who performs or has performed a *PRA senior management function* for the *firm*
- for a period of ten years from the date on which the *management responsibilities map* or the *statement of responsibilities*, as the case may be, is superseded by a more up-to-date version.
- 6.7 At least once every twelve months, a *firm* must certify in writing to the *PRA* whether or not it has complied with this Part. If it has not done so, the certificate must give details of that non-compliance. A *firm* must ensure that its *management body* approves the content and issue of the certificate and that the certificate is signed on behalf of the *management body*.

## 7 CHAIRMAN'S OFFICE

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- 7.1 A *firm* must ensure that the office of the *Chairman function* has resources that are adequate as to both quality and quantity to enable it to fulfil its role within the *firm*.

**Annex B**

**Amendments to the Certification Part**

[Note: This draft instrument shows the changes that are proposed to be made to the draft rules (the draft Certification Part) consulted on by the PRA in Annex 7.4 of Strengthening accountability in banking: a new regulatory framework for individuals (CP14/14).]

**Part**

# **CERTIFICATION**

**Chapter content**

**1. APPLICATION AND DEFINITIONS**

...



## 1 APPLICATION AND DEFINITIONS

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1.1 ...

...

1.2 This Part does not apply to a function performed by:

...

(2) a *person* acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989;~~or~~

(3) a *person* acting as a nominee in relation to a voluntary arrangement under Part II (Company Voluntary Arrangements) of the Insolvency (Northern Ireland) Order 1989;or

(4) in relation to their *non-executive director* function, a *person* who is an *unapproved non-executive director*.

...

1.3 In this Part, the following definitions shall apply:

...

*non-executive director*

means a *director* of a *firm* who does not perform an executive function in relation to that *firm*.

*unapproved non-executive director*

means a *non-executive director* of a *firm* who is not an *approved person* in relation to that *firm*.

...

## Annex C

### Amendments to the Fitness and Propriety Part

[Note: This draft instrument shows the changes that are proposed to be made to the draft rules (the draft Fitness and Propriety Part) consulted on by the PRA in Annex 7.5 of Strengthening accountability in banking: a new regulatory framework for individuals (CP14/14) and Appendix 2.2 Annex B of CP28/14.]

In this Annex, new text is underlined and deleted text is struck through.

Part

## **FITNESS AND PROPRIETY**

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### Chapter content

1. APPLICATION AND DEFINITIONS
2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS
3. CONDUCT STANDARDS
4. UNAPPROVED NON-EXECUTIVE DIRECTORS – NOTIFICATIONS
5. REGULATORY REFERENCES
6. FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS

Links

## 1 APPLICATION AND DEFINITIONS

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1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*; or
- (2) a *credit union*.

1.2 The matters referred to in 2 are relevant to the *PRA*'s determination of whether a *person* to whom a *senior management application* relates is fit and proper.

1.3 In this Part, the following definitions shall apply:

*certification function*

has the meaning given in the Certification Part.

*certificate*

means the certificate referred to in section 63F(1) of *FSMA*.

*commencement date*

means [the date appointed by the Treasury to commence the senior managers regime under the Financial Services (Banking Reform Act) 2013]

*non-executive director*

means a *director* of a *firm* who does not perform an executive function in relation to that *firm*.

*senior management application*

means an application for the *PRA*'s approval under section 59 of *FSMA*.

*unapproved non-executive director*

means a *non-executive director* of a *firm* who is not an *approved person* in relation to that *firm*.

## 2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

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2.1 (4) A *firm* must not make a *senior management application* in relation to a *person* unless it is satisfied that *person* is fit and proper to perform the *PRA senior management function* to which the application relates.

2.2 (2) A *firm* must not issue a *certificate* in relation to a *person*, unless it is satisfied that *person* is fit and proper to perform the *certification function* to which the *certificate* relates.

2.3 A *firm* must not appoint a *person* as an *unapproved non-executive director*, unless it is satisfied that *person* is fit and proper.

2.4 A firm must ensure that each member of its *management body* is at all times fit and proper.

[Article 91(1) CRD IV]

2.5 ~~(3)~~ In deciding whether a *person* is fit and proper, a *firm* must be satisfied that the *person*:

- (a) has the personal characteristics (including being of good repute and integrity);
- (b) possesses the level of competence, knowledge and experience;
- (c) has the qualifications; and
- (d) has undergone or is undergoing all training,

required to enable such *person* to perform his or her function effectively and in accordance with any relevant regulatory requirements, including those under the *regulatory system*, and to enable sound and prudent management of the *firm*.

2.6 ~~(4)~~ Before deciding whether a *person* is fit and proper, a *firm* must take reasonable steps to obtain appropriate references covering at least the past 5 years from that *person's* current and previous employers, and from firms at which that *person* served as, or is currently, a *non-executive director*.

2.7 ~~(5)~~ In deciding whether a *person* (P) is fit and proper in connection with a *senior management application* or on appointment as an *unapproved non-executive director*, a *firm* must:

- (a) obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under the Police Act 1997 (Certificates of Criminal records, etc) and related subordinated legislation of the *UK* or any part of the *UK*;
- (b) if P has lived or worked outside the *UK* for a material time in the previous five years, obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under equivalent overseas legislation; and
- (c) request, and have regard to, such information.

### 3. CONDUCT STANDARDS

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3.1 A firm must require any *PRA approved person* or *unapproved non-executive director* to:

- (a) act with integrity;
- (b) act with due skill, care and diligence;
- (c) be open and co-operative with the *FCA*, the *PRA* and other regulators; and

(d) disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

3.2 A firm must require any PRA approved person to:

(a) take reasonable steps to ensure that the business of the firm for which they are responsible is controlled effectively;

(b) take reasonable steps to ensure that the business of the firm for which they are responsible complies with relevant requirements and standards of the regulatory system; and

(c) take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

#### **4. UNAPPROVED NON-EXECUTIVE DIRECTORS - NOTIFICATIONS**

4.1 A firm, unless it is a credit union, must notify the PRA [on the form in Appendix 6] when a person becomes an unapproved non-executive director and shall provide the PRA with all of the information needed to assess whether that person is fit and proper;

4.2 If a firm becomes aware of information which would reasonably be material to the assessment of a current or former unapproved non-executive director's fitness and propriety under this Part, it must inform the PRA [on Form X<sup>1</sup>], or (if it is more practical to do so and with the prior agreement of the PRA) by fax or e-mail, as soon as practicable.

4.3 Where a firm replaces an unapproved non-executive director because the firm considers that person no longer fulfils the requirements of 2.4, the firm must notify the PRA as soon as reasonably practicable.

4.4 Where an unapproved non-executive director assumes a new role with the firm or ceases to be a director of the firm, the firm must notify the PRA as soon as reasonably practicable.

#### **5. REGULATORY REFERENCES**

3.15.1 (1) If a PRA authorised person firm (A), including a firm that is not a CRR firm or a credit union:

- (a) is considering issuing a certificate to, or making a senior management application in respect of, or appointing as an unapproved non-executive director, a person (P);
- (b) makes a request, for a reference or other information in respect of P from a firm to which this Part applies (B), in B's capacity as P's current or former employer or because P is, or was, a member of B's management body; and
- (c) indicates to B the purpose of the request,

<sup>1</sup> See, by analogy, the change of details form (Form D) in CP28/14.

B must, as soon as reasonably practicable, give to A all information of which B is aware that is relevant to A's assessment of whether P is fit and proper.

- (2) When giving information to A under (1), B must in particular disclose:
- (a) where B has concluded that P:
    - (i) was in breach of the Conduct Rules Part and has made a notification to the *PRA* of such a breach; or
    - (ii) was not fit and proper to perform any function;

in the 5 years before the request for a reference, the facts which led B to that conclusion;
  - (b) where B, following a finding that P:
    - (i) was in breach of the Conduct Rules Part, which breach B has notified to the *PRA*; or
    - (ii) was not fit and proper;

has taken, in the 5 years before the request for a reference, disciplinary action, a description of the basis for, and outcome of, the disciplinary action.
- (3) A firm must provide the information in (2)(b) regarding disciplinary action that resulted in:
- (a) the issue of a formal written warning; or
  - (b) the suspension or dismissal of P; or
  - (c) the reduction or recovery of any of P's remuneration.

## 6. FITNESS AND PROPRIETY TRANSITIONAL PROVISIONS

4.16.1 The requirement to obtain regulatory references in accordance with 2.4(4)~~6~~ does not apply to a *firm* in respect of any *person* to the extent that:

- (a) the *firm* is deciding whether the *person* is fit and proper for the purpose of issuing a *certificate*;
- (b) the *person* will be performing a *certification function* from the *commencement date*; and
- (c) immediately prior to the *commencement*, the *person* performed the same function for the *firm*.

6.2 The requirements of 2.3, 2.6, 2.7 and 4.1 do not apply to a *director* who, in relation to the *firm*:

- (a) on the *commencement date* is an *unapproved non-executive director*; and
- (b) immediately prior to the *commencement date*, was approved as a *non-executive director*.

## Annex D

[Note: This Annex shows the changes that are proposed to be made to the draft rules consulted on by the PRA in Appendix 1.1 of Senior insurance managers regime: a new regulatory framework for individuals (CP26/14).]

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

Part

# INSURANCE - SENIOR INSURANCE MANAGEMENT FUNCTIONS

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## Chapter content

1. APPLICATION AND DEFINITIONS
2. GENERAL
3. EXECUTIVE
4. OVERSIGHT
5. GROUP ENTITIES
6. THIRD COUNTRY BRANCH MANAGER
7. CHIEF ACTUARY
8. WITH-PROFITS ACTUARY
9. CHIEF UNDERWRITING OFFICER FUNCTION
10. UNDERWRITING RISK OVERSIGHT FUNCTION
11. LLOYD'S
12. ISPVs

Links

## 1 APPLICATION AND DEFINITIONS<sup>2</sup>

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1.1 Unless otherwise stated, this Part applies to:

- (1) a *UK Solvency II firm*;
- (2) in accordance with General Application<sup>3</sup> 3, the *Society*, as modified by 4011;
- (3) in accordance with General Application 3, *managing agents*, as modified by 4011;
- (4) a *third country branch undertaking* (other than a *Swiss general insurer*); and
- (5) an *ISPV*, in accordance with 4412.

1.2 In this Part, the following definitions shall apply:

*Chairman function*

has the meaning given in 4.1.

*Chairman of Audit Committee function*

has the meaning given in 4.2.

*Chairman of Remuneration Committee function*

has the meaning given in 4.4.

*Chairman of Risk Committee function*

has the meaning given in 4.3.

*Chief Actuary function*

has the meaning given in 67.1.

*Chief Executive function*

has the meaning given in 3.1.

*Chief Finance function*

has the meaning given in 3.2.

*Chief Risk function*

has the meaning given in 3.3.

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<sup>2</sup> Defined terms referred to in this Part (which are not ~~are not~~ specific to this Part under rule 1.2) either appear in FSMA or the PRA Rulebook or are defined in the Insurance – Senior Insurance Manager Regime – Glossary Amendments Part also being consulted on in (1) the PRA's consultation paper CP26/14 "Senior insurance managers regime: a new regulatory framework for individuals" ~~this consultation paper~~ either appear in FSMA or (2) ~~are being consulted on in~~ the PRA's consultation paper CP14/14 "Strengthening accountability in banking: a new regulatory framework for individuals" or (3) the PRA's consultation paper CP16/14 "Transposition of Solvency II: Part 3".

<sup>3</sup> This Part is being consulted on in CP16/14 which can be found at <http://www.bankofengland.co.uk/pr/Documents/publications/cp/2014/cp1614.pdf>



*Chief Underwriting Officer function*

has the meaning given in ~~8~~9.2.

*Group Entity Senior Insurance Manager function*

has the meaning given in ~~4~~5.1.

*Head of Internal Audit function*

has the meaning given in 3.4.

*Senior Independent Director function*

has the meaning given in 4.5.

*senior insurance management function*

means that aspect of any *key function* relating to the carrying on of a *regulated activity* by a *firm*, which is specified by the *PRA* in 3 – ~~9~~10 pursuant to section 59 of *FSMA*.

*Third Country Branch Manager function*

has the meaning given in ~~5~~6.2.

*Underwriting Risk Oversight function*

has the meaning given in ~~9~~10.2.

*With-Profits Actuary function*

has the meaning given in ~~7~~8.2.

**2 GENERAL**

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- 2.1 Each of the functions in 3 – ~~9~~10 is a *controlled function* and a *senior insurance management function*.
- 2.2 *Senior insurance management function* holders must each be approved by the *PRA* to perform the applicable *senior insurance management function*.
- 2.3 (1) A *firm* (other than a *third country branch undertaking*) must ensure that one or more *persons* performs each of the following *senior insurance management functions* on its behalf:
- (a) the *Chief Executive function*; ~~and~~
  - (b) the *Chief Finance function*; ~~and~~ and
  - (c) the *Chairman function*.
- (2) If a vacancy arises in respect of one or more of the *senior insurance management functions* set out in (1), a *firm* must ensure that it appoints a *person* to fill that vacancy as soon as practicable.
- 2.4 To the extent that:

- (1) a *firm* appoints a *person* to perform a *key function* which, but for this *rule*, would be a *senior insurance management function*;
- (2) the appointment is solely to provide cover for a *senior insurance management function holder* whose absence is:
  - (a) temporary; or
  - (b) reasonably unforeseen; and
- (3) the appointment is for less than 12 weeks in a consecutive 12-month period;

the description of the applicable *senior insurance management function* does not relate to those activities of that *person*.

### 3 EXECUTIVE

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- 3.1 The *Chief Executive function* (SIMF1) is the function of having responsibility, under the immediate authority of the *governing body*, alone or jointly with others, for carrying out the management of the conduct of the whole of the business (or relevant activities) of a *firm*.
- 3.2 The *Chief Finance function* (SIMF2) is the function of having responsibility for the management of the financial resources of a *firm* and reporting to the *governing body* of a *firm* in relation to its financial affairs.
- 3.3 The *Chief Risk function* (SIMF4) is the function of having responsibility for overall management of the risk management system specified in Conditions Governing Business<sup>4</sup> 3.
- 3.4 The *Head of Internal Audit function* (SIMF5) is the function of having responsibility for management of the internal audit *function* specified in Conditions Governing Business 5.

### 4 OVERSIGHT

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- 4.1 The *Chairman function* (SIMF9) is the function of having responsibility for chairing, and overseeing the performance of the role of, the *governing body* of a *firm*.
- 4.2 The *Chairman of Audit Committee function* (SIMF10) is the function of having responsibility for chairing, and overseeing the performance of any committee responsible for the oversight of the internal audit system specified in Conditions Governing Business 5.
- 4.3 The *Chairman of Risk Committee function* (SIMF11) is the function of having responsibility for chairing, and overseeing the performance of any committee responsible for the oversight of the risk management system specified in Conditions Governing Business 3.
- 4.4 The *Chairman of Remuneration Committee function* (SIMF12) is the function of having responsibility for chairing, and overseeing the performance of any committee responsible for the oversight of the design or implementation of the remuneration policy of a *firm*.
- 4.5 The *Senior Independent Director function* (SIMF14) is the function of performing the role of a senior independent *director*, and having particular responsibility for leading the assessment of performance of the *person* performing the *Chairman function*.

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<sup>4</sup> This Part is being consulted on in CP16/14 which can be found at <http://www.bankofengland.co.uk/prd/Documents/publications/cp/2014/cp1614.pdf>

## 5 GROUP ENTITIES

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45.1 The *Group Entity Senior Insurance Manager function* (SIMF7) is the function of having a significant influence on the management or conduct of one or more aspects of the affairs of a *firm* in relation to its *regulated activities* (other than in the course of the performance of another *senior insurance management function*) and which is performed by a *person* employed by, or an officer (~~other than a non-executive director~~) of:

- (1) a *parent undertaking* or holding company of a *firm*; or
- (2) another *undertaking* which is a member of the *firm's group*.

## 6 THIRD COUNTRY BRANCH MANAGER

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56.1 This Chapter applies only to a *firm* that is a *third country branch undertaking*.

56.2 The *Third Country Branch Manager function* (SIMF19) is the function of having responsibility for the conduct of all activities of the *third country branch undertaking* that are subject to the *regulatory system*.

56.3 A *third country branch undertaking* must have at least one *person* approved to perform the *Third Country Branch Manager function*.

56.4 A *third country branch undertaking* that transacts *with-profits insurance business* must have at least one *person* approved to perform the *With-Profits Actuary function* (SIMF21).

56.5 A *third country branch undertaking* is not required to have a *person(s)* approved to perform any of the other *functions*.

## 7 CHIEF ACTUARY

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67.1 The *Chief Actuary function* (SIMF20) is the function of having responsibility for the actuarial *function* specified in Conditions Governing Business 6.

## 8 WITH-PROFITS ACTUARY

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78.1 This Chapter applies only to *firms* that carry on *with-profits insurance business*.

78.2 The *With-Profits Actuary function* (SIMF21) is the function of having responsibility for advising the *governing body* of a *firm* transacting *with-profits insurance business* on the exercise of discretion affecting part or all of that business.

## 9 CHIEF UNDERWRITING OFFICER FUNCTION

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89.1 This Chapter applies only to *firms* that carry on *general insurance business* and to *managing agents*.

89.2 The *Chief Underwriting Officer function* (SIMF22) is the function of having responsibility, for the underwriting decisions in respect of material insurance risks that:

- (1) in relation to *firms* that carry on *general insurance business*, are borne by the *firm*; or
- (2) in relation to *managing agents*, are borne by *members*.

## 10 UNDERWRITING RISK OVERSIGHT FUNCTION

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910.1 This Chapter applies only to the *Society*.

~~9~~10.2 The *Underwriting Risk Oversight function* (SIMF23) is the function of overseeing and influencing underwriting plans by *managing agents* in respect of risks borne by *members*.

## 11 LLOYD'S

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~~4~~011.1 This Part applies to the *Society* and *managing agents* separately.

~~4~~011.2 Subject to ~~4~~011.3, the *Society* and *managing agents* shall comply with this Part to the extent that the *senior insurance management functions* apply to the *Society* or the *managing agent*.

~~4~~011.3 The *With-Profits Actuary function* (SIMF21) does not apply to the *Society* or to *managing agents*.

## 12 ISPVS

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~~4~~12.1 This Chapter applies only to *firms* that are *ISPVs*.

~~4~~12.2 The following senior insurance management functions do not apply to *ISPVs*:

- (1) *Chief Risk function* (SIMF4);
- (2) *Head of Internal Audit function* (SIMF5);
- (3) *Chairman of Audit Committee function* (SIMF10);
- (4) *Chairman of Risk Committee function* (SIMF11);
- (5) *Chairman of Remuneration Committee function* (SIMF12);
- (6) *Senior Independent Director function* (SIMF14);
- (7) *Third Country Branch Manager function* (SIMF19);
- (48) *With-Profits Actuary function* (SIMF21); and
- (59) *Chief Underwriting Officer function* (SIMF22).

## Annex E

[Note: This Annex shows the changes that are proposed to be made to the draft rules consulted on by the PRA in Appendix 1.2 of Senior insurance managers regime: a new regulatory framework for individuals (CP26/14).]

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

Part

# INSURANCE - FITNESS AND PROPRIETY

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Chapter content

1. APPLICATION
2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS
3. OBLIGATION TO PROVIDE REFERENCES
4. DISCLOSURE AND REPLACEMENTS
5. LLOYD'S

Links

## 1 APPLICATION<sup>5</sup>

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- 1.1 Unless otherwise stated, this Part applies to:
- (1) a *UK Solvency II firm*;
  - (2) in accordance with General Application<sup>6</sup> 3, the *Society*, as modified by 5;
  - (3) in accordance with General Application 3, *managing agents*, as modified by 5;
  - (4) a *third country branch undertaking* (other than a *Swiss general insurer*); and
  - (5) an *ISPV*.

## 2 FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

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- 2.1 A *firm* must ensure that all *persons* who perform *key functions* are at all times fit and proper *persons*.
- 2.2 In deciding whether a *person* is fit and proper pursuant to 2.1, a *firm* must be satisfied that the *person*:
- (1) has the personal characteristics (including being of good repute and integrity);
  - (2) possesses the level of competence, knowledge and experience;
  - (3) has the qualifications; and
  - (4) has undergone or is undergoing all training, required to enable such *person* to perform his or her *key function* effectively and in accordance with any relevant regulatory requirements, including those under the *regulatory system*, and to enable sound and prudent management of the *firm*.
- 2.3 Before deciding, and in considering on an on-going basis, whether a *person* is fit and proper pursuant to 2.1 and 2.2, a *firm* must:
- (1) consider the *person's* past business conduct; and
  - (2) be satisfied that the *person* discharges his or her *key functions* in accordance with the relevant *conduct standards* specified in Insurance - Conduct Standards Instrument 3.
- 2.4 Before deciding whether a *person* (P) is fit and proper to become a *senior insurance management function holder* or to act as an *unapproved non-executive director*, a *firm* must:
- (1) obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under the Police Act 1997 and related subordinated legislation of the *UK* or any part of the *UK*;

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<sup>5</sup> Defined terms referred to in this Part either appear in FSMA or the PRA Rulebook or are being consulted on in (1) the PRA's consultation paper CP26/14 "Senior insurance managers regime: a new regulatory framework for individuals" or (2) the PRA's consultation paper CP14/14 "Strengthening accountability in banking: a new regulatory framework for individuals" or (3) the PRA's consultation paper CP16/14 "Transposition of Solvency II: Part 3"; or (4) this consultation paper in Annex H.

<sup>6</sup> This Part is being consulted on in CP16/14 which can be found at <http://www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp1614.pdf>

- (2) if P has lived or worked outside the *UK* for a material time in the previous five years, obtain P's consent for the *firm* to request the fullest information in relation to P that it is lawfully able to request under equivalent overseas legislation; and
- (3) request, and have regard to, such information.

2.5 Before deciding whether a *person* is fit and proper to become a *senior insurance management function holder* or an *unapproved non-executive director*, a *firm* must take reasonable steps to obtain appropriate references from that *person's* current and previous employers, and from firms at which that *person* served as, or is currently, a *non-executive director*, covering at least the past 5 years.

2.6 Where a *firm* (A) seeks a reference pursuant to 2.5 from a ~~previous employer that is an FCA-*authorised person* or a PRA-*authorised person*~~ (B), ~~it~~ A must also request that B discloses all matters of which B is aware that are relevant to the assessment of that *person's* fitness and propriety.

### 3 OBLIGATION TO PROVIDE REFERENCES

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3.1 Where an *FCA-authorised person* or a *PRA-authorised person* (C):

- (1) is considering appointing a *person* (P) to perform any role;
- (2) makes a request for a reference or other information in respect of P from a *firm* to which this Part applies (B), in B's capacity as P's current or former employer or because P is, or was, a member of B's *governing body*; and
- (3) indicates to B the purpose of the request;

B must, as soon as reasonably practicable, give to C all relevant information of which B is aware that is relevant to C's assessment of whether P is fit and proper.

### 4 DISCLOSURE AND REPLACEMENTS

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- 4.1 (1) A *firm* (other than an *ISPV*) shall notify the *PRA* of any changes to the identity of *key function holders* and shall provide the *PRA* with:
- (a) all of the information needed to assess whether such *person* is fit and proper; and
  - (b) the information referred to in Insurance - Allocation of Responsibilities Instrument 5.1(3),

save that this requirement shall not apply where the *key function holder* is to be approved under section 59 of *FSMA* by the *FCA* and the same information is required by the *FCA*.

- (2) An *ISPV* shall notify the *PRA* of any changes to the identity of *key function holders* who are effectively running the *firm* and shall provide the *PRA* with all of the information needed to assess whether such *person* is fit and proper, save that this requirement shall not apply where the *key function holder* is to be approved under section 59 of *FSMA* by the *FCA* and the same information is required by the *FCA*.

4.2 Where a *key function holder* is to be approved under section 59 of *FSMA* by the *PRA* a *firm* must ensure that any application it makes for the approval of that *person* to perform the relevant controlled function is accompanied by the information referred to in 4.1.

- 4.3 If a *firm* becomes aware of information which would reasonably be material to the assessment of a current or former *key function holder's* fitness and propriety under this Part, it must inform the *PRA* [on Form X], or (if it is more practical to do so and with the prior agreement of the *PRA*) by fax or e-mail, as soon as practicable.
- 4.4 Where a *firm* replaces a *key function holder* because the *firm* considers that that *person* no longer fulfils the requirements in 2.2, the *firm* must notify the *PRA* as soon as reasonably practicable.

**5. LLOYD'S**

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- 5.1 This Part applies to the *Society* and *managing agents* separately.



## Annex F

[Note: This Annex shows the changes that are proposed to be made to the draft rules consulted on by the PRA in Appendix 1.3 of Senior insurance managers regime: a new regulatory framework for individuals (CP26/14).]

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

### Part

# **INSURANCE - ALLOCATION OF RESPONSIBILITIES**

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## Chapter content

1. APPLICATION AND DEFINITIONS
2. ALLOCATION OF RESPONSIBILITIES
3. PRESCRIBED RESPONSIBILITIES
4. IDENTIFICATION OF KEY FUNCTIONS
5. RECORDS
6. LLOYD'S

## Links

## 1 APPLICATION AND DEFINITIONS<sup>7</sup>

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1.1 Unless otherwise stated, this Part applies to:

- (1) a *UK Solvency II firm*;
- (2) in accordance with General Application<sup>8</sup> 3, the *Society*, as modified by 6;
- (3) in accordance with General Application 3, *managing agents*, as modified by 6; and
- (4) a *third country branch undertaking* (other than a *Swiss general insurer*).

1.2 In this Part, the following definitions shall apply:

*governance map*

has the meaning given in 5.1.

*prescribed responsibility*

- (1) for a *firm* (other than a *third country branch undertaking*) means the responsibilities in 3.1;
- (2) for a *third country branch undertaking* (other than a *UK-deposit insurer* or a *Swiss general insurer*), means the applicable responsibilities in 3.1 taking account only of the matters relevant to the operations effected by the *third country branch*, save in relation to the responsibility in 3.1(4), which shall also take account of the operations of the *third country branch undertaking* insofar as necessary to assess whether the *third country branch undertaking* has adequate worldwide financial resources for the purposes of Third Country Branches 13; and
- (3) for a *UK-deposit insurer*, means the applicable responsibilities in 3.1 taking account of the operations effected by the *third country branch* and all the *third country undertaking EEA branches*, save in relation to the responsibility in 3.1(4), which shall also take account of the operations of the *third country branch undertaking* insofar as necessary to assess whether the *third country branch undertaking* has adequate worldwide financial resources for the purposes of Third Country Branches 13.

## 2 ALLOCATION OF RESPONSIBILITIES<sup>9</sup>

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2.1 A *firm* (other than a *third country branch undertaking*) must allocate each element of the *prescribed responsibilities* set out in 3.1 (other than (9) and (10)), to one or more *persons* who are approved under section 59 of *FSMA* by (1) the *PRA* or, (2) in relation to *relevant senior management functions* only, the *FCA* or, if appropriate, are ~~*non-executive directors*~~.

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<sup>7</sup> Defined terms referred to in this Part (which are not specific to this Part under rule 1.2) either appear in *FSMA* or the *PRA* Rulebook or are being consulted on in (1) the *PRA*'s consultation paper CP26/14 "Senior insurance managers regime: a new regulatory framework for individuals" or (2) the *PRA*'s consultation paper CP14/14 "Strengthening accountability in banking: a new regulatory framework for individuals" or (3) the *PRA*'s consultation paper CP16/14 "Transposition of Solvency II: Part 3" or (4) this consultation paper in Annex H.

<sup>8</sup> This Part is being consulted on in CP16/14 which can be found at <http://www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp1614.pdf>

<sup>9</sup> ~~References to *non-executive directors* in this Chapter are subject to further consultation.~~

- 2.2 A *firm* (other than a *third country branch undertaking*) must allocate each element of the *prescribed responsibilities* set out in 3.1(9) and (10) to one or more *non-executive directors* who perform an oversight *PRA senior insurance management function*.
- 2.3 A *third country branch undertaking* must allocate each of the *prescribed responsibilities* set out in 3.1(1), (4), (5), (6) and (7) to one or more *persons* who are approved under section 59 of *FSMA* by (1) the *PRA* or, (2) in relation to *relevant senior management functions* only, the *FCA*.

### 3 PRESCRIBED RESPONSIBILITIES

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- 3.1 Each of the responsibilities set out in this *rule* is a *prescribed responsibility*:
- (1) responsibility for ensuring that the *firm* has complied with its obligation in Insurance - Fitness and Propriety 2.1 to satisfy itself that every *person* who performs a *key function* (including those in respect of whom an application under s59 of *FSMA* is made) is a fit and proper *person*;
  - (2) responsibility for leading the development of the *firm's* culture and standards in relation to the carrying on of its business and the behaviours of its staff;
  - (3) responsibility for embedding the *firm's* culture and standards in relation to the carrying on of its business and the behaviours of its staff, in the day-to-day management of the *firm*;
  - (4) responsibility for the production and integrity of the *firm's* financial information and its regulatory reporting;
  - (5) responsibility for management of the allocation and maintenance of the *firm's*;
    - (a) capital; and
    - (b) liquidity;
  - (6) responsibility for the development and maintenance of the *firm's* business model;
  - (7) responsibility for performance of the *firm's* *ORSA*;
  - (8) responsibility for the induction, training and professional development of all of the *firm's* *key function holders* (including those in respect of whom an application under section 59 of *FSMA* is made);
  - (9) responsibility for maintenance of the independence, integrity and effectiveness of the *firm's* policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment; and
  - (10) responsibility for oversight of the *firm's* remuneration policies and practices.

### 4 IDENTIFICATION OF KEY FUNCTIONS

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- 4.1 A *firm* must identify:
- (1) each of the *functions* that the *firm* considers to be a *key function*; and
  - (2) any such *key function* that amounts to effectively running the *firm* (or, for *third country branch undertakings*, effectively running the operations effected by the *third country*

*branch, or, for a UK-deposit insurer, the operations effected by the third country branch and all the third country undertaking EEA branches).*

- 4.2 A *firm* must keep its identification of *key functions* pursuant to 4.1 up-to-date.
- 4.3 A *firm* must keep a record of its reasoning for the identification of *key functions* pursuant to 4.1.

## 5 RECORDS

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- 5.1 A *firm* must at all times have a comprehensive and up-to-date single document (a *governance map*) that includes the following details:
- (1) a list of the *key functions* identified by the *firm* in accordance with 4.1 highlighting those that amount to effectively running the *firm* (or, for *third country branch undertakings*, effectively running the operations effected by the *third country branch* or, for a *UK-deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*);
  - (2) the names of *persons* who effectively run the *firm* (or, for *third country branch undertakings*, effectively run the operations effected by the *third country branch* or, for a *UK-deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*) or who are responsible for other *key functions* listed pursuant to 5.1(1);
  - (3) for each *person* named pursuant to 5.1(2), a summary of the significant responsibilities allocated to that *person* (including, if applicable, any *prescribed responsibilities* that have been allocated to that *person* in accordance with 2);
  - (4) where any responsibilities covered by 5.1(3) are allocated to more than one *person*, details of how those responsibilities are shared or divided between the *persons* concerned;
  - (5) reporting lines and lines of responsibility for each *person* listed pursuant to 5.1(2);
  - (6) where the *firm* (other than a *third country branch undertaking*) is a member of a *group*:
    - (a) how the *firm's* management and governance arrangements fit together with those of its *group* and the extent to which the *firm's* management and governance arrangements are provided by or shared with other members of its *group*; and
    - (b) for the *persons* listed pursuant to 5.1(2), details of the reporting lines and the lines of responsibility (if any) to *persons* who are employees or officers of other *group* members or to committees or other bodies of the *group* or of other *group* members.
- 5.2 The *firm* must provide the *PRA* with a copy of the *governance map* upon request.

## 6 LLOYD'S

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- 6.1 This Part applies to the *Society* and *managing agents* separately.

**Annex G**

[Note: This Annex shows the changes that are proposed to be made to the draft rules consulted on by the PRA in Appendix 1.4 of Senior insurance managers regime: a new regulatory framework for individuals (CP26/14).]

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

**Part**

## **INSURANCE - CONDUCT STANDARDS**

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**Chapter content**

- 1. APPLICATION**
- 2. SCOPE OF CONDUCT STANDARDS**
- 3. CONDUCT STANDARDS**
- 4. LLOYD'S**

**Links**

## 1 APPLICATION<sup>10</sup>

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- 1.1 Unless otherwise stated, this Part applies to:
- (1) a *UK Solvency II firm*;
  - (2) in accordance with General Application<sup>11</sup> 3, the *Society*, as modified by 4;
  - (3) in accordance with General Application 3, *managing agents*, as modified by 4;
  - (4) a *third country branch undertaking* (other than a *Swiss general insurer*);
  - (5) an *ISPV*; and
  - (6) in relation to any of the foregoing *firms*, any *person* who is or should have been approved under section 59 of *FSMA* by either:
    - (a) the *PRA*; or
    - (b) the *FCA*, in respect of the performance by the *person* of a *relevant senior management function*,

and in either case in relation to the carrying on of a *regulated activity* by the relevant *firm*.

## 2 SCOPE OF CONDUCT STANDARDS

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- 2.1 If you are a natural *person* subject to this Part, you must comply at all times with all of the *conduct standards*.
- 2.2 A *firm* must require:
- (1) any *person* performing a *key function* to observe the *conduct standards* specified in 3.1 – 3.3; ~~and~~
  - (2) any *key function holder* (other than *non-executive directors*<sup>12</sup> and the *authorised UK representative*) to observe the *conduct standards* specified in 3.4 – 3.8, in addition to complying with (1); ~~and~~
  - (3) any *non-executive director* to observe the *conduct standards* specified in 3.7 and 3.8, in addition to complying with (1).

## 3 CONDUCT STANDARDS

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- 3.1 You must act with integrity.
- 3.2 You must act with due skill, care and diligence.

<sup>10</sup> Defined terms referred to in this Part either appear in FSMA or the PRA Rulebook or are being consulted on in (1) the PRA's consultation paper CP26/14 "Senior insurance managers regime: a new regulatory framework for individuals" or (2) the PRA's consultation paper CP14/14 "Strengthening accountability in banking: a new regulatory framework for individuals" or (3) the PRA's consultation paper CP16/14 "Transposition of Solvency II: Part 3" or (4) this consultation paper in Annex H.

<sup>11</sup> This Part is being consulted on in CP16/14 which can be found at <http://www.bankofengland.co.uk/pr/Documents/publications/cp/2014/cp1614.pdf>

<sup>12</sup> ~~References in this Chapter to *non-executive directors* are subject to further consultation.~~

- 3.3 You must be open and co-operative with the *FCA*, the *PRA* and other regulators.
- 3.4 You must take reasonable steps to ensure that the business of the *firm* for which you are responsible is controlled effectively.
- 3.5 You must take reasonable steps to ensure that the business of the *firm* for which you are responsible complies with the relevant requirements and standards of the *regulatory system*.
- 3.6 You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate *person* and that you oversee the discharge of the delegated responsibility effectively.
- 3.7 You must disclose appropriately any information of which the *FCA* or the *PRA* would reasonably expect to have notice.
- 3.8 When exercising your responsibilities, you must pay due regard to the interests of current and potential future *policyholders* in ensuring the provision by the *firm* of an appropriate degree of protection for their insured benefits.

## 4 LLOYD'S

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- 4.1 This Part applies to the *Society* and *managing agents* separately.

Annex H

**Amendments to the PRA Rulebook – Glossary Part**

Amend the Glossary Part as follows in the appropriate alphabetical positions<sup>13</sup>. The amendment of the definition of “non-executive director” is in addition to the changes currently being consulted on in Senior insurance managers regime: a new regulatory framework for individuals – CP26/14<sup>14</sup>. Underlining indicates new text and deleted text is struck through.

Part

## **GLOSSARY**

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Links

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<sup>13</sup> Defined terms embedded within definitions in this Annex (which are not defined in this Annex) are in the PRA Rulebook.

<sup>14</sup> <http://www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp2614.pdf>



Glossary

...

*non-executive director*

means a *director* who has no responsibility for implementing the decisions or the policies of the ~~governing body of a firm~~ of a firm who does not perform an executive function in relation to that *firm*.

...

*unapproved non-executive director*

means a *non-executive director* of a firm who is not an *approved person* in relation to that *firm*.

## **Appendix 2**

# **PRA Supervisory Statement Responsibilities of non-executive directors under the Senior Managers Regime and application of the presumption of responsibility**



# Draft supervisory statement – Responsibilities of non-executive directors and application of the Presumption of Responsibility under the Senior Managers Regime

## 1 Introduction

1.1 This supervisory statement:

- clarifies the responsibilities of those non-executive director (NEDs) functions which are subject to pre-approval by the PRA under the Senior Managers Regime (SMR), specifically the Chairman, the Chairs of the Audit, Remuneration and Risk Committees ('Committee Chairs') and the Senior Independent Director (SID); and
- sets out how the PRA expects to apply Sections 66B(5) and(6) of FSMA (collectively referred to as the Presumption of Responsibility) to all Senior Managers (executive and non-executive).

## 2 Responsibilities of non-executive directors under the Senior Managers Regime

### Statutory framework of the Senior Managers Regime

2.1 The definition of a Senior Management Function (SMF) in Section 59ZA(2) of FSMA defines 'managing' as including participating in the taking of decisions about how one or more aspects of a firm's affairs should be carried on. Senior Managers can therefore include NEDs who 'manage' a significant aspect of a firm's affairs and may take decisions that affect its safety and soundness.

2.2 FSMA places requirements on banks, building societies, credit unions and PRA-designated investment firms (collectively referred to as Relevant Authorised Persons) in relation to the SMR and also includes certain

provisions aimed at individual Senior Managers.

### Scope of the PRA's Senior Managers Regime

2.3 Consistent with its statutory objectives, in determining the scope of the SMR, the key for the PRA was to identify those roles that individually could directly affect a firm's safety and soundness. The PRA considers that these roles include only certain NED functions namely Chairmen, SIDs and Committee Chairs.

2.4 Under the SMR, all Relevant Authorised Persons are required to have a Chairman. However, in line with the requirements in CRDIV and the principle of proportionality, only significant CRR firms are required to establish Nomination, Remuneration and Risk Committees (and have the Chairs of those committees approved as Senior Managers)<sup>1</sup>. While there are currently no requirements to establish an Audit Committee in the PRA Rulebook, most credit institutions will be required to do so when the UK implements the new EU regulatory framework for statutory audit<sup>2</sup>.

### Responsibilities of NEDs under the PRA's Senior Managers Regime

2.5 The PRA's rules recognise that NEDs in scope of the SMR do not individually manage a firm's business in the same way as executive Senior Managers and, therefore, the

<sup>1</sup> PS7/13 'Strengthening capital standards: implementing CRD IV, feedback and final rules' states that only firms whose supervisor has indicated are impact category 1 or 2 should consider themselves as significant for the purposes of these requirements.

<sup>2</sup> See Directive 2014/56/ amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0056&from=EN>, in particular Article 39.

responsibilities for which they are accountable are likely to have a more limited scope.

2.6 NEDs in scope of the SMR are neither required nor expected to assume executive responsibilities but are required to take on certain Prescribed Responsibilities (set out in Annex 1) all of which are:

- non-executive in nature; and
- either inherent in certain non-executive roles or derive from them.

2.7 The potential accountability of NEDs in scope of the PRA's SMR under the Presumption of Responsibility is restricted to those activities for which they are responsible. These activities include ensuring that the Board and/or the committees which they chair:

- meet with sufficient frequency;
- foster an open, inclusive discussion which challenges executives where appropriate;
- devote sufficient time and attention to matters within their remit which are relevant to the firm's safety and soundness
- have access to all appropriate relevant management and, if necessary, external information so as to ensure that all NEDs are appropriately apprised of matters under discussion; and
- provide independent oversight of executive decisions.

2.8 Annex 2 sets out a range of hypothetical scenarios where the PRA might consider applying sanctions primarily to NEDs in scope of the SMR and others where the PRA is more likely to consider applying sanctions primarily to executive Senior Managers.

2.9 In general the PRA expects the Statements of Responsibilities of NEDs in scope of the SMR to be less extensive than those of executive Senior Managers. However, firms can and, where appropriate should add

responsibilities not captured in the PRA's and FCA's rules to the Statements of Responsibilities of relevant non-executive Senior Managers. For instance, a firm may wish to make its Chairman responsible for succession planning.

2.10 Although the SMR requires NEDs in scope to take on individual responsibilities, the PRA views the regime and its application as consistent with the principle of collective decision-making.

2.11 NEDs in scope of the PRA's SMR are subject to the Conduct Rules, including those applicable only to Senior Managers. As was the case under the Approved Persons Regime, breaches of the Conduct Rules by NEDs in scope of the SMR are directly enforceable against the individual Senior Manager.

2.12 Firms are also required to ensure that NEDs outside the scope of the SMR (and therefore not directly bound by the Conduct Rules) observe Conduct Rules 1-3 and SM4.

2.13 Some Conduct Rules apply to NEDs in respect of their limited duties only. For instance, the Chair of the Remuneration Committee is likely to discharge his or her responsibilities under SM2 if (s)he takes reasonable steps to ensure that the Remuneration Committee complies with the requirements of SYSC19A and any specific and relevant requirements imposed under s.55M of FSMA, and remains free from undue executive interference in its decision-making pursuant to SYSC 7.1.22 R.

2.14 On the other hand, Conduct Rules such as the duty to act with integrity, apply to NEDs in scope of the SMR and executive Senior Managers in very similar ways.

2.15 The requirements to 'be open and cooperative with the FCA, the PRA and other regulators' and 'disclose appropriately any information of which the FCA or PRA would reasonably expect notice' are particularly important for NEDs. As the PRA Approach Document states, if any director has "concerns about the firm or its management and

governance, the PRA will expect them to press for action to remedy the matter and, if those concerns are not addressed, to alert the PRA.<sup>3</sup> This is why the PRA requires firms to ensure that all NEDs, including those outside of scope of the SMR, observe SM4.

### 3 The Presumption of Responsibility under the Senior Managers Regime

3.1 In this chapter the PRA sets out how it will apply sections 66B (5) and (6) of FSMA in practice. For convenience, the PRA refers to section 66B (5) throughout this Statement as the Presumption of Responsibility and to section 66B(6) as the Reasonable Steps Defence.

3.3 The PRA will consider the specific facts of each situation which may fall within the Presumption of Responsibility and will act as it considers appropriate in light of those facts. Consequently, this supervisory statement does not establish minimum standards or safe-harbours. The expectations and examples below are indicative, non-binding and non-exhaustive.

#### Statutory framework

3.4 Section 66B(5) of FSMA establishes that a person will be guilty of misconduct if the PRA finds that all the following criteria are met:

- The person is or was a Senior Manager in a Relevant Authorised Person;
- There has been or continues to be a breach of a 'Relevant Requirement' (as defined in Section 66B(4) of FSMA) by the Firm; and
- The Senior Manager was responsible for managing any of the Firm's activities in relation to which the breach occurred.

<sup>3</sup> The Prudential Regulation Authority's approach to banking supervision <http://www.bankofengland.co.uk/publications/Documents/raapproach/bankingappr1304.pdf> , para.78 and The Prudential Regulation Authority's approach to insurance supervision <http://www.bankofengland.co.uk/publications/Documents/raapproach/insuranceappr1406.pdf> ,para. 88

3.5 The Senior Manager will, however, not be guilty of misconduct under Section 66B if (s)he satisfies the PRA that (s)he took such steps as a person in their position could reasonably be expected to take to avoid the contravention occurring (or continuing) ('Reasonable Steps Defence').

3.6 The PRA may therefore take certain actions under section 66 of FSMA where it appears to the PRA that the person is guilty of misconduct given the Presumption of Responsibility, subject to the Reasonable Steps Defence. The availability of the Reasonable Steps Defence means that the Presumption of Responsibility does not establish a "strict liability regime" for Senior Managers.

3.7 As with any action that the PRA takes under section 66, the statutory process involves a period during which the person involved is able to make representations.

3.8 Under Sections 66B(2) and (3) of FSMA, individuals, including Senior Managers, can also be guilty of misconduct if they breach a Conduct Rule or are knowingly concerned in a breach of a Relevant Requirement by the firm. This supervisory statement has no application to those circumstances. In respect of any individual situation, the PRA may consider whether the individual is guilty of misconduct by any of sections 66B(3), (4) or (5), solely or in combination. The PRA does not see the Presumption of Responsibility as being a basis for action only in significant cases or as a last resort. The PRA will consider each situation on its merits. There may be situations where a Senior Manager may be guilty of misconduct by virtue of a breach of the Conduct Rules under section 66B(2) as well under the Presumption of Responsibility.

3.9 There is no distinction made in FSMA between executive and non-executive Senior Managers in relation to the Presumption of Responsibility. However, the PRA's ability to apply the Presumption of Responsibility hinges on the scope of that responsibility in the first place; and the PRA recognises that the prescribed responsibilities of NEDs within the SMR are limited to particular non-executive roles. These differences should be recognised in their respective Statements of Responsibilities.

3.10 The Presumption of Responsibility recognises that individual Senior Managers should be held accountable for their individual contributions to collective decisions and their

implementation insofar as those contributions are in scope of their Senior Manager responsibilities.

### Description of the operation of the Presumption of Responsibility

3.11 The Presumption of Responsibility arises where all the elements in Section 66B(5) of FSMA are met i.e.:

- the individual must be or must have been a Senior Manager;
- there must have been a contravention of a relevant requirement by the firm; and
- the Senior Manager must have been responsible for managing any of the [firm's] activities in relation to which the contravention occurred.

3.12 The first element, whether the individual was a Senior Manager at the time of the breach, will be a question of fact.

3.13 The second element is that there has been a contravention of a Relevant Requirement by the firm.

3.14. The fact that the PRA might previously have made findings and reached a bilateral settlement with a firm in relation to some or all of its breaches does not bind either the PRA or the individual in considering whether this element is satisfied.

3.15 The third element is that the Senior Manager is responsible for managing any of the firm's activities in relation to which the contravention occurred.

3.16 Depending on the nature and extent of the firm's breach, and the scope of individual Senior Managers' responsibilities, it is possible that more than one Senior Manager could be responsible. In such circumstances, the PRA will consider whether it is appropriate to consider sanctioning one, some, or all such Senior Managers under the Presumption of Responsibility.

3.17 Whether a Senior Manager is or is not responsible for managing any of the firm's relevant activities will be a question of fact. Statements of Responsibility and Responsibilities Maps should be relevant evidence but the PRA may look beyond these if it considers it appropriate.

### The PRA's approach to the Reasonable Steps Defence

3.18 The PRA can only take actions under s.66 of FSMA if it appears to the PRA that a Senior Manager is guilty of misconduct. A person will not be guilty of misconduct under the Presumption of Responsibility if the Senior Manager is able to satisfy the PRA that s(he) took "such steps as a person in [his or her] position could reasonably be expected to take to avoid the contravention occurring (or continuing)."

3.19 On this point, the PRA expects the individual to submit evidence and make representations. The PRA would normally expect to engage in dialogue with the individual prior to issuing an initial Decision Notice.

3.20 Section 66B(6) involves the PRA assessing (a) the steps that the specific Senior Manager actually took, against (b) such steps as the PRA considers that a Senior Manager, in that position, could reasonably have been expected to take. The PRA's expectations of the steps in (b) will necessarily depend on the individual circumstances as they existed at the time. It is not the PRA's intention to apply standards "retrospectively" or with the benefit of hindsight. However, examples of the considerations that the PRA may consider in forming its view of (b) can include:

- the size, scale and complexity of the firm;
- what the Senior Manager actually knew, or a Senior Manager in that position ought to have known (taking into account, among other factors, the length of time they have been in the role and handover arrangements to those new in a role);
- what expertise and competence the Senior Manager had, or ought to have possessed, at the time to perform his/her specific Senior Management Function;
- what steps the Senior Manager could have taken, considering what alternative actions might have been open to the Senior Manager at the time and the timeliness within which he or she could have acted;
- the actual responsibilities of that Senior Manager and the relationship between those responsibilities and the responsibilities of other Senior Managers in the firm (including in relation to any joint-

responsibilities or matrix-management structures);

- whether the Senior Manager delegated any functions, taking into account that any such delegation should be appropriately arranged, managed and monitored;
- the overall circumstances and environment, at the firm and more widely, in which such a Senior Manager was operating at the time.

3.21 In relation to the steps that a Senior Manager actually took to avoid the contravention occurring or continuing, examples of steps that may be considered relevant, depending on the circumstances, can include:

- pre-emptive actions to prevent a breach occurring, including any initial reviews of the business on taking up a Senior Manager function;
- implementing, policing and reviewing appropriate policies;
- awareness of relevant requirements and standards of the regulatory system;
- investigations or reviews of the Senior Manager's area of responsibilities;
- where a breach is continuing, the response to that breach;
- structuring and control of day-to-day operations, including ensuring any delegations are managed and reviewed appropriately. This includes in relation to any "matrix-management" arrangements;
- obtaining appropriate internal management information, and critically interrogating and monitoring that information;
- raising issues, reviewing issues, and following them up with relevant staff, committees and boards;
- seeking and obtaining appropriate expert advice or assurance, whether internal or external;

- ensuring that the firm and/or relevant area has adequate resources, and that these are appropriately deployed, including for risk and control functions; and
- awareness of relevant external developments, including key risks.

3.22 Evidence that the PRA might seek to obtain in respect of these kinds of matters might include:

- board and board committee minutes,
- minutes of other internal meetings;
- statements of responsibilities and responsibilities maps;
- organisation charts and information on reporting lines;
- any other internal materials e.g. emails or telephone recordings; and
- regulatory correspondence and interviews.

## Annex 1 – PRA Prescribed Responsibilities of NEDs in scope of the SMR

| SMF   | Prescribed Responsibility  |
|---|--|
| <b>Chairman (SMF9)</b>                              | <p>Chairing, and overseeing the performance of the role of, the management body of a firm.</p> <p>The induction, training and professional development of all members of the firm's management body.</p>   |
| <b>Chair of the Risk Committee (SMF10)</b>          | <p>Chairing, and overseeing the performance of the role of, the risk committee of a firm.</p> <p>Ensuring and overseeing the integrity and independence of the risk function in accordance with SYSC 7.1.22 R (Risk control).</p>  |
| <b>Chair of the Audit Committee (SMF11)</b>         | <p>Chairing, and overseeing the performance of the role of, the audit committee of a firm.</p> <p>Ensuring and overseeing the integrity and independence of the internal audit function in accordance with SYSC 6.2 (Internal audit).</p>  |
| <b>Chair of the Remuneration Committee (SMF 12)</b> | <p>Chairing, and overseeing the performance of the role of, the remuneration committee of a firm</p>   |
| <b>SID (SMF 13)</b>                                 | <p>Performing the role of a senior independent director and leading the assessment of the performance of the person performing the Chairman function.</p>  |
| <b>Any NED in scope of the SMR</b>                  | <p>Ensuring and overseeing the integrity and independence of the compliance function in accordance with SYSC 6.1 (Compliance)</p> <p>Ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment.</p> |



## Annex 2 – Hypothetical examples where sanctions may apply to NEDs in scope of the Senior Managers Regime

| Potential for sanctions to apply primarily to NEDs in scope of the SMR   | Potential for sanctions to apply to executive Senior Managers   |
|--|---|
| <p>A Skilled Persons Review reveals that a firm's Risk Committee has not advised the Board on the firm's risk appetite nor assisted it in overseeing the implementation of the firm's risk strategy by executive management in contravention of SYSC 7.1.18R(2). In this situation, the PRA might primarily consider whether there could be grounds to sanction the Chair of the Risk Committee.</p> <p>During a Board Effectiveness Review, the PRA discovers that the Remuneration Committee has failed to prepare any decisions regarding remuneration, for consideration and decision by the Board in contravention of SYSC 19A.3.12R(4). In this situation, the PRA might primarily consider whether there could be grounds to sanction the Chair of the Remuneration Committee.</p> <p>A firm's Chairman and NEDs in scope of the SMR have serious concerns about an overly dominant CEO. These concerns are not addressed, recorded or discussed by the Board or with PRA or FCA supervisors.</p> | <p>A firm breaches its capital requirements as a result of a major loss in a key business unit that has repeatedly breached its risk limits. The risk limits were discussed and set by the Risk Committee and the Board. In this situation, the PRA might primarily consider whether there could be grounds to sanction the appropriate executive Senior Managers, including Heads of the Key Business Areas and the Chief Risk Officer. If, however, the breaches are reported to the Board and/or the Risk Committee, the PRA may also enquire whether the Board/ Risk Committee discussed them and made any recommendations.</p> <p>In an attempt to obtain Board approval for a new, riskier, lending strategy, a firm's senior executives submit incomplete and misleading management information to the Board which significantly downplays the risks of such a strategy. The CEO also suppresses any negative or questioning advice on this issue, and consequently the board approves the strategy which, 6 months later, causes the firm to breach a number of regulatory requirements.</p> <p>A firm's management fails to monitor the provision of services by a third part under an outsourcing agreement thereby resulting in an operational risk crystallising.</p> |

## **Appendix 3**

# **FCA Draft Handbook Text: Guidance on the role and responsibilities of NEDs in relevant authorised persons and Solvency II firms, and rules for Solvency II firms.**

*Editorial note:* The amendments proposed in this instrument build upon the draft Handbook text proposed by the FCA in CP14/13 and CP 14/25 as if it was made (and underlining and striking through in this instrument represent changes to that consultation text).

## **INDIVIDUAL ACCOUNTABILITY IN RELEVANT AUTHORISED PERSONS AND SOLVENCY II FIRMS 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 64 (Conduct: statements and codes);
  - (3) section 64A (Rules of conduct);
  - (4) section 137A (The FCA’s general rules);
  - (5) section 137T (General supplementary powers);
  - (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 (Rule-making instruments) of the Act.

### **Commencement**

- C. This instrument comes into force on [*date*].

### **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 |
| Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) | Annex B |
| The Fit and Proper test for Approved Persons (FIT)                                       | Annex C |
| Supervision manual (SUP)   | Annex D |
| Amendments to the Code of Conduct sourcebook (CO CON)                                    | Annex E |

## **Citation**

- E. This instrument may be cited as the Individual Accountability in Relevant Authorised Persons and Solvency II Firms Instrument 2015.

By order of the Board of the Financial Conduct Authority  
[*date*]

**Annex A**  
**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text.

- chair of the nomination committee function*
- (1) (for a relevant authorised person) FCA controlled function ~~FCA controlled function~~ FCA controlled function SMF13 in Part 1 of the table in SUP 10C.4.3R (Table of FCA controlled functions for relevant authorised persons), described more fully in SUP 10C.5.3R.
- (2) (for a Solvency II firm) the FCA controlled function CF 7 in Part 2 of the table of FCA controlled functions, described more fully in SUP 10A.6.15R.
- FCA governing functions*
- any of the following *FCA controlled functions*:
- ...
- (2) (in the case of a Solvency II firm) FCA controlled functions CF1, and CF 7 in Part 2 of the *table of FCA controlled functions*);
- ...

## Annex B

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

Insert the following text where indicated. All the text is new and is not underlined.

#### 4.5 Senior management responsibilities for relevant authorised persons

...

4.5.50 G ...

Role of non-executive directors

4.5.51 G A *firm* is not required or expected to allocate responsibility for any of the specific responsibilities or key business functions in this section to *non-executive directors*, although this does not prevent the *firm* from doing so.

4.5.52 G In general, the *FCA* expects the *statement of responsibilities* of a *non-executive director* who is an *SMF manager* to be less extensive than those of an executive *SMF manager*.

4.5.53 G The *FCA* does not require any of the general duties of a *non-executive director* described in section 2 of *CO CON 1 Annex 1* (The general role of a *NED*) to be included in the *non-executive director's statement of responsibilities*.

## Annex C

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

In this Annex, underlining indicates new text.

#### 1.2 Introduction

...

- 1.2.4A G However, if the *firm* is a *PRA-authorised person*, the *governing functions* do not apply. The exception to this is a *Solvency II firm*. For a *Solvency II firm*, the *FCA governing ~~function~~ functions* CF1 and CF7 may apply if the *person* carrying out the function is not already approved to carry out a *PRA controlled function* and the conditions in *SUP 10A.11.11AR* (minimising overlap with the PRA approved persons regime) are satisfied.

## Annex D

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

#### 10A FCA Approved Persons

##### 10A.1 Application

...

##### 10A.1.8 G ...

For example, *persons* in *Solvency II firms* which are *incoming EEA firms* are not expected to carry out the *FCA governing ~~function~~ functions* CF1 or CF7, nor a *significant management function* CF29 where the *person* will be regarded as effectively running the *firm* or responsible for a *Solvency II Directive* ‘key function’ as defined ...

...

##### 10A.4.4 R FCA controlled functions

...

| Part 2 (FCA controlled functions for PRA- <u>authorised persons</u> )         |          |  |
|---|----------|--|
| Type  | CF       | Description of FCA controlled function                   |
| <i>FCA governing <del>function</del> functions</i> * (Solvency II firms only) | 1        | <i>Director function</i>                                 |
|   | <u>7</u> | <u><i>Chair of the nomination committee function</i></u> |
| ...   |          |  |
| *FCA significant-influence functions  |          |  |

...

#### 10A.6 FCA governing functions

Introduction



10A.6.1 G ... For a *Solvency II firm* the *FCA governing ~~function~~ functions* CF1 and CF7 may apply if the *person* carrying out the function is not approved to carry out a *PRA controlled function* and the conditions in *SUP 10A.11.11AR* (minimising overlap with the PRA approved persons regime) are satisfied.

...

Chair of the nomination committee function (CF7) (Solvency II firms only)

10A.6.15A R For a *Solvency II firm* only, if the *firm* has a nomination committee, the *chair of the nomination committee function* is the function of acting in the capacity of chairman of that committee.

10A.6.15B G For a *Solvency II firm*, the *chair of the nomination committee function* may not apply if a *person* carrying out the function is already approved to carry out a *PRA controlled function* and the conditions in *SUP 10A.11.11AR* (minimising overlap with the PRA approved persons regime) are satisfied.

...

## Annex E

### Amendments to the Code of Conduct sourcebook (CO CON)

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

#### 1.1 **Application, ~~and~~ purpose and general**

...

1.1.11 G ...

Purpose

1.1.12 G ...

General

1.1.13 G *CO CON 1 Annex 1 has guidance on the role and responsibilities of non-executive directors of relevant authorised persons and Solvency II firms.*

Insert CO CON 1 Annex 1 as a new Annex. All the text is new and is not underlined.

#### **1 Annex Guidance on the role and responsibilities of NEDs for Relevant authorised persons and Solvency II firms**

**1G**

|          |                                  |   |
|----------|----------------------------------|---|
| <b>1</b> | <b>Introduction</b>              |   |
| 1.1      | G                                | This annex applies to non-executive directors (NEDs) performing the <i>chair of the nominations committee function</i> . It only applies where the individual performing that function is also a NED. |
| 1.2      | G                                | This annex covers the role of a NED in performing the Chair role and in performing the general NED role.  |
| 1.3      | G                                | The <i>FCA's</i> view of the role of a NED is consistent with the duties of directors included in <i>UK</i> company law and the description of the role of a NED in the <i>Combined Code</i> .        |
| <b>2</b> | <b>The general role of a NED</b> |   |
| 2.1      | G                                | The role of a NED performing the general NED role is to:  |
|          | (1)                              | provide effective oversight and challenge; and  |
|          | (2)                              | help develop proposals on strategy.   |

|          |   |  |  |
|----------|---|--|--|
| 2.2      | G   | To deliver this, their responsibilities include:                         |  |
|          |   | (1)  | attending and contributing to board and committee meetings and discussions;  |
|          |   | (2)  | taking part in collective board and committee decisions, including voting and providing input and challenge; and                                       |
|          |   | (3)  | ensuring they are sufficiently and appropriately informed of the relevant matters prior to taking part in board or committee discussions and decisions |
| 2.3      | G   | Other key roles of a NED include:  |  |
|          |   | (1)  | scrutinising the performance of management in meeting agreed goals and objectives;   |
|          |   | (2)  | monitoring the reporting of performance;   |
|          |   | (3)  | satisfying themselves on the integrity of financial information;   |
|          |   | (4)  | satisfying themselves that financial controls and systems of risk management are robust and defensible;  |
|          |   | (5)  | scrutinising the design and implementation of the remuneration policy;   |
|          |   | (6)  | providing objective views on resources, appointments and standards of conduct; and   |
|          |   | (7)  | involvement in succession planning.  |
| <b>3</b> | <b>Role of a NED as chair of the nomination committee</b> |  |  |
| 3.1      | G   | A NED's responsibility as chairman of the nomination committee includes: |  |
|          |   | (1)  | ensuring that the nomination committee meets with sufficient frequency;  |
|          |   | (2)  | fostering an open, inclusive discussion which challenges executives where appropriate;   |
|          |   | (3)  | ensuring that the nomination committee devotes its time and attention to the matters within its remit;   |
|          |   | (4)  | helping to ensure that the committee and its members have the information necessary to its and their tasks;  |
|          |   | (5)  | reporting to the main Board on the committee's activities; and   |
|          |   | (6)  | ensuring that the nomination committee provides independent  |

|          |  |  |  |
|----------|--|--|--|
|          |  |  | oversight of executive decisions.  |
| 3.2      | G  | The Chair should take reasonable steps to ensure that the nomination committee complies with:  |  |
|          |  | (1)  | the requirements in SYSC 4.3A about the nomination committee (if that part of SYSC applies to the <i>firm</i> ); and   |
|          |  | (2)  | any specific and relevant <i>requirements</i> relating to the committee or to the matters within the committee's responsibilities.   |
| 3.3      | G  | SYSC 4.3A.8R and SYSC 4.3A.9R are the parts of SYSC 4.3A that deal with the nomination committee for <i>relevant authorised persons</i> .  |  |
| <b>4</b> | <b>General approach to the role of a NED</b> |  |  |
| 4.1      | G  | The <i>FCA</i> recognises that NEDs individually do not manage a <i>firm's</i> business in the same way as executive <i>directors</i> . Therefore, the responsibilities for which NEDs are accountable are likely to be of more limited scope.   |  |
| 4.2      | G  | A NED is neither required nor expected to assume executive responsibilities.   |  |
| 4.3      | G  | Although NEDs who are subject to the senior management regime for <i>SMF managers</i> , or are <i>approved persons</i> performing a <i>significant influence function</i> in a <i>Solvency II firm</i> , have individual duties under that regime, the <i>FCA</i> views the regime and its application as consistent with the principle of collective decision-making. |  |
| 4.4      | G  | The standard of care, skill and diligence that the <i>FCA</i> would expect from a NED is the care, skill and diligence that would be exercised by a reasonably diligent person with:   |  |
|          |  | (1)  | the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the NED in relation to the <i>firm</i> , taking into account the standards in the <i>Handbook</i> (especially <i>CO CON</i> and <i>DEPP</i> ); and |
|          |  | (2)  | the general knowledge, skill and experience that the NED has.  |

## **Appendix 4**

# **[revised] Supervisory statement Y/15 Scope of SIMR for insurers, identification of key functions, and allocation of responsibilities to individuals**



## Draft supervisory statement - Scope of SIMR for insurers, identification of key functions, and allocation of responsibilities to individuals

### 1 Introduction

- 1.1 This draft supervisory statement applies to all UK Solvency II insurance (and reinsurance) firms and groups, and to third country insurance branches, within the scope of the Solvency II Directive, and to the Society of Lloyd's and managing agents.
- 1.2 The statement sets out the Prudential Regulation Authority's (PRA's) expectations of how these firms should comply with the rules in the Insurance — Senior Insurance Management Functions Part of the Rulebook dealing with Controlled Functions (CFs), the rules in the Insurance — Allocation of Responsibilities Part of the Rulebook dealing with the identification of key functions, and the allocation of responsibilities to relevant individuals.
- 1.3 This statement seeks to advance the PRA's statutory objectives to ensure the safety and soundness of the firms it regulates and to provide the appropriate protection for policyholders by promoting good corporate governance.

### 2 Controlled Functions

- 2.1 This section sets out the PRA's expectations of how firms should comply with, and interpret, the rules on CFs in the Insurance — Senior Insurance Management Functions Part of the Rulebook, which govern the scope of the PRA's Senior Insurance Managers Regime (SIMR) for insurers.

#### [Link to the firm's regulated activities](#)

- 2.2 The PRA expects firms to put forward individuals performing a CF for approval even if they are physically located outside the United Kingdom.

#### Criteria for a 'Controlled Function' in FSMA

- 2.3 Consistent with the criteria set out in section 59 [and 59ZA] of the Financial Services and Markets Act 2000 (FSMA), the PRA expects a firm, where appropriate, to put individuals employed by parent or group entities forward for approval as group entity senior managers if they are involved in decisions affecting its business and meet these criteria. This involvement may be evidenced by an arrangement (as defined in section 59(10) of FSMA) between the firm and the parent or group entity. Arrangements in this context could include, but are not limited to, the existence of matters reserved to the board of the parent or group entity or reporting lines from CFs in the firm to individuals in the parent or group entity.
- 2.4 ~~The PRA does not expect individuals performing a CF to have ultimate authority over any areas they manage; ultimate authority and responsibility will continue to rest with the board. In the PRA's view, 'responsible for managing' (or 'having a significant influence on the management') includes, but is not limited to: In the PRA's view, 'responsible for managing' (or 'having a significant influence on the management') includes, but is not limited to:~~
  - managing or overseeing an area or function under the delegated authority of the board;
  - direct responsibility for briefing, reporting and putting matters for decision to the board in respect of an area: ~~and/or~~
  - being an executive director on the board or a board committee and taking part in its collective decision-making;

- chairing the board or the Audit, Risk or Remuneration Committee of the firm;  
or
  - being a director or senior employee in an entity in the same group as the firm and exercising direct significant influence over one or more aspects of the firm's affairs in relation to regulated activities.
- 2.5 The PRA expects individuals performing the CF role to have regard for the duties of non-executive directors (NEDs) on the board of a subsidiary through which the CF is directing business. The board of the subsidiary and specifically the NEDs are expected to provide proper oversight of the subsidiary and have regulatory duties under FSMA and fiduciary duties under the CA 2006 in this respect. This means a CF may direct elements of the business which form part or all of a subsidiary only to the extent the NEDs agree to this. In practice this means close liaison between the CF and the NEDs of the subsidiary including full and transparent passage of information. The PRA will hold the NEDs and the CF accountable for this collaboration.
- 2.6 The PRA expects that the allocation of responsibilities should be made in such a way that it does not undermine the collective fiduciary, legal and regulatory responsibilities of the board, but rather complements and informs the operation of collective decision-making mechanisms.
- Independence requirements**
- 2.7 Certain rules or Delegated Acts prevent individuals from performing specific combinations of CFs at the same firm, or require certain CFs to be performed independently of any other functions or activities of the firm.
- 2.8 Where rules or Delegated Acts do not prevent an individual from performing a combination of CFs, the PRA may still decide not to approve the individual to perform the desired combined functions in some circumstances, such as where the PRA considers that:
- there could be a significant conflict of interest from combining the functions (other than on a temporary basis), that would be difficult to manage
- satisfactorily, such as Chairman and CEO; or
- the individual's qualifications, training, competencies and/or personal characteristics render them fit and proper to perform one function but not the other(s).
- Sharing a PRA CF**
- 2.9. In certain circumstances, including but not limited to job-share arrangements, a firm may be allowed to have more than one individual responsible for a single CF.
- 2.10. The PRA would expect to see a clear explanation and justification of how the relevant responsibilities are allocated or shared between the individuals responsible for the CF, along with the reporting lines and lines of responsibility for each individual.
- 2.11. However, the PRA expects CFs to be shared between individuals only where appropriate and justified. The norm should be for every firm to have a single individual performing each of the PRA CFs which the firm is required to have. This individual should be the most senior employee or officer responsible for ~~managing the activities in~~ that area.
- Principle of proportionality**
- 2.12. In accordance with the principle of proportionality, and depending on the nature, scale and complexity of the business activities and risks, the PRA expects that smaller firms may be able to combine responsibilities for different functions with a single individual. This will depend on the entity meeting the need for transparency and accountability, the need for appropriate management of any conflicts of interest, and the need for at least two persons to be effectively running the firm.
- 2.13. A third country branch undertaking must have at least one individual approved to perform the *Third Country Branch Manager* senior insurance management function as set out in Chapter 6 of the Insurance — Senior Insurance Management Functions Part of the Rulebook (and where relevant a With Profits Actuary). It is not required to have individual(s) approved in advance to perform any of the other key functions, but will need to notify the PRA of the

identity of key function holders, and provide relevant information about them. However, a third country branch undertaking is expected to apply in advance for the approval of individuals to perform any other function that would be of particular importance for the branch, in the light of the particular nature of its business and the organisation and management of its affairs, including the allocation of prescribed responsibilities

### 3. Key functions

- 3.1. In accordance with the rules in the Conditions Governing Business Part of the Rulebook and the Delegated Acts, the system of governance of each Solvency II insurance firm or group needs to cover at least the following key functions: risk-management, compliance, internal audit, and actuarial. The system of governance may also include additional key functions subject to the decision of the firm or group concerned.
- 3.2. When assessing whether an additional key function exists within a particular firm, firms and groups are expected to take into consideration whether:
  - the function is essential for the proper functioning of the firm or group considering its risk profile and business;
  - the function assumes material or complex financial market risks as part of its activities, or assumes material credit risk through the activity of providing loans;
  - the function needs a competence that is specific and difficult to replace; or
  - any failure in the operation or effectiveness of the function may threaten seriously the interests of the Solvency II insurance firm or group or its policyholders.
- 3.3. A firm or group can freely decide how to organise each function in practice, taking into account the nature, scale and complexity of the risks inherent in its business, and the need for an effective system of governance with a clear allocation of responsibilities.

3.4. The function of 'effectively running the firm' is normally expected to include all the members of the governing body, as well as those individuals on the governing body of a parent or other group company who are exercising the group entity senior management function.

3.5. The PRA expects that firms and groups should have clear structures of accountability and delegation of individual and collective responsibilities, including checks and balances to prevent dominance by an individual. Senior individuals should remain accountable for the actions of those to whom they delegate responsibilities, including where firms use third parties in respect of outsourced functions.

### 4. Allocation of responsibilities to senior managers and NEDs

4.1. The statutory framework of the SIMR contains fewer obligations than the SMR for Relevant authorised persons. In particular, under FSMA, insurance firms and individuals subject to approval in them are not subject to the Presumption of responsibility and prospective criminal liability in case of firm failure. The SIMR does, however, implement a number of requirements in the Solvency II Directive relating to governance and the fitness and propriety of key individuals.

#### Prescribed Responsibilities (which are additional to the Responsibilities inherent in the definition of each PRA Controlled Function)

- 4.2. There are a number of responsibilities inherent in the definition of each CF in the Insurance –Senior Insurance Management Functions Part of the Rulebook which should be read in conjunction with the Conditions Governing Business Part of the Rulebook, along with the Delegated Acts. In addition, Chapter 3 of the Insurance - Allocation of Responsibilities Part of the Rulebook sets out a number of 'Prescribed Responsibilities', which cover:
- the firm's implementation and operation of the new SIMR;
  - the culture and standards within the firm; and



- a number of areas which the PRA has specific interest in as a prudential regulator.
- 4.3. The PRA requires firms to allocate PRA Prescribed Responsibilities to any senior insurance manager or director performing a CF specified by the PRA, or a CF specified by the Financial Conduct Authority (FCA) [in SUP 10C of the FCA Handbook] or to a NED and deemed to be a 'relevant senior management function'. In practice, the PRA expects firms will generally allocate Prescribed Responsibilities to the function to which they are most closely linked.
- 4.4. Certain Prescribed Responsibilities can only be assigned to individuals on the governing body.

#### Scope of responsibilities for NEDs

- 4.5. The PRA can specify controlled functions at insurers if they are senior management functions (SMF) as defined in Section 59ZA of FSMA. Section 59ZA(2) of FSMA defines 'managing' as including participating in the taking of decisions about how one or more aspects of a firm's affairs should be carried on. The concept of a SMF can therefore include NEDs who 'manage' a significant aspect of a firm's affairs and might therefore take decisions that affect a firm's safety and soundness.
- 4.6. The PRA has aligned the scope of its approval regime for individuals under the SIMR and SMR as far as NEDs are concerned. Although individuals performing CFs in Solvency II firms are subject to fewer and less onerous statutory requirements than Senior Managers in Relevant authorised persons, the PRA considers that the same NED functions in Solvency II firms can take decisions that affect a firm's safety and soundness or the protection of policyholders. Moreover, the PRA sees value in consistent approval regimes for all PRA-authorised persons.
- 4.7. All firms are required to have a Chairman. However, in line with the principle of proportionality, only large or complex firms are expected to establish Remuneration and Risk Committees (and have the Chairs of those committees approved as Senior Insurance Managers). While there is currently no

explicit requirement to establish an Audit Committee in the PRA Rulebook, listed firms are required and/or expected to do so under a number of rules and guidelines, including the Corporate Governance Code.

#### Responsibilities of the Chairman and Senior Independent Director

- 4.8. The PRA expects the responsibility inherent in the definition of the Chairman function in rule 4.1 of the Insurance – Senior Insurance Management Functions Part of the Rulebook to encompass responsibility for the following:
- promoting an open exchange of views, challenge and debate at the board;
  - ensuring that NEDs have the tools, resources and information to carry out their roles effectively, particularly their challenge function; and
  - providing a genuine check and balance to the executives.
- 4.9. Moreover, the PRA expects firms normally to allocate the following Prescribed Responsibilities in the Insurance - Allocation of Responsibilities Part of the Rulebook to the Chairman:
- the induction, training and professional development of all persons performing CFs on behalf of the firm and all members of the firm's governing body; and
  - leading the development of the firm's culture and standards in relation to the carrying on of its business and the behaviours of its staff.
- 4.10. In the absence of Audit, Risk or Remuneration committees, the PRA expects the Chairman to be responsible for oversight of these areas, unless the firm allocates responsibility for them to another NED who is in a CF.
- 4.11. The PRA also expects Chairmen to remain apprised of matters relating to the board and its individual committees and to take steps to facilitate this, for instance by having regular discussions with the Chairs of the Audit,

Remuneration and Risk committees outside board meetings.

- 4.12. Given the importance and responsibility of the role, Chairmen are expected to commit a significantly larger proportion of their time to their functions than other NEDs. The PRA expects Chairmen, in particular those of major firms, not to have or take on additional commitments which may interfere with the fulfilment of their responsibilities in respect of the firm.

#### Appraising the Chairman

- 4.13. The rules on CFs in the Insurance - Controlled Functions Part of the Rulebook specify a Senior Independent Director (SID) CF, which entails 'particular responsibility for leading the assessment of the performance of the person performing the Chairman function'. Where a firm has chosen not to have a SID, it must allocate responsibility for appraising the Chairman to another NED.

- 4.14. The PRA expects the assessment of the Chairman to include, but not be limited to the:

- extent to which he has fulfilled the responsibilities referred to in this statement; and
- quality and sufficiency of resources allocated to his office.

#### Responsibilities of the Chairman and Chairs of Board committees

- 4.15. NEDs are not expected to assume executive responsibilities but are primarily responsible for the functioning of the bodies they chair, and are expected to take on the particular responsibilities that are either inherent in or related to their non-executive role.

- 4.16. The primary responsibility of NEDs who chair a board or board committee is the management of the board or committees they chair in accordance with their terms of reference and relevant legal and regulatory rules and guidelines. This includes ensuring that the board or committee:

- devotes its time and attention to the matters within its remit that are relevant to the ongoing safety and soundness of the firm;

- has access to all appropriate relevant management, and, if necessary, external information, so as to ensure that all NEDs are appropriately apprised of matters under discussion;
- meets with sufficient frequency; and
- fosters an open, inclusive discussion, which challenges the executive as well as providing the lead for the oversight process.

- 4.17. The PRA views these particular responsibilities as both consistent with, and contributing to the effective operation of, the principle of collective decision-making.

- 4.18. Accordingly, NEDs subject to PRA approval in Solvency II firms are likely to be subject to similar responsibilities to NEDs in scope of the SMR in Relevant authorised persons, even though Approved Persons in insurance firms are not subject to the Presumption of responsibility or potential criminal liability in case of firm failure. The expected responsibilities for NEDs in scope of the SIMR are set out in Annex1.

- 4.19. In addition, the PRA's rules require NEDs subject to PRA approval in Solvency II firms to observe the Conduct Standards (equivalent to the Conduct Rules for Relevant authorised persons). Breaches of these Standards by NEDs subject to PRA approval are directly enforceable.

- 4.20. References "to the business of the firm for which you are responsible" in Conduct Standards 4 and 5 should be interpreted to include the chairmanship of a relevant board committee when applied to a NED in scope of the SMR.

- 4.21. The Chairman and Chairs of the board committees are also expected to take reasonable steps to ensure that all NEDs, including those not subject to regulatory approval, are fit and proper on an ongoing basis, and ensure that they observe the Conduct Standards set out in paragraphs 1.1, 1.2, 1.3, 1.7 and 1.8 in Annex 2.

- 4.22. The Presumption of responsibility in Sections 66B(5) and (6) of FSMA only

applies to Relevant authorised persons and therefore does not cover individuals subject to pre-approval in insurance firms. However, NEDs performing a Controlled Function in insurers can be held individually accountable if they have at any time:

- failed to comply with rules made by the PRA under section 64A of FSMA (including the Conduct Standards listed above); or
- been knowingly concerned in a contravention of a relevant requirement by a PRA-authorised person; and
- were, at that time, an approved person, or an employee of a relevant PRA-authorised person.

**Annex 1: PRA Expected Responsibilities of NEDs in scope of the SIMR**

| <b><u>CONTROLLED FUNCTION</u></b>                     | <b><u>PRESCRIBED RESPONSIBILITY</u></b>  |
|---|--|
| <b><u>Chairman ( )</u></b>                            | <p><u>Chairing, and overseeing the performance of the role of, the management body of a firm.</u></p> <p><u>The induction, training and professional development of all members of the firm's management body.</u></p> |
| <b><u>Chair of the Risk Committee ( )</u></b>         | <p><u>Chairing, and overseeing the performance of the role of, the risk committee of a firm.</u></p>   |
| <b><u>Chair of the Audit Committee ( )</u></b>        | <p><u>Chairing, and overseeing the performance of the role of, the audit committee of a firm.</u></p>  |
| <b><u>Chair of the Remuneration Committee ( )</u></b> | <p><u>Chairing, and overseeing the performance of the role of, the remuneration committee of a firm.</u></p> <p><u>Oversight of the firm's remuneration policies and practices.</u></p>                                |
| <b><u>SID ( )</u></b>                                 | <p><u>Performing the role of a senior independent director, and having particular responsibility for leading the assessment of the performance of the person performing the Chairman function.</u></p>                 |
| <b><u>Any NED subject to pre-approval</u></b>         | <p><u>Maintenance of the independence, integrity and effectiveness of the firm's policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment.</u></p> |

**Annex 2: Conduct Standards for Senior Insurance Managers [as proposed in Appendix 1.4 of CP 26/14]**

- 1.1 You must act with integrity.
- 1.2 You must act with due skill, care and diligence.
- 1.3 You must be open and co-operative with the FCA, the PRA and other regulators.
- 1.4 You must take reasonable steps to ensure that the business of the *firm* for which you are responsible is controlled effectively.
- 1.5 You must take reasonable steps to ensure that the business of the *firm* for which you are responsible complies with the relevant requirements and standards of the *regulatory system*.
- 1.6 You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate *person* and that you oversee the discharge of the delegated responsibility effectively.
- 1.7 You must disclose appropriately any information of which the *FCA* or the *PRA* would reasonably expect to have notice.
- 1.8 When exercising your responsibilities, you must pay due regard to the interests of current and potential future *policyholders* in ensuring the provision by the *firm* of an appropriate degree of protection for their insured benefits.

# Appendix 5

## Draft PRA form: Notification of the appointment of a non-executive director or key function holder



**BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY**

## **Notification of non SMR/SIMR Appointment**

### **Notification of the appointment of a Non-Executive Director or Key Function Holder**

*PRA Rulebook Reference: Fitness and Propriety (CRR Firms) 4.1 and Fitness and Propriety (SII Firms) 4.1*

The PRA have produced guidance which will assist both the notifying *firm* and the *appointee* in answering the questions in this form. Please read these notes, which are available on the *PRA* website at [WEB ADDRESS TBC]

Both the notifying *firm* and the *appointee* will be treated by the *PRA* as having taken these notes into consideration when completing this form.

Name of *appointee*

Name of *firm(s)*

*Firm* reference number(s)

Prudential Regulation Authority  
20 Moorgate  
London  
EC2R 6DA  
United Kingdom  
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Website [www.bankofengland.co.uk/PRA](http://www.bankofengland.co.uk/PRA)

Registered as a Limited Company in England and Wales No 07854923. Registered Office: 8 Lothbury Road, London, EC2R 7HH

## Contact information

1.01 a Who should the *PRA* contact at the *firm* in relation to this notification?

b

Position

c

Telephone

d

Fax

e

E-mail



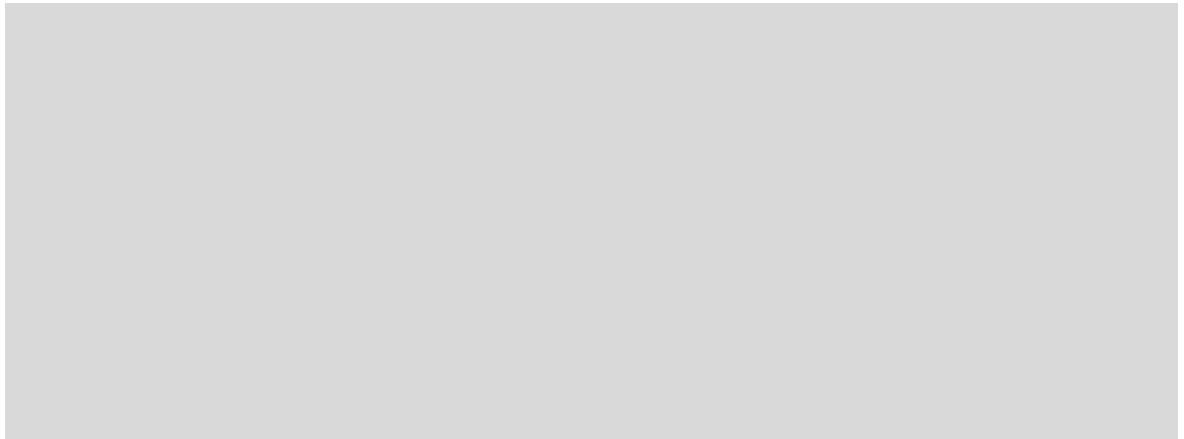


## Description of the position being notified

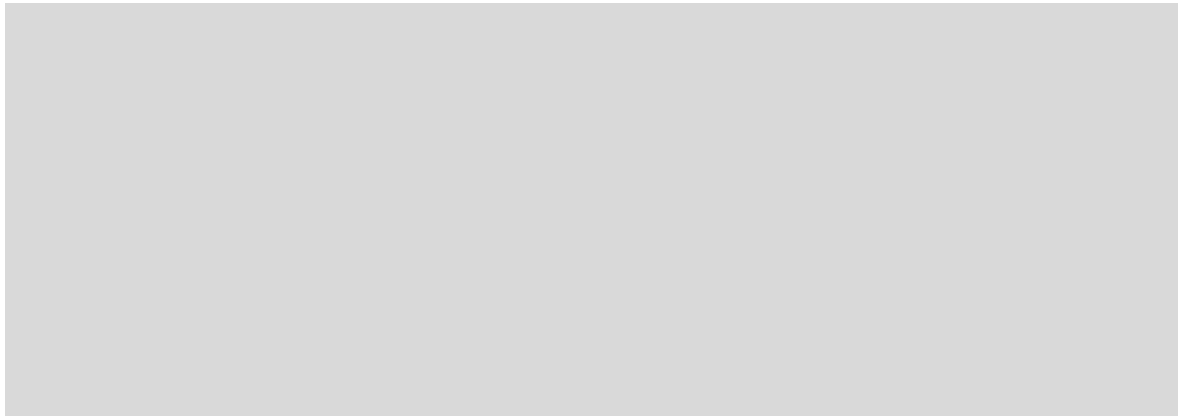
**3.01** Name of the position and/or name of key function(s) for which the individual will be responsible



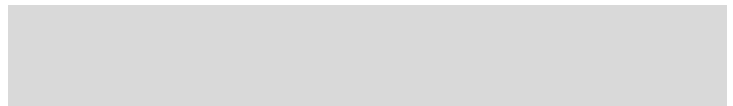
**3.02** Please note the key responsibilities of the role:



**3.03** Please note how many other appointments the individual currently holds (Executive & Non-Executive) and how the *firm* considers that the appointee has sufficient time and resources to dedicate to the role:



**3.04** Date of appointment



**3.05** If applicable, length of appointment



**3.06** Name of firm(s) and/or group for which the role will be exercised <sup>1</sup>



**3.07** FRN(s) (if applicable)



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<sup>1</sup> If more space is required please detail on a separate sheet and attach with Supplementary Information

**The following question is applicable to Non-Executive Directors only**

**3.08** Please note how the *firm* considers that the appointment complements the composition of the Board, and ensures the appropriate levels of skills and experience:

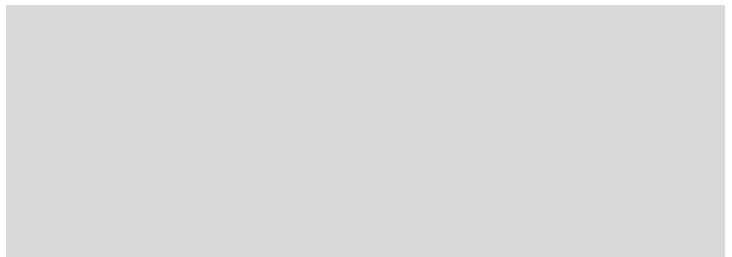


**The following questions are applicable to Solvency II Key Function Holders only**

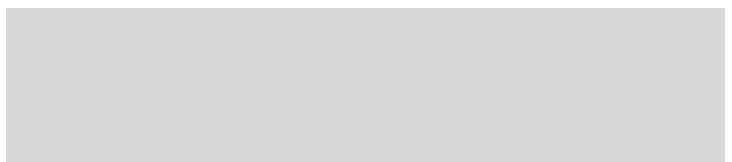
**3.09** Is the individual deemed to be in a position where they are effectively running the firm or group?



**3.10** Is the individual currently approved for a PRA or FCA Controlled Function at that firm or any other firm within that group? If so, please name that firm, and also name the relevant Controlled Function



**3.11** Is the individual applying on a separate form to perform a PRA or FCA Controlled Function at the same firm or any other firm within that group?



## Fitness and propriety

This section should be completed in reference to the guidance notes corresponding with this form.

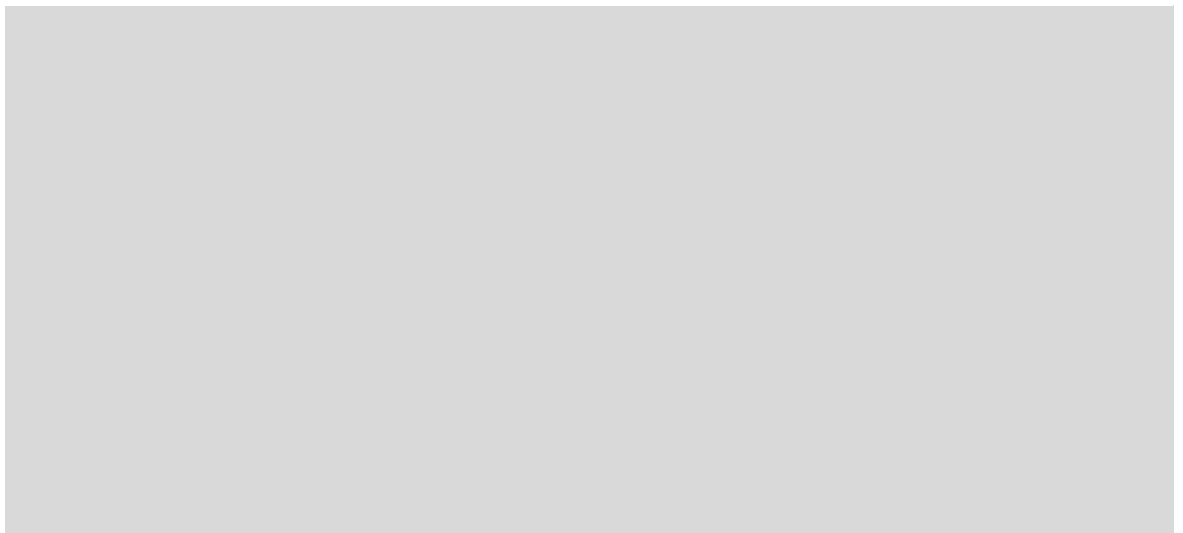
### Disclosure Note:

We require firms to disclose all relevant information relating to an appointees fitness and propriety. If there is any doubt about the relevance of the information, the information should be disclosed. The *PRA* takes non-disclosure very seriously and may consider it to be evidence of dishonesty and/or lack of integrity. In all circumstances, disclosures should be full, frank and unambiguous; if in doubt, disclose. In the event that an appointee discloses adverse information to notifying firm (or the notifying firm knows of adverse information by some other means) the notifying firm has a duty to disclose that information candidly to the *PRA* and explain why the notifying firm considers this does not affect the *appointee's* fitness and propriety (this paragraph should be read in conjunction with the information on disclosure in the guidance notes corresponding to this form).

- 4.01**            **Criminal Proceedings** – Has the appointee **ever** been arrested or charged/convicted of any criminal offence (whether spent or not), been given a caution, been subject to Criminal proceedings or been asked to produce documents pursuant to a criminal investigation (whether or not in the United Kingdom)?

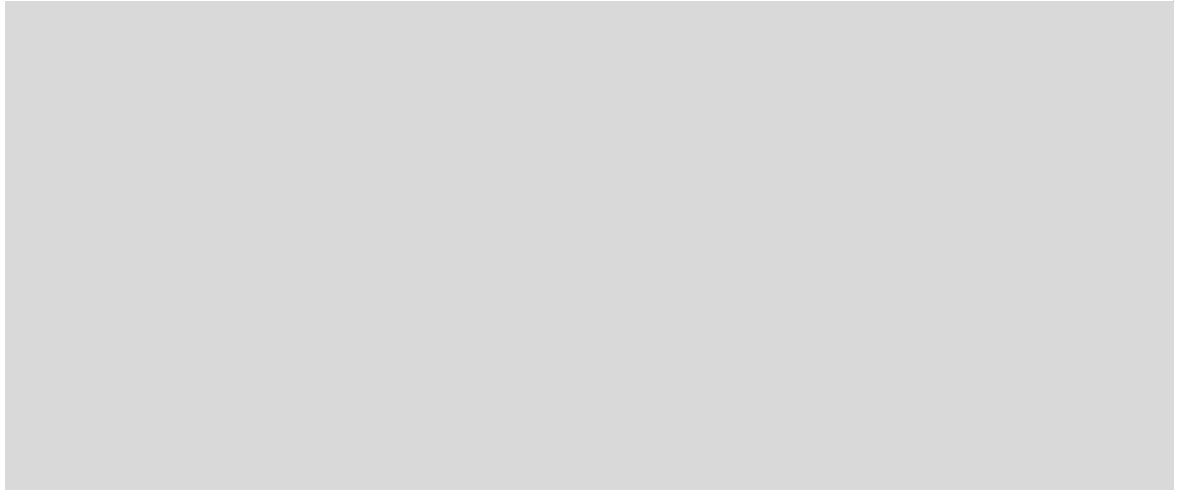


- 4.02**            **Civil Proceedings** – Is the appointee currently subject or has **ever** been subject to civil proceedings or been the subject of a judgement debt or award against the appointee? Does the appointee have any current judgement debts outstanding or have they ever failed to satisfy any such judgement debts. Has the appointee ever filed for or had a petition served for bankruptcy, been adjudged bankrupt, been subject of a bankruptcy restrictions order or made any arrangements with creditors?



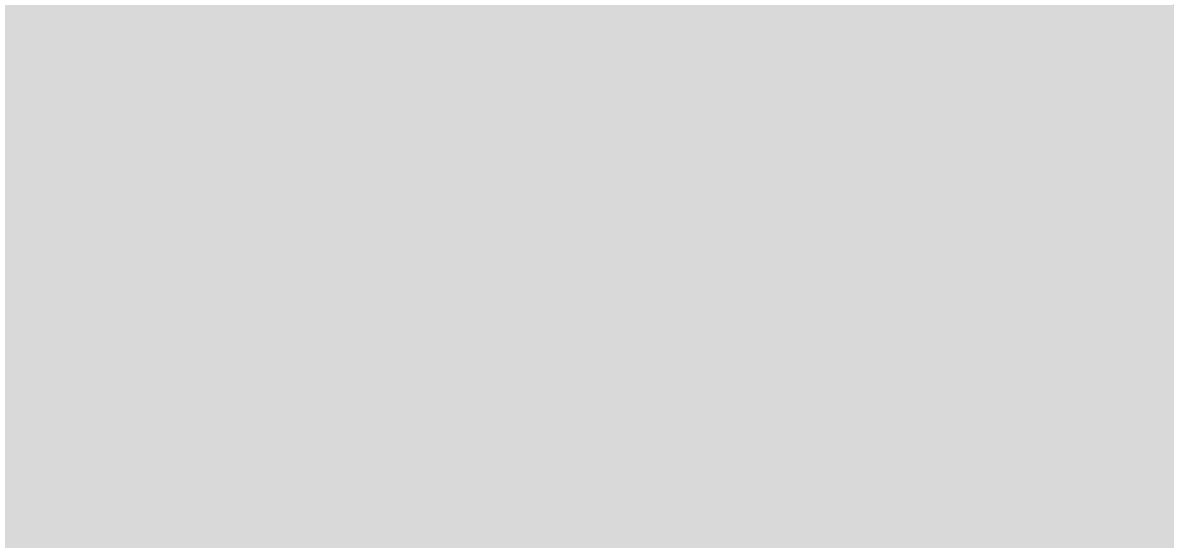
4.03

**Conflicts of Interest** – Does the appointee have any potential conflicts of Interest such as other appointments, Close relatives with financial relations to companies subject to this notification, qualifying ownership or any other form of substantial influence in the firm?



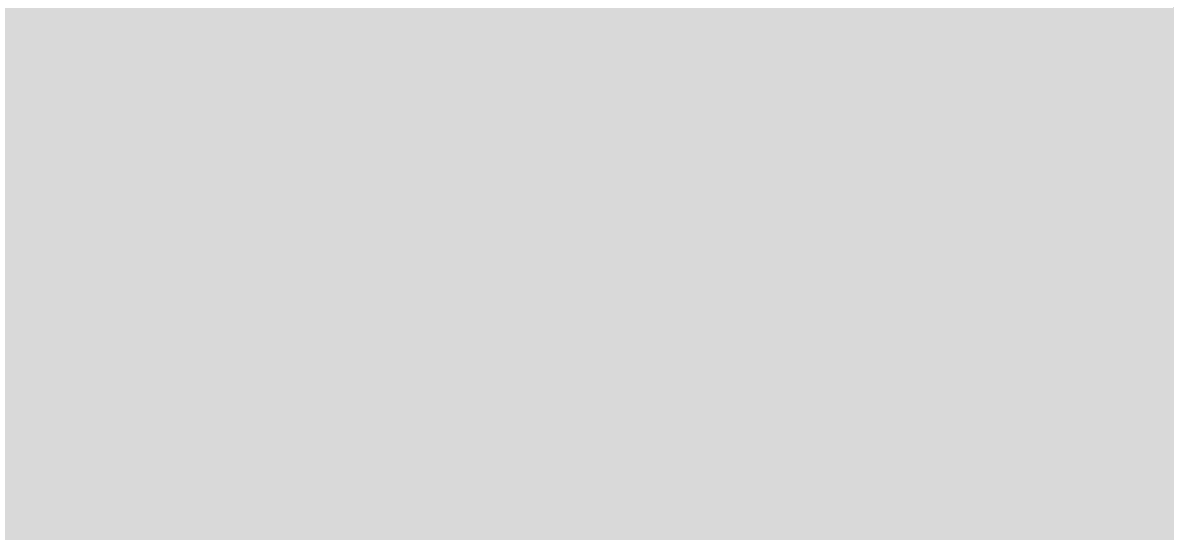
4.04

**Business and Employment Matters** – Has the appointee ever been dismissed from a position in a financial institution, company or from employment as a senior executive or termination of an engagement as a board member or auditor in another firm?



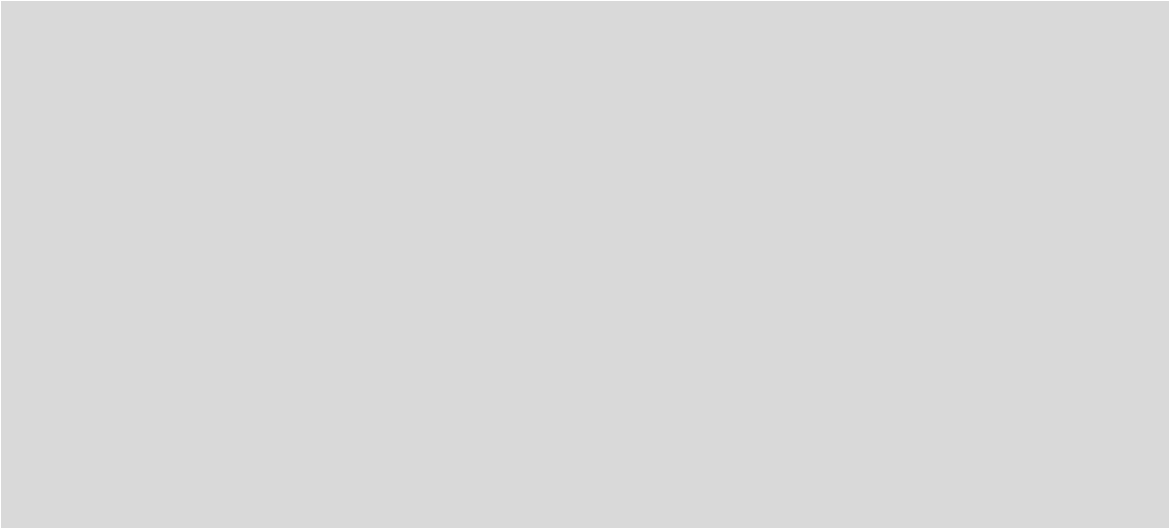
4.05

**Regulatory Matters** – In relation to activities regulated by the FCA and/or PRA or any other regulatory body. Has the appointee been subject of an investigation, been subject to the rejection of an application, exclusion or limitation in any other way in terms of the right to conduct operations, been the subject of supervisory sanctions, or been subject of a notification of breach of conduct rules?



4.06

**Other Matters** - Are the *appointee* or *the firm* aware of any other information relevant to this notification that we might reasonably expect from the *appointee*?



## Supplementary Information

**5.01** Please confirm that the *Firm* has provided the below documentation, in support of this notification:

**5.01.1** the appointee's full CV including relevant employment history;

YES  NO

**5.01.2** its assessment of whether the *appointee* has the personal characteristics required to perform the role effectively;

YES  NO

**5.01.3** its assessment of whether the *appointee* possesses the level of competence, knowledge and experience required to perform the role effectively;

YES  NO

**5.01.4** its assessment of whether the appointee has the qualifications required to perform the role effectively; and

YES  NO

**5.01.5** its assessment of whether the appointee has undergone or is undergoing all training required to perform the role effectively.

YES  NO

**5.02** Is the firm submitting any other information relevant to this notification?

YES  NO

**5.03** Please confirm total number of additional sheets being submitted

## Declarations and signatures

### Declaration of Firm

Knowingly or recklessly giving the *PRA* information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). Rule 6 of the Notifications Part of the *PRA* CRR Rulebook require an *authorised person* to take reasonable steps to ensure the accuracy and completeness of information given to the *PRA* and to notify the *PRA* immediately if materially inaccurate information has been provided.

Fitness and Propriety 3.1(d) in the *PRA* CRR Rulebook and Insurance – Conduct Standards 3.7 in the *PRA* Solvency II Rulebook provide that a firm must require any key function holder or non-executive director to disclose appropriately any information of which the *PRA* would reasonably require notice. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *PRA*. It should not be assumed that information is known to the *PRA* merely because it is in the public domain or has previously been disclosed to the *PRA* or another regulatory body. If there is any doubt about the relevance of information, it should be included.

**In making this notification the *firm* believes on the basis of due and diligent enquiry that the appointee is a fit and proper person to perform the role. The firm also believes, on the basis of due and diligent enquiry, that the appointee is competent to fulfil the duties required in the performance of such function(s).**

**In signing this form on behalf of the firm I confirm that the information in this Form is accurate and complete to the best of my knowledge and belief and that I have read the notes to this Form.**

[\(http://fshandbook.info/FS/html/PRA/\)](http://fshandbook.info/FS/html/PRA/)

[\(http://www.bankofengland.co.uk/PRA/\)](http://www.bankofengland.co.uk/PRA/)

5.01 Name of *person* signing on behalf of the  
*firm*

5.02 Job title

5.03 Signature

Date / /





BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



**PUB REF: 5000**

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