



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP14/17

Strengthening individual accountability in insurance: extension of Senior Managers & Certification Regime to insurers

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Responses are requested by Friday 3 November 2017.

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1 Overview

1.1 In this consultation paper (CP), the Prudential Regulation Authority (PRA) sets out its substantive proposals for the extension to all insurers of the Senior Managers & Certification Regime (SM&CR, 'the regime'), that will be introduced by amendments to Financial Services and Markets Act 2000 (FSMA) through the Bank of England and Financial Services Act 2016 ('the 2016 Act'). The extended SM&CR for insurers will not come into effect until a commencement date has been set by HM Treasury.

1.2 A key objective for the proposals in this paper is to strengthen the PRA's regulatory regime for insurers to ensure there is an effective governance system with a clear allocation of responsibilities within firms; as well as to ensure the individual accountability of senior managers and directors of insurers for:

- their own conduct in relation to their responsibilities within their firm;
- overseeing the business conduct of the key individuals reporting to them (including in respect of the business risks taken or managed by these individuals); and
- the ongoing safety and soundness of their firms, and the adequate protection of the firm's policyholders.

1.3 In addition, the regime is intended to facilitate the recommendations in the Fair and Effective Markets Review (FEMR)¹ by contributing to the fair and effective operation of markets.

1.4 The proposals are also intended to align more closely the SM&CR individual accountability regimes for the banking and insurance sectors, while continuing to respect the different business models in the two sectors, as well as the requirements of EU legislation.

1.5 Chapter 2 of this CP sets out the PRA's proposals to extend the SM&CR to Solvency II insurers (ie UK Solvency II firms, the Society of Lloyd's and Lloyd's managing agents, and third country (re)insurance branches), insurance special purpose vehicles (ISPVs), and large non-Directive firms (large NDFs).²

1.6 Chapter 3 of this CP sets out the PRA's proposals to extend the SM&CR to small NDFs. It is relevant to small NDFs (which are defined as insurance firms that are out of scope of Solvency II, and are not large NDFs).

1.7 The proposals in this CP would extend the SM&CR to insurers through amendments to the Senior Insurance Managers Regime (SIMR) that was implemented for insurers on 7 March 2016, and subsequently amended by Policy Statement (PS) 27/16³ and PS12/17,⁴ and as would be amended by the proposals being consulted on in CP8/17.⁵ The consultation in

1 www.bankofengland.co.uk/markets/Pages/fmreview.aspx.

2 Large NDFs are defined as insurance firms that are out of scope of Solvency II, and having assets relating to all regulated activities, with a value of more than £25 million, as included in the firm's two most recent reported annual accounts.

3 'Strengthening accountability in banking and insurance: PRA requirements on regulatory references (part II)', September 2016: www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps2716.aspx.

4 'Strengthening individual accountability in banking and insurance: amendments and optimisations', May 2017: www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps1217.aspx.

5 'Strengthening accountability in banking and insurance: optimisations to the SIMR, and changes to SMR forms', June 2017: www.bankofengland.co.uk/pr/Pages/publications/cp/2017/cp817.aspx.

CP8/17 will close on Friday 22 September 2017 with a view to final rules and forms published by the end of 2017, and implementation two months after their publication.

1.8 The proposals in this CP would add a new Insurance – Certification Part to the Solvency II section of the PRA Rulebook, along with corresponding new parts for large NDFs and small NDFs respectively, as well as amend several other existing parts of the PRA Rulebook relating to the current SIMR.

1.9 The PRA is not proposing any further change in this CP to the set of PRA senior insurance management functions (SIMFs) that have already been implemented in the SIMR (or that are proposed in CP8/17). The PRA proposes that each of the PRA SIMFs (termed under FSMA as ‘senior management functions’) from the current SIMR will be included in the new SM&CR. These SIMFs are referred to in this CP as S(I)MFs (in recognition that they are both ‘senior insurance management functions’ in the current PRA Rulebook as well as ‘senior management functions’ under FSMA).

1.10 The PRA is considering, in conjunction with the Financial Conduct Authority (FCA), amending the terminology and acronyms attached to some of these S(I)MFs, so as to align this terminology more closely with the current regime for banking, and intends to consult on this in a later CP (see paragraph 1.17). This would not affect the current approved status of those individuals who are already approved for an S(I)MF (ie as a ‘senior manager’) at an insurer.

1.11 The proposals in Appendix 2 of this CP would also update the current Supervisory Statement (SS) 35/15 ‘Strengthening individual accountability in insurance’¹ to reflect these proposals for the extension of the SM&CR to insurers. The amendments to this SS are shown against the version of the SS under consultation in CP8/17, which is subject to change following finalisation of the policy. This SS is intended to clarify the PRA’s expectations on the application of the regime. This regime would be renamed as the SM&CR, rather than the SIMR, for consistency with the proposed terminology for all other regulated firms.

1.12 The proposals include a consolidated Statement of Policy (SoP) ‘Conditions, time limits, and variations of approval’ (Appendix 3) which explains how the PRA proposes to exercise its ability to apply such conditions or time limits, or to vary any approvals given to an individual to be appointed as a senior manager.

1.13 This CP should be read in conjunction with FCA CP17/26² which contains the FCA’s equivalent proposals for insurers to implement a complementary SM&CR.

1.14 The policy proposals in this paper have been designed in the context of the current UK and EU regulatory framework. The PRA proposes to keep its policy under review to assess whether any changes would be required due to changes in the UK regulatory framework, including those arising once any new arrangements with the European Union take effect.

Responses and next steps

1.15 This consultation closes on Friday 3 November 2017. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP14_17@bankofengland.co.uk.

1 May 2017: www.bankofengland.co.uk/pr/Pages/publications/ss/2017/ss3515update.aspx.

2 Available at: www.fca.org.uk/publication/consultation/cp17-26.pdf.

1.16 The PRA proposes to publish final policy during 2018. The extended SM&CR for insurers will not come into effect until a commencement date has been set by HM Treasury.

1.17 The PRA intends to issue a further CP in 2017 Q3/Q4 that would contain proposals for aligning some of the terminology more closely with the current SM&CR for banking, and for updating the forms that enable the application of the SM&CR to both the insurance and banking sectors. The CP may also include proposals for the relevant transitional measures for the commencement of the new regime. A separate consultation on other consequential changes to the rules may follow in 2018 Q1.

2 Extension of the SM&CR to Solvency II insurers, ISPVs, and large NDFs

2.1 The PRA proposes to extend the SM&CR to Solvency II insurers, ISPVs, and large NDFs, as envisaged by the 2016 Act, through amendments to the current SIMR that would:

- create a new Certification Regime through PRA rules to implement the provisions in s63E and s63F of FSMA that will be applied to these firms through the 2016 Act;
- apply PRA conduct rules (currently called ‘conduct standards for insurers’) to all employees¹ at firms who are within the scope of this proposed new Certification Regime;
- make rules for the notification to the PRA of conduct rule breaches by holders of an S(I)MF, or by employees to whom the conduct rules apply, including those in scope of the new Certification Regime;
- set out the PRA’s expectations (in SS35/15) for the reasonable steps to be taken by individuals to meet the new ‘duty of responsibility’ in s66B(5)(c) of FSMA;
- rename the current ‘scope of responsibility’ records and ‘governance maps’ in the SIMR as ‘statements of responsibility’ and ‘management responsibilities maps’ respectively, amend some of the ‘prescribed responsibilities’ in the current SIMR, introduce some new prescribed responsibilities for third country branches, and set out the PRA’s expectations for statements of responsibility;
- add a new rule relating to the provision of handover information and materials for an individual to perform a new S(I)MF or to take on a new responsibility;
- provide a SoP, that is consolidated for both insurers and banking firms, on the use of the power in s61 of FSMA to set conditions or time limits on the approvals of individuals for an S(I)MF;
- facilitate the approval process for transfers of individuals between banking and insurance firms; and
- update SS35/15 to reflect the above proposed changes, and widening the scope of application of this SS to include large NDFs.

Proposed new Certification Regime for Solvency II insurers, ISPVs, and large NDFs

2.2 The 2016 Act amends FSMA to require the PRA to exercise its rule-making power to minimise the risk that individual employees at insurers may perform a ‘significant harm function’ (ie a function that might involve the risk of significant harm to a firm or to any of its policyholders), which they are not fit and proper to perform. For this purpose, the PRA will be enabled by FSMA to specify certain ‘certification functions’ that it is satisfied are ‘significant harm functions’, but which are not also functions for which individuals require approval by the PRA or FCA (ie the so-called ‘controlled’ (or senior manager) functions), nor non-executive director (NED) roles.

¹ The term ‘employee’ in this CP includes individuals who are under an obligation to provide services under an arrangement with some other service provider, and are subject to (or to the right of) supervision, direction, or control by the insurance firm as to the manner in which they provide services to the firm. This would be assessed on a case-by-case basis.

2.3 The PRA proposes to follow the principle set out recently for banking firms in PS9/16,¹ by aiming to align the scope of the Certification Regime as closely as possible with the population that is identified for the purpose of applying the firm's remuneration policy.² This latter population includes members of the governing body, persons who effectively run the firm or have other key functions, and other categories of staff whose professional activities have a material impact on the firm's risk profile.

2.4 Accordingly, the PRA proposes that all 'key function holders' (KFHs), ie those individuals who are responsible for discharging a 'key function' (and who should already have been identified)³ at Solvency II insurers, and large NDFs, along with ISPVs, should be designated as being in a 'certification function', unless that function is a PRA S(I)MF or FCA controlled function (CF), or they are a NED.

2.5 In addition, the PRA proposes that in order to meet the requirement in paragraph 2.2 above, along with the principle of proportionality, the 'certification functions' would also include for those Solvency II insurers and large NDFs that are 'large firms' (defined in paragraph 2.6), 'material risk-takers' (MRTs, ie those employees of an insurer whose professional activities have a material impact on the firm's risk profile). The PRA proposes that these MRTs would be defined in a similar manner as applies with respect to the Solvency II remuneration requirements, and could therefore be identified by these firms in accordance with the expectations the PRA has set out for this purpose in SS10/16.⁴ 'Large firms' would be required to keep records showing the identity of these MRTs, as well as their reasoning for how they have been identified.

2.6 For this purpose, the PRA intends that a 'large firm' would be defined in the PRA Rulebook Glossary as set out in the draft instrument on which the PRA is consulting in CP8/17, namely as a firm with annual premium income (gross of reinsurance) of more than £1 billion in each of the previous three financial years, or with assets (including any reinsurance) related to regulatory activities of more than £10 billion at the end of each of the last three financial years.

2.7 As an exception to the above, small run-off firms would be deemed not to have any 'certification functions', though like all other Solvency II insurers, they would still need to assess the fitness and propriety of persons performing a key function in accordance with Insurance - Fitness and Propriety 2.

2.8 In summary, the PRA proposes that the set of 'certification functions' for Solvency II insurers (along with ISPVs and large NDFs, but excluding small run-off firms) would include all individuals who are a KFH. In addition, the set of 'certification functions' would include MRTs at Solvency II insurers (and large NDFs) that are 'large firms'. Any individuals who are NEDs or that are approved for a controlled (or senior manager) function by the PRA or FCA would be excluded (as required by FSMA).

2.9 Any individuals whose appointment is solely to cover the absence of an employee in a 'certification function' whose absence is reasonably unforeseen, and is for less than four weeks, would be deemed to be excluded.

1 PRA Policy Statement 9/16 'Strengthening individual accountability in banking: responses to CP1/16, and the Certification Part of CP29/15' March 2016: www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps916.aspx.

2 As envisaged by Article 275 in the EU Solvency II Delegated Regulation.

3 Solvency II firms: Insurance – Allocation of Responsibilities 4, and Large Non-Solvency II firms: Allocation of Responsibilities 4 in the PRA Rulebook.

4 August 2016: www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss1016.aspx.

2.10 The PRA would expect that firms would normally consider as a minimum¹ whether individuals with responsibility for the following functions or activities should be considered to be KFJs (or MRTs for 'large firms'), and hence in a 'certification function' (if these individuals do not hold an S(I)MF or FCA CF):

- investment management (including reconciliation, valuation, or reporting, of asset holdings or positions);
- claims management;
- underwriting and pricing of products;
- reinsurance;
- capital management;
- liquidity management;
- operational systems and controls;
- information technology (IT); and
- managing MRTs (for 'large firms').

2.11 Firms will then be required by FSMA to issue certificates each year to individual employees in these 'certification functions', to show that they are satisfied that the individual is fit and proper to perform that function, or, where a certificate is not provided, what steps the firm proposes to take in relation to the person as a result of the decision. Firms must then keep a record of all such valid certificates. These do not have to be filed with the PRA. These individuals would then not be subject to any separate fit and proper assessment by the PRA under the Certification Regime (though an assessment by the PRA will still need to be carried out for all new KFJs under the Solvency II regime).

2.12 In addition to firms having to issue annual certificates for their employees in 'certification functions', the PRA proposes that these individuals would be subject to its relevant conduct rules and standards (see paragraphs 2.13 to 2.18), and that firms would be required to obtain regulatory references before appointing individuals to these 'certification functions'. Appendix 4 shows how the various requirements in the PRA's rules would then be applied across the hierarchy of different roles (ie S(I)MF, Notified NED, KFJ, other 'certification function', and other key function role).

Application of conduct rules to employees in a 'certification function' and certain other employees

2.13 The PRA proposes to extend the application of some of its conduct rules to all employees who are holding a PRA 'certification function' (including KFJs), at Solvency II insurers, ISPVs, and large NDFs; as well as to the employees of those firms who are performing an S(I)MF on a temporary basis, or who should have been approved for an S(I)MF.

2.14 The PRA believes that this proposal demonstrates the importance it attaches to the application of its conduct standards by the relevant staff in these key positions, and that it

¹ This is not though an exhaustive list of possible 'certification functions'.

would also enable the PRA to take enforcement actions if there are material breaches by such individuals of these standards.

2.15 The three generic conduct standards¹ (that these firms should already be requiring all persons performing key functions to observe) would then apply directly as conduct rules to the individuals described in paragraph 2.13. For KFHs, the conduct rules would also include the additional (Senior Insurance Manager) conduct standards that Solvency II insurers, ISPVs, and large NDFs, currently must require their KFHs to observe.

2.16 Firms will then be directly required by s64B of FSMA (by virtue of the 2016 Act) to take all reasonable steps to secure that those persons in ‘certification functions’ (along with all the other persons to whom the PRA conduct rules apply) understand how those conduct rules apply to them, including through the provision of suitable training.

2.17 The PRA proposes to retain its current rules for firms to require their KFHs to observe its conduct standards, and to consider whether an individual has performed their function in accordance with these conduct standards, as part of the ongoing fit and proper assessments by firms. This is a key part of the current SIMR and is intended to ensure that firms do not rely unduly on self-certification by their employees. The PRA proposes that the same requirements to observe the PRA’s conduct standards – insofar as they relate to the three generic conduct standards - should then be applied by firms to all other employees to whom the PRA conduct rules would apply.

2.18 The PRA also proposes to continue to apply its conduct rules to individuals in a ‘relevant senior management function’, ie those who are approved by the FCA for a function that the PRA is satisfied is an S(I)MF. The PRA proposes that this title would cover all individuals approved by the FCA for a ‘governing function’ (see FCA CP17/26 for more information), or for the compliance oversight function. The definition of this title in the PRA Rulebook Glossary, which will be relevant to the rules being consulted on in this CP, will be consulted on in a further CP (see paragraph 1.17).

Notification of disciplinary action following conduct rule breaches

2.19 The 2016 Act introduces provisions in FSMA that will require notification by firms to the PRA and FCA where: (a) a firm takes disciplinary action against either a person in a controlled function, a director, or an employee, for a reason specified in the rules made by the regulator (s64C of FSMA); or (b) the firm is of the opinion that there are grounds on which the approval of an individual could be withdrawn (s63(2A) of FSMA).

2.20 The PRA propose to make rules in the Notifications Part of the PRA Rulebook for the operation of the above notifications by Solvency II insurers, ISPVs and large NDFs, which mirror those for other regulated firms. These rules would specify in particular that notification to the PRA is required within seven business days where the disciplinary action relates to any action, failure to act, or circumstance that amounts to a breach of any conduct rule. The latter notification rule would then apply in relation to all S(I)MFs and ‘Conduct Rules non-executive directors’, as well as to employees to whom the PRA conduct rules apply, including those holding a ‘certification function’ and KFHs.

1 Integrity; due skill, care and diligence; and openness with the regulator.

Duty of responsibility

2.21 The PRA proposes amendments to SS35/15 (Appendix 2), to set out its expectations of how the new statutory 'duty of responsibility' should be observed by senior managers and directors at insurers.

2.22 The new 'duty of responsibility' has been established through the addition of a fourth element to s66B(5) of FSMA, as explained below. This extends one of the three grounds ('Condition C') for a finding of misconduct under section 66B of FSMA. This provision of FSMA will now enable the PRA to take action for misconduct against an individual if:

- the individual has at any time performed as a 'senior manager' at a firm;
- the firm contravenes, or has contravened, a regulatory requirement;
- at the relevant time, the senior manager was responsible for the management of any of the firm's activities in relation to which the contravention occurred; and
- the senior manager did not take such steps as a person in the senior manager's position could reasonably be expected to take to avoid the contravention occurring (or continuing).

2.23 If the PRA wishes to take action for such misconduct, it will be for the PRA to set out why it appears to the PRA that the senior manager did not take reasonable steps to prevent or stop the contravention of the regulatory requirement.

2.24 In this CP, the PRA is consulting on its expectations on the new duty of responsibility, including what may constitute reasonable steps and how firms can document them. The PRA's proposals on the duty of responsibility should be read alongside FCA CP17/26.

2.25 The wording that the PRA proposes to include for these expectations in paragraphs 2.94 to 2.113 of SS35/15 mirrors the wording for the corresponding duty for individuals at banking firms, on which the PRA consulted in CP34/16,¹ and which is set out in SS28/15.² The PRA considers that this wording is suitable for both insurance and banking firms.

Statements of responsibility and management responsibilities maps

2.26 There are certain prescribed responsibilities that are set out in Insurance – Allocation of Responsibilities for Solvency II insurers, and in Large Non-Solvency II firms – Allocation of Responsibilities for large NDFs, (the 'Allocation rules'). The PRA proposes that these firms should continue to be required to allocate these responsibilities to holders of a PRA S(I)MF or to the holder of an FCA CF that is a 'relevant senior management function'³ (and where relevant to a NED), and to record these allocated prescribed responsibilities for each such individual. The PRA proposes that this allocation of responsibilities should be consistent with the scope of that function, and with all the other responsibilities that may be allocated to that person.

2.27 The PRA proposes that the first of these prescribed responsibilities, namely for ensuring that the firm meets certain obligations under Insurance - Fitness and Propriety, will be

1 'Strengthening accountability in banking and insurance: amendments and optimisations', September 2016: www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp3416.aspx.

2 'Strengthening individual accountability in banking', May 2017: www.bankofengland.co.uk/pr/Pages/publications/ss/2017/ss2815update.aspx.

3 See paragraph 2.18 with regards to the definition of 'relevant senior insurance management function'.

amended, so as to encompass all aspects of the operation of the regime, including the new Certification Regime, and divided into four new prescribed responsibilities, so as to bring these responsibilities in line with the corresponding proposals being made by the FCA.

2.28 To correspond with the proposals made by the FCA, the PRA proposes that ISPVs will be required to allocate a responsibility to a holder of a PRA S(I)MF, or to the holder of an FCA CF that is a 'relevant senior management function', for the operation of the regime, and for the operation of the new Certification Regime.

2.29 For third country branches and Swiss general insurers, the PRA proposes to add four new prescribed responsibilities for risk management, systems and controls, compliance with the UK regulatory system, and escalation of correspondence. These responsibilities would each be related to the activities of the branch and would align the regime more closely to that which applies for banking firms, as well as to the proposals in FCA CP 17/26.

2.30 The PRA proposes that the record of the scope of responsibilities that is required to be maintained and kept up-to-date under the 'Allocation rules' by all KFHs, including holders of an S(I)MF, at Solvency II insurers and large NDFs, would be renamed as a 'statement of responsibilities' (SoR), in line with the terminology of s60 of FSMA, and would extend this requirement to ISPVs as well.

2.31 The PRA proposes to amend the rules¹ which set out the requirements for the provision to the PRA of SoRs for holders of an S(I)MF, so as to align these with the requirements in the amended FSMA, as well as with the corresponding rules for other PRA-regulated firms. In particular, this would mean (in addition to the current requirement to provide a SoR alongside an application for the approval of an individual for an S(I)MF) that if there is a significant change to the SoR for the holder of an S(I)MF², then a copy of the revised statement of responsibilities would need to be provided to the PRA.

2.32 The PRA proposes that the associated 'governance maps' for Solvency II insurers and large NDFs should continue, but be renamed as 'management responsibilities maps' for consistency with other regulated financial firms, and should also include a record of any matters reserved to the governing body; but otherwise is not proposing any changes to the current rules for the maintenance of these maps, or for the circumstances for their provision to the PRA.

2.33 The PRA's further expectations on SoRs and management responsibilities maps are set out in the draft SS35/15 (Appendix 2). Among other matters, SoRs and management responsibilities maps are expected to be drafted in a clear and complete way with a consistent structure and an appropriate and proportionate level of detail. In addition, SoRs would be expected to:

- include the full set of responsibilities (and not just some summary of significant responsibilities) in the SoR for each individual, and therefore comprise more than a tick-box allocation of Prescribed Responsibilities; and
- reflect how the business model, complexity, risk profile, and size of a firm affect each senior manager's (or KFH's) responsibilities.

1 In the Senior Insurance Management Regime – Applications & Notifications Parts of its Rulebook.

2 In the circumstances envisaged by s62A of FSMA.

Handover of responsibilities

2.34 The PRA proposes to add a new rule¹ that will require Solvency II insurers and large NDFs to take all reasonable steps to ensure a senior manager is provided, in advance, with all the information and materials they would reasonably expect in order to perform a new S(I)MF, or new responsibilities, effectively and in accordance with the regulatory system. This would mirror a corresponding new requirement that is also being proposed by the FCA.

Conditions and time limits for the approval of individuals

2.35 The 2016 Act will amend s61 of FSMA to enable the PRA to apply conditions and time limits to any approvals given to an individual to be appointed as a senior manager. The PRA is therefore now consulting on a consolidated SoP 'Conditions, time limits, and variations of approval' (Appendix 3) as required by s63D and s63E of FSMA. This SoP explains how the PRA would propose to exercise its ability to apply such conditions or time limits, or to vary any approvals.

Transfers of individuals between insurance and banking firms

2.36 Following the extension of the SM&CR to all insurance firms, the PRA proposes to enable individuals who have been approved for an S(I)MF within insurance firms to be treated equivalently to individuals who have been approved for an SMF within banking firms. This would mean that it may be possible to make an application for approval of an individual seeking to move from an SMF at a banking firm to an S(I)MF at an insurance firm through the submission to the PRA of either a Short Form A or a Form E, as appropriate.² (The PRA proposes to include the corresponding rule changes to enable a similar approach for moves of individuals from an insurance firm to a banking firm in a CP later this year.)

Amendments to SS35/15

2.37 The PRA proposes to update SS35/15 (Appendix 2). This update would reflect the application of the above proposals to extend the SM&CR to Solvency II insurers, and would also widen the proposed scope of application of this SS to include large NDFs, as well as some general tidying up. This SS is intended to clarify the PRA's expectations on the application of the regime which would be renamed as the SM&CR, rather than the SIMR, for consistency with the proposed terminology for all other regulated firms.

2.38 The proposed amendments set out the PRA's expectations of how the new statutory 'duty of responsibility' should be observed by senior managers and directors at insurers (see paragraphs 2.94 to 2.113 in Appendix 2), as well as some fuller expectations on the content of SoRs and management responsibilities maps (see paragraphs 2.57 to 2.92 in Appendix 2).

2.39 These amendments include the expectation (as also applied for banking firms) that PRA S(I)MFs and PRA Prescribed Responsibilities can be shared but not split among two or more S(I)MFs (see paragraphs 2.19A, and 2.50 to 2.56 in Appendix 2)³. This means that where two or more individuals share an S(I)MF, each will be deemed fully accountable for all the responsibilities inherent in or allocated to that S(I)MF. The same approach applies where a firm allocates a PRA prescribed responsibility to two or more individuals performing different S(I)MFs.

1 In Insurance – Senior Insurance Management Functions and Large Non-Solvency II Firms – Senior Insurance Management Functions.

2 The updated forms for the SM&CR will be consulted on later this year (see paragraph 1.17).

3 There is an exception that the prescribed responsibility in relation to outsourced operational functions may be split where appropriate and justified (see paragraph 2.221 in Appendix 2).

3 Extension of an SM&CR to small NDFs

3.1 The PRA proposes to continue to apply a streamlined set of requirements for small NDFs that would implement the updates to FSMA made through the provisions of the 2016 Act, and is suitably coordinated with the FCA's proposals on how it will apply a proportionate regime for these firms, through amendments to the current SIMR that would:

- create a new Certification Regime through PRA rules, to implement the provisions in s63E and s63F of FSMA that will be applied to these firms through the 2016 Act;
- apply the PRA conduct rules to all employees¹ at these firms who are within the scope of this proposed new Certification Regime;
- make rules for the notification to the PRA of conduct rule breaches by holders of an S(I)MF, or by employees to whom the new conduct rules apply, including those in a 'certification function';
- rename the current 'scope of responsibility' records in the SIMR as 'statements of responsibility', and amend some of the 'prescribed responsibilities' in the current SIMR;
- modify the rules relating to regulatory references to align with the FCA's proposals;
- provide a consolidated SoP, on the PRA's use of the power in s61 of FSMA to set conditions or time limits on the approvals of individuals for an S(I)MF; and
- facilitate the approval process for transfers of individuals between banking and insurance firms.

Proposed new Certification Regime for small NDFs

3.2 The 2016 Act will amend FSMA to require the PRA to exercise its rule-making power to minimise the risk that individual employees at insurers may perform a 'significant harm function' (ie a function that might involve the risk of significant harm to a firm or to any of its customers), which they are not fit and proper to perform.

3.3 For this purpose, the PRA will be enabled by FSMA to specify certain 'certification functions', that it is satisfied are 'significant harm functions', but which are not also functions for which individuals require approval by the PRA or FCA (ie the so-called 'controlled' (or senior manager) functions), or NED roles.

3.4 The PRA proposes that individuals (other than those in a PRA S(I)MF, FCA CF, or NEDs) in any of the following roles would be specified by the PRA as being in a 'certification function':

- (a) all members of the 'governing body'; and
- (b) employees who report directly to the 'governing body'.

3.5 Firms will then be required by FSMA to issue certificates each year to individual employees in these 'certification functions' to show that they are satisfied that the individual is fit and

¹ The term 'employee' in this CP would include individuals who are under an obligation to provide services under an arrangement with some other service provider, and are subject to (or to the right of) supervision, direction, or control by the insurance firm as to the manner in which they provide services to the firm. This would be assessed on a case-by-case basis.

proper to perform that function, or, where a certificate is not provided, what steps the firm proposes to take in relation to the person as a result of the decision. Firms must then keep a record of all such valid certificates, but these would not have to be filed with the PRA. These individuals would not be subject to any separate fit and proper assessment by the PRA under the Certification Regime.

Application of conduct rules to employees in a ‘certification function’ and to certain other employees

3.6 The PRA proposes to extend the application of its conduct rules to all employees who are holding a PRA ‘certification function’ at small NDFs, as well as to the employees of those firms who are performing an S(I)MF on a temporary basis, or who should have been approved for an S(I)MF. The relevant conduct rules for this purpose would be the three generic conduct standards, ie integrity, application of due skill, care and diligence, and openness with the regulator.

3.7 Firms will then be directly required by FSMA to take all reasonable steps to secure that those persons (along with all the other persons to whom its conduct rules apply) understand how those conduct rules apply to them, including through the provision of suitable training.

3.8 Correspondingly, the PRA proposes that the requirements to observe the PRA’s conduct standards – insofar as they relate to the three generic conduct standards – should be applied by firms to all their employees to whom the PRA conduct rules would apply, and that the requirements to observe all the PRA’s conduct standards should be applied by firms to holders of an S(I)MF. The PRA proposes that firms should then consider whether an individual has performed their function in accordance with these conduct standards, as part of the ongoing fit and proper assessments of these individuals by firms.

3.9 The PRA also proposes to continue to apply its conduct rules to individuals in a ‘relevant senior management function’, ie who are approved by the FCA for a function that the PRA is satisfied is an S(I)MF. The PRA proposes that this title would cover all individuals approved by the FCA for a ‘governing function’ (see FCA CP17/26 for more information), or for the compliance oversight function. The exact definition of this term in the PRA Rulebook Glossary will be consulted on in a further CP (see paragraph 1.17).

Notification of disciplinary action following conduct rule breaches

3.10 The 2016 Act introduces provisions in FSMA that will require notification by firms to the regulators: (a) where a firm takes disciplinary action against either a person in a controlled function, a director, or an employee for a reason specified in rules by the regulator; or (b) where the firm is of the opinion that there are grounds on which the approval of an individual could be withdrawn.

3.11 The PRA proposes to make rules in the Notifications Part of the PRA Rulebook for the operation of the above notifications, which mirror those for other regulated firms, and which specify in particular that notification is required within seven business days where the disciplinary action relates to any action, failure to act, or circumstance that amounts to a breach of any conduct rule. The latter notification rule would then apply in relation to all S(I)MFs and ‘Conduct Rules non-executive directors’, as well as to employees to whom the PRA conduct rules apply, including those holding a ‘certification function’.

Statements of responsibility and prescribed responsibilities

3.12 Firms are currently required by PRA rules to keep an up-to-date record of the significant responsibilities of each holder of a PRA S(I)MF (or of an FCA CF that is a 'relevant senior management function').¹ The PRA proposes to rename these records as 'statements of responsibility' (SoR), in line with the provisions of s60(2A) of FSMA.

3.13 The responsibilities set out in these SoRs must include certain prescribed responsibilities that are set out in Non-Solvency II Firms – Allocation of Responsibilities 3. An additional prescribed responsibility would be added for the operation of the regime, including the new Certification Regime.

3.14 The PRA proposes to amend the rules in the Non-Solvency II Firms – Senior Insurance Management Regime – Applications and Notifications Part of its Rulebook, which set out the requirements for the provision to the PRA of SoRs for holders of an S(I)MF, so as to align these with the requirements in the amended FSMA, as well as with the corresponding rules for other PRA-regulated firms. In particular, this would mean (in addition to the ongoing requirement to provide a SoR alongside an application for approval of an individual for an S(I)MF) that, if there is a significant change to the SoR for the holder of an S(I)MF, then a copy of the revised SoR would need to be provided to the PRA.

Regulatory references

3.15 Small NDFs are currently required by Non-Solvency II Firms – Fitness and Propriety 3, to provide regulatory references for an individual employed by them, when so requested by another regulated firm. These references must include all information (on events or matters within a specified time period) of which the NDF is aware that it reasonably considers to be relevant to the assessment by the new firm of whether that individual is fit and proper.

3.16 In PS27/16, the PRA said that it and the FCA will consider whether to extend some or all of the full regulatory reference requirements to small NDFs when the SM&CR was extended to all other regulated firms through the implementation of the 2016 Act.

3.17 In their CP17/26, the FCA explain that they are now proposing to extend the full set of regulatory reference rules to all insurance firms, as this would support their objective of consumer protection and market integrity by providing all insurers with effective tools to better assess an individual's fitness and propriety. This should, in turn, help to ensure that individuals take greater responsibility for their own conduct.

3.18 The PRA considers that the extension of these rules would further both its general objective and its insurance objective. These rules would contribute to an appropriate degree of protection for policyholders, and for future policyholders, and enhance the safety and soundness of firms. The PRA therefore proposes to mirror the proposals in FCA CP17/26 and extend all the regulatory reference rules (as currently apply to other regulated insurers) to small NDFs, so that there will be an obligation for firms to:

- request references going back six years for all individuals who are being appointed to either an S(I)MF or a 'certification function' at the NDF;
- include mandatory information in the references provided to other regulated firms (going back six years);

¹ See paragraph 3.9.

- provide the references in a mandatory template; and
- update the references if appropriate, for six years following resignation (including any notice period served), but with no updates proposed to be required for any references provided prior to the implementation date of these new rules.

3.19 Appendix 5 shows how the various requirements in the PRA's rules would then be applied across the hierarchy of different roles (ie S(I)MF, 'Conduct Rules NED', and 'certification function').

Conditions and time limits for approval of individuals

3.20 The 2016 Act will enable the PRA to apply conditions and time limits to any approvals given to an individual to be appointed as an S(I)MF. The PRA is therefore now consulting on a SoP 'Conditions, time limits, and variations of approval' (Appendix 3). This SoP explains how the PRA would propose to exercise its ability to apply such conditions or time limits, or to vary any approvals.

Transfers of individuals between insurance and banking firms

3.21 Following the extension of the SM&CR to all insurance firms, the PRA proposes to enable individuals who have been approved for an S(I)MF within insurance firms to be treated equivalently to individuals who have been approved for an S(I)MF within banking firms. This would mean that an individual would be assessed through application of the same criteria as would be relevant for an individual proposing to move between two insurance (or banking) firms, and may be able to make an application for approval to the PRA through the submission of either a Short Form A or a Form E,¹ as appropriate. (The PRA proposes to include the corresponding rule changes to enable this for banking firms in a CP later this year.)

¹ The updated forms for the SM&CR will be consulted on later this year (see paragraph 1.17).

4 The PRA's statutory obligations

4.1 Before making any rules, FSMA¹ requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis;
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons;²
- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective;³ insurance objective⁴ (if applicable), and secondary competition objective;⁵ and
- an explanation of the PRA's reasons for believing that making the proposed rules are compatible with its duty to have regard to the regulatory principles;⁶

4.2 The PRA is also required by the Equalities Act 2010⁷ to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

4.3 The PRA should also have regard to aspects of the government's economic policy recommended by HM Treasury.⁸

Cost benefit analysis

Proposed new Certification Regime, application of PRA conduct rules to employees in a 'certification function', and related notification requirements

4.4 The PRA anticipates that the cost for firms of complying with the proposed new Certification Regime would be limited because:

- all KFHS are already subject to an ongoing fitness and propriety assessment by firms, and should already be required by the firm to observe all of the PRA's conduct standards;
- senior managers at firms should already be taking reasonable steps to ensure that the business is controlled effectively, including through oversight of the activities of any MRTs; and
- firms are already required to notify the PRA of any information which would reasonably be expected to be material to the assessment of a KFHS's fitness and propriety.

4.5 For 'large firms', the PRA considers there could be around 40 to 60 individuals in a certification function which could result in additional costs for each firm of around £150,000 each year, plus £300,000 initial costs. For other smaller firms, the PRA considers there may be an average of around five to seven individuals in a 'certification function' which could result in additional costs for each firm of around £25,000 each year, plus £50,000 initial costs. These

1 Section 138J of FSMA.

2 Section 138K of FSMA.

3 Section 2B of FSMA.

4 Section 2C of FSMA.

5 Section 2H(1) of FSMA.

6 Sections 2H(2) and 3B of FSMA.

7 Section 149.

8 Section 30B of the Bank of England Act 1998.

costs have been estimated from the corresponding cost benefit analysis that was prepared for the broadly similar proposals that were made for banks and building societies in CP26/14, together with information contained in firms' governance maps. The PRA would welcome estimates from respondents to this CP of the likely costs for them.

4.6 The PRA considers that a requirement on firms to issue an annual certificate for all their KFJs, and to apply all its conduct rules directly to those individuals, may reinforce the ongoing assessment of fitness and propriety that already applies for these individuals, and ensure that these individuals contribute to the ongoing safety and soundness of their firms. For all employees in a 'certification function', the annual certification, and application of the PRA's generic conduct rules and standards, along with the notification to the PRA of any conduct rule breaches, should help to ensure that there is proper control over those individuals who could cause significant harm to the firm through the risks that they may assume.

Amendments to SS35/15

4.7 The PRA proposes to set out in an updated SS35/15, its expectations of how the new statutory 'duty of responsibility' should be observed by senior managers and directors at insurers, as well as some fuller expectations on the content of SoRs and management responsibilities maps. These expectations are intended to assist firms in meeting the requirements of the regime.

4.8 While there will be some costs associated with individuals having to meet the new duty of responsibility, and for any updates to SoRs and management responsibilities maps, there would be benefits associated with these measures as they help mitigate the risk of senior managers and directors being unclear about the full range of their responsibilities, or failing to take reasonable steps in the performance of their duties thereby causing the failure of their firms and/or breaching any regulatory requirements.

4.9 In addition, the application of the expectations around the new duty of responsibility could help to encourage individual accountability by facilitating the PRA's ability to hold individuals to account where a failure occurs, which, in turn, would help bring the benefits of an increased deterrent against any negligent or reckless management and decision making.

Regulatory references

4.10 The PRA proposes that firms would be required to obtain regulatory references before appointing individuals to any certification function. In addition, small NDFs would be required to apply the same regime as all other regulated firms for seeking or providing regulatory references.

4.11 The costs, both initial and ongoing, for this change are estimated at around £5,000 for larger firms, and less than £1,000 for small firms; by reference to the costs in tables 3.7 and 3.8 of the CP14/14¹ cost benefit analysis for building societies, and the commentary in CP36/15 Annex 3.² These changes would provide all insurers with effective tools to better assess an individual's fitness and propriety, which should in turn, help to ensure that individuals take greater responsibility for their own conduct.

1 'Strengthening accountability in banking: a new regulatory framework for individuals', July 2014: www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp1414.aspx.

2 'Strengthening accountability in banking and insurance: regulatory references', October 2015: www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp3615.aspx.

Other changes

4.12 The PRA proposes the following additional changes to the regime:

- amending the prescribed responsibility for ensuring that the firm meets certain obligations under Insurance - Fitness and Propriety, to encompass all aspects of the operation of the regime, including the new Certification Regime, and dividing this into four specified responsibilities;
- adding four new prescribed responsibilities for third country branches and for Swiss general insurers;
- in accordance with FSMA, requiring firms to submit an updated SoR for their senior managers whenever there is a significant change to their responsibilities;
- recording in the management responsibilities map the matters reserved for the governing body;
- providing a SoP setting how the PRA proposes to utilise its new ability to set or vary time limits or conditions on approvals of individuals for an S(I)MF; and
- enabling a simpler process for individuals who have been previously approved by the PRA or the FCA to move between banking and insurance firms.

4.13 None of these changes are expected to give rise to any significant costs for firms, but they are intended to improve the efficiency of the operation of the regime.

Compatibility with the PRA's objectives

4.14 The proposals in this CP seek to extend the SM&CR to PRA-regulated insurance firms by adapting the SIMR. These changes are intended to enhance individual accountability through the annual certification of key employees, and to improve corporate governance in these firms, through the provision of clear SoRs and management responsibilities maps, thereby advancing the PRA's safety and soundness and insurance statutory objectives.

4.15 The PRA considers these proposals would enhance the ongoing safety and soundness of firms, and ensure that there is an appropriate degree of protection for their policyholders and future policyholders, through the management of these firms by fit and proper individuals, with clear responsibilities, who are acting in accordance with the PRA's conduct rules.

4.16 The PRA considers that the proposals in this CP are compatible with its secondary objective of facilitating effective competition, as they would help to ensure that larger insurance firms and groups operate under comparable governance standards, and that individuals may transfer between the insurance and banking sectors under comparable regulatory arrangements, which together with a more streamlined approach for smaller firms (and especially for small NDFs and small run-off firms), should ensure that compliance burdens are proportionate, and do not materially increase barriers to entry or exit.

Regulatory principles

4.17 In developing the proposals in this CP, the PRA has had regard to the regulatory principles. Two of the principles are of particular relevance.

4.18 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. The proposals in this CP seek to extend the SM&CR to PRA-regulated insurance firms, through adaptation of the SIMR that has already been implemented by firms, and hence without imposing undue additional costs for firms. In addition, the CP includes a proposal in relation to MRTs that would apply only to larger firms. The proposals in Chapters 2 and 3 also seek to:

- recognise that KFHs are already subject to ongoing fit and proper requirements, and are already required by firms to observe the PRA's conduct standards, so that the implementation costs of designating KFHs as 'certification functions', and applying conduct rules to them, should be relatively marginal;
- ensure that all individuals in a certification function are covered by those conduct rules and standards that are relevant to them;
- ensure that individuals are aware of the steps that they would be expected to take to meet the new statutory duty of responsibility; and
- continue to apply a streamlined regime to small NDFs, ISPVs, and small run-off firms.

4.19 The principle that a firm's senior management is responsible for the firm's activities and for ensuring that its business complies with regulatory requirements. The proposals in this CP seek to further entrench the notion of individual accountability. In particular, firms (through their senior managers and directors) would be responsible for:

- the assessment of the ongoing fitness and propriety of individuals in a 'certification function' whose activities might involve the risk of significant harm to the firm or any of its policyholders;
- seeking (and providing) regulatory references in respect of such individuals; and
- notifying the PRA of any disciplinary actions taken in relation to employees in a 'certification function' who breached the PRA's conduct standards.

4.20 In recognition of this regulatory principle, the PRA has also set out in the draft SS35/15 its proposed expectations for how the new duty of responsibility, that is being implemented through changes to FSMA through the 2016 Act, would be applied by senior managers and directors.

Impact on mutuals

4.21 In the PRA's opinion, the impact of the proposals in this CP on mutuals is expected to be no different from the impact on other firms.

Equality and diversity

4.22 The PRA carried out an equality impact assessment as part of the development and implementation of the SIMR. The PRA considers that the proposals in this CP do not give rise to additional equality and diversity implications.

HM Treasury Recommendation letter

4.23 In March 2017, HM Treasury made recommendations to the Prudential Regulation Committee (PRC) about aspects of the government's economic policy to which the PRC should have regard when considering how to advance the objectives of the PRA and apply the regulatory principles set out in FSMA.¹ The PRA has considered the implications of the proposals in this CP on each of these aspects, and considers that three of these aspects of economic policy are of particular relevance to these proposals.

Competitiveness

4.24 The PRA considers that these proposals will enhance the external visibility of the sound and effective governance of insurance firms. The proposals are fully consistent with the new framework for ensuring the individual accountability of senior managers and other employees whose activities could cause significant harm for an insurer, that are being introduced by the 2016 Act. This should help to ensure that the United Kingdom continues to be seen as a leading financial centre with a sound reputation.

Innovation

4.25 The PRA considers that the proposals will not hamper innovation in the financial services sector, as these proposals would implement in a proportionate manner the provisions of the 2016 Act that will apply to all regulated firms. The proposals include a streamlined regime for ISPVs that may facilitate the development of this innovative market within a trusted and robust regulatory environment.

Better outcome for consumers

4.26 The PRA considers that the proposals are consistent with the Government's economic policy consideration for improved competition in financial services and the securing of an appropriate degree of protection for consumers. A number of the proposals are differentiated between small firms and 'large firms', which should help to improve the ability of new entrant and smaller insurers to compete with larger insurers. The proposed new rules should also ensure there is accountability by all senior managers and key employees at insurance firms for their responsibilities at these firms, as envisaged by the 2016 Act, thereby ensuring the ongoing safety and soundness of these firms, as well as an appropriate degree of protection for policyholders.

¹ Information about the Prudential Regulation Committee and the recommendations from HM Treasury are available on the Bank's website at www.bankofengland.co.uk/about/Pages/people/prapeople.aspx.

Appendices

-
- 1 Draft SOLVENCY II FIRMS AND NON SOLVENCY II FIRMS: SENIOR INSURANCE MANAGERS REGIME (AMENDMENT) (NO X) INSTRUMENT [DATE]**

 - 2 Draft amendments to Supervisory Statement 35/15 'Strengthening individual accountability in insurance'**

 - 3 Draft amendments to Statement of Policy 'Conditions, time limits, and variations of approval'**

 - 4 Application of extended SM&CR to Solvency II insurers and Large NDFs**

 - 5 Application of extended SM&CR to Small NDFs**

Appendix 1 - Draft SOLVENCY II FIRMS AND NON SOLVENCY II FIRMS: SENIOR INSURANCE MANAGERS REGIME (AMENDMENT) (NO X) INSTRUMENT [DATE]

PRA RULEBOOK: SOLVENCY II FIRMS AND NON SOLVENCY II FIRMS: SENIOR INSURANCE MANAGERS REGIME (AMENDMENT) (NO X) INSTRUMENT [DATE]

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000 (“the Act”):
 - section 60 (Applications for approval);
 - section 60A (Vetting of candidates by authorised persons);
 - section 61 (Determination of applications);
 - section 63E (Certification of employees by authorised persons);
 - section 63F (Issuing of certificates);
 - section 64A (Rules of conduct);
 - section 64C (Requirement for authorised persons to notify regulator of disciplinary action);
 - section 137G (The PRA’s general rules); and
 - section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) 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: Solvency II Firms and Non Solvency II Firms: Senior Insurance Managers Regime (Amendment) (No X) Instrument [Date]

- D. The PRA makes the rules in the Annexes to this instrument.
- E. Annex A is part of the Solvency II firms sector of the PRA Rulebook.
- F. Annex I and Annex Q are part of the Non-Solvency II firms sector of the PRA Rulebook.

Commencement

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

Citation

- H. This instrument may be cited as the PRA Rulebook: Solvency II Firms and Non Solvency II Firms: Senior Insurance Managers Regime (Amendment) (No X) Instrument [Date].

By order of the Prudential Regulation Committee
[DATE]

Annex A

Insurance – Certification Part

In this Annex, all text is new and is not underlined.

Part

Insurance - Certification

Chapter content

APPLICATION AND DEFINITION

CERTIFICATION FUNCTIONS

PERFORMANCE OF CERTIFICATION FUNCTIONS

MATERIAL RISK TAKERS

LLOYD'S

UK ISPVS

Links

1. APPLICATION AND DEFINITION

1.1 Unless otherwise stated, this Part applies to:

- (1) a *UK Solvency II firm*;
- (2) in accordance with Insurance General Application 3, the *Society*, as modified by 5;
- (3) in accordance with Insurance General Application 3, a *managing agent*, as modified by 5;
- (4) a *third country branch undertaking* (other than a *Swiss general insurer*) in relation to the activities of the *third country branch* that are subject to the *regulatory system*; and
- (5) a *UK ISPV*, in accordance with 6.

1.2 This Part does not apply to a *small run-off firm*.

1.3 In this Part, the following definition shall apply:

employee

in relation to a *firm*, includes any *person* within the description set out in section 63E(9) of *FSMA*.

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

- (1) a *PRA approved person*;
- (2) a *person* who performs an *FCA controlled function*; or
- (3) a *non-executive director* in relation to their *non-executive director* function.

2. CERTIFICATION FUNCTIONS

2.1 For the purposes of this Part, the following are *certification functions*:

- (1) a function performed for a *firm* by a *key function holder* at the *firm*;
- (2) a function performed by a *material risk taker* at a *large firm*.

2.2 A function is only a *certification function* to the extent that the function relates to a *regulated activity* carried on by a *firm*.

3. PERFORMANCE OF CERTIFICATION FUNCTIONS

3.1 A *firm* must take reasonable care to ensure that none of its *employees* performs a *certification function* under an arrangement entered into by the *firm* in relation to the carrying on by the *firm* of a *regulated activity*, unless the *employee* has a valid *certificate* issued by the *firm*.

3.2 A *person* does not perform a *certification function* for a *firm* under 2.1 if the *person* is performing any *controlled function* for that firm.

3.3 To the extent that:

- (1) a *firm* appoints a *person* to perform a function which, but for this rule, would be a *certification function*;
- (2) the appointment is solely to provide cover for a *certification employee* whose absence is reasonably unforeseen; and
- (3) the appointment is for less than four weeks;

such a *person* does not perform a *certification function*.

4. MATERIAL RISK TAKERS

4.1 This Chapter applies to a *firm* that falls within 1.1 and is a *large firm*.

4.2 A *firm* must identify, in respect of the *firm*, its *employees* who are *material risk takers*.

4.3 A *firm* must keep its identification of *material risk takers* pursuant to 4.2 up-to-date.

4.4 A *firm* must keep a record of its reasoning for the identification of *material risk takers* pursuant to 4.2.

5. LLOYD'S

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

6. UK ISPVs

6.1 2.1(2) does not apply to a *UK ISPV*.

6.2 4 does not apply to a *UK ISPV*.

Annex B
Amendments to the
Insurance – Fitness & Propriety Part

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

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

disciplinary action

~~in relation to a person, means any of the following:~~

- ~~(1) the issuing of a formal written warning;~~
 - ~~(2) the suspension or dismissal of the person; or~~
 - ~~(3) the reduction or recovery of any of the person's remuneration.~~
- has the meaning given in section 64C of FSMA.

...

2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

2.1 A firm must ensure that all *persons* who perform *key functions* or certification functions are at all times fit and proper *persons*.

2.2 In deciding whether a *person* is fit and proper pursuant to 2.1 and, where applicable, section 60A(1) and section 63F of FSMA, 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 or certification 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 consider:

- (1) the *person's* past business conduct; and
- (2) whether the *person* performs his or her *key functions* or certification functions in accordance with the relevant *conduct standards* specified in Insurance - Conduct Standards 3.

...

2.5

- (1) Before deciding whether a person (P) is fit and proper to be appointed as a *key function holder* or to perform a certification function, a *firm* must take reasonable steps to obtain appropriate references covering the past six years from the following:
 - (a) each *FCA-authorised person* and *PRA-authorised person* that is, or was:
 - (i) P's current or former employer; or
 - (ii) an organisation (not falling within (i)) at which P is currently serving, or has served, as a *key function holder*, *senior insurance management function holder*, other *approved person*, *non-executive director*, *notified non-executive director* or *credit union non-executive director* or performed, or is currently performing, a *certification function*;
 - (b) P's other current and former employers; and
 - (c) other organisations at which P served as, or is currently, a non-executive director.

...

- 2.7 If a *firm* previously obtained the information required by 2.4 to 2.6 when it determined that a *key function holder* or a person performing a certification function was fit and proper for the purposes of this Part, and the *firm* engages that *person* for a continuous period of time, the *firm* is not required to comply with 2.4 to 2.6 again in respect of any subsequent *key function appointments* or arrangements to perform certification functions at the same *firm* within that continuous period.

Annex C
Amendments to the
Insurance – Conduct Standards Part

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

1. APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

- (1) a *UK Solvency II firm*;
- (2) in accordance with Insurance General Application 3, the *Society*, as modified by 4;
- (3) in accordance with Insurance General Application 3, *managing agents*, as modified by 4;
- (4) a *third country branch undertaking* (other than a *Swiss general insurer*);
- (5) a *UK ISPV*; and
- (6) in relation to any of the foregoing *firms*, any *person* who is:
 - (a) a *Conduct Rules non-executive director*;
 - (b) an *employee of a firm who is a key function holder*;
 - (c) a *certification employee (other than a key function holder)*; or who is
 - (d) approved under section 59 of *FSMA* by either:
 - ~~(a)(i)~~ the *PRA*; or
 - ~~(b)(ii)~~ the *FCA*, in relation to a *relevant senior management function*;
 - (e) an *employee who should have been approved under section 59 of FSMA by*

either:

- (i) the *PRA*; or
- (ii) the *FCA*, in relation to a *relevant senior management function*; or
- (f) an *employee who is performing a function that would have been a controlled function but for Insurance - Senior Insurance Management Functions 2.4.*

1.2 In this Part the following definition shall apply:

employee

has the meaning given in Insurance – Certification 1.3.

2. SCOPE OF CONDUCT STANDARDS

2.1 If you are a natural *person* who is:

(1) an *employee* of a *firm* who is a *key function holder*, or

(2) approved under section 59 of *FSMA* by either:

~~(1)(a)~~ the *PRA*; or

~~(2)(b)~~ the *FCA*, in relation to a *relevant senior management function*,

you must comply at all times with all of the *conduct standards*.

...

2.1B If you are an *employee* of a type specified in 1.1(6)(c), (e) or (f) you must comply at all times with the *conduct standards* specified in 3.1 to 3.3.

2.2 A *firm* must require:

(1) any *person* performing a *key function* to observe the *conduct standards* specified in 3.1 to 3.3;

(2) any *key function holder* (other than a *notified non-executive director* and an *authorised UK representative*) to observe the *conduct standards* specified in 3.4 to 3.8, in addition to complying with (1); ~~and~~

(3) any *notified non-executive director* to observe the *conduct standards* specified in 3.7 and 3.8, in addition to complying with (1); ~~and~~

(4) an *employee* of a type specified in 1.1(6)(c), (e) or (f) to observe the *conduct standards* specified in 3.1 to 3.3.

...

Annex D

Amendments to the

Insurance – Senior Insurance Management Functions Part

In this Annex new text is underlined.

2. GENERAL

...

2.8 (1) A firm (other than a UK ISPV) must take all reasonable steps to ensure that before a person begins to perform:

(a) a senior insurance management function; or

(b) new or revised responsibilities in performance of a senior insurance management function

that person is provided with all of the information and materials that the person may reasonably expect in order to perform that senior insurance management function or those new or revised responsibilities effectively and in accordance with the regulatory system.

(2) A firm must:

(a) have a written policy to ensure compliance with (1), including in relation to the systems and controls it uses;

(b) ensure the policy under (a) is complied with; and

(c) maintain adequate records of the steps taken to comply with (1).

...

Annex E

Amendments to the

Insurance – Allocation of Responsibilities Part

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

1. APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

...

(3) in accordance with Insurance General Application 3, *managing agents*, as modified by 6;

(4) a *third country branch undertaking* (other than a *Swiss general insurer*); and

(5) a UK ISPV, in accordance with 7.

1.2 In this Part, the following definitions shall apply:

~~*governance map*~~ *management responsibilities map*

has the meaning given in 5.1.

...

third country prescribed responsibility

(1) for a *third country branch undertaking* (other than a *UK-deposit insurer*) means the responsibilities set out in 3A.2 to the extent only that they are relevant to the operations effected by its *third country branch*); and

(2) for a *UK-deposit insurer* means the responsibilities set out in 3A.2 to the extent only that they are relevant to the operations effected by its *third country branch* and all its *third country undertaking EEA branches*.

2. ALLOCATION OF RESPONSIBILITIES

2.1 A *firm* (other than a *third country branch undertaking*, ~~or a *small run-off firm*~~ or a UK ISPV) must allocate each of the *SIMR prescribed responsibilities* set out in 3.1 (other than 3.1(10) and (11)); to one or more *persons* who, in relation to that *firm*, are approved under section 59 of *FSMA* by:

(1) the *PRA* to perform a *senior insurance management function*; or

(2) in relation to *relevant senior management functions* only, the *FCA*.

2.2 A *firm* (other than a *third country branch undertaking*, ~~or a *small run-off firm*~~ or a UK ISPV) must allocate each of the *SIMR prescribed responsibilities* set out in 3.1(10) and (11) and the *SIMR prescribed responsibility* set out in 3.3, if applicable, to one or more *non-executive directors* who perform:

(1) a *senior insurance management function* set out in Insurance – Senior Insurance Management Functions 4; or

(2) an *FCA governing function* at that *firm*.

2.3 A *third country branch undertaking* (other than a *Swiss general insurer*) must allocate each of the *SIMR prescribed responsibilities* set out in 3.1(1A) to 3.1(1), (4), (5), (6) and (7) and each of the *third country branch prescribed responsibilities* to one or more *persons* who, in relation to that *firm*, are approved under section 59 of *FSMA* by:

(1) the *PRA* to perform a *senior insurance management function*; or

(2) in relation to *relevant senior management functions* only, the *FCA*.

...

2.5 A *UK ISPV* must allocate each of the *SIMR prescribed responsibilities* set out in 3.1(1A) to 3.1(1C) to one or more *persons* who, in relation to that *firm*, are approved under section 59 of *FSMA* by:

(1) the *PRA* to perform a *senior insurance management function*; or

(2) in relation to *relevant senior management functions* only, the *FCA*.

2.6 A *firm* must ensure that any responsibilities allocated to, and that form part of the responsibilities of, a *person* who performs a *senior insurance management function* in relation to the *firm* are consistent with the scope of that *senior insurance management function* and of any *SIMR prescribed responsibilities*, *FCA responsibilities* and other responsibilities allocated to that *person*.

3. SIMR PRESCRIBED RESPONSIBILITIES

3.1 Each of the responsibilities set out in this rule is an *SIMR prescribed responsibility*:

(1A) responsibility for the *firm's* performance of its obligations under the *senior insurance management regime*;

(1B) responsibility for the *firm's* performance of its obligations under the *certification regime*;

(1C) responsibility for compliance with the *firm's* obligations in relation to its *management responsibilities map*;

(1) responsibility for ensuring that the *firm* has complied with its obligations in Insurance – Fitness and Propriety to:

(a) ensure that every *person* who performs a *key function* but does not also perform a *senior insurance management function* or a *certification function* (including every *person* in respect of whom an application under section 59 of *FSMA* is made) is a fit and proper *person*; and

(b) provide and obtain regulatory references;

...

3A PRESCRIBED RESPONSIBILITIES: UK BRANCHES

3A.1 This Chapter applies only to a *third country branch undertaking*.

3A.2 Each of these responsibilities is a *third country branch prescribed responsibility*:

- (1) responsibility for management of the firm's risk management processes in the UK;
- (2) responsibility for the firm's compliance with the UK regulatory system applicable to the firm;
- (3) responsibility for the escalation of correspondence from the PRA, FCA and other regulators in respect of the firm to each of the governing body or the management body of the firm and, as appropriate, the firm's parent undertaking and the ultimate parent undertaking of the firm's group; and
- (4) responsibility for management of the firm's systems and controls in the UK.

...

5. RECORDS

5.1 A firm must have and maintain a ~~governance map~~ *management responsibilities map*, which is a clear and coherent document or series of documents with the following details:

...

- (6) ...
 - (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;-
- (7) matters reserved to the governing body (including the terms of reference of its committees) and including, in the case of a third country branch undertaking, the equivalent body (or its committees) responsible for the management of the third country branch undertaking's business activities in the UK.

5.2 A firm must update the ~~governance map~~ *management responsibilities map*:

...

5.3 A firm must, as soon as reasonably practicable, provide the following to the PRA:

- (1) upon request by the PRA, a copy of the ~~governance map~~ *management responsibilities map*; and
- (2) in the event of an update pursuant to 5.2(2), a copy of the relevant part of the ~~governance map~~ *management responsibilities map*.

5.4 A firm must keep an up-to-date record of the ~~scope of responsibilities~~ *statement of responsibilities* of each *key function holder*.

- 5.5 A ~~scope of responsibilities form~~ statement of responsibilities form, where it is kept and maintained on behalf of a *key function holder*, will satisfy the requirement in 5.4.
- 5.6 The record in 5.4, and each updated version, must be signed by the *key function holder* and an appropriate representative of the *firm*.
- 5.7 Where a *firm* amends its ~~governance map~~ management responsibilities map, to show changes in a *person's* responsibilities it must also ensure that:
- (1) the *person* concerned is informed in writing of the changes; and
 - (2) the records in 5.4 is amended to show the changes.
- 5.8 Each version of both the ~~governance map~~ management responsibilities map and the record in 5.4 must be retained for a period of ten years from the date on which it was superseded by a more up-to-date record, and must be provided to the *PRA* on request.

...

7. UK ISPVS

- 7.1 This Chapter applies only to *firms* that are *UK ISPVs*.
- 7.2 A *firm* that is a *UK ISPV* is not required to comply with the requirements laid down in:
- (1) 4 (Identification of Key Functions); and
 - (2) 5.1 to 5.3 and 5.7 (Records).
- 7.3 The requirements in 5.4 and 5.6 apply to a *firm* that is a *UK ISPV* as if any reference to a *key function holder* were a reference to a senior insurance management function holder.
- 7.4 The requirements in 5.8 apply to a *UK ISPV* as if the reference to the management responsibilities map were deleted.

Annex F

Amendments to the

Key Function Holder – Notifications Part

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

...

2. KEY FUNCTION HOLDER NOTIFICATION

...

2.4 The *PRA* directs that:

(1) where the *key function holder* is to be approved by the *PRA* to perform a *senior insurance management function*, the *firm* must provide the information referred to in 2.2 to the *PRA* in whichever Form is required for the *senior insurance management approval application*, pursuant to Senior Insurance Managers Regime – Applications and Notifications 2, which must be accompanied by a ~~scope of responsibilities form~~ statement of responsibilities form; and

(2) where the *key function holder* is to be approved by the *FCA* to perform an *FCA controlled function*, the *firm* is not required to submit a *key function holder notification form* to the *PRA* to the extent the *firm* provides the information referred to in 2.2 to the *FCA* as part of the application to the *FCA*, with a ~~scope of responsibilities form~~ statement of responsibilities form.

...

6. TRANSITIONAL ARRANGEMENTS FOR KEY FUNCTION HOLDERS

[deleted]

6.1 ~~This Chapter applies only in relation to a:~~

~~(1) transitional key function holder, in relation to key functions held as at 1 January 2016;~~

~~(2) grandfathering key function holder, in relation to key functions held as at the commencement date;~~

~~(3) new SIMF applicant; and~~

~~(4) transitional notified non-executive director in relation to his or her position as a notified non-executive director as at the commencement date.~~

6.2 ~~A firm must provide the information required by Insurance Fitness and Propriety 4.1 for each transitional key function holder, grandfathering key function holder, new SIMF applicant and transitional notified non-executive director in accordance with 6.3 to 6.6~~

6.3 ~~In respect of a grandfathering key function holder, the requirement in 6.2 will be satisfied where the firm submits a grandfathering notification in accordance with Senior~~

~~Insurance Managers Regime – Transitional Provisions 2.1, or the update to the *grandfathering notification* in accordance with Senior Insurance Managers Regime – Transitional Provisions 5 (as the case may be), provided that the *firm* also submits a *scope of responsibilities form* to the *PRA* in respect of that *grandfathering key function holder* by 7 September 2016.~~

- 6.4 — ~~In respect of a *new SIMF applicant*, the *PRA* directs that a *firm* must provide the information referred to in 6.2 to the *PRA* in whichever form is required for the *senior insurance management approval application*, pursuant to Senior Insurance Managers Regime – Applications and Notifications 2, which must be accompanied by a *scope of responsibilities form*.~~
- 6.5 — ~~In respect of a *transitional notified non-executive director*, the requirement in 6.2 will be satisfied where the *firm* records the *transitional notified non-executive director* in the *firm's governance map* on or before the *commencement date*.~~
- 6.6 — ~~In respect of a *transitional key function holder* who is not a *grandfathering key function holder*, *new SIMF applicant* or a *transitional notified non-executive director*, the *PRA* directs that a *firm* must provide the information referred to in 6.2 to the *PRA* by sending the *key function holder notification form* to the *PRA* in accordance with 3.3 by 7 September 2016.~~

Annex G

Amendments to the

Senior Insurance Managers Regime – Applications and Notifications Part

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

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part the following definitions shall apply:

...

current approved person approval

means

- (1) an approval granted to a *person* under section 59 of *FSMA* (Approval for particular arrangements):
 - (a) by the *PRA* for the performance of a *PRA senior management function or senior insurance management function*; or
 - (b) by the *FCA* for the performance of a *significant influence function*;
- (2) a deemed approval given by either the *PRA* following the submission of a *grandfathering notification* under Senior Insurance Managers Regime - Transitional Provisions or Senior Managers Regime – Transitional Provisions or by the *FCA* under any equivalent rules in the *FCA Handbook*; or
- (3) for the purposes of 2.5(2) and 2.6(1), an approval granted to that *person* under section 59 of *FSMA* by either the *PRA* or the *FCA* to perform a *controlled function* prior to the *commencement date* but which ceased (i) on or before the *commencement date*; and (ii) during the six-month period specified in 2.5(2) and 2.6(1), as the case may be.

...

scope of responsibilities form

means ~~the form to be completed by a *firm* containing the information referred to in Insurance Allocations of Responsibilities 5.1(3).~~

...

2. APPLICATION TO PERFORM A SENIOR INSURANCE MANAGEMENT FUNCTION

...

2.3 The PRA directs that, subject to 2.4 and 2.5, a *firm* must use Form E for a *senior insurance management approval application* if it is being made in respect of a *person* who has a *current approved person approval* and is either:

- (1) ceasing to perform a PRA senior management function or senior insurance management function and taking up a new *senior insurance management function* for the same *firm* or another member of its *group*; or
- (2) ceasing to perform a *significant influence function* and taking up a *senior insurance management function* for the *firm* or another member of its *group*.

2.4 The PRA directs that a *firm* must not use Form E for a *senior insurance management approval application* if:

- (1) a notification has been or should be made to the PRA or FCA under any of the following:
 - (a) section 63(2A) of FSMA (Duty to notify regulator of grounds for withdrawal of approval);
 - (b) section 64C of FSMA (Requirement for authorised person to notify regulator of disciplinary action);
- (4)(2) a notification has been made or should be made to the PRA under any of the rules in Notifications 11 or to the FCA under any equivalent provisions of the *FCA Handbook*;
- (2)(3) any of the circumstances in 4.2(2)(a)-(d) apply in relation to:
 - (a) any *controlled function* that that *person* is ceasing to perform; or
 - (b) any *controlled function* that that *person* is continuing to perform in relation to that *firm* or a *firm* in the same *group*.

including if any reference in 4.2(2)(a)-(d) to a *senior insurance management function holder* were read as if it included reference to a *PRA senior management function holder*.

...

2.7 The PRA directs that the form submitted for a *senior insurance management approval application* must be accompanied by a ~~scope of responsibilities form~~ statement of responsibilities form or, where a statement of responsibilities form ~~such form~~ has already been provided under Key Function Holder – Notifications 2.2, an updated version of it.

...

4. CEASING TO PERFORM A SENIOR INSURANCE MANAGEMENT FUNCTION

...

4.2

...

(2) Form C is qualified if the information it contains:

...

(c) includes a notification under any of the provisions set out in 2.4(1) or (2); or

...

4A. APPLICATION TO VARY A CONDITIONAL APPROVAL

4A.1 The PRA directs that a firm making an application to the PRA under section 63ZA of FSMA (for the variation of a conditional approval) must do so by submitting

(1) Form I; and

(2) a statement of responsibilities form for the PRA approved person concerned.

4A.2 The PRA directs that a firm withdrawing an application made under section 63ZA of FSMA (Variation of senior manager's approval at request of relevant authorised person) must do so using Form B.

5. CHANGE IN DETAILS RELATING TO SENIOR INSURANCE MANAGEMENT FUNCTION HOLDERS

...

5.3 If a senior insurance management function holder ceases to perform a senior insurance management function for a firm but continues to perform one or more senior insurance management functions for the same firm, the firm must submit a revised statement of responsibilities form for the remaining senior insurance management function(s), along with Form J.

6. PROCEDURE FOR MAKING APPLICATIONS AND NOTIFICATIONS

...

6.3

(1) The PRA directs that, if a firm is required to submit a revised statement of responsibilities under section 62A of FSMA, it must do so by submitting Form J with the revised statement of responsibilities form.

- (2) A firm must not use Form J where the revisions are to be made as part of arrangements involving an application:
- (a) for approval for the person performing the senior insurance management function concerned to perform another senior insurance management function or relevant senior management function for the same firm; or
 - (b) to vary under section 63ZA of FSMA an approval for the person performing the senior insurance management function concerned to perform another senior insurance management function or relevant senior management function for the same firm.

7. FORMS

7.1 ...

- (7) The ~~scope of responsibilities form~~ statement of responsibilities form may be found here.

Annex H
Amendments to the
Senior Insurance Managers Regime – Transitional Provisions Part

In this Annex new text is underlined

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

scope of responsibilities form

has the meaning given in Senior Insurance Managers Regime – Applications and Notifications as at 7 March 2016.

...

Annex I

Large Non-Solvency II Firms – Certification Part

In this Annex, all text is new and is not underlined.

Part

Insurance - Certification

Chapter content

- 1. APPLICATION AND DEFINITION**
- CERTIFICATION FUNCTIONS**
- PERFORMANCE OF CERTIFICATION FUNCTIONS**
- MATERIAL RISK TAKERS**

Links

1. APPLICATION AND DEFINITION

1.1 Unless otherwise stated, this Part applies to:

- (1) a *large non-directive insurer*; and
- (2) a *Swiss general insurer*.

1.2 In this Part, the following definition shall apply:

employee

in relation to a *firm*, includes any *person* within the description set out in section 63E(9) of *FSMA*.

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

- (1) a *PRA approved person*;
- (2) a *person* who performs an *FCA controlled function*; or
- (3) a *non-executive director* in relation to their *non-executive director* function.

2. CERTIFICATION FUNCTIONS

2.1 For the purposes of this Part, the following are *certification functions*:

- (1) a function performed for a *firm* by a *key function holder* at the *firm*;
- (2) a function performed by a *material risk taker* at a *large firm*.

2.2 A function is only a *certification function* to the extent that the function relates to a *regulated activity* carried on by a *firm*.

3. PERFORMANCE OF CERTIFICATION FUNCTIONS

3.1 A *firm* must take reasonable care to ensure that none of its *employees* performs a *certification function* under an arrangement entered into by the *firm* in relation to the carrying on by the *firm* of a *regulated activity*, unless the *employee* has a valid *certificate* issued by the *firm*.

3.2 A *person* does not perform a *certification function* for a *firm* under 2.1 if the *person* is performing any *controlled function* for that firm.

3.3 To the extent that: (1) a *firm* appoints a *person* to perform a function which, but for this rule, would be a *certification function*;

- (2) the appointment solely is to provide cover for a *certification employee* whose absence is reasonably unforeseen; and
- (3) the appointment is for less than four weeks;

such a *person* does not perform a *certification function*.

4. MATERIAL RISK TAKERS

- 4.1 This Chapter applies to a *firm* that falls within 1.1 and is a *large firm*.
- 4.2 A *firm* must identify, in respect of the *firm*, its *employees* who are *material risk takers*.
- 4.3 A *firm* must keep its identification of *material risk takers* pursuant to 4.2 up-to-date.
- 4.4 A *firm* must keep a record of its reasoning for the identification of *material risk takers* pursuant to 4.2.

Annex J

Amendments to the

Large Non-Solvency II Firms – Fitness & Propriety Part

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

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

disciplinary action

~~in relation to a person, means any of the following:~~

- ~~(1) the issuing of a formal written warning;~~
 - ~~(2) the suspension or dismissal of the person; or~~
 - ~~(3) the reduction or recovery of any of the person's remuneration.~~
- has the meaning given in section 64C of FSMA.

...

2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

2.1 A firm must ensure that all persons who perform *key functions or certification functions* are at all times fit and proper persons.

2.2 In deciding whether a person is fit and proper pursuant to 2.1 and, where applicable, section 60A(1) and section 63F of *FSMA*, 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 or certification 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 consider:

- (1) the person's past business conduct; and

- (2) whether the *person* performs his or her *key functions* or *certification functions* in accordance with the relevant *conduct standards* specified in Large Non-Solvency II Firms - Conduct Standards 3.

...

2.5 Before deciding whether a person (P) is fit and proper to be appointed as a *key function holder* or to perform a certification function a *firm* must take reasonable steps to obtain appropriate references covering the past six years from the following:

- (a) each *FCA-authorised person* and *PRA-authorised person* that is, or was:
- (i) P's current or former employer; or
 - (ii) an organisation (not falling within (i)) at which P is currently serving, or has served, as a *key function holder*, *senior insurance management function holder*, other *approved person*, *non-executive director*, *notified non-executive director* or *credit union non-executive director* or performed, or is currently performing, a *certification function*;
- (b) P's other current and former employers; and
- (c) other organisations at which P served as, or is currently, a non-executive director.

...

2.7 If a *firm* previously obtained the information required by 2.4 to 2.6 when it determined that a *key function holder* or a person performing a certification function was fit and proper for the purposes of this Part, and the *firm* engages that person for a continuous period of time, the *firm* is not required to comply with 2.4 to 2.6 again in respect of any subsequent *key function appointments* or arrangements to perform certification functions at the same *firm* within that continuous period.

Annex K

Amendments to the

Large Non-Solvency II Firms - Conduct Standards Part

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

1. APPLICATION AND DEFINITION

1.1 Unless otherwise stated, this Part applies to:

- (1) *a large non-directive insurer;*
- (2) *a Swiss general insurer; and*
- (3) in relation to any of the foregoing *firms*, any *person* who is:
 - (a) a Conduct Rules non-executive director;~~or~~
 - (b) an employee of a firm who is a key function holder;
 - (c) a certification employee (other than a key function holder);
 - (d) who is approved under section 59 of FSMA by either:
 - ~~(a)(i)~~ (i) the PRA; or
 - ~~(b)(ii)~~ (ii) the FCA, in relation to a relevant senior management function;
 - (e) an employee who should have been approved under section 59 of FSMA by either:
 - (i) the PRA; or
 - (ii) the FCA, in relation to a relevant senior management function; or
 - (f) an employee who is performing a function that would have been a controlled function but for Large Non-Solvency II Firms – Senior Insurance Management Functions 2.4.

1.2 In this Part the following definition shall apply:

employee

has the meaning given in Large Non-Solvency II Firms - Certification 1.2.

2. SCOPE OF CONDUCT STANDARDS

2.1 If you are a natural *person* who is:

(1) an employee of a firm who is a key function holder; or

(2) approved under section 59 of FSMA by either:

~~(1)(a)~~ the PRA; or

~~(2)(b)~~ the FCA, in relation to a *relevant senior management function*,

2. you must comply at all times with all of the *conduct standards*.

...

2.1B If you are an employee of a type specified in 1.1(3)(c), (e) or (f) you must comply at all times with the conduct standards specified in 3.1 to 3.3.

2.2 A firm must require:

(1) any person performing a *key function* to observe the *conduct standards* specified in 3.1 to 3.3;

(2) any *key function holder* (other than a *notified non-executive director*) to observe the *conduct standards* specified in 3.4 to 3.8, in addition to complying with (1);
~~and~~

(3) any *notified non-executive director* to observe the *conduct standards* specified in 3.7 and 3.8, in addition to complying with (1); ~~and~~

(4) an employee of a type specified in 1.1(3)(c), (e) or (f) to observe the conduct standards specified in 3.1 to 3.3.

...

Annex L

Amendments to the

Large Non-Solvency II Firms - Senior Insurance Management Functions Part

In this Annex new text is underlined.

...

2. GENERAL

...

2.8 (1) A firm must take all reasonable steps to ensure that before a person begins to perform:

(a) a senior insurance management function; or

(b) new or revised responsibilities in performance of a senior insurance management function

that person is provided with all of the information and materials that the person may reasonably expect in order to perform that senior insurance management function or those new or revised responsibilities effectively and in accordance with the regulatory system.

(2) A firm must:

(a) have a written policy to ensure compliance with (1), including in relation to the systems and controls it uses;

(b) ensure the policy under (a) is complied with; and

(c) maintain adequate records of the steps taken to comply with (1).

...

Annex M

Amendments to the

Large Non-Solvency II Firms – Allocation of Responsibilities Part

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

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

~~governance map~~ management responsibilities map

has the meaning given in 5.1.

SIMR prescribed responsibility

(1) for a firm (other than a Swiss general insurer) means the responsibilities in 3.1;

(2) for a Swiss general insurer means the responsibilities set out in 3.1 to the extent only that they are relevant to the activities of the firm carried on from a branch in the UK.

Swiss general insurer prescribed responsibility

means the responsibilities in 3A.2.

...

2. ALLOCATION OF RESPONSIBILITIES

...

2.3 A Swiss general insurer must allocate each of the SIMR prescribed responsibilities set out in 3.1(1A) to 3.1(1) and each of the Swiss general insurer prescribed responsibilities to one or more persons who, in relation to that firm, are approved under section 59 of FSMA by:

(1) the PRA to perform a senior insurance management function; or

(2) in relation to the relevant senior management function only, the FCA.

2.4 A firm must ensure that any responsibilities allocated to, and that form part of the responsibilities of, a person who performs a senior insurance management function in relation to the firm are consistent with the scope of that senior insurance management function and of any SIMR prescribed responsibilities, FCA responsibilities and other responsibilities allocated to that person.

3. SIMR PRESCRIBED RESPONSIBILITIES

3.1 Each of the responsibilities set out in this rule is an *SIMR prescribed responsibility*:

(1A) responsibility for the firm's performance of its obligations under the senior insurance management regime;

(1B) responsibility for the firm's performance of its obligations under the certification regime;

(1C) responsibility for compliance with the firm's obligations in relation to its management responsibilities map;

(1) responsibility for ensuring that the *firm* has complied with its obligations in Large Non-Solvency II – Fitness and Propriety to:

(a) ensure that every *person* who performs a key function but does not also perform a senior insurance management function or a certification function (including every *person* in respect of whom an application under section 59 of ~~FSMA is made~~) is a fit and proper *person*; and

(b) provide and obtain regulatory references;

...

3A PRESCRIBED RESPONSIBILITIES: SWISS GENERAL INSURERS

3A.1 This Chapter applies only to a Swiss general insurer in respect of the activities of the firm carried on from a branch in the UK.

3A.2 Each of the responsibilities set out in this rule is a Swiss general insurer prescribed responsibility:

(1) responsibility for management of the firm's risk management processes in the UK;

(2) responsibility for the firm's compliance with the UK regulatory system applicable to the firm;

(3) responsibility for the escalation of correspondence from the PRA, FCA and other regulators in respect of the firm to each of the governing body or the management body of the firm and, as appropriate, the firm's parent undertaking and the ultimate parent undertaking of the firm's group; and

(4) responsibility for management of the firm's systems and controls in the UK.

...

5. RECORDS

5.1 A *firm* must have and maintain a ~~governance map~~ management responsibilities map, which is a clear and coherent document or series of documents with the following details:

...

(6) ...

(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;

(7) matters reserved to the governing body (including the terms of reference of its committees) including, in the case of a Swiss general insurer, the equivalent body (or its committees) responsible for the management of the Swiss general insurer's business and activities in the UK.

5.2 A firm must update the ~~governance map~~ management responsibilities map:

...

5.3 A firm must, as soon as reasonably practicable, provide the following to the PRA:

(1) upon request by the PRA, a copy of the ~~governance map~~ management responsibilities map; and

(2) in the event of an update pursuant to 5.2(2), a copy of the relevant part of the ~~governance map~~ management responsibilities map.

5.4 A firm must keep an up-to-date record of the ~~scope of responsibilities form~~ statement of responsibilities of each *key function holder*.

5.5 A ~~scope of responsibilities form~~ statement of responsibilities form, where it is kept and maintained on behalf of a *key function holder*, will satisfy the requirement in 5.4.

...

5.7 Where a firm amends its ~~governance map~~ management responsibilities map to show changes in a *person's* responsibilities it must also ensure that:

(1) the *person* concerned is informed in writing of the changes; and

(2) the record in 5.4 is amended to show the changes.

5.8 Each version of both the ~~governance map~~ management responsibilities map and the record in 5.4 must be retained for a period of six years from the date on which it was superseded by a more up-to-date record, and must be provided to the PRA on request.

...

Annex N
Amendments to the
Large Non-Solvency II Firms – Key Function Holder – Notifications Part

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

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

scope of responsibilities form

means the form to be completed by a firm containing the information referred to in Large Non-Solvency II Firms – Allocations of Responsibilities 5.1(3).

...

2. KEY FUNCTION HOLDER NOTIFICATION

...

2.4 The PRA directs that:

- (1) where the *key function holder* is to be approved by the PRA to perform a *senior insurance management function*, the firm must provide the information referred to in 2.2 to the PRA in whichever Form is required for the *senior insurance management approval application*, pursuant to Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications 2, which must be accompanied by a ~~*scope of responsibilities form*~~ *statement of responsibilities form*; and
- (2) where the *key function holder* is to be approved by the FCA to perform an *FCA controlled function*, the firm is not required to submit a *key function holder notification form* to the PRA to the extent the firm provides the information referred to in 2.2 to the FCA as part of the application to the FCA, with a ~~*scope of responsibilities form*~~ *statement of responsibilities form*.

...

5. TRANSITIONAL ARRANGEMENTS FOR KEY FUNCTION HOLDERS

[deleted]

5.1 This Chapter applies only in relation to a:

- (1) ~~*transitional key function holder*~~, in relation to ~~*key functions held as at the commencement date*~~;

~~(2) grandfathering key function holder, in relation to key functions held as at the commencement date;~~

~~(3) new SIMF applicant; and~~

~~(4) transitional notified non-executive director, in relation to his or her position as a notified non-executive director as at the commencement date.~~

~~5.2 — A firm must provide the information required by Large Non-Solvency II Firms — Fitness and Propriety 4.1 for each transitional key function holder, grandfathering key function holder, new SIMF applicant and transitional notified non-executive director in accordance with 5.3 to 5.6.~~

~~5.3 — In respect of a grandfathering key function holder, the requirement in 5.2 will be satisfied where the firm submits a grandfathering notification in accordance with Large Non-Solvency II Firms — Senior Insurance Managers Regime — Transitional Provisions 2.1, or the update to the grandfathering notification in accordance with Large Non-Solvency II Firms — Senior Insurance Managers Regime — Transitional Provisions 5 (as the case may be), provided that the firm also submits a scope of responsibilities form to the PRA in respect of that grandfathering key function holder by 7 September 2016.~~

~~5.4 — In respect of a new SIMF applicant, the PRA directs that a firm must provide the information referred to in 5.2 to the PRA in whichever form is required for the senior insurance management approval application, pursuant to Large Non-Solvency II Firms — Senior Insurance Managers Regime — Applications and Notifications 2, which must be accompanied by a scope of responsibilities form.~~

~~5.5 — In respect of a transitional notified non-executive director, the requirement in 5.2 will be satisfied where the firm records the transitional notified non-executive director in the firm's governance map on or before the commencement date.~~

~~5.6 — In respect of a transitional key function holder who is not a grandfathering key function holder, a new SIMF applicant or a transitional notified non-executive director, the PRA directs that a firm must provide the information referred to in 5.2 to the PRA by sending the key function holder notification form to the PRA in accordance with 3.3 by 7 September 2016.~~

Annex O

Amendments to the

Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications Part

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

1. APPLICATION AND DEFINITIONS

...

1.2

current approved person approval

means

- (1) an approval granted to a *person* under section 59 of *FSMA* (Approval for particular arrangements):
 - (a) by the *PRA* for the performance of a *PRA senior management function or senior insurance management function*; or
 - (b) by the *FCA* for the performance of a *significant influence function*;
- (2) a deemed approval given by:
 - (a) the *PRA* following the submission of a *grandfathering notification* under:
 - (i) Senior Insurance Managers Regime - Transitional Provisions;
 - (ii) Large Non-Solvency II Firms – Senior Insurance Managers Regime – Transitional Provisions;~~or~~
 - (iii) Non-Solvency II Firms – Senior Insurance Managers Regime – Transitional Provisions; or
 - (iv) Senior Managers Regime – Transitional Provisions; or
 - (b) by the *FCA* under any equivalent rules in the *FCA Handbook*; or
- (3) for the purposes of 2.5(2) and 2.6(1), an approval granted to that *person* under section 59 of *FSMA* by either the *PRA* or the *FCA* to perform a *controlled function* prior to the *commencement date* but which ceased:
 - (a) on or before the *commencement date*; and
 - (b) during the six-month period specified in 2.5(2) and 2.6(1), as the case may be.

...

~~scope of responsibilities form~~

~~means the form to be completed by a firm containing the information referred to in Large Non-Solvency II Firms – Allocations of Responsibilities 5.1(3).~~

2. APPLICATION TO PERFORM A SENIOR INSURANCE MANAGEMENT FUNCTION

...

2.3 The PRA directs that, subject to 2.4 and 2.5, a firm must use Form E for a senior insurance management approval application if it is being made in respect of a person who has a current approved person approval and is either:

- (1) ceasing to perform a PRA senior management function or senior insurance management function and taking up a new senior insurance management function for the same firm or another member of its group; or
- (2) ceasing to perform a significant influence function and taking up a senior insurance management function for the firm or another member of its group.

2.4 The PRA directs that a firm must not use Form E for a senior insurance management approval application if:

- (1) a notification has been or should be made to the PRA or FCA under any of the following:
 - (a) section 63(2A) of FSMA (Duty to notify regulator of grounds for withdrawal of approval);
 - (b) section 64C of FSMA (Requirement for authorised person to notify regulator of disciplinary action);
- ~~(4)~~(2) a notification has been made or should be made to the PRA under any of the rules in Notifications 11 or to the FCA under any equivalent provisions of the FCA Handbook;
- ~~(2)~~(3) any of the circumstances in 4.2(2)(a) to (d) apply in relation to:
 - (a) any controlled function that that person is ceasing to perform; or
 - (b) any controlled function that that person is continuing to perform in relation to that firm or a firm in the same group.

including if any reference in 4.2(2)(a)-(d) to a senior insurance management function holder were read as if it included reference to a PRA senior management function holder.

...

- 2.7 The *PRA* directs that the form submitted for a *senior insurance management approval application* must be accompanied by a ~~*scope of responsibilities form*~~ *statement of responsibilities form* or, where a *statement of responsibilities form* ~~such form~~ has already been provided under Large Non-Solvency II Firms - Key Function Holder – Notifications 2.2, an updated version of it.

...

4. CEASING TO PERFORM A SENIOR INSURANCE MANAGEMENT FUNCTION

...

4.2

...

- (2) Form C is qualified if the information it contains:

...

- (c) includes a notification under any of the provisions set out in 2.4(1) or (2); or

...

4A. APPLICATION TO VARY A CONDITIONAL APPROVAL

- 4A.1 The *PRA* directs that a *firm* making an application to the *PRA* under section 63ZA of *FSMA* (for the variation of a conditional approval) must do so by submitting

- (1) Form I; and

- (2) a *statement of responsibilities form* for the *PRA* approved person concerned.

- 4A.2 A *firm* withdrawing an application made under section 63ZA of *FSMA* (Variation of senior manager's approval at request of relevant authorised person) must do so using Form B.

5. CHANGE IN DETAILS RELATING TO SENIOR INSURANCE MANAGEMENT FUNCTION HOLDERS

...

- 5.3 If a *senior insurance management function holder* ceases to perform a *senior insurance management function* for a *firm* but continues to perform one or more *senior insurance management functions* for the same *firm*, the *firm* must submit a revised *statement of responsibilities form* for the remaining *senior insurance management function(s)*, along with Form J.

6. PROCEDURE FOR MAKING APPLICATIONS AND NOTIFICATIONS

...

6.3

- (1) The PRA directs that, if a firm is required to submit a revised *statement of responsibilities* under section 62A of *FSMA*, it must do so by submitting Form J with the revised *statement of responsibilities form*.
- (2) A firm must not use Form J where the revisions are to be made as part of arrangements involving an application:
 - (a) for approval for the *person performing the senior insurance management function* concerned to perform another *senior insurance management function* or *relevant senior management function* for the same *firm*; or
 - (b) to vary under section 63ZA of *FSMA* an approval for the *person performing the senior insurance management function* concerned to perform another *senior insurance management function* or *relevant senior management function* for the same *firm*.

7. FORMS

7.1 ...

- (7) The ~~*scope of responsibilities form*~~ *statement of responsibilities form* may be found here.

Annex P

Amendments to the

Large Non-Solvency II Firms - Senior Insurance Managers Regime – Transitional Provisions Part

In this Annex new text is underlined

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

scope of responsibilities form

has the meaning given in Senior Insurance Managers Regime – Applications and Notifications as at 7 March 2016.

...

Annex Q

Non-solvency II Firms – Certification Part

In this Annex, all text is new and is not underlined.

Part

Insurance - Certification

Chapter content

3. APPLICATION AND DEFINITION

CERTIFICATION FUNCTIONS

PERFORMANCE OF CERTIFICATION FUNCTIONS

Links

1. APPLICATION AND DEFINITION

1.1 Unless otherwise stated, this Part applies to a *small non-directive insurer*.

1.2 In this Part, the following definition shall apply:

employee

in relation to a *firm*, includes any *person* within the description set out in section 63E(9) of FSMA.

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

- (1) a *PRA approved person*;
- (2) a *person* who performs an *FCA controlled function*; or
- (3) a *non-executive director* in relation to their *non-executive director* function.

2. CERTIFICATION FUNCTIONS

2.1 For the purposes of this Part, the following are *certification functions*:

- (1) a function performed for a *firm* by a member of the *governing body*; and
- (2) a function performed for a *firm* by an *employee* of the *firm* who reports directly to the *governing body*.

2.2 A function is only a *certification function* to the extent that the function relates to a *regulated activity* carried on by a *firm*.

3. PERFORMANCE OF CERTIFICATION FUNCTIONS

3.1 A *firm* must take reasonable care to ensure that none of its *employees* performs a *certification function* under an arrangement entered into by the *firm* in relation to the carrying on by the *firm* of a *regulated activity*, unless the *employee* has a valid *certificate* issued by the *firm*.

3.2 A *person* does not perform a *certification function* for a *firm* under 2.1 if the *person* is performing any *controlled function* for that *firm*.

3.3 To the extent that:

- (1) a *firm* appoints a *person* to perform a function which, but for this rule, would be a *certification function*;
- (2) the appointment solely is to provide cover for a *certification employee* whose absence is reasonably unforeseen; and
- (3) the appointment is for less than four weeks;

such a *person* does not perform a *certification function*.

Annex R
Amendments to the
Non-Solvency II Firms – Fitness & Propriety Part

In this Annex new text is underlined.

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part the following definitions shall apply:

...

disciplinary action

has the meaning given in section 64C of FSMA.

regulatory reference template

means the template found in 6.1.

2. FITNESS AND PROPRIETY ASSESSMENTS BY FIRMS

2.1 A *firm* must ensure that all *persons* who perform a *senior insurance management function* or a *certification function* are fit and proper *persons*.

2.2 In deciding whether a *person* is fit and proper pursuant to 2.1 and, where applicable, section 60A(1) and section 63F of FSMA, 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 *senior insurance management function* or *certification 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 consider the *person's* past business conduct, including whether the *person* performs his or her *senior insurance management functions* or *certification functions* in accordance with the relevant conduct standards specified in Non-Solvency II Firms - Conduct Standards 2.

...

2.4A (1) Before deciding whether a *person* (P) is fit and proper to be appointed as a *senior insurance management function holder* or to perform a *certification function* a *firm* must take reasonable steps to obtain appropriate references covering the past six years from the following:

(a) each FCA-*authorised person* and PRA-*authorised person* that is, or was:

(i) P's current or former employer; or

(ii) an organisation (not falling within (i)) at which P is currently serving, or has served, as a *key function holder*, *senior insurance management function holder*, *other approved person*, *non-executive director*, *notified non-executive director* or *credit union non-executive director* or performed, or is currently performing, a *certification function*;

(b) P's other current and former employers; and

(c) other organisations at which P served as, or is currently, a *non-executive director*.

(2) A *firm* (A) is not required to request references from an employer of P or any organisation referred to in (1)(a) to (c) (such employer or organisation, B) where:

(a) A and B are members of the same *group*; and

(b) there are adequate arrangements in place under which A has access to all information sources to which B has access to the extent necessary were B giving a reference in accordance with this Part.

If A has access to only some of the information in 2.4A(2)(b), A may ask for a reference that only covers the information to which A does not have access. To the extent that A does not request a reference in the circumstances set out in this (2), A must access and obtain the relevant information.

(3) When making a *senior insurance management approval application*, a *firm* must take reasonable steps to obtain references in accordance with (1) and (2):

(a) no later than one month before the end of the application period set out in section 61 of *FSMA*; or

(b) where a request by a *firm* for a reference to an employer or organisation would require the *firm*, the employer, the organisation or any other *person* to make a *mandatory disclosure* prior to P disclosing to its current employer or organisation, as the case may be, that such application has been made, before the end of the application period set out in section 61 of *FSMA*.

2.4B (1) Where a *firm* (A) seeks to obtain a reference pursuant to 2.4A, A must request that the organisation giving the reference (B) discloses all matters of which B is aware that

B reasonably considers to be relevant to the assessment of that *person's* fitness and propriety.

(2) A must also request that, if B is a *full scope regulatory reference firm*, B discloses the information contained in the *regulatory reference template*.

- 2.5 If a *firm* previously obtained the information ~~in~~required by 2.4 to 2.4B when it determined that a *senior insurance management function holder* or a *person performing a certification function* was fit and proper ~~in accordance with~~for the purposes of this Part, and the *firm* engages that *person* for a continuous period of time, the *firm* is not required to comply with 2.4 to 2.4B again in respect of any subsequent appointments at the same *firm* within that continuous period.

...

3. REGULATORY REFERENCES

3.1

...

(3) When giving the reference referred to in 3.1(1), a *firm* must:

(a) use the *regulatory reference template*; and

(b) include all the information set out in the *regulatory reference template*.

(4) A *firm* may make formatting modifications to the *regulatory reference template* when giving a reference under 3.1(1), provided the *regulatory reference template* as modified includes all substantive information required by 3.1(3)(b).

3.1A (1) If:

(a) a *firm* to whom this Part applies (B) has given a reference pursuant to 3.1 to any *PRA authorised person* (A) about any *person* (P); and

(b) either:

(i) B is or has become aware of matters or circumstances that mean that, if B were giving that reference now, this Part would require B to draft it differently; or

(ii) B has reached conclusions of the type described in item (E), or taken *disciplinary action* of the type described in item (F) of the *regulatory reference template*, and had B taken or reached those conclusions or actions in the six year period referred to in the *regulatory reference template*, this Part would require B to draft the reference differently; and

(c) it would be reasonable to consider the differences in (b) to be significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must make reasonable enquiries as to the identity of P's current employer and (subject to (3)) provide A with details of those differences in writing as soon as reasonably practicable.

(2) The obligation to update regulatory references in (1) applies in the following circumstances:

(a) if P is no longer employed by or in the service of B, the obligation to update references in (1) ends six years after P ceased to be employed by, or in the service of B;

(b) if P is no longer employed by or in the service of B and the matters or circumstances are not serious matters, B does not have to disclose something if it did not occur or exist in the six year period ending on the date B gave the original reference. This limitation is additional to that in (2)(a);

(c) if P is still employed by, or in the service of B, (1) applies throughout the period P remains employed by, or in the service of, B.

(3) B is not required to update a regulatory reference given to A if:

(a) A is no longer a full scope regulatory reference firm;

(b) P is no longer employed by, or in the service of, A;

(c) P is not yet employed by, or in the service of A, and it is no longer intended that P will be employed by or serve at A; or

(d) despite making reasonable enquiries under (1), B does not know whether P is still employed by, or in the service of, A.

(4) (1) does not require B to update references provided prior to [DATE].

(5) If a firm (B) has given a reference to another firm (A) under 2.4A in respect of a person (P) no more than six years ago and B asks A if P is still an employee of, or serving at, A, A must answer that question as soon as reasonably possible, even if B does not tell A the reason for the enquiry.

...

3.4 (1) A firm must arrange for orderly records to be kept that are sufficient to enable it to comply with the requirement of this Part in response to any requests for references referred to in this Part in relation to item (E) and item (F) in the regulatory reference template.

(2) A firm does not breach the requirements of this Part by failing to include information in a reference that it would otherwise have to include if:

(4)(a) the reason for the omission is that the firm does not have the necessary records; and

~~(2)(b) neither (1) nor any other~~ requirement of or under the *regulatory system* requires the *firm* to have those records.

...

6. TEMPLATE

6.1 The *regulatory reference template* is the template found here.

Annex S
Amendments to the
Non-solvency II Firms – Conduct Standards Part

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

1. APPLICATION AND DEFINITION

1.1 This Part applies:

(1) to a small non-directive insurer, and

(2) in relation to a small non-directive insurer, to any person who is:

(a) a Conduct Rules non-executive director; or

(b) who is approved under section 59 of FSMA by either:

~~(1)~~ (i) the PRA; or

~~(2)~~ (ii) the FCA, in relation to a relevant senior management function;

(c) a certification employee;

(d) an employee who should have been approved under section 59 of FSMA by either:

(i) the PRA; or

(ii) the FCA, in relation to a relevant senior management function; or

(e) an employee who is performing a function that would have been a controlled function but for Non-Solvency II Firms – Senior Insurance Management Functions 2.3.

1.2 In this Part the following definition shall apply:

employee

has the meaning given in Non-solvency II Firms – Certification 1.2.

1A SCOPE OF CONDUCT STANDARDS

...

1A.3 If you are an employee of a type specified in 1.1(2)(c), 1.1(2)(d) or 1.1(2)(e) you must comply at all times with the conduct standards specified in 2.1 to 2.3.

1A.4 A firm must require:

(1) a natural *person* of a type specified in 1.1(2)(b) to observe all of the *conduct standards*; and

(2) an *employee* of a type specified in 1.1(2)(c), 1.1(2)(d) or 1.1(2)(e) to observe the *conduct standards* specified in 2.1 to 2.3.

...

Annex T

Amendments to the

Non-solvency II Firms – Allocation of Responsibilities Part

In this Annex, new text is underlined.

...

3. PRESCRIBED RESPONSIBILITIES

3.1 Each of the responsibilities set out in this rule is a *small non-directive insurer prescribed responsibility*:

(1A) responsibility for the *firm's* performance of its obligations under the *senior insurance management regime*;

(1B) responsibility for the *firm's* performance of its obligations under the *certification regime*;

- (1) responsibility for providing the *governing body* with an up-to-date business plan and all relevant management information;
- (2) responsibility for management of the *firm's* financial resources;
- (3) responsibility for ensuring the *governing body* is kept informed of its legal and regulatory obligations; and
- (4) responsibility for the oversight of systems and controls, along with risk management policies and procedures, that are proportionate to the nature, scale, and complexity of the risks inherent in the *firm's* business mode.

Annex U

Amendments to the

Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications Part

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

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

current approved person approval

means

(1) an approval granted to a *person* under section 59 of *FSMA* (Approval for particular arrangements):

- (a) by the *PRA* for the performance of a *PRA senior management function or senior insurance management function*; or
- (b) by the *FCA* for the performance of a *significant influence function*;

(2) a deemed approval given by:

(a) the *PRA* following the submission of a *grandfathering notification* under:

- (i) Senior Insurance Managers Regime – Transitional Provisions;
- (ii) Large Non-Solvency II Firms – Senior Insurance Managers Regime – Transitional Provisions;
- (iii) Non-Solvency II Firms – Senior Insurance Managers Regime – Transitional Provisions; or

(iv) Senior Managers Regime – Transitional Provisions; or

(b) by the *FCA* under any equivalent rules in the *FCA Handbook*; or

(3) for the purposes of 2.5(2) and 2.6(1), an approval granted to that *person* under section 59 of *FSMA* by either the *PRA* or the *FCA* to perform a *controlled function* prior to the *commencement date* but which ceased (i) on or before the *commencement date*; and (ii) during the six-month period specified in 2.5(2) and 2.6(1), as the case may be.

...

scope of responsibilities form

~~means the form to be completed by a firm containing the information referred to in Non-Solvency II Firms – Fitness and Propriety 4.1(2).~~

...

2. APPLICATION TO PERFORM A SENIOR INSURANCE MANAGEMENT FUNCTION

...

2.3 The PRA directs that, subject to 2.4 and 2.5, a firm must use Form E for a *senior insurance management approval application* if it is being made in respect of a person who has a *current approved person approval* and is either:

- (1) ceasing to perform a *PRA senior management function or senior insurance management function* and taking up a new *senior insurance management function* for the same firm or another member of its group; or
- (2) ceasing to perform a *significant influence function* and taking up a *senior insurance management function* for the firm or another member of its group.

2.4 The PRA directs that a firm must not use Form E for a *senior insurance management approval application* if:

(1) a notification has been or should be made to the PRA or FCA under any of the following:

- (a) section 63(2A) of FSMA (Duty to notify regulator of grounds for withdrawal of approval);
- (b) section 64C of FSMA (Requirement for authorised person to notify regulator of disciplinary action);

~~(1)~~(2) a notification has been made or should be made to the PRA under any of the rules in Notifications 11 or to the FCA under any equivalent provisions of the *FCA Handbook*;

~~(2)~~(3) any of the circumstances in 4.2(2)(a) to (d) apply in relation to:

- (a) any *controlled function* that that person is ceasing to perform; or
- (b) any *controlled function* that that person is continuing to perform in relation to that firm or a firm in the same group.

including if any reference in 4.2(2)(a)-(d) to a *senior insurance management function holder* were read as if it included reference to a *PRA senior management function holder*.

...

2.7 The PRA directs that the form submitted for a *senior insurance management approval application* must be accompanied by a ~~scope of responsibilities form~~ statement of responsibilities form.

...

4. CEASING TO PERFORM A SENIOR INSURANCE MANAGEMENT FUNCTION

...

4.2

...

(2) Form C is qualified if the information it contains:

...

(c) includes a notification under any of the provisions set out in 2.4(1) or (2); or

...

4A. APPLICATION TO VARY A CONDITIONAL APPROVAL

4A.1 The PRA directs that a firm making an application to the PRA under section 63ZA of FSMA (for the variation of a conditional approval) must do so by submitting

(1) Form I; and

(2) a statement of responsibilities form for the PRA approved person concerned.

4A.2 A firm withdrawing an application made under section 63ZA of FSMA (Variation of senior manager's approval at request of relevant authorised person) must do so using Form B.

5. CHANGE IN DETAILS RELATING TO SENIOR INSURANCE MANAGEMENT FUNCTION HOLDERS

...

5.3 If a senior insurance management function holder ceases to perform a senior insurance management function for a firm but continues to perform one or more senior insurance management functions for the same firm, the firm must submit a revised statement of responsibilities form for the remaining senior insurance management function(s), along with Form J.

6. PROCEDURE FOR MAKING APPLICATIONS AND NOTIFICATIONS

...

6.3

(1) The PRA directs that, if a firm is required to submit a revised statement of responsibilities under section 62A of FSMA, it must do so by submitting Form J with the revised statement of responsibilities form.

- (2) A firm must not use Form J where the revisions are to be made as part of arrangements involving an application:
- (a) for approval for the person performing the senior insurance management function concerned to perform another senior insurance management function or FCA-designated senior management function for the same firm; or
 - (b) to vary under section 63ZA of FSMA an approval for the person performing the senior insurance management function concerned to perform another senior insurance management function or FCA-designated senior management function for the same firm.

7. FORMS

7.1 ...

- (7) The ~~scope of responsibilities form~~ statement of responsibilities form may be found here

Annex V

Amendments to the

Non-Solvency II Firms - Senior Insurance Managers Regime – Transitional Provisions

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

1. APPLICATION

...

1.2 In this Part, the following definitions shall apply:

...

scope of responsibilities form

has the meaning given in Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications as at 7 March 2016.

...

Annex W
Amendment to the
Transitional Measures Part

In this Annex new text is underlined.

1. APPLICATION AND DEFINITIONS

...

1.2 In this Part the following definitions shall apply:

...

Solvency II rules

means the *PRA* rules in the Valuation, Technical Provisions, Own Funds, Solvency Capital Requirement – General Provisions, Solvency Capital Requirement – Standard Formula, Solvency Capital Requirement – Internal Models, Minimum Capital Requirement, Undertakings in Difficulty, Investments, Composites, Conditions Governing Business, Insurance Special Purpose Vehicles, Group Supervision, Reporting, Surplus Funds, With-Profits, Insurance - Certification, Insurance – Conduct Standards, Insurance – Senior Insurance Management Functions, Insurance – Allocation of Responsibilities and Insurance – Fitness and Propriety Parts of the *PRA* Rulebook.

...

Annex X

Amendments to the Notifications Part

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

...

11. CONDUCT RULES – NOTIFICATIONS

11.1 This Chapter applies to every *firm* that is:

- (a) a *CRR firm*;
- (b) a *credit union*; ~~or~~
- (c) a *third country CRR firm* in relation to the activities of its establishment in the UK₂;
- ~~(d) a *UK Solvency II firm*;~~
- ~~(e) in accordance with Insurance General Application 3, the *Society*, as modified by 14;~~
- ~~(f) in accordance with Insurance General Application 3, *managing agents*, as modified by 14;~~
- ~~(g) a *third country branch undertaking*;~~
- ~~(h) a *UK ISPV*; and~~
- ~~(i) a *non-directive insurer*.~~

...

11.4 If a *firm* is required to notify the *PRA* under 11.2 in respect of a *person* performing a *senior management function* or *senior insurance management function*, it must do so within seven business days of the point at which it determined the relevant requirement applied, by submitting:

- (1) if the *firm* is of a type in paragraph 11.1(a), (b) or (c) and the circumstances set out in Senior Managers Regime – Applications and Notifications 5.2 apply, Form C;
- ~~(2) if the *firm* is of a type in paragraph 11.1(d), 11.1(e), 11.1(f), 11.1(g) or 11.1(h) (other than a *Swiss general insurer*) and the circumstances set out in Solvency II Firms - Senior Insurance Managers Regime – Applications and Notifications 4.2(2) apply, Form C;~~
- ~~(3) if the *firm* is a *large non-directive insurer* or a *Swiss general insurer* and the circumstances set out in Large Non-Solvency II Firms - Senior Insurance Managers Regime – Applications and Notifications 4.2(2) apply, Form C;~~

(4) if the *firm* is a *small non-directive insurer* and the circumstances set out in Non-Solvency II Firms - Senior Insurance Managers Regime – Applications and Notifications 4.2(2) apply, Form C;

~~(2)~~ (5) and in all other cases, Form D.

A *firm* must not unreasonably delay its determination of whether or not the requirement applies.

11.5 If a *firm* becomes aware of information which would reasonably be material to the assessment

of the fitness and propriety of a *PRA approved person*, or a *person* in respect of whom an application for approval to perform a *PRA senior management function* or *senior insurance management function* has been made, it must inform the *PRA* on Form D, 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.

...

14. LLOYD'S

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

Annex Y

Amendments to Glossary definitions

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

certification function

- (1) for a CRR firm, a credit union and a third country CRR firm in relation to the activities of its establishment in the UK has the meaning given in Certification 2.2 – 2.4;
- (2) for a UK Solvency II firm, the Society, a managing agent, a third country branch undertaking (other than a Swiss general insurer) and a UK ISPV has the meaning given in Insurance – Certification 2;
- (3) for a large non-directive insurer and a Swiss general insurer has the meaning given in Large Non-Solvency II Firms – Certification 2; and
- (4) for a small non-directive insurer has the meaning given in Non-solvency II Firms – Certification 2.

certification regime

means the requirements of the *regulatory system* which apply to ~~relevant authorised persons~~ persons insofar as they relate to *persons* performing *certification functions* including those set out in Certification, ~~and Fitness and Propriety, Insurance – Certification, Insurance – Fitness and Propriety, Large Non-Solvency II Firms – Certification, Large Non-Solvency II Firms – Fitness and Propriety, Non-Solvency II Firms – Certification and Non-Solvency II Firms – Fitness and Propriety~~ and the corresponding *FCA* requirements in SYSC 5.2 and FIT of the *FCA Handbook*.

full scope regulatory reference firm

means:

...

(9) a large non-directive insurer;

(10) a small non-directive insurer.

material risk taker

means an employee (within the meaning in section 63E(9) of FSMA (certification of employees by relevant authorised persons)) of a firm whose professional activities have a material impact on the firm's risk profile.

relevant senior management function¹

¹ In addition to the proposed changes shown here, the PRA intends to consult in a future CP on further amendments to this definition. The PRA expects to propose in this future CP that the term include all individuals approved by the FCA for a 'governing function' or for the compliance oversight function.

means, for the purposes of section 64A of *FSMA*, ~~any of the following FCA controlled functions~~ and to the extent applicable, pursuant to the *FCA Handbook*, to a *UK Solvency II firm*, the *Society*, a *managing agent*, a *third country branch undertaking* (other than a *Swiss general insurer*), an *ISPV*, a *large non-directive insurer* or a *small non-directive insurer*.

1. CF1 Director function;
2. CF2A Chair of the Nomination committee function;
3. CF2B Chair of the With-Profits committee function;
4. CF3 Chief executive function;
5. CF5 Director of unincorporated association function;
6. CF6 Small friendly society function; and
7. CF10 Compliance oversight function; ;
8. ~~CF28 Systems and control function; and~~
9. ~~CF51 Actuarial conduct function holder in Solvency II third country Insurance undertakings.~~

senior insurance management regime

means the requirements of the regulatory system, to the extent applicable to authorised persons, insofar as they relate to approved persons performing senior insurance management functions and relevant senior management functions, including those set out in Insurance – Allocation of Responsibilities, Insurance – Fitness and Propriety, Insurance – Senior Insurance Management Functions, Large Non-Solvency II Firms – Allocation of Responsibilities, Large Non-Solvency II Firms – Fitness and Propriety, Large Non-Solvency II Firms – Senior Insurance Management Functions, Non-Solvency II Firms – Allocation of Responsibilities, Non-Solvency II Firms – Fitness and Propriety and Non-Solvency II Firms – Senior Insurance Management Functions.

statement of responsibilities

means a statement of the aspects of the affairs of an authorised person for which it is intended that a person is (or will be) responsible including information required under section 60(2A) or section 62A of FSMA.

scope of responsibilities form statement of responsibilities form

(1) for a UK Solvency II firm, the Society, a managing agent, a UK ISPV and a third country branch undertaking (other than a UK-deposit insurer or a Swiss general insurer), means the form to be completed by a firm containing:

- (a) the information referred to in Insurance – Allocations of Responsibilities 5.1(3);

- (b) in respect of Insurance – Applications and Notifications 2.7, 4A.1, 5.3 and 6.3(1), the information required by section 60(2A) of FSMA; and
 - (c) in respect of Insurance – Allocation of Responsibilities 5.5 and for *senior insurance management function holders* only, the information required by section 60(2A) of FSMA.
- (2) for a *large non-directive insurer*, means the form to be completed by a *firm* containing:
 - (a) the information referred to in Large Non-Solvency II Firms – Allocation of Responsibilities 5.1(3);
 - (b) in respect of Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications 2.7, 4A.1, 5.3 and 6.3(1), the information required by section 60(2A) of FSMA; and
 - (c) in respect of Large Non-Solvency II Firms – Allocation of Responsibilities 5.5 and for *senior insurance management function holders* only, the information required by section 60(2A) of FSMA.
- (3) for a *small non-directive insurer*, means the form to be completed by a *firm* containing:
 - (a) the information referred to in Non-Solvency II Firms – Fitness and Propriety 4.1(2); and
 - (b) in respect of Non-Solvency II Firms – Applications and Notifications 2.7, 4A.1, 5.3 and 6.3(1), the information required by section 60(2A) of FSMA.

Appendix 2 - Draft amendments to Supervisory Statement 35/15 'Strengthening individual accountability in insurance'

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1 Introduction

Strike through indicates deleted text, and underlining indicates new text. The amendments are shown against the version of the SS under consultation in CP8/17, which is subject to change following finalisation of the policy.

1.1 This supervisory statement (SS) sets out the approach of the Prudential Regulation Authority (PRA) to strengthening individual accountability in insurance. It is addressed to the following entities, collectively termed 'insurers' in this SS:

- UK Solvency II insurance firms and groups;
- third-country insurance branches within the scope of rules transposing the Solvency II Directive; ~~and~~
- the Society of Lloyd's and managing agents; and
- large non-directive firms (NDFs).¹

1.2 The SS seeks to advance the PRA's safety and soundness and insurance statutory objectives, by setting out the PRA's expectations of how ~~firms-insurers~~ should comply with the regulatory framework of the Senior ~~Insurance Managers~~ & Certification Regime (SIM&CR).

1.3 The PRA has considered matters to which it is required to have regard, and it considers that this statement is compatible with the Regulatory Principles and relevant provisions of the Legislative and Regulatory Reform Act 2006. This statement is not expected to have any direct or indirect discriminatory impact under existing UK law. In particular the statement sets expectations regarding:

- the Senior ~~Insurance Managers~~ Regime (SIMR)²;
- the Certification Regime;
- the application of Conduct Standards and associated notifications; ~~and~~
- assessing fitness and propriety; and
- regulatory references.

1.4 This statement has been subject to public consultation and reflects the responses received by the PRA.³

1 These are insurance firms that are out-of-scope of Solvency II, and have assets relating to all regulated activities, with a value of more than £25 million, as included in the firm's two most recent reported annual accounts.

2 The Senior Insurance Managers Regime (SIMR) is renamed in this SS (updated on xx 2017) as the Senior Managers Regime (SMR).

3 This statement combines draft supervisory statements that were consulted on in CP26/14, 'Senior Insurance Managers Regime: a new regulatory framework for individuals', November 2014; www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2614.aspx; and 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; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp715.aspx.

2 The Senior Insurance Managers Regime (S+MR)

2.1 This chapter sets out the PRA's expectations of how insurers firms, and individuals performing a Senior Insurance Management Function (SIMF) (Senior Insurance Managers) at an insurer, comply with the S+MR. In particular, this chapter clarifies:

- the scope of the S+MR;
- the identification of key functions; ~~and~~
- the allocation of responsibilities to individuals;
- the PRA's expectations regarding the contents of Statements of Responsibilities (SoR) and Management Responsibilities Maps; and
- how the PRA expects to apply Section 66B(5) FSMA (known as the Duty of Responsibility).

2.2 This chapter should be read in conjunction with:

- the relevant parts of the PRA Rulebook namely:
 - Insurance – Senior Insurance Management Functions, Insurance – Allocation of Responsibilities, Conditions Governing Business, and Insurance – Fitness and Propriety for Solvency II firms; and
 - Large Non-Solvency II Firms – Senior Insurance Management Functions, Large Non-Solvency II Firms – Allocation of Responsibilities, Non-Solvency II Firms- Governance, and Large Non-Solvency II Firms – Fitness and Propriety for large NDFs
- the relevant European legislation;
- the Statement of Policy 'Conditions, time limits, and variations of approval';
- the Financial Conduct Authority's (FCA's) rules and guidance on its corresponding SM&CR Approved Persons Regime (APR); and
- SS5/16 'Corporate governance: Board responsibilities' which is a supervisory statement on the PRA's expectations of boards that complements the S+MR's focus on individual accountability.²

1 Please see also the feedback provided in PS22/15, 'Strengthening individual accountability in insurance: responses to CP26/14, CP7/15 and CP13/15', August 2015; www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps2215.aspx.

2 PRA SS5/16, 'Corporate governance: Board responsibilities', March 2016; <http://www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss516.aspx>.

Senior Insurance Management Functions (SIMFs)

2.3 This section sets out the PRA's expectations of how ~~firm~~insurers should comply with, and interpret, the rules ~~on SIMFs~~ in the Insurance – Senior Insurance Management Functions and Large Non-Solvency II Firms – Senior Insurance Management Functions Parts of the Rulebook, which govern the scope of the PRA's SIMR for insurers. These rules specify the set of senior insurance management functions (SIMFs) applicable to insurers. Each of these SIMFs is also a 'senior management function' as defined in s59ZA of FSMA. The acronym SMF is used in this SS for these senior (insurance) management functions.

2.4 In view of the need to establish that an individual with appropriate skills, experience and personal characteristics is responsible for each SIMF, the PRA does not expect persons other than natural persons to be approved for a SIMF.

Criteria for a 'Group Entity Senior Insurance Management Function'

2.5 The definition of a Group Entity Senior Insurance Manager (SIMF 7) for insurers will only encompass those individuals who meet the criteria in section 59ZA of FSMA, and who are also deemed to be in a key function (as defined in the PRA Rulebook). This is likely to include the ~~chairman~~ of the group board, or the chair of a key group board committee where that committee has direct responsibility for oversight of the affairs of the insurer firm. It is also expected to include those Group Executive Directors and Senior ~~Insurance~~ Managers who have responsibility for some aspect of the safety and soundness of the group, or of the PRA regulated insurance firms in the group.

2.6 However, the PRA believes that this definition of a SIMF 7 should not normally encompass Non-Executive Directors (NEDs) in another group company, (other than the ~~chairman~~ of the group board or the chair of a key group board committee (eg Audit Committee) where that committee has direct responsibility for oversight of the affairs of the firm). It should also not normally encompass individuals who are either in a role with a predominately conduct focus, or who are performing relatively junior managerial roles.

2.7 This function should include any individual within the group (eg a group CEO) whose decisions and actions had to be regularly taken into account by the governing body of the firm.

2.8 The PRA expects individuals performing the Group Entity Senior Insurance-Manager role to have regard for the duties of NEDs on the board of a subsidiary through which the Group Entity Senior Insurance Manager is directing business. The board of the subsidiary is expected to provide proper oversight of the subsidiary and has regulatory duties under FSMA and fiduciary duties under the Companies Act 2006 in this respect. This means a Group Entity Senior Insurance Manager may direct elements of the business which form part or all of a subsidiary only to the extent the board agrees to this. In practice this means close liaison between the Group Entity Senior Insurance Manager and the NEDs of the subsidiary including full and transparent passage of information. The PRA will hold the NEDs and the Group Entity Senior Insurance Manager accountable for this collaboration.

2.9 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.

International groups

2.10 The scope of the SIMFs under the SIMR only applies in relation to a firm's UK-regulated activities. This inherently limits the extent to which it can apply to individuals in a firm's parent

or group entities, particularly those based overseas. However, the fact that an individual is located outside the United Kingdom does not, in itself, mean that they ~~he or she~~ cannot perform an SIMF on behalf of a firm.

2.11 The PRA is mindful of both the territorial scope of the SIMR and the governance arrangements of international groups operating in the United Kingdom. Consequently, the PRA does not require pre-approval of senior individuals located overseas whose responsibilities in relation to the United Kingdom are limited to developing the group's overall strategy. The PRA's focus is on those individuals who, irrespective of their location, are directly responsible for implementing the group's strategy at UK firms. The PRA and FCA followed a similar approach under the APR, which resulted in a small number of individuals based overseas being approved as Significant Influence Functions (SIFs) of UK firms.

2.12 Consequently, if an individual located overseas is directly responsible for taking decisions about how a UK firm should conduct its UK-regulated activities and has not delegated this responsibility to a Senior Insurance Manager based in the United Kingdom, it is likely that they ~~he or she~~ will require approval as SIMF 7 (or, in some cases, another SIMF).

2.13 The PRA does not aim or expect to approve individuals as SIMF 7 in every UK firm which is part of an overseas-headquartered group. Whether these entities are required to have any individuals approved as SIMF 7 is assessed on a case-by-case basis. In the first instance, it is up to firms to consider whether there may be any individuals in their parent or group companies, in the United Kingdom or overseas, who may be performing an SIMF 7 on behalf of a firm. In doing so, they should take into account:

- the respective organisational structures of the group and the firm;
- the split of key responsibilities between the group and UK boards and senior management; and
- whether SIMFs based in the United Kingdom have an appropriate level of delegated authority from the group or parent to ensure that the UK entities comply with local regulatory obligations.

Independence requirements

2.14 Articles 258 & 271 of the EU Solvency II Delegated Regulation prevent individuals from performing specific combinations of SIMFs at the same firm, or require certain SIMFs to be performed independently of any other functions or activities of the firm.

2.14A In addition, Insurance – Senior Insurance Management Functions 13 and Large Non-Solvency II Firms – Senior Insurance Management Functions 12 requires that at 'large firms', the Chairman function (SIMF9) ('Chair of the board') and Chief Executive Officer (SIMF1) (CEO) roles must not be combined with a single individual, and that for any insurance firm, within a group, that is a 'large firm' (as defined in the Glossary of the PRA Rulebook), a group executive (ie an employee or officer of the parent company or some other group company who performs an executive function) may not take on a NED oversight SMF role (ie SIMF 9, SIMF10, SIMF11, SIMF12 or SIMF14) for that firm. This means for example that a Group CEO (or CFO) should not take on a NED chairing role for an insurance firm that is a 'large firm' within a group.

2.15 Where neither PRA rules nor the EU Solvency II Delegated Regulation prevent an individual from performing a combination of SIMFs, or of SMFs and other roles, the PRA may still decide not to approve the individual to perform the desired combined functions (and roles) in some circumstances, such as where the PRA considers that:

- there could be a significant conflict of interest from combining the functions or roles (other than on a temporary basis), that would be difficult to manage satisfactorily, such as Chair of the board (or a board committee) and CEO; or
- the individual's qualifications, training, competencies and/or personal characteristics render them fit and proper to perform one function or role but not the other(s).

2.16 The PRA envisages that a person may in certain cases be approved to carry out Controlled Functions (CFs), or CFs and other roles, in more than one firm, subject to the individual having sufficient time and resource, and the ability to address any resulting conflicts of interest, and to the combination of duties not preventing the person from carrying out all their responsibilities in a sound, honest, and objective manner.

2.16A In particular, the chair of a board (or board committee) needs to be able to ensure the board (or board committee) is able to act in the best interests of the firm without undue influence from the group, so as to ensure its safety and soundness and to safeguard its policyholders; and the chair of a board (or board committee) needs to be able to play a pivotal role in facilitating the board culture described in chapter 6 of SS 5/16 "Corporate governance: Board responsibilities".

Sharing a PRA SMF

2.17 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 SMF.

2.18 The PRA expects to see a clear explanation and justification of how the relevant responsibilities are allocated or shared between the individuals responsible for the SMF, along with the reporting lines and lines of responsibility for each individual.

2.19 However, the PRA expects SMFs to be shared between individuals only where appropriate and justified. This individual(s) performing a SMF should be the most senior person(s) responsible for that area of the firm.

2.19A Where two or more individuals share an SMF, each will be deemed fully accountable for all the responsibilities inherent in, or allocated to that SMF. The same approach applies where a firm allocates a PRA prescribed responsibility to two or more individuals performing different SMFs.

Principle of proportionality

2.20 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.

2.21 A third country branch undertaking must have at least one individual approved to perform the Head of Third Country Branch SMF as set out in Insurance — Senior Insurance Management Functions 6 (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 a third country branch undertaking will need to notify the PRA of the identity of key function holders and provide relevant information about them.

2.22 However, if a third country branch undertaking has some individuals who are appointed to either the chief finance officer, chief risk officer, chief actuary, chief underwriting officer, chief operations, or head of internal audit functions, and whose role is dedicated to the undertaking's operations in the UK, then the PRA expects firms to apply for the approval of such individuals for the relevant functions. They may also wish to have some additional individuals approved, so as to be able to meet the requirement to have all the Prescribed Responsibilities, as set out in Insurance - Allocation of Responsibilities 2.3, allocated to an approved person.

Internal audit function

2.22A In accordance with Insurance – Senior Insurance Management Functions 2.7, those Solvency II firms that are not classed as 'significant', and which elect to outsource their internal audit function to a third party, are not required to have an individual approved to perform the Head of Internal Audit function (SIMF5).

2.22B 'Significant' is not defined in the PRA Rulebook for the purpose of applying the above rule, but the factors that may be taken into account in considering whether or not a firm is significant may include for example the potential impact of a firm on the stability of the UK financial system and its capacity to cause disruption to the interests of a substantial number of policyholders.

2.22C Instead of the requirement to have an individual approved to perform the Head of Internal Audit function (SIMF5), insurers that are not 'significant' and which elect to outsource their internal audit function to a third party are required to allocate a new Prescribed Responsibility to one of their non-executive directors who performs a SIMF or an FCA governing function¹ such as the Chair of the Audit Committee (SIMF11) for:

- providing for an effective internal audit function; and
- overseeing the performance of the internal audit function.

Firms in run-off (other than third country branch undertakings) that no longer have regulatory permissions to write new business

2.22D Where a UK Solvency II firm no longer has permissions to write new business (and has not written or acquired any further business in the last twelve months), and has less than £25m technical provisions as reported in its two most recent annual accounts (ie is a 'small run-off firm'), it is only required to comply with a streamlined SIMR as set out in the PRA Rulebook.

2.22E The key differences between this streamlined SIMR for small run-off firms and the full SIMR for Solvency II insurance firms are as follows:

- Small run-off firms are only required by Chapter 6A in the Insurance – Senior Insurance Management Functions part of the PRA Rulebook to have individuals approved to perform (1) either the CEO function (SIMF1) or the Head of Small Run-off Firm function (SIMF26), (2) the Chief Finance function (SIMF2), and, where applicable, (3) the With-Profits Actuary function (SIMF21); rather than the full suite of SIMFs for which individuals are required to be approved for Solvency II insurance firms; and

¹ Definition of this term is in the PRA Rulebook glossary at the following link: www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/67042/23-09-2016.

- there is a smaller set of four PRA Prescribed Responsibilities, as set out in Insurance – Allocation of Responsibilities 3.2, which these firms need to allocate among their S+MFs, or to an FCA CF who is in a ‘relevant senior management function’.

2.22F However, in accordance with Insurance – Fitness and Propriety 4, these firms will still need to appoint key function holders (KFHs) for the four mandatory key functions (ie actuarial, risk management, internal audit, and compliance), ensure that they are fit and proper on an ongoing basis, and notify these individual KFHs to the PRA on appointment with all the information needed for a fit and proper assessment.

2.22G In order to avoid firms moving unexpectedly between the streamlined S+MR and the full S+MR as a result of the size threshold (described in paragraph 2.22D above) no longer being met, the definition of a ‘small run-off firm’ in the PRA rulebook has been written in such a way as to enable the rules for the streamlined regime (once triggered) to continue to apply, as long as the firm does not have permission to effect contracts of insurance, does not write any further new business, and does not acquire any additional business from another insurance firm.

Chief Operations function

2.22H The individual holding the Chief Operations S+MF (SIMF24) should be the most senior individual responsible for managing the internal operations and technology of a firm, and this is expected to include responsibility for the operational continuity and resilience of, the operations, systems and technology of the firm. The latter includes but may not be necessarily limited to the mechanisms and networks that support the operations of a firm, including data entry, data storage, data processing and reporting services, but also monitoring, business and decision support services.

2.22I SIMF24 is the exception to a general expectation that S+MFs can be shared but not split. SIMF24s may be shared or split among two or more individuals provided that the split accurately reflects the relevant firm’s organisational structure and that comprehensive responsibility for operations and technology is not undermined. For instance, where a relevant firm has two distinct but equally senior individuals (eg a Chief Operating Officer and a Chief Information Officer (CIO)) with overall responsibility for its internal operations and technology respectively, it may be appropriate for the SIMF24 to be split among them. Where the SIMF24 is split, the PRA does not expect it to be split among more than three individuals

2.22J The PRA expects that individuals in scope of the proposed Chief Operations S+MF may hold the job title of Chief Operating Officer (‘COO’) but may also hold job titles such as Chief Administrative Officer (‘CAO’) or Head of Operations and Technology (O&T). Not every individual with these job titles will necessarily come into scope of the Chief Operations S+MF; this will be determined by their specific responsibilities. The individual, with the responsibilities for managing the internal operations and technology of a firm, may have a wider set of responsibilities, either within the firm or its group, and a summary of all these responsibilities would be set out in the ‘statement scope of responsibilities’ (SoR) that is maintained for that individual in accordance with Insurance - Allocation of Responsibilities 5 or Large Non-Solvency II Firms – Allocation of Responsibilities 5.

2.22K Where firms have significant levels of operational infrastructure and oversight based either at group level or outside the United Kingdom, it may be appropriate for the Chief Operations S+MF of a firm to sit at group or parent-entity level and/or outside the United Kingdom. Where relevant, the proposed Chief Operations S+MF will also apply to incoming

third-country branches which have an individual performing that function in respect of the activities of the branch.

2.22L Where a firm splits the Chief Operations SIMF among two or more individuals, the responsibilities of each relevant individual should be unambiguously clear and set out in their respective SoR. These responsibilities may include but not necessarily be limited to areas such as:

- business continuity;
- cyber security;
- information technology;
- internal operations;
- operational continuity, resilience and strategy;
- outsourcing, procurement and vendor management; and
- shared services.

2.22M Responsibilities likely to be allocated the SIMF24 may overlap with other Prescribed Responsibilities or FCA functions.¹ As long as accountability for all relevant responsibilities is clear and explicit, firms may allocate them in whichever way best reflects the way they organise themselves in practice.

Key functions

2.23 In accordance with the Conditions Governing Business Part and the EU Solvency II Delegated Regulation, the system of governance of each Solvency II insurance firm and group needs to cover at least the following key functions: risk-management, compliance, internal audit, and actuarial. In addition, all of the SMFs (as defined in the Rulebook) for insurers are considered to be key functions. The system of governance for insurers may also include additional key functions that are of specific importance to the sound and prudent management of the firm, as assessed by the firm or group concerned.

2.24 When assessing whether an additional key function exists, 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 difficult to replace; or
- any failure in the operation or effectiveness of the function may seriously threaten the interests of the insurance firm or group or its policyholders.

¹ SYSC4. Annex 1G.

2.25 The PRA does not consider that key function is intended to be a closed category. In order to facilitate consistency, the PRA suggests that firms may wish to consider whether the following functions would meet the criterion of being of specific importance to the sound and prudent management of the firm, so as to be considered a key function:

- investment function (see 2.27 below);
- claims management function (especially for general or health insurance firms);
- operational systems (and controls) function (if not covered by a Chief Operations SIMF – see 2.22H to 2.22K above);
- IT function (if not covered by a Chief Operations SIMF – see 2.22H to 2.22K above); and
- reinsurance function (if separate from the other key functions, e.g. risk management).

2.26 These are functions whose operation, if not properly managed and overseen, could for some firms, depending on the nature and complexity of the business, potentially lead to significant losses being incurred or to a failure in the ongoing ability of the firm to meet its obligations to policyholders.

2.27 The PRA expects that investment managers and traders, who either oversee or undertake significant, or frequent, investment (or currency) activities on behalf of the firm (or any of its clients or policyholders) would normally be considered to be performing a key function (and/or may be in a certification function – see chapter 2A).

2.28 The PRA would normally expect a key function holder to report into a very senior figure at the firm such as the CEO or possibly some other Senior Manager SIMF holder. In cases where there is more than one head of a function, the PRA anticipates that responsibility for a particular key function might be shared between more than one individual. This would be in a similar way, and subject to similar restrictions, to the sharing of responsibilities by two Senior Managers SIMF holders (see paragraphs 2.17 to 2.19A above).

2.29 In accordance with Insurance – Allocation of Responsibilities 5 and Large Non-Solvency II Firms – Allocation of Responsibilities 5, Solvency II insurance firms and large NDFs should prepare and maintain a management responsibilities governance map. This should show the key functions at the firm, and the relevant individuals (termed key function holders) responsible for these functions, along with their lines of accountability and responsibility both within that firm and any wider group. This management responsibilities governance map should be set out and maintained in a clear and coherent manner.

2.30 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. Within this structure the PRA believes that firms will be able to operate within their intended risk appetite and agreed risk strategy and risk profiles without the need for all executive decisions to be taken to the board. However, it is expected that appropriate oversight of executive decisions will continue to be made by the board as part of its oversight function, promoting a culture of effective risk management.

2.31 Performance of each of the above key functions may be outsourced by Solvency II firms to another undertaking, in accordance with the provisions in the EU Solvency II Regulations, and with guidelines issued by the European Insurance and Occupational Pensions Authority

(EIOPA). However, there also needs to be appropriate oversight of any outsourced functions. The PRA expects the management responsibilities governance map to set out which key functions have been outsourced (in whole or in part), the name of the service provider, and the identity of the key function holder within the firm who has the responsibility for oversight of that function.

2.32 The activity 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 Insurance Management function. As indicated in the EIOPA guidelines on Systems of Governance, it would also include the members of the senior management (such as the CEO) who are responsible for high level decision making, and for implementing the strategies devised, and the policies approved, by the board.

2.33 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 remain accountable for the actions of those to whom they delegate responsibilities, including in particular where firms outsource functions to third parties.

2.34 Third country branch undertakings will also need to establish which are the key functions in respect of the branch’s operations and include at least the four minimum key functions specified in the Directive. The rules in Insurance -Fitness and Propriety 4 will then apply in respect of those key functions. In particular, the relevant individuals responsible for these key functions will need to be notified to the PRA for an assessment of their fit and proper status if they will not directly be in either a PRA SIMF or FCA CF.

Allocation of responsibilities to Senior Insurance-Managers and NEDs

~~2.35 The statutory framework of the SIMR currently contains fewer obligations than the Senior Managers Regime (SMR) for deposit takers and PRA regulated investment firms. In particular, under FSMA, individuals who are subject to pre-approval at insurance firms are not subject to the duty of responsibility [though this will change when the relevant provisions of the Bank of England and Financial Services Act 2016 are commenced for insurers], nor to prospective criminal liability in case of firm failure.~~

2.36 There are a number of responsibilities inherent in the definition of each SIMF in the PRA Rules¹ Insurance – Senior Insurance Management Functions Parts of the Rulebook which should be read in conjunction with the Conditions Governing Business Parts of the Rulebook, ~~and~~ the EU Solvency II Delegated Regulation. Even where a Senior Manager has not been allocated other responsibilities by the firm, the responsibility inherent in the definition of the SIMF establishes that they will be deemed accountable for that aspect of the firm’s activities. For example, if an individual performing SIMF5 has no other responsibilities allocated to them, they will be deemed accountable for all aspects relating to the management of the firm’s internal audit function, including reporting to the board and/or Audit Committee.

2.37 In addition, Insurance - Allocation of Responsibilities 3 and Large Non-Solvency II Firms – Allocation of Responsibilities 3, set out a number of ‘Prescribed Responsibilities’ which cover:

¹ Insurance – Senior Insurance Management Functions, Conditions Governing Business, Large Non-Solvency II Firms – Senior Insurance Management Functions, and Non-Solvency II Firms – Governance, Parts of the PRA Rulebook.

- the firm's implementation and operation of the S+MR;
- the culture and standards within the firm; and
- a number of areas in which the PRA has specific interest as a prudential regulator.

2.37A In particular, it should be noted that the PRA expects insurers to observe high standards in the management of operational as well as financial risks. For example, insurers should have procedures in place to ensure continuity of critical services, such as the payment of claims to policyholders. There is therefore a Prescribed Responsibility in relation to the oversight of compliance with the requirements of the PRA Rulebook in respect of any outsourced operational functions and activities.

2.38 The PRA requires firms to allocate PRA Prescribed Responsibilities to any Senior Insurance Manager or director performing a SIMF specified by the PRA or to a CF specified by the Financial Conduct Authority (FCA) (in SUP 10CA of the FCA Handbook) which is 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.

2.39 Appropriate responsibilities may, where relevant, be allocated to a Group Entity Senior Insurance Manager (SIMF 7). The relevant allocations of responsibilities for each regulated firm will need to be set out clearly in the ~~governance~~ management responsibilities map(s) that are maintained. The PRA still expects any potential conflicts of interest to be addressed properly. In addition, the firm would need to ensure that each individual had the necessary time and resources available so that they could perform their role(s) in a sound, honest, fair, objective and suitably independent manner, as required by the EU Solvency II Delegated Regulation.

2.40 Certain Prescribed Responsibilities can only be assigned to NEDs who are approved to perform an SIMF or an FCA governing function, namely ~~oversight of the:-~~

- oversight of the development and implementation of policies and procedures of the firm's remuneration policies and procedures;
- oversight of the independence, autonomy and effectiveness of the firm's policies and procedures on whistleblowing; and
- providing for an effective internal audit function, and oversight of the performance of that function, for firms that are not significant and have outsourced that function externally.

Scope Statements of responsibilities for NEDs

2.41 The PRA recognises that NEDs in scope of the S+MR do not manage a firm's business in the same way as executive SIMFs and therefore the responsibilities for which they are accountable are more limited.

2.42 Those NEDs who are subject to pre-approval by the PRA or the FCA are neither required nor expected to assume executive responsibilities, but are expected to take on certain responsibilities (set out in Appendix 1) all of which are non-executive in nature and are either inherent in or derive from their Chair or Senior Independent Director (SID) roles.

2.43 The potential accountability of NEDs in scope of the S+MR is restricted to those activities for which they are responsible, which include (but are not limited to):

- 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; and
- devote sufficient time and attention to matters within their remit which are relevant to the firm's safety and soundness;
- helping to ensure that the board or committee and its members have the information necessary to perform their tasks;
- facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions; and
- reporting to the main board on the committee's activities.

2.44 The role of the Chairman of the board and of the board committees is integral to a firm's safety and soundness. Consequently, the PRA expects Chairmen to:

- seek proactively to remain appraised of matters relating to the board and its individual committees by, for instance, having regular discussions with the Chairs of the Audit, Remuneration and Risk Committees outside board meetings; and
- 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 to the firm under the SIMR. The PRA may consider using its powers to impose conditions on approval to time limit a Chair's ability to take on additional external commitments where it considers that doing so may advance its objectives.¹

2.45 As discussed in Chapter 4, firms must assess the fitness and propriety of those NEDs which are not in scope of the SMR (Notified NEDs) periodically and comply with certain notification requirements to the PRA. The PRA expects the responsibility for the firm's performance of its obligations in respect of its Notified NEDs under Insurance - Fitness and Propriety 2.1, and Large Non-Solvency II Firms – Fitness and Propriety 2.1, to be allocated to the Chair of the board (ie the SIMF9 Chairman function).

2.46 Insurance - Senior Insurance Management Functions 4.5 and Large Non-Solvency II Firms – Senior Insurance Management Functions 4.5 specifies a SID (SIMF 14), which it defines as the function of having responsibility for leading the assessment of the performance of the person performing the Chairman function. Where a firm has a SID, the PRA expects their his or her assessment of the Chairman of the board to consider, among other things:

- the extent to which the Chairman has fulfilled their his or her responsibilities under the SIMR; and
- the quality and sufficiency of resources allocated to the Chair of the boardman's office.

¹ See Appendix 3 of this CP, draft amendments to Statement of Policy, 'The Prudential Regulation Authority's policy on conditions, time limits and variations of approval'.

Individual accountability and collective decision-making by boards

2.47 The PRA views the SMR and its application as consistent with the principle of collective decision-making. The SMR co-exists with the statutory and fiduciary duties of directors under UK company law and domestic and international corporate governance standards. The SMR clarifies and formalises the individual responsibilities which NEDs in scope of the SMR should already have in practice.

2.48 The PRA considers it vital that the board as a whole understands the Threshold Conditions, Fundamental Rules and more detailed underlying rules in the PRA Rulebook. Boards should establish within their firms a culture that supports adherence to the spirit and letter of these requirements.

2.49 As part of its ongoing supervision of firms' governance, the PRA assesses the overall composition and effectiveness of boards. Moreover the PRA expects firms to discuss succession planning and proposed changes to their board with supervisors irrespective of whether the proposed change relates to a function in scope of the SMR or not.

Sharing Prescribed Responsibilities

2.50 PRA Prescribed Responsibilities can be allocated to more than one Senior Manager. However, where a firm allocates a PRA Prescribed Responsibility to more than one Senior Manager, each of those individuals will be deemed fully accountable for that responsibility. PRA Prescribed Responsibilities can therefore be shared, but not split among two or more SMFs.

2.51 Where a PRA Prescribed Responsibility is shared among more than one Senior Manager, the PRA expects the responsibility to be recorded identically in each of the Senior Manager's Statement of Responsibility (SoR). However, firms are expected to utilise the free text section in the SoRs to provide additional details on how a given shared Prescribed Responsibility applies to the different individuals sharing it in practice. For example, the Prescribed Responsibility in Insurance - Allocation of Responsibilities 3.1(4) (responsibility for the production and integrity of the firm's financial information and its regulatory reporting under the regulatory system) is often shared among two SMFs, typically the Chief Finance (SIMF2) and Chief Risk (SIMF4) functions. Where this is the case, firms should utilise the free text in SoRs to specify and, where appropriate, list the financial and regulatory returns that each SMF is responsible for.

2.52 Similarly, where one or more individuals share the Prescribed Responsibility for the firm's performance of its obligations in respect of outsourced operational functions and activities, firms may wish to provide details on which key outsourced relevant services and activities each individual is responsible for overseeing in their respective SoRs.

2.53 An example of the interplay between the principles of appropriate individual accountability, which lies at the heart of the SMR, and collective decision-making, can be found in the two Prescribed Responsibilities in Insurance - Allocation of Responsibilities 3.1 and Large Non-Solvency II Firms – Allocation of Responsibilities 3.1 relating to culture.

2.54 These Prescribed Responsibilities reflect the expectation set out in the PRA's approach documents that firms should have a culture that supports their prudent management and

builds on the idea that boards and management of regulated firms should embed the principle of safety and soundness in the culture of the whole organisation.¹

2.55 While the PRA acknowledges that a firm's culture is a collective matter for the board (as noted in the Financial Reporting Council (FRC) Code), these responsibilities seek to ensure that the CEO and Chair of the board assume a leading role in the development and implementation of firms' culture.

2.56 Large UK-headquartered groups comprising multiple firms may wish to allocate the two Prescribed Responsibilities relating to culture to the group CEO and Chair of the group board, as opposed to the CEOs and Chairs of the boards of the individual legal entities, for instance, where culture is a matter reserved for the group board. They are not, however, required or expected to do so. In this situation, it may be appropriate for the group CEO and Chair of the group board to be approved as Group Entity Senior Insurance Managers (SIMF7) of each of the firms in the group.

Statements of Responsibilities and Management Responsibilities Maps

Purpose of Statements of Responsibilities and Management Responsibilities Maps

2.57 In this SS, the record of the statement of the aspects of the affairs of a firm, for which it is intended that an individual is (or will be) responsible, and that is maintained by insurers for key function holders (including Senior Managers) under Insurance – Allocation of Responsibilities 5.4 and Large Non-Solvency II Firms – Allocation of Responsibilities 5.4, is referred to as a 'Statement of responsibilities' (SoR). For Senior Managers, this SoR should include the statutory SoR that is prepared by firms for the purpose of s60(2A) or s62A of FSMA.

2.58 SoRs and Management Responsibilities Maps (MRMs) should promote clarity and transparency on the individual responsibilities of each key function holder (including Senior Managers) and a firm's (and, where relevant, group's) management and governance arrangements.

2.59 SoRs and MRMs serve a variety of purposes. In particular, they provide for a more targeted assessment of the fitness and propriety of prospective and incumbent Senior Managers and key function holders by allowing their competence, knowledge, experience, qualifications, training and, where relevant, proposed time commitment, to be measured against the responsibilities they have been allocated.

2.60 SoRs and MRMs should not be regarded simply as regulatory returns, but should be seen as valuable components of a firm's internal corporate governance documentation and processes. As such, the PRA expects SoRs and MRMs to be used by firms to aid the clarification, documentation, embedding, and review of their internal corporate governance arrangements.

2.61 Examples of internal governance processes where SoRs and MRMs should be used include but are not limited to:

- succession planning and the induction of new SMFs and other key function holders;

1 'The Prudential Regulation Authority's approach to insurance supervision', paragraph 82;
<http://www.bankofengland.co.uk/publications/Pages/other/pr/supervisoryapproach.aspx>.

- the ongoing learning and development of incumbent key function holders and, where appropriate, Certified employees; and
- the periodic monitoring and assessment of the effectiveness of governance arrangements which firms are required to carry out under Conditions Governing Business 2.

2.62 SoRs and MRMs can help identify the Senior Manager or key function holder responsible for an area if things go wrong. However, as stated in the PRA approach documents “the PRA’s preference is to use its statutory powers to secure ex ante, remedial action”.¹

2.63 To ensure adherence to the letter and spirit of the relevant statutory and regulatory requirements on SoRs and MRMs, firms should ensure that they are drafted in a clear and complete way with a consistent structure, and an appropriate and proportionate level of detail.

2.64 Indicators that firms should consider when evaluating the quality and effectiveness of their SoRs and MRM include, but are not limited to:

- the extent to which a firm’s SoRs and MRM are embedded and utilised in internal governance processes and how valuable internal stakeholders find them in practice; and
- the outcome of relevant Internal Audit reviews.

Statements of Responsibilities

Completeness

2.65 As sections 60(2A-2B) of FSMA state, SoRs must set out the areas of a firm’s regulated activities that each Senior Manager is responsible for.

2.66 The Insurance - Allocation of Responsibilities and Large Non-Solvency II Firms – Allocation of Responsibilities Parts of the PRA Rulebook list a series of Prescribed Responsibilities which firms must allocate among their Senior Managers.

2.67 Although Prescribed Responsibilities are a pivotal feature of the PRA’s SMR insofar as they represent areas which the PRA, as a prudential regulator, is specifically interested in, SoRs should comprise more than a tick-box allocation of Prescribed Responsibilities, especially for large, complex firms. Firms should utilise section 3.2.2 of the SoR template to provide additional clarifications, details, and explanations of the Prescribed Responsibilities they have allocated where it would be necessary, or helpful, in understanding what the Senior Manager’s responsibilities are.

2.68 Moreover, SoRs should indicate whether a Senior Manager or key function holder has:

- overall responsibility for any business areas, activities, or management functions of the firm not otherwise covered under the Prescribed Responsibilities (‘Overall Responsibility’). Annex 1G of SYSC 4 in the FCA Handbook lists a number of indicative, non-exhaustive areas, activities and functions to assist firms with this task. Overall Responsibilities should be set out in section 3.3 of the SoR template; and

1 ‘The Prudential Regulation Authority’s approach to insurance supervision’ (paragraph 106): www.bankofengland.co.uk/publications/Pages/other/prasupervisoryapproach.aspx.

- additional responsibilities not covered under the Prescribed or Overall Responsibilities, which should be set out in section 3.4 of the template ('Additional Responsibilities'). Typically, such Additional Responsibilities will entail managing or overseeing material actions, deliverables and projects which are specific to a firm and/or key function holder.

2.69 Firms are free to assign to a Senior Manager or key function holder, and include in their Statements of Responsibilities (SoR), additional responsibilities not covered in the PRA's rules. Additional responsibilities must not, however, modify or qualify any responsibilities prescribed by the PRA.

2.70 Unlike Overall Responsibilities, which often describe permanent areas, activities, or management functions in a firm, Additional Responsibilities may often have a defined agreed or expected completion date. Examples include:

- material change management or transformation projects, including, but not limited to, a significant overhaul of a firm's IT systems, the management of aspects relating to a complex acquisition or the authorisation of a new significant entity;
- material remediation actions resulting from supervisory discussions, supervisory reviews, such as a skilled persons review under section 166 of FSMA, or enforcement action;
- responsibilities which other PRA rules or SSs require or expect firms to allocate to a Senior Manager or key function holder;
- responsibilities (other than Prescribed Responsibilities) assumed on an interim basis. For instance, where an individual has been given a time-limited approval or temporarily expanded their remit to provide cover for an unforeseen departure; and/or
- in deciding whether to include a given deliverable or task as an Additional Responsibility in the SoR of a Senior Manager or key function holder, firms should take into account the expected duration and materiality of the deliverable or task. It follows that not every project a key function holder is responsible for should be listed in their SoR, only those meeting a minimum level of prudential or strategic significance for the firm and with a minimum expected duration.
 - In the first instance, it is the responsibility of firms to assess whether a deliverable is material enough to warrant inclusion in a given SoR. However, the PRA generally expects the following deliverables and tasks to be reflected in relevant SoRs:
 - actions linked to a change of control or significant restructuring, such as a major acquisition, corporate reorganisation, divestment, flotation, or Part VII transfer of business;
 - material or urgent actions requested in a Periodic Summary Meeting (PSM) letter;
 - material or urgent actions recommended or required following a deep-dive by the PRA or FCA, a Skilled Persons Review under Section 166 of FSMA, or an internal review by the firm;

- material or urgent actions in response to or following enforcement by the PRA, FCA or other regulators;
- The PRA expects firms to ‘cleanse’ SoRs periodically or whenever any that are Additional Responsibilities are either deemed satisfactorily completed by the firm and the PRA or become less significant.

2.71 While the SoRs of individuals performing the same SMF across different firms will be inevitably similar to some extent, the PRA expects SoRs (and MRMs) to reflect how the business model, complexity, risk profile and size of each firm affect each key function holder’s responsibilities.

2.72 SoRs that read like generic job descriptions and do not reflect firm-specific circumstances, priorities, and projects are not consistent with the spirit of the SMR.

2.73 SoRs, in particular, responsibilities included in the Other Responsibilities section, also provide a common vehicle to document actions and undertakings which, in the past, may have been recorded in ad-hoc attestations. While SoRs may not be appropriate to document certain types of attestation, such as those which are backward-looking or not capable of being allocated to individual key function holders, they provide a vehicle to consolidate and rationalise other attestations.

Clarity and level of detail

2.74 Firms should include free text in SoRs to clarify and elaborate on the responsibilities of key function holders and Senior Managers.

2.75 However, free text in a SoR should not unduly complicate, dilute, or undermine the clarity of the individual’s responsibilities.

2.76 The aim of this text should be to clarify, describe, and develop the responsibilities of the relevant individual by, for instance:

- if a responsibility is shared, explaining how it applies to the different individuals sharing it in practice; and
- breaking down certain responsibilities into key component tasks. While the PRA does not expect firms to list every task relating to every responsibility, some description of the tasks is expected, particularly for certain Prescribed Responsibilities, which sometimes provide a high-level description of an area likely to comprise multiple underlying key deliverables.

2.77 To avoid the risk of SoRs becoming unduly complex, heavily caveated or unclear, the PRA has suggested in the Statement of Responsibilities template, a 300 word limit as a guide to the amount of free text that firms should use to describe each responsibility which they allocate to a Senior Manager (Prescribed, Overall and/or Additional). The PRA considers that 300 words should be sufficient for firms to provide an appropriate level of detail on each responsibility they allocate. However, save for smaller, less complex firms, it is equally likely that text significantly below the suggested 300 words will fall below the level of detail necessary to appropriately facilitate supervisory interactions.

2.78 Moreover, the PRA recognises that larger firms commonly have more complex governance arrangements, particularly if they are part of a group. There may be situations where a firm legitimately needs to exceed the suggested 300 word limit for one, some, or all responsibilities of Senior Managers or key function holders. As long as the information is clear, relevant and useful to facilitate supervisory interactions, the PRA will not discourage firms from exceeding the suggested 300 word limit.

2.79 However, the PRA also expects firms to avoid superfluous or unnecessary text in SoRs. The aim of free text in SoRs should be to elaborate on the areas which an individual is responsible for, rather than on how that individual discharges their responsibilities or the generic competencies and skills required to perform that particular key function or SMF. This information can, nonetheless, be useful in other contexts, such as the PRA's initial assessment of the individual's fitness and propriety, and firms are encouraged to include it in supporting documentation such as role profiles.

2.80 The responsibilities of key function holders, including Senior Managers, must be set out in their SoRs and the firm's MRM, which are the mandatory, standard documents required by FSMA and/or the PRA Rulebook.

2.81 However, the PRA does not forbid or discourage firms from also including information about a key function holder's responsibilities in non-mandatory, internal, supporting documents, such as role profiles, if they elect to do so, as long as this does not lead to the omission of such information from the SoR and MRM.

2.82 In addition, role profiles and similar documents can provide valuable information in an accessible format about a key function holder beyond what must be included in SoRs and MRMs, such as a:

- description of the key competencies, experience and expertise requirements of the role;
- lists of key direct reports; and/or
- committees below board level which the individual chairs or is a member of.

Consistency

2.83 The PRA expects firms to take reasonable steps to ensure that the information they include in the SoRs of different key function holders, including Senior Managers, is as consistent as possible in terms of clarity, style, and level of detail particularly when dealing with SoRs of Senior Managers or key function holders with similar roles and levels of responsibility.

2.84 The PRA acknowledges that there will be some variation in the level of detail of some SoRs within a firm. For instance, the PRA expects the SoRs of Heads of Key Business Areas (SIMF6s) and Group Entity Senior Insurance Managers (SIMF7s), which may apply to individuals performing a diverse range of roles and influencing the firm in different ways, to contain fewer or, in some cases, no Prescribed Responsibilities. Conversely, the PRA expects the amount of free text in the SoRs of SIMF6s and SIMF7s to be greater than in the SoRs of other SMFs as there are likely to be very few, if any, commonalities or recurring responsibilities between SIMF6s and SIMF7s in different firms.

2.85 Likewise, the PRA expects the SoRs of NEDs in scope of the SMR to be less extensive than those of executive Senior Managers. Nonetheless, it is important that the SoRs of NEDs in scope of the SMR provide at least some detail. Merely stating that an SIMF10-13 is responsible for chairing a given board committee in accordance with its terms of reference is unlikely to provide an appropriate level of detail in many cases. The SoRs of non-executive SMFs should

go into a somewhat greater level of detail and break down the chairmanship of these key committees into more granular key tasks (without allocating executive or quasi-executive responsibilities to the relevant NEDs). Examples of additional detail which firms would be expected to include, if applicable, in the SoRs of NEDs in scope of the SMR may include but are not limited to:

- the SID's (SIMF14) responsibility for leading the board (and/or Nominations Committee) in implementing an orderly succession plan for the Chair of the board; and
- the Chair of the Remuneration Committee's responsibility for ensuring that the Committee discusses and approves buy-outs of variable remuneration (for new hires) and termination packages (for outgoing employees) in specific, pre-determined circumstances, such as when they exceed a certain amount.

Updating a Statement of Responsibilities

2.86 Section 62A of FSMA requires firms to submit a revised Statement of Responsibilities whenever there is a significant change in the aspects of the authorised person's affairs which the person is responsible for managing in performing the function.

2.87 In determining whether a change to a Senior Manager's role and responsibilities is significant, the PRA expects firms to consider all relevant factors, including but not limited to:

- the importance to the firm of the responsibilities being given up or taken on;
- whether the change alters the seniority of the Senior Manager in the firm or group;
- whether there are any changes to the identity, number, or seniority of individuals reporting to the Senior Manager; and
- whether there are any changes to the skills, experience, or knowledge required by the Senior Manager.

2.88 Whether a significant change has taken place will be determined on a case-by-case basis. However, the list below sets out non-exhaustive examples of potential significant changes which, in the PRA's view, may require the submission of a revised Statement of Responsibilities:

- a variation of the individual's approval, either at the firm's, the PRA's, or the FCA's initiative, resulting in the imposition of a condition or time limit;
- fulfilling or failing to fulfil a condition on approval imposed by the PRA or FCA;
- sharing or ceasing to share an SMF originally performed by one individual among two or more individuals; and
- the addition, reallocation, or removal of any of the following:
 - a PRA or FCA Prescribed Responsibility;
 - responsibility for a function under SYSC 4.7.8R of the FCA Handbook (FCA Overall Responsibility); or
 - any additional responsibility not covered above.

Management Responsibilities Maps (MRM)

2.89 Firms are required by Insurance - Allocation of Responsibilities 5.1 and Large Non-Solvency II Firms – Allocation of Responsibilities 5.1 to develop and maintain an MRM. The purpose of an MRM is to consolidate information on a firm’s management and governance arrangements into an accessible, clear and comprehensive single source of reference. In this sense, an MRM can be described as the governance equivalent of a business plan or an ORSA document.

2.90 Insurance - Allocation of Responsibilities 5 and Large Non-Solvency II Firms – Allocation of Responsibilities 5 sets out the information that a firm’s MRM must include. In particular, firms are required to ensure that the MRM includes:

- aggregate information on the allocation of responsibilities to key function holders as set out in their individual, respective SoRs. Note, however, that it is not necessary for the MRM to duplicate or restate all the information in each SoR;
- the rationale for any shared or divided responsibilities and details of how each of the individuals responsible is expected to discharge the shared responsibility in practice (without prejudice to the expectations in paragraphs 2.50 to 2.56 above);
- matters reserved for the board and the terms of reference of the key board committees, including their structures, membership, remit, interaction with other committees in the firm and, if applicable, the group;
- reporting lines of key function holders to individuals and committees in the firm and, if applicable, the group, including those located overseas; and
- where firms are part of a larger group, the interaction of a firm’s governance arrangements with group governance arrangements (for example, in areas such as internal codes of conduct and remuneration policies), including the extent to which the firm’s management and governance arrangements are provided by, or shared with, other group entities.

2.91 There is no template for MRMs and it is up to firms to develop and maintain an MRM that is appropriate for and accurately reflects the structure, size and complexity of the firm including, where applicable, group governance arrangements.

2.92 Firms should determine the most effective method of clearly communicating the required information in the MRM. This is likely to include a combination of text and visual aides, such as organograms, group structure diagrams or organisation charts. Irrespective of how a firm chooses to present the required information, firms should ensure that the information presented in the MRM is clear, complete and meets the requirements in Insurance - Allocation of Responsibilities and Large Non-Solvency II Firms – Allocation of Responsibilities.

2.93 A firm’s MRM should include sufficient information to be able to form a clear understanding of how the management and governance arrangements of the firm work. The PRA would normally expect to see that:

- there is an effective and clear governance framework in place, with clear reporting lines of accountability;
- there is no ambiguity over exactly who is carrying out the different areas of work and who is responsible for them;
- there are no obvious gaps in the responsibilities allocated to individual senior managers and other key function holders;

- it is clear where critical decisions and judgments are being made, where individuals making these decisions should be accountable;
- it is clear from the SoRs (in the MRM) that individuals are expected to observe relevant conduct standards applicable to them; and
- responsibility for the review and oversight of any outsourced activities is clearly and suitably allocated.

The Duty of Responsibility under the SMR

2.94 This section sets out how the PRA will apply section 66B(5) of FSMA (also referred to as 'the Duty of Responsibility') in practice.

2.95 The PRA will consider the specific facts of each situation which may fall within the Duty of Responsibility and will act as it considers appropriate in light of those facts. Consequently, this statement does not establish minimum standards or safe-harbours. The expectations and examples below are indicative, non-binding and non-exhaustive and there may be other considerations, not listed, that are relevant.

Statutory framework

2.96 For the purposes of disciplinary action by the PRA under section 66B of FSMA, a person is guilty of misconduct if any of three conditions are met. One of these arises from the Duty of Responsibility. It states that a person will be guilty of misconduct if the PRA finds that all of the following four criteria are met:

- the person is or was a Senior Manager in a PRA-authorized firm;
- there has been or continues to be a contravention of a 'Relevant Requirement' (as defined in section 66B(4) of FSMA) by the firm;
- the Senior Manager was, at the relevant time, responsible for the management of any of the firm's activities in relation to which the contravention occurred; and
- the Senior Manager did not take such steps as a person in the Senior Manager's position could reasonably be expected to take to avoid the contravention occurring (or continuing).

2.97 The Senior Manager will not be guilty of misconduct under section 66B(5) if the PRA finds that they had taken such steps as a person in their position could reasonably be expected to take to avoid the contravention occurring (or continuing) ('Reasonable Steps criterion').

2.98 The PRA may take disciplinary action under section 66 of FSMA where it appears to the PRA that the person is guilty of misconduct and the PRA is satisfied that it is appropriate in all the circumstances to take action against them.

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

2.100 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 contravention of a Relevant Requirement by the firm. This SS does not explicitly consider these two potential grounds for misconduct. However, in respect of any individual situation, the PRA may consider whether the individual is guilty of misconduct by any of sections 66B(2), (3) or (5), solely or in combination. The PRA will consider each situation on its facts. 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 as under the Duty of Responsibility.

2.101 There is no distinction made in FSMA between executive and non-executive Senior Managers in relation to the Duty of Responsibility. However, the PRA's ability to apply the Duty of Responsibility hinges on the scope of that responsibility in the first place and the PRA recognises that the responsibilities of NEDs in scope of the SMR are usually more limited than for executive management. These differences should be recognised in their respective SoRs.

2.102 The Duty 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 Duty of Responsibility

2.103 The Duty of Responsibility arises where all the elements in section 66B(5) of FSMA are met.

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

2.105 The second element is that there has been, or continues to be, a contravention of a Relevant Requirement by the firm. The contravention does not need to be material or significant and in taking disciplinary action under section 66 of FSMA, the PRA must be satisfied that it is appropriate in all the circumstances to take action against the person, and such circumstances may include the nature and seriousness of the contravention.

2.106 The third element is that the Senior Manager was, at the relevant time, responsible for the management of any of the firm's activities in relation to which the contravention occurred.

2.107 Depending on the nature and extent of the firm's breach, and the scope of the individual Senior Manager's 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 Duty of Responsibility.

2.108 Whether a Senior Manager is or is not responsible for managing any of the firm's relevant activities will be a question of fact. SoRs and Management 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 criterion

2.109 The PRA can only take action under section 66 of FSMA if it appears to the PRA that a Senior Manager is guilty of misconduct and the PRA is satisfied that it is appropriate in all the circumstances to take action against the Senior Manager. A person will not be guilty of misconduct under the Duty of Responsibility if they have taken such steps as a person in their position could reasonably be expected to take to avoid the contravention occurring (or continuing).

2.110 The individual will be able to submit evidence and make representations on this point. The PRA would normally expect to engage in dialogue with the individual prior to issuing an initial Decision Notice.

2.111 Section 66B(5)(d) 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 to avoid the contravention

occurring (or continuing). The PRA's expectations of the steps in 'b)' will necessarily depend on the 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 their 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 they 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 the Senior Manager was operating at the time. For example, the PRA may consider whether the way in which they prioritised matters was informed by an appropriate risk assessment and how they responded to new developments.

2.112 In relation to 'a)' and the steps that a Senior Manager actually took to avoid the contravention occurring or continuing, examples of the steps that might be considered to be reasonable actions, depending on the circumstances, could include:

- pre-emptive actions to prevent a breach occurring, including any initial reviews of the business or business area on taking up a Senior Management function;
- implementing, policing and reviewing appropriate policies and procedures;
- 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, any response taken 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.

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

- board and board committee minutes;
- minutes of other internal meetings;
- SoRs and Management Responsibilities Maps;
- organisation charts and information on reporting lines;
- any other internal materials, for example, emails or telephone recordings; and
- regulatory correspondence and interviews.

~~2.49 The duty of responsibility in section 66B(5) of FSMA currently only applies to Relevant Authorised Persons¹ and therefore does not cover individuals in insurance firms [though this will change when the relevant provisions of the Bank of England and Financial Services Act 2016 are commenced for insurers]. However, NEDs who are performing an SIMF or an FCA governing function in insurance firms can be held individually accountable if they have:~~

- ~~• failed to comply with rules made by the PRA under section 64A of FSMA (including the rules in Insurance Conduct Standards); or~~
- ~~• been knowingly concerned in a contravention of a relevant requirement by a PRA authorised person.~~

1 Defined in s. 71A of FSMA.

2A The PRA's Certification Regime

2A.1 This chapter sets out the PRA's expectations of how firms should act when deciding which roles are 'certification functions' (as defined in the Glossary of the PRA Rulebook) requiring a certificate to be issued by the firm to the person performing the function. It should be read alongside the Insurance - Certification, and Insurance - Fitness and Propriety Parts of the Rulebook¹, and the provisions of Part V of FSMA, together with Article 275 of the EU Delegated Regulation ('Remuneration Requirements').

Relationship between the Certification Regime and the Remuneration Requirements

2A.2 The PRA has specified certification functions to include the functions performed by the individual employees having responsibility for a 'key function', ie employees who are 'key function holders' (KFHs).

2A.3 In addition, for 'large firms', certification functions include functions performed by 'material risk-takers' (MRTs) ie those staff whose professional activities have a material impact on a firm's risk profile. SS10/16 'Solvency II: Remuneration requirements' sets out some PRA expectations around how Solvency II firms may develop suitable criteria for identifying MRTs, for the purpose of application of the Remuneration Requirements.

2A.4 However, it should be noted that some individuals classified as MRTs under the Remuneration Requirements will not fall within the Certification Regime. In particular, anyone who performs a (PRA or FCA) SMF will not be treated as performing a certification function for that firm.² In addition, NEDs will not fall within the Certification Regime (unless, in addition to their NED function, they also perform an additional function which is a certification function, which the PRA would not expect would normally be the case).

2A.5 There may also be employees who are classified as MRTs but who are not sufficiently involved in a regulated activity of the firm to meet the statutory test for a certification function. This may, for example, be the case where the individual is employed by an overseas subsidiary of the UK-authorized firm; such a person may be a material risk taker under the Remuneration Requirements as these will apply at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established outside the European Economic Area (EEA). But if they have no involvement in a regulated activity of the UK-authorized firm, the effect of Insurance - Certification 2.2 is that they would not be performing a certification function.

2A.6 The PRA expects that in an insurance firm, only those individuals who are key function holders, or who are MRTs at 'large firms', could be performing a certification function specified by the PRA. However, the FCA's Certification Regime is potentially wider and may also include other individuals who are not in scope of the PRAs regime.

¹ For large NDFs, the corresponding Rulebook parts are Large Non-Solvency II Firms – Certification, and Large Non-Solvency II Firms - Fitness and Propriety.

² It is however possible that an individual may perform roles at more than one regulated firm, in which case it would be possible for that individual to perform a senior management function at one firm and a certification function at another firm.

2A.7 The PRA would expect that firms would normally consider as a minimum¹ whether individuals with responsibility for the following functions or activities should be considered to be KFHS (or MRTs for 'large firms'), and hence in a certification function (if these individuals do not hold a SMF):-

- Investment management (including reconciliation, valuation, or reporting, of asset holdings or positions)
- Claims management
- Underwriting and pricing of products
- Reinsurance
- Capital management
- Liquidity management
- Operational systems and controls
- Information Technology (IT)
- Managing material risk takers (for 'large firms')

Identifying functions and describing them in certificates

2A.8 The PRA's approach to specifying certification functions makes any function performed by a key function holder for a firm, or by a MRT for a 'large firm', a certification function (to the extent that the function will require the employee to be involved in a regulated activity of the firm, and provided that the employee is not performing any controlled function for the firm, and is not a non-executive director of the firm).

2A.9 However, this does not mean that the PRA expects firms to issue multiple certificates to each employee who is in a certification function. Rather, in a certificate, a firm may describe the function performed by an employee in broad terms, and without listing all the activities that function may involve. A firm should assess whether the employee is fit and proper to perform all aspects of the function as described by a certificate. The factors the PRA requires a firm to take into account when making this assessment are set out in the Insurance - Fitness and Propriety and Large Non-Solvency II Firms – Fitness and Propriety Parts of the Rulebook, and in Chapter 4 of this supervisory statement.

Moving functions during the certification year

2A.10 In cases where a certified employee's role changes to involve a new certification function part way through the twelve month period for which their certificate is valid, and if that new function may have different requirements relating to personal characteristics, the level of competence, knowledge and experience, qualifications or training, the PRA expects the firm to assess whether the employee is fit and proper to perform that new function before they start. A firm should not wait until the point of annual reassessment to determine whether the employee is fit and proper for the new function.

¹ This is not though an exhaustive list of possible 'certification functions'.

Associated requirements in FSMA

2A.11 In addition to the rules in the Insurance – Certification and Large Non-Solvency II Firms - Certification Parts of the PRA Rulebook, firms should also take account of section 63E (Certification of employees by Authorised Persons) and section 63F (Issuing of certificates) of FSMA; for example, in relation to the definition of an ‘employee’, the content of a certificate, the period for which a certificate is valid, the procedure to be followed in the event of a refusal by a firm to issue a certificate and record keeping.

3 Application of Conduct Standards and associated notification requirements

3.1 This chapter sets out the PRA's expectations of how individuals who are subject to the Conduct Standards in the Insurance – Conduct Standards and Large Non-Solvency II Firms – Conduct Standards Parts of the PRA Rulebook should comply with them. However, this is not an exhaustive statement of the standards required to comply with the Conduct Standards.

Persons and activities to which the PRA Conduct Standards apply

3.2 The Insurance – Conduct Standards and Large Non-Solvency II Firms – Conduct Standards Parts of the PRA Rulebook applies directly to a persons who is performing either a SMF specified by the PRA, or a CF specified by the Financial Conduct Authority (FCA) that is a 'relevant senior management function' as defined in the PRA Rulebook, or who is responsible for a 'key function'. These persons will be required by this Part to comply with all these standards.

3.2A In addition, all other employees performing a certification function specified by the PRA, along with 'Conduct Rules NEDs', are required directly by these Parts of the PRA Rulebook [~~from xx 2017~~] to comply with Insurance-Conduct Standards 3.1-3.3 or Large Non-Solvency II Firms – Conduct Standards 3.1-3.3. 'Conduct Rules NEDs' are also required by these Parts of the PRA Rulebook to comply with Insurance - Conduct Standards 3.7-3.8 or Large Non-Solvency II Firms – Conduct Standards 3.7-3.8. Employees performing Certification functions are subject to the rules regardless of whether the firm has issued a certificate to them or not.

3.2B Where an employee is performing a function that would have been an SMF but for the rule¹ which provides a twelve-week grace period to cover absences which are temporary or reasonably unforeseen, the effect of the PRA rules² is to apply the Individual Conduct Standards (but not the Senior Manager Conduct Standards) directly to that employee. This means that the employee is not held to the same standards as a permanent Senior Manager, but is still required to comply with the more general standards set out in the Individual Conduct Standards.

3.3 In accordance with Insurance – Fitness and Propriety 2.3 and Large Non-Solvency II Firms – Fitness and Propriety 2.3, the relevant Conduct Standards in Insurance – Conduct Standards 3 and Large Non-Solvency II Firms - Conduct Standards 3 should also be taken into account by firms and groups when assessing on an ongoing basis the fit and proper status of all those persons who are effectively running the firm or group, in an SME, performing a certification function, or are performing another key function for the firm or group.

¹ Insurance - Senior Insurance Management Functions 2.4 and Large Non-Solvency II Firms – Senior Insurance Management Functions 2.4.

² Insurance - Conduct Standards 1.1(6)(f) and 2.1B, and Large Non-Solvency II Firms – Conduct Standards 1.1(6)(f) and 2.1B.

Application of the Conduct Standards

3.4 In assessing whether an individual's conduct was either consistent with or complied with a Conduct Standard, the PRA expects the context in which a course of conduct was undertaken to be taken into account, including the:

- precise circumstances of the individual case;
- characteristics of the particular function performed by the individual in question; and
- behaviour to be expected in that function.

3.5 A person will only be in breach of any of the Conduct Standards where ~~he or she is~~ they are personally culpable. Personal culpability arises where:

- a person's conduct was deliberate; or
- the person's standard of conduct was below that which would be reasonable in all the circumstances.

3.6 In accordance with Insurance — Fitness and Propriety 2.3 and Large Non-Solvency II Firms – Fitness and Propriety 2.3, the PRA expects firms and groups to have suitable procedures for monitoring the conduct of individuals who are performing a key function or a certification function, and to take relevant action if these individuals do not observe these Conduct Standards. For this purpose, the PRA expects firms and groups to take all reasonable steps to gather and consider information which may indicate the extent to which individuals are in compliance with these Conduct Standards.

3.7 Where a firm or group identifies any matter which might be relevant to an assessment of whether an individual who is performing such a key function is fit and proper, including a potential failure to observe a Conduct Standard, it should promptly and fully investigate the position and take appropriate action, including complying with any obligation to notify the PRA (see the notifications section of this chapter).

3.8 The PRA expects that the Conduct Standards apply only to an individual's conduct in relation to the activities of the firm or group for which ~~he or she is~~ they are working. These standards do not relate to a person's actions in their private life if those actions are unrelated to the firm's activities and the PRA would not generally expect to assess such actions against these standards. However, the PRA notes that an individual's wider behaviour could affect their ~~his or her~~ ability to follow these standards more generally. The way in which a person behaves in their private life may then be relevant to any assessment, by the PRA or by the firm itself, of whether that person is, or remains, fit and proper.

3.9 All persons performing a key function or a certification function should be required by the firm to observe Individual Conduct Standards 1, 2 and 3 ~~Insurance – Conduct Standards 3.1 to 3.3~~. This may be required through a staff handbook, and then through any subsequent staff contract updates. The PRA expects these Conduct Standards to be promulgated suitably through the organisation, and for the firm to take steps to ensure that all relevant staff are aware of their obligation to observe these standards. The PRA expects that they should also be

1 in accordance with Insurance – Conduct Standards 2.2 and Large Non-Solvency II Firms – Conduct Standards 2.2.

taken into account when setting the relevant objectives (including any expected behaviours) for individuals each year.

Individual Conduct Standards¹

Individual Conduct Standard 2: *'You must act with due skill, care and diligence.'*

3.10 The PRA expects all individuals who are performing a key function or a certification function to exercise their business skills with appropriate levels of attention and care; and to provide proper and adequate explanations about the activities they are undertaking, when requested by a senior manager or director of the firm or the group.

3.11 A person who is effectively running a firm or is responsible for another key function is a key function holder. A key function holder may, but will not necessarily, perform a CF that is a PRA SIMF or an FCA CF. The PRA expects a key function holder to understand the business for which they are responsible. Key function holders are unlikely to be experts in all aspects of a complex financial services business. However, the PRA expects that they should understand and inform themselves about the business sufficiently to understand the key risks relating to a firm's insurance, investment or other business activities.

3.12 The PRA expects a key function holder to require explanations from those who report to them, whenever they have material concerns about the identification, measurement or control of risks borne by the firm. Such concerns could for example arise in the following circumstances:

- business is undertaken (or an investment made) that is expected to be unusually profitable (relative to the risks expected by the firm);
- the profits are particularly volatile; or
- the business involves risks for the firm that are either beyond those reasonably anticipated in the business plan, or beyond the firm's normal risk tolerance limits.

3.13 Where those explanations are implausible or unsatisfactory, the PRA expects the key function holder to take steps to test the veracity of those explanations.

Individual Conduct Standard 3: *'You must be open and co-operative with the FCA, the PRA and other regulators.'*

3.14 The PRA expects a person to use their firm's mechanisms for reporting information to the regulators. Relevant factors in assessing whether a person has followed Individual Conduct Standard 3 include:

- whether a person has provided information into such mechanisms in an appropriate manner;
- whether the person has taken steps to influence a decision so as not to report to the regulator concerned;

¹ Individual Conduct Standard 1 is: 'You must act with integrity'. The PRA does not expect to have to describe what is meant by acting with integrity.

- whether the person has acted in a way intended to obstruct the reporting of information to the regulator concerned;
- where relevant to the person's role, the way in which the person has operated, managed or overseen those mechanisms; and
- the way in which a person has responded to requests from a relevant regulator.

Conduct Standards for key function holders

3.15 In accordance with rule 2.2 in the Insurance – Conduct Standards and Large Non-Solvency II Firms – Conduct Standards Parts of the Rulebook, 'Notified NEDs', should be required by the firm to observe Individual Conduct Standards 1-3 and Senior Insurance Manager Conduct Standards 4-5. Similarly, all other key function holders should be required by the firm to observe Individual Conduct Standards 1-3 and Senior Insurance Manager Conduct Standards 1-5. The PRA expects that observance of these Conduct Standards should therefore normally be included within the terms and conditions for the appointment of key function holders, and in the Scope Statement of Responsibilities ~~record~~ that must be maintained (and signed by the individual) under Insurance – Allocation of Responsibilities 5.4 and Large Non-Solvency II Firms – Allocation of Responsibilities 5.4.

3.16 The factors the PRA expects to be taken into account when assessing whether a key function holder has followed Senior Insurance Manager Conduct Standards 1-5 include:

- whether the person exercised reasonable care when considering the information available;
- whether the person reached a reasonable conclusion upon which to act;
- the nature, scale and complexity of the firm's business;
- the person's role and responsibility; and
- the knowledge the person had, or should have had, of regulatory concerns, if any.

Senior Insurance Manager Conduct Standard 1 *'You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively'*.

3.17 If the strategy of the business is to enter higher-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be higher. In organising the business for which they are responsible, a key function holder should bear this in mind.

3.18 The PRA expects the organisation of the business, and the responsibilities of those within it, to be clearly defined. Reporting lines should be clear to staff. Where staff have dual reporting lines, there is a greater need to ensure that the responsibility and accountability of each line manager is clearly set out and understood. The PRA would expect that for each MRT within a 'large firm', there would be a nominated key function holder who has responsibility for the oversight of the activities of that MRT.

Senior Insurance Manager Conduct Standard 2 *'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'*.

3.19 The PRA expects a key function holder to take reasonable steps both to ensure the firm's compliance with the relevant requirements and standards of the regulatory system, and to ensure that all staff are aware of the need for compliance. For this purpose, the PRA expects key function holders not merely to ensure that firms meet the letter of the requirements, but also not to attempt to game them by engaging in creative compliance or regulatory arbitrage designed to mask the riskiness of activities or business models. Rather, key function holders should maintain sight of the overriding principles of safety and soundness and the protection of policyholders, and act accordingly.

3.20 A key function holder need not personally put in place the systems of control in the business; whether they do this will depend on their role and responsibilities. However, the PRA expects the key function holder to take reasonable steps to ensure that the business has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business.

Senior Insurance Manager Conduct Standard 3: *'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'.*

3.21 The PRA does not expect a key function holder personally to manage the business on a day-to-day basis. The extent to which this is done by the key function holder will depend on a number of factors, including the nature, scale and complexity of the business and their position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The PRA expects a key function holder to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level.

3.22 In accordance with this standard, the PRA believes that the authority for dealing with an issue or a part of the business should only be delegated to an individual or individuals by a key function holder when they have reasonable grounds for believing that the delegate has the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with that part of the business.

3.23 Although a key function holder may delegate the resolution of an issue, or authority for dealing with a part of the business, they cannot delegate their oversight responsibility. The PRA expects that person to maintain a suitable level of understanding of the delegated activity, supervise and monitor the person to whom the responsibility has been delegated, and ensure that they receive reports on delegated matters and question those reports where appropriate. Where an issue raises significant concerns, the PRA expects a key function holder to act clearly and decisively.

Senior Insurance Manager Conduct Standard 4: *'You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice'.*

3.24 This Conduct Standard applies, in addition to Individual Conduct Standard 1, to a key function holder. Individual Conduct Standard 1 relates primarily to responses from individuals to requests from a relevant regulator and to an individual's involvement in a firm's mechanisms for reporting to a regulator. However, Senior Insurance Manager - Conduct Standard 4 imposes a greater duty on key function holders to disclose any information the

relevant regulator would reasonably expect. This includes making a disclosure in the absence of any request or enquiry from the relevant regulator. By virtue of their position, the PRA expects that a key function holder is likely both to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the PRA or FCA would reasonably expect notice.

3.25 The PRA does not expect a key function holder to disclose information which the person knows that the firm or another senior manager has already disclosed to the PRA, for example through having seen a copy of the relevant communication.

3.26 The PRA expects that, in disclosing appropriately, the person will need to disclose:

- sufficient information for the regulators to be able to understand the full implications of the matter being disclosed;
- in a timely manner; and
- to an appropriate contact at the PRA or FCA (or both), which may include the firm's usual supervisory contact(s).

Senior Insurance Manager Conduct Standard 5: *'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.'*

3.27 The PRA expects a key function holder to ensure that appropriate attention is given to the need to ensure that the firm will continue to be able to provide the benefits that it has committed to provide for its policyholders. This is likely to be achieved primarily through taking relevant actions, in line with the PRA's Conduct Standards, to ensure that the firm meets all the PRA's Fundamental Rules¹ and continues to meet the Threshold Conditions.²

3.28 In particular, the PRA expects key function holders to exercise sound and prudent management over the areas of the business for which they are responsible. This would be exemplified through ensuring the application of suitable due diligence over any major transactions that are contemplated by the firm or group, and for which a key function holder has a responsibility. Key function holders should also apply due care and attention in the appropriate management of any conflicts of interest within a firm or group.

Application of the Conduct Standards to NEDs in scope of the SMR and Notified NEDs

3.29 NEDs who are subject to pre-approval by the PRA or the FCA, are directly subject to all the Conduct Standards, including those applicable only to Senior Insurance Managers. Conduct Rules NEDs are directly subject to Individual Conduct Standards 1-3 and Senior Insurance Manager Conduct Standards 4-5. As was the case under the APR, breaches of the Conduct Standards by NEDs in an SMF, or by Conduct Rules NEDs, are directly enforceable by the PRA using its powers under FSMA.

3.30 Firms are also required by Insurance - Conduct Standards 2.2 and Large Non-Solvency II Firms – conduct Standards 2.2 to require that all members of their governing management

1 Solvency II Firms Fundamental Rules (FR3) in the PRA Rulebook; fshandbook.info/FS/prerulebook.jsp.

2 The Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013; www.legislation.gov.uk/uksi/2013/555/contents/made.

body, including all Notified NEDs, observe Individual Conduct Standards 1-3 and Senior Insurance Manager Conduct Standards 4-5.

3.31 Some Conduct Standards apply to NEDs in respect of their limited duties only. For instance, the Chair of the Remuneration Committee would be likely to discharge their responsibilities under Insurance-Conduct Standards 3.2 if they take reasonable steps to ensure that the Remuneration Committee complies with the requirements of the EU Solvency II Delegated Regulation (and any specific and relevant requirements imposed under section 55M of FSMA), and remains free from undue executive interference in decision-making.

3.32 By contrast, certain Conduct Standards, such as the duty to act with integrity, apply to NEDs and executive Senior Insurance-Managers in very similar ways.

3.33 The requirements to 'be open and co-operative with the FCA, the PRA and other regulators' (Individual -Conduct Standard 3) and 'disclose appropriately any information of which the FCA or PRA would reasonably expect notice' (Senior Insurance Manager Conduct Standard 4) 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.'¹

Notifications by firms to the PRA in relation to the application of Conduct Standards by individual key function holders

3.34 The PRA considers that a breach of Conduct Standards by a key function holder, including details of any related disciplinary action taken by a firm against that key function holder, would generally reasonably be expected to be material to the assessment of an individual's fitness and propriety. Therefore, in accordance with Insurance - Fitness and Propriety 4.3, Large Non-Solvency II Firms – Fitness and Propriety 4.3, and Fundamental Rules 7 in the PRA Rulebook, the PRA expects insurance firms and groups to notify the PRA if they know that a current (or former) key function holder has not complied with those Conduct Standards.

3.35 Where a firm has reported a breach of a Conduct Standard, and subsequently takes disciplinary action against the person for matters relating to the breach, the firm should make a separate notification to the PRA of the disciplinary action.

3.36 The PRA expects that firms will report to the PRA and the FCA details of known breaches, including those which do not come to the firm's attention until after the person concerned has left the firm. Firms should consider whether the person was a key function holder for the firm at the time the breach is thought to have occurred (rather than at the point at which it came to the firm's attention).

Notifications by firms to the PRA (Notifications 11)

3.37 The notification requirements in Notifications 11 complement and do not override existing requirements according to which firms have to report information to the PRA, including those for key function holders under Insurance - Fitness and Propriety 4.3 and Large

¹ See paragraph 88 of the PRA's approach to insurance supervision', June 2014; www.bankofengland.co.uk/publications/Pages/other/prasupervisoryapproach.aspx.

Non-Solvency II Firms – Fitness and Propriety 4.3, as described in paragraphs 3.34-3.36 above, or Fundamental Rule 7 of the PRA Rulebook.

3.38 The obligations to make a notification under section 64C (*‘Requirement for relevant authorised persons to notify regulator of disciplinary action’*) of FSMA applies notwithstanding any agreement (for example a ‘COT 3’ Agreement settled by the Advisory, Conciliation and Arbitration Service) or any other arrangements entered into by a firm and an employee upon termination of the employee’s employment. A firm should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

3.39 The provision of information to a regulator which is false or misleading may be a criminal offence under section 398 of FSMA.

3.40 Where a notification under the Notifications 11 rules relates to a person performing an SMF, a firm should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the PRA by telephone or by other prompt means of communication, before submitting a written notification. Oral notifications should be given directly to the firm’s usual supervisory contact at the PRA. An oral notification left with another person or left on a voicemail or other automatic messaging service is not considered appropriate.

3.41 The PRA is entitled to rely on any information it receives from a firm and to consider any notification received under Notifications 11 as being made by a person authorised by the firm to do so. A firm should therefore consider whether it needs to put procedures in place to ensure that only appropriate employees make notifications under Notifications 11 on its behalf to the PRA.

4 Assessing fitness and propriety

4.1 This chapter sets out the factors that the PRA:

- will take into account when assessing whether an individual is fit and proper to perform a S1MF; and
- expects firms to take into account when assessing whether an individual is fit and proper to perform a S1MF or NED function or a certification function specified in the PRA rules, or some other key function.

Assessing fitness and propriety

4.2 In assessing whether an individual is fit and proper to be effectively running a firm or to be performing another key function or certification function, firms and groups should apply the rules in Insurance — Fitness and Propriety 2 and Large Non-Solvency II Firms – Fitness and Propriety 2, along with the EU Solvency II Delegated Regulation; and also have regard to the EIOPA Guidelines on Systems of Governance.

4.3 The PRA will also expect firms and groups to have regard in their assessments of fitness and propriety to the person's:

- honesty, integrity and reputation;
- competence and capability; and
- financial soundness.

4.3A Insurers must be run by people who are competent to fill their roles. This means ensuring that individuals have appropriate expertise and experience and, in the case of non-executive directors, give sufficient time to fulfil their obligations to a high standard.

4.4 The PRA will likewise consider each of the factors in paragraphs 4.2 to 4.3A and 4.3 when assessing whether an individual is fit and proper to be effectively running a firm or to be responsible for another key function.

4.5 In determining a person's honesty, integrity and reputation, the PRA will have regard to all matters which may have arisen either in the United Kingdom or elsewhere and which the PRA considers relevant to the requirements and standards of the regulatory system.

4.6 For example, conviction for a criminal offence will not automatically mean an application will be rejected. The PRA proposes to treat each candidate's application on a case-by-case basis, having regard to a range of factors which may include, but are not limited to the:

- seriousness of, and circumstances surrounding, the offence;
- explanation offered by the convicted person;
- relevance of the offence to the proposed role;

- passage of time since the offence was committed; and
- evidence of the individual's rehabilitation.

4.7 When determining a person's financial soundness, the PRA will not normally require a person notified to them as being responsible for a key function to supply a statement of assets or liabilities. The PRA does not expect a person being of limited financial means, in itself, to affect ~~their his or her~~ suitability to effectively run a firm or perform a key function or certification function.

4.8 The PRA expects a firm or group to take a similar approach to that set out in paragraphs 4.5 to 4.7 above when assessing whether a person is fit and proper to run a firm or perform a key function or certification function effectively.

4.9 In relation to proposed new appointees to SIMFs and for the appointment of other new 'key function holders', the PRA expects the regulatory references, along with the current Financial Services Register, to be an important independent source of information for firms about the suitability of a person's past business conduct. For other proposed new appointees, it is acknowledged that there may only be limited independent information available on a person's past business conduct that can be taken into account.

4.10 Firms may, however, wish to consider whether internal procedures such as pre-employment questionnaires for candidates might be relevant to elicit information on past business conduct for these purposes. Where a firm becomes aware of information which may indicate that aspects of a person's past business conduct might be relevant to an assessment of whether an individual is 'fit and proper', the PRA expects the firm to make reasonable enquiries to establish the circumstances of that conduct and its relevance (if any) to the individual's fitness and propriety.

4.11 For the ongoing assessment of fitness and propriety of individuals, the PRA believes that most firms will already have a regular cycle of appraisals and performance reviews for their staff that is likely to provide an appropriate baseline for this assessment. Additional checks may be deemed appropriate outside of this process, taking account of the nature and level of an individual's responsibilities within the organisation, and of any other relevant information. For the purpose of such checks, the PRA expects firms and groups to take all reasonable steps to gather and consider information which may be relevant to an individual's business conduct.

Criminal background checks

4.12 In order to meet the requirement in Insurance — Fitness and Propriety 2.4 and Large Non-Solvency II Firms – Fitness and Propriety 2.4 to make a criminal record check, the PRA expects a firm to get an application form from the Disclosure and Barring Service (DBS) or an umbrella body (a registered body that gives access to DBS checks) in England and Wales. There is an equivalent procedure in Scotland (involving Disclosure Scotland) and Northern Ireland (involving AccessNI). If the candidate is employed by a contractor, the PRA expects that the firm may ask the contractor to obtain the certificate. The PRA does not expect firms to send any DBS certificates or copies of such certificates to the PRA.

5 Regulatory references

5.1 This chapter sets out the PRA's expectations of how firms should comply with the rules on regulatory references in the Insurance - Fitness and Propriety and Large Non-Solvency II Firms-Fitness and Propriety Parts of the PRA Rulebook. A 'regulatory reference' is an employment reference delivered in a mandatory form containing specific information on a candidate's conduct and fitness and propriety. Firms must request and provide regulatory references in certain circumstances detailed in Insurance – Fitness and Propriety and Large Non-Solvency II Firms – Fitness and Propriety.

5.2 The chapter clarifies how firms should comply with a range of measures whose overarching goal is to prevent the 'recycling' of individuals with poor conduct records between firms.

5.3 The rules on regulatory references and the expectations set out in this chapter take into account the recommendations of the Fair and Effective Markets Review (FEMR).¹

Requesting regulatory references

5.4 The Insurance – Fitness and Propriety and Large Non-Solvency II Firms- Fitness and Propriety Parts in the PRA Rulebook requires firms to request references when assessing the fitness and propriety of candidates to perform the following functions, (collectively referred to as 'relevant functions'):

- Senior ~~Insurance~~-Management Functions (S~~I~~MF) under the S~~I~~MR;
- Certification functions;
- Notified non-executive director (NED) functions; and
- any other Key Function Holders (KFHs) for insurers.

5.5 Regulatory references must cover the previous six years of employment and be sought from all relevant former employers, or organisations at which the individual is or was a NED, and (if different) any firms at which the candidate has performed:

- ~~an S~~I~~MF;~~
- a Senior Management Function (SMF);
- another Controlled Function (CF);
- a Certification function;
- a notified NED function or credit union NED function; and/or
- any other KFH who is neither a S~~I~~MF nor CF or notified NED.

¹ www.bankofengland.co.uk/markets/Documents/femrjun15.pdf.

5.6 Note that other references should also be requested from any other employers or organisations other than firms for which the candidate has performed a role, including as a non-executive director (for the purposes of this specific requirement, which is set out in Insurance - Fitness and Propriety 2.5(1)(c) and Large Non-Solvency II Firms- Fitness and Propriety 2.5(1)(c), the term 'non-executive director' is not restricted to the definition in the PRA Rulebook but should be understood as encompassing all forms of non-executive directorship).

Information to be included in the request for a reference

5.7 Where a firm (firm A) is requesting a regulatory reference from another full-scope regulatory reference firm (firm B) (as defined in the PRA Rulebook Glossary), firm A should make it sufficiently clear that the request is subject to the requirements in Insurance – Fitness and Propriety or Large Non-Solvency II Firms- Fitness and Propriety, by attaching or referring to the Regulatory Reference Template ('Template').

5.8 As long as firm A makes the nature of its request to firm B and the fact it is subject to the Template requirements sufficiently clear, it does not have to set out specifically the information that firm B needs to include in the regulatory reference.

5.9 Conversely, if firm A is requesting a reference from a firm that is not a full-scope regulatory reference firm, or where it does not know whether the firm is a full-scope regulatory reference firm, it should clearly specify the information it requires to be provided as a minimum, and may find it appropriate to use the Template anyway.

Recruiting individuals from overseas firms

5.10 Due to local legal restrictions in some jurisdictions, obtaining information on individuals' conduct and fitness and propriety from firms outside the United Kingdom may sometimes not be possible.

5.11 Although the PRA is aware of these legal restrictions, it requires firms to take reasonable steps to obtain references from all current and former employers. When recruiting a candidate who is or may have previously been based overseas, these steps may include:

- approaching all relevant current and former overseas employers;
- explaining that UK regulation requires them to request certain information on candidates for certain functions and to specify the information they require; and
- collecting as much of this specific information as the overseas employers are legally able and willing to provide.

5.12 While full-scope regulatory reference firms must take reasonable steps to obtain information from overseas firms, the PRA will take into account any demonstrable, relevant legal impediments when assessing whether firms are complying with this requirement. Evidence of these legal constraints may include, but is not limited to, relevant correspondence with the overseas employer or a legal opinion setting out the applicable legal restrictions in a given jurisdiction.

5.13 In addition, the PRA understands that several jurisdictions have registers containing information relevant to the conduct and/or fitness and propriety of, at least certain categories of financial services professionals. Although searches of relevant registers are not an express part of the regulatory reference requirements, they may be a valuable source of information for the assessment required, under the rules in Insurance – Fitness and Propriety and Large

Non-Solvency II Firms- Fitness and Propriety, of a candidate's fitness and propriety. A firm's due diligence would be likely, however, to comprise of more than a search of relevant registers.

Recruiting individuals internally or from the same group

5.14 Insurance – Fitness and Propriety 2.5(2) and Large Non-Solvency II Firms- Fitness and Propriety 2.5(2) states that a full-scope regulatory reference firm (firm A) is not required to obtain full regulatory references (when hiring individuals into relevant functions) from a firm or firms which are part of their same group, provided that the group's internal policies and procedures enable firm A to access all the information that other member of the group would require to give a reference (subject to any applicable laws).

5.15 The aim of this rule is to give full-scope regulatory reference firms which are part of a group flexibility to rely on centralised records or other internal mechanisms and processes for exchanging information on employees. However, these internal mechanisms and processes should adequately enable full-scope regulatory reference firms to satisfy their obligations. It follows that the quality and quantity of information that full-scope regulatory reference firms should have access to from their groups should be equivalent to that which would otherwise be contained in a regulatory reference.

Obtaining references before applying for pre-approval as a SIFM or CF or certifying a Certification employee

5.16 There may be circumstances where it may not always be possible for firms to obtain a reference before applying to the regulators for approval on behalf of a SIFM.

5.17 For instance, if a candidate's current employer is a UK-listed company, the candidate's resignation may trigger an obligation on the employer to issue a regulatory notification under Listing Rule 9.¹ In this scenario, the candidate may want to wait until they have obtained regulatory approval for their proposed SIFM (or an indication that such approval is likely to be forthcoming) before resigning from their current role. A regulatory reference request from a prospective employer in these circumstances could alert the candidate's current employer of their impending resignation and trigger the obligation to notify.

5.18 The requirement on firms to satisfy themselves that candidates for a SIFM are fit and proper before applying to the PRA for approval on their behalf applies irrespective of the circumstances. Therefore, where a firm cannot obtain all necessary references before applying to the PRA for approval to appoint, the PRA expects the firm to:

- explain in the application why it was not possible to obtain all prior regulatory references;
- confirm that, despite the absence of all necessary regulatory references at this stage, it is satisfied that the candidate is fit and proper, as required by Insurance – Fitness and Propriety 2 and 4 and Large Non-Solvency II Firms- Fitness and Propriety 2 and 4, and list the evidence it has relied on to reach this conclusion; and
- commit to obtaining all necessary regulatory references as soon as reasonably practicable subject to any applicable legal restrictions, and to take appropriate action if any of those references reveal previously unknown adverse information about the candidate's fitness

1 In particular, LR 9.6.11 <https://www.handbook.fca.org.uk/handbook/LR/9/6.html>.

and propriety including, if justified, revoking an offer of employment or terminating the individual's employment.

5.19 If a firm cannot obtain the necessary references prior to making an application for approval as an S4MF because doing so would trigger a market-sensitive notification requirement, they will be required to do so before the candidate can be approved by the PRA.

5.20 If a firm cannot obtain the necessary references prior to making an application for approval as an S4MF due to any other legitimate reasons, besides market-sensitive notification requirements, it will need to obtain and consider all references necessary to confirm its conclusions as to the candidate's fitness and propriety no later than one month before the application is due to be determined.

5.21 In either case, the PRA will process these applications but will treat them as incomplete. Consequently, the PRA will not make a decision as to whether to approve candidates, conditionally or unconditionally, until the firm has confirmed that it has obtained all references necessary to confirm its conclusions as to fitness and propriety.

5.21A Similarly, where a firm needs to fill a vacancy which is a Certification function and which could not have reasonably been foreseen, the PRA recognises that it may not be reasonable to expect the firm to obtain references prior to issuing a certificate. In such cases, firms should take up the references as soon as reasonably possible. If the references duly obtained raise concerns about the employee's fitness and propriety, the firm should immediately revisit and, if appropriate, revoke, its decision to issue them with a certificate.

Providing regulatory references

5.22 If a firm receives a request from another firm subject to the regulatory reference requirements regarding a candidate for a relevant function, Insurance – Fitness and Propriety 3 and Large Non-Solvency II Firms- Fitness and Propriety 3 requires that firm to provide a regulatory reference including all information which it reasonably considers to be relevant to the hiring firm's assessment of that individual's fitness and propriety.

5.23 Insurance–Fitness and Propriety 3 and Large Non-Solvency II Firms- Fitness and Propriety 3 of the PRA Rulebook requires that the regulatory reference must be provided using the Template and include, at a minimum, the information set out in the Template.¹

Individuals employed by a firm which is part of a group

5.24 It is not uncommon for individuals to be contractually or formally employed by one firm but to perform their role in or provide services to other entities within that firm's group. Where this is the case, the firm providing the reference should obtain relevant information from other entities in its group which the individual has worked in or provided services to over the past six years. Firms should take similar action when updating a reference (see paragraphs 5.50-5.54 below).

5.25 Accordingly, the PRA expects firms, and where relevant, groups, to implement appropriate policies and processes to ensure that if an individual leaves the group, they can provide a complete regulatory reference covering the prior six years of employment regardless of how many times ~~he or she~~they changed roles or moved within the group over that period.

¹ www.handbook.fca.org.uk/handbook/SYSC/22/Annex1.html.

5.26 Where an individual has, in the past six years, simultaneously performed relevant functions across several firms within the same group and then leaves that group, the regulatory reference(s) should include information from all relevant entities subject to any applicable legal restrictions. The PRA considers it good practice for groups to consolidate information from all relevant entities into a single template. To facilitate this, the regulators have included a rule allowing firms to change the format of the Template (but not the substantive information that it must include).

Agreements and circumstances relating to the departure of an individual

5.27 The precise manner in which an individual may have left a firm (ie dismissal, redundancy, mutual agreement etc.) has no bearing on that firm's obligation to provide a regulatory reference.

5.28 Moreover, the obligation to provide regulatory references applies to every firm notwithstanding any agreement or arrangement it may have entered into with an individual prior to or upon termination of ~~their~~ ~~his or her~~ employment, including a COT 3 Agreement settled by the Advisory, Conciliation and Arbitration Service.

5.29 A firm should not enter into any arrangements or agreements that could conflict with its obligations under the Insurance – Fitness and Propriety and Large Non-Solvency II Firms- Fitness and Propriety parts of the PRA Rulebook.

Outsourcing the collection of employee information

5.30 The requirement for a firm to give information to another PRA-regulated firm should also be observed where the hiring firm has outsourced the collection of information on a candidate to an unregulated third party, such as an executive search firm, provided that the firm requesting the reference makes it clear to the firm giving it that the unregulated third party is acting on its behalf.

Mandatory information

5.31 Insurance – Fitness and Propriety 3.1 and Large Non-Solvency II Firms- Fitness and Propriety 3.1 requires firms to include the following mandatory information in answer to Questions (E) and (F) of the Template, relating to the period beginning six years before the date of the request for a reference and ending on the date of the reference:

- a description of any breaches by the individual of the conduct standards in Insurance - Conduct Standards or Large Non-Solvency II Firms- Conduct Standards, or, where relevant, the Statements of Principle and Code of Practice for Approved Persons (APER) (which was superseded in the PRA Rulebook by the Insurance - Conduct Standards and Large Non-Solvency II Firms- Conduct Standards on 7 March 2016 but may still be relevant to historic misconduct), or the corresponding conduct requirements in the FCA Handbook, if they culminated in 'disciplinary action', and the outcome of this disciplinary action. The definition in the PRA Rulebook of disciplinary action, for the purposes of regulatory references, mirrors the definition in section 64C of FSMA; and
- whether the firm concluded, and the facts that led to any such conclusion, that the candidate was not fit and proper to perform a function.

5.32 Suspensions imposed pending an internal investigation do not have to be notified to the PRA nor included in regulatory references. Conversely, suspensions imposed as a disciplinary measure are required to be included in regulatory references, and may need to be reported to the regulator (see paragraph 5.56).

5.33 Likewise, the reduction or recovery of an individual's remuneration should only be included in a regulatory reference if it is imposed as a disciplinary action due to a breach of the conduct standards or, where relevant, APER, or other historic applicable rules, but not if it is triggered by a downturn in financial performance or a need to preserve/rebuild capital unrelated to misconduct.

All relevant information

5.34 In addition to the mandatory information specified in Questions (E) and (F) of the Template, which must be disclosed in regulatory references, Insurance - Fitness and Propriety 3 and Large Non-Solvency II Firms- Fitness and Propriety 3 requires a firm to provide all information of which it is aware that it reasonably considers to be relevant to the requesting firm's assessment of the candidate's fitness and propriety. To facilitate this, the Template includes Question (G) which is termed here an 'all relevant information section'.

5.35 Information disclosed in the 'all relevant information section' of the Template should not duplicate anything disclosed in answer to Questions (E) and (F) in the Template. This section aims to capture additional information relevant to the requesting firm's assessment of the candidate's fitness and propriety.

5.36 However, the 'all relevant information' section can be used to provide further background on a breach disclosed in answer to Questions (E) and (F) in the Template, such as mitigating circumstances and/or subsequent corrective action or good conduct by the individual. It follows that information in the 'all relevant information' section does not always have to be 'negative'.

5.37 For example, if an individual's remuneration was subject to clawback three years ago due to a finding by ~~their~~ his employer that the individual had failed to act with due skill, care and diligence in respect of a particular matter, but the individual's conduct at the same employer had been exemplary since; the disciplinary action should be disclosed in answer to Questions (E) and (F) in the Template, but the firm would be able to use the 'all relevant information' section to highlight the candidate's subsequent conduct and any remedial action taken.

5.38 Disclosures in the 'all relevant information' section are subject to the same six-year time limit as those provided in answer to Questions (E) and (F) in the Template, except for cases involving serious matters, for which there is no time limit. It is important that firms also take into account all relevant legal requirements, such as those relating to the rehabilitation of offenders and spent convictions where appropriate, when determining what they may disclose.

5.39 Firms should make their own assessment of the seriousness of the matter on a case-by-case basis. Some non-exhaustive examples of misconduct which a firm may consider serious enough to warrant inclusion in the 'all relevant information section' of the Template (regardless of how long ago they took place) include but are not limited to:

- a serious breach of certain rules directly applicable to the individual ie within Insurance - Conduct Standards and Large Non-Solvency II Firms – Conduct Standards;
- misconduct that caused or led to a breach by the firm of important supervisory requirements, such as the Threshold Conditions;
- misconduct that resulted in enforcement action by the regulators against the firm and/or the individual concerned;

- misconduct involving serious dishonesty (whether or not it also involves a criminal act, but taking account of any applicable legal requirements relating to the rehabilitation of offenders and spent convictions and related disclosures);
- conduct that would have caused the firm providing the reference (firm A) to dismiss the individual ('P') in accordance with its internal code of conduct if it had been discovered while P was still working there; and/or
- conduct that would cause firm A not to employ P if firm A were considering P for a relevant function and it became aware of it (through a regulatory reference from a prior employer or otherwise).

5.40 Please note that the examples in the paragraph above are only relevant for the purposes of regulatory references. They do not, for example, have any application in the context of the exercise of disciplinary powers by the PRA.

5.41 The 'all relevant information' section may also include information on events that did not culminate in formal 'disciplinary action' as defined in the PRA Rulebook, or in a formal finding that the individual was not fit and proper.

Legal duties

5.42 When considering what information and level of detail to include in regulatory references, firms need to comply with their legal obligations under statutory and common law.

5.43 As set out in Insurance - Fitness and Propriety 3.4 and Large Non-Solvency II Firms- Fitness and Propriety 3.4, a firm is not required to disclose information that has not been properly verified. A firm supplying a reference owes a duty to its former employee and the recipient firm to exercise due skill and care in the preparation of the reference. References should be true, accurate, fair, and based on documented fact.

5.44 If a reference refers to misconduct/includes adverse information about the candidate, then this should have been properly investigated by the firm, and the firm should have reasonable grounds for believing that the misconduct has taken place. References should not be based on unproven allegations or mere suspicions.

5.45 Fairness may require a firm to have given an employee an opportunity to comment on information in a reference ('right to comment'). However, it is ultimately for firms to decide whether a right to comment is appropriate taking into account the individual circumstances of each case.

5.46 Giving individuals a right to comment on allegations capable of inclusion in a regulatory reference does not equate to giving them a right to edit or veto the contents of a regulatory reference.

5.47 Similarly, if an individual refuses to comment on allegations having been given a reasonable opportunity to do so, this should not, in itself, prevent the firm from including these allegations in a regulatory reference.

5.48 It is the responsibility of firms to develop internal policies and processes that ensure compliance with their legal and regulatory obligations.

Updating regulatory references

5.49 From 7 March 2017 firms are required to revise a regulatory reference they have given on or after that date where they become aware of matters that would cause them to draft the reference differently, if the reference were being given now.¹ This updating obligation applies for a period of six years.

5.50 The matters in scope of the requirements to update a regulatory reference are the same, in terms of the disclosures and minimum time requirements, as those applicable to the initial reference. However, the maximum six-year time limit for updating references will be fixed irrespective of the severity of the misconduct.

5.51 The six-year period for updating regulatory references starts on the date when the individual's employment with the firm providing the reference terminated (including any applicable notice periods, garden leave or equivalent).

5.52 Notwithstanding the fixed six-year updating period, disclosures in the original regulatory reference may include misconduct that occurred more than six years before the reference was given, but which came to light within the period during which the updating provision applies (if sufficiently serious).

5.53 In practice, updating is likely to be limited to circumstances where misconduct comes to light after an employee has left the firm, and that firm is able to confirm that misconduct and/or a breach of any relevant conduct rules or standards by the former employee occurred.

Updating references where the individual moves multiple times in six years

5.54 A firm providing an updated reference is only required by Insurance – Fitness and Propriety 3 and Large Non-Solvency II Firms- Fitness and Propriety 3 to provide it to the individual's current employer, but not to any other firms where the individual may have been employed in the period between leaving the firm providing the update reference and joining their ~~his~~ current employer.

5.55 Moreover, the PRA expects firms to consider this requirement alongside the following additional requirements and expectations on full-scope regulatory reference firms to disclose misconduct to either the regulators or other firms:

- in addition to the requirement to provide an updated reference to the individual's current employer, a firm is required to ensure that any new references it is asked to provide within the six-year period reflects any relevant information that may come to light following the individual's departure.
- where a firm discovers misconduct, a number of existing rules require firms and the individuals therein to disclose this to the PRA irrespective of whether the individuals involved remain employed by the firm or not. These rules include:
 - (c) Fundamental Rule 7, which states that a firm must deal with its regulators in an open and cooperative way and must disclose to the PRA appropriately anything relating to the firm of which the PRA would reasonably expect notice;²

¹ This requirement does not apply to non-regulatory references ie standard employment references.
² <http://www.prarulebook.co.uk/rulebook/Content/Part/211136/22-06-2016>.

- (d) Individual Conduct Standard 3 and Senior Insurance Manager Conduct Standard 4, which require individuals to “be open and co-operative with the FCA, the PRA and other regulators” and Key Function Holders to “disclose appropriately any information of which the FCA or PRA would reasonably expect notice”; and
- (e) Insurance – Fitness and Propriety 4.3 and Large Non-Solvency II Firms- Fitness and Propriety 4.3, which states that a firm must inform the PRA as soon as practicable of any information that would reasonably be expected to be material to the assessment of a current or former key function holder’s fitness and propriety.

Appendices

1 PRA Expected Responsibilities of NEDs in scope of the SMR

Appendix 1: PRA Expected Responsibilities of NEDs in scope of the SIMR

Senior Insurance Management Function	Expected Responsibility
Chairman of the board (ie SIMF 9 Chairman function)	Chairing, and overseeing the performance of the role of, the governing body of a firm. Leading the development and monitoring effective implementation of policies and procedures for the induction, training and professional development of all members of the firm's governing body, Overseeing the assessment of fitness and propriety of all NEDs; and Leading the development of the firm's culture by the governing body as a whole
Chair of the Risk Committee (SIMF 10)	Chairing, and overseeing the performance of the role of, the risk committee.
Chair of the Audit Committee (SIMF 11)	Chairing, and overseeing the performance of the role of, the audit committee.
Chair of the Remuneration Committee (SIMF 12)	Chairing, and overseeing the performance of the role of, the remuneration committee. Oversight of the development and implementation of the firm's remuneration policies and practices.
SID (SIMF 14)	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.
Any NED subject to pre-approval	Oversight of the independence, autonomy, and effectiveness of the firm's policies and procedures on whistleblowing including the procedures for protection of staff who raise concerns from detrimental treatment.

Annex: Summary of Updates to SS35/15

SS35/15 was first published in August 2015 following CP26/14 'Senior Insurance Managers Regime: a new regulatory framework for individuals'¹, 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'², and CP 13/15 'Changes to the Approved Persons Regime for Solvency II firms: forms, consequential changes and transitional arrangements'³.

This appendix details changes made to this SS following its initial publication in August 2015.

Updates

September 2016

- Inserting Chapter 5 to incorporate the PRA's expectations in relation to regulatory references published as part of PS27/16 'Strengthening accountability in banking and insurance: PRA requirements on regulatory references (part II)'.⁴
- Other consequential changes to chapters 1-4, and updates to reflect the commencement of changes to FSMA made through the Bank of England and Financial Services Act 2016.

May 2017

- Adding paragraphs 2.22A - 2.22G to set out the PRA's expectations in relation to the rule changes described in Chapter 4 of PS xx/17 'Strengthening individual accountability in banking and insurance: amendments and optimisations'.
- Amending Chapter 3 to reflect the direct application with effect from 12 July 2017 of PRA conduct rules to Conduct Rules NEDs; and to record the PRA's expectation that observance of the PRA Conduct Standards by key function holders should normally be included within the Scope of Responsibilities record maintained (and signed) by the individual.

1 July 2014, www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp1414.aspx.

2 February 2015, www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp715.aspx.

3 December 2014, www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2814.aspx.

4 September 2016, www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps2716.aspx.

Appendix 3 - Draft amendments to Statement of Policy ‘Conditions, time limits, and variations of approval’

1 Introduction

Strike through indicates deleted text, and underlining indicates new text.

1. This statement of policy is issued by the Prudential Regulation Authority (PRA) in accordance with section 63ZD of the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services (Banking Reform) Act 2013,¹ and the Bank of England and Financial Services Act 2016, which requires the PRA and the Financial Conduct Authority (FCA) to issue a statement of their respective policies on:

- approving individuals under section 59 of FSMA subject to conditions and time limits; and
- varying approvals under section 59 of FSMA.²

~~2.~~ 2. The statement applies to all PRA-~~authorised~~ persons, including Insurance Special Purpose Vehicles (ISPVs), the Society of Lloyd’s (Lloyd’s) and managing agents at Lloyd’s. Relevant Authorised Persons (Relevant Firms) as defined in section 71A of FSMA namely:

~~3.~~ ~~banks;~~

~~4.~~ ~~building societies;~~

~~5.~~ ~~credit unions; and~~

~~6.~~ ~~PRA designated investment firms.~~

3. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way that advances its statutory objectives.³ The PRA is also required to have regard to certain regulatory principles.⁴ The PRA may alter or replace this statement of policy at any time subject to consultation.

2. Statutory framework

4. Section 61 of FSMA allows the PRA to approve applications to perform a Senior Management Function (SMF)⁵ under section 59 of FSMA:

- subject to any conditions that the PRA considers appropriate; and/or
- for a limited time period; and in either case, only
- where it appears to the PRA that it is desirable to do so in order to advance any of its objectives.

¹ www.legislation.gov.uk/ukpga/2013/33/contents/enacted.

² The PRA’s and FCA’s power to vary approvals are set out in Sections in sections 63ZA or 63ZB of FSMA.

³ Sections 2B and 2C of FSMA.

⁴ Sections 2G and 3B of FSMA.

⁵ The term SMF in this document includes Senior (Insurance) Management Functions at insurers.

5. Similarly, sections 63ZA and 63ZB of FSMA allow the PRA to vary approvals to perform SMFs granted under section 59 of FSMA either at the request of a ~~Relevant~~ firm or at the PRA's own initiative, where:

- the PRA gave the approval; or
- the FCA gave the approval and the ~~Relevant~~ firm is PRA-authorised; and
- the PRA considers that it is desirable to do so in order to advance any of its objectives. Variations of approval may include the imposition, modification or removal of conditions and/or time limits.

6. Before exercising its powers under section 63ZB of FSMA, the PRA is required to consult with the FCA if the approval was given by the FCA or last varied by the FCA. Moreover, where the PRA wants a variation of approval made at its own initiative to take place immediately, it must comply with section 63ZC of FSMA, which gives the firm concerned and the individual approved (the "Senior Manager") the right to make representations.

3 General approach

7. Sections 61, 63ZA and 63ZB of FSMA give the PRA flexibility to address issues which can arise when considering applications to perform an SMF or assessing the fitness and propriety of existing Senior Managers on an ongoing basis. However, these powers can only be used if they appear to advance the PRA objectives. This will be assessed on a case-by-case basis taking into account the circumstances of the firm and the relevant Senior Manager.

8. Moreover, these FSMA powers complement, but do not replace the PRA's ability to:

- discuss candidates for SMF roles informally with firms (without detracting from firms' obligation to vet those candidates under Section 60A of FSMA);
- approve applications unconditionally but make non-binding recommendations on issues such as learning and development plans, either at the time of approval or subsequently; or
- reject applications or withdraw the approval of individuals deemed not to be fit and proper.

9. In line with the PRA approach documents¹, the PRA may discuss the potential imposition of conditions and time limits on the approvals of individual Senior Managers with the boards and senior management of the firms concerned. However, firms should not view the availability of such conditions and time limits as a way of facilitating the approval of individuals who otherwise fail to meet minimum standards of fitness and propriety.

10. Similarly, while the PRA relies on supervisory dialogue in seeking to ensure that Senior Managers address risks to a firm's safety and soundness on an ex-ante basis, it reserves the right to use its power to vary approvals on its own initiative to impose conditions requiring individual Senior Managers to take certain action where justified.

1 <http://www.bankofengland.co.uk/publications/Pages/other/prasupervisoryapproach.aspx>.

11. The rest of this statement of policy sets out, for illustrative purposes, a series of non-binding, non-exhaustive examples of situations where the PRA may use its FSMA powers to impose time limits, conditions and variations on the approvals of Senior Managers. However, each case will be assessed individually and firms should not rely on these examples to predict or develop expectations about the likely outcome of a given application.

4 Time-limited approvals

12. If a firm appoints an individual to perform a function which, in all other circumstances, would be an SMF subject to pre-approval by the PRA (PRA SMF); the appointment is solely to provide cover for an PRA SMF whose absence is temporary or reasonably unforeseen and the appointment will be for less than twelve weeks in a consecutive twelve-month period, that individual will not require pre-approval.¹

13. However, as soon as it becomes apparent that the individual will be performing a PRA SMF for more than twelve weeks in a consecutive twelve-month period, the firm will be required to apply for pre-approval.

14. Therefore, the use of time-limited approvals will only be applied to applications to perform an SMF on an interim, provisional or temporary basis for a period exceeding or likely to exceed twelve weeks in a consecutive twelve-month period.

15. An example of where the PRA may approve an individual subject to a time-limit is where:

- an SMF leaves a firm suddenly or unexpectedly;
- the firm needs to fill the SMF vacancy immediately;
- it is likely to take longer than twelve weeks to recruit a permanent replacement; and
- there is an individual at the firm not currently approved to perform the relevant SMF, such as a deputy, who the firm and the PRA deem capable of fulfilling the role in an interim capacity but not necessarily on a permanent basis.

16. There is no formal upper limit on the duration of time-limited approvals, which will be set on a case-by-case basis.

5 Probationary time limits

17. There may be circumstances where a firm wants to appoint a candidate to perform an SMF who may, in their proposed role, be responsible for dealing with unusual or severe challenges in the foreseeable future. In this situation, although the candidate is deemed fit and proper, it might be appropriate to approve ~~him or her~~ them subject to a time limit, with a view to reassessing ~~him or her~~ them for a permanent position in due course.

18. In this situation, a time-limited approval may be accompanied by a condition requiring the individual to:

¹ Senior Management Functions 2.3, Insurance – Senior Insurance Management Functions 2.4, Large Non-Solvency II Firms – Senior Insurance Management Functions 2.4, Non-Solvency II Firms – Senior Insurance Management Functions 2.3.

- complete a certain action on or before the end of the time limit, for example a requirement on an acting Head of Internal Audit (S(I)MF5) to produce a revised Audit Plan for the firm within the next six months; or
- refrain from taking specific actions or decisions associated with the role until a permanent approval is granted, for example a requirement on an interim Chief Risk function (S(I)MF4) not to review the firm's risk appetite until approved on a permanent basis.

19. A further example could be where:

- the Chief Executive (SMF1) of a large bank resigns unexpectedly;
- the firm wants to appoint the head of retail banking, which is the bank's largest and most significant business line, as interim Chief Executive;
- PRA supervisors consider that the head of retail banking would be capable of running the firm on a day-to-day basis but note that ~~he or she has~~ they have no experience developing a long-term strategy for the firm as a whole; and
- the firm's ~~Chairman~~ and Head of HR estimate that it could take up to a year to recruit a permanent Chief Executive and believe that the Head of Retail Banking could be the ideal candidate if ~~he or she~~ they can deliver a viable five-year strategic plan.

19A. Another example could be where:

- the Chief Executive (SIMF1) of a large insurer resigns unexpectedly;
- the firm wants to appoint as an interim Chief Executive, an individual with extensive professional experience, but little or no experience in the wider responsibilities of a Chief Executive. Such an individual could currently be for example a Chief Underwriting Officer at an insurer;
- PRA supervisors consider that the individual proposed as Chief Executive would be capable of running the firm on a day-to-day basis but note that they have no experience in developing and implementing a long-term strategy for the firm as a whole; and
- the firm's Chair of the Board and Head of HR estimate that it could take up to a year to recruit a permanent Chief Executive and believe that the individual currently proposed to be Chief Executive could be the ideal candidate if they can deliver a viable five-year strategic plan.

20. In these situations, it may be appropriate to approve the ~~head of retail banking individual~~ as Chief Executive (S(I)MF1) subject to a twelve-month time limit, during which ~~he or she~~ they would be expected to produce a five-year plan for the firm. The plan would be taken into account when considering whether to approve ~~him or her~~ them on a permanent basis.

21. The PRA may vary or remove a time limit on a Senior Manager's approval before the time limit lapses depending on its assessment of the individual circumstances of the case, including but not limited to fulfilment of any conditions.

6 Role-scale limited approvals

22. Where a firm is expanding, transforming its business model or its risk profile and there are identifiable upcoming milestones, the PRA may wish to link the duration of one or more Senior Managers' approvals to these milestones.

23. An example might be an unlisted bank or insurer which currently operates only in the United Kingdom but is planning an initial public offering and a number of overseas acquisitions which are projected to treble the size of its balance sheet and give it a global footprint over the next three years.

24. The incumbent Chief Finance function (S(I)MF2) holder has never managed the financial resources of an institution as large or complex as this firm/bank intends to become. In this situation, it may be appropriate to either:

- limit ~~his or her~~ their approval to three years (the projected time for completing the expansion); or
- link it to certain expected milestones (ie the point at which the firm's balance sheet exceeds a predetermined size) at which point ~~his~~ their fitness and propriety would be reassessed in light of the new circumstances.

25. The imposition of a role-scale-linked time limit on a Senior Manager's approval would apply without prejudice to other obligations which may arise on a firm in those circumstances, such as the duty to provide the PRA and FCA with a revised Statement of Responsibilities if the relevant Senior Manager's responsibilities undergo a 'significant change' (section 62A of FSMA) and to meet any information or verification requirements imposed by the PRA under that section and under Applications and Notifications 5.3 and 6.3, Insurance – Applications and Notifications 5.3 and 6.3, Large Non-Solvency II Firms – Senior Insurance Managers Regime - Applications and Notifications 5.3 and 6.3, or Non-Solvency II Firms - Senior Insurance Managers Regime – Applications and Notifications 5.3 and 6.3.

7 Performing an SMF after a time limit lapses

26. Should an individual continue to perform an SMF following expiry of a time-limited approval, ~~he or she~~ they will be deemed to be performing an SMF without approval and may be liable to penalties under section 63A of FSMA.¹

27. The firm may also be liable under section 59(1) of FSMA for failing to take reasonable care to ensure that the individual does not perform an SMF without approval.

28. Moreover, the Senior Manager responsible for managing or overseeing the firm's performance of its obligations under the Senior Managers Regime (under Allocation of Responsibilities 4.1(1) Insurance – Allocation of Responsibilities 3.1(1A), Large Non-Solvency II Firms – Allocation of Responsibilities 3.1(1A), or Non-solvency II Firms – Allocation of Responsibilities 3.1(1A)) may be guilty of misconduct under section 66B(5) of FSMA if ~~he or she~~

¹ The PRA's approach to enforcement: statutory statements of policy and procedure sets out the PRA's policy on the imposition and amount of penalties under inter alia sections 63A of FSMA; www.bankofengland.co.uk/publications/Documents/other/praproachenforcement.pdf.

~~they did not take~~ cannot satisfy the PRA that ~~he or she~~ took reasonable steps to avoid the contravention of section 59(1) of FSMA occurring or continuing.¹

29. Firms must remain aware of the expiry of all time-limited approvals and promptly inform the regulator of any steps they intend, or may be required, to take ahead of their expiry.

8 Conditional approvals

30. Conditional approvals may be granted in cases where a candidate has been deemed fit and proper overall but, typically, where the assessment has unveiled an action or development point whose completion would advance the PRA's objectives.

31. Before imposing conditions, the PRA may undertake an interview to assess the candidate's competency and capability for the SMF ~~he or she is~~ they are seeking to perform. However, it may also impose conditions without a prior interview.

32. The PRA may ask a candidate to undertake training to enhance their competency and capability in a specific area where this is desirable to advance the PRA's objectives. Fulfilment of conditions may be subject to a deadline, which would differ from any potential accompanying statutory time limits on the individual's approval.

33. An example might be the case of a ~~firm~~bank which is looking to appoint its current head of credit risk as Chief Risk Officer and is seeking approval for ~~him or her~~ them to perform the Chief Risk function (S(I)MF4). The candidate has substantial experience in credit and operational risk but their knowledge of market risk, or of insurance risk in the case of an insurer, which accounts for a significant part of the firm's risk profile, is out of date. In this situation, it might be appropriate to attach a condition to the individual's approval requiring ~~him or her~~ them to undertake training to update ~~his or her~~ their knowledge of market risk (or insurance risk in the case of an insurer) by a specified date.

34. In some circumstances conditions may require a candidate to refrain from or cease undertaking certain actions. They may also require the candidate to go beyond regulatory requirements in a given area. An example might be a systemically important bank which is seeking approval for a new Chairman (SMF9) who sits on the board of two major non-financial firms. ~~Notwithstanding that~~ while these two additional directorships ~~may be~~ within the limits imposed under relevant PRA rules (ie the rules in General Organisational Requirements implementing CRD IV), supervisors are concerned about their potential impact on the candidate's ability to devote sufficient time to ~~his or her~~ their proposed ~~chairing~~man role which, for a firm of this size and complexity, would typically require a near full-time commitment. In this situation, it might be appropriate to attach a condition to the individual's approval requiring them to resign from one or both of the other non-executive directorships.

35. There may be circumstances where conditions imposed on a Senior Manager's approval can also be imposed on the firm as a whole using the PRA's powers under section 55M of FSMA. An example could be a condition to produce a remediation plan within a specified timeframe setting out the process by which a specific business unit intends to rectify deficiencies in its prudential systems and controls. This could potentially be imposed on the firm, its Chief Executive (S(I)MF1) or, if applicable, the relevant Head of Key Business Area (S(I)MF6).

¹ In addition, under section 66B (3) of FSMA, any Senior Manager or Certified employee who was knowingly concerned in the firm's breach of section 59(1) of FSMA would also be guilty of misconduct.

36. In considering whether to impose a condition on a Senior Manager's approval under section 63ZB of FSMA instead of or in addition to imposing a requirement on the firm under section 55M, the PRA may take into account a number of factors including but not limited to:

- whether it would be more appropriate to impose the requirement on the firm, for instance because it relates to a matter reserved to the board as a whole;
- the extent to which the subject matter of the condition already forms part of the Senior Manager's responsibilities, as evidenced by documents including ~~his or her~~ their Statement of Responsibilities; and
- whether the regulatory outcome which the condition is seeking is within the control of the relevant Senior Manager, including through any direct reports for which ~~he or she is~~ they are responsible.

9 Failure to observe a condition

37. Failure to observe a condition by the set deadline does not, in itself, invalidate an approval granted under section 59 of FSMA but, depending on the circumstances, may amount to a breach by the firm and/or the relevant Senior Manager of a number of regulatory requirements including but not limited to:

- Section 63A(2)(b) of FSMA;
- Fundamental Rules 1, 2, 6 and 7.(1);
- Individual Conduct Rule/Standard 1 and Senior Management Conduct Rule/Standard 4 ; and
- General Organisational Requirements 5.1(5), 5.2 and 5.3 (for CRR firms).

38. Moreover, non-fulfilment or late fulfilment of a condition may be deemed to constitute a failure by the relevant Senior Manager to observe minimum standards of fitness and propriety and could trigger disciplinary action, including withdrawal of approval.

10 Variations of approval

39. The circumstances which may lead to a time limit or condition being imposed on a prospective Senior Manager may also lead to an incumbent Senior Managers' approval being varied, either at the firm's request or the PRA's own initiative.

40. In addition, the PRA may vary an individual's approval to give explicit responsibility for managing or overseeing delivery of a specific and potentially ad hoc and time-limited regulatory requirement or remedial action.

41. For example, a UK-regulated firm has just entered into a three-year deferred prosecution agreement with overseas authorities after being accused of local market misconduct. Breach of the deferred prosecution agreement could seriously imperil the firm's safety and soundness, eg through fines and/or loss of key local authorisations. The PRA may vary the approvals of one or more Senior Managers so as to make them explicitly responsible for ensuring and overseeing compliance with the terms of the agreement in order to further the firm's safety and soundness.

Appendix 4 – Application of extended SM&CR to Solvency II insurers and Large NDFs

This table shows how the various constituent elements of the SM&CR for insurers, as proposed in this CP, would be applied to the different categories of individual within each firm.

Role	Fit and proper assessment by regulator	Fit and proper assessment by firm	Conduct standards apply directly to individuals	Conduct standards applied by firm	Regulatory references	Required DBS checks
PRA S(I)MF or FCA Relevant SMF	Pre-approval	✓	All	All	✓	✓
Notified NED	Yes, post appointment	✓	See Note 2	See Note 2	✓	✓
KFH (other than a 'notified NED')	Yes, post appointment	✓	All	All	✓	X
Certification function (other than a KFH)	X	✓	Individual conduct rules only	Individual conduct standards only	✓	X
Performing a key function	X	✓	X	Individual conduct standards only	X	X
Other employees	X	X	X	X	X	X

Notes

- 1) Individuals who hold multiple roles in the table above must comply with the requirements consistent with their highest level role.
- 2) For 'Notified NEDs', including Conduct Rules NEDs, the conduct standards to be applied by the firm would be the three individual conduct standards, plus the additional senior (insurance) manager standards requiring proactive disclosure of information by individuals to the PRA and FCA, and having regard to the interests of policyholders. For Conduct Rules NEDs, these same conduct standards will also apply directly to the individuals as conduct rules.

Appendix 5 – Application of extended SM&CR to Small NDFs

This table shows how the various constituent elements of the SM&CR for insurers, as proposed in this CP, would be applied to the different categories of individual within each firm.

Role	Fit and proper assessment by regulator	Fit and proper assessment by firm	Conduct standards apply directly to individuals	Conduct standards applied by firm	Regulatory references	Required DBS checks
PRA S(I)MF or FCA Relevant SMF	Pre-approval	✓	All	All	✓	✓
Conduct Rules NED	X	X	See Note 2	X	X	X
Certification function	X	✓	Individual conduct rules only	Individual conduct standards only	✓	X
Other employees	X	X	X	X	X	X

Notes

- 1) Individuals who hold multiple roles in the table above must comply with the requirements consistent with their highest level role.
- 2) For 'Conduct Rules NEDs', the conduct rules/standards would be only the three individual conduct rules/standards, plus the additional senior (insurance) manager rules/standards requiring proactive disclosure of information by individuals to the regulators, and having regard to the interests of policyholders.