

LEGAL CUTOVER (SKILLED PERSONS) INSTRUMENT 2013

WHEREAS:

- A. The Authority has, in accordance with Article 5 of the Designation Order, appointed persons to exercise functions referred to in Article 5(1) of the Designation Order, which include the function of the Financial Conduct Authority of designating or modifying a Relevant Instrument and the functions of making rules and issuing guidance.
- B. By virtue of Article 5(3)(a) of the Designation Order the persons appointed may discharge the relevant functions as if they were the governing body of the Financial Conduct Authority.
- C. By virtue of Article 7(1) of the Designation Order this Instrument shall be treated as if it had been made by the Financial Conduct Authority acting through its governing body.
- D. Article 2(1)(c) of the Early Commencement Order commenced certain of the Financial Conduct Authority's rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.
- E. Article 2(1)(c) of the Early Commencement Order commenced certain of the Prudential Regulation Authority's rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.

Interpretation

1 In this Instrument (including the Recitals):

- (1) "Designation Order" means the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (SI 2013/161);
- (2) "Early Commencement Order" means the Financial Services Act 2012 (Commencement No. 1) Order 2013 (SI 2013/113);
- (3) "the 2000 Act" means the Financial Services and Markets Act 2000;
- (4) "the 2012 Act" means the Financial Services Act 2012;
- (5) "the Authority" means the Financial Services Authority;
- (6) "Financial Conduct Authority" means the body corporate referred to in section 1A of the 2000 Act as amended by section 6 of the 2012 Act;
- (7) "Prudential Regulation Authority" means the body corporate referred to in section 2A(1) of the 2000 Act as amended by section 6 of the 2012 Act;
- (8) "Handbook" means the Authority's Handbook of Rules and Guidance (and including for this purpose the Handbook Guides and Regulatory Guides published by the Authority alongside the Handbook of Rules and Guidance) in each case as published on the Authority's Handbook website at 11h59 pm on 27 February 2013;
- (9) "Relevant Instrument" has the meaning in section 119(6)(b) of the 2012 Act;
- (10) "FSA Instrument" means an instrument published by the Authority, by which the Authority made, issued, gave, imposed or amended a Relevant Instrument;
- (11) "FCA Relevant Instrument" means a Relevant Instrument designated by the Financial Conduct Authority under paragraph 2;

- (12) "PRA Relevant Instrument" means a Relevant Instrument designated by the Prudential Regulation Authority under paragraph 14 and excludes any Relevant Instrument falling within paragraph 15;

Designation of rules etc. by the Financial Conduct Authority

- 2 In accordance with Article 3(1) of the Designation Order, the Financial Conduct Authority designates the rules, guidance, requirements, codes, schemes, statements or directions, set out in each FSA Instrument (or part of such instrument) by which the Authority made, issued, gave, imposed or amended each part or provision of the Handbook, identified as:
- (1) "Designated" in Column 2 of Annex D to this Instrument; and
 - (2) "FCA" or "FCA/PRA" in Column 3 of Annex D to this Instrument.
- 3 As required by Article 3(1)(c) and (d) of the Designation Order, the Financial Conduct Authority specifies that:
- (1) The FCA Relevant Instruments were made, issued, given or imposed by the Authority under the provisions set out in the relevant FSA Instrument;
 - (2) The FCA Relevant Instruments collectively were made, issued, given or imposed by the Authority under the provisions set out in column 1 of Parts 1 to 10 of Schedule A to this Instrument; and
 - (3) The FCA Relevant instruments collectively are treated as made, issued, given or imposed by the Financial Conduct Authority under the corresponding provisions set out in column 2 of Parts 1 to 10 of Schedule A to this Instrument.
- 4 In accordance with Article 2(2)(a) of the Designation Order, each FCA Relevant Instrument is treated as having been made, issued, given or imposed by the Financial Conduct Authority.

Modification of rules etc. by the Financial Conduct Authority

- 5 In accordance with Article 3(1) of the Designation Order, the Financial Conduct Authority modifies each FCA Relevant Instrument (or part of such instrument) as specified in Annex C to this Instrument.

Rules etc. made, given or amended by the Financial Conduct Authority

- 6 In accordance with Article 2(1)(c) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 9, the Financial Conduct Authority makes, issues, gives, amends or imposes:
- (1) each provision in Annex A and provision 3.2.7R in Annex B to this Instrument; and
 - (2) each provision in Annex C to this Instrument that meets all of the conditions in paragraph 7; and
 - (3) any amendment that is not a modification made in accordance with paragraph 5 specified in a provision in Annex C to this Instrument that meets all of the conditions in paragraph 8.
- 7 The conditions referred to in paragraph 6(2) are that a provision is:
- (1) identified as "Made" in Column 2 of Annex D to this Instrument; and
 - (2) identified as "FCA" or "PRA/FCA" in Column 3 of Annex D to this Instrument.
- 8 The conditions referred to in paragraph 6(3) are that a provision is:

- (1) identified as “Designated” in Column 2 of Annex D to this Instrument; and
 - (2) identified as “FCA” or “PRA/FCA” in Column 3 of Annex D to this Instrument,
- 9 The Financial Conduct Authority makes, issues, gives, amends or imposes the provisions in paragraph 6 in exercise of the following powers and related provisions of the 2000 Act, as amended by the 2012 Act:
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- 10 The rule-making powers in paragraph 9 are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.

Commencement: Financial Conduct Authority

- 11 As required by Article 3(1) of the Designation Order, the Financial Conduct Authority specifies that the designation (in paragraph 2) and the modification (in paragraph 5) of each FCA Relevant Instrument comes into effect on 1 April 2013.
- 12 The Financial Conduct Authority directs that paragraph 6 of this Instrument comes into effect on 1 April 2013.
- 13 The Financial Conduct Authority directs that paragraph 6 of this Instrument comes into force immediately after the coming into force of the designations in paragraph 2 and the modifications in paragraph 5.

Designation of rules etc. by the Prudential Regulation Authority

- 14 In accordance with Article 3(1) of the Designation Order, the Prudential Regulation Authority designates the rules, requirements, codes, schemes, statements or directions, set out in each FSA Instrument (or part of such instrument) by which the Authority made, gave or amended the part or provision of the Handbook identified as:
- (1) “Designated” in Column 2 of Annex D to this Instrument; and
 - (2) “PRA” or “FCA/PRA” in Column 3 of Annex D to this Instrument.
- 15 The designation by the Prudential Regulation Authority in paragraph 14 excludes any provision designated as guidance in an FSA Instrument.
- 16 As required by Article 3(1)(c) and (d) of the Designation Order, the Prudential Regulation Authority specifies that:
- (1) The PRA Relevant Instruments were made, issued, given or imposed by the Authority under the provisions set out in the relevant FSA Instrument;
 - (2) The PRA Relevant Instruments collectively were made, issued, given or imposed by the Authority under the provisions set out in column 1 of Parts 1 to 10 of Schedule A to this Instrument; and
 - (3) The PRA Relevant instruments collectively are treated as made, issued, given or imposed by the Prudential Regulation Authority under the corresponding provisions set out in column 3 of Parts 1 to 10 of Schedule A to this Instrument.

17 In accordance with Article 2(2)(a) of the Designation Order, each PRA Relevant Instrument is treated as having been made, issued, given or imposed by the Prudential Regulation Authority.

Modification of rules etc. by the Prudential Regulation Authority

18 In accordance with Article 3(1) of the Designation Order, the Prudential Regulation Authority modifies each PRA Relevant Instrument (or part of such instrument) as specified in Annex C to this Instrument.

Rules etc. made, given or amended by the Prudential Regulation Authority

19 In accordance with Article 2(1)(c) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph (3), the Prudential Regulation Authority makes, issues, gives, amends or imposes:

- (1) each provision in Annex A and provision 3.2.7AR in Annex B to this Instrument; and
- (2) each provision in Annex C to this Instrument that meets all of the conditions in paragraph 20;
- (3) any amendment that is not a modification made in accordance with paragraph 18 specified in a provision in Annex C to this Instrument that meets all of the conditions in paragraph 21.

20 The conditions referred to in paragraph 19(2) are that a provision is:

- A. identified as "Made" in Column 2 of Annex D to this Instrument; and
- B. identified as "PRA" or "PRA/FCA" in Column 3 of Annex D to this Instrument.

21 The conditions referred to in paragraph 19(3) are that a provision is:

- A. identified as "Designated" in Column 2 of Annex D to this Instrument; and
- B. identified as "PRA" or "PRA/FCA" in Column 3 of Annex D to this Instrument,

22 The Prudential Regulation Authority makes, gives, amends or imposes the provisions in paragraph 19 in exercise of the following powers and related provisions of the 2000 Act, as amended by the 2012 Act:

- (1) section 137G (The PRA's general rules); and
- (2) section 137T (General supplementary powers).

23 The rule-making powers in paragraph 19(3) are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.

24 The Prudential Regulation Authority gives as guidance:

- (1) each provision in Annex C to this instrument identified as "PRA" or "FCA/PRA" in Column 3 of Annex D that is marked with a G in Column 1 of Annex D to this Instrument; and
- (2) each provision listed in Annex D to this Instrument identified as "PRA" or "FCA/PRA" in Column 3 of Annex D that is (a) marked with a G in Column 1 of Annex D to this Instrument and (b) not in Annex C to this Instrument.

Commencement: Prudential Regulation Authority

25 As required by Article 3(1) of the Designation Order, the Prudential Regulation Authority specifies that the designation (in paragraph 14) and the modification (in paragraph 18) of each PRA Relevant Instrument comes into effect on the 1 April 2013.

- 26 The Prudential Regulation Authority directs that paragraph 18 of this Instrument comes into effect on 1 April 2013.
- 27 The Prudential Regulation Authority directs that paragraph 19 of this Instrument comes into force immediately after the coming into force of the designations in paragraph 14 and the modifications in paragraph 18.

Amendments to the Handbooks

- 28 The modules of the FCA's and PRA's Handbooks of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this Instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Supervision manual (SUP)	Annex C

Citation

- 29 This Instrument may be cited as the Legal Cutover (Skilled Persons) Instrument 2013.

By order of the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body

19 March 2013

By order of the Board of the Prudential Regulation Authority

22 March 2013

Annex A

Amendments to the Glossary of definitions (Glossary)

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

- skilled person*
[FCA/PRA]
- a *person* appointed to make a report required by section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~) for provision to the *FSA* appropriate regulator and who must be a person:
- (a) nominated, ~~or~~ approved or appointed by the *FSA* appropriate regulator,
and
 - (b) appearing to the *FSA* appropriate regulator to have the skills necessary to make a report on the matter concerned.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

3.2.7
[FCA/
PRA]

R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
<p><u>(zp) A person in respect of which the <i>appropriate regulator</i> has given notice of its intention to itself appoint a <i>skilled person</i> to provide it with a report pursuant to section 166(3)(b) of the <i>Act</i> and SUP 5.2.</u></p>	<p><u>Any amount invoiced to the <i>appropriate regulator</i> by a <i>skilled person</i> in relation to any work carried out by that <i>skilled person</i> in connection with its appointment by the <i>appropriate regulator</i> pursuant to section 166(3)(b) of the <i>Act</i>.</u></p>	<p><u>Within 30 days of the date of the invoice.</u></p>
<p><u>(zq) A person in respect of which the <i>appropriate regulator</i> has given notice of its intention to itself appoint a <i>skilled person</i> to collect or update information pursuant to section 166A(2)(b) of the <i>Act</i>.</u></p>	<p><u>Any amount invoiced to the <i>appropriate regulator</i> by a <i>skilled person</i> in relation to any work carried out by that <i>skilled person</i> in connection with its appointment by the <i>appropriate regulator</i> pursuant to section 166A(2)(b) of the <i>Act</i>.</u></p>	<p><u>Within 30 days of the date of the invoice.</u></p>
...		

Annex C

Amendments to the Supervision manual (SUP)

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

5 Reports by skilled persons

5.1 Application and purpose

Application

5.1.1 R ...

5.1.1A [FCA] R In respect of the FCA's power in section 166 of the Act (Reports by skilled persons), reference to a firm in SUP 5.5.1R, SUP 5.5.5R and SUP 5.5.9R includes a recognised investment exchange.

5.1.1B [FCA] G In respect of the FCA's power in section 166 of the Act (Reports by skilled persons), the guidance in this chapter applies to a recognised investment exchange in the same way as it applies to a firm.

...

Purpose

5.1.3 [FCA/ PRA] G The purpose of this chapter is to give guidance on the FSA's appropriate regulator's use of the power in section 166 (Reports by skilled persons) and section 166A (Appointment of skilled person to collect and update information) of the Act (Reports by skilled persons). The purpose is also to make rules requiring a firm to include certain provisions in its contract with a skilled person and to give assistance to a skilled person and, where a firm is required to appoint a skilled person, to include certain provisions in its contract with a skilled person. These rules are designed to ensure that the FSA appropriate regulator receives certain information from a skilled person and that a skilled person receives assistance from a firm.

5.2 The FSA's appropriate regulator's power

Who may be required to provide a report?

5.2.1 [FCA/ PRA] G Under section 166 of the Act (Reports by skilled persons), the FSA appropriate regulator may, by giving a written notice, itself appoint a skilled person to provide it with a report, or require any of the following persons to provide it with a report by a skilled person:

...

5.2.2 [FCA/ PRA] G Under section 166A of the Act (Appointment of skilled person to collect and update information), the appropriate regulator may require a firm to appoint, or itself appoint, a skilled person to collect or update information.

5.3 Policy on the use of skilled persons

- 5.3.1 [FCA/PRA] G The appointment of a *skilled person* to produce a report under section 166 of the *Act* (Reports by skilled persons) is one of the *FSA's appropriate regulator's* regulatory tools. The tool may be used:
- ...
- ~~SUP 5 Annex 1 gives examples of circumstances in which the *FSA* may use the *skilled persons* tool.~~
- 5.3.1A [FCA] G SUP 5 Annex 1 gives examples of circumstances in which the *FCA* may use the *skilled persons* tool.
- 5.3.2 [FCA/PRA] G The decision by the *appropriate regulator* to require a report by a *skilled person* under section 166 of the *Act* (Reports by skilled persons) will normally be prompted by a specific requirement for information, analysis of information, assessment of a situation, expert advice or recommendations or by a decision to seek assurance in relation to a regulatory return. It may be part of the risk mitigation programme applicable to a *firm*, or the result of an event or development relating or relevant to a *firm*, prompted by a need for verification of information provided to the *FSA appropriate regulator* or part of the *FSA's appropriate regulator's* regular monitoring of a *firm*.
- 5.3.2A [FCA/PRA] G The decision by the *appropriate regulator* to require the collection or updating of information by a *skilled person* under section 166A of the *Act* (Appointment of skilled person to collect and update information) will be prompted where the *appropriate regulator* considers there has been a breach of a requirement by a *firm* to collect, and keep up to date, information of a description specified in the *appropriate regulator's rules*.
- 5.3.3 [FCA/PRA] G When making the decision to require a report by a *skilled person* under section 166 (Reports by skilled persons) or the collection or updating of information by a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, the *FSA appropriate regulator* will have regard, on a case-by-case basis, to all relevant factors. Those are likely to include:
- ...
- (4) the objectives of the *FSA's appropriate regulator's* enquiries;
- ...
- (6) considerations relating to *FSA the appropriate regulator's* resources.
- SUP 5.3.4G to SUP 5.3.10G give further guidance on these listed factors.

Circumstances relating to the firm

- 5.3.4 [FCA/PRA] G The *FSA appropriate regulator* will have regard to circumstances relating to the *firm*, for example:
- ...
- (3) quality of a *firm's* systems and records: whether the *FSA appropriate regulator* has confidence that the *firm* has the ability to provide the required information;

- (4) objectivity: whether the *FSA appropriate regulator* has confidence in the *firm's* willingness and ability to deliver an objective report;
- (5) conflicts of interest: whether the subject matter of the enquiries or the report involves actual or potential misconduct and it would be inappropriate for the *FSA appropriate regulator* to rely on the *firm* itself to enquire into the matter; and

...

Alternative tools available, including other statutory powers

5.3.5
[FCA/
PRA]

- G The *FSA appropriate regulator* will have regard to alternative tools that may be available, including, for example:
- (1) obtaining what is required without using specific statutory powers (for example, by a visit by *FSA* staff of the *appropriate regulator* or a request for information on an informal basis);
 - (2) requiring information from *firms* and others, including authorising an agent to require information, under section 165 of the *Act* (~~Authority's power~~ Power to require information);
 - (3) appointing investigators to carry out general investigations under section 167 of the *Act* (~~Appointment of persons to carry out general investigations~~ investigator in general cases) (see *EG 3* for the *FSA's appropriate regulator's* policy on the use of this power); and
 - (4) appointing investigators to carry out investigations in particular cases under section 168 of the *Act* (~~Appointment of persons to carry out investigations in particular cases~~ investigator in specific cases) (see *EG 3* for the *FSA's appropriate regulator's* policy on the use of this power).

Legal and procedural considerations

5.3.6
[FCA/
PRA]

- G The *FSA appropriate regulator* will have regard to legal and procedural considerations including:
- (1) statutory powers: whether one of the other available statutory powers is more appropriate for the purpose than the power in section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~);
- ...
- (3) application of the *Handbook rules*: whether it is important that the relevant *rules* in the *Handbook* should apply, for example *SUP 5.5.1R* which obliges the *firm* to require and permit the ~~skilled person~~ skilled person to report specified matters to the *FSA appropriate regulator*.

The objectives of the *FSA's appropriate regulator's* enquiries

5.3.7
[FCA/
PRA]

- G The *FSA appropriate regulator* will have regard to the objectives of its enquiries, and the relative effectiveness of its available powers to achieve those objectives. For example:

- (1) historic information or evidence: if the objectives are limited to gathering historic information, or evidence for determining whether enforcement action may be appropriate, the *FSA's appropriate regulator's* information gathering and investigation powers under sections 165 (~~Authority's power~~ Power to require information), 167 (~~Appointment of persons to carry out general investigations~~ investigator in general cases) and 168 (~~Appointment of persons to carry out investigations in particular cases~~ investigator in specific cases) of the *Act* are likely to be more appropriate than the power in section 166 ~~power~~ (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act*; and
- (2) expert analysis or recommendations: if the objectives include obtaining expert analysis or recommendations (or both) for diagnostic, monitoring, preventative or remedial purposes, the section 166 power (Reports by skilled persons) may be an appropriate power to use, instead of, or in conjunction with, the *FSA's appropriate regulator's* other available powers.

Cost considerations

5.3.8
[FCA/
PRA]

- G In accordance with its general policy the *FSA appropriate regulator* will have regard to the question of cost, which is particularly pertinent in relation to *skilled persons* because:
- (1) if the *FSA appropriate regulator* uses the section 166 power (Reports by skilled persons) or the section 166A power (Appointment of skilled person to collect and update information), either the *firm* will appoint, and will have to pay for the services of, the *skilled person*, or the *appropriate regulator* will appoint, and will require under FEES 3.2.7R(zp) or FEES 3.2.7R(zq) that the relevant *firm* pays for the services of, the *skilled person*;
 - (2) if the *FSA appropriate regulator* uses its other information gathering and investigation powers, it will either authorise or appoint its own staff to undertake the information gathering or investigation (or both), or it will pay for the services of external competent persons to do so; in either case the costs will be recovered under the *FSA's appropriate regulator's* general fee scheme.

5.3.9
[FCA/
PRA]

- G In having regard to the cost implications of using the section 166 power (Reports by skilled persons) or the section 166A power (Appointment of skilled person to collect and update information) alternative options (such as visits) or other powers, the *FSA appropriate regulator* will take into account relevant factors, including:

...

- (4) whether the *firm* appears to have breached requirements or standards under the *regulatory system* or otherwise put the interests of consumers at risk, and it is unable or unwilling to review and remedy the matters of concern, or the *FSA appropriate regulator* considers that it cannot rely on the *firm* to do so; and

...

...

Considerations relating to ~~FSA~~ the appropriate regulator's resources

5.3.10
[FCA/

- G The *FSA appropriate regulator* will have regard to ~~FSA~~ appropriate regulator- related considerations including:

- PRA]
- (1) FSA appropriate regulator expertise: whether the FSA appropriate regulator has the necessary expertise; and
 - (2) FSA appropriate regulator resources: whether the resources required to produce a report or to make enquiries or to appoint a skilled person itself are available within the FSA appropriate regulator, or whether the exercise will be the best use of the FSA's appropriate regulator's resources at the time.

5.4 Appointment and reporting process

Scope of report

- 5.4.1 [FCA/PRA]
- G ~~The FSA~~ Where the appropriate regulator requires a report by a skilled person under section 166 of the Act (Reports by skilled persons), the appropriate regulator will send a notice in writing requiring the person in SUP 5.2.1G to provide a report by a skilled person, or notifying the person in SUP 5.2.1G in writing of the appropriate regulator's appointment of a skilled person to provide a report, on any matter if it is reasonably required in connection with the exercise of its functions conferred by or under the Act. The FSA appropriate regulator may require the report to be in whatever form it specifies in the notice (SUP 5 Annex 2 summarises the appointment and reporting processes).
- 5.4.1A [FCA/PRA]
- G Where the appropriate regulator requires the updating or collection of information by a skilled person under section 166A of the Act (Appointment of skilled person to collect and update information), the appropriate regulator will send a notice in writing requiring the firm to appoint a skilled person, or notifying the firm of the appropriate regulator's appointment of a skilled person, to collect or update the relevant information.
- 5.4.2 [FCA/PRA]
- G As part of the decision making process the FSA appropriate regulator will normally contact the person in SUP 5.2.1G or in SUP 5.2.2G to discuss its needs before finalising its decision to require a report or the updating or collection of information by a skilled person. This will provide an opportunity for discussion about the appointment, whether an alternative means of obtaining the information would be better, what the scope of a report should be, who should be appointed, who should appoint, and the likely cost.
- 5.4.3 [FCA/PRA]
- G The FSA appropriate regulator will give written notification to the person in SUP 5.2.1G or SUP 5.2.2G of the purpose of the report or collection or updating of information, its scope, the timetable for completion and any other relevant matters. The FSA appropriate regulator will state the matters which the report is to contain, or the information which is to be collected or updated, as well as any requirements as to the report's format. For example, a report on controls may be required to address key risks, key controls and the control environment. The FSA appropriate regulator attaches importance to there being a timetable for each report and to the skilled person, with the cooperation of the person in SUP 5.2.1G or the firm in SUP 5.2.2G, as relevant, keeping to that timetable.
- 5.4.4 [FCA/PRA]
- G The written notification in SUP 5.4.3G may be preceded or followed by a discussion of the FSA's appropriate regulator's requirements and the reasons for them. This may involve the FSA appropriate regulator, the person in SUP 5.2.1G or in SUP 5.2.2G and the person who has been, or is expected to be, appointed as the skilled person. The FSA appropriate regulator recognises that there will normally be value in holding discussions involving the skilled person at this stage. These discussions may include others if appropriate.

- 5.4.5 [FCA/PRA] G The *FSA appropriate regulator* will wish to conduct the discussion with the *firm*, its *skilled person* and any others within a timescale appropriate to the circumstances of the case.

Appointment process

- 5.4.6 [FCA/PRA] G ~~The~~ Where the *skilled person* is appointed by the *person* in SUP 5.2.1G ~~The FSA or SUP 5.2.2G~~, the *appropriate regulator* will normally seek to agree in advance with the *person* in SUP 5.2.1G or SUP 5.2.2G the *skilled person* who will make the report or collect or update the relevant information. The Act requires that ~~the~~ such skilled person be nominated or approved by the *FSA appropriate regulator*.

- (1) if the *FSA appropriate regulator* decides to nominate the *skilled person* who is to make the report or collect or update the information, it will notify the *person* in SUP 5.2.1G or SUP 5.2.2G accordingly; and
- (2) alternatively, if the *FSA appropriate regulator* is content to approve a *skilled person* selected by the *person* in SUP 5.2.1 G or SUP 5.2.2G, it will notify the latter *person* of that fact.

The *FSA appropriate regulator* may give the *person* in SUP 5.2.1G or SUP 5.2.2G a shortlist from which to choose.

- 5.4.7 [FCA/PRA] G A *skilled person* must appear to the *FSA appropriate regulator* to have the skills necessary to make a report on the matter concerned or collect or update the relevant information. A *skilled person* may be an accountant, lawyer, compliance consultant, *actuary* or *person* with relevant business, technical or technological skills.

- 5.4.8 [FCA/PRA] G When considering whether to nominate, or approve or appoint a *skilled person* to make a report or collect or update information, the *FSA appropriate regulator* will have regard to the circumstances of the case, including whether the proposed *skilled person* appears to have:
- (1) the skills necessary to make a report on the matter concerned or collect or update the relevant information;
 - (2) the ability to complete the report or collect or update the information within the time expected by the *FSA appropriate regulator*;
 - (3) any relevant specialised knowledge, for instance of the *person* in SUP 5.2.1G or SUP 5.2.2G, the type of business carried on by the *person* in SUP 5.2.1G or SUP 5.2.2G, or the matter to be reported on or information to be collected or updated;
 - (4) any professional difficulty or potential conflict of interest in reviewing the matters to be reported on or the information to be collected or updated, for instance because ~~the matters to be reported on~~ it may involve questions reflecting on the quality or reliability of work previously carried out by the proposed *skilled person*; and
 - (5) enough detachment, bearing in mind the closeness of an existing professional or commercial relationship, to be able to collect or update the information or to give an objective opinion on matters such as:
 - (a) matters already reported on by the *skilled person* (for example, on the financial statements of the *person* in SUP 5.2.1G or in SUP 5.2.2G) or in relation to their *systems and controls*); or

- (b) matters that are likely to be contentious and may result in disciplinary or other enforcement action against the *person* in SUP 5.2.1G or SUP 5.2.2G, its management, *shareholders* or *controllers*; or

...

- 5.4.9 [FCA/PRA] G In appropriate circumstances, it may be cost effective for the *FSA appropriate regulator* to nominate or approve the appointment of, or appoint itself, a *skilled person* who has previously acted for, or advised, the *person* in SUP 5.2.1G or SUP 5.2.2G. For example, the *FSA appropriate regulator* may nominate, or approve the appointment of, or appoint, the auditor of a *person* in SUP 5.2.1G or SUP 5.2.2G to prepare a report or collect or update the information taking into account, where relevant, the considerations set out in SUP 5.4.7G.

Reporting process

- 5.4.10 [FCA/PRA] G ~~The FSA~~ Where the *skilled person* is appointed by the *person* in SUP 5.2.1G or SUP 5.2.2G, the *appropriate regulator* will normally require the ~~person in SUP 5.2.1G to appoint a skilled person to be appointed to~~ report to the *FSA appropriate regulator* through that *person*. In the normal course of events the *FSA appropriate regulator* expects that the *person* in SUP 5.2.1G or SUP 5.2.2G will be given the opportunity to provide written comments on the report or the collection of the relevant information prior to its submission to the *FSA appropriate regulator* (SUP 5 Annex 2 summarises the reporting process).

- 5.4.10A [FCA/PRA] G Where the *skilled person* is to be appointed by the *appropriate regulator* itself, the *skilled person* will report directly to the *appropriate regulator*.

- 5.4.11 [FCA/PRA] G The *FSA appropriate regulator* may enter into a dialogue with the *skilled person*, and is ready to discuss matters relevant to the report or the collection or updating of the relevant information with him, during the preparation of the report or the collection or updating of the relevant information. Such discussions will normally may involve or be through the *person* in SUP 5.2.1G or SUP 5.2.2G.

- 5.4.12 [FCA/PRA] G The *FSA appropriate regulator* will normally specify a time limit within which it expects the *skilled person* to deliver the report or collect or update the relevant information. Where the *skilled person* is appointed by the *person* in SUP 5.2.1G or SUP 5.2.2G, ~~The the~~ *skilled person* should, in complying with its contractual duty under SUP 5.5.1R, take reasonable steps to achieve delivery by that time. If the *skilled person* becomes aware that the report may not be delivered, or collection or updating of the relevant information may not be, on time, he should inform the *FSA appropriate regulator* and the *person* in SUP 5.2.1G or SUP 5.2.2G as soon as possible. ~~Where the skilled person is appointed by the person in SUP 5.2.1G or SUP 5.2.2G, if the skilled person becomes aware that there may be difficulties delivering the report or collecting or updating the relevant information within cost estimates, he will no doubt wish to advise the firm.~~

- 5.4.13 [FCA/PRA] G The *FSA appropriate regulator* may meet with the *person* in SUP 5.2.1G or SUP 5.2.2G and the *skilled person* together to discuss the final report. The *FSA appropriate regulator* may also wish to discuss the final report with the *skilled person* present but without the *person* in SUP 5.2.1G or SUP 5.2.2G.

5.5 Duties of firms

Contract with the skilled person

5.5.1
[FCA/
PRA]

- R When a *firm* appoints a ~~skilled person~~ *skilled person* to provide a report under section 166 (Reports by skilled persons) or collect or update information under section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~), the *firm* must, in a contract with the *skilled person*:
- (1) require and permit the *skilled person* during and after the course of his appointment:
 - (a) to cooperate with the *FSA appropriate regulator* in the discharge of its functions under the *Act* in relation to the *firm*; and
 - (b) to communicate to the *FSA appropriate regulator* information on, or his opinion on, matters of which he has, or had, become aware in his capacity as *skilled person* reporting on the *firm* in the following circumstances:
 - (i) the *skilled person* reasonably believes that, as regards the *firm* concerned (A) there is or has been, or may be or may have been, a contravention of any relevant *requirement* that applies to the *firm* concerned; and (B) that the contravention may be of material significance to the *FSA appropriate regulator* in determining whether to exercise, in relation to the *firm* concerned, any functions conferred on the *FSA appropriate regulator* by or under any provision of the *Act* other than Part VI (Official Listing); or
 - (ii) the *skilled person* reasonably believes that the information on, or his opinion on, those matters may be of material significance to the *FSA appropriate regulator* in determining whether the *firm* concerned satisfies and will continue to satisfy the *threshold conditions*; or
 - ...
 - (2) require the *skilled person* to prepare a report or collect or update information, as notified to the *firm* by the *FSA appropriate regulator*, ~~within the time specified by the FSA~~ within the time specified by the *appropriate regulator*; and
 - (3) waive any duty of confidentiality owed by the *skilled person* to the *firm* which might limit the provision of information or opinion by that *skilled person* to the *FSA appropriate regulator* in accordance with (1) or (2). (See also SUP 5.5.13G and SUP 5.6)

5.5.2
[FCA/
PRA]

- G In complying with the contractual duty in SUP 5.5.1R(1) the *FSA appropriate regulator* expects that a *skilled person* appointed by a *firm* under section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~) will cooperate with the *FSA appropriate regulator* by, amongst other things, providing information or documentation about the planning and progress of the report and its findings and conclusions, if requested to do so. A *firm* should therefore ensure that the contract it makes with the *skilled person* requires and permits the *skilled person* to provide the following to the *FSA appropriate regulator* if requested to do so:

...

5.5.3

- G If the *FSA appropriate regulator* is considering asking for the information specified

- [FCA/
PRA] in SUP 5.5.2G it will take into consideration the cost of the *skilled person* complying with the request, and the benefit that the *FSA appropriate regulator* may derive from the information. For example, in most cases, the *FSA appropriate regulator* will not need to request a *skilled person* to give it source data, *documents* and working papers. However, the *FSA appropriate regulator* may do so when it reasonably believes that this information will be relevant to any investigation it may be conducting, or any action it may need to consider taking against the *firm*.
- 5.5.4 [FCA/
PRA] G In complying with the contractual duty in SUP 5.5.1R, the *FSA appropriate regulator* expects that, in the case of substantial or complex reports, the *skilled person* will give a periodic update on progress and issues to allow for a re-focusing of the report if necessary. The channel of communication would normally be directly between the *skilled person* and the *FSA appropriate regulator*. However, the *FSA appropriate regulator* would also expect *firms* normally to be informed about the passage of information, and the *skilled person* would usually be expected to keep the *firm* informed of any communication between the *skilled person* and the *FSA appropriate regulator*.
- 5.5.5 [FCA/
PRA] R A *firm* must ensure that the contract required by SUP 5.5.1R:
...
(2) expressly
(a) provides that the *FSA appropriate regulator* has a right to enforce the provisions included in the contract under SUP 5.5.1R and SUP 5.5.5R(2);
(b) provides that, in proceedings brought by the *FSA appropriate regulator* for the enforcement of those provisions, the *skilled person* is not to have available by way of defence, set-off or counterclaim any matter that is not relevant to those provisions;
(c) (if the contract includes an arbitration agreement) provides that the *FSA appropriate regulator* is not, in exercising the right in (a), to be treated as a party to, or bound by, the arbitration agreement; and
(d) provides that the provisions included in the contract under SUP 5.5.1R and SUP 5.5.5R(2) are irrevocable and may not be varied or rescinded without the *FSA's appropriate regulator's* consent; and
...
- 5.5.6 [FCA/
PRA] G The Contracts (Rights of Third Parties) Act 1999, or Scots common law, enables the *FSA appropriate regulator* to enforce the rights conferred on it under the contract required by SUP 5.5.1R against the *skilled person*.
- 5.5.7 [FCA/
PRA] G If the *FSA appropriate regulator* considers it appropriate, it may request the *firm* to give it a copy of the draft contract required by SUP 5.5.1R before it is made with the *skilled person*. The *FSA appropriate regulator* will inform the *firm* of any matters that it considers require further clarification or discussion before the contract is finalised.
- 5.5.8 [FCA/
PRA] G The *FSA appropriate regulator* expects the *firm*, including where applicable in complying with Principle 11, to give the *FSA appropriate regulator* information about the cost of the *skilled persons* report. This may include both an initial estimate of the cost as well as the cost of the completed report. This information is required to help inform the *FSA's appropriate regulator's* decision making in the

choice of regulatory tools. Information about the number and cost of reports by *skilled persons* will be published by the *FSA appropriate regulator*.

Assisting the skilled person

- 5.5.9 [FCA/PRA] R A *firm* must provide all reasonable assistance to any *skilled person* appointed to provide a report under section 166 (Reports by skilled persons) or to collect or update information under section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~).

...

Responsibility for delivery

- 5.5.12 G ~~In complying with Principle 11, When a *firm* appoints a *skilled person* to provide a report under section 166 (Reports by skilled persons) or collect or update information under section 166A (Appointment of skilled person to collect and update information) of the *Act*, a *firm* is expected, including where applicable in complying with Principle 11, to take reasonable steps to ensure that a *skilled person* delivers a report or collects or updates information in accordance with the terms of his appointment.~~

Assistance to skilled persons from others

- 5.5.13 [FCA/PRA] G In respect of the appointment of a *skilled person* under section 166 of the *Act* (Reports by skilled persons), ~~Section section 166(57) of the *Act* (Authority's power to require information)~~ imposes a duty on certain *persons* to give assistance to a *skilled person*. The *persons* on whom this duty is imposed are those who are providing, or have at any time provided, services to any *person* falling within SUP 5.2.1G. They include suppliers under *material outsourcing arrangements*.
- 5.5.14 [FCA/PRA] G In respect of the appointment of a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, under section 166A(5) a *skilled person* may require any *person* to provide all such assistance as the *skilled person* may reasonably require to collect or update the information in question.

5.6 Confidential information and privilege

- 5.6.1 [FCA/PRA] G Within the legal constraints that apply, the *FSA appropriate regulator* may pass on to a *skilled person* any information which it considers relevant to the *skilled person's* function. A *skilled person*, being a primary recipient under section 348 of the *Act* (Restrictions on disclosure of confidential information by Authority etc.), is bound by the confidentiality provisions in Part XXIII of the *Act* (Public record, disclosure of information and cooperation) as regards confidential information he receives from the *FSA appropriate regulator* or directly from a *firm* or other *person*. A *skilled person* may not pass on confidential information without lawful authority, for example, where an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates. The *FSA appropriate regulator* will indicate to a *skilled person* if there is any matter which cannot be discussed with the *person* in SUP 5.2.1G.

...

- 5.6.3 [FCA] G In respect of the appointment of a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, a contractual or

- PRA] other requirement imposed on a *person* to keep any information confidential will not apply if:
- (1) the information is or may be relevant to anything required to be done as part of the *skilled person's* appointment under section 166A (Appointment of skilled person to collect and update information) of the *Act*;
 - (2) a *firm* or a *skilled person* requests or requires the *person* to provide the information for the purpose of securing that those things are done; and
 - (3) the *appropriate regulator* has approved the making of the request or the imposition of the requirement before it is made or imposed.
- 5.6.4 [FCA/
PRA] G A *firm* may provide information that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done in respect of the *skilled person's* collection or updating of information under section 166A (Appointment of skilled person to collect and update information) of the *Act*.

5 Annex 1G

Examples Non-exhaustive list of examples of when the ~~FSA~~ FCA may use the skilled person tool (This Annex belongs to SUP 5.3.1AG)

[FCA]

Toolkit purpose	Purpose for use of tool	Examples of reasons for use of tool
Diagnostic	<ul style="list-style-type: none"> To find out more about a concern (e.g. the result of a visit, risk assessment, or notification) and determine whether action is needed to mitigate a risk to the <i>regulatory objectives</i> or to determine whether there may have been a breach of a <i>rule</i> or of a <i>threshold condition</i> <u>or, in the case of an RIE, failure to meet the recognised requirements.</u> To assess the implications of, and <i>firm's*</i> response to, a change of circumstances e.g. <ul style="list-style-type: none"> proposed entry into new business area; new control structure; merger or take-over; new IT system; or launch of an E-Commerce venture. 	<ul style="list-style-type: none"> Concern about effectiveness of the <i>firm's*</i> internal audit department. Concern about reliability of submitted financial returns. Inability of a <i>firm*</i> to quantify its current financial position. Assessment of consequences of incomplete customer files. Concern about quality of systems and controls. Indication of financial crime or <i>money laundering</i>. Concern about a <i>firm's*</i> controller. Assessment of control structure when a <i>bank</i> (specialising in consumer lending) diversifies into commercial lending.
Diagnostic/ monitoring	<ul style="list-style-type: none"> To verify information provided to the FSA <u>FCA</u>. 	<ul style="list-style-type: none"> Verification of a specific return to give the FSA <u>FCA</u> assurance of the quality of information provided.
	<ul style="list-style-type: none"> To collect information required by but not provided to the <i>FCA</i> by the <i>firm*</i>. To update information previously provided to the <i>FCA</i> but not kept up to date by the <i>firm*</i>. 	<ul style="list-style-type: none"> <u>Failure by a <i>firm*</i> to provide or keep up to date information required by the <i>FCA</i>.</u>
Monitoring	<ul style="list-style-type: none"> To review systems and controls To complement baseline monitoring 	<ul style="list-style-type: none"> Assessment of systems and controls in <i>firms*</i> where identified as a risk mitigation priority. In-depth review of part of a <i>firm*</i> which is material to the <i>firm's</i> risk profile but of which the FSA <u>FCA</u> does not consider it has an adequate, up-to-date understanding.
Preventative	<ul style="list-style-type: none"> To gather and analyse information on an identified risk and develop recommendations for resolution. 	<ul style="list-style-type: none"> Review of identified control weaknesses over <i>client money</i> to obtain recommendations to ensure compliance with the relevant <i>rules</i>.
Remedial	<ul style="list-style-type: none"> To assist in the design of a customer redress programme. To assist in the design of a remedial action plan. To oversee and report on remedial action plan. 	<ul style="list-style-type: none"> Where possible, the FSA <u>FCA</u> has identified possible losses from failure to reconcile assets or from mis-posting of transactions to the general ledger. To report on quality of work undertaken and adherence to milestones in the action plan.
* or, where applicable, the other <i>persons</i> in SUP 5.2.1G.		

Non-exhaustive list of examples of when the FCA may itself appoint a skilled person rather than require a firm to do so

<u>Toolkit purpose</u>	<u>Purpose for use of tool</u>	<u>Examples of reasons for use of tool</u>
<u>Diagnostic/ monitoring/ preventative/ remedial</u>	<u>(any of the above)</u>	<ul style="list-style-type: none"> • <u>To provide a report or information that is urgently required.</u> • <u>To assert a greater degree of control over the appointment and oversight of the <i>skilled person</i> due to the sensitive nature of the matter concerned.</u> • <u>To assert a greater degree of control over the appointment and oversight of the <i>skilled person</i> in circumstances where more than one <i>firm</i>* is the subject of the same report or information required.</u>

SUP 5 Annex 2G is deleted in its entirety. The deleted text is not shown.

Annex D

Designations & Regulator making new provision

Handbook Provision	Made, designated or not in force after legal cutover	Relevant regulator
SUP 5.1.1R	Designated	FCA/PRA
SUP 5.1.1AR	Made	FCA
SUP 5.1.1BG	Made	FCA
SUP 5.1.2G	Designated	FCA/PRA
SUP 5.1.3G	Designated	FCA/PRA
SUP 5.2.1G	Designated	FCA/PRA
SUP 5.2.2G	Made	FCA/PRA
SUP 5.3.1G	Designated	FCA/PRA
SUP 5.3.1AG	Made	FCA
SUP 5.3.2G	Designated	FCA/PRA
SUP 5.3.2AG	Made	FCA/PRA
SUP 5.3.3G	Designated	FCA/PRA
SUP 5.3.4G	Designated	FCA/PRA
SUP 5.3.5G	Designated	FCA/PRA
SUP 5.3.6G	Designated	FCA/PRA
SUP 5.3.7G	Designated	FCA/PRA
SUP 5.3.8G	Designated	FCA/PRA
SUP 5.3.9G	Designated	FCA/PRA
SUP 5.3.9AG	Not in force after legal cutover	
SUP 5.3.10G	Designated	FCA/PRA
SUP 5.4.1G	Made	FCA/PRA
SUP 5.4.1AG	Designated	FCA/PRA
SUP 5.4.2G	Designated	FCA/PRA
SUP 5.4.3G	Designated	FCA/PRA

SUP 5.4.4G	Designated	FCA/PRA
SUP 5.4.5G	Designated	FCA/PRA
SUP 5.4.6G	Designated	FCA/PRA
SUP 5.4.7G	Designated	FCA/PRA
SUP 5.4.8G	Designated	FCA/PRA
SUP 5.4.9G	Designated	FCA/PRA
SUP 5.4.10G	Designated	FCA/PRA
SUP 5.4.10AG	Designated	FCA/PRA
SUP 5.4.11G	Designated	FCA/PRA
SUP 5.4.12G	Designated	FCA/PRA
SUP 5.4.13G	Designated	FCA/PRA
SUP 5.5.1R	Designated	FCA/PRA
SUP 5.5.2G	Designated	FCA/PRA
SUP 5.5.3G	Designated	FCA/PRA
SUP 5.5.4G	Designated	FCA/PRA
SUP 5.5.5R	Designated	FCA/PRA
SUP 5.5.6G	Designated	FCA/PRA
SUP 5.5.7G	Designated	FCA/PRA
SUP 5.5.8G	Designated	FCA/PRA
SUP 5.5.9R	Designated	FCA/PRA
SUP 5.5.10G	Designated	FCA/PRA
SUP 5.5.11G	Designated	FCA/PRA
SUP 5.5.12G	Designated	FCA/PRA
SUP 5.5.13G	Designated	FCA/PRA
SUP 5.5.14G	Designated	FCA/PRA
SUP 5.6.1G	Designated	FCA/PRA
SUP 5.6.2G	Designated	FCA/PRA
SUP 5.6.3G	Made	FCA/PRA
SUP 5.6.4G	Made	FCA/PRA

SUP 5 Annex 1G	Designated	FCA
SUP 5 Annex 2G	Not in force after legal cutover	