

Chapter 22

Regulatory references

22.2 Getting, giving and updating references: the main rules

Obligation to obtain references

22.2.1

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- (1) If a *firm* (A) is considering:
 - (a) permitting or appointing someone (P) to perform a *controlled function*;
 - (b) issuing a certificate under the certification regime for P; or appointing a *board director*;

(as explained in more detail in rows (A) and (B) of the table in ■ SYSC 22.2.3R), A must take reasonable steps to obtain appropriate references from:

 - (c) P's current *employer*; and
 - (d) anyone who has been P's *employer* in the past six years.
- (2) A must take reasonable steps to obtain the reference before the time in column two of the applicable row in the table in ■ SYSC 22.2.3R. If A does not obtain it within that time it must take reasonable steps to obtain it as soon as possible thereafter.
- (3) A must in particular request:
 - (a) the information in ■ SYSC 22.2.2R(1) to (3); and
 - (b) (if P's current or previous *employer* is also an *SMCR firm*) the information in ■ SYSC 22.2.2R(4) (questions (A) to (F) of Part One of ■ SYSC 22 Annex 1R).
- (4) When deciding what information to request under (1), A must have regard to the factors in ■ SYSC 22.2.2R(5) (Factors set out in ■ SYSC 22 Annex 2R).

Obligation to give references

22.2.2

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- (1) A *firm* (B) must provide a reference to another *firm* (A) as soon as reasonably practicable if:
 - (a) A is considering:
 - (i) permitting or appointing someone (P) to perform a *controlled function*; or
 - (ii) issuing a certificate under the certification regime for P; or
 - (iii) appointing P to another position in the table in ■ SYSC 22.2.3R;

- (as explained in more detail in the table in ■ SYSC 22.2.3R);
- (b) A makes a request, for a reference or other information in respect of P from B, in B’s capacity as P’s current or former employer;
 - (c) B:
 - (i) is P’s current employer; or
 - (ii) has been P’s employer at any time in the six year period preceding the request in (1)(b); and
 - (d) A indicates to B the purpose of the request.
- (2) B must disclose to A in the reference all information of which B is aware that B reasonably considers to be relevant to A’s assessment of whether P is fit and proper.
- (3) B is only required to disclose under (1) and (2) something that occurred or existed:
- (a) in the six years before the request for a reference; or
 - (b) between the date of the request for the reference and the date B gives the reference; or
 - (c) (in the case of serious misconduct) at any time.
- [Note: See ■ SYSC 22.5.10G and ■ SYSC 22.5.11G for guidance on the meaning of serious misconduct]
- (4) B must in addition disclose the information in questions (A) to (F) of Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements).
- (5) When deciding what information to give to A under (1) to (3), B must have regard to the factors in ■ SYSC 22 Annex 2R (Factors to take into account when asking for and giving regulatory references).

22.2.3 R Table: What positions need a reference

Position	When to obtain reference	Comments
(A) Permitting or appointing someone to perform an FCA controlled function or a PRA controlled function.	One month before the end of the application period	
	Where a request for a reference would require:	
	(a) the firm requesting the reference;	
	(b) the employer giving the reference; or	
	(c) any other person;	
	to make a mandatory disclosure prior to P disclosing to its current employer that such application has been	

Position	When to obtain reference	Comments
(B) Issuing a certificate under section 63F of the <i>Act</i> (Certification of employees by authorised persons).	made, the date is the end of the application period. Before the certificate is issued	This includes renewing an existing certificate.
(C) Appointing someone to any of the following positions (as defined in the <i>PRA Rulebook</i>): (a) a notified non-executive director; (b) a credit union non-executive director; or (c) a key function holder.	Not applicable	SYSC 22.2.1R (obligation to obtain a reference) does not apply to a <i>firm</i> appointing someone to the position in column (1). However SYSC 22.2.2R does apply to a <i>firm</i> asked to give a reference to a <i>firm</i> appointing someone to the position in column (1).
(D) A <i>firm</i> appointing someone to be a <i>non-SMF board director subject to competence requirements</i> of itself.	Before appointment	Only applies where the appointment is by a <i>UK SMCR firm</i> that is: (a) a <i>core SMCR firm</i> ; or (b) an <i>enhanced scope SMCR firm</i> .
<p>Note 1: Mandatory disclosure means an obligation in any applicable laws, regulations or rules to declare or disclose information to the public.</p> <p>Note 2: P refers to the <i>employee</i> or <i>ex-employee</i> about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.</p> <p>Note 3: The application period means the period for consideration referred to in section 61 of the <i>Act</i> (Determination of application).</p>		

Obligation to revise references: The main rule

22.2.4

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If at any time:

- (1) a *firm* (B) has given a reference under ■ SYSC 22.2.2R to another *firm* (A) about an *employee* or *ex-employee* of B (P);
- (2) B was also an *SMCR firm* when it gave the reference in (1);
- (3) either of the following applies:
 - (a) B is aware of matters or circumstances that mean that if B had been aware of them when giving that reference, this chapter would have required B to draft the reference differently; or
 - (b) the following applies:
 - (i) B has since giving the reference reached conclusions of the type described in question (E) of Part One of ■ SYSC 22 Annex 1R or taken disciplinary action of the type

described in question (F) of Part One of ■ SYSC 22 Annex 1R; and

- (ii) if B had taken or reached those conclusions or actions within the six year period referred to in Part One of ■ SYSC 22 Annex 1R, this chapter would have required B to draft the reference differently; and

- (4) it would be reasonable to consider the differences in (3) 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:

- (5) make reasonable inquiries as to the identity of P's current *employer*; and
- (6) give A details of those differences in writing as soon as reasonably practicable, unless ■ SYSC 22.2.5R says that B does not have to do so.

22.2.5 **R** B does not need to update A if:

- (1) A is no longer a *firm*;
- (2) P has not yet been *employed* by A (because, for example, P is still working their notice period with B) and it is no longer intended for A to *employ* P;
- (3) A is no longer P's *employer*; or
- (4) despite making reasonable enquiries under ■ SYSC 22.2.4R, B does not know whether P is still *employed* by A.

22.2.6 **R** This *rule* sets out time limits about the obligation to update a reference in ■ SYSC 22.2.4R.

- (1) If B still *employs* P, ■ SYSC 22.2.4R applies throughout the period B remains *employed*.
- (2) If B no longer *employs* P, the obligation to update ends six years after P ceased to be *employed* by B.
- (3) If B no longer *employs* P and the matters or circumstances are not serious misconduct by P, 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 applies in addition to the one in (2).

[**Note:** See ■ SYSC 22.5.10G and ■ SYSC 22.5.11G for *guidance* on the meaning of serious misconduct]

Obligation to revise references: Finding out who the current employer is

22.2.7

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If at any time:

- (1) a *firm* (B) has given a reference under ■ SYSC 22.2.2R to another *firm* (A) about an *employee* or *ex-employee* of B (P);
- (2) B asks A whether P is still an *employee* of A; and
- (3) B gave A the reference no more than six years ago;

A must answer that question as soon as reasonably practicable, even if B does not tell A why it wants to know that information.

Sole traders

22.2.8

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The obligation in ■ SYSC 22.2.1R (Obligation to obtain references) does not apply if A and P (as referred to in that *rule*) are the same *person*.

22.2.9

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An example of ■ SYSC 22.2.8R is this. Say that P works at a *firm* (B) and leaves to become a *firm* and a *sole trader*. P appoints themselves to perform the *compliance oversight function*. P does not need to get a regulatory reference from B about themselves.

22.2.10

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- (1) If a *firm* is appointing someone who was a *sole trader* to a position that would normally require a regulatory reference under ■ SYSC 22.2.1R, it does not have to request a reference from the *sole trader* themselves. That is because ■ SYSC 22.2.1R only requires a *firm* to request a reference from a previous *employer* and a *sole trader* is not their own *employer*.
- (2) An example of (1) is this. Say that P was a *firm* and a *sole trader* and performed the *compliance oversight function* themselves. P goes to work for another *firm* (A). A does not need to request a regulatory reference from P about P.