

WHISTLEBLOWING INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority amends Senior Management Arrangements, Systems and Controls (“SYSC”) in the exercise of the powers listed in Schedule 4 to SYSC (Powers exercised).
- B. The provisions of the Financial Services and Markets Act 2000 (the “Act”) relevant to rules and listed in that Schedule are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 May 2002.

Amendments to Senior Management Arrangements, Systems and Controls

- D. SYSC is amended by inserting, after SYSC 3, the provisions in Annex A to this instrument.

Consequential amendments to SYSC, AUTH and CRED

- E. SYSC, AUTH (the Authorisation manual) and CRED (the Credit Unions sourcebook) are amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Whistleblowing Instrument 2002.

By order of the Board
21 March 2002

Annex A

Chapter 4

Guidance on Public Interest Disclosure Act: Whistleblowing

4.1 Application and purpose

Application

- 4.1.1 **G** This chapter is relevant to every *firm* to the extent that the Public Interest Disclosure Act 1998 ("PIDA") applies to it.

Purpose

- 4.1.2 **G** (1) The purposes of this chapter are:
- (a) to remind *firms* of the provisions of PIDA; and
 - (b) to encourage *firms* to consider adopting and communicating to workers appropriate internal procedures for handling workers' concerns as part of an effective risk management system.
- (2) In this chapter "worker" includes, but is not limited to, an individual who has entered into a contract of employment.
- 4.1.3 The *guidance* in this chapter concerns the effect of PIDA in the context of the relationship between *firms* and the FSA. It is not comprehensive guidance on PIDA itself.

4.2 Practical measures

Effect of PIDA

- 4.2.1 **G** (1) Under PIDA, any clause or term in an agreement between a worker and his employer is void in so far as it purports to preclude the worker from making a protected disclosure (that is, "blow the whistle").
- (2) In accordance with section 1 of PIDA:
- (a) a protected disclosure is a qualifying disclosure which meets the relevant requirements set out in that section;
 - (b) a qualifying disclosure is a disclosure, made in good faith, of information which, in the reasonable belief of the worker making the disclosure, tends to show that one or more of the following (a "failure") has been, is being, or is likely to be, committed:
 - (i) a criminal offence; or
 - (ii) a failure to comply with any legal obligation; or
 - (iii) a miscarriage of justice; or
 - (iv) the putting of the health and safety of any individual in danger; or
 - (v) damage to the environment; or
 - (vi) deliberate concealment relating to any of (i) to (v);
- it is immaterial whether the relevant failure occurred, occurs or would

occur in the *United Kingdom* or elsewhere, and whether the law applying to it is that of the *United Kingdom* or of any other country or territory.

Internal Procedures

- 4.2.2 G**
- (1) *Firms* are encouraged to consider adopting (and encouraged to invite their *appointed representatives* to consider adopting) appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the *FSA*.
 - (2) Smaller *firms* may choose not to have as extensive procedures in place as larger *firms*. For example, smaller *firms* may not need written procedures. The following is a list of things that larger and smaller *firms* may want to do.
 - (a) For larger *firms*, appropriate internal procedures may include:
 - (i) a clear statement that the *firm* takes failures seriously; (see SYSC 4.2.1 G(2)(b));
 - (ii) an indication of what is regarded as a failure;
 - (iii) respect for the confidentiality of workers who raise concerns, if they wish this;
 - (iv) an assurance that, where a protected disclosure has been made, the *firm* will take all reasonable steps to ensure that no *person* under its control engages in victimisation;
 - (v) the opportunity to raise concerns outside the line management structure, such as with the Compliance Director, Internal Auditor or Company Secretary;
 - (vi) penalties for making false and malicious allegations;
 - (vii) an indication of the proper way in which concerns may be raised outside the *firm* if necessary (see (3));
 - (viii) providing access to an external body such as an independent charity for advice;
 - (ix) making whistleblowing procedures accessible to staff of key contractors; and
 - (x) written procedures.
 - (b) For smaller *firms*, appropriate internal procedures may include:
 - (i) telling workers that the *firm* takes failures seriously (see SYSC 4.2.1.G(2)(b)) and explaining how wrongdoing affects the organisation;
 - (ii) telling workers what conduct is regarded as a failure;
 - (iii) telling workers who raise concerns that their confidentiality will be respected, if they wish this;

- (iv) making it clear that workers will be supported and protected from reprisals;
 - (v) nominating a senior officer as an alternative route to line management and telling workers how they can contact that individual in confidence;
 - (vi) making it clear that false and malicious allegations will be penalised by the *firm*;
 - (vii) telling workers how they can properly blow the whistle outside the *firm* if necessary (see (3));
 - (viii) providing access to an external body for advice such as an independent charity; and
 - (ix) encouraging managers to be open to concerns.
- (3) (a) *Firms* should also consider telling workers (through the *firm's* internal procedures, or by means of an information sheet available from the *FSA's* website, or by some other means) that they can blow the whistle to the *FSA*, as the regulator prescribed in respect of financial services and markets matters under PIDA.
- (b) The *FSA* will give priority to live concerns or matters of recent history, and will emphasise that the worker's first port of call should ordinarily be the *firm* (see Frequently Asked Questions on www.fsa.gov.uk/whistle/).
- (c) For the *FSA's* treatment of confidential information, see *SUP 2.2.4G*.

Link to fitness and propriety

- 4.2.3 G** The *FSA* would regard as a serious matter any evidence that a *firm* had acted to the detriment of a worker because he had made a protected disclosure (see *SYSC 4.2.1G(2)*) about matters which are relevant to the functions of the *FSA*. Such evidence could call into question the fitness and propriety of the *firm* or relevant members of its staff, and could therefore, if relevant, affect the *firm's* continuing satisfaction of *threshold condition 5* (Suitability) or, for an *approved person*, his status as such.

Annex B
Consequential amendments to SYSC, AUTH and CRED

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

SYSC 1.1

SYSC 1.1 Change the title of this section to “Application of SYSC 2 and SYSC 3”

Before SYSC 1.1.1R, insert:

Purpose of this section

1.1.-2G This section sets out the application of *SYSC 2* (Senior management arrangements) and *SYSC 3* (Systems and controls).

1.1.-1G The application of *SYSC 4* (Guidance on Public Interest Disclosure Act: Whistleblowing) is set out in *SYSC 4.1.1G* (Application).

SYSC 1.1.1R Amend as shown below:

SYSC 2 and SYSC 3 ~~apply~~ applies to every *firm* except that:

...

(2) for an *incoming EEA firm* *SYSC 2 and SYSC 3* ~~do~~ does not apply;

...

SYSC 1.1.2G(2) Amend as shown below:

SYSC 1.1.7R and *SYSC 1.1.10R* (Where?) further restrict the territorial application of *SYSC 2* and *SYSC 3* for an *incoming EEA firm*, ...

SYSC 1.1.3R Amend as shown below:

SYSC 2 and SYSC 3 ~~apply~~ applies with respect to the carrying on of:

...

SYSC 1.1.4R Amend as shown below:

SYSC 2 and SYSC 3 also ~~apply~~ applies with respect to the *communication* and *approval* of *financial promotions* which:

...

SYSC 1.1.7R Amend as shown below:

SYSC 2 and SYSC 3 ~~apply~~ applies with respect to ... in which case *SYSC 2 and SYSC 3* ~~apply~~ applies with ...

SYSC 1.1.8G Amend as shown below:

... Therefore, SYSC 2 and SYSC 3 ~~apply~~ applies to the *custody* activities ...

SYSC 1.1.9R Amend as shown below:

SYSC 2 and SYSC 3 also ~~apply~~ applies in a *prudential context*

SYSC 1.1.11G(1) Amend as shown below:

In considering whether to take regulatory action under SYSC 2 or SYSC 3 in relation to ...

SYSC 1.1.12R Amend as shown below:

A contravention of the *rules* in SYSC 2 and SYSC 3 does not ...

AUTH 5 Ann 3G

AUTH 5 Ann 3G Amend the following row of Table 2 as shown:

<p>SYSC</p>	<p><u>SYSC 1 contains application provisions only. SYSC 2 and SYSC 3 apply</u> As set out in SYSC 1.1.1R(1):</p> <p>(1) SYSC 2.1.1R and SYSC 2.1.2G do not apply;</p> <p>(2) SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and only in so far as responsibility for the matter in question in not reserved by a European Community instrument to the <i>firm's Home State regulator</i>; and</p> <p>(3) SYSC 3 applies, but only in so far as responsibility for the matter in question in not reserved by a European Community instrument to the <i>firm's Home State regulator</i>.</p> <p>SYSC 1.1.7R (Where?) further restricts the territorial application of <u>SYSC 1 to SYSC 3</u> for an <i>incoming EEA firm</i>. Further <i>guidance</i> is contained in SYSC 2.1.6G, Question 12.</p> <p><u>SYSC 4 applies to the extent that the Public Interest Disclosure Act 1998 applies to the firm.</u></p>	<p>SYSC <u>1 to SYSC 3</u> does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (SYSC 1.1.1R(2)).</p> <p>SYSC <u>1 to SYSC 3</u> have <u>has</u> limited application for activities which are not carried on from a <i>UK</i> establishment (see SYSC 1.1.7R).</p> <p>Otherwise, see column (2).</p>
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CRED 4.1

CRED 4.1.3G Amend as shown below:

SYSC 1 to 3 apply to all *credit unions* in respect of the carrying on of their *regulated activities* and unregulated activities in a *prudential context*. *SYSC 4* applies to all *credit unions* without restriction.

CRED 4.1.8G After CRED 4.1.7G insert:

4.1.8 G *SYSC 4* reminds *firms* of the provisions of the Public Interest Disclosure Act 1998 and encourages them to consider adopting appropriate internal whistleblowing procedures. This applies equally to *credit unions* but is not the subject of further *guidance* in this chapter.