SUPERVISION MANUAL (CONTROLLED FUNCTIONS) (AMENDMENT) INSTRUMENT 2008

Powers exercised

A.   The Financial Services Authority makes this instrument in the exercise of:

(1)   the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(a)   section 138 (General rule-making power);
(b)   section 139 (Miscellaneous ancillary matters);
(c)   section 156 (General supplementary powers);
(d)   section 157(1) (Guidance);
(e)   section 59 (Approval for particular arrangements); and

(2)   the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

B.   The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C.   This instrument comes into force on 6 August 2008.

Amendments to the Handbook

D.   The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls (SYSC)	Annex B
Supervision manual (SUP)	Annex C

Citation

E.   This instrument may be cited as the Supervision Manual (Controlled Functions) (Amendment) Instrument 2008.

By order of the Board
24 July 2008

Annex A

Amendments to the Glossary of definitions

In this Annex, striking through indicates deleted text.

EEA investment business oversight function	*controlled function* CF9 in the *table of controlled functions*, described more fully in *SUP* 10.7.6R.

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

In this Annex, striking through indicates deleted text.

2.1.6   G

	Question	**Answer**
1	Does an individual to whom a function is allocated under SYSC 2.1.3R need to be an *approved person*?	An individual to whom a function is allocated under *SYSC* 2.1.3R will be performing the *apportionment and oversight function* (CF 8, see *SUP* 10.7.1R) and an application must be made to the *FSA* for approval of the individual before the function is performed under section 59 of the *Act* (Approval for particular arrangements).There are exceptions from this in *SUP* 10.1 (Approved persons - Application). ~~In particular, an *incoming EEA firm* is referred to the *EEA investment business oversight function* (CF 9, see *SUP* 10.7.6 R).~~
…		

Annex C

Amendments to the Supervision manual (SUP)

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

10.1.13   R   Only the following *controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*:

(1)   the *EEA investment business oversight function*; [deleted]

(2)   the *compliance oversight function*; [deleted]

…

10.1.13A   R   If the only *regulated activities* carried on by an *incoming EEA firm* in the *United Kingdom* are *MiFID business*, only SUP 10.1.13R (3), (4) and (6) apply to that *firm*. [deleted]

10.1.13B   G   If an *incoming EEA firm* carries on *designated investment business* which consists of *MiFID business* only, the *EEA investment business oversight function* and the *compliance oversight function* will not apply to that *firm*. [deleted]

10.1.13C   G   If an *incoming EEA firm* carries on *designated investment business* which consists of both *MiFID business* and other regulated activities, the *EEA investment business oversight function* and the *compliance oversight function* (*SUP* 10.1.13R(1) and *SUP* 10.1.13 R(2)) will apply to that *firm*, but only in relation to that part of the business which is not *MiFID business*. [deleted]

10.1.14   R   In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *controlled functions* apply:

(1)   the *required functions*, other than the *apportionment and oversight function* and the *compliance oversight function*;

…

...

10.4.5	R	Controlled functions		
		Type	CF	Description of controlled function
		*Governing functions**	1	*Director function*
			...	
		*Required functions**	8	...
			~~9~~	~~*EEA investment business oversight function*~~ [deleted]
...				

10.7.6   R   ~~The *EEA investment business oversight function* is the function of acting in the capacity of an individual who is responsible, in accordance with SYSC 2.1.3R(2), for overseeing the establishment and maintenance of systems and controls in relation to *designated investment business* carried on from a *branch* in the *United Kingdom* of an *incoming EEA firm*.~~ [deleted]

10.7.7   G   ~~Where an overseas individual has not delegated this function to a *senior manager* in the *United Kingdom*, he is likely to be performing this *controlled function*. However, the *FSA* anticipates that any individual carrying out this function will normally be located in the *United Kingdom*. He may be the local *chief executive* or one or more of the individuals approved to perform the *significant management (designated investment business) function*. If the local *chief executive* (or other individual) is approved for this function, this does not mean that all his responsibilities are the concern of the *FSA*. *SUP* 10.1.9 R preserves the principle of *Home State* prudential regulation whenever it applies and in respect of each *controlled function*.~~ [deleted]

...

10.9.1   R   *SUP* 10.9 applies only to a *firm* which~~, under *SYSC* 2.1.1R,~~ apportions a significant responsibility, within the description of the *significant management function*, to a *senior manager* of a significant business unit.

…

10.9.3   G   However, the scale, nature and complexity of the *firm's* business may be such that a *firm* apportions ~~under *SYSC* 2.1.1R~~ a significant responsibility to an individual who is not approved to perform the *governing functions*, *required functions* or, where appropriate, the *systems and controls function*.

If so, the *firm* should consider whether the functions of that individual fall within the *significant management function*. For the purposes of the description of the *significant management functions*, the following additional factors about the *firm* should be considered:

…