

Senior Managers & Certification Regime (SMCR)

Proposed Rules and Guidance

Introduction

The FCA implemented SMCR for Banks, building Societies and Credit Unions in March 2016. On 26th July 2017, the FCA issued consultation paper (CP17-25) on implementing the SMCR across other Financial Service Companies they regulate.

The main purpose of the new regime is to protect consumers which is to be achieved by making both senior managers and other staff more responsible and accountable for their actions.

The SMCR will replace the Approved Persons Regime. This is a summary of the changes will impact on IFA's.

What are the FCA proposing?

Unlike the blanket regime applied to the banks, the FCA is proposing the regime for should be proportionate and flexible to reflect the different risks, impact and complexity of individual firms. Some requirements are set out in legislation therefore are mandatory implementation.

The regime is made up of 3 core elements and is applicable to each legal entity;

Senior Managers (SM) Regime

The focus is on the most senior people in the firm who will need to be approved by the FCA prior to taking up the role (as for APER).

- Firms need to ensure the SM is suitable for the job.
- For each SM role there must be a document detailing what they are responsible and accountable for – 'a statement of responsibilities' this will also include FCA 'prescribed responsibilities' where applicable.
- SM's have a duty of responsibility and should something material come to light the FCA will consider if that person took reasonable steps to prevent the occurrence.

Certification Regime

This replaces and broadens the current Controlled Functions Regime and covers managers & staff who aren't caught under SM but whose role can have a big impact on clients, markets or the firm. Unlike the current controlled functions regime these people will now be checked and 'certified' by the firm that they are suitable for the role. Re certification will take place on an annual basis.

Conduct Rules

These rules are designed to improve the behaviour of those working in financial services and therefore will apply to almost everyone. For large complex firms – fewer than 1% of firms regulated by the FCA – there will be extra requirements such as a the need to have responsibilities maps and handover documents.

Functions included under the Senior Managers regime

The FCA have split the functions into 2 distinct areas, 4 governing functions and 2 required functions.

The 4 governing functions are;

1. SMF9 – Chair (this is a non-exec position and replaces the need to approve all NED's (if applicable))
2. SMF1 – Chief Executive
3. SMF3 – Executive Director
4. SMF27 – Partner

It is not anticipated that firms need to have all of these functions. The 2 required functions are;

- SMF16 – Compliance Oversight
- SMF17 – MLRO

It is possible for a person to hold more than one function listed above

Statement of Responsibilities

All designated SM's will have a single document clearly stating what their role is and what they are responsible for. This document will contain both internal responsibilities and any 'prescribed responsibilities' that are appropriate to the role.

The statement of responsibilities must be kept up to date and must be submitted to the FCA with the senior manager approval application. If there is a significant change to the document it must be resubmitted to the FCA. Where a person holds multiple functions, it is appropriate to amalgamate all responsibilities into a single document as long as it is clear what responsibility relates to which function

Prescribed Responsibilities

1. Performance by the firm of its obligations under the Senior Managers Regime, including implementation and oversight
2. Performance by the firm of its obligations under the Certification Regime
3. Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules
4. Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime
5. Responsibility for the firm's compliance with CASS (if applicable)
6. Responsibility for ensuring the governing body is informed of its legal and regulatory obligations
7. Responsibility for an AFM's value for money assessments, independent director representation and acting in investors' best interests (if applicable)

When allocating the responsibilities it should be given to the SM who is responsible for that issue, who has sufficient authority and an appropriate level of knowledge and competence to carry out the responsibility properly.

Each prescribed responsibility is normally the responsibility of one person, therefore it is important to consider where the responsibility truly lies. For example, if the MLRO is not responsible for all aspects of financial crime but just the reporting and oversight of Money Laundering then it may not be appropriate to allocate responsibility 4 to the MLRO

Duty of Responsibility

All SM's have a duty of responsibility which means that if one of the FCA requirements/responsibilities is broken that SM could be held accountable if they did not take reasonable steps to prevent or stop the breach.

The FCA will need to prove an individual did not take reasonable steps. Where appropriate the FCA may take enforcement action against the individual, the firm or both!

Roles included in the Certification Regime that are applicable to IFA firms

- Significant Management Function – other than those who are included in the SM regime
- Functions that are subject to qualification requirements
- Material risk takers (Remuneration code staff)
- Anyone who supervises or manages anyone performing one of the above functions

The Significant Management Function is new and is lifted from the existing SMCR for banking. It captures people under the level of senior manager but have responsibility for a significant business unit. When considering if the business unit is significant firms need to consider the following;

- the size and significance of the firm's business in the UK
- the risk profile of the unit
- the unit's use of the firm's capital
- its contribution to the profit and loss account
- the number of employees, Certification Functions or Senior Managers in the unit
- the number of customers in the unit

A business unit isn't limited to one that carries on commercial activities with customers or third parties or that earns a revenue. It can be an internal support department for example HR, Operations or IT. It is possible for one person to hold more than one Certification Function; the firm will need to certify that the person is fit and proper to carry out **each** function. Similarly, if a person holds both a SM function but also carries out a role that is captured under certification regime then that person will also need to be certified.

Conduct Rules

The Conduct rules replace the existing 'statement of principles' for approved persons and are split between rules that apply only to Senior Managers and rules that apply to **all** Financial Service employees including Senior Managers but excluding ancillary workers. The rules are enforceable by the FCA at an individual level.

A firm is required to ensure appropriate training on the rules to all of their in-scope employees. Additionally, firms are required to notify the FCA when disciplinary action has been taken due to a breach of a conduct rule. For SM's this will be within 7 business days of the firm becoming aware. For all other staff via an annual return.

Rules applying to Senior Manager's only

- SC1** You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
- SC2** 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
- SC3** 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

You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

Rules applying at all individuals (including senior managers but excluding ancillary staff)

You must act with integrity

You must act with due care, skill and diligence

You must be open and cooperative with the FCA, the PRA and other regulators

You must pay due regard to the interests of customers and treat them fairly

You must observe proper standards of market conduct

Ancillary staff include

Receptionists, Switchboard Operators, Post-room Staff, Reprographics/Print-room staff, Property/Facilities Management/Events Management, Security Guards, Invoice Processing, Audio-visual Technicians, Archive Records Management, Corporate Social Responsibility staff, Data Controllers and processors under the Data Protection Act, Cleaners, Catering Staff, Personal Assistants & Secretarial Staff, Information Technology Support and Human Resources administrators/processors

Fit and proper requirements

Anyone performing a Senior Manager or Certification Function and NED's who are not senior managers must be assessed as being 'fit and proper to do their role. That status must be reassessed on an on-going basis and at least once a year.

Please note: All assessment must include qualifications, training, competence reviews and personal characteristics. The FCA are not proposing to change the requirements in FIT, however, they **are** proposing that firms collect new evidence when assessing or reassessing. The following will be required: Certification Functions or NED's

- Senior Managers & NEDS - Criminal Records check
- Senior Managers, Certification Function & NEDS – Regulatory references from past employers for the past 6 years

- Share the information in a standard template
- Disclose disciplinary action due to breach of conduct rules and any findings that the person was not fit and proper
- Disclose any other information such as upheld complaints during the past 6 years (if serious misconduct then no time limit)
- Retain records of disciplinary and fit and proper finding for 6 years
- Not enter into arrangements that conflict with the disclosures above (NDA's)
- Firms will need to update regulatory references where new significant information comes to light