

Senior Managers Regime

An overview for asset managers

Final rules for the extension of the Senior Managers & Certification Regime (**SMCR**) to the asset management industry together with other regulated sectors not already subject to the regime, are expected to come out in early 2018. The new regime will come into force later in 2018. The FCA's current consultation on the proposed new regime (available [here](#)) provides a guide as to how the regime will likely apply to the asset management industry post-implementation.

The original SMCR, which applies to banks, PRA-designated investment firms, came into force on 7 March 2016. The related rules on regulatory references came into force on 7 March 2017. The proposed regime, as it will apply to asset managers, whilst largely predicated on the current SMCR regime has been modified to take into consideration the different nature of the regulated entities not already caught by the regime. This overview looks at the UK's current proposals to extend the senior managers regime to the asset management industry and considers how asset managers can begin to prepare for the new regime pending final rules from the FCA.

<p>What is the senior managers regime?</p>	<p>The SMCR is designed to replace the existing Approved Persons regime with a new accountability system focused on senior managers and individual responsibility. Although the regime for banks has been in force since 2016, it is too early to tell whether it has had the positive cultural and behavioural impact intended.</p> <p>There will be three layers of regulation under the SMCR for asset managers:</p> <ul style="list-style-type: none"> • Senior Managers: will require pre-approval by the regulator. The scope of their role must be clearly documented in a statement of responsibilities; • Certification Regime staff: akin to current approved persons, whose fitness and propriety will be certified annually by firms rather than by the FCA; and • Conduct Rules staff: the majority of employees apart from those performing purely ancillary functions, who will be subject to individual Conduct Rules.
<p>How will the regime apply to asset managers?</p>	<p>The requirements of the new regime will depend on whether the asset manager is classified as a limited scope firm, a core firm or an enhanced firm.</p> <ul style="list-style-type: none"> • Limited scope firms: internally managed AIFs will be classified as limited scope firms. Such firms will have fewer senior management functions and will not have to allocate the prescribed responsibilities (see below). The Certification Regime and Conduct Rules will apply to limited scope firms; • Core firms: the majority of asset managers would likely be classified as core firms. As such, they will have to apply the core set of Senior Management Functions and Prescribed Responsibilities (see Senior Managers below). The Certification Regime and Conduct Rules will also apply; and • Enhanced firms: broadly, asset managers that are significant IFPRU firms, CASS large firms and or have an AUM of £50 billion or more will be "enhanced firms" subject to additional requirements over and above those of Core firms. This will include allocating additional senior management functions and ensuring that there is a senior manager with overall responsibility for every area, business activity and management function.
<p>Senior managers</p>	<p>The most senior people in the firm will continue to be required to obtain regulatory pre-approval. Firms will need to document the precise responsibilities of senior managers in a statement of responsibilities. A list of "prescribed responsibilities" will need to be allocated across the population of senior managers. Senior managers will be subject to a duty of responsibility. The FCA will consider in enforcement actions whether a senior manager took "reasonable steps" to prevent regulatory breaches from occurring.</p>

Certification Regime Staff	Many individuals who currently hold FCA approval, for example, the CF30 Customer Function, will cease to be FCA Approved Persons. Instead, the onus will fall on firms to certify annually that individuals performing "significant harm functions" are "fit and proper" to carry out those roles. In practice, this shifts a considerable burden onto firms to in effect set up their own internal approved persons regime.
The Conduct Rules	<p>The FCA's current Statements of Principle for Approved Persons (APER) will be replaced by the so-called "Conduct Rules". The Conduct Rules are high-level standards that substantially mirror APER. The Conduct Rules will apply to the majority of employees in asset management firms.</p> <p>Of particular note is the new rule for senior managers which requires that they "disclose appropriately any information of which the FCA would reasonably expect notice" – a pro-active and personal obligation to make reports to the regulator.</p>
What are the extra-territorial jurisdiction considerations?	The SMCR will apply to anyone who performs a Senior Manager role, whether they are based in the UK or overseas. For UK firms, the Certification Regime is limited to people performing a Certification Function who are either based in the UK or, if based outside the UK, are dealing with UK clients. However, if an individual is a material risk taker under one of the FCA's Remuneration Codes, the Certification Regime will apply even if they are based overseas and do not deal with a UK client.
What can asset managers do now to prepare?	<p>Although the final SMCR rules for asset managers will not come out until early 2018, firms can get ahead by beginning to consider some of the following:</p> <ul style="list-style-type: none"> • Identify applicable regime: firms should make an initial determination as to which rules apply to each of the regulated entities in their group; • Corporate governance: corporate governance frameworks should be reviewed to ensure that they are clear and effective – this will assist in delineating scope of each senior manager's role and responsibilities; • Reporting lines: reporting lines should be reviewed to ensure that roles and responsibilities are clearly demarcated; • Employee categorisation: each employee should be initially categorised as Senior Managers, Certification Regime staff or Conduct Rules staff. The concept of an employee is broadly defined to include consultants and secondees; • Senior manager's roles: consideration should be given to the scope of each senior manager's responsibilities and how those would be described. The cross over between some functions can give rise to complexities. This is compounded by the fact that the FCA has stated that firms should aim to ensure that each responsibility is described in less than 300 words; and • Documentation review: firms should consider which employment contracts, compliance manuals and other documentation will need to be updated to reflect the requirements of the SMCR. <p>The FCA will be looking for firms not only to meet the black letter of the law but also its cultural and behavioural expectations. These should therefore be taken into consideration when preparing for the implementation of the SMCR.</p>

Key contacts



Alex Haynes

Partner, London

T: +44 20 7809 2003

E: alex.haynes@shlegal.com



William Saunders

Partner, London

T: +44 20 7809 2138

E: william.saunders@shlegal.com



Richard Small

Partner, London

T: +44 20 7809 2424

E: richard.small@shlegal.com



James Tinworth

Partner, London

T: +44 20 7809 2082

E: james.tinworth@shlegal.com