

May2019

SM&CR Extension: issues for solo-regulated firms to consider as implementation date approaches

Summary

From 9 December 2019 47,000 FCA solo-regulated firms will become subject to the Senior Managers and Certification Regime ("**SM&CR**").

Even for "limited-scope" and "core" firms, which will benefit from a degree of automatic transitioning to the new regime, several important issues require careful consideration well in advance of the 9 December 2019 commencement date.

Having advised Banks ahead of the March 2016 implementation of the Banking SM&CR, and a number of solo-regulated firms on the extension, we set out below the five issues which will require the most careful consideration in the weeks ahead.

Our previous e-alerts on the FCA's proposals for extending the SM&CR can be found [here](#) and [here](#).

1. Senior Manager Function Allocation / Mapping

Limited scope and core SM&CR firms will benefit from "automatic conversion": existing directors holding Controlled Function 1 (Director: CF/1) will automatically transition to SMF/3 (Executive Director) in the SM&CR without any application or notification from the firm. CF/10 (Compliance Oversight) and CF/11 (MLRO) holders will transition automatically to SMF/16 and SMF/17 respectively.

Notwithstanding automatic conversion, it must be borne in mind that certain Controlled Functions do not "map" to Senior Management Functions ("**SMFs**"). Non-executive Chairs (holding CF/2) will not automatically convert to SMF/9 (Chair) and a Conversion Notification (Form K) will be required.

Some Controlled Function holders will not meet the definition of a "Senior Manager" (in particular Directors – holding CF/1 – and Partners – holding CF/4). In respect of these individuals a Form C will need to be submitted, to take effect before the commencement date.

Enhanced firms will not benefit from automatic conversion; a mapping exercise will need to take place and a Conversion Notification (Form K) submitted ahead of commencement, along with a Responsibilities Map.

2. Statements of Responsibilities: who will hold what responsibility?

Notwithstanding automatic conversion, Statements of Responsibility will need to be prepared for each Senior Manager. Core firms do not need to submit these to the FCA prior to or on commencement. This is a "one-off exemption": any applications for Approval to perform a SMF after commencement will need to be accompanied by a Statement of Responsibility.

Core Firms must allocate five Prescribed Responsibilities to Senior Managers, and these will be recorded in Statements of Responsibility. Authorised Fund Managers ("**AFMs**") will need to allocate an additional Prescribed Responsibility ("za"): the responsibility for value for money assessments.

Enhanced firms have a further 7 Prescribed Responsibilities to allocate.

In March 2019 the FCA published its [finalised guidance](#) on preparing Statements of Responsibilities and Responsibilities Maps.

3. Asset Managers: the "value for money assessment" prescribed responsibility

In June 2017 the FCA published the [Final Report](#) on its Asset Management Market Study. This was followed by the [Final Rules](#) in April 2018.

From **30 September 2019** COLL 8.5.17 – 22 will take effect, requiring AFMs to conduct an assessment (at least annually, for each scheme it manages) of whether the payments out of scheme property set out in the prospectus are justified in the context of the overall value delivered to unitholders. The AFM must (separately, for each class of units in a scheme) consider at least the matters set out in COLL 6.6.21R (minimum considerations: assessment of value).

In the course of implementing the SM&CR firms must allocate Prescribed Responsibility "za", and make a Senior Manager responsible ensuring its compliance with COLL 8.5.17R, COLL 8.5.20R (and COBS 2.1.4R). Where the chair of the AFM's governing body is an Approved Person, the AFM must allocate the Prescribed Responsibility to that person.

As a result of transitional provisions, AFMs are not required to include statements relating to value assessments in respect of any annual accounting period ending before 30 September 2019.

As such, despite the fact that the value for money assessment rules have not yet taken effect, AFMs will need to consider and allocate the Prescribed Responsibility relating to such assessments by the commencement date. In some cases, consideration as to how assessments will be conducted and described may thus have to be brought forward, as part of the SM&CR implementation process.

4. Certification Staff: identification by implementation date

Certificates of fitness and propriety need not be issued for the first time until 12 months after the commencement date. However, the firm's population of Certification Staff needs to be identified prior to the commencement date.

For many firms the largest single class of individuals that will transition to the Certification Regime will be the current CF/30 holders (Customer Function). Careful consideration will need to be given to whether *all* of a firm's CF/30 holders fall within the Certification Regime. Most notably, the definition of the new "Client Dealing Function" departs subtly from the existing "Customer" function. Additional individuals, who do not currently hold a Controlled

Function, may also be caught by the Certification Regime (including individuals based overseas who deal with UK clients).

Additionally, existing Controlled Function holders, whose Controlled Functions do not map directly into Senior Management Functions (e.g. existing CF/28 and CF/29 holders), may come to fall within the Certification Regime.

5. Senior Managers and Certification Staff: awareness, consent and training

It is important that the individuals who will become Senior Managers understand, from an early stage, what being a Senior Manager entails. Conversations should take place as soon as possible to ensure that potential Senior Managers understand the demands of being an SMF holder and are content to hold the role. Beyond the necessity for a Statement of Responsibility, and the requirement to discharge one or more Prescribed Responsibilities, Senior Managers must receive guidance and training on the [Duty of Responsibility](#) and the potential for individual liability, arising out of any failure to take "reasonable steps" to prevent regulatory contraventions occurring or continuing.

Certification Staff must similarly receive training as to: (a) the fact they may no longer be Approved Persons; (b) what Certification entails; and (c) the fact that their ability to perform a Certification Role depends on their holding and maintaining a Certificate of fitness and propriety, which will be assessed annually by the firm.

Both Senior Managers and Certification Staff **must receive training on the new Conduct Rules**, which will apply to both groups from the commencement date.

We have substantial experiencing of advising on the implementation of the SM&CR. Since March 2016 we have advised a number of Banks on how the regime applies and works day-to-day, in both supervisory and enforcement contexts. We have delivered training to Senior Managers, certification staff and on the conduct rules to a large number of Boards and firms.

**If you have any questions about the SM&CR
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