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Taking responsibility: the FCA's Senior Managers and Certification Regime

The Financial Conduct Authority (**FCA**) has recently consulted on replacing its Approved Persons Regime with the Senior Managers and Certification Regime (**SM&CR**) for all FCA solo-regulated financial services firms. The aim of the SM&CR is to improve accountability within financial services firms and to raise standards of conduct. The SM&CR was originally introduced for banks and large investment firms, largely in response to the financial crisis, but is now being extended to apply to financial services firms more generally.

The changes proposed by the SM&CR can be broadly divided into three categories:

1. Senior Managers Regime
2. Certification Regime
3. Conduct Rules

As these rules cover a wide variety of firms, the FCA has also proposed applying the changes on a limited basis for Limited Scope Firms (which include certain Limited Permission Consumer Credit firms, sole traders and internally managed AIFs). The FCA has also proposed an Enhanced Regime for certain large, complex firms. These additional requirements are discussed below.

Senior Managers Regime

This aims to ensure that the FCA is aware of the most senior decision makers in a firm and that there is someone in place who is ultimately responsible for each of the key areas within a firm. This would apply to persons based both in the UK and overseas.

There are four main aspects to the Senior Managers Regime:

- A new type of controlled function called a **Senior Management Function** which includes the Chair function, the Chief Executive function, the Executive Director function, the Partner function, the Compliance Oversight function and the Money Laundering Reporting Officer function. In contrast to the current Approved Persons Regime, only the Chair of the board would need to be approved and not every non-executive director.
- A **Statement of Responsibilities** for each Senior Manager setting out their role and their responsibilities. These would need to be submitted to the FCA and Senior Managers would need to ensure that these are kept up to date. The FCA would look to the Statement of Responsibilities when considering whether to bring enforcement action against a Senior Manager.

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- A **Duty of Responsibility** under which the relevant Senior Manager could be held responsible for breaches by the firm and subject to FCA enforcement action if they did not take “reasonable steps” to prevent or stop the breach. Senior Managers would therefore need to make sure that they properly understand their role and the related responsibilities.
- New **Prescribed Responsibilities** which set out the areas of responsibility which a firm is required to allocate to Senior Managers. These include performance of the obligations under the SM&CR and policies and procedures to address financial crime. Therefore firms would need to ensure that they appropriately allocate these Prescribed Responsibilities.

Certification Regime

This would apply to persons who are not Senior Managers but whose roles have the potential to harm a firm or its customers. These are known as **Certification Functions**.

These include persons carrying on the following functions (as well as their supervisors and managers):

- Significant Management Function
- CASS oversight function
- Proprietary trading
- Dealing with clients
- Material Risk taking
- Algorithmic trading
- Functions subject to qualification requirements (such as mortgage advisers or retail investment advisers)

Some Certification Functions would fall within the scope of the FCA’s current Approved Persons Regime but some roles would be caught by regulation for the first time.

Under the SM&CR, a person carrying on a Certification Function would not need to be approved by the FCA but the employing firm would need to verify on a yearly basis that the person is fit and proper to carry out their role and issue a certificate confirming this. Where a person carries on more than one Certification Function, this would need to be done for each Certification Function carried on.

Conduct Rules

The FCA has also proposed new Conduct Rules to replace those currently in APER. These consist of two tiers of rules: Individual Conduct Rules and Senior Manager Conduct Rules. These would apply to a firm’s regulated and unregulated financial services activities.

The Individual Conduct Rules are as follows:

- You must act with integrity.
- You must act with due care, skill and diligence.

- You must be open and co-operative 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.

These differ slightly from the rules currently in APER and would apply to all Senior Managers and non-executive directors, all persons carrying on a Certification Function and all other employees except ancillary staff.

The FCA has produced an exhaustive list of ancillary staff which includes most general support functions such as receptionists, security guards and cleaners. Crucially it does not exclude the legal function and the Law Society has said that it is concerned about the possible conflict between lawyers' own professional duties and the Conduct Rules as well as the status of legal professional privilege.

The Senior Manager Conduct Rules are as follows:

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

These would apply to Senior Managers and, in the case of the requirement to disclose to the FCA or PRA, to non-executive directors.

Enhanced Regime

Certain large, complex firms would be subject to additional requirements under the SM&CR including additional Senior Management Functions and additional Prescribed Responsibilities. Also such firms would need to have a Senior Manager with overall responsibility for each area of the firm as well as a responsibilities map and handover procedures.

The FCA has various criteria to identify firms subject to the enhanced regime such as whether the firm (i) is a CASS large firm; (ii) has assets under management of £50 billion or more, or (iii) has revenue from consumer credit lending of £100 million or more. The FCA estimates that the Enhanced Regime would only apply to around 350 or 1% of firms.

Next steps

The FCA has indicated that it intends to publish its final rules during the course of 2018. It will also separately consult on the operational aspects of the SM&CR such as transitional arrangements. However, there are still some areas that firms can start to think about now.

Firms should start to do the following:

- Identify persons who carry on Senior Management Functions and also those persons to whom they would allocate the Prescribed Responsibilities.
- Consider which responsibilities apply to each Senior Manager and make sure that there is adequate coverage across the firm including appropriate delegation arrangements.
- Encourage proposed Senior Managers to make sure that they are fully familiar with the areas of their firm for which they are responsible and any related risks and responsibilities.
- Consider which roles within the firm will need to be treated as Certification Functions.

Further information?



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