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THE SENIOR MANAGERS & CERTIFICATION REGIME: FCA PUBLISHES NEAR FINAL RULES

August 2018

On 4 July 2018, the FCA published, in their latest policy statement (PS18/14) (the "**Policy Statement**"), its feedback on consultation paper CP 17/25 and near final rules on how the Senior Managers & Certification Regime ("**SMCR**") will be applied to all FCA regulated firms and the steps such firms will need to take to comply.

The purpose of SMCR is to raise the standard of conduct for everyone who works within the financial services industry and to hold the more senior members of FCA regulated firms more responsible and accountable, on a personal level, for their actions.

SMCR proposes three core elements that will apply to every FCA regulated firm:

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

Certain rules, as implemented by the FCA, will apply depending on the firm's categorisation as either: enhanced, core or limited. For a summary of the three core elements and a description on the three firm categorisations, please see our newsletter on CP 17/25 here.

Next steps for firms

As the Policy Statement sets out the FCA's near final rules on the implementation of SMCR, it can be used by firms to assess: (i) which rules may affect them; and (ii) what the FCA's compliance requirements are. Additionally, the policy statement can assist firms in migrating to the new regime as effectively as possible. All FCA regulated firms will move to the SMCR regime from 9 December 2019.

Although the rules are near-final, FCA has noted that they:

(a) may be amended by any subsequent changes required to the FCA's Handbook e.g. as a result of the UK's exit from the EU;

(b) are not near-final in respect of benchmark activities which the FCA will consult on separately; and

(c) are subject to further commencement regulations to be made by HM Treasury.

To view the full Policy Statement, please click here.

In the table below, we have set out a brief overview of the near-final rules published by the FCA and which category of firm they impact.

Key points	Commentary

1. USEFUL DEFINITIONS

1. SMCR firms

Updates reflects in SYSC 21, Annex 1 and in particular, the current flow diagram at 1.2R will be deleted and replaced with a new flow diagram to set out the definition of SMCR firm and the different types of SMCR firms. This will assist firms in assessing which category of SMCR firm they fall into (core, enhanced or limited).

2. Exempt firms

The following are considered exempt firms from the SMCR regime:

(a) a UCITS qualifier i.e. a firm which is an operator, trustee or depositary of a recognised scheme and is an authorised person; and

(b) an AIFM qualifier i.e. an EEA AIFM which is marketing or has market an AIF in the UK through its EEA Passporting rights and is not exercising a right to manage a UK AIF.

2. SENIOR MANAGEMENT REGIME

Senior management function ("**SMF**") manager's will continue to need FCA approval and people who perform any of the Senior Manager Functions will be considered Senior Managers and this applies to all firms except Limited Scope Firms.

1. Handbook rules that apply to all FCA regulated firms

(a) SUP 10C: pre-approval by the FCA of senior management;
(b) SUP 10C.10.14G: firms to be satisfied that a person is fit and proper before applying for them to be approved as a SMF manager by the FCA;
(c) SUP 10C.14.18R – SUP 10C.14.25G: firms to carry out annual assessments of fitness and for their SMF managers;
(d) SUP 10C.1016R: firms to carry out criminal record checks before applying for someone to be approved as an SMF manager;
(e) SYSC 22: firms should ask (and provide, where applicable) for regulatory references before appointing someone

Key points	Commentary
	to be an SMF manager/other senior management positions; (f) SUP 10C.11: firms to prepare statement of responsibilities and provide to those SMF managers as part of the firm's application to the FCA for them to be approved as an SMF manager. This should be updated in the event of a significant change in the SMF manager's responsibilities; and (g) SUP TP 12, 12.11: sets out the requirements for statement of responsibilities.
2. Handbook rules that apply to core and enhanced firms only	(a) SYSC 24: firms should allocate certain specified and prescribed responsibilities among its SMF managers; and (b) SYSC 23.4: firms to carry out criminal record checks before appointing a board director who is not an SMF manager.
3. Handbook rules that apply to enhanced firms only	(a) SYSC 25: firms should maintain a management responsibilities map that describes its management and governance arrangements; (b) SUP 12 TP 12, 12.12: sets out the requirements for responsibilities maps; (c) SYSC 26: firms should ensure that one or more of its SMF managers have overall responsibility for each of the activities, business areas and functions of the firm (note that a full scope UK AIFM does not need to treat 'managing an AIF' as part of its SMCR financial activities); and (d) SYSC 25.9: firms should ensure that a person becoming a SMF manager has all the necessary information and materials to perform their responsibilities.

3. CERTIFICATION REGIME

Applies to employees who are not SMF managers.

Suggestions of the types of roles such employees may be carrying out:

- significant management function;
- proprietary traders;
- CASS oversight function;
- functions subject to qualification requirements;
- client dealing function;
- algorithmic traders;
- material risk takers; and

Key points	Commentary

– anyone who supervises/manages anyone performing one of the functions above.

1. Handbook rules that apply to all FCA regulated firms (except internally managed AIFs	(a) SYSC 27: firms should not permit an employee to carry out certification functions unless it has issued them with a certificate (which is only valid for 1 year and must be renewed accordingly and only when the firm is satisfied that the person continues to be fit and proper); and (b) SYSC 22: firms should ask (and provide, where applicable) for regulatory references before appointing someone to perform a certification function.

4. CONDUCT RULES

The aim of these rules is to improve standards of individual behaviour across firms and to broaden their awareness of conduct issues.

Staff will need to be trained so they understand how the conduct rules apply to them. Firms must notify the FCA if they take formal disciplinary action against someone breaching any of the Conduct Rules.

1. Handbook rules that apply to all FCA regulated firms	(a) COCON: rules of conduct that apply directly to a firm's workforce (other than ancillary staff); (b) SUP 15.11: firms should report breaches of COCON to the FCA; and (c) COCON 2.3: firms should ensure that all persons subject to COCON are notified of the rules that apply to them and take all reasonable steps to ensure they understand how those rules apply to them.

5. APPOINTED REPRESENTATIVES

SMCR will not extend to appointed representatives. Therefore, the approved persons regime will continue to apply to appointed representatives once SMCR is implemented.

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