

MARKS SATTIN

Senior Managers & Certification Regime
Deadline 9th December 2019

Overview

The **Senior Managers and Certification Regime** will come into place and be implemented this year for over 56,000 FCA regulated firms, mirroring what the banks and some insurance firms have already put in place. The key objective for the implementation of this regime is to give individual accountability to Senior Managers when reporting to the board for their actions and decisions.

The **Certification Regime** will authorise individual firms to oversee staff who are in a position where their responsibilities can affect the market as well as the fate of the company by taking risks. These include positions such as propriety traders, wealth managers and dealers.

With this regime in place, the individual will have to pass a fit and proper test, regulated by the firm itself, replacing the APR (Approved Persons Regime) where the individual was regulated and approved by the FCA.

Key Features of SM & CR

Conduct Rules - Statements of responsibility and prescribed responsibilities

Certification Regime - which roles and staff members responsibilities actively involve taking risks

Senior Managers Regime - implementation requirements

Firms subjected to the new regime

The regime has three levels and different requirements depending on the size of the firm

Limited

There are c.33k firms that would fall into this category. These are firms that have limited permissions such as consumer credit firms, sole traders and utility companies

Core

There are c.11k firms who are not limited but don't meet thresholds to become enhanced. Core firms can decide to opt up, this can happen if they are part of a group that falls into the enhanced category or could likely fall into the enhanced level through business growth of acquisitions

Enhanced

There are c.500 firms that fall into this criteria due to size and complexity, such as firms with over £50bn AUM

Under the new regime, the following roles will be considered Senior Manager functions:

Core firms

- SMF1 – Chief Executive
- SMF9 – Chairman
- SMF16 – Compliance Oversight
- SMF17 – Money Laundering Reporting Officer
- SMF27 – Partner

Enhanced firms

- SMF1 – Chief Executive
- SMF2 – Chief Finance Function
- SMF3 – Executive Director

- SMF4 – Chief Risk Functions
- SMF5 – Head of Internal Audit
- SMF7 – Group Entity Senior Manager
- SMF9 – Chairman
- SMF10 – Chair of Risk Committee
- SMF11 – Chair of Audit Committee
- SMF12 – Chair of the Remuneration Committee
- SMF13 – Chair of the Nominations Committee
- SMF14 – Senior Independent Director
- SMF16 – Compliance Oversight
- SMF17 – Money Laundering Reporting Officer
- SMF18 – Other Overall Responsibility
- SMF24 – Chief Operations Function
- SMF27 - Partner

The firm's responsibility for certifying and authorising staff

Staff that require certification are no longer authorised by the FCA, moving forward this will be authorised in house, taking away a lot of their work. This will now also include employees that are not Senior Managers but their responsibilities carry a great impact on customers, the firm and/or the market.

The fit and proper certification will look at:

- An individual's qualification, training and competence
- The job covering the proposed function
- Complexity of firm
- An evaluation on competence and conduct

Typical roles that require certification:

- Algorithmic Trading
- CASS Oversight
- Client Dealing
- Functions requiring qualifications
- Managers/Supervisors of certification employees
- Material Risk Takers
- Propriety Traders
- Significant management

Individual and Senior Manager Conduct Rules

5 Individual Conduct Rules:

1. You must act with integrity – sound judgement, observation of rules and honesty
2. You must act with due skill, care and diligence – understand your areas of business and act competently
3. You must be open and cooperative with the FCA, PRA and other regulators
4. You must pay due regard to the interests of customers and treat them fairly – this is aligned with FCA Treating Customers Fairly (TCF) requirements and will be a personal obligation
5. You must observe proper standards of market conduct – not just subjected to market abuse but proper conduct all markets including non-regulated markets

4 Senior Conduct Rules:

1. You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled efficiently
2. 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
3. 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
4. You must disclose appropriately any information of which the FCA would reasonably expect notice

What SM & CR means to the FCA

The SM & CR is intended to form part of a culture reboot which starts from the top filtering down to the conduct of all staff. Culture has been to blame for all conduct failures from Pension and Endowment selling in the 1990's to more recent LIBOR, PPI and FX scandals.

The main purpose for SM & CR is to create real culture change across all regulated firms.

To paraphrase [Andrew Bailey's](#) definition of "Culture" in his speech:

"Cultural outcomes are a product of effective management and governance set by the tone from the top, incentives created and quality, effectiveness of risk management"

Timeline for SM & CR

July 2018 FCA will publish final/near final rules

Circa September 2018 - Board agrees strategy

Circa December 2018 – Introduce ICR (Individual Conduct Rules) and Certification processes

Circa April 2019 - SMR and changes introduced to reporting lines

Circa September 2019 - ICR assessments

December 2019 - SM & CR goes live

Circa April 2020 - Implement changes to SMR

Circa December 2020 - First annual certification of staff sent to FCA

Near final rules published on 4th July

The FCA have published their near final rules and have confirmed that this will come into place for all FCA regulated firms by 9 December 2019. There hasn't been much change from the original proposals published in July 2017.

However here are some of the key changes to be aware of:

Senior Managers Regime

The Senior Manager Functions remain the same for the FCA only (not PRA), with the exception of:

- SMF18 (Other Overall Responsibility)
- SMF7 (Group Entity Senior Manager)
- SMF27 (Partner)

The functions have been further clarified in their handbook.

Certification Regime

The FCA have not made any further amendments to the Significant Harm Functions for FCA-only authorised firms. The FCA has provided further clarification on their expectations on the Certification Regime:

- A person will still have to have their fit and proper test on an annual basis should they hold both a Senior Manager Function and a Significant Harm Function
- There will be more employees that fall in to the Client Dealing Significant Harm Function than the previous CF30 under APR. This will now be any client facing person of the company that provides advisory or client dealings, including retail, professional clients and counterparties.
- This means firms will need to prepare to conduct more fit and proper tests but they will have a 12 month grace period post 9 December 2019 to complete their fit and proper tests
- “Partners” of firms who are not “employees”, those who do not fulfil criteria of SMF27 (Partner) function do not fall under the Certification Regime

Opt up to an Enhanced Firm

There are a large number of holding groups who have multiple legal entities and companies, that the FCA have introduced a process for them to opt up on a voluntary basis to become enhanced firms, even though individually they do not meet the criteria for being an enhanced firm.

A new FCA register

Currently the register only contains information on Senior Managers and no information on certified persons under the Certification Regime. This will change under SM & CR, where all staff that fall within the Certification Regime will be on the Register. The new directory is expected to be updated in 2019.