

# Extension of the Senior Managers and Certification Regime: Impact on Asset Managers

On 4 May 2016, the Bank of England and Financial Services Act received Royal Assent. The Act will extend the Senior Managers and Certification Regime (SMCR) - which already applies to banks and insurers - to all financial services firms. Around 60,000 additional firms will be brought into scope of the regime when it comes into force (expected to be early 2018).

Detailed regulations from the PRA/FCA are expected later this year, but experience drawn from the banking sector suggests that the changes required by the regime are extensive and will take a substantial amount of time to implement, and that early engagement by firms with affected individuals is vital.

## Key features of the extended SMCR

- Regulatory pre-approval for specified "Senior Managers"
- Statements of responsibility (a form of regulatory job profile) for Senior Managers
- Enhanced individual accountability
- Firm required to identify and certify the fitness and propriety of individuals with the potential to pose significant harm to the firm or customers (known as "Certified Persons")
- New Conduct Rules
- New notification, training and record-keeping obligations

It is anticipated that the extended SMCR regime will also include:

- Governance and responsibilities map requirements
- Enhanced "handover" requirements for departing Senior Managers
- A requirement to obtain and provide regulatory references
- New whistleblowing requirements

## Key issues

- What is proposed?
- Is my firm affected?
- Key features of the extended SMCR
- Who will be a Senior Manager?
- Who will be a Certified Person?
- Who will be covered by the Conduct Rules?
- When will the extended SMCR be implemented?

## Key Dates

- **4 May 2016:** The Bank of England and Financial Services Act received Royal Assent
- **Q3 2016 to Q4 2017:** FCA and PRA consultation in relation to proposed rules
- **Early 2018:** New extended SMCR rules likely to be implemented

## Background

The extended SMCR will come into effect in 2018. Although the regulators are expected to consult on the proposed rules in 2016 and 2017, lessons can be learned from the implementation of the regime in the banking sector. In our experience the extended SMCR is likely to require substantial changes to training, employment documents and compliance policies and procedures and senior individuals will need to understand the possible impact on them personally.

Firms will need to consider:

- who will be a Senior Manager.
- how to allocate key responsibilities between the Senior Managers. What processes they will adopt for agreeing statements of responsibility (SORs) with Senior Managers
- whether existing governance and committee arrangements continue to be appropriate
- what arrangements will be made to reflect increased personal accountability for Senior Managers (for example, in relation to legal expenses and/or indemnification)
- how Certified Persons will be identified and certified annually
- how to ensure uncertified staff are not inadvertently performing certified functions
- which staff will be covered by the Conduct Rules
- how training should be updated and delivered
- whether changes to employment documents and processes will be required
- if changes to regulatory references and personal data retention are necessary
- what changes to settlement agreements and termination processes should be implemented
- the potential impact on remuneration arrangements
- which individuals will be covered in other group entities
- the practical implementation of the regime in relation to in-scope employees based overseas

## What is proposed?

On 7 March 2016, the new Senior Managers (SM) and Certification Regime (CR) applicable to many banks and insurers in the UK came into force. Its purpose is to ensure that individuals who run, or perform important functions in, banks and insurers have clear lines of responsibility, and are accountable to the regulator for their actions. The Government now proposes to extend this regime to all sectors of the financial services industry, including FSMA "authorised" firms in 2018.

## Is my firm affected?

Yes if your firm is regulated by the Financial Services and Markets Act 2000 and meets the definition of an 'Authorised

Person'. About 60,000 firms will be affected including investment firms, private equity firms, asset managers, mortgage brokers and consumer credit firms.

## What are the key elements of the extended SMCR?

The extended SMCR will replace the current Approved Persons Regime for affected firms. The final rules will be subject to consultation, but key elements will be:

- The most Senior Managers in firms will be subject to pre-approval and supervision by the FCA or PRA. Certain responsibilities prescribed by the FCA or PRA will be allocated to the Senior Managers and their individual responsibilities will need to be set out in a "statement of responsibilities" (or "SORs") which must be submitted to the regulator with the Senior Manager's approval application.
- Firms will have to prepare and maintain a Governance or Responsibilities Map showing the key roles within the firm, the people responsible for them, their responsibilities and lines of accountability.
- Senior Managers will be accountable to the regulator if they breach Conduct Rules prescribed by the FCA or PRA, are knowingly concerned in a breach by a firm of a regulatory requirement, or fail to take reasonable steps to prevent such a breach by a firm in their area of responsibility, as set out in their Statement of Responsibilities and the Responsibilities Map.
- Senior Managers will have a statutory duty of responsibility to take reasonable steps to avoid the firm breaching a regulatory requirement in the Senior Manager's area of responsibility.
- Firms must ensure that Senior Managers and other staff who could cause significant harm to the firm or its customers are at all times fit and proper, and must certify them as such at least annually.
- Firms must also ensure that employees comply with certain Conduct Rules, in respect of which firms will have notification, training and record keeping obligations.
- The criminal offence applied to banks of recklessly causing a financial institution to fail will not be applied under the Extended SMCR.

## Who will be a Senior Manager, who will be a Certified Person and who will be covered by the new Conduct Rules?

The Senior Managers Regime is intended to cover the top level of decision makers within an institution. This could cover individuals who are based outside the UK and some Non Executive Directors.

Experience demonstrates the importance of involving Senior Managers in the process (and in particular the Governance Map and Statement of Responsibilities) at an early stage. Equally important is the provision of advice

and re-assurance to Senior Managers through the development of appropriate policies (for example, we have assisted a number of Banks by producing a bespoke "Senior Managers' Handbook") and processes relating to decision making.

Most current Approved Persons below senior management level are expected to become Certified Persons. In addition some roles that are currently not subject to approval may require certification.

New Conduct Rules will apply to Senior Managers, Certified Persons, directors and other employees. For institutions regulated by the FCA the staff population subject to the Conduct Rules may be extensive (under the banking regime only ancillary staff such as security, catering and cleaning staff are exempt). Firms will be expected to embed the Conduct Rules in their employment documentation and to provide firms with appropriate training.

#### When will the extended SMCR be implemented ?

The extended SMCR will come is expected to come into effect in (early) 2018 and the regulators are expected to consult on the proposed rules later this year.

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Clifford Chance has a team of about 30 lawyers from our employment, litigation and regulatory practices who have been supporting banks and insurers to implement the Banking and Insurance Accountability Regimes. We would be happy to speak to your firm about the lessons learned from the implementation of the Banking and Insurance Accountability Regimes. The Extended Accountability Regime is likely to require substantial changes to key documents and processes; senior individuals will want to know what impact it will have on them personally, and firms will need to consider what process they will adopt for agreeing statements of responsibilities with senior managers, how certification staff be identified and certified, which staff will be covered by the Conduct Rules, how should training be delivered, and what changes to employment documents and processes will be required.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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