

## EXTENSION OF THE SENIOR MANAGERS AND CERTIFIED PERSONS REGIME

The FCA has published its long awaited consultation paper on the extension of the senior managers and certification regimes (SMCR) to all financial services regulated firms. Going forward virtually everyone in a regulated firm will be subject to increased regulatory requirements and expectations as to how they conduct themselves.

Within firms, significant focus will be placed on those in management and control positions to implement the regimes and then meet their expectations going forward. As stated by Mark Steward (the FCA Director of Enforcement and Market Oversight) in a speech last year: "*What I like about the senior manager's regime is that it focuses on the people who can make a difference, the senior management and it is top down rather than bottom up, which seems to start the inquiry into firm culpability in the right place. While that may not be where such an inquiry ends, I think it reinforces the real responsibility that we, as regulators and as members of the community expect.*"

This briefing will help firms and their employees understand what they need to do to ensure a smooth transition to the new regime which is expected to come into effect in 2018 (most likely following the summer). This will in many cases require firms to make substantial changes to training, employment documents and compliance policies and procedures and senior individuals will need to understand the possible impact on them personally.

A 'core regime' will apply to all firms (other than limited scope firms) and an 'enhanced regime' to approximately 350 larger and complex firms.

### Key issues

- Key features of the Extended SMCR Regime
- Timetable
- Is my firm affected?
- Who will be a senior manager?
- Who will be a certified person?
- Who will be covered by the conduct rules?
- What preparatory steps should be taken and when?

## Key features of the extended SMCR Regime

### Core Regime

- Regulatory pre-approval for senior managers (but not some non executives directors)
- Statements of responsibility for senior managers
- Personal accountability for senior managers
- Annual firm certification of individuals in 'Certified Function' roles
- A requirement to obtain regulatory references for senior managers, certified persons and non executive directors
- New Conduct Rules for almost every person working in financial services
- New notification, training and record-keeping obligations

### Enhanced Regime

- Handover procedures

## Timetable

### What?

- FCA Consultation on extended SM & CR rules
- Last date for consultation responses
- FCA Policy Statement / Final Rules
- Extended Senior Managers and Certification Regimes will come into operation

### When?

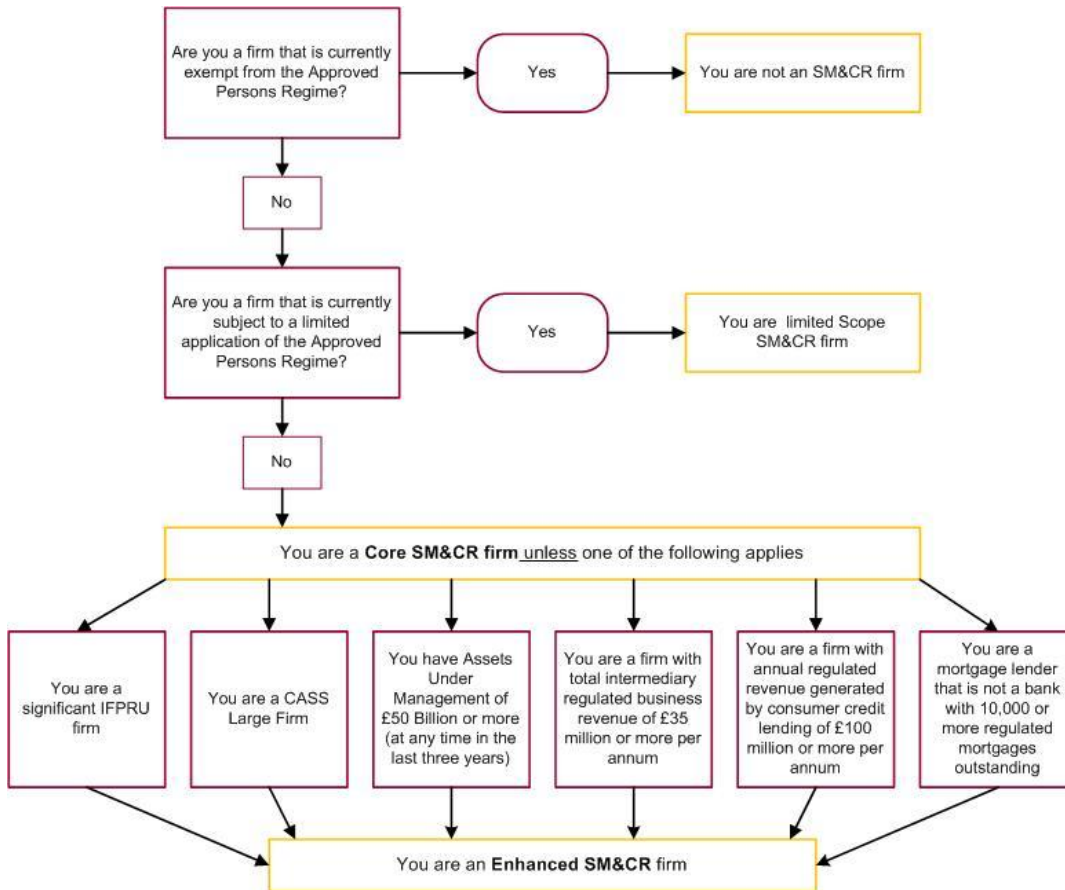
- 26 July 2017
- 3 November 2017
- Summer 2018
- Post summer 2018

- Additional Senior Manager functions and prescribed responsibilities
- Responsibilities map and requirement to allocate "Overall Responsibility" to a senior manager for every activity, business area and management function of the firm

### Is my firm affected?

Yes, if your firm is regulated by the Financial Services and Markets Act 2000 and offers financial services; and in particular if it is subject to the current Approved Persons Regime (APER). Different firms will be subject to different SMCR requirements (see diagram below).

All in scope firms will be subject to the 'core regime' of the extended SMCR (save for certain 'Limited Scope Firms'). Larger and more complex solo regulated firms meeting specified criteria will be subject to additional requirements under an 'enhanced regime'. Other large and complex firms that do not meet the criteria may still be required by the FCA to comply with the enhanced regime. In addition, firms may opt into the enhanced regime.



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

The extended SMCR will replace the current Approved Persons Regime for affected firms. All in scope firms (other than limited scope firms) will be subject to the core SMCR comprised of a Senior Managers Regime, a Certified Persons Regime and Conduct Rules.

Key aspects of the proposed extended SMCR include the following:

*Senior Managers*

- Firms in the core SMCR will need to allocate six 'Senior Management Functions' (SMF's) (Chief Executive, Executive Director, Partner, Chair, Compliance Oversight and Money Laundering Reporting Officer (MLRO)). Anyone holding an SMF will be subject to pre-approval and supervision by the FCA (although we expect that 'grandfathering' will apply to individuals currently holding these roles will not require approval on commencement of the new regime). (There is a modified regime for incoming EEA and non EEA branches).
- Certain responsibilities prescribed by the FCA will need to be allocated amongst the senior managers and their individual responsibilities will need to be set out in a 'statement of responsibilities' which must be submitted to the regulator with the senior manager's approval application (subject to grandfathering arrangements).

- Senior managers will have a statutory 'Duty of Responsibility' and will potentially be accountable if they fail to take reasonable steps to prevent a breach by a firm in their area of responsibility as set out in their statement of responsibilities.
- Enhanced SMCR Firms will be subject to further Senior Management Functions and will be required to allocate additional Prescribed Responsibilities to their Senior Managers.
- Enhanced SMCR firms will be required to ensure there is a Senior Manager with overall responsibility for every area, business activity and management function (the 'Overall Responsibility' requirement).
- Enhanced SMCR firms will have to prepare and maintain a responsibilities map showing the key roles within the firm, the people responsible for them, their responsibilities and lines of accountability.

### *Certification*

- Firms are required to identify Certified Persons who fulfil one or more 'Certification Functions'.
- Firms must ensure that senior managers, non executive directors (who are not senior managers) and certified persons are at all times fit and proper, and must certify them as such at least annually.

### *Conduct Rules*

- Firms must also ensure that employees comply with certain 'Conduct Rules', in respect of which firms will have notification, training and record keeping obligations.

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

There is no territorial limit on the Senior Managers Regime. It will apply to anyone performing a Senior Management Function whether based in or outside the UK.

There are eight prescribed Certification Functions in relation to which relevant individuals will need to be certified, including all individuals who have been designated as 'material risk takers' (MRTs) for the purposes of the FCA's various Remuneration Codes. Most current approved persons below senior management level will become Certified Persons (CP's). In addition some roles that are currently not subject to approval may require certification.

The Certification Regime will only apply to Certification Functions based in the UK or to individuals who are based outside the UK who are dealing with UK clients. Note however that all MRT's will be subject the Certification Regime wherever they are located.

Conduct Rules will apply to Senior Managers, Certified Persons, non executive directors and all employees performing financial services roles; ancillary staff such as security, catering and cleaning staff are exempt. Additional Conduct Rules will apply to Senior Managers.

### **Incoming EEA/Non EEA UK Branches**

The Certification Regime and Conduct Rules will only apply to people based in the UK; they will not extend to individuals outside the UK even if they deal with UK clients.

A modified Senior Managers Regime will apply to EEA and non EEA Branches. EEA branches will have two SMF's (EEA branch Senior Manager and MLRO). Non EEA branches will have five SMF's.

### **What preparatory steps should be taken?**

Firms that will be in scope need to consider:

- whether they come within the core or enhanced regime
- who should be on the implementation team
- whether to respond to the FCA Consultation (directly or via an industry body)
- how they will engage with senior managers and what processes they will adopt for agreeing statements of responsibility with senior managers
- how 'Certification' staff can be identified and certified annually
- how to ensure non-certified 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 reference procedures and personal data retention are necessary
- what changes to settlement agreements and termination processes should be implemented
- which individuals will be covered in other group entities
- the practical implementation of the regime in relation to in-scope employees based overseas
- whether the regime presents an opportunity to review governance structures and arrangements

Experience demonstrates the importance of engaging with senior managers (SM's) early in the implementation process. Equally important is the provision of advice and assistance to SM's for example by producing a Senior Managers' Handbook and/or offering individual briefings.

**Clifford Chance has a team of about 30 lawyers from our employment, litigation and regulatory practices who have supported banks and insurers to implement the Banking and Insurance Senior Managers, Certified Persons and Regulatory Reference Regimes. We would be happy to speak to your firm about the lessons learned from the implementation of the Banking and Insurance Accountability Regimes.**

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