FINANCIAL REGULATORY QUICK START GUIDE

EXTENSION OF THE SENIOR MANAGERS AND CERTIFICATION REGIME TO PRIVATE EQUITY FIRMS

The original Senior Managers and Certification Regime (SMCR) came into force in March 2016 for most PRA-authorised firms. It was extended to regulated PE firms with effect from 9 December 2019.

OVERVIEW

The extension affects all PE firms that are UK authorised firms. It also affects PE firms investing into UK authorised financial services firms; such firms must consider whether any individuals within the PE firm require approval in relation to the target firm.

The SMCR comprises of three elements:

- **The Senior Managers Regime** – an approval regime for individuals performing Senior Management Functions (SMFs)
- **The Certification Regime** – firms are solely responsible for assessing the fitness and propriety of employees who could pose a risk of significant harm to the firm or its customers
- **The Conduct Rules** – basic conduct standards applicable to most employees of the firm (save for purely administrative staff)

The extended regime is meant to be proportionate, and so firms are divided into three categories:

- **Limited Scope firms** – firms that benefitted from a limited application of the Approved Persons Regime, such as internally-managed AIFs, are subject to a reduced set of requirements
- **Core firms** – firms that do not qualify as Limited Scope or Enhanced are subject to the baseline regime, which is a pared-back version of the SMCR for banks
- **Enhanced firms** – PE firms with assets under management of £50 billion or more (calculated as a three-year rolling average) fall within the Enhanced regime, and are subject to additional requirements above the Core baseline regime, more akin to the requirements for banks

THE SENIOR MANAGERS REGIME

The Senior Managers Regime seeks to afford a clear allocation of responsibilities to the most senior individuals within a firm, and strengthen their level of responsibility and accountability.

Individuals performing specified SMFs must be pre-approved by the FCA and are subject to a duty of responsibility. They must formally be allocated responsibilities within the firm and these must be recorded in a Statement of Responsibilities (SoR), which is provided to the regulator.

Senior Manager and Individual Conduct Rules

Senior Managers Regime

The most senior people in firms. Anyone who performs a Senior Management Function needs to be approved by the FCA.

Core requirements:

SMFs	Duty of Responsibility	Statement of Responsibilities	Criminal Records Checks	Prescribed Responsibilities (Limited Scope Firms don't need to do this)

Extra requirements that only Enhanced firms need to meet:

Additional SMFs	Additional Prescribed Responsibilities	Responsibilities Maps	Handover Procedures	Overall Responsibility

Individual Conduct Rules

Certification Regime

People who aren't Senior Managers but whose job can cause significant harm to the firm or its customers. The FCA does not approve these people, but firms need to check and confirm that these people are suitable to do their job at least once a year.

Other Staff

All staff who perform financial services roles. This does not include ancillary staff (for example; caterers, cleaners, and security staff).

Fit and proper requirements (including Regulatory References)

Enhanced firms must also produce a Responsibilities Map, showing the firm's overall governance and management arrangements.

This responsibility framework is designed to help the FCA understand who is accountable for what within the firm.

While most NEDs do not fall within the regime, they must still comply with the Conduct Rules, and are subject to the usual fitness and propriety requirements and rules on regulatory references.

CERTIFICATION

Employees that fall outside the scope of the Senior Managers Regime, but who are performing a "significant harm function", must be certified by the firm as fit and proper (no prior approval from the FCA is required). This includes, for example, individuals performing a "significant management function" and all Code Staff under the AIFM Remuneration Code.

Certification must take place before an employee commences the relevant role, and on at least an annual basis thereafter.

CONDUCT RULES

For the first time, basic conduct rules apply across almost the entire firm. A further set of conduct rules is applicable to Senior Managers only.

Firms need to inform staff about the rules, provide tailored training on the rules (including on what the rules mean for particular staff specifically), and notify the FCA within prescribed timeframes when they have taken disciplinary action against an individual for a breach of the rules.

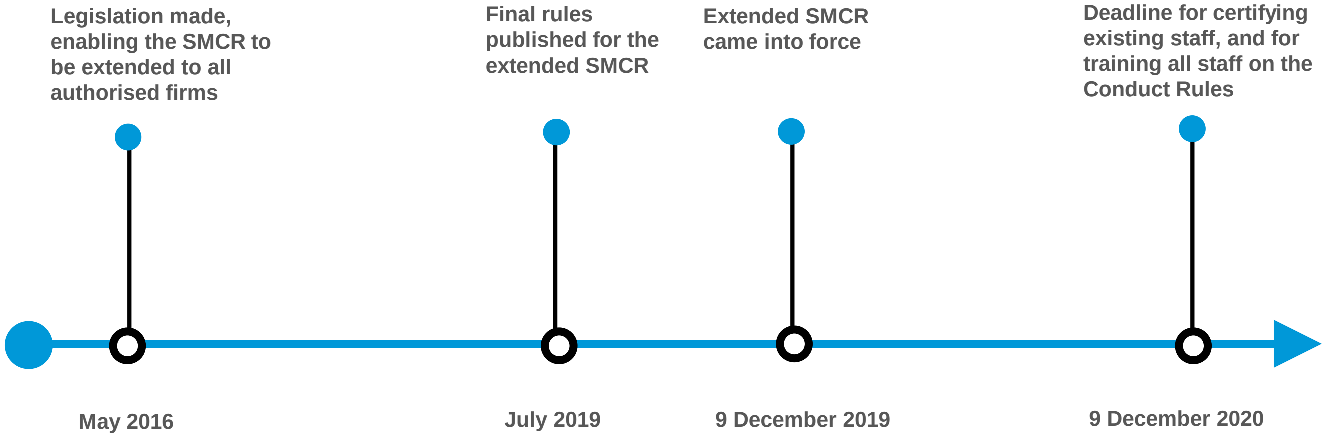
REGULATORY REFERENCES

The enhanced rules for regulatory references have been extended to PE firms. They are relevant to both Senior Manager and Certified Person candidates.

These rules were introduced to help prevent individuals with poor disciplinary records moving from one firm to another without relevant information about their disciplinary history being disclosed.

Among other things, the rules require that firms use a mandatory template to provide references, and disclose information going back at least six years (or longer where the individual was involved in serious misconduct).

TIMING



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