

FINANCIAL REGULATORY QUICK START GUIDE

THE SENIOR MANAGERS AND CERTIFICATION REGIME FOR PRA-AUTHORISED BANKS AND INVESTMENT FIRMS

The Senior Managers and Certification Regime (SMCR) is the accountability regime for individuals working in financial services.

OVERVIEW

The SMCR replaced the previous Approved Persons Regime and is intended to help clarify responsibilities and therefore make it easier for the regulators to hold individuals to account when something goes wrong. 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).

By making firms responsible for assessing the fitness and propriety of staff below Senior Manager level, the regulators can focus their attention on the most senior individuals.

Responsibility for the SMCR for PRA-authorised banks and investment firms is split between the PRA and the FCA, as these firms are dual-regulated. The regulators have each designated their own SMFs and Certification Functions, reflecting the focus of each regulator.

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 regulators. Not all SMFs will be relevant to every firm; some SMFs are mandatory, whereas others only apply if relevant to the business.

SMFs for UK banks	
SMF1	Chief Executive
SMF2	Chief Finance
SMF3	Executive Director
SMF4	Chief Risk
SMF5	Head of Internal Audit
SMF6	Head of Key Business Area
SMF7	Group Entity Senior Manager
SMF8	Credit Union Senior Manager
SMF9	Chair
SMF10	Chair of Risk Committee
SMF11	Chair of Audit Committee
SMF12	Chair of Remuneration Committee
SMF13	Chair of Nomination Committee
SMF14	Senior Independent Director
SMF16	Compliance Oversight
SMF17	Money Laundering Reporting
SMF18	Other Overall Responsibility
SMF24	Chief Operations

Senior Managers must formally be allocated prescribed responsibilities within the firm and these are required to be recorded in a Statement of Responsibilities (SoR), which is provided to the regulators and must be kept up to date.

Firms must also produce a Responsibilities Map, showing their overall governance and management arrangements.

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

Senior Managers are subject to a duty of responsibility, which is intended to help the regulators more easily take action against senior individuals.

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 Functions
Significant Management
Proprietary Trader
CASS Operational Oversight
Functions Requiring Qualifications
Client Dealing
Supervisors of Certified Persons
Material Risk Taker
Algorithmic Trading

CERTIFICATION

Employees that are performing a designated "significant harm function" must be certified by the firm as fit and proper. No prior approval from the regulators is required, so responsibility for certification lies solely with the firm.

Certification must take place before an employee commences the relevant role, and on at least an annual basis thereafter. Responsibility for the firm's compliance with the Certification Regime must be allocated to a Senior Manager.

This is a significant burden for firms in practice, particularly as it can involve making difficult judgments about whether an individual is or remains fit and proper.

CONDUCT RULES

Basic conduct rules apply across almost the entire firm. These cover core principles such as acting with integrity. A further set of conduct rules is applicable to Senior Managers only, although SC4 (see below) also applies to NEDs who are not Senior Managers.

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

REGULATORY REFERENCES

The revised rules on regulatory references are relevant to Senior Manager and Certified Person candidates, as well as NEDs. 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). This is another area that can present difficult judgments for firms, particularly given the regulators' focus on conduct.

Individual Conduct Rules (everyone except "ancillary staff")

Rule 1	You must act with integrity
Rule 2	You must act with due skill, care and diligence
Rule 3	You must be open and cooperative with the FCA, the PRA and other regulators
Rule 4	You must pay due regard to the interests of customers and treat them fairly
Rule 5	You must observe proper standards of market conduct

Senior Manager Conduct Rules (Senior Managers only)

SC1	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
SC2	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
SC3	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
SC4	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice (also applies to NEDs who are not Senior Managers)

CONTACTS



David Berman
Partner, London
 T +44.20.7710.3080
 E david.berman@lw.com



Nicola Higgs
Partner, London
 T +44.20.7710.1154
 E nicola.higgs@lw.com



Rob Moulton
Partner, London
 T +44.20.7710.4523
 E rob.moulton@lw.com