LATHAM & WATKINS

FINANCIAL REGULATORY QUICK START GUIDE

THE SENIOR MANAGERS AND CERTIFICATION REGIME FOR FCA SOLO-REGULATED 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 FCA's SMCR came into force on 9 December 2019 and applies to all FCA solo-regulated firms authorised under the Financial Services and Markets Act 2000. At present, it does not apply to firms authorised under other legislation, such as payment services and e-money firms. It is an adapted version of the SMCR for banks and insurers.

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 FCA's regime is meant to be proportionate, and so divides firms into the following three categories:

- **Limited Scope firms** – firms that previously benefitted from a limited application of the Approved Persons Regime, such as sole traders, internally-managed AIFs and limited permission consumer credit firms, 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** – around 350 of the largest, most complex, or riskiest firms 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.

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)

SMFs for UK FCA firms	
SMF1	Chief Executive
SMF2	Chief Finance*
SMF3	Executive Director
SMF4	Chief Risk*
SMF5	Head of Internal Audit*
SMF7	Group Entity 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*
SMF27	Partner
SMF29	Limited Scope Function**

* Enhanced firms only **Limited Scope firms only

Individuals performing specified SMFs must be pre-approved by the FCA and are subject to a duty of responsibility. Not all SMFs will be relevant to every firm. Senior Managers 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 and must be kept up to date.

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 are performing a designated "significant harm function" must be certified by the firm as fit and proper (no prior approval from the FCA 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.

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

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. 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 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 FCA's focus on conduct.

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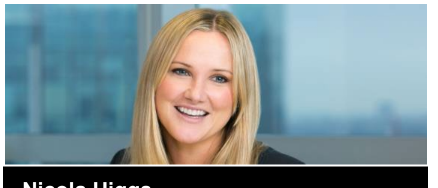

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