

FCA Confirms SMCR Optimisations

The FCA has published final rules confirming amendments to the SMCR, and final rules for solo-regulated firms.

Key Points:

- The FCA has confirmed that the Head of Legal does not require approval as a Senior Manager, and has clarified the scope of the Client Dealing Function.
- The FCA has also published the final rules setting out the SMCR for solo-regulated firms, and for its new Directory of individuals working in financial services firms.

The FCA has published final rules, amending the SMCR to confirm that the Head of Legal does not require approval as a Senior Manager (if not otherwise performing a Senior Management Function), and clarifying the scope of the Client Dealing Function under the Certification Regime so that it does not capture purely administrative roles. The FCA consulted on these changes, which affect banks and insurers already subject to the regime, as well as solo-regulated firms that will become subject to the SMCR from December (although the status of the Head of Legal is only relevant to “enhanced” firms), in January 2019 (see Latham’s related [Client Alert](#)).

Head of Legal

The FCA is largely confirming the changes as consulted on. It has, however, provided a few additional helpful clarifications in relation to the Head of Legal. The FCA confirms that the individual that the Head of Legal reports to will need to be certified, if they are not a Senior Manager. This is because the Certification Regime requires managers of certified persons to also be certified themselves, and the Head of Legal will be a certified person. This creates a chain of accountability up until the Senior Manager level is reached. Therefore, firms may need to certify not only their Head of Legal, but possibly also one or more individuals who sit above the Head of Legal, but below the relevant Senior Manager.

The FCA explains, however, that as the Head of Legal role will no longer be a Senior Management Function, the FCA will not seek to hold any other individual to account for their responsibilities. The FCA also confirms that it does not envisage that other legal roles, apart from the Head of Legal, will fall within the Significant Management Function contained within the Certification Regime. Therefore, other individuals carrying out a legal role will not require certification unless they are a Material Risk Taker, or are otherwise performing any other of the certification functions.

The FCA clarifies that, although the Head of Legal will need to be certified, firms do not need to undertake regulatory referencing or redo fit and proper assessments for these individuals, as long as their job does not change.

Client Dealing Function

In relation to the Client Dealing Function, although the FCA reports that respondents requested some further clarifications about what activities would bring an individual within scope, the FCA declines to offer further guidance. Instead, it states that the amended rule has been drafted in a way that provides firms with the flexibility to exercise judgment as to whether a role requires certification. The clear implication is that firms must judge for themselves whether or not particular individuals fall within the scope of this function. Consequently, firms should ensure that they take a consistent approach across the business, and document thoroughly any determinations as to why particular individuals do or do not require certification.

Rules for Solo-regulated Firms

PS19/20 also includes the FCA's entire set of final rules for solo-regulated firms and its final rules on its new Directory of individuals working in financial services firms. The FCA previously published near-final rules, but was unable to publish these in final form until HM Treasury granted the FCA the necessary powers. These powers were granted via legislation on 18 July 2019. At the same time, HM Treasury confirmed that the commencement date for the SMCR for benchmark administrators (that do not carry on any other regulated activities) will be 7 December 2020. The FCA has not yet consulted on the SMCR for benchmark administrators, but is expected to do so later this year.

Key Dates

We outline below some of the key SMCR-related dates for firms to bear in mind:

| Date | Action |
|----------------------------|---|
| 26 July 2019 | Changes to the position of the Head of Legal and scope of the Client Dealing Function come into effect for banks and insurers |
| "around" September 2019 | Banks and insurers to start submitting Directory data via Connect |
| 9 December 2019 | SMCR for solo-regulated firms applies Solo-regulated firms to start submitting Directory data via Connect Deadline for banking firms to have issued a certificate for Head of Legal |
| 9 March 2020 | Banks and insurers to have finished submitting Directory data |
| 7 December 2020 | Extended SMCR to come into force for benchmark administrators |
| 9 December 2020 | Certification deadline and deadline for submission of Directory data for solo-regulated firms |

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