

FCA Consults on SMCR for Benchmark Administrators

The FCA has published a Consultation Paper that sets out proposed rules for the SMCR for benchmark administrators.

Key Points:

- The SMCR for benchmark administrators (that perform no other regulated activities) will apply from 7 December 2020.
- Benchmark administrators will be subject to the Senior Managers Regime and the Conduct Rules, but not the Certification Regime.
- Benchmark administrators will automatically be subject to the “Core” regime, but may move to the “Limited Scope” or “Enhanced” regimes.

On 29 November 2019, the FCA published a [Consultation Paper](#) (CP19/31) on extending the Senior Managers and Certification Regime (SMCR) to benchmark administrators. The SMCR currently applies to banks and insurers. It will apply to almost all other regulated firms from 9 December 2019. However, the FCA previously agreed to delay the application date for benchmark administrators that carry on no other regulated activities (benchmark administrators with other regulatory permissions would be caught under the existing roll-outs), since they are a new category of authorised firm. The FCA is now consulting on how the SMCR will apply to benchmark administrators, and requests feedback on its proposals by 28 February 2020. The regime will apply to benchmark administrators from 7 December 2020.

For an overview of the SMCR as it applies to other FCA firms, see Latham & Watkins’ guide [The Senior Managers and Certification Regime: Extension to All Authorised Firms](#), which explains the basic structure of the SMCR, the different firm classifications, and how the regime operates. This *Client Alert* assumes a basic knowledge of the SMCR for FCA firms.

Classification

The FCA is proposing that all benchmark administrators automatically be treated as “Core” firms under the regime. This is the standard classification for FCA firms.

Those that feel this categorisation is not proportionate to their size and activities would need to apply for a waiver to be treated as a “Limited Scope” firm, which would lead to lighter-touch requirements. Firms applying for a waiver would be required to demonstrate that complying with the Core regime would be

unduly burdensome or would otherwise not achieve the rules' purpose. The FCA envisages that firms that successfully apply for the waiver would be either small administrators with simple business models or larger businesses that principally carry on non-regulated activities and do not administer benchmarks that have a significant impact on UK market integrity or UK consumers. This is therefore likely to be useful for firms that administer only non-significant benchmarks.

The "Enhanced" regime technically would apply to benchmark administrators, but the FCA does not expect that any would meet the thresholds that take them into this regime as all of the thresholds are linked to activities that would require other regulatory permissions. It appears that this would also be the case for administrators of critical benchmarks that do not carry on any other regulated activities.

However, benchmark administrators that wished to opt up to the Enhanced regime would be able to. This would be voluntary and would involve submitting a form to the FCA. Benchmark administrators may choose to opt up if, for example, other firms in their group are Enhanced firms and having all firms applying the same regime makes more sense from a practical perspective. However, they would need to bear in mind that, if they choose to opt up, they would then be required to apply all elements of the Enhanced regime in full, and would only be able to move back down to the Core regime one year after giving notice to the FCA that they wished to do so.

The Senior Managers Regime

Core Regime: SMFs

The FCA proposes that benchmark administrators under the Core regime would be required to allocate up to four Senior Manager Functions (SMFs) to individuals within the firm, depending on their governance structure. These SMFs are the Chair, Partner, CEO, and Executive Director. These functions would apply only to individuals currently in these roles, so benchmark administrators would need to allocate these SMFs to the extent that they already have someone performing the role, and would not be expected to change their governance structure in order to implement the SMCR.

SMFs for benchmark administrators under the Core Regime	
SMF1	Chief Executive
SMF3	Executive Director
SMF9	Chair
SMF27	Partner

This list of SMFs compares with the usual six SMFs that are relevant to other Core firms. Benchmark administrators would not need to secure approval for individuals performing the Compliance Oversight or Money Laundering Reporting Functions. This is because the relevant parts of the FCA Handbook covering the requirements of these Functions do not apply to benchmark administrators with no other regulatory permissions.

For Core firms, the usual Senior Managers Regime requirements would apply. These include, for example, needing to gain prior FCA approval for the individual to perform the role, allocating Prescribed Responsibilities to Senior Managers, preparing Statements of Responsibilities for each Senior Manager, and conducting a fit and proper assessment of each Senior Manager on at least an annual basis.

The list of relevant Prescribed Responsibilities the FCA proposes for benchmark administrators is shorter than that for other Core firms. The FCA does not specify which Prescribed Responsibilities it considers should go to which SMFs, other than indicating that each Prescribed Responsibility should be allocated to the Senior Manager who is the most senior person responsible for that activity or area. This individual would need to have sufficient authority and an appropriate level of knowledge and competence to carry out the responsibility properly.

Prescribed Responsibilities for benchmark administrators under the Core Regime	
(a)	Responsibility for performance by the firm of its obligations under the SMR, including implementation and oversight
(b-1)	Responsibility for performance by the firm of its obligations in respect of notifications and training of the Conduct Rules
(d)	Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime

Limited Scope Regime: SMFs

Only one type of SMF, the Limited Scope Function (SMF29), would apply to a benchmark administrator that has successfully applied for a waiver for categorisation as a Limited Scope firm. This SMF would apply to the most senior person (or persons) within the firm with day-to-day responsibility for benchmark administration activities. Limited Scope benchmark administrators would not be required to allocate any Prescribed Responsibilities.

Regulatory References

Under the FCA's proposals, the rules on regulatory references would apply to benchmark administrators, and so they would be required to request and provide regulatory references in the prescribed template whenever a Senior Manager moved from one organisation to another, and update any references given when they have obtained any new, significant information about the individual in question.

The Certification Regime

The FCA does not propose to apply the Certification Regime to benchmark administrators. This is because the EU Benchmarks Regulation already requires administrators to ensure that employees are fit and proper, and so the FCA considers that this should achieve a similar outcome to the Certification Regime.

The Conduct Rules

The FCA proposes that the Conduct Rules (set out below) should apply widely to almost all employees of benchmark administrators, as they do for other firms subject to the SMCR. The Conduct Rules would apply to any regulated or unregulated financial service activities that employees of benchmark administrators undertake, including any ancillary activities. As is the case for other SMCR firms, the Individual Conduct Rules would apply to all relevant employees, and the Senior Manager Conduct Rules would apply only to Senior Managers. Non-executive directors who are not within scope of the Senior Managers Regime would also need to comply with the Individual Conduct Rules, as well as Senior Manager Conduct Rule 4.

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

As with other SMCR firms, benchmark administrators would have three key obligations in relation to the Conduct Rules: informing relevant individuals that the Conduct Rules apply to them; providing appropriate training to relevant individuals so that they understand the Conduct Rules and how they apply to them specifically; and notifying the FCA when the firm has taken disciplinary action against a Senior Manager or other individual subject to the Conduct Rules for a breach of the Conduct Rules.

The FCA is proposing to tailor the Conduct Rules for benchmark administrators subject to the Annex II regime for commodity benchmarks under the EU Benchmarks Regulation. Under the FCA’s proposals, the Individual Conduct Rules would apply only to the regulated benchmark activities of these firms. This would be in line with how the FCA’s Principles for Businesses apply to these firms, and reflect their specific treatment under the EU Benchmarks Regulation. The Senior Manager Conduct Rules (except for Senior Manager Conduct Rule 4) would apply in relation to both the regulated benchmark activities of these firms and any activities that might reasonably be regarded as having a negative effect on the integrity of the UK financial system or the firm’s financial resources.

Next Steps

The FCA requests feedback on its proposals by 28 February 2020. The FCA will publish its final rules before the SMCR for benchmark administrators comes into force on 7 December 2020. In terms of transition to the regime, the FCA is expecting that administrators will have most of their relevant individuals that currently perform Controlled Functions automatically converted to the corresponding SMFs. However, it may be necessary for firms to complete a form for some individuals (most likely the Chair function, as the FCA will not have visibility as to which individual currently performs this function). The FCA intends to provide further details on transitioning to the regime in due course.

As has been the case with other roll-outs of the SMCR, there will be a one-year transition period for firms to train (non-Senior Manager) staff on the Conduct Rules.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

David Berman

david.berman@lw.com
+44.20.7710.3080
London

Stuart Davis

stuart.davis@lw.com
+44.20.7710.1821
London

Frida Montenius

frida.montenius@lw.com
+44.20.7710.1161
London

Kishore Bhindi

kishore.bhindi@lw.com
+44.20.7710.4785
London

Carl Fernandes

carl.fernandes@lw.com
+44.20.7710.4777
London

Rob Moulton

rob.moulton@lw.com
+44.20.7710.4523
London

Sherryn Buehlmann

sherryn.buehlmann@lw.com
+44.20.7710.3043
London

Nicola Higgs

nicola.higgs@lw.com
+44.20.7710.1154
London

Denisa Odendaal

denisa.odendaal@lw.com
+44.20.7710.1845
London

Brett Carr

brett.carr@lw.com
+44.020.7710.4695
London

Gabriel Lakeman

gabriel.lakeman@lw.com
+44.020.7710.4645
London

Jonathan Ritson-Candler

jonathan.ritson-candler@lw.com
+44.20.7710.1815
London

Charlotte Collins

Knowledge Management Lawyer
charlotte.collins@lw.com
+44.20.7710.1804
London

Anne Mainwaring

anne.mainwaring@lw.com
+44.20.7710.1018
London

Katy Sanders

katy.sanders@lw.com
+44.20.7710.4548
London

Becky Critchley

becky.critchley@lw.com
+44.20.7710.4519
London

Sam Maxson

sam.maxson@lw.com
+44.20.7710.1823
London

Sean Wells

sean.wells@lw.com
+44.20.7710.4662
London

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[Review of the EU Benchmarks Regulation](#)

[ESMA's Consultation Paper on the MAR Review](#)

[FCA Warns of 'Significant Weaknesses' in Firms' Implementation of the Conduct Rules](#)

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