

BROKING BITES

Senior Manager and Certification Regime (SMCR)

August 2018

Senior Manager and Certification Regime (SMCR) – updated guidance from the FCA

At our recent seminar on the implications of the Senior Manager and Certification Regime (SMCR) for brokers/MGAs, we talked through the proposal to extend the SMCR rules to all solo regulated firms.

The FCA has recently released two Policy Statements on the subject. The first details the near final rules for this extension and summarises specific feedback and requests for clarifications from the market.

The second Policy Statement covers the requirements for those firms transitioning from the existing framework (Approved Person's Regime - APR) to the SMCR. Very minor changes were noted.

It has been confirmed that firms affected by these changes will move to the new regime on **9 December 2019**.

In this edition of Insurance Insights, we highlight the key changes contained in these Policy Statements and how your business can start to prepare for the introduction of the new rules.

Extending the SMCR to solo regulated firms

The key changes (as outlined in Policy Statement PS18/14) are summarised below:

AREA	CHANGES BY FCA
CATEGORISATION – LIMITED, CORE, ENHANCED	Three of the criteria dictating whether firms fall into the enhanced category have been updated to accommodate and smooth any single year anomalies. The FCA has lengthened the time period from 6 to 12 months for a firm to implement the enhanced category requirements, once they have met the relevant criteria.
PRESCRIBED RESPONSIBILITIES	The FCA has removed the need for an individual adopting the Prescribed Responsibility (that only applied to Core firms) to inform the governing body of its legal and regulatory obligations.

The FCA also provided specific responses to market feedback, as well as requests to clarify the requirements. These, together with a list of questions that brokers have been asking us, are outlined at the end of this newsletter.

Transitioning to the SMCR

The FCA has made two changes:

- Aligned the REP008 reporting period for Limited Permission Consumer Credit firms with their annual return.
- Adjusted a number of regulatory forms following specific feedback.

What does this mean for brokers?

As highlighted in our recent seminar, it is important that firms ensure they are well prepared for the implementation of SMCR. Specifically, firms need to:

- Undertake an assessment of their governance arrangements and identify where roles and responsibilities lie
- Engage compliance/HR/support functions and get buy-in from senior management at an early stage in their preparations
- Consider the practical implications of SMCR – including producing the required documentation (Statements of Responsibilities, responsibility maps, certification records), introducing new recruitment and HR processes etc.
- Check they have the appropriate people in the correct approved functions before approved individuals are converted from the APR to the SMCR. This will help to make the transition to the new regime as streamlined as possible.
- Refer to the FCA Handbook for additional guidance and clarifications by the FCA.

If you have any questions about the issues raised above, or any other aspect of the SMCR or effective governance, please get in touch with [Jessica Wills](mailto:jwills@pkf-littlejohn.com) on jwills@pkf-littlejohn.com or +44 (0)20 7516 2229 or [Samiha Shaikh](mailto:sshaikh@pkf-littlejohn.com) on sshaikh@pkf-littlejohn.com or +44 (0)20 7516 2345.

SMCR Overview

SENIOR MANAGERS REGIME	ENHANCED	CORE	LIMITED
1. Senior Manager	√	√	√
2. FCA approval	√	√	√
3. Statement of Responsibilities	√	√	√
4. Criminal records check for Senior Managers and NEDs	√	√	√
5. Duty of Responsibility	√	√	√
6. Fit and Proper Requirements	√	√	√
7. Handover procedures	√	X	X
8. Prescribed Responsibilities	√	√	X
9. Overall responsibility	√	X	X
10. Other overall responsibility function	√	X	X
11. Responsibilities Map	√	X	X
12. Regulatory References	√	√	√
CERTIFICATION REGIME	ENHANCED	CORE	LIMITED
13. Certification Function	√	√	√
14. Fit and Proper Requirements	√	√	√
15. Regulatory References	√	√	√
CONDUCT RULES	ENHANCED	CORE	LIMITED
16. Individual Conduct Rules	√	√	√
17. Senior Manager Conduct Rules	√	√	√

Frequently Asked Questions

1. Can anyone be a Senior Manager? Do Senior Managers have to be a Director?

A Senior Manager must be the most senior person in that role or the nominated SMF (Senior Management Function). This person does not need to be a Director; however, in most instances, it will most likely be a Director as they generally are the most senior person.

Firms may decide that the ultimate accountable person needs to be changed as a result of their review/assessment of the current governance arrangements. This is permissible as long as the person is willing and suitable to take on the roles and associated accountability, it is reflected in their Statement of Responsibilities (SoR) and is consistent with the organisation and governance structures of the firm.

2. How can you tell if you are a limited firm?

The 'limited' category covers all firms that currently have a limited application of the Approved Persons Regime:

- Limited permission consumer credit firms
- All sole traders
- Authorised professional firms whose only regulated activities are non-mainstream regulated activities
- Oil market participants
- Service companies
- Energy market participants
- Subsidiaries of local authorities or registered social landlords
- Insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts.
- Authorised internally managed Alternative Investment Funds (AIFs)

3. Are group companies affected?

No, the SMCR applies to regulated legal entities, rather than to groups of companies. In other words, the criteria for the different categories of firms (enhanced, core or limited) will be measured on a legal entity basis rather than on a group basis. The FCA has clarified that where firms have an enhanced entity in the group and wish to apply those standards to core firms for operational ease, the core firm cannot select to adopt specific parts of the enhanced regime - it is all or nothing.

4. Can a SMF be located overseas?

Yes, there is no territorial limit, so this role can be allocated to an overseas person. The Certification Regime and Conduct Rules are limited to people based in the UK only.

5. Can a Senior Manager hold more than one function across different legal entities?

Yes, a Senior Manager will need to have one Statement of Responsibility (SoR) for every firm where they perform a SMF. If a Senior Manager performs multiple SMFs in a single firm, this should be included in a single SoR. If someone performs SMFs in different firms across a group, they will need one SoR for every firm (legal entity) within the group.

6. What triggers a change in role of a Senior Manager?

Every Senior Manager must have a SoR, and update it whenever there is a significant change to their responsibilities. This is a requirement that comes from legislation. To help firms, the FCA has provided some examples in SUP 10C.11.6 of potential changes that could trigger the need to resubmit a SoR.

7. Who are criminal checks mandatory for?

Criminal checks will only be mandatory for proposed Senior Managers. This means that the original proposal for these checks to also be required for certified staff falls away as a regulatory requirement (but firms may still choose to adopt such checks).

8. What is the point of the SMF 18: Other Overall Responsibility?

The FCA believes using SMF18 for enhanced firms is the best way to capture individuals with Overall Responsibility for a firm's business area or activity of the firm when they are not performing another SMF.

9. Can someone who is a SMF also be a Certified Function ('CF')?

Yes. For example, if someone is approved as a SMF and also meets the definition of the Client Dealing Function under the Certification Regime, they must be certified for the latter function. In practice, once the FCA has approved someone as a SMF, firms may decide to assess the individual's fitness and propriety for both roles in one assessment on an ongoing basis or at least once a year.

10. What are examples of failing the Conduct Rules?

The COCON rulebook ([COCON 4.1 and 4.2](#)) provides specific examples of what constitutes a breach in the rules.

11. How would you determine who should be a CF?

Significant Management Function (current CF29) and CASS Oversight Function (current CF10a) are the only two that apply to brokers. The Client Dealing Function only applies to those advising on investments (other than non-investment insurance contracts).

We recommend that you:

- Review your risk registers and any risk owners, not assigned a SMF, may be a CF.
- Review the attendance of key board and committee meetings, and any individuals who influence or challenge decisions, not assigned a SMF, could be a CF.
- Identify any person who has delegated authority to make significant decisions, who may fall into the category of a CF.

We hope you've found this issue useful. If anyone within your business would like to receive future issues, please send their details to Joseph Meakin (jmeakin@pkf-littlejohn.com).

Our specialist team is here to help. If you would like advice on any of the issues discussed in this newsletter, please contact one of our Governance, Risk and Control Assurance team members.

PKF Littlejohn LLP

1 Westferry Circus
Canary Wharf
London E14 4HD
Tel: +44 (0)20 7516
2200

pkf-littlejohn.com

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JESSICA WILLS

Partner

E: jwills@pkf-littlejohn.com

T: +44 (0)20 7516 2229

IAN SINGER

Partner

E: isinger@pkf-littlejohn.com

T: +44 (0)20 7516 2236

SAMIHA SHAIKH

Senior Manager

E: sshaikh@pkf-littlejohn.com

T: +44 (0)20 7516 2345

PAUL GOLDWIN

Partner

E: pgoldwin@pkf-littlejohn.com

T: +44 (0)20 7516 2251

JOHN NEEDHAM

Partner

E: jneedham@pkf-littlejohn.com

T: +44 (0)20 7516 2284

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