

Senior Managers & Certification Regime

July 2019

It is difficult to know what to write about this that has not already been written. Advisers know that this regime is due to be implemented by 9th December 2019, but probably not many advisers have actually done anything about it. For many small firms, there may not appear to be much to do, but advisers underestimate the work involved at their own risk.

SM&CR is a catalyst for change - an opportunity to establish healthy cultures and effective governance in firms by encouraging greater individual accountability and setting a new standard of personal conduct.

From 9 December 2019, the FCA is extending the Senior Managers and Certification Regime (SM&CR) to solo-regulated firms. By doing this, the FCA aims to reduce harm to consumers and strengthen market integrity. This presents a unique opportunity to set a new standard of personal conduct for everyone working in financial services.

This extension affects almost every solo-regulated firm, from very small firms (including sole traders and limited permission consumer credit firms) to some of the largest global firms.

The SM&CR will apply to all FSMA authorised firms. It also applies to branches of non-UK firms with permission to carry out regulated activities in the UK.

The FCA is extending the SM&CR in a way that is proportionate to the size of the firm.

To comply with the new regime, firms may need to take a number of steps, such as adjusting their governance arrangements, clarifying areas of responsibilities, identifying and eliminating gaps, and recording and evidencing their review processes.

In addition to the roles and responsibilities that apply to senior management, firms will also need to identify their certified persons; these are persons who could potentially cause harm to clients, employees or the firm itself.

Certified persons will not be directly authorised by the FCA, but firms will need to identify any roles that include investment advisers, wealth advisers, pension transfer advisers, proprietary traders or any person who supervises or manages a certified function, just to name a few.

To put it simply, firms will need to ensure that the right person is performing the right role and is properly trained and qualified to perform that role.

Senior managers and certified persons will need to understand how the new code of conduct rules that will apply to them specifically and will be required to undergo appropriate training before the commencement of SMCR.

What firms need to do

- Determine the firm classification – Limited scope, Core or enhanced - and understand how SMCR applies to them;
- Identify senior managers, allocate the appropriate responsibilities and produce 'statements of responsibilities';
- Identify certified staff, ensuring that mechanisms are in place to train, assess and certify them as competent, as fit and proper;
- Train senior managers and certification staff on the new conduct rules;

- Review 'statements of responsibilities' and terms of reference of governance and committees

Evidence

As ever, the most important thing for firms to do is to store the evidence, and be able to produce the evidence, demonstrating competence under fitness and propriety, of knowledge and skills through testing, file reviews, skills assessments and ongoing CPD, and so on.

FCA Directory

The Directory is a new public register that enables consumers, firms and other stakeholders to find information on key individuals working in financial services.

The current FCA Register is to be adapted/replaced by the new directory. Originally, the FCA was considering disbanding the Register, but on consultation it received a lot of feedback about the importance to consumers who relied upon the register to check the status of advisers.

When the FCA's Directory opens for submissions, firms will be required to submit the details of their senior managers, certified individuals, as well as other important individuals who undertake business with clients and require a qualification to do so.

Firms must also ensure that the details remain up to date.

Banking firms and insurers can start submitting data as of September 2019, while all other firms can start submitting from 9th December 2019.

Conclusion

The FCA is looking to build a uniform structure to try to provide consumer protection throughout financial services. The application of SM & CR will be proportional, dependant on the size of firms. Senior managers will have specific spans of duty and responsibility. Senior Managers can be held to be liable for any breaches within their span of responsibility. This personal liability is likely to focus the activities of senior managers and therefore lead to better practices.

Firms must not underestimate the amount of work that will be involved in getting to compliance for this new regime.

Implementation is due to take place on 9th December and there does not appear to be any plan to allow any period of grace before enforcement may take place for non-compliance. It would be better for firms to have everything in place as soon as possible rather than the perennial rush to meet regulation deadlines that is bound to happen.

Tick tock.

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