

## The Senior Managers and Certification Regime (SM&CR)

### What about the little people?

The Senior Managers and Certification Regime (SM&CR) replaces the current Approved Persons Regime, changing how people working in financial services are regulated.

The aim of the new SM&CR is to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence. As part of this, the SM&CR aims to:

- encourage a culture of staff at all levels taking personal responsibility for their actions
- make sure firms and staff clearly understand and can demonstrate where responsibility lies

SM&CR is already in place in the banking sector. The FCA is extending the SM&CR to cover insurers and solo-regulated firms (those firms regulated only by the FCA) and proposing some changes to the current banking regime.

“CP17/25 Individual Accountability: Extending the Senior Managers & Certification Regime to all FCA Firms” has received a lot of publicity and you are probably reading this wondering whether you are going to learn anything new.

For banks, building societies, credit unions, and PRA-designated investment firms, the FCA replaced the Approved Persons Regime with the SM&CR in March 2016. Parliament amended the Financial Services and Markets Act (FSMA) in May 2016 to extend the SM&CR to all firms authorised to provide financial services under FSMA. **This is due to come into force in early 2018.**

The holders of Senior Management Functions are to be registered in a similar manner to the current Approved Persons Regime. The difference is that there will be a document which outlines what they are responsible and accountable for (a “Statement of Responsibilities”). The Senior Manager will also have a “Duty of Responsibility” which will mean that they will be held responsible for issues within their scope of Responsibility. Holders of more than one Senior Manager Function will need to have a separate “Statement of Responsibilities” for each function that hold.

### What firms need to do under the Senior Managers Regime

If a person will be performing a Senior Management Function, the firm will need to:

- satisfy themselves that the candidate is suitable, or ‘fit and proper’, to carry out a Senior Management Function
- apply for that person to be approved by the FCA, before they take up their role
- send us a Statement of Responsibilities as part of the application

After a Senior Manager has been approved, the firm will need to:

- update and resubmit Statements of Responsibilities to us whenever there is a significant change to a Senior Manager’s responsibilities
- assess that all their Senior Managers are fit and proper to carry out their job at least once a year

In addition, firms will need to make sure they have appropriately allocated all of the Prescribed Responsibilities to their Senior Managers, unless they are a Limited Scope Firm where Prescribed Responsibilities do not apply.

What Senior Managers need to do

- Anyone who is a Senior Manager will have a 'duty of responsibility'. Senior Managers should understand what this means in the context of their job.
- Senior Managers must ensure that their Statements of Responsibilities are accurate and up to date.
- There are also Conduct Rules that will apply to Senior Managers. We explain these in Chapter 7. Senior Managers will need to understand and comply with the Conduct Rules.

### **The Certification Regime is a new FSMA requirement for all firms.**

This covers people who aren't Senior Managers, but whose jobs mean they can have a big impact on customers, the firm and/or market integrity. The FSA will not approve these people, but firms will need to check and confirm ('certify') at least once a year that these people are suitable to do their job. This is a requirement under legislation.

The onus seems to be shifted from the FCA to give approval, to the registered firms and their Senior Management giving approval. I would interpret this to mean that if a person holding a Certification Function causes a problem, then the Senior Manager who gave the approval for their certification will be held responsible. That will certainly tighten up recruitment criteria if the person making the appointment can be held responsible for the failure of the Certification Function holder.

Possibly the most interesting change to the Certification Regime is the Certification Function for "Anyone who supervises or manages a Certified Function (directly or indirectly), but is not a Senior Manager". This covers all the management levels and line managers between the front-line advisers and the Senior Manager holding Compliance Oversight or AML reporting officer functions. So, for example, that would mean that sales managers or compliance consultants will probably fall into this bracket.

Also within the proposed Certification Regime will be "Functions subject to qualification requirements". This includes, for example, mortgage advisers, retail investment advisers and pension transfer specialists.

The client dealing function will be expanded from the current CF30 function to apply to any person dealing with clients, including retail and professional clients and eligible counterparties.

### **What firms need to do under the Certification Regime**

The Certification Regime will make firms more responsible for assessing that their staff are fit and proper to carry out Certification Functions. FCA approval is not required for anyone who performs a Certification Function.

Firms will need to:

- Identify employees who perform a Certification Function.
- Assess whether those employees are fit and proper to perform their role. Firms need to do this assessment at the point of recruitment (or before a person performs a Certification Function) and on an ongoing annual basis
- Issue a certificate to the employee if the firm is satisfied that they are fit and proper to perform that Certification Function. The certificate needs to:
  - state that the firm is satisfied that the person is a fit and proper person to perform the function the certificate relates to
  - set out what aspect of the firm's affairs the person will be involved in as part of performing

their function.

- If the firm completes a fit and proper assessment and then decides not to issue a certificate to someone, the firm must give the person a notice in writing setting out:
  - what steps (if any) the firm proposes to take in relation to the person as a result of the decision
  - the reasons for proposing to these steps.

This is still in the consultation stage. If you read the CP17/25, there are questions at the end of each section. The FCA is actually looking for feedback in order to try to get the SM&CR to work properly from the outset for most people. Consultation will end on 3<sup>rd</sup> November. It is up to you to make your response. If you do not respond, you cannot complain when the system is too complicated for you.

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