

30 July 2019

PS19/20: Optimising the Senior Managers & Certification Regime – Feedback to CP19/4 and Final Rules

On 26 July 2019, the Financial Conduct Authority (“FCA”) published their final rules on the Senior Managers and Certification Regime (“SM&CR”), including their feedback on responses to Consultation Paper 19/4.

All firms authorised and regulated by the FCA under the Financial Services and Markets Act (FSMA) will be affected by the new rules under SM&CR. It is important to note that whether a firm is classified as Limited Scope, Core or Enhanced will affect the impact of these requirements.

This newsletter is aimed at Core and Limited Scope firms.

The SM&CR will replace the Approved Persons Regime (APR) and aims to reduce harm to customers and strengthen market integrity by creating a system whereby both firms and regulators can hold individuals to account.

The SM&CR is made up of three elements:

1. The Senior Managers Regime (SMR) – focusing regulatory approval on fewer senior individuals on a firm than the current number under APR.
2. The Certification Regime – requiring firms to take on the responsibility of assessing the fitness and propriety of individuals who could potentially harm the firm or its customers.
3. The Conduct Rules – high level standards of behaviour expected of individuals working in the financial services industry.

The main changes to the existing rules as discussed in the Policy Statement include:

Confirming that the Head of Legal function is not required in SMR

- **The Head of Legal will be subject to the Certification Regime and Conduct Rules.** They will not be identified as a SMF due to industry concerns that such a classification would compromise legal privilege.
- Head of Legal will be a SMF only if/when performing another Senior Management Function e.g., Compliance Oversight.
- The individual to whom the Head of Legal reports will be captured under the Certification Regime (where they are not performing any other SMF).



Amendments to the scope of the "Client Dealing Function" under the Certification Regime

- The scope of the Client Dealing Function has been amended to exclude individuals who have no scope to choose, decide or reach a judgement on what should be done in a given situation, and whose tasks do not require them to exercise significant skill.
- The amended definition gives firms flexibility when exercising judgement on whether a role requires certification or not.
- The predominant relevant factors in assessing whether an individual is classified as a Client Dealing Function includes whether the role:
 - is simple or largely automated; and
 - involves exercising discretion or judgement.
- Ultimately this will depend on the firm's business and the way responsibilities have been allocated across its staff.

Clarifying the application of the Certification Regime to CF 28 Systems and Controls roles

- CF 28 – Systems and Controls Function is included as an example of a person who performs the "Significant Management Function" under the Certification Regime.
- The FCA considered the importance of the CF 28 - Systems and Controls role and that it warranted inclusion within the Certification Regime.

Applying SC4 to non-approved Executive Directors at Limited Scope firms

- One of the Conduct Rules being introduced is the Senior Managers Conduct Rules 4 ("SC4"), which requires senior managers to provide appropriate disclosure to the regulator of matters it would reasonable expect notice.
- In the near-final rules, SC4 applied to non-executive directors (NEDs) of Limited Scope firms but not to executive Directors who were potentially more involved in the running of the business.
- SC4 now applies to executive directors at Limited Scope Firms (as well as to NEDs).

Amendments to regulatory forms and the Handbook

- Form H (notification of disciplinary action relating to conduct rules staff) – amended to clarify reporting requirements and the application of the form to NEDs; and
- Form O Notification (changing firm status under SM&CR) – amended to provide clarity on the submission of supporting documents.

Directory

The PS 19/20 makes final rules regarding the new Directory for Certified Staff. Firms should start submitting data on their Certified Staff to the Directory as of 9 December 2019.

Please do get in touch to discuss the FCA findings outlined above in more detail. Newgate has developed a Readiness Assessment gap analysis tool which will map your firm's framework against SM&CR requirements. We also offer an on-site firm visit to get clients up to speed on SM&CR requirements before the implementation on 9 December 2019.

The FCA Policy Statement PS 19/20 can be found [here](#).