Senior Managers & Certification Regime: A Call for Evidence

https://www.gov.uk/government/consultations/senior-managers-certification-regime-a-call-for-evidence

On 30 March 2023, the FCA and PRA published a joint **discussion paper DP1/23** seeking views from financial services firms, including insurance, on the operational aspect of the Senior Managers and Certification Regime (SM&CR), by asking 22 questions. A separate legislative piece was issued by HM Treasury named: A Call to Evidence, also inviting views on SM&CR.

The review of the SM&CR is aimed at understanding stakeholders' views on its functionality and identify areas for improvements that could benefit the regime, for firms and regulators. This is to be achieved whilst maintaining the fundamental aims of the SM&CR, which is to promote safety and soundness, reduce harm to consumers and strengthen individual accountability.

SM&CR Discussion paper

The joint FCA and PRA Discussion Paper seeks stakeholder feedback in relation to the general effectiveness, scope and proportionality of the SM&CR regulatory regime, such as:

- **Overall approach of the SM&CR —** Has the regime made it easier to hold individuals to account and if it has improved safety, soundness and conduct within firms?
- **Fitness and propriety —** Do firms believe applying the fitness and propriety requirements assist in appointing appropriately qualified individuals to Senior Manager roles?
- **Holding individuals to account —** Has the SM&CR made it easier for firms to hold staff to account and take disciplinary action when appropriate against them?
- **Collective decision-taking —** To what extent the specific accountabilities of individual directors established by the Senior Managers Regime work in ways that complement the collective responsibility of the board of directors or decision-making committees. Are there ways this could be improved?
- **Enforcement —** Does the prospect of enforcement work to promote individual accountability or should the approach be enhanced to better support the aims of the SM&CR?
- **Scope —** Whether the scope of the SM&CR is appropriate and are there any steps that

would enhance domestic competition and international competitiveness. For example, could the scope of the Certification Regime be examined given the general perception that it applies too broadly?
- **Proportionality —** To what extent is the SM&CR applied proportionately to firms and individuals? Respondents to the PRA's recent Strong and Simple Prudential Framework Discussion Paper favoured some simplification of the SM&CR in terms of either minimum requirements, thresholds or processes for approving new individuals.

Firms caught in scope of the regime are to respond to specific questions set out in the Discussion Paper by completing an **online response survey** by 1 June 2023. The Call for Evidence by the HM Treasury remains open for stakeholder comments also, until 1 June 2023.

Suitable for: Core, Limited scope and Enhanced SM&CR firms.

Portfolio Letter: Wholesale Brokers 2023

https://www.fca.org.uk/publication/correspondence/wholesale-brokers-portfolio-letter-2023.pdf

On 11 January 2023, the FCA published a portfolio letter to wholesale brokers setting out its new strategy for supervising wholesale brokers. The letter details what the FCA believes are the most important risks arising from wholesale brokers.

The FCA has drawn on recent supervisory work to identify the following four key areas of focus for wholesale broking firms:

- **Financial resilience —** The FCA is concerned about the liquidity risk management by brokers in turbulent markets, where liquidity risks can crystallize unpredictably, especially in commodity markets. In order to improve financial resilience, firms should review the level of liquidity that they hold under the new Investment Firm Prudential Regime (IFPR) and ensure that their assessment is commensurate with the risks they face.
- **Remuneration structures —** Brokers will need to comply with MIFIDPRU Remuneration code to avoid firms achieving short-term financial targets at the expense of client interests. Firms need to ensure that their remuneration structures match the risks associated with their business model and higher risk firms must identify Material Risk Takers whose professional activities have a material impact on the risk profile of the firm or the assets it manages. Firms that fail to evidence that they have taken appropriate steps to implement the required IFPR remuneration requirements, the FCA will consider imposing additional capital requirements to account for the increased risk that weak incentives can drive.
- **Governance and culture —** The FCA have observed that, poor decision making and

failures in oversight played a key role in amplifying the extent of any underlying issues and preventing them from being resolved in timely manner. To promote a healthy firm culture, firms should ensure that their board members are competent and skilled. The Senior Manager and Certification Regime (SM&CR) should be followed by firms to promote good decision making and accountability. Senior manager holding any senior management functions (SMFs) must have adequate and appropriate skills relevant to their roles. Firms can also help themselves to avoid conduct risk by properly taking into account regulatory references when hiring new certified staff and considering appropriate risk mitigations with any individuals where adverse information that comes to light in the onboarding process.

- **Control functions —** In order to execute effective compliance, particularly in relation to financial crime risks and market abuse. Firms should review and develop their internal compliance infrastructure regularly to identify areas that require attention and make changes that comply with FCA rules to mitigate these risks. The FCA highlighted deficiencies in wholesale brokers' client onboarding processes to control financial crime and money laundering.

CEOs of wholesale brokers were expected to have discussed the letter with their boards and agreed on actions and next steps by the end of February 2023.

Suitable for: Wholesale Brokers.

Competition Problems With the Trade Data Market

https://www.fca.org.uk/news/press-releases/fca-tackle-competition-problems-trade-data-market

A key part of the FCA's strategy within the UK's financial services sector, is to promote effective competition and innovation in the interest of consumers.

Trading data includes information on the prices and volumes of financial products, traded and supplied by venues such as stock exchanges. Access to good quality, fairly priced trade data is important for the whole financial system. It allows for properly informed, timely investment decisions. The ultimate goal for the FCA is to strengthen the UK's position in global wholesale markets, while maintaining the UK's reputation as a leading global market of choice. However, a recent report by the FCA, has found that competition in the wholesale data market is "not working as well as it should".

A summary of the FCA's trade data findings report shows:

- Trading markets are concentrated among a small number of firms, which means there

is little choice for data users and switching suppliers is very difficult.
- The way data is sold can be complex, making it harder for data users to make informed choices.
- Complexity and limited choice result in additional costs to data users and these are likely to be passed on to UK retail investors and savers.
- Despite rules in place requiring delayed data to be distributed for free, many users end up with little choice but to pay for data.

To support their findings, the FCA has launched a Wholesale Data Market study, which will investigate potential competition problems in the markets for benchmarks, credit ratings data and market data vendor services. The main concern for the FCA, is that the structure of these markets could result in higher costs for investors and prevent new entrants from entering the market.

The FCA is working with the Government to develop consolidated tapes, which collect wholesale data across the market and distribute them in single, standardised data feeds. This should ease the burden of cost, quality and accessibility of wholesale data.

Suitable for: Manufacturers and Distributors.

Authorisation of the First Long Term Asset Fund (LTAF)

https://www.fca.org.uk/news/press-releases/fca-authorises-first-long-term-asset-fund

The FCA has authorised the first Long Term Asset Fund (LTAF), which is a new type of open-ended fund, designed to invest efficiently in long-term assets. A regulatory regime that came into force on the 15th November 2021, set out rules published in the **Policy Statement PS21/14**, to create an environment for investors with long-term investment horizons, that understand and can bear the risks of such investments, to seek the potential for higher long-term returns, without the need for immediate liquidity.

The FCA have since created a new category of authorised fund called the LTAF, with its own distinct chapter in the **Collective Investment Schemes sourcebook (COLL)**, which forms part of the Handbook.

Assets LTAFs can be invested in?

Through LTAFs, investors will have access to unlisted investments such as windfarms, artificial intelligence and fintech which are otherwise essentially inaccessible. Another advantage for investors, is that they can benefit from exposure to growing industries, whilst providing funding for these projects.

Do LTAFs come with risks?

If a fund has too many withdrawals or redemptions, it runs the risk of fund managers being forced to freeze the fund, resulting in the illiquid assets taking longer to sell. LTAF managers will be scrutinised by the FCA and be required to be transparent about these risks, to avoid assets being sold quickly or at a discount.

The FCA invites discussion and views from the UK fund and asset management industry by 22 May 2023 in response their discussion paper **DP23/2: Updating and improving the UK regime for asset management**.

Suitable for: AIFMs, authorised fund managers and distributors, asset managers with experience of managing illiquid and long-term assets, fund distributors, investors, depositories, investment advisers and private wealth managers.

Economic Crime Levy

https://www.fca.org.uk/news/news-stories/fca-collect-treasurys-economic-crime-levy-anti-money-laundering-july

The Government has introduced an 'Economic Crime Levy' (ECL) to fund the fight against economic crime. The levy will be collected by the FCA, along with various other regulatory bodies including HMRC and the Gambling Commission for the government. AML regulated businesses that are authorised by the FCA and subject to the Money Laundering regulations between 6 April 2022 and 5 April 2023, will be impacted by the Economic Crime Levy. The levy will be paid annually and determined by the firm's UK revenue. For example, firms within Band 1, with a UK revenue of £10.2 million, will not be required to pay the levy. However, firms that fall into Band 2, with a UK revenue of £10.2 million up to £36 million, will have to pay £10,000.

All impacted firms are required by the FCA to submit their data via a new Reg Data Report (FIN074) from 1 April 2023, to ensure they are charged the correct amount. Failure do so in a timely manner, may result in a £250 administrative fee. Impacted firms will see the new levy appear on invoices from July 2023. A separate letter of correspondence will be sent to Annex 1 Financial institutions, to report the relevant data.

Suitable for: AML regulated firms.

Improvements Needed in ESG Benchmarks

https://www.fca.org.uk/news/news-stories/fca-outlines-improvements-needed-esg-benchmarks

ESG benchmarking, is the practice of comparing a firm's ESG performance, against its peers within its industry. In September of 2022 the FCA sent a portfolio letter to benchmark administrators, where they highlighted the risk of poor disclosures for ESG benchmarks. They have since completed a preliminary review on these benchmarks and found that the overall quality of ESG-related disclosures made by benchmark administrators, were poor.

A further detailed letter was sent to benchmark administrators outlining issues such as:

- Not enough detail on the ESG factors considered in benchmark methodologies.
- Not ensuring that the underlying methodologies for ESG data and ratings products used in benchmarks are accessible, clearly presented and explained to users.
- Not fully implementing ESG disclosure requirements.
- Benchmark administrators failing to implement their ESG benchmarks' methodologies correctly – for example, using outdated data and ratings or failing to apply ESG exclusion criteria.

Suitable for: Firms that promote ESG products.

FCA Authorisations Operating Service Metrics

https://www.fca.org.uk/news/statements/update-fca-authorisations-operating-service-metrics

On the 21st March, the FCA published an update on its operating service metrics for dealing with various applications such as authorisations, change in control and approved persons applications.

The update highlighted a number of key points of interests, for firms and individuals thinking submitting an application and seeking to understand the FCA's likely approach and timings:

- Authorisation caseloads have fallen from a peak in December 2021 and are approaching more sustainable levels, following the recruitment of 125 additional permanent colleagues.
- Incomplete and poor-quality applications remain a particular issue for Money Laundering Registrations and Payments Services Regulations and Electronic Money Regulations applications.
- Additional time may be needed for greater scrutiny of complex cases and where greater engagement is required so the FCA can meet its objectives effectively.
- The FCA has significantly reduced the time to allocate change in control notifications to a case officer and on average now allocates and begins work within 3 days of receipt. It expected to be allocating within 24 hours at the end of March 2023.
- Processing of approved persons applications within the three-month timescale has significantly improved compared with 2021/22.

The FCA propose that from Q4 2023, they will report operating service metrics performance quarterly and will include more detailed reporting on the time taken to process applications.

Suitable for: All firms.

Updates on Sustainability Disclosure Requirements (SDR) and Investment Labels Consultation

https://www.fca.org.uk/news/news-stories/fca-updates-sustainability-disclosure-requirements-and-investment-labels-consultation

On the 29th March, the FCA provided an update, announcing a delay to the upcoming policy statement on Sustainability Disclosure Requirements ("SDR") and investment labels. This follows their **consultation paper CP22/20** published in October 2022, where the FCA set out to measures to create sustainable investment labels, consumer-facing disclosures to help consumers understand key sustainability-related features of a product, detailed disclosures and tackle green-washing.

The consultation, which closed on the 25th January 2023, received over 240 written responses. Final rules were set to published by the end of the first half of 2023, however, due to the large volume of response from the consultation, the FCA has decided that the rules will be delayed until Q3 of 2023.

The consultation for the Sustainability Disclosure Requirements ("SDR") and investment labels will focus primarily on UK authorised asset managers, including UK AIFMs and UK firms carrying out portfolio management and their UK based products / portfolio management services. There is no clarity as to whether overseas products marketed in the UK will be subject to the new regime.

Suitable for: Asset managers, UK AIFMs, Portfolio managers, distributors of investment products to retail investors in the UK.

FCA's Plan for the Next 12 Months

https://www.fca.org.uk/news/press-releases/fca-sets-clear-plan-next-12-months

On the 5th April, the FCA published their **Business Plan for 2023 and 2024**, which set out their objectives, challenges of the year ahead, focus areas and how they plan to deliver on their commitments. The FCA aims to adapt to the changing economic picture, by accelerating their work over the next year, through further investment and increased resources.

These are summarised in four areas:

- Putting consumers' needs first
- Preparing financial services for the future
- Strengthening the UK's position in global wholesale markets
- Reducing and preventing financial crime

The FCA has also published the **consultation on its fees** and levies for the year ahead. In recognition of the pressure firms are under, the FCA is proposing to freeze application fees and the minimum fees firms pay, which affects more than 17,000 FCA-regulated firms.

Suitable for: All firms.

Newgate Compliance has produced high level summary of the Business Plan 2023/24 and what firms can expect from the FCA.

If you require any assistance on the articles above, please contact Newgate Compliance via **info@newgatecompliance.com**.

+44 (0)20 3696 8750

info@newgatecompliance.com

newgatecompliance.com

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Newgate Compliance is a compliance consultancy offering a modern solution to implement your compliance function using an innovative compliance software solution called the gateway©.

Newgate has an unrivalled combination of experienced professionals, many of whom are ex-regulators.

Our customer focused approach seeks to provide appropriate, pragmatic and flexible solutions to our clients helping them to meet both the regulator's rules but also the spirit, principles and culture of the regulatory regime.

We look to build long-term relationships with our customers helping to encourage business growth, productivity and innovation. Our proactive approach is tailored to each customer's needs changing to meet those needs as the customer progresses and develops.