



# OVERVIEW OF THE SENIOR MANAGERS AND CERTIFICATION REGIME FOR FCA SOLO-REGULATED FIRMS

The Senior Managers and Certification Regime (SMCR) took effect for the nearly 47,000 solo-regulated firms on 9 December 2019.

It affects all FCA solo-regulated firms that were authorised under the Financial Services and Markets Act 2000 from sole traders, those with limited permission through to global asset management firms. UK branches of EEA and non-EEA firms are also subject to a limited version of the new rules. However, it does not apply to payment services firms or appointed representative firms.

The new regime is part of the FCA's focus on individual accountability in financial services. It puts the onus on individuals and firms to take greater responsibility for their actions and makes it easier for the regulator to hold individuals to account by having clear lines of responsibility and minimum standards of conduct for most staff.

## SMCR OVERVIEW

There are three aspects to the new regime:

**Senior Managers Regime** – is the approval regime that applies to individuals performing the most senior management functions (SMFs) at the firm who have ultimate responsibility for the firm's decisions. All senior managers must be pre-approved by the FCA.

**Certification regime** – covers individuals who could pose a risk of significant harm to the firm, customers or the market generally. Their firms take on a proxy regulator role – they (and not the FCA) will now be responsible for assessing the individuals' fitness and propriety before they start their roles and on an, at least, annual basis thereafter.

**Conduct rules** – are basic standards of conduct which apply to all staff aside from those performing ancillary roles. 'Ancillary staff' such as facilities staff, receptionists and HR administrators/processors will fall outside the new regime.

Senior managers are subject to an additional set of conduct rules.



## DIFFERENT TYPES OF SMCR FIRM

Importantly, for solo-regulated firms, SMCR is not a one size fits all solution. To take account of the diversity of the firms caught by the new rules, it is applied proportionately depending on the size and complexity of the firm.

There are three categories of firm with different rules applying to each category:

**Core firms** – includes most solo-regulated firms, which will need to comply with a set of core regulatory requirements.

**Limited scope firms** – such as sole traders, not for profit debt advice bodies, internally managed alternative investment funds and non-core financial services businesses which will be subject to fewer rules.

**Enhanced firms** - includes the largest asset managers, intermediaries and non-bank lenders (around 400 firms) which will be subject to additional requirements.

The certification regime and conduct rules will apply in broadly the same way to all three categories of firm. However, there are material differences in the rules for SMFs and the firms. In particular, enhanced and core firms have a greater number of SMFs and are also required to allocate prescribed responsibilities to their SMFs. Enhanced firms also need to have a management responsibilities map and a handover procedure in place.

Firm/Requirements	Enhanced	Core	Limited
<b>Senior management functions (SMF's)</b>	Up to 17 SMF's	Up to 6 SMF's	Up to 3 SMF's
<b>Prescribed responsibilities</b>	Yes - 14 prescribed responsibilities to be allocated	Yes - 6 prescribed responsibilities to be allocated	No
<b>Overall responsibility function</b>	Yes	No	No
<b>Statement of responsibilities</b>	Yes	Yes	Yes
<b>Responsibilities map</b>	Yes	No	No
<b>Duty of responsibility</b>	Yes	Yes	Yes
<b>FCA prior approval of senior management functions</b>	Yes	Yes	Yes
<b>Criminal records checks for senior</b>	Yes	Yes	Yes



<b>management functions</b>			
<b>Regulatory references</b>	Yes	Yes	Yes
<b>Handover procedure</b>	Yes	No	No
<b>Fit and Proper assessments for certified and senior management functions - ongoing and at least annual</b>	Yes	Yes	Yes
<b>Certification regime</b>	Yes	Yes	Yes
<b>Conduct rules</b>	Yes	Yes	Yes

### WHICH CATEGORY APPLIES?

SMCR applies at the legal entity rather level rather than group level, which means that there will be some groups including firms in different categories.

The FCA will have contacted firms to inform them which category (limited, core or enhanced) they believe they fall into based on their permissions, the type of firm and the regulatory data they have submitted. However, firms will be responsible for making sure that they are correctly categorised. For more information about the SMCR categories, visit the FCA website [here](#).



## SENIOR MANAGER REGIME

The Senior Manager Regime (SMR) applies to a core list of senior managers responsible for the areas of a business with the greatest potential to cause harm or impact market integrity including but not limited to: the CEO, directors and the chair. These positions are all designated as senior management functions (SMFs).

Much like under the approved person regime, senior managers will need FCA approval before starting their roles and firms will need to satisfy themselves of a candidate's fitness and propriety through pre-employment vetting (including criminal record checks) before an application is made and on an ongoing basis thereafter.

As set out below, the number of SMFs will depend on whether the firm is an enhanced, core or limited scope firm. Importantly, there is no territorial restriction on the SMR so the rules apply to anyone who is in a SMF, whether or not they are based in the UK, although there are specific rules for branches of overseas firms.

Code	Senior management function	Limited scope firm	Core firm	Enhanced firm
<b>SMF1</b>	Chief Executive Function	No	Yes	Yes
<b>SMF2</b>	Chief Finance Officer Function	No	No	Yes
<b>SMF3</b>	Executive Director Function	No	Yes	Yes
<b>SMF4</b>	Chief Risk Officer Function	No	No	Yes
<b>SMF5</b>	Head of Internal Audit Function	No	No	Yes
<b>SMF7</b>	Group Entity Senior Manager Function	No	No	Yes
<b>SMF9</b>	Chair Function	No	Yes	Yes
<b>SMF10</b>	Chair of the Risk Committee Function	No	No	Yes
<b>SMF11</b>	Chair of the Audit Committee Function	No	No	Yes
<b>SMF12</b>	Chair of the Remuneration Committee Function	No	No	Yes
<b>SMF13</b>	Chair of the Nomination Committee Function	No	No	Yes
<b>SMF14</b>	Senior Independent Director Function	No	No	Yes
<b>SMF 16</b>	Compliance Oversight Function	Yes	Yes	Yes
<b>SMF17</b>	Money Laundering Reporting	Yes	Yes	Yes



	Officer Function			
<b>SMF18</b>	Other Overall Responsibility Function	No	No	Yes
<b>SMF24</b>	Chief Operations Function	No	No	Yes
<b>SMF27</b>	Partner Function	No	Yes	Yes
<b>SMF29</b>	Limited Scope Function	Yes	No	No

## PRESCRIBED RESPONSIBILITIES

Many of these roles, for example the SMF 17 Money Laundering Reporting Officer (MLRO), will have regulatory responsibilities allocated to them as a core part of their role.

Under the SMR for core and enhanced firms, in addition to any core responsibilities, every senior manager must be allocated 'prescribed responsibilities' which ensure that senior managers are accountable for risks in their areas of responsibility. The prescribed responsibilities need to be allocated to the most senior person responsible for an issue. This means that, for example, if an MLRO is not responsible for all aspects of financial crime in a firm and reports to a more senior individual with responsibility for financial crime, the prescribed responsibility for financial crime matters should be allocated that person, not the MLRO.

Enhanced firms must also allocate those senior managers with overall responsibility for a business area, activity or management function, an 'overall responsibility' obligation.

Prescribed responsibilities do not apply to limited scope firms.

Prescribed and core responsibilities need to be recorded in a statement of responsibilities for each SMF which sets out which areas of the business each individual senior manager is accountable for – a template for which is included on the FCA site (available [here](#)).

Guidance has been provided on how to draw up Statements of Responsibility that, rather than mirroring any job description must be concise, factual and self-contained. Statements of Responsibility must be submitted when preapproval is sought for a senior manager. They are also intended to be living documents – updated and resubmitted by the firm whenever there are significant changes to the role.

Enhanced firms must also produce a 'responsibilities map' recording the firm's wider management and governance arrangements.



## DUTY OF RESPONSIBILITY

However, perhaps the most significant change for SMFs under the new rules is that they will have a statutory 'duty of responsibility'. If there is a regulatory breach within their area of responsibility and they failed to take reasonable steps to prevent it, they could face enforcement action by the FCA.

Senior managers can also be subject to enforcement action if they breach a conduct rule where they are 'personally culpable' ie their conduct was below that which was reasonable in the circumstances. Given the nature of the senior manager conduct rules, there is likely to be significant crossover between the two regulatory requirements.

The SMCR also introduces a requirement for enhanced firms to have handover procedures for incoming senior managers to ensure that they have all the information and materials they could reasonably expect to do their jobs properly.

## CERTIFICATION REGIME

The certification regime covers the population of employees who are not senior managers but whose roles mean that they could cause significant harm to the firm or its customers. The broader definition of "employees" in the FCA Handbook also means that contractors and secondees in these roles may also be covered.

The certification regime includes most of the previous approved population under the Approved Persons Regime but also anyone with a significant influence function, client dealing functions and material risk takers. The full list includes:

- significant management function;
- CASS oversight function;
- proprietary traders;
- the client-dealing function;
- algorithmic trading;
- functions subject to qualification requirements;
- material risk takers; and
- supervisors or managers of a certified person who is not a senior manager.

The list includes some roles that may have previously required FCA approval under the Approved Persons Regime (such as CF30s).



Unlike the approved person regime, these roles will not be subject to pre-approval by the regulator under SMCR. Instead, firms will need to certify that such staff are fit and proper to perform their roles on an ongoing basis and at least annually.

Firms need to understand who their certified population is and ensure that their fitness and propriety checks for both certified staff and senior managers have been incorporated into their existing HR and compliance processes – including the annual appraisal as well as disciplinary and performance processes.

### **FITNESS AND PROPRIETY**

Firms will be required to make sure that anyone performing an SMF or a certification role (or if they are a non-executive director subject to the competent employee requirement under SYSC 5.1) is fit and proper to perform that role.

The FCA has therefore extended the existing rules and guidance set out in the handbook including FIT rules to senior managers and certified staff and non-executive directors at solo-regulated firms.

Firms will therefore need to assess whether SMFs and certified staff are fit and proper at start of employment and on an ongoing basis thereafter.

At least annually, the firm must carry out a formal assessment and issue a certificate confirming the individual's fitness and propriety in the role that they are engaged to perform, for a maximum of twelve months.

As part of that process, the FCA requires firms both to undertake criminal records checks for senior managers and to take up regulatory references for senior managers and certified employees covering the past six years of employment.

The FCA's summary of the fitness and propriety requirements for SMFs and certified staff who are new joiners, internal hires or assessed annually is set out below.



## SUMMARY OF FITNESS AND PROPRIETY REQUIREMENTS

	New hire	Internal hire (including intra-group hires)	Annual assessment
<b>Senior manager</b>			
Regulatory reference	✓	✗	✗
F&P assessment	✓	✓	✓
FCA approval before commencing role	✓	✓	✗
Criminal record check	✓	✓	✗
<b>Certification function</b>			
Regulatory reference	✓	✗	✗
F&P assessment	✓	✓	✓
Certificate for function	✓	✓	✓

The FCA has made it clear that assessing fitness and propriety is not a tick box exercise. It must be effectively overseen by the SMF whose prescribed responsibilities make them responsible for implementing the certification process and the assessment must be effectively embedded into the firm's existing HR processes to effect the culture change that the FCA is expecting. The FCA has produced a helpful guide of positive and negative indicators of fitness and propriety which is published on its website.

In particular, firms should ensure that their managers are trained on what is/is not considered acceptable performance/conduct and the annual fitness and propriety and in-year assessments triggered by disciplinary, performance or other issues that arise, should be built into the business' appraisal, disciplinary, performance and sickness absence policies.

Firms should also consider carefully how marginal cases will be decided or appeals against fitness and propriety assessments heard – indicating that conduct panels overseen by the senior manager responsible for the certification process should be set up to resolve these.

The FCA also emphasises that it is not necessarily a binary choice between pass and fail. Development plans may be a useful tool to put in place where concerns about competence are identified during a fitness and propriety assessment which could be resolved, for example, through supervision or training. However, the key is that fitness and propriety assessment is a regular, thorough and consistent process and not something to put off until the annual appraisal rounds.

Regulatory references are also a big part of the process and if information arises that would have changed any information included in a regulatory reference, an updated reference should be provided. Firms should



therefore factor into their fitness and propriety assessments any such updated references and when giving such references for former employees, firms will need to disclose information relevant to assessing whether a candidate is fit and proper in a timely manner using the FCA’s regulatory reference template and update any such references if the information included changes over the next six years.

## CONDUCT RULES - STAFF

The conduct rules are high-level standards, which replace the statements of principle for approved persons under the Approved Persons Regime and will cover a wider population – senior managers, certified staff and all other employees apart from ancillary staff. Their aim is to improve conduct at all levels. The conduct rules are split into individual conduct rules, which apply to everyone including SMFs and certification staff, and senior manager conduct rules, which apply only to SMFs.

Conduct rule	
<b>Rule 1</b>	Act with integrity
<b>Rule 2</b>	Act with due skill, care and diligence
<b>Rule 3</b>	Be open and cooperative with FCA, PRA and other regulators
<b>Rule 4</b>	Pay due regard to the interests of the customers and treat them fairly
<b>Rule 5</b>	Observe proper standards of market conduct
<b>SMR 1</b>	Take reasonable steps to ensure that the business for which you are responsible is controlled effectively
<b>SMR 2</b>	Take reasonable steps to ensure that the business of the firm for which you are responsible complies with relevant requirements and standards of the regulatory system
<b>SMR 3</b>	Take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively
<b>SMR 4</b>	Disclose appropriately any information of which the FCA would reasonably expect notice

Firms have a duty to inform staff who will be covered by the conduct rules and give them training on how the rules apply to their roles. Training will need to be tailored to the roles the individuals perform.

The FCA has again produced some helpful guidance on positive and negative indicators for effective staff training on their obligations under the conduct rules.

In particular, the FCA expects that: the SMF responsible for conduct rule enforcement is able to show oversight involvement in the training; that the training is interactive and tailored to individual roles; that line managers are involved in delivering the training (not just HR); that it is built into induction or onboarding processes and regularly reviewed; that conduct is linked clearly to fitness and propriety and performance assessments; and the effectiveness of training is monitored by firms.

See [here](#) for more information.



Firms will also be obliged to monitor compliance and report disciplinary action taken against a person for breach of the conduct rules to the FCA for SMFs within seven days of a breach and for all other staff annually.

## **FCA DIRECTORIES**

The FCA will also have a new public register of individuals working in financial services which will operate alongside the financial services register and provide information about: certified persons, directors who are not senior managers and other individuals who are sole traders or appointed representatives and will include the business the individual is qualified to carry on as well as any regulatory sanctions.

## **TIMINGS**

The deadline for solo-regulated firms to have identified their SMFs and certified persons and trained them on the conduct rules was 9 December 2019. For all other staff subject to the conduct rules, firms had until 9 December 2020 to apply the rules and train them. They were also due to have carried out their first assessment of the fitness and propriety of certified persons by 9 December 2020. However, following the significant impact of the coronavirus pandemic (Covid-19) on many solo-regulated firms, the FCA has pushed back the 9 December 2020 deadline to 31 March 2021 for carrying out the first fitness and propriety assessments and train/apply the conduct rules to the remaining affected staff.

## **PRACTICAL STEPS**

- For firms new to SMCR, the first step will be to identify whether they are subject to the limited scope, core or enhanced regime.
- Next, they will need to audit existing arrangements to see how these can be adapted to accommodate the new requirements – including allocation of prescribed responsibilities, fitness and propriety assessments and conduct rule training.
- Senior managers (with support from the legal, HR and compliance teams) should be involved in implementation and ensuring compliance with the new rules on an ongoing basis.
- Firms should consider who their SMFs are and agree the allocation of prescribed responsibilities and statements of responsibility with them. For enhanced firms, a responsibilities map will then need to be drawn up. It is a good idea to start discussions with staff about their prescribed responsibilities early to allow them to get comfortable with their new responsibilities.
- Firms will then need to identify which staff will fall into certification functions and satisfy themselves that those staff are fit and proper to perform these functions. The deadline for the first assessment is now 31 March 2021.



- HR, legal and compliance teams will also need to design policies and procedures for the business to follow to ensure their compliance with the new rules for example, how certificates will be issued to staff, how fitness and propriety will be assessed and conduct rule breaches determined and, where appropriate, reported to the FCA.
- Training will also need to be rolled out for all staff on their obligations under SMCR including how the conduct rules apply to their roles. The deadline for training all staff (other than SMFs and certified staff) is now 31 March 2021.
- Finally, the HR and compliance teams will need to update employment contracts and policies including compliance, recruitment, disciplinary, reference and appraisal policies to meet SMCR requirements.

For information on how to ensure your business complies with SMCR, please contact **Tom Walker** or **Hester Jewitt** in the financial services regulation group.