

ADVISER

SENIOR MANAGERS AND CERTIFICATION REGIME UPDATE

THE UK SENIOR MANAGERS AND CERTIFICATION REGIME (SM&CR) WILL BE EXTENDED TO ALL FINANCIAL SERVICES FIRMS IN 2018.

UPDATE

In 2016 we reported on the Government's announcement to extend the SM&CR to non-banking regulated financial services firms ([Adviser: Asset Managers and Non-banks Soon to be Caught by the Senior Managers Regime](#)), which includes investment firms, asset managers, and consumer credit firms. While the exact date for the implementation of the new regime has not been finalised, changes across a significant number of policies and procedures in a regulated firm will be required before the deadline, which is anticipated to be in late 2018.

The Financial Conduct Authority (FCA) has taken the approach of keeping most of the principal elements of the existing regime (as discussed in our June 2015 bulletin, [Marsh Insights: The Senior Managers Regime](#)) in its proposed rules. However, the impact of the regime will be dependent upon whether the firm is deemed an 'Enhanced Firm' (which is similar to the existing banking SM&CR rules), a 'Core Firm', or a 'Limited Scope Firm'.

SENIOR MANAGERS REGIME

Under the SM&CR, the current approved persons will need to be assessed to establish whether they will become senior managers, and, if so, must be approved by the FCA before carrying out their role. A Statement of Responsibilities will be required for each senior manager setting out their responsibilities.

Certain FCA-prescribed responsibilities will need to be allocated among the senior managers.¹

CERTIFICATION REGIME

As discussed in our previous bulletins, the CR covers people who are not considered to be senior managers under the new regime but who have the potential to cause significant harm to the organisation or its customers. Approval from the FCA will not be required where a person falls under the CR, however, the firm will be responsible for checking and certifying annually that those individuals remain fit and proper and are suitable to carry out their role.

CONDUCT RULES

The SM&CR Code of Conduct rules will apply to all staff in financial services firms (other than to individuals performing an ancillary function, for example, cleaners, caterers, and security guards), additional conduct rules will apply to senior managers. For senior managers, there will mainly be a change of emphasis, with a view of holding each of them accountable for failures that take place in the areas for which they have responsibility.

There will also be a requirement for the organisation to report breaches of the Conduct Rules to the regulator.

DISCIPLINARY ACTION

Any disciplinary action taken by the firm must be reported to the FCA within seven business days for senior managers. Annual FCA notification requirements will apply to all other staff where there has been a breach of the Conduct Rules.

At present, a senior manager can be disciplined for misconduct in two circumstances: for breaching a statement of principle; or for being knowingly concerned in the firm's breach. A third element will be introduced under the new regime, which will apply to a firm that has breached a rule in an area where a senior manager is responsible and he/she did not take reasonable steps to prevent that breach. This will apply to all firms (Enhanced, Core, and Limited Scope).

DIRECTORS AND OFFICERS (D&O) INSURANCE AND OPERATIONAL RISK – WHAT TO DO NEXT

- Examine internal processes and procedures with regards to the new or expanded requirements under the regime.
- Review internal indemnification agreements to make sure they apply to appropriate individuals.
- Consider your existing D&O policy, in particular:
 - Who do you intend to be covered by the policy – everyone impacted by the SM&CR or only certain individuals?
 - Does your definition of “insured person” reflect this?
 - Is the policy adequate in terms of limits if you intend to provide cover for a broader category of insured person?
 - Should elements of the cover be ring-fenced?

SUMMARY

While the consultation period was closed on **3 November 2017**, the FCA's Policy Statement is anticipated in Q1 2018. Firms are advised to start reviewing and addressing their procedures now to ensure they will be able to evidence the reasonable steps they have taken to prevent a breach of the rules.

A further FCA paper is expected to consult on the template proposed for the Statement of Responsibilities² and other matters.

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1. FCA. “SYSC 4.7 Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities”, available at <https://www.handbook.fca.org.uk/handbook/SYSC/4/7.html?date=2016-03-07>, accessed 6 November 2017.
 2. FCA. *Senior Management Regime: Statement of Responsibilities*, available at https://www.handbook.fca.org.uk/form/sup/SUP_10C_ann_5D_SOR_20160307.pdf, accessed 6 November 2017.



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