



## Senior Managers & Certification Regime (SMCR)

*For the first of my compliance updates for 2020 I thought I would spend some time with you all and talk about the **Senior Managers and Certification Regime (SMCR)**.*

The new regime came into effect from 9 December 2019 and replaces the approved persons regime for all directly authorised firms. The purpose of SMCR is to reduce harm to consumers by making individuals more accountable for their conduct and competence by:-

- Encouraging staff to take personal responsibility for their actions;
- Improving conduct at all levels;
- Making sure firms and staff clearly understand and can show who does what.

There are three levels of firms – enhanced, core and limited. AMII members are likely to cover all three levels with enhanced applying to firms who earn £35m+ in commission and fee income. Limited scope will apply to sole traders.

There are three aspects to the SMCR:-

- Senior Managers Regime
- Certification Regime;
- Conduct Rules.

### 1. Senior Managers Regime

Senior Managers (SMs) are the most senior decision makers with the greatest potential to

cause harm or impact upon market integrity. I would recommend that you review (should you not have already done so!) your Governance and Board structure to assess who will be Senior Managers and which SM Function they will hold (likely to be statutory directors and those ‘acting’ as directors). Check your entry on Companies House and on the FCA Register to ensure that these are consistent with each other.

All senior managers will need to have individual Statements of Responsibility which outline the role they have and their accountabilities and they will need to be submitted to the FCA with the approval application and if there are any changes the Statement of Responsibilities will need to be submitted to the FCA. If you were automatically converted from being an Approved Person to being a Senior Manager then you still need one.

The FCA also expect allocation of five Prescribed Responsibilities that must be assigned to the most senior SM responsible for the area involved with the skills and capability to carry it out. The Prescribed Responsibilities will be included in the Statement of Responsibility together with a list of Other Responsibilities that we advocate.

## The five PRs are:-

Handbook Reference	Prescribed Responsibility
(a)	Responsibility for the firm's performance of its obligations under the Senior Manager's regime
(b)	Responsibility for the firm's performance of its obligations under the Certification Regime
(b – 1)	Responsibility for the firm's obligations for: a) Conduct Rules training b) Conduct Rules reporting
(d)	Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime
(z)	Responsibility for the firm's compliance with CASS (if applicable)

In the event of a breach of FCA requirements, an Senior Manager can be held accountable if the FCA substantiate that you didn't take 'reasonable steps' expected to prevent the breach. Some non-exhaustive examples of reasonable steps are:

- Complying with regulations, legal obligations and behaving with integrity;
- Monitoring resourcing requirements and escalating where additional resource is required;
- Delegating appropriately and requesting and reviewing regular reports from your team;
- Ensuring you have clear reporting lines and a full understanding and control of your business area;
- Identifying training requirements to feed into training plans.

Responsibility for evidencing 'reasonable steps' lies with the Senior Manager's and documentation such as meeting minutes, job descriptions and Statements of Responsibilities will be key to this. However, you should also consider to how more informal discussions are documented.

## 2. Certification Regime

Certification captures non-SMF employees and any contractors carrying out specific functions that could still cause significant harm to customers, the business and/or market integrity. A firm does not need to necessarily have any certified staff (this will depend on the size and structure of the firm) and I would suggest firms of 30+ staff do give consideration to this.

Certified staff will not be approved by the FCA and you must certify at least once per year that they remain "fit and proper" to do their job taking into account qualifications, training, level of competence and whether the employee meets the relevant honesty/integrity/financial soundness assessment.

## 3. Fit and Proper Checks and Regulatory References

Fit & Proper requirements apply to all NEDs, SMF & Certified persons. They must be assessed on an ongoing basis and at least once a year. To demonstrate employees are fit and proper to do their jobs firms are required to assess and evidence:-

- Honesty, integrity & reputation;
- Competency & capability;
- Financial soundness.

New SMs will have to have a criminal record check undertaken by the firm before the firm submits an application to the FCA for approval.

Regulatory references are now required for all new SM, CF or NEDs appointments. These references need to be gained from all previous employers in the last 6 years and should be provided to you on a standard FCA template. In turn you must provide regulatory references on request from firms looking to employ one of your previous employees who are applying for a NED, SM or CF role. Therefore, you must:-

- Retain records of disciplinary and fit and proper findings going back 6 years;
- Not enter into any arrangements that conflict with FCA disclosure obligations;
- Update references to firms when significant information comes to light;
- Ensure to remain consistent with common law, i.e. rehabilitation of offenders and spent convictions.

## **4. Conduct Rules**

For the first time ever all customer-facing staff will be subject to direct action from the FCA should they breach rules (not just SMs).

There are two tiers of Conduct Rules - 1st Tier capture all employees (other than ancillary workers) whilst 2nd Tier apply only to SMFs in addition to 1st Tier.

Conduct rules will apply to SMFs and Certified Staff from commencement of the regime and to all other staff from 9<sup>th</sup> December 2020. Documented training will be required to ensure all appropriate employees understand the rules and their obligations under the regime. What plans do you have to ensure that this happens?

You must notify the FCA when disciplinary action has been taken for a conduct rule breach - disciplinary action means the issuing of a formal written warning or suspension or dismissal of a person or reduction or recovery of remuneration/bonuses.

For SMs notification must be made within 7 working days of concluding the disciplinary action. For other individuals notification to the FCA is to be made annually.

The FCA will tweak RMAR reporting to facilitate reporting on relevant employee matters during the course of this year. Only in the last few weeks have I had very 'interesting' discussions with clients who have discovered rather awkward 'issues' with their staff.

Conduct Rules are as follows:-

### **First Tier**

1. You must act with integrity;
2. You must act with due care, skill and diligence;
3. You must be open and cooperative with the FCA, PRA and other regulators;
4. You must pay due regard to customers and treat them fairly;
5. You must observe proper standards of market conduct.

### **Second Tier**

- SC1 You must take reasonable steps to ensure that the business of the firm

for which you are responsible is controlled effectively;

SC2 You must 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;

SC3 You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee discharge of the delegated responsibility effectively;

SC4Y You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

them to complete some form of self assessment;

2. Employers assess the above plus competence and capability annually – how will you do this and how will you evidence that this has taken place?

3. Other staff confirm annually they are of good repute – a one pager at most;

4. Criminal records check for new SMs and NEDs;

5. Annual certificate issued to all certified staff – again a one pager.

## New documents required

It will be down to firms to produce:-

1. SMs, NEDs and certified staff confirm annually their honesty, integrity, reputation, fitness, propriety and financial soundness – you need to ask

## FCA provide:-

1. Statements of Responsibility for SMs (not tailored)
2. References for SMs, NEDs and certified
3. Disciplinary notifications (Forms D or H)

If you are at a loss for all or any of this, then may I suggest that you look at the [AMII Compliance Manual?](#) *(Available to AMII Members at the reduced price of £495 + VAT [Usual price £595+VAT] – contact Branko direct to order your copy).* We have produced this for general insurance intermediaries since 2004 and it provides a comprehensive, one-stop-solution for all compliance matters and last year saw key updates for New ICOBS/IDD and GDPR with the latter including a ONE page privacy statement and a one page summary as to legal marketing methods. Can't force you to buy one but the alternative of reading the FCA's Handbook of Rules and Guidance or, worse still, compliance by osmosis is not ideal...!



*“If you have any questions or would like any further help on any of the topics above please do not hesitate to get in touch”*

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