

AMII Compliance Update from Branko Bjelobaba

For the first of my compliance updates for 2021 I thought I would spend some time with you all and talk about three things - SMCR, Brexit and the new FCA Directory.

Senior Managers and Certification Regime (SMCR)

The Conduct Rules will extend to **ALL** staff as from 31st March 2021 and just a reminder if you have not already tackled this.

The first phase came into effect from 9 December 2019 and applied to Senior Managers and those individuals taking on the certificated roles. 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 aspects to the SMCR:-

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

Please be aware that SMCR does not apply to Appointed Representatives themselves and that the old Approved Persons regime continues. This will mean you remain responsible (and this responsibility should be allocated to a Senior Manager) for ensuring that the key individual(s) at the AR remain fit and proper (and you check), that staff are trained and that the business is monitored fully to ensure that they remain compliant and that this

1.1.1. Senior Managers Regime

Senior Managers (SMs) are the most senior decision makers with the greatest potential to cause harm or impact upon market integrity. By now you should have reviewed your Governance and Board structure and Senior Managers will have been already working with their new responsibilities.

All senior managers will have individual Statements of Responsibility which outline the role they have and their accountabilities. 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 PR will be

included in the Statement of Responsibility together with a list of Other Responsibilities that we advocate.

1.1.2. 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 50+ 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.

1.1.3. 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.

1.1.4. 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).

Conduct rules will apply to SMFs and Certified Staff from day one and to all other staff from 31st March 2021 (has been delayed by almost four months due to covid). Documented training will be required to ensure all appropriate employees

understand the rules and their obligations under the regime. I guess you will have already done this? I have undertaken numerous events on SMCR and would be pleased to do so should you have a need.

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 tweaked RMAR reporting to facilitate reporting on relevant employee matters and your first return was made last August. I continue to have very 'interesting' discussions with clients who have discovered rather awkward 'issues' with their staff.

Conduct Rules are as follows:-

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.

So, do you and your staff actually know what these all mean and have you explained them? Don't forget, you will have already been assessing the competence of your people since the onset of FSA on 14th January 2005 and this needs to be added into the round.

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 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 (plus competence and capability);
4. Criminal records check for new SMs and NEDs;
5. Annual certificate issued to all certified staff – again a one pager.

If you are at a loss for all or any of this, then may I suggest that you look at the AMII Compliance Manual? 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...!

Brexit

By now you will know if you have an exposure! Do you have clients in the EU? We have left the EU and as a consequence passporting has come to an end. This means that you can't rely on the fact you are authorised in the UK by the FCA to carry on regulated insurance distribution activities in the EU without having a new EU authorisation. If you do, without authorisation in at least one EU country then you will be doing so illegally. If your client lives in the EU and receives advice from you in the UK then this is an issue and insurers will be unable to accept this business from you.

What can you do then? Well, if EU business is substantial you are already likely to have registered a business in the EU and sought authorisation from their regulator. So, for the Republic of Ireland, it is the Central Bank of Ireland. Once you are authorised by them you can then have a passport to allow you to conduct regulated activities in the rest of the EU.

FCA new Directory

Firms must submit their Directory Persons data via Connect by **31 March 2021** and the FCA commenced incrementally publishing data as they were submitted from 14 December 2020.

As always, any queries then drop me a line!

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