

Senior Managers and Certification Regime (SMCR) Working Group Meeting

Date and Time	Thursday 29 th August 2019
Venue	At the offices of Eversheds Sutherland, 1 Wood Street, London, EC2V 7WS
Attendees	Attendees by phone
Simon Collins (Chairperson)	John Roberts – Threesixty Services
Peter Ewing – FCA	Liz Coyle – SimplyBiz
Kumar Ved – Compliancy Services	Helen Tibbs – Clear Financial Consultants
Anita Kareer – TCC	Ciara Cremin – Clear Financial Consultants
Winnie Chu – MPAC Group	Matthew Cranny – Create Solutions
Lorraine Bay – BDO	Jeremy Smith – B-Compliant
Mazhar Manzoor – ESMA Compliance	Phil Dibb - JustCRS
	Helen Dean – Thistle
	Mary Slevin – Thistle
	Lucy Gallagher – BDO
	David Allison – Compliance Management Services
	Amy McLaughlin – The Compliance Company
	Bev Robertson - APCC

Apologies

Julian Sampson – Fulcrum Compliance
 Mark Greenwood – SimplyBiz
 Sandy McGregor - SimplyBiz
 Charles Cattell – The Cattelyst Consultancy
 Richard Farr – Telos Solutions
 Mel Holman – Compliance and Training Solutions
 Nicki Houghton – Haven Risk Management

Simon opened the meeting by once again thanking Peter for attending this working group meeting.

Q&A session with Peter Ewing FCA

1. How are sole traders of GI firms affected under SMCR as they don't have any CFs?

Effectively they don't need any approved persons. All sole traders are limited scope firms, although the exception is if they have a governance committee in their firm. In that case, they are treated as core firms.

The FCA are planning on releasing a summary of the rules on sole traders on the website shortly.

Senior Managers and Certification Regime (SMCR) Working Group Meeting

2. ***How does a firm treat an unregulated sister company who it outsources some regulated activities to e.g. Financial promotions - they aren't employed by the regulated firm?***

This is the same as any other outsourcing activities. If you outsource activities to an unregulated firm, you are still accountable for those activities.

3. ***I am unsure whether the certification regime is expected to apply to General Insurance Brokers who are core firms. We have firms with 200 staff and regulated income of (say) £10m. The guidance talks of large business units of £100million! Is there a place for the certification regime for small core firms who are general insurance brokers with (say) 50 staff? Can you give us some pointers? Some of our small firms would like to use the regime.***

This depends on if anyone in the firm meets the criteria of a significant management function due to the size of the firm. This is an act of judgement and cases should be judged on their own merits. There is guidance for the definition of significant management in SYSC but some firms may decide to appoint certified individuals even if they don't strictly meet the SYSC definition to give them some "skin in the game" particularly if there are few SMFs. It is hard to give a definitive answer.

4. ***FCA has commented that they plan to update the SMCR Guide. Do we have any idea on the timescale for this? Can we expect any further clarification to assist in determining where to draw the line in regard to certification for client dealing? For example, what would cause an "information-giver" (in MiFID II-speak) to become subject to certification?***

Peter advised that an update from the FCA about the SMCR guide will be available on the website soon.

In regard to client dealing, there is unlikely to be any further guidance, the key issues is that it depends on what role the individual is actually doing and whether they meet the definitions of the function. This is effectively a case by case basis on whether the individual is simply entering data under instruction or having greater discretion to act.

5. ***FCA has commented on the lack of understanding about the Conduct Rules, especially on the part of senior managers. Is any further assistance proposed to help understanding? Perhaps further examples to illustrate good practice?***

Peter confirmed that there will be no further guidance released on Conduct rules. COCON is deemed sufficient and FCA is keen for firms to think carefully about how the rules impact different departments or cohorts of individuals within the firm.

6. ***If a Core Firm has a governance structure of a Board and an Audit Committee and a Risk Committee. Do you only need to apply for the Board Chairman SMF9 Function? (i.e. Core Firms should not apply for SMF 10 / SMF 11 Senior Manager functions even where the governance structure means they have individuals fulfilling these roles)***

Yes.

Senior Managers and Certification Regime (SMCR) Working Group Meeting
If you have a Risk Committee or Audit Committee, that is perfectly fine but there are no specific SMF roles. Some firms may wish to opt up if they wish to comply with all the requirements of an enhanced firm.

- 7. Will the FCA grant approval as a SMF to an individual in an enhanced firm who is appointed to a required function, even if the firm in question is not obliged to make such an appointment but elects to do so?**

Yes, the FCA would process the approval.

- 8. Will FCA write to solo regulated firms confirming their categorisation (limited/enhanced/core)?**

Yes, the FCA has sent an email to all firms regarding their categorisation.

Peter advised that he is aware that some firms have not received an email. Peter asked the working group for their feedback. Many members of the working group confirmed that their clients are yet to receive these emails. A further email is to be issued by the FCA.

- 9. Can FCA confirm whether it is currently consulting in-house whether to bring ARs into the regime? Is there likely to be consultation on this?**

The FCA are not at the moment expecting to bring ARs into the regime.

- 10. Thinking about the prescribed responsibilities for Core Firms (Core and Enhanced) 'Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules': A. What is 'notification' does this mean in the event that there is a breach? B. Is it possible to 'split' this prescribed responsibility in terms of: a. Notification and b. Training Being allocated to different Senior Managers?**

It is possible to split the prescribed responsibility.

You can have a senior management function without any prescribed responsibility. If they do have a responsibility, this should be stated in the statement of responsibilities.

- 11. Is it still proposed that we can upload Directory data from 9th December 2019, and have one year to complete this (ie to 9th December 2020)? Is the date for the AR register 9th March 2020, which is when it will go live?**

Yes, this is correct.

- 12. The '12-week rule' for Senior Managers (SUP 10A.5.6) is clear. What happens where we have a person under the Certification Regime going on extended leave (ie over 4 weeks)? Do we need to notify FCA? I have read (in relation to Certified Persons) that emergency appointments will not require cover if: a. the absence is reasonably unforeseen and b. is due to last for less than 4 weeks.**

No, you do not need to notify the FCA.

- 13. Does a limited scope or core firm need to notify any changes within their Senior Managers Statements of Responsibilities, where the Senior Manager has never previously submitted**

Senior Managers and Certification Regime (SMCR) Working Group Meeting
a SoR to FCA? Also, would the situation be any different if the FCA had received a copy of the SoR with a previous application to carry out a SM function?

Yes, and second question, No

- 14. Would the FCA find it acceptable for an Enhanced Firm to have only two SMFs responsible for all areas in a firm of 150-200 people? The thinking behind the plan is that the two individuals ultimately make all the decisions even if they have appointed individuals to carry out the various functions on a day to day basis.***

There are not that many enhanced firms that have such a small number of SMF individuals and there may be issues around spans of control. In principle there are no rules that prevent it, however it would be very likely to be questioned.

- 15. We would like to know if the concept of material risk taker can be applied to non CRR/CRD firms. • The quantitative criteria for identifying a Material Risk Taker refer to persons who earn above a threshold (€500k). How should carried interest be applied to this threshold? With many carry schemes, there is no value until a performance threshold is reached. In the year that threshold is reached, an employee may receive remuneration taking them above this amount. But there would be no way to value that carried interest beforehand to know if they should be classified as a Material Risk Taker. We will like to have this clarified. Also, we note that these individuals would, in most instances, also be Client dealing function holders. Can firms simply classify them as such, or would they also need to be certified as material risk takers?***

Yes, it does.

In any remuneration code where there is a concept of a risk taker it applies – not just CRR firms.

- 16. Contractors holding SMF functions: We have recently received feedback from some case officers on applications which suggest that a contractor (under a contract for services) is unable to fulfil the senior management functions. Does the FCA have revised guidelines on whether contractors can perform senior management functions and what needs to be in place to assure the FCA of the efficacy of those arrangements.***

In regard to contractors holding SMF functions, it shouldn't be an issue.

There is nothing in the rules to prevent contractor SMF functions.

- 17. Small firms and SMFs: Some case officers have recently indicated that they are not prepared to approve individuals for entities seeking authorisation if they do not have previous experience in the roles, they are seeking approval for. Some small firms (who are not limited scope) will start off as 2-3-man bands and may not have had previous SMF16/17 experience. In the absence of approval, these firms will be forced to recruit compliance officers, an overhead cost they can ill afford at the onset. Is it a new policy of the FCA that all firms seeking authorisation must put forward individuals with previous SMF16/17 experience?***

Senior Managers and Certification Regime (SMCR) Working Group Meeting
Case officers will be looking for appropriate experience for people to take on these roles, but there is no change of policy.

- 18. On page 9 of the FCA long form A from 9/12/2019, it states a new function - Customer function CF 30 (AR) Customer function. The question is - How will the FCA identify CF30 AR's prior to 9/12/2019, if the FCA are not going to do this will a firm have to inform the FCA which CF30's are linked to an AR and which CF30's are linked to the directly authorised principal firm?**

There is no further notification required, they will remain on the register as CF30 AR.

- 19. In relation to Sole Traders who have no employees and therefore do not require to hold any governing functions:**

Question - Whether both the individual and Senior Manager Conduct Rules apply to Sole Traders?

If a sole trader is not an SMF, then the individual conduct rules do not apply to them.

There will be the revised guidance which is yet to be released.

- 20. In relation to Certification Functions employees**

Question: What are the ramifications for those members of staff who will be certified, with respect to FCA fines/enforcements? Will they be liable as individuals if there is a breach in their area?

Yes, they will be liable as will be conduct rule staff.

AOB

- Following on from the last meeting Peter attended with the working group, Simon asked where you have individual firms who are enhanced but do not have an internal audit function, they would not necessarily have a chair of an audit committee within the actual entity, therefore they would not appoint an SMF 5 or an SMF 11, which Peter agreed. We also discussed group situations where an entity may have an audit committee chaired by a group NED in those circumstances they would be registered as a SMF 7 rather than a SMF 11 reflecting the group entity role.
- Certified roles – the guidance within the rulebook explains that you require a certificate for all certified roles. Firms have a year to provide a certificate for those certified staff as at 9th December 2019, this must be submitted by 9th December 2020. If a firm hires somebody after 9th December 2019 into a certified role, that firm will have to assess the individual as fit and proper and has to provide a certificate upon entry to the firm. (Peter clarified this point in a follow up email.)
- Paraplanners – Peter advised that they should be certified if they are dealing with clients and making judgements, but each case should be viewed carefully depending on the role.
- Simon asked if there are any follow up questions, they are to be sent to Bev or Gabby.

Senior Managers and Certification Regime (SMCR) Working Group Meeting
Next meeting: TBC