SMCR Implementation for core firms:

Key dos, don'ts and issues to consider

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Introduction and background

- The Senior Manager & Certification Regime (SMCR) originates from the financial crisis and the relative failure of regulators to hold senior managers accountable.
- It was introduced for banks/deposit takers and (partly) for insurance firms in 2016, and the FCA is now extending it to all solo-regulated firms, for whom it will replace Approved Persons (APER).
- The regulator has worked hard, within the boundaries of the legislation to make the regime as proportionate and simple as it can.
- As a result, the “Enhanced” category applies to only c.400 firms, with the remainder deemed “Core” and so subject to a slimmed down regime.
- Following its consultation last summer (CP17/25) the FCA has now published its response to the feedback and near-final rules (PS18/14).
- The FCA has made few material changes and the near-final rules mirror very closely its original proposals.

Overview

SMCR has three main elements: Senior Managers Regime; Certification Regime; and Conduct Rules.

➢**Senior Managers (SMs)** are the most senior people in the firm responsible for particular functions. They each have a Statement of Responsibilities (SoR) and must be approved by the FCA. There are some Prescribed Responsibilities that need to be shared between them.

➢**Certified Staff** perform defined roles that can have a significant influence on customers, the firm or market integrity. They must be certified annually by the firm and meet fit and proper criteria. Breaches of these need to be notified to the FCA, and firms will also need to keep regulatory references for both Senior Managers and Certified Staff.

➢**Conduct Rules** apply to all employees aside from defined “ancillary” roles. They are intended to help improve the culture in firms by defining minimum standards. There are an additional four conduct rules that apply only to Senior Managers. These require Senior Managers to take “reasonable steps” regarding the control, compliance and appropriate delegation within their areas, and to disclose appropriate information to the regulator

The new regime will be implemented from 9 December 2019.

Basics of the “Core” regime

- Core firms are subject to all but a few of the elements of SMCR. Of these, the most important is that they do not have to complete A Responsibilities Map for the firm as a whole.
- However, some of the elements apply to Core firms in a slimmed down form. The most important of these are the Senior Manager Functions (SMFs) and Prescribed Responsibilities (PR). In each case, the regime for Enhanced firms have several additional requirements.
- Because they are in the legislation, the Certification Regime and Conduct Rules apply equally to Core as well as Enhanced firms.
- The transition arrangements for Core firms to implement SMCR are also significantly less onerous than those for Enhanced firms.

The following sections provide short lists of dos, don’ts, and issues you should consider carefully for each of these three elements. Where necessary, it should be read in conjunction with the relevant Consultation Paper and Policy Statement.

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Implementation Programme

Do:

- Think ahead about sequencing and dependencies (e.g. selecting an HR system)
- Align SMCR changes with your own planned activity (e.g. performance year) as much as possible
- Focus on Certification as much as the Senior Manager Regime

Don't:

- Approach as a normal piece of regulatory change - this is about the spirit more than the letter
- Set up a major programme until you've scaled the work - with SMCR, you may be able to save cost
- Run it purely as an Operations/HR programme – the impact on your Board and Executive is too big

Consider:

- How SMCR will affect your strategy in the next five years
- How much business change it will trigger (e.g. processes for recording/retaining evidence)
- How you want to monitor its impact

Senior Manager Regime

Do:

- Make sure Senior Managers' authority matches the functions and activities in their SoR
- Involve the Board and (where relevant) your overseas parent/Head Office in your thinking
- Try and avoid overseas-base Executives being caught by the regime

Don't:

- Concentrate all the Prescribed Responsibilities in one person
- Leave areas where individual accountability is ambiguous
- Rely on dotted line reporting if it can be avoided

Consider:

- How you want committees to function and discussions/actions recorded
- How SMCR as an individual accountability regime affects your culture
- How escalation and accountability work when there is a conduct incident

Certification Regime

Do:

- Minimise the number of staff who need to be certified
- Consider carefully the implications for your systems and processes
- Keep the reporting lines to SMs as simple as possible

Don't:

- Leave fit and proper considerations until the last minute
- Underestimate the impact of Certification on your firm's culture
- Apply Significant Management functions unevenly across your firm

Consider:

- How you will maintain the regime over time (e.g. fit & proper checks, notifications, regulatory references)
- The implications of conduct breaches and how to assess and notify these consistently
- What training will be needed for new staff coming into Certified roles

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Conduct Rules

Do:

- Check each SM has sufficient authority to meet the Senior Manager Conduct Rules
- Make arrangements to share best practice across SMs and to maintain consistency
- Agree consistent thresholds that trigger escalation and disclosure to FCA

Don't:

- Deprioritise training on Individual Conduct Rules, either formally or informally
- Recruit Certified staff whose records have significant gaps or blemishes
- Take decisions informally without properly recording them

Consider:

- What sort of training to provide for SMs, now and in the future
- The impact of an individual accountability regime on your firm's culture
- How to interpret these in light of future FCA Enforcement cases

Contact details for further help

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