

A response to HMT's Senior Managers & Certification Regime Call for Evidence

31 May 2023

Introduction

UK Finance and the Association for Financial Markets in Europe (AFME) welcome the opportunity to comment on HMT's Call for Evidence on the Senior Managers and Certification Regime (SM&CR).

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

Executive Summary

We welcome the initiative of HMT, together with the FCA and PRA, to review the SM&CR and the opportunity to provide input. Overall, members' experience of the SM&CR has been broadly positive, with benefits seen in executive accountability and firm-wide conduct standards.

We would like to highlight the following key points from our response and would be happy to discuss any of the points we raise in further detail:

1. *Senior Manager Approvals*: the lengthy approval process, combined with the significant delays experienced, have been a huge challenge for the industry. We have identified a number of ways in which the process could be improved, including: narrowing the scope of roles requiring approval (as opposed to notification); taking

previous approvals into account; and allowing candidates to hold Prescribed Responsibilities during their approval process.

2. *Scope Expansion*: we are concerned by the trend towards adding additional responsibilities into the SM&CR other than by formal SM&CR consultations. We believe that it goes against the overall obligation on firms to ensure that there is adequate accountability for each aspect of their firm's business according to their structure. Equally significantly, it does not provide an opportunity for industry feedback on any new requirements.
3. *Certification Functions*: aspects of the existing scope have the effect of capturing too many individuals, particularly in relation to client dealing and extraterritorial reach. We also suggest a reduction in the frequency with which Fitness and Propriety (F&P) screenings are repeated.
4. *The FCA Directory*: the Directory is disproportionate to the aim of protecting retail consumers and places significant administrative burdens on firms. Equally, we do not believe that the intended benefits have been evidenced. We consider that, in line with the objectives of SM&CR to place responsibility on firms for the fitness and propriety of staff, it should show only information at a firm level. Failing that, we suggest that it should show only information relating to individual who interact with retail customers, roles requiring qualifications or non SMF Non-Executive Directors (NEDs).
5. *Conduct Rules*: Conduct Rules are not the appropriate means to address all non-financial misconduct, or misconduct occurring outside of a work context (although these remain relevant to an individual's F&P). In addition, the absence of regulatory feedback on the industry's application of the Conduct Rules is a key concern, given the impact that a Conduct Rule breach can have on an individual's subsequent career, or lack of it.
6. *International Competitiveness and Talent Attraction*: key elements of the SM&CR impact the UK's competitiveness, including the delays to Senior Manager approvals, challenges with obtaining Regulatory References and criminal records checks from abroad, understanding of personal liability and the UK's approach to variable remuneration.
7. *Regulatory Alignment*: in addition to the UK's remuneration rules, we have identified areas where the approaches taken by the PRA and FCA could be more aligned, for example in relation to allocation of responsibilities or drafting of rules.
8. *Regulatory Dialogue and Feedback*: we continue to have concerns about the willingness of the regulators to take on board feedback raised via consultations, the lack of feedback about important aspects of the SM&CR (such as the Conduct Rules application or the Directory usage), as well as on more administrative issues such as

difficulties relating to the submission of information via Forms or technical problems with Connect.

Responses to Questions

1. Has the SM&CR effectively delivered against its core objectives? For example, making it easier to hold individuals to account; or improving governance, behaviour and culture within firms.

Yes it has. Our members continue to support the broad requirements of the existing SM&CR which requires the identification of which Senior Managers are accountable for what aspects of the firm's business and, via the Management Responsibility Map (MRM), ensuring that no area of its activity is left unallocated to a Senior Manager. The requirement to have appropriate handover processes in place is also beneficial.

Senior Managers have embraced the spirit of the SM&CR and form a population that both accepts accountability for their role and is deeply committed to maintaining the highest standards of conduct in their businesses. This has supported improvements in culture, behaviours and governance processes within firms as well as providing clarity about regulators' expectations about accountability.

However, there are areas in which we feel that the SM&CR has been expanded beyond its original objectives, as well as areas where the scope and requirements could be refined, which we discuss in more detail in our responses to other questions.

2. Do these core objectives remain the right aims for the UK?

Broadly, yes. The core objectives of the SM&CR were first articulated as three industry facing themes in the 2013 Parliamentary Commission on Banking Standards (PCBS) report. These themes were:

- *making individual responsibility in banking a reality, especially at the most senior levels;*
- *reforming governance within banks to reinforce each bank's responsibility for its own safety and soundness and for the maintenance of standards;*
- *creating better functioning and more diverse banking markets in order to empower consumers and provide greater discipline on banks to raise standards.*

We believe these objectives are as relevant today as when the SM&CR first came into effect in 2016 and that there has been a meaningful and tangible change for the better in culture, behaviour and attitudes towards risk within firms.

It is noteworthy that other jurisdictions around the world have sought to emulate aspects of the SM&CR, but usually focused more on individual accountability of senior executives and rather less on the broader certification of more junior individuals as fit and proper.

3. Has the regime remained true to its original objectives or has the scope or use of the regime shifted over time?

All the Regime's Core Objectives Remain Relevant

The original objectives of the SM&CR remain the important ones and the regime has supported firms in the continuing enhancement of standards of behaviour.

Some might suggest that the weighting given to the regime's core objectives has changed from an emphasis on the safety and soundness of the financial system, in the immediate wake of the global financial crisis, to a greater focus on culture and consumer duty and treating customers fairly. All aspects of the regime should be treated by firms, legislators and regulators as having an equal weight. The temptation to morph the regime's objectives, depending on public sentiment or more immediate past history should be resisted.

Resisting this scope creep could perhaps be reinforced by the inclusion of a 'policy purpose clause' in the primary legislation, providing a specific reference point for the regime's purpose.

Increasingly, members see the regime being used to drive implementation of new policy or regulation, rather than focusing on accountability. For example, specific requirements to assign a Senior Manager for climate change and digital assets, or adding specific wording to Statements of Responsibility (SoRs) for booking arrangements, algos and operational resilience. The ever-increasing demand to document responsibilities as more and more regulatory requirements come into place increases the complexity of implementing the regime.

Responsibilities

Over the years since the introduction of the regime, we have seen an expansion of the number of responsibilities and to a lesser extent, Senior Management Functions. Specifically, there has been a proliferation of responsibilities added without rule-making consultation via supervisory letters, creating a compliance burden and uncertainty for firms. This practice particularly creates issues for non-executive directors on boards, and there is concern that it may clash with UK company law in some instances. We are also concerned about the regulatory practice in Periodic Summary Meeting (PSM) letters of requiring a Senior Manager to be designated as responsible for each PSM action.

We believe responsibilities should be limited to those set out in the rules. We strongly encourage the UK authorities to carefully consider whether a new Prescribed Responsibility (PR) is required in response to a particular emerging thematic event, regulatory priority or risk type 'de jour'. Even then, regulators should formally consult on new PRs, rather than introducing "overall" or "other" responsibilities through supervisory communications. We believe that in most cases a focused set of initiatives to improve systems and controls, perhaps arising from pan-industry 'Section 166' reports, is a better response than permanently creating a new PR. Mandating a new PR also necessarily expands what was intended to be a "limited set" (FCA CP14/13/PRA CP14/14 section 2.28) and reduces the flexibility firms have to design their own governance structures.

Conduct Rules

In our members' view, the Conduct Rules were introduced to ensure that a minimum standard of professional behaviour is consistently followed by individuals throughout all firms in the context of their employees' behaviour in the workplace.

Over the life of the SM&CR, the demarcation between an individual's professional and private life has blurred, perhaps more as a result of FCA pronouncements or opinions expressed in less formal industry communications, such as speeches, than as a result of enforcement activity, from which firms can draw conclusions about expected behaviour. Our members assess personal behavioural issues unrelated to the activities of the firm to be relevant to the assessment of fitness and propriety and not specifically the conduct rules where there is not a nexus to the activities of the firm. An example of a nexus to the firm that might drive a Conduct Rule breach is proven allegation of bullying of fellow staff member outside of the office which might have a detrimental impact upon staff performance and the firm's culture.

It remains our understanding that Conduct Rule expectations were designed to capture conduct in the work environment.– Indeed, there are aspects of an individual's personal and private life which should arguably be beyond the scope of supervisory enquiry. Furthermore, we believe that matters arising outside of a work context may be more relevant to an individual's F&P assessment than a Conduct Rule investigation.

Additional guidance on this point would also help address inconsistency between firms, which currently can lead to different treatment of similar situations, e.g. whether they are treated as a breach of Individual Conduct Rule 1. This is especially important since breaching Individual Conduct Rule 1 can be deemed 'worse' than other breaches, even if that is not the intention, as some firms currently see this as a way to capture conduct not covered by the other rules.

Our members tell us there is also an issue that can arise when an individual leaves the firm ahead of disciplinary action. Regulation permits a firm to conclude that a conduct rule breach had occurred and issue a notice even though the individual is no longer an employee. This leads to a pan-industry inconsistency in approach which can be unfair to individuals. Some firms are more conservative and others casting a wide net with regard to Conduct Rule Breaches (even issuing them when there is not a written warning).

Finally, we note that the introduction of the new FCA Consumer Duty rules is causing some confusion in relation to the expansion of the Conduct Rules. The new Individual Conduct Rule 6, requiring in scope staff to "act to deliver good outcomes for retail customers" seems to overlap with the existing Individual Conduct Rule 4 "you must pay due regard to the interests of customers and treat them fairly". This gives the impression that the new rule has been designed to fit the Consumer Duty without adequate regard for its interaction with the existing SM&CR obligations. It also means that the Individual Conduct Rules will no longer apply equally to all staff.

4. The government would be interested in respondents' reflections on their experience of the SM&CR, now that it has been in place for some years.

The SM&CR is now well embedded in members' governance, internal control frameworks, attestation mechanisms and annual performance assessment processes. As we note above, this has resulted in positive improvements in behaviour across our members' UK workforce.

There are aspects of it that are unduly 'bureaucratised', particularly in the annual requirements to certify individuals as 'fit and proper', or disproportionate, for example the requirement to update the FCA Directory within 7 days. A more proportionate approach would be to require timeliness rather than a specific time limited deadline, allowing firms (especially larger firms) to establish regular (e.g. monthly or quarterly) review processes. We have outlined these in more detail elsewhere in our response.

The reach of the Certification Regime to those based overseas is a concern.

Additionally, the mismatch of those caught by the PRA MRT remuneration policy but not caught by SM&CR requires a timely reconciliation process and the additional analysis of identifying whether the individual actually provides services to the UK.

5. What impact does the SM&CR have on the UK's international competitiveness? Are there options for reform that could improve the UK's competitiveness?

In addition to the issues outlined in response to Q8 on individuals relocating from abroad, we would like to raise the following points.

Remuneration Requirements

A key area where the SM&CR is negatively impacting UK competitiveness is on its approach to remuneration, specifically the deferral period of no less than 7 years for Senior Managers, with vesting commencing no earlier than the third year after the award.

While we support the use of variable remuneration measures, such as deferrals, to strengthen the link between conduct and remuneration, the UK's deferral periods are currently longer than those applied in other comparable financial centres. Retaining deferral periods that are longer than elsewhere will continue to be a hurdle to encouraging the movement of talent within the global industry, particularly for non-UK firms who may have to combine the application of UK rules with additional requirements from their home state. Furthermore, the differing approaches set by the PRA and FCA regarding remuneration for Senior Managers is an unnecessary inconsistency. We recommend that the UK re-evaluates its approach to variable remuneration and considers other financial centres, for example aligning deferral periods with the EU, at up to five years, or the US, at up to three years.

Group Structures

In addition, for business operating globally, and more specifically for those headquartered outside the UK, the regime's distinction between developing strategy, which can be

undertaken by global staff who do not hold a Senior Management Function (SMF) role, versus local implementation of that strategy, which must be done by a locally approved SMF, is difficult to separate in practice. As a consequence, the SMF regime may lead to decision making being overly localised in the UK, as SMFs attempt to demonstrate the independence of their decision-making. This could result in UK subsidiaries / branches being viewed as less strategically important than entities outside the UK, and therefore the UK attracting less investment and support from the group. Similarly, global firms may also be encouraged to put in place purely administrative reporting lines and structures of governance from the UK to meet the requirements while ensuring a globally coordinated approach. These additional compliance and administrative structures are not necessary. Consideration could be given to solutions which allow UK subsidiaries and branches to rely on group level individuals who are responsible for elements of the UK business without requiring them to become Senior Managers and/or be based in the UK.

6. Are there examples of other regimes that the government could learn from?

In our analysis, other countries' accountability regimes focus more on senior managers, rather than certified persons, and a smaller group of them. We provide comments under Q8 below on how the Senior Manager aspects of the UK regime could be amended.

7. How does the level of detail, sanctions and time devoted to the UK's SM&CR regime compare with that in other significant financial centres?

Senior Managers

The industry devoted significant time and resource to the Senior Managers aspect of the regime. This is now well embedded and understood and has resulted in improvements in culture and governance. As we note above, the period of time taken to approve senior managers has been unacceptable lengthy, leading to industry frustration. A narrowing of the scope of SMFs requiring pre-approval and a radical overhaul of the technology member firms use to submit applications would ease this. We cover this further under Q8 below.

Forms could be presented as word documents, rather than PDFs, to aid completion and editing and they could be fully aligned with FCA Connect fields. In our view what is agreed with the Senior Manager should be submittable directly to FCA Connect.

The requirement for annual rescreening of SMFs is unduly burdensome and of little benefit. Firms have well established annual F&P disclosures. Alternatives such as rescreening perhaps every three years or random sampling would be beneficial. Re-confirming each year with senior executives their 30-year old academic qualifications is not an efficient use of their time or the firm's resources. Screening providers do not retain this personal data for 12 months and so each screening starts again.

In relation to reasonable steps processes, we note that the documentation of this is very time intensive and goes beyond the requirements of other jurisdictions..

Certification Regime

The Certification Regime has expanded far beyond its original purpose, with firms sometimes having many hundreds of Certified Persons. Managing this has spawned a whole industry and would benefit from being radically reviewed. It could be re-evaluated to ensure that the Certification Functions are limited to positions of significant influence. For example, we question the benefits of certifying roles such as an algo trader or a client-facing dealer. The definition of “client dealing” in the FCA Handbook is also extended (SYSC 27.8.20) to state that *“the FCA interprets the phrase ‘dealing with’ as including having contact with and extending beyond ‘dealing’ as used in ‘dealing in investments’”*, This is disproportionate. We have made more specific recommendations about Certification Functions in our response to the PRA-FCA consultation.

There is also ongoing concern about the territorial overreach of certification, especially for the client dealing function and Material Risk Takers.

Fit and proper assessment could also be made less frequent, moving perhaps to a rolling biennial basis, whenever a Certified Person has a change of role, or upon a significant event such as returning from an extended absence or following a disciplinary action, with an ongoing reliance on the annual performance review processes well established within firms.

A related consideration beyond the scope of the SM&CR is the Material Risk Takers (MRT) regime, which has similarly expanded to capture a disproportionately large number of individuals, and which can be a direct disincentive to individuals taking up senior roles in the UK or lead to UK staff seeking to relocate overseas once they reach a certain level of seniority. Amongst the considerations for the review of the MRT regime should be revisiting remuneration thresholds which have remained static for an extended period of time.

Financial Services Directory

A critical issue for our members is the amount of time and resource which is devoted to the Financial Services Directory, for seemingly minimal benefit. The original intention of the Directory appeared, to us, to be the protection of retail consumers. However, the data contained within the Directory covers all Certified Persons, many of whom will never interact with a retail customer.

We have always maintained that the focus should be on ensuring that a retail customer can check that the firm with which they are interacting is appropriately regulated and authorised. The existence of the Certification Regime, which puts the onus on firms to ensure their staff are fit and proper to perform their functions, should negate the need for retail consumers to access information on individual employees. We suggest that the Directory should be amended to focus on firms, rather than individuals. Failing this, the scope of individuals on the Directory should be restricted to those in retail customer facing roles, roles requiring qualification and non-SMF NEDs with other Certified Persons not included.

In addition, reporting capabilities should be improved to allow firms to reconcile the data more easily. This would assist with ongoing data quality issues, such as duplicate entries. For

example, firms must download lists by Legal Entity and by SMF which is time consuming. This would assist with ongoing data quality issues, such as duplicate entries. Provision of automated reports would be welcome.

Furthermore, there are additional functionality improvements which would bring significant benefits, such as if removals could be processed per person instead of per legal entity. We would be happy to arrange further dialogue with our members to propose suggestions.

Finally, we note that there are gaps in the FCA Directory between the go-live of the SM&CR (2016) and the Directory (2020), meaning that individuals are missing a record of their regulated role during this intervening period.

Maintenance of Records

The need to maintain official documentation at all times creates a disproportionate administrative burden for firms. While we agree that firms should maintain robust and auditable governance over changes to responsibilities and accountability, moving to a periodic update of official documentation could alleviate the operational burden without compromising the enforceability of the regime. We note, for example, that the Central Bank of Ireland's proposals for its Senior Executive Accountability Regime (SEAR) takes a more proportionate approach to document submission.

Additionally, greater clarity on the distinction between requirements and good practice would support more consistent implementation across the industry.

8. Are there specific areas of the SM&CR that respondents have concerns about or which they believe are perceived as a deterrent to firms or individuals locating in the UK? If so, what potential solutions should be considered to address these? Respondents should provide as much detail as possible to help build the fullest picture of any issues.

Senior Manager Approvals

A critical issue for our members, as identified in the Call for Evidence and Discussion Paper, is the often lengthy delays to the Senior Manager approval process. This not only creates governance and administration challenges for firms in the interim period, but also directly affects the candidates, particularly where a location move may have to be postponed or where there is uncertainty over whether an individual will be able to take up an SMF role while approval is pending. This can put off prospective candidates in situations where they would need to make significant personal logistical changes during that period such as relocating family, selling homes or changing children's schools.

We suggest below a number of possible amendments to the regime which could help to address this issue:

- Narrow down the range of SMF roles that needs prior approval. For instance 'Exco' type roles such as CEO, CFO, CRO, CCO, COO as well as MLRO could be subject to

prior approval by PRA/FCA, whereas other SMF roles could be subject to notification by the firm, with the firm taking responsibility for conducting sufficient due diligence supported by appropriate governance and audit trails.. Such a 'non-specialist SMFs' notification model would allow the PRA/FCA to devote more time to examining suitability for roles where their input is more relevant.

- Similarly SMF NEDs, chairs of board sub-committees for instance, could be subject to a streamlined process with an effective transportable NED record/passport being created. Where an individual already holds such a NED role at another firm, reliance could be placed on this passport and other firms' due-diligence and approval processes to accelerate that individual's appointment to a further such NED roles.
- Additionally, where prospective SMFs have previously been approved for a similar role, a fast-track process could be used, placing a degree of reliance on the previous approvals to reduce the burden both for the firm in terms of a streamlined application process and for the regulator in terms of a simplified approval. This could also be considered for individuals who have been subject to regulatory approval in another comparable jurisdiction.
- The regulators could permit Senior Managers to hold Prescribed Responsibilities prior to their approval by the regulator, but after the Form A or J has been submitted by their firm.
- The development of a sample "best practice" application pack would also help firms ensure consistency in the content and level of detail of their submissions, particularly if paired with further details on the process of analysis performed by the regulator within the 3-month period.

Form M, relating to notified NEDs requires an excessive range of documentation, including the necessary ESMA and MiFID forms. Notification should be radically pruned to require only notification of personal details and confirmation that the firm had undertaken an F&P assessment.

Additionally, Form M cannot be submitted online via Connect. For certain firms, the submission methods are therefore either by email or post. However, the PRA does not accept password-protected or encrypted documents from firms, which adds an additional administrative burden as the only choice is to submit via post (generally via courier to ensure safe and timely receipt). If submission via the Connect system was not an option, it would be helpful if the PRA were able to accept password-protected or encrypted emails. Whilst the regulators reassure firms that their email system is safe, sending unprotected documents via email is generally against firms' internal policies.

Members tell us that there has been significant delays in receiving a response from the PRA when submitting Form M via post.

SMF 7

In relation to international group structures, there is a lack of clarity as to the scope and implications of an individual being identified as SMF 7 (Group Entity Senior Manager Function) for example when and for what they are liable.

12-week rule

While we welcome the desire to give firms flexibility to manage changes in roles with the 12-week rule, it should be materially lengthened, as happened during the pandemic. If an approval takes longer than the 12-week period, the delay may create issues for firms. This is particularly the case for senior roles, which often involve longer timelines as replacements are found for departing individuals.

For instance, the circumstances in which an individual is “absent” and that absence is “reasonably unforeseen” could be clarified. The most pragmatic option would be for an existing SMF to be able to adopt the responsibilities for a period of time once they have been assessed as being P&P by the firm. Alternatively, the 12-week rule could be lengthened, or flexibility could be given to firms to inform the regulator of the reason why additional time is required, to avoid incentivising firms to put a different person in role simply to avoid breaching the 12-week limit.

Additionally, the limitations on who can hold PRs during the interim period can create challenges and may lead to Legal Entity Heads holding PRs as a placeholder. In cases where Legal Entity Heads are also pending regulatory approval, this can lead to forced assignment of PRs to meet the deadline.

Regulatory References

Under SYSC 22.2.1, firms are currently required to take reasonable steps to obtain a Regulatory Reference (RR) for individuals being recruited or moving internally into SMF or Certified positions covering the last 6 years of employment history, with a corresponding duty to provide a RR to another firm on request.

Currently, the reasonable steps to obtain a RR include requesting details for employers including those out of scope of the SM&CR / SYSC requirements, such as firms not regulated by the FCA, as they are outside the territorial scope of the UK regulators, or outside the financial services industry.

In our members’ experience, such companies do not hold records aligned to the requests set out in the template RR, and/or obligations under employment law may preclude or make it difficult them from providing information to the extend required under RRs. With this in mind, such requests do not add value, meaningfully supplement the firm’s due diligence, or meet the intended objectives of the RR approach.

We therefore suggest removing the requirements for firms to request RRs from employers out of scope of the SM&CR, i.e. non-financial services firms, and those outside the territorial scope of the UK regulators.

The result of this proposal would reduce lags in the hiring process for staff from outside the financial services sector and from overseas, while retaining the benefits of RRs where firms have a duty to provide them, i.e. those in-scope of SYSC 22.2.1. In turn this would reduce barriers to entry and increase international competitiveness.

Criminal Records Checks

Finally, in the case of individuals who have worked overseas, it can be difficult and sometimes impossible to get criminal checks, due to local differences, including requirements to attend a local police station in person to complete the checks. This causes delays in collecting the evidence for regulatory approval. Therefore, we recommend that where an individual is moving within the same group and has worked for it for over 6 years the requirement to perform foreign criminal checks is waived.

Delays of this nature also impact the UK's international competitiveness, especially in the case of overseas candidates, particularly when taking into the consideration the practices of other jurisdictions, where pre-approval is not a prerequisite for taking on the responsibilities of the role. Additionally, pre-approval and the resulting delays also act as a barrier to entry for candidates coming into financial services from other sectors, adding a level of complexity and uncertainty to the recruitment and onboarding process, reducing the attractiveness/competitiveness of the sector as a whole to outside talent.

A specific practical change could be to extend the validity of background screenings. When onboarding new hires, a criminal records check is completed before they start with the firm. Frequently, by the time a newly hired external Senior Manager goes through the internal processes (such as the Nomination Committee) and completion of application forms, their criminal records check may be close to expiring (or already expired) before submission – extending the validity to 6, or even 12, months for a Senior Manager, in particular one who was previously approved at another firm, would reduce the friction in this process.

Recognising qualifications

Prior employers sometimes fail to recognise existing qualifications, leading to employees having to retake exams when they change firms, at a cost to the new employer. FCA / accredited bodies should instead recognise previously held qualifications and other relevant training. This would help competitiveness and international alignment.

Sharing and splitting responsibilities

Larger institutions sometimes have co-heads of divisions, jointly responsible for a business area or they can have different executives collaborating to deliver bank-wide programmes and outcomes. Firms have encountered issues with the SM&CR, whereby such sharing of responsibilities was not recognised by regulators or required allocation of specific responsibilities to individual Senior Managers. Equally, current PRA guidance is inconsistent on the splitting of PRs. Greater flexibility should be given to firms when individuals share the responsibilities of a SMF and to split PRs among two or more SMFs. This would not run counter to the SM&CR's objectives and could in fact help to ensure good outcomes.

Personal Liability

There remain concerns that the SM&CR focus on personal accountability is a deterrent to candidates from other jurisdictions. Even where the firm clearly explains the regime and the benefits which a clear demarcation of accountability can bring, individuals from outside the

UK, and particularly from jurisdictions where there is a tradition of collective accountability, are often concerned about the UK's approach.

Regulatory Investigations

Finally, we note that regulatory investigations into individuals are often extremely lengthy. Notwithstanding the current consultation from the Bank of England on its enforcement processes, we believe that this is a consideration for individuals planning to take up a Senior Manager role. Being the subject of a long ongoing investigation has health and wellbeing implications for an individual, as well as impacting their career options. Furthermore, for international firms these lengthy investigations can interact with other regulatory or legal requirements, impacting the remuneration of the employee being investigated. The risk of this taking place can act as a direct impediment to diversity amongst Senior Managers, making it a role potentially unviable to those without substantial private financial resources, including those from lower socio-economic backgrounds, single parents or others with dependents. This timeframe also means that we have very few precedents for how regulators will enforce the regime, despite being over 7 years on from its commencement.

Reasonable steps

We would welcome if the regulators could update their guidance on the reasonable steps defence and include examples of good practice.

9. Is the current scope of the SM&CR correct to achieve the aims of the regime? Are there opportunities to remove certain low risk activities or firms from its scope?

As we note above in Q8, a reduction in the scope of Senior Managers requiring approval, would be beneficial.

In relation to the Certification regime, we suggest under Q7 above some aspects of the Certification Functions that could be reviewed as well as the frequency with which assessment is performed,

We also note that the FCA Directory is over inclusive and bureaucratic. It should be radically trimmed.

10. Are there "lessons learned" that government should consider as part of any future decisions on potential changes to the scope of the regime to ensure a smooth rollout to firms or parts of the financial services sector?

Financial Services Directory

The creation of the Financial Services Directory could provide some lessons for future implementation of policy and data gathering exercises. At the policy level, there was an impression amongst the industry that its development lacked a robust cost-benefit analysis, including whether the design and subsequent administrative requirements were proportionate to the benefits. At the implementation level, concerns raised by our members regarding the

useability of the templates and the functionality of FCA Connect which resulted in the FCA sensibly delaying the go-live date of the Directory and, at our request, forming a working group with our members to work through the issues raised. Additional consultation on, and testing of, the technical aspects of the policy, as part of a longer lead time, might have prevented this.

Extension of the SM&CR to all FCA-authorised Firms

The FCA significantly underestimated the volume of SMF applications that would result from extending the SM&CR to all solo-regulated firms in December 2019. It appeared under-resourced to deal with these, which resulted in extensive backlogs and delays to the approvals process that the FCA is only now beginning to address. We would encourage the authorities to ensure that they have sufficient time and resources to operationalise any further changes made to the SM&CR.

Further Extending the Regime

As set out above, we consider that there are changes that could be made to the existing SM&CR to better deliver on the regime's core objectives. It would be preferable to make these changes, and any others arising from HM Treasury's review of the SM&CR, before extending the regime to new firms or parts of the financial services sector, such as FMIIs. This would avoid creating regulatory uncertainty from extending the regime while it is in flux. The Bank of England and/or the FCA would also be better placed to design the detail of the SM&CR for new firms or parts of the financial services sector once any changes to the overall regime are known.

In addition, extending the SM&CR to new firms or parts of the financial services sector should be considered carefully given the compliance burden and the risks of unintended consequences, for example on the international competitiveness of the UK. This includes taking account of how such firms may differ from those already subject to the regime, the extent to which the existing supervision of these firms already provides for robust regulatory oversight and the existence of voluntary measures that are already in place to ensure individual accountability and good governance. Indeed, it may be that voluntary measures provide a more proportionate, efficient and flexible way of achieving the government's desired outcomes for certain firms or parts of the financial services sector.

11. Any other comments the government or regulators would benefit from receiving?

Regulatory Alignment

Our members have noted some areas in which greater coordination and harmonisation between the FCA and PRA would be appreciated. Aside from the examples covered in our response above (for example in relation to remuneration), members have also raised that the regulators take differing approaches to the allocation of Prescribed Responsibilities (for example to SMF 18s) and that the PRA Rulebook is generally drafted in a more concise, and therefore clear, manner than the FCA Handbook.

Submission of Information

Our members continue to have significant issues with the submission of information to the regulators. Aside from our comments under Q8 above on the approvals process for Senior Managers, there are issues with Forms being inconsistent between the Handbook/Rulebook and Connect, or only available in pdf copies. Other examples include that the “short” Form A is not short and that Form M cannot be submitted online, and that where additional documents are required to be attached to submissions they often contain information that is duplicative with the submission itself. Further exploration with the industry of how the information submission process could be improved would be welcome.

It would be helpful too if, where firms are submitting Forms by e-mail, the regulators’ systems could accept password protected documents. Whilst the regulators reassure firms that their email system is safe, sending unprotected documents via email is generally against firms’ internal policies.

Where errors are identified or technical problems encountered with FCA Connect, getting through to the Helpdesk/Contact Centre can be challenging, as is the frequency with which the individual at the Helpdesk/Contact Centre is unable to resolve the issue, or merely points the firm back to the rules. Frequently, firms are told that information missing due to technical errors must be submitted outside of Connect (e.g. via email), which can then trigger the issue outlined above.

Finally, we note that the PRA phone line is only open for 2 hours per day, which is limiting for firms experiencing issues.

Industry Consultation

Feedback from our members included some expression of frustration that comments made by the industry during consultation processes are often acknowledged but not taken on board. Where the regulators decide to adopt new rules “as consulted on”, it would be helpful if the they could give a fuller explanation of why they have decided not to address industry feedback and/or why the industry’s identified concerns should not arise.

Feedback to Industry

After seven years in operation, it is likely that the regulators have accrued a substantial body of examples and best practice, as well as having clarified the detail of their expectations. This should be shared. In addition, the current examples provided for MRMs and SoRs are based on the FCA’s own structure, limiting their usefulness for industry.

Additional guidance and examples across a range of topics would be beneficial for the industry as a whole, both for consistency but also in helping firms deliver against the regulators’ expectations efficiently and effectively. Topics on which guidance, examples and best practice would be particularly helpful include:

- Reasonable steps;
- Reasonable steps assessments;

- Delegation matrices;
- Conduct Rule breach reporting;
- Senior Manager applications
- Management Responsibilities Maps; and
- Statements of Responsibilities.

The publication of these could be further enriched by a process by which the regulators provided regular (e.g. annual) observations along with both weak examples and examples of good practice to provide a baseline for industry, allowing them to benchmark themselves.

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