



How insurers can prepare for SM&CR

July 2017

On 26 July 2017, the FCA and PRA published two consultation papers outlining how they plan to extend the Senior Managers and Certification Regime (SM&CR) to insurers.

Though the consultations will be open until 3 November 2017, with a final policy statement due next year, insurers should not wait for the consultation process to conclude before beginning to plan for what will result in fundamental changes to many aspects of their businesses. In the light of the scale of the challenge that firms will face and the other significant regulatory initiatives due next year firms should be considering embarking on the following:

- putting together a properly resourced project team (including HR, compliance and legal)
- ensuring board level engagement and senior level project sponsorship
- planning work-streams and timescales taking into account other projects such as mandated Board Effectiveness Reviews
- reviewing adequacy of governance mapping to reflect FCA senior management functions and allocation of prescribed responsibilities
- identifying potential new Senior Managers and Certificated persons
- reviewing job descriptions including roles and responsibilities for senior staff
- preparing for changes to process and additional record keeping requirements to comply with rules on regulatory references and annual fitness and propriety assessments
- analysing implications for employment contracts and contracts with outsource providers
- conducting gap analysis on policies and procedures
- ensuring a holistic approach to preparing for regulatory changes by establishing gateways for cooperation and communication with other projects to prepare for matters including the Insurance Distribution Directive, the General Data Protection Regulation and Brexit
- commencing development of programme of training for all staff about the new conduct rules.

The purpose of the new regime

The aims of the new SM&CR are primarily the reduction in harm to consumers and strengthening market integrity by making individuals more accountable for their conduct and competence. Whilst insurers have already implemented the Senior Insurance Managers Regime (SIMR) the regulators anticipate that SM&CR will be far more transformative with regards to culture and conduct. As part of this, the SM&CR aims to:

- encourage a culture of staff at all levels taking personal responsibility for their actions
- make sure firms and staff clearly understand and can demonstrate where responsibility lies.

A proportionate approach to the application of SM&CR will be adopted to reflect the significant differences in size and risk profile between various firms. In particular it is proposed that the full SM&CR will apply to Solvency II firms and large “non-directive firms” (NDFs) whilst a streamlined regime will apply to small NDFs, small run-off firms and Insurance Special Purpose Vehicles.

The Senior Managers Regime

The senior managers element of the regime will be similar to what is currently in place as part of SIMR. The new regime will cover many board members and most senior executives with new senior managers requiring pre-approval from the regulators in due course. Of particular note are the FCA proposals that Senior Management Functions will include individuals with overall responsibility for claims handling, complaints and IT along with the Conduct Risk Oversight Officer (for Lloyd’s firms). The FCA is also still separately consulting on bringing heads of legal functions within the regime.

The SM&CR will require the allocation of a variety of prescribed responsibilities to senior managers, with these responsibilities set out in a Statement of Responsibilities (SoR). The SoRs will need to track across to the Governance map which firms will have already prepared for the purposes of SIMR. All SMF holders have a Duty of Responsibility, which the FCA will be particularly keen to enforce.

The Certification Regime

When the certification element of the regime is extended, significantly more people will be directly regulated by the regulator than was the case under the Approved Persons Regime (APR). There is no pre-approval of individuals under the certification element of the regime; instead, firms are required to take responsibility for ensuring that all of these individuals are fit and proper to perform positions where they pose a risk of significant harm to the firm or any of its customers. Individuals working in legal, compliance and audit may all be within scope (depending on their specific role). As with SMF holders, firms are required to assess the fitness and propriety of certification staff on an ongoing basis.

Conduct Rules

Along with the rest of the APR, the Statements of Principles and Code of Practice for Approved Persons will be replaced under the new regime. The primary changes involve the inclusion of a rule requiring staff to “pay due regard to the interests of the customer and treat them fairly” and also a more pro-active requirement on senior managers to disclose issues to the FCA. However the more important change has been to the scope of application of these new rules. In addition to the conduct rules applying to senior managers and individuals covered by the certification regime, the conduct rules will also apply to all employees other than ancillary staff (and they can be fined for breaches of them).

Regulatory references

The regulators have supplemented the SM&CR with changes to the rules for regulatory references. Insurers will be familiar with the fundamentals of this regime, however the breadth of individuals caught by the FCA's regime means that these rules will apply to far more individuals than at present. Firms will need to request regulatory references going back six years and they will need to keep information going back six years about current and former staff so that they will be able to give fair and accurate references.

The consultation

If you would like to discuss these changes or if you have any thoughts which you would like RPC to make on your behalf as part of the consultation process, then please contact either your usual contact at RPC or any of those listed below.



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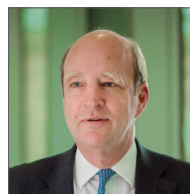
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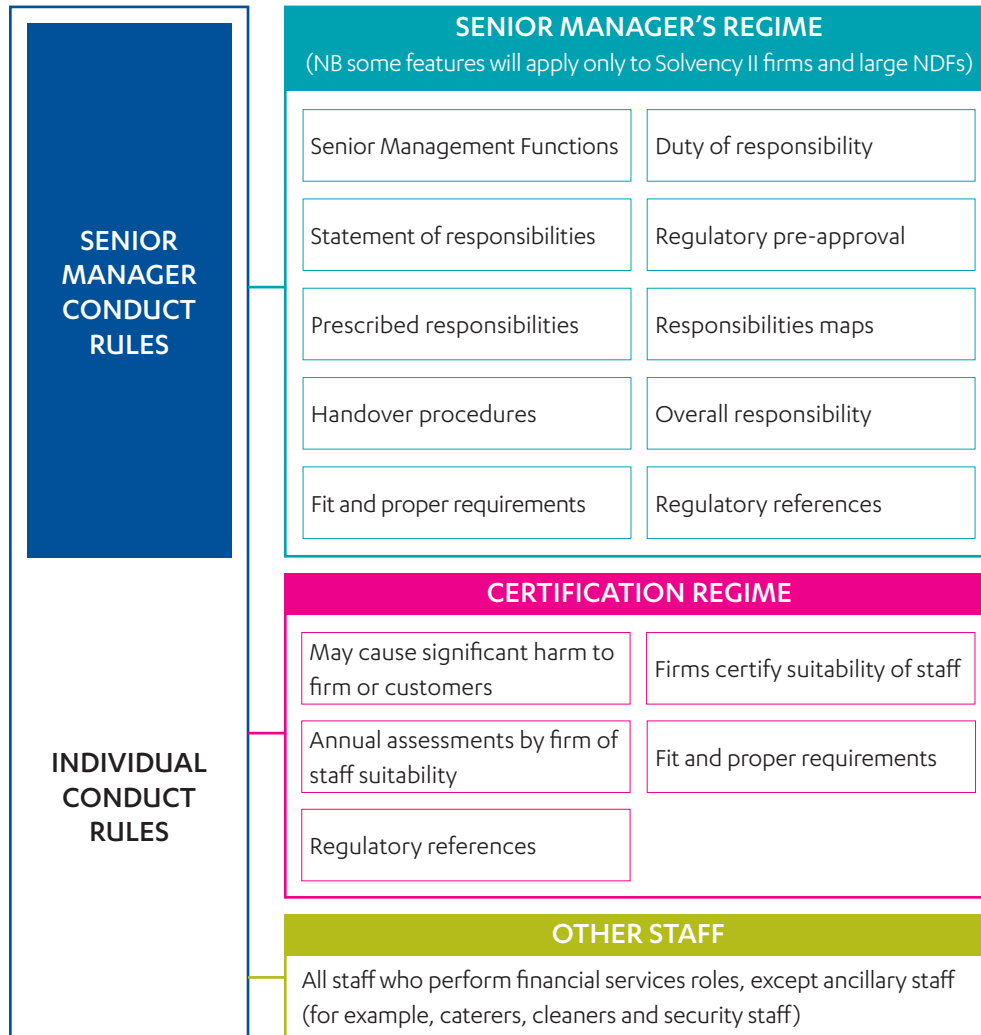


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An overview of the structure of the SM&CR*



*This has been adapted from an FCA diagram.