

FCA consults on extending Senior Managers and Certification Regime

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FCA consults on extending Senior Managers and Certification Regime

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The Financial Conduct Authority has finally published its proposals for the extension of the Senior Managers and Certification Regime (or "SMCR") that currently applies only in banks and other deposit takers to most FCA regulated entities who are not already covered by it.

There is no firm implementation date for the new rules but this is still expected to be in 2018. The proposals remain subject to further consultation and change until 3 November 2017 (and responses to the consultation can be submitted via the link below before then). Nevertheless, the current proposals do give a clearer flavour of how the rules will be rolled out and it would be a brave employer who waits for the final version to start the significant preparations likely to be needed.

Obviously this is a compliance-led issue that will have wide-ranging affect on in-scope business. However, several of the key changes fall within the employment arena and will impact on HR processes. These will take some time to put in place and we recommend that employers start making preparations now if they have not already done so.

Key points to note are that all firms caught by the revised rules (other than limited scope firms) will have to:

- introduce a responsibility map showing who in the company is responsible for various key areas (including certain mandatory responsibilities that must be allocated to someone);
- introduce individual statements of responsibility for Senior Managers, who will be personally liable if they fail to take reasonable steps to prevent or stop an FCA breach in the areas of the business for which they are responsible;
- annually certify a broad category of staff in “certification functions” as “fit and proper”;
- consider whether any performance or misconduct issues that arise breach any of the applicable FCA conduct rules (a sub-set of which will be applied to a much broader category of staff than currently), which cover matters such as the individual’s integrity, and whether they meet standards of due skill, care and diligence, and of market conduct. If the conduct rules are

breached, this may require a report to the FCA, and for those in certified functions, may affect the ability of the firm to continue to certify that person as fit and proper and therefore affect the firm's ability to continue to employ them;

- tell their staff that the conduct rules apply to them and train them on those rules; and
- comply with the enhanced rules on regulatory references that came into effect for banks earlier this year. Where for example there has been a breach by an individual of the conduct rules and disciplinary action has been taken, the firm will have to notify a prospective employer of the individual of that fact and provide details in the regulatory reference.

Additional "enhanced" requirements will also apply to a small sub-set of firms.

On the employment side specifically, HR teams in affected businesses need to start thinking about:

- producing and agreeing (or imposing) statements of responsibility;
- checking whether contracts of employment allow the imposition of necessary responsibilities on current Senior Managers (and changing templates to ensure that they do so in the future) – as one might expect, our experience is that statements of responsibility are hotly negotiated;
- ensuring employment contracts make appropriate references to the need to comply with regulatory requirements under sanction of dismissal, to the requirement for advance FCA approval being obtained and maintained for Senior Managers and for certification being obtained and maintained for Certification Functions;
- including provisions relating to the expanded conduct rules into compliance manuals/staff handbooks;

- setting up processes to annually assess and certify staff in Certification Functions;
- amending processes for appraisals/disciplinary issues to ensure that FCA conduct rules breaches are identified and, where necessary, notified as well as being fed into the certification process; and
- considering application of the new rules when entering into settlement agreements with affected staff, particularly when they have been disciplined for a conduct or capability reason.

The consultation paper can be accessed [here](#).

If you need help with any of the issues referenced in this article, please contact [Nick](#).

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