

August 2019

PS 19/20 - OPTIMISING THE SENIOR MANAGER AND CERTIFICATION REGIME

Key observations



Policy Statement PS19/20 - Optimising the Senior Manager and Certification Regime – Feedback to CP19/4 and Final Rules

The FCA policy statement 19/20 details the final rules for Senior Manager and Certification regime (SM&CR). The final rules are not significantly different from the various consultations, but below we have highlighted what in our view are interesting points and clarification.

	PS19/20	Observations
1	<p>"...the SM&CR aims to:</p> <ul style="list-style-type: none"> ▶ encourage staff to take personal responsibility for their actions ▶ improve conduct at all levels ▶ make sure firms and staff clearly understand and can demonstrate who does what" <p>(1.10 – p4)</p>	<p>In this articulation of aim of the SM&CR, the FCA is flagging the importance of day 2 outcomes, i.e. the importance of embedding the requirements and understanding to BAU activities.</p>
2	<p>The Directory</p> <ul style="list-style-type: none"> ▶ PS19/20 confirms the introduction of The Directory (see Annex 1 for further details). ▶ Solo regulated firm will be able to upload information on relevant Certified and non-SMF Directors via Connect or multi-entry facility from 9th December 2019, but must have completed the upload by 9th December 2020, which is when all staff who are to be certified have been issued certification. <p>(1.15 – 4)</p>	<p>You need to building appropriate systems and controls into your HR processes to ensure that Directory information is uploaded in a timely fashion on an ongoing basis to ensure the data on the Directory is up to date and current.</p>
3	<p>Certified Staff</p> <ul style="list-style-type: none"> ▶ The FCA confirms that staff who will become certified at transition, you will not need undertake regulatory references or redo their fitness proper assessment, as long as the individual does not change roles. ▶ Re-emphasis that anyone who supervises/managers a certified member of staff either directly or indirectly who is not a Senior Manager Function (SMF) individual, will need to certified until the line of management reaches a SMF. <p>(2.21 – 2.23 2.26 – p8/9)</p>	<p>No changes to previous rules but clarification provided.</p>

4	<p>Certified Systems and Controls staff:</p> <p>The FCA has provided additional guidance and clarification on individuals who should be certified for systems and controls, if they are undertaken by individuals who do not need to be SMFs (SYSC 27.8.7A - page 91) i.e.</p> <ul style="list-style-type: none">▶ Finance - is the function of having responsibility for management of the financial resources of the firm, including reporting directly to the governing body of the firm in relation to its financial affairs▶ Chief Risk Officer or equivalent - the function of having responsibility for overall management of the risk controls of a firm, including:<ul style="list-style-type: none">▶ the setting and managing of the firm's risk exposures; and▶ reporting directly to the governing body of the firm in relation to its risk management arrangements▶ Internal Audit - is the function of having responsibility for management of the internal audit function of the firm, including reporting directly to the governing body of the firm on the internal audit function▶ Chief operation officer or equivalent – is the function of having overall responsibility for managing all or substantially all the internal operations or technology of the firm or of a part of the firm. This can include but not limited to:<ul style="list-style-type: none">(1) business continuity(2) cybersecurity(3) information technology(4) internal operations(5) operational continuity, resilience and strategy(6) outsourcing, procurement and vendor management; and(7) management of services shared with other group members.	<p>As part of your preparation for SM&CR implementation, you may wish to re-visit your criteria for determining who should be certified in relation to systems and controls, in light of the additional guidance.</p>
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5	<p>Consumer Credit Reporting:</p> <p>If you do not have 3 years FCA consumer credit reporting period to calculate a 3 year average to determine if you are core or enhanced, then you should calculate based on reports that have been submitted to the FCA (SYSC 23 Annex 1 8.115/16G).</p>	<p>This provides useful clarification on if you have been authorised for less than 3 years.</p>
6	<p>Head of Legal:</p> <ol style="list-style-type: none"> 1. The final rules confirm that anyone who has either local or overall responsibility for the activities listed below, will not have to be an SMF, unless they have overall responsibility for another activity which means they have to be an SMF for the overall responsibility: <ul style="list-style-type: none"> ▶ <i>"the provision of legal advice or assistance to the firm or any member of its group in connection with the application of the law or with any form of resolution of legal disputes;</i> ▶ <i>the provision of representation for the firm or any member of its group in connection with any matter concerning the application of the law or any form of resolution of legal disputes;</i> ▶ <i>a reserved legal activity as defined in section 12 of the Legal Services Act 2007 (Meaning of "reserved legal activity" and "legal activity") when carried out for the firm or any member of its group; or</i> ▶ <i>any of the activities set out in section 32(1) of the Solicitors (Scotland) Act 1980 (Offence for unqualified persons to prepare certain documents) when carried out for the firm or any member of its group."</i> ▶ Also support services that are directly related but subordinate to the legal services above, are excluded but only to the extent they relate to legal services 2. The final rules confirm that the Head of Legal will have to be certified and all the rules applicable to certified staff will apply to them including code of conduct rules. Therefore, whoever manages or supervises the Head of Legal will need to be certified, if they are not an SMF. <p>(SYSC 26.4.10R & 26.4.11R – page 18/19)</p>	

<p>7 Code of Conduct</p> <ul style="list-style-type: none">▶ The FCA have confirmed that SC4 (Senior Manager Conduct rule – "<i>must disclose appropriately any information of which the FCA or PRA would reasonably expect notice</i>") does not require the disclosure of legally privileged communications (para 2.16 – p8).▶ The FCA have amended their rules so that SC4 applies not only to all non-Executive Directors who are not SMFs, but also to Executive Directors of Limited Permission firms.	<p>Useful clarification regarding disclosure of legally privileged information of SC4.</p> <p>The extensions of SC4 to all directors who are SMFs will be relevance to your dealers who in the main limited permission firms.</p>
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Annex 1

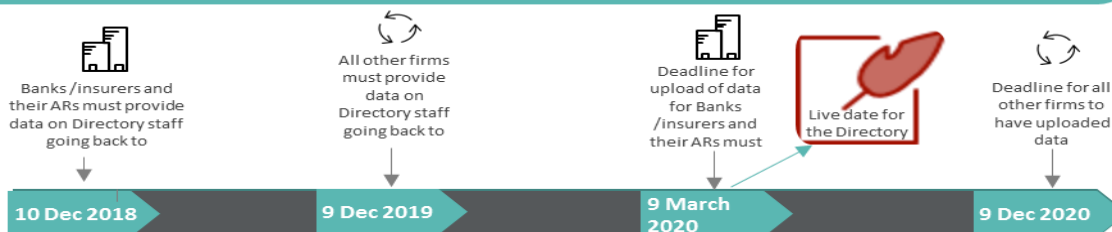
The Directory

SYSC
/SUPWho will be on
The Directory?

- ✓ certified staff;
- ✓ directors who are not SMFs; and
- ✓ sole traders and appointed representative (including staff within appointed representatives) where they require qualification to business with clients

Who

- 1) Firms' will be responsible for ensuring the information is accurate and submitted to FCA in timely manner
- 2) SMF must be allocated the prescribed responsibility of ensuring the firm's performance under the Certification Regime will also be accountable for reporting requirements for individuals who are required to be included in the Directory
- 3) Firms' must report changes re the directory individual in maximum of 7 business days
- 4) Annual report confirming no changes have occurred



Directory

Information on the Directory for each individual will include:

- 1) Employer details
- 2) Restrictions applying to a firm's regulated activities
- 3) Individual's name
- 4) Individual reference number (IRN)
- 5) Relevant role(s) held
- 6) Start and end dates of each role
- 7) Types of business the individual is qualified to undertake*
- 8) Workplace location(s)
- 9) Customer engagement method(s)
- 10) Membership of relevant accredited bodies e.g. online/telephone or face to face**
- 11) Regulatory sanctions and prohibitions (this
- 12) Date information was last updated

* roles requiring qualifications

** only for client facing roles requiring qualifications

Firms' will need to provided the following information on their directory staff :

- 1) Individual's full name
- 2) Individual reference number
- 3) Relevant role(s) held
- 4) Start and end dates of each role
- 5) Type of business the individual is qualified to undertake
- 6) Workplace location(s) including a postcode for customer facing roles
- 7) Unique identifiers including national insurance number and date of birth (passport number if no national insurance number)

Info
for
FCA

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