

SENIOR MANAGERS AND CERTIFICATION REGIME

Summary of CP 18/19 – Introducing the Directory
Published on 4 July 2018

Introduction

Document Purpose

The Financial Conduct Authority (**FCA**) is consulting on proposals to introduce a Directory of individuals who have been approved by the FCA and Prudential Regulatory Authority (**PRA**) under the Senior Managers & Certification Regime (**SM&CR**) or are Certified by the firm. The FCA wishes to make information on individuals who carry out a wider range of roles more publicly available, in addition to those already approved by the regulator.

Overview

The FCA's proposed introduction of a Directory comes at a time where it has also proposed to extend SM&CR to all firms authorised under the Financial Services and Markets Act 2000 (**FSMA**). During previous consultations on SM&CR, the FCA received substantial feedback from firms and other stakeholders on the value of a central public record of certification staff and other important individuals. This new consultation paper CP18/19 outlines the FCA's proposals in respect of this public directory.

The FCA's proposals aim to reduce the potential harm that consumers may experience through falling victim to scams and financial crime, and dealing with unsuitable individuals.

Proposed changes

Scope of the Directory

In addition to senior managers approved by either regulator to perform Senior Manager Functions (**SMF**), the FCA proposes that the Directory will include information on the following individuals who work for or on behalf of firms within the scope of SM&CR:

- ▶ **Certified staff** – This will include all staff who have a significant impact on customers, markets or the firm itself
 - ▶ **FCA Certified staff** – Individuals who fall under the Certification function of SM&CR (for example significant management functions, Material Risk Takers, algorithmic traders and roles which require qualifications)
 - ▶ **PRA Certified staff** – This will include staff certified under the PRA's Certification regime. For banks this will include significant risk takers while for insurers it will include Key Function Holders and Material Risk Takers (and those managing a Material Risk Taker)
- ▶ **Non-SMF Directors** – Non-executive directors who are not performing SMF
- ▶ **Sole Traders** – Sole traders who are excluded from the Certification Regime even if they perform a role which requires qualification(s) will be included in the Directory
- ▶ **Appointed Representatives** – Will remain under the scope of the Approved Persons Regime and appear on the current FS Register. However where an individual employed by an appointed representative requires qualifications for the role, such as mortgage or investment advisers, they will be appear in the Directory

Content of the Directory

The FCA has proposed that the Directory will include the information below, as in their view this best aligns with the needs of customers and other stakeholders. The FCA has allowed scope to add in further information in the future, as it deems appropriate.

INFORMATION	EXPLANATION
Employer details	This will comprise of the firm's name, FRN, address, contact telephone, fax, email and website
Restrictions applying to a firm's regulated activities	This will detail any restrictions the FCA or PRA has applied to a firm's permissions
Individual's name	The full name of the individual including any middle names
Individual reference number (IRN)	Under the proposals any individual required to be listed on the Directory will have an IRN which will be shown
Relevant role(s) held	This will include details of each certification function held by certified staff, designation as a non-SMF Director, sole trader or appointed representative where they are undertaking business with clients requiring qualifications
Start and end dates of each role	The date the individual commenced and ceased performing their relevant roles
Types of business the individual is qualified to undertake (if requiring qualification)	Where an individual is required to hold certain qualifications, this will detail which types of business the individual has been deemed as being suitable to undertake
Workplace location(s)	The workplace(s) of the individual, indicating either the town or city
Regulatory sanctions and prohibitions	This will detail any public action taken against the individual (for example through a Final Notice, withdrawal of approval, financial penalties or any other regulatory enforcement under s.66 FSMA)
Date information was last updated	The date of when the individual's details were last updated in the Directory by their firm

Impact on firms

The FCA will require firms to provide it with the information below about the individuals who act on its behalf:

- ▶ Individual's full name
- ▶ Individual reference number
- ▶ Relevant role(s) held (including any changes to the individual's role)
- ▶ Start and end dates of each role
- ▶ Type of business the individual is qualified to undertake
- ▶ Workplace location(s) including a postcode for customer facing roles
- ▶ Unique identifiers including passport number, national insurance number and date of birth

Notification and reporting process

The FCA will expect firms to keep the Directory up to date via Connect and so information about joiners, leavers and changes to individual circumstances of relevant individuals will need to be updated on Connect within the proposed time limits below.

CIRCUMSTANCE	TIMING
Individual new to a role	By the end of the first business day of the individual performing the relevant role
Individual leaving a role	One business day after the individual has left their role (even if the individual remains employed by the firm in another capacity that falls outside the scope of the Directory)
Exceptional circumstances (such as an individual not working a notice period or urgent and critical appointments)	Three business days after beginning or ceasing to undertake a role
Changes not affecting an individual's role or fitness or propriety (such as a change to family name or workplace location)	Three business days after the firm is made aware of the change

Firms will be able to amend information on the Directory at any time, including the ability to update information on multiple employees at once.

A firm which has not made any changes to their individuals on the Directory within the last 12 months will be required to confirm via Connect that the information is still accurate and relevant. The FCA believe this will allow them to clearly identify firms who simply have not had any leavers, joiners or changes to staff against firms who have failed to report to the FCA.

The FCA has indicated that information submitted by the firm will appear on the Directory no later than the next business day.

Accuracy

Any information submitted will not usually be amended by the FCA, therefore it will be the firm's responsibility to ensure the information it provides is accurate¹.

Accountability

The FCA has proposed amending the prescribed responsibility for ensuring the firm's performance under the Certification regime to cover the reporting requirements for individuals who are required to be included in the Directory.

For Limited Scope firms, who do not need to allocate prescribed responsibilities, the SMF 29 (Limited Scope Function) will hold responsibility for reporting under the basis that firms still need to establish and maintain controls (SYSC 4.1.1).

¹ However, it should be noted that the FCA is to pay compensation for a clone scam which took advantage of the Financial Services Register containing out of date information (see final report on complaint number FCA00459 by the Complaints Commissioner, 18 June 2018). The complaint related to an investor who purchased bonds in 2016 from a company purporting to be a credit union. The credit union had been dissolved in 2012 but remained on the FCA register.

Timing of implementation

The table below outlines the proposed dates from when firms will need to submit information for the Directory.

TYPE OF FIRM	START DATE	DEADLINE
Banks, building societies, credit unions and PRA designated investment firms and their appointed representatives (<i>only need to provide data from 10 December 2018 onwards</i>)	10 December 2018	10 December 2019
Insurers and reinsurers and their appointed representatives	10 December 2018	10 December 2019
All other firms authorised to provide financial services under FSMA	9 December 2019	9 December 2020

The FCA has said that it intends to publish the final rules in summer 2019. Upon publication of these final rules, the Connect system will go live and firms will be able to begin submitting information to the FCA.

Considerations for firms

- ▶ If you are not currently an SM&CR firm then you should ensure that the above requirements are built into your planning for SM&CR implementation.
- ▶ If you are part of SM&CR already, you should:
 - ▶ identify who will operationally update the register and ensure there is cover in case of holiday or temporary absence;
 - ▶ ensure that you design and document a process for collating and updating information on the Directory. This should include controls for ensuring the data is accurate and submitted on time;
 - ▶ define and create reports for the senior manager responsible to obtain assurance that the requirements to submit information to the Directory are being adhered to;
 - ▶ ensure processes and controls are reviewed by a senior manager who has the prescribed responsibility for ensuring the firm's performance under the Certification regime or, if you are a Limited Permission firm, then the individual who holds SMF 29;
 - ▶ if you have appointed representatives, design and implement appropriate procedures for reporting into your system for updating the regulator. Also consider if the appointed representative or other documents need updating;
 - ▶ monitor relevant activities including the supply and accuracy of data to you for the Directory; and
 - ▶ consider whether your employment contracts and lawful bases for processing personal data and any data consents are appropriate or need updating.

Further information

Introducing the Directory, [CP18/19](#), 4 July 2018 (NB consultation closes on 5 October 2018)

[AG FS Update](#): "Senior Managers Regime - Personal Accountability in Financial Services Firms", 22 May 2018

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