MiFID II, PSD2, GDPR and now SMCR – the latest acronym you are going to be hearing a lot about in 2019. This next compliance change is a product of the 2008 financial crisis.

In the wake of the crisis, the Parliamentary Commission on Banking Standards recommended a series of measures to improve standards in financial services. The PRA and FCA took these recommendations forward, by replacing the Approved Persons Regime with a new Senior Managers and Certification Regime (SMCR), for deposit takers and the largest insurance firms. Designed to increase market integrity, the SMCR is now being extended to almost all financial services firms. The new regime is scheduled for implementation on 9 December 2019 and will affect businesses ranging from one person IFAs to asset managers with billions under management.

As firms begin preparing for the first phase of this new regulatory landscape, we outline the key changes coming up over the next 10 months and how you should be planning for them.

Identifying Which Elements of the SMCR Apply

The FCA recognises that there is a wide range of different business models and governance structures that apply to the broad variety of firms that will be affected by the new regime. There will be a standard set of requirements for all but the smallest ‘Limited Scope’ FCA solo-regulated firms, known as the ‘core regime’.

But to ensure that the new regime is flexible enough to meet these different structures, there will be extra requirements for a portion of firms whose size, complexity and potential impact on consumers warrant more attention, known as the ‘enhanced regime’.

SMCR Checklist: The Countdown Begins

Jonathan Segal of Fox Williams LLP

Initial Governance Mapping and Statements of Responsibility

The SMCR introduces specific Senior Management Functions (SMFs); as with the current Approved Persons Regime, anyone who holds an SMF will require pre-approval from the regulator before performing this role. The FCA are proposing to develop a new directory of financial services workers.

The SMCR also introduces seven new ‘Prescribed Responsibilities’ that must be given to Senior Managers and an additional responsibility for Authorised Fund Managers. This is to ensure that a Senior Manager is accountable for the key conduct and potential risks.

Senior Managers will have a ‘Statement of Responsibilities’ for this purpose, which sets out the areas they are responsible and accountable for. Firms will need to keep Statements of Responsibility up to date and resubmit them to the FCA whenever there is a significant change to a Senior Manager’s responsibilities.

Issuing certificates to Certified Staff

Under the new Regime, firms must issue certificates to employees who will be performing FCA significant harm functions, to certify that they are fit and proper to perform their role.

Firms will need to identify their certified employee population by December 2019 and conduct a detailed review of role-specific qualification, training and competence requirements. Employers should be comfortable that their certification staff meet any role-specific regulatory requirements, or they may find themselves in a difficult position when the SMCR implementation deadline arrives. The FCA is proposing a phased arrangement over one year to allow for the more effective implementation of the certification regime in solo regulated firms, which means that the requirement to certify won’t arise until 2020.

Action list:

- Prepare an initial governance map of the organisation, identifying all staff within the firm who will hold a SMF
- Allocate prescribed responsibilities and prepare draft statements of responsibilities for Senior Managers
- Initial training for all designated Senior Managers and meet with individual SMF holders to discuss mapping and statements of responsibilities
- Review all current roles and identify who will be certified and the qualification, training or competence requirements for each position
- Finalise an annual Fitness and Propriety Assessment Policy
- Assess fitness and propriety of all certified staff and record decisions

Application of Conduct Rules to staff who are not Senior Managers or Certification Staff

New Conduct Rules will apply across firms to all non-ancillary staff. There is an obligation on employers in advance of this date to inform their employees about the application of the rules, how they work in practice and the consequences of breaching them.

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Action list:

- Review regulatory guidance to determine whether the core, enhanced or limited scope regime applies
- Analyse which SMCR requirements will be relevant. The core regime consists of three main elements: the Senior Managers Regime, the Certification Regime and the Conduct Rules
- Engage senior executives at an early stage in the SMCR implementation process
The Senior Managers and Certification Regime
What Senior Managers should expect
by Joanna Chatterton of Fox Williams LLP

As the name suggests, the role of a Senior Manager will be pivotal to your business once the regime comes into force in late 2019. But who will be a Senior Manager and what will change for you if you become one?

Will you be a Senior Manager?
Having a senior role or the title Manager won’t necessarily mean you are a Senior Manager. Senior Managers are the most senior people with the greatest potential to cause harm or impact on market integrity. There won’t be many of them in your firm – even the largest retail banks have less than 40.

The FCA has identified certain Senior Management Functions. Not all firms will require all of these – that depends on its size, complexity and the regulated activities it carries out. Anyone who holds such a Senior Management Function will require pre-approval from the regulator before performing this role.

The regime introduces new “Prescribed Responsibilities” that must be given to Senior Managers. These have been identified by the FCA to ensure that there is a Senior Manager who is accountable for all key risks.

What your firm will be doing to get the Senior Manager team in place
1. Identifying individuals who will hold Senior Manager Functions (SMFs)
2. Allocating prescribed responsibilities that are relevant to the firm’s activities to those SMFs
3. Identifying overall responsibilities of senior individuals for any other activities, functions or business areas
4. Identifying problem areas, for example:
   - Concerns about obtaining FCA approval for any individuals
   - Do they need to restructure/reallocate responsibilities
   - Are there any reluctant candidates or do they need to manage those disappointed not to be allocated an SMF

Duty of Responsibility
Senior Managers must comply with additional Conduct Rules as well as those applicable to most staff. They also have a duty of responsibility - this means that if a firm breaches one of the regulator’s requirements, the Senior Manager responsible for that area could be held accountable if they did not take ‘reasonable steps’ to prevent or stop the breach. Sanctions include fines or being barred.

Training
The FCA has imposed specific training obligations. One to One session with advisers and possibly paid for independent legal advice to ensure you understand your responsibilities may be offered for Senior Managers.

Reputation
If you breach a Conduct Rule this will need to be reported to the FCA. Any concerns about your fitness and propriety will need to be recorded on the new style regulatory reference – the days of the agreed reference hiding a multitude of sins are over.

New Paperwork to sign
Senior Managers will have a ‘Statement of Responsibilities’ which sets out what they are responsible and accountable for. This is submitted to the FCA and must be kept up to date.

You are likely to be asked to sign an updated employment contract. The SMCR does not override the general principle that if your contract doesn’t expressly permit a change in your role, responsibilities etc your agreement is required. Be warned that refusing to agree to your Statement of Responsibilities will mean you can’t perform the Senior Manager role and could be a fair reason to dismiss you.

Financial incentives were not the norm to secure agreement in the banking sector unless as a result of the SMCR the individual had a significantly enhanced role and responsibilities.

It is important that if you are a Senior Manager you:

1. Understand the scope of your responsibilities
2. Know the conduct rules
3. Are questioning and challenging
4. Oversee line reports proactively
5. Always follow up on queries and issues
6. Understand the business you are responsible for and the regulatory requirements applicable to it
7. Keep appropriate records to demonstrate reasonable steps have been taken
8. Check that the firm has insurance policies which are adequate to cover you and are fit for purpose.

This overview is general guidance. It should not be relied upon without first taking separate legal advice. Neither the author nor Fox Williams LLP accept any responsibility for any consequences resulting from reliance on the contents of this document.

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As the name suggests, the role of a Senior Manager will be pivotal to your business once the regime comes into force in late 2019. But who will be a Senior Manager and what will change for you if you become one?
COMING EVENTS

OUR NEXT SUMMIT

AltFi Australasia Summit 2019
15th April 2019
Join AltFi at their fourth annual Australasia Summit to examine “The Future of Lending in Australia”. Each year this event draws together some of the major global and Australian thought leaders to discuss the impact of technology on lending and the emergence of online and non-bank lending.

UPCOMING FORUMS & SEMINARS

Fintech Investor Forum 2019
15th May 2019
We’ll be discussing the trend of fintechs moving into the public markets and the risks and rewards that it brings for investors, founders and fintech businesses themselves.

The Alternative Property Forum
The second Alternative Property Forum will look at the diversity of the property investment space with a look at ‘where we are in the cycle’ and the idea that alternative property finance firms can have a real impact in helping to support SME housebuilders.

The Alternative Income Forum
Over the last few years there’s been an explosion in the number of funds and investment trusts focused on generating an income using alternative assets. Our second forum in this space will bring all these strategies together in one room.

Contact events@altfi.com for more information

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Experts in FinTech

We can provide a flexible menu of services so you can choose the service which best suits your business, from a light touch package to assistance with full implementation of the SMCR, to include:

**Light Touch**
- Introductory webinar outlining the key requirements of the SMCR
- Template contracts and policy documents
- Provision of training materials
- Ad hoc advice on regulatory and employment issues as needed

**Full Implementation**
- Advising on initial mapping exercise, preparing draft statements of responsibilities and meeting with designated Senior Managers to discuss implications of the SMCR
- Reviewing and updating employment contracts for Senior Managers, Certified and other staff, updating Employee and Compliance Handbooks and drafting tailored Delegation, Referencing, Handover and Whistleblowing policies
- Preparing and delivering customised training to staff at all levels, including mandatory conduct rules training
- Advising on requirements and processes for assessing fitness and propriety annually, guidelines for line managers on new forms for appraisals, establishment of a process for providing regulatory references and appointment of a whistleblowing champion

We work with established businesses, financial institutions and start-ups.

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