

FCA'S SENIOR MANAGERS & CERTIFICATION REGIME

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2 December 2019

Introduction

- What is the SM&CR?
- Approved Persons
- 3 components
 - Senior Managers
 - Certification
 - Conduct Rules
- When does it come into effect?
- What is the aim?



What does this mean for housing associations?

- Types of firm
 - Limited scope
 - Core
 - Enhanced
- Limited or full permission consumer credit firm?
- What do we need to do before 9 December 2019?
- What do we need to do before 9 December 2020?



Senior Manager Regime

- Current Approved Persons
- Senior Management Functions (SMFs)
- Requirements for Limited Scope & Core
- Governance Functions & Required Functions
- Not all required – what if you don't have any?
- Only if applicable to your business



Senior Management Functions

Limited Scope

SMF29 – Limited Scope Function

SMF16 – Compliance Oversight

SMF17 – Money Laundering Reporting Officer (MLRO)

Core (in addition to SMF 16 and 17)

SMF1 – Chief Executive

SMF3 – Executive Director

SMF9 – Chair



Controlled Functions to SMFs

Function mapping for Core and Limited Scope firms (including branches)

Current controlled function	Corresponding Senior Management Function(s)
CF1 – Director	SMF3 – Executive Director
CF2 – Non-Executive Director ⁹	SMF9 – Chair
CF3 – Chief Executive	SMF1 – Chief Executive
	SMF19 – Head of Third Country Branch ¹⁰
CF4 – Partner	SMF3 – Executive Director ¹¹
	SMF27 – Partner
CF5 – Director of Unincorporated Association	SMF3 – Executive Director
CF6 – Small Friendly Society Function	SMF3 – Executive Director
CF8 – Apportionment & Oversight ¹²	SMF29 – Limited Scope
CF10 – Compliance Oversight	SMF16 – Compliance Oversight
CF11 – Money Laundering Reporting Officer (MLRO)	SMF17 – Money Laundering Reporting Officer (MLRO)
CF29 – Significant Management Function ¹³	SMF21 – EEA Branch Senior Management Function

N.B. no automatic transfer for CF2, CF28 and CF29

Prescribed Responsibilities

- None for Limited Scope firms
- For Core:
 - Performance of obligations under Senior Manager Regime
 - Performance of obligations under Certification Regime
 - Performance of obligations in respect of notifications and training of Conduct Rules
 - Responsibility for policies and procedures for risk re financial crime
- Duty of responsibility (FSMA) – all Senior Managers
- *“If a firm breaches one of our 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”*

Statement of Responsibilities (SoR)

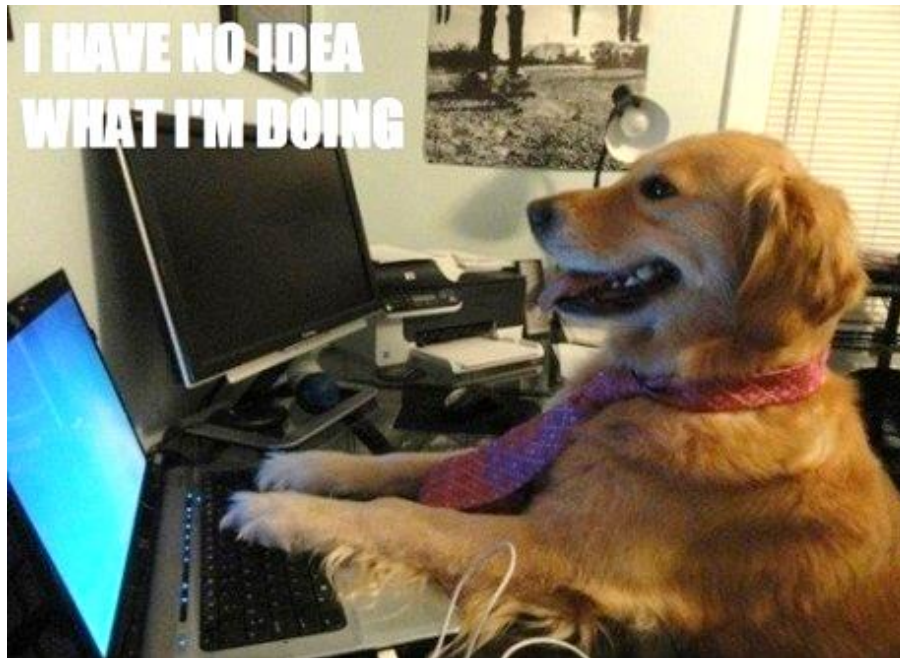
- Needed by all SMs
- Per individual not per SMF
- Per firm (if SM covers several in group)
- What should it contain?
- Prescribed responsibilities
- For current SMs – have available on request
- For new SMs - submitted with applications
- Kept up to date



Certification Regime

Q: What is it?

A: It is all about suitability (and certification)



Certification Regime

- What is it?
- Responsibility is on YOU to make sure staff are fit and proper
- An individual:
 - has obtained relevant qualifications;
 - has gone or is undergoing training; and
 - possesses a level of competence.

Certification Regime

- Who might it apply to?
- Anyone carrying out a Certification Function
- “Employees” (including advisors)
- Not to Senior Managers (in their capacity as Senior Managers) unless separately carrying out a “very different” Certification Function
- Will also apply to those supervising a Certification Function

There is a chain of responsibility

Certification Regime

- Certification Functions
- Carrying out a Significant Management Function (CF29)

Significant Responsibility for a Business Unit...

- Making material decisions on the commitment of the firm's financial resources, its financial commitments, its assets acquisitions, its liability management or its overall cash and capital planning;
- processing confirmations, payments, settlements, insurance claims, client money and similar matters;
- complaints handling;
- determining whether an applicant should be accepted for credit (including lending) and on what terms; or
- a member of a committee (that is, a person who, together with others, has authority to commit the firm) making decisions in these functions



Certification Regime

- Certification Functions
- Systems and Controls Function (CF28)

Responsibility for reporting to the governing body of a firm, or the audit committee (or its equivalent) in relation to:

- its financial affairs;
- setting and controlling its risk exposure; and
- adherence to internal systems and controls, procedures and policies



Certification Regime

- Non-Executive Directors (NEDs)
- NEDs are also subject to the “fit and proper” test
- NEDs must have regulatory references
- Notwithstanding they may not actually be carrying out a Certification Function
- However, if a NED is a non-approved board director (and you are a Limited Scope Firm) then this does not need to be done



Certification Process

- What needs to be done?
- You need to certify that
 - each person with a Certified Function
 - each NED (if applicable)
 - each Senior Manager

Is fit and proper.

Certification Process

- **Fit and Proper?**

- What you must assess:
 - Honesty, Integrity and Reputation
 - Competence and Capability
 - Financial Soundness

“Ensure that the annual fitness and propriety checks for Certification staff and Senior Managers fit into your firm’s existing HR and other processes”



Certification Process

- **Fit and Proper?**

- **You must certify each year that each Senior Manager, Certified Person or NED meets these requirements.**
- Look at evidence of fraud, dishonesty (civil or criminal)
- Disciplinary issues or other misconduct
- Regulatory issues
- Complaints, mismanagement
- General competence
- Adequate training and experience
- Demonstrable skills
- Financial Probity and personal solvency.

Certification Process

- **Certification for Function**

- You must certify each year:
- Who are the persons carrying out Certified Functions in your firm
- That these persons are Fit and Proper

Certification Process

- **How??**

- *Criminal DB Checks*: Senior Managers only
- *FCA Approval*: Senior Managers only
- *Regulatory References*: Senior Managers, Certified Persons and NEDs

Annually

- *Fitness and Proper Test*: Senior Managers, Certified Persons and NEDs
- *Certification for Function*: Certified Persons only

Certification Process

- **References**

- Request a reference from all previous employers in past 6 years (all)
- Share information in a standard template
- Disclose any findings that the person is not fit and proper
- Disclose any other relevant information (e.g. complaints) from past 6 years except for serious misconduct which has no time-limit
- Retain records of disciplinary and fit and proper findings going back (at least) 6 years
- Not enter into arrangements that conflict with disclosure obligations, e.g. NDAs

Certification Process

Summary of fitness and propriety requirements

	New hire	Internal hire (including intra-group hires)	Annual assessment
Senior Manager			
Regulatory reference	✓	✗	✗
F&P assessment	✓	✓	✓
FCA approval before commencing role	✓	✓	✗
Criminal record check	✓	✓	✗
Certification Function			
Regulatory reference	✓	✗	✗
F&P assessment	✓	✓	✓
Certificate for function	✓	✓	✓

Certification Process

- THE DIRECTORY



Certification Process

- WHEN?

On and from 9 December 2019



Conduct Rules

- Applies to all staff involved in activities
- Individual Conduct Rules
 - You must act with integrity
 - You must act with due skill, care and diligence
 - You must be open and co-operative with the FCA and other regulators
 - You must pay due regard to the interests of customers and treat them fairly
 - You must observe proper standards of market conduct
- Senior Manager Conduct Rules



Breach of Conduct Rules

- Notify FCA if disciplinary action taken against staff in relation to Conduct Rules
- Written warning, suspension, dismissal, reduction of salary
- Keep FCA informed as to material events or changes
- Timing:
 - SMs – within 7 days
 - Other staff – annually
- Failure to disclose could be a criminal offence



Reminder – what should we do?

9 December 2019

- Register SMs if required and allocate PRs
- Prepare SoRs
- Identify Certification staff
- Training on Conduct Rules for SMs and Certification staff
- Policies into place

9 December 2020

- Complete initial certifications
- Train all other staff on Conduct Rules
- Continue to monitor

Key Questions

- Limited Scope or Core?
- Who are the Senior Managers?
- Will the current Approved Persons transfer automatically?
- Does each Senior Manager have a SoR?
- Have the Prescribed Responsibilities been allocated to the Senior Manager and included in the SoR?
- Which Certification functions apply?
- How can we carry out fitness and propriety checks for Certification staff and Senior Managers?
- How can we incorporate the checks and references required into our recruitment and monitoring processes?
- Who needs to be trained on the Conduct Rules?
- When does this need to take place?

Money Laundering and Criminal Liabilities

- ML hides the origin of the dirty assets so that they appear to have come from a legitimate source
- Offences carry up to 14 years imprisonment and unlimited fine
- Secondary offences are particularly important for Regulated Sector – include:
 - Failure to report a suspicion / failure to suspect
 - Tipping off re Report
 - Tipping off re Investigation
- Defence for non Nominated Officer (MLRO) – inadequate training. So the buck is passed to the MLRO. Pass it back with adequate training.

Are you in the Regulated Sector?

- Governed by Money Laundering, Terrorist Financing and Transfer of Funds (Information to Payer) Regulations 2017
- Not specifically aimed at Registered Providers
- Aimed at business areas, including:
 - Estate Agency
 - Consumer Credit and other regulated lending
 - High Value Dealers? €10,000 in cash
 - Money services businesses – transmitting money
 - Various others – hopefully irrelevant

Processes and Procedures

- The aim is to undertake checks significantly to increase the likelihood that ML is detected, so that suspicions are then reported to the MLRO. Done by:
 - Identifying your customer
 - Identifying the customer's source of funds
- Training
- Record keeping



Practical Questions

- Are you receiving reports from Staff Members? If not, why not?
- Are you investigating the position? Reach a reasonable suspicion?
- Are you reporting to the NCA?
 - Risks of ML Defences – Civil Liability
 - Extended Moratorium Period – now over 7 months
- Are you registered with FCA / HMRC for AML?
- Do you need an Officer for Compliance with overall oversight?

Questions...

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Accreditations





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