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# The new Senior Managers and Certification Regime

Extending it across the Financial Services industry



October 2017

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## The details

We now look at each of the key elements of the new regime, assessing how they will apply to non-banking non-insurer firms. With its proposals, the FCA has built on how the new regime has been implemented with banks, but has included several new elements that take into account proportionality, which will benefit smaller or simpler firms and impose additional requirements on those firms that are the largest and most complex.

We now review in turn:

- The basic structure
- The designated senior management functions
- Allocation of responsibilities to senior managers
- Statement of responsibilities for senior managers
- Management responsibility maps
- The conduct rules
- References
- The certification regime
- The duty of responsibility for senior managers
- Application to UK branches of EEA and third country firms

# Get in touch

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Should you require implementation support or wish to discuss the contents of this publication, please do not hesitate to contact us.



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# The basic structure

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## Impact of the change – high

The new regime reflects the FCA's determination to ensure that staff at all levels are fully alert to regulatory requirements, and also the wider thrust to hold senior managers responsible for breaches in their area of responsibility.

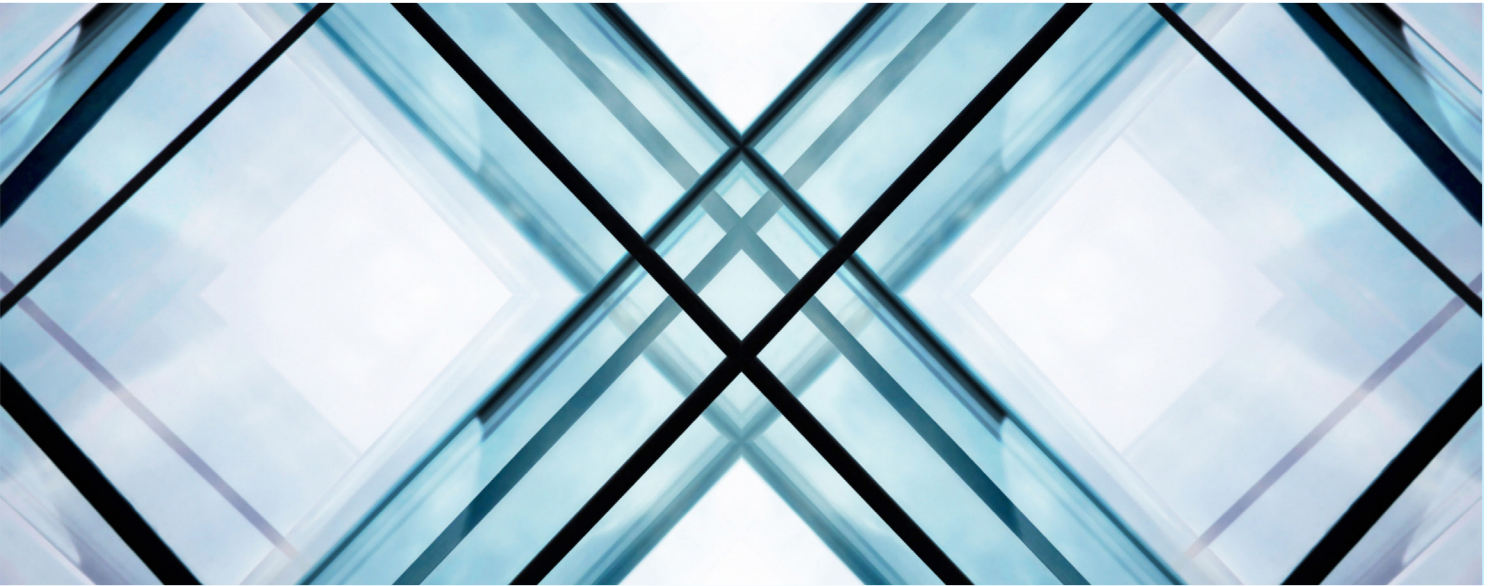
## Firms

Under the new regime, firms will fall into one of three categories:

1. **Core regime firms** – This will be the majority of firms, to which the standard set of 'core requirements' will apply.
2. **Enhanced regime firms** – These are the largest and most complex firms (fewer than 1% of FCA-regulated firms), to which extra requirements will apply. The criteria for identifying Enhanced firms are as follows:
  - A firm that is a Significant IFPRU firm
  - A firm that is a Large CASS firm
  - Firms with Assets Under Management of £50 billion or more (at any time in the previous 3 years)
  - Firms with current total intermediary regulated business revenue of £35 million or more per annum
  - Firms with an annual regulated revenue generated by consumer credit lending of £100 million or more
  - Mortgage lenders (that are not banks) with 10,000 or more regulated mortgages outstanding
3. **Limited Scope firms** – These firms will be subject to fewer requirements than core firms. This category covers all firms that currently have a limited application of the Approved Persons Regime, including:
  - Authorised professional firms whose only regulated activities are in non-mainstream regulated activities
  - Limited Permission Consumer Credit Firms
  - Sole traders
  - Internally managed AIFs (that are not a collective investment scheme)
  - Not-for-profit debt advice bodies

The following firms will also be Limited Scope firms if (1) its principal purpose is to carry on activities other than regulated activities and (2) it is not a MiFID investment firm:

- Oil and energy market participants
- Services companies
- Wholly owned subsidiaries of a local authority or registered social landlords
- Firms whose regulated business is restricted to insurance distribution activity in relation to non-insurance contracts



SYSC 23 Annex 1R provides definitions of the different types of firms and the criteria for categorisation as a Core, Enhanced or Limited Scope firm. The FCA may, on a case-by-case basis, require a Core firm to comply with the Enhanced firm requirements if it considers it appropriate to do so.

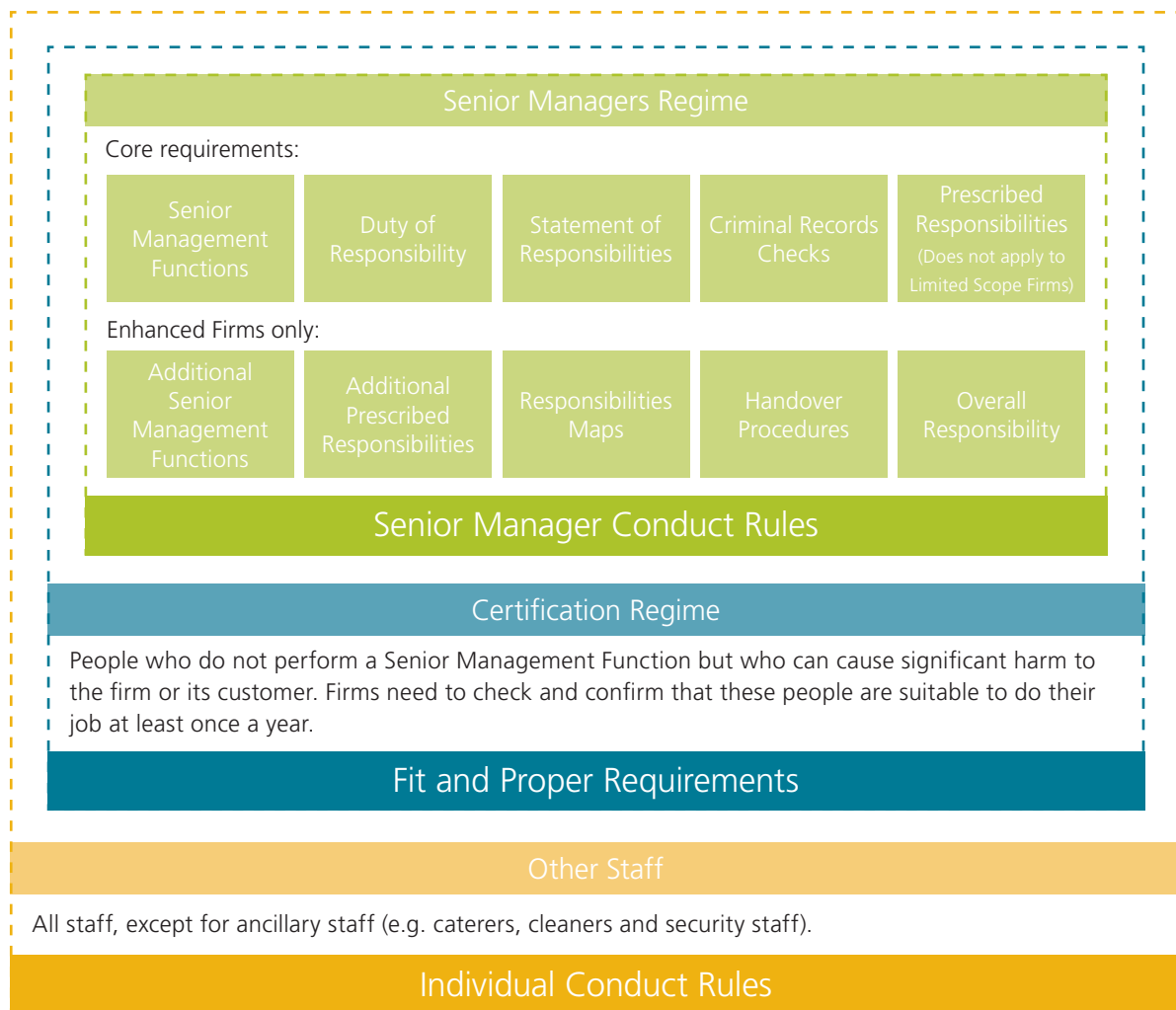
Rules covering the transition of a firm from one category to another are also provided in the Annex. When a firm becomes an Enhanced firm based on the above criteria, it will have six months from when it first meets the criteria until the status becomes effective and it will have to comply with the Enhanced firm requirements. If a firm no longer meets the criteria, it will remain subject to the rules for one year. For Limited Scope firms and EEA and non-EEA branches, they will not be moved into the Enhanced regime even if they meet the necessary criteria.

## Staff

A firm's staff will be divided into the following three categories:

1. **Senior managers** – The top layer of executive management and all directors. Known as Senior Management Function (SMF) managers, they must be pre-approved by the FCA and will be subject to first and second tier conduct rules, which are substantially similar to the current Statements of Principle for Approved Persons (APER). In addition:
  - A senior manager must prepare a **statement of responsibilities** (SoR) setting out his/her duties. An Enhanced firm must also prepare a **management responsibilities map** (MRMap) linking these together and describing its governance arrangements.
  - A senior manager is subject to the **duty of responsibility** and must take reasonable steps to prevent a regulatory breach occurring in order to avoid being found guilty of misconduct by the FCA.
2. **Certification staff** – Individuals below the level of senior manager who can **cause significant harm** to the firm or its customers, such as managers of significant business areas, dealers, customer advisers and their managers, will not be individually approved (even if Controlled Functions (CFs) at present). Instead, the firm is responsible for ensuring and certifying their fitness and propriety. They are termed **certified staff** and are subject to first tier conduct rules.
3. **Conduct staff** – All other staff, apart from twenty designated categories such as cooks, cleaners and receptionists (ancillary staff), will be subject to the same first tier conduct rules as certified staff (called **conduct staff**).

## Summary Diagram



# The senior management functions

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## Impact of the change – medium

For most firms the new SMFs will be drawn from a sub-set of existing CFs.

A senior management function (SMF) is where the person holding the function (the senior manager) is **responsible for managing** (meaning taking or participating in taking decisions, so this catches board and committee membership) one or more aspects of the firm's regulated affairs which involve a **risk of serious consequences** for the firm. Senior managers will be the most senior people in the firm with the greatest potential to cause harm or impact upon market integrity. The FCA has stated that a controlled function (CF) is one performed:

- Under an arrangement (including office, partner, employment or contractor)
- Entered into by a firm or its contractor (typically an Appointed Representative (AR))
- In relation to the firm carrying on a regulated activity

### Four key points are:

1. A group employee will only perform a CF for the firm if performed under an arrangement entered into by the firm or pursuant to a contract between the firm and the group member.
2. A firm must ensure that an SMF is fit and proper. This, in summary, means that they are of good repute and integrity; possess adequate knowledge; hold necessary qualifications and are properly trained.
3. A person may combine SMF roles other than (probably) Chairman and Chief Executive, and certain risk roles will need to be held by different people.
4. An individual currently approved as a CF who is not changing their role will not need to be re-approved to continue as the equivalent SMF, although a 'grandfathering' form will probably be required.

### Who will be an SMF?

The FCA has proposed the following SMFs **for all firms** (except for Limited Scope firms):

#### **Governing functions**

- **Chief Executive** (SMF 1) - responsibility for the conduct of the whole of the business (SUP 10C.5.12)
- **Executive directors** (SMF 3) - other directors apart from Non-Executive Directors (SUP 10C.5.1)
- **Partners** (SMF 27) - a partner in a firm, other than a limited partner in a partnership (SUP 10C.5.16)

#### **Governing functions – Non-executive**

- **Chairman** (SMF 9) - responsibility for chairing, and overseeing the performance of the role of the governing body of the firm (SUP 10C.5A.5)

### **Required functions**

- **Money Laundering Reporting Officer (MLRO)** (SMF 17) - responsibility for overseeing the firm's compliance with the FCA's rules on systems and controls against money laundering (SUP 10C.6.2)
- **Compliance Oversight** (SMF 16) - responsible for the compliance function in the firm and reporting to the governing body (SUP 10C.6.1)

Some firms will not need to apply all of these SMFs, as many will not be relevant for individual firms. For example, a sole trader will not need any of the Governing functions (such as a Chief Executive).

The following SMFs will also apply to **Enhanced firms** (in addition to the above):

### **Governing functions**

- **Chair of the Audit Committee** (SMF 11) - responsibility for chairing and overseeing the performance of any committee responsible for the internal audit system (SUP 10C.5A.8)
- **Chair of the Nominations Committee** (SMF 13) - responsibility for chairing and overseeing the performance of any nomination committee (SUP 10C.5A.2)
- **Chair of the Remuneration Committee** (SMF 12) - responsibility for chairing and overseeing the performance of any committee overseeing design and implementation of a firm's remuneration policies (SUP 10C.5A.1)
- **Chair of the Risk Committee** (SMF 10) - responsibility for chairing and overseeing the performance of any committee overseeing risk management systems, policies and procedures (SUP 10C.5A.6)
- **Senior Independent Director** (SMF 14) – performing the role of a senior independent director, with particular responsibility for assessing the chairman's performance (SUP 10C.5A.14)
- **Group Entity Senior Manager** (SMF 7) – (where the firm is part of a group) an officer of the firm's parent company, who is not an SMF of the firm, but has significant influence over the firm's regulated activities. This goes beyond setting group policy and equates to having responsibility for implementing it where no local manager has that responsibility (SUP 10C.5B.1). A firm considering appointing an SMF 7 should recognise that the individual will be subject to the first and second tier rules (see Conduct Rules) when they may find it difficult to fulfil their requirements. Firms in this position may wish to consider reallocating responsibilities in order to address this issue.

### **Systems and controls functions**

- **Chief Finance Officer function** (SMF 2) - responsibility for managing the firm's financial resources and reporting directly to its governing body on its financial affairs (SUP 10C.6A.3)
- **Chief Operations function** (SMF 24) - overall responsibility for managing all, or substantially all, internal operations/ technology of the firm (SUP 10C.6B.1)
- **Chief Risk function** (SMF 4) - responsibility for overall management of a firm's risk controls, setting and managing its risk exposures, and reporting directly to the governing body on its risk management arrangements (SUP 10C.6A.4)
- **Head of Internal Audit** (SMF 5) - responsibility for management of the firm's internal audit and reporting directly to the governing body on it (SUP 10C.6A.6)

### **Required function**

- **Other Overall Responsibility** (SMF 18) - where a person has overall responsibility for one of the firm's activities, business areas or management functions not falling within the remit of another SMF (SUP 10C.7.1) – see Allocation of responsibilities to senior managers.



For **Limited Scope firms**, the required SMFs will depend on the firm's specific activities and permissions. This will include one or more of the following:

- Compliance Oversight (SMF 16)
- MLRO (SMF 17)
- Limited Scope function (SMF 29) – this is the same as the Apportionment and Oversight function under the Approved Persons Regime and is only relevant for Limited Scope firms (SUP 10C.6.4)

#### **Non-Executive Directors**

The FCA will only approve the Chairman of the firm, instead of approving all Non-Executive Directors (NEDs). While some NEDs are currently approved under the Approved Persons Regime, they will not require the FCA's approval under the new regime. However, all NEDs will still be subject to the conduct rules, the regulatory reference and the fit and proper requirements.

## General provisions about SMFs

#### **Fit and Proper Assessment**

A firm must at all times ensure that its senior managers are fit and proper to perform an SMF (or a certification function). In assessing the individual, a firm must have regard to the criteria laid out in FIT in the FCA Handbook. This includes a consideration of the following in relation to the individual:

- Honesty, integrity and reputation;
- Competence and capability; and
- Financial soundness.

An individual must be assessed prior to their appointment to carry on an SMF and on an ongoing basis (at least once a year).

As part of the assessment, a firm must take reasonable steps to obtain regulatory references from past employers for the previous six years (see Regulatory References) and conduct criminal record checks. If the person has worked overseas, it may be appropriate to conduct an overseas criminal record check and a reference check with the overseas regulator (SYSC 22.2.1 & FIT 2.1). A criminal record check is also required for any board directors that are not SMF managers (i.e. NEDs) (SYSC 22.5.19).

If, at any point, a firm becomes aware of circumstances or grounds upon which the FCA could withdraw the SMF manager's approval, the firm must notify the FCA (section 63(2A) FSMA).

### Shared appointments

The FCA expects a firm to appoint a single individual to perform each SMF role. However, a firm may share responsibilities among more than one person provided it is appropriate and can be justified, for example as part of a job share or a handover. A firm should however avoid assigning too many responsibilities to one person, so that they are not able to carry out those responsibilities effectively (SYSC 24.3.6 – 10).

### The 12-week rule

A person appointed to provide cover for an SMF manager whose absence is temporary or reasonably unforeseen (such as holidays or emergencies) for less than 12 weeks in any consecutive 12-month period will not be performing an SMF and will not require FCA approval. However, as soon as it becomes apparent that a person will be performing an SMF for longer than 12 weeks, the firm should apply for approval (SUP 10C.3.13-14).

### FCA applications

The detailed application procedure for senior managers to carry on an SMF is outlined in SUP 10C.10. Particular points to note are:

- Application must be made in advance of performing the function using 'form A' (SUP 10C.10.8 - 8A). If withdrawing an application for approval, form B is used (SUP 10C.10.36).
- The firm must be satisfied that the candidate is fit and proper before submitting the application (SUP 10C.10.14 – 22).
- The firm must obtain regulatory references for the candidate (SYSC 22.2.1).
- An application must be accompanied by a statement of responsibilities for the candidate and a summary of the handover material, for which see below (SUP 10C.10.11 – 13).

### Advising cessations

If a person ceases to perform an SMF, the firm must notify the FCA within seven business days using form C, or form E if applying for them to perform another SMF (SUP 10C.14.5). If a person ceases to perform an SMF but continues to perform one or more other SMFs, the firm must submit a revised statement of responsibilities using form J (SUP 10C.11.12). A firm must notify the FCA as soon as practicable on becoming aware, or it being likely, that it will submit a qualified form C – dismissal, suspension, resignation under investigation, discipline, or may not be fit and proper (SUP 10C.14.7).

### Conditional and time limited approvals

The FCA may give approval for a person to carry on an SMF that is only for a limited time or is subject to conditions in certain circumstances. These are most likely to be:

- Where the firm is making an interim appointment for more than 12 weeks but for no more than 12 to 18 months (SUP 10C.12.7 – 15);
- Where an enforcement investigation may call into question the individual's fitness and propriety but there are insufficient grounds to refuse approval (SUP 10C.12.16 – 18); or
- Where the FCA considers that a candidate is fit and proper only subject to a condition or time limit, for example where there is a competence issue such as lack of technical knowledge that can be remedied by training (in this case the firm must apply for permanent appointment after a fixed period of no more than 12 to 18 months); or the condition may not be ability-related, for example requiring a NED to resign from other directorships (SUP 10C.12.19 – 29).

An approval can be limited by reference to the nature or scope of the role, for example:

- Where a firm is changing its business model or risk profile, a candidate's approval may be linked to a forthcoming milestone;
- There may be a condition that the candidate's role may not change;
- There may be a condition that the candidate does not get involved in parts of the role for which he/she is not competent, and for which the firm has made other arrangements;
- That he/she takes responsibility for a remediation programme; or
- Requiring the candidate to take stated actions (SUP 10C.12C 30 – 43).

The firm may request to vary a conditional approval using form I and the FCA may do so on its own initiative (SUP 10C.13). Failure to observe a condition is a breach of sections 59 & 63A FSMA by both firm and individual.

## Handover pack – Enhanced firms

In order to ensure continuity of performance, **Enhanced firms** will be required to ensure that a person becoming an SMF manager, one taking on a new role or changing responsibilities, has all the necessary information to perform their job effectively and compliantly. This material should be practical, adding judgement and opinion and assess what should be prioritised. It should include predecessor input and identify unresolved and possible breaches, and unresolved regulatory concerns (SYSC 25.9).

Elements of a handover pack might include:

- Organogram and statement of operations
- Identification of key operating procedures
- List of key elements of management information
- Last 12 months management reports and accounts for the area
- Last 12 months internal audit, compliance and regulatory reports
- Details of progress on current projects and remedial work

A **summary of the handover material** must be provided to the FCA with the SMF manager's application for approval.

# Allocation of responsibilities to senior managers

## Impact of the change – medium

Firms will be required to reconsider and formalise the allocation of responsibilities. This is also a good time to look at practical governance – how are decisions made, and who oversees what?

A firm will be required to allocate certain FCA-defined responsibilities to an appropriate SMF manager (**Prescribed Responsibilities**), which are in addition to the inherent responsibilities that are already part of that senior manager's role. That person may already be an SMF manager because they hold one of the functions described in the Basic Structure section, or they may have to become an SMF manager as a result of performing a Prescribed Responsibility or a key function. The FCA provides detailed explanations of each Prescribed Responsibility in SYSC 24.2.6 and a table explaining which type of firm must have which prescribed responsibilities in SYSC 24 Annex 1. Prescribed Responsibilities will **not apply for Limited Scope firms** (SYSC 24.1.1).

The Prescribed Responsibilities for all firms (excluding Limited Scope firms) are:

- Responsibility for the firm's **compliance with the Senior Managers Regime**, including implementation and oversight (usually the Chief Executive)
- Responsibility for the firm's **compliance with the Certification Regime** (usually the Chief Executive)
- Responsibility for the firm's **obligations in respect of notifications and training of the conduct rules** (usually the Chief Executive)
- Overall responsibility for countering **financial crime**, including responsibility for the firm's policies and procedures (perhaps the MLRO)
- Overall responsibility for the firm's compliance with **CASS** (if applicable)
- Responsibility for ensuring the governing body is **informed of its legal and regulatory obligations** (this is not applicable for Enhanced firms)
- Responsibility for an **AFM's value for money assessments, independent director representation and acting in investors' best interests** (only applicable for AFMs)

For **Enhanced firms**, the following additional Prescribed Responsibilities must be allocated to senior managers:

- Compliance with the firm's Management Responsibilities Map (MRMap)
- Safeguarding and overseeing the independence and performance of the internal audit function
- Safeguarding and overseeing the independence and performance of the compliance function
- Safeguarding and overseeing the independence and performance of the risk function
- If the firm outsources its internal audit function, taking reasonable steps to ensure the independence of the persons involved in the performance of the service from the persons who perform the external audit
- Developing and maintaining the firm's business model by the governing body
- Managing the firm's internal stress-tests and ensuring the accuracy and timeliness of information provided to the FCA for the purposes of stress-testing

### Overall Responsibility

For **Enhanced firms**, the Overall Responsibility requirement will also apply. Enhanced firms must ensure that every **activity, business area** and **management function** has a senior manager responsible for it. This is not applicable for either **Core firms** or **Limited Scope firms**. Overall Responsibility means that the senior manager needs to be the most senior person responsible for managing the area, including having primary and direct responsibility for:

- Briefing and reporting to the governing body about their area of responsibility; and
- Putting matters for decision about their area of responsibility to the governing body.

This does not mean that the person must have day-to-day management control of that function, but instead they must have sufficient resources and authority to be able to exercise their management and oversight responsibilities effectively (SYSC 26.3).

The FCA has provided guidance on the business activities and key functions of firms in SYSC 25 Annex 1G. However, this list is not mandatory or exhaustive, and it is intended for firms to use as a prompt to identify the business activities and key functions within their business. These business activities and key functions include (but are not limited to):

- Administration of insurance
- Client trading
- Collection and recovering amounts owed to a firm by its customers/dealing with customers in arrears
- Corporate investments
- Customer complaints handling
- Customer service
- Design and manufacturing of products for wholesale and retail customers
- Financial or investment advice
- HR
- Incentive schemes for the firm's staff
- Investment management
- Investment research
- Issuing commitments
- Market making
- Middle office (means risk management and controls in relation to, and accounting for, transactions in securities and derivatives)
- Mortgage advice
- Origination/syndication and underwriting
- Payment services
- Processing
- Production and distribution of marketing materials and communications
- Providing information in relation to a specified benchmark
- Settlement
- Wholesale and retail lending decisions
- Wholesale and retail sales

This requires an **Enhanced Firm** to identify its key activities, which may include some of those set out above, or different ones so as to reflect its actual operations, and ensure that they are allocated appropriately and with a senior manager responsible.

# Statement of responsibilities for senior managers

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## Impact of the change – high

The need to prepare a regulatory job description for each Senior Manager is an exacting task as it requires the firm to consider how it has allocated responsibilities, and for the Senior Manager to agree the scope of responsibility that he or she is prepared to accept.

Each firm will be required to prepare, and file with the FCA, a **statement of responsibilities** (SoR) when seeking approval for an SMF manager. This applies for Enhanced, Core and Limited Scope firms. The SoR is in effect a regulatory job description for the senior manager that fulfils two functions. First, it enables the firm to be satisfied that certain responsibilities have been clearly allocated to a specific manager. And second, it will enable the FCA to identify who within a firm's senior management is responsible for that area.

An SoR must follow a prescribed form, clearly describe the allocated senior management Prescribed Responsibilities and demonstrate how they fit in with the firm's governance and management structure. The wording used to describe them may not alter, reduce, dilute or undermine the scope of the SoR prescribed requirements.

A firm will also be required to file a revised SoR with the FCA if there is a significant change in the SMF manager's responsibilities (including where a Prescribed Responsibility is added or removed) or if there is a change in how responsibilities are shared.

An SoR must:

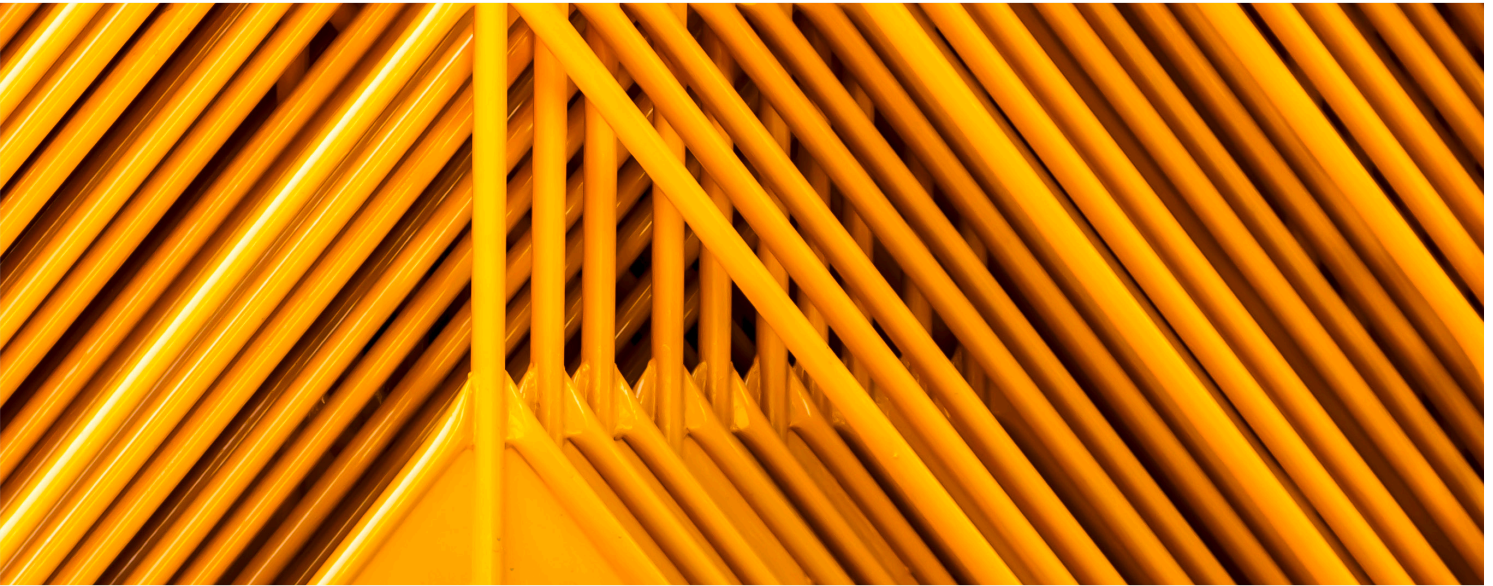
- Be consistent with the firm's MRMap and the SoRs for the firm's other SMF managers;
- Be complete and not refer to documents that do not form part of it;
- Only contain matters that SUP 10C/FSMA permit;
- Demonstrate how the responsibilities fit in with the firm's governance and management;
- Clearly explain what responsibilities are split or shared, state why and identify the other SMF manager;
- Be practical and useable by the FCA, without unnecessary detail, succinct and clear (SUP 10C.11.23 – 28, 32);
- Include specific responsibility for a regulatory outcome, if requested by the FCA. For example to ensure a firm takes remedial action (SUP 10C.11.30); and
- Restrict the description of each responsibility to a 300 word limit.

### Shared responsibility

Where SMF managers share a responsibility, each person is individually responsible for everything included in that responsibility (SUP 10C.11.33). Where some part of the responsibility has not clearly been allocated, it will be assumed that that part is the joint responsibility of all of them.

### Inherent responsibility

Every SMF is defined to include an 'inherent, inseparable and intrinsic' responsibility that is built into the role. This is the most important responsibility given to an SMF manager and they will be accountable for that aspect of the firm's activities (even if they have not been allocated any other responsibilities) (SUP 10C.11.29).



### Significant change

A firm must file a revised SoR with form J if there is a 'significant change' in the SMF manager's responsibilities (section 62A FSMA). 'Significant change' includes:

- Imposition, variation or removal of condition or time limit;
- Fulfilling (or not) a condition on approval;
- Adding, reallocating or removing an SMF;
- Sharing or dividing a function (or ceasing to do so); or
- A significant change to a person's job, for example important functions added or removed, changed seniority, changes to the SMF manager's report, and changes to the skills, experience or knowledge needed for the job (SUP 10C.11.6).

### Changes

An application to the FCA must be made in advance if a change in job or responsibilities will result in an SMF manager performing a different SMF (SUP 10C.14.1). Changes to personal details and to arrangements outside section 62A FSMA and SUP 10C.11 should be notified within seven business days of the firm becoming aware using form D (SUP 10C.14.13).

### Record keeping

A firm must hold a complete set of current SoRs for all its SMF managers as filed with the regulators, and also retain past versions (SUP 10C.11.20 – 22).

# Management responsibility map

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## Impact of the change – high

Preparing the map requires a firm to give thorough consideration to the overall allocation of responsibilities as well as the structure and operation of its governance.

**Enhanced firms** will be required to prepare and maintain a single document, called the **Management Responsibility Map** (MRMap) which sets out its management and governance arrangements, and shows how the elements fit together. It must give an overview of how responsibilities have been allocated across the firm and be designed to ensure that the SoRs do not leave any gaps in this allocation. This is not a requirement for either **Core** or **Limited Scope firms**. The MRMap, typically a computer file kept up-to-date, is intended to enable both the firm and the FCA to be satisfied that the firm has a clear organisational structure as required by SYSC, and to identify which senior manager is accountable for what function if something goes wrong. The mandatory requirements for what an MRMap must contain are outlined in SYSC 25.2. These include (but are not limited to):

- **Names and responsibilities** of Board members, senior managers and senior personnel reporting to them (including all responsibilities described in any current SoR)
- Details of **reporting lines & lines of responsibility**
- Details of **how responsibilities are shared or divided** between different senior managers
- The firm's **management and governance arrangements** and how they fit together with its group / the rest of the firm
- **Governing or managing body** – matters reserved and committee Terms of Reference
- Details of **allocation of required responsibilities**

The MRMap must be consistent with the SoRs and be prepared in a way that makes it simple for the firm and the FCA to see how the responsibilities allocated in an SoR fit into the overall system of the management and governance of the firm (SYSC 24.4.1 & 2).

Firms can use the table of business activities and key functions in SYSC 25 Annex 1G (see Overall Responsibility) to assist in determining whether its MRMap covers all necessary activities and areas.

# Conduct rules

## Impact of the change – medium

The rules are little changed from the present. The impact will be their application to all (or nearly all) staff, and the exacting standard to which the FCA will enforce them.

The conduct rules (known as COCON) take the form of a personal promise made to the FCA and enforceable by disciplinary action. They are similar to the current Statements of Principle for Approved Persons (APER) and apply to all of a firm's staff (other than for the excluded category of **ancillary staff**, such as receptionists, messengers, cleaners and secretaries) (COCON 1.1.2). The conduct rules will apply to a firm's regulated and unregulated financial services activities (including any related ancillary activities).

### First Tier



#### Applicable to SMF managers, certified staff and code staff ('Conduct Rules Staff')

**Rule 1:** You must act with integrity – this requires the management of risk, the exercise of sound judgement and observation of rules as well as honesty (COCON 2.1.1)

**Rule 2:** You must act with due skill, care and diligence – this requires all staff to understand their area of the business and to act competently (COCON 2.1.2)

**Rule 3:** You must be open and cooperative with the FCA and other regulators (COCON 2.1.3)

**Rule 4:** You must pay due regard to the interests of customers and treat them fairly – this corresponds with the FCA's longstanding Treating Customers Fairly (TCF) requirement, but is new in making this a personal obligation (COCON 2.1.4)

**Rule 5:** You must observe proper standards of market conduct – this encompasses not only market abuse but proper conduct in all other markets, whether or not regulated (COCON 2.1.5)

### Second Tier



#### Applicable to SMF managers only

**SC1:** You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively (COCON 2.2.1)

**SC2:** You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system (COCON 2.2.2)

**SC3:** You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively (COCON 2.2.3)

**SC4:** You must disclose appropriately any information of which the FCA would reasonably expect notice (COCON 2.2.4)

SC1 to SC3 require an SMF manager to understand the business he or she manages, to identify the risks and to ensure that they are properly managed, supervising delegates and receiving and acting upon adequate management information. SC4 goes beyond Rule 3 in requiring a SMF manager proactively to advise the regulators when required.

### **The standard of compliance**

In determining the standard of compliance, the FCA will look at the circumstances, the nature of the function and the behaviour expected of someone in that role. A person will only breach COCON through personal culpability, meaning conduct that is deliberate or falls below a reasonable standard.

When assessing SMF conduct, the FCA will look at whether he or she exercised reasonable care and reached a reasonable conclusion, as well as the nature of the firm's business, their role and responsibility (as set out in their SoR), and what they knew or ought to have known about regulatory concerns over their role and responsibilities. There is a particular focus on responsibility for participating in collective decision-making.

### **What must a firm do?**

A firm may need to contractually require an SMF to observe each conduct standard. A firm must also ensure that everyone subject to COCON is notified of the rules and take all reasonable steps to ensure that they understand how they apply to them, including by training so that they have a broad understanding of all the rules and a deeper understanding of the specific rules relevant to them.

### **Notification of breaches**

Firms are required to notify the FCA of a significant rule breach by any Conduct Rules Staff, which includes a rule, a statement of principle, a principle or a COCON rule (SUP 15.3.11R). There is no de minimis but the use of the word 'significant' – to be judged against the regulators' objectives – should enable a firm to review the breach and determine whether it meets a reportable threshold.

A firm must advise the FCA:

- As soon as practicable and no later than seven business days after becoming aware of information reasonably material to assessing an FCA-approved SMF manager's fitness and properness (including material that would be declared on a form A or contained in FIT2) (SUP 10C.14.18-21)
- Using form C (on termination) and otherwise form D of any of the following circumstances:
  - The FCA having grounds for withdrawal of approval (section 63(2A) FSMA)
  - Knowing or suspecting failure to comply with conduct rules (section 64B(5) FSMA)
  - Taking disciplinary action (section 64C FSMA) (SUP 10C.14.22)
- Within a day of determining that it will be submitting a qualified form C (termination) for an SMF manager for suspension, resignation under investigation, dismissal, lack of fitness and properness, breach of conduct rules or disciplinary action (SUP 10C.14.7-9)

A firm must not enter into any agreement on termination that would conflict with its duty to supply information to the FCA (SUP 10C.14.26).



### What about non-executive directors (NEDs)?

The FCA recognises that NEDs individually **do not manage a firm's business** in the same way as executive directors and has confirmed that a NED is neither required nor expected to assume executive responsibilities. The **standard of care, skill and diligence** that the FCA would expect from a NED is that of a reasonably diligent person with the general knowledge, skill and experience that may reasonably be expected of a person carrying out the NED's functions. While NEDs (apart from the Chairman) will not be senior managers, they still must observe the conduct rules.

The **general role** of any NED is to provide effective oversight and challenge and help develop proposals on strategy, and they are **expected to do this** by:

- Attending and contributing to board and committee meetings and discussions
- Taking part in collective board and committee decisions, including voting and providing input and challenge
- Ensuring they are sufficiently and appropriately informed of the relevant matters prior to taking part in board or committee discussions and decisions (COCON Annex 1G 2 – 4)

# Regulatory references

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## Impact of the change – high

The requirement for a firm to give a completely candid reference will have a significant impact on how firms give references, and the ease with which individuals with adverse records can move between firms.

The FCA requires that **all regulated firms** (as the new employer) cannot employ an individual in a senior management or certified role or as a NED without having obtained a **regulatory reference** from the former employer as part of their assessment of whether that individual is fit and proper. An exception to this is for NEDs of **Limited Scope firms**, who will not be subject to this requirement.

If a firm (A) advises another firm (B) that A is considering appointing a person (P) to perform an SMF, certified role or as a NED, and requests B as P's current or former employer for a reference or other information in connection with P's appointment, B must as soon as reasonably practicable give A all relevant information of which it is aware, and that is relevant to A's assessment of whether P is fit and proper (SYSC 22.2.2).

The standard of disclosure is that B should:

- Exercise due skill and care in preparing the reference (SYSC 22.5.4(1))
- Ensure it is true, accurate, fair and based on documented facts (SYSC 22.5.4(3))
- Take reasonable care to verify the facts and opinions contained in any frank and honest views (SYSC 22.5.4(2))
- Not enter into any agreement conflicting with these obligations (SYSC 22.5.13)

**Requesting any reference** – prior to appointing P to perform an SMF or certified function, A must take reasonable steps to obtain references from current and previous employers for the past six years (SYSC 22.2.1). This is regardless of whether or not the previous employer is a regulated entity.

**Specific disclosures** – specific information must be disclosed by B when a regulatory reference is requested. This information includes:

1. Details of any certification function or controlled function (including being an SMF) or of NED position held by P and a summary of what the role involved and its responsibilities.
2. Details of other roles performed while an employee of any firms within the group in the last six years.
3. If a firm has concluded that in the last six years before the request for a reference, that a candidate was in breach of COCON or APER, or has breached a conduct rule, the facts that led to that conclusion.
4. If a firm has concluded that in the last six years before the request for a reference, P was not fit and proper to perform a function, the facts which led to that conclusion.



5. Details surrounding and the outcome of any disciplinary action taken as a result of points (3) or (4) above (SYSC 22.2.2(4)).

It may be necessary for a firm to disclose information that goes beyond the mandatory minimum information outlined above. For example, providing details of where a breach of COCON or APER has occurred more than six years before the request for the reference (SYSC 22.5.10). An older breach should not be disclosed unless there is a good reason for doing so (SYSC 22.5.10(3)) and examples of these instances can be found at (SYSC 22.5.11).

**Form of the reference** – The regulatory reference must be in the template specified at SYSC 22 Annex 1R.

**Obligation to revise references** – a firm is under a continuing obligation to update a reference given in the previous six years where a former employer becomes aware of circumstances that would cause them to draft the reference differently if it were drafting it now. The circumstances must significantly affect the assessment of whether P is fit and proper (SYSC 22.2.4).

# The certification regime

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## Impact of the change – high

Each firm will become responsible for vetting – ‘certifying’ – personnel below the level of senior management who deal with customers or whose activities could seriously impact the firm. This is a major transfer of the gateway responsibility from the FCA to each individual firm since this level of staff will no longer be CF28s, 29s or 30s but instead certified by the firm as fit and proper for that job.

All firms (**Enhanced, Core and Limited Scope firms**) will be required to ensure that an employee (including a secondee) only performs a certification function if it has issued a single certificate for them to do so:

- Stating it is satisfied **he/she is fit and proper**
- To perform a stated function(s) (and every aspect of it or them)
- Setting out what affairs he/she will be performing, which may be in broad terms, not listing every activity
- And which is valid for 12 months

Which it should only do if **satisfied that they are fit and proper for that function**, having regard to:

- The nature, scale and complexity of the firm’s business
- The job description covering the proposed function
- The individual’s qualifications, training, competence, skills, knowledge, experience and personal characteristics, including checking convictions and contacting previous employers

A firm must **maintain a record** of each certificated employee (SYSC 27.2.3 – 8).

A firm may only issue a certificate if satisfied the person is **fit and proper** for the role, and that he/she:

- Has the right characteristics, including good reputation and integrity
- Possesses knowledge, competence and experience
- Has the qualifications
- Has undergone or is undergoing all necessary training to perform effectively and compliantly, and enable sound and prudent management (FIT 2.1).

This will require a formal recorded determination which sets out how each element has been considered and satisfied. A firm should give detailed consideration to these elements, especially when assessing integrity and competence, which may include speaking to the individual’s manager. It is unlikely that a firm can reach a satisfactory determination simply by reviewing an individual’s CV or training record.

A **certification function** is one that requires an employee to be involved in one or more aspects of the firm's regulated activities which:

- Are performed from its UK establishment, or deal with a UK client from its overseas establishment (territorial limitation), and
- Involve a risk of significant harm to it or those using or contemplating using its services.

**The certification functions (also referred to as FCA-specified significant-harm functions) are:**

- **Algorithmic trading** (SYSC 27.7.23) – this involves approving the deployment of, amendments to and combination of trading algorithms; monitoring compliance of a trading algorithm with a firm's obligations or the rules of a trading venue to which it is connected
- **Benchmark submission and administration** (SYSC 27.7.3) – the person allocated the function of benchmark manager or administration manager
- **CASS oversight** (SYSC 27.7.1) – the person allocated oversight of operational effectiveness with respect to CASS
- **Client dealing** (SYSC 27.7.18) – staff dealing with clients or their property when advising on, dealing in or arranging investments; acting as an investment manager; or acting as a bidder's representative
- **Functions requiring qualifications** (SYSC 27.7.11) – where Training & Competence requirements apply, principally retail investment and mortgage advisers
- **Managers or supervisors of certification employees** (SYSC 27.7.13) – both direct and indirect
- **Material risk takers** (SYSC 27.7.14) – a person who falls within the Material Risk Takers Regulation (there is no territorial limitation (SYSC 27.3.1) (see Appendix 1)
- **Proprietary traders** (SYSC 27.7.4) – where the activity does or might involve the risk of significant harm to the firm or any of its customers
- **Significant management** (SYSC 27.7.5) – with significant responsibility for a significant business unit, considering its risk profile, use of firm's capital, contribution to P&L, staffing and customers

#### **Role changes and temporary appointment**

An individual must be reassessed if their function changes, and also before being assigned a new function with different requirements. A new certificate is required if the new work extends beyond the scope of the current certificate (SYSC 27.2.15).

If a firm decides not to issue a certificate resulting from a role change after having considered whether an individual is fit and proper, it must give the person reasoned written notice of any steps it will take, and consider notifying the FCA of any COCON breach (SYSC 27.2.12).

A temporary appointment to a specified significant-harm function (other than one requiring qualifications) to provide cover for a reasonable unforeseen absence for less than four weeks does not require certification (SYSC 27.5.1).

# The duty of responsibility for senior managers

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## Impact of the change – high

The new trigger for disciplinary action underlines the FCA's determination to ensure that senior managers are liable for breaches in areas for which they are responsible.

At present a senior manager can be disciplined for misconduct in **two circumstances**:

- For breaching a statement of principle for approved persons (in due course, a code of conduct rule), or
- For being knowingly concerned in the firm's breach.

A new third ground has been introduced and will apply under the new regime – where the firm has breached a rule in an area where an SMF manager is responsible and he/she did not take reasonable steps to prevent that breach (see FSMA s.66A(5)(d) for FCA enforcement action). This is applicable for **all firms (Enhanced, Core and Limited Scope firms)**.

### Assessing conduct

The FCA will assess the steps that the SMF manager took against those it considers should have been taken. Factors that the FCA may consider are:

- The size, scale and complexity of the firm
- What the SMF manager actually knew, or an SMF manager in that position ought to have known
- What expertise and competence the SMF manager had, or ought to have possessed
- What steps the SMF manager could or should have taken
- The actual responsibilities of that SMF manager and the relationship between those responsibilities and the responsibilities of other SMF managers
- Whether the SMF manager delegated any functions, taking into account that any such delegation should be appropriately arranged, managed and monitored
- The overall circumstances and environment, at the firm and more widely, in which the SMF manager was operating at the time

### Steps to take

In relation to the **steps that an SMF manager actually took** to avoid the contravention occurring or continuing, the examples of what could be relevant steps include:

- Pre-emptive actions to prevent a breach occurring, including any initial reviews of the business on taking up an SMF
- Implementing, policing and reviewing appropriate policies
- Awareness of relevant requirements and standards of the regulatory system
- Investigations or reviews of the SMF manager's areas of responsibility



- Where a breach is continuing, the response to that breach
- Structuring and control of day-to-day operations, including ensuring any delegations are managed and reviewed appropriately
- Obtaining appropriate internal management information, and critically interrogating and monitoring that information
- Raising issues, reviewing issues, and following them up with relevant staff, committees and boards
- Seeking and obtaining appropriate expert advice or assurance, whether internal or external
- Ensuring that the firm and/or relevant area has adequate resources, and that these are appropriately deployed, including for risk and control functions
- Awareness of relevant external developments, including key risks

Every SMF manager should consider whether their business is structured to enable them to take these, or analogous, steps and whether they possess adequate authority to take them – and if not, do something about it. He/she should also ensure that he/she keeps adequate records to demonstrate that he/she has done so.

#### **Records to keep**

Evidence that the FCA might seek to obtain in respect of these kinds of matters might include:

- Board and board committee minutes
- Minutes of other internal meetings
- SoRs and MRMap
- Organisation charts and information on reporting lines
- Any other internal materials e.g. emails or telephone recordings
- Regulatory correspondence and interviews

This further emphasises the importance of keeping orderly and adequate records and, in particular, ensuring that board, committee and internal meetings are adequately minuted, recording individual contributions when necessary.



# Application to UK branches of EEA & third country firms

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## Impact of the change – high

The new regime is likely to apply with few modifications to incoming EEA and third country branches.

The FCA's policy is that firms of a comparable size and complexity and carrying out the same activities should compete on a relatively level playing-field regardless of their legal status. In other words, the regime for UK-incorporated firms should apply as far as practicable to an incoming branch, with variations only to recognise essential structural differences, and as required under EU law for incoming EEA branches.

The FCA recognises that the board of an incoming branch will be located in its home state and strategy and plans for the branch will often be set by parts of the firm based in the home state. As a result, the FCA will focus on the governance of the branch, rather than of the firm as a whole, and on the individuals that run the branch on a day-to-day basis. Significant responsibility is placed on branch senior management; for example, if Head Office proposes a significant strategy or business change, the responsible SMF manager should assess it and ensure it is implemented compliantly, or otherwise inform the FCA (COCON 4.2.2).

### Senior management functions

An **incoming EEA branch** is only required to have:

- An **MLRO** (SMF 17)
- An **EEA Branch Senior Manager** (EBSM) (SMF 21) (SUP 10C.8.4-7) – which requires three characteristics:
  - A person who falls within the statutory definition of senior manager (the relevant individual has responsibility for managing (meaning taking or participating in taking decisions about)) one or more aspects of the firm's affairs in relation to it carrying on a regulated activity which do or might involve a risk of serious consequences for the firm or other UK interests (section 59ZA FSMA)
  - Whose determination of fitness and properness is not reserved to his/her home member state (which will generally not be the case)
  - Who has significant responsibility (such as head of the unit, or member of the committee that takes decisions regarding the unit) for a significant business unit (assessed in accordance with risk profile, use or commitment of capital, contribution to P&L, employees, customers and other relevant factors) that carries on any of:
    - Designated investment business other than dealing in investments as principal
    - Processing confirmations, payments, settlements, insurance claims, client money or similar relating to designated investment business
    - Activities subject to CASS
    - Accepting deposits from retail banking customers and substantially connected activities

A branch manager and a person performing a governing function at an incoming branch do not need to be approved unless they fall within the EBSM definition. An approved SMF manager at an incoming EEA branch will be subject to the tier 1 and tier 2 conduct rules so far as consistent with EU legislation.

There is no territorial limitation for SMF managers in EEA branches, which means that the regime will apply to anyone who performs an SMF (MLRO or EBSM), whether they are based in the UK or overseas. However, the FCA has stated that, in practice, they expect most branches to be able to identify SMF managers who are primarily based in the UK.

A **third country branch** is required to have a larger number of SMF managers. The branch must have:

- **Head of Third Country Branch** (SMF 19) (SUP 10C.5.15) – the person with the highest degree of individual decision making authority within the branch over activities subject to UK regulation, and who will typically be performing CEO-level activities in the branch; there can be joint office holders, although this would be relatively unusual.
- **Executive Director** (SMF 3)
- **Partner** (SMF 27) (where applicable)
- **Compliance Oversight** (SMF 16)
- **MLRO** (SMF 17)

### Prescribed responsibilities

Prescribed Responsibilities do not apply for incoming EEA branches (SYSC 25.6.4).

A third country branch, however, must ensure that an SMF manager is responsible and accountable for all of the branch's activities, whether regulated or not, and wherever that person is situated (SYSC 26.3).

A third country branch must allocate the following Prescribed Responsibilities, which will apply to an SMF manager (SYSC 24 Annex 1 - 4.2):

- Performance of obligations under the **senior managers regime**, including implementation and oversight
- Performance of obligations under the **certification regime**
- Performance of obligations in respect of notifications and training of the **conduct rules**
- Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further **financial crime**
- Responsibility for the firm's compliance with any applicable **CASS requirements**
- Responsibility for management of the firm's **risk management processes** in the UK
- Responsibility for the firm's **compliance** with the UK regulatory system applicable to the firm
- Responsibility for the **escalation of regulatory correspondence** to the governing body and/or the management body of the firm or, where appropriate, of the parent undertaking or holding company of the firm's group
- Responsibility for an **AFM's** value for money assessments, independent director representation and acting in investors' best interests (where applicable)

### Other responsibilities

A third country branch must ensure that an SMF manager is clearly responsible for each of the activities, business areas and management functions of the branch (that are not included in a SMF or Prescribed Responsibility) and is directly involved in their management (SYSC 26.3). Any such SMF manager will have **local responsibility** for that activity, area or function. There are two relevant categories:

- **Activities under the management of the branch's governing body:** an SMF manager must have overall responsibility for each such activity, area or function where this reports into the governing body. The FCA expects that the person to whom the responsibility is allocated is the most senior employee or officer responsible for managing or supervising that function under the management of the governing body. A person can have local responsibility for a function even if they also report to a person outside of the branch (SYSC 26.3.2, 26.7.3 and 26.7.6).

- **For other activities**, for example an area that reports directly to Head Office and not through the branch’s governing body, or where there is no branch governing body, an SMF manager must have overall responsibility for such activities and be directly involved in managing them, but need not form part of or sit within the branch managing structure. Where the branch allocates responsibility to an SMF manager that is not based in the branch, the FCA expects that it will be allocated to an SMF manager who is the most senior person responsible for implementing that strategy for the branch (SYSC 26.8.1-4).

**Local responsibility** – a person with local responsibility must be sufficiently senior and credible, and have sufficient resources and authority to be able to exercise their management and oversight responsibilities effectively. A person does not have local responsibility for a function just by being a member of the governing body and it does not necessarily mean having ultimate authority over it or having day-to-day management control. Furthermore, it would not be considered unusual if a person who has local responsibility for a function was not a member of the governing body, for example the head of compliance may report directly to the governing body even though the head of compliance himself is not a member of the governing body (SYSC 26.4.4, 26.6.6 and 26.9.1-2).

### Statements of Responsibility

All branches will be required to have statements of responsibility for SMF managers and the requirements are the same as for a UK firm (see Statements of Responsibilities for Senior Managers). The relevant forms have been tailored so that any sections that are not relevant to EEA or third country branches are omitted.

### MRMaps

An EEA and third country branch must both have an MRMap in relation to the activities of the UK branch for their UK branch activities, but otherwise without territorial limit and for all activities, not just regulated ones (SYSC 25.1.4 - 5). EEA and third country branches should prepare their MRMap as if the rest of the firm (outside of the UK branch) were a separate company in its group (SYSC 25.4.13). This means that the MRMap should include:

- Details of how the branch’s management and governance arrangements fit together with the wider firm;
- Details of the extent to which the branch’s management and governance arrangements are provided by, or shared with, the wider firm; and
- Details of the reporting lines and the lines of responsibility between the branch and those who carry out functions in relation to it and the wider firm and persons acting for it.

**Third country branches** – this will have the same features as a UK firm’s MRMap with two main differences:

- The MRMap relates only to the branch
- References to the ‘group’ in this context include the rest of the firm (SYSC 25.1.5).

**EEA branches** – this is also similar to a UK firm’s MRMap but focuses on the branch SMF managers and their responsibilities. It may omit information already supplied, for example as part of the passporting process, although the FCA considers that firms may find it convenient to prepare a full MRMap containing all of the required information (SYSC 25.6.5 – 9).

### References

For an EEA and third country branch, the obligation to give a reference only applies if the current or former employee is or was an employee of its branch in the UK and the reference must relate only to their activities within the branch (SYSC 22.1.6).

### Certification Regime

The application to incoming branches (both **EEA** and **third country** branches) will be the same as for a UK firm, but apply in relation to the activities of the branch maintained by the firm in the UK (SYSC25.1.4). In order to be certified, a person must be:

- Based in the UK or (for a third country branch) deal with a UK customer from overseas (SYSC 27.3.1)
- Engaged in the regulated activities of the branch (SYSC 27.6.1)
- Performing a significant harm function (SYSC 27.2.3)

### Conduct Rules

The first tier conduct rules will apply to all staff (except for ancillary staff), at an EEA branch only for those at the branch and so far as consistent with EU legislation. At a third country branch, the code of conduct will apply to Conduct Rules Staff in respect of functions performed from the UK branch plus persons dealing with a UK client from overseas (COCON 1.1.10).

# Appendix 1 - Material risk takers

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## Qualitative

1. Member of the management body in its management function
2. Member of the management body in its supervisory function
3. Member of senior management
4. Member is responsible and accountable to the management body for the activities of the independent risk management, compliance or internal audit functions
5. Member with overall responsibility for risk management within a business unit (i.e. any separate organisational/legal entities, business lines or geographical locations) which has had internal capital distributed to it that represents at least 2% of the internal capital of the institution (a 'material business unit')
6. Member is head of a material business unit
7. Member has managerial responsibility in an independent risk management, compliance or internal audit function; or has managerial responsibility in a material business unit and reports directly to the member identified in (4) or (5)
8. Member has managerial responsibility in a material business unit and reports directly to the staff member who heads that unit
9. Member heads a function responsible for legal affairs, finance including taxation and budgeting, human resources, remuneration policy, IT or economic analysis
10. Member responsible for, or is a member of, a committee responsible for the management of counterparty, residual, concentration, securitisation, interest arising from non-trading book activities, operational, liquidity or excessive leverage risks
11. With regard to credit risk exposures of a nominal amount per transaction which represents 0.5% of the institution's Common Equity Tier 1 capital and is at least EUR 5 million, the member:
  - (a) Is responsible for initiating credit proposals, or structuring credit products, which can result in such credit risk exposures
  - (b) Has authority to take, approve or veto a decision on such credit risk exposures
  - (c) Is a member of a committee which has authority to take decisions referred to in (a) or (b)
12. In relation to an institution to which the derogation for small trading book business (provided for in Article 94 of Regulation (EU) No 575/2013) does not apply, the member:
  - (a) Has authority to take, approve or veto a decision on transactions on the trading book which in aggregate meet one of the following thresholds:
    - i. Where the standardised approach is used, an own funds requirement for market risks which represents 0.5% or more of the institution's Common Equity Tier 1 capital; or
    - ii. Where an internal model-based approach is approved for regulatory purposes, 5% or more of the institution's internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval); or
  - (b) Is a member of a committee which has authority to take decisions set out in (a)

13. Member has managerial responsibility for a group of staff members who have individual authorities to commit the institution to transactions and either of the following conditions is met:
  - (a) The sum of those authorities equals or exceeds a threshold set out in (11)(a), (11)(b) or (12)(a)(1)
  - (b) Where an internal model-based approach is approved for regulatory purposes those authorities amount to 5% or more of the institution's value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval). Where the institution does not calculate a value-at-risk at the level of that staff member the value-at-risk limits of staff under the management of this staff member shall be added up
14. With regard to decisions to approve or veto the introduction of new products, the member:
  - (a) Has authority to take such decisions; or
  - (b) Is a member of a committee which has authority to take such decisions
15. Member has managerial responsibility for a staff member who meets one of the criteria in (1) – (14)

## Quantitative

1. Subject to paragraphs (2) – (3):
  - (a) Member who has been awarded total remuneration of EUR 500,000 or more in the preceding financial year
  - (b) Member who is within the 0.3% number of staff awarded the highest total remuneration in the preceding financial year
  - (c) Member who, in the preceding financial year, was awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of senior management or meets any of the criteria in Qualitative (1), (3), (5), (6), (8), (11) – (14)
2. A criterion in (1) will not be met where the institution determines that the member's professional activities do not have a material impact on its risk profile because the member (or the category to which he/she belongs):
  - (a) Only carries out professional activities/has authorities in a business unit which is not a material business unit; or
  - (b) Has no material impact on the risk profile of a material business unit through the professional activities carried out
3. The condition in (2)(b) shall be assessed on the basis of objective criteria which take into account all relevant risk/performance indicators used by the institution and on the basis of the duties/authorities of the member (or category of members) and their impact on the institution's risk profile when compared with the impact of the professional activities of staff members identified by the criteria in Qualitative





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