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VERSION 1 (15/11/2019)

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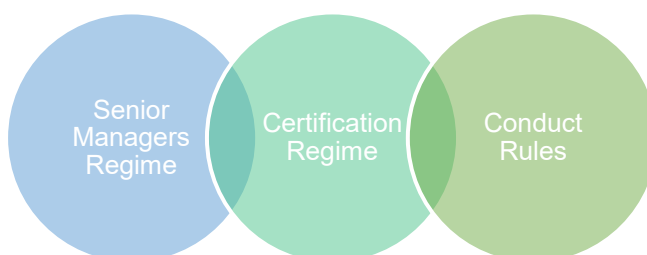
**THE SENIOR MANAGERS AND CERTIFICATION REGIME (SMCR):**

**TEMPLATE DOCUMENTS FOR UK SOLO-REGULATED CORE SMCR FIRMS**

FS REG Limited has prepared template documents which contain everything you need to efficiently implement the SMCR at your firm.

The SMCR will replace the current Approved Persons Regime and introduce changes to how the FCA regulates individuals working in financial services. Firms affected by these changes will move to the new regime from 9 December 2019.

**The SMCR comprises of the following:**



**Our pack of template documents contains:**

1. A comprehensive guide to the SMCR;
2. A template compliance manual chapter covering the SMCR;
3. An SMCR staff tracker template;
4. The FCA Statement of Responsibilities form for Senior Managers;
5. A template Assessment Form and Certificate of Fitness and Propriety for Certified Staff;
6. A template Assessment Form of Fitness and Propriety for Senior Managers;
7. A template undertaking of compliance with the Conduct Rules;
8. A Powerpoint presentation providing general guidance on the SMCR;
9. A Powerpoint presentation providing training to staff on the Conduct Rules; and
10. A handout for the presentation providing training to staff on the Conduct Rules.

Extracts of the above documents are provided below.

**The benefits of using our template documents are:**

- **Time efficiency:** the template documents are drafted in a concise and simple way which makes them quick and easy to use.
- **Cost efficiency:** the pack of template documents is on sale for a price which we understand is substantially lower than what some of our competitors charge.
- **Flexibility:** the template documents are suitable for all types of UK solo-regulated core SMCR firms and are provided in a Word or Powerpoint format that can be easily tailored by your firm.

In addition to our template documents, we can provide to your firm individual assistance in relation to the implementation of the SMCR for a competitive fee. Please contact us at [contact@fsreg.com](mailto:contact@fsreg.com) if you wish to discuss this further.

**DOCUMENT 1 – GUIDE FOR UK SOLO-REGULATED “CORE” SMCR FIRMS**

VERSION 1 (02/09/2019)

**FS REG LIMITED ([www.fsreg.com](http://www.fsreg.com))**

**THE SENIOR MANAGERS AND CERTIFICATION REGIME:  
GUIDE FOR UK SOLO-REGULATED “CORE” SMCR FIRMS**

SAMPLE

Based on the “Senior Managers and Certification Regime: Guide for FCA Solo-Regulated Firms” published by the FCA in July 2018

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SAMPLE

## 1. INTRODUCTION

### How this guide will help UK Core SMCR firms

This guide is a summary of the FCA rules and guidance on the Senior Managers & Certification Regime (“**SM&CR**”). It provides an overview of how the SM&CR works, what firms need to do under the new regime, and how the FCA will move firms and individuals from the existing Approved Persons Regime (“**APR**”) to the new SM&CR.

The guide isn’t a substitute for reading the relevant Handbook requirements, but we have provided cross-references to where a firm can find further information wherever possible.

There are also questions and things for a firm to consider when applying the SM&CR. These shouldn’t be treated as a tick box exercise and the FCA expects a firm to consider how applying these requirements in the firm will support the aims of the SM&CR.

If there are differences between this guide and the FCA Handbook rules and guidance, the rules and guidance take precedence. References in this Guide to rules and guidance in the FCA Handbook are based on the near-final rules published in PS18/14.

### Who the guide is for

The SM&CR will apply to all FCA solo-regulated firms authorised under the Financial Services and Markets Act 2000 (“**FSMA**”), as well as EEA and third-country branches.

This guide, however, only deals with FCA solo-regulated firms authorised under FSMA that are UK Core SMCR firms, i.e. FCA solo-regulated firms that are “Core” SMCR firms as defined in Section 2 below and have their registered office in the United Kingdom.

Firms that are not authorised under FSMA (for example Payment Services firms) won’t be covered by the SM&CR.

The SM&CR won’t apply to Appointed Representatives. They will continue to be subject to the APR.

This guide is not relevant to UK branches of EEA or third-country firms.

### Context

The SM&CR introduces changes to how the FCA regulates individuals working in financial services. It will replace the APR.

The SM&CR aims to reduce harm to consumers and strengthen market integrity by creating a system that enables firms and regulators to hold individuals to account. As part of this, the SM&CR aims to:

- encourage staff to take personal responsibility for their actions;
- improve conduct at all levels; and
- make sure firms and staff clearly understand and can show who does what.

In March 2016, the FCA replaced the APR with the SM&CR for banking firms. The original legislation didn’t cover solo-regulated firms. In May 2016, the Bank of England and Financial Services Act 2016 made changes to the FSMA that required the FCA to extend the SM&CR to all firms authorised to provide financial services under FSMA.

## 2. CONFIRMING THAT A FIRM IS A CORE SMCR FIRM

### Confirming that a firm is a Core SMCR firm

A firm can use the tool below to confirm that it is a Core SMCR firm.

If a firm is not a Core SMCR firm, this guide does not apply to it.

#### Table of Firm Types

Firm type	Description
Limited Scope SMCR Firms	<p>This firm type covers all firms that currently have a limited application of the APR, including:</p> <ul style="list-style-type: none"> <li>• limited permission consumer credit firms;</li> <li>• all sole traders;</li> <li>• authorised professional firms whose only regulated activities are non-mainstream regulated activities;</li> <li>• oil market participants;</li> <li>• service companies;</li> <li>• energy market participants;</li> <li>• subsidiaries of local authorities or registered social landlords;</li> <li>• insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts; and</li> <li>• authorised internally managed Alternative Investment Funds (AIFs).</li> </ul> <p>Limited Scope SMCR firms will be subject to fewer requirements than Core SMCR firms.</p>
Core SMCR Firms	<p>These firms will have a baseline of SM&amp;CR requirements applied.</p> <p>This is a residual category, meaning that a solo-regulated firm will be a Core SMCR firm unless it is a Limited Scope SMCR firm or an Enhanced Scope SMCR firm.</p>
Enhanced Scope SMCR Firms	<p>If a firm meets one or more of 6 criteria below, it will be an Enhanced Scope SMCR firm:</p> <p><i>Definitional criteria</i></p> <ul style="list-style-type: none"> <li>• A firm that is a Significant IFPRU firm</li> <li>• A firm that is a CASS Large firm</li> </ul> <p><i>Criteria calculated on a rolling average</i></p> <ul style="list-style-type: none"> <li>• Firms with Assets Under Management of £50 billion or more as a 3-year rolling average</li> <li>• Firms with current total intermediary regulated business revenue of £35 million or more per annum calculated as a 3-year rolling average</li> <li>• Firms with annual revenue generated by regulated consumer credit lending of £100m or more calculated as a 3-year rolling average.</li> </ul> <p><i>Criteria calculated as a point in time</i></p> <ul style="list-style-type: none"> <li>• Mortgage lenders and administrators (that are not banks) with 10,000 or more regulated mortgages outstanding at the latest reporting date.</li> </ul> <p>Enhanced Scope SMCR firms will represent a small proportion of solo-regulated firms that will have to apply extra rules.</p>

### **Applying the SM&CR to groups**

FSMA requires the SM&CR to be applied at a legal entity level. This means that there will be groups which will contain firms in different tiers of the new regime.

Some groups may choose to apply the highest tier of the regime to all entities in their group – for example, to make all entities Enhanced Scope SMCR firms. There is no expectation or requirement for firms to do this. If a group chooses to apply the Enhanced Scope SMCR regime to some firms, then they will need to submit a Form O for every affected entity.

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## DOCUMENT 2 – COMPLIANCE MANUAL CHAPTER

VERSION 1 (02/09/2019)

### CHAPTER [...]

#### SENIOR MANAGERS & CERTIFICATION REGIME

##### 1. INTRODUCTION

The Senior Managers & Certification Regime (“SM&CR”) aims to:

- encourage staff to take personal responsibility for their actions;
- improve conduct at all levels; and
- make sure firms and staff clearly understand and can show who does what.

##### 2. CONFIRMING THAT THE [FIRM – TO BE REPLACED WITH “COMPANY”, “LLP”, ETC. AS APPROPRIATE] IS A UK CORE SMCR FIRM

###### 2.1 Confirming that the Firm is a UK Core SMCR firm

This section of the [Compliance Manual] has been prepared on the basis that the Firm is a UK Core SMCR firm.

The Firm’s [Compliance Officer] should use the tool below at least annually to verify that the Firm continues to be a UK Core SMCR firm.

###### 2.2 Table of Firm Types

Firm type	Description
Limited Scope SMCR Firms	<p>This firm type covers all firms that, before the SM&amp;CR came into force, had a limited application of the approved persons regime, including:</p> <ul style="list-style-type: none"><li>• limited permission consumer credit firms;</li><li>• all sole traders;</li><li>• authorised professional firms whose only regulated activities are non-mainstream regulated activities;</li><li>• oil market participants;</li><li>• service companies;</li><li>• energy market participants;</li><li>• subsidiaries of local authorities or registered social landlords;</li><li>• insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts; and</li><li>• authorised internally managed Alternative Investment Funds (AIFs).</li></ul> <p>Limited Scope SMCR firms will be subject to fewer requirements than Core SMCR firms under the SM&amp;CR.</p>
Core SMCR Firms	<p>These firms will have a baseline of SM&amp;CR requirements applied.</p> <p>This is a residual category, meaning that an FCA solo-regulated firm will be a Core SMCR firm unless it is a Limited Scope SMCR firm or an Enhanced Scope SMCR firm.</p>

Enhanced Scope SMCR Firms	<p>If a firm meets one or more of 6 criteria below, it will be an Enhanced Scope SMCR firm:</p> <p><i>Definitional criteria</i></p> <ul style="list-style-type: none"> <li>• A firm that is a Significant IFPRU firm</li> <li>• A firm that is a CASS Large firm.</li> </ul> <p><i>Criteria calculated on a rolling average</i></p> <ul style="list-style-type: none"> <li>• Firms with Assets Under Management of £50 billion or more as a 3-year rolling average</li> <li>• Firms with current total intermediary regulated business revenue of £35 million or more per annum calculated as a 3-year rolling average</li> <li>• Firms with annual revenue generated by regulated consumer credit lending of £100m or more calculated as a 3-year rolling average.</li> </ul> <p><i>Criteria calculated as a point in time</i></p> <ul style="list-style-type: none"> <li>• Mortgage lenders and administrators (that are not banks) with 10,000 or more regulated mortgages outstanding at the latest reporting date.</li> </ul> <p>Enhanced Scope SMCR firms represent a small proportion of FCA solo-regulated firms that have to apply extra rules.</p>
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The SM&CR generally applies on a legal entity basis. This means that the Firm must generally identify its Senior Managers and Certification staff only among those individuals who specifically perform a relevant function for the Firm, and not at a group level.

### 2.3 FCA Rules and Guidance

The FCA rules and guidance regarding firms' classification under the SM&CR can be found in Annex 1 (Definition of SMCR firm and different types of SMCR firms) of SYSC 23 (Senior managers and certification regime: Introduction and classification).

## 3. SENIOR MANAGERS REGIME

### 3.1 Introduction

A Senior Management Function ("**SMF**") is a new type of controlled function under [FSMA]. The FCA has prescribed several SMFs in its Handbook (see SUP 10C (FCA senior managers regime for approved persons in SMCR firms)).

The FCA calls the individuals who hold these functions "**Senior Managers**". They are the most senior individuals in a firm with the greatest potential to cause harm or impact upon market integrity.

Anyone who performs a SMF needs to be approved by the FCA before they can start their role. Applications for approval are made by submitting to the FCA a Form A to which there must be attached a statement of responsibilities (see section 3.3 below).

Senior Managers must be fit and proper to do their jobs. The FCA sets out what firms need to do for fitness and propriety in the FIT Sourcebook of the FCA Handbook. The Firm must review the fitness and propriety of its Senior Managers at least once a year and must notify the FCA if it is of the opinion that there are any grounds on which the FCA could withdraw its approval of any of its Senior Managers.

Every Senior Manager has a duty of responsibility under FSMA. This means that if the Firm breaches one of the FCA requirements, the Senior Manager responsible for that area could be held accountable if they didn't take reasonable steps to prevent or stop the breach.



There is no territorial limitation on the Senior Managers Regime. This means that it will apply to anyone who performs a Senior Manager role for the Firm, whether they are based in the UK or overseas.

The FCA rules and guidance regarding the Senior Managers Regime are mainly contained in SYSC 23 (Senior managers and certification regime: Introduction and classification) and (SYSC 24 Senior managers and certification regime: Allocation of prescribed responsibilities).

### 3.2 Senior Management Functions

There are [6 – NUMBER TO BE TAILORED DEPENDING ON WHETHER THE FIRM IS A COMPANY, PARTNERSHIP, ETC] SMFs that are relevant to the Firm, and these are set out in the table below.

Function Name	Description
<b>Governing Functions</b>	
SMF1 – Chief Executive	This is the person(s) with responsibility, under the immediate authority of the governing body, for the conduct of the whole of the business (or relevant activities) of the Firm.  This SMF is currently performed for the Firm by [NAME].
SMF3 – Executive Director	A director of the Firm, other than a non-executive director (“NED”).  This SMF is currently performed for the Firm by [NAME].
SMF27 - Partner	A partner in the Firm.  This SMF is currently performed for the Firm by [NAME].
SMF9 – Chair*	The person with responsibility for chairing, and overseeing the performance of the role of, the governing body of the Firm.  This SMF is currently performed for the Firm by [NAME].
<b>Required Functions</b>	
SMF16 – Compliance Oversight	This is the person responsible for the compliance function in the Firm and reporting to the governing body on this.  This SMF is currently performed for the Firm by [NAME].
SMF17 – Money Laundering Reporting Officer	This is the person who has responsibility for overseeing the Firm’s compliance with the FCA rules on systems and controls against money laundering.  This SMF is currently performed for the Firm by [NAME].

\* The SMF9 – Chair is the only SMF that can be held by a NED who does not perform any of the other SMFs. NEDs who do not perform the SMF9 – Chair do not need to be approved by the FCA. These NEDs will, however, still be subject to the Conduct Rules, fit and proper requirements and regulatory reference rules (see below for details).

[The Firm has the following NEDs: [TBC]]

The FCA rules and guidance regarding the SMFs are mainly contained in SUP 10C (FCA senior managers regime for approved persons in SMCR firms).

### 3.3 Statement of Responsibilities; Prescribed Responsibilities

Every Senior Manager needs a statement of responsibilities (“SoR”), that is a single document clearly setting out their role and responsibilities. The Compliance Officer maintains the current SoR of the Firm’s Senior Managers, which must be prepared using a prescribed form produced by the FCA.

Under the SM&CR, there are certain responsibilities, known as the “Prescribed Responsibilities” (“PRs”), that the Firm must give to one or more Senior Managers.

There are a total of [6 – NUMBER TO BE TAILORED DEPENDING ON WHETHER THE FIRM IS AN AUTHORISED FUND MANAGER AND/OR HOLDS CLIENT ASSETS] Prescribed Responsibilities that are relevant to the Firm, and these are set out in the table below.

The Firm needs to consider carefully which Senior Manager is the best person to hold each PR. Each PR should be given to the Senior Manager who is the most senior person responsible for that activity or area. They will need to have sufficient authority and an appropriate level of knowledge and competence to carry out the responsibility properly.

Giving a Senior Manager a PR will not require re-approval by the FCA, but when the Firm moves a PR from one Senior Manager to another, the relevant SoRs must be updated to reflect these changes and submitted to the FCA using Form J.

Each PR should normally be held by only one person.

Description Handbook PR Ref.	Description
(a)	Responsibility for the Firm’s performance of its obligations under the senior managers regime.  This PR is currently held by [NAME].
(b)	Responsibility for the Firm’s performance of its obligations under the certification regime.  This PR is currently held by [NAME].
(b-1)	Responsibility for the Firm’s obligations for: (a) conduct rules training; and (b) conduct rules reporting.  This PR is currently held by [NAME].
(d)	Responsibility for the Firm’s policies and procedures for countering the risk that the Firm might be used to further financial crime.  This PR is currently held by [NAME].
(z)	Responsibility for the Firm’s compliance with CASS.  This PR is currently held by [NAME].
(za)	The responsibilities allocated under COLL 6.6.27R or COLL 8.5.22R (Allocation of responsibility for compliance to an approved person), i.e. the responsibility for an AFM’s assessments of value, independent director representation and acting in investors’ best interests.  This PR is currently held by [NAME].

The firm must submit an FCA SoR Form to the FCA (as an attachment to a Form A) when applying for a Senior Manager to be approved. It must also keep the FCA SoR Form up to date, and resubmit it to the FCA (as an attachment to a Form J or Form I) whenever there is a “significant change” to a Senior Manager’s responsibilities.

The FCA has guidance in SUP10C of its Handbook setting out examples of what might be a significant change for these purposes. This includes where a Senior Manager has a PR added or removed from their responsibilities, or where there is a change to how responsibilities are shared between Senior Managers.

The FCA rules and guidance regarding SoRs and PRs are mainly contained in SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities) and SUP 10C (FCA senior managers regime for approved persons in SMCR firms).

The PR for the performance by the Firm of its obligations under the SMR, including implementation and oversight, is currently held by [NAME].

## **4. CERTIFICATION REGIME**

### **4.1 Introduction**

The Certification Regime covers specific functions that are not Senior Management Functions, but can have a significant impact on the Firm, its customers, and/or market integrity. These functions are known as the “**Certification Functions**” and are listed, as far as the Firm is concerned, in section 4.2 below.

The FCA does not approve the individuals performing a Certification Function, but the Firm must check and confirm (i.e., certify) at least once a year that these individuals are fit and proper to do their job. The Certification Regime is a requirement under FSMA and is set out in SYSC 27 of the FCA Handbook.

When an individual joins the Firm to perform a Certification Function, if that individual will not be a Senior Manager, the continued employment of that individual will depend on them being certified by the Firm (acting by the Firm’s [Compliance Officer - TBC]) as being fit and proper and continuing to be so certified.

The Firm must take into account the FCA rules and guidance in FIT for the purpose of certifying whether an individual is fit and proper to perform a Certification Function.

The relevant certification must be based on information contained in, and must be documented in, a specific form that the Firm has adopted for these purposes, known as the “Assessment and Certificate of Fitness and Propriety”. The Certification Form must be signed by both the individual and the Firm’s [Compliance Officer - TBC].

Among other things, the Certification Form contains a certificate that: (a) states that the Firm is satisfied that the relevant individual is a fit and proper person to perform the Certification Function(s) they will perform at the Firm, and (ii) sets out the aspects of the Firm’s business in which the individual will be involved.

The Certification Regime only applies to the Firm’s employees. This definition covers individuals seconded to the Firm and contractors but does not apply to NEDs, for example.

If someone performs more than one Certification Function, the Firm must certify that the person is fit and proper to carry out each function. There might be different competencies required for the different functions, so it is necessary to assess that the person is fit and proper to do each role (but this could be done as part of a single assessment process).

If a Senior Manager performs a Certification Function that is closely linked to their role as a Senior Manager, then they will not need to be certified under the Certification Regime. However, if they are performing a Certification Function that is very different to what they are doing as a Senior Manager,

## DOCUMENT 3 – SMCR STAFF TRACKER

VERSION 1 (02/09/2019)

[...] (the “Firm”)

### SMCR STAFF TRACKER

Date: [...]

#### 1. LIST OF SENIOR MANAGERS

No.	Name	Job title	Senior management functions (SMFs)	Prescribed responsibilities (PRs)	Statement of responsibilities (SoRs) completed?	Conduct rules training completed?	Undertaking of compliance with conduct rules signed?	Comments
1.					YES / NO	YES / NO	YES / NO	
2.					YES / NO	YES / NO	YES / NO	
3.					YES / NO	YES / NO	YES / NO	
4.					YES / NO	YES / NO	YES / NO	
5.					YES / NO	YES / NO	YES / NO	

#### 2. LIST OF NON-APPROVED NON-EXECUTIVE DIRECTORS

No.	Name	Conduct rules training completed?	Undertaking of compliance with conduct rules signed?	Comments
1.		YES / NO	YES / NO	
2.		YES / NO	YES / NO	
3.		YES / NO	YES / NO	
4.		YES / NO	YES / NO	
5.		YES / NO	YES / NO	

### 3. LIST OF CERTIFICATION STAFF

No.	Name	Job Title	Certification function(s)	Certificate of fitness and propriety issued?	Conduct rules training completed?	Undertaking of compliance with conduct rules signed?	Comments
1.				YES [specify date] / NO	YES / NO	YES / NO	
2.				YES [specify date] / NO	YES / NO	YES / NO	
3.				YES [specify date] / NO	YES / NO	YES / NO	
4.				YES [specify date] / NO	YES / NO	YES / NO	
5.				YES [specify date] / NO	YES / NO	YES / NO	

### 4. LIST OF OTHER STAFF SUBJECT TO THE CONDUCT RULES

No.	Name	Job title	Conduct rules training completed?	Undertaking of compliance with conduct rules signed?	Comments
1.			YES / NO	YES / NO	
2.			YES / NO	YES / NO	
3.			YES / NO	YES / NO	
4.			YES / NO	YES / NO	
5.			YES / NO	YES / NO	

### 5. LIST OF ANCILLARY STAFF

No.	Name	Job Title	Comments
1.			
2.			
3.			
4.			
5.			

**DOCUMENT 4 – FCA STATEMENT OF RESPONSIBILITIES FORM**

Application number or IRN  
(for FCA use only)

## Senior Managers Regime:

### ***Statement of Responsibilities for solo-regulated firms***

This form applies to solo-regulated *firms*. It does not apply to dual regulated *firms* or *appointed representatives*.

This is a statement provided under section 60(2A) of the Financial Services and Markets Act 2000 (Applications for approval), including a statement revised under section 62A (Changes in responsibilities of senior managers).

For *candidates* for approval, this form **must** be submitted as an attachment to a Form A application or a Form E application.

For significant changes to an existing *statement of responsibilities*, this form **must** be submitted as an attachment to a Form J notification or a Form I application or variation.

*FCA Handbook* Reference: SUP 10C Annex 10D.

[Commencement Date]

Name of *individual*  
(to be completed by *firm*)

Name of *firm*  
(as entered in 2.01)

Financial Conduct Authority  
12 Endeavour Square  
Stratford  
London E20 1JN  
United Kingdom  
Telephone +44 (0) 300 500 0597  
E-mail [firm.queries@fca.org.uk](mailto:firm.queries@fca.org.uk)  
Website <http://www.fca.org.uk>  
Registered as a Limited Company in England  
and Wales No 1920623. Registered Office as  
above

**Personal identifications details**

**Section 1**

1.01 Individual Reference Number (IRN)

[Redacted]

1.02 Title  
(e.g. Mr, Mrs, Ms)

[Redacted]

1.03 Surname

[Redacted]

1.04 ALL forenames

[Redacted]

1.05 Date of birth (dd/mm/yyyy)

[Redacted]

1.06 National Insurance number

[Redacted]

**Firm identification details**

**Section 2**

2.01 Name of *firm*

[Redacted]

2.02 *Firm* Reference Number (FRN)

[Redacted]

2.03 a Who should the *FCA* contact at the *firm* in relation to this *statement of responsibilities*?

[Redacted]

b Position

[Redacted]

c Telephone

[Redacted]

e E-mail

[Redacted]

I have supplied further information related to this page in Section 4 YES  NO

A *statement of responsibilities* should be drafted to clearly show the responsibilities that the *candidate* or *senior manager* is to perform as part of their *senior management function* and how they fit in with the *firm's* overall governance and management arrangements. If the *firm* is an *enhanced scope SM&CR firm*, the *statement of responsibilities* should also be consistent with the *firm's management responsibilities map*.

A *statement of responsibilities* should be drafted in such a way as to be practical and useable by regulators. The FCA considers that this would be achieved by succinct, clear descriptions of each responsibility which avoid unnecessary detail. *Firms* have the opportunity to provide details of each responsibility allocated to an individual using the free text boxes in this form, however, FCA would not usually expect the description of each responsibility to exceed 300 words.

A *statement of responsibilities* must be a self-contained document. There should be one statement per *senior manager* per *firm*. Where an *individual* performs a *senior management function* on behalf of more than one *firm* within a *group*, one *statement of responsibilities* is required for each *firm*. Any supplementary information may be provided in Section 4 (or if submitting electronically, in a **single** attachment). A *statement of responsibilities* must not cross refer to other documents, attachments or links.

If the FCA considers that the *statement of responsibilities* is not sufficiently clear to be practical and usable, it could be challenged as part of a *candidate's* application for approval, or in ongoing supervision.

Details of the *individual's* responsibilities should be set out in Sections 3.2 to 3.4, as appropriate:

- Section 3.2 covers *prescribed responsibilities* required by regulators to be allocated to one or more *senior managers*. This section is not applicable to *limited scope SMCR firms* or *EEA core SMCR branches*.
- Section 3.3 covers having overall responsibility for each of the business areas, activities, and management functions of the *firm*. This section applies to *enhanced scope SMCR firms* only.
- Section 3.4 covers anything else, not otherwise included, for which a *candidate* or *senior manager* is to be responsible as part of their *FCA senior management function(s)* role. This section applies to all *firms*.

**3.1 Effective date and relevant Senior Management Functions**

**3.1.1** Please state the effective date of this *statement of responsibilities*:

Please note that where this is a revised *statement of responsibilities*, i.e. since the granting of the application, there has been a significant change in the aspects of the *firm's* affairs which the *individual* is responsible for managing in performing the function (for example, a change in allocation of responsibilities within the *firm*, or the *senior manager* is applying for a new or additional *senior management function*), then this *statement of responsibilities* supersedes any previous versions.

**3.1.2** List all *senior management functions* which the *candidate* or *senior manager* is to perform and the effective date the *candidate* or *senior manager* commenced or will commence the performance of the functions.

Senior management function	Description of senior management function	Tick SMF applied for or held					Effective Date
		Core firms				Enhanced SMCR firms	
		Limited scope SMCR firms	UK core SMCR firms	EEA core SMCR firms	Third country branches		
SMF 1	Chief Executive	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	



SMF 2	Chief Finance					<input type="checkbox"/>	
SMF 3	Executive Director	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
SMF 4	Chief Risk Officer					<input type="checkbox"/>	
SMF 5	Head of Internal Audit					<input type="checkbox"/>	
SMF 7	Group Entity Senior Manager					<input type="checkbox"/>	
SMF 9	Chair of the Governing Body	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
SMF10	Chair of the Risk Committee					<input checked="" type="checkbox"/>	
SMF11	Chair of the Audit Committee					<input type="checkbox"/>	
SMF12	Chair of the Remuneration Committee					<input type="checkbox"/>	
SMF13	Chair of the Nomination Committee					<input type="checkbox"/>	
SMF14	Senior Independent Director					<input type="checkbox"/>	
SMF16	Compliance Oversight	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
SMF17	Money Laundering Reporting Officer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SMF18	Other overall responsibility function					<input type="checkbox"/>	
SMF19	Head of Overseas Branch				<input type="checkbox"/>		
SMF21	EEA Branch Senior Manager			<input type="checkbox"/>			
SMF24	Chief Operations					<input type="checkbox"/>	
SMF27	Partner	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
SMF29	Limited scope function ( <i>limited scope SMCR firms only</i> )	<input type="checkbox"/>					

This *statement of responsibilities* is considered to automatically include the existing legal and regulatory obligations where they exist for these roles and functions. For example, certain specific responsibilities of a

*director* are set out in company law. Such responsibilities do not need to be recorded in this statement, but any additional responsibilities should be recorded in the sections below.

### 3.2 Prescribed Responsibilities

This section deals with those *prescribed responsibilities* to be allocated to one or more *senior managers*. The allocation of responsibilities under a *statement of responsibilities* should not reduce or alter the scope of any applicable *prescribed responsibilities*. *Limited scope SMCR firms* and *EEA core SMCR branches* are not required to assign *prescribed responsibilities* and should leave this section blank.

If the responsibilities that the *candidate* or *senior manager* is to carry out as described in the *statement of responsibilities* go beyond those set out in this section, those additional responsibilities should not reduce or alter the scope of the *prescribed requirements* set out in this section (SUP 10C.11)

**321** Please indicate below which of the responsibilities listed are/will be allocated to the *candidate* or *senior manager* if any, and whether or not they are shared. Different *prescribed responsibilities* apply to different types of *firm* as indicated in the table below.

If the *individual* has not been allocated a *prescribed responsibility*, please go to Section 3.3.

**DOCUMENT 5 - ASSESSMENT FORM AND CERTIFICATE OF FITNESS AND PROPRIETY**

VERSION 1 (02/09/2019)

**ASSESSMENT FORM AND CERTIFICATE OF FITNESS AND PROPRIETY TO PERFORM  
CERTIFICATION FUNCTIONS**

To be used only by an FCA solo-regulated UK Core SMCR firm.

<b>Name of Firm</b>	[...] (the " <b>Firm</b> ")
<b>Name of Individual</b>	[...] (the " <b>Individual</b> ")
<b>Date</b>	[...]

**This form ("Form") is divided into the following sections:**

1. Certificate of fitness and propriety (to be completed by the Firm)
2. Role description and certification function analysis (to be completed by the Firm)
3. Fitness and propriety information (to be completed by the Individual)
4. Declaration by the Individual (to be completed by the Individual)
5. Assessment of fitness and propriety (to be completed by the Firm)

**The following documents must be attached to this Form:**

	Yes	No	N/A
1. Individual's curriculum vitae (CV)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Individual's criminal records check from the Disclosure and Barring Service (DBS) (if obtained)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Individual's regulatory reference(s) from previous employer(s) in the past 6 years <sup>1</sup>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Other supporting documents: [please specify]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>1</sup> Not required for existing employees as at 9 December 2019.

1. **CERTIFICATE OF FITNESS AND PROPRIETY (“CERTIFICATE”) (TO BE COMPLETED BY THE FIRM)**

<b>Name of Firm</b>	[...]
<b>Firm reference number (FRN)</b>	
<b>Name of Individual</b>	
<b>Individual reference number (IRN)</b>	
<b>Date of certification</b>	
<b>Duration of certification</b>	Valid for a period of 12 months from the date of certification.
<b>Certification function(s)</b>	<input type="checkbox"/> Significant Management <input type="checkbox"/> Proprietary Trader <input type="checkbox"/> CASS Oversight <input type="checkbox"/> Function Requiring Qualifications <input type="checkbox"/> Client-Dealing <input type="checkbox"/> Manager of Certification Employees <input type="checkbox"/> Material Risk Taker <input type="checkbox"/> Algorithmic Trading
<b>Affairs of the Firm the Individual will be involved in performing the function</b>	Please see Section 2.

The Firm is satisfied, having considered the criteria set out in FIT (Fit and Proper test for Employees and Senior Personnel) of the FCA Handbook and the information contained in this Form, that the individual is a fit and proper person to perform the certification function(s) to which this Certificate relates.

<b>Individual at Firm assessing fitness and propriety*</b>	Signature:  Name:  Position:
<b>Senior Manager at Firm with the Prescribed Responsibility for the Firm’s performance of its obligations under the certification regime (if different from the above)</b>	Signature:  Name:  Position: Senior Manager

\* This individual could be the Senior Manager at the Firm who holds the Prescribed Responsibility for the Firm’s performance of its obligations under the certification regime or another individual at the Firm such as the certified employee’s hiring manager or supervisor.

**2. ROLE DESCRIPTION AND CERTIFICATION FUNCTIONS ANALYSIS (TO BE COMPLETED BY THE FIRM)**

**2.1 ROLE DESCRIPTION**

<b>Nature of arrangement between the Individual and the Firm</b>	<i>[For example: Full-Time Employee / Part-Time Employee / Contractor / Secondee / Group Employee / Temporary Employee]</i>
<b>Job title</b>	
<b>Role description</b> Please provide a high-level summary of the responsibilities of and role performed by the Individual.	
<b>Location</b>	
<b>Start date</b>	
<b>End date (if applicable)</b>	
<b>Reporting to</b>	

SAMPLE

## 2.2 CERTIFICATION FUNCTION ANALYSIS

### 2.2.1 Certification function(s) performed

Certification Function	Definition	Does the Individual perform this function?	If yes, please provide further details.
<b>Significant Management</b>	<p>This refers to individuals with significant responsibility for a significant business unit.</p> <p>The Significant Management Function applies to people who (i) are not senior managers performing an SMF and (ii) are responsible for one or more business units that, because of their size, nature or impact, are considered significant by the Firm.</p> <p>These important roles can seriously impact the way the Firm conducts its business and are not limited to revenue-generating business areas.</p>	YES / NO	<i>For example: The Individual is the head of the [...] department / the Individual is the chief risk / financial officer of the Firm.</i>
<b>Proprietary Trader</b>	All proprietary traders are covered by the Certification Regime.	YES / NO	<i>For example: The Individual is a proprietary trader at the Firm, trading in [...] instruments.</i>
<b>CASS Oversight</b>	The CASS Oversight Function covers oversight of the operational effectiveness of the Firm's systems and controls for client money and assets in accordance with CASS (Client Assets Sourcebook) of the FCA Handbook.	YES / NO	<i>For example: The Individual is responsible for the oversight of the Firm's systems and controls for client money and assets.</i>
<b>Functions Requiring Qualifications</b>	This includes, for example, mortgage advisers, retail investment advisers and pension transfer specialists. The full list is set out in TC (Training and Competence Sourcebook) of the FCA Handbook.	YES / NO	<i>For example: The Individual is a [mortgage advisor] which role requires the holding of the following qualification: [...].</i>
<b>Client-Dealing</b>	This function applies to any person dealing in or arranging	YES / NO	<i>For example: The Individual deals with the Firm's</i>

	<p>investments with clients, including retail and professional clients and eligible counterparties.</p> <p>This includes:</p> <ul style="list-style-type: none"> <li>• financial advisers;</li> <li>• people who are involved in corporate finance business;</li> <li>• people who are involved in dealing or arranging deals in investments; and</li> <li>• investment managers.</li> </ul>		<i>clients because they act as [...].</i>
<b>Manager (direct or indirect) of Certification Employees, but isn't a Senior Manager</b>	<p>This function makes sure that people who supervise certified employees are held to the same standard of accountability.</p> <p>It also makes sure there is a clear chain of accountability between junior certified employees and the Senior Manager ultimately responsible for that area.</p> <p>For example, if a firm employs a customer-facing financial adviser, every manager above them in the same chain of responsibility will have to be certified (until the Senior Manager holding the relevant senior management function is reached).</p>	YES / NO	<i>For example: The Individual supervises or manages employees carrying out the following certification functions: [...]</i>
<b>Material Risk Taker</b>	<p>The concept of Material Risk Takers (also known as Remuneration Code staff) is taken from the FCA remuneration codes (SYSC 19).</p> <p>They are a category of staff that all firms under AIFMD, UCITS, IFPRU and BIPRU are already required to identify under the FCA remuneration regime.</p> <p>The Firm need to consider all types of risk when identifying their Material Risk Takers, including those of a prudential, operational, conduct and reputational nature.</p> <p>All of these Material Risk Takers will be covered by this certification function.</p>	YES / NO	<i>For example: The Individual is a material risk taker under the FCA remuneration rules on the basis that they [...].</i>
<b>Algorithmic Trading</b>	<p>This function includes people with responsibility for:</p> <ul style="list-style-type: none"> <li>• approving the deployment of a trading algorithm or a part of one;</li> </ul>	YES / NO	<i>For example: The Individual is responsible for approving the deployment by the Firm of the following trading algorithm: [...].</i>

	<ul style="list-style-type: none"><li>• approving the deployment of an amendment to a trading algorithm or a part of one, or a combination of trading algorithms;</li><li>• having significant responsibility for the management of monitoring or deciding whether the use or deployment of a trading algorithm is, or remains, compliant with the Firm's obligations.</li></ul>		
--	--	--	--

SAMPLE



## 2.2.2 Other

<p><b>Senior Managers and the Certification Function</b></p> <p>Please specify whether the individual performing the certification function(s) is also an FCA approved Senior Manager. An FCA approved Senior Manager will only be required to be certified if their senior manager role is very different to the relevant certification function. For example, where a senior manager holding the SMF3 - Executive Director function also performs a Client-Dealing Certification Function.</p>	<p>YES / NO</p>
<p><b>Territoriality</b></p> <p>Please provide details about the territorial application of the certification regime to the individual.</p>	<p>The certification regime applies to the Individual because:</p> <p>a) the Individual is based in the UK <input type="checkbox"/></p> <p>b) even though the Individual is based outside the UK, they deal (i.e. have contact) with UK clients <input type="checkbox"/></p> <p>c) notwithstanding a) and b), the Individual is a material risk taker under the FCA Remuneration Codes <input type="checkbox"/></p>
<p><b>CASS Oversight Certification Function</b></p> <p>If the individual performing the CASS Oversight Certification Function is not an FCA approved Senior Manager, please provide further details about the interaction of this certification function with the CASS prescribed responsibility allocated to the FCA approved Senior Manager.</p>	<p><i>For example: The Individual performs the CASS oversight function on a day to day basis and is subject to supervision by the senior manager holding the CASS prescribed responsibility who has the ultimate responsibility for this activity.</i></p>
<p><b>Performing Certification Functions for more than one firm</b></p> <p>If the individual is performing certification functions for one or more firms (in addition to the Firm), please provide further details about such other firms and the functions performed for them.</p> <p>Individuals who perform certification functions across group entities can be certified through a single process but the performance of all functions across the different entities must be taken into account for the purposes of assessing fitness and propriety.</p>	<p>YES / NO</p> <p><i>For example: The Individual also performs certification functions for the following group firms:</i></p> <p><i>Firm 1:</i> <i>Certification Function(s):</i></p> <p>[A separate certificate of fitness and propriety has been issued by the above firms in respect of the relevant activities.]</p>

## DOCUMENT 6 - UNDERTAKING OF COMPLIANCE WITH THE CONDUCT RULES

VERSION 1 (02/09/2019)

### UNDERTAKING OF COMPLIANCE WITH THE CONDUCT RULES

<b>To</b>	[Firm name] (the "Firm")
<b>From</b>	[Individual's name]
<b>SMCR classification</b>	[E.g. Senior manager/certified employee/other staff subject to the Conduct Rules. See the table at COCON 1.1.2 for details]
<b>Date</b>	[...]

By signing this undertaking, I hereby confirm that:

1. I am aware that the following conduct rules as set out in COCON (Code of Conduct) of the FCA Handbook (the "**Conduct Rules**") apply to me:

*Individual Conduct Rules*

Rule 1: You must act with integrity.

Rule 2: You must act with due skill, care and diligence.

Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.

Rule 4: You must pay due regard to the interests of customers and treat them fairly.

Rule 5: You must observe proper standards of market conduct.

*[Senior Manager Conduct Rules*

SC1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

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.

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.

SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice. – *DELETE IF NOT APPLICABLE. PLEASE NOTE THAT SC4 APPLIES TO NEDs]*

2. I have read and understand the Conduct Rules, and have received suitable training on how the Conduct Rules apply to me.
3. I will comply with the Conduct Rules at all times when carrying out my role.
4. I will notify the Firm immediately if I:
  - a) breach any of the Conduct Rules; or
  - b) become aware, or have information which suggests, that a breach by me of any of the Conduct Rules has occurred, may have occurred or may occur in the foreseeable future.
5. I am aware that, under the FCA rules, the Firm is required to notify the FCA when disciplinary action has been taken against me for a Conduct Rules breach and may report to the FCA concerns about my conduct even if no disciplinary action has been taken.

Signature: \_\_\_\_\_

DOCUMENT 7 – PRESENTATION FOR SOLO REGULATED FIRMS  
VERSION 1 (02/09/2019)

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**THE SENIOR MANAGERS AND CERTIFICATION  
REGIME: GUIDE FOR UK FCA SOLO-REGULATED  
“CORE” SMCR FIRMS**

*Presentation delivered to [...] on [...] 2019 by [...]*

BASED ON THE “SENIOR MANAGERS AND CERTIFICATION REGIME: GUIDE  
FOR FCA SOLO-REGULATED FIRMS” PUBLISHED BY THE FCA IN JULY 2018

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# 1. INTRODUCTION

# How this guide will help UK Core SMC<sup>R</sup> firms

This guide is a summary of the FCA rules and guidance on the Senior Managers & Certification Regime (“**SM&CR**”). It provides an overview of how the SM&CR works, what firms need to do under the new regime, and how the FCA will move firms and individuals from the existing Approved Persons Regime (“**APR**”) to the new SM&CR.

The guide isn’t a substitute for reading the relevant Handbook requirements, but we have provided cross-references to where a firm can find further information wherever possible.

There are also questions and things for a firm to consider when applying the SM&CR. These shouldn’t be treated as a tick box exercise and the FCA expects a firm to consider how applying these requirements in the firm will support the aims of the SM&CR.

If there are differences between this guide and the FCA Handbook rules and guidance, the rules and guidance take precedence. References in this Guide to rules and guidance in the FCA Handbook are based on the near-final rules published in PS18/14.

# Who the guide is for

The SM&CR will apply to all FCA solo-regulated firms authorised under the Financial Services and Markets Act 2000 (“**FSMA**”), as well as EEA and third-country branches.

This guide, however, only deals with FCA solo-regulated firms authorised under FSMA that are UK Core SMCR firms i.e. FCA solo-regulated firms that are “Core” SMCR firms as defined in Section 2 below and have their registered office in the United Kingdom.

Firms that are not authorised under FSMA (for example Payment Services firms) won't be covered by the SM&CR.

The SM&CR won't apply to Appointed Representatives. They will continue to be subject to the APR.

This guide is not relevant to UK branches of EEA or third-country firms.

# Context

The SM&CR introduces changes to how the FCA regulates individuals working in financial services. It will replace the APR.

The SM&CR aims to reduce harm to consumers and strengthen market integrity by creating a system that enables firms and regulators to hold individuals to account. As part of this, the SM&CR aims to:

- encourage staff to take personal responsibility for their actions;
- improve conduct at all levels; and
- make sure firms and staff clearly understand and can show who does what.

In March 2016, the FCA replaced the APR with the SM&CR for banking firms. The original legislation didn't cover solo-regulated firms. In May 2016, the Bank of England and Financial Services Act 2016 made changes to the FSMA that required the FCA to extend the SM&CR to all firms authorised to provide financial services under FSMA.





## **2. CONFIRMING THAT A FIRM IS A CORE SMCR FIRM**

# Confirming that a firm is a Core SMCR firm

A firm can use the tool below to confirm that its SM&CR firm type is that of a Core SMCR firm. If a firm is not a Core SMCR firm, this guide does not apply to it.

**Table of Firm Types (1/2)**

Firm type	Description
Limited Scope SMCR Firms	<p>This firm type covers all firms that currently have a limited application of the APR, including:</p> <ul style="list-style-type: none"><li>• limited permission consumer credit firms;</li><li>• all sole traders;</li><li>• authorised professional firms whose only regulated activities are non-mainstream regulated activities;</li><li>• oil market participants;</li><li>• service companies;</li><li>• energy market participants;</li><li>• subsidiaries of local authorities or registered social landlords;</li><li>• insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts; and</li><li>• authorised internally managed Alternative Investment Funds (AIFs).</li></ul> <p>Limited Scope SMCR firms will be subject to fewer requirements than Core SMCR firms.</p>

## Table of Firm Types (2/2)

Firm type	Description
Core SMCR Firms	<p>These firms will have a baseline of SM&amp;CR requirements applied.</p> <p>This is a residual category, meaning that a solo-regulated firm will be a Core SMCR firm unless it is a Limited Scope SMCR firm or an Enhanced Scope SMCR firm.</p>
Enhanced Scope SMCR Firms	<p>If a firm meets one or more of 6 criteria below, it will be an Enhanced Scope SMCR firm:</p> <p><i>Definitional criteria</i></p> <ul style="list-style-type: none"> <li>• A firm that is a Significant IFPRU firm</li> <li>• A firm that is a CASS Large firm</li> </ul> <p><i>Criteria calculated on a rolling average</i></p> <ul style="list-style-type: none"> <li>• Firms with Assets Under Management of £50 billion or more as a 3-year rolling average</li> <li>• Firms with current total intermediary regulated business revenue of £35 million or more per annum calculated as a 3-year rolling average</li> <li>• Firms with annual revenue generated by regulated consumer credit lending of £100m or more calculated as a 3-year rolling average.</li> </ul> <p><i>Criteria calculated as a point in time</i></p> <ul style="list-style-type: none"> <li>• Mortgage lenders and administrators (that are not banks) with 10,000 or more regulated mortgages outstanding at the latest reporting date.</li> </ul> <p>Enhanced Scope SMCR firms will represent a small proportion of solo-regulated firms that will have to apply extra rules.</p>

# Applying the SM&CR to groups

FSMA requires the SM&CR to be applied at a legal entity level. This means that there will be groups which will contain firms in different tiers of the new regime.

Some groups may choose to apply the highest tier of the regime to all entities in their group – for example, to make all entities Enhanced Scope SMCR firms. There is no expectation or requirement for firms to do this. If a group chooses to apply the Enhanced Scope SMCR regime to some firms, then they will need to submit a Form O for every affected entity.

DOCUMENT 8 – TRAINING ON CONDUCT RULES FOR STAFF (POWERPOINT VERSION)  
VERSION 1 (02/09/2019)

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**THE SENIOR MANAGERS AND  
CERTIFICATION REGIME (SMCR):  
TRAINING ON CONDUCT RULES FOR STAFF**

*Presentation delivered to [...] on [...] 2019 by [...]*

BASED ON THE COCON (CODE OF CONDUCT) CHAPTER OF THE FCA  
HANDBOOK.

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CHAPTER 1	INTRODUCTION
CHAPTER 2	INDIVIDUAL CONDUCT RULES
CHAPTER 3	APPLICATION
CHAPTER 4	TRAINING AND BREACHES OF THE CONDUCT RULES

# 1. INTRODUCTION

# Overview

FSMA gave the FCA new powers to write Conduct Rules and apply them to all employees within a firm – not just approved individuals. These are a new set of enforceable rules that set basic standards of good personal conduct, against which the FCA can hold individuals to account.

They can be found in the COCON (Code of Conduct) chapter of the FCA Handbook (see: <https://www.handbook.fca.org.uk/handbook/COCON>).

As the Conduct Rules apply to staff directly, they help shape the culture, standards and policies of firms as a whole and promote positive behaviours that reduce harm.

The Conduct Rules are intended to improve standards of individual behaviour in financial services from the top down and the bottom up. They represent a meaningful change in the standards of conduct the FCA expects from those working in the industry.

By applying the Conduct Rules to a broad range of staff the FCA aims to improve individual accountability and awareness of conduct issues across firms.



## **2. INDIVIDUAL CONDUCT RULES**

# Two tiers of the Conduct Rules

Two tiers of Conduct Rules apply to all firms.

The first is a general set of rules that applies to all “Conduct Rules Staff” (as defined below).

The second tier consists of rules that only apply to “Senior Conduct Rules Staff Members” (as defined below).

# First Tier – Individual Conduct Rules

1. You must act with integrity.
2. You must act with due care, skill and diligence.
3. You must be open and cooperative with the FCA, the PRA and other regulators.
4. You must pay due regard to the interests of customers and treat them fairly.
5. You must observe proper standards of market conduct.

# Second Tier – Senior Manager Conduct Rules

SC1. You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

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.

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.

SC4. You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

**DOCUMENT 9 – TRAINING ON CONDUCT RULES FOR STAFF (WORD VERSION)**

VERSION 1 (02/09/2019)

**FS REG LIMITED ([www.fsreg.com](http://www.fsreg.com))**

**THE SENIOR MANAGERS AND CERTIFICATION REGIME (SMCR):**

**TRAINING ON CONDUCT RULES FOR STAFF**

**SAMPLE**

Based on the COCON (Code of Conduct) chapter of the FCA Handbook.

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## 1. INTRODUCTION

### 1.1 Overview

FSMA gave the FCA new powers to write Conduct Rules and apply them to all employees within a firm – not just approved individuals. These are a new set of enforceable rules that set basic standards of good personal conduct, against which the FCA can hold individuals to account. They can be found in the COCON (Code of Conduct) chapter of the FCA Handbook (see: <https://www.handbook.fca.org.uk/handbook/COCON>).

As the Conduct Rules apply to staff directly, they help shape the culture, standards and policies of firms as a whole and promote positive behaviours that reduce harm.

The Conduct Rules are intended to improve standards of individual behaviour in financial services from the top down and the bottom up. They represent a meaningful change in the standards of conduct the FCA expects from those working in the industry.

By applying the Conduct Rules to a broad range of staff the FCA aims to improve individual accountability and awareness of conduct issues across firms.

SAMPLE

## **2. INDIVIDUAL CONDUCT RULES**

### **2.1 Two tiers of the Conduct Rules**

Two tiers of Conduct Rules apply to all firms.

The first is a general set of rules that applies to all “Conduct Rules Staff” (as defined in section 3.1 below).

The second tier consists of rules that only apply to “Senior Conduct Rules Staff Members” (as defined in section 3.2 below).

### **2.2 First Tier – Individual Conduct Rules**

1. You must act with integrity.
2. You must act with due care, skill and diligence.
3. You must be open and cooperative with the FCA, the PRA and other regulators.
4. You must pay due regard to the interests of customers and treat them fairly.
5. You must observe proper standards of market conduct.

### **2.3 Second Tier – Senior Manager Conduct Rules**

SC1. You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

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.

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.

SC4. You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.



### 3. APPLICATION

#### 3.1 To whom do the Individual Conduct Rules apply?

The Individual Conduct Rules apply to the following categories of individuals ("Conduct Rules Staff"):

1. An SMF manager.
2. An employee of an SMCR firm who:
  - a) performs the function of an SMF manager;
  - b) is not an approved person to perform the function in question; and
  - c) is required to be an approved person at the time they perform that function.
3. An employee of an SMCR firm who would be performing an FCA designated senior management function but for the 12-week rule set out in SUP 10C.3.13R.
4. A certification employee of an SMCR firm. This applies even if the certification employee has not been notified that the Conduct Rules apply to them or notified of the Conduct Rules that apply to them.
5. An employee of an SMCR firm who would be performing an FCA certification function but for the emergency appointments or temporary UK role exclusions under SYSC 27.5.1R (Emergency appointments) or SYSC 27.5.3R (Temporary UK role).
6. Any employee of an SMCR firm not falling under any of the above, except the following ("Ancillary Staff"):
  - a) receptionists;
  - b) switchboard operators;
  - c) post room staff;
  - d) reprographics/print room staff;
  - e) property/facilities management;
  - f) events management;
  - g) security guards;
  - h) invoice processing;
  - i) audio visual technicians;
  - j) vending machine staff;
  - k) medical staff;
  - l) archive records management;
  - m) drivers;
  - n) corporate social responsibility staff;
  - o) taking part in following activities of the firm:
    - (i) the firm's activities as a data controller; or
    - (ii) the firm's activities of data processing;as defined in the data protection legislation, but provided the function does not require the employee concerned to exercise a significant amount of discretion or judgment;
  - p) cleaners;
  - q) catering staff;
  - r) personal assistant or secretary;
  - s) information technology support (i.e. helpdesk); and
  - t) human resources administrators / processors. (This does not apply to an employee of an SMCR firm that is an FCA-authorized person until 9 December 2020.)
7. A board director of a UK SMCR firm.

The following definitions apply for the above purposes:

An “SMF manager” is, in relation to an SMCR firm, a person who has approval under Section 59 of FSMA (Approval for particular arrangements) to perform a designated senior management function in relation to the carrying on by that SMCR firm of a regulated activity.

An “employee” includes a reference to a person who: (a) personally provides, or is under an obligation personally to provide, services to the employer under an arrangement made between the employer and the person providing the services or another person; and (b) is subject to (or to the right of) supervision, direction or control by the employer as to the manner in which those services are provided.

A “certification employee” is an employee of an SMCR firm who has a valid certificate issued by that SMCR firm.

A “board director” is a member of the board of directors, or if there is no such board, the equivalent body responsible for the management of the authorised person concerned.

### **3.2 To whom do the Senior Manager Conduct Rules apply?**

The Senior Manager Conduct Rules apply to the following categories of individuals (“Senior Conduct Rules Conduct Staff”):

1. An SMF manager.
2. An employee of an SMCR firm who:
  - a) performs the function of an SMF manager;
  - b) is not an approved person to perform the function in question; and
  - c) is required to be an approved person at the time they perform that function.
3. A board director of a UK SMCR firm.

However, SC1 to SC3 do not apply to a board director of a UK SMCR firm unless the director also falls into points 1 or 2 above (i.e. the director is an SMF manager or an employee of an SMCR firm who performs the function of an SMF manager).

This means that NEDs will generally not be subject to the Senior Manager Conduct Rules.

### **3.3 To what conduct do the Conduct Rules apply?**

The Conduct Rules only apply to conduct that forms part of, or is for the purpose of, any of the following:

- a) the “SMCR financial activities” of a firm; or
- b) any activities of a firm, whether regulated or unregulated, that have, or might reasonably be regarded as likely to have, a negative effect on:
  - (i) the integrity of the UK financial system; or
  - (ii) the ability of the firm to meet the “fit and proper” threshold condition 2E and 3D (Suitability);or
- (iii) the ability of the firm to meet the applicable requirements and standards under the regulatory system relating to the firm’s financial resources.

The “SMCR financial activities” of a firm are defined as any of the following:

- a) regulated activities;
- b) an activity carried on in connection with a regulated activity (whether current, past or contemplated);
- c) an activity held out as being for the purposes of a regulated activity (whether current, past or contemplated);
- d) activities that constitute dealing in investments as principal, disregarding the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc); or

- e) activities listed in points 2 to 15 of Annex I to the Capital Requirements Directives (List of activities subject to mutual recognition).

### 3.4 Where do the Conduct Rules apply?

The Conduct Rules apply to the conduct of the following Conduct Rules Staff wherever it is performed:

- a) a Senior Conduct Rules Staff member; and
- b) a certification employee performing the FCA certification function of a Material Risk Taker for a UK SMCR firm.

For all other Conduct Rules Staff, the Conduct Rules only apply if the conduct of persons:

- a) is performed from an establishment maintained in the United Kingdom by the SMCR firm; or
- b) involves dealing with a client of the firm in the United Kingdom from an establishment overseas (applies to UK SMCR firms only).

“Dealing with” includes having contact with customers and extending beyond “dealing” as used in the phrase “dealing in investments”. “Dealing in” is used in Schedule 2 to FSMA to describe, in general terms, the regulated activities which are specified in Part II of the Regulated Activities Order.

“A client of the firm in the United Kingdom” refers to:

- a) for a client which is a body corporate, its office or branch in the United Kingdom; or
- b) for a client who is an individual, a client who is in the United Kingdom at the time of the dealing.

A person will not be subject to the Conduct Rules to the extent that it would be contrary to the UK's obligations under a Single Market Directive, the auction regulation or the benchmarks regulation.

### 3.5 Non-executive directors of SMCR firms

COCON 1 Annex 1 contains guidance on the role and responsibilities of non-executive directors of SMCR firms.

For these purposes, a “non-executive director” (NED) is defined as a director who has no responsibility for implementing the decisions or the policies of the governing body of a firm and a “director” is defined as any person appointed to direct a firm's affairs, including a person who is a member of a firm's governing body and (i) a person occupying in relation to a firm the position of a director (by whatever name called) and (ii) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act.

The guidance applies to NEDs performing the roles below:

- a) the role of chair of the board of directors;
- b) the role of chair of the nomination committee;
- c) the role of chair of any other committee (irrespective of whether performing that role is itself a designated senior management function);
- d) the general NED role.

The FCA's view of the role of a NED is consistent with the duties of directors included in UK company law and the description of the role of a NED in the UK Corporate Governance Code.

#### The general role of a NED

The role of a NED performing the general NED role is to:

- a) provide effective oversight and challenge; and
- b) help develop proposals on strategy.

To deliver this, their responsibilities include:

- a) attending and contributing to board and committee meetings and discussions;
- b) taking part in collective board and committee decisions, including voting and providing input and challenge; and
- c) ensuring they are sufficiently and appropriately informed of the relevant matters prior to taking part in board or committee discussions and decisions.

Other key roles of a NED include:

- a) scrutinising the performance of management in meeting agreed goals and objectives;
- b) monitoring the reporting of performance;
- c) satisfying themselves on the integrity of financial information;
- d) satisfying themselves that financial controls and systems of risk management are robust and defensible;
- e) scrutinising the design and implementation of the remuneration policy;
- f) providing objective views on resources, appointments and standards of conduct; and
- g) being involved in succession planning.

### **Role of a NED as chair of the board or a committee**

Subject to any specific governance arrangements, rules or requirements applicable to the board or particular committees, a NED's responsibility as chair of the board or a committee includes:

- a) ensuring that the board or committee meets with sufficient frequency;
- b) fostering an open, inclusive discussion which challenges executives, where appropriate;
- c) ensuring that the board or committee devotes sufficient time and attention to the matters within its remit;
- d) helping to ensure that the board or committee and its members have the information necessary to its and their tasks;
- e) reporting to the main board on the committee's activities;
- f) facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions; and
- g) in relation to the nomination committee, safeguarding the independence and overseeing the performance of the nomination committee.

The chair of the nomination committee should take reasonable steps to ensure that the nomination committee complies with:

- a) the requirements in SYSC 4.3A about the nomination committee (if that part of SYSC applies to the firm); and
- b) any specific and relevant requirements relating to the committee or to the matters within the committee's responsibilities.

The above is still relevant to a firm:

- a) that is not required by the FCA Handbook to have a nomination committee; or
- b) for which being the chair of such a committee is not a controlled function; if it has such a committee.

### **General approach to the role of a NED**

The FCA recognises that NEDs individually do not manage a firm's business in the same way as executive directors. Therefore, the responsibilities for which NEDs are accountable are likely to be more limited.

A NED is neither required nor expected to assume executive responsibilities.

Although NEDs who are subject to the senior management regime for SMF managers have individual duties under that regime, the FCA views the regime and its application as consistent with the principle of collective decision-making.

The standard of care, skill and diligence that the FCA would expect from a NED is the care, skill and diligence that would be exercised by a reasonably diligent person with:

- a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the NED in relation to the firm, taking into account the standards in the Handbook (especially COCON and DEPP); and
- b) the general knowledge, skill and experience that the NED has.

SAMPLE