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SMCR – Top Priorities for 2020/21

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The UK senior managers and certification regime ("SMCR") overhauled the accountability regime for individuals working in UK financial services firms and has been in force for just over two months now. The regime applied to all FCA solo-regulated firms on 9 December 2019, but for most firms, there is still work to be done. In this Client Alert, we summarize the main issues firms will need to focus on to ensure full compliance with SMCR in 2020/21 and beyond. For further background and detail on SMCR, see our previous memo here.

1. The Certification Regime

The certification regime ("CR") applies to employees whose role means it is possible for them to cause significant harm to the firm, its customers or the market more generally (also referred to as 'Certification Functions'). Firms must check and certify that individuals holding certification functions are fit and proper to perform their role at least once a year. It was that case that Firms needed to complete certification assessments and issue certificates of certification by 9 December 2020; however, the FCA announced on 30 June 2020 (the “30th June Announcement”) that this deadline will be extended until 31 March 2021. The FCA’s 30th Announcement is available here.

Importantly, there is no jurisdictional limitation under the SMCR; Senior Managers performing a role overseas which impacts the strategy of the UK firm would, in certain circumstances, still remain in scope. The CR is limited to UK-based employees (with the exception of Material Risk Takers or those dealing with UK clients, where no territorial limitation applies). Therefore firms with overseas offices need to consider whether any overseas personnel will be bought into the scope of the rules.

While the senior management functions are more clearly defined, the lessons learned from implementation of SMCR to the banking industry demonstrated the challenges involved in the identification of staff who need to be certified, as compared to the relatively straightforward identification of senior managers. With this in mind, engaging in the identification and certification of staff should begin as early as possible.

2. Directory of individuals

The FCA has established a "directory" of individuals at SMCR firms who will no longer be shown on the Financial Services Register. Directory persons will include all certified staff and directors who are not performing senior management functions (both executive and non-executive) as well as appointed representatives and sole traders who are undertaking business with clients and need a qualification to do so. Firms can now submit data using the Directory Persons Connect Form either via a single entry or multiple entries template form. The information on the directory was due to go live in December 2020 but this too appears to have been delayed until 31 March 2021 following the FCA’s 30th June Announcement. When it is live, the Directory will include information about the individual's role, their workplace location and the types of business they are qualified to undertake.

3. The Conduct Rules

Effective training is critical to complying with SMCR. New Conduct Rules apply to almost all employees within firms. Following the FCA’s 30th June Announcement it appears that firms will have until 31 March 2021 to train all remaining employees on the Conduct Rules, previously this was required to be completed by December 2020. Ensuring staff qualifications and competencies are aligned with the requirement of the Training and Competency framework will be at the core of the SMCR's annual certification process.

4. Embedding culture/engaging with SMCR

Central to the successful implementation of SMCR will be satisfying the FCA of a strong culture of 'good conduct, integrity and compliance' within the firm. This can be more of a challenge than expected. Firms should be prepared to demonstrate not only that the 'tone is set from the top' but also evidence this being set from the middle level and down. A firm should be able to define what 'good culture' means to it, which will often depend on the firm's needs, structure and personnel within the organisation. As part of this process, firms should develop metrics to define and measure both their strengths and weaknesses in this area. Firms that successfully embed a good culture are more likely to meet clients' and the FCA's expectations in this area.

Involving staff beyond senior management such as Human Resources and employment will also be key to successful SMCR compliance, to ensure broader buy-in and input on issues such as organisational governance, the relationship between remuneration and behaviour and having the knowledge and resources to be able to measure the effective embedding of good conduct and ethics within a firm.

We have worked closely with clients to prepare for SMCR and we remain available to answer any questions on SMCR, discuss or review your existing accountability frameworks, or provide the required conduct rule training for staff. Please reach out to any of your regulatory contacts listed on this Client Alert.

Related Professionals

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