

PRA Evaluation of the Senior Managers and Certification Regime

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On behalf of our members, AFME and UK Finance welcome the opportunity to comment on the PRA's evaluation of the Senior Managers and Certification Regime (SMCR). We welcome this Evaluation which represents good practice - it is important to review all major regulatory initiatives to ensure they have met their objectives in an effective and proportionate way.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms, we act to enhance competitiveness, support customers, and facilitate innovation.

Comments on the Evaluation

We have split out our comments by theme below. As a general point, we note that, while action by the PRA on some of the issues below would be welcome, the issue will only be fully addressed if corresponding action is also taken by the FCA. For example on addressing any barriers (real or perceived) to diversity and on clarifying the approach to interim appointments.

Theme 1: Holding individuals to account through the SM&CR

- 1. Conduct Rules and Regulatory References:** Different firms include different information in regulatory references and may have different materiality thresholds. This means that it is difficult to know whether a 'clean' reference is truly clean or whether adverse information about the individual might have been omitted. For example, it is believed that some firms take a zero tolerance approach to hiring any individuals who have Conduct Rule breaches detailed in their regulatory reference and will not employ them. This could lead to the same firms omitting information from references that they issue or adopting a high materiality threshold when determining whether a Conduct Rule breach has occurred for fear of employment litigation. Other firms include comprehensive information, which created an unlevel playing field if the receiving firm takes a 'zero tolerance' approach.

In addition, the requirement for data gathering for the past six years can often be challenging. Whilst firms have robust processes in place, it would be valuable to understand more about what constitutes 'reasonable'.

More dialogue between the industry and regulators on i) how important the seriousness and materiality of the underlying conduct is when determining whether a breach of the Conduct Rules has occurred and ii) the information to be included in regulatory references would be welcome to ensure firms are taking a consistent, balanced approach which is fair to both the receiving firm and to the individual. It would be useful for firms if this included feedback from the regulators on the Conduct Rule breach notifications they receive - to understand the types of misconduct being reported industry-wide, as well as the level of individuals being issued Conduct Rule breaches and whether this is in line with the intent of the regime.

We would also welcome clarification of expectations around the application of the conduct rules and regulatory references requirements to non-permanent staff including for instance, those provided by third party suppliers.

2. **Link between SMCR and Remuneration Adjustments:** Further guidance on the importance to be placed on temporary regulatory 'key risks' or actions versus core SMR responsibilities would be welcomed. There is a danger that the articulation of regulatory actions in regulatory correspondence places undue focus on impending deliverables in performance assessments above the core components of SMF roles. It is also important that remuneration decisions should ultimately remain a matter for firms and their Remuneration Committees, and not be driven by regulators.
3. **Senior Manager Expectations:** We suggest that responsibility for embedding the SMR and the Certification Regime should sit at the top of the organisation to ensure a consistent framework firm or group. If the PRA chooses to articulate more detailed expectations of the individuals holding these prescribed responsibilities, it should be noted that more detailed or onerous requirements (e.g. personal responsibility for the drafting of all Statements of Responsibilities) may result in these responsibilities being moved down the hierarchy, e.g. to a Head of Compliance or HR which would be counter-productive

Theme 2: Myth busting and clarifying expectations

4. **Diversity:** We would welcome further dialogue with the PRA as to how firms can work to further improve their diversity within senior roles. For example, it could be useful to discuss opportunities to draw candidates from less conventional financial services backgrounds e.g. NED roles for those with an entrepreneurial rather than academic background and the acceptable timescales for any upskilling required.

Some firms also report a reluctance to appoint individuals into Senior Manager roles or as direct reports of Senior Managers if they do not have directly relevant experience due to the need to ensure the recruiting Manager is taking 'reasonable steps'. This could contribute to a lack of diversity over time.

It may be helpful to reaffirm whether the approval process is designed to test diversity of thinking, e.g. whether SMF candidate interviews are intended to test independence of mind and strength of character to challenge.

Guidance on the level of detail required for competency assessments would also be helpful, particularly for applicants who have an existing SMF approval.

5. **Collective Accountability:** We agree that the two approaches can co-exist at Board level where NED SMF responsibility is limited to the effective performance of the Chair role, not the decisions or output of the Board/ Board Committee, and this is an important distinction which should be retained.

The Senior Independent Director (SID) for the Ring-fenced bank (a 'Double Independent NED') role causes some difficulty for corporate groups which have indicated that the SMR responsibilities of this role (SMF14) are more suited to those of the Group SID. A new SMF category of 'Lead DiNED' with accountabilities tailored to that role, e.g. leading the DiNED conflict process, may be more suitable.

- 6. Interim Appointments:** The current flexibility afforded by the 12-week rule is helpful. However, further guidance on whether the 12-week period restarts once an application is submitted, or whether individuals can perform SMFs under regulatory forbearance until the application is determined, would be welcomed (we have communicated separately to the PRA and FCA our related concerns about delays to Senior Manager approvals and also note under point 11 below some delays reported to FCA Connect processing). Similar to that which has been recently consulted on for Senior Managers, clarity on whether Certification should be withdrawn when individuals are on long term absence (e.g. successive periods of sick leave) would also be helpful. It should be noted that individuals may not want certain extended leave periods (e.g. parental or medical leave) to be evident on Register.

Theme 3: Application of the SM&CR to different business models

- 7. Documentation:** We welcome and support the PRA's proposal to seek further views on requiring smaller firms to submit documentation less frequently. Significant administrative resource is required to support the submission of SMCR applications (especially Form J), which is more challenging for smaller firms and can result in disproportionate administrative resource requirements.
- 8. Group Application:** Further guidance on how Groups should apply the SMR and on the expectations of those holding SMF 7 would be welcomed - the regime does not sit easily in large, complex Group structures where subsidiaries are regulated as separate firms but are subject to Group policies and processes. We note that this point is also raised as part of the PRA's Consultation Paper CP2/21 'International banks: The PRA's approach to branch and subsidiary supervision'.
- 9. Time-Limited Approvals:** With regard to the PRA's recommendation to make time-limited and conditional approvals more readily used, we would observe that time-limited approvals can be viewed as though the PRA does not have complete confidence in an individual. In some cases this may be due to the appointment being temporary in nature but in others it may be down to concerns about a structure rather than the individual themselves, for example to limit the time an individual can hold 'double-hatted' roles, but as the context is not published, some stigma is likely to attach to the individual, which would be unfair.
- 10. Guidance Inventory:** An inventory of guidance and expectations on Senior Manager responsibility would be a valuable resource for firms, particularly if produced in conjunction with the FCA. We have highlighted previously to the PRA and FCA that keeping track of expectations on Senior Managers, which can often be expressed in diverse regulatory publications, for instance supervisory letters that are aimed at different departments within firms as well as 'Dear CEO' letters, and speeches can be challenging. A single resource would allow firms to periodically review their compliance.
- 11. Working within Existing Expectations:** We welcome the PRA's suggestion that supervisors should seek to work within existing regulations and expectations wherever possible, rather than adding new requirements. As we have previously discussed with both the PRA and FCA, our members have been concerned that, as new focus topics emerge on the regulatory agenda, there is an expectation that each should be specifically added to Senior Manager responsibilities. This seems to challenge the general principle that firms should ensure their Senior Managers are responsible for material new areas of focus, without the need for regulators requiring explicit allocation. It can also lead to Statements of Responsibility being frequently changed and becoming too detailed to be practical. Furthermore, the administrative resource required to track and make these changes is disproportionate to the objectives of SMCR. This statement by the PRA is therefore extremely welcome and would work well in conjunction with the aforementioned inventory of supervisory expectations.

Where regulators feel it is absolutely necessary to add new areas of responsibility, firms would prefer that new areas of responsibility be added to the list of prescribed responsibilities or suggested 'Main Business Activities' published by the FCA in SYSC 25 Annex 1) so that there is a single framework for responsibilities expected to be included in a Statement of Responsibility. Regulators might also review the full list of 'Additional

Responsibilities' that firms have been asked to add to Statements of Responsibility since 2016 to check whether these are still areas of regulatory focus, or whether some could now be retired to avoid unnecessary focus on these issues over and above core responsibilities.

We have reason to believe that the need for frequent updates to Statements of Responsibility, for example to add 'key risks' from Periodic Summary Meeting letters to a number of different Senior Managers in different firms, is contributing to worrying backlogs in the FCA's Connect system. Firms have reported that updates have not been processed for several months, preventing further updates from being submitted.

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