

FCA CP 17/25 – Individual Accountability: Extending the Senior Managers & Certification Regime to all FCA firms – Responsible Finance Response

3 November 2017

Q1: Does the proposed list of Senior Managers in the core regime cover the appropriate roles, ie the most senior decision makers within a firm?

The proposed Senior Managers functions cover the most senior decision makers within a firm. Responsible Finance welcomes the Senior Managers and Certification Regime as it is more proportionate than the Approved Persons regime, which required all Directors and Non-Executive Directors to become approved. That approach presented recruitment and retention challenges for responsible finance providers, as NEDs in the sector are not compensated for the potential risk they undertake as an approved person.

In the proposed Senior Managers Regime, key individuals are responsible for the firm's culture and risk management, therefore fewer people need to be approved. It is clear which individuals need to be approved. However we recommend that the FCA create a Senior Managers Function for responsible finance providers (community finance organisations) which captures the key decision making functions such as Chief Executive, Chair, and Compliance. This would create parity with the credit union sector which has SMF8. As small organisations responsible finance providers often have the same individuals performing multiple functions, or the head of the risk and audit committee may move into the chair role. In such cases re-approving an individual for a new function can be time and resource intensive, particularly for small firm. By creating a Statement of Responsibility responsible finance providers will determine the significant decision-making roles, and therefore approve those individuals. Having a single function will allow greater flexibility for the sector, where regulatory costs directly impact the bottom line and its ability to deliver positive impact to its customers and the communities the sector serves.

Q2: Are there any other roles that the FCA should consider specifying as SMFs? (You may wish to consider the list of proposed Senior Managers under the enhanced regime in section 8.16)

Please refer to our response to Question 1 on a function for a single function for responsible finance providers.

Q3: Are there any proposed Senior Managers that the FCA should consider excluding from the core regime?

N/A

Q4: Do you agree with our approach to Senior Management Functions for Limited Scope Firms? If not, please explain why.

Yes, however we would welcome a similar approach taken for the responsible finance sector which introduces a single function for key decision-making positions.

Q5: Do you agree with our proposed list of Prescribed Responsibilities? If not, please explain why.

Yes.

Q6: Do you agree with our proposed Prescribed Responsibility for AFMs as set out in CP17/18? If not, please explain why.

N/A

Q7: Do you agree with the functions we have proposed making Certification Functions? If not, please explain why.

Yes. In small firms many Certification Functions may be carried out by Senior Managers, so we would welcome clarification from the FCA on how small firms should approach the Certification Regime proportionately.

Q8: Are there any other functions that we should make a Certification Function?

No.

Q9: Do you think the identity of people performing Certification Functions should be made public by firms? If so, which Certification Functions should be made public?

Yes we agree with this proposal. We recognize that making the identity of Certification Functions could create difficulty in recruiting people into Certification roles, however as significant harm roles come with responsibility it is good for firms to be transparent around who is in the role. However we welcome additional clarification on the process for registering on a public registry and then how the information is used. We recommend that the process is proportionate.

Q10: Do you agree with our proposed territorial limitation for the Certification Regime? If not, please explain why.

N/A

Q11: Do you agree with the approach we have proposed to allocating CASS responsibilities? If not, please explain why.

N/A

Q12: Do you agree with our proposed approach to rules and guidance on the fit and proper test? If not, please explain why.

We understand the rationale and need for regular fit and proper tests, and recognise the need for key individuals to certify that they are fit and proper to have an influence on a firm that poses a risk to consumers. We agree that they should be done on a regular basis, however for small organisations such as responsible finance providers, an annual fit and proper requirement is disproportionate and increase the compliance burden for the firm. We recommend that the FCA place a requirement to conduct fit and proper tests at least every 36 months. Fit and proper tests should also be proportionate to a firm's size and risk posed.

Q13: Do you agree with our proposed requirements on criminal record checks? If not, please explain why.

We understand the rationale for the proposed requirements on criminal record checks, however for small firms this can present a disproportionate regulatory burden and cost. We recommend that criminal records checks are only required during the approval stage for Senior Managers and not annually.

Q14: Do you agree with our proposed requirement of regulatory references? If not, please explain why.

We understand the rationale for regulatory references but in practice it may prove difficult. If an individual has held multiple roles in the last 6 years, this could place a logistical burden on a small firm. Also if an employer is not legally required to respond (and may refuse to with the new GDPR rules coming online), firms could struggle to collect the reference. Then if a firm cannot track down a former employer there is a question of how they proceed with the Senior Manager's application. We recommend the FCA takes a proportionate approach by reducing the employment history (e.g. 3 years), or the guidance specifies that to the extent that firms can retrieve regulatory references from employers within 6 years.

Q15: Do you agree with our proposal to apply the Conduct Rules to financial services activities?

Yes

Q16: Do you agree with our proposal to apply the Conduct Rules to all employees who perform financial services, with the limited exclusions listed in section 7.14?

Yes

Q17: If you disagree, please explain why, including (where appropriate) cost implications.

N/A

Q18: Do you agree with our proposal to link notification requirements for disciplinary action to breaches of the Conduct Rules?

Yes

Q19: Do you agree with our proposed frequency of Conduct Rules notifications? If not, please explain why.

We recommend that the notification period for Senior Managers is longer (e.g. 14 days, or 1 month) given time and resources constraints within small firms. Although we recognise that reporting breaches in Senior Managers conduct is critical, a longer window would be more proportionate to the reality of the operating environment of small firms. We agree with the frequency of conduct rules notification for other employees.

Q20: Do you agree with our proposed approach of using the objective criteria set out above to identify firms for the enhanced regime? If not, please explain why and propose alternative approaches.

N/A

Q21: Do you agree with our proposed approach to moving firms between core and enhanced? If not, please explain why.

N/A

Q22: Do you agree with our proposed Senior Management Functions for enhanced firms?

N/A

Q23: Do you agree that this will ensure the most senior people in firms are covered by the Senior Managers Regime, regardless of organisational structure? If not, please explain why.

N/A

Q24: Do you agree with our proposals for Prescribed Responsibilities in enhanced firms? If not, please explain why.

N/A

Q25: Do you agree with our proposal to apply the Overall Responsibility requirement to enhanced firms? If not, please explain why.

N/A

Q26: Do you agree with our proposal to apply Responsibilities Maps to enhanced firms? If not, please explain why.

N/A

Q27: Do you agree with our proposal to apply handover procedures to enhanced firms? If not, please explain why.

N/A

Q28: Do you agree with our proposals for Senior Managers in EEA Branches?

N/A

Q29: Do you agree with our proposals on the Certification Regime and Conduct Rules for EEA Branches?

N/A

Q30: Do you agree with our proposals for Senior Managers in non-EEA branches? If you disagree, please explain why.

N/A

Q31: Do you agree with our proposals for Prescribed Responsibilities in non-EEA branches? If you disagree, please explain why.

N/A

Q32: Do you agree with our proposals on the Certification Regime and Conduct Rules for non-EEA Branches?

N/A

Q33: Do you agree with our proposal to introduce a new Prescribed Responsibility for the Conduct Rules that will also apply to banking firms?

N/A

Q34: Do you agree with our changes to the 12-week rule? If not, please explain why.

We agree with the principle to the 12-week rule. However in practice in a small firm 12 weeks might not be fit-for-purpose in practice. For example, the recruitment process can take longer than 12 weeks. We recommend that the FCA implements the 12-week rule but enables waivers for firms where the gap period is longer.

Q35: Do you agree with our approach to applying the partner function to banking firms? If not, please explain why.

N/A

Q36: Based on the summary above and the full analysis www.fca.org.uk/publication/research/cba-extensionsenior-managers-certification-regime.pdf, do you agree with our approach and methodology for the cost-benefit analysis? If not, please explain why. If not, please explain why.

Yes.

Q37: Based on the summary above and the full analysis www.fca.org.uk/publication/research/cba-extensionsenior-managers-certification-regime.pdf, do you agree with our findings and conclusions for the cost-benefit analysis? If not, please explain why.

Yes.