

Final guidance readies solo-regulated firms for SMCR extension

A diverse array of financial services businesses are undergoing an overhaul this year to the way their staff are regulated. The Financial Conduct Authority's final guidance sets out its three-tiered approach, along with its expectations for Statements of Responsibilities and Responsibilities Maps. **Louise Skinner** and **Thomas Twitchett** highlight the key points.

On 9 December 2019, the Senior Managers and Certification Regime will be extended to all Financial Conduct Authority solo-regulated firms. Ahead of this extension, and to assist affected firms, the FCA has released multiple guides. In July 2018, the FCA published its official guide to SMCR for solo-regulated firms containing near-final rules and a detailed overview of the regime. The FCA has now published final guidance for solo-regulated firms on how to prepare Statements of Responsibilities and Responsibilities Maps, both of which are integral components of the Senior Managers Regime.

Although the FCA's final guidance has been developed for solo-regulated firms, the FCA has been keen to stress that dual-regulated firms may also find it a useful resource.



Background

The SMCR is being extended to all FCA solo-regulated firms from 9 December 2019. It will be applied proportionately to firms in accordance with the regulatory tier (or category) in which they fall. Firms can be categorised either as limited, core or enhanced scope firms. Broadly-speaking, firms classified as limited scope firms will be subject to less onerous SMCR requirements; firms classified as core or enhanced scope will be subject to more onerous SMCR requirements. The FCA operates an online checker tool that firms may wish to use to help establish the tier in which they will fall.

The FCA's final guidance provides firms with self-assessment questions and examples of good and poor practices, proportionate to whether a firm is a limited, core or enhanced scope firm. The guidance is intended to be applied in a risk-based and proportionate way, taking into account the size, nature and complexity of the relevant firm, to decide whether any given example of good or poor practice in the guidance is appropriate to that firm.

Senior Managers Regime

The Senior Managers Regime is designed to ensure that persons who perform senior management functions obtain FCA approval before starting their roles. Senior managers will be required to provide a Statement of Responsibilities (SoR) stating what they are accountable for and enhanced firms will also be required to provide a Responsibilities Map.

Statements of Responsibilities

Preparing and maintaining an up-to-date SoR is a legal requirement for individuals who are senior managers. The SoR sets out the role(s) and responsibilities for which a senior manager has ultimate accountability. The FCA's final guidance stipulates that the SoR should be focussed on what the relevant individual is accountable for, rather than being an exposition of their job profile (ie, it should not detail the skills and competencies required for the effective discharge of their role).

The FCA's final guidance encourages firms to ask themselves as a useful test when preparing SoRs: *"Could someone who understands the type of business that you do, but doesn't know how your firm is organised, understand what the individual Senior Manager is accountable for by reading their SoR?"*

The FCA's final guidance cross-refers to the template SoR for solo-regulated firms currently found in the FCA's near-final rules (Appendix 1, PS18/14). The guidance considers in turn each of the different sections of the template SoR and, for each, poses helpful self-assessment questions for firms depending on their tier classification. Enhanced scope firms are offered guidance for addressing sections of the form concerning 'prescribed responsibilities', 'overall responsibilities' and 'other responsibilities'; core scope firms 'prescribed responsibilities' and 'other responsibilities'; and limited scope firms 'other responsibilities' only.

The FCA's final guidance provides example SoRs based on three case studies involving different firm tier classifications. The example SoRs focus on 'senior management functions', 'prescribed responsibilities' and 'other responsibilities' (as applicable). Tailored

guidance has also been provided for CEOs, partners, chairs, compliance officers and executive directors to allow SoRs to be prepared that reflect the FCA's expectations.

Examples of good and poor practices are included in the guidance, to ensure responsibilities are appropriately allocated and SoRs are drafted to a high standard. The guidance includes the following tips (among others):

1. An SoR is specific to a legal entity and should not include details of an individual's responsibility in *other* legal entities except to the extent necessary to understand how that individual's functions in relation to the regulated firm fit in with their group responsibilities.
2. Unless there is a strong justification, the FCA would not normally expect prescribed responsibilities to be shared or divided between senior managers.
3. Where a prescribed responsibility is shared between senior managers, the rationale for sharing should be clearly explained in the SoR. A potentially appropriate instance of sharing could be where a departing and incoming senior manager work together temporarily as part of handover arrangements.
4. Sharing prescribed responsibilities between individuals occupying different senior management functions (and particularly across lines of defence) is likely to be poor practice leading to a lack of clarity in accountability.
5. The role of an individual must be well suited to the prescribed responsibility for which the senior manager will be accountable.

Firms should also take care not to include language such as "including but not limited to" in SoRs, which may imply that some areas of responsibility have not been correctly or adequately documented.

Responsibilities Maps

A Responsibilities Map is a requirement for enhanced scope firms only. The process of putting together the map encourages enhanced firms to assess accountability not just at an individual level but more broadly across the entire firm.

A Responsibilities Map provides an overview of how the firm is managed and governed. It should contain key information about governance bodies, senior management reporting lines and senior managers' responsibilities. The FCA's final guidance recommends using a mixture of graphics and text in order to make the map clear to understand. It also provides example Responsibilities Maps that are helpful indicators of the layout that should be adopted. Each element of the map should be represented clearly using diagrams and tables.

Producing a Responsibilities Map requires careful drafting in order effectively to portray the distribution of accountability across a firm. If a firm is part of a group, this must be reflected in the map, including reference to key group-level individuals.

As with SoRs, the FCA's final guidance encourages firms to ask themselves as a useful test when preparing a Responsibilities Map: "*Would someone who didn't know your firm be able to understand how it was governed and who was accountable for its business activities?*"

When formulating Responsibilities Maps, it is recommended that firms consider, among other things, whether:

- It is easy to understand the firm's governance structure.
- The information provided is too detailed and would be more appropriate for SoRs.
- Clear distinctions are made between multiple reporting lines.
- The remit, membership and influence of any decision-making committees is clear.

Firms should keep a record of the different versions of their Responsibilities Maps and retain these in accordance with regulatory record-keeping requirements.

Implementation

In advance of 9 December 2019, FCA solo-regulated firms should ensure that they are prepared to implement all steps required in relation to their firm in advance of SMCR going live – including the production of clear and accurate SoRs and (where applicable) cogent and transparent Responsibilities Maps.

Although these steps may be challenging to coordinate and finalise internally, involving the collaboration of multiple internal stakeholders and often external advisers, the process of producing SoRs and Responsibilities Maps can helpfully illuminate areas of previously unclear divisions and responsibilities as well as crystallise stronger and more robust governance and accountability systems.

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