



WHITE PAPER

SM&CR: Enhancing Ethics, Accountability & Culture



Ruleguard

Contents

Background	3
What has changed?	5
How does SM&CR apply to firms?	7
Setting standards	9
Senior Managers Regime	10
Certified Regime	13
FCA Directory	15
Conduct Rules	16
Ruleguard's SM&CR Solution	18
Why Ruleguard?	19
About Ruleguard	20
Get in touch!	21

Background

Since the financial crisis of 2008, regulators worldwide have been introducing reforms to improve individual accountability within firms.

Regulators were criticised for their lack of action and inability to prevent the crisis. Further criticism was aimed at firms' failings with the public feeling that some senior managers were richly rewarded despite mismanagement. In the UK, the changes resulted in the phased implementation of the Senior Managers and Certification Regime (SM&CR) to replace the Approved Persons Regime (APER) for relevant firms.





What has changed?

The SM&CR differs from the APER regime in a number of ways, but can be summarised in terms of:

- Regulatory approval process
- A firm's assessment process
- Individual accountability

APER

With the APER regime, the regulator reviewed and approved both senior managers that were responsible for the direction of the firm, as well as key staff undertaking specific roles such as trading or advising retail clients.

SM&CR

With SM&CR, the onus is on the firm to assess their senior managers fitness and competency to fulfil their roles and responsibilities. This is supported by the requirement that the prescribed responsibilities must be allocated to a senior manager. Firms should explain how they have made this allocation and have supporting evidence of the fitness assessment.



Approved Persons Regime (APER)

Overview

- Regulatory authorisation of the firm
- Approval of all individuals to hold controlled functions
- Board responsibilities
- Individual responsibilities

Governance:

- Approved Persons Regime (including Conduct)
- Required roles: directors, partners, compliance, MLRO

Process for approved persons:

- Form A completed
- Supporting documents (CV; rationale for the appointment, details of relevant experience and expertise)
- Criminal checks - best practice
- References - best practice
- SYSC: Apportionment of Responsibilities required (also under MiFID II)
- Qualifications: required for certain roles (eg retail investment advisers)
- Statements of Principle & Code of Practice - all individuals and specific direction requirements

Senior Managers & Certification Regime (SM&CR)

Overview

- Regulatory authorisation of the firm
- Regulatory approval of certain senior manager functions and NEDs
- Prescribed responsibilities for specific senior management functions
- Business certifies other senior managers and risk takers

Governance:

- COCON
- Required senior managers functions according to SM&CR firm classification

Process for approved senior management functions (SMFs):

- Form for approval
- Statement of Responsibilities

Required:

- Criminal checks
- References
- Allocated Prescribed Responsibilities

Enhanced firms also:

- Management Responsibilities Maps
- Handover Procedures
- Overall Responsibility

Certification regime - annual process

Code of Conduct - most staff, few exceptions

How does SM&CR apply to firms?

Under SM&CR, a firm's obligations differ according to the complexity and scale of the firm.

Firstly, those organisations dual-regulated by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) fall into the following categories:

- Bank and deposit takers (SM&CR Banking firms)
- Insurers (SM&CR Insurance firms)

Next, firms regulated by the FCA are classified into three groups:

- Core
- Limited
- Enhanced

Core firms must comply with baseline requirements, whereas enhanced firms have additional requirements, and limited scope firms have less requirements placed upon them with fewer senior management functions.

The rules require firms to classify themselves (see SYSC 23 annex 1) and monitor activities to identify any changes to that classification. In turn a change will prompt a notification to the regulator.

The classification exercise should be completed at least annually, but changes to business services or activities could trigger a review of the classification. Therefore, firms need to ensure that they're monitoring their activities to anticipate when a notification might be required.



Types of SM&CR solo-regulated firms

Limited scope:

- Sole traders, claims management companies, subsidiaries of local authorities, insurance intermediaries. Internally managed AIFs
- Dental Practice - limited permission as a Consumer Credit Firm

Core:

- Most solo-regulated firms

Enhanced:

- Small number of solo-regulated firms - mostly large firms
- Significant investment firms and large CASS firms
- Mortgage lender (not authorised banks) with 10,000+ regulated mortgages outstanding

Setting standards

The UK's SM&CR sets a baseline standard of conduct.

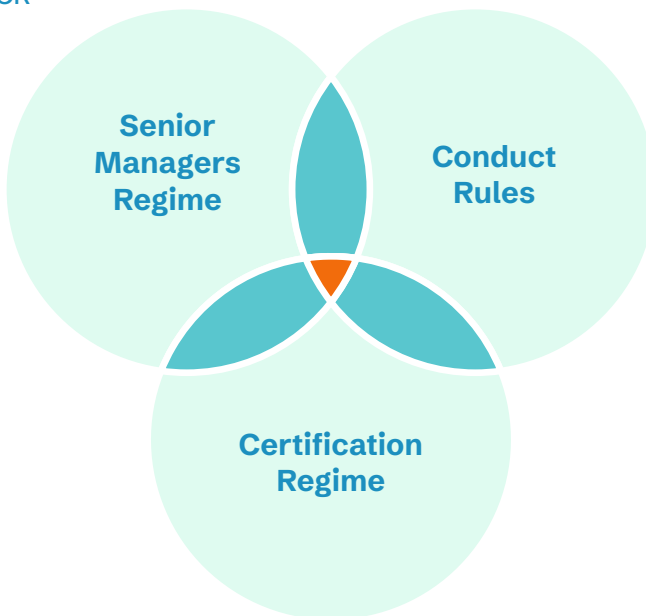
It promotes:

- Greater individual responsibility throughout a business
- Minimum standards of conduct
- Fitness and propriety of individuals undertaking key roles

With firms responsible for assessing fitness and propriety for senior managers and certifying employees as competent, it is hoped that firms will create a corporate culture that encourages good outcomes for consumers.

The Regime's three key core components are: Senior Managers Regime, Certification Regime and Conduct rules.

Key Components of SM&CR



Senior Managers Regime

This component is key in driving individual accountability and creating the right culture within a firm.

Regulatory feedback has indicated that SM&CR has provided greater clarity regarding an individual's duties.

SM&CR requires firms to take responsibility for ensuring individuals understand their responsibilities. Individuals cannot hide behind collective decision making as their Statement of Responsibilities set out their obligations to the firm and the regulator.

Firms identify their senior managers and allocate specific responsibilities to those senior managers. These individuals require approval by the relevant supervisory body before commencing their duties.

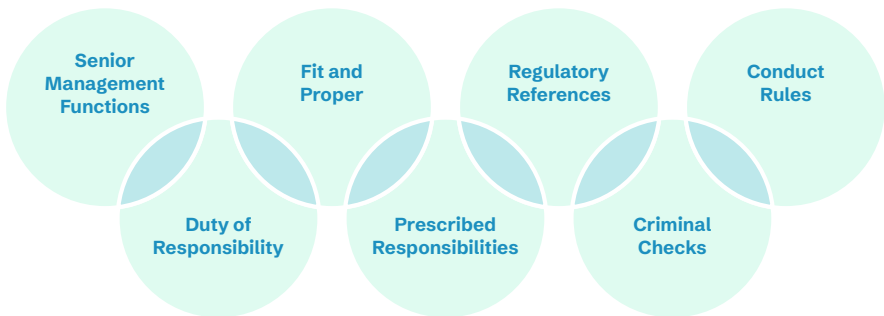
That process is not new, however, firms are now obliged to complete criminal checks on all senior managers, obtain regulatory references and make a formal assessment of fitness.

This requires a more rigorous recruitment process accompanied by supporting evidence.

Firms identify their senior managers, including: CEO and Chair of the Board as well as regional or global business heads.

- Identification will be based on those roles involving risk of serious impact on the business in the UK. This is referred to as the “direct, significant influence test”, which could also capture individuals located overseas.
- Preparation of Statement of Responsibilities are required for the application
- Fitness assessment performed each year

Senior Manager Requirements



For Enhanced firms, additional requirements include:

- Management Responsibilities Maps
- Handover Procedures
- Overall Responsibility

The preparation and maintenance of these documents are key to demonstrating that the firm is fulfilling its obligations. However, this can be time consuming and onerous where firms are part of group structures and individuals hold senior roles in numerous subsidiaries.

Prescribed Responsibilities

These are responsibilities that are prescribed by the regulator and their applicability is aligned to the firm classification (See Table 2). Each prescribed responsibility must be allocated to a senior manager or where shared between senior managers, explain how the responsibility is shared.

Prescribed responsibilities

by Firm Type

Core Firms' prescribed responsibilities:

- (a) Performance by the Firm of its obligations under the SM&CR, including implementation and oversight.
- (b) Performance by the Firm of its obligations under the Certification Regime (which includes requirements in relation to regulatory references). This PR applies even if we do not have any individuals who are subject to the Certification Regime.
- (b-1) Performance by the Firm of its obligations in respect of notifications and training of the Conduct Rules.
- (d) Responsibility for the Firm's policies and procedures for countering the risk that the Firm might be used to further financial crime (If we do not allocate this to MLRO then the individual who has this PR must supervise the MLRO).
- (z) Responsibility for the Firm's compliance with CASS (if applicable).

Authorised Fund Managers:

- (za) Responsibility for an AMF's assessments of value, independent director representation and acting in investors' best interests. This applies to AFMs.

Enhanced Firms' additional prescribed responsibilities:

- (c) Compliance with the rules relating to the firm's Responsibilities Map.
- (j) Safeguarding and overseeing the independence and performance of the internal audit function (in accordance with SYSC 6.2).
- (k) Safeguarding and overseeing the independence and performance of the compliance function (in accordance with SYSC 6.1).
- (l) Safeguarding and overseeing the independence and performance of the risk function (in accordance with SYSC 7.1.21R & 7.1.22R).
- (j-3) If the firm outsources its internal audit function, taking reasonable steps to ensure that every person involved in the performance of the service is independent from the persons who perform external audit, including:
 - Supervision and management of the work of outsourcing internal auditors
 - Management of potential conflicts of interest between the provision of external audit and internal audit services.
- (t) Developing and maintaining the firm's business model
- (s) Managing the firm's internal stress-tests and ensuring the accuracy and timeliness of information provided to the FCA for the purposes of stress-testing.

Authorised Fund Managers:

- (za) Responsibility for an AMF's assessments of value, independent director representation and acting in investors' best interests. This applies to AFMs.

Certified Regime

Firms need to assess and certify staff performing ‘specified functions’. Aside from implementing a process that works, firms will also need an audit trail and supporting evidence. Firms need to consider:

- How to identify trends in staff behaviours and early warning indicators
- What management information is needed to support good governance of the process

Senior Managers

- Direct, significant influence test
- Statement of Responsibilities
- Fitness Checks

Certification Staff

- Specified functions
- Audit trail
- Evidence

Conduct Rules

- Tailored training

Specified functions

This relates to individuals performing roles which could have significant impact on the firm or its customers, who are not senior managers. Under the Certification Regime, senior managers need to implement processes and controls to ensure that anyone performing a specified function has been certified to do. This would include:

- Implementing a process to assess an individual as fit and proper
- Issuing a certificate confirming competency that is valid for 12 months
- Ensuring the individual remains competent during the 12-month period

Where an individual changes role, a process of reassessment is made

Where any adverse information comes to light during a 12-month period, a review of in the individual's certification is triggered.

One of the greatest challenges for firms is how to evidence the certification of staff. Implementing a process is the first step, but demonstrating appropriate oversight, rationale and having supporting evidence for the certification is vital.

These roles include, but are not limited to:

- CASS oversight
- Proprietary trader
- Significant management
- Functions requiring qualifications
- Managers of certification employees
- Material risk takers
- Algorithmic trading

It's important that firms identify those individuals performing a certified role under SM&CR. Where a firm decides it cannot issue a certificate to a person, it must notify the individual in writing and set out the steps that it intends to take and reasons for proposing those actions. Firms will need to keep accurate records of all employees who have valid certificates and any amendments. Firms will also need to ensure that employment policies and procedures are maintained.

NB: The Certification Regime applies to employees at UK firms who are based in the UK (or spend more than 30 days each year in the UK). It also includes individuals who are material risk takers wherever they are based.

FCA Directory

Firms are already familiar with the FCA Register, which contains information relating to authorised firms and their permissions. Under the SM&CR, we also saw the introduction of the FCA Directory.

This allows the public to search for individuals performing certified roles as well as senior managers. Firms must ensure that information published is accurate and kept updated. This forms part of the firms reporting requirements and they must submit an attestation confirming that the data is accurate and up-to-date. Failure to submit the annual attestation or late submission can result in a fee of £250, it could even lead to enforcement action. It's also worth noting that firms must update the Directory within 7 days of any changes taking place and not wait for the annual attestation to be submitted. In this way, firms must ensure that any changes to a person's role and responsibilities are monitored and where necessary, trigger an ad hoc update to the Directory.

Firms are required to provide specific data about certified individuals, however, only certain information is made public such as:

- Name and any previous names
- Roles with start and end dates
- Activities undertaken
- Customer facing roles requiring a qualification must include:

Customer engagement methods (face to face; telephone, etc)

- Workplace location (where relevant)
- Memberships of professional bodies

For some firms, this exercise could prove to be particularly onerous.

Conduct Rules

Employees must be trained to understand how the following rules apply in their roles:

1. You must act with integrity
2. You must act with due skill, care and diligence
3. You must be open and cooperative with the FCA, the PRA and other regulators

These 3 conduct rules should be part of a firm's culture and its values.

Senior manager training must be tailored to include their responsibilities relating to:

1. You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
2. 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.
3. 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.
4. You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

Assessing compliance

All firms need to demonstrate that they assess fitness and propriety periodically to fulfil their obligations under the Senior Managers and Certification Regime (SM&CR). Firms need to consider how they will measure success. This might include an assessment of the following areas:

- #Fit and Proper checks that identify new issues with staff
- Ensuring that relevant senior managers oversee the Fit and Proper process and
- Ensuring appropriate reporting.

The above examples demonstrate that a qualitative check has been completed, rather than ticking a box.

Key Sources

Please see below for the list of key materials.

FCA website:

<https://www.fca.org.uk/firms/senior-managers-certification-regime/dual-regulated-firms>

PRA website:

<https://www.bankofengland.co.uk/prudential-regulation/key-initiatives/strengthening-accountability>



Ruleguard's SM&CR Solution

Ruleguard for SM&CR is an end-to-end technology solution designed to help firms reduce the cost and regulatory risk arising from compliance with the Senior Managers and Certification Regime.

Using Ruleguard, you can document every employee within the SM&CR population and organise all of the information needed to comply with the rules. Senior Managers can track responsibilities using a visual map of delegated items, and demonstrate 'reasonable steps' with built-in attestations and evidencing.

Individual reporting lines can be mapped, including cross-entity and matrix-management scenarios.

Once this information is stored in Ruleguard, you can create Statements of Responsibilities (SORs) for each person and Responsibilities Maps covering the full picture of your business.

Fitness and Propriety and Certification workflows allow you to automate the assessment of individuals joining the firm and on a regular basis afterwards. Conduct Rule training progress and Conduct Breaches can also be tracked with the same system.

Dashboards and MI provide real-time insights and regular reporting outputs, and give HR or Compliance teams the necessary reassurance that everything is on-track.

Why Ruleguard?

Ruleguard is an end-to-end GRC software designed to help regulated firms manage the burden of evidencing and monitoring compliance.

It has a range of tools to help firms fulfil their obligations across the UK, Europe and APAC regions.

An ever-changing regulatory environment requires firms to identify the changes impacting their business and to adapt their processes and controls quickly to meet those requirements. It can be time consuming and overwhelming to be constantly monitoring rule changes from various supervisory bodies both in the UK and internationally. Senior Management require evidence to demonstrate that business risks are being managed effectively. Collating data from various sources to generate timely management information, enable decision-making and facilitate oversight is a key requirement.

Using Ruleguard will enable you to show regulators and auditors how your business has complied with the rules, including providing effective governance and oversight to your firm.

About Ruleguard

Ruleguard started out in 2013 as a software ‘design and build’ agency that specialised in financial services projects, particularly those with a unique requirement for data and functionality that was far from being available ‘off the shelf’.

Fast-forward to 2024 and we have established Ruleguard as one of the foremost offerings in the RegTech space, providing genuine compliance oversight to some of the largest and most complex financial institutions globally.

Most importantly, we continue to work closely with our clients to identify the most painful aspects of compliance oversight and strive to build-out our platform to improve that governance with increased efficiency and reduced cost.

Get in touch!

Contact the Ruleguard team on 020 3965 2166
or info@ruleguard.com

Visit our website to find out more about how Ruleguard can help:

<https://www.ruleguard.com>

Key points of contact

Priscilla Gaudoin

Head of Risk & Compliance

Priscilla.Gaudoin@ruleguard.com

Ed Buckman

Director of Commercial Strategy

Ed.Buckman@ruleguard.com

Matthew Bruce

Platform Director

Matthew.Bruce@ruleguard.com



Ruleguard

Disclaimer:

This document is intended for general information purposes only and does not take into account the reader's specific circumstances and may not reflect the most current developments.

Ruleguard disclaims, to the fullest extent permitted by applicable law, any and all liability for the accuracy and completeness of the information in this document and for any acts or omissions made based on such information. Ruleguard does not provide legal, regulatory, audit or tax advice. Readers are responsible for obtaining such advice from their own legal counsel or other licensed professionals.

Copyright © 2024 Ruleguard. All Rights Reserved. Ruleguard is the trading style of Strategic Software Applications Ltd which is incorporated and registered in England and Wales with company number 08423947 whose registered office is at 10 Queen Street Place, London, EC4R 1AG. Ruleguard and the Ruleguard logo are registered trade marks owned by Strategic Software Applications Ltd.

Copyright © 2024 Ruleguard. All Rights Reserved.

Ruleguard 2024
WP01-03-24