UK Financial Conduct Authority Issues Near-Final Rules on Extension of Senior Managers and Certification Regime and Introduces New Financial Services Directory

9 July 2018

Following the consultation papers published in July and December 2017, the UK Financial Conduct Authority ("FCA") on 4 July 2018 provided responses to the industry feedback it received and issued near-final rules on extending the Senior Managers and Certification Regime ("SMCR") to almost all FCA-regulated firms.[1] Notably, the FCA has confirmed that the new rules will apply from 9 December 2019. We summarise below the limited changes from the FCA's initial SMCR proposals, the main features of which have been covered in our previous client updates.[2]

In addition, the FCA has published a consultation paper regarding the introduction of a new directory of financial services workers (the "Directory").[3] This will be available from 10 December 2019 for banks, building societies, credit unions and insurers, and from 9 December 2020 for all other firms. The key aspects of the Directory and firms' significant related notification obligations are outlined below.

Extended SMCR—Implementation Date. Firms affected by the extended SMCR rules will move to the new regime from 9 December 2019. However, the FCA has allowed for transitional stages in respect of two areas to help firms implement the SMCR:

- While firms must identify their 'Certification Staff' by the commencement date, they will then have 12 months to complete the initial certification process to determine that all Certification Staff are fit and proper to perform their roles. Certification Staff are employees whose role means that they may cause 'significant harm' to the firm or its customers, but they are not 'Senior Managers' and are not approved by the FCA.

1 'Extending the Senior Managers and Certification Regime to FCA firms – Feedback to CP17/25 and CP17/40, and near-final rules', Policy Statement PS18/14 (July 2018); 'The Duty of Responsibility for insurers and FCA solo-regulated firms', Policy Statement PS18/16 (July 2018). The FCA has also issued a separate document applying to insurance firms, 'Extending the Senior Managers and Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules', Policy Statement PS18/15 (July 2018).

2 Please see our client updates in July 2017 (https://www.debevoise.com/insights/publications/2017/07/uk-financial-conduct-authority) and December 2017. (https://www.debevoise.com/insights/publications/2017/12/uk-financial-conduct-authority-publishes-details)

3 'Introducing the Directory', Consultation Paper CP18/19 (July 2018).

- Firms must train all Senior Managers and Certification Staff on the FCA's new 'Conduct Rules' by the commencement date, when the Conduct Rules will come into force. However, firms will have a further 12 months to train all other employees on the Conduct Rules before they apply to those employees.

Extended SMCR—Changes to the FCA's Initial Proposals. In response to generally positive feedback on the SMCR framework, the FCA has decided to implement almost all of its consultation proposals. However, the FCA has made some changes to the extended SMCR:

- Under the core SMCR for UK-based firms, the number of 'Prescribed Responsibilities' to be allocated between the Senior Managers has been reduced from seven to six, as the FCA has removed the Prescribed Responsibility for ensuring that the firm's governing body is informed of its legal and regulatory obligations.

- The FCA has amended some of the criteria for identifying whether a firm will be subject to the enhanced SMCR rather than the core SMCR. For example, firms with assets under management of £50bn or more, calculated as a three-year rolling average (previously this figure was taken at any time in the previous three years) will be part of the enhanced SMCR.

- A simpler process has been introduced for firms voluntarily to opt up to a higher tier of the SMCR with more stringent requirements (i.e. from limited scope to core, or from core to enhanced). Opting up can help ensure a consistent approach across a group which would otherwise have entities in different tiers.

- For firms meeting the criteria to move from the core to the enhanced SMCR (not those opting up voluntarily), the FCA has decided to extend the transition period from six months to 12 months. This will give firms more time to prepare and make the changes required to comply with the rules of the enhanced regime.

Financial Services Directory—Overview. After the extension of the SMCR, the FCA originally contemplated only leaving in place the existing Financial Services Register (the "FS Register"), which provides a public record of all FCA-regulated firms and approved individuals. The FS Register is frequently used by a range of stakeholders to find out information on individuals, including their role, employment history, and details of any regulatory sanctions and prohibitions. The FS Register covers Senior Managers under the SMCR, but not any other personnel (since they are no longer approved by the FCA) who would previously have appeared on the FS Register as approved persons. As is currently the case with banks and other firms that are already subject to the SMCR, this would have resulted in information on substantially fewer individuals being made public.

The FCA now proposes to introduce the Directory to supplement the FS Register, with a single user interface and search tool. The Directory will encompass Certification Staff, directors of firms who are not Senior Managers, and sole traders and appointed representatives who perform a role requiring a qualification under the FCA rules. The details available on individuals will be similar to the information in the current FS Register.

Financial Services Directory—Implementation and Compliance. Firms will need to provide the FCA with the relevant information on personnel who are to appear in the Directory to ensure that it is kept up to date. Importantly, other than in exceptional cases, firms must notify the FCA of a new joiner by the end of their first business day performing the role and must report an individual leaving a relevant role no later than one business day after he or she has left. Changes in circumstance that do not affect an individual's role or fitness and propriety, but that require the Directory to be updated, must be notified to the FCA within three business days of the firm being informed of the change.

Banks, building societies, credit unions and insurers will be required to start recording information for the Directory from 10 December 2018 and submit notifications for relevant employees to the FCA by 10 December 2019. All other firms must start recording information from 9 December 2019 and submit their notifications by 9 December 2020.

The FS Register has proven to be a valuable resource for the financial services industry, law firms, individual consumers and many others, so the FCA's proposal to restore a comprehensive central database is welcome. In particular, the Directory should assist firms in verifying the employment history of potential new hires and help consumers avoid those who have previously been subject to enforcement action. However, larger firms will need to plan carefully and invest significant resources so that they are able to update the FCA of personnel changes within the required, very short, timeframes.

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Please do not hesitate to contact us with any questions.

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