On 30 March, the UK Prudential Regulation Authority and the Financial Conduct Authority (the “Regulators”) published a joint discussion paper (the “Discussion Paper”) on the review of the Senior Managers and Certification Regime (the “SM&CR” and the “Review”). The Discussion Paper invites responses by 1 June 2023. The Review forms part of the cross-departmental initiative launched by the Edinburgh Reforms, and HM Treasury published a call for evidence (the “Call for Evidence”) regarding the SM&CR on the same day. This is the first full review of the SM&CR since its launch in 2016.

The SM&CR is a regulatory regime that sets standards for the fitness and propriety of senior decision-makers and the reasonableness of their actions as well as the conduct of all financial services staff. It applies across the board to regulated financial services firms and is central to the Regulators’ approach driven by individual responsibility. Its scope is likely to expand; the Financial Services and Markets Bill (the “Bill”) seeks to extend the SM&CR’s reach to, among others, credit rating agencies, investment exchanges and central securities depositories.

The Review provides a forum for the views of firms and other stakeholders on the SM&CR. Its objective is to “identify ways to improve the regime to help it work better for firms and regulators, while preserving its underlying aims.” The Review presents an opportunity for the Regulators and the UK government to address the criticisms summarised in the Call for Evidence. These include, among others:

- Delays in authorisation: The Discussion Paper and the Call for Evidence acknowledge that the delays in processing applications for senior managers have led to planning problems for firms. Typically, approval of a new senior manager takes between 6–12 weeks but sometimes longer than the statutory deadline of three months. In response, the Regulators have sought to improve their processes and resources to reduce the backlog. The Discussion Paper nevertheless states that the Regulators “remain open to suggestions” regarding “further changes and improvements” to help reduce the waiting time for authorisations. Firms are
invited to submit their views on the efficacy of the measures taken by the
Regulators thus far and to recommend any further steps.

• Compliance requirements for international firms: International firms are often
subject to multiple regulatory regimes with varying requirements. As summarised
in the Appendix published by the Regulators, the UK’s regulatory regime adopts a
different approach from other key jurisdictions such as the U.S. and Hong Kong.
For instance, the U.S. has opted not to have a separate accountability regime for
individuals. Instead, it relies on various pre-existing regulatory regimes that apply
to U.S.-domiciled financial institutions. As an example, U.S. insurance regulators
rely on a notification and accompanying filing of biographical information only
after the appointment by an insurance company of a new director or executive
officer in the ordinary course of business. Certain U.S. insurance regulators also
require directors and executive officers to submit fingerprints and a commitment
from the insurer requiring it to remove any director or executive officer that is
found by such regulator to be untrustworthy. The Call for Evidence notes that
regulation should “not create unnecessary or disproportionate compliance burdens”
that might prejudice the UK’s continuing role as an international hub for
financial services. The new secondary regulatory objective of competitiveness and
growth proposed under the Bill lends this greater urgency. The Review invites
views on any actions in relation to SM&CR that can bolster competition and
international competitiveness.

• Differing standards for firms: Given the breadth of the SM&CR’s scope, the
Regulators have sought to tailor its application in ways that promote
proportionality. Nevertheless, concerns have been raised regarding the
discrepancies in the amount of scrutiny faced by some firms but not others under
the SM&CR. The Discussion Paper notes that some firms support the
simplification of the SM&CR in relation to “minimum requirements, thresholds or
processes for approving new individuals.” The questions posed by the Discussion
Paper includes whether the SM&CR has been applied proportionately.

The Review will inform the debate as to whether there is a case for reforming the
SM&CR, including through legislative change. It presents an opportunity to reduce
waiting times for the authorisation of senior managers, to promote greater regulatory
alignment with other key regulatory regimes (particularly in the context of the UK’s
post-Brexit changes to the financial services sectors) and to tailor the SM&CR to the
size and complexity of individual firms.

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Please do not hesitate to contact us with any questions.