

AFB RESPONSE TO FCA CONSULTATION 25/21 – SENIOR MANAGERS & CERTIFICATION REGIME REVIEW

The Association of Foreign Banks (AFB) is a trade body which represents the interests of the foreign banking sector in the UK to industry stakeholders, including the Government, regulatory bodies, and financial services organisations. AFB has around 170 International banking group members, representing around 80% of the UK's foreign banking market, providing financial services through branches, subsidiaries and representative offices in the UK.

AFB member firms include the full spectrum of banking entities, delivering services ranging from retail banks servicing subsections of the community to significant wholesale market participants.

AFB welcomes the opportunity to respond to the FCA's consultation on reforming the Senior Managers & Certification Regime (SM&CR). We set out our comments on the questions below. (For reference we attach our responses to the HMT and PRA consultations.)

1. To what extent do you support the further changes we are considering in phase 2 of the reform (summarised in paragraph 1.11). Are there any other changes you suggest? We would welcome views on the impact (positive or negative) of each potential change and on any suggested additional improvements.

Our responses to this consultation focus on the specific changes proposed for phase 1 of the reform. We have commented generally on the phase 2 proposals in our response to the HMT consultation. Given the preliminary nature of the phase 2 proposals in CP25/21, we believe it would be more constructive to wait until more detailed proposals are put forward by HMT before offering substantive feedback. We would welcome the opportunity to engage further and provide input when the FCA (and the PRA) consult formally on phase 2, particularly in relation to reducing the number / amalgamating SMF roles e.g. SMF18, SMF22 and SMF6, and setting out a framework whereby certain SMFs would not require pre-approval by the regulator and would only require regulatory notification similar to non-SMF NEDs.

2a. Please provide feedback on your experience of applying for SMF approval, particularly where you have experienced unnecessary friction or uncertainty in the process and how this compares to other overseas jurisdictions.

We welcome efforts to streamline the SMF approval process to make it faster, simpler, and more operationally efficient. Historically, the primary challenge has been the length of time it takes to obtain approval. While we acknowledge the FCA's comments regarding recent improvements in processing times, the timeframe for approval remains a key area where further progress would be beneficial.

Our members have not highlighted other specific sources of friction or uncertainty in the process. However, continuing to reduce the overall time to approval would help alleviate operational pressures and improve the experience for both firms and candidates.

2b. On which priority areas would firms welcome more information, guidance, or changes to forms?

In addition to our response to question 4, our members have highlighted the need for guidance and clarity on the definition of '*significant changes*' which would trigger the submission of a Form J as well as further alignment of the Connect system, given there is a marked change in the form and format of other areas of the system, with the new portal to submit a Form A. As a matter of clarity, pdf forms on the regulatory website should be made consistent with the Connect system, with functionality issues addressed.

In addition, we have commented in our response to the PRA that, for simpler firms, a more pragmatic approach could be taken in terms of whether Statements of Responsibilities and MRMs should be separate documents.

3. Do you agree to our proposals for changes to criminal record checks and disclosures?

We welcome the proposed changes to criminal record checks and disclosures. The introduction of a six-month validity period is particularly helpful for our members, given the time it can take to secure SMF approvals from overseas Head Offices as well as from the FCA and PRA. This change will reduce the need to duplicate checks, easing administrative burdens and reducing associated costs.

We also support the removal of the requirement to undertake criminal record checks when an existing SMF holder is applying for a different SMF role within the same firm or group. This additional flexibility is a practical step that will help streamline internal role changes and avoid unnecessary duplication (for example where firms have existing processes for periodically reviewing criminal records checks).

The proposals are helpful in relation to overseas candidates, as conducting criminal records checks in other jurisdictions can be complex and time-consuming. Overall, the proposed changes reflect a proportionate and flexible regulatory approach, which we support.

4. Do you agree with our proposed changes to the 12-week rule?

We welcome the proposed changes to the 12-week rule, which will be particularly helpful in situations involving sudden, unexpected SMF departures. In such cases, it can take time to identify and recruit a suitable replacement, and the added flexibility will help firms manage these transitions more effectively.

However, with a few exceptions, our members do not support the proposal to make individuals appointed under a revised 12-week rule subject to the Senior Manager Conduct Rules. While we recognise the importance of maintaining high standards and accountability, imposing these rules on temporary appointees would discourage qualified individuals from agreeing to provide cover under the revised rule, especially, if needed, at short notice.

As an alternative, we suggest that the FCA considers issuing guidance that firms should ensure individuals appointed under the 12-week rule are made aware of the Senior Manager Conduct Rules and are expected to pay due regard to them, without being formally subject to them. We believe this approach would offer a more proportionate balance between regulatory expectations and operational practicality.

Our members also feel that the requirement for the Prescribed Responsibilities associated with a role being performed under the 12-week rule to be re-allocated to other SMFs (rather than the temporary

SMF) may create challenges for firms in terms of capacity, particularly as the default position in situations which require the 12-week rule to be used, is to allocate Prescribed Responsibilities to the CEO/Branch Manager.

We consider that it would be preferable to continue to allow firms the flexibility to assign Prescribed Responsibilities to the best person for the role, with appropriate supervision and oversight from other SMFs as needed.

5. Do you agree with our proposals on SMF7?

Almost all of AFB members are dual-regulated and accordingly we have focused on the SMF7 proposal from the PRA. By way of general comment, our members suggest that the proposals should be aligned between the FCA and the PRA in order to avoid unnecessary duplication.

6. Do you agree with our proposals on SMF18?

We support the proposed changes to SMF18 and welcome the additional guidance, which helps clarify expectations around the appropriate level of seniority for individuals performing this function. This should help reduce the confusion that can sometimes arise when determining who should be allocated the SMF18 function.

Our members request that similar guidance be provided for SMF22, to ensure consistency with the approach for UK firms and third country banks.

Our members have also emphasised the importance of retaining flexibility in the framework. In particular, there may be cases where senior individuals, despite not being part of the top layer of a firm's executive management, nevertheless hold responsibility for areas that present significant risks to the firm. In such cases, there is benefit in being able to allocate the SMF18 function to those individuals, where appropriate.

Additionally, considering the current suite of SMFs, there are some areas where the regime could be simplified and the number of applicable SMFs be reduced, such as the amalgamation of SMF18 (Other Overall Responsibility Function),¹ SMF6 (Head of Material Business Unit) and SMF22² (Other Local Responsibility) which in effect apply themselves similarly and are generally given to heads of business. Rationalisation in this sense could bring about additional clarity and simplicity.

7. Do you agree with our proposals on Prescribed Responsibilities?

We support the FCA's proposals on Prescribed Responsibilities. In particular, our members agree with the FCA's observation that splitting Prescribed Responsibilities is sometimes necessary in practice to reflect how accountability is structured within firms. The additional guidance on this point is therefore welcome.

¹ Applicable to UK Banks

² Applicable to UK Branches of Non-EEA Banks

We would also suggest that the FCA and PRA align the rules in relation to Prescribed Responsibilities and their allocation to SMF18s/SMF22s to both solo- and dual-regulated firms. Differing approaches between solo- and dual-regulated firms relating to the same SMF functions increases the level of complexity in administering the regime, particularly for groups which have multiple firms within the UK with different categorisation. In view of AFB and its members, that the current phase 1 consultation is a chance to align approaches between the PRA and FCA, thereby reducing complexity.

8. Do you agree with our proposals on raising the thresholds for becoming an Enhanced SM&CR firm?

We support these proposals.

9. Do you agree with our proposals on SoRs and MRMs?

Our members consider that the proposal to replace the requirement to submit updated SoRs and MRMs following each change with a periodic six-month submission will reduce the compliance burden for firms, but not significantly. Members note that, in practice, firms will still be required to maintain up-to-date SoRs and MRMs internally at all times, so the operational effort involved in keeping these documents current will remain unchanged. We recommend that the FCA consider removing the phrase “at all times”, for example, to reflect that firms may need to follow an appropriate internal process to monitor for any updates and then to reflect these in the MRMs, with appropriate internal review and approval of content updates prior to finalisation.

Some members felt that removing the formal submission requirement could offer greater internal flexibility in managing updates. Accordingly, the AFB would suggest retaining the option to include documentation with each submission for material changes, thereby retaining flexibility for firms.

Overall, while the proposal introduces some administrative relief, its impact on the compliance burden for firms is relatively limited.

Members also welcome the proposals to clarify guidance as to what constitutes a significant change in SMF responsibilities, which triggers a requirement for regulatory notification under Form J.

As a related point, members have commented that the FCA should consider allowing SoRs to be incorporated into MRMs. The current language of SYSC 25.4.8G makes it mandatory for MRMs only to include summary details about SoRs. For some, particularly smaller, firms this creates unnecessary complexity. Our members would therefore welcome a more flexible approach allowing firms to incorporate SoRs as part of their MRMs.

10. Do you agree with our proposal to align with the PRA on SoR submission requirements for dual-regulated firms?

Our members consider that consistency between the regulators aids regulatory compliance and reduces the risk of potential duplication. Again, we would suggest that the FCA adopt the same approaches for solo-regulated firms, as they adopt for dual-regulated firms, alongside the PRA.

11. Do you agree with our proposals on certification?

AFB members support the phase 1 certification proposals, in particular the removal of duplication in certain cases where the same individuals currently need to be certified for separate functions. While this change will have limited impact on the administrative burden of our members, it is a positive step. However, some members have voiced concerns that the suggested amendments relating to the primacy of MRT over other certified functions, such as Significant Management would add complexity, such that firms would have to interpret when certain functions should be applied or disapplied. This may also increase the risk of omissions in relation to certification and registration within the current regulatory deadlines.

For these cases, firms have suggested that the PRA and FCA await wider legislative changes, or consider removing, redefining or amalgamating Certified Functions, which would have a greater positive impact on streamlining the Certification Regime, and thereby reduce the burden of our members.

While our members support the FCA's proposal to remove the requirement for separate certification as an FCA Material Risk Taker where an individual is also certified in one of the PRA's certification functions at the same firm, our members do not see any reasons for there being two different certification regimes for MRTs. We would invite the Regulators to consider implementing a single MRT certification function.

The proposed additional guidance is also welcome to help streamline the certification and re-certification process for firms. AFB supports the clarification that the firms are able to apply during the transitional period.

We also support the intention to adopt a more proportionate approach to certification in due course. Our members are in favour of making more substantive changes to the regime.

12. Do you agree with our proposal to change the timescales for updating the Directory?

We support the proposal to extend the timescales for updating the Directory. However, we think that 30 days or quarterly would be preferable.

13. Do you agree with our proposals on regulatory references?

Our members welcome the FCA's proposal for regulatory references to be provided within 4 weeks. This would assist members to make workforce planning and resourcing more efficient. In order to ensure that this timeframe is complied with, AFB members favour this proposal being implemented as a rule, rather than guidance.

We also note that the FCA's proposals in this respect are not aligned with those from the PRA. We think that the rules should be consistent between the two regulators.

We would also propose that the requirement to request regulatory references from anyone who has been the candidate's employer in the past six years, be limited to employers which are caught under the SM&CR regime. It is the experience of our members, that employers that are not caught under the SM&CR, such as non-financial services businesses and/or overseas financial services firms, do not

respond to regulatory reference request as they are under no obligation to do so. Awaiting returns from such firms result in delays in recruitment and the administration of the SM&CR.

In our view the guidance on the approach to individuals who leave the firm before the disciplinary process concludes strikes the right balance between the need for fairness to the employee and preventing genuine “bad apples” from leaving before any findings are made against them. However, our members consider that further guidance on what the FCA considers to be “good enough grounds” in new SYSC 22.5.2(3) would be helpful.

In this context we ask that the FCA also consider the AFB’s response to CP25/18: Tackling non-financial misconduct in financial services in relation to reportable and non-reportable conduct breaches.

14. Do you agree with the proposed guidance on the Conduct Rules?

While we welcome the proposed guidance on the Conduct Rules, the aspects that the FCA seeks to clarify are generally already well-understood. Instead, our members look forward to the FCA’s guidance on the approach to non-financial misconduct which continues to pose difficulties and gives rise to inconsistent approaches across the industry.

**Association of Foreign Banks
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Contact:

Ethan Moxam, Senior Associate, Policy and Regulatory Affairs
ethan.moxam@foreignbanks.org.uk

Andrew Brooke, Director, Policy and Regulatory Affairs
andrew.brooke@foreignbanks.org.uk