AFB RESPONSE TO HM TREASURY'S CONSULTATION – REFORMING THE SENIOR MANAGERS & CERTIFICATION REGIME

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 HM Treasury's (HMT) consultation on reforming the Senior Managers & Certification Regime (SM&CR).

General Comments

AFB members support HMT's proposed reforms and note that the proposals take account of the feedback submitted during the March 2023 Call for Evidence, to which AFB contributed.

AFB members welcome HMT's proposed reforms to streamline the SM&CR and uphold the Chancellor's commitment, as outlined in the 2025 Mansion House speech, to reduce the regulatory burden of the regime. While supportive of the direction of travel set out in the consultation, AFB members recommend HM Treasury go further in its approach to reform. Additional changes to the SM&CR rules would help deliver a more proportionate and competitive regime, better suited to the dynamism of the UK financial sector.

We set out our specific comments on the questions below.

1. Do you agree that the Certification Regime should be removed from FSMA 2000?

In principle AFB supports HMT's proposal to remove the Certification Regime from FSMA 2000. Transitioning to a regulator-led framework would provide greater flexibility to amend the rules over time, allowing for a forward-looking response to evolving risks across different roles and firms. Ultimately, this would enable a more tailored and proportionate regulatory approach.

AFB members also note that, although they support HMT's proposal to remove the Certification Regime from FSMA 2000, it is challenging to provide detailed feedback in the absence of clarity on a proposed alternative to replace the current regime. As a consequence, AFB would propose that the Certification Regime is not removed from legislation until final proposals have been consulted on and agreed by the Regulators.

2. Do you agree that the Regulators should consider developing a more proportionate approach, that would replace the existing Certification Regime?

As noted above, AFB supports the removal of the legislative framework for the Certification Regime from FSMA 2000 in favour of a regulatory framework. We support the Regulators being given enhanced flexibility, in order to develop a more proportionate and tailored approach to the regime. We believe that the Certification Regime in its current form presents an onerous compliance burden compared to other jurisdictions, and that adopting a more proportionate approach would support the regulators' secondary statutory objective of promoting the international competitiveness of UK financial services markets.

3. **Do you believe there are risks or unintended consequences if the Certification Regime is removed from FSMA 2000, and replaced with regulator rules? For example, how would it impact consumer protection, market integrity, safety and soundness, and policyholder protection?**

Although AFB members support the removal of the Certification Regime from FSMA 2000, they noted a number of areas for consideration as the regime is revised. AFB members highlighted the risk that if the certification process was removed or downsized, it could place increased pressure on SMFs, as there may be less scope for the delegation of responsibility. Furthermore, as some certified staff are subject to remuneration rules, any changes to the Certification Regime will require careful consideration of how the changes will impact those rules, particularly clawback provisions. Similarly, firms would need to assess the implications for regulatory references, including how existing references will be handled for individuals who are no longer within the scope of the regime.

4. **Are there alternative approaches that will still deliver the desired benefits, but may not involve removing the regime from legislation entirely?**

As noted above, AFB members support the proposed approach with caveats. We believe that removal of the Certification Regime from legislation is required in order to deliver the necessarily flexibility to the Regulators to deliver a streamlined regime in accordance with their statutory objectives.

5. **What are the critical elements for any replacement regime to achieve the government objectives of a lower cost, more proportionate and competitive regime?**

Our members believe that the most important reform required in relation to the Certification Regime is that the requirement for annual certification should be removed from legislation so that the Regulators may prescribe a more proportionate framework for the assessment of fitness and propriety of certification staff members by firms. For those firms with a significant number of certification staff, the annual reassessment process is unnecessarily burdensome, and our members question the value that it delivers, in circumstances where a comprehensive assessment of fitness and propriety is undertaken on initial appointment and there are systems and controls in place which support ongoing assessment, such as annual performance reviews.

Our members would support a regulatory rule that required certification staff to undergo reassessments of their fitness and propriety on a reactive basis, for example in response to concerns that had arisen concerning their conduct, rather than needing to be done for all certification staff on a prescribed timeframe.

Our members broadly do not consider it necessary to abolish the Directory of Certified Persons, as this is generally considered to be a useful tool.

Likewise, our members would not be in favour of removing the regulatory references regime for certified persons, as this is considered important from the perspective of building better working cultures.

We also suggest that additional guidance is required to assist non-UK banks (with branches in the UK) with identifying which individuals should be certified staff (also including the definition of material risk takers) and to reduce the scope of individuals who fall within the definition of certified persons. The current lack of guidance means that many branches of non-UK banks take a cautious approach and certify a broader group of employees than is necessary. We would welcome a detailed review of the certification functions as part of the Phase 2 reforms, as we consider that reducing the number of certified functions (including those who are required to be certified as material risk takers) would increase the attractiveness of the UK as a venue for the expansion of the business of non-UK banks.

6. Do the regulators currently have the necessary powers and tools to deliver a replacement regime or are further powers required?

The Regulators do not currently have the necessary powers to allow them to deliver a more proportionate and competitive regime. In order to deliver this, HMT would need to proceed with its proposals outlined in its consultation. We do not believe any further powers would be required.

7. Do you have any comments on the likely costs and benefits of removing the Certification Regime from legislation and replacing it with a more proportionate regime, at this stage?

We are not able to comment on the cost benefit analysis at this stage, when the detail of the proposed changes that would be introduced by the PRA and FCA is not yet known, pending their Phase 2 consultations.

8. Do you agree with the proposal to give the regulators more flexibility to reduce the overall number of senior manager roles?

AFB supports HMT's proposal to help reduce the overall number of senior managers within the regime, by granting greater flexibility for the Regulators in specifying which SMFs require regulatory pre-approval.

9. In addition, do you agree with the proposal to give the regulators flexibility to reduce the number of roles within the regime for which pre-approval is required?

AFB supports HMT's suggestion that Regulators specify certain senior manager roles for which firms would be responsible for ensuring that individuals meet fitness and propriety standards with a requirement to notify the relevant regulator of such appointments. This would enable Regulators to maintain oversight without requiring pre-approval in every case. AFB further recommends that in Phase 2 the FCA and the PRA, consider reducing the number of SMF categories from requiring pre-approval

prior to beginning an SMF role. We would suggest exemptions in cases where SMFs have previously been approved by one or both Regulators, where the new role is not materially different to the role previously approved and provided that there have been no prior concerns in relation to fitness and propriety. Due diligence would still be undertaken by the firm, and the application to the Regulators (including the supporting documentation would still be submitted). However, the individual would be permitted to undertake the formal responsibilities of the role from the date of submission. This would not preclude Regulators from reviewing the application, interviewing the candidate, or requesting further information before deciding on the fitness and propriety of the individual.

An alternative approach would be to allow individuals who are not already an SMF, to perform an SMF role under the supervision of an existing senior manager within the firm until regulatory approval is granted. This modified process would allow for an appropriate investigation to take place within a timeframe suited to the circumstances of each application, while avoiding unnecessary disruption to the business of the regulated firm. This pragmatic approach would increase the attractiveness of the UK as a place for senior executives from non-UK banks to work.

10. Do you have any comments on the likely costs and benefits of making such changes to the Senior Manager Regime?

AFB considers that there will be benefits in making these changes to the Senior Managers Regime. Many of our members report that the current process for obtaining regulatory approval for SMFs is lengthy and can be inconsistent and confusing. Slow processing times for SM&CR applications can act as a disincentive for well-qualified senior candidates to move to the UK. These delays create uncertainty, especially for candidates moving with families/changing schools etc. Additionally, the length of the assessment process can lead to existing SMFs (such as the CEO/Branch Manager) having to take on additional interim SMF responsibilities for extended periods. This may lead to risk and control issues as they are likely to be less able to oversee the additional functions effectively over a prolonged timeframe.

Our members have not identified any expected costs associated with making the proposed changes.

11. Are there any alternative approaches that government should consider to reform the approach to regulator pre-approval, which would still deliver the desired benefits?

AFB recommends the following additional change is made.

Introduce mutual recognition/equivalence/deference

Where an individual seeking to be an SMF has already gone through an approval process in the UK for another role or in a jurisdiction which applies equivalent conduct standards, they should not be required to go through the full application/approval process. This approach could be taken in circumstances where the other jurisdiction grants a reciprocal exemption on the basis of an agreement on the exchange of information between the UK and that jurisdiction. The introduction of such a modified process would (in the medium and long term) reduce the time spent on the approvals process by firms and Regulators without undermining the aim of reducing the level of risk to the financial services industry.

12. Do you have any other comments or suggestions regarding these proposed changes?

AFB members invite HMT and the Regulators to consider extending the proposals relating to the 12-week rule to Independent Non-Executive Directors (INEDs). In our members' experience, the process of identification, assessment, recruitment and onboarding of INEDs typically takes longer than 12 weeks. Accordingly, we would propose that a period of 20 weeks is given for INEDs.

13. Do you agree with the proposal to remove prescriptive legislative requirements relating to provision, maintenance and updating of Statement of Responsibilities, with the aim of allowing regulators to adopt a more proportionate approach?

AFB supports removing prescriptive legislative requirements relating to the provision, maintenance and updating of Statement of Responsibilities (SoR). Removing these requirements would allow greater flexibility to the Regulators and help to establish a more proportionate and less burdensome regime. This approach is reflected in the PRA's proposal in CP18/25 to extend the deadline for submission of updated SoRs to no later than six months following a significant change in responsibilities.

14. What are the types of change for which an update to the Statement of Responsibilities is currently required, that you consider to be disproportionate?

AFB has not identified any such changes.

15. Are there requirements in the legislation for the Conduct Rules which you consider create a disproportionate burden? What are these elements?

Our members have expressed concerns that the requirement to notify Regulators of all instances of disciplinary action for conduct that would amount to a breach of a conduct rule creates a disproportionate burden for firms. This is because such determinations are recognised within firms to have very grave consequences for an individual's future and consequently absorb large amounts of senior management time. We consider that it ought to be sufficient for such matters to be disclosable on an individual's regulatory reference, rather than being notified proactively to the Regulators, unless of course the conduct was serious enough to require notification to the Regulators under Principle 11 / Fundamental Rule 7 more generally.

Our members also do not consider that it is necessary to have a statutory requirement for firms to provide training to Conduct Rules staff, noting that firms are trusted to provide training on many other regulatory topics without there being a statutory requirement to do so.

16. Are there any further elements of the SM&CR legislation within which create unnecessary regulatory burdens on firms, the removal of which would not impact on the primary objectives of the regime?

We have not received any further requests for removal from our members.

17. Do you face, or have you faced, any specific obstacles in trying to recruit internationally for senior manager roles?

Our members have not reported to us any specific obstacles, but it is necessary to explain the UK requirements in some detail to individuals based overseas. Accordingly, the simplifications and improved process, as set out in the consultations, are welcome.

18. If so, which are the key obstacles that would not be addressed by the reforms proposed in either this consultation or by the consultations the regulators have published in parallel?

N/A

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