

SMCR – roll out to all FCA Regulated Firms

MLROs Conference Two North 2018



SMCR - roll out to all FCA Regulated Firms

- A step change in how people working in financial services are regulated.
- Individuals at all levels of a firm will become accountable for their personal conduct and competence.



- Dodgy Derivatives Trading Limited – FCA solo regulated operator of a trading platform allowing customers to trade FX, CFDs, and a range of derivatives.
- Customer base is predominantly UK but includes customers around the world including Singapore, Russia, the Middle East, and China.



Which part of the extended SMCR regime does DDT fall into?

Enhanced - largest and most complex firms

- “Significant” investment firms (IFPRU) = assets > £530m; liabilities > £380m; fee/commission receipts > £160m; client money > £425m; AUM > £7.8bn.
- Large CASS firms = client money > £1bn or safe custody assets > £100bn
- AUM > £50bn (three year rolling average)
- Intermediaries, consumer credit lenders, mortgage lenders and administrators

Core - most firms

- Applies to all FCA solo regulated firms that are not Enhanced or Limited Scope firms.

Limited Scope - smaller firms

- Firms whose principal purpose is to carry on activities other than regulated activities, and are not MiFID investment firms.
- Covers all firms who currently have a limited application of APER including: limited permission consumer credit firms; sole traders; authorised professional firms whose only regulated activities are non-mainstream regulated activities; oil market participants; service companies; energy market participants; subsidiaries of local authorities or registered social landlords; insurance intermediaries whose principal business is not insurance intermediation and whose permissions are limited to non-investment insurance contracts; and internally managed AIFs.

- Applies to handful of the most senior staff at a firm.
- A “Senior Management Function” is defined as:

“in relation to the carrying on of a regulated activity by a firm, [a] function [which] will require the person performing it to be responsible for managing one or more aspects of the [firm’s] affairs, so far as relating to the activity, and those aspects involve, or might involve, a risk of serious consequences for the [firm], or for business or other interests in the United Kingdom”.



Defined list for Core Firms

- Governing functions:
 - SMF1 – Chief Executive – person with responsibility (under the immediate authority of the governing body) for the conduct of the business (or relevant activities).
 - SMF3 – Executive Director – a director of a firm, other than a NED.
 - SMF9 – Non-Executive Chairman – person with responsibility for chairing and overseeing the performance of the governing body of the firm.
 - SMF27 – Partner – a partner who has involvement in the management of the firm.
- Required functions:
 - SMF16 – Compliance Oversight – the person responsible for the compliance function of the firm and reporting to the governing body.
 - SMF17 – MLRO – the person who has responsibility for overseeing the firm’s compliance with the FCA’s rules on systems and controls against money laundering.

Core Firms - Senior Managers Regime

Some things to remember:

- No territorial limitation on SMR
- An individual can hold more than one SMF
- An SMF can be held by more than one individual

Other things to note:

- Fewer SMFs than CFs
- Some but not all SMFs will be grandfathered over from CF regime

Case Study - Senior Managers Regime

- Who are the SMFs for DDT?
 - SMF1 – Chief Executive
 - SMF3 – Executive Director
 - SMF9 – Non-Executive Chairman
 - SMF16 – Compliance Oversight
 - SMF17 – MLRO



Senior Managers Regime: Requirements

- SMFs need to be approved by the FCA as fit and proper annually:
 - Honesty and integrity
 - Reputation
 - Competence and capability
 - Financial soundness
 - Criminal record, directorships, civil/regulatory matters
- Each SMF will need a “Statement of Responsibilities”
- SMFs will be subject to a “Duty of Responsibility”
- Firms need to allocate “Prescribed Responsibilities” to SMFs

Case Study – Senior Managers Regime

- Any issues with fitness and propriety for DDT's SMFs?
- Who should get the Prescribed Responsibilities?



- Applies to staff who are not Senior Managers, but whose role involves a “significant harm function”. A function is a significant harm function if it:
 - “*will require the person performing it to be involved in one or more aspects of the authorised person’s affairs, so far as relating to the activity, and those aspects involve, or might involve, a risk of significant harm to the authorised person or any of its customers*”
- Includes:
 - Client dealing function: people who advise on investments and perform related functions like dealing or arranging, act as an investment manager, or do connected functions. Expanded from current CF30
 - Significant management function: anyone with “*significant responsibility for a significant business unit*”
 - Material risk takers
 - Functions that are subject to qualification requirements (see T&C Sourcebook).
 - CASS oversight function
 - Anyone who supervises or manages anyone performing a Certified Function (directly or indirectly)

Certification Regime – Things to Note

- Applies to UK employees and to overseas employees who are dealing with UK clients
- Exception for material risk takers under FCA Remuneration Codes
- 30-day rule
- Significant management function – factors include:
 - Size and significance of the firm's business in the UK
 - Risk profile of the unit
 - Unit's use of firm's capital
 - Contribution to P&L
 - Number of employees, certification functions and senior managers
 - Number of customers

Case Study – Certification Regime

- Who are DDT's CF holders?

Core Firms – Certification Regime

- Annual fitness and propriety certification by the firm
- Fitness and propriety for the role
- Includes qualifications, training, competence, and personal characteristics

Case Study – Certification Regime

- What problems might DDT face with certifying its CF holders?

- Will apply to all employees except ancillary staff
- Will apply to:
 - Regulated activities
 - Connected activities
 - Unregulated activities that affect:
 - integrity of the UK financial system
 - Ability of the firm to meet its threshold conditions
 - Ability of the firm to meet financial resources requirements
- Two tiers of Conduct Rules:

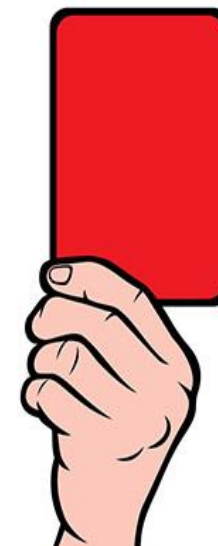
**Tier 1: Individual
Conduct Rules**

**Tier 2: Senior Manager
Conduct Rules**

- First tier – individual conduct rules – you must:
 - Act with integrity
 - Act with due care, skill and diligence
 - Be open and cooperative with the FCA, PRA, and other regulators
 - Pay due regard to the interests of customers and treat them fairly
 - Observe proper standards of market conduct
- Second tier – Senior Manager conduct rules – you must:
 - Take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
 - 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
 - Take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and overseen effectively
 - Disclose appropriately any information of which the FCA or PRA would reasonably expect notice

Core Firms – Conduct Rules

- Will apply from December 2019 to SMFs and CFs
- Will apply from December 2020 to all other affected staff
- Firms will have to notify and train affected staff
- Firms will have to notify FCA of disciplinary action



SMCR – Regulatory References

- Firms will need to request Regulatory References for incoming employees
- Need to go back six years for all SMFs, NEDs and CF staff
- Firms will equally need to give Regulatory References to potential new employers of outgoing staff

-
- A radical overhaul? Who takes the keys?
 - Grace period for implementation
 - FCA will be looking for individual accountability to bite from 2020
 - A lot for firms to think about – not a “tick box” approach

 - Any questions?

Contact Information



Chris Webber

Partner

+44 0207 655 1655

chris.webber@squirepb.com

Global Coverage

Abu Dhabi	Hong Kong	San Francisco	Africa	Italy
Atlanta	Houston	Santo Domingo	Argentina	Mexico
Beijing	Leeds	Seoul	Brazil	Panamá
Berlin	London	Shanghai	Chile	Peru
Birmingham	Los Angeles	Singapore	Colombia	Turkey
Böblingen	Madrid	Sydney	Cuba	Ukraine
Bratislava	Manchester	Tampa	India	Venezuela
Brussels	Miami	Tokyo	Israel	
Budapest	Moscow	Warsaw		
Cincinnati	Newark	Washington DC		
Cleveland	New York	West Palm Beach		
Columbus	Northern Virginia			
Dallas	Palo Alto			
Darwin	Paris			
Denver	Perth			
Doha	Phoenix			
Dubai	Prague			
Frankfurt	Riyadh			

■ Office locations

■ Regional desks and strategic alliances

