

1st June, 2023

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Prudential Regulation Authority
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Governance & Cross-Cutting Standards Policy Team
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Submitted by e-mail to: SMCR_DP@fca.org.uk

Dear PRA & FCA Policy Teams,

CFA UK response to the FCA and PRA regarding DP1/23 – Review of the Senior Managers and Certification regime ('SM&CR')

The CFA Society of the UK (CFA UK) welcomes the opportunity to respond to the FCA and the PRA on their joint Discussion Paper reviewing the functioning of the SM&CR. We have also responded separately to HM Treasury's parallel Call for Evidence on the same topic, communicating similar feedback.

CFA UK is a professional body representing over 11,000 investment professionals in the UK¹. As such, CFA UK is not a firm caught under the requirements of the SM&CR. We cannot therefore share our own direct experiences of living under SM&CR, but can pass on the feedback of our members, which include both Senior Managers and staff involved with the administration of SM&CR within their own firms.

The introduction of SM&CR to UK banks in 2016 and subsequently to investment and insurance was pioneering at the time and, 7 years on, it is entirely appropriate to review its effectiveness and identify if there are any areas calling for improvement.

CFA UK strongly believes that the SM&CR regime has increased individual accountability within registered firms and in consequence improved the safety and soundness within them. In particular, we find that it has helped to bring additional rigour and discipline to firms' recruitment and appraisal processes of their senior staff which has had consequential benefits to firm culture.

Overall, we received very little feedback suggesting that the requirements of the SM&CR regime were too onerous and dissuaded candidates from applying for SMF roles; rather it

¹ Please see Appendix 1 for a summary of both CFA UK and its umbrella organisation CFA Institute

was suggested that the requirements were more likely to serve as a barrier from the wrong type of individual from applying for a senior role in the first place.

We believe that the prospect of enforcement does promote individual accountability, however, this does rely on a fair and effective enforcement process. We note that the relatively small number of investigations into conduct of Senior Managers are taking increasingly long to conclude and that overwhelmingly no enforcement sanctions are issued. This trend could be counter-productive if it continues; it suggests that innocent individuals are being held subject to increasingly lengthy investigations².

As regards scope, rather than looking to reduce the SM&CR perimeter, we would suggest it be extended to cover firms involved central clearing parties and firms involved in payments, crypto and e-money.

The FCA/PRA's own survey from 2022 had identified that small- and medium-sized firms are less likely to be positive about SM&CR. We would encourage the FCA/PRA to delve deeper into this and explore potential reforms to make the SM&CR regime more proportionate and less burdensome for smaller firms.

As we also relayed in our recent response³ to questions 2 and 6 of the FCA's Discussion Paper DP23/1, we believe the SM&CR regime should be updated to include sustainability-related objectives in each of the SMF roles' Statements of Responsibility ("SoR"). At the same time, we do not support the creation of a new CSO (Chief Sustainability Officer) SMF, preferring that sustainability responsibilities are spread across a firm's senior management team.

One area of consistent feedback that we received from members was that some new appointment approvals take too long, especially those relating to individuals moving firms. We suggest that the FCA/PRA look at reducing the current 90-day requirement and that firms providing a reference for a departing employee be required to do so within a satisfactory time period and without unnecessary delay.

We are supportive of each of the inter-relating building blocks to the SM&CR regime, namely the Senior Management Functions, the Prescribed Responsibilities, the Statements of Responsibility, the Management Responsibilities Maps, the Certification Regime, the Directory of Certified and Assessed Persons and the Conduct Rules.

² The number of open cases concerning Senior Managers has grown continually every year since SM&CR was introduced in 2016. Of the 57 closed cases since 2016, 54 have resulted in no action. See Freedom of Information Request (June 2022): <https://www.fca.org.uk/freedom-information/information-investigations-opened-under-senior-managers-regime-june-2022>

³ CFA UK Response to DP23/1 'Finance for positive sustainable change: governance, incentives and competence in regulated firms' (May 2023): <https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/cfa-uk-dp23-1-final.pdf>

In line with our Society's purpose, we aim to highlight relevant issues to help the investment community to serve its stakeholders well and to build a more sustainable future.

Yours sincerely,



Will Goodhart
Chief Executive
CFA Society of the UK



Andrew Burton, CFA
Professionalism Adviser
CFA Society of the UK

With thanks to the oversight of the [Professionalism Steering Committee](#).

APPENDIX I: About CFA UK and CFA Institute

CFA UK serves nearly twelve thousand leading members of the UK investment profession. Many of our members work either managing investment portfolios, analysing and advising on investments, or in some form of investment operations and oversight role.

The mission of CFA UK is to build a better investment profession and to do this through the promotion of the highest standards of ethics, education and professional excellence in order to serve society's best interests.

Founded in 1955, CFA UK is one of the largest member societies of CFA Institute and provides continuing education, advocacy, information, networking and career support on behalf of its members.

Most CFA UK members have earned the Chartered Financial Analyst® (CFA®) designation or are candidates registered in CFA Institute's CFA Program. Both members and candidates attest to adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct.

For more information, visit www.cfauk.org or follow us on Twitter @cfauk and on LinkedIn.com/company/cfa-uk/.

CFA Institute is the global association for investment professionals that sets the standard for professional excellence and credentials.

The organisation is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow.

It awards the Chartered Financial Analyst® (CFA) and Certificate in Investment Performance Measurement® (CIPM) designations worldwide, publishes research, conducts professional development programs, and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry.

CFA Institute has members in 162 markets, of which more than 170,000 hold the Chartered Financial Analyst® (CFA) designation. CFA Institute has nine offices worldwide and there are 158 local member societies.

For more information, visit www.cfainstitute.org.

APPENDIX II: Responses to questions

Q1: To what extent do you agree or disagree that the SM&CR has made it easier to hold individuals to account?

We agree to a significant extent.

Q2: To what extent do you agree or disagree that the SM&CR regime has improved safety and soundness and conduct within firms?

We agree to a significant extent.

Q3: To what extent do you agree or disagree that the fitness and propriety requirements support firms in appointing appropriately qualified individuals to Senior Manager roles?

We agree to a significant extent. We believe that it has helped to bring additional rigour and discipline to firms' recruitment and appraisal processes of their senior staff.

Q4: Please provide any suggestions that can help ensure that appropriately qualified individuals are not deterred from taking up relevant Senior Manager roles.

Overall, we received very little feedback suggesting that the requirements of the SM&CR regime were too onerous and dissuaded candidates from applying for SMF roles; rather it was suggested that the requirements were more likely to serve as a barrier from the wrong type of individual from applying for a senior role in the first place.

Q5: To what extent do you agree or disagree that the SM&CR has made it easier for firms to hold staff to account and take disciplinary action when appropriate against them?

We agree to a significant extent.

Q6: To what extent do the specific accountabilities of individual directors established by the Senior Managers Regime work in ways that complement the collective responsibility of the board of directors or decision-making committees?

To a significant extent.

Q7: To what extent do you agree or disagree that the prospect of enforcement promotes individual accountability?

To a significant extent. We believe that the prospect of enforcement does promote individual accountability, however, this does rely on a fair and effective enforcement process.

Q8: How could our approach to enforcement be enhanced to better support the aims of the SM&CR?

We note that the relatively small number of investigations into conduct of Senior Managers are taking increasingly long to conclude and that overwhelmingly no enforcement sanctions are issued. This trend could be counter-productive if it continues; it suggests that innocent

individuals are being held subject to increasingly lengthy investigations⁴.

Q9: To what extent do you agree or disagree that the scope of the SM&CR is appropriate?

As regards scope, rather than looking to reduce the SM&CR perimeter, we would suggest it be extended to cover firms involved central clearing parties and firms involved in payments, crypto and e-money.

Q10: Are there actions the regulators could take in respect of the SM&CR that would help enhance competition or international competitiveness?

Please see our answer to question 12 below.

Q11: To what extent do you agree or disagree that the SM&CR is applied proportionately to firms and individuals?

The FCA/PRA's own survey from 2022 had identified that small- and medium-sized firms are less likely to be positive about SM&CR. We would encourage the FCA/PRA to delve deeper into this and explore potential reforms to make the SM&CR regime more proportionate and less burdensome for smaller firms.

Q12: How could the process for SMF approvals be further improved?

One area of consistent feedback that we received from members was that some new appointment approvals take too long, especially those relating to individuals moving firms. We suggest that the FCA/PRA look at reducing the current 90-day requirement and that firms providing a reference for a departing employee be required to do so within a satisfactory time period and without unnecessary delay.

Q13: To what extent do you agree that the process for obtaining criminal records and notifying these to the regulators is effective in supporting the aims of the SM&CR?

To a significant extent.

Q14: To what extent do you agree or disagree that the 12-week rule sufficiently helps firms to manage changes in SMFs?

No comment.

Q15: To what extent do you agree or disagree that the regulators have in place:

- a. an appropriate set of Senior Management Functions to achieve the aims of the SM&CR?***

⁴ The number of open cases concerning Senior Managers has grown continually every year since SM&CR was introduced in 2016. Of the 57 closed cases since 2016, 54 have resulted in no action. See Freedom of Information Request (June 2022): <https://www.fca.org.uk/freedom-information/information-investigations-opened-under-senior-managers-regime-june-2022>

We agree to a significant extent.

b. an appropriate set of Prescribed Responsibilities to achieve the aims of the SM&CR?

We agree to a significant extent.

Q16: To what extent does the Duty of Responsibility support:

a. personal accountability?

To a significant extent.

b. better conduct of Senior Managers?

To a significant extent.

Q17: To what extent do you agree or disagree that Statements of Responsibilities and Management Responsibilities Maps help to support individual accountability?

As we also relayed in our recent response⁵ to questions 2 and 6 of the FCA's Discussion Paper DP23/1, we believe the SM&CR regime should be updated to include sustainability-related objectives in each of the SMF roles' Statements of Responsibility ("SoR"). At the same time, we do not support the creation of a new CSO (Chief Sustainability Officer) SMF, preferring that sustainability responsibilities are spread across a firm's senior management team.

Q18: To what extent do you agree or disagree that the Certification Regime is effective in ensuring that individuals within the regime are fit and proper for their roles?

We agree to a significant extent. However, we believe that the FCA's guidance for the annual re-certification of individuals remaining in post could be improved. We believe the annual re-certification process brings welcome additional discipline to the annual appraisal cycle for those staff under the Certification Regime. However, we think it would be helpful for firms if the FCA drew a distinction between new appointments and annual re-appointments in terms of the depth of information and checks they expected employers to obtain and run respectively, in the same way that they do for SMF roles.

Q19: Regarding the Directory of Certified and Assessed Persons, to what extent do you agree or disagree that:

a. it captures the appropriate types of individuals?

To a significant extent.

⁵ CFA UK Response to DP23/1 'Finance for positive sustainable change: governance, incentives and competence in regulated firms' (May 2023): <https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/cfa-uk-dp23-1-final.pdf>

b. the requirements for keeping it up to date are appropriate?

To a significant extent.

Q20: To what extent do you agree or disagree that regulatory references help firms make better-informed decisions about the fitness and propriety of relevant candidates?

They are necessary, but please also see our response to question 12 above.

Q21: To what extent do you agree or disagree that the Conduct Rules are effective in promoting good conduct across all levels of the firm?

We agree to a significant extent.

Q22: Are there other areas, not already covered in the question above, where you consider changes could be made to improve the SM&CR regime?

No additional comments.