THE INVESTMENT ASSOCIATION

# IA Response to FCA/PRA Joint Discussion Paper on Senior Manager's & Certification Regime

## About the Investment Association

The Investment Association (IA) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 250 members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage £10 trillion for savers and institutions, such as pension schemes and insurance companies, in the UK and beyond. 46% of this is for overseas clients. The UK investment management industry is the largest in Europe and the second largest globally.

## Executive summary

The IA welcomes the opportunity to respond to the FCA and PRA's joint discussion paper (DP 1/23) on Senior Managers and Certification Regime (SM&CR). In addition to responding to this DP, the IA is also responding to the HMT Call for Evidence released in parallel on this topic. Where relevant we have made references to details of our response to the HMT Call for Evidence in this response.

Whilst SM&CR is a valuable tool for establishing strong governance, and competence in regulated firms. However, its expanding scope, and extensive requirements, have resulted in increasing complexity and cost of compliance, often significantly disproportionate to the anticipated benefits or behavioural change that these requirements seek to achieve. With the Financial Services and Markets Bill 2022 introducing the secondary objective of competitiveness for the UK regulators, it is ever more important to take steps to critically review and improve the UK's SM&CR regime to make it fit for purpose and effective against its objectives.

Considerable time, efforts and resources have been put into SM&CR implementation across the industry and this review, 7 years since the regime's launch, is important to critically review and amend the regime to ensure that it continues to be fit for purpose and works effectively and efficiently.

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We therefore welcome the PRA[1] and FCA's openness for feedback to address areas where the regime may not be working effectively in practice. This approach will enable the industry to continue to move in the right direction and ensure that firms maintain the highest standards of conduct and culture.

**Summary of the key views in this response:**

Whilst our members believe that the overarching design of the regime can be tweaked and enhanced through some changes in the underlying rules and regulations, there is a strong sentiment that the operational aspects of the regime and how it has been implemented need to be overhauled. SM&CR is increasingly being perceived as bureaucratic and hard to navigate with constant regulatory changes or regulatory creep that leads to an ever-growing scope of SM&CR. As part of the regulators' secondary objective and to ensure the UK's accountability regime remains competitive. We strongly believe that by engaging in meaningful consultation and collaboration with the industry, the proposed changes outlined below can help enhance UK's appeal to our industry through lowering the cost of business and creating more certainty as an attractive destination for individuals captured by SM&CR, in particular Senior Manager Functions (SMFs). We have also outlined our high-level recommendations and feedback to HMT Call for Evidence below in the hope that together tripartite consensus can emerge on what needs to be changed, with a clear sense of understanding where the responsibility for that change lies.

- **Clarity on the purpose of the regime.** There is a noticeable lack of interoperability between SM&CR and other regulatory initiatives leading to conflicts with their respective objectives or administration and inconsistencies in application. The introduction of newer regulations such as the Consumer Duty, sustainability measures or algorithmic trading which are tied to SM&CR has contributed to an expanding list of accountabilities which firms are required to allocate to individuals within the regime. This is further complicated by the fact that many of these considerations arrive through a varied range of channels such as Firm Evaluation Letters and Dear CEO letters. It is crucial for regulators to reaffirm that the regime is meant to serve as the overarching regulatory standard that drives forward good culture and behaviours as opposed to simply being a tool in the regulator's toolkit.

- **Thematic review of Conduct Rules Breaches**. Certified Persons and Conduct Rules staff are an important part of the SM&CR framework and support the change in culture and standards that the regulators set out at the outset of the regime and give SMFs comfort that those they delegate to are part of the SM&CR framework and have 'skin in the game'. However, considerable time, efforts and resources have been put into SM&CR implementation across the industry including in analysing and reporting conduct breaches. With the regulators having collected significant data from firms since the regime's launch, there are considerable merits in conducting a comprehensive thematic review of the Conduct Rule Breach process. Publishing insights and themes of such a review would greatly benefit the industry in determining appropriate thresholds and improving transparency, particularly in the area of Non-Financial Misconduct. This will help firms understand how information they report is utilised by the regulators and allow them to review their conduct breach processes to make sure they remain appropriate and robust. It would also be useful to understand the purpose of line-by-line reporting with regards to conduct rule breaches.

- **Risk-based SMF approval process.** In approving SMFs, we recommend a more risk-based approach that takes into account, to a higher degree, an individual's experience in similar SMF roles, whether in the same firm or different firms, in the UK or in similar positions abroad. This should include recognition of

[1] As most of IA members are regulated primarily by the FCA, our response focusses on the FCA as the primary regulator of SM&CR. To the extent the areas identified also apply to the PRA, we would urge consistency of approach across regulators.

suitable international accountability regimes that are comparable to the UK regime, allowing an easier transition of personnel without requiring a full-scale and lengthy approval process.

To deal with continuing delays in authorisations and associated issues, we recommend the introduction of a 'Notified Person requirement' in certain specified circumstances or SMFs. Under this proposal only notification from the firms to the regulator is required (such as notification procedures for changes to the management body for non-SMF directors), rather than needing to receive full regulatory pre-approval.

- **Use of technology to significantly improve and enhance the operational experience and effectiveness**. The FCA's recent commitment to strengthening its capability and capacity through investment in people, technology and data in its Business Plan, can be the perfect catalyst for upgrading and digitising the processes associated with SM&CR. This would include the burdensome Connect system and the FCA Financial Services Register, reducing the approval times, allowing efficient filtering and triaging and thereby significantly improving the administration of the regime. In addition, we strongly encourage the regulator to use mechanisms under AI and update their technology to allow firms to link their systems to the register. This would drive better outcomes, retain and use information as part of assessments as well as reduce manual processing for firms with regards to new SMF applications or the addition and removal of existing SMFs. This should help significantly reduce SMF approval times and help the regulators focus on areas and individuals it deems risky.

- **Review of administrative processes and procedures.** We recommend that the regulatory processes and procedures are reviewed to ensure they are practical, streamlined, and less burdensome for firms and the regulator, minimising repetition and improving efficiency. We strongly believe that the regulators would benefit from stepping back and revisiting what aspects are absolutely necessary versus what is good to have in order to administer a more flexible approach. This is detailed further throughout our response. Some examples include:

  **12-week rule:** The 12-week rule, aimed at addressing the practical challenges of approving temporary senior managers, is welcomed in principle. However, its effectiveness is hindered by the short time-period. It becomes nearly impossible to select and approve a new candidate within the 12-week window, especially in cases of sudden departures or when specialised expertise is required. Additionally, the FCA's approval process often takes the entire 12 weeks, leaving no benefit of the rule. There are also instances where firms require temporary coverage for a shorter period, yet still need to go through the full SMF process.
  The majority of members consider extending the 12-weeks to 36 weeks to accommodate certain scenarios, noting that this worked well during the pandemic.

  **30-day rule.** We recommend increasing the 30-day rule to 60 days to reflect operational realities of the regime and ease the regulatory burden on international firms that benefit from their certified frequently population travelling to the UK.

**We have also outlined below recommendations made to HMT in our response to their Call for Evidence:**

- **Review of Annual Certification requirements:** To address the disproportionate and costly regulatory requirements associated with the Annual Certification Regime, considering that misconduct is often detected through other systems and controls like onboarding, compliance monitoring and regular performance reviews. We strongly recommend that HMT re-evaluates the rigidity of these requirements which are contained within primary legislation, requiring any changes to be made through parliamentary approvals. In the first instance, moving the certification requirements from primary legislation to the FCA Handbook, will allow the FCA to effectively consider appropriateness of

these requirements and then set out less prescriptive and more flexible certification requirements for firms to apply based on their size and risk profile. For instance, the FCA could allow re-certification up to every 3 years instead of annually, unless there have been any significant changes in an individual's circumstances, while allowing the flexibility for firms to continue with annual or other frequent certifications that align with their processes.

- **Remuneration deferral requirements.** We propose a further review of the 7-year deferral requirement which substantially impacts Material Risk Takers (MRTs) and PRA designated SMFs, for applicable investment firms. Where this or other deferral requirements differ internationally, we propose implementing consistency e.g. matching the EU deferral requirement of 5 years. Reducing the 7-year deferral will also allow firms to make best use of the proposed removal of the bonus cap, as staff will be resistant to increasing variable remuneration if deferrals remain substantially above those in other jurisdictions, ultimately leading to deterring talent from coming to the UK.

- **Scope and review of thresholds:** The threshold of £50bn for Enhanced firms has remained static since its introduction without factoring in inflation. We propose that the limit is reviewed to take into account AUM increase due to inflation.

  Moreover, to provide firms with a smoother transition when moving from one category to another such as from Core to Enhanced, we recommend allowing them sufficient time to gradually increase their SMFs. This approach recognises the practical challenges faced by firms and allows time to adjust their senior management structure and responsibilities. By allowing a more gradual increase in SMFs, firms can effectively plan and implement necessary changes while ensuring continuity in their operations.

  This would alleviate the burden of a sudden and significant organisational overhaul, reducing operational disruptions and potential risks associated with swift decision-making. Firms would have the opportunity to assess and allocate SMF functions in a deliberate manner, ensuring appropriate alignment with their specific business needs and regulatory requirements.

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

Pre-SM&CR, the investment management industry was regulated via the Approved Person Regime which was transformed through to SM&CR. This notably heightened the measures for accountability of Senior Managers which we generally view to have a positive effect on conduct and culture of firms. Whilst it is critical that accountability is championed in the industry, there is a delicate balance to be struck so that neither regulators nor firms are overburdened by it. SM&CR should not create bureaucracy, and that it does not disincentivise good individuals from holding relevant positions and responsibilities. Current member feedback suggest that the regime would benefit from refining, suggestions to which are set out throughout this paper and in our response to HMT's Call for Evidence.

One particular area where the industry would benefit from greater transparency is on the extent to which individuals are made accountable and the process to which the regulator leads up to a decision for enforcement. This is not currently evident, nor is it clear to firms, what the regulator does with the conduct breach information (further set out in our response to Q7).

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

The SM&CR regime, and the Approved Person Regime before then, have sharpened the focus on Senior Manager responsibilities in UK. This has supported investment management firms in maintaining strong conduct and culture.

In addition to asking the industry for feedback, we strongly urge the regulators take this opportunity to review their experience with the regime and publish their assessment of its effectiveness in achieving its stated objectives.

## 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?

Throughout this response we seek to make recommendations on how the rules and operational realities of the regime could be improved so as to not disincentivise individuals from undertaking SMF roles and relevant accountabilities.

There is a clear lack of an efficient and consistent approach for onboarding existing SMFs. Overwhelming feedback from our members indicates that the detailed and time-consuming requirements for personnel transitioning into similar SMF roles to those that they currently hold or have held in the past, whether internally, to another UK firm or from an international location with similar and compatible accountability requirements, act as a significant barrier and commercial deterrent when hiring senior personnel in the UK. The delays in obtaining approvals and the lack of a consistent approach to the approval process create real commercial and practical difficulties for firms when publicly announcing new senior-level hires subject to regulatory approval, due to the risk of public embarrassment for the firms and individuals if the approval is denied, even for a technical reason.

Furthermore, difficulties arise from the inherent notion that firms are required to demonstrate that individuals carrying out SMF roles elsewhere have not been guilty of poor conduct or misconduct in their previous positions. Proving a negative is inherently challenging, and a more nuanced approach is needed. Detailed assessments should only be necessary if the regulators have reasonable grounds to believe that an individual should not continue to be appointed as an SMF. This distinction, which is commonly observed in broader legal contexts, should also be extended to the SM&CR.

In summary, there is a pressing need to streamline the onboarding process for existing SMFs. Addressing the challenges associated with approvals, providing consistency, and adopting a more balanced approach to assessments. This would greatly enhance the efficiency and attractiveness of hiring senior personnel in the UK, ensuring a smoother transition while maintaining the necessary regulatory oversight.

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

A streamlined and proportionate approach that better takes into account the negligible risk involved in hiring a competent, recognised individual that either holds an SMF position or has previously held an SMF role in the UK or in an internationally comparable jurisdiction. For example, if an individual with SMF responsibilities for one firm is employed to have responsibility for the same SMF at another firm, the process would benefit from a lighter approach or easier transition. The threshold whereby there needs to be a full application process review could be limited to events where there has been misconduct suspected by the firm or regulator, risk has been introduced by changes in responsibility, or there has been a sufficient time gap in holding SMF responsibilities.

Similarly, quite often in the evolving market today, individuals' experiences prove to be most valuable in embodying due skill and competence in a role. A similar approach would be useful in allowing more flexibility on functions requiring Training and Competence qualifications, in particular for those that have worked their way up through the ranks in an organisation and have therefore gained valuable experience. The regulators often forgo lack of qualification when assessing the governance of a new firm facing authorisation, a similar approach would therefore benefit from individuals taking up SM&CR roles.

Furthermore, distinctions should be drawn, and proportional measures applied between a new SMF vs existing SMFs/employees known to the firm, in such instances it should be up to the firm or board e.g., SMF1 to attest to or sign off that an individual is fit and proper for the relevant role.

Lastly, different SMF roles carry with them different levels of risk and should therefore not be treated in the same way, for example an SMF1, or SMF 18 represents more risk than an SMF 29, but the approval process does not seem to take the different risks into account.

## 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?

As referenced in our response to Q1, although SM&CR has provided a framework of accountability, the principles underlying the Conduct Rules have been around for years, since before SM&CR, and are engrained in Codes of Conduct or Ethics for many firms. Hence, even though the framework is welcome, it is difficult to measure the behavioural outcome through SM&CR.

Furthermore, there is a strong advocation for transparency and sharing insights on information the FCA has collected, particularly with regards to conduct breach information and how this impacts the regulator's decision making. Members wish to understand how the FCA utilises the line by line named data collected as part of Conduct Rule Breach reporting, what insights and trends it provides, and what lessons the industry can learn from, as well as the continuing requirement for named reporting in future.

We note that there is non-exhaustive guidance for breaches in Conduct Rules, e.g., COCON, which does not reference Non-Financial Misconduct at all. With lack of any guidance and examples from the regulators, there appear to be general inconsistencies across the industry with regards to the threshold for breaches of the Conduct Rules, with particular reference to Non-Financial Misconduct and understanding the instances, or severity to which firms should deem misconduct to be a breach of one or more of the Rules.

Personal misbehaviour involving fraud, dishonesty, lack of integrity, and harassment, among other things, must be distinguished, as these serious issues should be examined and addressed through proper disciplinary action. They may also result in considerable regulatory liability under the Conduct Rules. However, there is a lack of clarity in how firms and authorities evaluate behaviour here for the purposes of Conduct Rules requirements. The applicable threshold for Conduct Rule 2 is based on negligence and "reasonable steps" for SMFs to prevent misconduct or "due skill care and diligence" on a wider scale. Negligence standards harm psychological safety which can impact culture negatively with innocent mistakes second-guessed in retrospect. There is currently no genuine agreement on the framework for determining what culpability looks like. The concept of "reasonable care" was developed by the courts to provide a system for allocating liability for compensatory losses; it is therefore unsuitable for determining root causes or allocating blame and punishment.

Individuals and organisations regard performance adjustment as a type of punishment, even if firms are still compelled to consider it in the absence of individual blame. Accountability and blame are not synonymous, but their distinction is difficult to draw out in this context. The broad definition of disciplinary action under the legislation brings into scope performance/remuneration adjustments as well as disciplinary warnings and dismissals.

This is particularly important when the consequences of reporting conduct breach information can adversely affect an individual's regulatory reference. Though we understand that firms should not

automatically deny employment should adverse information be disclosed within a regulatory reference, it should be viewed as unfair or unjust, if one firm reported a type of conduct breach with an individual facing adverse outcomes, yet another did not and that other individual guilty of the same behaviour did not face consequences.

In light of this, we recommend the regulators set a threshold for breaches of the Conduct Rules, this can be done with transparency on the data regulators receive on conduct breaches trends. This should be done in conjunction with a wider review of the Conduct Rule Breach process, to better understand how data-driven decisions are made from a supervisory and enforcement perspective. This will aid firms in determining where a breach of the Conduct Rules has occurred which would in turn help the industry ensure that the reporting of the type and severity of conduct breaches are suitably linked to the SMF role.

## 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? Are there ways this could be improved?

Further thought should be given to the role of INEDs, and how their purpose to effectively challenge the executive team fits within SM&CR. The industry would welcome clarification on why some INEDs are responsible under SM&CR instead of NEDs or other Executive Directors. A direct example of this are INEDs having to be responsible for championing SM&CR under Consumer Duty.

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

We agree that the prospect of enforcement would naturally promote individual accountability. It would however be easier to demonstrate this with the benefit of the data and experience gathered from the last 7 years of the regime.

However, in line with our response to Q5 there is an urgent need for clear guidance on the powers of regulators under SM&CR to hold individuals accountable. In particular, it would be beneficial for the industry to have greater understanding on what the thresholds are whereby an individual's actions has led to enforcement action, particularly in the Certified and Conduct Rules populations.

Furthermore, potential SMF candidates look for clarity on what accountability means in terms of liability, as touched upon in Q1 and Q5, it is not always transparent how the FCA collects and uses conduct breach information in its decision making.

Therefore, further clarity through a thematic review showing where the regulators have seen breaches and in what responsibilities would be helpful. A crucial aspect of accountability is that expectations are clear. Further clarity will also allow firms to have more certainty when seeking to discipline employees.

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

Enforcement can be intimidating for many, and while we recognise its necessity in certain circumstances, it is important to establish measures that encourage firms to come forward rather than deter them. To achieve this, regulators could enhance transparency by providing clearer insights into the decision-making process preceding enforcement actions. This would enable individuals and firms to have a better understanding of the steps involved. Additionally, promoting greater transparency and providing detailed explanations leading up to significant events can shift the focus away from strict enforcement and foster a culture of learning and understanding regarding good conduct for both the specific firm under scrutiny and the wider industry.

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

Investment managers, in particular, face challenges in implementing the SM&CR. This is because the regime operates on an entity basis and can fall under different categories of Limited, Core and Enhanced, with investment managers often having complex organisational structures across multiple entities or SMFs having multiple responsibilities across entities in the same group. For global investment management firms, SM&CR presents an additional challenge as they are operating across multiple jurisdictions, it becomes harder to implement the regime consistently across all its operations.

The scope of the regime has expanded over time and now captures a wider array of financial services firms. For smaller firms, this can lead to disproportionate requirements compared to their larger competitors. Smaller firms often struggle the most with implementing new regulations, therefore reviewing proportionality of the regime is key to easing what may be seen as unnecessary burdens.

As a starting point, the £50bn threshold which has remained unchanged over the years without factoring in inflation, should be reviewed and increased in line with inflation. Additionally, for firms moving from one category to another, the SMF requirements can increase significantly. We recommend allowing firms sufficient time to gradually increase the number of their SMFs. This approach recognises the practical challenges faced by firms and allows time to adjust their senior management structure and responsibilities. By allowing a more gradual increase in SMFs, firms can effectively plan and implement necessary changes while ensuring continuity in their operations.

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

SM&CR plays a fundamental role in both attracting and deterring talent to the UK. While the UK's financial services eco-system is recognised for is robust regulatory landscape, it is important to strike the right balance between effectiveness and proportionality as the UK is increasingly being viewed as having an overly burdensome regulatory environment. While member feedback does not indicate that SM&CR by itself is a factor in determining the UK's competitiveness, it is part of the wider regulatory framework the increasing complexity and change of pace of which is causing concerns for firms.

On SM&CR, we suggest the following issues are addressed:

- There is a noticeable lack of interoperability between SM&CR and other regulatory initiatives leading to conflicts with their respective objectives or administration and inconsistent application across firms. The introduction of newer regulations such as the Consumer Duty, sustainability measures or algorithmic trading which are tied to SM&CR has contributed to an expanding list of accountabilities which firms are required to allocate to individuals within the regime. This is further complicated by the fact that many of these considerations arrive through a varied range of channels such as Firm Evaluation Letters or Dear CEO letters. As a result, the UK is perceived as quite daunting, carrying with it significant regulatory burden through the complexity and prescriptive nature interpreted through regulations under the SM&CR framework.

- One particular area that is directly impacting the attractiveness of the UK is the enforced 7-year deferral requirement which substantially impacts Material Risk Takers (MRTs) and PRA designated SMFs, at applicable investment firms. Where this requirement or others deferral requirements differ internationally, we propose implementing consistency with these norms e.g. mirroring the EU deferral requirement of 5 years. Reducing the 7-year deferral will also allow firms to make best use of the proposed removal of the bonus cap, as staff will be resistant to increasing variable remuneration if deferrals remain substantially above those in other jurisdictions, ultimately leading to detracting talent from coming to the UK.

- Furthermore, the differences amongst cross jurisdiction recognition of UK-centric examination qualifications such as those under the Training and Competence sourcebook can act as a deterrent. Therefore, a system whereby other jurisdictional qualifications are recognised or taken into account alongside UK specific regulations alongside the individual's experience in the role feels like an appropriate measure. Another approach could include UK Senior managers carrying the responsibility for overseas people who would otherwise be deemed as Certified Persons under the current system. This would then limit administration, focus adherence in the UK and increase accountability in the hands of the Senior Managers.

- The time it takes to complete an investigation of an individual suspected of inordinate behaviour can directly impact the attractiveness of the UK. In particular we are aware of cases where the uncertainty of outcome over a long period of time has negative outcomes on the wellbeing of an individual in question. To be clear, it is not that individuals should not be under investigation where there is just cause. It is the way that investigations are handled, and the time taken to reach a ruling. Regulators should be well equipped to handle such delicate situations or consider making decisions more proportionate to the risk an individual can pose, i.e., focusing on the individuals that can pose the highest risk.

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

We strongly advocate a risk-based SMF approval process. The SMF requirements should be simplified to enable a seamless transfer and smoother onboarding of SMFs, eliminating the need for a comprehensive pre-approval process. This will allow for approval or 'pre-approval' from day one, with a subsequent assessment or a more streamlined assessment when deemed appropriate, starting from the presumption that an SMF continues to be suitable unless proven otherwise.

Different SMFs represent different risks therefore some flexibility toward less risky functions could alleviate the burden on firms and regulators when processing applications. This should be considered with incoming proposals on SMF responsibilities for Consumer Duty, Artificial Intelligence, diversity and inclusion and sustainability. Further to this, due to the international nature of investment management firms, the complexity of navigating different regulatory landscapes often highlights the disproportionality encountered through the assessment process and bureaucracy of paperwork.

To deal with continuing delays in authorisations, we recommend introduction of a Notified Person requirement and triaging certain specified circumstances or SMFs. Under this proposal only notification from the firms to the regulator is required (similar to the notification procedures for changes to the management body for non-SMF directors), rather than needing to receive full regulatory pre-approval for pre-existing or existing SMFs that have experience in similar firms or have been promoted within a firm. This should extend to existing SMFs when moving roles in the same firm or from another UK firm. (Please see further recommendations outlined in our response to Q12 under 'Notification/Non-Objection').

The burden of new regulations is larger on smaller firms. Separately, requiring investment managers to have similar numbers of Senior Managers and PRs as banks seems disproportionate to the amount of risk inherent to both business models. This notion leads back to the revisiting of SM&CR categories, in particular the Core and Enhanced regimes.

In instances where it is appropriate, the regulator should be more open towards double or triple hatting between different SMF roles provided an individual's skillset ensures that there is no material increase in risk of consolidating responsibilities into a single role. For instance, where smaller firm such as smaller branches and subsidiaries, present less of a risk to the UK consumer and financial stability, there could be consideration in allowing smaller entities to consolidate SMF responsibilities to a single individual (the CEO or Branch Manager). This avoids creating positions which are unnecessary and burden firms with multiple

applications. We have included further examples of where proportionality can be applied to existing/lower risk SMFs in question 4.

Moreover, the significant and sudden increase in the number of required SMFs when a firm reaches the financial threshold of £50bn AUM as an Enhanced firm can be difficult to manage in the short term, especially considering the difference in Prescribed Responsibilities or the sheer number of SMFs that are caught within the Enhanced regime. To provide firms with a smoother transition when moving from one category to another, we recommend allowing them sufficient time to gradually increase their SMFs when a firm is moving into the Enhanced threshold. This approach recognises the practical challenges faced by firms in adjusting their senior management structure and responsibilities. By allowing a gradual increase in SMFs, firms can effectively plan and implement necessary changes while ensuring continuity in their operations.

This would alleviate the burden of a sudden and significant organisational overhaul, reducing operational disruptions and potential risks associated with swift decision-making. Firms would have the opportunity to assess and allocate SMF functions in a deliberate manner, ensuring appropriate alignment with their specific business needs and regulatory requirements. By affording firms the flexibility and time needed for a smooth transition, the regulatory framework can better support their efforts in adapting to new requirements, fostering a more effective and efficient implementation of SM&CR while maintaining business continuity and minimising potential negative impacts.

As outlined in our response to Q3, difficulties arise from the inherent notion that firms are required to demonstrate that individuals carrying out SMF roles elsewhere are not guilty of poor conduct or misconduct in their previous positions. Proving a negative is inherently challenging, and a more nuanced approach is needed. Detailed assessments should only be necessary if the regulators have reasonable grounds to believe that an individual should not continue to be appointed as an SMF. This distinction, which is commonly observed in broader legal contexts, should also be extended to this regulation.

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

While we acknowledge the recent improvement in the FCA's Service Level Agreement (SLA) metrics on SMF applications, there are several areas that require a more comprehensive review. We strongly recommend the time taken by the regulators to review and approve SMF applications should be reduced from 90 days to support business needs. Additionally, the regulators aim to close Form Cs & Form Ds in 2 days and APER approvals in 5 days however in reality the industry has seen these take far longer. SOR updates have no SLAs at all which has meant acknowledgment can has occurred anywhere from 1 to 11 months which further brings into question the necessity of SoRs.

We have set out a number of suggested improvements to assist with the day-to-day operations and processes that would enhance efficiency and information quality across the industry. These improvements, many of which are relatively minor and easy tweaks to the current requirements and processes, will collectively have a significant positive impact on the efficiency of the regime, as well as taking into account fast changing business needs:

**Inconsistency in assessment or approach taken by the regulators**. There have been instances that highlight inconsistencies in approach with regards to similar types of applications, we therefore recommend reviewing internal guides for case officers to take on board realities of day-to-day business. For example, firms have had to withdraw an SMF application which are relatively well progressed as a direct result of adding new responsibilities for individuals during the approval process. However, in other circumstances the firm could continue on with their application. This makes firms hesitant in changes that reflect business needs as it means risking re-joining the back of a long queue or waiting until the existing application is approved to then make further changes.

**Access to Case Officers.** In some instances, member firms do not have access to their case officer and progress of their application is unclear. Therefore, frequent communication by the regulator on progress of applications (aided by technology improvements) as well as a consistent approach would assist with clarity

of the progress made in relation to applications. Specifically, firms would like to be made aware if and when the application has been picked up by a case officer, who the case officer is, whether it is with the PRA or FCA and how frequently they can be expected to be updated on the application's overall status. This information on the progress of applications is vital for firms' ability to manage their regulatory risk and can help minimise disruption to day-to-day firm operations.

**Clarity on the use of certain forms**. Regulators should further review their approach to assessing when an employee's primary role has significantly changed, whilst their other roles remain unaffected. In such instances, firms have submitted Form J's without being clear on next steps only to receive feedback that information on the changes in the other roles needed to be included. Further clarification on when and how Form J can be used in such instances would reduce ambiguity and prevent repetition of the same information being submitted and save time.

**SMF onboarding process.** We further recommend a review of the SMF onboarding processes to critically analyse its benefits and identify areas of improvement, especially instance where firms are disproportionately impacted. Examples of this include:

- the volume of redundant supporting documents required
- the mismatch between the FCA Connect Forms and offline forms
- The burdensome Connect system, through which it is time consuming to submit an application
- the use of Form D as a catch all or for minor changes such as personal information to major conduct breaches
- The long lead times for approvals renders even simple changes a resource heavy exercise.
- Differences between PRA and FCA handling of applications, and lack of clarity on how supporting documentation is shared between regulators in joint applications
- Duplicative/inconsistent information needed in within MRMs.

We recommend; clearer signposting of the appropriate forms, reducing the amount of unnecessary supporting documentation such as MRMs and SORs which are duplicative across different forms, and rectifying discrepancies between FCA Connect forms and offline forms.

A review of the assessment process throughout the different areas of and across regulators could ensure consistency of approach. In addition to this, where a regulator already has information on a candidate due to prior applications it should be converted into accessible information that can be deployed across different forms or supporting documentation, especially where it is current and up to date information, this would in turn ease the burden on firms as well as the regulators and help streamline and quicken the process.

**30-day rule.** The 30-day rule, which recognises the international nature of the UK financial services industry and provides an exemption from SM&CR certification for short-term visitors, is welcomed in principle. However, in practice, the 30-day limit is relatively short, leading firms to certify individuals ahead of time to meet onboarding requirements, making it less generous in practice. Additionally, the limit can be easily breached by individuals taking multiple short trips within a 12-month period.
To address this, we propose extending the exemption to 90 days to strike a balance between policy intentions and the certification needs of individuals primarily based in the UK. We commend the FCA for their recognition of the need for sensible short-term visits and encourage similar pragmatic accommodations in other regulatory areas to avoid confusion and unnecessary burdens on firms.

Other recommendations that could help SMF approvals such as the 12-week rule (Q14) and streamlined SMF notifications (Q11) are set out throughout our response.

## Q13: To what extent to 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?

Whilst we agree with the principle behind needing criminal background checks and note that criminal checks are a part of legislation, there is a question around the type of requirements put into place. It is in firms' interests to ensure that SMFs have clear criminal records, as such firms would naturally have reason to pursue their own checks in line with fitness and propriety assessments. The requirement to have 'Standard' DBS checks for existing SMFs feels disproportionate as these are in place to highlight spent convictions which would otherwise have been checked before approving an SMF initially which means this process in subsequent applications is not disclosing new information. Whereas 'basic' DBS checks would show new convictions which for the purpose of existing SMFs feels more proportionate and easier for firms to obtain as well as saving undue cost.

We recommend extending the three-month window for DBS checks on existing Senior Managers to twelve months to reduce the unnecessary cost with firms or replace it with self-declaration whereby the firms attest it has carried out the necessary background checks. Additionally, this change would expedite application processing and contribute to smoother operations.

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

The principle that underpins the 12-week rule is welcome as it seeks to reflect the realities of operating the regime in practice, and the fact that it would be disproportionate and time consuming (both for the FCA and the firm in question) to approve a new Senior Manager for only a temporary period. However, the operation of the rule is undermined by the fact that the 12-week time period is too short. For example, if someone were to leave a SMF at short notice, it would be virtually impossible to select a new candidate (which may require firm interviews with potential candidates), preparation of a SMF application (including perhaps undertaking criminal background checks, financial record checks, obtaining references, performing a skills gap analysis and obtaining the corporate approvals for the candidate) and then have them approved by the FCA within the 12-week period. This is particularly the case when you consider that the statutory deadline for the FCA reaching a SMF application determination is three months (i.e., the whole 12-week period can be taken up just by the FCA approval process).

There are circumstances whereby firms require only 5 or 6 months of coverage e.g., maternity leave or sickness, but must undergo a full SMF process for what, in practice, would be less than 6 months coverage. In absence of clarification for the 12-week rule around situations such as finding or hiring an individual to step into a role to fill a SMF resignation, it has been widely interpreted that firms have 12 weeks to find a new hire. The 12-week rule was designed to cater for genuinely unforeseen circumstances, and not to give businesses more time to reallocate SMF responsibilities as part of BAU personnel changes unforeseen circumstances such as unexpected leave or long-term sickness. 12 weeks is too restrictive with realities such as gardening leave and the time it takes to find a new hire to step into the role (especially where overseas), application preparation, handover, and background checks. There appears to be confusion on what to do in such circumstances, i.e., if the 12-week rule does not apply in such circumstances what would the FCA expect of firms? Further clear guidance that reflects a deeper understanding of circumstances whereby an individual has to leave for a period of 12 months or under would help eradicate any confusion and thereby smoothen the process for the FCA and firms.

It is important for all individuals within an organisation to be aware of the regime and not just one person. This is because the SM&CR requires that certain individuals in senior management positions be held accountable for their actions and conduct, and this responsibility cannot be easily transferred to another person unless there is familiarity across SMFs/candidates that can step up. If an individual with a crucial role within the regime goes on leave or leaves the organisation, it can be difficult to find a replacement with the same level of expertise and knowledge. In some cases, it has meant that the person officially

responsible for a particular area of the business is not necessarily the best placed individual to exercise oversight of that area. The FCA's delay in approvals therefore can have the unintended consequence of causing sub-optimal oversight. This can lead to a breakdown in compliance and create challenges in maintaining accountability and transparency within the organisation. To ensure the successful implementation of the SM&CR, firms must ensure that all individuals within the organisation (in proportion to their role) are aware of the regime's requirements and their responsibilities under it. This will help to create a culture of accountability and promote compliance with the SM&CR across the organization.

Our suggestion is, so that the 12-week rule can allow for the types of scenarios for which it was envisaged, we would propose extending the window from 12-weeks to 36 weeks and allowing for other appropriately selected Senior Managers to step in without a full application i.e. reducing updated SORs and handovers being sent to the regulators. In addition, for temporary SMF appointments lasting less than 12 months, it might be worthwhile considering whether the application process could be streamlined to allow for quicker preparation and approval.

## 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?

Whilst the set of SMFs and PRs are more reflective of investment management businesses (in terms of roles and responsibilities undertaken) under the Enhanced category, as opposed to the Core category, there is little by way of regulatory contact or insight for the firm beyond that of the CEO, Board and Compliance Officer. It would therefore be of better value to both the industry and regulators to revisit what is absolutely necessary/set more appropriate thresholds for Limited, Core and Enhanced.

The majority of our members expressed that Group Entity Led Managers (SMF7s) are not always seen as an effective function for some international groups with a branch or subsidiary located in the UK. In particular where there is a well-established and well know individual with a reputation that precedes them to then require them to undergo an application as an SMF7 appears disproportionate and unnecessary. Additionally, there are often issues with identifying who the SMF7 should apply to within a group structure which is further proliferated with the differing interpretations of what constitutes an SMF7 by the PRA and FCA.

One particular firm expressed that quite often there is natural alignment of what may be SMF 18 ('other overall responsibilities') duties to that of the executive team, therefore integration of responsibilities under the SMF 18 could be rolled up to members of the executive team, taking away confusion of having multiple and often overlapping responsibilities between multiple SMF 18s.

Another firm expressed that SMF18 is a function that is too broad in application and could result in a number of people being applied to the same or similar categories which further dilutes accountabilities and takes away from the purpose of having a single person being accountable. In such an instance it would therefore be more effective to have one person accountable for all investment activity, and it also helps with coordination of all investments under one umbrella.

With the above in mind, it is evident that one size does not fit all. Therefore, a degree of flexibility is needed that enables firms, where appropriate, to double or triple hat or have certain functions fall away where it is lower-risk. As mentioned before in question 12, we believe that there is more proportionality that can be applied to smaller firms.

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

Whilst we would be wary of the regulator adding an ever-growing 'shopping list' of accountabilities to the responsibilities of each SMF, we would recommend that there is more timely guidance on changes firms

need to implement via once source (and not spread among many other) as it is becoming more and more challenging for firms to keep abreast of new measures in place.

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

## a. Personal accountability?

The Duty of Responsibility as articulated through the Senior Manager Conduct Rules is a useful reminder of personal accountability. It is widely viewed that Senior Managers do not require a regulatory regime to encourage good conduct. This is a core requirement of being an employee and is reinforced through multiple channels and processes. In particular, accountability to some extent can create adverse effects on the conduct of a firm, for example, Senior Managers are more focussed on their accountability captured under SM&CR and ensuring an audit trail exists as opposed to spending time on their wider responsibilities or day to day running of the firm.

## b. Better conduct of Senior Managers?

Please see our response to Q16a above

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

Statements of Responsibilities (SoRs) and Management Responsibilities Maps (MRMs) are useful for explaining the running of a firm's business and its governance structure to both regulators and other external parties including clients. There is recognition that the regular review of Senior Managers can be informed by these documents i.e., it is a reminder business changes or can be useful in a significant change in structure. Furthermore, as mentioned in our response to Q14 with regards to the 12-week rule and extension to 36 weeks, SoRs and MRMs can act as a tool to inform changes to a more streamlined approach.

We therefore recommend that the Statements of Responsibilities and Management Responsibilities Maps (MRMs) be consolidated solely to MRMs. Given much of the information is duplicative the need to submit both is unclear in how it drives the objectives of the SM&CR more than a consolidated MRM.

We also recommend that the FCA consider having MRMs submitted to the Connect portal and making it easier to change as and when needed, this would also meet the FCA's ambition to be a more digital and innovative regulator.

## 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 with the principle that sits behind the certification regime; however member feedback suggest that this is often not the primary process for ensuring that individuals within the regime are fit and proper. Any misconduct identified once certified is often detected through other systems and controls and internal processes rather than the Annual Certification Process. As such Annual Certification is currently a significant cost for firms with disproportionate outcomes. For most firms, individual misconduct cases are captured and addressed as part of the firm's existing hiring and employee onboarding processes as well as through regular performance reviews and disciplinary procedures, outside of the SM&CR Annual Certification requirements. This brings into question the effectiveness and benefit of the Annual Certification requirement, which is cumbersome and onerous.

Whilst the certification process has been successful for some firms, firms have encountered challenges when it comes to the day-to-day management of the process. Firms have always been responsible for their staff and for ensuring that they are competent and fit and proper to perform their roles, more onuses could be put on the Senior Managers rather than the individuals to keep fit and proper alive throughout the full

year. Furthermore, as it stands, firms are obliged to let the FCA know of notifiable conduct breaches which would inherently flag the fitness and proprietary of an individual in SM and Certified roles.

We have in our response to the HMT Call for Evidence, recommended that HMT should re-evaluate the rigidity of the annual certification requirements which are contained within primary legislation, requiring any changes to be made through parliamentary approvals. In the first instance, moving the certification requirements from primary legislation to the FCA handbook, should allow the FCA to effectively consider appropriateness of these requirements and then set out less prescriptive and more flexible certification requirements for firms to apply based on their size and risk profile. For instance, the FCA could allow re-certifying up to every 3 years instead of annually, unless there have been any significant changes in an individual's circumstances, while allowing the flexibility for firm to continue with annual or other frequent certifications that align with their processes.

## 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?

There is uncertainty around whether the Directory captures the appropriate types of individuals or whether the lists are even comparable from firm to firm. One size does not fit all, each firm is different in the way it manages its business and therefore submits different level of details on the people that should be made visible to clients.

Given the purpose of the certification regime is that certified person take responsibility for their own actions, we disagree that managers of certified persons also need to be certified. In our view it is redundant and unnecessarily expands the scope of certified staff. We therefore recommend removing managers of certified persons as a certified function by deleting SYSC 27.8.13.

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

Whilst we understand the FCA want to keep updated records, there is a duplication in effort whereby firms have to keep the Directory up-to-date during the year and then attest to this annually.

Additionally, technology could be better utilised to allow integrated reporting to remove/reduce manual processing activity associated with updating the Directory.

## 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?

Whilst the principle behind needing references is welcome, the FCA should consider the fundamental conflicts raised in the current regulatory reference process, which may cause potential employment law risks for firms.

We would propose that the requirement be amended to exempt previous employers which are out of scope of either the SM&CR, financial services, or the territorial scope of the regulators. There is ambiguity around the purpose of the references which also conflicts with employment and/or data protection laws in other jurisdictions.

This amendment would reduce delays to the process for hiring the best talent from outside the financial services industry or from abroad while retaining the benefits of the references. Where regulatory references are required, the timing of which should be extended to reflect realities of obtaining them. Furthermore, there is a suggestion that further guidance such as that of question G in the SYSC 22 of the FCA handbook; 'Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper?' could be better defined.

We have outlined the undue negative impact of conduct breach information on regulatory references in our response to question 7. Inconsistences in application of the Conduct Rules within firms also leads to inconsistencies in regulated references disclosures.

## 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 believe that it helps to re-enforce good culture through tone from the top. Pre-SM&CR, the investment management industry was regulated via the Approved Person Regime which was transformed through to SM&CR. This notably heightened the measures for accountability of senior managers which we generally view to have a positive effect on conduct and culture of firms.

Please refer to our response to Q1 for further information.

## 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?

Operating the regime is costly as it is, spanning from legal advice, training, background checks (annual and every 3 years), resourcing, exams, technology solution/systems creating and maintenance. We would recommend simplification of rules and regulations where possible. In particular, more of a joined-up approach between the regulators as well as internally, within the FCA, this would significantly improve the process. Members often feel there is an over-reach in regulations and crossovers/read-across between different regulations in the UK as well as on an international scale. Cross-over is not considered enough, such examples outlined already include accountability requirements around sustainability, diversity and inclusion.

Members would like clarity on enforcement, as it is not clear what the regulator is seeing or doing with the information received, this could be a by-product of several factors e.g., limited guidance, a highly compliant impacted population, an aversion to reporting amongst firms. There has been a lack of clarity to prove categorically that such conduct, unless directly linked to an individual's role at a regulated firm, amounts to a breach of the Conduct Rules and can impact Fitness and Propriety.

Having clarity on the conduct breaches and what firms should report on to reduce/increase the numbers would naturally help the FCA when it comes to deciding on enforcement actions. It is a highly important question to understand whether the nature of conduct breaches or lighter enforcement is the direct derived impact of improvement in culture or whether it is encouraging cultures that seek to avoid openness with the regulator.

Lastly, The FCA published a discussion paper, DP23/2 which is based on creating a more streamlined and simplified regulatory regime. The paper seeks to understand the overlap between MIFID, UCITS and AIFMD rules, applicable to Authorised Fund Managers' regulatory activities. Similarly, creating a common framework, whereby the impact of other UK Regulations such as "MAR" and other UK Regulations such as General Data Protection Regulation and Anti-Money Laundering) is succinct will be vital in achieving a much-improved regulatory landscape both under SM&CR and more widely.