



HM Treasury

Senior Managers & Certification Regime for Financial Market Infrastructures: Consultation Response

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Chapter 1

Introduction

- 1.1 In July 2021, HM Treasury published the consultation document, 'Senior Managers & Certification Regime ("SM&CR") for Financial Market Infrastructures ("FMIs")'¹, which proposed creating an SM&CR for certain Bank of England ("the Bank") regulated FMIs. In practice, these FMIs were defined as:
- Central Counterparties ("CCPs");
 - Central Securities Depositories ("CSDs");
 - payment systems recognised under the Banking Act 2009 ("recognised payment systems"); and
 - specified service providers to such recognised payment systems.
- 1.2 The consultation document sought views on the proposed creation of an SM&CR for FMIs, which would enhance the accountability of senior managers and improve governance arrangements at these systemically important firms. Under the proposals, the Bank would be granted new powers to implement, supervise and enforce:
- A **Senior Managers Regime** ("SMR").
 - A **Certification Regime** ("CR").
 - **Conduct rules** for all employees (including contractors and secondees), which set minimum, high-level requirements regarding the conduct of individuals where necessary or expedient for advancing the Bank's financial stability objective.
- 1.3 As outlined in the consultation document, the key features of the proposed SM&CR for FMIs are intended to be similar to the existing SM&CR for banks, insurers and other authorised persons as set out in Part 5 of the Financial Services and Markets Act 2000 ("FSMA"). The existing SM&CR encourages a culture where staff at all levels take personal responsibility for their actions and ensures that firms and staff clearly understand and can demonstrate where responsibility lies within the organisation, making it easier for both firms and regulators to hold individuals to account. Since 2016 there has been a phased commencement of the SM&CR to all authorised firms. The regime was implemented for all banks, building societies, credit unions and Prudential Regulation Authority (PRA) designated investment firms in 2016 and was

¹ <https://www.gov.uk/government/consultations/senior-managers-certification-regime-smcr-for-financial-market-infrastructures-fmis-consultation>

extended to cover insurance firms in December 2018. The regime was further extended to most other Financial Conduct Authority (“FCA”) regulated firms from December 2019 and benchmark administrators from December 2020.

- 1.4 The government’s main objectives in the proposals outlined in the consultation were to strengthen the individual accountability of senior managers within FMIs and provide an effective and proportionate means for promoting high standards of conduct amongst all staff. This would ensure that the firms which underpin the proper functioning and overall stability of the UK’s financial system are subject to the highest regulatory standards.

Chapter 2

Overview of the consultation

- 2.1 The consultation ran from 20 July 2021 to 22 October 2021. The government received 13 written responses to the consultation in total.
- 2.2 The consultation focused on the scope of the proposed creation as a whole, but in particular HM Treasury asked stakeholders for views on the following questions:
- Do you agree with the proposal to create an SM&CR for FMIs?
 - Are there any specific considerations for FMIs (as a whole or in part) which you think should be accounted for, to ensure the effectiveness of the proposed SM&CR when applied to FMIs?
 - Are there any other considerations on the proposals outlined in this consultation which should be brought to our attention?
- 2.3 The summary below reflects respondents' views on the overall intent to create an SM&CR for FMIs, and on how an SM&CR for FMIs might be most appropriately and proportionately applied to these entities.

Chapter 3

Summary of responses

- 3.1 A majority of respondents agreed with the regime in principle and acknowledged the effectiveness of the existing SM&CR. Supportive respondents agreed with the policy objectives outlined in the consultation document, particularly the regime's aim to encourage effective governance, incentivise good behaviour, and require employees to have adequate oversight of the areas for which they are responsible. Respondents mentioned that the achievement of these objectives should help to improve risk management and therefore contribute to a safer and more robust financial system. In certain cases, firms noted that they had already voluntarily adopted arrangements designed to replicate features of the Senior Managers Regime in respect of a number of Board members, Directors and several members of its Senior Management Team.
- 3.2 Conversely, a few respondents disagreed with creating an SM&CR for FMIs. Some were concerned about the appropriateness of such a regime, arguing that there is a difference in nature between these entities and those to whom the existing SM&CR applies (e.g. banks), and, more specifically, that individuals within FMIs do not have the same incentives to take risks as those in other types of firms. Others also argued that the requirements set out by the proposal are already adequately implemented by the existing legal and regulatory framework that applies to FMIs, including the European Market Infrastructure Regulation (EMIR), the Central Securities Depositories Regulation (CSDR), the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SFR), the Banking Act 2009, and the Financial Services (Banking Reform) Act 2013 (FSBRA).
- 3.3 Some respondents were concerned that the adoption of SM&CR would be too costly, disruptive, or time-consuming for FMIs. One respondent also queried whether the introduction of an SM&CR for FMIs may be overly burdensome on the regulators, questioning whether the Bank of England had the necessary resources to maintain resilience should FMIs be brought into the scope of this regime. Others reported concerns that the introduction of an SM&CR for FMIs could make it harder for UK based FMIs to recruit talented or senior staff, as compared to FMIs based in other jurisdictions. Similarly, some respondents mentioned that any significant unilateral increase in standards may damage the UK's competitive position internationally as a centre for clearing and post-trade services.
- 3.4 A number of respondents highlighted the importance of the proposed regime being proportionate and tailored to FMIs, mentioning they would welcome

further details on the scope, application, supervision and enforcement arrangements of the regime.

3.5 When asked about specific considerations for FMIs (as a whole or in part) which should be accounted for, to ensure the effectiveness of the proposed SM&CR when applied to FMIs, respondents noted in particular the following points:

- The global nature of FMIs, and the need to balance international competitiveness and regulation;
- The role and responsibilities performed by the various individuals within the perimeter of the Senior Managers Regime and the Certification Regime should be carefully considered when designing their scope;
- The Bank's review process for assessing an individual performing a Senior Management Function ('SMF') should be shortened from the three months suggested in the consultation document to 45 days;
- The assessment of the fitness and propriety of individuals should be carried out every two years, rather than on an annual basis, as is the case under the existing SM&CR.

3.6 When asked about any other considerations on the proposals outlined in this consultation, respondents also raised the following points:

- The importance of designing the regime in such a way that it can be easily applied to other sectors or types of platforms and technologies which seek to perform similar functions to FMIs, and the importance of maintaining a level playing field;
- The fact that FMIs are often part of larger groups that also contain other types of infrastructure.

Chapter 4

Government response

- 4.1 The government is grateful for the responses it has received to the consultation and has carefully considered each of these.
- 4.2 In general, and as set out in the consultation, the government believes that, while overall regulatory standards are set appropriately for FMIs, the existing regulatory regimes do not make sufficient provision for the oversight of *individual* conduct within these entities. Furthermore, while it may be the case that incentives to take risks by individuals at FMIs may be different when compared to certain other financial institutions (such as banks), it is clear that there remains a large amount of risk concentrated in these systemically important firms. The proposed SM&CR aims to strengthen the individual accountability of senior managers within FMIs, ensuring they have suitable skills, experience and understanding of the systemic importance of these entities, while providing an effective and proportionate means for guaranteeing high standards of conduct amongst all staff. The government expects that this will result in improved governance arrangements at FMIs.
- 4.3 As outlined in the consultation document, the government appreciates that each type of FMI is different in nature and subject to its own specific legislative framework, and it is therefore crucial that the proposed SM&CR is effectively tailored to each individual type of firm and the specific nature of FMIs. While the government intends to ensure a relatively uniform SM&CR in terms of powers and regulatory approach across FMIs, it intends to provide sufficient flexibility to the regime to ensure that the Bank is able to effectively apply the SM&CR as appropriate to different types of firms. The detail of the regime will therefore be decided upon and implemented by the Bank through its rules, which may differ in relation to different functions, activities and types of entity. For example, the Bank will be granted the power to determine which functions will be Senior Management Functions (“SMFs”) and whether the Certification Regime will be designed in a way to ensure it captures the right people in each different entity.
- 4.4 The responsibility placed upon the Bank in this space is in line with the government’s proposals set out in “The Future Regulatory Framework Review: Central Counterparties and Central Securities Depositories” consultation¹ for the Bank to take on primary responsibility for regulating these entities. Any aspects of the new regime that will be delivered by the Bank through its rules will be subject to public consultation. The Bank will also conduct its own cost-benefit analysis, to ensure that the costs incurred by the entities adopting the

¹ <https://www.gov.uk/government/consultations/future-regulatory-framework-review-central-counterparties-and-central-securities-depositaries>

SM&CR are proportionate. The government has separately consulted on improving the Bank's cost-benefit analysis process² and expects for these improvements to be in place when the Bank is conducting its cost-benefit analysis when implementing the SM&CR for FMIs. The Bank's ability to effectively tailor the regime to the specific circumstances of FMIs should also help ensure that the introduction of an SM&CR for these firms does not hinder or damage their international competitiveness. More broadly, while the government is not minded to deviate from the standard SM&CR timescales, these are upper limits. Furthermore, and as set out in the consultation, the government proposes a conditional or time limited approval process to allow the Bank to respond flexibly to requests where appropriate.

² <https://www.gov.uk/government/consultations/future-regulatory-framework-review-central-counterparties-and-central-securities-depositories>

Chapter 5

Next steps

- 5.1 After having reviewed the evidence provided by stakeholders in response to this consultation, the government believes that creating an SM&CR for FMIs remains a desirable and effective means of achieving its objectives of enhancing the accountability of senior managers and improving governance arrangements at FMIs. The government therefore intends to design and put in place an SM&CR for CCPs and CSDs, with particular detailed aspects of the regime set out in secondary legislation and regulators' rules, where appropriate.
- 5.2 The government also wishes to have the option to extend the SM&CR to certain other systemic financial services entities in the future – credit rating agencies (CRAs) and recognised investment exchanges (RIEs) – should it decide to do so, and following further specific consultation on that issue.
- 5.3 As such, the government will legislate to create a new SM&CR “gateway”, when parliamentary time allows, which will enable HM Treasury to lay statutory instruments to apply the SM&CR to CCPs, CSDs, and, in the future, potentially to RIEs and/or CRAs. The gateway approach will allow the relevant regulator for each type of entity to ensure the regime is applied in a proportionate way, whilst also ensuring greater regulatory consistency across the financial services sector.
- 5.4 The government intends to legislate to implement an SM&CR for recognised payment systems and specified service providers. However, this will be taken forward separately to the creation of this gateway, and to a different, longer timeframe. This is to account for a forthcoming review of the regulatory perimeter for systemic firms in payments chains regulated by the Bank of England.
- 5.5 At this time, the government does not plan to launch any further consultations on the underlying framework for the SM&CR. The government will set out further details of its plans to implement the SM&CR for CCPs and CSDs in due course.

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This document can be downloaded from www.gov.uk

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