

Feedback Statement

FS16/7

Senior Managers and Certification Regime: Feedback for branches of banks from outside the European Economic Area



September 2016

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1. Overview

- 1.1** Since the Senior Managers and Certification Regime (SMCR) was implemented on 7 March 2016, we have reviewed a sample of grandfathering notifications. We have also reviewed the Statements of Responsibilities (SoRs) and management responsibilities maps sent with those notifications.

Background

- 1.2** The Senior Managers and Certification Regime (SMCR) came into effect on 7 March 2016 for firms that accept deposits and dual regulated investment firms. Appropriate individuals who were already approved under the Approved Persons Regime were grandfathered into Senior Management Functions (SMFs) in the SMCR. As well as their grandfathering notifications, firms were required to provide a SoR for each Senior Manager. They were also required to provide a management responsibilities map, documenting the senior management responsibilities for the firm as a whole, together with other information about the firm's management and governance.

Our review

- 1.3** We have conducted an in-depth supervisory review of the SoRs and responsibilities maps supplied with grandfathering notifications for all 'fixed' firms (those with an allocated supervisor) in scope of the regime and a sample of 'flexible' firms (no allocated supervisor), representing all the sectors and types of firms. This review included a number of non-EEA branches. The review considered to what extent we believed that firms had complied with the relevant rules and guidance in the Handbook for:
- allocation of Senior Management Functions to individuals
 - allocation of responsibilities to those individuals
 - Statements of Responsibilities, and
 - responsibilities maps
- 1.4** Our findings are the result of a supervisory review against existing Handbook requirements. Nothing in this statement creates new guidance.

Our findings

- 1.5** Almost all non-EEA branches submitted grandfathering notifications with accompanying SoRs and responsibilities maps. It was clear from our review that most branches had engaged with the challenges of implementing the SMCR and had invested a considerable amount of effort in preparing for it.
- 1.6** In the vast majority of cases that we looked at, branches had considered how the SMCR applied to them and had identified Senior Managers and allocated Senior Management Functions and responsibilities. Most branches had also allocated all the relevant prescribed responsibilities to Senior Managers and had allocated a range of overall responsibilities which covered the business functions and activities of the branch.
- 1.7** We also identified a number of issues where we believe that some firms are not meeting our rules and guidance, as set out in the Handbook. We were concerned that a number of firms may not have fully understood the regime or implemented it correctly.
- 1.8** In summary:
- In a few cases, it was not clear whether firms had identified sufficiently senior individuals to hold Senior Management Functions or particular responsibilities. Examples included where one SMF manager reports to another or where SMF managers do not appear to have sufficient seniority, resources or authority to discharge their responsibilities effectively.
 - In some branches' submissions, it was not clear that all the business functions and activities of the branch had been allocated as overall responsibilities. Where responsibilities had been shared or divided, SoRs and responsibilities maps were not always clear enough to enable us to understand how the sharing or division of responsibilities worked.
 - Responsibilities, as given in the SoRs and maps, were not always clear. Some firms did not provide enough detail in these documents to delineate the scope of an individual's responsibilities. In other cases, they were not sufficiently focused on what an individual was actually responsible for. In a few cases, SoRs were not consistent with management responsibilities maps.
 - There was wide variation in the quality of management responsibilities maps. Some maps did not clearly set out Senior Managers' responsibilities and many maps omitted other required information.
 - In a number of cases, maps did not give enough information around governance arrangements, especially about how these related to and fit with the firm and/or group as a whole. These omissions may make it difficult for supervisors to understand how a firm is managed and governed in practice.

Key points to note

- Where we refer to specific rules and guidance, these are extracts from the Handbook only. Other rules and guidance may also be relevant. It is each firm's responsibility to ensure they are compliant with the whole of the regime as set out in the rules and guidance in the Handbook at all times.

- Firms may also wish to consider the PRA's rules and Supervisory Statement SS28/15 'Strengthening individual accountability in banking'.
- Firms should note that a senior manager is responsible for the firm's performance of its obligations under the Senior Management Regime (see SYSC 4.8.9R (1)).

Next steps

- 1.9** We have either already contacted firms in the scope of our review or will contact them in the near future with detailed observations relevant to them.
- 1.10** Firms should review their SoRs and management responsibilities maps in light of this feedback and, where necessary, revise them using the rules and guidance from the Handbook. Where this is required by our existing rules, they should resubmit revised documents.
- 1.11** Where firms identify changes to documentation they have already submitted, they should notify us as required by the rules. In particular, where there is a significant change to the responsibilities of a Senior Manager, firms should notify us using Form J.

2. Allocation of FCA prescribed and local responsibilities and seniority

Observations

- 2.1** In some cases, it appears that the FCA-prescribed responsibilities or the overall responsibilities may not have been allocated to the most senior and/or most appropriate individual.
- 2.2** For example, some firms have allocated the responsibility for policies and procedures for countering the risk that the firm might be used to further financial crime (prescribed responsibility d) to an individual at a lower level in the organisation than we would expect. Our observation is *not* only about this responsibility.
- 2.3** Where we have seen one SMF manager (A) reporting to another (B), we have not always been confident that B does not in fact have some responsibility for the matters for which A is said to be responsible. As a result, we have not always been confident that A is in fact the most senior person responsible for those matters. We have also not always been confident that senior managers who are given responsibilities have sufficient seniority, resources or authority to discharge their responsibilities effectively.
- 2.4** We could not therefore be sure that firms had allocated responsibilities in SoRs and maps as described in our guidance, which seeks to ensure that responsibilities are allocated to the most senior person responsible. This may also lead to a risk of overlaps in the allocation of responsibilities, so that it is not clear who is responsible for what.

Extracts of relevant Rules and Guidance

- 2.5** The requirements for allocating responsibilities are set out at the following sections of SYSC:
- **SYSC 4.8.6R** sets out the requirements that a firm must allocate each of the FCA-prescribed senior management responsibilities (part 1-7 of the table in SYSC 4.8.9R) to one or more SMF managers of the branch.
 - **SYSC 4.8.6R (5)** also requires that firms make the allocations of the FCA-prescribed senior management responsibilities in such a way that it is clear who has which of those responsibilities.
 - **SYSC 4.8.10R** states that a firm must ensure that, at all times, one or more of its SMF managers have overall responsibility for each of the activities, business areas and management functions of the branch that are under the management of the branch's governing body.

- **SYSC 4.8.10R (7)** states that a firm must make the allocation of the responsibilities in 4.7.10R in such a way that it is clear who has which of those responsibilities.
- 2.6** The guidance at **SYSC4.8.11G** sets out the purpose of SYSC 4.8.10R, noting that it is to avoid gaps and to ensure that an SMF manager has responsibility for every part of a branch's activities, business areas and management functions not otherwise covered by other parts of SYSC or by the equivalent PRA requirements.
- 2.7** Further sections of the SYSC handbook set out guidance when allocating responsibility and the seniority of individuals for non-EEA branches. The key areas of focus for firms to consider are:
- **SYSC 4.8.11G** also sets out guidance for branches which have activities, business areas and functions of the branches not under the management of the branch's governing body. The guidance provides examples of situations where this may be the case and notes that in some circumstances it would not be appropriate to require the firm to allocate overall responsibility for that matter to a person who is part of the management structure of the branch.
 - Guidance on seniority when allocating responsibility is given at **SYSC 4.8.17G**, which says that in general the FCA expects that a person to whom overall responsibility for a function is allocated under SYSC 4.8.10R(1) will be the most senior employee or officer responsible for managing or supervising that function under the management of the branch's governing body.
 - **SYSC 4.8.18G** also highlights that a person may have overall responsibility for a function under SYSC 4.8.10R (1) even though that person also reports to a person outside the branch.
- 2.8** Furthermore, **SYSC 4.8.23G** sets out our expectation that anyone who has local responsibility for a matter will be sufficiently senior and credible and will have sufficient resources and authority to be able to exercise his management and oversight responsibilities effectively. This expectation also applies to someone who has responsibility for an FCA-prescribed senior management responsibility, which is noted in **SYSC 4.8.24G**.

3.

Identification and allocation of overall responsibilities for all activities, business areas and management functions of the firm

Observations

- 3.1** When allocating overall responsibilities, some firms have not demonstrated to us that all business activities and functions of the firm have been allocated to SMF managers. This means there are potential gaps in the allocation of overall responsibilities.
- 3.2** Many firms used the table at SYSC 4 Annex 1G as a guide when identifying and allocating overall responsibilities. It contains the main business activities and functions of a relevant authorised person. Some firms had used this appropriately, recognising that it is not a comprehensive list. However, some firms that used this guidance allocated only the overall responsibilities listed in the table. Other firms did not use SYSC 4 Annex 1G at all. In both cases we were not always confident that responsibility had been identified for all business functions and activities in the firm.

Extracts of relevant Rules and Guidance

- 3.3 SYSC 4.8.10 R (1)** sets out the requirements to allocate overall responsibilities for all activities of the firm as well as setting out where explicit allocation may not be required. The rule states that a firm must ensure that, at all times, one or more of its SMF managers has overall responsibility for each of the activities, business areas and management functions of the branch that are under the management of the branch's governing body. Some of the sub-sections that firms should consider in relation to identification and allocation of overall responsibilities are:
- **SYSC 4.8.10R(2)** notes that a firm must ensure that, at all times, one or more of its SMF managers has responsibility for each of the activities, business areas and management functions of the branch that are not covered by sub-section 1.
 - In addition **SYSC 4.8.10R(4)** sets out that an SMF manager who has responsibility for any activity, business area or management function under subsections (1) or (2) has 'local responsibility' for that activity, business area or management function.
 - However **SYSC 4.8.10R (6)** notes that the rule does not require a firm to allocate local responsibility for the running of the branch's governing body.

- 3.4 SYSC 4 Annex 1G** contains a table of overall responsibilities which may be used to help a firm to prepare its management responsibilities map, as outlined in the guidance at **SYSC 4.7.37G**. SYSC 4.7.37G (4) notes that if a firm uses SYSC4 Annex 1G to help it check whether it has allocated overall responsibility it should bear in mind that the Annex is not exhaustive. **SYSC 4.8.35G** notes that this guidance is also relevant to this section (i.e. SYSC 4.8).
- 3.5 SYSC 4.8.11G** sets out additional guidance on the purpose of SYSC 4.8.10R and states that it is to avoid gaps; that it is to make sure that an SMF manager has responsibility for every part of a branch's activities, business areas and management functions not otherwise covered by other parts of SYSC or by the equivalent PRA requirements.

4.

Responsibilities that have been shared or divided

Observations

- 4.1** Some firms have not provided enough clarity or detail about where they have shared or divided responsibilities. As a result it is not always clear which SMF manager is responsible for which areas of responsibility. Some descriptions of the split of responsibilities do not provide a consistent and complete picture of who is responsible for what across the relevant SMF managers. This may lead to a risk of gaps and/or overlaps in allocation of responsibilities.
- 4.2** Responsibilities are also described as 'shared' in a number of cases. However, it appears from the description provided that the SMF managers are in fact responsible for different areas.
- 4.3** In both the management responsibilities maps and the SoRs, firms have not always appropriately described the shared or divided responsibility in a way that provides reassurance that all responsibilities have been allocated as required by our rules. Neither did they always state the reasons why they have divided or shared FCA-prescribed responsibilities.

Extracts of relevant Rules and Guidance

- 4.4** When dividing and/or sharing responsibilities, a firm should consider the following sections of SYSC:
- **SYSC4.8.31R** states that **SYSC4.7.27G** to **SYSC4.7.29G** (Dividing and sharing management functions between different people) apply to branches maintained by third-country relevant authorised firms for the purposes of the allocation of responsibilities.
 - **SYSC 4.7.27G** notes that the FCA expects a firm to divide and allocate responsibilities for FCA-prescribed senior management responsibilities and overall responsibilities for a firm's activities, business areas and management functions between its SMF managers so that responsibilities are grouped together appropriately.
 - Additional guidance for firms when considering allocation of responsibility is given in **SYSC 4.7.27G (3)**, which says that a firm should take into account the way it is organised, the business it carries out and the need not to allocate too many responsibilities to one individual.

- 4.5** When drafting a SoR that includes shared or divided responsibilities, non-EEA branches should consider:
- **SYSC 4.7.28G** notes that SUP 10C.11.31G - 33G contains material in relation to guidance on how to prepare SoRs where a responsibility or function is shared or divided between several SMF managers and dividing and sharing responsibilities.
 - **SYSC 4.7.29G** sets out that a firm may allocate more than one FCA-prescribed responsibility to the same SMF manager subject to SYSC 4.7.23G (should not give too many responsibilities to one person) and SYSC 4.7.27G (what responsibilities should be grouped together).
- 4.6** When drafting a responsibility map that includes shared or divided responsibilities, non-EEA branches should consider:
- In relation to the management responsibilities map, **SYSC 4.6.7R** sets out further details in relation to the division of responsibilities across firms within the responsibilities maps. The rule states that the third-country relevant authorised person's management responsibilities map for a branch must show clearly how any responsibilities covered by that management responsibilities map are shared or divided between different persons.
 - **SYSC 4.6.9R** sets out that the management responsibilities map for a branch maintained by a third country relevant authorised person must include the matters listed in SYSC 4.5.7R.
 - It states in **SYSC 4.5.7R (4)** that the management responsibilities map must include the reasons why the branch has allocated responsibility for an FCA-prescribed senior management responsibility to more than one person jointly; or has divided responsibility for an FCA-prescribed senior management responsibility between different persons.
- 4.7** Key sections in SUP should also be considered for guidance on sharing and dividing responsibilities, areas of focus should be:
- In relation to the SoRs, **SUP 10C.11.31G** sets out guidance for firms where responsibilities are shared or divided between SMF managers. It states that the SoRs should show which responsibility or function is shared or divided between which SMF managers or other persons. It should be clear which responsibility or function and which SMF managers or other persons are involved.
 - Additional guidance on the drafting of the SoRs where the responsibility is split between several SMF managers is set out in **SUP 10C.11.32G**, which says that the SoR for each SMF manager should explain why this has been done and give full details of the arrangements, including the names of the other persons and their FCA/PRA Individual Reference Numbers if known.

5. Drafting of statements of responsibilities

Observations

- 5.1** Some firms submitted SoRs which included additional information that was either not relevant to the individual's responsibilities or which focused on how the individual discharged their responsibilities, rather than what they were actually responsible for. In some cases this appears to limit or caveat the responsibility to particular activities, which could result in a lack of clarity or gaps in responsibilities.
- 5.2** In other cases, not enough information was given to be able to understand what the SMF manager was responsible for. For example, we have seen cases where job titles have been given as overall responsibilities without sufficient information to understand which business functions and activities fall into the SMF manager's overall responsibilities.
- 5.3** Firms have also, in some cases, provided SoRs that were not consistent with the responsibilities map.

Extracts of relevant Rules and Guidance

- 5.4** **SUP 10C.11.20R** requires that firms must, at all times, have a complete set of current statements of responsibilities (SoRs) for all their SMF managers.
- 5.5** There is guidance on what the statements should contain in **SUP 10C.11.23G - 30G**. The key areas of focus for non-EEA branches are:
- The guidance at **SUP 10C.11.23G** covers points including that a firm should show clearly how the responsibilities that the SMF manager performs as part of their FCA-designated senior manager function fit in with the firm's overall governance and management arrangements and be consistent with the firm's management responsibilities map.
 - **SUP 10C.11.25G** sets out that SoRs should be practical and useable by the FCA without unnecessary detail and be succinct and clear.
 - **SUP 10C.11.26G (3)** notes that the allocation of responsibilities under a SoR should not reduce or alter the scope of any applicable prescribed responsibilities. Where the description in the SoR goes beyond the prescribed responsibilities or the firm includes additional responsibilities and information then the guidance in **SUP 10C.11.26G (4)** should be considered as it states that it should not reduce or alter the scope of the prescribed requirements or dilute or undermine the prescribed responsibilities.

- 5.6** In relation to why SoRs are required, the guidance at **SUP 10C.11.27G** states that a firm's SoRs for its SMF managers should together demonstrate that there are no gaps in the allocation of responsibilities among its SMF managers.
- 5.7** The guidance at **SUP10C.11.28G** says that the SoR should include details of all FCA and PRA prescribed senior management responsibilities allocated to the SMF manager, as well as responsibilities allocated to the senior manager that are overall responsibilities for a firm's activities, business areas and management functions under SYSC 4.7.8R.

6. Drafting of the Management Responsibilities Map

Observations

- 6.1 In many cases, firms had not included all of the information required by our rules.
- 6.2 Specific examples of information that was missing included senior management responsibilities (as described in SoRs), details of, and rationale for, shared and divided responsibilities and the matters reserved to the board. This makes it difficult to understand how the complete picture of senior management responsibilities fit together across the firm, especially where they are shared or divided across multiple senior managers.
- 6.3 We also saw some less fundamental errors such as maps not containing the employment details of people described or identified in the map.
- 6.4 There were particular issues with the way in which some firms approached governance arrangements. We have described these in the following section.

Extracts of relevant Rules and Guidance

- 6.5 **SYSC 4.6.6R** sets out the general rule on the management responsibilities map. The rule states that a third-country relevant authorised person must, at all times, have a comprehensive and up-to-date document (the management responsibilities map) that describes its management and governance arrangements, for any branch it maintains in the United Kingdom including details of the reporting lines and the lines of responsibility and reasonable details about the persons who are part of those arrangements and their responsibilities.
- 6.6 The guidance detailed at **SYSC 4.6.8G** sets out the rationale for the responsibilities map and states that one purpose of the management responsibilities map is to help the firm and the FCA satisfy themselves that the firm has a clear organisational structure. It also helps the FCA to identify who it needs to speak to about particular issues and who is accountable if something goes wrong.
- 6.7 **SYSC 4.6.9R** sets out the specific requirements for the information that must be included in the management responsibilities map and notes that a management responsibilities map for a branch maintained by a third-country relevant authorised person must include the matters listed in **SYSC 4.5.7R** and include details of certain senior individuals, all responsibilities described in any current statement of responsibilities, how responsibilities are shared or divided (if relevant), with reasons why this has been done, matters reserved to the governing body and whether

people described or identified in the map are employees of the firm and, if not, by whom they are employed, among other things.

- 6.8 SYSC 4.6.12G – SYSC 4.6.14G** set out guidance in relation to the firm management responsibilities map to provide further clarity on and, in some cases, the rationale for the information required. Key sections that non-EEA branches should consider are:
- **SYSC 4.6.12G (2)** notes that the SoRs and the management responsibilities map should all be prepared in a way that makes it simple to see how the responsibilities allocated in a particular SoRs fit into the overall system of management and governance of the firm.
 - **SYSC 4.6.14G** sets out that guidance on management responsibilities maps for branches maintained by third-country relevant authorised persons are set out in SYSC 4.5.11G. The guidance at **SYSC 4.5.11G** states that a firm's management responsibilities map should demonstrate that there are no gaps in the allocation of responsibilities among its management.
 - Further guidance at **SYSC 4.5.15G** is applicable to branches maintained by a third-country relevant authorised persons and the guidance sets the requirement to ensure that the approach is compatible with it being a single document.
- 6.9** The guidance at **SYSC 4.5.16G** and **SYSC 4.5.17G** is applicable to branches maintained by a third-country relevant authorised persons and refers to the use of **SYSC 4 Annex 1G** as a checklist for firms to see whether its management responsibilities map covers all its business activities, bearing in mind that the annex is not comprehensive.

7. Governance arrangements in the Responsibilities Map

Observations

- 7.1** Some firms have provided only limited details on their governance arrangements. This means that the map does not provide relevant or sufficient information to understand how the management and governance of the firm works.
- 7.2** In some instances, for example, there has not been enough detail given about reporting lines. Where firms described governance arrangements depending on committees, we have not always been given enough information on key matters such as committee structures, committee membership, the nature, purpose, remit and interaction of committees or any other governance arrangements in place, to be able to form a clear understanding of these firms' governance arrangements. This means that important context for senior management responsibilities is missing, for example about decisions that committees may take that are relevant to those responsibilities.
- 7.3** We have also seen a number of responsibilities maps for branches that do not fully or at all describe or explain how the branch's arrangements interact with the governance of the firm. This includes interaction with the governance of the firm as a whole or with group governance arrangements, or the extent to which the branch's management and governance arrangements are provided by, or shared with, any other members of its group or others. This makes it unclear how the relationship between the branch, the wider firm and the group influences or impacts the branch and the senior management responsibilities in practice.
- 7.4** In some cases, reporting lines are not sufficiently clear. There are sometimes few details of individuals in the wider group who are shown on the map and their relationship to the firm and its SMF managers.

Extracts of relevant Rules and Guidance

- 7.5** The general rules about management responsibilities maps are described above.
- 7.6** **SYSC 4.6.9R** sets out the specific requirements for the information that must be included in the management responsibilities map and notes that a management responsibilities map for a branch maintained by a third-country relevant authorised person must include the matters listed in **SYSC 4.5.7R**. It sets out the specific requirements for a management responsibilities map. It includes details of how management and governance arrangements relate to prescribed responsibilities and overall responsibilities, including the following:

- The map must also include details of how the firm's management and governance arrangements fit together with its group and details of the extent to which the firm's management and governance arrangements are provided by, or shared with any other members of its group or others.
 - Further, it must include details of the reporting lines and the lines of responsibility (if any) between the firm and those who carry out functions in relation to them and other members of its group or other third parties, persons acting as employees or officers of, or otherwise acting for members of its group or other third parties and committees or other bodies of members of its group or other third parties. It must also include the responsibilities that people identified or described in the responsibilities map have in relation to other group members.
- 7.7 SYSC 4.5.7R (11)** requires details of how all the other matters required in the rule fit together and fit into the firm's management and governance arrangements as a whole.
- 7.8 SYSC 4.6.12G** notes that the management responsibilities map should be consistent with the SoRs. It also notes that the SoRs and the management responsibilities map should all be prepared in a way that makes it simple to see how the responsibilities allocated in a particular statement of responsibilities fit into the overall system of management and governance of the firm.
- 7.9 SYSC 4.6.14G** notes that the guidance set out in SYSC 4.5.12G also applies to management responsibilities maps for branches maintained by third-country relevant authorised persons. The guidance at **SYSC 4.5.12G (5)** notes that the main aim of including material about SoRs in the management responsibilities map is to show how the material fits into the firm's overall governance structure and for each of the SoRs, fits with the others.

Financial Conduct Authority



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