

Feedback Statement

FS16/8

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



September 2016

Contents

1	Overview	3
2	Allocation of SMF Managers (SMF21 and SMF17)	5
3	Clear allocation of responsibilities to SMF Managers and clarity in the SoRs	7
4	Governance arrangements in the management responsibilities map	9

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 EEA branches. The review considered to what extent we believed that firms had complied with the relevant rules and guidance in the FCA 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 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.
- 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 some firms may not have fully understood the regime or implemented it correctly.
- 1.8** In summary:
- Some EEA branches identified a very small number of individuals as Senior Managers and it was not clear that responsibility had been allocated for all the business units required by the rules. In some cases, not enough information was given about the responsibilities of the Senior Managers identified or the operations of the firm for us to determine whether appropriate individuals had been identified or whether required responsibilities had been allocated.
 - Responsibilities, as given in the SoRs and maps, were not always clear. Some EEA branches did not provide enough detail in these documents to articulate the scope of an individual's responsibilities. Where responsibilities are divided between Senior Managers, there was not always enough information for us to understand the division of responsibilities. This issue was particularly common in EEA branches that had identified co-head roles and where, in some cases, only one of the co-heads was identified as an SMF.
 - In a number of cases, responsibilities maps did not give enough information around governance arrangements, especially about how these related to and fit with the firm and/or the group as a whole.
- 1.9** Note that, 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.

Next steps

- 1.10** 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.
- 1.11** 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.
- 1.12** 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 SMF Managers (SMF21 and SMF17)

Observations

- 2.1** Some EEA branches have allocated individuals to the EEA branch senior manager function (SMF21) function but have not set out what the SMF manager is responsible for in the branch. In these cases it is therefore not clear what the individual is responsible for and whether they meet the definition of SMF21.
- 2.2** Some firms had allocated both the money laundering reporting function (SMF17) and an EEA branch senior manager function (SMF21) to a single individual. They had not identified any other individuals as SMF managers, or provided a clear explanation of how they had allocated responsibilities to the individual or how all the relevant business activities had been covered. It was not always clear to us that all individuals with significant responsibility for a significant business unit in an EEA branch had been identified as SMF managers and allocated responsibility for the relevant business activities of the branch.
- 2.3** Firms that had allocated significant business unit activities to SMF managers did not always provide enough information on the individuals for us to be able to determine their position in the branch. We were therefore unable to determine whether they were appropriate people to hold a senior management function.

Extracts of relevant Rules and guidance

- 2.4** Part Two of **SUP 10C.43R** sets out the senior manager functions for EEA branches which consist of a Money Laundering Reporting Function (SMF17) and an EEA Branch Senior Manager Function (SMF21). The key areas of focus are:
- **SUP 10C.8.4R** states that a person performs the EEA branch senior manager function in relation to the branch in the United Kingdom of an EEA relevant authorised person if that person has significant responsibility for one or more significant business units of the branch that carry on any of the activities detailed in SUP 10C8.4R (2).
 - The section in **SUP 10C8.4R (2)** sets out the activities and also notes that only activities carried on from the branch are relevant and that the activity listed in relation to CASS only applies in relation to activities of a firm for which it has a top-up permission.

- The guidance detailed at **SUP 10C8.6G** notes that a person performing the EEA branch senior manager function could be 1) the head of a significant business unit carry on the activities in SUP010C.8.4R(2); or 2) a member of a committee (that is, a person who, together with others, has authority to commit the branch) making decisions about those activities.
- 2.5** When considering whether a business unit is significant the firm should consider the guidance at **SUP 10C8.7G** which lists factors that firms should take into account and says that firms should consider all relevant factors in the light of the firm’s current circumstances and its plans for the future. This includes the risk profile of the unit, its use or commitment of the firm’s capital, its contribution to the profit and loss account, the number of employees or approved person working in the business unit, the number of customers and any other factor which makes the unit significant to the conduct of the branch’s affairs.
- 2.6** Feedback Statement **FS15/3 Section 2.9** (page 13) notes that individuals performing the EEA Branch Senior Manager Function must also meet the definition of a senior manager in the Financial Services (Banking Reform) Act 2013.
- 2.7** The definition of a senior manager is included in FSMA 2000 as amended by the Financial Services (Banking Reform) Act 2013 and is:

Senior management functions *(After section 59 of FSMA 2000 insert)*

“59ZA Senior management functions

- (1) *This section has effect for determining whether a function is for the purposes of section 59(6) or (6A) a senior management function.*
- (2) *A function is a “senior management function”, in relation to the carrying on of a regulated activity by an authorised person, if—*
- (a) *the function will require the person performing it to be responsible for managing one or more aspects of the authorised person’s affairs, so far as relating to the activity, and*
- (b) *those aspects involve, or might involve, a risk of serious consequences—*
- (i) *for the authorised person, or*
- (ii) *for business or other interests in the United Kingdom.*
- (3) *In subsection (2)(a) the reference to managing one or more aspects of an authorised person’s affairs includes a reference to taking decisions, or participating in the taking of decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on”*

3.

Clear allocation of responsibilities to SMF Managers and clarity in the SoRs

Observations

- 3.1** Some EEA Branches have submitted SoR documentation with only minimal information on the responsibilities of the SMF managers. In some cases, no information about responsibilities was given at all. In other cases, the allocation of responsibility is not clear or it is not possible to determine whether responsibilities have been divided or shared.
- 3.2** There were also examples of SoRs that included more information on how responsibilities are carried out, rather than what the responsibilities are. 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.
- 3.3** Some of the management responsibilities maps did not contain enough information on the SMF manager's responsibilities to be able to ensure that there are no gaps or overlaps in responsibilities.
- 3.4** Some EEA branches have not made clear how responsibilities are allocated where there are Co-Head arrangements. There have been instances where one Co-Head is an SMF manager with responsibilities, whereas the other Co-Head is not an SMF manager. Firms have not always provided enough information on this Co-Head structure to explain why only one Co-Head should be approved to hold a senior management function. This results in a lack of clarity about how senior management functions and responsibilities have been allocated in the firm. Where Co-Heads have divided responsibilities between them, there have been instances where this division is not clear and could result in gaps and/or overlaps in responsibilities.
- 3.5** In some cases, MLRO responsibilities have been divided with another individual, including someone holding an SMF21 EEA branch senior manager function. In these cases, there is sometimes a lack of clarity about who is responsible and how the branch has ensured that these responsibilities are held by appropriate individuals without gaps or overlaps.
- 3.6** SoRs and management responsibilities maps were in some instances inconsistent due to a lack of information in the map and/or SoR.

Extracts of relevant Rules and guidance

- 3.7** The requirements for allocating responsibilities are set out at the following sections of SYSC:
- **SUP10C 8.4R – 8.7G** sets out the activities and definition for an EEA branch senior manager function (SMF21) as well as providing examples of SMF21 roles.
 - **SUP10C.8.4R (1)** states that a person performs the EEA branch senior manager function in relation to the branch in the United Kingdom of an EEA relevant authorised person if that person has significant responsibility for one or more significant business units of the branch that carry on any of the activities listed in **SUP 10C.8.4R (2)**.
 - **SUP 10C.11.1G (1)** notes that Section 60(2A) of the Act (Applications for approval) says that, if a firm is applying for approval from the FCA or the PRA for a person to perform a designated senior management function, the regulator to which the application is being made must require the application to contain, or be accompanied by, a statement setting out the aspects of the affairs of the firm which it is intended that the person will be responsible for managing in performing the function.
- 3.8** When drafting SoRs an EEA Branches should consider:
- **SUP 10C.11.20R** requires that firms must, at all times, have a complete set of current SoRs for all their SMF managers.
 - In addition, **SUP 10C.11.25G** sets out that a SoR should be practical and useable by the FCA without unnecessary detail and be succinct and clear.
 - **SUP 10C 11.23G** notes that a SoRs should show clearly how the responsibilities that the SMF manager performs as part of their FCA-designated senior management function fit in with the firm's overall governance and management arrangements and be consistent with the firm's management responsibilities map.
- 3.9** When drafting a Responsibility Map an EEA Branch should consider:
- **SYSC 4.6.15R** states that an EEA branch must, at all times, have a comprehensive and up-to-date document (the management responsibilities map) that describes the management and governance arrangements for any branch it maintains in the United Kingdom, including the responsibilities of its SMF Managers.
 - **SYSC 4.6.16R** states that the management responsibilities map for an EEA branch must show clearly how responsibilities covered by that management responsibilities map are shared or divided between different persons.
- 3.10** **SYSC 4.6.27G** sets out the guidance that the management responsibilities map should be consistent with the SoRs. It also notes that the SoRs and the management responsibilities map should 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 branch.

4. Governance arrangements in the management responsibilities map

Observations

- 4.1** Some branches 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 branch works or how it relates to the firm and/or group as a whole.
- 4.2** 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 and any other governance arrangements in place. This means we are unable to form a clear understanding of the governance arrangements of the branch.
- 4.3** 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 firm or group governance arrangements. They also do not show 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.
- 4.4** In some instances, there has not been enough detail on reporting lines. In some cases, reporting lines are not sufficiently clear. There are also few details of reporting lines and lines of responsibility between the branch and committees or individuals in the wider firm as required by our rules.
- 4.5** In some instances firms had omitted information as part of the exemption for EEA branches, but had not identified where the omitted information can be found.

Extracts of relevant Rules and guidance

- 4.6** **SYSC4.6.15R** states that an EEA relevant authorised person must, at all times, have a comprehensive and up-to-date management responsibilities map that describes the management and governance arrangements for any branch it maintains in the UK.
- 4.7** Where firms have already supplied information to the FCA or PRA the rule at **SYSC 4.6.20R** permits an EEA relevant authorised person to exclude from its management responsibilities map (1) any information contained in its requisite details; (2) any information contained in any notice of changes to its requisite details under the EEA Passport Rights Regulations; (3) any other information that has been supplied by the firm to the FCA or PRA (including through the

firm's Home State competent authority) if that information was supplied to the FCA or the PRA as a Host State competent authority for credit institutions or investment firms; and the Single Market Directives or any other EU legislation provides for the supply of that information to the FCA or the PRA as noted above.

- 4.8** EEA Branches should consider the following in relation to governance arrangements in the responsibility map:
- **SYSC 4.6.23G** notes that the FCA expects that an EEA relevant authorised person that excludes information from its management responsibilities map under SYSC 4.6.20R will identify in its management responsibilities map the document supplied to the FCA or the PRA where the omitted information can be found.
 - In addition, **SYSC 4.6.16R** states that the EEA relevant authorised person's management responsibilities map for a branch must show clearly how responsibilities covered by that management responsibilities map are shared or divided between different persons.
 - The guidance at **SYSC 4.6.17G** notes the purpose of the responsibilities maps for EEA relevant authorised persons and states at **SYSC 4.6.17G (1)** that the management responsibilities map is an important support to the FCA's functions as the Host State competent authority. **SYSC 4.6.17G (4)** highlights that by helping the FCA to better understand how the branch is structured, the management responsibilities map also helps the FCA to carry out more effective supervision of conduct of business, money laundering and other Host State responsibilities.
 - In relation to governance, **SYSC 4.6.18R (4)** requires that the responsibilities map show details of how the branch's management and governance arrangements fit together with the wider firm, its group and any other person, including details of the extent to which the branch's management and governance arrangements are provided by, or shared with, other members of its group, the wider firm, or others.
 - In relation to reporting lines **SYSC 4.6.18R(6)** states that a responsibilities management map requires details of the reporting lines and lines of responsibility (if any) between the branch and the following: (a) those who carry out functions in relation to them and other members of its group, other third parties or the wider firm; (b) include persons acting as employees or officers of, or otherwise acting for, anyone in (a); or (c) committees or other bodies of anyone in (a).
- 4.9** **SYSC 4.6.18R (8)** also requires that details of how **SYSC 4.6.18R (1) to (7)** fit together and fit into the branch's management and governance arrangements as a whole.

Financial Conduct Authority



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