

Feedback Statement

FS16/9

# Senior Managers and Certification Regime: Feedback for Credit Unions



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

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- 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

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- 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 credit unions. 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.

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## Our findings

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- 1.5** Almost all credit unions submitted grandfathering notifications with accompanying SoRs and responsibilities maps. It was clear from our review that most credit unions had engaged with the challenges of implementing the SMCR and had invested a considerable amount of effort in preparing for it.
- 1.6** In most of cases that we looked at, credit unions had considered how the SMCR applied to them. They had identified Senior Managers and allocated Senior Management Functions and prescribed responsibilities.
- 1.7** We also identified a number of common issues where we believe that some credit unions are not meeting our rules and guidance, as set out in the Handbook. We were concerned that a number of credit unions may not have fully understood the regime or implemented it correctly.
- 1.8** In summary:
- Some credit unions had only allocated prescribed responsibilities and had not identified and allocated overall responsibilities for their business functions and activities.
  - Many credit unions supplied very limited information in management responsibilities maps.
  - Some credit unions allocated a very large number of Senior Management Functions.

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## Key points to note

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- 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 credit union's responsibility to ensure they comply with the whole of the regime as set out in the rules and guidance in the Handbook at all times.
- Credit unions may also wish to consider the PRA's rules and Supervisory Statement SS28/15 'Strengthening individual accountability in banking'.
- Credit unions should note that a senior manager is responsible for the firm's performance of its obligations under the Senior Management Regime (see SYSC 4.7.7R (1)).

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## Next steps

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- 1.9** We have either already contacted credit unions in the scope of our review or will contact them in the near future with detailed observations relevant to them.
- 1.10** Credit unions 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 credit unions 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, credit unions should notify us using Form J via Connect or on paper.

## 2. Large numbers of SMF managers

### Observations

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- 2.1 Some credit unions have identified a large number of SMF managers. However it is not clear that all these people actually meet the definition of an SMF manager.
- 2.2 Some credit unions had a large number of individuals who held CF1 controlled functions under the Approved Persons Regime. Some credit unions have grandfathered all or most of these people into senior management functions which has resulted in a large number of SMF managers. As a result, there is a risk that not all SMF managers may meet the definition of an SMF and it is unclear who has responsibility for some functions and activities in these credit unions.
- 2.3 As set out above, we expect senior management responsibilities to sit with the most senior individual responsible for that area. So credit unions should generally have fewer SMF managers under the Senior Managers Regime compared to Significant Influence Function holders under the Approved Persons Regime, as the regime will capture only the most senior individuals.

### Extracts of relevant Rules and guidance

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- 2.4 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"*

**2.5** The two key sections of the Handbook that credit unions should review when allocating Senior Manager functions are the *System Management Arrangements, Systems and Controls* ('SYSC 4.7') and *Supervision* ('SUP10C.11'). Key areas of focus are:

- **SYSC 4.7.24G** says that in general the FCA expects that a person who has responsibility for an FCA-prescribed senior management responsibility will be the most senior employee or officer responsible for managing that area.
- Similarly, **SYSC 4.7.16G** says that, in general, the FCA expects that a person to whom overall responsibility for an area of a firm is allocated under SYSC 4.7.8R will be the most senior employee or officer responsible for managing that area. Furthermore, **SYSC 4.7.21G (2)** sets out our expectation that anyone who has overall 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; this is noted at **SYSC 4.7.22G**.

**2.6** When dividing and/or sharing responsibilities Credit Unions should consider the following guidance:

- The guidance in SYSC on dividing and sharing management functions between different people is set out at **SYSC 4.7.25G**. It states that the FCA expects that a firm will not normally split an FCA-prescribed senior management responsibility between several SMF managers, with each only having responsibility for part, and also that a firm will not normally allocate responsibility for an FCA-prescribed senior management responsibility or overall responsibility for its activities, business areas and management functions to two or more SMF managers jointly.
- Where a firm does have a reason to divide responsibility, then firms should consider the guidance in **SYSC 4.7.26G**. This states that although the norm should be for a firm to have a single individual performing each FCA-prescribed senior management responsibility or function, there may be circumstances in which responsibilities can be divided or shared. It also notes that a firm should only divide or share a responsibility where this is appropriate and can be justified.
- Where responsibilities are divided and/or shared, firms should also consider the guidance at **SUP10C.11.31G** in relation to the SoRs. It states that the SoR should show which responsibility or function is shared or divided between which SMF managers or other persons.



## 3.

# Allocating overall responsibilities for business activities

### Observations

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- 3.1** Some credit unions did not appear to comprehensively allocate responsibilities for the business of the credit union to their SMF Managers. As mentioned earlier in this document, some credit unions identified a large number of individuals as SMF Managers. However in smaller, less complex firms we would expect to see responsibilities spread across fewer SMF Managers.
- 3.2** Some credit unions have only allocated prescribed responsibilities in their Statements of Responsibilities. They have not allocated overall responsibilities for the credit union's business functions and activities to senior managers.
- 3.3** Where they have allocated overall responsibilities, there are cases where these do not appear to cover all business activities of the credit union. This means there is a risk of gaps in responsibilities and a lack of clarity about who is responsible for what in the credit union.

### Extracts of relevant Rules and Guidance

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- 3.4** When allocating overall responsibilities, credit unions should consider the following key areas of SYSC 4.7:
- **SYSC 4.7.8R** of the FCA Handbook sets out the requirements for allocating overall responsibilities for all of the firm's activities. It 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 firm. It also states that a firm must make the allocations of the responsibilities in **SYSC4.7.8R** in such a way that it is clear who has which of those responsibilities.
  - The guidance set out at **SYSC 4.7.9G** highlights that the purpose of SYSC 4.7.8R is to make sure that an SMF manager has responsibility for every part of a firm's activities, business areas and management functions not otherwise covered by other parts of SYSC or by the equivalent PRA requirements.
  - **SYSC 4.7.11G** sets out the meaning of overall responsibility, that it is a person who has ultimate responsibility (under the governing body) for managing or supervising that function and has primary and direct responsibility for briefing and reporting to the governing body about that function and putting matters for decision about that function to the governing body.

**3.5** **SUP** is the supervision processes section of the FCA Handbook and contains further rules in relation to responsibilities. **SUP 10C.11.20R** is a rule which requires that a firm must, at all times, have a complete set of current SoRs for all its SMF managers. The key areas of focus when allocating overall responsibilities and drafting SoRs are the following sections:

- **SUP 10C.11.27G** is guidance that explains why SoRs are required. It states that a firm's SoRs for its SMF managers should demonstrate that there are no gaps in the allocation of responsibilities among its SMF managers.
- When drafting the SoRs, credit unions should also consider the guidance at **SUP 10C.11.28G**, which 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.

## 4. Responsibilities Maps

### Observations

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- 4.1** It was a common theme across all credit unions that they had not included some information required by the FCA's rules in their management responsibilities maps.
- 4.2** The key issue that we saw with the credit union maps was that in many cases they provided only very limited information. Examples of this included a lack of detail on reporting lines, governance arrangements (including committee structures), membership and the purpose and remit of committees and SMF responsibilities. There were some instances where the credit unions had only provided information on two or three specific requirements in the responsibilities map. This means it is difficult to gain a clear understanding of the allocation of responsibilities and/or governance arrangements.

### Extracts of relevant Rules and Guidance

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- 4.3** One of the key sections of the FCA handbook that credit unions should review for the Firm Management Responsibilities Maps is the *System Management Arrangements, Systems and Controls* ('SYSC') section 4.5 of the FCA Handbook. The key areas that Credit Unions should consider are:
- **SYSC 4.5** sets out the rules and guidance that firms need to consider when developing and updating their Firm Management Responsibilities Maps.
  - **SYSC 4.5.4R** states that a firm must, at all times, have a comprehensive and up-to-date document (the management responsibilities map) that describes its management and governance arrangements, including details of the reporting lines and the lines of responsibility; and reasonable details about (a) the persons who are part of those arrangements and (b) their responsibilities.
  - **SYSC 4.5.7R** sets out the specific requirements for a management responsibilities map; it states that the map must include:
    - Details of all the firm's approved persons, members of its governing body and management body, senior management and senior personnel and details of all responsibilities they hold;
    - The reasons why, where applicable, the firm has allocated responsibility to more than one person jointly or divided responsibility between different persons;
    - Details of firm's management and governance arrangements;

- Matters reserved to the governing body;
- Details of how the firm's management and governance arrangements fit together with its group or any other person, and where the arrangements are provided by or shared with others in its group or other third parties;
- Details of the reporting lines and lines of responsibility;
- Details on how all of the above fit into the firm's management and governance arrangements as a whole.

**4.4** There is specific guidance for small firms at **SYSC 4.5.13G**, which states that the FCA expects the map of a small and non-complex firm to be simple and it may be no more than a single sheet of paper. However, credit unions need to also ensure that they have considered the rules and guidance set out in **SYSC 4.5.7R** and **SYSC 4.5.9G – SYSC 4.5.12G** to provide themselves with confirmation that all relevant information has been included in the document.

**4.5** The guidance detailed at **SYSC 4.5.6G** 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.

Financial Conduct Authority



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