Joint FCA and PRA statement Senior Managers and Certification Regime (SM&CR) and coronavirus (Covid-19): our expectations of dual-regulated firms

We recognise that firms directly affected by coronavirus will need to keep their governance arrangements under review.

Where we can, we intend to provide flexibility to FCA and PRA dual-regulated firms. We have made specific provisions for firms in these circumstances.

Notifications about changes to Senior Manager responsibilities

The obligation on firms to update and resubmit a Statements of Responsibilities (SoRs) if there are 'significant changes' to Senior Management Functions (SMFs) responsibilities is set in statute. There is no fixed statutory deadline for firms to resubmit revised SoRs in the event of such a significant change. PRA Supervisory Statement 28/15 and SUP 10C.11.6G in the FCA Handbook includes non-exhaustive examples of potential 'significant changes'.

We are aware that 'significant changes' to an SMF's responsibilities may be required in this period due to sickness or any other temporary situations as a result of coronavirus issues.

We understand the current operational challenges and are keen to ensure that firms prioritise their resources appropriately. So, the regulators:

- expect firms to resubmit relevant SoRs as soon as reasonably practicable taking into account the current circumstances; and
- understand that firms may take longer than usual to submit revised SoRs in the present environment.

Temporary arrangements for Senior Management Functions (SMFs)

The FCA's and PRA's rules allow individuals to perform SMFs without approval for up to 12 weeks in a consecutive one-year period if their firm experiences an SMF vacancy that is (a) temporary; and/or (b) reasonably unforeseen. This is sometimes referred to as the '12-week rule'.

In normal circumstances, the 12-week rule provides enough flexibility for firms to deal with temporary or unexpected SMF absences. The FCA and PRA are currently gathering evidence on whether the 12-week rule is likely to give dual-regulated firms enough flexibility to deal with temporary absences of SMF as a result of coronavirus.

If the FCA and PRA conclude that the 12-week rule is insufficient to allow firms to respond to temporary SMF absences linked to coronavirus, they will consider additional measures.

Notifications about temporary arrangements (including allocating Prescribed Responsibilities to unapproved individuals acting up as SMFs under the 12-week rule)

In normal circumstances, if an SMF becomes temporarily vacant, firms should reallocate those SMFs' Prescribed Responsibilities (PRs) among their remaining SMFs until a permanent replacement for the vacant SMF is identified and approved. Where possible, this remains the FCA's and PRA's preference for firms dealing with temporary SMF absences linked to coronavirus.

However, if firms cannot reallocate an absent SMF's PRs among their remaining SMFs due to reasons relating to coronavirus, they can temporarily allocate them to the individual who is acting up as interim SMF under the 12-week rule, even if they are, at the time, unapproved as an SMF.

An unapproved individual acting up as an SMF under the 12-week rule will not have a SoR (unless the firm applies for them to be permanently approved as that SMF). So it is essential that firms ensure that their records (Responsibilities Maps, role profiles etc.) keep a clear 'running commentary' of any temporary allocation of PRs to unapproved individuals during this period. Firms should also update their PRA and/or FCA Supervisors of any temporary allocation of Prescribed Responsibilities to unapproved individuals acting up as SMFs under the 12-week rule by emailing or calling us.

Allocating responsibility for coordinating firms' responses to coronavirus among SMFs

The FCA and PRA do not require or expect firms to designate a single SMF to be responsible for all aspects of their response to coronavirus. While it is important for firms to have a clear framework for allocating responsibilities to various SMFs for different aspects of their response to coronavirus, the FCA and PRA do not generally prescribe a 'one-size-fits-all' approach.

An exception is the identification of 'key workers' which, as noted in the FCA and PRA statements on key workers on 20 March, firms should allocate to the CEO (SMF1).

Where firms have an SMF24, aspects of their response to coronavirus that may naturally sit with this SMF. For instance, compliance with PRA and FCA requirements and expectations on:

- business continuity;
- information security; and
- outsourcing.

Other aspects of firms' responses to coronavirus may, however, sit naturally with other SMFs. For instance, managing liquidity in the current market, which would naturally fall to the CFO.

Moreover, given the likelihood of SMFs becoming suddenly, temporarily absent, the PRA encourages firms to consider how they may respond to unexpected changes to current contingency plans (contingencies upon contingencies).

Furloughing Senior Management Functions

(a) General approach

Dual-regulated firms must have individuals performing one of the following combinations of SMFs at all times:

- CEO (SMF1) CFO (SMF2) and Chair of the governing body (CRR firms and Solvency II insurers)
- Head of Overseas Branch (SMF19) (UK branches of third-country banks and insurers)
- Small Insurer Senior Management Function (SMF25) (small, non-Solvency II insurers)
- Head of Small Run-Off Firms (SMF26) (small, run-off insurance firms)

Individuals performing these SMF and other SMFs required by the FCA (eg Compliance Oversight (SMF16), Money Laundering Reporting Officer (MLRO) (SMF17) and the Limited Scope Function (SMF29)) should only be furloughed as a measure of last resort.

If an individual performing one of the mandatory or required SMFs referred to above becomes absent, the firm must appoint individuals to continue performing these SMFs so they can continue fulfilling their legal and regulatory obligations. If the replacement is temporary, firms can use the 12-week rule to arrange cover.

Other SMFs are not 'mandatory' under PRA and FCA rules. So firms have greater flexibility to furlough the individuals performing them. For instance, if a firm temporarily suspends a business service or function due to the disruption it could, in principle furlough the SMF responsible for it.

But firms should think carefully about the risks and unintended consequences of furloughing non-mandatory SMFs. In particular, those who are key to their business continuity during this period.

For instance, it could be detrimental for a firm to furlough the individual(s) performing the Chief Operations (SMF24), given their responsibility for areas such as business continuity, cybersecurity or outsourcing.

(b) Notifying and recording furloughing of SMFs

Unless a furloughed SMF is permanently leaving their post, they will retain their approval during their absence and will not need to be re-approved when they return.

So firms do not have to submit a Form C, unless a furloughed SMF steps down permanently or leaves the firm.

Likewise, firms will not need to submit a Form J, which is normally required when an SMF goes on long-term leave, in respect of furloughed SMFs. But firms must:

- ensure that furloughed SMFs remain fit and proper on their return
- reallocate the responsibilities of furloughed SMFs, including any Prescribed Responsibilities,
  - among their remaining SMFs, or
  - if relying on the 12-week rule, to the individual acting up as interim SMF (see above)
- clearly document the reallocation of responsibilities of any furloughed SMFs in SoRs, Management Responsibility Maps (MRMs) and internal documents

Firms should also update their PRA and FCA supervisors of any furloughing of one or more SMFs by emailing or calling us.

Certification requirements for dual regulated firms

Firms should continue to take reasonable steps to complete any annual certifications of employees that are due to expire while coronavirus restrictions are in place. We understand it may be necessary to adjust standard certification processes and policies. And we recognise that what constitute reasonable steps may be altered by the current circumstances. However, even in these circumstances, Certified staff who are not fit and proper should not be re-certified.

Certification is an important mechanism for firms to ensure their critical people are fit and proper. It is even more important now for the public to be able to trust in the individuals delivering critical financial services.

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