

# CORONAVIRUS INFORMATION & UPDATES

April 7, 2020

## UK financial services regulators set out expectations for Senior Managers during COVID-19 crisis

The COVID-19 outbreak is the first major event since the UK's implementation of the Senior Managers and Certification Regime (SMCR). Firms' and their Senior Managers' responses to rapidly unfolding and unprecedented events will be a key focus for the FCA. Decisions taken now may be judged with the benefit of hindsight. General guidance issued by the FCA on its approach to the crisis indicates that actions which could be perceived by enforcement authorities as opportunism or which undermine regulatory protections may draw enforcement authorities' fire once more normal times return.

**Attorneys**  
[Rosemarie Paul](#)  
[Chris Stott](#)  
[Eve Ellis](#)

Until now, specific and practical guidelines from the regulators have been limited. However, on 3 April, as the lockdown imposed in the UK entered its third week, the FCA issued separate information pages for [solo-regulated](#) and [dual-regulated firms](#) on issues arising in connection with the SMCR. The latter was published jointly with the Prudential Regulation Authority (PRA).

This followed a brief statement by the FCA on 25 March (as part of its [information page for firms](#)) about the operation of the SMCR during this time. That statement acknowledged the need for firms to have some flexibility to respond to the challenging and unfamiliar circumstances they face. It confirmed that there is no requirement for firms to have a single Senior Manager responsible for the coronavirus response and that firms should allocate responsibilities in the way which best enables them to tackle the risks they face. It has identified individuals holding the SMF 2 (CFO) and SMF 24 (COO) functions as amongst those likely to have particular responsibilities relevant to the response to the outbreak (in these cases in relation to financial resilience and operational resilience respectively).

The table below summarises the information now published by the FCA and the PRA. It is intended to assist by presenting the regulators' separate pages for solo- and dual-regulated firms in one place, but it is not exhaustive. New guidance is being issued by the FCA, PRA and other UK enforcement authorities on a rolling basis. We are monitoring this guidance as it is released in an alert which is regularly updated and maintained on our website.

Firms will need to consider how they deal with other practical SMCR-related issues not specifically addressed in information published by the regulators. These will include how Senior Managers may demonstrate that they have taken "reasonable steps" in relation to decisions taken in connection with the current situation and how best to seek to ensure that Conduct Rules training processes continue if possible.

Ropes & Gray will be holding virtual round table meetings during May 2020, to discuss the issues presented for firms as they seek to implement and apply the SMCR in challenging times. Dates of the virtual roundtable meetings will be circulated shortly.

# CORONAVIRUS INFORMATION & UPDATES



	<b>Solo-regulated firms</b>	<b>Dual-regulated firms (statement published jointly with the PRA)</b>
<b>Notifications about changes to Senior Manager responsibilities</b>	<ul style="list-style-type: none"> <li>Confirmation that the FCA does not intend to enforce requirement on firms to submit updated Statements of Responsibilities (SoRs) if the change (1) is made to cover multiple absences due to illness or other temporary changes in direct response to the outbreak and (2) is temporary and the firm expects to revert to its previous arrangements.</li> <li>Reallocations of responsibilities must be clearly documented internally and documents retained so that they can be made available to the FCA in future if requested.</li> <li>Firms should keep SoRs, role profiles and Responsibilities Maps (if applicable) up to date but there is no need to notify the FCA of temporary arrangements using Form D.</li> </ul>	<ul style="list-style-type: none"> <li>Confirmation that there is no fixed statutory deadline for firms to submit revised Statements of Responsibilities (SoRs) in the event of a “significant change” (whether as the result of the outbreak or any other reason).</li> <li>The FCA and PRA expect firms to resubmit relevant SoRs “as soon as reasonably practicable taking into account the current circumstances” and understand that it may take longer than usual for firms to do so.</li> </ul>
<b>Temporary arrangements for Senior Management Functions (SMFs)</b>	<ul style="list-style-type: none"> <li>The FCA intends to modify the 12 week rule by consent to allow temporary arrangements to be extended to up to 36 weeks. This would allow firms to allocate the responsibilities of absent SMFs to an individual standing in for him or her. This should be an individual already approved as a Senior Manager if possible (as is the current rule) but may be an individual who is currently not so approved if necessary, provided that firms allocate to the most senior person responsible for a particular area, the individual has sufficient authority and an appropriate level of knowledge and competence and has access to the governance forums</li> </ul>	<ul style="list-style-type: none"> <li>The FCA and PRA are reviewing whether the 12 week rule provides firms with sufficient flexibility for firms to deal with temporary or unexpected SMF absences. Additional measures will follow if deemed necessary.</li> </ul>

# CORONAVIRUS INFORMATION & UPDATES



	<p>required to exercise their responsibilities.</p>	
<p><b>Notifications about temporary arrangements (including allocating Prescribed Responsibilities (PRs) to unapproved individuals acting as SMFs under the 12-week rule)</b></p>	<ul style="list-style-type: none"> <li>• No requirement for updated SoRs to be submitted in respect of absent Senior Managers or of Senior Managers taking on responsibilities of absent Senior Managers.</li> <li>• Nonetheless, allocations (however temporary) should be clearly documented internally and Management Responsibilities Maps (if applicable) should reflect allocations of responsibilities to individuals who have hitherto not been approved as Senior Managers.</li> </ul>	<ul style="list-style-type: none"> <li>• If firms cannot reallocate an absent SMF’s PRs among remaining SMFs for reasons relating to coronavirus, they may temporarily allocate them to individuals who are acting as interim SMFs under the 12-week rule (even if those individuals are at the time unapproved as an SMF).</li> <li>• Unapproved individuals acting as SMFs will not have SoRs (unless they are applying to be permanently approved in respect of the SMF in question).</li> <li>• Changes of this nature should be recorded in other documents, such as Responsibilities Maps and role profiles to ensure that firms have a running record of temporary allocations to unapproved individuals.</li> <li>• Firms should update PRA and/or FCA supervisors (by telephone or email) in relation to temporary allocations.</li> </ul>
<p><b>Allocating responsibility for coordinating firms’ responses to coronavirus among SMFs</b></p>	<ul style="list-style-type: none"> <li>• As indicated in previous guidance, the FCA and PRA do not expect or require firms to designate a single SMF to be responsible for firms’ response to the outbreak (except for in relation to the identification of “key workers” – see above ).</li> </ul>	<ul style="list-style-type: none"> <li>• As also previously indicated, many aspects of the response to the outbreak are likely to fall most naturally to individuals occupying the SMF24 function, but there are others that will fall elsewhere (for example, managing liquidity,</li> </ul>

# CORONAVIRUS INFORMATION & UPDATES



		<p>which will fall to Chief Financial Officers)</p> <ul style="list-style-type: none"> <li>The PRA encourages firms to make plans relating to “contingencies on contingencies” given the likelihood of individuals becoming temporarily and unexpectedly absent.</li> </ul>								
<p><b>Furloughing SMFs</b></p>	<ul style="list-style-type: none"> <li>Firms should update FCA supervisors by telephone or email if one or more SMFs are furloughed.</li> <li>Firms do not need to complete or file forms in respect of furloughed SMFs (unless they permanently step down or leave the firm), but firms must ensure that individuals remain fit and proper upon their return, reallocate the responsibilities of furloughed SMFs (including PRs) and clearly record such reallocations as outlined above.</li> </ul>	<ul style="list-style-type: none"> <li>Firms must have individuals performing certain combinations of SMFs at all times:</li> </ul> <table border="1" data-bbox="984 1167 1498 1656"> <tr> <td data-bbox="984 1167 1230 1299">CRR firms and Solvency II insurers</td> <td data-bbox="1230 1167 1498 1299">CEO (SMF1) CFO (SMF2) Chair of governing body</td> </tr> <tr> <td data-bbox="984 1299 1230 1432">UK branches of third country banks and insurers</td> <td data-bbox="1230 1299 1498 1432">Head of Overseas Branch (SMF19)</td> </tr> <tr> <td data-bbox="984 1432 1230 1564">Small non-Solvency II insurers</td> <td data-bbox="1230 1432 1498 1564">Small Insurer SMF (SMF25)</td> </tr> <tr> <td data-bbox="984 1564 1230 1656">Small run-off insurance firms</td> <td data-bbox="1230 1564 1498 1656">Head of Small Run-Off Firms (SMF26)</td> </tr> </table> <ul style="list-style-type: none"> <li>Other SMFs are not mandatory, so individuals occupying these functions may be furloughed (but firms should consider the risks and potential unintended consequences of doing so).</li> </ul>	CRR firms and Solvency II insurers	CEO (SMF1) CFO (SMF2) Chair of governing body	UK branches of third country banks and insurers	Head of Overseas Branch (SMF19)	Small non-Solvency II insurers	Small Insurer SMF (SMF25)	Small run-off insurance firms	Head of Small Run-Off Firms (SMF26)
CRR firms and Solvency II insurers	CEO (SMF1) CFO (SMF2) Chair of governing body									
UK branches of third country banks and insurers	Head of Overseas Branch (SMF19)									
Small non-Solvency II insurers	Small Insurer SMF (SMF25)									
Small run-off insurance firms	Head of Small Run-Off Firms (SMF26)									
	<ul style="list-style-type: none"> <li>Individuals performing required functions should only be furloughed as a last resort. Where required functions apply, the individual should be replaced until their return, or the 12-week rule should be used if the replacement is temporary.</li> <li>Other SMFs are not mandatory, so individuals occupying these functions may be furloughed.</li> </ul>									

# CORONAVIRUS INFORMATION & UPDATES



<p><b>Certification requirements</b></p>		<ul style="list-style-type: none"><li>• Acknowledgment that standard certification processes may need to be adjusted, but reminder that certification requirements remain in place.</li><li>• Certified staff who are not fit and proper should not be re-certified.</li></ul>
--	--	--