

**MEMO# 32372**

April 9, 2020

# **COVID 19 - UK FCA's Expectations for SM&CR for Solo-Regulated Firms**

[32372]

April 9, 2020 TO: Chief Compliance Officer Committee

Chief Risk Officer Committee

International Compliance Advisory Committee

International Internal Audit Advisory Committee

Technology Committee RE: COVID 19 - UK FCA's Expectations for SM&CR for Solo-Regulated Firms

On 3 April, the UK Financial Conduct Authority (FCA) published its expectations to help solo-regulated firms comply with the Senior Managers and Certification Regime (SM&CR) during COVID 19.[\[1\]](#) These expectations are in addition to the FCA's earlier statement on its expectations for Senior Manager Responsibilities.[\[2\]](#)

According to its current publication, the FCA expects firms directly affected by the coronavirus to keep their governance arrangements under review and make appropriate changes as circumstances change. While the FCA does not require firms to have a single Senior Manager responsible for their coronavirus response, firms should allocate these responsibilities in the way that best enables them to manage their risks.

## **Senior Management Responsibilities**

According to the FCA, Senior Managers are responsible for risks in their areas of responsibility and such persons should be considering (i) where the current situation might lead to emerging risks, and (ii) how it affects existing risks, along with the controls used to manage them.

## **Statements of Responsibilities and "Significant Changes" to Senior Manager Responsibilities**

The FCA does not intend to enforce the requirement that firms submit updated Statements of Responsibilities (SoRs), if the update:

- is made to cover multiple sicknesses, or other temporary changes in responsibilities in direct response to the pandemic, and
- is temporary and expected to revert to the firm's previous arrangements

This accommodation, which is intended to minimize burdens on firms, recognizes that some firms may need to make temporary arrangements to address absences or change Senior

Manager responsibilities as a result of the pandemic. Firms remain responsible for ensuring that all allocations of responsibilities (however temporary) are clearly documented internally so everyone understands who is responsible for what. Firms should also be prepared to provide this documentation to the FCA upon request.

The FCA makes clear that firms' internal records should aim to keep a "running commentary" of their Senior Manager population and their responsibilities during this period. This running commentary should be kept current and include Statements of Responsibilities, role profiles, and Responsibilities Maps (if applicable). The FCA does not expect to get notifications via Form D of these temporary arrangements. Fixed firms should supply the FCA with timely detail of the changes they would normally include in updated SoRs. Firms should also provide updates to their FCA supervisors by phone or email of any furloughing of one or more Senior Managers.

## **Temporary Arrangements for Senior Management Functions**

The FCA intends to issue a Modification by Consent to the 12-week rule to support firms using temporary arrangements during the crisis.[\[3\]](#) If temporary arrangements last longer than 12-weeks as a result of the crisis, firms that notify the FCA that they consent to a modification of the 12-week rule can extend these temporary arrangements up to 36 weeks. Responsibilities associated with any temporary arrangements should be clearly documented, including on relevant Statements of Responsibilities and Responsibilities Maps (if applicable).

Under the FCA's current Modification, firms can also allocate the Prescribed Responsibilities of the absent Senior Manager to the individual who is standing in for such Senior Manager. Under normal circumstances, Prescribed Responsibilities can only be allocated to another approved Senior Manager. The FCA expects firms to follow this rule, if possible.

The FCA also expects firms to allocate responsibilities to the most senior person responsible for that activity or area who has sufficient authority and an appropriate level of knowledge and competence to carry out the responsibility properly. The covering manager will need access to the governance forums necessary to exercise their responsibilities.

## **Furloughed Staff**

The FCA's earlier guidance on key workers in financial services noted that individuals captured by the Senior Managers Regime may be considered to be key workers.[\[4\]](#)

Recognising that firms may decide to furlough Senior Managers if they are unable to fulfil their responsibilities (e.g., due to illness, caring responsibilities, or if they have no current practical responsibilities), the FCA will permit such managers to retain their approval during their absence without having to be re-approved by the FCA when they return (unless a furloughed Senior Manager permanently left). The firm, however, remains responsible for ensuring the Senior Manager is fit and proper.

For firms subject to the Overall Responsibility rule in SYSC 26, the responsibilities of the furloughed Senior Manager must be allocated to another Senior Manager. If, however, the firm is relying on the 12-week rule, the replacement does not need not be a Senior Manager.

As already explained, the FCA does not expect firms to send updated SoRs to the FCA for the furloughed Senior Manager or for those Senior Managers taking on their responsibilities while they are away.

## Reallocating Prescribed Responsibilities

In the view of the FCA, individuals performing required functions, such as Compliance Oversight, the money laundering reporting officer (MLRO) and the Limited Scope Function, should only be furloughed as a last resort. The FCA observes that, where a required function applies to a firm, the firm should replace the furloughed individual until their return. If the replacement is temporary, firms can use the 12-week rule to arrange cover. Firms, however, need to ensure the allocation is appropriate and complies with the FCA rules (e.g., an oversight role is not allocated to an executive). For those Senior Management Functions that are not “mandatory,” firms have greater flexibility to furlough the individuals performing them. So, for example, if a firm temporarily suspends a business service or function due to the disruption caused by coronavirus, it could, in principle, furlough the Senior Manager responsible for it. Begin typing here

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### endnotes

[1] See <https://www.fca.org.uk/news/statements/smcr-coronavirus-our-expectations-solo-regulated-firms>. Separately, the FCA also published its expectations for dual-regulated firms with the Prudential Regulation Authority (PRA). See <https://www.fca.org.uk/news/statements/joint-fca-pra-statement-smcr-coronavirus-covid-19>.

[2] See [Memorandum No. 32326](#) to ICI Global Members, Chief Compliance Officer Committee, International Compliance Advisory Committee, and International Internal Audit Advisory Committee, dated March 26, 2020.

[3] The 12-week rule allows an individual to cover for a Senior Manager without being approved, where the absence is temporary or reasonably unforeseen, and the appointment is for less than 12 consecutive weeks.

[4] See [Memorandum No. 32326](#) to ICI Global Members, Chief Compliance Officer Committee, International Compliance Advisory Committee, and International Internal Audit Advisory Committee, dated March 26, 2020.