

1st June, 2023

SM&CR Call for Evidence Team
Financial Services Strategy
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Submitted by e-mail to: SMCR@HMTreasury.gov.uk

To the HMT SM&CR Policy Team,

RE: HMT's Call for Evidence on the Senior Manager & Certification Regime

The CFA Society of the UK (CFA UK) welcomes the opportunity to respond to HM Treasury's Call for Evidence on the functioning of the SM&CR. We have also responded separately to the FCA's and PRA's parallel joint discussion paper DP1/23 on the same topic, communicating similar feedback.

CFA UK is a professional body representing over 11,000 investment professionals in the UK¹. As such, CFA UK is not a firm caught under the requirements of the SM&CR. We cannot therefore share our own direct experiences of living under SM&CR, but can pass on the feedback of our members, which include both Senior Managers and staff involved with the administration of SM&CR within their own firms.

The introduction of SM&CR to UK banks in 2016 and subsequently to investment and insurance was pioneering at the time and, 7 years on, it is entirely appropriate to review its effectiveness and identify if there are any areas calling for improvement.

The feedback from our members is overwhelming aligned with the feedback which the PRA received in its own survey last year. There is a strong consensus amongst our members that SM&CR has increased individual accountability in firms where it has been introduced. In particular, it has introduced welcome additional rigour and discipline to the recruitment and appraisal of firms' senior leaders. That, in turn, has led to follow-on benefits in terms of firm culture. These are significant gains within an industry that depends on trust and must be held onto. It is difficult to quantify the economic benefits of this, even after 7 years, but we would note that both (i) the UK has survived the most recent turmoil in the banking sector relatively unscathed² and (ii) the Woodford scandal pre-dated the roll-out of SM&CR to investment firms.

We do not believe that SM&CR has damaged the competitiveness of the UK financial sector since its introduction, indeed, by raising the bar on conduct and behaviour, we believe it may have actually improved it.

¹ Please see Appendix 1 for a summary of both CFA UK and its umbrella organisation CFA Institute

² We refer to the recent collapses of CSFB, Silicon Valley Bank and First Republic Bank

There are, however, a few areas which we would like to identify for potential improvement.

- First, we have received fairly consistent feedback that some SM approvals take too long, especially for individuals that are moving firms, from one SM function to another. We suggest that the FCA/PRA look at reducing the current 90-day requirement and that firms providing a reference for a departing employee be required to do so within a satisfactory time period and without unnecessary delay.
- Second, we note from the FCA/PRA's record on investigation of complaints of poor behaviour amongst SMFs, Certified Individuals and Material Risk Takers that resolution of investigations is taking increasingly long and that in the overwhelming majority of cases the investigation leads to no further action³. We are not privy of course to the detail of any of these cases, however, we would observe from these two sets of headline numbers that protracted investigations of cases mostly resulting in no enforcement action could mean that careers of the individuals concerned are being adversely and unfairly affected as the investigations are taken so long to complete. If this is a resourcing issue at the FCA, then this should be addressed.
- Third, as regards scope, rather than looking to reduce the SM&CR perimeter, we would suggest it be extended to cover firms involved central clearing parties and firms involved in payments, crypto and e-money.

In line with our Society's purpose, we aim to highlight relevant issues to help the investment community to serve its stakeholders well and to build a more sustainable future.

Yours sincerely,



Will Goodhart
Chief Executive
CFA Society of the UK



Andrew Burton, CFA
Professionalism Adviser
CFA Society of the UK

With thanks to the oversight of the [Professionalism Steering Committee](#).

³ The number of open cases concerning Senior Managers has grown continually every year since SM&CR was introduced in 2016. Of the 57 closed cases since 2016, 54 have resulted in no action. See Freedom of Information Request (June 2022): <https://www.fca.org.uk/freedom-information/information-investigations-opened-under-senior-managers-regime-june-2022>

APPENDIX I: About CFA UK and CFA Institute

CFA UK serves nearly twelve thousand leading members of the UK investment profession. Many of our members work either managing investment portfolios, analysing and advising on investments, or in some form of investment operations and oversight role.

The mission of CFA UK is to build a better investment profession and to do this through the promotion of the highest standards of ethics, education and professional excellence in order to serve society's best interests.

Founded in 1955, CFA UK is one of the largest member societies of CFA Institute and provides continuing education, advocacy, information, networking and career support on behalf of its members.

Most CFA UK members have earned the Chartered Financial Analyst® (CFA®) designation or are candidates registered in CFA Institute's CFA Program. Both members and candidates attest to adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct.

For more information, visit www.cfauk.org or follow us on Twitter @cfauk and on LinkedIn.com/company/cfa-uk/.

CFA Institute is the global association for investment professionals that sets the standard for professional excellence and credentials.

The organisation is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow.

It awards the Chartered Financial Analyst® (CFA) and Certificate in Investment Performance Measurement® (CIPM) designations worldwide, publishes research, conducts professional development programs, and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry.

CFA Institute has members in 162 markets, of which more than 170,000 hold the Chartered Financial Analyst® (CFA) designation. CFA Institute has nine offices worldwide and there are 158 local member societies.

For more information, visit www.cfainstitute.org.

APPENDIX II: Responses to questions

- 1. *Has the SM&CR effectively delivered against its core objectives? For example, making it easier to hold individuals to account; or improving governance, behaviour and culture within firms.***

Yes. There is a strong consensus amongst our members that SM&CR has increased individual accountability in firms where it has been introduced.

- 2. *Do these core objectives remain the right aims for the UK?***

Yes.

- 3. *Has the regime remained true to its original objectives or has the scope or use of the regime shifted over time?***

We believe it has remained true to its original objectives.

- 4. *The government would be interested in respondents' reflections on their experience of the SM&CR, now that it has been in place for some years.***

We believe it has been extremely positive. It has introduced welcome additional rigour and discipline to the recruitment and appraisal of firms' senior leaders. That, in turn, has led to follow-on benefits in terms of firm culture. These are significant gains within an industry that depends on trust and must be held onto. It is difficult to quantify the economic benefits of this, even after 7 years, but we would note that both (i) the UK has survived the most recent turmoil in the banking sector relatively unscathed⁴ and (ii) the Woodford scandal pre-dated the roll-out of SM&CR to investment firms.

- 5. *What impact does the SM&CR have on the UK's international competitiveness? Are there options for reform that could improve the UK's competitiveness?***

We do not believe that SM&CR has damaged the competitiveness of the UK financial sector since its introduction, indeed, by raising the bar on conduct and behaviour, we believe it may have actually improved it.

- 6. *Are there examples of other regimes that the government could learn from?***

No comment.

- 7. *How does the level of detail, sanctions and time devoted to the UK's SMCR regime compare with that in other significant financial centres?***

No comment.

⁴ We refer to the recent collapses of CSFB, Silicon Valley Bank and First Republic Bank

8. ***Are there specific areas of the SM&CR that respondents have concerns about or which they believe are perceived as a deterrent to firms or individuals locating in the UK? If so, what potential solutions should be considered to address these? Respondents should provide as much detail as possible to help build the fullest picture of any issues.***

We would like to identify the following for potential improvement.

- First, we have received fairly consistent feedback that some SM approvals take too long, especially for individuals that are moving firms, from one SM function to another. We suggest that the FCA/PRA look at reducing the current 90-day requirement and that firms providing a reference for a departing employee be required to do so within a satisfactory time period and without unnecessary delay.
- Second, we note from the FCA/PRA's record on investigation of complaints of poor behaviour amongst SMFs, Certified Individuals and Material Risk Takers that resolution of investigations is taking increasingly long and that in the overwhelming majority of cases the investigation leads to no further action⁵. We are not privy of course to the detail of any of these cases, however, we would observe from these two sets of headline numbers that protracted investigations of cases mostly resulting in no enforcement action could mean that careers of the individuals concerned are being adversely and unfairly affected as the investigations are taken so long to complete. If this is a resourcing issue at the FCA, then this should be addressed.

9. ***Is the current scope of the SM&CR correct to achieve the aims of the regime? Are there opportunities to remove certain low risk activities or firms from its scope?***

As regards scope, rather than looking to reduce the SM&CR perimeter, we would suggest it be extended to cover firms involved central clearing parties and firms involved in payments, crypto and e-money.

10. ***Are there "lessons learned" that government should consider as part of any future decisions on potential changes to the scope of the regime to ensure a smooth rollout to firms or parts of the financial services sector?***

No comment.

11. ***Any other comments the government or regulators would benefit from receiving?***

No comment.

⁵ The number of open cases concerning Senior Managers has grown continually every year since SM&CR was introduced in 2016. Of the 57 closed cases since 2016, 54 have resulted in no action. See Freedom of Information Request (June 2022): <https://www.fca.org.uk/freedom-information/information-investigations-opened-under-senior-managers-regime-june-2022>