Getting to the heart of the matter
Our two-year health check on SMCR compliance
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Introduction

Our “two-year health check” is designed to help you ensure compliance with the Senior Managers and Certification Regime (“SMCR”). The Financial Conduct Authority (“FCA”) has identified firms’ culture and governance as one of its cross-sector priorities this year, and has been busy consulting on the SMCR and announcing plans to extend it to all firms in the United Kingdom. Likewise, the Prudential Regulation Authority’s (“PRA”) business plan includes delivering and embedding the governance regime for banks and insurers.

Failure by firms to ensure the right cultures, behaviours and effective governance is increasingly leading to regulatory intervention and, of particular relevance to community-based firms, can cause reputational issues. Our SMCR health check will ensure that your governance arrangements are fit for purpose, give confidence to your internal and external stakeholders, and will allow you to demonstrate that you are striving for effective governance in accordance with your regulatory obligations.
The Senior Managers and Certification Regime

The evaluation of the SMCR by regulators, industry and professional services firms has largely been in relation to its impact on banks. This narrow focus has been at the expense of building societies and credit unions, which are uniquely affected by SMCR given your community-based approach and values, which require a different approach to implementation.

Your desire to support your members, make a real difference in your communities, and "do the right thing" by members and staff requires you to implement the SMCR in a proportionate manner and defines what "reasonable steps" your senior managers should take to comply with their obligations under the SMCR. Likewise, any independent review of your SMCR and governance arrangements should be tailored to take into account your unique business model, market position, and relationships with customers and staff.

Senior Managers Regime
Individuals who hold one or more key functions within a firm must be approved by the appropriate regulator before they can be formally appointed.

Certification Regime
Firms must certify that certain individuals are 'fit and proper' to perform their functions.

Conduct Rules
A code of conduct applying to all non-ancillary staff within firms.
Eversheds Sutherland offers a compelling proposition: a combination of financial services lawyers and regulatory consultants with experience in governance reviews and working with community-based firms. Through our practice and experience we can help you with:

- assessing whether your governance structures and frameworks are fit for purpose
- reviewing your arrangements against FCA requirements and expectations
- undertaking s166 Skilled Person reviews of implementation of the SMCR and governance arrangements generally
- giving technical input and guidance on the requirements of the SMCR such as “duty of responsibility
- guiding you on the mapping of prescribed responsibilities and business activities to appropriate senior managers and governance committees
- producing governance gap analyses and recommendations to bridge gaps
- defining the approach to fit and proper assessments and certification regime population maintenance as part of BAU
- advising on SMCR-related areas including third party relationships, handover policy, references, delegated activities, whistleblowing, etc
- reviewing existing responsibilities maps, statements of responsibilities, role profiles, handover policies
- designing and delivering training programmes for relevant senior managers and staff

Our multi-disciplinary approach allows you to benefit from front-line regulatory experience as well as being entitled to assert legal advice privilege in respect of our report.
Your two-year health check

We have developed a four-stage product offering which can be scaled to meet your particular circumstances, requirements and budget. The health check may include any or all of the following activities, and project scope can be extended beyond the SMCR to review wider aspects of governance as required.

1. Foundation enquiries
   Developing a high level understanding of your operating model and governance arrangements through:
   - scoping exercise
   - preliminary discussions with you
   - identifying and obtaining relevant documents including your statements of responsibilities, management responsibilities maps, board and committee minutes, management information, action logs, organisation charts, and job descriptions
   - identifying and scheduling interviews with relevant individuals from your firm

2. Review
   Reviewing documents, conducting interviews and attending your board and committee meetings with a focus on:
   - governance and oversight by the board and senior management
   - your operating culture
   - effectiveness of your decision making processes
   - stress testing the constitution of your board and committees
3. Evaluation and report drafting
Assessing and collating the evidence including:
- reviewing your controls and procedures against FCA requirements
- assessing your board members’ understanding of risks faced by the firm and how risks are managed
- considering how relevant duties can be appropriately segregated
- identifying conflicts of interest and how they are managed
- undertaking a gap analysis in relation to your policies and procedures/systems and controls
- identifying where remediation is needed
- assisting your communications with internal and external stakeholders, including regulators and other interested parties

4. Report delivery
Reporting to you by way of:
- delivering a draft report
- liaising on key issues from the draft report
- delivering the final report
Our approach to fees

We will have an initial free consultation with you to discuss your firm, your approach to governance generally and your approach to the SMCR in particular. We will agree a scope of work and a fixed fee which is proportionate to that scope of work in advance of beginning our work for you.
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Credentials

“We were impressed with the calibre and experience of both the legal and compliance support we received from Eversheds Sutherland. Having the legal expertise and Compliance Assurance team under the same roof was extremely effective – we really like the model. Eversheds Sutherland provided a seamless one stop shop in circumstances where we otherwise would have had to instruct separate law and consultancy firms.”

Head of Compliance at a major financial institution

Governance assurance review
Our client was part of a large group that provides segregated accounts and wealth management. We reviewed the effectiveness of the board against FCA requirements and expectations, including a review of relevant policies and procedures, sample management information packs, terms of reference, delegated authority matrices, board and committee terms of reference and sample minutes of meetings. We presented our findings in a report and discussed these with the CEO and other members of the board.

Governance internal audit
We undertook a governance internal audit of a firm after the FCA raised specific concerns over conflicts of interest. We interviewed all board members and members of risk committees. We reviewed relevant management information, terms of reference, delegated authority matrices and board minutes. Our report, which included several recommendations, was provided to the Head of Internal Audit.

Governance frameworks
We are advising a number of firms on their proposed governance frameworks. This involves reviewing organisation charts and terms of reference, together with discussions with appropriate board and committee members.

Governance training
We provided a bespoke training session to a recently formed board and received the following feedback: “The training we received was not only well-delivered in a manner that both the executives and non-executives could understand, but also dealt with real world day-to-day issues which is very often lacking in training of this type. In particular the training session was both highly interactive and informative. A difficult challenge well delivered.”
Team profiles

Simon Collins
MD of FS Regulatory Compliance
T: +44 20 7919 0725
simoncollins@eversheds-sutherland.com

David Saunders
Partner
T: +44 20 7919 4685
davidsaunders@eversheds-sutherland.com

Sarah Naylor
Partner
T: +44 161 831 8522
sarahnaylor@eversheds-sutherland.com

Tom Parry
Associate
T: +44 161 831 8096
tomparry@eversheds-sutherland.com

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