

Strengthening Accountability in Banking

Senior Managers & Certification Regime

These slides provide additional information for firms on the regime. They summarise existing information and do not represent formal FCA Guidance.

Note: These slides will be updated when new policy papers are published.

Contents

- Overview of the new regime Slides 3-10
- The Senior Managers Regime Slides 11-25
- Certification Regime and Conduct Rules Slides 26-30
- Appendix Slides 31-36



Overview



Background (1/2)

The Parliamentary Commission on Banking Standards (PCBS) recommended:

- “A Senior Persons Regime... should provide far **greater precision about individual responsibilities** than the system that it replaces, and would serve as the foundation for... changes to enforcement powers...”
- “A Licensing Regime... as the **basis for upholding individuals' standards of behaviour**, centred on the application of a revised set of Banking Standards Rules to a broader group...”

The Banking Reform Act 2013 created the legislative framework.

Background (2/2)

Through the new Accountability Regime:

- Senior managers can be held accountable for misconduct that falls within their area of responsibility.
- Individuals working at all levels can be held to appropriate standards of conduct.

A key purpose of the new regime is to **improve genuine accountability** in firms by removing ambiguity and clarifying individual responsibilities. We do not want to see a tick-box approach taken by firms, but genuine engagement.

Our banking accountability regime in context

Accountability

Final rules for the Senior Managers & Certification Regime have been published. This also includes:

- Extension of Certification regime to ensure a consistent approach to wholesale activity
- **Final Handbook consequential amendments.**

Still to come:

- Final rules on Regulatory References (as an interim measure, we are continuing to apply the current referencing requirements in APR for pre-approved roles)

Remuneration

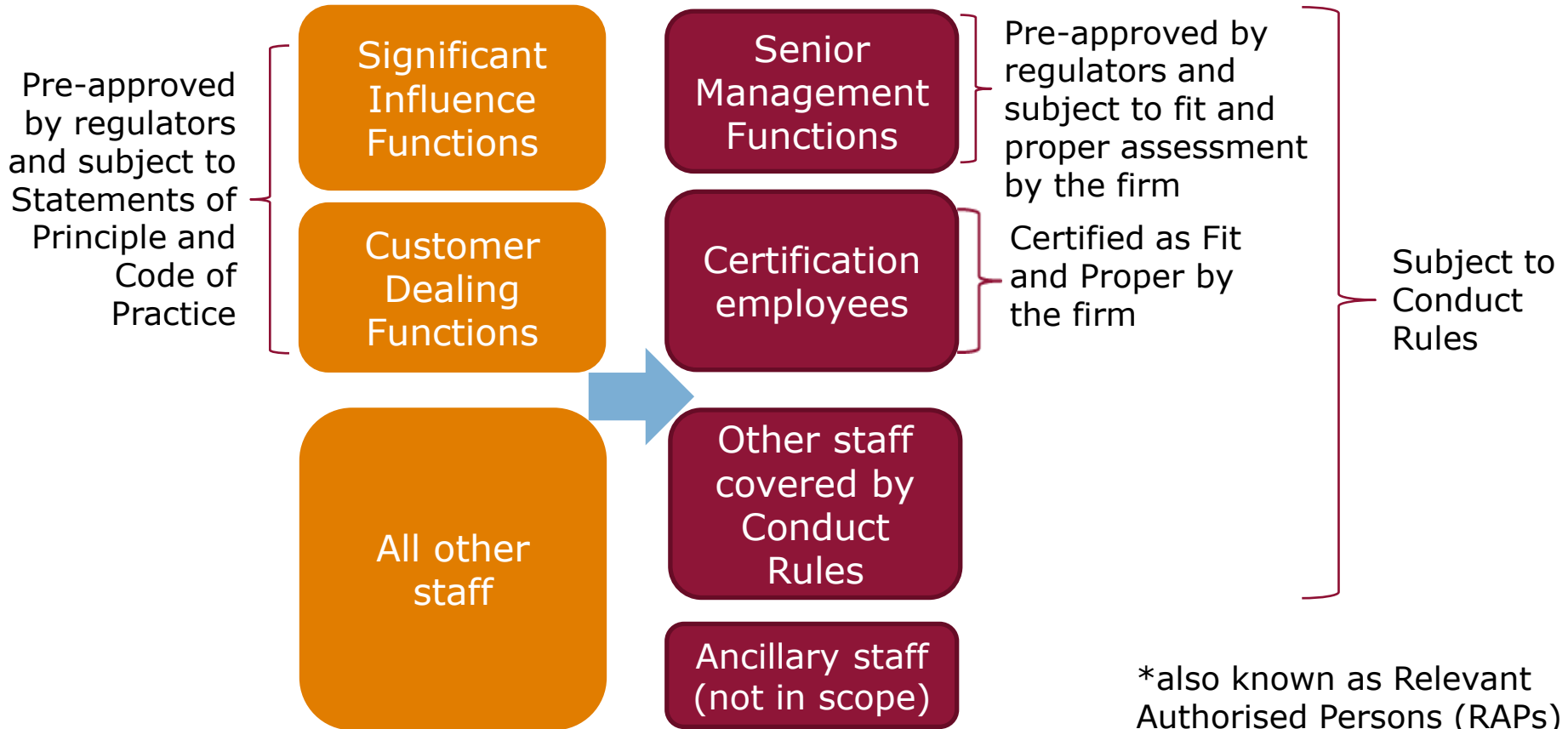
New Remuneration rules published in June 2015, bringing greater alignment between risk and reward.

Whistleblowing

New rules to strengthen whistleblowing systems and controls in firms and to promote a culture where people can speak up were published in October 2015 and take effect in September 2016.

The new accountability regime

Applies to Banks, PRA-designated Investment Firms, Building Societies, Credit Unions and Incoming Branches of Overseas Banks*



*also known as Relevant Authorised Persons (RAPs)

Senior Managers Regime: overview (1/2)

Scope

- UK RAPs: Board (excluding 'Notified NEDs') and other individuals who hold key roles or have overall responsibility. NEDs captured are: Chairman of the Board, Chairs of Risk, Audit, Remuneration and Nomination Committees and Senior Independent Directors only.
- Non-EEA Branches: Executive Directors of the branch and other individuals who hold key roles or have local responsibility.
- EEA branches: Individuals with significant responsibility for significant business units of the branch and other individuals who hold key roles.

Senior Managers Regime: overview (2/2)

Features

- Pre-approval by regulators.
 - Annual assessment of fitness and propriety by the firm.
 - Regulatory power to approve applications with time limits or conditions.
 - Conduct Rules (including additional rules for Senior Managers).
 - Statements of Responsibilities.
 - Criminal records checks and regulatory references.
 - Criminal offence relating to a decision that causes a financial institution to fail.
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- Notified NEDs in UK RAPs (i.e. those that do not have a specified role on the board) will **not** be subject to the SMR, including pre-approval or the criminal offence etc.
 - The criminal offence also does not apply to credit unions or incoming branches.
 - Note: HMT is proposing to introduce a 'duty of responsibility' to replace the 'Presumption of Responsibility'.

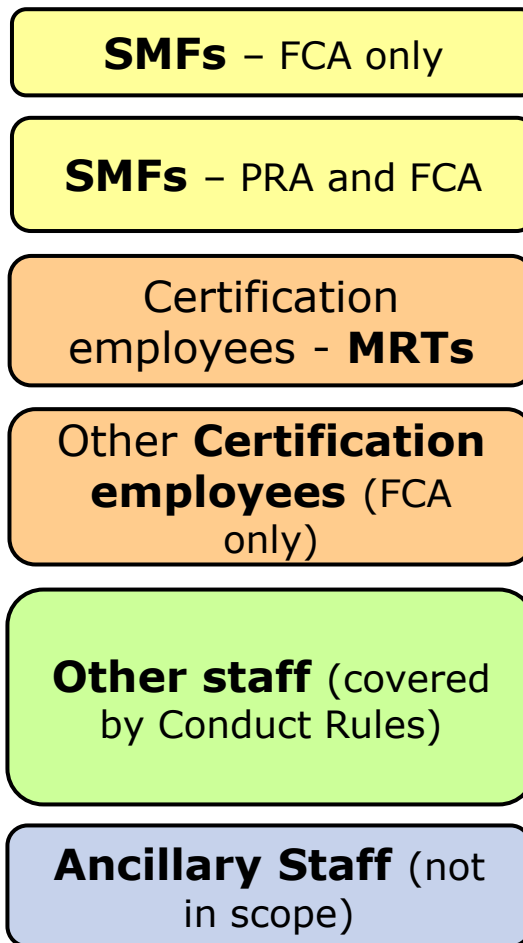
Interaction between SM&CR and Remuneration

Senior Managers Regime:

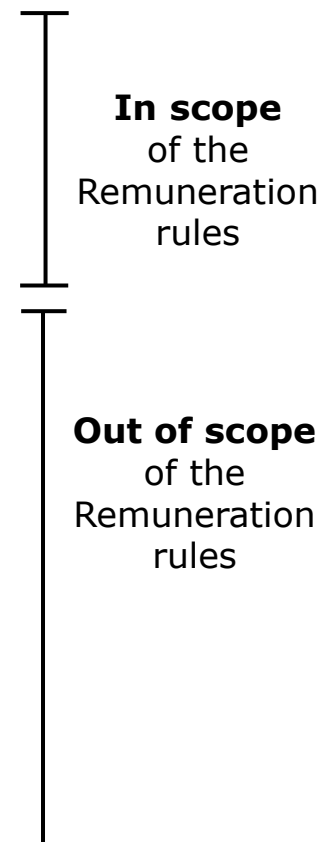
- Senior managers holding a **PRA SMF** will be subject to the Remuneration rules
- Senior managers holding an **FCA-only SMF** will only be subject to the Remuneration rules if they are an MRT

Certification Regime:

- Certification employees who are not MRTs will **not** be subject to the Remuneration rules.



Remuneration

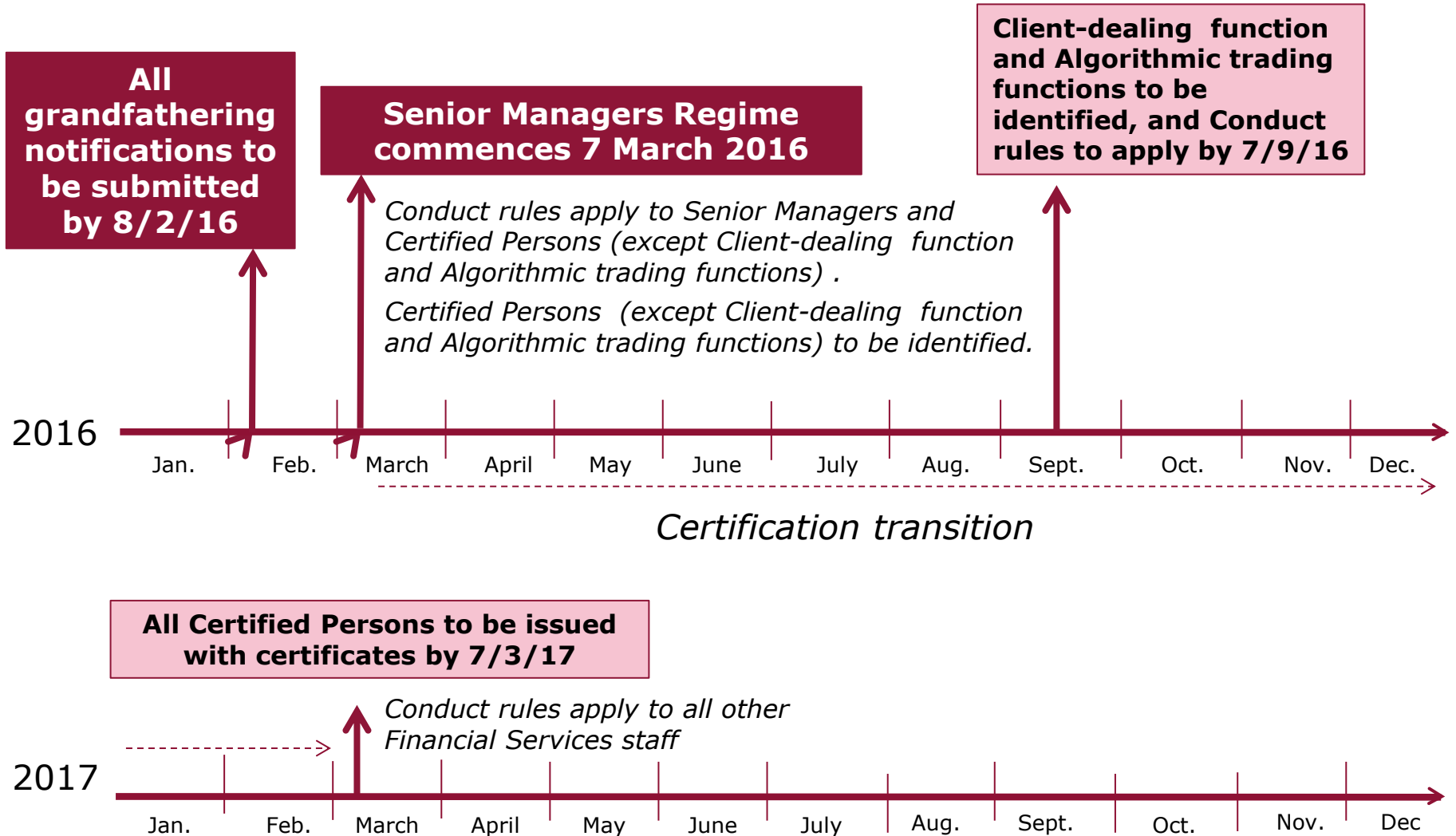




The Senior Managers Regime



Timeline



Broad Overview of Senior Management Functions

Types	Roles
Executive Roles	<ul style="list-style-type: none">• Traditional executive roles such as Chief Executive, Head of Overseas Branch and the Chief Finance Function*• Generic executive directors and individuals who head up significant business divisions
Oversight (non-executive) Roles#	<ul style="list-style-type: none">• Core oversight roles discharged by non-executive directors, such as Chairman, Senior Independent Directors and the chairs of main board committees• Cannot be allocated overall responsibility for business activities or management functions• Can be allocated certain prescribed responsibilities
Lines of defence and control roles	<ul style="list-style-type: none">• Key roles in the three-lines of defence model, such as Head of Internal Audit and Chief Risk Officer*• Technical roles such as Money Laundering Reporting
Other*	<ul style="list-style-type: none">• Group Entity Senior Managers• Other Overall Responsibility or Other Local Responsibility Functions

NB: Responsibilities should generally be performed by, or allocated to, one individual, but we accept that there will be limited circumstances where sharing or dividing a function or a responsibility may be appropriate.

Other SMFs: SMF 6 and 7

SMF	Policy
<p>SMF 6 – Head of Key Business Area (PRA-designated)</p> <p>UK RAPs only</p>	<p>Applies to a person who manages an area that has gross total assets of £10bn or more and which either:</p> <ol style="list-style-type: none">1) Accounts for 20% or more of the gross revenue of the firm, or2) Where the firm is part of a group, accounts for more than 20% of the total gross revenue of the group.
<p>SMF 7 – Group Entity Senior Manager (PRA-designated)</p> <p>UK RAPs and non-EEA branches</p>	<ul style="list-style-type: none">• Applies to individuals who exercise significant influence over the RAP as part of their role in the wider Group.• They can be operating in either an executive or non-executive capacity.

Other SMFs: SMF 18

SMF	Policy
SMF 18 – Other Overall Responsibility Function (FCA) UK RAPs only	<ul style="list-style-type: none">• Applies to individuals who have overall responsibility for each of the activities, business areas and management functions of the firm (we have provided examples in our guidance).• Will apply <u>only</u> to those who also do not already hold another SMF.• They cannot be assigned Prescribed Responsibilities with the <u>exception</u> of ‘Overall responsibility for the firm’s compliance with CASS’.• SMF18s are not a direct replacement for the current CF29 (Significant Management function). This function is intended to allow flexibility for firms’ differing business models and governance.

Allocation of Overall Responsibility:

- We expect in many cases that overall responsibility will be allocated to individuals approved for one of the other FCA or PRA senior management functions.
- If a firm’s **complex** legal structure is preventing it from allocating individual responsibilities clearly, this in itself suggests a regulatory risk which we would wish the firm to mitigate.
- We recognise that our focus on individuals with ‘overall responsibility’ may, in practice, require firms to formalise existing arrangements between the Board and individuals who have been delegated responsibility for a function and are based outside the legal entity. We are not proposing to prescribe what this arrangement should look like.

Other SMFs: Non-EEA branches

SMF	Policy
SMF19 – Head of Overseas Branch	<ul style="list-style-type: none">• There is a requirement for all non-EEA branches to have at least one SMF19.• Will be responsible for conduct of all activities of the UK branch of an overseas firm subject to the UK regulatory system.• Should have the highest degree of individual decision-making authority within the branch.
SMF22 - Other local responsibility function	<ul style="list-style-type: none">• This will operate in a similar way to the Other overall responsibility (SMF18) function for UK RAPs.• Captures any individuals that have local responsibility for any of the activities, business areas or management function of the branch, but who do not already perform any other SMFs in relation to the branch.
SMF3 – Executive Director	<ul style="list-style-type: none">• This will operate in a similar way to the existing Director (CF1) function for non-EEA branches.• This function already exists in the SMR for UK RAPs, but for branches it will be limited to individuals performing a the function in relation to the activities of the <u>branch</u>, rather than in relation to the whole firm.

Other SMFs: Non-EEA branches

SMF	Policy
SMF16 – Compliance Oversight (FCA)	<ul style="list-style-type: none">• If a non-EEA branch was not previously required to have an individual approved to the Compliance Function, this will not change under the SMR.• However, if a non-EEA branch is not required to have an individual approved to SMF16, they must still ensure that the prescribed responsibility on compliance is allocated to an appropriate senior manager of the branch.
SMF2 – Chief Finance SMF4 – Chief Risk SMF5 – Head of Internal Audit	<ul style="list-style-type: none">• These only apply where a branch has dedicated individuals performing these functions.• However, the prescribed responsibilities framework for branches always requires a non-EEA branch to have an approved SMF who is responsible for risk management. If the branch does not have a CRO/SMF4, they must allocate this responsibility to another SMF, apart from SMF22.• The local responsibility requirements also require that, if a branch has finance/internal audit functions, they must also have an approved SMF with responsibility for these functions. These may be allocated to any SMF, including SMF22.

Other SMFs: EEA branches

SMF	Policy
SMF21 – EEA Branch Senior Manager	<ul style="list-style-type: none">• The EBSM function is based on the previous Significant Management (CF29) function for EEA branches, which is limited to individuals that are involved in particular regulatory activities:<ul style="list-style-type: none">• Accepting deposits• Designated investment business• Processing confirmations, payments, settlements, insurance claims, client money in relation to designated investment business• CASS (for EEA firms with a top up permission only)• The EBSM applies to individuals that have significant responsibility for a significant business unit that carry out any of these activities.• The EBSM is not limited to the most senior individuals – heads of sub-business units may also require approval as an EBSM if their business unit meets the ‘significance’ threshold.• Members of the governing body of the branch may require approval as an EBSM if they i) have significant responsibility for a significant business unit; and ii) do not perform a governing function in relation to the overall firm.

Allocating responsibilities – UK RAPs and non-EEA branches

Allocating senior management responsibilities in practice:

- Identify all entities in the group that are caught by the regime.
- Consider what activities, business areas or functions are performed by each entity and which Prescribed Responsibilities will be relevant to them.
- For each entity, identify those individuals that hold Senior Management Functions (1-17 for UK RAPs; and 2-22 for incoming branches, where applicable).
- From this list, allocate the relevant Prescribed Responsibilities.
- In addition, for each entity, identify any individuals that have overall **or local** responsibility for any other activities, functions or business areas.
- Record the allocation of responsibilities on individual Statements of Responsibilities and a summary of these in the responsibilities maps. It is the firm's responsibility to submit correct and clear documentation.

Management Responsibilities Maps

Will need to include (amongst other things):



*Does not apply to EEA branches

- We expect that smaller firms (i.e. those with gross total assets of £250 million or less), with less complex business models and governance arrangements will, in practice, have simpler responsibilities maps
- Example Responsibilities Maps for small firms were provided alongside our final rules (in CP15/22)

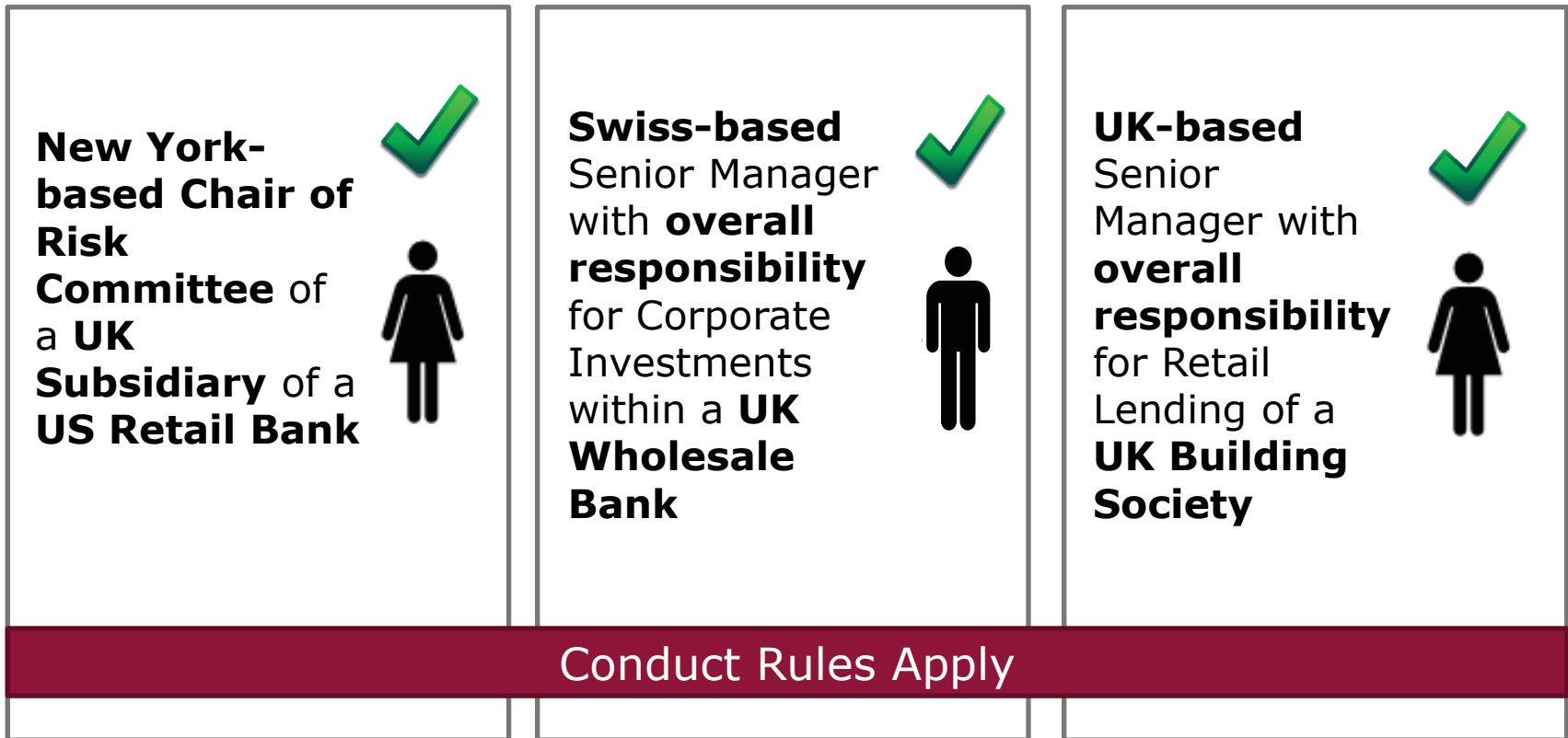
Management Responsibilities Maps – EEA Branches

- EEA branches will be required to provide and maintain a responsibilities map.
- However, some of the information required may overlap with information received as part of the 'Programme of Operations' (the 'passport information') provided when an EEA branch passports into the UK.
- Our rules seek to avoid duplication by only requiring EEA branches to provide:
 - Information which has changed since the passporting information was submitted, and has not been updated since; or
 - Additional information not included in the passporting information.
- Where information is omitted, EEA branches should provide details in the responsibilities map of where this information can be found.
- In practice, we will have regard to both the passporting information and the additional and updated information when considering the responsibilities map for EEA branches.
- We expect that firms may find it easier and more effective to combine any previous and updated information into a single document.

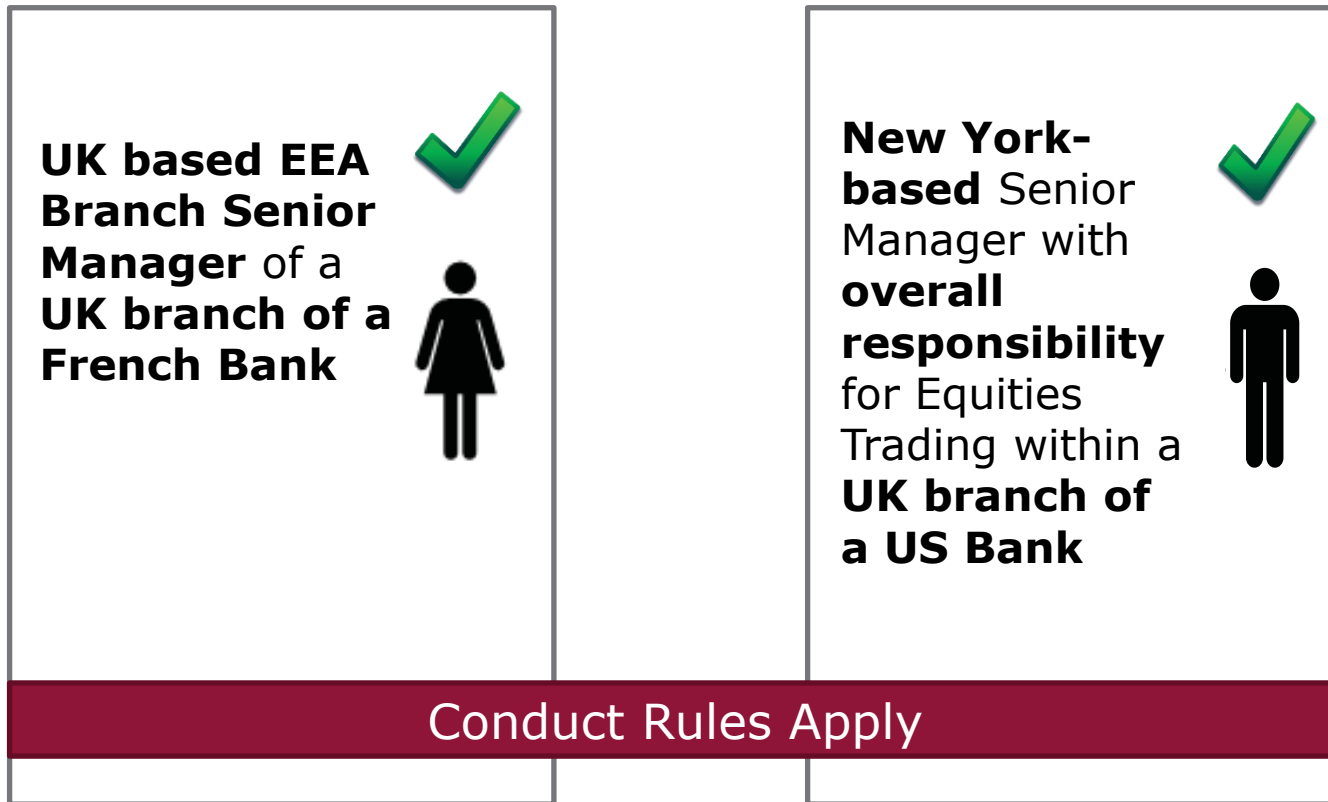
Territoriality

- There is no 'territorial limitation' for the Senior Managers Regime.
- Senior Managers are bound by the Conduct Rules regardless of whether or not they are located within the UK.
- UK firms must allocate overall responsibility to a Senior Manager for all activities (including non-regulated activities), business areas and management functions of the whole firm, including those carried out from a branch overseas.
- Non-EEA branches must allocate local responsibility to a Senior Manager for all activities (including non-regulated activities), business areas and management functions of the branch.

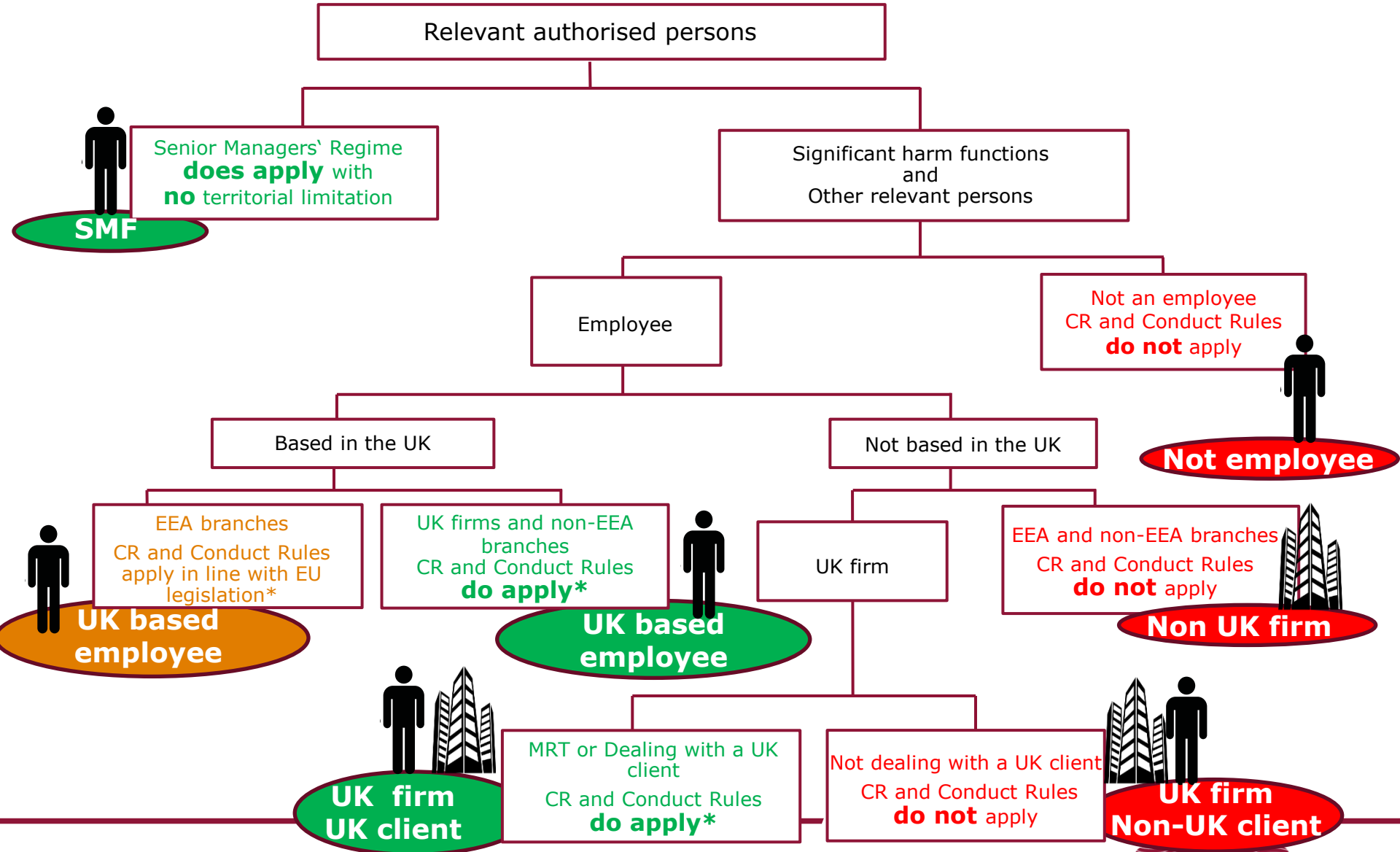
Territoriality – high-level, indicative examples for UK RAPs



Territoriality – high-level, indicative examples for incoming branches



Territoriality across the regime





Certification Regime and Conduct Rules: what do they mean for firms?



Certification Regime: Overview

- The Certification Regime requires firms to assess the fitness and propriety of employees in roles which could pose a risk of significant harm to the firm or any of its customers.
- It is the firm's responsibility to make individual certification decisions; however, the regulators may challenge the overall effectiveness of a firm's process.

Scope

- Material Risk Takers
- CASS Oversight*
- Benchmark Submission and Administration
- Significant Management
- Customer-facing roles with a required qualification
- Proprietary traders
- Line Managers of Certified People
- Client-dealing function** (with respect to wholesale activities)
- Algorithmic traders**

Features

- Annual Certification by firms
- Certification Regime overseen by a Senior Manager
- Regulatory references

*For **EEA branches**, the CASS significant harm function only applies to branches with a top up permission

**Transitional period applies – firms have until 7 Sept 2016 to identify staff for the client-dealing function and algorithmic trading functions and train these staff in respect of Conduct Rules

Certification Regime: Territorial Limitation

For **UK firms**:

Material Risk Takers

- **No 'territorial limitation'** – The Certification Regime applies to them wherever they are based

All other Certified Persons

- Are subject to the Certification Regime if they are **based in the UK or dealing with a client in the UK only**

For **EEA* and non-EEA branches**, the Certification Regime applies to individuals that are **based in the UK only**.

*For EEA branches, the Certification Regime applies in line with EU legislation

Conduct Rules

Rule		Applied by
First tier – Individual Conduct Rules		
CR1	You must act with integrity	FCA and PRA
CR2	You must act with due skill, care and diligence	FCA and PRA
CR3	You must be open and cooperative with the FCA, the PRA and other regulators .	FCA and PRA
CR4	You must pay due regard to the interests of customers and treat them fairly.	FCA Only
CR5	You must observe proper standards of market conduct .	FCA Only
Second tier – Senior Management Conduct Rules (Senior Managers Regime)		
SM1	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively	FCA and PRA
SM2	You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system	FCA and PRA
SM3	You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee this effectively	FCA and PRA
SM4	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice	FCA and PRA

Conduct Rules: Territorial Limitation

	UK firms	EEA* and non-EEA branches
Senior Managers	No territorial limitation – conduct rules apply wherever they are based	
Material Risk Takers	No territorial limitation – conduct rules apply wherever they are based	Applies to individuals if they are based in the UK only
Other Certified Persons	Applies to individuals that are based in the UK or dealing with a client in the UK only	Applies to individuals if they are based in the UK only
Other conduct rules staff	Applies to individuals that are based in the UK or dealing with a client in the UK only	Applies to individuals if they are based in the UK only

*For EEA branches, the Conduct Rules apply in line with EU legislation

Appendix

- Future publications Roadmap
- Useful information
- Summary of Senior Management Functions
- Prescribed Responsibilities – UK RAPs
- Prescribed Responsibilities – non-EEA branches

Future publications roadmap

Date	Publication / Legislation
Summer 2016	Final rules on regulatory references
Summer 2016	Consultation on Legal Functions and SMF18
Summer 2016	Consultation on the application of Conduct Rule Breaches to Approved NEDs
Summer 2016	Consultation on whistleblowing for branches

Note:

On 15/10/15, HMT announced that it has introduced legislation to Parliament which proposes to extend the SM&CR to all FSMA-authorized firms by 2018, thereby replacing the existing Approved Persons Regime.

Useful information

- Visit the FCA Website:
 - <http://www.fca.org.uk/firms/being-regulated/improving-individual-accountability>
- All queries should be referred to firms' supervisors or to the Contact Centre.

Summary of Senior Management Functions

SMF	PRA-designated functions*	SMF	FCA-designated functions
SMF 1	Chief Executive	SMF 3	Executive Director
SMF 2	Chief Finance	SMF 13	Chair of Nominations Committee
SMF 4	Chief Risk	SMF 16	Compliance Oversight
SMF 5	Head of Internal Audit	SMF 17	Money Laundering Reporting
SMF 6	Head of Key Business Area	SMF 18	Other Overall Responsibility
SMF 7	Group Entity Senior Manager	SMF19	Head of Overseas Branch
SMF 8	Credit Union SMF	SMF 21	EEA Branch Senior Manager
SMF 9	Chairman	SMF 22	Other Local Responsibility
SMF 10	Chair of Risk Committee		
SMF 11	Chair of Audit Committee		
SMF 12	Chair of Remuneration Committee		
SMF 14	Senior Independent Director		
SMF 19	Head of Overseas Branch		

*Applications for approval to PRA-designated functions will require consent from the FCA

Prescribed Responsibilities – UK RAPs

Ref	Applicable to all firms	FCA / PRA
a	Senior management regime	Shared
b	Employee certification regime	Shared
c	Responsibilities map	Shared
d	Financial crime	FCA
e	Allocation of all prescribed responsibilities	PRA

Ref	Applicable to specific types of firm	PRA / FCA
v	Proprietary trading activities	PRA
w	Risk management policies and procedures (if no Chief Risk function)	PRA
x	Internal audit function (if outsourced)	PRA
y	Ring-fencing requirements	PRA
z	CASS	FCA

Ref	Applicable to small firms only*	PRA / FCA
aa	Risk management policies and procedures	PRA
bb	Systems and controls	PRA
cc	Firm's financial resources.	PRA
dd	Legal and regulatory obligations	PRA

Key

PRA

FCA

Shared

Ref	Applicable to larger firms only	FCA / PRA	Allocate to a NED
f	Induction, training and professional development of all members of the firm's governing body	Shared	Yes
g	Induction, training and professional development of all persons other than members of the governing body	Shared	
h	Overseeing the adoption of the firm's culture	PRA	
i	Leading the development of the firm's culture	PRA	
j	Internal Audit	Shared	Yes
k	Compliance	Shared	Yes
l	Risk control	Shared	Yes
m	Remuneration Code	Shared	Yes
n	Whistleblowing	Shared	Yes
o	Capital, funding and liquidity	PRA	
p	Treasury management	PRA	
q	Financial information and its regulatory reporting	PRA	
r	Recovery plan and resolution pack	PRA	
s	Internal stress-tests	PRA	
t	Firm's business model	PRA	
u	Fitness & Propriety of notified NEDs	PRA	

*Small firms are firms with gross total assets of £250 million or less

Prescribed Responsibilities – Non-EEA Branches

Ref	Applicable to all firms	FCA / PRA
za	Senior management regime	Shared
zb	Employee certification regime	Shared
zc	Responsibilities map	Shared
zd	Risk Management	Shared
ze	Compliance	Shared
zf	Escalation of correspondence	Shared
zg	Financial crime	FCA
zi	Systems and Controls	PRA
zj	Allocation of all prescribed responsibilities	PRA
zk	Liquidity	PRA
zl	Financial information and its regulatory reporting	PRA

Key
PRA
FCA
Shared

Ref	Applicable to specific types of firm	PRA / FCA
zm	CASS	FCA

Note: Prescribed Responsibilities do not apply to EEA Branches