

SIF interviews at the FCA: A practical guide for non-SMCR firms

April 2019

1. Introduction

- 1.1. The Approved Persons Regime (APR) established under the Financial Services and Markets Act 2000 as amended (FSMA) seeks to ensure that only relevant individuals that work for relevant firms who are considered fit and proper by the FCA are appointed to carry out certain senior functions within such firms.
- 1.2. The APR applies to authorised firms which are not covered by the Senior Managers and Certification Regime (SMCR) (which currently applies to the banking and, from December 2018, insurance sectors). These firms, which are all authorised and regulated by the FCA, include investment firms (including stockbrokers, securities and futures firms, asset managers, and financial advisers), insurance and mortgage brokers, and consumer credit firms (FCA solo-regulated firms).
- 1.3. The FCA is responsible for approving and regulating approved persons in FCA solo-regulated firms. As part of this, it is responsible for applications for approval for FCA-designated controlled functions, including FCA SIF functions, at such firms. The PRA has stated that, where it has an interest in an FCA-designated function, it will inform the FCA that it is aware of an application on which it wishes to express a view.
- 1.4. Broadly speaking, the test for determining a candidate's fitness and propriety is threefold. It aims to assess:
 - honesty, integrity and reputation;
 - competence and capability; and
 - financial soundness.
- 1.5. Historically, the primary concern of the predecessor to the FCA (and PRA), the FSA, was to verify the honesty, integrity and reputation of candidates, and it tended to regard the competence and capability of key management figures as largely a matter for the firm concerned. However, over a number of years following the financial crisis of 2007-2009, the FSA began to focus more on competence and capability, and this resulted in a far more intrusive, hands-on approach to corporate governance. A key part of this change in priorities was the introduction of an in-depth interview into the process, to assess the competence and capability of some candidates seeking approval to carry out Significant Influence Functions (SIFs) at authorised firms (SIF interview).

- 1.6. The FCA (and PRA) has continued this approach since its inception and SIF interviews have become more common and more rigorous. The purpose of this briefing paper is to give prospective candidates for SIF positions at non-SMCR firms some guidance on what to expect and how best to prepare for these interviews. While the FCA is primarily responsible for the approval of prospective candidates at FCA solo-regulated firms, given the PRA's right to express a view in relation to these applications, we have included relevant PRA guidance in this briefing paper.
- 1.7. The SMCR will be extended to all FCA solo-regulated firms from December 2019. Further information on this is provided at sections 6 and 10 of this briefing paper. For information on the SMCR interviews process, please also see our separate briefing papers "SMCR interviews at the FCA and PRA: A practical guide for firms subject to the SMCR" .

2. When will a SIF interview be required?

- 2.1. The decision by the FCA as to whether to interview a SIF candidate is fundamentally risk-based. Although it will depend to some extent on the size, complexity and risk profile of the firm concerned, we would now generally expect the FCA to interview candidates applying for one or more of the following roles at a substantial FCA solo-regulated firms: chairman, chief executive, senior independent director, finance director/chief financial officer, risk director/chief risk officer, and chair of the firm's risk or audit committees. In addition, the FCA may interview candidates applying for: other executive director positions, chief compliance officer, money laundering reporting officer (MLRO), and the CASS oversight function.
- 2.2. The above list is not intended to be exhaustive. The FCA has discretion to interview any SIF candidate, and may do so even in relation to applications for SIF roles at firms with a medium or low risk profile if, for example, it has concerns about the candidate's fitness and propriety, or about the applicant firm itself. It is particularly likely that an interview will be arranged if a candidate has not previously been approved under the APR, or if they are seeking approval for a role of a type for which they have not previously been approved.
- 2.3. In certain circumstances, a separate meeting between the FCA and appropriate representatives from the applicant firm may also be required. For example, the chairman of the firm's nomination committee could be invited for a meeting to discuss the due diligence process the firm has undertaken in relation to a candidate in more detail.

3. SIF interviews: form and content

Process

- 3.1. The SIF interview is potentially a two stage process. The first interview is an unrecorded, but minuted, interview with the candidate, followed, if necessary, by a second, recorded interview. Each interview will take place at the offices of the FCA in London and can be expected to last for approximately 90 minutes.

- 3.2. One of the merits of the potential two stage interview process is that where the FCA has serious concerns about the suitability of a candidate, it can express those concerns after the first interview and invite the candidate to a second interview, as well as providing the candidate with an opportunity to withdraw from the process without being formally rejected.

Who should attend?

- 3.3. As a general rule, the FCA prefers to interview candidates alone. At the second interview stage, should this be required, candidates are advised that they may be accompanied by a lawyer. In this context, the candidate's lawyer is invited in the capacity of independent observer rather than as an adviser, and would not be expected to take an active role in the interview itself. While not standard practice, we have seen cases where, if a candidate wishes to be accompanied by a lawyer at the first interview stage, the FCA has indicated that it would not object, but it would require advance notice and would then also have its own legal representation present.

Who will conduct the interview?

- 3.4. In composing the interview panel, the FCA will draw upon a pool of advisers, senior advisers and external technical specialists as required. The FCA has made clear that a typical panel will include representatives from its relevant authorisations and supervision teams, a senior adviser and possibly a technical specialist. The exact composition of the panel will vary according to the candidate, the firm and the nature of the prospective role. The FCA works to ensure that SIF interviews are conducted by suitably experienced interviewers and that interview panels have the correct balance of individuals and avoid any actual or perceived conflicts of interest.

What will be discussed?

- 3.5. The FCA will aim to explore a range of issues in SIF interviews, including but not limited to:
- (A) the general responsibilities of approved persons;
 - (B) the candidate's understanding of the SIF role that he or she has been asked to perform and, consequently, his or her responsibilities;
 - (C) the knowledge, skills and experience that the candidate will bring to the role;
 - (D) the candidate's view of the main risks facing the relevant firm and the role that he or she will play in managing them; and
 - (E) the regulator's expectations of the candidate in performing the SIF role.

- 3.6. The FCA aims to focus on the following key competencies for SIF roles:
- (A) **Market knowledge:** whether the candidate has awareness and understanding of the wider business, economic and market environment in which the relevant firm operates.
 - (B) **Business strategy and business model:** whether the candidate has a level of awareness and understanding of the firm's business strategy and business model appropriate to his or her proposed role.
 - (C) **Risk management and control:** the candidate should be able to identify, assess, monitor, control and mitigate risks to the firm. An awareness and understanding of the main risks facing the firm and the role that the candidate will play in mitigating them is very important.
 - (D) **Financial analysis and control:** whether the candidate has the ability to interpret the firm's financial information, to identify key issues based on this information and to put in place appropriate controls and measures.
 - (E) **Governance, oversight and controls:** the candidate should be able to assess the effectiveness of the firm's arrangements to deliver effective governance, oversight and controls in its business and, if necessary, to oversee changes in these areas.
 - (F) **Regulatory framework and requirements:** the candidate needs to have awareness and understanding of the regulatory framework in which the firm operates and the regulatory requirements and expectations relevant to the SIF role which the candidate is seeking to carry out.
- 3.7. The FCA has adopted the FSA's stated policy that it would not seek to apply a "one size fits all" approach to its assessment of candidates and that it would not assess the competence of each candidate against all of the criteria listed above. Some of these criteria are likely to be far more relevant than others for certain SIF candidates.
- 3.8. The firm will, however, be expected to have considered all of these criteria in the context of the overall governance of the firm when the firm assesses the candidate as suitable for the relevant SIF role. For example, if a candidate for a director position lacks knowledge of a particular area of the firm's business then it will generally be expected that there will be appropriate knowledge of that area amongst other members of the board (and that the candidate will improve his or her knowledge of that area).
- 3.9. The FCA is keenly focused on the effectiveness of firms' due diligence of candidates and expects firms to be able to demonstrate that they have a robust recruitment process in place. A non-exhaustive list of supporting materials that should be provided with each application is available on the FCA website. We can provide further guidance on the due diligence expected to be undertaken by the firm on the candidate on request.

4. Which topics should be prioritised?

- 4.1. Clearly, the questions that will be put to candidates in SIF interviews will depend to a large extent upon the facts of each application. However, it is possible to draw some general conclusions about which of the criteria listed above the FCA will prioritise when assessing candidates for each of the various SIF positions.
- 4.2. Candidates for executive director positions can expect to undergo the most intensive interview experience. The FCA will seek to assess such candidates against most, if not all, of the key competencies listed above, and such candidates will be expected to have a detailed knowledge of the business of the firm, the markets in which it operates and the key risks arising from the firm's business model.
- 4.3. Candidates for NED positions can also expect to face searching questions, in particular concerning the scope and responsibilities of their prospective role, their understanding of the regulatory framework, and, importantly, their ability and willingness to challenge, hold to account, and second-guess executives. The PRA expects to see a culture within firms which promotes discussion, debate, and challenge, with chairpersons taking a pivotal role in facilitating that culture. It may ask candidates for NED positions to describe how they intend to contribute to that facilitation, and how they will discharge their responsibilities as a committee chair.
- 4.4. The PRA has stated that constructive challenge of the decisions and performance of the executives by NEDs improves the overall exercise of good judgement by the board. Of particular importance is scrutiny by NEDs of the firm's strategy, including the viability and sustainability of the firm's business model and the appropriateness of the firm's risk appetite and management framework.
- 4.5. The PRA has previously acknowledged that, following the financial crisis, some NED SIF interviews over-emphasised the need for detailed technical knowledge, indicating that it does not regard this as an absolute prerequisite for all NED candidates. It has made clear, however, that all boards should include a sufficient number and quality of NEDs who, between them, understand the firm's business with sufficient depth to provide effective challenge to the executives. More specifically, NEDs, collectively, need to have sufficient current and relevant knowledge and experience, including market knowledge and sector experience, to understand the key activities and risks involved in the firm's business model, and provide effective challenge across all major business lines of the firm. Firms should be prepared to explain to the FCA the particular skills and experiences they envisage a new NED bringing to the board so that the individual can be assessed in that context.
- 4.6. The FCA (and PRA) also considers that a structured induction and training plan for new NEDs, which takes account of their skills, experiences and any gaps therein, could be key to them quickly understanding the nature and risks of the business and becoming effective contributors to the board. Candidates should be able to demonstrate that such a plan is in place.

5. The tenor of the interview

- 5.1. We have received a wide variety of reports of SIF interviews, with some candidates indicating that their interviews have run smoothly and others reporting more challenging experiences. The depth of questioning has sometimes been greater than expected and candidates for both executive and NED positions who have not had prior experience of key aspects of the firm's business have reported particularly challenging, and at times, stressful, experiences.
- 5.2. The nature and depth of questioning will, of course, depend on the nature of the particular role for which the candidate is being interviewed and the approach of the individuals conducting the interview. While the interview process for senior functions under the SMCR (Senior Management Functions - SMFs) has become more detailed, precise and in-depth, particularly given the introduction of SMF statements of responsibilities (which set out the SMF role and its responsibilities), prescribed responsibilities (which must be allocated across the SMF population) and firmwide responsibilities maps (which set out the firm's governance structure and the allocation of SMF responsibility across the firm's business), we have not received reports of the same in relation to SIF interviews under the APR process.
- 5.3. Furthermore, as the regulators intended, while we have seen an increase in the proportion of prospective SMF candidates interviewed within particular firms, we have not seen a similar trend in relation to SIF interviews within FCA solo-regulated firms.
- 5.4. That said, given the ongoing reports from some SIF candidates of challenging interview experiences and, in any event, as a matter of good practice, candidates should ensure they spend an appropriate amount of time and care preparing for their interviews, so they are in the best position possible to respond effectively to the FCA's questions.
- 5.5. Section 6 below contains some key "dos and don'ts" for candidates for director positions to bear in mind in relation to SIF interviews. We have indicated those points that are likely to be of relevance both to executives and non-executives with the code "E/NED", those points that are likely to be of most relevance to executives with "E" and those points that are likely to be of most relevance to non-executives with "NED". We should stress, however, that the degree of importance that each of the listed points will have in relation to any particular candidate will depend on the nature of his or her proposed role. Where we have stated that a point is relevant both to executive directors and NEDs, the range and depth of questions that candidates for executive directorships may be asked on the point are, as noted above, likely to be significantly greater than are likely to be experienced by candidates for NED positions.
- 5.6. Sections 7 and 8 below contain specific guidance on the additional issues that the FCA can be expected to cover in SIF interviews relating to: (i) the significant management function (CF 29), and (ii) the compliance oversight and/or MLRO functions.

6. Dos and don'ts

Dos

✓ Business model, strategy and plan of the firm (E/NED)

Ensure that you have studied and are familiar with the existing or proposed business model, strategy, and plan of the firm, including:

- the types of business that the firm carries on and/or will be carrying on;
- the geographical locations of the firm's branches and customers; and
- any major developments in terms of growth, new products or markets, or regulatory change.

✓ Risks (E/NED)

Ensure that you are aware of the firm's existing or proposed risk appetite statement and its risk management and control framework, including how the risk appetite is used by the board to monitor the key risks to the business and to inform key business decisions.

Ensure that you understand and can articulate the principal actual and prospective risks to the firm's business, including: strategic and operational risks; credit, interest rate, and liquidity risks; market and concentration risks; and conduct risk, including retail conduct risk if applicable.

Ensure that you are familiar with the proposed or existing recovery and resolution planning in place for the business.

Consider and be prepared to discuss the business' main challenges, how you understand these are being, or proposed to be, addressed by the board, and your view of the business' overall outlook.

It would be helpful to review the PRA's supervisory statement published in March 2016 on corporate governance and board responsibilities (SS5/16) and, in particular, its expectations on a firm's risk appetite, its risk management and control framework, and the board's active oversight of actual and prospective risks.

The FSA's December 2011 NED guidance on the fair treatment of customers (GC11/30) still remains relevant and candidates should be aware of the regulator's expectations set out in it on firms' management of retail conduct risk.

See also "Regulatory expectations in relation to the firm's culture" below.

✓ Appropriateness of the firm's business model, strategy and plan, and risk appetite (E)

Be prepared to explain and justify the firm's existing or proposed business model, strategy and plan, and its stated or proposed risk appetite statement, in particular:

- the viability and sustainability of the business model;
- the clarity and appropriateness of the risk appetite statement and how it supports the business strategy; and

- the effectiveness and appropriateness of the firm’s risk management and control framework and how it is aligned with the firm’s risk appetite statement.

See also “Regulatory expectations in relation to the firm’s culture” below.

✓ **Governance and ownership structure of the firm (E/NED)**

Ensure that you are familiar with the governance and ownership structure of the firm where that is settled, including:

- the composition of the board of directors and committees of the board;
- principal non-board executives and their reporting lines;
- the principal functions of the firm and who is to lead each of these; and
- the shareholding structure of the firm and the identity of key shareholders or, if the firm is a subsidiary, where the firm fits into the structure of the group of which it forms a part.

✓ **Regulatory regime applying to the firm (E/NED)**

Ensure that you are familiar with the principal elements of the regulatory regime, and the regulators’ requirements and expectations, applying to the firm, including:

- the activities that the FCA and, if relevant, the PRA, regulates, and the regulators’ requirements and expectations in relation to those activities;
- the UK corporate governance requirements; and
- the FCA’s approach to supervision publication (April 2019).

✓ **Regulatory expectations in relation to the firm’s culture (E/NED)**

The regulators have become increasingly focused on firms’ culture and its central role in achieving good customer outcomes, reducing the risk of regulatory misconduct, maintaining wider market integrity and continuing to build public trust in the financial services industry following the financial crisis.

They have made it clear that firms should have, and be able to demonstrate, a culture that encompasses risk awareness and management, accountability and responsibility, ethical behaviours and values, and diversity and openness. It should be “owned”, developed and led from the “top down” and embedded across the firm’s business.

While the SMCR and SMF individuals (Senior Managers) are central to this culture, with the regime’s aim to enhance individual accountability and raise conduct standards at all levels and Senior Managers being expected to demonstrate full responsibility and accountability for clearly defined business activities and any risks arising in relation to them, it is reasonable to expect that the FCA will want to see SIF individuals within FCA solo-regulated firms playing their part in developing and instilling the firm’s culture across the business.

In light of this, do ensure you are aware, and can demonstrate your understanding, of the regulators’ expectations in relation to the firm’s culture. Be prepared to discuss the existing, or proposed, culture,

values and behaviour of the firm, how this is, or would be, developed and embedded across the firm, and how you would contribute to it through your SIF role.

✓ **The nature and scope of your SIF role (E/NED)**

It is of course critical that you can articulate to the interviewers precisely the nature and scope of the role for which you are applying, including, in particular, in the case of an executive role, the extent of your functional/divisional responsibilities and reporting lines and, in the case of a NED position, the scope of any additional specific oversight responsibilities you will assume.

Applications for SIF positions within FCA solo-regulated firms will continue to be processed under the APR until the commencement of the SMCR. Certain SIF positions will be “mapped over” to equivalent SMFs (Senior Management Functions) under the SMCR (see further at section 10 below). As a result, it would be sensible for candidates of such SIF positions to be able to demonstrate their understanding of the SMF role requirements should the FCA raise any questions on these in the interview.

In light of this, be prepared to demonstrate your understanding of the key SMF requirements, including regulatory pre-approval, the statutory duty of responsibility (to take reasonable steps to prevent regulatory contravention in the business area for which the SMF is responsible) and the application of a number of conduct standards. Also the SMF statement of responsibilities (which sets out the SMF role and its responsibilities), the SMF prescribed responsibilities (which core and enhanced firms are required to allocate across their SMF populations) and the firmwide responsibilities map (which enhanced firms must produce and which sets out the firm’s governance structure and allocation of SMF responsibility across the firm).

✓ **Regulatory regime applying to the SIF role (E/NED)**

Ensure that you understand the duties of the relevant SIF function for which you are seeking approval under the relevant FCA rules. Furthermore, given that the SIF function may be “mapped over” to an equivalent SMF under the SMCR (see further under “The nature and scope of your SIF role” above), it would be sensible to be able to demonstrate your understanding of the SMCR framework, its intention and purpose to strengthen individual accountability, and how it will apply to the firm as a whole and form part of the regulators’ expectations in relation to the firm’s culture (see “Regulatory expectations in relation to the firm’s culture” above).

It would be sensible to review key publications on these areas in advance of the interview, including:

- FCA Business Plan 2019-209 (in particular, FCA’s priorities on firms’ culture and governance (chapter 5);
- PRA supervisory statement 5/16 on Corporate Governance and Board Responsibilities (updated July 2018);
- for an understanding of the SMCR and key developments in relation to it: PRA’s supervisory statements 28/15 and 35/15 respectively (both updated July 2018); FCA’s Guide for insurers on the extension of the SMCR (updated February 2019); and the FCA discussion paper 16/4 and consultation paper 19/4 on the proposed status of firm’s legal function under the SMCR (September 2016 and January 2019 respectively); and

- On the extension of the SMCR to FCA solo-regulated firms, the FCA's policy statement 18/14, Guide for FCA solo-regulated firms, policy statement 18/16 on the duty of responsibility (all July 2018) and its guidance FG19/2 on statements of responsibilities and responsibilities maps (March 2019).

All FCA and PRA publications can be found at www.fca.org.uk and www.bankofengland.co.uk/pr respectively.

✓ **Your regulatory understanding and experience (E/NED)**

Where you do not have prior experience of working in businesses of the types to be carried on by the firm, be prepared to explain what steps you have taken to ensure that you understand the regulatory regime within which such businesses operate.

✓ **Regulatory priorities and concerns for the relevant industry sector (E/NED)**

Ensure that you are aware of the current policy priorities and concerns in regulating the industry sector in which businesses of the type carried on by the firm operate. These are documented in various publications available from the FCA website (www.fca.org.uk), including the FCA's business plan 2019-20, and from the Bank of England's Financial Stability Reports, which are available from the Bank's website (www.bankofengland.co.uk).

✓ **Regulatory priorities and concerns for the firm (E/NED)**

Ensure you have read and are familiar with the regulator's latest supervisory risk assessment letter to the firm, and any other topics which are the subject of supervisory concern or attention.

✓ **Board decision-making (E/NED)**

Think carefully in advance of the interview about how you envisage the board taking decisions and how you intend to contribute to that process effectively.

✓ **Qualifications in the general sense (E/NED)**

Decide in advance of the interview how, in general terms, you will articulate your suitability for the role, in terms of your qualifications, experience and leadership qualities.

Candidates will be expected to have given thought to their own needs in terms of training and development, particularly those candidates applying for roles for which they have relatively little obviously relevant experience.

NEDs should consider how their skills and experience will complement those of the executives and other board members, and in particular, contribute to the development of the firm's strategy, culture and risk management framework.

✓ **Motivation (E/NED)**

Be prepared to explain your motivations for applying to carry out the relevant SIF function, including (where relevant) the due diligence you undertook in relation to the firm and the position before you accepted the role, and your capacity to perform the role in view of other commitments you may have.

✓ **Time commitments (NED)**

Be prepared to demonstrate that you have given due consideration to, and are able to meet, the level of time commitment that will be required for the role. In particular, be prepared to give an account of your other roles and professional activities, including other non-executive directorships, and to demonstrate that these will not interfere with your ability to perform your duties effectively.

✓ **Leadership qualities (E/NED)**

Be prepared to explain why you believe that you have sufficient leadership qualities to take on the relevant SIF function, both by reference to your past experience and your personal qualities. This will be particularly important in respect of an application for the role of an executive director, chairman of the board or chair of a key board committee (e.g. the audit committee). The regulator expects candidates for these roles to be:

- highly authoritative;
- in the case of a NED, capable of challenging the executive effectively; and
- in the case of a chief executive or chair of the board, capable of marshalling the diverse skills and contributions of other board or committee members.

✓ **Holding executives to account (NED)**

The FCA (and PRA) has made it clear that a fundamental role for NEDs is the effective challenge of the performance and decisions of the executives and holding them to account on the areas and matters for which they are responsible, while also supporting their leadership of the business.

Be prepared to explain in detail:

- how you will effectively and constructively hold executives to account on:
 - the performance and decisions of individual executives;
 - the firm's proposed or existing business strategy;
 - the viability and sustainability of the firm's proposed or existing business model;
 - the effectiveness of the firm's proposed or existing risk management framework; and
 - the firm's culture, values, and behaviour and how these elements are being developed and instilled across the business;
- how you will ensure that you understand the risks to which the firm is exposed as its business develops and the quantitative and qualitative aspects of those risks;

- how you will go about ensuring you are given adequate information to make judgements and questioning and clarifying financial information and other data which executives may present to you by, for example:
 - questioning the assumptions on which that information or other data is based;
 - understanding the processes that have been applied to prepare the information or other data; and
 - understanding the uncertainties that may be embedded in the information or other data; and
- what steps you will take if you find yourself in fundamental disagreement with the chief executive (or another executive director) on a course of action.

Don'ts

X Difficult questioning (E/NED)

To some candidates, the regulator's questioning may sound a little brusque at times. Do not respond aggressively, however inappropriate you feel the line of questioning to be.

X Ill-informed interviewers (E/NED)

If you find that the interviewers are not as familiar as you would like with the proposed strategy of the firm, do not patronise them, however irritating it may be that they have not done their homework.

X Your experience (E/NED)

The interviewers may ask you questions about the quality and/or quantity of your experience, even where your experience in the sectors in which the firm will operate is very considerable. Do not be offended, as even where your experience is self-evident the regulator may nevertheless wish to go through the process of testing it. In addition, do not take the view that significant past experience is a substitute for reviewing relevant regulatory background materials (on which see above) and revising your knowledge of the regulatory system to which the relevant firm is subject.

X Your authority (E/NED)

If your role will involve senior executive responsibilities, or chairing the board or a committee of the board, you may be asked whether you feel you have the authority to carry out this role effectively. Again, this line of questioning should not be regarded as offensive, however inappropriate you feel it to be: it is among the points that the FCA and PRA tend to test as a matter of routine in these cases.

X Disagreements (E/NED)

The interviewers may disagree with or challenge some of the remarks that you make in the interview. Do not be offended by this and remember that they might be doing this simply to see how well you stand your ground and can make a case that you are right.

7. Candidates for significant management (CF29) positions

7.1. For candidates for CF29 positions, the points listed above relating to executive director candidates are relevant, except to the extent that they relate to the functioning of the board of directors and board level decision-making. CF29 candidates are expected to have particular knowledge of:

- the business division or area in which they propose to work;
- the way in which that business division or area operates within the overall business of the relevant firm;
- their reporting lines, both as to authority and information flows, within the firm; and
- the staff who will report to the candidate (either by name or description) in the management structure and the extent to which the candidate will delegate tasks to those staff.

Where the candidate expects to be a member of, or to participate in discussions of, a board or management committee, the regulator may ask for details of how the candidate expects meetings of the relevant committee to be run and what, if any, decisions the committee will be making.

8. Candidates for compliance oversight and MLRO positions

8.1. Candidates for compliance and/or MLRO positions need to be able to demonstrate to the FCA that they:

- have a sound and proactive grasp of the regulatory issues facing the firm's business;
- can discuss those issues openly with the regulator and that they are used to fostering an environment in which problems are disclosed to and discussed with the regulator where that is appropriate;
- are aware of regulatory priorities for the sector in which the firm operates; and
- have sufficient force of personality and experience of dealing with senior executives not to be dominated by executives to the detriment of compliance and good risk analysis.

8.2. While it will be important to demonstrate a good grasp of the applicable rules, these candidates also need to be able to demonstrate, at a general level, a capacity to move beyond the minutiae of day-to-day compliance to engage with strategic issues facing the firm and to address such questions as:

- Has the firm’s risk appetite been agreed and stated? Is it being used to monitor and control key risks and inform key business decisions?
- What compliance risks are inherent in the firm’s business plan? How can these be mitigated?
- What management and compliance resources will be required to ensure that these mitigating actions are as successful as possible? Are those resources available?
- Has the candidate discussed the firm’s business plan with the firm’s executives (or prospective executives) from a regulatory/compliance perspective? (The candidate should, of course, have done so.)

8.3. In relation to the MLRO position, candidates would be well advised to attend the interview equipped with one or two generic examples of situations in which they would expect a report to the FCA and/or the National Crime Agency to be made in a business environment similar to that of the relevant firm (without, of course, disclosing details of names, dates or other features sufficient to identify any past cases). It is also sensible for such candidates to have thought in advance about what steps they are going to take to ensure that:

- the need to make such reports is well understood and acted upon in the business of the firm; and
- so far as possible, staff speak to the MLRO accordingly as soon as the “reasonable suspicion” test has been satisfied concerning a particular person or transaction, if not before that threshold is reached.

9. After the interview

9.1. Having reviewed the content of the information provided both by the firm and the candidate, after the interview(s) the FCA will make a decision on whether to grant approval to the candidate. As stated under “Introduction” above, where the PRA has an interest in an FCA-designated function, it will inform the FCA that it is aware of an application on which it wishes to express a view. If the FCA proposes to refuse the application it will begin by discussing its concerns with the firm and the individual concerned, thereby providing an opportunity to modify or withdraw the application.

9.2. If an applicant is not minded to modify or withdraw its application at this stage then there are two levels to the appeal process. The process can be initiated by referring the matter to the FCA’s Regulatory Decisions Committee (RDC) for consideration. If the RDC does not decide in favour of the applicant, the matter can be escalated to the Upper Tribunal, which is an independent tribunal that, amongst other things, hears appeals against FCA approval decisions.

- 9.3. A detailed examination of the appeals process is beyond the scope of this briefing paper, and it is to be hoped that by following the guidance outlined above candidates will not reach a point where they have to consider whether to engage with that process. However, we can provide information and guidance on the appeals process on request.

10. Future developments

SMCR extension

- 10.1. The Bank of England and Financial Services Act 2016 provides for the SMCR (currently applying to the banking and insurance sectors) to be extended to all FCA solo-regulated firms and the extension will take effect in December 2019. The FCA published final rules and a Guide for FCA solo-regulated firms in July 2018 and many firms will have begun the implementation process within their organisations.
- 10.2. As many firms will be aware, the FCA's consultation proposals make clear that the extended SMCR will be applied to FCA solo-regulated firms in a proportionate way to reflect the diverse business models across the financial services sector: a "core" regime for the vast majority of firms; an "enhanced" regime for the largest and most complex firms (the FCA estimates 350 of the total number of 47,000 FCA solo-regulated firms will fall into this category); and a more limited application of the regime for a number of smaller "limited scope" firms (those currently subject to a limited application of the APR).
- 10.3. Each type of firm will be required to have relevant SMFs, statements of responsibilities for each SMF and, for core and enhanced firms, prescribed responsibilities allocated across the SMF population. Each SMF will be subject to regulatory pre-approval, the statutory duty of responsibility (to take reasonable steps to prevent regulatory contravention in their area of responsibility) and a number of conduct standards. The number of SMFs required within a particular firm will depend on its category, with enhanced firms required to have the greatest number (similar to the number required in banking and insurance firms) and limited scope firms the smallest number. Enhanced firms will also be required to produce responsibilities maps (setting out the firm's governance structure and allocation of SMF responsibility across the business) and implement adequate SMF handover procedures, just as banking and insurance firms are required to do now under the regime.

Impact on regulatory approvals process

- 10.4. Based on the experiences of firms currently subject to the SMCR, FCA solo-regulated firms can expect applications for approval under the SMCR to be subject to greater scrutiny and assessed in more granular detail. This is particularly likely in light of the required statements of responsibilities, prescribed responsibilities (in core and enhanced firms) and firmwide responsibilities maps (in enhanced firms), as well as the legal requirement on firms to undertake greater due diligence on candidates' fitness and propriety.

- 10.5. It is also likely that the FCA will interview a higher percentage of candidates than under the APR, as the regulators indicated they would do, and have been doing, under the SMCR, and that interviews for certain roles (as set out under “When will a SIF interview be required?” above) will take place, as they have been doing under the SMCR.

Transitional arrangements

- 10.6. The APR SIF approvals process, including the SIF interview, will continue up to the point of the SMCR extension commencement and will continue to be subject to the APR process and requirements. Applications which are “in flight” at the point of the SMCR extension commencement will also be subject to the APR, rather than the SMCR, process. SIF positions which “map over” to equivalent SMF positions under the SMCR will be converted without the need for a fresh approval, and therefore interview, process. Some SIF positions (for example, non-executive directors not taking up SMF roles) will not be SMF positions under the SMCR and, as a result, their approval will lapse at the point of the regime’s commencement. New SMF candidates or current SIF approved persons taking up other SMF roles will need to apply for approval under the SMCR process, which will or may include an SMF interview depending on the particular role being applied for.

Interview preparation

- 10.7. Candidates for SIF positions for which regulatory approval is being sought prior to the SMCR extension should ensure they are aware and understand the regime’s extension, how it will apply to the firm and the transitional arrangements that will apply to their SIF position specifically (the FCA’s Guide referred to in this section and in section 6 above is particularly useful in this regard).

If you would like to discuss the issues raised in this briefing paper, or any other financial regulatory matter, please do contact one of us or your usual Slaughter and May contact:



Jan Putnis

T +44 (0)20 7090 3211

E jan.putnis@slaughterandmay.com

Ben Kingsley

T +44 (0)20 7090 3169

E ben.kingsley@slaughterandmay.com

Nick Bonsall

T +44 (0)20 7090 4276

E nick.bonsall@slaughterandmay.com

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