

THE SENIOR MANAGERS & CERTIFICATION REGIME (“SMCR”)

SMCR RISK FOR ASSET MANAGERS

WHAT IS SMCR?

From **9 December 2019**, the SMCR will replace the FCA’s Approved Persons regime for asset managers.

The SMCR consists of four new regimes:

▶ Senior Managers Regime (“**SMR**”), applicable to senior function holders (such as CEO, Executive Directors, Compliance Officers and Partners).

▶ Certification Regime (“**CR**”), applicable to certain function holders not falling within SMR (who are likely Approved Persons under the current regime, or supervise individuals who are).

▶ SMCR Conduct Rules, applicable to all employees of a firm (save for “ancillary functions”, such as cleaners or receptionists).

▶ Regulatory Reference Regime, requiring firms to provide regulatory references in respect of current or former employees’ fitness and propriety to hold SMR or CR functions elsewhere.

WHAT DOES SMCR MEAN FOR ASSET MANAGERS?

The SMCR aims to hold senior managers within an asset management firm **personally responsible** for regulatory failings. It shifts the regulatory oversight burden from the FCA to firms in a number of ways, including introducing:

- A new requirement for preparation of either a ‘*Statement of Responsibilities*’ or (for larger firms) a ‘*Responsibilities Map*’ demonstrating where **personal responsibility** for particular regulatory obligations lies;
- A new “*Duty of Responsibility*” to the FCA for senior managers, breach of which leads to **personal accountability** to the FCA;
- A requirement that a Certified Function holder’s fitness and propriety to perform their role to be assessed by firms at least **annually**;
- The new SMCR Conduct Rules, applicable to **all employees** within a firm (save for “ancillary functions” such as receptionists), breach of which results in **personal culpability**. These include broad requirements to, for example, “*act with integrity*” or “*with due skill, care and diligence*”.

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WHAT ARE THE RISKS TO ASSET MANAGERS?

The greatest risk to an asset management firm arising from the SMCR regime is one of **personal exposure** of its directors, officers and employees to regulatory intervention for a breach of the SMCR's new provisions.

That personal exposure might arise from:

- ▶ An exposure to significant legal and professional fees responding to informal requests for documents or interviews by the FCA (sometimes known as "*Pre-Investigation Costs*");
- ▶ Significant legal and professional fees incurred in participating in any formal investigation commenced by the FCA into breaches of the SMCR's new requirements (often referred to as "*Investigation Costs*");
- ▶ The need for representation in any *internal investigation* commenced by a firm at the behest of the FCA following discovery of a potential breach of SMCR obligations (a "*Self-Reporting Process*"); and
- ▶ The risk of heavy FCA fines and penalties associated with any breach of the SMCR's new provisions.

ASSURED PARTNERS' APPROACH TO SMCR RISK

The FCA's strengthened focus on **personal accountability** highlights the need for asset managers to ensure that **all employees** are protected from the significant costs associated with personal regulatory risk under the SMCR. Assured Partners' D&O product provides:

- **All employees** who are subject to the SMCR with cover for legal and professional fees whether those employees are Senior Managers, Certified Persons or other employees subject to the new, broad SMCR Conduct Rules.
- **"Cradle to Grave" regulatory cover:** Full-limits cover is available for legal and professional costs from early, informal engagement with the FCA right through to full representation in any formal investigation into breaches of the SMCR's provisions.
- **Cover for costs incurred in Self-Reporting Events:** Full-limits cover for legal and professional fees incurred by any employee attending an internal investigation performed at the behest of the FCA for suspected breaches of SMCR obligations.
- **Access to Specialist Advice:** Access to specialist claims advice and a panel of trusted legal specialists in the event cover under the policy is required by an asset manager's senior managers or employees in relation to SMCR conduct risk.

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