

Policy Statement | PS12/17

# Strengthening individual accountability in banking and insurance: amendments and optimisations

May 2017



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY





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## 1 Overview

1.1 This Prudential Regulation Authority (PRA) Policy Statement (PS) provides feedback to responses to Consultation Paper (CP) 34/16 ‘Strengthening individual accountability in banking and insurance: amendments and optimisations’.<sup>1</sup> It also provides:

- the final rules amending the Senior Managers and Certification Regime (SM&CR) (Appendix 1) and Senior Insurance Managers Regime (SIMR) (Appendix 2);
- updates to Supervisory Statement (SS) 28/15 ‘Strengthening individual accountability in banking’ (Appendix 3) and SS35/15 ‘Strengthening individual accountability in insurance’ (Appendix 4); and
- the PRA Statement of Policy (SoP) ‘Conditions, time limits and variations of approval’ (Appendix 5).

1.2 The final rules also insert the links to Forms B, C, and D, into Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications 7, and Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications 7. The links were omitted in error when those Parts were published in PS26/15 ‘The prudential regime, and implementation of the Senior Insurance Managers Regime, for non-Solvency II firms’.

1.3 The changes to SS28/15 include updates to references to ‘MiFID II’ as set out in Policy Statement 9/17 Implementation of MiFID II: Part 2 (PS9/17).<sup>2</sup>

1.4 This PS is relevant to all PRA-regulated firms. However, at the time of publication, certain chapters or sections thereof may only be relevant to either:

- banks, building societies, credit unions and PRA-designated investment firms (collectively referred to as Relevant Authorised Persons (‘RAPs’); and/or
- Solvency II firms, the Society of Lloyd’s, managing agents; third country branch undertakings and Insurance Special Purpose Vehicles (ISPVs), large non-directive firms (NDFs)<sup>3</sup> and/or small NDFs (collectively referred to as ‘insurers’).<sup>4</sup>

### Responses to CP34/16

1.5 Before making any proposed rules or establishing its general policies and practices, the PRA is required by the Financial Services and Markets Act 2000 (FSMA) to have regard to any representations made to it, and to publish an account, in general terms, of those representations and its response to them.

1.6 The PRA received sixteen responses to CP34/16:

- Chapter 2 of this PS summarises feedback on the proposals for implementing the amendments to the SM&CR and SIMR in the Bank of England and Financial Services Act 2016 (BoE Act)<sup>5</sup> and the PRA’s final policy.

1 September 2016: [www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp3416.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp3416.aspx).

2 April 2017: [www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps917.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps917.aspx).

3 [www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/77326/22-03-2017](http://www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/77326/22-03-2017).

4 [www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/77374/22-03-2017](http://www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/77374/22-03-2017).

5 [www.legislation.gov.uk/ukpga/2016/14/part/2/crossheading/conduct-of-persons-working-in-financial-services-sector/enacted](http://www.legislation.gov.uk/ukpga/2016/14/part/2/crossheading/conduct-of-persons-working-in-financial-services-sector/enacted).

- Chapter 3 of this PS summarises feedback on the proposed optimisations to the SM&CR and the PRA's final policy.
- Chapter 4 of this PS summarises feedback on the PRA's proposed optimisations to SIMR and the PRA's final policy.
- Chapter 5 sets out the various timelines for implementing the rules and expectations in this PS.

### **Statutory obligations**

1.7 Where the final rules differ from the draft in the CP in a way which is, in the opinion of the PRA, significant, FSMA<sup>6</sup> requires the PRA to publish:

- details of the difference (and the PRA's response to representations made to it regarding those changes) together with a cost benefit analysis; and
- a statement setting out in the PRA's opinion whether or not the impact of the rule on mutuals is significantly different to that for other PRA authorised firms.

1.8 The final rules relating to the implementation of the amendments to the SM&CR and SIMR in the BoE Act do not differ significantly from those proposed in CP34/16. Most respondents supported the relevant proposals in CP34/16 and relevant feedback has been addressed via clarifications in SS28/15.

1.9 In response to consultation feedback, the PRA has made modifications to the final rules relating to the optimisations to the SM&CR proposed in CP34/16. For instance:

- the draft definition of the new Chief Operations Senior Management Function (SMF) has been simplified and renumbered SMF24; and
- the new Prescribed Responsibility (PR) accompanying the Chief Operations SMF has likewise been narrowed to cover 'the firm's performance of its obligations under the Outsourcing part of the PRA Rulebook (or, in the case of UK branches of non-EEA RAPs ('incoming third-country branches'), 'the firm's performance of its obligations under Chapter 7 of Internal Governance of Third Country Branches').
- the draft definition of the Head of Key Business Area function (SMF6) has been revised so that:
  - the existing quantitative criterion relating to the contribution of the business area to the group's 'gross revenue' has been deleted; and
  - only the qualitative criterion proposed in CP34/16 has added namely whether the relevant business area or division of the firm performs a critical function.

1.10 The modifications referred to above enhance the clarity, flexibility and proportionality of the relevant requirements relative to the original proposals in CP34/16, and will therefore lessen the burden on firms, including mutuals.

1.11 In response to consultation feedback, the PRA has made a modification to the final rules relating to the optimisation of the SIMR, so that the new streamlined regime for run-off firms

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<sup>6</sup> [www.legislation.gov.uk/ukpga/2000/8/contents](http://www.legislation.gov.uk/ukpga/2000/8/contents).



without permission to write new business will apply to such firms when they meet a £25 million size threshold in relation to their gross technical provisions, and have not written or acquired any business in the last twelve months. The streamlined regime will then continue to apply to these ‘small run-off firms’ for as long as they do not write or acquire any new business, and do not have permissions to write new business. In addition, the final rules have been amended so that a small run-off firm will be required to appoint one individual with overall responsibility for the business as either a CEO (SIMF1) or a Head of small run-off firm function (SIMF26), rather than only as the latter.

1.12 The modification referred to in paragraph 1.10 above enhances the clarity, flexibility and proportionality of the relevant requirements relative to the original proposals in CP34/16, and will therefore lessen the burden of firms. It will apply in the same way to mutuals as for other firms.

1.13 The PRA has also amended SS28/15 and SS35/15 to clarify its expectations on areas such as:

- the PRA’s expectations of the contents on Statements of Responsibilities and Management Responsibilities Maps;
- the duty of responsibility;
- the new Chief Operations SMF; and
- the application of the Conduct Rules to Notified non-executive directors (NEDs).

### Next steps

1.14 The PRA will shortly be publishing a consultation paper which, among other proposals, will consult on a new:

- Head of Key Business Area SIMF for insurers (SIMF6); and
- Chief Operations SIMF, and a corresponding new PR in relation to outsourced operational functions and activities, modelled on the final definition for RAPs in this PS (SIMF24).<sup>7</sup>

1.15 The PRA and FCA will consider whether to apply the remaining requirements and expectations in this PS to insurers as part of their upcoming consultations on the extension of the SM&CR to all financial services firms regulated under FSMA as provided for by the BoE Act.

1.16 The FCA ran two consultations relating to two proposals in CP34/16 concurrently with the PRA (‘Guidance on the duty of responsibility’ (FCA CP16/26)<sup>8</sup> and ‘Applying conduct rules to all non-executive directors in the banking and insurance sectors’ (FCA CP16/27).<sup>9</sup> The PRA policy, rules and expectations in this PS are consistent with the FCA’s equivalent rules and guidance.<sup>10</sup>

<sup>7</sup> In light of the proposed creation of a Chief Operations SIMF and to promote consistency between the accountability regimes for RAPs and insurers, the Chief Operations SMF and proposed Chief Operations SIMF will be numbered SMF/SIMF 24 respectively. This is due to the fact that there is already a SIMF23 function (Underwriting Risk Oversight).

<sup>8</sup> [www.fca.org.uk/sites/default/files/cp16-26.pdf](http://www.fca.org.uk/sites/default/files/cp16-26.pdf).

<sup>9</sup> [www.fca.org.uk/sites/default/files/cp16-27.pdf](http://www.fca.org.uk/sites/default/files/cp16-27.pdf).

<sup>10</sup> See FCA PS17/8 Applying conduct rules to all non-executive directors in the banking and insurance sector <https://www.fca.org.uk/publication/policy/ps17-08.pdf> and PS17/9 Guidance to Duty of Responsibility (Amendments to the Decision Procedure and Penalties Manual) <https://www.fca.org.uk/publication/policy/ps17-09.pdf>

## 2 Amendments to the SM&CR and SIMR made by the BoE Act

2.1 The first set of proposals in CP34/16 sought to implement the amendments to the SM&CR and SIMR made by the BoE, which included:

- setting out the PRA's expectations on the duty of responsibility and reasonable steps;
- updating the SoP 'Conditions, time limits and variations of approval'; and
- applying certain Conduct Rules<sup>11</sup>/Conduct Standards<sup>12</sup> to those NEDs who are not approved as:
  - Senior Management Functions (SMFs) under the SMR; or
  - Senior Insurance Management Functions (SIMFs) under SIMR (collectively 'Notified NEDs').<sup>13</sup>

2.2 Except for the application of certain Conduct Rules/Conduct Standards to Notified NEDs, which applied to all firms regulated by the PRA, the amendments in the first set of proposals were aimed only at RAPs.

### **PRA expectations on the duty of responsibility and reasonable steps**

2.3 In CP34/16, the PRA consulted on its expectations regarding the duty of responsibility, (which superseded the presumption of responsibility formerly in section 66 of FSMA), including what may constitute reasonable steps and how to document them.

2.4 The PRA's proposed expectations on the duty of responsibility were included as amendments to SS28/15 and based on the initial expectations relating to the, now deleted, presumption of responsibility (with appropriate modifications to reflect the statutory change from a presumption to a duty).

2.5 Respondents to CP34/16 agreed with the PRA's proposed expectations on the duty of responsibility, and the PRA is making the changes to SS28/15 as proposed.

2.6 A number of respondents urged the PRA to ensure that the duty of responsibility was applied consistently and proportionately. The PRA considers that the language in SS28/15 reflects this approach.

2.7 One respondent noted that, while the PRA's expectations and FCA guidance were aligned in substance, it would have been preferable if they had been presented as a joint, single list. The PRA considers this to be unnecessary. The list of reasonable steps in the PRA's expectations and FCA guidance are aligned in substance. Moreover, the lists are neither exhaustive nor prescriptive. The PRA and FCA will consider the individual circumstances of each case when assessing whether an individual performing an SMF took reasonable steps.

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11 See [www.prarulebook.co.uk/rulebook/Content/Part/302677/13-09-2016](http://www.prarulebook.co.uk/rulebook/Content/Part/302677/13-09-2016). The Conduct Rules section of the FCA Handbook ('COCON') can be found at [www.handbook.fca.org.uk/handbook/COCON/2/?date=2017-03-07&timeline=True?view=chapter](http://www.handbook.fca.org.uk/handbook/COCON/2/?date=2017-03-07&timeline=True?view=chapter).

12 See [www.prarulebook.co.uk/rulebook/Content/Part/318600/13-09-2016](http://www.prarulebook.co.uk/rulebook/Content/Part/318600/13-09-2016) for Large Non-Solvency II Firms and [www.prarulebook.co.uk/rulebook/Content/Part/302744/13-09-2016](http://www.prarulebook.co.uk/rulebook/Content/Part/302744/13-09-2016) for Non-Solvency II Firms.

13 A notified non-executive director is defined as 'a non-executive director of a firm who is not an approved person in relation to that firm', see [www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/77797/11-07-2016](http://www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/77797/11-07-2016).

### **Amendment to Statement of Policy ‘Conditions, time limits and variations of approval’**

2.8 In CP34/16, the PRA consulted on an amendment to the SoP ‘Conditions, time limits and variations of approval’ to reflect the fact that the BoE Act amended FSMA to allow the PRA and FCA to vary or remove time limits on the approvals of individuals performing SMFs, which the original legislation establishing the SM&CR did not allow.<sup>14</sup> Respondents supported the proposed amendment.

2.9 The SoP is included as Appendix 5 to this PS.

### **Application of certain Conduct Rules/Conduct Standards to Notified NEDs**

2.10 The BoE Act amended Section 64 of FSMA to enable the PRA and FCA to apply rules of conduct to all ‘member(s) of the board of directors, or if there is no such board, the equivalent body responsible for the management of the authorised person concerned’, including Notified NEDs in RAPs and insurers.

2.11 Consequently, in CP34/16 and FCA CP27/16 the PRA and FCA proposed to apply certain Conduct Rules/Conduct Standards to Notified NEDs in dual-regulated firms.

2.12 The Conduct Rules/Conduct Standards which the PRA/FCA proposed to apply to Notified NEDs comprised:

- the three Individual Conduct Rules/Standards which, since 7 March 2017, apply to all individuals performing SMFs, SIMFs and all employees in RAPs except ancillary staff;
- one of the Conduct Rules/Standards which apply to SMFs and SIMFs and require them to ‘disclose appropriately any information of which the FCA or PRA would reasonably expect notice’; and
- one of the Conduct Standards which apply to SIMFs and requires them to pay due regard to the interests of policyholders in ensuring an appropriate degree of protection for their insured benefits.

2.13 Most respondents supported the application of these specific Conduct Rules/Conduct Standards to Notified NEDs. In particular, respondents noted that:

- in view of the fact, since 7 March 2017 the Individual Conduct Rules apply even to junior staff in RAPs, the inclusion of Notified NEDs within the scope of these rules will help engender a culture within firms that ‘we are all in it together’ regarding prudential management;
- the application of certain Conduct Rules/Conduct Standards would help address industry concerns about the SM&CR/SIMR spawning the emergence of two-tier unitary boards due to the fact that only certain NEDs are subject to the SMR/SIMR; and
- the Senior Manager Conduct Rule/ Senior Insurance Manager Conduct Standards, which the PRA and FCA proposed to apply to Notified NEDs relate to openness with the regulators and the protection of policyholders. They are therefore fundamentally different in nature to the other Senior Manager Conduct Rules/Senior Insurance Manager Conduct Standards and entirely consistent with the oversight role of a Notified NED.

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<sup>14</sup> See Section 23 of the Financial Services (Banking Reform) Act 2013: [www.legislation.gov.uk/ukpga/2013/33/section/23/enacted](http://www.legislation.gov.uk/ukpga/2013/33/section/23/enacted).

2.14 The PRA has also decided, in line with the extension of scope in the Conduct Rules to include Notified NEDs and in order to promote consistency in the scope of persons covered by the Conduct Rules, to amend Conduct Rules 1.2(2)(c) to include those directors who would be performing a PRA SMF but for rule 2.3 in the Senior Management Functions part of the PRA Rulebook.

#### Notification requirements

2.15 The application of the Conduct Rules to Notified NEDs in RAPs will trigger the requirement in Section 64C of FSMA for these firms to notify the PRA and FCA of internal disciplinary action against Notified NEDs linked to breaches of these Rules ('Section 64C notifications').

2.16 Section 64C of FSMA defines 'disciplinary action' for these purposes as the:

- issuing of a formal written warning;
- suspension or dismissal of the person; and/or
- reduction or recovery of any of the person's remuneration (ie malus or clawback).

2.17 Under current PRA rules, Section 64C notifications must be made within seven business days of the relevant disciplinary action where they involve individuals performing an SMF or employees subject to the Certification regime pursuant to the PRA's rules (ie Material Risk Takers (MRTs) under the Remuneration Rules).<sup>15</sup>

2.18 In CP34/16, the PRA proposed to apply the same deadline to Section 64C Notifications involving Notified NEDs, which most respondents supported.

2.19 One respondent, however, urged the PRA to take into account that, as NEDs do not meet the definition of 'employee' in Section 64 of FSMA, the internal disciplinary processes in section 64C may not always apply to them. The PRA considers this a valid point in respect of malus and clawback as PRA rules explicitly prohibit the award of variable remuneration to a NED 'in relation to his or her role as such'.<sup>16</sup> Therefore this form of internal disciplinary process will, in most cases, be inapplicable to NEDs.

2.20 In respect of other forms of internal disciplinary action, the PRA has clarified in SS28/15 that:

- 'suspension or dismissal' should be interpreted as including the suspension or termination of a directorship; and
- 'formal written warning' includes any equivalent written warnings issued to a NED.

2.21 In FCA CP27/16, the FCA proposed to require firms to submit all Section 64C Notifications involving Notified NEDs annually alongside notifications involving all other Conduct Rules staff except SMFs. However, FCA CP27/16 acknowledged the PRA's proposal to apply a seven business-day deadline to Section 64C notifications involving Notified NEDs 'and would share information with [the FCA] where needed'. A number of respondents highlighted this divergence, which already exists in respect of some MRTs but did not challenge it. The PRA will therefore proceed with the proposed seven business-day deadline.

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<sup>15</sup> [www.prarulebook.co.uk/rulebook/Content/Chapter/302395/22-01-2017](http://www.prarulebook.co.uk/rulebook/Content/Chapter/302395/22-01-2017).

<sup>16</sup> See Rule 15.3 in the Remuneration Part of the PRA Rulebook.

2.22 The PRA will shortly publish a CP containing consequential changes to Form L so that it can be used for Section 64C notifications involving Notified NEDs.

### 3 Optimisations to the SM&CR

3.1 In CP34/16, the PRA consulted on a range of optimisations to the SM&CR, including:

- a new Chief Operations SMF;
- a new PRA PR to accompany the proposed new Chief Operations SMF;
- additional qualitative criteria to the definition of the Head of Key Business Area function (SMF6); and
- setting out the PRA's expectations relating to the clarity, consistency and level of detail of Statements of Responsibilities (SoRs) and Management Responsibilities Maps (MRMs).

#### **Proposed Chief Operations Senior Management Function**

3.2 In CP34/16, the PRA proposed to create a new Chief Operations SMF for RAPs, including, where applicable, UK branches of non-EEA banks or PRA-designated investment firms (incoming non-EEA branches).

3.3 The PRA further proposed that:

- the identification of individuals in scope of the proposed Chief Operations SMF should be based on their responsibilities rather than their job titles;
- firms would only be required to have a Chief Operations SMF if they had someone performing that function; and
- where firms have significant levels of operational infrastructure and oversight at a group or parent entity outside the United Kingdom, the Chief Operations SMF could be located overseas.

3.4 Most respondents supported the creation of a new Chief Operations SMF, which one respondent noted would close an 'inadvertent gap' in the SMR.

3.5 However, several respondents raised concerns about the breadth of the proposed Chief Operations SMF as defined in CP34/16. In particular, respondents highlighted that:

- the PRA's proposals appeared to be based on the assumption that overall responsibility for the related but wide-ranging areas of operations, systems and technology would generally be allocated to a single individual;
- in practice, however, a number of large RAPs have more than one individual with overall responsibility for these areas in the United Kingdom; and
- the individuals who, between them, have overall responsibility for operations, systems and technology in some large RAPs did not always sit in a single reporting line but were often equally senior.

3.6 For instance, some respondents explained that they currently had a Chief Operating Officer (COO) responsible for the firm's internal operations and an equally senior Chief

Information and Technology Officer (CITO) responsible for the firm's information technology. Both individuals had separate reporting lines to the CEO and the board and sat on the firm's executive committee.

3.7 These respondents argued that requiring all firms to identify a single individual as the Chief Operations SMF could:

- force them to amend their current management structures;
- place accountability for an undue range of responsibilities on a single individual; and/or
- reverse organisational changes (such as the appointment of a CITO to the executive committees) which, in some cases, had been made specifically to increase the level of senior management focus on areas such as information technology.

3.8 The PRA agrees that clarifying and strengthening accountability for internal operations and technology should not result in the imposition of a one-size-fits-all model on how firms allocate responsibility for these areas. Consequently the PRA:

- has revised the definition of the Chief Operations SMF in the PRA Rulebook so that it covers 'responsibility for managing the internal operations and technology of a firm';
- has deleted the term 'systems' from the definition of the Chief Operations SMF (the PRA considers that 'systems' are already covered under internal operations/technology); and
- will allow the Chief Operations SMF to be split among more than one individual, as long as the split is justified and accurately reflects the firm's organisational structure and provided splitting does not leave any part of the COO responsibilities out. The possibility of splitting the Chief Operations SMF is further examined in SS28/15.

3.9 These revisions will provide greater flexibility to those firms which, for instance, have separate but equally senior individuals responsible for internal operations and information technology.

### Splitting the Chief Operations SMF

3.10 The ability to split the Chief Operations SMF where justified is a specific departure from the expectation set out in SS28/15 that SMFs can be 'shared but not split', which continues to apply to all other SMFs.<sup>17</sup> Moreover firms which have a single individual with overall responsibility for internal operations and technology should only have that individual approved as Chief Operations SMF.

3.11 Likewise, if a firm has several individuals responsible for internal operations and technology but there is a hierarchical relationship between them, only the most senior individual should be approved as Chief Operations SMF.

3.12 SS28/15 provides:

- illustrative hypothetical scenarios where splitting the Chief Operations SMF may or may not be justified. In practice, however, this will be considered on a case-by-case basis;

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<sup>17</sup> See paragraphs 211 and 2.40 of SS28/15.

- the responsibilities and FCA key functions which the PRA expects to fall within the remit of the individual(s) performing the Chief Operations SMF; and
- the interaction between the Chief Operations SMF and Group Entity Senior Manager function (SMF7) where a RAP is part of a group with centralised internal operations or technology.

3.13 In light of the proposal to create a Chief Operations SIMF for insurers modelled on the definition for RAPs (which will be published in due course) the Chief Operations SMF has been renumbered SMF24 to ensure alignment with its proposed insurance equivalent.<sup>18</sup> There is no SMF23 for RAPs.

### **New Prescribed Responsibility**

3.14 To complement the proposed Chief Operations SMF, the PRA proposed to create a new PR for RAPs (including incoming non-EEA branches) for ‘managing, and ensuring the operational continuity and resilience of, the internal operations, systems and technology of a firm’.

3.15 The aim behind the proposed PR was to ensure that all RAPs (except credit unions) have appropriate senior accountability for overseeing their internal operations and technology irrespective of whether:

- they have an individual approved as Chief Operations SMF, which may not be the case in some small CRR firms; and/or
- they outsource their internal operations or technology or key elements thereof.

3.16 However, respondents noted that:

- the fact that the wording of the PR was almost identical to that of the proposed Chief Operations SMF meant that all firms, irrespective of size, would in effect be required to appoint a Chief Operations SMF; and
- requiring an SMF to ‘ensure’ the operational continuity and resilience of, the internal operations, systems and technology of a firm was disproportionate and not feasible in practice.

3.17 In response to this feedback and in line with the original intent behind the proposed PR, which was to ensure appropriate but proportionate senior management accountability for operations and technology in all CRR firms (including when these are outsourced), the PRA has redefined it to focus on responsibility ‘for the firm’s performance of its obligations under the Outsourcing part of the Rulebook’. This will ensure a more proportionate and purposeful application.

### **Revised definition of the Head of Key Business Area function (SMF6)**

3.18 In CP34/16, the PRA proposed to add qualitative criteria to the definition of the Head of Key Business Area function (SMF6) to supplement the existing quantitative thresholds in Rule 3.6 of the Senior Management Functions part of the Rulebook, which state that for an individual to be an SMF6, the business area or division which they manage must:

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<sup>18</sup> There is already a SIMF23 function for insurers namely the Underwriting Risk Oversight function. See Rule 10.2 in the Insurance- Senior Insurance Management Functions part of the Rulebook.



- have gross total assets greater than or equal to £10 billion (asset test); and either
  - account for more than 20% of the firm's gross revenue (firm revenue test); or
  - where the firm is part of a group, account for more than 20% of the total gross revenue of the group (group revenue test);

3.19 Under the draft proposal, an individual would be an SMF6 if the business area they were responsible for:

- met both of the quantitative criteria listed above; or
- met one of the quantitative criteria listed above, and either:
  - performed a 'critical function' as defined in sections 3(1) and (2) of the Banking Act 2009 (as amended);<sup>19</sup> or
  - was a 'material business unit' as defined in Article 3(6) of the Regulatory Technical Standards for the definition of material risk takers for remuneration purposes ('MRT regulation').

3.20 Most respondents welcomed the proposal to enhance the definition of the SMF6 function with qualitative criteria. However some respondents felt that the:

- resulting definition was unduly complicated;
- group revenue test was unclear and did not result in any additional individuals meeting the definition of an SMF6; and
- reference to 'material business unit' as defined in the MRT regulation was based on the allocation of capital to that unit. However, some firms did not typically allocate standalone capital at individual business level as a proportion of the total capital of the entity or group. Therefore, the definition should recognise alternative proxy capital measures, such as risk weighted assets (RWAs).

3.21 In response to this feedback, the PRA has:

- added an additional qualitative criterion relating to a 'critical function' to the definition of the SMF6. This is an attempt to simplify the definition by eliminating a qualitative criterion which some respondents found challenging.
- removed the group revenue test. Some respondents noted that most individuals currently approved by the PRA as SMF6 are so because their business areas meet the firm revenue test, and argued that the group revenue test was therefore redundant as well as unclear. The PRA's revisions clarify and simplify the resulting definition while adding a qualitative criterion.

3.22 The rule stating that an individual performing an SMF6 cannot report to another SMF6 continues to apply to the revised definition.

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<sup>19</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336028/RRD\\_draft\\_for\\_consultation\\_-\\_draft\\_for\\_consultation\\_purposes.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336028/RRD_draft_for_consultation_-_draft_for_consultation_purposes.pdf).



## **Expectation of Statements of Responsibilities and Management Responsibilities Maps**

3.23 In CP34/16, the PRA proposed its expectations in relation to the clarity, consistency and level of detail of SoRs and MRMs.

3.24 Respondents found these expectations helpful but raised questions as set out below.

### **Interaction with role profiles**

3.25 A number of respondents interpreted the PRA's expectations as signalling that SoRs and MRMs should replace supporting documentation such as the role profiles which some firms have prepared for their SMFs. They further noted that role profiles could fulfil a useful complementary role. Moreover, role profiles were often viewed as more user-friendly than the SoR template from a formatting and layout point of view.

3.26 The PRA agrees that role profiles can enhance clarity around the responsibilities and competencies of SMFs and does not discourage their use. However, information about an SMF's responsibilities (including any relevant free text) should be set out principally in the SoR, which is the mandatory regulatory return, even if this information is duplicated or supplemented in a role profile. The existence of a role profile should not result in the omission of information about an SMF's responsibilities from their SoR. SS28/15 has been updated with this expectation.

### **Firm-specific and temporary responsibilities**

3.27 A number of respondents noted that the expectation that SoRs should include "more information about additional responsibilities, projects and remediation actions" should be explained further. In particular, respondents noted that only ad hoc responsibilities, projects and actions which are material and have an appropriate timeline for completion should be included. Otherwise, the burden of updating SoRs constantly to reflect short-term shifts in responsibilities might become unmanageable.

3.28 The PRA agrees that any ad hoc, firm-specific action or regulatory deliverable should be sufficiently material, both in terms of significance and duration before it has to be included in an SoR. The revised SS28/15 includes a non-exhaustive, indicative list of such potential responsibilities.

## **4 Optimisations to SIMR**

4.1 In CP34/16, the PRA proposed some technical modifications to SIMR to enhance the proportionate, risk-based application of the regime.

### **Outsourcing of the internal audit function by smaller insurers**

4.2 The PRA proposed to exempt any Solvency II insurers and Lloyd's managing agents classed as 'not significant', along with large NDFs (collectively 'smaller insurers') which elect to outsource their internal audit function to a third party, from the requirement to have an individual approved as SIMF5. Instead, these firms would be required to allocate a new PR to one of their oversight (ie non-executive) SIMFs or FCA Controlled Function (CF),<sup>20</sup> such as the Chair of the Audit Committee (SIMF11) for:

- providing for an effective internal audit function; and

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<sup>20</sup> A definition of an FCA 'controlled function' is available in the Glossary of the FCA Handbook at [www.handbook.fca.org.uk/handbook/glossary/?starts-with=C](http://www.handbook.fca.org.uk/handbook/glossary/?starts-with=C).

- overseeing the performance of the internal audit function.

4.3 This proposal was consistent with the approach taken for RAPs.<sup>21</sup> Respondents supported it and the PRA has therefore made the rules as proposed.

#### **Firms in run-off that no longer have regulatory permissions to write new business**

4.4 The PRA proposed that certain run-off firms without permission to write new business should be subject to a streamlined SIMR.

4.5 Respondents considered that this proposal would contribute to an appropriate level of protection for policyholders and to effective and proportionate individual accountability in these firms. However, they stressed the need to recognise the cost restrictions faced by many firms in run-off and approach this issue proportionately.

4.6 After considering this feedback, the PRA has decided to revise its original proposal so that the streamlined SIMR will be automatically available for small run-off firms if the firms:

- do not have permission to write new business and that have not written any new business nor acquired any further block of business in the last 12 months; and
- have less than £25 million technical provisions as reported in their two most recent annual accounts.

4.7 Other run-off firms will be able to apply for a waiver or modification of the relevant PRA rules, which will be assessed against the statutory tests in section 138A of FSMA.

4.8 In order to avoid firms moving unexpectedly between the streamlined and full SIMRs as a result of the above size threshold no longer being met, the streamlined regime, once triggered, will continue to apply as long as the firm does not hold permission to effect contracts of insurance and does not write any further new business or acquire any additional blocks of business from another insurance firm.

4.9 In addition, the final rules have been amended so that a small run-off firm will be required to appoint one individual with overall responsibility for the business as either a CEO (SIMF1) or a Head of Small Run-Off Firm function (SIMF26)<sup>22</sup>, rather than only as a SIMF19A as proposed in CP34/16. This will enable the CEO of such a firm moving into run-off to continue performing the SIMF1 function without having to be re-approved.

#### **Updated Supervisory Statement 35/15**

4.10 Although there were no specific responses calling for amendments to SS35/15, it has been amended to reflect the application of the above change to our policy in respect of small run-off firms, and also to provide an explanation of the factors that would be relevant to assessing whether an insurer is 'not significant' for the purposes of the application of rules on insurers that outsource their internal audit function.

#### **Amended Forms**

4.11 In CP36/14, the PRA proposed amendments to the Long Form A, Short Form A, Form E for Solvency II firms and the SoR form for both Solvency II firms and large NDFs.

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<sup>21</sup> See Rule 4.2(3) in the Allocation of Responsibilities part of the PRA Rulebook.

<sup>22</sup> This function has now been renamed and renumbered as 'Head of small run-off firm' SIMF26, rather than 'Head of firm without permissions to write new business' SIMF19A as was proposed in CP34/16.

4.12 Most respondents were content with the proposed amendments to these forms. One respondent requested additional, minor changes to these forms, which will be considered as a part of the forthcoming proposed extension of the SM&CR to insurers.

4.13 The PRA has included final versions of the forms in Appendix 6, with some slight modifications.

## 5 Timelines for implementation

5.1 The rules and expectations published in this PS will become effective at different times.

### **Rules and expectations which will become effective immediately**

5.2 The expectations relating to the duty of responsibility and SoRs and MRMs (as set out in SS28/15) and the revised SoP 'Conditions, time limits and variations of approval' will become effective immediately.

5.3 The PRA is not requiring or expecting RAPs to review and resubmit their SoRs and MRMs in line with the expectations outlined in SS28/15. However, these expectations should be taken into account and inform future required or scheduled revisions of these documents and supervisory discussions.

### **Rules and expectations which will become effective following a transitional period**

5.4 The optimisations to the SIMR described in Chapter 4 of this PS will become effective on Tuesday 12 September 2017.

5.5 The application of the Conduct Rules to Notified NEDs will become effective on Monday 3 July 2017 and will apply to breaches identified on or after that date.

5.6 A number of firms requested a transitional period to implement the proposals relating to the Chief Operations SMF, accompanying PR and the new criteria for SMF6s.

5.7 The PRA will publish a CP shortly including proposals for consequential changes to PRA/FCA forms to reflect:

- the new Chief Operations SMF and PR for RAPs; and
- the proposed Chief Operations SIMF and PR for insurers.

## Appendices

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- 1 **PRA RULEBOOK: CRR FIRMS, NON CRR FIRMS: SENIOR MANAGERS REGIME AMENDMENT INSTRUMENT 2017**, available at:  
[www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps1217.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps1217.aspx).

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  - 2 **PRA RULEBOOK: SOLVENCY II FIRMS AND NON SOLVENCY II FIRMS: SENIOR INSURANCE MANAGERS REGIME (AMENDMENT) INSTRUMENT**, available at:  
[www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps1217.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps1217.aspx).

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  - 3 **Supervisory Statement 28/15 UPDATE 'Strengthening individual accountability in banking'**, available at:  
[www.bankofengland.co.uk/pr/Pages/publications/ss/2017/ss2815update.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ss/2017/ss2815update.aspx).

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  - 4 **Supervisory Statement 35/15 UPDATE 'Strengthening individual accountability in insurance'**, available at:  
[www.bankofengland.co.uk/pr/Pages/publications/ss/2017/ss3515update.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ss/2017/ss3515update.aspx).

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  - 5 **PRA Statement of Policy UPDATE 'Conditions, time limits and variations of approval'**, available at:  
[www.bankofengland.co.uk/pr/Pages/publications/sop/2017/conditionsupdate.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/sop/2017/conditionsupdate.aspx).

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  - 6 **Updated forms effective from 12 September 2017**, available at:  
[www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps1217.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps1217.aspx).