

FCA to Clarify Scope of the Client Dealing Function

The FCA has announced that it plans to consult further on the scope of the Client Dealing Function under the SMCR.

Key Points:

- The FCA acknowledges that the scope of the Client Dealing Function needs to be clarified, and will consult on changes to its rules.
- The FCA plans to finalise these changes ahead of the December 2019 “go live” data for solo-regulated firms.
- In the meantime, banks and insurers will be able to assume that certain administrative roles are not in scope, and solo-regulated firms may for the time being plan on the assumption that these roles are not in scope.

The FCA has published a [new webpage](#) concerning the Client Dealing Function under the Senior Managers and Certification Regime (SMCR). The Client Dealing Function is one of the specified functions under the Certification Regime, and is very broadly worded. This has led to concerns about the scope of the Function, as it could potentially capture employees in purely administrative roles.

This potentially broad scope is incongruous with the overarching legislative definition of a Certification Function, which refers to roles that include an individual in activities that involve, or might involve, a risk of significant harm to the firm or any of its customers.

In a helpful and welcome move, the FCA acknowledges that uncertainty concerning the scope of this Function still persists, and has announced that it plans to consult on clarifying the scope of the Client Dealing Function. Although no precise timing has been given for the consultation, the FCA indicates that it intends to confirm any changes before the SMCR for solo-regulated firms comes into effect on 9 December 2019.

As banks are already subject to the SMCR, and insurers will be subject to the regime from 10 December 2019, the FCA is putting interim arrangements in place to give those firms clear guidance that they can apply between now and when the amended rules come into force.

For the time being, the FCA will accept that certain activities that form part of the definition of the Client Dealing Function do not include employees who perform solely administrative functions. Therefore, firms

that may have previously included individuals in their population of Certified Persons on the basis that their activities fell within the broad definition of the Client Dealing Function, despite the fact that they were doing a purely administrative role, should now be able to conclude that they are out of scope. The activities that should be treated as not including employees who perform solely administrative functions are those show in red below:

Activities that make up the Client Dealing Function

1. *The following activities:*
 - a) *advising on investments other than a non-investment insurance contract; or*
 - b) *performing other functions related to this, such as dealing and arranging.*
2. *The following activities:*
 - a) *giving advice in connection with corporate finance business; or*
 - b) *performing other functions related to this.*
3. *If the firm does any of the following activities:*
 - a) *dealing, as principal or as agent; or*
 - b) *arranging (bringing about) deals in investments;*

taking part in those activities is included.
4. *If the firm is acting in the capacity of an investment manager the following are included:*
 - a) *taking part in that activity; and*
 - b) *carrying on functions connected to this.*
5. *Acting as a 'bidder's representative' in relation to bidding in emissions auctions.*

The FCA also notes that the interim approach will be relevant to solo-regulated firms that are preparing to transition to the SMCR. Therefore, firms preparing now to implement the SMCR may plan on the assumption that employees performing solely administrative functions are not caught.

The FCA indicates that when it has completed the consultation process, it will provide information on any transitional measures that may be needed for firms to adjust their approach. Therefore, if the end position differs from the interim arrangements, firms may assume that they will be given some time to adjust to any changes.

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