Regime change

The UK's Senior Managers and Certification Regime was extended to all FCA-authorised firms from December 2019 – and applied to investment firms. **John Decesare**, director of group compliance at 3i, gives his view on how private equity has dealt with the new rules

Given that the UK's Financial Conduct Authority (FCA) introduced the Senior Managers and Certification Regime (SMCR) in a proportionate and pragmatic way for the vast majority of firms - known as 'core' firms - the process has been more evolution than revolution.

SMCR was devised to strengthen market integrity by making firms and individuals at those firms more accountable for their conduct and competence. For some firms this meant putting structures in place to comply with SMCR.

We already had a strong compliance culture at 3i. We had good governance and controls, as you would expect from a FTSE 100 company. Being listed, we may not be typical, but I think most private equity firms started from a good place.

RESPONSIBLE APPROACH

The principles underpinning the regime were already largely embedded in our organisation, such as clear job descriptions for staff, clear reporting lines leading all the way up to the CEO, annual appraisals and assessments, and a focus on conduct and culture. For us, it was a question of what more did we need to do.

We had to identify the actual staff members who were senior managers, which was pretty straightforward. Identifying certification functions and specifically allocating prescribed responsibilities to the senior managers was also relatively simple. We are well structured and people know their responsibilities, so although we had to review things internally - and document matters specifically for SMCR purposes - we were in a pretty good place for compliance by 9 December 2019 (which was the original deadline for compliance before it was extended to 31 March 2021, for certain aspects at least, due to the COVID-19 pandemic).

Despite the process being evolutionary, there was some benefit in shining a light on people's responsibilities throughout. There's always room for improvement, and we used the opportunity to review our existing arrangements and the way they were documented.

PERFECT FIT

A key requirement of the SMCR has been for firms to assess relevant staff as 'fit and proper' to carry out professional roles. While we already had embedded performance review processes, enhancing that to incorporate the specific requirements of SMCR probably took the greatest amount of time. Again, this was an example of us extending existing processes rather than implementing new ones. We completed our first 'fit and proper' assessment of relevant staff this year as part of our online employee appraisal process.

"Having clear reporting lines and job descriptions should not only be a regulatory requirement – it's also good practice"

John Decesare,
director of group compliance, 3i

THE BENEFITS?

Embraced in the right way, implementing SMCR can deliver tangible, if incremental, organisational benefits. Having clear reporting lines and job descriptions should not only be a regulatory requirement - it's also good practice.

The same applies to assessing staff on an ongoing basis. However, SMCR provided us with the opportunity to review and, where necessary, enhance existing controls.

Of course, as a regulated private equity firm, you have to behave with integrity and be competent. Reputation is key. Nonetheless, for the first time there are now conduct rules that apply to most staff members as individuals.

A combined focus on responsibilities, competence, conduct and culture like this certainly helps to reinforce these areas right across the organisation and will benefit control functions generally. And this will ultimately deliver tangible benefits for all firms.

BACK TO BUSINESS

An 'enhanced' firm is in a similar position to where the banks and insurance companies were under the first wave of the SMCR rollout in December 2019. The FCA's view

VALERO DOVAL / IKON IMAGES

was that such regulation was only useful in relation to systemically important firms. In my opinion, it has been very sensible in its approach, very pragmatic.

Most private equity firms are 'core' firms. The bar is quite high for 'enhanced' firms. If a firm is hovering around the boundary, it may opt into the enhanced regime to remove the complexity of whether they should be in or out. At 3i, we were clearly within the core regime. You have to be a very large, significant, systemically important firm to fall into the enhanced category.

There has not been a lot of noise on SMCR since it reached the implementation phase. I think it's because firms have just got on with putting into practice what is fundamentally a pragmatic regime. That has certainly been the case for us.

At 3i, it has enabled us to focus on governance, controls, reporting lines, appraisals, people's conduct and culture, and making sure they're taking their regulatory training on time. Used properly, this project can deliver some noticeable compliance benefits. ●

SMCR IN SHORT

1
Type of firm
From December last year, the SMCR applied to all FCA-regulated firms. The requirements apply differently according to whether the firm is 'limited', 'core' or 'enhanced'. For the purposes of investment firms, including private equity, a firm is an enhanced firm if it manages assets of at least £50bn on a three-year rolling average.

2
Who is covered by the regime?
Under the SMCR, those defined as 'senior managers' are individuals who perform a senior management function as designated, and approved, by the FCA. Other staff currently requiring approval became covered by the Certification Regime.

3
Responsibilities of senior managers
After identifying the individuals performing senior management functions, all the prescribed responsibilities as set out by the FCA must be assigned to the senior managers most closely associated to them, and set out in a written Statement of Responsibilities.

Enhanced firms have also had to produce a responsibility map showing how the prescribed responsibilities have been allocated. There are three senior management functions for limited-scope firms, six for core firms and 17 for enhanced firms.

4
Duty of responsibility
Under the SMCR, each senior manager has a statutory duty of responsibility. If a firm breaches an FCA requirement, the senior manager responsible for that area could be held personally accountable if they did not take reasonable steps to prevent or stop the breach.

5
Certification Regime
Under the Certification Regime, firms must certify annually that staff that could cause significant harm to clients are fit and proper to carry out their certification function.

6
References: obtaining and giving Regulatory References
Firms must get Regulatory References before hiring a senior manager, non-executive director or person carrying out a Certified function for the last six years of their employment, whether with an authorised firm or otherwise. There are also more onerous requirements on firms when giving references.

7
Conduct rules
All staff within FCA-regulated firms must comply with the FCA's Conduct Rules, and to that end firms are responsible for appropriate training for their staff.

8
Notifications to the FCA
If a senior manager breaches the Conduct Rules, or is found to be not fit and proper, the firm must notify the FCA immediately.