Governance and Cross-Cutting Standards
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

By email: CP25-21@fca.org.uk

7 October 2025

Dear Governance and Cross-Cutting Standards

RE: CP25/21 Senior Managers & Certification Regime Review

The British Private Equity and Venture Capital Association (BVCA) is the industry body and public policy advocate for the private capital industry in the UK. With a membership of around 600 firms, we represent UK-based venture capital, private equity and private credit firms, as well as their professional advisers and investors. There are almost 13,000 UK companies backed by private capital which currently employ over 2.5 million people in the UK. In 2024, £29.4bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. This increased investment has fuelled the growth of businesses across the UK, with six in ten (58%) of the businesses backed in 2024 located outside of the capital.

We welcome the opportunity to respond to the FCA's consultation paper on the Senior Managers & Certification Regime (SMCR). We support the overarching aim to enhance efficiency, proportionality and clarity of the regime, which would help reduce compliance burdens for firms.

We support the proposed measures and welcome efforts to streamline the processes, including in relation to the certification regime, regulatory references and criminal record checks. However, we would encourage clearer guidance from the FCA to address ambiguities encountered by firms in practice, particularly regarding the 12-week rule, and the delineation of certain senior manager functions (SMFs), as detailed below.

We also acknowledge that HM Treasury is also consulting on substantive legislative changes to enable wider changes to the SMCR to be determined by the PRA and FCA. If implemented, some of the current phase 1 measures proposed by the FCA may only be transitional and we await the FCA's further phase 2 reform proposals in due course.

We have only responded to the questions on which BVCA members have specific views.

Question 1: To what extent do you support the further changes we are considering in phase 2 of the reform (summarised in paragraph 1.11). Are there any other changes you suggest? We would welcome views on the impact (positive or negative) of each potential change and on any suggested additional improvements.
We welcome the consideration of the listed changes to the regime, as these appear helpful in alleviating the compliance costs and administrative burden for firms (for example, reducing the number of SMF roles, expanding the use of the 12-week rule and streamlining the SMF approval process). Although we note that some of the changes are likely to be most beneficial to the largest firms that are enhanced firms, and we would encourage the FCA to ensure that it also considers changes which would reduce the burden on core and limited scope firms.

In addition, in considering a replacement for the certification regime, we would ask that the FCA considers the likely burden that would be imposed on firms if the certification regime is simply replaced with a different regime. Firms have spent considerable time and resources in adapting to the current certification regime, and we would ask that if there are to be changes, these should remove requirements on firms rather than replace them with new requirements that would impose additional burdens on firms in implementing a new regime.

We look forward to the FCA's detailed reform proposals in due course.

Question 2a: Please provide feedback on your experience of applying for SMF approval, particularly where you have experienced unnecessary friction or uncertainty in the process and how this compares to other overseas jurisdictions.
As a general comment, the amount of documentation required to apply for SMF roles can be burdensome. For example, we would question whether it is necessary for a firm to provide a skills gap analysis with its SMF application. The time taken to process SMF applications can also be variable and difficult to predict in advance.

There is no equivalent process to SMF applications in the United States. This means that executives can be appointed to senior roles private capital managers of all sizes without the wait time imposed by the UK SMF regime.

Question 2b: On which priority areas would firms welcome more information, guidance, or changes to forms?
We welcome the FCA's proposed changes to Form A, on the assumption that it will be made clear which documentation can be reduced or consolidated (if the list is intended to be broader than the skills gap analysis, competency assessment and learning and development plan which are mentioned in the consultation).

The webpage explaining the SMF application process is helpful but it asks firms to contact the FCA if they wish to discuss a potential application for a candidate currently based overseas, rather than providing guidance on typical cases. Our members frequently recruit senior talent from overseas, so we would welcome more detailed FCA website guidance on the FCA's expectations in these cases, particularly where obtaining information from foreign jurisdictions proves difficult.

Question 3: Do you agree to our proposals for changes to criminal record checks and disclosures?
The FCA proposes removing the requirement for firms to undertake criminal record checks (CRCs) where the individual is an existing SMF holder applying for an SMF within the same firm or group. We welcome the proposed removal of this administrative requirement. It would be helpful to understand the rationale for limiting this exemption to intra-group applications and not extending it to cases where an existing SMF holder moves to, or applies for a new SMF of, a different firm or group.

Given that SMF holders are subject to ongoing obligations to disclose criminal convictions to the FCA, and are also required to make such disclosures in any new SMF application, the FCA is still able to assess the fitness and propriety of these individuals even in the absence of a separate CRC. In light of this, we suggest extending the scope of the proposed waiver to include applications by existing SMF holders moving to, or applying for a new SMF in respect of, different firms or groups.

Question 4: Do you agree with our proposed changes to the 12-week rule?
We welcome the FCA's position that an individual can perform an SMF function under the 12-week rule for the longer of 12 weeks or the time it takes for the FCA to approve an application for a permanent replacement, provided the application to approve the replacement has been submitted within 12 weeks of the absence commencing. However, we would encourage the FCA to reconsider extending this period. Identifying and recruiting an appropriate replacement for certain senior manager roles can take considerably longer than 12 weeks and we would question the FCA's assertion that a firm with good succession plans should be able to find a permanent replacement within 12 weeks. For example, recruiting new senior managers based in other countries requires more time to cater to administrative logistics, and new hires may have longer notice periods with their previous employers.

We would also encourage the FCA to consider scrapping the requirement that an absence be "reasonably unforeseen" in order to provide additional flexibility for firms. In reality it is difficult to cater for every circumstance and giving firms the flexibility to apply the 12-week rule for any absence would simplify this aspect of the rules considerably, thus saving compliance costs. Alternatively, the FCA might provide further guidance on the circumstances in which the 12-week rule may be applied, and particularly what constitutes a 'reasonably unforeseen permanent departure' of a senior manager or a 'reasonably unforeseen' absence (as referenced in proposed guidance SUP10C.3A.1 and 10C.3A.6). By way of example, in an M&A context it is often the case that senior managers will leave the target firm on completion of the transaction. Sometimes it is clear from an early stage that this will happen, sometimes it is not known until shortly before closing who will stay and who will leave. In any case, it can take some time to recruit permanent replacements. It is unclear under the current guidance whether these circumstances would qualify as 'reasonably unforeseen'.

In addition, the process for securing a permanent replacement to an SMF role approved will not necessarily coincide with the transaction timetable; and the transaction may close, and existing SMFs resign, prior to the FCA approving the permanent replacements. It would be helpful to have FCA guidance on whether the 12-week rule could be used in these circumstances. More generally, notwithstanding the appropriate use of notice periods and succession plans, there are circumstances in which recruitment of a successor takes longer than anticipated or than a departing SMF's notice period accommodates, and our members would welcome confirmation that this type of scenario is capable of falling into the 'reasonably unforeseen' category (notwithstanding that the departure of the SMF is, itself, not unforeseen).

In addition, the consultation notes that the 12-week rule should be used as infrequently as reasonably possible.

We welcome the proposed additional guidance with non-exhaustive examples of when the rule can be used.

Question 5: Do you agree with our proposals on SMF7?
We appreciate the FCA's efforts to address longstanding concerns regarding the inconsistent application of SMF7 and to provide further guidance on when roles such as Chief Financial Officer or members of a group management committee may be considered to perform the Group Entity Senior Manager Function. The additional examples are helpful in clarifying the circumstances under which they would likely be SMF7.

However, we query whether the proposed guidance will deal comprehensively with the ambiguity. Certain phrases in the proposed guidance remain open to interpretation, such as whether entities have 'sufficient discretion' to make decisions and whether it is 'reasonable' to view an individual as carrying out relevant activities. Given that the applicability of SMF7 depends heavily on the specific structure and governance arrangements of each group, it remains to be seen in practice whether more uncertainty may stem from the wording in the new guidance.

Question 6: Do you agree with our proposals on SMF18?
We appreciate the further guidance which would likely reduce the number of individuals who may be identified as carrying out SMF 18, by setting out the regulatory expectation that only persons with the requisite seniority in the firm would be captured. The references to other relevant parts of the FCA Handbook also provides helpful guidance.

Question 7: Do you agree with our proposals on Prescribed Responsibilities?
We welcome the additional guidance proposed by the FCA on the allocation of Prescribed Responsibilities. However, we think it is important that firms can allocate Prescribed Responsibilities in the way which is most appropriate for their particular circumstances, and we note that the FCA's proposed guidance does retain this flexibility in particular in relation to small non-complex firms.

Question 8: Do you agree with our proposals on raising the thresholds for becoming an Enhanced SMCR firm?
Yes, we welcome the raised threshold for becoming an Enhanced SMCR firm. The impact of becoming an Enhanced SMCR firm in terms of the additional requirements is potentially significant, so it is important that the thresholds are set appropriately.

Question 9: Do you agree with our proposals on SoRs and MRMs?
Yes. We welcome the proposals on SoRs and MRMs to reduce the compliance burden on firms.

Question 10: Do you agree with our proposal to align with the PRA on SoR submission requirements for dual-regulated firms?
N/A.

Question 11: Do you agree with our proposals on certification?
We consider the proposals on certification helpful for firms to navigate a more efficient way to assess individuals by incorporating into internal processes, and the proposals also remove any duplication in certification requirements. We appreciate the proposals are only temporary changes or adjustments and we await the FCA's further proposals for the phase 2 reforms in due course.

Question 12: Do you agree with our proposal to change the timescales for updating the Directory?
We welcome the proposal to extend the timescales for updating the Directory.

Question 13: Do you agree with our proposals on regulatory references?
Our expectation is that four weeks will be manageable, but we welcome the inclusion of this timeline in guidance rather than a rule. We note that there may be occasions on which four weeks is not practicable – for example, when an individual departs before the conclusion of an investigation or other issue that requires further consideration, or an opportunity for the individual to respond to facts or allegations.

In those circumstances, it may be appropriate for the guidance to acknowledge the possibility of a longer period being required, or otherwise explain to firms how the FCA might expect this scenario to be handled – for example, submitting a regulatory reference containing the facts as they currently stand, with the possibility for an updated reference if necessary, or the ability to explain to the FCA why the regulatory reference is delayed.

Question 14: Do you agree with the proposed guidance on the Conduct Rules?
We welcome the additional proposed guidance on the Conduct Rules and, in particular, the circumstances in which a Conduct Rules breach is notifiable to the FCA. We support the FCA's confirmation that only breaches where disciplinary action was taken should be reported. This is a complex area and additional guidance is generally helpful. However, we would note that decisions in relation to Conduct Rule breaches, notifications and regulatory references can be finely balanced and require the exercise of judgment on the part of the firm and senior managers.

We think it would be helpful for the FCA to recognise this in the guidance it provides. For example, in relation to whether a firm should include reference to a COCON breach for which it did not take disciplinary action in section G of a regulatory reference. The proposed FCA guidance states that a firm need not report that breach if it "reasonably considers it not to be relevant" to the assessment of fitness and propriety. This imports a level of objectivity to the firm's assessment of whether the breach is relevant to the assessment. We would suggest that it would be preferable for the guidance to say that a firm need not report the breach where the firm either (a) considers it not to be relevant (a wholly subjective test) or (b) honestly or in good faith considers it not to be relevant (preserving an element of objectivity but putting less pressure on firms in their assessment).

The proposed guidance should address the ambiguity that sometimes exists regarding remuneration adjustments and suspensions. As the consultation acknowledges, some firms in the private capital sector link their malus and clawback to a wide range of factors that are not necessarily Conduct Rule breaches. It would therefore be helpful to have guidance making clear that only adjustments made as a result of Conduct Rule breaches are notifiable.

In addition, as remuneration may often be subject to 'reduction' as a simple consequence of performance targets being applied, we therefore agree that it would be helpful to clarify that such a reduction would not constitute disciplinary action. The rule should only capture decisions to further reduce the level that would otherwise be delivered after the normal application of performance targets.

It is standard practice to suspend an individual as a neutral, precautionary measure pending the outcome of an investigation. In our experience, suspension as a true disciplinary sanction is extremely unusual. On that basis, we welcome the FCA's proposal to clarify that where the reason for a suspension is to remove someone from work before an investigation has concluded, that would not be reportable as a Conduct Rule breach.

If you have any questions or there are points it would be helpful to discuss further, please contact Nick Chipperfield (nchipperfield@bvca.co.uk) and Tom Taylor (ttaylor@bvca.co.uk).

Yours faithfully,

Tim Lewis
Chair, BVCA Regulatory Committee