

Senior Managers & Certification Regime Call for Evidence
Financial Services Strategy
HM Treasury
1 Horse Guards Road
SW1A 2HQ

By email: SMCR@HMTreasury.gov.uk

1 June 2023

Dear Financial Services Strategy team

Re: Senior Managers & Certification Regime Call for Evidence

The BVCA is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. With a membership of over 700 firms, we represent the vast majority of all UK-based private capital firms, as well as their professional advisers and investors. Between 2017 and 2021, BVCA members invested over £57bn into around 3,900 UK businesses, in sectors across the UK economy ranging from heavy infrastructure to emerging technology. Companies backed by private equity and venture capital currently employ over two million people in the UK and 90% of the businesses our members invest in are small and medium-sized businesses.

We do not consider that the SM&CR is in need of fundamental reform. Firms expended significant time and resources in implementing the regime, and there is no need to make significant changes which would result in firms incurring significant additional costs. We consider that improving the operational efficiency of the SM&CR, particularly the process for approving Senior Managers, would provide the greatest benefit to firms and we welcome the steps the FCA and PRA have taken to reduce the time for approvals to be issued and to meet their statutory timeframes. However, we have set out in the responses to the specific questions some suggested adjustments to the regime which could improve its efficiency and reduce the burden on firms. We would note that the BVCA's member firms are solo regulated firms, and most will be Limited Scope or Core firms.

We have responded only to the questions relevant to private capital and on which our members have specific views.

Q1: Has the SM&CR effectively delivered against its core objectives? For example, making it easier to hold individuals to account; or improving governance, behaviour and culture within firms.

Generally, we agree that the SM&CR has delivered on its core objectives, reinforcing Senior Managers' awareness of their individual responsibilities and that this has generally had a positive effect on firms.

Q2: Do these core objectives remain the right aims for the UK?

We agree that the core objectives – individual accountability and improving governance, behaviour and culture – remain the right aims for the SM&CR.

Q3: Has the regime remained true to its original objectives or has the scope or use of the regime shifted over time?

We do not believe that the objectives of the regime have changed. However, the scope and use of the regime has changed over time. In particular, the regime was originally intended for banks and systemically important investment firms. It has subsequently been extended to cover all authorised firms. Some degree of proportionality was introduced when the regime was extended – creating the categories of Enhanced, Core and Limited Scope firms – but many of the requirements and processes remain the same across all

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firms. It is crucial that the boundaries between the different types of firm remain appropriate (the shift from Core to Enhanced Scope firm in particular imposes significant additional burdens), and we would also encourage the Government and the regulators to consider ways of extending the proportionality afforded to different types of firm so as to reduce the burden on the smallest firms in particular.

We would also note that there is a risk that the SM&CR becomes a vehicle for applying other regulatory objectives, expanding the scope of the regime - for example, adding diversity and climate change as prescribed responsibilities. We would encourage the regulators to consider carefully whether the SM&CR regime is always the right tool to use for this purpose.

Q4: The government would be interested in respondents' reflections on their experience of the SM&CR, now that it has been in place for some years?

While we consider that the SM&CR has had beneficial effects in reinforcing Senior Managers' awareness of their individual responsibility, there are a number of areas where the SM&CR could be improved:

- (i) **Operational effectiveness** – the delays experienced in processing Senior Manager applications in particular have been widely reported and create significant issues for firms. We recognise the steps the regulators have taken to address these issues but improvement is still required.
- (ii) **Certainty for Senior Managers** – the purpose of the regime is to hold Senior Managers to account, and the regime imposes a Duty of Responsibility on Senior Managers with a requirement that they take 'reasonable steps'. However, there is little guidance for Senior Managers on what will be considered to be 'reasonable steps' creating uncertainty and making it difficult for firms to provide meaningful guidance to existing and prospective Senior Managers on what will and will not discharge the duty.
- (iii) **Proportionality** – as stated above, there is some proportionality built into the regime, but there is still too little differentiation in the forms and processes applicable to different firms and to different Senior Manager roles with very different risk profiles. We would encourage the Government and regulators to consider ways to increase the proportionality of the regime – for example, by introducing fast track processes for certain Senior Manager appointments such as where a Senior Manager is moving between firms – which would have a beneficial effect on the operational efficiency of the regime as well as reducing the burden on firms.
- (iv) **Unnecessary requirements** – we believe that there are some requirements of the regime which impose administrative burdens on firms with little purpose – for example, the requirement to issue a fit and proper certificate annually, the duplicative information requirements of some of the application forms or the requirement to obtain regulatory references for all certification staff. We consider that a critical review of the administrative aspects of the regime would identify a number of requirements which could be removed or reduced.

Q5: What impact does the SM&CR have on the UK's international competitiveness? Are there options for reform that could improve the UK's competitiveness?

We do not think that the existence of the SM&CR regime *per se* impacts the UK's international competitiveness; many other jurisdictions have, or are introducing, similar regimes. However, the operational effectiveness of the regime (in particular the time taken to process Senior Manager applications) together with the lack of certainty around regulatory expectations of the 'reasonable steps' required of Senior Managers are relevant to the attractiveness of the UK.

Q6: Are there examples of other regimes that the government could learn from?

We think that the focus should be on improving the SM&CR and making it suitable for the UK financial services sector. We would encourage the Government and regulators to consider whether to 'recognise' other countries' regimes so that individuals who are approved or assessed under those regimes could

benefit from a fast-track procedure when applying for Senior Manager positions in the UK. This would also benefit the UK's international competitiveness and make it easier for international groups to move employees to the UK to perform Senior Manager roles.

Q8: Are there specific areas of the SM&CR that respondents have concerns about or which they believe are perceived as a deterrent to firms or individuals locating in the UK? If so, what potential solutions should be considered to address these? Respondents should provide as much detail as possible to help build the fullest picture of any issues.

As set out in our response to Q4 we consider that the operational effectiveness of the regime (and the Senior Manager approval process in particular) is the most significant issue with the regime, because it introduces significant delay and uncertainty for firms and individuals; particularly for individuals contemplating relocating to the UK to take up a Senior Manager role. In addition, the lack of clarity regarding the expectations of Senior Managers, coupled with the personal exposure they face, is a significant issue for any individual considering taking up a Senior Manager role. We would encourage the regulators to consider ways in which they can improve the clarity of expectations on Senior Managers through issuing further guidance.

Q9: Is the current scope of the SM&CR correct to achieve the aims of the regime? Are there opportunities to remove certain low risk activities or firms from its scope?

Generally, we agree that the scope of the SM&CR is appropriate. As set out above, we do think there is the potential to introduce more proportionality into the regime to reflect the actual risk presented by firms and individuals.

There are aspects of the regime which could be streamlined to reduce the burden on firms which would also aid competition and international competitiveness, for example:

- (i) introducing a fast-track procedure for certain applications (e.g. where an individual is moving from a Senior Manager function at one firm to perform the same Senior Manager function at another firm);
- (ii) removing the requirement to issue a certificate annually – a certificate could be issued at the outset of an individual's employment with the firm and would remain in place until the firm determined the individual was no longer fit and proper – firms would continue to conduct an annual assessment of fitness and propriety but the administrative burden of issuing a certificate could be removed;
- (iii) restricting the requirement for regulatory references to Senior Managers – the requirement to provide a regulatory reference for Certification staff is burdensome and it is not clear that the references really fulfil the function they were originally intended to fulfil.

Q10: Are there "lessons learned" that government should consider as part of any future decisions on potential changes to the scope of the regime to ensure a smooth rollout to firms or parts of the financial services sector?

We would encourage the Government and regulators to avoid changes which require firms to submit additional information to the regulators or amend submissions which have already been made. The move to the Senior Managers regime from the Approved Persons regime imposed a very significant administrative burden on firms. Any future changes to the regime should reduce the burden on firms rather than increase it, even if this is only temporary.

Please do not hesitate to get in touch if you have any questions or if you would like to discuss any of the above in more detail (please contact Tom Taylor ttaylor@bvca.co.uk / Nick Chipperfield nchipperfield@bvca.co.uk).

Yours faithfully,



Tim Lewis

Chair, BVCA Regulatory Committee