

Don't let SM&CR die in BAU

SM&CR goes live on 9th December 2019, there's a lot of activity across financial services firms and TISA is heavily involved with its members in preparation for the new regime. What we have seen in broad scope is that the industry is simply not ready to take SM&CR into BAU! We need to take action now and to learn from the insights, best practices and common issues seen across the industry to ensure SM&CR is not lost within BAU when ownership is passed from the project to the business.

Of course, firms will have differing levels of SM&CR activity depending on their size and structure and should take a proportionate approach to implementation and delivery. This paper looks at the highest level, giving a full belt-and-braces approach and should be used by firms as appropriate to them.

What do we mean by BAU ownership?

SM&CR will be Business As Usual (BAU) from 10 December 2019. This means you must know who is going to manage each stage in the administration of SM&CR, who is going to review and control it, how it is reported, who it is reported to, how it links into business change, personnel matters and how SM&CR lives and breathes in the business.

In simple terms it is about running a business in line with the regulatory expectations and evidencing that.

Tensions

In our research for this paper, we have **identified 10 key areas of tension** for firms to address before it's too late (assuming the project is well underway). Those areas need both upfront work in the implementation project and further or ongoing review.

(1) Engagement vs ownership

40% of firms are not sufficiently engaged in the project



Senior Managers and Leadership teams are being engaged, there is an understanding SM&CR is important but it's nowhere near the top of their list, sometimes suffering from SM&CR fatigue or simply competing priorities and the reason for this (primary drivers).

44% of firms intend for BAU ownership of SM&CR to belong to Compliance

This is in direct conflict with the 3 LOD (3 lines of defence) model, the compliance function is intended to provide the second line of defence, performing checks on BAU processes, not completing them.

In a recent FCA podcast (August 2019), Jonathan Davidson, Director of Supervision – Retail and Authorisations at the FCA agreed that "organisations who think that the Senior Manager Regime is the remit of the compliance team have probably missed the point entirely".

(2) Play nicely



In many cases there is a tension between compliance and HR over a regulatory requirement becoming a BAU process. Engagement and ownership from both functions from the beginning, or as early stage as possible, to get the difficult 'ownership' conversations will help to circumvent that tension.

We have seen this particular tension causing delays in many SM&CR projects resulting in ineffective handover to BAU and worse, delays due to late involvement or agreement of those functions resulting in unpicking or reworking key aspects.

(3) Pass the parcel



95% of firms' SM&CR projects are owned by Compliance, Legal or the Project team

The business will own SM&CR risk in BAU. Our survey showed 95% ownership of the project, defining business practices and controls that do not own and are not directly involved with the business processes.

Many firms may be ready on paper but not in practice, agreement of BAU ownership, their involvement and agreement is critical to ensuring SM&CR will work in any business.

If you aren't considering handing over to BAU by now then you need to start today

(4) Keep it real



Firms who built SM&CR into existing corporate messaging and structures reported greater success in engagement and understanding than those who went out with stand-alone messaging.

Embed SM&CR into existing language, values and behaviours.

Incorporate SM&CR into business scorecards and performance reviews, ensure there is a visible and tangible measurement at a business and individual level with clear targets, behaviours and goals.

It's the responsibility of project team to understand what is keeping their COO up at night and how SM&CR will help, making it both real and positive.

(5) Get the RACI right



Though accountability is clear in SM&CR, there is conflict over ownership of process. With an apparent belief that compliance should own the business processes, this is a huge area of tension across many firms. We have summarised those into 2 key groups:

Do-ers vs Reviewers

Do-ers are those that own the business process (operational departments): they 'do' the work, adhere to the requirements and ensure the work is completed effectively.

Reviewers are those that review the business process (compliance departments): they review the business processes and controls to ensure requirements are met.

Operational management vs Operational Risk

Operational management are those that manage effectiveness of business processes (Senior Managers/business control committees): they manage this through reporting, assessment, control and review processes.

Operational risk are those that independently review business processes, risks and controls (audit): they manage this through review and assessment processes.

Example - Anti-Money Laundering Controls



Operational risk Audit reviewing business processes, controls and regulatory compliance reviews



Reviewer Compliance reviewing business process and controls for regulatory compliance



Operational management Financial Crime Group/MLRO controlling through MI and reporting on process



Do-er Front line staff obtaining and processing onboarding information

(6) Leadership not champions

SM&CR is about leading by example to achieve cultural change. Setting individual champions throughout the business may counter this approach.



In a recent FCA podcast (August 2019), Jonathan Davidson, Director of Supervision – Retail and Authorisations at the FCA stated *“The Senior Manager part is about leadership and stepping up and actually saying this can be a positive thing for your firm as opposed to just a compliance thing which in a sense is constricting”*.

(7) SM&CR function should have a direct link into CEO/COO

It is likely that the CEO/COO will be accountable for SM&CR due to their Prescribed Responsibilities though it’s in the gift of each business to decide.



There needs to be a consistent application and oversight of SM&CR throughout the business ensuring effective delegation of duties and appropriate reporting /recording.

How firms achieve this differs widely with some firms creating SM&CR oversight teams, some creating a specific role and some expanding the Company Secretariat function.

Of course this is not a regulatory requirement but firms, particularly the CEO/COO should question how they will ensure consistent application and oversight.

(8) Don’t reinvent the wheel!



Incorporate SM&CR into existing communications and conduct frameworks
Add SM&CR to existing risk and control frameworks and assessments.

Try to avoid launching SM&CR as a big bang, evolve what you have, let it bed in and build from there.

Don’t jump into a new system or process, see how it fits in your business now then work out what you need going forward. SM&CR may look very different in the cold light of day to the rose-tinted glasses of the project.

(9) Keep it alive



The FCA expect SM&CR to be a catalyst for change - an opportunity to establish healthy cultures and effective governance in firms by encouraging greater individual accountability and setting a new standard of personal conduct.

Consider staff turnover and role changes and relevant affected processes. Provide ongoing training and engagement with Senior Managers, Certified People and Conduct Rules Staff. Ensure communications are relevant, effective and promote understanding with consideration to the format and delivery methods used for each group.

(10) Death by MI



With increased accountability there is a tendency for Senior Managers to ask for MI on everything. If left unchecked, Senior Managers could spend so much time checking MI and reporting that they can no longer perform their role and MI production could be the cornerstone of every business. Avoid creating cottage industries and review MI by exception.

It’s useful to start with outcomes linked to Statements of Responsibility to ensure that MI is available on key areas. Utilise your existing MI, look for any gaps and plug them, make sure you are capturing the best measure for the outcome – after all MI will only tell you what you ask it to.

Don’t forget to incorporate soft MI, qualitative analysis, reviews, verbal updates, feedback etc.

Don’t be the first!

At the time of publication no fines have been levied by FCA in relation to SM&CR, don’t let your firm be first.