



tisa

Leading on Investments and Savings

**Response by TISA to CP 19/4:
Optimising the Senior
Managers & Certification
Regime and feedback to DP
16/4 – Overall responsibility
and the legal function**

April 2019



TISA Response to CP 19/4: Optimising the SM&CR and feedback to DP 16/4 – Overall responsibility and the legal function

About TISA

TISA is a unique, rapidly growing, consumer focused membership organisation. Our ambition is to improve the financial wellbeing of all UK consumers. We work with our members to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of all sectors of the financial services industry. We have over 200-member firms involved in the supply and distribution of savings, investment products and associated services, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

Complementing our consumer policy development, TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives (TeX/STAR, Digital ID, MiFID II and Open Savings & Investment). This reflects TISA's commitment to open standards and independent governance.

TISA's current strategic policy and industry solution developments include:

- **Financial Guidance:** Making guidance more widely available to support financial decision making for those consumers who currently do not have access to advice.
- **Digital ID:** Development of a secure Digital ID for consumers of UK financial services. This will be key enabler for the digitisation of financial services.
- **Open Standards Development - Digitisation:** Building on TISA's range of open standards development projects (inc. TeX, MiFID II), TISA's members have launched a project to further open up UK financial services to consumers. This project - Open Savings & Investment – is aligned to the aims of Open Banking and has the core objective of enabling access to all savings and investments through the development/governance of industry open standards.
- **Financial education:** Helping young people manage finance, including KickStart Money - a three-year programme delivering financial education to 18,000 primary school children.
- **Retirement saving:** Strategic proposals for a holistic approach to saving for retirement.
- **Consumer engagement:** Focusing on vulnerable customers and millennials.

TISA also provides its members with support on a range of operational and technical issues targeted at improving infrastructure and processes, standards of good practice and the interpretation and implementation of new rules and regulations. This work currently includes: MiFID II, CASS, SM&CR and addressing cybercrime.

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We welcome the opportunity to respond on the consultation and commend the efforts of the FCA to provide clarity in areas of concern and confusion as raised by industry.

Consultation Questions Response

Question 1 – Do you agree with our proposal to exclude Head of Legal from the requirement to be approved as a Senior Manager? If not, please explain why.

CP19/4 and the draft rules provide that:

- a) the head of a firm's legal function (Head of Legal) is expressly carved out of the scope of the SMF18 function (and equivalent SMF22 for overseas firms); and
- b) overall responsibility for the SMCR Legal Function may be allocated to someone who is not approved to perform a Senior Manager Function.

It appears the FCA considers responsibility for providing legal services is a responsibility firms must allocate but that:

- firms may allocate this responsibility to their Head of Legal; and
- despite holding that responsibility, and although they must be certified, that Head of Legal does not need hold the SMF18 function or be approved as a senior manager.

This seems helpful (and to address some of the concerns around privilege) if a firm has a Head of Legal who is not otherwise required to be approved as a senior manager. Where, however, a firm's Head of Legal has other functions or responsibilities which require their approval as a senior manager, they will still need to be approved as such. It is not currently clear if the FCA sees such individuals as also subject to the duty of responsibility in relation to their responsibility for the legal function. If so, that would not address the concerns around privilege for those individuals. It may also incentivise firms to structure themselves so that their Head of Legal is not a senior manager or lawyer (and do not subject to a duty of responsibility in relation to their responsibility for the legal function). Alternatively, we can see that it may be the intention is that, if individuals are approved as senior managers for other reasons, the duty of responsibility would not apply to their responsibility for the legal function. For this aspect of their responsibility they would be certified and not duty of responsibility applied. We consider this is an important point that would benefit from clarification.

We also query whether it is the FCA's position that if the person responsible for the legal function is not a senior manager they will be required to be a certified person because of that responsibility or whether the FCA just considers it likely that they would be certified? Is this a matter for firms in their discretion to assess by reference to their own situation and the definitions of the certification functions and, if so, it would be helpful for the FCA to provide some guidance around how this would apply in practice especially in smaller firms where there may not be a legal department.

Question 2 - Do you agree with our proposed notification requirement for relevant intermediaries that do not submit RMA-B and our approach to the period before commencement? If not, please explain why.

We have received no feedback from our members in relation to this question however we generally support any further clarity and guidance for firms that may have difficulty in assessing categorisation.

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Question 3 - Do you agree with our proposed amendments to the scope of the Client Dealing Function?

We agree with and support the proposed amendments to clarify that purely administrative functions are excluded from the scope of the Client Dealing Function, however one member has raised a specific query in relation to the Client Dealing Function that does not seem to be answered by this (below).

“The real issue is more at the top end of those that interact but don't advise clients i.e. sales or product specialists. The argument can be two-fold

1. They are all in the investment management client lifecycle process and whether they arrange or directly connected to the capacity of investment manager they are in scope.
2. To deconstruct the roles of sales and product specialist (people who sit with the fund managers but support sales which technical product knowledge) and argue they neither advise/arrange or act in the capacity of an investment manager. On this point I would find it hard to argue that they are not ' part of a function connected with this activity'. but legal sometimes have persuasive arguments.

The FCA would expect firms to evaluate this given their business models and given investment managers usually 'employ' (via internal service companies) the sales and product specialist team, one could expect a consistent approach. I fear this is far from likely and we will end up with a less than level playing field. I am unclear (reading the directory PS) and SUP 16 annex 47, whether this helps to close or leaves open this gap.

The FCA fields in the directory 12&13, are they linked or deconstructed?

- what if a firm includes its sales team under 'client dealing function' but as the MiFID II competency requires apply but not the FCA TC requirements field 13 is blank and field 14 is blank. How are customers meant to understand this?

- benefit as outlined by FICA: the ability to reassure customers of the suitability of their staff from front desk to back office non-client-facing roles is at risk.”

Additionally, we feel the ‘...and whose tasks do not require them to exercise significant skill’ wording would benefit from examples to aid firms in their assessment of roles to judge whether they are in or out of scope.

Question 4 - Do you agree with our proposals to introduce a new Certification Function to cover individuals in Systems and Controls functions at firms where these functions do not require approval? If not, please explain why.

We believe this is a reasonable proposal to ensure responsibility for appropriate functions. In relation to the Certification Function title and description for this and other previously approved roles, we question whether the FCA will be re-naming following implementation as over time knowledge of the previously approved functions will diminish and referring to previous guidance will become increasingly difficult and cumbersome for firms.

Clarity on how this will be applied retrospectively, if at all, would be beneficial as some firms will be implementing all elements of the regime, including certification, from 9th December and would need to include this in their preparations.

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Question 5 - Do you agree with our proposal to extend the application of SC4 (from Senior Managers and all Non-Executive Directors) to all directors of UK Limited Scope firms? If not, please explain why.

We agree with this proposal to ensure consistency over Executive and Non-Executive Directors at all firms against this Senior Manager Conduct Rule.

Question 6 – Do you have any comments on the proposed amendments to our regulatory forms?

We have received no feedback from our members in relation to this question and have no further comments on this question.

Question 7 – Do you have any comments on the cost benefit analysis?

We have received no feedback from our members in relation to this question and have no further comments on this question.

Question 8 – Do you agree that these proposals would not result in any direct discrimination against any of the protected groups? Please provide any additional feedback you believe is relevant.

We have received no feedback from our members in relation to this question and have no further comments on this question.