HM Treasury Senior Managers & Certification Regime: Financial Market Infrastructures Consultation Paper

LINK's response to HM Treasury's Senior Managers & Certification Regime: Financial Market Infrastructures Consultation published in July 2021

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Introduction

1. As a Financial Market Infrastructure (FMI), LINK is responsible for the operation of the UK's largest cash machine network. Effectively every cash machine in the UK is connected to LINK, and LINK is the only way banks and building societies can offer their customers access to cash across the whole of the UK. All of the UK's main debit and ATM card issuers are LINK Members.

2. The LINK Network is a fundamental part of the UK's payments infrastructure and cash machines are by far the most popular channel for cash withdrawal in the UK, used by millions of consumers every week.

3. LINK welcomes an opportunity to respond to this important Consultation Paper in order to inform both the Treasury and the Bank, in their work to develop the framework of the proposed regime. LINK's response to each question is set out below

Executive Summary

4. LINK sets out below detailed responses to the questions set out in the Consultation Paper but, in summary, LINK is pleased to support the broad objectives of the Consultation Paper and looks forward to responding to more detailed proposals in due course when the Bank issues its own consultation.

Question I: Do you agree with the proposal to create a SM&CR for FMIs?

5. LINK is in general agreement with the objective of reinforcing the oversight of the conduct of senior individuals within FMIs and the proposals to achieve this, as set out in the CP. This includes:

    - The intention for the key features of the regime to be similar to the existing SM&CR for the banks, the core elements being a senior managers regime; a certification regime; and conduct rules.

- That the Bank, rather than the FCA or PRA, be the sole regulator for the purposes of making rules, supervision and for taking enforcement action against those in breach of the regime.

6. The Bank, as the established supervisor of FMI firms, already has a depth of knowledge and understanding as to the uniqueness and individual nature of each firm, including firm structures and business models. This knowledge must be called upon by the policy makers to shape the proposed regime and to ensure appropriate tailoring to both the FMI sector and to each subset of FMI firm.

7. In basing the proposed regime on one which is already in place, the Bank will benefit from experience gained during previous implementations by both the PRA and the FCA. This will also allow the Bank to leverage off existing infrastructures and processes (for example, systems to submit and process applications for the approval of Senior Management Function holders), which it is hoped would minimise implementation costs for both regulators and for firms, as ultimately the costs of implementation and subsequent operation will be borne by FMI firms through their regulatory fees and levies.

Question II: Are there any specific considerations for FMIs (as a whole or in part) which you think should be accounted for, to ensure the effectiveness of the proposed SM&CR when applied to FMIs?

8. While LINK is generally supportive of the proposals, regulators should not lose sight of the fact that the rigour of the Bank's supervision arrangements currently in place for FMIs already reflects the risks each FMI presents to the Bank's objectives, and facilitates detailed engagement with the Board and Senior Management of an FMI. In LINK's experience of supervision by the Bank, the arrangements currently in place both encourage and support effective oversight and challenge between the Bank and the LINK Board, as well as between the Board and Senior Management within LINK.

9. It is important to ensure that any framework and rules introduced as a result of this (and subsequent) consultations remain consistent with the requirements set out in the IOSCO Principles for FMI firms. These Principles already set international standards for governance arrangements, financial resources, and the management of certain types of risk within an FMI firm, as well as supporting good governance and the accountability of the Board and Senior Management. Certainly, the Principles are well embedded within LINK (and likely within other UK FMIs), therefore any new SM&CR requirements must build upon and complement these already established good practice standards.

10. The Bank currently conducts periodic assessments of each FMI it supervises from which it sets the risk-mitigating actions it expects to be taken (known as Priorities). These are informed by a continuous cycle of supervisory engagement, to identify firm-specific risks as they emerge. This assessment activity together with the outputs from the annual requirement for each FMI to self-assess its compliance with the IOSCO Principles (and which is then shared with Bank supervisors) should be used by the Bank to inform the tailoring of any regime both with regard to the sector and to each subset of FMI firm.

Question III: Are there any other considerations on the proposals outlined in this consultation which should be brought to our attention?

11. LINK supports the Treasury's proposal for a more bespoke approach to SM&CR which recognises that each FMI firm is subject to its own distinct legal regime, and which LINK believes reinforces the argument for tailoring.

12. LINK considers that an approach similar to that adopted by the FCA for solo regulated firms (three categories of firms: Limited Scope; Core; and Enhanced) matching SM&CR requirements with the particular nature of each firm, is most likely to achieve a proportionate regime for FMIs.

13. Other points for consideration in relation to the proposals outlined include:

    - Consistency and clarity of application: both of the core standards and of any other requirements as they might apply to the FMI sector and to each subset of FMI. Examples include (but are not limited to):
        - Any Threshold Conditions that might be applied to an FMI.
        - If FMIs would be subject to certain high-level standards such as the 'Principles for Business' in the same way that an FCA regulated entity is.
        - The roles within each subset of FMI which will be covered by the regime. This is particularly important if the regime is able to be tailored to each subset of FMI firm.
        - Any Code of Conduct intended to support the implementation of the requirements such as the COCON section of the FCA Handbook.
    - Implementation infrastructure: which should be simple, supported by technology (which is both proven and reliable), and adequately resourced by the Bank.
    - Implementation period: with an appropriate period of time being allowed for the implementation of any proposed regime, for the transition of individuals into Senior Management Function roles and for achieving compliance with the new requirements.
    - Cost considerations: to avoid the addition of significant operating costs and administrative burdens for FMI firms.
    - Unintended consequences: minimising the potential for any unintended consequences of implementing such a regime within FMI firms. For example:
        - firms finding it increasingly challenging to recruit people to undertake senior roles (including non-executive director roles) given the responsibilities and personal liabilities arising under the proposed regime; or
        - the diversity of Boards and Senior Management, if greater emphasis on senior management accountability were to limit the candidate pool and potentially discourage some candidates from outside the UK-regulated

financial services sector from applying for senior manager roles, with knock-on implications for the skills and diversity in FMIs.

- Guidance: with the Bank supporting any new regime with the provision of appropriate guidance on the expectations of Senior Managers. For example, in relation to the format and content of a Statement of Responsibilities and the criteria for an individual fulfilling those responsibilities.
- Enforcement: with clarity on the disciplinary powers that the Bank will have and how these will be applied in an open, fair, and transparent way. Including from a conduct perspective the descriptions of conduct which, in the Bank's opinion, do or do not comply with any relevant conduct rules or such other requirements as set out by the Bank.

ENDS

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