

The background image shows a modern office interior with large glass windows. Several business professionals are silhouetted against the bright light coming from the windows. Some are walking, while others are standing and talking. The city skyline is visible through the glass. The overall atmosphere is professional and dynamic.

# SMCR – ‘Class of December 2019’

## Top 10 tips for transition and ongoing compliance

October 2019

# Before 09.12.19 (“S-Day”)

## 1) Don’t panic

- a. There is still time to get it right before S-Day
- b. Whilst there is much to do, there is plenty of help available from advisors
  - i. Compliance consultants and lawyers can help
  - ii. Think which type of adviser could be most appropriate for which issues that your firm might face eg:
    - 1) consultants may cost less than lawyers;
    - 2) lawyers can receive instructions and give advice under ‘privilege’ (in short, confidentiality even from regulators and court proceedings), which can be useful in the face of risks from, say, employment tribunal claims

## 2) Understand how your firm’s operational / risk attributes (eg income, assets, client base) fit into the structure of the rules, ie:

- 2.1. Is your firm Limited Scope, Core or Enhanced? That dictates how much work you will have to do.

## 3) Understand how your firm’s intended governance and management structures, mechanisms and personnel (‘Management and Conduct Systems’ - “MCS”) from S-Day fit with the structures and categories in the rules, in particular:

- 3.1. Who working at or for your firm will have a Senior Manager Function (“SMF”) or Certification Function (“CF”), or be staff subject to Conduct Rules (“CRS”) or not (“ancillary staff”)?
- 3.2. Which SMFs will have which ‘Prescribed Responsibilities’ (“PRs”)?
- 3.3. Of those working at or for your firm who are currently Approved Persons (“APs”), which of them will become SMFs or CFs?

## 4) Understand how any changes are to be effected from S-Day to your MCS will be, or need to be, made, in particular:

- 4.1. Do you know which of your APs will become SMFs or CFs automatically under ‘grandparenting’ procedures (“Auto-transition”)?
- 4.2. Do you need to apply to change any individual’s role within your MCS, or to add roles for new or existing individuals (“SMF Applications”)?

## 5) Get your SMF paperwork in order for S-Day, in particular:

- 5.1. Have you identified and reviewed the forms needed for SMF Applications?
- 5.2. Have you identified the additional materials, including ‘statements of responsibility’ (“SoRs”)?
- 5.3. Have you allocated, and documented the allocation of, PRs to your SMFs?
- 5.4. Have you prepared SoRs, including as to PRs, for those who will be SMFs after Auto-transition?

# After (“S-Day”)

## 6) Get your fitness and propriety (“FP”) systems and controls (“FPSCs”) ready for after S-Day, in particular:

- 6.1. Have you identified the factors in relation to each CF and SMF that will enable you to certify their FP?
- 6.2. Have you set up and timetabled an annual certification process for CFs and SMFs?

## 7) Get your conduct rules systems and controls (“CRSCs”) ready for after S-Day, in particular:

- 7.1. Is it clearly documented that each of your SMFs understand the specific application to them of the Senior Manager Conduct Rules?
- 7.2. Have you established systems for notifying the FCA of conduct rule breaches?
- 7.3. Is it clearly documented that your CRSCs are integrated into your training systems and controls (“TSCs”)?

## 8) Get your employment (including recruitment, disciplinary and regulatory references) systems and controls (“ESCs”) ready for after S-Day, in particular:

- 8.1. Have you prepared the integration of your TSCs, FPSCs and CRSCs with your ESCs?
- 8.2. For individuals being recruited as CFs, SMFs or NEDs do your ESCs enable you to obtain and take account of (as applicable) -
  - 1) ‘inward’ (ie from third party authorised firms) regulatory references?, and
  - 2) criminal record checks from the Disclosure and Barring Service?
- 8.3. Have you amended contracts of employment, precedent settlement agreements and applicable policies?

## 9) Get your TSCs ready for after S-Day, in particular:

- 9.1. Have you prepared the integration of your CRSCs, ESCs and FPSCs with your TSCs?
- 9.2. Have you set up and timetabled training suitable for CRS, CFs, NEDS, and SMFs?

## 10) Don’t panic!

- 10.1. See item 1 above.

# Get in touch



**Jeremy Irving**  
Partner

+44 (0)20 7337 1010  
jeremy.irving@brownejacobson.com



**Ian Deakin**  
Senior Associate

+44 (0)330 045 2265  
ian.deakin@brownejacobson.com