

More FCA-Authorized Firms to Be Considered Enhanced SMCR Firms

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A number of asset managers currently categorized as core firms under the U.K. Senior Managers and Certification Regime (SMCR) may be recategorized as falling within the enhanced firms SMCR regime.

What's new?

The rules implementing the new prudential rules applicable to MiFID firms which took effect in January 2022, also introduced certain consequential changes to the terms otherwise used in the FCA handbook.

One such change, included in the FCA's third consultation paper ([CP21/26](#)) on the new prudential regime for investment firms, was the introduction of a new defined term "significant SYSC¹ firm," which replaced the defined term "significant IFPRU² firm."

A firm is a "significant SYSC firm" if its total assets exceed £530 million; its total liabilities exceed £380 million; the client money that it receives or holds exceeds £425 million; the assets belonging to its clients that it holds in the course of, or in connection with, its regulated activities exceeds £7.8 billion; or **if the annual fees and commission income it receives in relation to its regulated activities exceeds £160 million** in the 12-month period immediately preceding the assessment date. (emphasis added)

What does it all mean?

The term "significant SYSC firm" has consequences on the firm categorization under the SMCR.

The definition of an Enhanced SMCR Firm includes, among other elements, a firm that is a "significant SYSC firm". Prior to January 2022, this reference used to be to a "significant IFPRU firm".

As the definition of a "significant IFPRU firm" was set out in the old IFPRU sourcebook³ and as IFPRU excluded BIPRU firms from the definition of an "IFPRU investment firm," it had commonly been understood that the "significant IFPRU firm" category would not apply to BIPRU investment firms.

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The effect of the change would be that, as a number of asset managers will meet the £160 million annual revenue test in the new post-IFPR definition of a “significant SYSC firm,” a potentially substantially greater number of firms will be categorized as enhanced SMCR firms.

When does the change take effect?

The rules are in force already. However, the categorization as an enhanced firm takes effect one year and three months after the change took effect, i.e., at the end of March 2023.

What’s the impact on U.S. asset managers?

Although the rules do not have direct extraterritorial impact, the enhanced regime may affect a U.S. asset manager with a U.K. subsidiary that acts as the delegated investment manager. The scope of the enhanced regime is more comprehensive and may bring within scope U.S.-based employees of the U.S. parent that were not included under the more limited scope of the SMCR applicable to core SMCR firms. However, practical implications are fact-specific and affected firms should evaluate the impact on their existing governance arrangements.

What’s next?

Recent communications with the FCA on this topic indicate that the FCA is currently not considering amending the criteria for a “significant SYSC firm” test applicable to all firms, including former BIPRU firms.

Arguably, this effectively amounts to a broadening of the scope of the enhanced SMCR firms without appropriate notice and due consultation. Given the significance of the changes to firms, the description of the changes as purely consequential to give due effect to the new prudential rules does not seem an accurate description. Further engagement with the FCA is possible.

¹ SYSC – Reference to the Senior Management Arrangements, Systems and Controls sourcebook in the FCA Handbook

² IFPR – Reference to the Prudential sourcebook for Investment Firms formerly included in the FCA Handbook, replaced in January 2022 by MIFIDPRU, the Prudential sourcebook for MiFID Investment Firms set out in the FCA Handbook

³ IFPRU 1.2.3R

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