



## Senior Managers and Certification Regime Factsheet – November 2020

Version 3.0

### Introduction

Following the application of the Senior Managers and Certification Regime to the banking sector in 2013, from the 9<sup>th</sup> of December 2019 the SM&CR also became enforceable for all FCA solo-regulated consumer credit firms. The SM&CR replaces the current Approved Persons Regime for SM&CR firms.

The regime does not require firms to change their governance structure or introduce new roles but aims to recognise the important part that Senior Managers play in ensuring the right culture and governance within firms with a view to improve standards of conduct, from the top down and from the bottom up.

It's really important that the BVRLA's Leasing Broker members are aware of how the new regime affects their firm and have implemented the changes that they are required to make to ensure successful implementation. Introducing the SM&CR in any firm required a culture change which could take some time to implement.

Key steps for BVRLA members implementing this regime to take include:

- Learning what the SM&CR regime will mean to your firm, by reading this Factsheet and the other Guidance documents referenced throughout it and attending relevant training,
- Determine what SM&CR tier your firm falls into,
- Assess which of your staff members the regime will apply to and be prepared for how you intend to apply it,
- Make sure those affected are adequately trained in time for implementation on the 9<sup>th</sup> December 2019,
- Create procedures for the annual reviews required to ensure SM&CR staff are fit and proper

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for their role and the reporting elements required of firms under the regime.

## SM&CR Tier Structure- Who does the SM&CR apply to, and how?

If you are a firm previously **exempt** from the Approved Persons Regime, then the SM&CR will not apply to you. Consumer Credit firms, including Leasing Brokers, require at least one Approved Individual under this regime with the exclusion of firms providing not-for-profit debt advice and some Sole Traders.

If you are a firm previously subject to **Limited application** of the Approved Persons Regime, which will apply to those firms with Limited FCA Permissions, you will be a **Limited Scope SM&CR firm**.

If neither of the above apply, you will be a **Core SM&CR firm**, unless one of the criteria for the **Enhanced tier** apply. The full list of criteria can be found in the [FCA's Guide for Solo Regulated Firms, page 8](#) but those most likely to apply to BVRLA Leasing Broker members are highlighted below:

- You are a firm with total intermediary regulated business revenue of £35 million or more per annum, calculated as a three year rolling average
- You are a firm with annual revenue generate by regulated consumer credit lending of £100m or more calculated as a three year rolling average

If any of these do apply, you will be an **Enhanced SM&CR firm**.

The SM&CR will not apply to Appointed Representatives. They will continue to be subject to the Approved Persons Regime.

Further information on the different Firm types can be found in the [FCA's Guide for Solo Regulated Firms, page 8](#).

### SM&CR Firm Type- Next Steps

- If you remain unsure on how the SMCR tier structure applies to your firm, you may wish to use the **Firm Checker Tool** on the FCA Website.
- The FCA will contact allocate firms with an SM&CR tier. It's important to remember that this allocation will be based on the data they hold on the firm so it is important to check that your FCA registration is up to date at all times.

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## Senior Management Functions and Statements of Responsibilities

The Senior Managers regime has no territorial limit and applies to anyone who performs a Senior Manager role for a solo-regulated firm, whether they are based in the UK or Overseas.

Advice on how existing approvals will be converted can be found from **page 53 onwards of The Senior Managers and Certification Regime: Guide for FCA Solo-Regulated firms.**

The Senior Managers regime requires individuals performing certain roles to be approved by the FCA. These roles are defined in the FCA handbook and are called **Senior Management Functions (SMFs)** and those that they are allocated to are called **Senior Managers**. The FCA have provided a list of a number of prescribed SMFs in their handbook- not all SMFs will apply to every firm and this will depend on what SM&CR firm type you are. It is possible that Senior Managers may hold more than one SMF. Those performing SMFs should be approved by the FCA prior to starting their role. Once approved, they will then have a Duty of Responsibility under the FSMA and could be held accountable if they do not take reasonable steps to prevent any breach of FCA requirements.

Part of the approval process will involve the FCA assessing that the Senior Manager is fit and proper to do their jobs.

### Senior Management Functions by Firm Type:

Table A		
Limited	Core	Enhanced
<b>Required Functions</b> SMF29- Limited Scope Function SMF16- Compliance Oversight SMF17- Money Laundering Reporting Officer	<b>Governing Functions</b> SMF 1- Chief Executive SMF3- Executive Director SMF27- Partner SMF9- Chair  <b>Required Functions</b> SMF16- Compliance Oversight SMF17- Money Laundering Reporting Officer	<b>Governing Functions</b> SMF 1- Chief Executive SMF3- Executive Director SMF7- Group Entity Senior Manager SMF9- Chair SMF10- Chair of the Risk Committee SMF11- Chair of the Audit Committee SMF12- Chair of the Remuneration Committee SMF13- Chair of the Nominations Committee SMF14- Senior Independent Director SMF27- Partner  <b>Required Functions</b> SMF16- Compliance Oversight SMF17- Money Laundering Reporting Officer SMF18- Other Overall Responsibility

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		<b>Systems and Controls Functions</b> SMF2- Chief Finance Function SMF4- Chief Risk Function SMF5- Head of Internal Audit SMF24- Chief Operations Function
The functions required of a <b>Limited Scope Firm</b> will depend on their permissions and activities. For example, a Sole Trader with no employees might only require <b>SMF16</b> .		

Each Senior Manager will then require a **Statement of Responsibilities (SOR)** which is intended to make clear exactly what they are *'responsible and accountable for under the ultimate accountability of a firm's governing body'*. The SOR should be *'clear and easy for regulators, the Senior Manager and others in the firm to understand'*. This document should be self-contained and not refer to any others. This should not be a summary of a job role but should instead be reflective of what the role holder is accountable for. **Prescribed Responsibilities** (defined in **SYSC 24**) must be shared between the Senior Manager's in order to make sure that the Senior Manager is accountable where relevant.

It is worth noting that Senior Managers will require a separate SOR for each legal entity they are accountable for and cannot use one SOR to cover a number of legal entities, even if they operate in the same way.

The sections to be included in an SOR are outlined below:

Table B	
Key SoR Sections by Firm Type	
<b>Limited</b>	<ul style="list-style-type: none"> <li>• <b>Prescribed Responsibilities are not relevant to Limited Scope Firms.</b></li> <li>• <b>Other Responsibilities-</b> This will cover those business activities for which the Senior Manager is responsible for, for example IT, Sales or Customer Service.</li> <li>• <b>Supplementary Information-</b> any other additional information not covered by the above.</li> </ul>
<b>Core</b>	<ul style="list-style-type: none"> <li>• <b>Prescribed Responsibilities-</b> These should be appropriate to the role and applicable to the legal entity. If they are shared with another Senior Manager, they should be shared appropriately and the rationale for this should be explained. The prescribed responsibilities that apply to Core SM&amp;CR firms are:                         <ul style="list-style-type: none"> <li>(a) Performance by the firm of its obligations under the SMR, including implementation and oversight</li> <li>(b) Performance by the firm of its obligations under the Certification Regime</li> <li>(b-1) Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules. More information on PR3.</li> <li>(d) Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime</li> <li>(z) Responsibility for the firm's compliance with CASS (if applicable)</li> </ul> </li> <li>• <b>Other Responsibilities-</b> this area should explain any business functions for which they are accountable not already covered by the Prescribed Responsibilities.</li> </ul>

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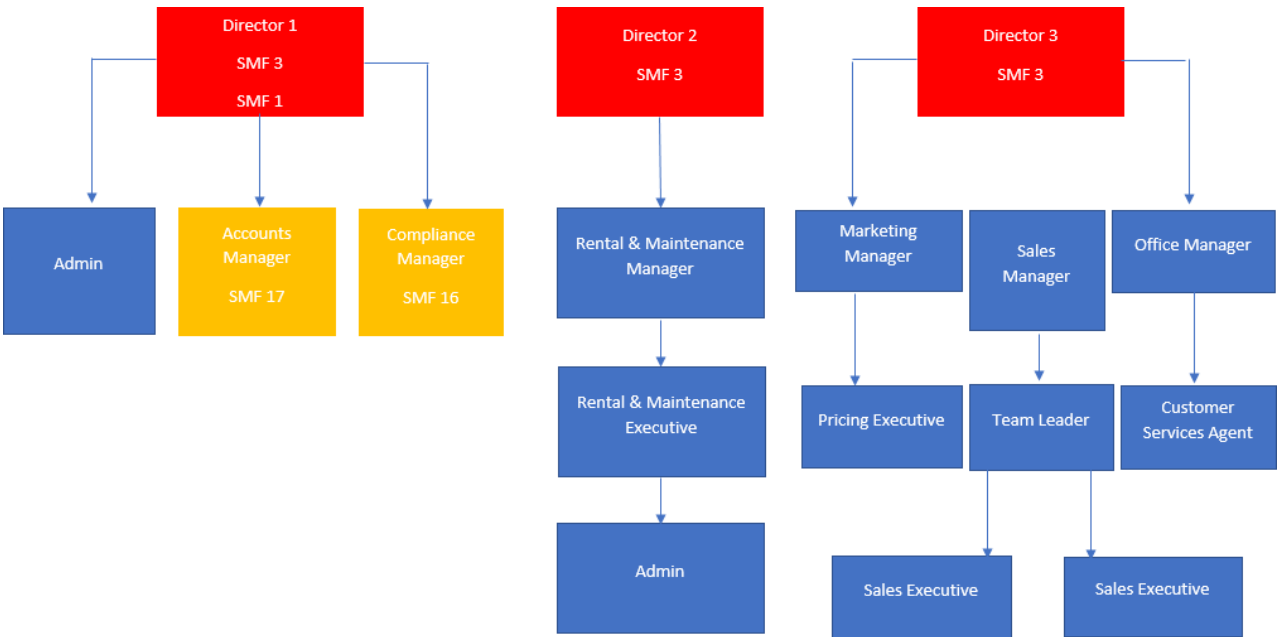
- **Supplementary Information-** any other additional information not covered by the above.

**Enhanced**

- **Prescribed Responsibilities-** These should be appropriate to the role and applicable to the legal entity. If they are shared with another Senior Manager, they should be shared appropriately and the rationale for this should be explained. Details of the prescribed responsibilities that apply to **Enhanced SM&CR Firms** can be found on **page 24 of The Senior Managers and Certification Regime: Guide for FCA Solo-Regulated firms.**
- **Overall Responsibilities-** the purpose of this section is to ensure that there are no gaps in responsibility, ensuring that all activities, business areas and management functions have a Senior Manager who has overall responsibility of that area.
- **Other Responsibilities-** this area should explain any business functions for which they are accountable not already covered by the Prescribed Responsibilities. Most SMF managers in an Enhanced scope firm will not need to complete this additional section and they will have covered all responsibilities in the previous sections.
- **Supplementary Information-** any other additional information.

**Statement of Responsibilities- Case Study**

If we consider a Firm, 'Leasing Broker Ltd' for the purpose of this example, we can see how the Senior Manager Regime could be practically applied. 'Leasing Broker Ltd' are currently subject to full application of the Approved Persons regime and do not meet any of the criteria under the Enhanced Firm tier and they are a **Core SM&CR** firm. Here is an example Organisational Chart for the firm:



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The SMF's relevant to 'Leasing Broker Ltd' as a Core Firm can be found in **Table A**. As a Limited Company, the Partner Function (**SM27**) will not apply to 'Leasing Broker Ltd'. The Executive Director function (**SMF3**) will apply to the firm's 3 Executive Directors- these are highlighted in **Red** in the example chart above. The CEO function (**SMF1**) will also be applicable if one acts as CEO. For the purposes of this example, it has been allocated to Director 1. The Chair Function (**SMF9**) can also be applied where relevant.

'Leasing Broker Ltd' will then need to allocate the Compliance Oversight (**SMF16**) and Money Laundering Reporting Officer (**SMF17**) functions to one or more individuals who will also be approved as Senior Managers. This can also include the Executive Directors. **SMF16** and **SMF17** are **required** functions for Core firms. For the purpose of this example, you will see they are allocated in the above chart to the Compliance Manager and Accounts Manager, highlighted in **Orange**.

'Leasing Broker Ltd' will then need to allocate the 5 Core tier Prescribed Responsibilities (see **Table B, above**) amongst its 5 'Senior Managers' and maintain Statements of Responsibilities (SOR) for each of them.

As an example, the SOR for Director 3 of 'Leasing Broker Ltd' may look something like the below if they were allocated Prescribed Responsibility (b-1):

<b>Firm Name</b>	Leasing Broker Ltd
<b>Firm Tier</b>	Core
<b>Employee Name</b>	Director 3
<b>Senior Management Function</b>	SMF3
<b>Description of Senior Management Function</b>	Executive Director
<b>Effective Date</b>	9 <sup>th</sup> December 2019

Prescribed Responsibilities		
PR Reference	PR Description	Is the PR shared? (Y/N)
<i>The PR reference code and description can be found on page 19 of The Senior Managers and Certification Regime: Guide for FCA Solo-Regulated firms. PR's will usually be held by one person but firms may share a PR where they can show this is justifiable. The below is an example and is not exhaustive.</i>		
(b-1)	Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules. More information on PR3.	N <i>If the PR is shared, this should also include why this is justified e.g. as part of a job share.</i>

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Other Responsibilities		
Title of other responsibility	Description of other responsibility	Is this other responsibility shared?
<i>This area should explain any business functions for which they are accountable not already covered by the Prescribed Responsibilities. The below is an example and is not exhaustive.</i>		
Complaint Handling	Responsible for the production and review of Compliance MI. Responsible for ensuring adequate reporting on complaints received. Responsible for ensuring that any complaints issued to 'Leasing Broker Ltd' are handled in accordance with the documented complaints handling procedure.	N <i>Where this responsibility is shared, this area should also detail the Name, IRN and/or Job Title of the individual this responsibility is shared with.</i>

Supplementary Information
<i>Here you should detail any other additional information not covered by the above.</i>

<b>Statement Date</b>	9 <sup>th</sup> December 2019
<b>Statement Due to be Reviewed</b>	9 <sup>th</sup> December 2020

*It is worth noting that the FCA have not produced any strictly guidelines for how these reviews should look, but in all cases they should be documented.*

Further Case Studies and Example Statements of Responsibility can be found on **page 8 of the FCA's Finalised Guidance on Statements of Responsibilities and Responsibilities Maps.**

## Senior Managers- Next Steps

Once you are aware of the tier your firm falls in to, you can begin to look at the governing and required functions applicable to your firm. You should then start to prepare to allocate these to the relevant employees, also ensuring that you are aware of the applicable Prescribed Responsibilities with a view to sharing them between your chosen Senior Managers.

All Senior Managers will require a SOR. Firms should also ensure that a process is in place for new recruits.

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## Responsibilities Maps

A responsibilities map should provide a clear overview of how a firm is managed and governed and should be easy for those who work for the firm and regulators to understand. Only **Enhanced Firms** are required to have a responsibilities map, which should allow someone who does not know the firm to understand both how the firm is governed and who is accountable for which business activities.

The Responsibilities Map should clarify:

- The governance structure of the firm.
- Who is responsible for making/who has oversight of strategic decisions.
- Who is responsible for implementing strategic decisions.
- Key responsibilities of Senior Managers (at a summary level).
- Who reports to whom and any distinction between multiple reporting lines.

For **Firms part of a Group of Companies**, the Responsibilities Map should clarify how the firm is related to others in the group, any group-level governance committees that the firm relies on, if any governance decisions are made by management committees and how they relate to the formal governance of the firm (e.g. Board of Directors).

Further guidance on Responsibilities Maps can be found on **page 24 of the Senior Managers and Certification Regime: Guidance on statements of responsibilities and Responsibilities Maps for FCA firms**

## Certification Regime

The Certification Regime is a requirement under FSMA and is detailed in **SYSC 27** of the FCA handbook. An aim of the regime is to reinforce that firms, rather than the FCA, are responsible for ensuring their staff are fit and proper.

The Certification Functions are set out in the handbook and those employed in roles falling in to these functions will need to be issued with a certificate once a year that should clarify the aspects of the firms business that the individual will be involved in, as well as stating that the authorised person is satisfied that the individual is fit and proper to perform the function.

The Certification Regime will not apply to a Sole Trader, and similarly will not apply to a firm where there are only a handful of senior individuals supported by administration staff. Firms are only required to apply those functions that are relevant to them.

The following functions are Certification Functions under the SM&CR:

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- Significant Management Function
- Proprietary Traders
- CASS Operational Oversight Function
- Functions Subject to Qualification Requirements (full list can be found in the **FCA's Training and Competence Sourcebook**)
- **The Client Dealing Function**
- Anyone who supervises/manages a Certified Function but isn't a Senior Manager
- Material Risk Takers
- Algorithmic Trading

Further detail on these functions can be found on **page 33 of The Senior Managers and Certification Regime: Guide for FCA Solo-Regulated firms**. Page 35 onwards of this guide also outlines the process for **Territoriality and Overseas Employees**.

## Fitness and Propriety

The FCA have extended the application of the **FIT section of their Handbook** to cover Certification Staff and Senior Managers. Some examples of things firms should consider as part of assessing Fitness and Propriety include:

- Honesty, Integrity and Reputation
- Competence and Capability (including FCA Training Requirements)
- Financial Soundness

Under the SM&CR, firms must collect additional evidence when assessing candidates under this test. This evidence should include:

- **Criminal Record checks, for Senior Managers**  
To the maximum extent allowed by Law, firms need to declare any criminal record held by a relevant candidate. Firms will be required to register with the DBS and should consider also checking with relevant overseas regulatory bodies where a candidate has spent time working or living outside of the UK.
- **Regulatory References**  
Firms will be required to request a reference from candidates for Senior Manager or Certification Function candidates' past employers. Firms can find a template for the information required under **SYSC 22, annex 1R**.

Sole Traders are not required to complete these checks for themselves. Where they have employees, if the employees meet the definition of a Senior Manager or Certification Functions, the requirements will apply.

A full summary of the Fit and Propriety requirements can be found on **page 41 of The Senior Managers and Certification Regime: Guide for FCA Solo-Regulated firms**. It will be useful for firms to use this information to forward plan their procedure in preparation of conducting their annual reviews on the relevant staff. A new Senior Manager employee should be assessed against their current job role.

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## Certification Regime and Fitness/Propriety- Next Steps

Firms should identify which certification functions apply to which members of their staff. Certification staff needed to be identified as soon as the regime is implemented but training does not need to be completed until 31<sup>st</sup> March 2021<sup>1</sup>.

Firms should set up processes for new hires, which reflect the need for collecting additional evidence when assessing candidates outlined above.

Firms should also prepare for annual fitness and propriety checks and the issuing of certificates. The FCA have not specified a set process for conducting these annual reviews however any and all checks conducted should be documented as evidence that they have been completed.

## Conduct Rules

The FCA have created a new set of enforceable rules that set basic standards of good personal conduct. The rules can be found in the **COCON section of the FCA Handbook**.

There are two tiers of conduct rules, those that apply to all financial services staff and directors in a firm, and those that only apply to Senior Managers. It's important to note that the Code of Conduct will cover Regulated and Non-Regulated business.

<b>First Tier- Individual Conduct Rules- Apply to all Financial Services Staff</b>	
<b>1.</b>	You must act with integrity
<b>2.</b>	You must act with due care, skill and diligence
<b>3.</b>	You must be open and cooperative with the FCA, the PRA and other regulators
<b>4.</b>	You must pay due regard to the interests of customers and treat them fairly
<b>5.</b>	You must observe proper standards of market conduct
<b>Second Tier- Senior Manager specific Conduct Rules</b>	
<b>SC1.</b>	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
<b>SC2.</b>	You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory.
<b>SC3.</b>	You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
<b>SC4.</b>	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

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The Conduct Rules apply to:

- All Senior Managers
- All Certified Functions
- All Non-Exec Directors who are not Senior Managers
- All Other Employees, with the exception of Ancillary Staff (a list of roles considered by the FCA as ancillary staff can be found on [page 44 of The Senior Managers and Certification Regime: Guide for FCA Solo-Regulated firms.](#))

Firms are required to train relevant staff on the Conduct Rules and how they apply to their role by the 31<sup>st</sup> March 2021<sup>1</sup>. They should allocate the Prescribed Responsibility for this to a Senior Manager. BVRLA Members may wish to consider using the E-Learning Platform to implement this training. Further information on the packages available can be found [here](#).

Following the implementation of the Senior Managers and Certification Regime to the banking sector, the FCA conducted a 3 year review to better understand how the regime has embedded in these firms. Following this review, the FCA plan to increase their supervisory focus on the conduct rules and therefore it is important that firms embed the conduct rules into their business in order to meet their obligations under the regime. Full detail of this review can be found [here](#).

Firms will also be responsible under FSMA to notify the FCA when disciplinary action has been taken against a member of staff for a Conduct Rule breach. Disciplinary action for this purpose could also include the clawback or lessening of commission due to sales staff as a result of a compliance related breach, should this breach fall into scope of the Code of Conduct. The reporting requirement for conduct rule breaches is an annual requirement and is called REP008. Firms should complete and submit this report using Gabriel. The report should include the following information:

- Details about the individual who has committed the breach
- Details about what conduct rule has been breached
- What disciplinary action has been taken (issuing a formal warning, suspension or dismissal of a person or clawback of remuneration)

The report should be submitted annually even if this is a nil report due to no breaches during this period. Firms that do not submit this report could be charged a late return fee of £250. Further information of the reporting requirements can be found [here](#).

## Next Steps for SM&CR Preparation

- Ensure the FCA hold accurate data on your firm and look out for communication from the FCA regarding tier allocation.
- Use the [SM&CR Readiness Checklist](#) (page 73) which highlights the key areas that firms should consider in their preparation for the regime.
- Recognise which staff members the regime will apply to, and how. Prepare SOR's where applicable.
- Information on the BVRLA E- Learning packages available can be found [here](#) and The BVRLA's Learning and Development department will be running half-day SM&CR training. Further information on the course content can be found [here](#).

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## Appendix

<sup>1</sup> **The Certification Regime and Conduct Rules training deadline date-** The FCA released PS20/12 in October 2020 that confirmed that they were to extend the initial deadline for the following requirements from the 9<sup>th</sup> December 2020 to the 31<sup>st</sup> March 2021:

- the date the Conduct Rules come into force, for staff who are not Senior Managers, Certification Staff or board directors
- the date by which relevant employees must have received training on the Conduct Rules (this automatically follows from the extension in the previous bullet point)
- the deadline for submission of information about Directory Persons to the Register
- references in FCA rules to the statutory deadline for assessing Certified Persons as fit and proper following agreement with the Treasury

The feedback received by the FCA did indicate that most firms would still be able to meet the original deadline of the 9<sup>th</sup> December 2020 and they encourage firms to do so where possible.

## Points of Reference

**'FCA-regulated firms must get ready, get set...'** BVRLA Blog Post

**The Senior Managers and Certification Regime: Guide for FCA Solo-Regulated firms** FCA Guidance

**The FCA's Finalised Guidance on Statements of Responsibilities and Responsibilities Maps for FCA Firms** FCA Guidance

**Senior Managers Regime** FCA Publication

**BVRLA SM&CR Training Course**

**BVRLA E-Learning Platform**

**FCA SM&CR Banking Stocktake Report**

**PS19/20: Optimising the Senior Managers & Certification Regime and feedback to CP19/4**

**FCA Conduct Rule Breach Reporting/ REP0008 Information**

**BVRLA Contacts:** [compliance@bvrla.co.uk](mailto:compliance@bvrla.co.uk) or call 01494 434747

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