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# *Approved Persons – Fitness & Propriety*

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**ODDfELLOWS** SINCE 1810  
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## *Agenda*

What is an Approved Person?

What is the fit & proper test?

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What happens if an approved person does not comply with regulatory requirements?

New Regulator?

What systems & controls do you need to put in place?

## *What is an Approved Person?*

An approved person is someone who is approved by the FSA to perform a ***controlled function*** for an authorised firm.

The ***controlled functions*** are those roles for a FSA regulated business that have a particular regulatory significance:

For example, individuals responsible for a firm's systems and controls and compliance with the FSA's rules

## *Fit & Proper Test:*

The FSA will have regard to a number of factors when assessing the fitness and propriety of an individual.

- honesty, integrity and reputation (the FSA must be satisfied that the individual will be open and honest in their dealings and is able to comply with the requirements imposed on him);
- financial soundness; and
- competence and capability (the individual must have the necessary skills to carry on the function they are to perform)

## *How do I become an approved person?*

Submission of the appropriate approved person form to the FSA.

Before the firm submits the relevant form, it must verify the information contained in it

Q. What checks should a firm make on a candidate before submitting an application for approval from the FSA?

The FSA expects firms to perform due and diligent enquiries into their candidates before they submit an application to us for approval. Our approval process is not a substitute for the checks that a firm should be carrying out on its prospective recruits. It is for the firm to determine what checks are appropriate but in making its decision, a firm should have regard to the controlled function to which the application relates firm's enquiries should include checks to verify relevant qualifications and previous employment

***Q. Should these checks include a check of criminal records?***

It is for senior management to decide what checks should be made. In deciding if it is necessary to carry out a check of criminal records, the firm should consider that the FSA does not routinely carry out these checks

***FSA interviews:***

CEO, Finance Director, Compliance Officer, NED utilised for higher risk firms, unlikely that smaller firms would be the subjected to interviews, however you cannot rule it out.

***Can an individual actively undertake their approved persons role before FSA approval?***

Prior to FSA approval a firm must take reasonable care to ensure that the candidate does not perform the controlled function (SUP 10.12.1)

***Does an individual need to be approved if they are covering for a significant influence function where the approved person's absence is temporary or unforeseen?***

If the appointment is for less than 12 weeks in a consecutive 12 month period approval is not required (SUP 10.5.5)

## ***Significant influence controlled function***

If the application relates to a Significant influence controlled function then firms are required to provide details regarding the following:

- why the candidate is competent and capable to carry out the controlled function(s) applied for
- why the appointment complements the firm's business strategy, activity and market in which it operates
- how the appointment was agreed including details of any discussions at governing body level (where applicable).

## ***Non-Disclosure of Information?***

The success of your application could be affected if the FSA find that you have deliberately withheld information or provided false or incomplete facts.

Knowingly or recklessly giving the FSA information which is false or misleading in a material particular maybe a criminal offence (section 398 of the Financial Services and Markets Act 2000).

## ***FSA Form A – Firm Declaration***

In making this application the firm believes on the basis of due and diligent enquiry that the candidate is a fit and proper person and competent to perform the controlled function

In signing this form on behalf of the firm:

I confirm that the information in this Form is accurate and complete to the best of my knowledge and belief

I confirm the candidate has been made aware of the regulatory responsibilities of the proposed role as set out in the Statements of Principle and Code of Practice for Approved Persons

## **Consequences of being an Approved Person**

**Approved Persons must:**

- 1. Continue to comply the FSA's Fit & Proper requirements**
- 2. Report to the firm and FSA any matter that may impact on their going fitness and propriety**
- 3. Comply with the FSA Statements Principle and the Code of Practise for Approved Persons**

**All approved persons need to be familiar with the above and understand how they apply to the day to day exercise of their controlled functions.**

## What happens if an approved person does not comply with regulatory requirements?

**22 November 2011** the FSA fined a Compliance Officer £14,000 and banned her from performing any SIF in regulated financial services for breaching Principle 6 of the FSA's Statements of Principle for Approved Persons.

Various investors raised concerns that a bond being marketed by the firm was of doubtful provenance and legitimacy, and the firm's Prime Broker resigned as a result of its concerns. The Compliance Officer failed to consider the reasons for the Prime Broker resigning and despite being aware of the investors' concerns about the Bond the Compliance Officer failed to properly investigate those concerns or act upon the information.

In doing so, the Compliance Officer did not engage with their responsibilities as Compliance Officer and therefore failed to act with due skill and care. The Compliance Officer relied wrongly on another employee of the firm and on the belief that external lawyers were instructed and would have acted on concerns as appropriate.

**27 Jan 2012** - The FSA fined Alexander Ten-Holter, trader and former compliance officer at Greenlight Capital (UK) LLP (Greenlight) £130,000 for failing to question and make reasonable enquiries before selling Greenlight's shareholding in Punch Taverns plc (Punch) ahead of an anticipated significant equity fundraising by Punch in June 2009, and prohibited him from performing Compliance Oversight and Money Laundering reporting functions.

In 2011 the FSA imposed 22 prohibitions orders on individuals holding approved persons roles ranging from 2 years to lifetime prohibition orders. The individuals held a variety of positions including CEO, Director, Chief Financial Officer, Compliance Officer and Mortgage Advisors.

In addition to the prohibition orders the individuals also received personal fines ranging between £14,000 to £2.1m.

It is important to remember that a firm's 'Directors & Officers Liability Insurance Policy' does not protect against personal fines imposed by the regulators.

There has also been an increase in the number of individuals whistle blowing to the FSA. In recent years, the FSA's whistleblowing line received the following number of reports from the financial services sector:

	2006:	777
	2007:	835
	2008:	1186
	2009:	1890
2010:	4650 (598% increase since 2006 & 246% from 2009)	

If an approved person does not comply with regulatory requirements the FSA may fine or publicly reprimand the individual.

This may include taking away their approved person status which would severely impact on their future employment prospects in the financial services industry.

Additionally, employers will not want to be associated with individuals who have been the subject of regulatory censure.

## ***New Twin Peaks Regulation***

It is clear from information published to date that the expectations of the existing and new regulatory bodies on firms Senior Management (approved persons) will intensify.

At a conference in 2011 Hector Sants, Chief Executive Designate, Prudential Regulation Authority (PRA) confirmed the following:

*‘As far as governance is concerned, the PRA will be focusing not only on the structure and operation of the system but also on the quality and competence of the senior management of the firm’*

*‘We consider that action against individuals has a greater deterrent effect than action against firms and we are committed to holding senior managers to account for competency and integrity failings’.*

## *What systems & controls do you need to put in place?*

- 5 year employment history & references
  - FSA & Companies House Search
    - Credit & CRB Checks
- Qualification & Professional Body Certification

- Approved Persons Procedures
- Training & Development Scheme
  - Approved Persons
  - SYSC
  - Anti-Money Laundering & Financial Crime
  - Health & Safety
  - TCF & Complaints
  - Information Security
  - Data Protection
  - Fraud & Bribery
- Whistleblowing Policy
- Conflicts of Interest Policy
- Fraud & Bribery Policy
- Gifts & Hospitality Policy

*Any Questions?*

