
Approved Persons – Fitness & Propriety

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Agenda

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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 & controls and compliance with the FSA principles & 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 them);
- financial soundness; and
- competence and capability (the individual must have the necessary skills to carry on the function they are to perform)

How do you 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 due diligence 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 for approval. The FSA approval process is not a substitute for the checks that a firm should be carrying out on its candidate. 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. The firm's enquiries should include checks to verify relevant qualifications and previous employment

Q. Should the due diligence include a criminal bureau records (CRB) check?

It is for the firms senior management to decide what due diligence checks should be made. In deciding if it is necessary to carry out a CRB check, 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

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.

FSA approval to perform a controlled function brings with it a number of important responsibilities, including a duty to be aware of and comply with FSA regulatory requirements and expectations. Specifically, approved persons must:

1. Continue to comply with the FSA's Fit and Proper test for Approved Persons, set out in the FIT section of the FSA Handbook. Approved persons have a duty to report to the authorised firm and to the FSA any matter that may impact on their on-going fitness and propriety. The questions in the Fitness and propriety section of the application can provide a useful but non-exhaustive guide to matters which should be reported.

2. Comply with the Statements of Principle and the Code of Practice for Approved Persons set out in the APER section of the FSA Handbook. These Statements of Principle describe the conduct that the FSA requires and expects of the individuals it approves. The Code of Practice sets out guidance, together with generic examples of conduct which, in the FSA's opinion, does not comply with the Principles.

Non compliance with these regulatory requirements may result in the FSA taking enforcement action against the approved person.

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

01 May 2012; FSA fined the **Compliance Officer** of a small firm specialising in financial planning & portfolio management £11,550 for failings in relation to the protection of client money and banned him from acting as a compliance officer

08 May 2012; FSA fined the Chairman of an Insurance Company £119,303 for significant failings in corporate governance & control systems and banned him from acting as the Chairman.

12 Sept 2012; FSA fined the Executive Director of a major bank £500,000 and banned him from holding any senior position in a UK bank, building society or insurance firm. For failing to exercise due skill, care and diligence by pursuing an aggressive expansion strategy, without suitable controls to manage the associated risks

08 March 2012; FSA fined the Finance Director of a Friendly Society £109,000 for entering into contracts on behalf of the Society without authorisation and which benefited a former employee.

The FSA also prohibited him from performing any function in relation to any regulated activity in the financial services industry.

Since 2010 the FSA have:

- Published 250 final notices
- Imposed penalties in excess of £248m, including £29m on individuals
- Banned 129 individuals from the industry

As at the end Sept 2012 the FSA have:

- Imposed penalties on 20 individuals ranging from £11,500 to £3,638,000

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.

Period	Total
May 01 - April 02	266
May 02 - April 03	277
May 03 - April 04	110
May 04 - Dec 04	273
Jan 05 - Dec 05	133
Jan 06 - Dec 06	128
Jan 07 - Dec 07	142
Jan 08 - Dec 08	154
Jan 09 - Dec 09	276
Jan 10 - Dec 10	524
Jan 11 - Dec 11	470
Jan 12 - June 12	259

835 (1:6)
1,186 (1:8)
1,890 (1:7)
4,648 (1:9)
3,540 (1:7)

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 (PRA & FCA) on firms Senior Management (approved persons) will only intensify.

Extract from Mutually Yours Newsletter Sept 2012; Nick Poyntz-Wright, Head of Life Insurance FSA Business Unit:

‘One change in emphasis is that we will be looking more specifically at those who are Control Function Holders (CFHs) to fulfil their roles as opposed to placing generic requirements on the Board or firm.

When firms ask the FCA what they need to do to satisfy our requirements, they can expect a response to the relevant CFH asking what they have done to satisfy themselves that the action complies with our rules and regulations’

Q. After the establishment of the PRA and FCA which regulator will be responsible for maintaining the approved persons regime for mutuals?

As mutuals will be regulated by both the PRA and FCA, the process for approving individuals to roles with a bearing on the safety and soundness of the mutual will be led by the PRA, in close co-ordination with the FCA.

The FCA will be responsible for conduct-focused roles

CP12/26 'Regulatory Reform; PRA & FCA Regime for Approved Persons'

- *The proposed split of controlled functions between the PRA and FCA for firms that are 'dual-regulated' (regulated by both the PRA and FCA);*
- *The procedures between the PRA and FCA when dealing with approved persons applications from dual-regulated firms;*
- *The controlled functions that FCA intends to specify for FCA only regulated firms*
- *What these changes mean in practice for firms;*
- *Draft Handbook text to create 2 versions of Chapter 10 of the Supervision Manual (one version for PRA and one version for FCA);*
- *Changes to APER to allow the PRA and FCA to take disciplinary action against an approved person, within a dual-regulated firm, regardless of which regulator approved the controlled function; and*
- *A change to APER to extend its scope to activities outside of a persons controlled function, but connected to regulated activities.*

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

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

- Approved Persons Procedures (initial & on-going fitness & propriety)
- 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



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