

The Approved Persons Regime – Significant Influence Function Review

Introduction

Authorised firms have a responsibility to comply with the FSA Principles and rules as set out in the source books which make up the FSA Handbook. In addition, certain individuals, known as approved persons are subject to their own Code of Practice. This is a set of principles for those individuals and they work alongside the Principles for Business.

In Consultation Paper 08/25, published just before Christmas, the FSA confirm their responsibilities over regulating the two different categories of approved persons. The two categories are:

- Those who have a significant influence on a firm.
- Those who deal with customers or customer's property.

This paper brings forward proposals to improve aspects of the supervision of those having a significant influence on a firm. This arises from an internal review conducted by the FSA to see what lessons could be learned from their supervision of Northern Rock.

What is Proposed and Why?

The FSA's internal review identified the need to focus on an increase in the thoroughness of supervision where issues relating to the competence of the firms management were identified.

As a result, they looked at all the Significant Influence Controlled Functions. These are:

1 (director), 2 (non executive director), 3 (chief executive), 4 (partner), 5 (director of unincorporated association), 6 (small friendly society), 8 (apportionment and oversight), 10 (compliance oversight), 11 (money laundering reporting officer), 12 (actuarial), 12A (with profits actuary), 12B (Lloyds actuary function), 28 (systems and controls) and 29 (significant management function).

This has led them to make the following proposals:

- Extend the existing definitions of CF1 (director) and CF2 (non executive director) to include those individuals exercising significant influence on a regulated firm from a parent undertaking or holding company which is unregulated by FSA or any other EU financial services regulator. More detail of the potential scope can be found by following the link below and scrolling to page 37 of the document and referring to 10.6.5G.
- Clarify the role of CF2 (non executive director) within the Code of Conduct for Approved Persons (APER).

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- Extend the definition of CF29 (significant management function) to include proprietary traders. This will pick up those people who are not covered by the regime already as a senior manager, but where it is believed the individual exercises a significant influence over a firm and its conduct.
- The current rule requiring firms to provide references for applicants of the CF30 (customer function) role will be applied to applicants for all controlled function roles.
- The application of the approved persons regime will be amended to apply all controlled function roles to UK branches of third country firms (that is firms based outside the EU).

In addition to these proposals, since October 2008, the FSA has been interviewing people who are applying to exercise significant influence functions in some of the larger firms. Also, changes have been made to the Application Form A to enable more detail to be gathered about competence and capability of an applicant.

Action Points

If you believe that your firm or individuals connected with it could be affected by these proposals, consider what impact it might have. This consultation finishes on 31st March 2009 and final proposals and rules are due to be published in the second quarter of 2009. It is envisaged that there will be a 6 month transition period.

If you require further information, please speak with your usual contact at CPA Audit Llp or use the following link to access the full Consultation Paper and draft rules:

http://www.fsa.gov.uk/pubs/cp/cp08_25.pdf

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