

Direct line: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Rachel Donaldson
Operational and Reporting Policy Team
Permissions Decisions and Reporting
Department
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Our ref: CP08/25

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Dear Ms Donaldson

CP08/25 The approved persons regime – significant influence function review**

This is the Financial Services Consumer Panel's response to CP08/25** The approved persons regime – significant influence function review.

The Panel strongly supports the proposals set out in this Consultation Paper which should strengthen the approved persons regime and apply it on a sensible, proportionate basis. We note the FSA Chairman's comments in the FSA Business Plan 2009/10 about enforcement, in particular that "in line with our increased focus on senior management responsibility and oversight, we expect to see more cases where individuals, especially those holding significant influence functions, are subject to enforcement action." We expect the FSA to ensure that it has sufficient resources to enforce the requirements of the extended approved persons regime swiftly and rigorously. We will continue to take a close interest in the FSA's enforcement work and we wish to see positive evidence that the Chairman's comments are being carried through into positive action.

We have set out our answers to the specific questions posed in the consultation paper below.

Q1: Do you agree with our proposal to extend controlled functions CF1 (director) and CF2 (non-executive director) to those individuals exercising significant influence?

We agree. The extension of CF1 and CF2 will go a long way towards reflecting the reality of direction and influence at senior level within businesses. The FSA does not currently propose to apply the extended regime to UK incorporated authorised firms with an EEA regulated company as individuals "may" already be subject to an

equivalent regime in the relevant EEA State. We would like such individuals to be included unless they are definitely subject to an equivalent regime. We note the position with regard to UK branches of an EEA regulated company. It seems to the Panel that there is a risk of a two-tier regime developing if branches of EEA regulated firms are to be excluded from the extended regime altogether. We expect the FSA to monitor the operation of the new regime with this in mind and, if necessary, to take whatever action is possible under the Single Market Directives.

Q2: Do you agree that a transitional period of 6 months is sufficient for implementation?

The transitional period should be no longer than six months.

Q3: Do you agree with our proposed guidance to the Handbook that clarifies the role of non-executive directors?

We agree with this guidance. As is acknowledged in the Paper, this is entirely consistent with existing industry codes. The FSA's current disciplinary approach is too limited and we believe it is appropriate for the FSA to consider whether non-executive directors should have intervened in a business where executives had been making poor decisions.

Q4: Do you agree with our proposal to extend the description of CF29 to include more proprietary traders?

We support this proposal. Given the impact that proprietary traders can have on a business it is absolutely right that they should be covered by the approved persons regime and to be subject to personal enforcement action as appropriate.

Q5: Do you agree with our judgement that the proposed guidance in the draft Handbook text supports the expectation that all proprietary traders will be approved persons?

We have no comments on the draft text.

Q6: What are your views on the outcome of the cost benefit analysis compared to other reasons why we might implement this proposal?

The outcome of the cost benefit analysis itself does not outweigh the wider reasons to implement this proposal. As we have said, the activities of proprietary traders can have a potentially devastating affect on the business of a firm and, ultimately, its customers. The application of the approved persons regime to all proprietary traders is a proportionate regulatory response to this risk. There is no justification, economic or otherwise, for continuing to allow proprietary traders to operate without personal accountability when others posing a similar level of risk to the business are quite rightly included within the approved persons regime. Once this proposal has been implemented, proprietary traders will be in no doubt as to the standards of behaviour expected from them and the consequences of failing to meet those standards. The additional information that will be available to the FSA and to firms as a result of the extension of CF29 will also be of value in identifying potential issues and assisting the FSA to meet its regulatory objectives.

Q7: Do you agree that a transitional period of six months is sufficient for implementation?

The transitional period should be no longer than six months.



Q8: Do you agree that we should remove the limited application of the approved persons regime to UK branches of third country firms?

We agree that this should be removed.

Q9: Do you agree that we should extend the reference requirement in SUP 10.13.12R so it applies to all controlled functions?

We agree that the reference requirement should apply to all controlled functions.

Yours sincerely

For Acting Chairman
Financial Services Consumer Panel