



# Regulatory Roundup

## 20 October 2010

### Issue #22

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If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact [Peter Carlisle](#).



# Important Changes to Approved Persons Regime



## Useful Links:

[Reg Roundup #1](#)

[Reg Roundup #8](#)

[FSA Policy Statement PS10/15](#)

The recent speech by Rosalie Langley Judd (see the next article on Corporate Governance) follows the release of FSA Policy Statement PS10/15.

PS10/15 is the follow up to Consultation Paper CP10/3 which was covered in Regulatory Roundup #8, along with a link to a technical briefing (see also Regulatory Roundup #1).

The paper details wide-ranging **changes to the Approved Persons** regime.

Highlights of the proposals include the **removal** of the **CF28** (Systems and Controls) function which will be **replaced** by the reintroduced **CF13** (Finance); **CF14** (Risk); and **CF15** (Internal Audit) functions. Note from page 13 of PS10/15 that if an individual is currently a CF28 the **FSA will expect** them to move to one of these three new functions.

Firms will appreciate that under the *current* rules anyone approved for a governing function (for the purposes of this rule being CF1 to CF6 but excluding CF2) does not need to also be approved for the CF28 function (see SUP 10.6.2). The new rules will **change** this. All persons performing any of functions CF13-CF15 will need to be approved for the function **regardless** whether or not they are currently approved for a governing function.

The basic requirement behind all three of the 'new' functions is that they will apply to "an employee of the firm with responsibility for reporting to the governing body of a firm ...".

Note that page 16 of PS10/15 tells us "The appointment of individuals to CFs 13 – 15 is not mandatory and will depend on each firm's nature, scale and complexity".

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## Important Changes to Approved Persons Regime (cont.)



### Useful Links:

[Reg Roundup #1](#)

[Reg Roundup #8](#)

[FSA Policy Statement PS10/15](#)

There will be no major changes to the CF29 (Significant management) function and each governing function will continue to include the significant management function. However the scope of CF29 will be extended to an EEA firm that undertakes the activity of accepting deposits from banking customers and activities connected with this.

Perhaps the biggest impact, particularly on LLP structures, will be the introduction of the CF00 (Parent entity significant influence) function.

As you will know, just over a year ago the FSA introduced the concept of the “extended CF1/CF2” – see Regulatory Roundup #8 – which captured certain individuals who were employed by a **parent undertaking** or a **holding company** (please see Handbook glossary for definitions of these two terms) and whose decisions or actions are regularly taken into account by the governing body of the regulated firm (see SUP 10.6.4/SUP 10.6.8) . The requirement did not cover LLPs at the time.

The extended CF1/2 rules will be removed and instead SUP 10.6.30 will be introduced.

The effect of new rule SUP 10.6.30 is that LLPs will now be drawn into this requirement. Note that in considering whether the CF00 function will be applicable to a firm, it is irrelevant whether the parent undertaking or holding company is authorised or not. There are two exemptions. First, where the parent undertaking or holding company is an EEA firm or is set up in another EEA state and is regulated by an EEA regulatory body then the CF00 requirement will not apply. Second, certain of the governing functions will include the CF00 function which means that if a person is already approved for a governing function at a firm then that individual will not also be required to be approved for the CF00 role.

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## Important Changes to Approved Persons Regime (cont.)



### Useful Links:

[Reg Roundup #1](#)

[Reg Roundup #8](#)

[FSA Policy Statement PS10/15](#)

Both Annex C and Annex E of Appendix 1 contain **FAQs** on the new CF00 function. Also note from page 21 of PS10/15 that the FSA “invite ... firms to contact us, should they need assistance in resolving which individuals should come within the CF00 regime and which should not”.

**Other new functions** introduced are: CF2a (Chairman); CF2b (Senior independent director); CF2c (Chairman of risk committee); CF2d (Chairman of audit committee); and CF2e (Chairman of remuneration committee). The CF2 (non-executive director) function remains.

Smaller and less complex firms should note from page 12 “we envisage that firms needing to appoint any or all of the proposed new roles, will do so proportionately, taking account of their specific circumstances and in consultation with their supervisor”.

For the avoidance of doubt, none of the new controlled functions will apply to the **appointed representatives** of a firm.

Annex 4 of PS10/15 lists the new functions and how they relate to current functions. Annex 5 of PS10/15 sets out in tabular form the different **actions required**, i.e. notification (e.g. where an individual is currently an extended CF1 and instead needs to be made CF00) or approval application (e.g. where an individual is not currently an extended CF1 but needs to be made CF00). All such notifications or approval applications will have to be made via the FSA’s Online Notifications and Applications System (ONA).

The changes do not take place until **1 May 2011** and there will be some transitional provisions. However we all know that regulatory deadlines creep up on us quicker than expected so we would recommend that firms devote time now to considering how the proposals will impact on them.

The amended rules are in Appendix 1 of PS10/15.



## FSA and Corporate Governance



### Useful Links:

[Speech by Rosalie Langley Judd](#)

[Speech by Hector Sants](#)

The speech by the FSA's Rosalie Langley Judd and the publication of PS10/15 ('Effective corporate governance' – see previous article in this Regulatory Roundup on Approved Persons) serve to demonstrate, if there was ever any doubt, the importance that the FSA places upon corporate governance.

Rosalie's speech is interesting in that as well as referring to the changes being brought about by PS10/15 it also provides a useful summary and reminder of the FSA's change in its approach to firms ('**enhanced supervision**') following the financial crisis as well as one definition of **governance** ("Governance can be described as board oversight of management activities and management oversight of staff activities in line with management requirements").

It is interesting to note that one of the ARROW risk elements that the FSA gives a **double weighting** to is '**governance, management and culture**' (and reference is made to Hector Sants' recent speech on culture and whether the regulator should seek to **regulate culture**).

In learning more about what went wrong at firms in the crisis, the FSA have highlighted three areas of governance where issues have been found and which can be summarised as: lack of sufficient challenge; poor understanding of higher risk products and activities; and lack of adequate management information. These three areas will come as no surprise to firms that have been subject to ARROW, and possibly thematic, visits.

We have known for some time that the FSA is spending more time on interviewing applicants for approved persons roles; the decision to interview is fundamentally risk based. Rosalie informs us that since October 2008 the FSA have interviewed just over 660 applicants for such roles, 36% of which have been in the last six months (the FSA calculates that the interview process costs each firm an additional £1,850 and the FSA £1,000).

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# FSA and Corporate Governance (cont.)

## Systems and Controls Questionnaire



### Useful Links:

[Speech by Rosalie Langley Judd](#)

The speech details the four stage process that the FSA may go through in the process of approving a person, including the **key competencies** for significant influence functions. There is more about this process in Chapter 3 of PS10/15.

[Speech by Hector Sants](#)

The speech concludes by confirming that governance is part of the FSA's intensive supervisory approach and that the regulator's emphasis is now on '**supervising governance in action**'.

### Useful Links:

[Reg Roundup #2](#)

Although still a good two months or so away, an early reminder that a **new data item** (FSA055) will become due for completion on 31 December for non-ILAS BIPRU firms (basically BIPRU limited licence; BIPRU limited activity; and exempt full scope BIPRU investment firms). Please see Regulatory Roundup #2 & #4 for background details.

[Reg Roundup #4](#)

[FSA055](#)

The **FSA055** is currently referenced in SUP 16.12 although by virtue of SUP TP1 (12T) the **first reporting period ends on 31 December 2010**.

Note that it is an annual return and that the reporting period is **calendar based** (as opposed to accounting reference date based).

No specific action should be required by firms as the return should appear as one of the data items to be completed on GABRIEL.

The link will allow you to **preview FSA055** to ensure that at the time you will be able to provide the 'right answers' in a timely manner – especially as it has to be submitted within 15 business days.



## Handbook Changes



### Useful Links:

#### [CP10/23](#)

Unlike its title ('Decision Procedure and Penalties manual and Enforcement Guide review 2010') CP10/23 is a short Consultation Paper concerning some changes brought about by the Financial Services Act 2010.

The FSA will have the power to publish decision notices as well as final notices. Under the present regime an enforcement case consists of a warning notice, followed by a decision notice and then a final notice.

The decision notice informs the person that they have the right to refer the matter to the Tribunal. If that right is exercised this will (assuming that the Tribunal decides that the FSA should take action against the person) delay the issuance of the decision notice. As such there could be a considerable gap between the time that the FSA started its investigation and being able to publish the details; currently the FSA is only able to publish details of a final notice.

Those at the wrong end of the FSA will also find that a rule has been brought in to prevent a firm (save for a sole trader) paying a financial penalty imposed by the FSA on a present or former employee, director or partner of the firm or an affiliated company.

As you will know, the FSA operates a discount scheme of up to 30% off financial penalties for early settlement (see DEPP 6.7.3 for details). The FSA will now extend the discount scheme to the length of a period of suspension or restriction that it may impose e.g. should the FSA decide that a 10 month suspension of a firm was appropriate, early settlement would result in a 30% discount with the suspension period being reduced to 7 months.

The CP also confirms removal of the FSA's public awareness objective (the Consumer Financial Education Body will be responsible for taking forward consumer education work), replacing it with financial stability (in conjunction with the Treasury and the Bank of England). For the record, the FSA's other 3 regulatory objectives are market confidence; the protection of consumers; and the reduction of financial crime.

The consultation period ends 14 December.

# Complyport Shortlisted



## Useful Link:

[Complinet's 2010 "Best Consulting Firm of the Year"](#)

Complyport is delighted to have been nominated in the short list for **Complinet's 2010 "Best Consulting Firm of the Year"**. This nomination is the first award nomination that Complyport has received and comes only a year after Martin Herriot took over the post of CEO of the firm.

Further, Associate Director Aron Brown has been nominated in the Complinet 2010 **"Young Compliance Officer of the Year"** category.

We are extremely proud to have received these nominations and hope that we can continue providing our clients with the best possible service. Finally we would like to say a heartfelt thanks to those who put us forward for these industry recognised nominations.



# Bespoke, Practical Consulting



**If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact**

**[Peter Carlisle](#)**

**For details of any other of Complyport's services, please contact [Philip Chapman](#)**

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