



## Explanatory Booklet for Approved Persons

# Table of Contents

1. Overview .....	3
2. Fitness and Propriety.....	6
3. Statements of Principle and Code of Practice for Approved Persons .....	7
3.1 Statements of Principle.....	7
3.2 Code of Practice for Approved Persons .....	8
4. Competency requirements affecting all Approved Persons.....	9
5. Principles for Businesses.....	10
6. Customer Functions & the New Conduct of Business Sourcebook.....	12
6.1 COBS 3 – Client Categorisation .....	12
6.2 COBS 4 – Communicating with Clients, including Financial Promotions.....	12
6.3 COBS 9 – Suitability (including Basic Advice).....	12
6.4 COBS 11 – Dealing and Managing.....	13
6.5 COBS 14 – Providing Product Information to Clients.....	13
6.6 COBS 15 – Cancellation (Client’s Right to Cancel).....	13
6.7 COBS 16 – Reporting Information to Clients.....	13
7. Significant Influence Functions .....	14
7.1 Senior Management Arrangements, Systems and Controls.....	14
7.2 Apportionment of Responsibilities .....	14
7.3 Establishing and maintaining Systems and Controls .....	15
8. Failure to Comply .....	16
8.1 Monitoring .....	16
8.2 Suspension .....	16
8.3 Investigation.....	16
8.4 Disciplinary Sanction .....	17
8.5 The FSA’s Enforcement Powers.....	18
9. Any questions? .....	19
10. Useful information.....	20

# 1. Overview

The Financial Services Authority (“FSA”) is the lead regulator for UK financial services and has produced a Handbook of Rules and Guidance. Included are Principles, Rules and Guidance relating to specific individuals (known as *Approved Persons*) who carry out particular activities (known as *controlled functions*) in businesses that conduct FSA regulated activities.

This Explanatory Booklet provides guidance on your responsibilities as an FSA Approved Person. You should read this booklet on first becoming an Approved Person and retain it for future reference. As an Approved Person, it is your responsibility to familiarise yourself with the FSA Requirements – reading this booklet is not a substitute for reading the Requirements themselves. We will endeavour to notify you of any significant changes to these requirements but you should ensure that you remain up to date with any changes to the FSA Requirements by regularly consulting the FSA website. Additional guidance may be obtained from your local Regulatory Risk function and via the hyperlinks embedded within this document. (*Note – some hyperlinks connect to internal websites and can only be accessed from within the Group*)

The last update version of this booklet is available on the SIF Information Portal <http://moss.web.rbsgrp.net/sites/874/Pages/SIFPortal.aspx>

## Controlled Functions

*Controlled Functions* are specific activities, or job ‘types’, which the FSA views as central to an organisation’s ability to meet its regulatory requirements.

## Significant Influence Functions

*Significant Influence Functions*, as defined by the FSA, involve an Approved Person exerting *significant influence* over the business. These include governing functions, such as directors and non-executive directors, and required functions, such as Compliance and money laundering reporting. Individuals may also fall into the *Significant Influence Function* category if they report directly to board members or board committees or to executives of significant business units.

## Customer Functions

*Customer Functions*, as defined by the FSA, involve an individual performing *customer* related activities within the business. Examples of

*Customer Functions* are activities such as giving financial advice to clients or dealing with and managing the property of clients.

## **Approved Persons**

An *Approved Person* is an individual who has received permission from the FSA to carry out a *Controlled Function*.

## **FSA Requirements**

In this booklet, this term refers to the key regulatory provisions and requirements relating directly to *Approved Persons* performing *Controlled Functions*. The *FSA Requirements* are currently contained within the High Level Standards block of the FSA's Handbook of Rules and Guidance.

There are two main requirements imposed by the FSA on *Approved Persons*:

- Fulfil the 'Fitness and Propriety' requirements of the FSA, including being an "appropriate individual for the job" (e.g. honest, competent, financially sound, etc); and
- Abide by the FSA's 'Statements of Principle and Code of Practice for Approved Persons', including ensuring that the *Controlled Function*, for which you are responsible, is managed and controlled appropriately.

These standards and requirements are no more or less than the RBS Group expects from all employees of companies in the Group.

The *FSA Requirements* are binding on all individuals who are registered to perform a *Controlled Function*. As an employee of the Group, it is a term of your contract of employment that you abide by the *FSA Requirements*.

## **Delegation of duties to non-approved persons**

There may be scenarios where, as an Approved Person, you will be required to delegate some of your regulated responsibilities to a non-approved person (such as a direct report), whilst retaining the overall responsibility for the activities captured within the controlled function. In such instances, please speak to your divisional or functional Regulatory Risk team to check whether registration is required for that person. Please also note you are required to ensure that those individuals are fully aware of the responsibilities delegated to them. This should be achieved when setting their performance objectives and ultimately align with the Performance Management Policy Standard within the Group Policy Framework.

## **Leave of Absence**

Should you go on a leave of absence, e.g. maternity or garden leave, and are no longer actively performing/responsible for your Controlled Function duties, please note that the Group are obliged to notify the FSA of this fact and to have your FSA registration suspended. As soon as you are ready to recommence your duties, whether temporarily or otherwise, or are re-deployed into another controlled function role within the Group, please notify your Regulatory Risk team and they will arrange to have your registration re-activated to coincide with your re-commencement date.

## **Corporate Change**

Functional/divisional structure changes will take place from time to time. When they occur, you must assess the impact, if any, on your role as an Approved Person. Where there is a change in scope or ownership of activities, these must be clearly communicated to your divisional HR/Regulatory Risk departments. Appropriate training must be undertaken to address any knowledge gaps. A similar exercise should be carried out if you have Approved Persons reporting into you. For further information, contact your HR/Regulatory Risk departments.

## 2. Fitness and Propriety

The FSA will only approve an application for registration as an *Approved Person* if it is satisfied that the candidate is fit and proper to perform the *Controlled Function* to which the application refers. The FSA may subsequently withdraw its approval if it considers that the person, in respect of whom the approval was given, is no longer fit and proper to perform the *Controlled Function* to which the approval relates.

The effect of these requirements is that the FSA can, either at the outset or subsequently, deny an individual the approval necessary to carry out a *Controlled Function*. As such, it is critical that, once approved, you continue to comply with the FSA's Fitness and Propriety requirements. The factors that the FSA will consider when assessing the fitness and propriety of a person to perform a particular *Controlled Function* are detailed in the "Fit and Proper Test for Approved Persons (FIT)" section of the FSA's Handbook.

The most important considerations will be given to the person's:

- **Honesty, Integrity and Reputation** – The FSA will look at any criminal or other 'disciplinary type' record to assess whether you are fit and proper to undertake the role.
- **Competency and Capability** – You need to be able to prove to the FSA that you are capable of performing your role in a competent manner. The FSA will want to see documented evidence to establish this, including exam certificates and annual assessments of competency.
- **Financial Soundness** – The FSA will look to any indication/evidence that you are, or have been, in financial difficulties, as this might adversely impact on your suitability for your role.

First time applicants will be required to complete a "Fitness and Propriety" questionnaire before the application can be sent to the FSA. Individuals who have been previously registered are required to advise whether there has been any change to their responses to the questionnaire since the last time they were registered. RBS Group requires all *Approved Persons*, including those performing *Significant Influence Functions*, to complete a Declaration of Fitness and Propriety on an annual basis.

### 3. Statements of Principle and Code of Practice for Approved Persons

#### 3.1 Statements of Principle

As an *Approved Person* you are required to comply with the FSA's Statements of Principle for *Approved Persons*, as amended from time to time. Failure to do so could result in a number of sanctions being applied by the FSA; including withdrawal of approval, the individual being fined or being prevented from working in the UK financial services industry.

The Statements of Principle are:

1.	An Approved Person must act with integrity in carrying out his/her <i>Controlled Function</i> .
2.	An Approved Person must act with due skill, care and diligence in carrying out his/her <i>Controlled Function</i> .
3.	An <i>Approved Person</i> must observe proper standards of market conduct in carrying out his/her <i>Controlled Function</i> .
4.	An <i>Approved Person</i> must deal with the FSA and with other regulators in an open and co-operative way and must disclose appropriately any information of which the FSA would reasonably expect notice.
5.	An <i>Approved Person</i> performing a <i>Significant Influence Function</i> must take reasonable steps to ensure that the business of the firm for which s/he is responsible in his/her <i>Controlled Function</i> is organised so that it can be controlled effectively.
6.	An <i>Approved Person</i> performing a <i>Significant Influence Function</i> must exercise due skill, care and diligence in managing the business of the firm for which s/he is responsible in his/her <i>Controlled Function</i> .
7.	An <i>Approved Person</i> performing a <i>Significant Influence Function</i> must take reasonable steps to ensure that the business of the firm for which s/he is responsible in his/her <i>Controlled Function</i> complies with the relevant requirements and standards of the regulatory system.

### 3.2 Code of Practice for Approved Persons

The Code of Practice for *Approved Persons* was issued by the FSA for the purpose of helping to determine whether or not an *Approved Person's* conduct complies with a Statement of Principle.

Some of the factors to be considered in the context of the Code are:

- You should only undertake a *Controlled Function* if you meet the relevant standards of knowledge and skill set out in the FSA's Training and Competence sourcebook.
- In organising business for which you perform a *Controlled Function*, you should bear in mind the risks that the business is prepared to take.
- You should consider reviewing each area of the business for which you are responsible to ensure that it is clearly assigned to a particular individual.
- The organisation of the business, and the responsibility of those within it, should be clearly defined.
- If an individual's performance is unsatisfactory, you should carefully review whether to allow this individual to continue in their position.
- Where you are not an expert in a business area, you should consider whether your colleagues have the necessary expertise to provide you with an adequate explanation of issues within that business area.
- When delegating a task, there should be reasonable grounds for believing the delegate has the competence, knowledge, skill and time to perform the delegated task to an appropriate standard.

It is essential that all *Approved Persons* read the FSA's Statements of Principle and Code of Practice for *Approved Persons* at:

<http://fsahandbook.info/FSA/html/handbook/APER>

## **4. Competency requirements affecting all Approved Persons**

All regulated firms must ensure that their employees have the necessary skills, knowledge and expertise to take on the responsibilities given to them. Firms must ensure that:

- employees are competent;
- employees remain competent for the work they do;
- employees are appropriately supervised;
- employees' competence is regularly reviewed; and
- the level of competence is appropriate to the nature of the business.

## 5. Principles for Businesses

The current version of the Principles for Businesses, which comprises a general statement of the fundamental obligations of firms under the regulatory system, is set out below. These Principles provide the framework for all regulated activities and should be used as a reference point for decision-making and behaviour by all Approved Persons.

<b>1. Integrity</b>	<i>A firm must conduct its business with integrity.</i>
<b>2. Skill, Care and Diligence</b>	<i>A firm must conduct its business with due skill, care and diligence.</i>
<b>3. Management and Control</b>	<i>A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.</i>
<b>4. Financial Prudence</b>	<i>A firm must maintain adequate financial resources.</i>
<b>5. Market Conduct</b>	<i>A firm must observe proper standards of market conduct.</i>
<b>6. Customers' Interests</b>	<i>A firm must pay due regard to the interests of its customers and treat them fairly.</i>
<b>7. Communications with Clients</b>	<i>A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.</i>
<b>8. Conflicts of Interest</b>	<i>A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.</i>
<b>9. Customers: Relationships of Trust</b>	<i>A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely on its judgement.</i>

<b>10. Clients' Assets</b>	<i>A firm must arrange adequate protection for its clients' assets when it is responsible for them.</i>
<b>11. Relations with Regulators</b>	<i>A firm must deal with its regulators in an open and co-operative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.</i>

## **6. Customer Functions & the New Conduct of Business Sourcebook**

***Approved Persons* performing a *Customer Function Controlled Function (CF30)* must ensure that they are aware of and understand, in detail, any relevant requirements applicable to the performance and discharge of their roles and responsibilities.**

**This section will not be relevant to all *Significant Influence Approved Persons*. Individuals who are registered to perform significant influence functions should read Chapter 7.**

The latest version of the FSA's Conduct of Business Sourcebook (COBS) can be found at: <http://fsahandbook.info/FSA/html/handbook/COBS>

Some key areas of the customer interaction process are highlighted below. This list is not exhaustive and each *Approved Person* performing a Customer Function should ensure that they are aware of their individual responsibilities, as detailed in applicable sections of the FSA Handbook.

### **6.1 COBS 3 – Client Categorisation**

COBS 3 includes rules and guidance on:

- Client classification;
- Providing clients with a higher level of protection; and
- Policies, procedures and record keeping

### **6.2 COBS 4 – Communicating with Clients, including Financial Promotions**

COBS 4 includes rules and guidance on:

- Fair, clear and not misleading communications;
- Communicating with retail clients; and
- Financial promotions.

### **6.3 COBS 9 – Suitability (including Basic Advice)**

COBS 9 includes rules and guidance on:

- Assessing suitability;
- Record keeping on suitability; and

- Giving basic advice on a stakeholder product.

#### **6.4 COBS 11 – Dealing and Managing**

COBS 11 includes rules and guidance on:

- Best execution;
- Client order handling;
- Client limit orders;
- Record keeping;
- Use of dealing commission; and
- Personal account dealing.

#### **6.5 COBS 14 – Providing Product Information to Clients**

COBS 14 includes rules and guidance on:

- Packaged product and ISA disclosure;
- Content/ provision of key features; and
- Information on designated investments.

#### **6.6 COBS 15 – Cancellation (Client’s Right to Cancel)**

COBS 15 includes rules and guidance on:

- The client’s right to cancel;
- Exercising a right to cancel;
- Effects of cancelling;
- Cancellation – special situations; and
- Exemptions to the right to cancel.

#### **6.7 COBS 16 – Reporting Information to Clients**

COBS 16 includes rules and guidance on:

- General client reporting requirements;
- Occasional & periodic reporting; and
- Statements of client assets (designated investments and client money).

## 7. Significant Influence Functions

***Approved Persons*** who are registered to perform a ***Significant Influence Function*** (CF1 – 12B, 28 and 29) must ensure that they are aware of and understand, in detail, any relevant requirements applicable to the performance and discharge of their roles and responsibilities.

**This section will not generally be relevant to those that perform only *Customer Functions*.**

As a director, non-executive director or a senior manager who exerts significant influence over a regulated area of RBS Group, you have a responsibility for ensuring the firm's compliance with the FSA Handbook, in particular the requirements set out in the Senior Management Arrangements, Systems and Controls (SYSC) and the Principles for Businesses (PRIN) sections of the FSA Handbook.

### 7.1 Senior Management Arrangements, Systems and Controls

The requirements and responsibilities outlined in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) are summarised below. The latest version of the SYSC requirements can be found at: <http://fsahandbook.info/FSA/html/handbook/SYSC>

The purpose of SYSC is to:

- Encourage firms' directors and senior managers to take appropriate responsibility for their firms' arrangements on matters likely to be of interest to the FSA; and
- Amplify management and control responsibilities (correlating to Principle for Businesses 3).

The FSA distinguishes between the requirement to apportion responsibilities (SYSC 2) and the maintenance of appropriate systems and controls (SYSC 3). The remaining chapters of SYSC will be relevant to Significant Influence Approved Persons depending on the specific nature of their responsibilities.

### 7.2 Apportionment of Responsibilities

A firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors (excluding non-executive directors) and senior managers in such a way that:

- It is clear who has which of those responsibilities; and
- The business and affairs of the firm can be adequately monitored and controlled by the directors, relevant senior managers and governing body of the firm.

Some responsibilities can be shared between several individuals if that is appropriate for the business.

### **7.3 Establishing and maintaining Systems and Controls**

The FSA's Principle for Businesses 3 states: "A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems." It is up to senior management to determine what is appropriate for each business and only minimal guidance is provided. Some of the factors that should be used for an assessment of appropriateness include:

- The nature, scale and complexity of the business;
- The diversity of operations, including geographical diversity;
- The volume and size of transactions; and
- The degree of risk associated with each area of operation.

In practice, this will mean that a firm will have to set and control its risk exposures and establish internal systems, controls, procedures and policies. These need to be reviewed on a regular basis to ensure appropriateness and systems need to be in place to monitor adherence. Systems and controls also need to be in place to cover appointed representatives, tied agents and other outsourced activities. For firms to which the Combined Code applies, adherence to the Combined Code will be another factor in assessing the firm's systems and controls.

## 8. Failure to Comply

Failure to comply with the *FSA Requirements* may result in disciplinary action being taken, including dismissal from the service of the regulated firm in the RBS Group by which the *Approved Person* is employed ("the Group Firm").

It is your responsibility to familiarise yourself with the *FSA Requirements*. The Group will endeavour to inform *Approved Persons* of any significant changes to the *FSA Requirements*. However, *Approved Persons* should ensure that they keep themselves up to date with any changes made to the *FSA Requirements* by regularly consulting the FSA website or other appropriate methods. It is also your responsibility to report to your manager any issue or incident of which you become aware which may reasonably give rise (or has given rise) to a breach of any *FSA Requirements*.

The appropriate divisional risk units, in conjunction with Group Regulatory Affairs & Compliance and other Group Functions, as appropriate, may carry out assessments of your adherence to the *FSA Requirements*.

### 8.1 Monitoring

Individuals undertaking *Controlled Functions* will have their business conduct monitored and checked regularly to ensure compliance with the *FSA Requirements*. This will be done through the normal performance management procedures and any other applicable arrangements. Monitoring may be undertaken as part of Regulatory Risk reviews carried out by divisional/functional Regulatory Risk functions or by Group Regulatory Affairs & Compliance. Staff undertaking *Controlled Functions* will be required to co-operate fully when responding to any such enquiries and will also be required to co-operate fully with any such monitoring processes.

### 8.2 Suspension

Where there is a concern that the *FSA Requirements* have been breached, the *Approved Person* may be suspended. Any decision to suspend will usually be taken by the individual's line manager, in conjunction with advice from Group Human Resources.

### 8.3 Investigation

Where appropriate (and whether conducted during any suspension or otherwise) an investigation into the specific concerns will be carried out by either Regulatory Risk, Human Resources or line management, or a

combination of these and other appropriate functions. The *Approved Person* will be expected to participate in and co-operate fully with such an investigation and to provide any information in a frank and open manner. This may include attending investigatory interviews to establish the facts of the case. These interviews do not automatically impose or give rise to any disciplinary consequences.

## 8.4 Disciplinary Sanction

If, after investigation, the Group Firm believes that the *Approved Person* may have breached the *FSA Requirements*, a disciplinary hearing may be convened. Because a breach of the *FSA Requirements* has potentially serious implications for the *Approved Person's* continued employment with the Group Firm, one potential outcome could be dismissal. The *Approved Person* will have the right to representation and a hearing, as set out in the relevant disciplinary procedure.

A breach of the *FSA Requirements*, considered to amount to an act of Gross Misconduct, may result in dismissal without notice and benefits.

The following are examples of circumstances which may give rise to summary dismissal:

- The Group Firm has reason to doubt the *Approved Person's* integrity or honesty such that there is a breakdown in trust and confidence between him/her and the Group Firm;
- In cases of gross negligence, serious neglect of duties, or mismanagement; or
- The *Approved Person* has shown serious disregard for the *FSA Requirements* or management instructions issued in connection with the *FSA Requirements*, without reasonable excuse.

This is not intended to be an exhaustive list.

Even where the breach is not considered Gross Misconduct, but is considered Misconduct, it may be inappropriate to allow the *Approved Person* to continue in that role, as it might be contrary to the obligations placed upon the Group Firm by the FSA. In all such cases, consideration will be given to re-deployment. However, if re-deployment is not considered appropriate or a suitable alternative position can not be found within a reasonable period, dismissal from the Group firm remains an option and will be effected with or without notice.

The Group Firm also reserves the right to reduce or withhold payment of discretionary and/or non-discretionary remuneration where an employee is found guilty of a failure to comply with the *FSA Requirements*.

Further information on the RBS Group's disciplinary procedure can be obtained from HR Direct or via the HR Intranet site at:

<http://www.group.rbsgrp.net/HR/default.asp>

## **8.5 The FSA's Enforcement Powers**

The FSA has a range of enforcement powers and it will use these as it sees appropriate.

One of the FSA's enforcement powers is the withdrawal of an *Approved Person's* approval to perform one or more *Controlled Functions*.

The FSA can also use its enforcement powers to make prohibition orders. These prohibit individuals from continuing to perform a *Controlled Function* and/or can prevent an individual becoming an *Approved Person* in the future.

## **9. Any questions?**

If you have any queries about the content of this booklet or about your Approved Person status, please contact your divisional/functional Regulatory Risk team or business line Compliance team.

## 10. Useful information

FSA website: <http://www.fsa.gov.uk/>

FSA Handbook: <http://fsahandbook.info/FSA/html/handbook/>

- Principles for Businesses (PRIN):  
<http://fsahandbook.info/FSA/html/handbook/PRIN>
- Senior Management Arrangements, Systems and Controls (SYSC):  
<http://fsahandbook.info/FSA/html/handbook/SYSC>
- Statements of Principle and Code of Practice for Approved Persons (APER): <http://fsahandbook.info/FSA/html/handbook/APER>
- The Fit and Proper test for Approved Persons (FIT):  
<http://fsahandbook.info/FSA/html/handbook/FIT>
- Supervision (SUP): <http://fsahandbook.info/FSA/html/handbook/SUP>
- Training and Competence (TC):  
<http://fsahandbook.info/FSA/html/handbook/TC>
- Conduct of Business Sourcebook (COBS):  
<http://fsahandbook.info/FSA/html/handbook/COBS>