

Registration deadline fast approaching for the new approved persons regime – 6 February 2010

In a previous alert we highlighted the impact of the policy statement issued by the UK Financial Services Authority entitled “The approved persons regime – significant influence review” (“**PS09/14**”). This importantly widens the scope of the concept of ‘significant influence’ function at FSA-regulated firms. The necessary changes to the FSA’s Handbook of Rules and Guidance took effect on 6 August 2009 but with a transitional period until 6 February 2010 for firms to bring themselves into compliance.

The widened scope

The changes include:

- An extension to the scope and application of Controlled Function (“**CF**”) 1 (director function) and CF2 (non-executive director) to include those persons employed by a parent undertaking or holding company, whose decisions or actions are regularly taken into account by the governing body of a regulated firm (EEA regulated parent and holding companies are excluded);
- An extension of the definition of the significant management controlled function (CF29) to include all proprietary traders who are likely to exert significant influence on a firm;
- Amending the application of the approved persons regime to UK branches of overseas firms outside the EEA so that controlled functions may apply; and
- An extension of the rule obliging firms to provide references on request for applicants of the CF30 (customer function) to all controlled functions.

Anyone who falls within this wider definition is required to be approved by **6 February 2010**. We emphasised in our previous alert that the FSA is entitled under the legislation to take up to three months to consider an approved person application, but applications can be processed much more quickly and firms who have not yet addressed this issue should do so urgently.

The change will have an impact on affected individuals as they will be obliged to understand and fulfil the duties in Statements of Principle and Code of Practice for Approved Persons. They will be open to heavy sanctions if they fall short of these standards.

The FSA has stated that the new rules will catch the following categories of people:

- the chairman of the audit committee at the parent company level;
- any director of a parent company who exercises significant influence by way of his involvement in taking decisions for that FSA regulated firm;
- any individual responsible for setting the objectives for, and remuneration of, the executive directors of the FSA regulated firm; and
- any other individual who is a director or senior manager of a parent undertaking who is accustomed to influencing the operations of that FSA regulated firm.

The FSA has indicated that in order to be caught by the new rules, there will need to be an “arrangement” between the individual concerned and the FSA authorised firm. FSA guidance suggests that this requirement should be interpreted to mean any contract or arrangement that permits the performance of the role by the individual for and on behalf of the FSA authorised firm in question. Caution should be exercised in considering whether or not an arrangement is in place – given the FSA’s well established rules on apportionment of responsibilities it may well expect an arrangement to be in place where an individual exerts significant influence over the management of an FSA authorised firm. The FSA has always insisted upon clear reporting lines and transparency in the manner in which a business is run. A distinction can be drawn however between individuals responsible for setting group level strategy and those responsible for

implementing that strategy at the level of the FSA authorised firm. The fact that there is a reporting line to a parent/holding company does not necessarily imply that the recipient of the report must be registered as an approved person of the UK firm.

Ramifications

Firms operating as part of a group, particularly where there are cross company business divisions and cross border reporting lines should examine the FSA's requirements urgently if this has not already been done. A failure to consider the issue could expose firms and senior managers within them to significant risk of regulatory penalties.

There is considerable uncertainty about the precise scope of the changes and firms may need to take advice to assist them. The FSA has expressed a willingness to discuss whether particular individuals will be caught by the new rules, and this is an offer that firms may wish to take up after they have formed a preliminary view. We have been working with a number of clients on this issue to assist them in understanding and meeting the FSA's requirements.

If you have any questions or require specific advice on any matter discussed in this publication, please contact Matt Baker, Angela Hayes, Nick Kynoch, Keith McShea or your regular contact at Mayer Brown.

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