



Financial Services Authority

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To the Chief Executives of all UK Recognised Bodies

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Our Ref:

Your Ref:

Dear Chief Executive

Our approach to significant influence functions in relation to Recognised Bodies

As you may be aware, we have extended the scope of the approved persons regime for those that exercise a 'significant influence' function (SIF) at authorised firms.¹ We sent a letter to the CEOs of all relationship managed authorised firms in October, explaining our approach to approving persons performing SIFs.²

In particular, the scope of the approved persons regime has been extended to include individuals such as directors, non-executive directors or senior managers employed by a parent undertaking or a holding company whose decisions opinions or actions are regularly taken into account by the governing body of the authorised firm, and therefore likely to have a significant influence on the conduct of the authorised firm's affairs³.

As you know, although Recognised Bodies (RBs) are not required to have 'approved persons', we have already been applying an approach consistent with the approved persons

¹ We confirmed this on 27 July 2009 in our Policy Statement: www.fsa.gov.uk/pubs/policy/ps09_14.pdf

² We wrote to CEOs on 12 October 2009: http://www.fsa.gov.uk/pubs/ceo/ceo_letter1009.pdf

³ See paragraph 1.1 of Policy Statement 09/14

regime where individuals have been appointed to comparable positions at RBs, and in particular to Board roles (both executive and non-executive).

Although the Recognition Requirement Regulations¹ (RRRs) already have a sufficiently broad scope² to allow FSA to consider the type of person now covered by the expanded approved person regime, we have re-considered our supervisory approach in relation to such persons.

I thought it would be helpful to write and update you on how our supervisory approach for RBs has developed in light of the changes made in our approach to authorised firms noted above. Given the importance of the SIF framework generally, we want to continue to ensure that a consistent and proportionate approach to comparable roles is applied to regulated entities beyond authorised firms.

Overview

As you know, when considering whether RBs are satisfying the fit and proper test in the RRRs we assess relevant persons within the RB and also the impact a connection with any person has on the fitness and propriety of the RB. In particular, we place a great deal of emphasis on corporate governance arrangements and the suitability and competence of senior management and Boards.

Since the start of this year, we have routinely interviewed Board-level appointees as part of our work to ensure the RRRs are being met. Although we have not routinely interviewed individuals below director level before appointment, we have regularly assessed senior managers' suitability in so far as it may affect the fitness and propriety of the RB, through our close and continuous meetings.

To ensure that we continue to be comfortable that each RB is meeting the RRRs, we want to ensure that all key individuals³, and other individuals who might be exercising significant influence on the conduct of its affairs, whether they are within the RB entity itself or elsewhere within the group, have been properly identified to us. We will continue to interview new board level appointees and reserve the right to interview key individuals and others exercising significant influence, as necessary. Where we believe that a relevant individual within the RB or an RB's connection with any such individuals outside of the RB might compromise its compliance with the RRRs, we will set out our concerns to the RB.

Review of the RBs – what this means for you

Over the next few months we will work with RBs to ensure that the following persons have been properly identified to us:

¹ The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)

² See in particular the extracts from the RRR framework in the annex accompanying this letter.

³ See REC 3.4.3G.

(1) all key individuals, including, for example, individuals who are not employees of the RB but are employed within the RB's group who also satisfy the test of being a key individual;

(2) certain individuals in the RB's group who exercise significant influence over the conduct of the RB's affairs, but which are not key individuals.

In the unlikely event that we identify key individuals not previously identified to us we will consider their role and suitability in the context of the fitness and propriety of the RB. We will review the extent of the RB's connections with individuals identified in (2) above and how this might affect its requirement to satisfy the fit and proper test in the RRRs. We will not as a matter of course interview relevant individuals already in post, unless we consider it necessary to understand more fully their role or the impact their connection with the RB has on the fitness and propriety of the RB. However, we will routinely interview new candidates for positions as key individuals before they are appointed, or other relevant individuals, as necessary.

Below, we set out how we intend to formalise our supervisory approach to appraising relevant people.

Practical issues

Pre interview

In relation to 'key individuals' we recognise that Recognised Investment Exchanges (RIEs) and Recognised Clearing Houses (RCHs) are obliged under REC to notify us at different stages in the appointment process. For clarity, where RCHs are not obliged under REC to notify us before appointment, we still expect them to engage with us before then.

While in the vast majority of cases it will not be relevant, we foresee circumstances in which individuals at group level exercise significant influence over the affairs of the RB but who may not be 'key individuals'. We want to ensure that these individuals do not undermine compliance with the RRRs and as such, we expect the RB to tell their supervisors at a sufficiently early stage in the recruitment process and certainly before the appointment is confirmed to enable us, if necessary, to interview the individual before they are appointed.

The interview

The key purpose of the interview is to help us assess the extent to which an individual or the RB's connection with an individual might affect it meeting the 'fit and proper' test¹. So we will focus on the impact the individual might have on the fitness and propriety of the RB. This is not intended to be, as is the case with firms, a tool for us to decide whether to 'approve' an individual.

¹ Though as referred to in the annex we are explicitly required, in the context of individuals exercising significant influence on an RIE, to consider the suitability of those individuals themselves as well as the impact on the fitness and propriety of the RB.

The interview will take place at our offices and will normally last about 90 minutes. We will explore a range of issues that might impact on the fitness and propriety of the RB, including, but not limited to:

- responsibilities of the individual;
- knowledge, skills and experience that the person will bring to the RB;
- the individual's view of the main risks facing the RB and the role they will play in mitigating them;
- the individual's knowledge of the regulatory regime appropriate to the role; and
- our expectations of the person to uphold the fitness and propriety of the RB, including the importance on good relations with the FSA.

It is important that the person has an adequate understanding of the RB's business model and the sector in which it operates to provide us with sufficient comfort.

We will not normally expect the individual to be accompanied by a representative of the RB. If we have questions for the RB, we will address these separately. If you would prefer to have a representative attend with the candidate, please discuss it with us before the interview.

Post interview

We will write to the RB if we believe the connection with the individual does not impair the fitness and propriety of the RB. Where we have identified issues or concerns, we will communicate these in writing to the RB. As we are assessing the impact on the RB continuing to meet the RRRs rather than the individual's fitness and propriety, we will not write to that individual.

What you need to do next

Please share this letter with your Board.

If you have any questions, please contact your supervisor.

Yours sincerely

David Lawton

Head of Department, Market Infrastructure and Policy

Annex – SIF regime and RRR framework

The principles underlying the expanded SIF regime for authorised persons are already contained within the existing framework and scope of the RRRs taking into account FSA guidance in REC. The following provisions are of particular relevance:

The RRRs provide¹ that, *‘the [UK RB] must be a fit and proper person to perform the [relevant functions] of a [UK RB]’*. In considering whether a UK RB is ‘fit and proper’, *‘the FSA may take into account all the circumstances including the [UK RBs] connection with any person’*.

In relation to UK RIEs, paragraph 2 of the RRRs also provides that the persons who *‘effectively direct the business and operations of the UK RIE must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operations of the financial markets operated by it’*. Also, *‘the persons who are in a position to exercise significant influence over the management of the UK RIE, whether directly or indirectly, must be suitable’*. Whilst these provisions are explicitly related to RIEs this results from an implementation policy to copy out MiFID provisions, and should not be read as implicitly suggesting that the type of persons referred to are not within the scope of the more general requirements for RCHs.

In addition, the guidance in REC 2.4 states that in determining whether an RB is fit and proper, FSA may, amongst other things, have regard to *‘the integrity and competence of its governing body and key individuals’* (REC 2.4.3G); *‘its connections with any person in accordance with whose instructions the governing body or key individual is accustomed to act’* (REC 2.4.4G); and *‘the roles of any of the [UK RB’s] key individuals who have a position within organisations under the control or influence of that other person...’* and *‘the extent to which the [UK RB] operates as a distinct entity notwithstanding its connection with that other person’* (REC 2.4.5G).

¹ Paragraphs 2 and 17 of the Schedule to the RRRs