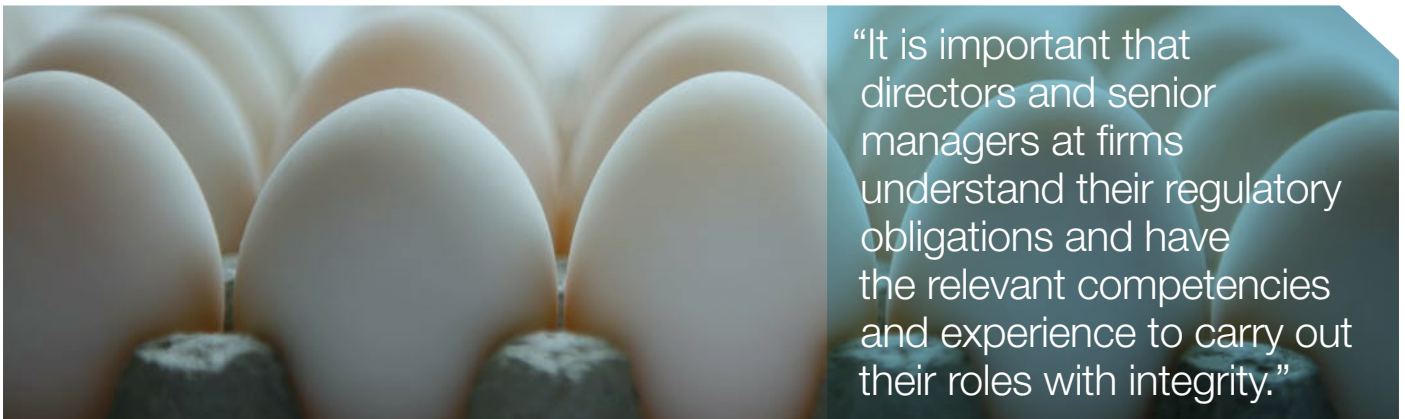


Approved Persons Regime: Significant Influence Review



“It is important that directors and senior managers at firms understand their regulatory obligations and have the relevant competencies and experience to carry out their roles with integrity.”

Following the collapse of Northern Rock, the FSA’s own audit review made a number of recommendations which led to the creation of the ‘Supervisory Enhancement Programme’. A key feature of this initiative is an increased emphasis upon the role and competence of senior management and the extension of the regulatory web to capture all those that exert a significant influence upon the activities of a firm.

With effect from 6 August 2009, the FSA has made certain enhancements to its approved persons regime that reflect this regulatory focus and widens the scope of individuals subject to the Statements of Principle and Code of Practice for Approved Persons (“APER”).

→ Background

The approved persons regime holds individuals themselves accountable for the performance of their responsibilities and is intended to encourage honesty and propriety as well as sound management and corporate governance. As Graeme Ashley-Fenn, director of Permissions, Decisions and Reporting Division at the FSA, said:

“It is important that directors and senior managers at firms understand their regulatory obligations and have the relevant competencies and experience to carry out their roles with integrity.”

Since October 2008, the FSA has carried out 115 interviews for ‘significant influence’ posts at high impact firms and the changes it has made to the approved persons Form A demonstrate a greater intensity of regulatory scrutiny.

With the new rules the FSA seeks to improve its powers of oversight by paying particular attention to those directors and senior managers employed by parent or holding companies and, in doing so, include them within the definition of Director (“CF1”) and Non-executive Director (“CF2”) controlled functions.

→ Extending the definition of CF1 and CF2

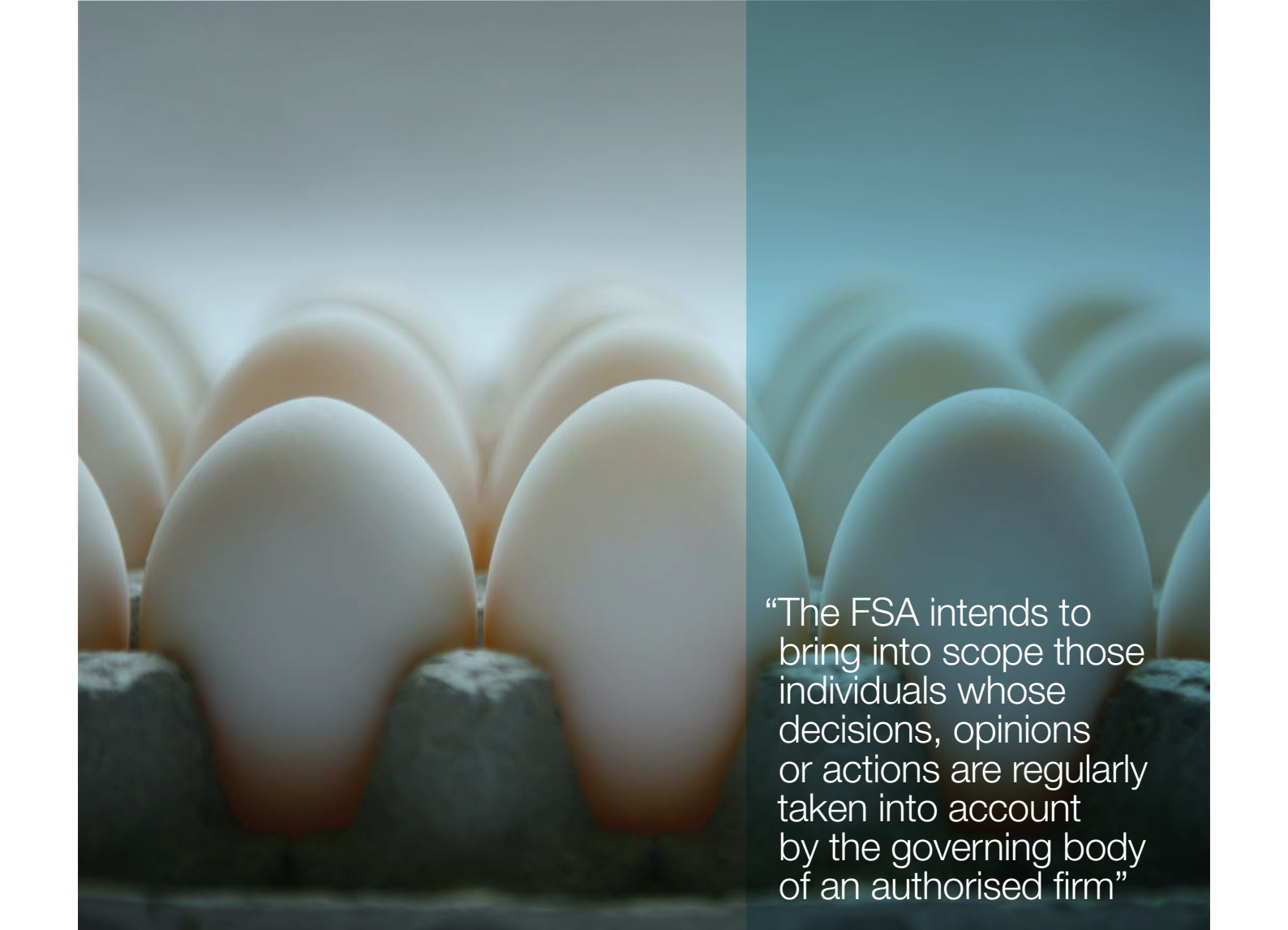
In extending the scope and application of CF1 and CF2 to include those persons employed by an unregulated parent undertaking or holding company, the FSA intends to bring into scope those individuals whose “...decisions, opinions or actions are regularly taken into account by the governing body of an authorised firm...”. It is considered that such individuals now exert an increasing influence and should, therefore, be accountable.

Shareholders are not included in the definition of CF1 or CF2 but if they take a more involved approach in the activities of a regulated firm and thereby exert a ‘significant influence’, it may be appropriate for them to be approved also.

→ Partnerships

The FSA has not chosen to extend the definition of CF4 (Partner) and, as such, the changes do not affect Limited Liability Partnerships in the same way.

Continued...



“The FSA intends to bring into scope those individuals whose decisions, opinions or actions are regularly taken into account by the governing body of an authorised firm”

Continued...

→ CF2 – ‘NED’ a clarification

The original proposals included clarifying the role of Non Executive Directors’ (“NEDs”) to make clear that the FSA would look at NEDs more closely where it believed they should have intervened more actively within a firm’s management.

Before making a final decision on this issue, the FSA has said it wishes to consider the relevant recommendations of the Walker Review and the Financial Reporting Council’s review of the Combined Code. The regulator said the results of this would be included in a further consultation paper on governance which the FSA expects to publish in Q4 2009.

→ CF29

The FSA has also sought to respond to the perceived risks that certain propriety traders pose to a firm, by extending the definition of the significant management controlled function (CF29) to include all proprietary traders who are not senior managers but who are likely to exert significant influence on a firm.

→ UK branches of third country firms

All controlled functions may now also be applied to UK branches of third country firms. The intention is to create a regime for such firms that is consistent with that in place for overseas firms and UK subsidiaries of overseas firms.

→ Applicant references

Finally, and in the spirit of harmonising the rules, SUP 10.13.12R (reference requests) now applies to all controlled functions (not just customer functions).

→ Next Steps

These changes came into effect on 6 August 2009 with a transitional period of six months. The FSA has advised firms to begin assessing which individuals require approval and submit timely applications to comply with the end of the transitional period.

If you wish to know more about how we can help you respond to these important regulatory challenges do get in touch.

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