CFA UK is a member society of

# The approved persons regime – significant influence function review

## CP 08/25

A response by

CFA Society of the UK

**31 March 2009**

**About CFA Society of the UK**

The CFA Society of the UK (CFA UK) represents the interests of more than 8,000 leading members of the UK investment profession. The society, which was founded in 1955, is one of the largest member societies of CFA Institute and is committed to leading the development of the investment profession through the promotion of the highest ethical standards and through the provision of continuing education, advocacy, information and career support on behalf of its members.

CFA UK supports the CFA, Associate (ASIP) and IMC designations. Most members hold either the Chartered Financial Analyst (CFA), or Associate designation. CFA Institute is best known for developing and administering the CFA curriculum and examinations and issuing the CFA Charter. CFA Institute's mission is to lead the investment profession globally by setting the highest standards of ethics, education and professional excellence.

Most CFA UK members also belong to the CFA Institute and reaffirm annually their adherence to its Code of Ethics and Standards of Professional Conduct. Both CFA UK and CFA Institute are committed to providing members with a wide range of continuing education opportunities. All members are encouraged to undertake ongoing post-qualification continuing education.

CFA UK is the awarding body for the IMC, the benchmark entry-level qualification for those working in investment management in the UK. The examination is accredited by the Qualifications and Curriculum Authority (QCA) and is designated a recommended examination by the Financial Services Skills Council (FSSC) for the purposes of the Financial Services Authority's training and competence requirements. The IMC is held by more than 15,000 investment professionals.

**About this response**

CFA UK welcomes CP08/25 on the Approved Person's Regime and the FSA's increased focus on the suitability and responsibility of individuals working within the investment profession.

We share the FSA's belief that appropriate standards of behaviour are necessary to protect the interests of firms and their customers, and that regulatory oversight can assist in delivering this. As the paper points out, the FSA's ability to hold individuals accountable for carrying out their responsibilities provides additional incentives for honest, prudent and sensible management. We believe that adherence to professional codes and standards such as those expressed by CFA Institute (and to which members commit themselves each year) provide significant additional incentive and that the FSA might wish to take into account an individual's professional commitments when reviewing candidates for significant influence functions.

We are pleased to hear that the FSA is interviewing new candidates for significant influence functions more frequently and we encourage the FSA to maintain this approach even when financial markets have stabilised. We do not share the FSA's concern that firm's would regard FSA vetting as a substitute for undertaking their own due diligence.

We believe that it is appropriate for the FSA to amend the significant influence function to reflect better the complex nature of financial firms and the role of individual's at parent undertakings or holding companies. As the FSA points out, many directors and non-executive directors do already apply for approval. It is appropriate for this practice to be applied consistently.

We are concerned about the FSA's intention (as expressed in para 2.2) to assess competence as a basis for considering sanctions against individuals holding significant influence functions. Para 2.2 reads: 'Previously, for individuals holding significant influence controlled functions, we have tended to focus on cases of dishonesty or lack of integrity where prohibition or withdrawal of approval was the most appropriate outcome. In the future, we will also consider the competence of significant influence function holders…'

The society believes that it would be appropriate for the FSA to deter and punish behaviour that is evidently grossly incompetent and where the principles and codes of practice for approved persons have not been upheld. However, we are anxious that it may be difficult to provide consistent (and thereby fair) judgements in situations where an individual's competence may have been insufficient, but is not wholly absent. Before considering proposals and publishing rules, relating to competence rules (and any consequent actions) we recommend that the FSA seeks further feedback from financial firms and professional bodies in the sector.

**Q1 Do you agree with our proposal to extend controlled functions CF1 (director) and CF2 (non-executive director) to those individuals exercising significant influence?**

Yes

**Q2 Do you agree that a transitional period of 6 months is sufficient for implementation?**

Yes

**Q3 Do you agree with our proposed guidance to the Handbook that clarifies the role of non-executive directors?**

CFA UK shares the FSA's view of the duties of non-executive directors and the proposed guidance to the Handbook as outlined in Appendix 1.

However, we believe that paragraph 4.3 of the paper may prove difficult to apply in practice. The paragraph reads ‘Our expectations of non executives and executives are different. In the past we have said that we will not discipline non-executives if they have acted in accordance with their roles and responsibilities when things go wrong. In the future, we will look at non-executives more closely in these cases if we believe that they should have intervened where executives are making sustained poor decisions.’

It is often only possible in hindsight or with the benefit of additional information to see that an individual should have intervened in a situation where ‘poor’ decisions were being made. Is it fair to assume that a non-executive director should be able to identify a decision as ‘poor’ contemporaneously? What do you mean by ‘sustained’? Time periods differ in importance. A series of decisions across several weeks of October 2008 might be seen by some as a ‘sustained’ period of time, whereas a six-month period might more typically be considered. Either way, the lack of clarity in this section of the paper would make it difficult to explain, apply or enforce.

**Q4 Do you agree with our proposal to extend the description of CF29 to include more proprietary traders?**

CFA UK shares the FSA’s view about the significant influence of the proprietary trader’s role and agrees with the FSA’s proposal that (despite the lack of supportive cost benefit analysis) the description of controlled function CF29 should be amended to include them.

**Q5 Do you agree with our judgement that the proposed guidance in the draft handbook text (Appendix 1) supports the expectation that all proprietary traders will be approved persons?**

Yes

**Q6 What are your views on the outcome of the cost benefit analysis compared to other reasons why we might implement this proposal?**

In principle, a lack of support for a proposal based on cost-benefit analysis (CBA) alone should not be sufficient reason to reject a proposal. CBA should be taken into account in relation to all proposals, but wider judgement also needs to be applied.

**Q7 Do you agree that a transitional period of six months is sufficient for implementation?**

Yes

**Q8 Do you agree that we should remove the limited application of the approved persons regime to UK branches of third country firms?**

Yes

**Q9 Do you agree that we should extend the reference requirement in SUP 10.13.12R so it applies to all controlled functions?**

As firms may be concerned about their exposure to claims if they provide any information beyond the barest minimum, we are not convinced that demanding a factually-based reference from a prior employer will necessarily provide a new employer with useful information such that a position might not be offered to a candidate on the grounds of their lack of fitness or propriety. As a consequence, we do not agree with the proposed extension of the reference request.