Statements of Principle and Code of Practice for Approved Persons
Statements of Principle and Code of Practice for Approved Persons

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APER App 1 This appendix has been removed until further notice
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Chapter 1

Application and purpose
APER 1 : Application and purpose

Section 1.1A : Application

Who?

1.1A.1 R APER applies to FCA-approved persons and PRA-approved persons who fall under (1) or (2):

(1) approved persons of firms that are not:
   (a) relevant authorised persons; or
   (b) Solvency II firms or small non-directive insurers; or

(2) approved persons approved to perform a controlled function in
    ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR (appointed representatives).

1.1A.1A G

(1) APER does not apply to FCA-approved persons or PRA-approved persons of relevant authorised persons, Solvency II firms or small non-directive insurers. COCON applies instead. For the purposes of APER (and SYSC, ■ SUP 10A, COCON and DEPP) a large non-directive insurer is treated as and included in the Glossary definition of a Solvency II firm.

(2) However, APER applies to approved persons approved to perform a controlled function under ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR (appointed representatives) even if the appointed representative’s principal is a relevant authorised person or Solvency II firm.

What?

1.1A.2 P

(1) APER applies to the performance by an approved person of:

   (a) FCA controlled functions (whether or not approval has been sought and granted); and
   
   (b) PRA controlled functions (whether or not approval has been sought and granted);  

   in relation to the authorised persons in relation to which that person is an approved person.

(2) APER also applies to the performance by an approved person of any other functions in relation to the carrying on of a regulated activity by the authorised persons referred to in (1).

1.1A.3 G

The functions described in ■ APER 1.1A.2R are called accountable functions.
1.1.4 [G] The relevance of MiFID to the Statements of Principle will depend on the extent to which the corresponding requirement imposed on firms under MiFID is reserved to a Home State regulator or has been disapplied under MiFID (see ■ APER 2.1A.2R and ■ FIT 1.2.4AG. See also ■ COBS 1 Annex 1, Part 2, 1.1R (EEA territorial scope rule: compatibility with European law)).

Where?

1.1.5 [G] The territorial scope of the approved persons regime and its application to incoming EEA firms is set out in SUP 10A.1 (see SUP 10A.1.11R and SUP 10A.1.13R).

Coverage of APER

1.1.6 [G] ■ APER 1.1A.7 G gives examples of the effect of ■ APER 1.1A.1R and ■ APER 1.1A.2R. The first column says whether the example involves an FCA-approved person and the second column says whether the example involves a PRA-approved person. So for example if there is a “Yes” in both columns that means that the example concerns a person who has been approved both by the FCA and by the PRA. The third column explains what functions APER covers in the scenario set out in the first two columns. The table is divided between cases in which the person performs the controlled function for an FCA-authorised person and ones where the person does so for a PRA-authorised person.

1.1.7 [G] Table: Examples of what activities APER covers

<table>
<thead>
<tr>
<th>FCA approved</th>
<th>PRA approved</th>
<th>Coverage of APER</th>
</tr>
</thead>
<tbody>
<tr>
<td>FCA-authorised person</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Yes, in relation to firm A</td>
<td>Not applicable</td>
<td>Applies to the FCA controlled function. Also applies to any other function performed for firm A in relation to the carrying on by firm A of a regulated activity even if it is not a controlled function.</td>
</tr>
<tr>
<td>(2) Yes, in relation to firm A. No, in relation to firm B,</td>
<td>Not applicable</td>
<td>In relation to firm A, the answer is the same as for scenario (1). However, APER does not apply to any function that the approved person carries on in relation to firm B even if that function relates to regulated activities carried out by firm B. However, if the function that he performs in relation to firm B is a controlled function the approved person and firm B may be subject to legal sanctions (see SUP 10A.13.1 G to SUP 10A.13.2 G).</td>
</tr>
<tr>
<td>PRA-authorised person that is not a relevant authorised person, or a Solvency II firm or a small non-directive insurer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) Yes, in relation to firm A</td>
<td>No</td>
<td>The answer is the same as for scenario (1).</td>
</tr>
<tr>
<td>(4) No</td>
<td>Yes, in relation to firm A</td>
<td>Applies to PRA controlled function. Also applies to any other function performed for firm A in relation to the carrying on by firm A of a regulated activity even if it is not a controlled function.</td>
</tr>
</tbody>
</table>
APER 1 : Application and purpose

<table>
<thead>
<tr>
<th>FCA approved</th>
<th>PRA approved</th>
<th>Coverage of APER</th>
</tr>
</thead>
<tbody>
<tr>
<td>(5) Yes, in relation to firm A</td>
<td>Yes, in relation to firm A</td>
<td>Applies to FCA controlled function and PRA controlled function. Also applies to any other function performed for firm A in relation to the carrying on by firm A of a regulated activity even if it is not a controlled function.</td>
</tr>
<tr>
<td>(6) Yes, in relation to firm A. No, in relation to firm B,</td>
<td>Yes, in relation to firm A. No, in relation to firm B,</td>
<td>In relation to firm A, the answer is the same as for scenario (5). However, APER does not apply to any function that the approved person carries on in relation to firm B even if that function relates to regulated activities carried out by firm B. However, if the function that he performs in relation to firm B is a controlled function the approved person and firm B may be subject to legal sanctions (see SUP 10A.13.1G to SUP 10A.13.21G).</td>
</tr>
</tbody>
</table>

PRA-authorised person that is a relevant authorised person, a Solvency II firm or a small non-directive insurer.

| (7) Yes, in relation to firm A | No | No. APER does not apply to approved persons of relevant authorised persons, Solvency II firms or small non-directive insurers. COCON applies instead. |
| (8) No | Yes, in relation to firm A | The answer is the same as for scenario (7). |
| (9) Yes, in relation to firm A | Yes, in relation to firm A | The answer is the same as for scenario (7). |

1.1A.8 G

1. A person may be an approved person in relation to more than one firm. When that is the case, APER applies in relation to all those firms.

2. APER does not apply if the firm is a relevant authorised person or a Solvency II firm, except for approved persons of an appointed representative of a relevant authorised person, a Solvency II firm or a small non-directive insurer.

3. If a person is an approved person of a firm (A) that is not a relevant authorised person, a Solvency II firm or a small non-directive insurer and also of another firm (B) that is either a relevant authorised person, a Solvency II firm or a small non-directive insurer, the result is:
   (a) APER applies to the approved person in relation to firm A; and
   (b) COCON applies to the approved person in relation to firm B.

1.1A.9 G

1. APER 1.1A refers to the authorised person in relation to which a person is an approved person. It also refers to an approved person of a firm.

2. Under section 59 of the Act (Approval for particular arrangements) there are two kinds of approved person.

3. Section 59(1) of the Act describes the first. It covers a person who performs a controlled function under an arrangement entered into by an authorised person (*A*). In this case, APER 1.1A refers to A.
(4) Section 59(2) of the Act describes the second. It covers a person who performs a controlled function under an arrangement entered into by a contractor (“B”) of an authorised person (“A”). In this case, APER 1.1A refers to A (and not B).

1.1A.10 E [deleted]

1.1A.11 G [deleted]
1.2 Purpose

1.2.1 [deleted]

1.2.1A The Statements of Principle contained in APER 2 are rules made under section 64A(1)(a) of the Act (Rules of conduct).

1.2.1B [deleted]

1.2.2 The guidance in APER 3 and APER 4 is guidance on the Statements of Principle and is called the Code of Practice for Approved Persons.

1.2.3 The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the FCA, do or do not comply with a Statement of Principle. The Code of Practice for Approved Persons also sets out, in certain cases, factors which, in the opinion of the FCA, are to be taken into account in determining whether or not an approved person’s conduct complies with a Statement of Principle.

1.2.3A [deleted]

1.2.4 [deleted]

1.2.5 As set out in SUP 10A.3.1 R (Provisions related to the Act), a function is a controlled function only to the extent that it is performed under an arrangement entered into by:

(1) a firm; or

(2) a contractor of the firm;

in relation to the carrying on by the firm of a regulated activity.
1.2.6 [deleted]
1.2.7 [deleted]
1.2.8 [deleted]
1.2.9 [deleted]
Chapter 2

The Statements of Principle for Approved Persons
2.1A The Statements of Principle

2.1A.1 APER 2.1A.3R sets out the Statements of Principle issued by the FCA to which APER 1.2.1A G refers and to which the provisions of the Code of Practice for Approved Persons in APER 3 and APER 4 apply.

2.1A.2 An approved person will not be subject to a Statement of Principle to the extent that it would be contrary to the UK’s obligations under a Single Market Directive or the auction regulation.

2.1A.3 Statements of Principle issued under section 64A(1)(a) of the Act

Statement of Principle 1
An approved person must act with integrity in carrying out his accountable functions.

Statement of Principle 2
An approved person must act with due skill, care and diligence in carrying out his accountable functions.

Statement of Principle 3
An approved person must observe proper standards of market conduct in carrying out his accountable functions.

Statement of Principle 4
An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.

Statement of Principle 5
An approved person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function is organised so that it can be controlled effectively.

Statement of Principle 6
An approved person performing an accountable higher management function must exercise due skill, care and diligence in managing the business of the firm for which they are responsible in their accountable function.

Statement of Principle 7
An approved person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function complies with the relevant requirements and standards of the regulatory system.
2.1B The Statements of Principle
Chapter 3

Code of Practice for Approved Persons: general
3.1 Introduction

3.1.1 [deleted]

3.1.1A The purpose of the Code of Practice for Approved Persons is to help an approved person to determine whether or not that person’s conduct complies with a Statement of Principle. The code sets out descriptions of conduct which, in the FCA’s opinion, do or do not comply with the relevant Statements of Principle. The code also sets out certain factors which, in the opinion of the FCA, are to be taken into account in determining whether an approved person’s conduct complies with a particular Statement of Principle.

3.1.2 The Code of Practice for Approved Persons is general guidance. The status and effect of general guidance is described in the Readers’ Guide. In particular, guidance:

(1) represents the FCA’s view and does not bind the courts or third parties;

(2) is not binding on approved persons, nor does it have ‘evidential’ effect;

(3) need not be followed to achieve compliance with the Statements of Principle, nor is there any presumption that departing from guidance is indicative of a breach of the relevant rule;

(4) indicates that if a person acts in accordance with the guidance in APER in the circumstances contemplated by that guidance, then the FCA will proceed as if that person has complied with the aspects of the rule to which the guidance relates.

3.1.3 In assessing compliance with, or a breach of, a Statement of Principle, the FCA will look at all the circumstances of a particular case. Account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular accountable function and the behaviour to be expected in that function.

3.1.4 (1) An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an
approved person’s conduct was deliberate or where the approved person’s standard of conduct was below that which would be reasonable in all the circumstances (see \textbf{DEPP 6.2.4 G} (Action against approved persons under section 66 of the Act)).

(2) For the avoidance of doubt, the Statements of Principle do not extend the duties of approved persons beyond those which the firm owes in its dealings with customers or others.

3.1.4A

3.1.5
In particular, in determining whether or not an approved person’s conduct complies with a Statement of Principle, the FCA will take into account the extent to which an approved person has acted in a way that is stated to be in breach of a Statement of Principle.

3.1.6
The Code of Practice for Approved Persons (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle. The purpose of the code is to help determine whether or not a person’s conduct complies with a Statement of Principle. The code may be supplemented from time to time. The FCA will amend the code if there is a risk that unacceptable practice may become prevalent, so as to make clear what conduct falls below the standards expected of approved persons by the Statements of Principle.

3.1.7
[deleted]

3.1.7A
Statements of Principle 1 to 4 apply to all approved persons. A person performing an accountable higher management function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that accountable function. Those responsible under \textbf{SYSC 2.1.3 R} or \textbf{SYSC 4.4.5 R} (Apportionment of responsibilities) for the firm’s apportionment obligation will be specifically subject to Statement of Principle 5 (and see, in particular, \textbf{APER 4.5.6 G}). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see, in particular, \textbf{APER 4.7.3G}).

3.1.7B
[deleted]

3.1.8
[deleted]

3.1.8A
In applying Statements of Principle 5 to 7, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing an accountable higher management function within the firm will be relevant in assessing whether an approved person’s conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be. The FCA will be of the opinion that an individual performing an accountable higher
management function may have breached Statements of Principle 5 to 7 only if their conduct was below the standard which would be reasonable in all the circumstances. (See also ■ APER 3.3.1G(3) to ■ APER 3.3.1G(5).)

3.1.8B

3.1.9  
UK domestic firms with a premium listing of equity shares are subject to the UK Corporate Governance Code, whose internal control provisions are amplified in the publication entitled ‘Guidance on Risk Management, Internal Control and Related Financial and Business Reporting (September 2014)’ issued by the Financial Reporting Council. Firms regulated by the FCA in this category will be subject to that code as well as to the requirements and standards of the regulatory system. In forming an opinion whether approved persons have complied with its requirements, the FCA will give due credit for their following corresponding provisions in the UK Corporate Governance Code and related guidance.
In determining whether or not the particular conduct of an approved person within their accountable function complies with the Statements of Principle, the following are factors which, in the opinion of the FCA, are to be taken into account:

(1) whether that conduct relates to activities that are subject to other provisions of the Handbook;

(2) whether that conduct is consistent with the requirements and standards of the regulatory system relevant to his firm.
3.3 Factors relating to Statements of Principle 5 to 7

3.3.1 In determining whether or not the conduct of an approved person performing an accountable higher management function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FCA, are to be taken into account:

(1) whether he exercised reasonable care when considering the information available to him;

(2) whether he reached a reasonable conclusion which he acted on;

(3) the nature, scale and complexity of the firm’s business;

(4) their role and responsibility as an approved person performing an accountable higher management function;

(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
Chapter 4

Code of Practice for Approved Persons: specific
4.1 Statement of Principle 1

4.1.1 [deleted]

4.1.1A The Statement of Principle 1 (see APER 2.1A.3R) is in the following terms: “An approved person must act with integrity in carrying out his accountable functions.”


4.1.3 Deliberately misleading (or attempting to mislead) by act or omission:

(1) a client; or

(2) his firm (or its auditors or an actuary appointed by his firm under SUP 4 (Actuaries)); or

(3) the FCA or the PRA;

falls within APER 4.1.2G.

4.1.4 Behaviour of the type referred to in APER 4.1.3G includes, but is not limited to, deliberately:

(1) falsifying documents;

(2) misleading a client about the risks of an investment;

(3) misleading a client about the charges or surrender penalties of investment products;

(4) misleading a client about the likely performance of investment products by providing inappropriate projections of future investment returns;

(5) misleading a client by informing him that products require only a single payment when that is not the case;
(6) mismarking the value of investments or trading positions;

(7) procuring the unjustified alteration of prices on illiquid or off-exchange contracts, or both;

(8) misleading others within the firm about the credit worthiness of a borrower;

(9) providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience;

(10) providing false or inaccurate information to the firm (or to the firm’s auditors or an actuary appointed by the firm under SUP 4 (Actuaries));

(11) providing false or inaccurate information to the FCA or the PRA;

(12) destroying, or causing the destruction of, documents (including false documentation), or tapes or their contents, relevant to misleading (or attempting to mislead) a client, his firm, or the FCA or PRA.

(13) failing to disclose dealings where disclosure is required by the firm’s personal account dealing rules;

(14) misleading others in the firm about the nature of risks being accepted.

4.1.5 G Deliberately recommending an investment to a customer, or carrying out a discretionary transaction for a customer where the approved person knows that they are unable to justify its suitability for that customer, falls within APER 4.1.2G.

4.1.6 G Deliberately failing to inform, without reasonable cause:

- (1) a customer; or

- (2) his firm (or its auditors or an actuary appointed by his firm under SUP 4 (Actuaries)); or

- (3) the FCA or the PRA;

of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, falls within APER 4.1.2G.

4.1.7 G Behaviour of the type referred to in APER 4.1.6G includes, but is not limited to, deliberately:

- (1) failing to disclose the existence of falsified documents;

- (2) failing to rectify mismarked positions immediately.

4.1.8 G Deliberately preparing inaccurate or inappropriate records or returns in connection with an accountable function, falls within APER 4.1.2G.
4.1.9 Behaviour of the type referred to in APER 4.1.8G includes, but is not limited to, deliberately:

(1) preparing performance reports for transmission to customers which are inaccurate or inappropriate (for example, by relying on past performance without appropriate warnings);

(2) preparing inaccurate training records or inaccurate details of qualifications, past employment record or experience;

(3) preparing inaccurate trading confirmations, contract notes or other records of transactions or holdings of securities for a customer, whether or not the customer is aware of these inaccuracies or has requested such records.

4.1.10 Deliberately misusing the assets or confidential information of a client or of their firm falls within APER 4.1.2G.

4.1.11 Behaviour of the type referred to in APER 4.1.10G includes, but is not limited to, deliberately:

(1) front running client orders;

(2) carrying out unjustified trading on client accounts to generate a benefit (whether direct or indirect) to the approved person (that is, churning);

(3) misappropriating a client's assets, including wrongly transferring to personal accounts cash or securities belonging to clients;

(4) wrongly using one client's funds to settle margin calls or to cover trading losses on another client's account or on firm accounts;

(5) using a client's funds for purposes other than those for which they were provided;

(6) retaining a client's funds wrongly;

(7) pledging the assets of a client as security or margin in circumstances where the firm is not permitted to do so.

4.1.12 Deliberately designing transactions to disguise breaches of requirements and standards of the regulatory system falls within APER 4.1.2G.
4.1.13 Deliberately failing to disclose the existence of a conflict of interest in connection with dealings with a client falls within ■ APER 4.1.2 G.

4.1.14 Deliberately not paying due regard to the interests of a customer falls within ■ APER 4.1.2 G.

4.1.15 Deliberate acts, omissions or business practices that could be reasonably expected to cause consumer detriment fall within ■ APER 4.1.2 G.
4.2 Statement of Principle 2

4.2.1 [deleted]

4.2.1A The Statement of Principle 2 (see APER 2.1A.3 R) is in the following terms: "An approved person must act with due skill, care and diligence in carrying out his accountable functions."

4.2.2 In the opinion of the FCA, conduct of the type described in APER 4.2.3G, APER 4.2.5G, APER 4.2.6G, APER 4.2.8G, APER 4.2.10G, APER 4.2.11G or APER 4.2.14G does not comply with Statement of Principle 2.

4.2.2A In the opinion of the FCA, conduct of the type described in described in APER 4.2.13 G does not comply with Statement of Principle 2.

4.2.3 Failing to inform:

(1) a customer; or

(2) his firm (or its auditors or an actuary appointed by his firm under SUP 4 Actuaries));

of material information in circumstances where they were aware, or ought to have been aware, of such information, and of the fact that they should provide it, falls within APER 4.2.2G.

4.2.4 Behaviour of the type referred to in APER 4.2.3 G includes, but is not limited to:

(1) failing to explain the risks of an investment to a customer;

(2) failing to disclose to a customer details of the charges or surrender penalties of investment products;

(3) mismarking trading positions;

(4) providing inaccurate or inadequate information to a firm, its auditors or an actuary appointed by his firm under SUP 4 (Actuaries);

(4) failing to disclose dealings where disclosure is required by the firm's personal account dealing rules.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>4.2.5</td>
<td><strong>G</strong> Recommending an <em>investment</em> to a <em>customer</em>, or carrying out a discretionary <em>transaction</em> for a <em>customer</em>, where the <em>approved person</em> does not have reasonable grounds to believe that it is suitable for that <em>customer</em>, falls within <strong>APER 4.2.2 G</strong>.</td>
</tr>
<tr>
<td>4.2.6</td>
<td><strong>G</strong> Undertaking, recommending or providing advice on <em>transactions</em> without a reasonable understanding of the risk exposure of the <em>transaction</em> to a <em>customer</em> falls within <strong>APER 4.2.2 G</strong>.</td>
</tr>
<tr>
<td>4.2.7</td>
<td><strong>G</strong> <em>Behaviour</em> of the type referred to in <strong>APER 4.2.6 G</strong> includes, but is not limited to, recommending <em>transactions</em> in <em>investments</em> to a <em>customer</em> without a reasonable understanding of the liability (either potential or actual) of that <em>transaction</em>.</td>
</tr>
<tr>
<td>4.2.8</td>
<td><strong>G</strong> Undertaking <em>transactions</em> without a reasonable understanding of the risk exposure of the <em>transaction</em> to the <em>firm</em> falls within <strong>APER 4.2.2 G</strong>.</td>
</tr>
<tr>
<td>4.2.9</td>
<td><strong>G</strong> <em>Behaviour</em> of the type referred to in <strong>APER 4.2.8 G</strong> includes, but is not limited to, trading on the <em>firm's</em> own account without a reasonable understanding of the liability (either potential or actual) of the <em>transaction</em>.</td>
</tr>
<tr>
<td>4.2.10</td>
<td><strong>G</strong> Failing without good reason to disclose the existence of a conflict of interest in connection with dealings with a <em>client</em> falls within <strong>APER 4.2.2 G</strong>.</td>
</tr>
<tr>
<td>4.2.11</td>
<td><strong>G</strong> Failing to provide adequate control over a <em>client's</em> assets falls within <strong>APER 4.2.2 G</strong>.</td>
</tr>
</tbody>
</table>
| 4.2.12  | **G** *Behaviour* of the type referred to in **APER 4.2.11 G** includes, but is not limited to:  

1. failing to segregate a *client's* assets;  
2. failing to process a *client's* payments in a timely manner. |
| 4.2.13  | **G** Continuing to perform a *controlled function* despite having failed to meet the standards of knowledge and skill set out in the Training and Competence sourcebook (TC) for that *controlled function* falls within **APER 4.2.2AG**. |
| 4.2.14  | **G** Failing to pay due regard to the interests of a *customer*, without good reason, falls within **APER 4.2.2 G**. |
4.3 Statement of Principle 3

4.3.1 The Statement of Principle 3 (see APER 2.1A.3 R) is in the following terms: "An approved person must observe proper standards of market conduct in carrying out his accountable functions."

4.3.2 [deleted]

4.3.3 A factor to be taken into account in determining whether or not an approved person's conduct complies with this Statement of Principle is whether he, or his firm, has complied with the Market Abuse Regulation or relevant market codes and exchange rules.

4.3.4 In the opinion of the FCA, compliance with the code or rules described in APER 4.3.3G will tend to show compliance with this Statement of Principle.
4.4 Statement of Principle 4

4.4.1 [deleted]

4.4.1A The Statement of Principle 4 (see APER 2.1A.3 R) is in the following terms: “An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.”

4.4.2 [deleted]

4.4.2A For the purpose of this Statement of Principle, regulators in addition to the FCA and the PRA are those which have recognised jurisdiction in relation to regulated activities and a power to call for information from the approved person in connection with their accountable function or (in the case of an individual performing an accountable higher management function) in connection with the business for which they are responsible. This may include an exchange or an overseas regulator.

4.4.3 In the opinion of the FCA, conduct of the type described in APER 4.4.4G, APER 4.4.7G or APER 4.4.9G does not comply with Statement of Principle 4.

4.4.4 Failing to report promptly in accordance with his firm’s internal procedures (or if none exist direct to the regulator concerned), information which it would be reasonable to assume would be of material significance to the regulator concerned), whether in response to questions or otherwise, falls within APER 4.4.3 G. The regulator concerned is:

(1) the FCA if it would be reasonable to assume that it would be of material significance to it;

(2) the PRA if it would be reasonable to assume that it would be of material significance to it;

(3) both the FCA and the PRA if it would be reasonable to assume that it would be of material significance to both of them.
There is no duty on an approved person to report such information directly to the regulator concerned unless he is one of the approved persons responsible within the firm for reporting matters to the regulator concerned. However, if an approved person takes steps to influence the decision so as not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the FCA will, in respect of that information, view that individual as being one of those within the firm who has taken on responsibility for deciding whether to report that matter to the regulator concerned.

In determining whether or not an approved person’s conduct under APER 4.4.4 G complies with Statement of Principle 4, the following are factors which, in the opinion of the FCA, are to be taken into account:

1. The likely significance to the regulator concerned (as defined in APER 4.4.4 G) of the information which it was reasonable for the individual to assume;
2. Whether the information related to the individual himself or to his firm;
3. Whether any decision not to report the matter internally was taken after reasonable enquiry and analysis of the situation.

Where the approved person is, or is one of the approved persons who is, responsible within the firm for reporting matters to the regulator concerned (as defined in APER 4.4.4G), failing promptly to inform the regulator concerned of information of which they are aware and which it would be reasonable to assume would be of material significance to the regulator concerned, whether in response to questions or otherwise, falls within APER 4.4.3G.

In determining whether or not an approved person’s conduct under APER 4.4.7G complies with Statement of Principle 4, the following are factors which, in the opinion of the FCA, are to be taken into account:

1. The likely significance of the information to the regulator concerned (as defined in APER 4.4.4G) which it was reasonable for the approved person to assume;
2. Whether any decision not to inform the regulator concerned (as defined in APER 4.4.4G) was taken after reasonable enquiry and analysis of the situation.

Failing without good reason to:

1. Inform a regulator of information of which the approved person was aware in response to questions from that regulator;
2. Attend an interview or answer questions put by a regulator, despite a request or demand having been made;
3. Supply a regulator with appropriate documents or information when requested or required to do so and within the time limits attaching to that request or requirement;

falls within APER 4.4.3 G.
4.5 Statement of Principle 5

4.5.1 [deleted]

4.5.1A The Statement of Principle 5 (see APER 2.1A.3R) is in the following terms: “An approved person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function is organised so that it can be controlled effectively.”

4.5.2 In the opinion of the FCA, conduct of the type described in APER 4.5.3G, APER 4.5.4G, APER 4.5.6G or APER 4.5.8G does not comply with Statement of Principle 5.

4.5.3 Failing to take reasonable steps to apportion responsibilities for all areas of the business under the approved person’s control falls within APER 4.5.2G (see APER 4.5.11G).

4.5.4 Failing to take reasonable steps to apportion responsibilities clearly among those to whom responsibilities have been delegated falls within APER 4.5.2G (see APER 4.5.11G).

4.5.5 Behaviour of the type referred to in APER 4.5.4G includes, but is not limited to:

1. implementing confusing or uncertain reporting lines (see APER 4.5.12G);

2. implementing confusing or uncertain authorisation levels (see APER 4.5.13G);

3. implementing confusing or uncertain job descriptions and responsibilities (see APER 4.5.13G).

4.5.6 In the case of an approved person who is responsible under SYSC 2.1.3 R (1) or SYSC 4.4.5 R (1) for dealing with the appointment of responsibilities under SYSC 2.1.1 R or SYSC 4.4.3 R, failing to take reasonable care to maintain a
clear and appropriate apportionment of significant responsibilities among the *firm's directors* and senior managers falls within ■ APER 4.5.2G.
4.5.7 **G** Behaviour of the type referred to in **APER 4.5.6G** includes, but is not limited to:

(1) failing to review regularly the significant responsibilities which the *firm* is required to apportion;

(2) failing to act where that review shows that those significant responsibilities have not been clearly apportioned.

4.5.8 **G** Failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of the individual performing an *accountable higher management function* falls within **APER 4.5.2G** (see **APER 4.5.14 G**).

4.5.9 **G** Behaviour of the type referred to in **APER 4.5.8 G** includes, but is not limited to:

(1) failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable (see **APER 4.5.14 G**);

(2) giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role (see **APER 4.5.14 G**);

(3) allowing managerial vacancies which put at risk compliance with the requirements and standards of the *regulatory system* to remain, without arranging suitable cover for the responsibilities (see **APER 4.5.15 G**).

4.5.10 **G** Strategy and plans will often dictate the risk which the business is prepared to take on and high level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be high. In organising the business for which they are responsible, the *approved person* performing an *accountable higher management function* should bear this in mind.

**Apportionment of responsibilities**

4.5.11 **G** To comply with the obligations of *Statement of Principle 5* (having regard to **APER 4.5.3G** and **APER 4.5.4G**), the approved person performing an *accountable higher management function* may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.

**Reporting lines**

4.5.12 **G** The organisation of the business and the responsibilities of those within it should be clearly defined (see **APER 4.5.5 G (1)**). Reporting lines should be clear to staff. Where staff have dual reporting lines there is a greater need to ensure that the responsibility and accountability of each individual line manager is clearly set out and understood.
Authorisation levels and job descriptions

4.5.13  Where members of staff have particular levels of authorisation (see § APER 4.5.5G(2) and § APER 4.5.5G(3)), these should be clearly set out and communicated to staff. It may be appropriate for each member of staff to have a job description of which he is aware.

Suitability of individuals

4.5.13A  The appropriate approved person performing an accountable higher management function should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible has in place appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.

If an individual's performance is unsatisfactory, then the appropriate approved person (if any) performing an accountable higher management function should review carefully whether to allow that individual to continue in position. In particular, if they are aware of concerns relating to the compliance with requirements and standards of the regulatory system (or internal controls) of the individual concerned, or of staff reporting to that individual, the approved person performing an accountable higher management function should take care not to give undue weight to the financial performance of the individual or group concerned when considering whether any action should be taken.

An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The approved person performing an accountable higher management function should satisfy themselves, on reasonable grounds, that the investigation is appropriate, the results are accurate and that the concerns do not pose an unacceptable risk to compliance with the requirements and standards of the regulatory system (see in particular Statement of Principle 6, § APER 4.5.8G, § APER 4.5.9G(1) and § APER 4.5.9G(2)).

Temporary vacancies

4.5.15  In organising the business, the approved person performing an accountable higher management function should pay attention to any temporary vacancies which exist (see § APER 4.5.9G(3)). They should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The approved person performing an accountable higher management function should assess the risk that is posed to compliance with the requirements and standards of the regulatory system as a result of the vacancy, and the higher the risk the greater the steps they should take to fill the vacancy. It may be appropriate to limit or suspend the activity if appropriate cover for responsibilities cannot be arranged. To the extent that those vacancies are in respect of one of the customer functions, they may only be filled by persons approved for that function.
4.6 Statement of Principle 6

4.6.1 [deleted]

4.6.1A The Statement of Principle 6 (see APER 2.1A.3R) is in the following terms: “An approved person performing an accountable higher management function must exercise due skill, care and diligence in managing the business of the firm for which they are responsible in their accountable function.”

4.6.1B

4.6.2 In the opinion of the FCA, conduct of the type described in APER 4.6.3G, APER 4.6.5G, APER 4.6.6G or APER 4.6.8G does not comply with Statement of Principle 6.

4.6.3 Failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible falls within APER 4.6.2G.

4.6.4 Behaviour of the type referred to in APER 4.6.3G includes, but is not limited to:

1. permitting transactions without a sufficient understanding of the risks involved;
2. permitting expansion of the business without reasonably assessing the potential risks of that expansion;
3. inadequately monitoring highly profitable transactions or business practices or unusual transactions or business practices;
4. accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations;
5. failing to obtain independent, expert opinion where appropriate; (see APER 4.6.12G).

4.6.5 Delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the
issue or to take authority for dealing with part of the business, falls within APER 4.6.2G (see APER 4.6.13G).

4.6.6 G  Failing to take reasonable step to maintain an appropriate level of understanding about an issue or part of the business that they have delegated to an individual or individuals (whether in-house or outside contractors) falls within APER 4.6.2G (see APER 4.6.14G).

4.6.7 G  Behaviour of the type referred to in APER 4.6.6 G includes but is not limited to:

   (1) disregarding an issue or part of the business once it has been delegated;

   (2) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated;

   (3) accepting implausible or unsatisfactory explanations from delegates without testing their veracity.

4.6.8 G  Failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated falls within APER 4.6.2G.

4.6.9 G  Behaviour of the type referred to in APER 4.6.8 G includes, but is not limited to:

   (1) failing to take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided;

   (2) failing to review the performance of an outside contractor in connection with the delegated issue or business.

4.6.10 G  In determining whether or not the conduct of an approved person performing an accountable higher management function under APER 4.6.5G, APER 4.6.6G and APER 4.6.8G complies with Statement of Principle 6, the following are factors which, in the opinion of the FCA, are to be taken into account:

   (1) the competence, knowledge or seniority of the delegate; and

   (2) the past performance and record of the delegate.

4.6.11 G  An approved person performing an accountable higher management function will not always manage the business on a day-to-day basis. The extent to which the approved person does so will depend on a number of factors, including the nature, scale and complexity of the business and their position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines. The FCA will look to the approved person performing an accountable higher management function to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to their attention, they should deal with them in an appropriate way.
Knowledge about the business

4.6.12

(1) It is important for the approved person performing an accountable higher management function to understand the business for which they are responsible (APER 4.6.4G). An approved person performing an accountable higher management function is unlikely to be an expert in all aspects of a complex financial services business. However, they should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.

(2) It is important for an approved person performing an accountable higher management function to understand the risks of expanding the business into new areas and, before approving the expansion, they should investigate and satisfy themselves, on reasonable grounds, about the risks, if any, to the business.

(3) Where unusually profitable business is undertaken, or where the profits are particularly volatile or the business involves funding requirements on the firm beyond those reasonably anticipated, he should require explanations from those who report to him. Where those explanations are implausible or unsatisfactory, he should take steps to test the veracity of those explanations.

(4) Where the approved person performing an accountable higher management function is not an expert in a business area, they should consider whether they or those with whom they work have the necessary expertise to provide an adequate explanation of issues within that business area. If not he should seek an independent opinion from elsewhere within or outside the firm.

Delegation

4.6.13

(1) An approved person performing an accountable higher management function may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.

(2) The approved person performing an accountable higher management function should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately.

(3) If an issue raises questions of law or interpretation, the approved person performing an accountable higher management function may need to take legal advice. If appropriate legal expertise is not available in-house, they may need to consider appointing an appropriate external adviser.

(4) The FCA recognises that the approved person performing an accountable higher management function will have to exercise their own judgment in deciding how issues are dealt with, and that in some cases that judgment will, with the benefit of hindsight, be shown to have been wrong. The approved person will not be in
breach of Statement of Principle 6 unless they fail to exercise due and reasonable consideration before they delegate the resolution of an issue or authority for dealing with a part of the business and fails to reach a reasonable conclusion. If the approved person is in doubt about how to deal with an issue or the seriousness of a particular compliance problem, then, although they cannot delegate to the FCA the responsibility for dealing with the problem or issue, they can speak to the FCA to discuss their approach (see ■ APER 4.6.5G).

Continuing responsibilities where an issue has been delegated

Although an approved person performing an accountable higher management function may delegate the resolution of an issue, or authority for dealing with a part of the business, they cannot delegate responsibility for it. It is their responsibility to ensure that they receive reports on progress and questions those reports where appropriate. For instance, if progress appears to be slow or if the issue is not being resolved satisfactorily, then the approved person performing an accountable higher management function may need to challenge the explanations they receive and take action to resolve the problem. This may include increasing the resource applied to it, reassigning the resolution internally or obtaining external advice or assistance. Where an issue raises significant concerns, an approved person performing an accountable higher management function should act clearly and decisively. If appropriate, this may be by suspending members of staff or relieving them of all or part of their responsibilities (see ■ APER 4.6.5G).
4.7 Statement of Principle 7

4.7.1 [deleted]

4.7.1A The Statement of Principle 7 (see APER 2.1A.3R) is in the following terms: "An approved person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function complies with the relevant requirements and standards of the regulatory system."

4.7.1B [deleted]

4.7.2 In the opinion of the FCA, conduct of the type described in APER 4.7.3G, APER 4.7.4G, APER 4.7.5G, APER 4.7.7G, APER 4.7.9G, APER 4.7.10G or APER 4.7.11AG does not comply with Statement of Principle 7.

4.7.2A [deleted]

4.7.3 Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of the regulated activities of the firm in question (as referred to in Statement of Principle 7) falls within APER 4.7.2G. In the case of an approved person who is responsible, under SYSC 2.1.3R(2) or SYSC 4.4.5R(2), with overseeing the firm’s obligation under SYSC 3.1.1R or SYSC 4.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2G.

4.7.4 Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of the regulated activities of the firm in question (as referred to in Statement of Principle 7) falls within APER 4.7.2G.

4.7.5 Failing to take reasonable steps adequately to inform themselves about the reason why significant breaches (whether suspended or actual) of the
relevant requirements and standards of the regulatory system in respect of the regulated activities of the firm in question (as referred to in Statement of Principle 7) may have arisen (taking account of the systems and procedures in place) falls within APER 4.7.2G.

4.7.6

Behaviour of the type referred to in APER 4.7.5G includes, but is not limited to, failing to investigate what systems or procedures may have failed including, where appropriate, failing to obtain expert opinion on the adequacy of the systems and procedures.

4.7.7

Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspended or actual) of the relevant requirements and standards of the regulatory system relating to the regulated activities of the firm in question (as referred to in Statement of Principle 7) falls within APER 4.7.2G (see APER 4.7.13G and APER 4.7.14G).

4.7.8

Behaviour of the type referred to in APER 4.7.7G includes, but is not limited to:

1. unreasonably failing to implement recommendations for improvements in systems and procedures;

2. unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner.

4.7.9

In the case of the money laundering reporting officer, failing to discharge the responsibilities imposed on them by the firm in accordance with SYSC 3.2.6IR or SYSC 6.3.9R falls within APER 4.7.2G.

4.7.10

In the case of an approved person performing an accountable higher management function responsible for compliance under SYSC 3.2.8R, SYSC 6.1.4AR, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within APER 4.7.2G.

4.7.11

The FCA expects an approved person performing an accountable higher management function to take reasonable steps both to ensure their firm’s compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

4.7.11A

Where the approved person is a proprietary trader under SUP 10A.9.10R, failing to maintain and comply with appropriate systems and controls in relation to that activity falls within APER 4.7.2G.
Systems of control

4.7.12  
An approved person performing an accountable higher management function need not themselves put in place the systems of control in their business (APER 4.7.4G). Whether he does this depends on his role and responsibilities. He should, however, take reasonable steps to ensure that the business for which he is responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business.

Possible breaches of regulatory requirements

4.7.13  
Where the approved person performing an accountable higher management function becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the regulatory system falling within their area of responsibility, then they should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner (APER 4.7.7G). This may involve an adequate investigation to find out what systems or procedures may have failed and why. He may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.

Review and improvement of systems and procedures

4.7.14  
Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the approved person performing an accountable higher management function should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner (APER 4.7.10G). What is reasonable will depend on the nature of the inadequacy and the cost of the improvement. It will be reasonable for the approved person performing an accountable higher management function to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.
Appendix 1
This appendix has been removed until further notice

1.1 This appendix has been removed until further notice

App 1.1.1
APER Appendix 1

This appendix has been removed until further notice
Statements of Principle and Code of Practice for Approved Persons

Schedule 1
Record keeping requirements

Sch 1.1 G

There are no record keeping requirements in APER.
Statements of Principle and Code of Practice for Approved Persons

Schedule 2
Notification requirements

Sch 2.1 G
The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.

Sch 2.2 G
It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.3 G

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statement of Principle 4 (APER 2.1A.3R)</td>
<td>Any information of which the FCA or PRA would reasonably expect notice</td>
<td>Appropriate disclosure</td>
<td>Any information of which the FCA or PRA would reasonably expect notice</td>
<td>Appropriate</td>
</tr>
</tbody>
</table>
Statements of Principle and Code of Practice for Approved Persons

Schedule 3
Fees and required payments

Sch 3.1 G

There are no requirements for fees or other payments in APER.
Statements of Principle and Code of Practice for Approved Persons

Schedule 5
Rights of action for damages

Sch 5.1 G

There is no right of action under section 138D of the Act (Actions for damages) for breach of the rules in APER.
Statements of Principle and Code of Practice for Approved Persons

Schedule 6
Rules that can be waived

Sch 6.1 G
Section 138A (Modification or waiver of rules) does not apply to APER.