

Chapter 3

Code of Practice for Approved Persons: general

3.1 Introduction

- 3.1.1** **G** [deleted]
- 3.1.1A** **G** 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*.
- 3.1.1B** **G**
- 3.1.2** **G** 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** **G** 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** **G** (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 ■ 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.

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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*.

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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*.

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3.1.7A G

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 ■ 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, ■ 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, ■ APER 4.7.3G).

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3.1.8A G

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

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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).)

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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.

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- (1) In the case of an *approved person* approved to perform a *controlled function* in ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR (appointed representatives), a reference in in ■ APER 2 to ■ APER 4 to a *firm* is a reference to:
 - (a) the *appointed representative* in relation to which that *approved person* performs the *controlled function* in ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR; and
 - (b) their *authorised approved person employer*.
- (2) For the purposes of *Statements of Principle 5 to 7* the reference is only to (a).

3.2 Factors relating to all Statements of Principle

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G 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

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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.

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