

Chapter 4

Code of Practice for Approved Persons: specific

4.6 Statement of Principle 6

- 4.6.1** **G** [deleted]
- 4.6.1A** **G** 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 APER employer* for which they are responsible in their *accountable function*."
- 4.6.1B** **G**
- 4.6.2** **G** 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** **G** 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** **G** Behaviour of the type referred to in **APER 4.6.3 G** 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 4.6.12 G**).
- 4.6.5** **G** 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

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- (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 *APER employer* 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 *APER employer*.

Delegation

4.6.13

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- (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

4.6.14

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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).