

Chapter 4

Code of Practice for Approved Persons: specific

4.7 Statement of Principle 7

- 4.7.1 G [deleted]

- 4.7.1A G 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 G

- 4.7.2 G 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*.

- 4.7.2 E

- 4.7.2A E [deleted]

- 4.7.3 G 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 4.4.5R(2), with overseeing the *firm's* obligation under ■ 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 G 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 G Failing to take reasonable steps adequately to inform themselves about the reason why significant breaches (whether suspected 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 **G** 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 **G** 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 **G** Behaviour of the type referred to in ■ APER 4.7.7 G 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 **G** In the case of the *money laundering reporting officer*, failing to discharge the responsibilities imposed on them by the *firm* in accordance with ■ SYSC 6.3.9R falls within ■ APER 4.7.2G.
- 4.7.10 **G** In the case of an *approved person* performing an *accountable higher management function* responsible for compliance in respect of the following provisions, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within ■ APER 4.7.2G:
- (1) [deleted]
 - (2) ■ SYSC 6.1.4R; or
 - (3) article 22(3) of the *MiFID Org Regulation* (as applied in accordance with ■ SYSC 1 Annex 1 2.8AR, ■ SYSC 1 Annex 1 3.2-AR, ■ SYSC 1 Annex 1 3.2-BR, ■ SYSC 1 Annex 1 3.2CR and ■ SYSC 1 Annex 1 3.3R); or
 - (4) ■ SYSC 6.1.4AR.
- 4.7.11 **G** 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 **G** 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 **G** 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 **G** 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 **G** 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 4.7.8G). 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.