

**APPROVED PERSONS REGIME (MERGING THE CUSTOMER FUNCTIONS)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 138 (General rule-making power);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Training and Competence sourcebook (TC)	Annex C
Supervision manual (SUP)	Annex D

Citation

- E. This instrument may be cited as the Approved Persons Regime (Merging the Customer Functions) Instrument 2007.

By order of the Board
22 February 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

customer function ~~any of the controlled functions 21 to 27 in the table of controlled functions~~ the controlled function 30 in the table of controlled functions, described more fully in SUP 10.10.7AR.

investment adviser function ~~controlled function CF21 in the table of controlled functions~~, described more fully in ~~SUP 10.10.7 R~~.

investment adviser (trainee) function ~~controlled function CF22 in the table of controlled functions~~, described more fully in ~~SUP 10.10.11 R~~.

corporate finance adviser function ~~controlled function CF23 in the table of controlled functions~~, described more fully in ~~SUP 10.10.13 R~~.

pension transfer specialist function ~~controlled function CF24 in the table of controlled functions~~, described more fully in ~~SUP 10.10.14 R~~.

adviser on syndicate participation at Lloyd's function ~~controlled function CF25 in the table of controlled functions~~, described more fully in ~~SUP 10.10.15 R~~.

customer trading function ~~controlled function CF26 in the table of controlled functions~~, described more fully in ~~SUP 10.10.16 R~~.

investment management function ~~controlled function CF27 in the table of controlled functions~~, described more fully in ~~SUP 10.10.20 R~~.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

FEES 4 Annex 1R Activity groups, tariff bases and valuation dates applicable									
R	Part 1 ...								
	...								
	Part 2								
	...								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Activity group</th> <th style="width: 80%;">Tariff-base</th> </tr> </thead> <tbody> <tr> <td>...</td> <td>.</td> </tr> <tr> <td>A.12</td> <td> <p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake one, or more, of the following customer functions: (CF 30), but excluding those persons solely acting in the capacity of an investment manager or solely advising clients in connection with corporate finance business or performing functions related to these.</p> <p><u>CF21Investment adviser function;</u> <u>CF22Investment adviser (trainee) function;</u> <u>CF24Pension transfer specialist function;</u> <u>CF25Adviser on syndicate participation at Lloyd's function;</u> or <u>CF26Customer trading function.</u></p> </td> </tr> <tr> <td>A.13</td> <td> <p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake one, or more, of the following customer functions (CF 30), but excluding those persons solely acting in the capacity of an investment manager or solely advising clients in connection with corporate finance business or performing functions related to these.</p> <p><u>CF21Investment adviser function;</u> <u>CF22Investment adviser (trainee) function;</u> <u>CF24Pension transfer specialist function;</u> <u>CF25Adviser on syndicate participation at Lloyd's function;</u> or <u>CF26Customer trading function.</u></p> </td> </tr> </tbody> </table>	Activity group	Tariff-base	A.12	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake one, or more, of the following customer functions: (CF 30), but excluding those persons solely acting in the capacity of an investment manager or solely advising clients in connection with corporate finance business or performing functions related to these.</p> <p><u>CF21Investment adviser function;</u> <u>CF22Investment adviser (trainee) function;</u> <u>CF24Pension transfer specialist function;</u> <u>CF25Adviser on syndicate participation at Lloyd's function;</u> or <u>CF26Customer trading function.</u></p>	A.13	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake one, or more, of the following customer functions (CF 30), but excluding those persons solely acting in the capacity of an investment manager or solely advising clients in connection with corporate finance business or performing functions related to these.</p> <p><u>CF21Investment adviser function;</u> <u>CF22Investment adviser (trainee) function;</u> <u>CF24Pension transfer specialist function;</u> <u>CF25Adviser on syndicate participation at Lloyd's function;</u> or <u>CF26Customer trading function.</u></p>
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		A.14	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake the <i>customer function (CF 30)</i> who advise <i>clients in connection with corporate finance business</i> or perform related functions. following (controlled function: CF23 Corporate finance adviser function.</p>
		...	

Annex C

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

TC 2.5 Appropriate examinations

...

2.5.5 R Time limits

- (1) ...
- (2) ...
- (3) Paragraphs (1)(b) and (c) do not apply for an *employee* who would be performing the functions in SUP 10.10.7AR (1), (2) and (6) under the *customer function*:
 - (a) [deleted]
 - (b) [deleted]
 - (c) [deleted]but for the 30-day rule, unless the individual is advising ~~*private customers*~~ *retail clients* on *packaged products* or is a *broker fund adviser*.
- (4) In (3), the '30-day rule' means the provisions of: SUP 10.10.7BR.
 - (a) [deleted]
 - (b) [deleted]
 - (c) [deleted]~~as appropriate.~~

Annex D

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Where an entire section of the text is being deleted, the place where the change will be made is indicated and the text is not struck through.

Overseas firms: UK establishments

10.1.7 R Only the following *controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:

- (1) ...
- (2) ...
- (3) ...
- (4) [deleted]
- (5) The customer functions.

...

Incoming EEA firms: passported activities from a branch

10.1.13 R Only the following *controlled functions* apply to an *incoming EEA firm* with respect to its *passport activities* carried on from a *branch* in the *United Kingdom*:

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) [deleted]
- (6) ~~the customer functions other than the adviser on syndicate participation at Lloyd's function~~ the customer function other than where this relates to the function in SUP 10.10.7AR (4)

Incoming EEA firms etc with top-up permission activities from a UK branch

10.1.14 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *controlled functions* apply:

- (1) ...
- (2) ...
- (3) [deleted]
- (4) the customer functions.

...

Appointed representatives

10.1.16 R The descriptions of the following *controlled functions* apply to an *appointed representative* of a *firm*, except an *introducer appointed representative*, as they apply to a *firm*:

- (1) ...
- (2) the customer functions other than in the investment management function. in relation to acting in the capacity of an investment manager (see SUP 10.10.7AR (6))

...

...

10.4.5 R Controlled functions

...

<i>Customer functions</i>	21	<i>Investment adviser function</i> <u>[deleted]</u>
	22	<i>Investment adviser (trainee) function</i> <u>[deleted]</u>
	23	<i>Corporate finance adviser function</i> <u>[deleted]</u>
	24	<i>Pension transfer specialist function</i> <u>[deleted]</u>
	25	<i>Adviser on syndicate participation at Lloyd's function</i> <u>[deleted]</u>
	26	<i>Customer trading function</i> <u>[deleted]</u>
	27	<i>Investment management function</i> <u>[deleted]</u>
	<u>30</u>	<u><i>Customer function</i></u>

...

10.6.3 G The effect of SUP 10.6.2 R is that a *person* who is *approved* to perform a *governing function* (other than the *non-executive function*) will not have to be specifically approved to perform the *systems and controls function* or the *significant management function*. A *person* who is *approved* to perform a

governing function will have to be additionally approved before he can perform any of the *required functions* or the customer functions.

10.10 Customer functions

10.10.1 R *SUP 10.10 (Customer functions)* applies with respect to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*.

10.10.2 G Without *SUP 10.10.1 R* the descriptions of the *customer functions* would extend to this functions wherever ~~they are~~ it was performed. The effect of *SUP 10.10.1 R* is that the descriptions ~~are~~ is limited, in relation to *regulated activities* with an overseas element, in a manner which is broadly consistent with the scope of conduct of business regulation.

10.10.3 G The *customer functions* ~~have~~ has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; ~~they have~~ it has no application to banking business such as deposit taking and lending, nor to *general insurance business*.

...

The customer conditions (the second and third conditions)

10.10.4 R ~~Each~~ The *customer function* is one which will involve the *person* performing it in dealing with ~~customers, (and for the corporate finance adviser function, clients)~~ *clients*, or dealing with property of ~~customers~~ *clients*, of a *firm* in a manner substantially connected with the carrying on of a *regulated activity* of the *firm*.

10.10.5 G *SUP 10.10.4 R* gives effect to sub-sections (6) and (7) of section 59 of the *Act* (referred to in that section as the second and third conditions). ~~Customer~~ is given the meaning in the Glossary (which is not the same as the definition given in section 59 (11) of the Act).

...

~~Investment adviser function (CF21)~~

10.10.7 R (1) ~~The investment adviser function is the function of:~~

(a) ~~advising on investments other than a non-investment insurance contract; and~~

(b) ~~performing functions within the customer trading function in connection with advising on investments other than non-investment insurance contracts.~~

(2) ~~This function does not include:~~

- (a) ~~The *investment adviser (trainee) function*;~~
 - (b) ~~The *pension transfer specialist function*; and~~
 - (c) ~~*advising on investments in the course of carrying on the activity of providing basic advice on a stakeholder product.*~~
- (3) ~~This function does not extend to an individual who is based overseas and who, in a 12 *month* period, spends no more than 30 *days* in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function. [deleted]~~

Customer function (CF 30)

10.10.7A R The *customer function* is the function of:

- (1) *advising on investments other than a non-investment insurance contract (but not where this is advising on investments in the course of carrying on the activity of providing basic advice on a stakeholder product) and performing other functions related to this such as dealing and arranging;*
- (2) *giving advice to clients solely in connection with corporate finance business and performing other functions related to this;*
- (3) *giving advice or performing related activities in connection with pension transfers or opt-outs for retail clients;*
- (4) *giving advice to a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate;*
- (5) *dealing, as principal or as agent, and arranging (bringing about) deals in investments other than a non-investment insurance contract with or for, or in connection with customers where the dealing or arranging deals is governed by COB 7 (Dealing and managing);*
- (6) *acting in the capacity of an investment manager and carrying on functions connected to this.*

10.10.7B R The *customer function* does not extend to an individual who is performing the functions in SUP 10.10.7AR (1) to (2) or SUP 10.10.7AR (5) to (6) and who is based overseas and who, in a 12 *month* period, spends no more than 30 *days* in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function.

10.10.7C G The *FSA* would expect an individual from overseas to be accompanied on a visit to a *customer*. TC 2.5.5R (1) provides that the *firm* will have to be satisfied that the individual has at least three years' up-to-date relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of TC 2.5.5R (1) are disapplied in these circumstances (except for an individual who gives advice to *retail clients on packaged products* or is a *broker fund adviser*). The effect of this is that such individuals need not

pass the relevant regulatory module of an appropriate examination (see TC 2.5.5R (3) and TC 2.5.5R (4)).

10.10.7D G The *customer function* in SUP 10.10.7AR (5) does not extend to the individual who, on the instructions of the *customer*, simply inputs the *customer's* instructions into an automatic execution system where no discretion is or may be exercised by the individual performing the activity. Nor does it extend to merely introducing a *customer* to a firm or distributing advertisements.

10.10.7E G An individual may *advise on investments* if he or she has not yet been assessed as competent in accordance with the *rules* in the Training and Competence sourcebook (TC). Once that individual has been assessed as competent, the *firm* should record when that person became competent and no longer required supervision.

10.10.8 G [deleted]

10.10.9 G [deleted]

10.10.10 G [deleted]

10.10.11 R [deleted]

10.10.12 G [deleted]

10.10.13 R [deleted]

10.10.13A G [deleted]

10.10.14 R [deleted]

10.10.15 R [deleted]

10.10.16 R [deleted]

10.10.17 G [deleted]

10.10.18 G [deleted]

10.10.19 G [deleted]

10.10.20 R [deleted]

10.10.21 G [deleted]

10.10.22 G [deleted]

10.11 Procedures relating to approved persons

10.11.6 G Copies of Forms A, B, C, D and E may be obtained from the *FSA* website

or from the ~~Authorisation and Approvals Department~~ Individuals, CIS and Mutuels Department. To contact the ~~Authorisation and Approvals Department~~ Individuals, CIS and Mutuels Department for general enquiries:

(1) telephone 020 7066 0019; or

(2) fax 020 7066 0017; or

(3) write to:

~~Authorisation and Approvals Department~~ Individuals, CIS and Mutuels Department,

The Financial Services Authority

25 The North Colonnade

Canary Wharf

LONDON E14 5HS; or

(4) e-mail iva@fsa.gov.uk

10.14 Further Questions

10.14.2 G If the *firm* or its advisers have further questions, they should contact the FSA's ~~Individual Vetting and Approval department~~ Individuals, CIS and Mutuels Department (see SUP 10.11.6 G).

Frequently asked questions

10 Ann 1
10 Ann
1G:

	Question	Answer
	Requirements of the regime	
1	...	
2	What are the procedures for 'emergency situations'?	Individuals may perform the <i>significant influence function</i> for up to 12 weeks in any consecutive 12 month period without requiring approval. When it becomes clear that a <i>person</i> will be performing the function on a permanent basis, then an application for approval should be made. However, there is no provision for individuals to perform the <i>customer functions</i> on a continuing basis without approval. See SUP 10.5.5 R.

8	What should a <i>firm</i> do if it is unsure whether an individual needs approval?	The <i>firm</i> should contact the Authorisation and Approvals Department <u>Individuals, CIS and Mutuels Department</u> . See <i>SUP</i> 10.11.6 G.
16	How can we get a supply of application forms (Form A)?	These can either be ordered through the Authorisation and Approvals Department <u>Individuals, CIS and Mutuels Department</u> or obtained from the <i>FSA</i> website at www.fsa.gov.uk . There is no charge for an application form.
	...	

Activity	Paragraph 1 of the table in <i>TC</i> 2.1.4R	Controlled Function	<i>SUP</i>
Advising and dealing, Managing, Advising (without dealing)	(a) - (c),	<i>investment adviser function</i> (CF21)	10.10.7R 10.10.11R
	(d) and (e),	investment adviser (trainee) function (CF22)	10.10.4R
	(f) - (o)	<i>customer function</i> (CF 30)	
Managing	(d) and (e)	<i>investment management function</i> (CF27)	10.10.20R
Advising (without dealing)	(f) - (h)	<i>investment adviser function</i> (CF21)	10.10.7R
		investment adviser (trainee) function (CF22)	10.10.11R
	(i)	<i>corporate finance adviser function</i> (CF23)	10.10.13R
	(j) - (m)	<i>investment adviser function</i> (CF21)	10.10.7R
		investment adviser (trainee) function (CF22)	10.10.11R
(n)	<i>adviser on syndicate participation at Lloyd's function</i> (CF25)	10.10.15R	

	(e)	pension transfer specialist function (CF24)	10.10.14R
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12.2.14 G (1) ...

- (2) If a firm appoints an appointed representative who is an individual in (1), that appointed representative will also be a representative. The individual may need to be approved to perform the ~~investment adviser function or the customer trading function or both~~ customer function, (see SUP 12.6.8 G and SUP 12.6.9 G). In these circumstances, in addition to complying with the requirements of SUP 12 and other regulatory requirements, the firm should ensure that the rules for representatives in COB 5 (Advising and selling) are complied with.

...

Obligations of firms under the approved persons regime

12.6.8 G (1) Some of the *controlled functions*, as set out in SUP 10.4.1 R, apply to an appointed representative of a firm, other than an *introducer appointed representative*, just as they apply to a firm (see SUP 10.1.16 R). These are the *governing functions* and the *customer functions* ~~(other than the investment management function)~~ such as, for example, CF 21, ~~the investment adviser function~~. As explained in SUP 10.1.16A R, ~~SUP 10.1.17G (3)~~ and SUP 10.3.2 G respectively:

(a) ...

- (b) although the ~~customer functions (other than the investment manager function)~~ apply ~~applies~~ to an appointed representative, the descriptions of the functions themselves do not extend to ~~mortgage mediation activity~~ mortgage mediation activity or *insurance mediation activity*; and

(c) ...

- (2) The *approved persons* regime applies differently to an appointed representative whose scope of appointment includes *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity* and whose principal purpose is to carry on activities other than *regulated activities*. These appointed representatives need only one person performing one of the *governing functions*. This means that only one director (or equivalent) of these appointed representatives must be approved under section 59 of the Act for the performance of the *director function*, the *chief executive function*, the *partner function* or the *director of unincorporated association function*, whichever is the most appropriate (see SUP 10.1.16AR and ~~SUP 10.1.17G (3)~~).

12.7 Notification Requirements

12.7.5 R To contact the ~~Authorisation and Approvals Department (Authorisation teams)~~ Individuals, CIS and Mutuels Department:

(1) telephone on 020 7066 1000; fax on 020 7066 1099; or

(2) write to: ~~Authorisation and Approvals Department (Authorisation teams)~~ Individuals, CIS and Mutuels Department, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or

(3) email appreps@fsa.gov.uk.

Part 1:

Transitional provisions applying to the Supervision manual only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
8A	SUP 10.4.1R	R	(1) ...		
			<p><i>(4) The <u>controlled functions</u> CF 21 (<u>investment adviser function</u>), CF 22 (<u>investment adviser (trainee) function</u>), CF 23 (<u>corporate finance adviser function</u>), CF 24 (<u>pension transfer specialist function</u>), CF 25 (<u>adviser on syndicate participation at Lloyd's function</u>), CF 26 (<u>customer trading function</u>) and CF 27 (<u>investment management function</u>) are subsumed in the new <u>controlled function</u> CF 30 (<u>customer function</u>) to the extent that they fall within the description of the <u>customer function</u>.</i></p>	<p><u>On 1 November 2007</u></p>	<p><u>On 1 November 2007</u></p>
8B		G	(1) ...		

			<p><u>(3) The effect of TP 8AR is that if immediately prior to 1 November 2007 a <i>person</i> was an <i>approved person</i> in relation to any of the <i>controlled functions</i> to be subsumed into the <i>customer function</i> the original grant of approval by the FSA will remain valid in relation to the <i>customer function</i> and no new approval to perform controlled function will be required.</u></p>		
...					