

**STATEMENTS OF PRINCIPLE AND CODE OF PRACTICE
FOR APPROVED PERSONS INSTRUMENT 2001**

Powers exercised

- A. The Financial Services Authority issues the statements and related code of practice and gives the guidance in the Annex to this instrument (“APER”) in the exercise of the powers listed in Schedule 4 to APER (Powers exercised).

Commencement

- B. This instrument shall come into force at the beginning of the day on which section 19 of the Financial Services and Markets Act 2000 (The general prohibition) comes into force.

Citation

- C. This instrument may be cited as the Statements of Principle and Code of Practice for Approved Persons Instrument 2001.
- D. The Annex to this instrument (including its Schedules) may be cited as the Statements of Principle and Code of Practice for Approved Persons (or APER).

By order of the Board
15 November 2001

ANNEX



Statements of Principle and Code of Practice for Approved Persons

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Statements of Principle and Code of Practice for Approved Persons

Transitional Provisions

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- 1 There are no transitional provisions in APER. However, GEN contains some technical transitional provisions that apply throughout the Handbook and which are designed to ensure a smooth transition at commencement.

Chapter 1

Application and purpose

1



1.1 Application

1.1.1

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APER applies to approved persons.

01.12.01/001



1.2 Purpose

- 1.2.1** G
01.12.01/001 The *Statements of Principle* contained in ■ APER 2 are issued under section 64(1) of the *Act* (Conduct: statements and codes).
- 1.2.2** G
01.12.01/001 Section 64(2) of the *Act* states that if the FSA issues *Statements of Principle* it must also issue a code of practice for the purpose of helping to determine whether or not a *person's* conduct complies with the *Statements of Principle*. The *Code of Practice for Approved Persons* in ■ APER 3 and ■ APER 4 fulfils this requirement.
- 1.2.3** G
01.12.01/001 The *Code of Practice for Approved Persons* sets out descriptions of conduct which, in the opinion of the FSA, do not comply with a *Statement of Principle* and, in the case of *Statement of Principle* 3, conduct which tends to show compliance within that statement. The *Code of Practice for Approved Persons* also sets out, in certain cases, factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an *approved person's* conduct complies with a *Statement of Principle*. The *guidance* set out in ■ APER 3 and ■ APER 4 does not form part of the *Code of Practice for Approved Persons*.
- 1.2.4** G
01.12.01/001 Section 64(11) of the *Act* states that the power to *issue Statements of Principle* and codes of practice includes power to make different provisions in relation to *persons*, cases or circumstances of different descriptions. *Statements of Principle* 1, 2, 3 and 4 apply to all *approved persons*, and *Statements of Principle* 5, 6 and 7 apply to those approved to perform *significant influence functions*.
- 1.2.5** G
01.12.01/001 As set out in ■ SUP 10.3.1 R (Arrangements and regulated activities), 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** G
01.12.01/001 The *Statements of Principle* apply only to the performance of a *controlled function* (that is, to the activities carried on under the *arrangement* described in the *firm's* application for approval).
- 1.2.7** G
01.12.01/001 The FSA recognises that an *approved person* may be performing functions which are unrelated to *regulated activities* or are otherwise outside the description of a *controlled function*. The fact that a *person* may be approved for one purpose does not have the effect of bringing all his functions within the *controlled function*, nor of making those functions subject to the *Statements of Principle*.
- 1.2.8** G
01.12.01/001 The territorial scope of the *approved persons* regime is set out in ■ SUP 10.1 (Application).

1.2.9

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01.12.01/001

The *Statements of Principle* apply only to the extent that a *person* is performing a *controlled function* for which approval has been sought and granted.

Chapter 2

2

The Statements of Principle for Approved Persons

2.1 The Statement of Principle

2.1.1

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01.12.01/001

■ APER 2.1.2 P sets out the *Statements of Principle* issued by the FSA to which ■ APER 1.2.1 G refers and to which the provisions of the *Code of Practice for Approved Persons* and *guidance* in ■ APER 3 and ■ APER 4 apply.

2.1.2

P
01.12.01/001

Table Statements of Principle issued under section 64 of the Act

Statement of Principle 1

An approved person must act with integrity in carrying out his controlled function.

Statement of Principle 2

An approved person must act with due skill, care and diligence in carrying out his controlled function.

Statement of Principle 3

An approved person must observe proper standards of market conduct in carrying out his controlled function.

Statement of Principle 4

An approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice.

Statement of Principle 5

An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively.

Statement of Principle 6

An *approved person* performing a *significant influence function* must exercise due skill, care and diligence in managing the business of the *firm* for which he is responsible in his *controlled function*.

Statement of Principle 7

An *approved person* performing a *significant influence function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *controlled function* complies with the relevant requirements and standards of the *regulatory system*.

Chapter 3

Code of Practice for Approved Persons: general

3

3.1 Introduction

3.1.1

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01.12.01/001

This *Code of Practice for Approved Persons* is issued under section 64 of the *Act* (Conduct: statements and codes) for the purpose of helping to determine whether or not an *approved person's* conduct complies with a *Statement of Principle*. The code sets out descriptions of conduct which, in the *FSA's* opinion, do not comply with the relevant *Statements of Principle*. The code also sets out certain factors which, in the opinion of the *FSA*, are to be taken into account in determining whether an *approved person's* conduct complies with a particular *Statement of Principle*. The description of conduct, the factors and related provisions are identified in the text by the letter 'E' as explained in paragraph 25 of the Readers Guide.

3.1.2

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01.12.01/001

The *Code of Practice for Approved Persons* in issue at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a *Statement of Principle*.

3.1.3

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01.12.01/001

The significance of conduct identified in the *Code of Practice for Approved Persons* as tending to establish compliance with or a breach of a *Statement of Principle* will be assessed only after all the circumstances of a particular case have been considered. 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 *controlled function* and the behaviour to be expected in that function.

3.1.4

G
01.12.01/001

- (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 ■ ENF 11.5.3 G (Action against approved persons)).
- (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.

3.1.5

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01.12.01/001

In particular, in determining whether or not an *approved person's* conduct complies with a *Statement of Principle*, the *FSA* 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

G
01.12.01/001

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 *FSA* 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

01.12.01/001



Statements of Principle 1 to 4 apply to all approved persons. In the Statements of Principle and in the Code of Practice for Approved Persons, a reference to "his controlled function" is a reference to the controlled function to which the approval relates. A person performing a significant influence function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that controlled function. Those responsible under ■ SYSC 2.1.3 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 E). 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 4.7.3 E).

3.1.8

01.12.01/001



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 a significant influence 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 FSA will be of the opinion that an individual performing a significant influence function may have breached Statements of Principle 5 to 7 only if his conduct was below the standard which would be reasonable in all the circumstances. (See also ■ APER 3.3.1 E (3)to (5))

3.1.9

01.12.01/001



UK domestic firms listed on the London Stock Exchange are subject to the Combined Code developed by the Committee on Corporate Governance, whose internal control provisions are amplified in the Guidance for Directors issued by the Institute of Chartered Accountants in England and Wales. FSA-regulated firms in this category will thus 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 FSA will give due credit for their following corresponding provisions in the Combined Code and related guidance.



3.2 Factors relating to all Statements of Principle

3.2.1



01.12.01/001

In determining whether or not the particular conduct of an *approved person* within his *controlled function* complies with the *Statements of Principle*, the following are factors which, in the opinion of the *FSA*, 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



01.12.01/001

In determining whether or not the conduct of an *approved person* performing a *significant influence function* complies with *Statements of Principle 5 to 7*, the following are factors which, in the opinion of the *FSA*, 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) his role and responsibility as an *approved person* performing a *significant influence 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

4.1 Statement of Principle 1

4

4.1.1



01.12.01/001

The *Statement of Principle 1* (see ■ APER 2.1.2 P) is in the following terms: "An *approved person* must act with integrity in carrying out his *controlled function*."

4.1.2



01.12.01/001

In the opinion of the FSA, conduct of the type described in ■ APER 4.1.3 E, ■ APER 4.1.5 E, ■ APER 4.1.6 E, ■ APER APER 4.1.8 E, ■ APER 4.1.10 E, ■ APER 4.1.12 E or ■ APER 4.1.13 E does not comply with *Statement of Principle 1* ■ APER 2.1.2 P).

4.1.3



01.12.01/001

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

- (1) a *client*; or
- (2) his *firm* (or its auditors or *appointed actuary*); or
- (3) the FSA;

falls within ■ APER 4.1.2 E.

4.1.4






01.12.01/001

Behaviour of the type referred to in ■ APER 4.1.3 E 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 *appointed actuary*);
- (11) providing false or inaccurate information to the *FSA*;
- (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 *FSA*;
- (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  01.12.01/001 Deliberately recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer* where the *approved person* knows that he is unable to justify its suitability for that *customer*, falls within  APER 4.1.2 E.



4.1.6  01.12.01/001 Deliberately failing to inform, without reasonable cause:



- (1) a *customer*; or
- (2) his *firm* (or its auditors or *appointed actuary*); or
- (3) the *FSA*;

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

4.1.7  01.12.01/001 Behaviour of the type referred to in  APER 4.1.6 E 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  01.12.01/001 Deliberately preparing inaccurate or inappropriate records or returns in connection with a *controlled function*, falls within  APER 4.1.2 E.

4.1.9  01.12.01/001 Behaviour of the type referred to in  APER 4.1.8 E includes, but is not limited to, deliberately:

4.1.10



01.12.01/001

- (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.

Deliberately misusing the assets or confidential information of a *client* or of his *firm* falls within ■ APER 4.1.2 E.

4.1.11



01.12.01/001

Behaviour of the type referred to in ■ APER 4.1.10 E 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



01.12.01/001

Deliberately designing *transactions* so as to disguise breaches of requirements and standards of the *regulatory system* falls within ■ APER 4.1.2 E.

4.1.13



01.12.01/001

Deliberately failing to disclose the existence of a conflict of interest in connection with dealings with a *client* falls within ■ APER 4.1.2 E.



4.2 Statement of Principle 2

4.2.1



01.12.01/001

The *Statement of Principle 2* (see ■ APER 2.1.2 P) is in the following terms: "An *approved person* must act with due skill, care and diligence in carrying out his *controlled function*."

4.2.2



01.12.01/001

In the opinion of the FSA, conduct of the type described in ■ APER 4.2.3 E, ■ APER 4.2.5 E, ■ APER 4.2.6 E, ■ APER 4.2.8 E, ■ APER 4.2.10 E, ■ APER 4.2.11 E or ■ APER 4.2.13 E does not comply with *Statement of Principle 2* ■ APER 2.1.2 P).

4.2.3



01.12.01/001

Failing to inform:

- (1) a *customer*; or
- (2) his *firm* (or its auditors or *appointed actuary*);

of material information in circumstances where he was aware, or ought to have been aware, of such information, and of the fact that he should provide it, falls within ■ APER 4.2.2 E.

4.2.4



01.12.01/001

Behaviour of the type referred to in ■ APER 4.2.3 E 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 *appointed actuary*;
- (5) failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.

4.2.5







01.12.01/001

Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where he does not have reasonable grounds to believe that it is suitable for that *customer*, falls within ■ APER 4.2.2 E.

- 4.2.6  01.12.01/001 Undertaking, recommending or providing advice on *transactions* without a reasonable understanding of the risk exposure of the *transaction* to a *customer* falls within ■ APER 4.2.2 E.
- 4.2.7  01.12.01/001 *Behaviour* of the type referred to in ■ APER 4.2.6 E includes, but is not limited to, recommending *transactions* in *investments* to a *customer* without a reasonable understanding of the liability (either potential or actual) of that *transaction*.
- 4.2.8  01.12.01/001 Undertaking *transactions* without a reasonable understanding of the risk exposure of the *transaction* to the *firm* falls within ■ APER 4.2.2 E.
- 4.2.9  01.12.01/001 *Behaviour* of the type referred to in ■ APER 4.2.8 E includes, but is not limited to, trading on the *firm's* own account without a reasonable understanding of the liability (either potential or actual) of the *transaction*.
- 4.2.10  01.12.01/001 Failing without good reason to disclose the existence of a conflict of interest in connection with dealings with a *client* falls within ■ APER 4.2.2 E.
- 4.2.11  01.12.01/001 Failing to provide adequate control over a *client's* assets falls within ■ APER 4.2.2 E.
- 4.2.12  01.12.01/001 *Behaviour* of the type referred to in ■ APER 4.2.11 E 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  01.12.01/001 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 4.2.2 E.



4.3 Statement of Principle 3

- 4.3.1**  The *Statement of Principle 3* (see ■ APER 2.1.2 P) is in the following terms: "An *approved person* must observe proper standards of market conduct in carrying out his *controlled function*."
- 01.12.01/001
- 4.3.2**  In many cases the required standard will be set out in ■ MAR 3 (Inter-Professional Conduct) and the *Code of Market Conduct* ■ MAR 1). Market codes and exchange rules will also be relevant.
- 01.12.01/001
- 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* ■ APER 2.1.2 P) is whether he, or his *firm*, has complied with ■ MAR 3 (Inter-Professional Conduct) or the *Code of Market Conduct* ■ MAR 1) or relevant market codes and exchange rules.
- 01.12.01/001
- 4.3.4**  Compliance with the code or *rules* described in ■ APER 4.3.3 E will tend to show compliance with this *Statement of Principle* ■ APER 2.1.2 P).
- 01.12.01/001

4.4 Statement of Principle 4

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4.4.1

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01.12.01/001

The *Statement of Principle 4* (see ■ APER 2.1.2 P) is in the following terms: "An *approved person* must deal with the *FSA* and with other regulators in an open and cooperative way and must disclose appropriately any information of which the *FSA* would reasonably expect notice."

4.4.2

G
01.12.01/001

For the purpose of this *Statement of Principle* ■ APER 2.1.2 P), regulators in addition to the *FSA* 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 his *controlled function* or (in the case of an individual performing a *significant influence function*) in connection with the business for which he is responsible. This may include an exchange or an *overseas regulator*.

4.4.3

E
01.12.01/001

In the opinion of the *FSA*, conduct of the type described in ■ APER 4.4.4 E, ■ APER 4.4.7 E, or ■ APER 4.4.9 E does not comply with *Statement of Principle 4* ■ APER 2.1.2 P).

4.4.4

E
01.12.01/001

Failing to report promptly in accordance with his *firm's* internal procedures (or if none exist direct to the *FSA*), information which it would be reasonable to assume would be of material significance to the *FSA*, whether in response to questions or otherwise, falls within ■ APER 4.4.3 E.

4.4.5

G
01.12.01/001

There is no duty on an *approved person* to report such information directly to the *FSA* unless he is one of the *approved persons* responsible within the *firm* for reporting matters to the *FSA*. However, if an *approved person* takes steps to influence the decision so as not to report to the *FSA* or acts in a way that is intended to obstruct the reporting of the information to the *FSA*, then the *FSA* will, in respect of that information, view him as being one of those within the *firm* who has taken on responsibility for deciding whether to report that matter to the *FSA*.

4.4.6

E
01.12.01/001

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

- (1) the likely significance to the *FSA* 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.

4.4.7



01.12.01/001

Where the *approved person* is, or is one of the *approved persons* who is, responsible within the *firm* for reporting matters to the *FSA*, failing promptly to inform the *FSA* of information of which he is aware and which it would be reasonable to assume would be of material significance to the *FSA*, whether in response to questions or otherwise, falls within ■ APER 4.4.3 E.

4.4.8



01.12.01/001

In determining whether or not an *approved person's* conduct under ■ APER 4.4.7 E complies with *Statement of Principle 4* ■ APER 2.1.2 P), the following are factors which, in the opinion of the *FSA*, are to be taken into account:

- (1) the likely significance of the information to the *FSA* which it was reasonable for the *approved person* to assume;
- (2) whether any decision not to inform the *FSA* was taken after reasonable enquiry and analysis of the situation.

4.4.9










01.12.01/001

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 E.

4.5 Statement of Principle 5

- 4.5.1**  The *Statement of Principle 5* (see ■ APER 2.1.2 P) is in the following terms: "An *approved person* performing a *significant influence function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *controlled function* is organised so that it can be controlled effectively."
- 01.12.01/001
- 4.5.2**  In the opinion of the *FSA*, conduct of the type described in ■ APER 4.5.3 E, ■ APER 4.5.4 E, ■ APER 4.5.6 E or ■ APER 4.5.8 E does not comply with *Statement of Principle 5* ■ APER 2.1.2 P).
- 01.12.01/001
- 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 4.5.2 E (see ■ APER 4.5.11 G).
- 01.12.01/001
- 4.5.4**  Failing to take reasonable steps to apportion responsibilities clearly amongst those to whom responsibilities have been delegated falls within ■ APER 4.5.2 E (see ■ APER 4.5.11 G).
- 01.12.01/001
- 4.5.5**  Behaviour of the type referred to in ■ APER 4.5.4 E includes, but is not limited to:
- 01.12.01/001
- (1) implementing confusing or uncertain reporting lines (see ■ APER 4.5.12 G);
 - (2) implementing confusing or uncertain authorisation levels (see ■ APER 4.5.13 G);
 - (3) implementing confusing or uncertain job descriptions and responsibilities (see ■ APER 4.5.13 G).
- 4.5.6**  In the case of an *approved person* who is responsible under ■ SYSC 2.1.3 R (1) for dealing with the apportionment of responsibilities under ■ SYSC 2.1.1 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 4.5.2 E.
- 01.12.01/001
- 4.5.7**  Behaviour of the type referred to in ■ APER 4.5.6 E includes, but is not limited to:
- 01.12.01/001
- (1) failing to review regularly the significant responsibilities which the *firm* is required to apportion under ■ APER 2.1.1 R;

4.5.8  01.12.01/001

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

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 a *significant influence function* falls within ■ APER 4.5.2 E (see ■ APER 4.5.14 G).

4.5.9  01.12.01/001

Behaviour of the type referred to in ■ APER 4.5.8 E 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  01.12.01/001

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 he is responsible, the *approved person* performing a *significant influence function* should bear this in mind.

Apportionment of responsibilities

4.5.11  01.12.01/001

In order to comply with the obligations of *Statement of Principle 5* (having regard to ■ APER 4.5.3 E and ■ APER 4.5.4 E), the *approved person* performing a *significant influence function* may find it helpful to review whether each area of the business for which he is responsible has been clearly assigned to a particular individual or individuals.

Reporting lines

4.5.12  01.12.01/001

The organisation of the business and the responsibilities of those within it should be clearly defined (see ■ APER 4.5.5 E (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

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01.12.01/001

Where members of staff have particular levels of authorisation (see ■ APER 4.5.5 E (2) and ■ APER 4.5.5 E (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

4.5.14

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01.12.01/001

If an individual's performance is unsatisfactory, then the appropriate *approved person* (if any) performing a *significant influence function* should review carefully whether to allow that individual to continue in position. In particular, if he is 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 a *significant influence 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 a *significant influence function* should satisfy himself, 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* and ■ APER 4.5.8 E and ■ APER 4.5.9 E (1) and ■ APER 4.5.9E (2)).

Temporary vacancies

4.5.15

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01.12.01/001

In organising the business, the *approved person* performing a *significant influence function* should pay attention to any temporary vacancies which exist (see ■ APER 4.5.9 E (3)). He 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 a *significant influence 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 he 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

 01.12.01/001

The *Statement of Principle 6* (see ■ APER 2.1.2 P) is in the following terms: "An *approved person* performing a *significant influence function* must exercise due skill, care and diligence in managing the business of the *firm* for which he is responsible in his *controlled function*."

4.6.2

 01.12.01/001

In the opinion of the FSA, conduct of the type described in ■ APER 4.6.3 E, ■ APER 4.6.5 E, ■ APER 4.6.6 E or ■ APER 4.6.8 E does not comply with *Statement of Principle 6* ■ APER 2.1.2 P).

4.6.3

 01.12.01/001

Failing to take reasonable steps adequately to inform himself about the affairs of the business for which he is responsible falls within ■ APER 4.6.2 E.

4.6.4

 01.12.01/001

Behaviour of the type referred to in ■ APER 4.6.3 E 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

 01.12.01/001

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 4.6.2 E (see ■ APER 4.6.13 G).

4.6.6

 01.12.01/001

Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has

4.6.7



01.12.01/001

delegated to an individual or individuals (whether in-house or outside contractors) falls within ■ APER 4.6.2 E (see ■ APER 4.6.14 G).

Behaviour of the type referred to in ■ APER 4.6.6 E 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



01.12.01/001

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 4.6.2 E.

4.6.9



01.12.01/001

Behaviour of the type referred to in ■ APER 4.6.8 E 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



01.12.01/001

In determining whether or not the conduct of an *approved person* performing a *significant influence function* under ■ APER 4.6.5 E, ■ APER 4.6.6 E and ■ APER 4.6.8 E complies with *Statement of Principle 6* (see ■ APER 2.1.2 P), the following are factors which, in the opinion of the FSA, 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



01.12.01/001

An *approved person* performing a *significant influence function* will not always manage the business on a day-to-day basis himself. The extent to which he does so will depend on a number of factors, including the nature, scale and complexity of the business and his position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines. The FSA will look to the *approved person* performing a *significant influence 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 his attention, he should deal with them in an appropriate way.

4.6.12



01.12.01/001

Knowledge about the business

- (1) It is important for the *approved person* performing a *significant influence function* to understand the business for which he is responsible ■ APER 4.6.4 E). An *approved person* performing a *significant influence function* is unlikely to be an expert in all aspects of a complex financial services business. However, he should understand and inform himself 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 a *significant influence function* to understand the risks of expanding the business into new areas and, before approving the expansion, he should investigate and satisfy himself, 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 a *significant influence function* is not an expert in a business area, he should consider whether he or those with whom he works have the necessary expertise to provide him with 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



01.12.01/001

- (1) An *approved person* performing a *significant influence 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 him or to others.
- (2) The *approved person* performing a *significant influence 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 a *significant influence function* may need to take legal advice. If appropriate legal expertise is not available in-house, he may need to consider appointing an appropriate external adviser.
- (4) The FSA recognises that the *approved person* performing a *significant influence function* will have to exercise his 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. He will not be in breach of *Statement of Principle 6* unless he fails to exercise due and reasonable consideration before he delegates the resolution of an issue or authority for dealing with a part of the business and fails to reach a reasonable conclusion. If he is in doubt about how to deal with an issue or the seriousness of a particular compliance problem, then, although he cannot delegate to the FSA the responsibility for dealing with the problem or issue, he can speak to the FSA to discuss his approach (see ■ APER 4.6.5 E).

Continuing responsibilities where an issue has been delegated

4.6.14

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01.12.01/001

Although an *approved person* performing a *significant influence function* may delegate the resolution of an issue, or authority for dealing with a part of the business, he cannot delegate responsibility for it. It is his responsibility to ensure that he receives 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 a *significant influence function* may need to challenge the explanations he receives and take action himself 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 a *significant influence 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 4.6.6 E).



4.7 Statement of Principle 7

4.7.1


01.12.01/001

The *Statement of Principle 7* (see ■ APER 2.1.2 P) is in the following terms: "An *approved person* performing a *significant influence function* must take reasonable steps to ensure that the business of the *firm* for which he is responsible in his *controlled function* complies with the relevant requirements and standards of the *regulatory system*."

4.7.2


01.12.01/001

In the opinion of the FSA, conduct of the type described in ■ APER 4.7.3 E, ■ APER 4.7.4 E, ■ APER 4.7.5 E, ■ APER 4.7.7 E, ■ APER 4.7.9 E or ■ APER 4.7.10 E does not comply with *Statement of Principle 7* ■ APER 2.1.2 P).

4.7.3


01.12.01/001

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 its *regulated activities* falls within ■ APER 4.7.2 E. In the case of an *approved person* who is responsible, under ■ SYSC 2.1.3 R (2), with overseeing the *firm's* obligation under SYSC 3.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within ■ APER 4.7.2 E.

4.7.4


01.12.01/001

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 its *regulated activities* falls within ■ APER 4.7.2 E (see ■ APER 4.7.12 G).

4.7.5


01.12.01/001

Failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the *regulatory system* in respect of its *regulated activities* may have arisen (taking account of the systems and procedures in place) falls within ■ APER 4.7.2 E.

4.7.6


01.12.01/001

Behaviour of the type referred to in ■ APER 4.7.5 E 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


01.12.01/001

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 suspected or actual) of the relevant requirements and standards of the *regulatory system*

4.7.8



01.12.01/001

relating to its *regulated activities*, falls within ■ APER 4.7.2 E (see ■ APER 4.7.13 G).

Behaviour of the type referred to in ■ APER 4.7.7 E 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



01.12.01/001

In the case of the *Money Laundering Reporting Officer*, failing to discharge the responsibilities imposed on him in accordance with chapter 8 of the *Money Laundering* sourcebook (*ML*) falls within ■ APER 4.7.2 E.

4.7.10



01.12.01/001

In the case of an *approved person* performing a *significant influence function* responsible for compliance under ■ APER 3.2.8 R, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within ■ APER 4.7.2 E (see ■ APER 4.7.14 G).

4.7.11



01.12.01/001

The *FSA* expects an *approved person* performing a *significant influence function* to take reasonable steps both to ensure his *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.

Systems of control

4.7.12



01.12.01/001

An *approved person* performing a *significant influence function* need not himself put in place the systems of control in his business ■ APER 4.7.4 E). 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 (see ■ APER 3.3.2 E).

Possible breaches of regulatory requirements

4.7.13



01.12.01/001

Where the *approved person* performing a *significant influence function* becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the *regulatory system* falling within his area of responsibility, then he should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner ■ APER 4.7.7 E). 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

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01.12.01/001

Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the *approved person* performing a *significant influence function* should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner ■ APER 4.7.10 E). 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 a *significant influence function* to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.

4

Schedules

Statements of Principle and Code of Practice for Approved Persons

Schedule1 Record keeping requirements

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- 1 There are no record keeping requirements in APER.

Statements of Principle and Code of Practice for Approved Persons

Schedule2 Notification requirements

G

- 1 The aim of the guidance in the following table is to give the reader a quick over-all view of the relevant requirements for notification and reporting.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.
- 3

Table	Notification requirements
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Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>Statement of Principle 4 (APER 2.1.2P)</i>	Any information of which the <i>FSA</i> would reasonably expect notice	Appropriate disclosure	Any information of which the <i>FSA</i> would reasonably expect notice	Appropriate

Statements of Principle and Code of Practice for Approved Persons

Schedule3 Fees and other required payments

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- 1 There are no requirements for fees or other payments in APER.

Statements of Principle and Code of Practice for Approved Persons

Schedule4 Powers exercised

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- 1 The following powers in the Act have been exercised by the FSA to issue the Statements of Principle and Code of Practice for Approved Persons:

Section 64(1) and (2) (Conduct: statements and codes).
- 2 The following power in the Act has been exercised by the FSA to give the guidance in APER:

Section 157(1) (Guidance).

Statements of Principle and Code of Practice for Approved Persons

Schedule5 Rights of action for damages

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- 1 There are no rules in APER.

Statements of Principle and Code of Practice for Approved Persons

Schedule6 Rules that can be waived

G

- 1 There are no rules in APER.