

Statements of Principle and Code of Practice for Approved Persons

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Chapter 1

Application and purpose

1.1A Application

Who?

- 1.1A.1 **R** *APER* applies to *FCA-approved persons* who are either:
 - (1) *approved persons of firms* that are not *SMCR firms*; or
 - (2) *approved persons* approved to perform a *controlled function* in ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR (appointed representatives).
- 1.1A.1A **G**
 - (1) *APER* does not apply to *FCA-approved persons of SMCR firms*. *COCON* applies instead.
 - (2) However, *APER* applies to *approved persons* approved to perform a *controlled function* under ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR (appointed representatives) even if the *appointed representative's principal* is an *SMCR firm*.

What?

- 1.1A.2 **P**
 - (1) *APER* applies to the performance by an *approved person* of *FCA controlled functions* in ■ SUP 10A (FCA Approved Persons) (whether or not approval has been sought and granted).
 - (2) *APER* also applies to the performance by an *approved person* of any other functions in relation to the carrying on of a *regulated activity* by their *authorised approved person employer*.
 - (3) Subject to (4), *APER* does not apply to conduct to which *COCON* applies.
 - (4) *APER* applies to conduct to which *COCON* does not apply under ■ COCON 1.1.8AR (To what conduct does it apply?).
- 1.1A.3 **G** The functions described in ■ APER 1.1A.2R are called *accountable functions*.

1.1A.4 **G** The relevance of *MiFID* to the *Statements of Principle* will depend on the extent to which the corresponding requirement imposed on *firms* under *MiFID* is reserved to a *Home State regulator* or has been disapplied under *MiFID* (see ■ APER 2.1A.2R and ■ FIT 1.2.4AG. See also ■ COBS 1 Annex 1, Part 2, 1.1R (EEA territorial scope rule: compatibility with European law)).

Where?

1.1A.5 **G** The territorial scope of the *approved persons* regime and its application to *incoming EEA firms* is set out in SUP 10A.1 (see SUP 10A.1.11R and SUP 10A.1.13R).

Coverage of APER

1.1A.6 **G** ■ APER 1.1A.7 G gives examples of the effect of ■ APER 1.1A.1R and ■ APER 1.1A.2R. The first column says whether the example involves an *FCA-approved person* in relation to one or two *firms*. The second column explains what functions *APER* covers in the scenario set out in the first column.

1.1A.7 **G** Table: Examples of what activities *APER* covers

FCA approved	Coverage of APER
(1) Yes, in relation to <i>firm A</i>	Applies to the <i>FCA controlled function</i> . Also applies to any other function performed for <i>firm A</i> in relation to the carrying on by <i>firm A</i> of a <i>regulated activity</i> even if it is not a <i>controlled function</i> .
(2) Yes, in relation to <i>firm A</i> . No, in relation to <i>firm B</i> ,	In relation to <i>firm A</i> , the answer is the same as for scenario (1). However, <i>APER</i> does not apply to any function that the <i>approved person</i> carries on in relation to <i>firm B</i> even if that function relates to <i>regulated activities</i> carried out by <i>firm B</i> . However, if the function that they perform in relation to <i>firm B</i> is a <i>controlled function</i> the <i>approved person</i> and <i>firm B</i> may be subject to legal sanctions (see SUP 10A.13.1G to SUP 10A.13.2G).

1.1A.8 **G**

- (1) A *person* may be an *approved person* in relation to more than one *firm*. When that is the case, *APER* applies in relation to all those *firms*.
- (2) *APER* does not apply if the *firm* is an *SMCR firm*, except for *approved persons* of an *appointed representative* of an *SMCR firm*.
- (3) If a *person* is an *approved person* of a *firm (A)* that is not an *SMCR firm* and also of another *firm (B)* that is an *SMCR firm*, the result is:
 - (a) *APER* applies to the *approved person* in relation to *firm A*; and
 - (b) *COCON* applies to the *approved person* in relation to *firm B*.

1.1A.9 **G**

- (1) ■ APER 1.1A refers to an *approved person's firm*. This means their *authorised approved person employer*.
- (2) Under section 59 of the *Act* (Approval for particular arrangements) there are two kinds of *approved person*.

- (3) Section 59(1) of the *Act* describes the first. It covers a *person* who performs a *controlled function* under an arrangement entered into by an *authorised person* ("A"). In this case, the *authorised approved person employer* is A.

(4) Section 59(2) of the Act describes the second. It covers a *person* who performs a *controlled function* under an arrangement entered into by a contractor ("B") of an *authorised person* ("A"). In this case, the *authorised approved person employer* is A (and not B).

1.1A.10 **E** [deleted]

1.1A.11 **G** [deleted]

1.2 Purpose

- 1.2.1 G [deleted]

- 1.2.1A G The *Statements of Principle* contained in ■ APER 2 are *rules* made under section 64A(1)(a) of the *Act* (Rules of conduct).

- 1.2.1B G

- 1.2.2 G The *guidance* in ■ APER 3 and ■ APER 4 is *guidance* on the *Statements of Principle* and is called the *Code of Practice for Approved Persons*.

- 1.2.3 G The *Code of Practice for Approved Persons* sets out descriptions of conduct which, in the opinion of the *FCA*, do or do not comply with a *Statement of Principle*. The *Code of Practice for Approved Persons* also sets out, in certain cases, factors which, in the opinion of the *FCA*, are to be taken into account in determining whether or not an *approved person's* conduct complies with a *Statement of Principle*.

- 1.2.3A G

- 1.2.4 G [deleted]

- 1.2.5 G As set out in ■ SUP 10A.3.1 R (Provisions related to the *Act*), 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** [deleted]

1.2.7 **G** [deleted]

1.2.8 **G** [deleted]

1.2.9 **G** [deleted]

Chapter 2

The Statements of Principle for Approved Persons

2.1A The Statements of Principle

2.1A.1 **G** ■ APER 2.1A.3R sets out the *Statements of Principle* issued by the FCA to which ■ APER 1.2.1A G refers and to which the provisions of the *Code of Practice for Approved Persons* in ■ APER 3 and ■ APER 4 apply.

2.1A.2 **R** An *approved person* will not be subject to a *Statement of Principle* to the extent that it would be contrary to the UK's obligations under a *Single Market Directive*, the *auction regulation* or the *benchmarks regulation*.

2.1A.3 **R** Statements of Principle issued under section 64A(1)(a) of the Act

Statement of Principle 1

An *approved person* must act with integrity in carrying out his *accountable functions*.

Statement of Principle 2

An *approved person* must act with due skill, care and diligence in carrying out his *accountable functions*.

Statement of Principle 3

An *approved person* must observe proper standards of market conduct in carrying out his *accountable functions*.

Statement of Principle 4

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

Statement of Principle 5

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* is organised so that it can be controlled effectively.

Statement of Principle 6

An *approved person* performing an *accountable higher management function* must exercise due skill, care and diligence in managing the business of the *firm* for which they are responsible in their *accountable function*.

Statement of Principle 7

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*.



2.1B The Statements of Principle

2.1B.1 **G**

2.1B.2 **P**

2.1B.3 **P**

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.

3.1.4A G

3.1.5 G

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*.

3.1.6 G

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*.

3.1.7 G

[deleted]

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).

3.1.7B G

3.1.8 G

[deleted]

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

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).)

3.1.8B **G**

3.1.9 **G**

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.

3.1.10 **R**

- (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

3.2.1

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

3.3.1

G

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.

3.3.2

E

Chapter 4

Code of Practice for Approved Persons: specific

4.1 Statement of Principle 1

- 4.1.1 **G** [deleted]
- 4.1.1A **G** The *Statement of Principle 1* (see ■ APER 2.1A.3R) is in the following terms:
"An *approved person* must act with integrity in carrying out his *accountable functions*."
- 4.1.1B **G**
- 4.1.2 **G** In the opinion of the *FCA*, conduct of the type described in ■ APER 4.1.3G, ■ APER 4.1.5G, ■ APER 4.1.6G, ■ APER 4.1.8G, ■ APER 4.1.10G, ■ APER 4.1.12G, ■ APER 4.1.13G, ■ APER 4.1.14G or ■ APER 4.1.15G does not comply with *Statement of Principle 1*.
- 4.1.3 **G** Deliberately misleading (or attempting to mislead) by act or omission:
- (1) a *client*; or
 - (2) his *firm* (or its auditors or an *actuary* appointed by his *firm* under ■ SUP 4 (Actuaries)); or
 - (3) the *FCA* or the *PRA*;
- falls within ■ APER 4.1.2G.
- 4.1.4 **G** Behaviour of the type referred to in ■ APER 4.1.3G 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 an *actuary* appointed by the *firm* under ■ SUP 4 (Actuaries));
- (11) providing false or inaccurate information to the *FCA* or the *PRA*;
- (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 *FCA* or *PRA*.
- (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 G Deliberately recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer* where the *approved person* knows that they are unable to justify its suitability for that *customer*, falls within ■ APER 4.1.2G.

4.1.6 G Deliberately failing to inform, without reasonable cause:

- (1) a *customer*; or
- (2) his *firm* (or its auditors or an *actuary* appointed by his *firm* under ■ SUP 4 (Actuaries)); or
- (3) the *FCA* or the *PRA*;

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

4.1.7 G Behaviour of the type referred to in ■ APER 4.1.6G 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 G Deliberately preparing inaccurate or inappropriate records or returns in connection with an *accountable function*, falls within ■ APER 4.1.2 G.

- 4.1.9 **G** Behaviour of the type referred to in ■ APER 4.1.8G includes, but is not limited to, deliberately:
- (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.
- 4.1.10 **G** Deliberately misusing the assets or confidential information of a *client* or of their *firm* falls within ■ APER 4.1.2 G.
- 4.1.10 **E**
- 4.1.11 **G** Behaviour of the type referred to in ■ APER 4.1.10 G 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 **G** Deliberately designing *transactions* to disguise breaches of requirements and standards of the *regulatory system* falls within ■ APER 4.1.2 G.

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

 - 4.1.14** **G** Deliberately not paying due regard to the interests of a *customer* falls within ■ APER 4.1.2 G.

 - 4.1.15** **G** Deliberate acts, omissions or business practices that could be reasonably expected to cause consumer detriment fall within ■ APER 4.1.2 G.

4.2 Statement of Principle 2

- 4.2.1 G [deleted]
- 4.2.1A G The *Statement of Principle 2* (see ■ APER 2.1A.3 R) is in the following terms: "An *approved person* must act with due skill, care and diligence in carrying out his *accountable functions*."
- 4.2.1B G
- 4.2.2 G In the opinion of the *FCA*, conduct of the type described in ■ APER 4.2.3G, ■ APER 4.2.5G, ■ APER 4.2.6G, ■ APER 4.2.8G, ■ APER 4.2.10G, ■ APER 4.2.11G or ■ APER 4.2.14G does not comply with *Statement of Principle 2*.
- 4.2.2A G In the opinion of the *FCA*, conduct of the type described in described in ■ APER 4.2.13 G does not comply with *Statement of Principle 2*.
- 4.2.3 G Failing to inform:
- (1) a *customer*; or
 - (2) his *firm* (or its auditors or an *actuary* appointed by his *firm* under ■ SUP 4 Actuaries));
- of material information in circumstances where they were aware, or ought to have been aware, of such information, and of the fact that they should provide it, falls within ■ APER 4.2.2G.
- 4.2.4 G Behaviour of the type referred to in ■ APER 4.2.3 G 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 an *actuary* appointed by his *firm* under ■ SUP 4 (Actuaries);
 - (4) failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.

- 4.2.5 **G** Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where the *approved person* does not have reasonable grounds to believe that it is suitable for that *customer*, falls within ■ APER 4.2.2 G.
- 4.2.6 **G** 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 G.
- 4.2.7 **G** *Behaviour* of the type referred to in ■ APER 4.2.6 G 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 **G** Undertaking *transactions* without a reasonable understanding of the risk exposure of the *transaction* to the *firm* falls within ■ APER 4.2.2 G.
- 4.2.9 **G** *Behaviour* of the type referred to in ■ APER 4.2.8 G 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 **G** 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 G.
- 4.2.11 **G** Failing to provide adequate control over a *client's* assets falls within ■ APER 4.2.2 G.
- 4.2.12 **G** *Behaviour* of the type referred to in ■ APER 4.2.11 G 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 **G** 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 4.2.2AG.
- 4.2.14 **G** Failing to pay due regard to the interests of a *customer*, without good reason, falls within ■ APER 4.2.2 G.

4.3 Statement of Principle 3

- 4.3.1 **G** The *Statement of Principle 3* (see ■ APER 2.1A.3 R) is in the following terms:
"An *approved person* must observe proper standards of market conduct in carrying out his *accountable functions*."
- 4.3.2 **G** [deleted]
- 4.3.3 **G** A factor to be taken into account in determining whether or not an *approved person's* conduct complies with this *Statement of Principle*) is whether he, or his *firm*, has complied with the *Market Abuse Regulation* or relevant market codes and exchange rules.
- 4.3.4 **G** In the opinion of the *FCA*, compliance with the code or *rules* described in ■ APER 4.3.3G will tend to show compliance with this *Statement of Principle*.



4.4 Statement of Principle 4

- 4.4.1** **G** [deleted]
- 4.4.1A** **G** The *Statement of Principle 4* (see ■ APER 2.1A.3 R) is in the following terms:
"An *approved person* must deal with the *FCA*, the *PRA* and other regulators in an open and cooperative way and must disclose appropriately any information of which the *FCA* or the *PRA* would reasonably expect notice."
- 4.4.1B** **G**
- 4.4.2** **G** [deleted]
- 4.4.2A** **G** For the purpose of this *Statement of Principle*, regulators in addition to the *FCA* and the *PRA* 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 their *accountable function* or (in the case of an individual performing an *accountable higher management function*) in connection with the business for which they are responsible. This may include an exchange or an *overseas regulator*.
- 4.4.2B** **G**
- 4.4.3** **G** In the opinion of the *FCA*, conduct of the type described in ■ APER 4.4.4G, ■ APER 4.4.7G or ■ APER 4.4.9G does not comply with *Statement of Principle 4*.
- 4.4.4** **G** Failing to report promptly in accordance with his *firm's* internal procedures (or if none exist direct to the regulator concerned), information which it would be reasonable to assume would be of material significance to the regulator concerned), whether in response to questions or otherwise, falls within ■ APER 4.4.3 G. The regulator concerned is:
- (1) the *FCA* if it would be reasonable to assume that it would be of material significance to it;
 - (2) the *PRA* if it would be reasonable to assume that it would be of material significance to it;
 - (3) both the *FCA* and the *PRA* if it would be reasonable to assume that it would be of material significance to both of them.

- 4.4.5** **G** There is no duty on an *approved person* to report such information directly to the regulator concerned unless he is one of the *approved persons* responsible within the *firm* for reporting matters to the regulator concerned. However, if an *approved person* takes steps to influence the decision so as not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the *FCA* will, in respect of that information, view that individual as being one of those within the *firm* who has taken on responsibility for deciding whether to report that matter to the regulator concerned.
- 4.4.6** **G** In determining whether or not an *approved person's* conduct under **APER 4.4.4 G** complies with *Statement of Principle 4*, the following are factors which, in the opinion of the *FCA*, are to be taken into account:
- (1) the likely significance to the regulator concerned (as defined in **APER 4.4.4 G**) of the information which it was reasonable for the individual to assume;
 - (1) whether the information related to the individual himself or to his *firm*;
 - (1) whether any decision not to report the matter internally was taken after reasonable enquiry and analysis of the situation.
- 4.4.7** **G** Where the *approved person* is, or is one of the *approved persons* who is, responsible within the *firm* for reporting matters to the regulator concerned (as defined in **APER 4.4.4G**), failing promptly to inform the regulator concerned of information of which they are aware and which it would be reasonable to assume would be of material significance to the regulator concerned, whether in response to questions or otherwise, falls within **APER 4.4.3G**.
- 4.4.8** **G** In determining whether or not an *approved person's* conduct under **APER 4.4.7G** complies with *Statement of Principle 4*, the following are factors which, in the opinion of the *FCA*, are to be taken into account:
- (1) the likely significance of the information to the regulator concerned (as defined in **APER 4.4.4G**) which it was reasonable for the *approved person* to assume;
 - (2) whether any decision not to inform the regulator concerned (as defined in **APER 4.4.4G**) was taken after reasonable enquiry and analysis of the situation.
- 4.4.9** **G** 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 G**.



4.5 Statement of Principle 5

- 4.5.1** **G** [deleted]
- 4.5.1A** **G** The *Statement of Principle 5* (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* is organised so that it can be controlled effectively."
- 4.5.1B** **G**
- 4.5.2** **G** In the opinion of the *FCA*, conduct of the type described in ■ APER 4.5.3G, ■ APER 4.5.4G, ■ APER 4.5.6G or ■ APER 4.5.8G does not comply with *Statement of Principle 5*.
- 4.5.3** **G** Failing to take reasonable steps to apportion responsibilities for all areas of the business under the *approved person's* control falls within ■ APER 4.5.2G (see ■ APER 4.5.11 G).
- 4.5.4** **G** Failing to take reasonable steps to apportion responsibilities clearly among those to whom responsibilities have been delegated falls within ■ APER 4.5.2G (see ■ APER 4.5.11 G).
- 4.5.5** **G** Behaviour of the type referred to in ■ APER 4.5.4 G includes, but is not limited to:
- (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** **G** In the case of an *approved person* who is responsible under ■ SYSC 4.4.5 R (1) for dealing with the appointment of responsibilities under ■ SYSC 4.4.3 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 4.5.2G.

- 4.5.7 **G** Behaviour of the type referred to in ■ APER 4.5.6G includes, but is not limited to:
- (1) failing to review regularly the significant responsibilities which the *firm* is required to apportion;
 - (2) failing to act where that review shows that those significant responsibilities have not been clearly apportioned.
- 4.5.8 **G** 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 an *accountable higher management function* falls within ■ APER 4.5.2G (see ■ APER 4.5.14 G).
- 4.5.9 **G** Behaviour of the type referred to in ■ APER 4.5.8 G 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 **G** 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 they are responsible, the *approved person* performing an *accountable higher management function* should bear this in mind.
- Apportionment of responsibilities**.....
- 4.5.11 **G** To comply with the obligations of *Statement of Principle 5* (having regard to ■ APER 4.5.3G and ■ APER 4.5.4G), the approved person performing an *accountable higher management function* may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.
- Reporting lines**.....
- 4.5.12 **G** The organisation of the business and the responsibilities of those within it should be clearly defined (see ■ APER 4.5.5 G (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 **G** Where members of staff have particular levels of authorisation (see ■ APER 4.5.5G(2) and ■ APER 4.5.5G(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

- 4.5.13A **G** The appropriate *approved person* performing an *accountable higher management function* should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible has in place appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.

- 4.5.14 **G** If an individual's performance is unsatisfactory, then the appropriate *approved person* (if any) performing an *accountable higher management function* should review carefully whether to allow that individual to continue in position. In particular, if they are 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 an *accountable higher management 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 an *accountable higher management function* should satisfy themselves, 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*, ■ APER 4.5.8G, ■ APER 4.5.9G(1) and ■ APER 4.5.9G(2)).

Temporary vacancies

- 4.5.15 **G** In organising the business, the *approved person* performing an *accountable higher management function* should pay attention to any temporary vacancies which exist (see ■ APER 4.5.9G(3)). They 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 an *accountable higher management 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 they 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** **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* 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 *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 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 *firm*.

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).



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.

Appendix 1
This appendix has been removed
until further notice

1.1 This appendix has been removed until further notice

App 1.1.1

Statements of Principle and Code of Practice for Approved Persons

Schedule 1 Record keeping requirements

Sch 1.1 G

There are no record keeping requirements in *APER*.

Statements of Principle and Code of Practice for Approved Persons

Schedule 2 Notification requirements

Sch 2.1 G

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.

Sch 2.2 G

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.3 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>Statement of Principle 4</i> (APER 2.1A.3R)	Any information of which the <i>FCA</i> or <i>PRA</i> would reasonably expect notice	Appropriate disclosure	Any information of which the <i>FCA</i> or <i>PRA</i> would reasonably expect notice	Appropriate

Statements of Principle and Code of Practice for Approved Persons

Schedule 3 Fees and required payments

Sch 3.1 G

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

Statements of Principle and Code of Practice for Approved Persons

Schedule 5 Rights of action for damages

Sch 5.1 G

There is no right of action under section 138D of the *Act* (Actions for damages) for breach of the *rules* in *APER*.

Statements of Principle and Code of Practice for Approved Persons

Schedule 6 Rules that can be waived

Sch 6.1 G

Section 138A (Modification or waiver of rules) does not apply to *APER*.

