



THE INSTITUTE  
OF CHARTERED  
ACCOUNTANTS

IN ENGLAND AND WALES

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By email: cp08\_25@fsa.gov.uk

Dear Ms Donaldson

**FINANCIAL SERVICES AUTHORITY CONSULTATION PAPER 08/25: THE APPROVED PERSONS REGIME – SIGNIFICANT INFLUENCE FUNCTION REVIEW**

The Institute of Chartered Accountants in England and Wales (the ICAEW) is pleased to respond to your request for comments on *consultation paper 08/25: The approved persons regime – significant influence function review*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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## ICAEW Representation

ICAEW REP 25/09

FINANCIAL SERVICES AUTHORITY CONSULTATION PAPER 08/25: THE APPROVED PERSONS REGIME – SIGNIFICANT INFLUENCE FUNCTION REVIEW

Memorandum of comment submitted in March 2009 by The Institute of Chartered Accountants in England and Wales, in response to the Financial Services Authority consultation paper *The approved persons regime – significant influence function review* published in December 2008.

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## INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the ICAEW) welcomes the opportunity to comment on the consultation paper *The approved persons regime – significant influence function* published by the Financial Services Authority.

## WHO WE ARE

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 750,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.
4. The Institute has a Non-executive director Special Interest Group which has a number of non-executive directors of financial services firms and which has taken a special interest in this consultation.

## MAJOR POINTS

### Support for the initiative

5. We are fully supportive of the principles behind the proposals in the consultation paper which highlights the importance of individuals who have significant influence on a firm and especially those individuals who are responsible for corporate governance. We agree that firms with robust corporate governance arrangements are more likely to be best placed to respond to their key risks.
6. We support the proposals that will bring additional individuals into the approved persons regime if they have a significant influence on an authorised firm which we see as an essential move forward. We note the FSA's strategic decision to investigate more cases and are supportive of this. We are however concerned about the impact that these proposals will have on subsidiaries of holding companies which themselves are subject to the UK Combined Code or similar non-UK governance codes. This impact should not be underestimated and could lead to significantly more additional approved persons applications from existing firms than the limited number of 200 envisaged. We urge that full and detailed guidance be prepared and issued to ensure that there is clarity and consistency surrounding the application of the rules.
7. We are pleased to note the FSA's stance on the value of the role of non-executive directors ('NEDs') within regulated firms and fully support the expectations on them to positively influence both business models and inherent risks within the regulated firm. We believe that the clarification by the FSA of the areas that NEDs should focus on may mean that regulated firms will have to

improve the flow of relevant information to NEDs in order to allow them to undertake their role. We believe that the increased focus on competence and capability of individuals holding significant influence controlled functions will strengthen the regime for the appointment of NEDs as well as executives.

8. We agree that the board and senior management have a critical role in ensuring effective governance structures, systems and controls are developed, operate well and continue to operate well and remain fit for purpose. We fully support a consistent approach to this and welcome additional guidance and the proposed extended definitions in this regard. Whilst being supportive we would urge caution against any new rules that may, in practice, make it harder for financial institutions and/or their parent companies to find and appoint suitably competent and capable NED's.

## **RESPONSES TO SPECIFIC QUESTIONS/POINTS**

### ***Q1: Do you agree with our proposal to extend CF1 and CF2 to those individuals exercising significant influence?***

9. We believe that there should be guidance given to enable firms to be able to judge where the circumstances warrant extending their existing arrangements to additional individuals. This additional guidance would be useful to avoid any future inconsistency of approach within firms and conflict between parent and subsidiary companies. We believe that it would be helpful if the guidance offered in the Annex to the consultation paper was more precise in its determination of what constitutes 'significant influence' in both management and governance functions. We also believe that the FSA should consider clarifying whether the CF2 definition should be restricted to 'independent' NEDs. NEDs of authorised subsidiary companies who are not independent (for instance holding company executives typically are registered under CF2 if they do not work full time in the firm) may not be able otherwise to comply fully with aspects of 4.6.15G of the proposed rules. This may create practical difficulties which may over time reduce the pool of experienced NEDs within groups with FSA regulated subsidiaries.
10. We urge the FSA to clarify how it intends potentially to extend FSA regulation to executives or NEDs of unregulated holding companies as the proposal may create practical difficulties, particularly for NEDs of holding companies who might, for example perform the role of chairman of a group audit committee with responsibility for a group internal audit and risk resource. Imposition of all the principles for Approved Persons, particularly APER 5-7, to the 'extended' persons appears disproportionate and potentially impractical, though we understand that the FSA may be constrained by the statutory framework in this respect.
11. We are keen to ensure that the proposals focus particularly on those entities with weaker corporate governance structures, rather than over-regulate those that can demonstrate a high level of competent scrutiny – whether by the subsidiary or by the holding company. More focussed and detailed examples of when holding company personnel would be considered not to be exercising significant influence as well as when they would be, would assist companies in assessing their exposure to this.

**Q2: Do you agree that a transitional period of 6 months is sufficient time for implementation?**

12. Yes we agree that 6 months is a sufficient time for implementation.

**Q3: Do you agree with our proposed guidance to the handbook (as outlined in Appendix 1) that clarifies the role of non-executive directors?**

13. We agree that it is helpful to clarify the role of NEDs. However, we believe that reference, in a principles-based regime, to the existing public guidance on NEDs published under the remit of the Financial Reporting Council would be more appropriate and provide more flexibility for future developments of this guidance.

There may also be practical difficulties, which may challenge existing practices, of a NED's ability to maintain confidence in the appropriateness of remuneration where that NED is serving on a subsidiary company board but not on the holding company board.

**Q4: Do you agree with our proposal to extend the description of CF29 to include more proprietary traders?**

14. Yes we agree.

**Q5: Do you agree with our judgement that the proposed guidance in the draft handbook text (Appendix 1) supports the expectation that all proprietary traders will be approved persons?**

15. Yes we agree.

**Q6: What are your views on the outcome of the cost benefit analysis compared to other reasons why we might implement this proposal?**

16. We believe that there are sufficient reasons, not linked to purely short-term economic considerations, which would support the implementation of the proposal, even if the increase in the numbers of approved persons applications may have been underestimated.

**Q7: Do you agree that a transitional period of 6 months is sufficient time for implementation?**

17. Yes we believe that a transitional period of 6 months from the date the final rules are published will be sufficient.

**Q8: Do you agree that we should remove the limited application of the approved persons regime to the UK branches of third country firms?**

18. Yes we think that this amendment would better reflect current corporate governance standards and expectations and would ensure a level playing field between third country firms who establish UK subsidiaries and third country firms that operate branches in the UK. However there may be confusion as to how CF1 and CF2 will apply in different corporate legal/structural situations. In particular it is common practice for the directors of a UK branch to be domiciled abroad. We feel that it is essential that the

FSA continues to be non-prescriptive and flexible in how controlled functions are applied in the context of a UK branch.

***Q9: Do you agree that we should extend the reference requirement in SUP 10.13.12R so it applies to all controlled functions?***

19. Yes we agree that this requirement should be extended to all controlled functions not just in connection with CF30. This will assist in ensuring that approved persons have experience which is relevant to the roles which they propose to undertake. However we feel it is essential that this remains applicable only if the new firm specifically requests the information and that thought be given to small start-up operations which by their very nature may find it difficult to obtain authorisation without some significant financial outlay to bring in individuals with suitable UK regulatory experience.

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