

## Consultation response

### **Consultation Response CP12/26 Regulatory reform: the PRA and FCA regimes for Approved Persons**

6 December 2012

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The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on Consultation Response CP12/26 Regulatory reform: the PRA and FCA regimes for Approved Persons. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

## Introduction

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on FSA's consultation document CP 12/26 Regulatory Reform: *the PRA and FCA regimes for Approved Persons*.

The Association for Financial Markets in Europe (AFME) represents a broad array of European and global participants in the wholesale financial markets: our members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. Whilst AFME is a European trade association, given the importance of the London markets, both to the European Union as a whole and to the many EU and international firms that have operations in, or provide services on a cross-border basis into, London, we consider it important to engage proactively and constructively in the debate concerning the new UK framework for financial regulation.

## Executive summary

In general AFME supports the overall approach proposed for the allocation and treatment of significant influence functions between the PRA and the FCA. That said there are some areas where Member firms would like to see modifications to the arrangements and/or further information made available.

For example, whilst we welcome the statement in paragraph 3.51 that "our general approach will be to act in a coordinated way where possible and to conduct one interview to help both regulators assess suitability..." it would be helpful to have further and better particulars on when there might be a joint interview and how, if the PRA and FCA are looking for different attributes in a candidate for a PRA significant influence function, their views will be reconciled.

Another example is where Member firms support the concept of a single application process (for example where an individual is to be both an Executive Director and the Chief Executive of a firm). However, Members strongly believe that it is essential that the Register continues to show all positions for which an individual holds Approved Person status. The Register is used by firms as a definitive reference of all controlled functions held by an individual both historic (when vetting potential employees) and on an ongoing basis whilst employed by the firm.

Further comments are set out below in our answers to the specific questions raised in the consultation document.

## Chapter 3: Controlled functions and changes to SUP 10

*Q1: Do you have any suggestions about how we could achieve the desired outcomes we were trying to achieve with the introduction of CF31, as an interim measure and without the need for systems developments?*

Whilst it is not appropriate for AFME, as a wholesale capital markets trade association, to comment on matters relating to the mortgage market, we would note that, *in principle*, we concur with the FSA giving priority to regulatory reform-related work rather than also seeking to introduce, before legal cutover, other regulatory developments.

*Q2: Do you agree with this approach to ensuring that the PRA and FCA will continue to be able to assess a person's suitability for all the key aspects of their role, without routinely requiring applications to be made to both regulators? If not please explain your concerns and any suggestions for an alternative approach.*

AFME supports, in principle, the “pragmatic approach” that has been developed to avoid a candidate seeking approval to perform a frequent combination of controlled functions, making separate applications to the PRA and FCA.

However, whilst we agree with the approach taken in draft SUP 10B.9.6R, we believe that the FCA function should not be completely subsumed “in” the definition of the PRA-governing function but should still be separately distinguished. In particular:

- for internal control purposes, it is important that there is no confusion with respect to the controlled functions an individual is approved to perform, therefore, rather than varying the scope of the CF3 and CF28 controlled functions (i.e. by including CF8 and CF1), firms would prefer to have individuals approved, by the PRA, to perform the individual functions i.e. CF3 and CF8, CF28 and CF1; and
- it would be confusing/potential misleading for the Register to show only the PRA controlled function.

Hence, we believe that the FCA function should be included “with” the PRA function and still shown recorded separately; perhaps as a CF8P and CF1P to show that approval was given by the PRA.

More generally, we wonder whether, given that CF8 includes overseeing the establishment and maintenance of systems and controls, CF8 should be a PRA Significant influence function?

*Q3: Do you agree that we have identified where PRA and FCA controlled functions are most likely to overlap (see Table 2)*

Whilst the most frequent examples may well have been identified we believe that there may be other common overlaps where larger groups are concerned. For example, a Group Head of Compliance (CF10) may also hold a CF28 Systems & Controls function or a Group Head of Personnel may hold both CF28 Systems & Controls and CF29 Significant Management functions.

Please also see our response to Q5 regarding CF2.

*Q4: Do you agree with our proposed approach for managing situations where someone changes their role and moves between the PRA and FCA controlled functions?*

As identified in the consultation paper, there will be cases where one role requires two approvals. However we are concerned where such an individual steps down

from one role they would need to re-apply for approval. For example a CEO may well be a CF1 and a CF3, when they step down as CF3 under these proposals a new application would be required to continue as CF1. This does not seem economic or efficient and it would be proportionate for the existing approved CF1 role to remain approved given that it would have been approved by FCA at the time of originally applying. [see also response to Q5 below]

*Q5: Do you agree with our proposed approach to the non-executive director function?*

The approach to specifying the non-executive director function by the PRA and FCA, including the introduction of notification requirement, rather than pre-approval, for an individual approved to perform the CF2 (PRA) function that is taking up one of the other elements of the function, appears sensible.

We do not agree, however, that an individual who has been approved to perform the CF2 (PRA) function should have to submit a new application to perform the CF2 (FCA) function (or vice versa). Information submitted on the original CF2 application should be accessible by both PRA and FCA and only where “new” or “extra” information is required should a request be made by the regulator. We believe that the costs of re-approval are likely to outweigh the benefits, particularly given that the fitness and propriety of an individual to perform the non-executive director controlled function *per se* will already have been determined by the PRA. We would suggest that the dual approvals process be modified such that the PRA and the FCA approve an individual.

We also suggest that a single notification to the regulator should be sufficient to trigger an update to the Register to reflect the individual’s change of role as described in paragraph 3.34 of CP12/26.

*Q6: Do you agree with our approach to CF28, and how it operates where someone also performs an FCA governing function?*

We believe that the approach described appears sensible.

## **Chapter 4: Changes to the Statements of Principle and Code of Practice for Approved Persons**

*Q7. Do you agree with our proposals to extend the scope of the APER standards in the ways set out above? If not, please explain the reasons for your objection.*

As a starting point we do not believe that an individual should have to follow two separate APER standards covering the same underlying principles. Only where FCA or PRA have a specific requirement that is not relevant to the other regulator is there an argument for differing standards.

If individuals performing significant influence functions in dual-regulated firms will have to comply with both the PRA and FCA versions of APER, it is crucial that the versions are either identical or appropriately differentiated.

Also, given that the versions APER are likely to diverge over time, we would be concerned if amendments were to introduce differences in interpretation and, hence, potential conflicts. Moreover, given that both the PRA and FCA can take disciplinary action against individuals performing significant influence functions for breach of their statements of principle, it is vital that there is clarity on how double jeopardy will be avoided. At a practical level we suggest that the regulator that was responsible for approving the original application should initiate any disciplinary action against an approved person.

We have no comments on the extension of APER, by both the PRA and FCA, - excusing their powers under the Bill - to “the performance by [an approved person] of any other functions in relation to the carrying on by authorised persons of regulated activities.”<sup>1</sup>

*Q8: Do you agree that these proposals to amend the wording and application of the Statements of Principle in APER are appropriate given the responsibilities of the PRA and FCA?*

We agree with the proposed wording but would refer to our above comments on the avoidance of double jeopardy. It would also be helpful to have some examples of when the regulators would, and more importantly would not, enforce against an individual for not adhering to the other regulators requirements. For example, can the FSA confirm whether the FCA would prosecute a SIF for failing to report an issue to the PRA when the SIF had reported that issue to the FCA? Other such examples would be helpful.

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<sup>1</sup> Clause 12 of the Financial Services Bill amending section 64 of FSMA