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## 5a APPROVED PERSONS

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### 5a.1 Introduction

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In March 2016, the FCA implemented the Senior Manager & Certification Regime (SM&CR) for UK banks, building societies, credit unions, and dual-regulated investment firms. This replaced the Approved Persons regime for those entities.

The SM&CR was implemented on 9 December 2019 to all solo directly regulated firms including Midmar, although ARs are not in scope and remain on the existing arrangements as specified below until advised further.

Under [SYSC 5.1.1](#), principal firms require their ARs to employ personnel with skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

As an authorised firm, the Firm is required to have systems and controls to satisfy itself of the suitability of individuals within ARs that will require FCA approval.

An individual's honesty and competence assessment will be made at the point of recruitment taking into account the level of responsibility the individual will assume in the Firm. This will also be assessed for existing staff if there is any reason to consider that this has changed since appointment or where the Firm chooses to carry out a regular confirmation exercise.

Where the person may be performing a Controlled Function (as defined by FCA rules at SUP 10A), the individual may need to be FCA pre-approved to carry out that role before the activities start.

When considering the fitness and propriety (FIT) of Approved Persons specifically, 3 main criteria are considered which are:

- Honesty, integrity and reputation ([FIT 2.1](#)).
- Competence and capability ([FIT 2.2](#)) – see Chapter 11 of the Manual for further detail.
- Financial soundness ([FIT 2.3](#)).

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### 5a.2 Approved Persons and Controlled Functions

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There are currently a number of Controlled Functions (not all of which are relevant to all ARs) and, prior to any individual performing any of these functions, they must be approved to do so by the FCA. These are listed at SUP 10A.4 and application to ARs is clarified at [SUP 10A.1.15 - 16](#).

Relevant Controlled Functions for ARs may include some of the following which will also depend upon the type of legal entity involved.

#### Significant Influence – FCA Governing Functions

- |            |   |
|------------|---|
| CF 1 (AR): | Director Function (for a limited company AR).   |
| CF 2 (AR): | Non-Executive Director Function.  |
| CF 3 (AR): | Chief Executive Function - only if relevant (for limited companies and for a managing partner LLP). |
| CF 4 (AR): | Partner Function (for an LLP AR).   |
| CF 5 (AR)  | Director of Unincorporated Association Function.  |

#### Customer-Dealing Function

CF 30 (AR): Customer Function (for ARs performing this role).

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## 5a.3 CF 30 – Customer Function

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The FCA register for the Firm and separately the Compliance Officer maintains a list of Approved Persons and roles for its ARs. If an individual is unsure whether they are an Approved Person, including whether this is for the Customer Function, they should contact the Compliance Officer to clarify this.

With regard to the CF 30 Customer Function, it is imperative that an individual holds this function before undertaking any of the following relevant activities otherwise this will be a breach of FCA rules:

- Advising on investments other than non-investment insurance contracts (but not where this is advising on investments in the course of carrying on the activity of providing basic advice on a stakeholder product) and performing other functions related to this such as dealing and arranging.
- Giving advice to clients solely in connection with corporate finance business and performing other functions related to this.
- Dealing, as principal or as agent, and arranging (bringing about) deals in investments other than a non-investment insurance contract with or for, or in connection with customers where the dealing or arranging deals is governed by COBS 11 (Dealing and Managing) (**not available to ARs**).
- Acting in the capacity of an investment manager and carrying on functions connected to this (**not available to ARs**).

All Approved Persons are required to adhere to the FCA rules detailed in the FCA Handbook, specifically those relating to fitness and propriety.

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## 5a.4 FIT Assessment

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Assessment of the fitness and propriety of anyone to be performing a Controlled Function will include many of the following steps, (which are non-exhaustive) and prior to submission of an application by the Firm:

- Complete employment history (months and years) for the last 10 years (where applicable).
- Residential address information for the last 3 years (months and years).
- Verified ID (identify and address).
- Full CV (including clarification on any gaps of employment).
- Independent employment references for at least the last 6 years, satisfying [SYSC 22](#) on regulatory references, where applicable.
- Pre-disclosure of any history which could impact the FCA's assessment of the candidate's fitness and propriety including investigative or disciplinary action by previous employers.
- Outside interests in an official capacity, i.e. directors or partners of other entities.
- Background due diligence checks completed by the Firm's compliance function including general internet searches, Companies House searches, credit history checks and criminal records checks.

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## 5a.5 APER – Statements of Principle and the Code of Practice for Approved Persons

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To help determine whether or not a person's conduct complies with the Statements of Principle, the FCA issued the Code of Practice for Approved Persons. Approved Persons need to comply with Principles 1-4 if they are approved to undertake Controlled Function 30, and Principles 1-7 if they are approved to undertake Controlled Functions 1-29.

## Principles 1 – 4

1. An Approved Person must act with integrity in carrying out their accountable function.
2. An Approved Person must act with due skill, care and diligence in carrying out their accountable function.
3. An Approved Person must observe proper standards of market conduct in carrying out their accountable function.
4. An Approved Person must deal with the FCA and with other regulators in an open and co-operative way and must disclose appropriately any information of which the FCA would reasonably expect notice.

## Principles 5 – 7

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 it can be controlled effectively.
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.
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.

The FCA places considerable emphasis on the attainment and maintenance of competence with reference to all roles undertaken by Approved Persons.

It is of extreme importance that staff are familiar with these principles if they are an FCA Approved Person as breaking them can result in disciplinary action against them personally. If the FCA considers an Approved Person's misconduct to be sufficiently serious it can also ask for their 'approval' to be withdrawn and they would no longer be eligible to work in that Controlled Function.

The Compliance Officer maintains a record of all Approved Persons and details of the Controlled Functions they are permitted to undertake. Should an individual believe that they require approval, or that their circumstances change either in relation to personal details or fitness or propriety, they should discuss this as soon as possible with the Compliance Officer.

In order to perform a Controlled Function a completed Form A: 'Application to perform Controlled Functions under the Approved Persons regime' must be submitted to the FCA prior to a person undertaking such activities and confirmation of approval obtained. The most up-to-date version of this form must be used.

If a person ceases to perform a Controlled Function it is company policy that a completed Form C: 'Notice of ceasing to perform Controlled Functions' must be submitted to the FCA no later than 7 calendar days after an Approved Person ceases to perform that Controlled Function, and certainly no later than 10 business days (in accordance with SUP 10A.14.8). A notification to the FCA is required as soon as practicable where an issue regarding fitness or propriety has arisen.

If an Approved Person has a change in personal details including title, name and National Insurance number, or the person is absent for more than 12 weeks but is expected to return to the same role, it is company policy that this must be notified to the FCA within 7 calendar days of the Firm becoming aware of the event, and certainly no later than 7 working days (in accordance with SUP 10A.14.15). This is done by completing Form D.

All such notifications and applications must be done by the Firm using the FCA's Connect system of which the Compliance Officer is the principal user and the Compliance Manager and compliance associates, including junior associates, are additional users.