Financial Conduct Authority

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: PS15/21: Changes to the Approved Persons Regime for Solvency II firms: Final rules (including feedback on CP14/25, CP15/5 and CP15/16)

Lead regulator: FCA

Date of assessment: 13 August 2015 (publication date)

Commencement date: 7/3/2016

Origin: Domestic

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? Whole of UK

Brief outline of proposed new or amended regulatory activity

Until March 2016, firms subject to the EU Solvency II Directive (SII firms) were subject to the Approved Persons Regime.

The Approved Persons Regime's main elements were:

1. Controlled Functions at both senior and customer facing levels that are pre-approved by the FCA
2. Requirements on firms to ensure people performing the above functions are fit and proper.
3. Conduct rules set out in a Statement of Principles and Code of Practice (APER), applicable to Controlled Functions holders only

In November 2014, we published a Consultation Paper (CP14/25) and proposed changes to the Approved Persons Regime for Solvency II firms to address:

- Solvency II Regulations and draft EIOPA guidelines in assessing Fitness & for Approved Persons
- Provisions in the Financial Services (Banking Reform) Act 2013 ('the Act') which allow the regulators to apply Conduct Rules to certain individuals in FSMA – authorised firms, and
- The PRA's reforms to the Approved Persons Regime for firms to whom the PRA have applied the Solvency II regime.

The Act did not cover Solvency II firms; however, given the potential risks that such firms pose, and as part of the implementation of the EU Solvency II Directive (Solvency II), the PRA chose to introduce a partial regime for insurers known as the Senior Insurers Managers Regime (SIMR). In parallel to the changes that the PRA was making, the FCA revised its

Approved Persons Regime to ensure there were no gaps in the regulatory framework as a result of certain roles being grandfathered into the PRA's SIMR. The changes we proposed for the revised APR are presented in the table below alongside our estimates of the associated costs.

The PRA's SIMR and the FCA's revised Approved Persons Regime for dual regulated insurers came into force on 7 March 2016, alongside the Senior Managers & Certification Regime (SM&CR) for the banking sector.

The above regimes paved the way for the extension of the full SM&CR to insurers due to be consulted on 26 May, and already incorporate some of the substantive ideas and principles underpinning the individual accountability regime.

The FCA's changes took into account provisions in the Act that apply to insurers, changes that the PRA was making to their approval regime for these firms, and requirements in Solvency II around the governance of firms and fitness and propriety of key function holders within them. The specific changes were:

- Maintaining those executive and certain other Controlled Functions which the PRA proposed to stop approving.
- Requiring Solvency II firms to have governance maps which describe the management structure and allocation of responsibilities.
- Requiring firms to develop scope of responsibilities documents for all Significant Influence holders.
- Requiring SII firms to keep records of governance maps and scope of responsibilities documents for ten years.
- Applying conduct rules to those employees in Controlled Functions[1] (in particular to Significant Influence Functions - SIFs)
- Removing standard Non-Executive Directors (NEDs) from the scope of pre-approval (Standard NEDs are those NEDs who do not hold specific responsibilities as opposed to 'approved' NEDs such as Chairmen, Senior Independent Directors and Chairs of Committees who hold specific responsibilities and are subject to regulatory pre-approval).

Which type of business will be affected? How many are estimated to be affected?

Insurance firms subject to the Solvency II Directive.

How many are estimated to be affected? C. 600

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2016	2016	10	0	0	0

Please set out the impact to business clearly with a breakdown of costs and benefits

The costs of some of the individual policy elements described here are a direct consequence of implementing the Solvency II directive and therefore they are not qualifying regulatory provisions under the Enterprise Act. The remaining elements of the changes made do not

[1] A function, relating to the carrying on of a regulated activity by a firm – see links below:
https://www.handbook.fca.org.uk/handbook/glossary/?filter-title=Controlled+Functions
https://www.handbook.fca.org.uk/handbook/SUP/10A/4.html#DES95
https://www.handbook.fca.org.uk/handbook/SUP/10C/4.html#D83

impose costs on firms as they seek to maintain the same, appropriate regulatory standards. In the table below, we describe the impact of the changes of each element of the policy and why firms will not have incurred costs as a consequence of the changes in the rules.

Policy Changes	Costs
1. Maintaining those Controlled Functions which the PRA proposed to stop approving. This ensured that individuals who can significantly impact our objectives remain in scope of conduct regulation.	Those Controlled Functions that PRA decided to stop approving (for example the CF1 - Director function) were 'PRA-designated functions' which means that PRA leads the assessments of these approved persons applications. However, under FSMA, the PRA requires FCA consent before approving an application for an individual to perform any PRA-designated Controlled Function. We believe this change was cost neutral for SII firms because we did not introduce 'new' Controlled Functions: firms were already required to submit approved persons applications for those Controlled Functions under PRA rules. We did change our rules to say that those individuals were going to become 'FCA-governing functions'. Firms are still required to use the same approved persons forms, mechanisms and systems for pre-approval and the only change is that the point of contact for applications for certain previously PRA-designated functions (eg CF1 – Director function) would now be the FCA and no longer the PRA. As a result, this change was cost neutral.
2. Requiring Solvency II firms to have governance maps in place by 1 January 2016. Governance maps should accurately describe the management structure and allocation of responsibilities, whatever their specific business model or approach to governance. Firms are required to keep their governance maps up to date.	Our rules on governance maps reflect the European Insurance and Occupational Pensions Authority's (EIOPA) requirements designed to ensure that firms have a transparent and appropriate allocation of responsibilities across senior management[2] and other SII key function holders. Therefore, this is a SII requirement[3] (Article 258, 1i) and therefore treated as a Non-Qualifying Regulatory Provision (NQRP) under the Enterprise Act.
3. Requiring firms to develop scope of responsibilities documents by 7 September 2016. We have also decided that we would require firms to produce these documents for	The Solvency II Directive introduced new requirements to ensure the fitness and propriety of persons performing important functions in insurers (Article 273, Chapter IX 'Systems of Governance)[4]. The PRA and the FCA have created a template to clarify the scope of

2 https://eiopa.europa.eu/Publications/Guidelines/Final_EN_SoG_Clean.pdf#search=Final%20EN%20SoG%20Clean

3 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:012:FULL&from=EN

4 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:012:FULL&from=EN

	all SIF holders, including those who have grandfathered into the new regime. We decided that there was no requirement for firms to submit these documents to us, but they must be made available to us on request.	responsibilities that firms assign to individuals. The ultimate aim of the scope of responsibilities is to list clearly all areas for which Controlled Functions/PRA Senior Insurance Management Functions and SIF is responsible, and details of those responsibilities. Therefore we introduced this new requirement to comply with EU obligations.
4.	Requiring SII firms to keep records of governance maps and scope of responsibilities documents for ten years to enable the identification of historic accountabilities should problems come to light in an area of the firm's business sometime after they first arose.	We did not identify any costs related to our proposal as SII firms were already subject to record keeping requirements under existing SII Directive rules (Article 258 Chapter IX 'Systems of Governance').
5.	Applying conduct rules to Controlled Functions building on existing Statements of Principles for Approved Persons[5] (APER).	The FCA conduct rules themselves do not introduce broader requirements on Solvency II firms and only introduce one additional requirement on all approved persons, individual Conduct Rule 4 ('Rule 4'), and one additional requirement on FCA SIF holders, Significant Influence Conduct Rule 3 ('SI3'). The Conduct Rules set out basic, common sense standards of good conduct that we believe are an important tool in ensuring key individuals in firms are clear about our expectations of their conduct.
6.	Removing standard Non-Executive Directors (NEDs) from the scope of pre-approval. Under new rules we distinguish between two types of NEDs: i) Standard NEDs are those NEDs who do not hold specific responsibilities and, ii) Approved NEDs who have specific roles such as Chairmen and Chairs of Committees (eg Remuneration or Risk Committee).	Under the Approved Persons Regime, <u>all</u> NEDs were subject to regulatory pre-approval. We changed this with CP15/5 and we maintained pre-approval for 'approved NEDs' only. Standard NEDs fell out of the APR completely. Under FCA rules, this is a cost saving for insurers as we do not require them to submit forms for regulatory pre-approval. However, under PRA rules, insurers are still required to notify the PRA when they appoint NEDs. This is to comply with EU obligations that all members of the board are fit and proper. Hence there is no material change in the existing requirements on firms introduced by these new changes.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

[5] APER has been discontinued for Solvency II firms' approved persons and banks. COCON is now used instead.

Link to CP15/15, CP15/25 and PS15/31.
https://www.fca.org.uk/publication/consultation/cp15-15.pdf
https://www.fca.org.uk/publication/consultation/cp15-25.pdf
https://www.fca.org.uk/publication/policy/ps15-31.pdf