Financial Conduct Authority

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: PS15/31: Final Rules on changes to the Approved Persons Regime for insurers not subject to Solvency II

Lead regulator: PRA/FCA

Date of assessment: 16/12/2015 (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

This Impact Assessment relates to changes to the Approved Persons Regime for Non-Directive Firms (NDFs). An 'approved person' is an individual who the FCA approves to do one or more activities - 'controlled functions' - for an authorised financial services firm.

NDFs are firms with permission to effect or carry out insurance contracts that fall out of scope of the Solvency II Directive, including UK branches of foreign firms.

Under PRA rules, 'small NDFs' means an NDF in respect of which the value of assets relating to all regulated activities carried on by the firm is **£25,000,000 or less**. NDFs exceeding the above threshold qualify as 'large' NDFs.

NDFs were subject to the FCA Approved Persons Regime until the 7th of March 2016, when the 'revised' Approved Persons Regime came into force.

Under the FCA Approved Persons Regime, NDFs were subject to the following:

- 8 PRA Controlled Functions and 6 FCA Controlled Functions subject to regulatory pre-approval;
- conduct rules set out in a Statement of Principles and Code of Practice (APER), applicable to Controlled Functions holders only;
- requirements on firms to ensure people performing Controlled Functions are fit and proper.

Changes to the Approved Persons Regime were proposed to ensure robust accountability of senior staff in these firms, primarily to address:

- provisions in the Financial Services (Banking Reform) Act 2013 (the Act) applying to all FSMA-authorised firms, and
- the PRA's proposed reforms to the scope of its pre-approval regime for NDFs.

Small NDFs are a small group of insurance firms, the vast majority of which are mutuals, therefore we sought to balance an effective accountability regime with regulation proportionate to smaller firms.
We originally consulted on changes to the Approved Persons Regime for NDFs in CP 15/15. The proposed changes largely mirrored the regime for Solvency II firms and, based on the feedback we received to CP15/15, we then issue a second CP (CP15/25) to introduce a more proportionate regime for small and large NDFs.

With CP 15/25 we consulted on:

- treating large NDFs in the same way as Solvency II firms for the purposes of individual accountability and governance (this reflected the greater potential of these firms to have an adverse impact upon FCA objectives) and,
- amendments to the arrangements for small NDFs setting out a streamlined governance regime for these types of firms. We also consulted on changes to the forms necessary for the implementation of the regime as well as transitional arrangements for implementing the reforms.

PS 15/31 set out the final rules for a streamlined approved persons regime for 'small' NDFs. Also, it makes final rules for large NDFs which we had consulted on treating as Solvency II firms in CP15/25.

Our rules included:

- Approval of new Controlled Functions which the PRA had chosen to stop making subject to its pre-approval, i.e. the FCA **continue to approve** CF1, CF3, CF5 and CF6 (which the PRA was proposing not to maintain), as FCA Significant Influence Functions (SIFs).
- **removing non-executives** that are not the Chairman, a Senior Independent Director or the chair of a key committee from pre-approval.
- **not maintaining (as an FCA function) the existing PRA CF28 function** which the PRA proposed to remove;
- **removing the CF8 apportionment and oversight function**;
- introducing **governance maps requirements** (for large NDFs only). These firms should have these documents in place as of March 2016;
- amending our current approved persons assessments to include a requirement to submit information on the **scope of SIF applicants' responsibilities** to support our assessments of fitness and propriety for key staff (requiring large NDFs to prepare scope of responsibilities documents by September 2016 while we gave small NDFs longer to prepare them, pushing the requirement back to 7 March 2017);
- shorter mandatory record keeping period (six years for all NDFs);
- applying **new FCA Conduct Rules** to FCA and PRA approved persons, mirroring those that we proposed for individuals in banks and Solvency II firms (this applies to all NDFs).

In addition, the **PRA revised the definition of small NDFs in the PRA's Glossary** to clarify that assets will need to exceed £25m <u>for 2 consecutive year-ends</u> before an NDF would be characterised as a 'large' NDF. Our rules cross-refer to the PRA's Glossary definition. This is the only change of note from consulted on rules in CP15/25 and allows firms to have more time to recognise that they may transition between small NDF and large NDF status, and prepare for any changes to their governance arrangements.

Finally, we made changes to the forms necessary for the implementation of the regime as well as transitional arrangements for implementing the reforms. We required firms to grandfather existing Controlled Function holders into the reformed regime on 7 March 2016.

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

How many are estimated to be affected? We expect around 100 UK insurance firms to be classified as small NDFs. Most of these firms are mutuals, and many of them are registered as friendly societies.

As to large NDFs, as of August 2015 there were fewer than 10 of these firms in existence.

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 policy changes and costs set out below were subject to public consultation (links to the relevant documents are provided below).

Policy Changes	Costs
We maintained those Controlled Functions which the PRA proposed to stop approving. This ensured that individuals who can significantly impact our objectives remain in the scope of conduct regulation.	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'. In effect, there is no actual change for firms other than dealing with the FCA rather than the PRA. Existing IT systems are in place and firms currently use them. As a result, this change is cost neutral.
We removed 'standard' non-executive directors from the scope of the revised Approved Persons regime; we also removed the CF28 and the CF8 functions.	Under the Approved Persons Regime, standard NEDs, CF28 and CF8 were subject to regulatory pre-approval. We changed this for NDFs and did not require pre-approval for these individuals. This is a cost saving for NDFs as we do not require them to submit forms for regulatory pre-approval. We did not collect data on savings at the time of consultation, as this is a retrospective impact assessment it is not proportionate to collect this data now.
We also required NDFs to have scope of responsibilities documents in place for all significant influence functions by 7 March 2016 (large NDFs) and by September 2017 (small NDFs).	We introduced these requirements for NDFs to ensure consistency with our requirements for Solvency II insurance firms (ie that such documents are to be prepared for all new SIF candidates as detailed in the Impact Assessment for PS15/21 which was consulted on and published separately). These requirements clarify existing provisions in SYSC2.1 (Apportionment of Responsibilities) , reflecting good

	corporate governance, including that a firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers and that firms must maintain records on the allocation of responsibilities and submit job descriptions with SIF applications. As such, we did not identify any material costs related to this proposal. As this is a retrospective impact assessment it is not proportionate to revisit this issue now.
We required firms to hold the scope of responsibilities documents for six years.	This reflected existing requirements in SYSC 2.2 (Recording the apportionment) on holding records relating to the allocation of responsibilities. As a result, this change was cost neutral.
We required large NDFs to maintain Governance Maps, and submit and maintain information and scope of responsibilities documents for all SIF holders, and to keep these documents for six years, will impose no costs.	These requirements clarify existing provisions in SYSC2.1 (Apportionment of Responsibilities), reflecting good corporate governance, including that a firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers and that firms must maintain records on the allocation of responsibilities and submit job descriptions with SIF applications. As such, we did not identify any material costs related to this proposal. As this is a retrospective impact assessment it is not proportionate to revisit this issue now.
Applying conduct rules to Controlled Functions building on existing Statements of Principles for Approved Persons (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'). . Previously, these high-level requirements were contained in APER guidance which was made pre-May 2015. As the rules do not change the standards, no new costs results.

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

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