



Significant Influence Functions Applications Guidance on the FSA's current approach

Introduction

The FSA's Policy Statement in September 2010 (PS10/15) gives feedback on previous consultation on the Walker Review on corporate governance and approved persons roles (CP10/15). The policy statement introduces new Significant Influence Functions ('SIF') to be implemented from 1 May 2011.

As part of PS10/15, the FSA also provided feedback on comments raised on more general issues about the current approach to approving applicants for SIF roles including the interview process.

This paper provides a summary of this FSA feedback. It is general advice, not firm specific and provides only a summary of the issues involved. For firm specific guidance on the approval of candidates for significant influence functions, please contact Gillian Gallacher for further assistance. Separate guidance on the new SIF roles can be found by pasting the following link in your browser:

http://www.gemcompliance.com/library/topics/corporate_governance.html

Background

Any individual who exercises significant influence on a regulated firm is likely to be carrying out a Significant Influence Function ('SIF') and must be approved by the FSA before doing so. Disciplinary action may be taken against individuals and/or firms where an individual exercises influence without prior approval.

Each significant influence function is one which is likely to result in the person responsible for its performance exercising a significant influence on the conduct of a firm's affairs, so far as relating to a regulated activity of the firm.

Summary of Feedback

For sometime now, the FSA has adopted a more intrusive approach to supervision when considering applications for approval for SIF roles. Its focus is on ensuring that a governing body of a financial services firm has the right balance of individuals, in terms of their experience and skills, and that board members are properly equipped to deal with the full range of issues that they may face. The FSA's intention is to focus on the competence and capability of candidates for SIF roles.

The FSA has confirmed that in accordance with the Fitness and Propriety ('FIT') sourcebook, it focuses on an individual's competencies and capabilities whilst also considering the individual's role in relation to the wider composition of the governing body.



The decision on whether to call an applicant for interview is risk-based and depends on the FSA's initial assessment of the applicant's competence, the role sought and the existing/proposed composition of the governing body. It may also decide to interview any candidate applying to perform an SIF role in circumstances where it has concerns about the candidate's fitness or propriety or concerns about the applicant firm.

For those called to interview, it is potentially a two stage process. The first interview is an unrecorded, minuted interview with the candidate followed if necessary by a second recorded interview.

As a general rule, the FSA will normally expect candidates to interview alone (unless if not appropriate i.e. for disability). It endeavours to ensure that the process is fair and reasonable. If there is a second interview, the candidate is advised that they may be accompanied by a lawyer. If the candidate avails themselves of this, the FSA will also have legal representation.

Second interviews are always recorded and the candidate is given a copy of the recording. The FSA already provides a standard interview feedback form to firms and will normally write to the firm and candidate involved setting out the key points arising from the above interview(s).

The FSA expects all firms to undertake their own due diligence on candidates and that firms are seen to be doing this. Failure to assess competence thoroughly will tell the FSA a lot about the quality of the firm's own recruitment procedures. Persistent failures to provide robust information in support of applications may lead to the FSA to take a closer supervisory look at the firm.

Where an appointment is likely to be sensitive or urgent, the FSA encourages firms to approach them at an early stage. Depending upon the circumstances, it may be possible for the FSA to say that they are minded to approve a candidate subject to satisfactory CRB clearance. To avoid delays in obtaining such things as Criminal Records Bureau (CRB) clearance, the FSA suggests that firms can also get the CRB clearance and, with the permission of the candidate, send this to the FSA.

Approval for Governing Functions - General Guidance on Competencies

As detailed above, the FSA's view on an applicant is based on its assessment of the individual's fitness and propriety and competence for the SIF role. The FSA expects the supporting firm to be satisfied on the applicant's fitness and propriety and competence for the role prior to application.

The FSA reviews the experience of the person as a whole, considering the organisation, their experience of the industry and also of their own role. Where an individual may have less experience of the financial services industry i.e. a Finance Director from a different industry, the FSA reviews the person's role in relation to the group as a whole and will also look at the experience of the overall management team.



Core Competencies

The FSA looks at the following core competencies for SIF applicants:

- Market knowledge - awareness and understanding of the wider business, economic and market environment in which the firm operates.
- Business strategy and model – awareness and understanding of the firm’s business strategy and model appropriate to the role.
- Risk management and control - the ability to identify, assess, monitor, control and mitigate risks to the firm. An awareness and understanding of the main risks facing the firm and the role the individual plays in managing them.
- Financial analysis and controls – the ability to interpret the firm’s financial information, identify key issues based on this information and put in place appropriate controls and measures.
- Governance, oversight and controls – the ability to assess the effectiveness of the firm’s arrangements to deliver effective governance, oversight and controls in the business and, if necessary, oversee changes in these areas.
- Regulatory framework and requirements – awareness and understanding of the regulatory framework in which the firm operates, and the regulatory requirements and expectations relevant to the SIF role.

Firms should consider an applicant’s experience in line with the above. If relevant gaps are identified, training actions should be documented and may be confirmed to the FSA as part of the application submission.

Overall Fitness and Propriety

The above guidance focuses on an applicant’s competence for the role. The applicant’s general fitness and propriety will also be assessed by the FSA including Criminal Records Bureau checks, Credit Checks and checks on the information disclosed in Section 5 of the FSA Application form for individuals (Form A).

It is an individual applicant’s responsibility to ensure that he/she has answered the required declarations honestly and openly. Firms should also ensure that they have carried out (and can evidence) their own due diligence on the candidate’s fitness and propriety by following normal appropriate recruitment checks.

Where an issue regarding an individual’s fitness and propriety comes to light from the FSA’s own investigations and either this has not been disclosed by the individual and/or the supporting firm has not previously identified this, the FSA may consider this raises concerns either on the individual’s honesty and co-operation with the regulator, and/or also on the adequacy of the firm’s own internal systems and controls.