

New FSA vetting regime changing life in the City

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Recent cases show regulator is serious about approval of persons with significant influence

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LAST week, the FSA secured an undertaking from former senior RBS executive Johnny Cameron that he would not work full-time in the financial services industry again. This weekend it emerged that ex-Morgan Stanley executive John Hyman would not be going through with his planned move to Nomura because the regulator had asked that his FSA approval application be withdrawn.

These, and other recent cases, illustrate the fact that the FSA is re-directing its attention towards senior executives, rather than the institutions they work for, and highlight just how tough a stance the regulator is prepared to take with FSA approved persons who perform “significant influence functions”.

How did this shift in focus come to pass and how does it manifest itself? What does it mean for the daily operation of financial services firms and their senior executives?

The roots of this increased scrutiny on individuals go back to the last government’s assessment of the origins of the financial crisis. A culture of excessive risk-taking combined with an insufficient control and understanding of those risks by individuals responsible for their oversight (including non executive directors) has been identified as a key cause. Thus, the FSA’s response has been a wide-ranging effort to move the UK financial services industry away from a risk-taking mindset and to impose a “more intrusive and intense” supervisory regime.

As the financial crisis was viewed, largely, as a risk management failure, the FSA naturally enhanced its scrutiny of those responsible for strategy and risk management. The definition of “significant influence functions” was extended and enhanced. The FSA interview panel process was introduced to assess candidates for these functions. In a speech last week Jon Pain, the FSA’s supervision managing director, said that over 400 such candidates have been interviewed by the FSA since October 2008. More than 30 individuals subsequently had their applications withdrawn by their sponsoring firms.

So what does this new approach with its emphasis on individuals mean for the day-to-day running of the financial services sector? What do senior executives in “significant influence functions” need to be aware of? Firstly, there is a distinction between those already performing FSA-approved roles and those in the process of seeking approval. When a person remains in an FSA-approved role, it is unlikely that their conduct will come up for regulatory scrutiny unless a specific FSA investigation is launched. However, once they are “off the bus” of a financial institution, there are regulatory hoops to jump through before they can get back on with a new employer with the required FSA approval. Otherwise they are effectively excluded from working in the UK financial services industry.

Obtaining FSA approval is by no means simply a matter of rubber-stamping, especially in relation to significant influence function applications. Not being granted approval can pose a serious reputational threat to both the individual and their prospective employer so it is crucial to understand the FSA's concerns and requirements.

For the individual, complete honesty is essential. This might be an awkward conversation to have with your new employer, but anyone applying for an FSA-controlled function should volunteer full details if, for example, they were ever the subject of an internal investigation for misconduct. The FSA can become far more concerned about a non-disclosure than the underlying facts.

Employers should seek full disclosure from new employees and will need to assess on the basis of the big picture, whether they are prepared to make the application for their FSA approval.

Clearly, the City watchdog is not afraid to be seen to be making judgments on judgments and to scrutinise the suitability of those senior executives and non executives already deemed acceptable by the boards of leading financial services institutions. The supervisory process of the FSA has become more intrusive and intensive in the wake of the financial crisis. The UK's financial services industry and the individuals that operate within it now have to play by the enhanced rules of the game.

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