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By Email

03 March 2022

To Senior Executive Officers (**SEO**) of FSRA Authorised Firms

Cc: Recognised Functions

Dear SEO,

FSRA's Thematic Review on Recognised Persons ("Review") – Findings and Outcomes

Background

In 2021, the FSRA conducted a thematic review of the practices adopted by Authorised Persons (**APs**) to appoint and assess the fitness and propriety of their Recognised Persons (**RPs**). In particular, the review focused on APs' compliance with the FSRA's principles and rules regarding Recognised Functions (**RFs**) and RPs, as set out in the FSRA General Rulebook (**GEN**) and Guidance and Policies Manual (**GPM**).

The Fitness and Propriety of RPs is one of the fundamental requirements for firms to meet the threshold conditions of their Financial Services Permission (**FSP**). The RP role comes with increased responsibility and accountability for ensuring compliance with our regulatory requirements. A firm must be satisfied that a RP is and remains a fit and proper person to carry out the role.

Scope

The review included 107 APs across different sectors to ensure coverage of a broad spectrum of financial services activities and business models. The following areas were included in the scope of the review:

- a) Governance and oversight of appointment and supervision of RPs.
- b) Internal controls put in place by APs to ensure compliance with the requirements in GEN 5.4 to 5.7; and
- c) Effectiveness of the policies and procedures adopted by the APs.



Methodology

The Review was carried out over four stages. First, an online survey was sent to all APs licensed by FSRA, excluding Representative Offices. The survey comprised of 29 questions covering the key systems and controls over the appointment and assessment of RPs, including governance and oversight, fitness and proprietary assessment, training, and outsourcing arrangements.

Second, the responses to the survey were reviewed to identify potential trends or patterns that might suggest good and bad practices across the APs. As part of the third stage, the outcome of FSRA's review of the responses to the survey was used to identify a smaller sample of APs to conduct a more detailed review. Finally, this review consisted of a desk-based review of relevant documentation followed by focused reviews with key staff involved in the assessment and appointment of RPs.

Key Findings

We appreciate that the size, scale, and complexity of APs differs from firm to firm and have taken this into account in our considerations. Nevertheless, we expect firms to maintain the appropriate policies, procedures, systems, or controls in place to fully demonstrate compliance with FSRA's relevant requirements.

Overall, the thematic review has identified that most APs do not have adequate policies, procedures, systems, or controls in place to fully demonstrate compliance with FSRA's relevant requirements related to the appointment and assessment of the fitness and propriety of their RPs. We have also noted that across APs there is an inconsistency in the methods used to appoint and assess the fitness and propriety of RPs resulting in a number of gaps as outlined in Appendix A. This gives rise to concerns regarding adequacy of senior management oversight over AP's compliance with FSRA's Recognised Persons regime. As a result, a number of findings were identified during the review for further improvement. Specifically, we have noted the following:

1) Policies and Procedures

Most APs do not have defined policies and procedures for the appointment and assessment of RPs in accordance with the requirements in GEN. Whilst some firms have compliance manuals which refer to the regulatory requirements regarding RPs, the process to appoint and assess RPs prior to their appointment is not adequately defined, for most of the firms we reviewed.

In addition, in most cases the compliance manuals do not consider the following aspects and evidential requirements for RPs including: (1) The Governance arrangements around the appointment and assessment of RPs, including appropriate approvals, (2) the process and steps required for appointing RPs, (3) initial and periodic fit and proper assessments, (4) succession plan for RPs, (5) the process and assessment conducted for candidates within the same Group and (6) relevant trainings for the RPs.

Finally, we have noted that where an AP is part of a Group, the reliance is made on the Group's existing policies and procedures without proper consideration of the principles of RPs outlined in GEN.



2) Fitness and Propriety Assessment

Based on the survey responses and the detailed review of selected APs, we have noted several weaknesses related to the initial due diligence conducted by APs as well as the subsequent periodic reassessment conducted on RPs to ascertain that they remain fit and proper.

Although certain APs have established systems, controls, policies, and procedures to guide the initial assessment of the fitness and propriety of candidates during the selection process, we have noticed that the documents maintained to support and evidence this initial assessment are inadequate (and in some cases missing) to demonstrate the effectiveness of the process.

The majority of APs request documentation from candidates applying for RFs as part of their assessment process for evaluating integrity, financial soundness, competence, and capability. However, we have noted that APs have made limited efforts to verify the information provided by candidates during the assessment process. For example, most of the APs selected for the sample review did not conduct adequate checks to evaluate RPs financial soundness prior to appointing them or verify the candidates stated qualifications.

We have also observed that most APs have either not conducted any periodic reassessment of their RPs or confused the fitness and propriety reassessment with the periodic performance review limiting their periodic reassessment to the review of the competence, skills, and capability of RPs against individual objectives rather than assessing their overall fitness and propriety against GEN requirements as set out under 5.6.4.

3) Outsourcing

The FSRA GEN Rulebook outlines several requirements to be considered by firms with material outsourcing arrangements, including the outsourcing of RFs to third party service providers. However, many of the APs included in the review have not established appropriate systems and controls to manage, assess and mitigate risks arising from outsourcing of RFs. For example, we have noted that several APs do not have policies and procedures to manage and oversee material outsourcing arrangements.

In addition, some APs have outsourced RFs with limited or no due diligence conducted on the third-party service provider. Furthermore, we have observed that a large number of APs have not conducted any periodic assessment to ensure the adequacy of the outsourcing arrangement.

Similarly, we have identified that certain APs have not conducted any due diligence on the appointed outsourced individuals but have instead relied on third-party service providers (or Group in case of intra-Group outsourcing) to assess the fitness and propriety of these individuals without obtaining appropriate assurance that these processes had been performed and are in line with the APs and FSRA requirements.

4) Training Program

We are pleased to note that the majority of APs have put in place a training program, which consists of induction training courses for new joiners and mandatory courses and eLearning courses for all employees on an ongoing at least annual basis, including RPs.

During the focused reviews, we noticed that training programs developed for RPs are mainly driven by certain regulatory requirements (e.g., AML and Financial Crime) or driven by the self-



interest of RPs. However, we have noted that the training provided to RPs are not mapped to their training needs or a professional development plan discussed and approved by their line manager. Role specific trainings about the AP's internal processes, products and services as well as general business operations are very important especially for RPs roles that are outsourced to third-party service providers.

Succession Planning

The process of succession planning is an important element of talent management and contingency planning in order to limit business interruptions and ensure continued operations when key positions become vacant. Whilst this may be more relevant to larger firms in ADGM, several APs have not developed any succession planning process and therefore don't have succession arrangements in place for key roles, including RPs roles.

Likewise, certain APs who have outsourced one or more RPs to a third-party service provider, lack a contingency plan to exit from these arrangements, should they need to do so.

For a limited number of firms, we have observed that succession plans are in place, including periodic and frequent review at the relevant Senior Management level and the HR function. In addition, employee performance is considered as a factor when appointing an individual as a successor to a RPs role, to maintain the continuity of an AP operations.

Next steps

APs are expected to carefully review the findings and recommendations outlined in this letter in order to enhance their practices and align them with FSRA's requirements.

FSRA will continue to monitor firm's practices in this area and as part of its supervisory cycle will review the steps taken by selected firms to review and address any identified areas for improvement.

In order to assist you we have attached Appendix A and B to this letter, which provide a list of good practices and areas for improvement noted during the review as well as FSRA's Recommendations, and the Regulatory Principles for RPs in our GEN Rulebook. In addition, APs should be aware of the GPM which sets out matters the Regulator takes into consideration when making an assessment of the kind under section 2.3.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'Emmanuel Givanakis', located below the closing text.

Emmanuel Givanakis
Chief Executive Officer
Financial Services Regulatory Authority



Appendix A

1) POLICIES AND PROCEDURES

Findings

Good practices

- Comprehensive employee handbook which outlines the Firm's employment process, mapped against the Principles for RPs set out in section 2.4 of GEN.
- Policies and procedures are being followed by APs when appointing a RP and undertaking a periodic re-assessment.

Areas for improvement

- Lack of defined policies and procedures for the appointment and assessment of RPs in accordance with the requirements in GEN. In other instances, off the shelf policies and procedures that are only a high-level reflection of the FSRA Rulebook, mainly seen as a tick box exercise and not adequately considered by an AP.
- Inadequate Senior Management oversight on the AP's compliance with its outlined policies and procedures with respect to the appointment and assessment of RPs and the FSRA GEN Rules.
- Reliance on the AP's Group existing policies and procedures without proper consideration of FSRA's Regulations and Rules.

Recommendations

- Policies and procedures should outline in more detail how the AP would consider the relevant requirements of GEN and the GPM, at the time of on-boarding and periodic re-assessment.
- Where an AP is part of a Group, it must ensure that the assessment process for RPs is integrated into the existing HR processes to include: (1) adequate management oversight over the assessment, record keeping of the assessments, and (2) process to manage instances where an individual fails to meet the required standards as set out in GEN.
- Policies and procedures process of appointing RPs should be reviewed periodically by Senior Management to ensure it complies with regulatory requirements and remains effective. Additionally, APs should ensure that the internal audit function or the compliance function undertakes regular reviews to assess the effectiveness of policies and procedures related to the appointment RPs.



2) FITNESS AND PROPRIETY ASSESSMENT

Findings

Good practices

- Fitness and propriety templates are developed by APs and are mapped against FSRA's GEN principles for RPs and Rule 5.7.3. These templates are used to document the assessment performed against each RP at the time of selection and for the periodic re-assessment. Use of technical assessments/case studies to test a candidate's competence and capability.
- Compliance Officer (**CO**) maintains adequate oversight over the periodic fitness and propriety assessment exercise. Fitness and propriety assessment made both initially and on an ongoing basis (at least annually – and on an ad-hoc basis if a material issue arise). This may also include regular one-to-one meeting with line management to assess performance against objectives.
- Outcome and deviations from the fitness and propriety re-assessment are adequately reported to Senior Management and Board Members of the Firm, as relevant.

Areas for improvement

- Inadequate initial due diligence performed by APs on the appointment of an RPs and the subsequent periodic reassessment performed to ascertain that they remain fit and proper.
- Inadequate record keeping of the initial fitness and propriety assessment and checks performed by APs on the candidates during the selection process.
- Limited efforts to verify the information provided by candidates during the selection and assessment process, for example, candidates stated qualifications.
- Periodic re-assessment of RPs either not performed or confused with the performance review.

Recommendations

- The FSRA expects APs to establish and maintain adequate systems and controls to assess the fitness and propriety of RPs in accordance with GEN.
- APs are required to apply the requirements outlined in FSRA GEN 5.7.3 when undertaking the initial and periodic fitness and propriety assessment of RPs. Among these factors are the individual's integrity, competence and capability, financial soundness, individual's proposed role and any other relevant matters.
- Senior Management of an AP are expected to ensure that the RPs observe high standards of integrity, competence, capability, and fair dealing in carrying out their functions through their conduct and periodic re-assessments.
- APs are expected to verify the information provided by the candidates, as well as request additional information and supporting documents as necessary to support the fitness and propriety assessment.
- In accordance with GEN 5.7.15(1), APs must keep records of the initial and periodic assessment undertaken for each individual appointed for a RP role.



3) OUTSOURCING OF RECOGNISED FUNCTIONS

Findings

Good practices

- Adequate oversight framework implemented by the AP to periodically assess the effectiveness of Service Level Agreements and services received from its outsourced services (including within its Group).

Areas for improvement

- Unsatisfactory due diligence conducted on the third-party service provider and periodic assessment to ensure the adequacy of the outsourcing arrangement.
- In addition to the above, reliance on service providers to assess the fitness and propriety of outsourced RPs without obtaining appropriate assurance on the assessment process.
- Inadequate systems and controls to manage and assess material outsourcing arrangements, including RPs roles.

Recommendations

- Establish and maintain appropriate and comprehensive outsourcing policies, procedures and risk management programs.
- Carry out due diligence, prior to the selection of a service provider to perform a RFs, APs are expected to evaluate the service provider's capacity and capability to perform the outsourced activity.
- When conducting due diligence, APs should identify and assess the risks associated with the outsourcing of a RFs, including potential conflicts of interest between the AP and the service provider.
- Periodically monitor the performance of the service provider (including within its Group) and the outsourced RPs by establishing clearly defined performance indicators to assess the effectiveness of the services provided.

4) TRAINING PROGRAM

Findings

Good practices

- Training modules provided to RPs are diverse, relevant and not limited to AML, including training on Code of Conduct, Regulatory Reporting Awareness, Cyber Security, Data Protection, Business operations and processes, and Risk Management.
- Training programs delivered across a variety of training methods, including induction training courses for new joiners, mandatory classroom courses, role specific training courses and e-Learning for all employees, including RPs.

Areas for improvement

- RPs competence and training needs are not reviewed regularly and does not consider the changes in the regulatory landscape.
- Training provided to RPs is not mapped to their training needs or professional development plan.
- Training programs are generic and do not consider Role-Based requirements.



- Records of training provided (including any assessments/test results) to RPs are not always maintained and sometimes not adequately reflective of the training delivered to a RP.

Recommendations

- Conduct periodic assessments of training needs of RPs in order to develop a training program that is more appropriate, role-specific and includes training relevant to the types of activities performed by RPs.
- RPs training should be relevant, appropriately structured, and evaluated regularly.
- Maintain appropriate training records for each individual for at least six years from the date of the training. The log should include at minimum; name of RPs, nature of training, date and outcome of training and other specifics as relevant. Senior management should have adequate oversight to ensure that RPs are competent and remain competent for their roles.

5) SUCCESSION PLANNING

Findings

Good practices

- Succession plan for RPs role should be established, including periodic and frequent review at the relevant Senior Management level and the HR function. In addition, employee performance is considered as a factor when appointing an individual as a successor to an RPs to maintain the business continuity of an AP operations.

Areas for improvement

- Succession planning processes have not been developed by AP's and succession plans are not documented for key roles, including RPs.
- Contingency plans to exit from an outsourcing arrangement are not documented by APs that have a material outsourcing arrangement.

Recommendations

- Implement appropriate succession planning arrangements for their RPs, proportionate to the size and complexity of their activities, to ensure the business continuity of their operations.
- Consider the skills and expertise needed by the RPs in line with the growth and expansion of the AP's activities in the future.
- Succession plan should be reviewed on periodic basis to ensure that it remains adequate. It should be Approved at appropriate Board and/or Senior Management level.
- APs who have outsourced RPs are expected to have a contingency plan to exit from these outsourcing arrangements in case these arrangements have to be ended.



Appendix B

The Principles for Approved Persons and Recognised Persons (GEN 2.4)

Principle 1 - Integrity

Each Approved Person and Recognised Person must observe high standards of integrity and fair dealing in carrying out every Controlled Function or Recognised Functions.

Principle 2 - Due skill, care and diligence

Each Approved Person and Recognised Person must act with due skill, care and diligence in carrying out every Controlled Function or Recognised Functions.

Principle 3 - Market conduct

Each Approved Person and Recognised Person must observe proper standards of conduct in the ADGM Financial System in carrying out every Controlled Function or Recognised Functions.

Principle 4 - Relations with the Regulator

Each Approved Person and Recognised Person must deal with the Regulator in an open and co-operative manner and must disclose appropriately any information of which the Regulator would reasonably be expected to be notified.

Principle 5 - Management, systems and control

Each Approved Person and Recognised Person who has significant responsibility must take reasonable care to ensure that the business of the Authorised Person for which he is responsible is organised so that it can be managed and controlled effectively.

Principle 6 - Compliance

Each Approved Person and Recognised Person who has significant responsibility must take reasonable care to ensure that the business of the Authorised Person for which he is responsible complies with any Regulations or Rules.