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22 August 2014

Dear Graham,

## **Attestations**

At the Practitioner Panel meeting on 4 March 2014 and in your letter of 8 April 2014 you and your colleagues on the Practitioner Panel expressed concerns relating to the use of attestations by the FCA. Having listened to those concerns, and also taking into account the views of other industry participants and commentators, I have concluded that it would be helpful for the FCA to clarify externally our views as to when we expect to use attestations and the outcomes we expect to achieve by doing so. We are also revising the internal guidance we have previously issued to supervisors to ensure that we are using this important supervisory tool consistently to achieve the right outcomes.

This letter summarises our approach to using attestations, and the steps we are taking to ensure that we use them consistently and clearly.

## **Our approach**

Attestations have been introduced as a formal supervisory tool. When we use an attestation, we do so to gain personal commitment from an approved person at a regulated firm that specific action has been taken or will be taken. The aim of an attestation is to ensure that there is clear accountability and senior management focus on those specific issues where we would like to see change within firms, often without on-going regulatory involvement. The focus of attestations is usually on firms putting things right (for example, by changing governance arrangements, systems and controls or delivering redress) rather than seeking to better understand the extent or materiality of an issue. It is not our intention to create onerous or additional assurance processes within firms which go beyond what the firm sees as reasonable.

We usually ask for attestations to be given by the most relevant significant influence function holder (for example, the SIF who is responsible for the area of the firm at which the issue has arisen or which is responsible for addressing the issue). Generally, we do not require further

evidence from the firm that the issue has been addressed – although in some cases we will wish to see evidence.

The most usual scenarios in which we use attestations are these:

1. Approach 1 – Notification

For emerging risks at firms which are unlikely to result in material consumer detriment or negative impact on market integrity, we may ask an appropriate individual at a firm to attest that they will notify us if the risk changes in its nature, magnitude or extent. The responsibility on the person making the attestation is to ensure that the firm appropriately monitors the risk and makes any notifications which are appropriate to us.

2. Approach 2 – Undertaking

Where we want a firm to take specific action within a particular timescale, but the risk is one which is unlikely to result in material consumer detriment or negative impact on market integrity, we may ask for an attestation undertaking that the action will be taken.

3. Approach 3 – Self-certification

For more significant issues, but where we are confident that the firm can resolve the issue itself, we may ask for an attestation that the risks have been mitigated or resolved.

4. Approach 4 – Verification

In cases in which we not only want a firm to resolve issues or mitigate risks but we also want verification of that, we may ask for an attestation confirming that the action, including verification as appropriate (e.g. by internal audit), has been done.

### **Obligation to co-operate**

As you know, our Principles for Business and Statement of Principles for Approved Persons<sup>1</sup> require firms and approved persons to deal with the FCA in an open and co-operative way. As in all circumstances, failure to meet the requirements of the principles – for example not notifying the FCA of the matter outlined in the letter – could result in action being taken as required and appropriate.

### **Clarity, transparency and consistency of attestations**

Attestations are an important supervisory tool and we recognise the importance of clarity, transparency and consistency in their use. Due to the potentially significant impact on individuals and firms flowing from attestations, it is important that attestations are clear and realistic: they need to be specific, achievable and have demanding but realistic timelines. It is

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<sup>1</sup> Principle 11 (Relations with Regulators) of the Principles for Business and Principle 4 of The Statement of Principles for Approved Persons require firms and approved persons to deal with the FCA in an open and co-operative way. Other (underlying) provisions in the FCA Handbook are also relevant, e.g. SUP 15 (Notification requirements).

also important that firms have an open dialogue with their supervisors so that there is a clear and shared understanding as to the outcomes we wish to achieve from specific attestations, as well as the details of the scope, content and timing.

Such an open dialogue should also help to address the concern that our use of attestations is skewing the prioritisation of risk at firms. As said above, we don't expect firms to create onerous assurance processes that could skew prioritisation, and of course, in considering when to ask for an attestation, we look at the range of issues on which the firm's senior management is focused, and the issues to which the firm's resources are being applied, to ensure that the most significant issues are the ones receiving most attention. When we are considering whether to seek an attestation, and if so the terms of it, supervisors will take into account the other issues being addressed by the firm (and the individual at the firm who we would wish to sign the attestation) – and the open dialogue that I refer to above should ensure that a new attestation is properly understood by both the firm and us as supervisors in the context of other issues being addressed by the firm.

### **Next steps for the FCA**

To ensure increased consistency in our approach to using attestations and address the risks that you identified, we will issue revised internal guidance and supporting materials available to supervisors, emphasising the importance of clarity and transparency when using attestations. We are also strengthening our governance processes around attestations including ensuring that all attestations are signed off at Head of Department level and that they will be reviewed by a central quality assurance function similar to the one used for Skilled Person Reviews. We are also changing the way we record and track attestations. Going forward, we are looking to publish data on attestations on a quarterly basis, similar to the information we publish on Skilled Person Reviews.

These are substantive and important steps which address the risks identified in your letter. I would be happy to write to you again with a further update if that would be helpful to the Panel, alternatively, we could discuss at a future Panel meeting.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Clive Adamson', with a long horizontal flourish extending to the right.

**Clive Adamson**

**Director of Supervision**