



OpenSpaces is a consultancy firm dedicated to providing bespoke innovative, commercially sound, and excellent financial services regulatory expertise to financial services' companies based in the UK and Africa.

...Clear, direct and commercially sound compliance advice and solutions

OpenSpaces



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Adeyemi Johnson, CEO OpenSpaces

Summer is here at last along with a welcome two weeks heat wave

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Summer in the UK is generally a time for relaxation and a period in which London is transformed from shades of grey into an array of colours coupled with an air of friendliness and positivity. As an added bonus, Andy Murray won Wimbledon and Prince George of Cambridge was born! In this vein, our summer edition whilst packed with relevant and topical matters is light

It has been a busy but exciting time for OpenSpaces since the launch of our inaugural edition in May 2013.

Firstly, we welcomed on board our new partner, Dapo Ako, whose joining us is a major achievement. He brings with him, significant experience as a former regulator and as a compliance officer (the perfect combination for a regulatory consultant). Prior to joining OpenSpaces, Dapo was an Associate Director, Compliance, at UBS, a leading investment bank and before that, a supervisor, at the Financial Conduct Authority (formerly FSA), where he was the lead supervisor for a number of brokerage firms with responsibility for all prudential and Conduct of Business matters. Dapo will add more depth to our investment banking and regulatory service offering.

In 2013, we recorded a significant milestone having organised and facilitated, on behalf of the Nigerian Stock Exchange (NSE), a 2-day training workshop for over 160 Compliance Officers of Broker Dealer firms. This was a very rewarding experience for both OpenSpaces and the participants. A report based on participants feedback and OpenSpaces observation on areas requiring development was submitted to the NSE

In addition, we have just completed an independent review of the compliance arrangements for a UK based provider of insurance services. Finally, we are presently providing advice on the scope and application of UK regulation to the UK subsidiary of a Nigerian-based organisation.

This edition, in keeping with the light summer mood, features just 3 articles; a continuation of our series on the impact of the new UK regulatory framework where Dayo Joseph examines the changes to the UK Approved Person regime. The second article, by Dapo Ako, is a summary of the key issues from the IMF's recent assessment of the implementation of the IOSCO's Objectives and Principles of Securities Regulation by Nigeria's Securities and Exchange Commission whilst the 3rd Article "Notes from Lagos" is an highlight of the training workshop organised on behalf of the NSE.

We hope you'll enjoy this edition as much as we've enjoyed putting it together and as usual, we look forward to your comments and suggestions for improvements.



A guide to the Approved persons and Controlled functions regime under the new UK regulatory framework

Dayo Joseph

Since the onset of the financial crisis, the Financial Conduct Authority (FCA) has undertaken a considerable amount of work in relation to the governance and risk management of authorised firms, leading to a number of changes in the rules, including those that came into force on 1 April 2013 relating to the approved persons regime. This guide explains the changes to the Approved persons regime and what firms need to do to comply with the changes

1. Designation of firms and Transitional arrangements and how this will affect the approved persons regime?

Firms will now be authorised as either:

- *Single – regulated firms: regulated by the FCA only;
- *Dual – regulated firms: regulated by both the FCA and PRA, which will involve a measure of overlap

Individuals already approved by the FSA will be transferred to the FCA and PRA via grandfathering provisions without the need to make a new application or notification.

2. Changes to controlled functions for FCA - only regulated firm

The significant change has been the extension of the Statements of Principle and Code of Practice for Approved Persons (APER) to the wider conduct of approved persons concerning regulated activities rather than just in relation to their controlled function.

Compliance officers will need to ensure that approved persons in their firms are aware and adhere to the standards in APER in relation to their wider conduct concerning regulated activities rather than just in relation to their controlled function.

The FCA governing and customer controlled function for FCA-only regulated firm is set out table.1:

Table.1

FCA controlled function for FCA-only regulated firms	
Governing functions	CF1 Director
	CF2 Non-executive director
	CF3 Chief executive
	CF4 Partner
	CF5 Director of an unincorporated association
	CF6 Small friendly society
Required functions	CF8 Apportionment and oversight
	CF10 Compliance oversight
	CF10a CASS operational oversight
	CF11 Money laundering reporting
Systems and controls function	CF28 Systems and controls
Significant management function	CF29 Significant management
Customer dealing functions	CF30 Customer function

3. FCA approach to controlled functions for PRA and FCA regulated firms

The current approach gives the PRA the responsibility of specifying all governing functions, thus, removing all possibilities of someone performing both a PRA and FCA governing function. This ensures a simpler process that helps maintain the standard of information in the Register.

The controlled functions are designated to either regulator as follows:

PRA controlled functions for dual-regulated firms	
Governing functions	CF1 Director
	CF2 Non-executive director
	CF3 Chief executive
	CF4 Partner
	CF5 Director of an unincorporated association
	CF6 Small friendly society
Required functions	CF12 Actuarial
	CF12A With-profits actuary
	CF12B Lloyd's actuary
	CF12 Actuarial
Systems and controls function	CF28 Systems and controls



...The PRA still requires the FCA's consent before approving an application for an individual to perform any PRA-designated Significant Influence Function

FCA controlled functions for dual-regulated firms	
Required Functions	CF8 Apportionment and oversight
	CF10 Compliance oversight
	CF10a CASS operational oversight
	CF11 Money laundering reporting
Significant management function	CF29 Significant management
Customer dealing functions	CF30 Customer function

As explained above, the PRA is responsible for approving all governing functions. Compliance Officers should be aware that where an individual is applying to perform certain PRA governing functions (CF1, CF3, CF4, CF5, CF6 or CF28) and also intend to carry out the FCA's CF8 function, they will be required to apply to the PRA only; there is no need for a separate application to the FCA. Instead, the PRA approval will effectively cover the FCA's CF8 function as well. However, Compliance Officers should note that they are required to notify the FCA when the individual begins or ceases to perform a role which would have required approval for CF8 were it not for the arrangement described above.

Significant Influence Functions

Compliance Officers should also understand that although the PRA leads the assessment of applications for approval for PRA-designated Significant Influence Functions, the PRA still requires the FCA's consent before approving an application for an individual to perform any PRA-designated

Significant Influence Function. If the FCA refuses to provide its consent for the approval, the PRA is obliged to refuse the application. Hence, Compliance Officers will need to give due consideration to the FCAs approach to assessing conduct-related skills and experience when submitting PRA-designated Significant Influence Function applications.

Statement of Principle 4 (APER 4.4) has also been amended so that the FCA can take action against a person for failing to report something to the PRA of which the PRA could reasonably have expected notice, and vice versa. The rationale for this is to allow one regulator to take action on behalf of the other. Although this is not expected to be common practice, it is a new area of regulatory risk that exposes individuals to both prudential and conduct matters.

The applications process

All application forms currently in use under the FSA regime are been retained. The regulators expect firms submitting an application to use the Online Notifications and Applications (ONA) system irrespective of regulator responsible for the relevant controlled functions. Paper applications can be submitted where ONA system is unavailable, and if the application relates to both a PRA and an FCA function, the application should be sent to the PRA only.



Summary of The Publication Of Financial Sector Assessment Program Documentation

A Detailed Assessment Of Implementation of Iosco Objectives And Principled of Securities Regulation In Nigeria



...It is highlighted that inadequate regulatory requirements and limited on-site supervision of broker-dealers has the potential of introducing systematic risks to the Nigerian financial system.

Dapo Ako

In May 2013, the International Monetary Fund published a detailed assessment on the Implementation of the IOSCO¹ Objectives and Principles of the Securities regulation in Nigeria. The assessment was based on the IOSCO Objectives and Principles that were approved in 2010 by the Financial Sector Assessment Programme².

The IOSCO methodology adopted by the IMF assessors reviewed the existing legal and regulatory framework as well as its implementation in practice. The last sector assessment conducted by the IMF was in 2002.

This article highlights some of the key findings contained in the report and covers two key areas; **comprehensive regulatory structures & risk based supervision**. It also highlights major steps taken by the Securities Exchange Commission (SEC) towards further development of the regulatory framework of the Securities markets.

A. Comprehensive Regulatory Structures

The IMF report identified significant deficiencies that jeopardize the proper governance and functions of the SEC. For instance, at the time of the IMF assessment it was notable that the SEC had been without a Board since June 2012 (although a Board was constituted in December 2012). At the same time, it was observed that there were insufficient written internal policies, procedures and practices relating to its core functions.

The report also observes that the Investment and Securities Act 2007 (ISA) and the Rules and Regulations does not guarantee SEC full independence although its powers are considered sufficient. It notes that the Minister of Finance has powers to 'direct' the SEC through directives, modify and rescind the rules proposed by the SEC and exempt persons from the application of the ISA after consultation. The mere existence of these types of legal or practical powers, particularly if they are not transparently exercised, has the potential to undermine SEC's independence.

B. Risk Based Supervision

The conduct of business requirements for market intermediaries was adjudged to be generally in place, but the IMF assessors noted that the regulatory framework remains weak in prudential and organisational requirements, including internal control and risk management. It concluded that the few inspections conducted by SEC have been triggered primarily by major deficiencies in the broker-dealers capital levels.

Furthermore, it is highlighted that inadequate regulatory requirements and limited on-site supervision of broker-dealers has the potential of introducing systematic risks to the Nigerian financial system. The lack of written internal policies, procedures and governance practices of the SEC functions significantly reduces its effectiveness and efficiency when

carrying out its supervisory responsibilities. Although the Nigerian Stock Exchange (NSE) has self regulatory powers over broker dealers, it is still required to create and enforce its own rules and report on the results of its self regulatory activities to the SEC. The IMF stresses better improvement in the co-operation and co-ordination between the SEC and the NSE in broker-dealer supervision to ensure early risk identification and avoid any systemic risk. In addition, partial elements of the regulatory and supervisory process were labelled haphazard due to the absence of a robust risk based reporting framework. The SEC would need to develop a robust regulatory and reporting framework to proactively identify and address any systematic risks.

C. Observations by the SEC of the Assessment Report

Before the final release of the assessment report, SEC was given the opportunity to provide commentary and respond to the IMF mission's observations. Whilst it agreed broadly with most of the recommendations made by the IMF assessors on improving the Nigerian capital markets infrastructure and strengthening regulation, SEC highlighted that the assessment report had failed to sufficiently emphasize the widely acknowledged improvement in the regulatory systems and process in the Nigerian capital markets since the last assessment in 2002. Indeed, there has been significant progress following the proactive and bold reforms that the Commission embarked since the global financial crisis.

SEC also recognised that whilst it has been able to attract highly qualified professionals across the globe, there is continued need to increase the proportion of technically skilled staff in the core mandate areas to strengthen the capacity of the Commission's enforcement regime to be more efficient and effective.

The IMF assessors conceded that it was

not possible for them to discuss with a sufficient pool of market participants and public sector authorities. The SEC felt that this may have significantly contributed to certain observations and conclusions that did not reflect the current circumstances in the market.

D. Conclusion

Whilst this summary highlights some of the major issues raised by the IMF report, specifically in the areas of Regulatory Structure and Risk Based Supervision, it would be unfair not to acknowledge the strides taken by the SEC to improve the regulatory framework and oversight of the capital market. These includes new corporate governance rules and significant changes in the administration of the Nigerian Stock Exchange. Additionally, SEC has since approved a new organizational structure and created more departments intended to strengthen and position the Commission to better discharge its mandates².

OpenSpaces believes that it is in the best interest of the SEC to ensure that the regulatory framework attains the highest standard possible and that any such implementation is competently done. SEC needs to enhance the current roadmap in its efforts to achieve a world class standard regulatory framework for Nigerian Securities Market.

Achieving a more robust risk-based supervision framework would require SEC to engage with external consultants who have expertise in regulatory change programs. This will ensure independent assurance and benchmark against the IOSCO objectives and principles.

A fully implemented Risk-Based Supervision (RBS) regime that incorporates a robust reporting framework would enhance SEC's capacity in developing an early warning system which identifies high risk issues, thus enabling SEC to focus its resources on the high risk and systemic issues.

Dapo Ako's Profile

Dapo Ako is a seasoned Compliance professional with several years' experience in the financial industry within the UK and Nigeria. He was a former lead supervisor within the Financial Service Authority's (FSA) Retail Firms Division and an Associate Director at UBS Investment Bank London. He currently serves within the Llyods Bank Commercial banking monitoring team.

Dapo holds BSc and MSc degrees in Economics from the Obafemi Awolowo University (Ife), Nigeria and an MBA from Imperial College Business School, London.

1. IOSCO is the **International Organization of Securities Commissions**, an association of organizations that regulate the world's [securities](#) and [futures](#) markets.

2. The Financial Sector

Assessment Program (FSAP), established in 1999, is a comprehensive and in-depth analysis of a country's financial sector. FSAP assessments are the joint responsibility of the IMF and World Bank in developing

and emerging market countries and of the Fund alone in advanced economies, and include two major components: a financial stability assessment, which is the responsibility of the Fund and, in developing

and emerging market countries, a financial development assessment, the responsibility of the World Bank.

3. <http://www.thisdaylive.com/articles/sec-gets-new-structure-as-bulls-return/151661/>

Notes from Lagos

OpenSpaces trains 160 Compliance Officers of Broker Dealers on behalf of the Nigerian Stock Exchange



Adeyemi Johnson

Between May 21 and 22, we had the privilege of training 160 Compliance Officers of Broker Dealers members of the Nigerian Stock Exchange (NSE) and 20 delegates drawn from the NSE and the Nigerian Securities and Exchange Commission (SEC) on behalf of the NSE who engaged us to organise and facilitate the training workshop.

The 2-day training workshop was one of the initiatives of the NSE's new management to improve the regulatory framework of the NSE. The key objective of the 2 days training workshop was to improve the technical skills of the Compliance Officers of member firms. This would in turn lead to an improvement in the compliance culture within member firms and ultimately result in better investor protection and improved investor confidence in the integrity of the market. The workshop was also part of a series of ongoing training, organised by the NSE, to improve the technical skills of compliance officers.

To achieve the objective of the NSE, we devised, together with the NSE, a training programme that would provide the 160 delegates with the core compliance skills necessary to develop a compliance framework within their firms. We, therefore, explored the following issues with the delegates - Developing a risk based compliance monitoring programme, the role of the compliance officer, Core Conduct of Business Obligations of a Broker Dealer i.e. Best Execution, Timely Execution, Customer Order priority, Communicating with clients (including Fair, Clear and Not Misleading Communication) Selling to Clients – Suitability and Understanding and an overview of the Nigerian Regulatory Environment.

Considering the large number of delegates, we

adopted a collaborative and interactive training style coupled with pictorial and minimal text PowerPoint presentations. This training style together with the group exercises led to closer interaction with and between delegates and also reinforced the key learning points of each training session. The responses received via feedback, confirmed that this approach was very effective as we scored highly on presentation and interaction with delegates as over 90% of the delegates rated training style as excellent. The contents of the training also scored highly with over 90% of the delegates rating content as very relevant.

However, the training was not just 'one-way traffic' as we learnt a lot from our interaction with the delegates. We learnt that compliance officers in Nigeria face an uphill task in trying to develop a culture of compliance in their firms in the absence of a robust enforcement regime and inadequate protection for their role. We also observed that the regulators i.e. NSE and SEC have a different approach to supervision.

The NSE appeared to have a more collaborative approach with the broker dealers whilst the SEC had a more formal relationship with them. Above all we learnt, from our interaction with them during the training, could hold their own with compliance officers in developed markets.

We were very impressed with the level of awareness and understanding of compliance exhibited by the delegates. This is more impressive given the fact that compliance is a relatively new profession in Nigeria. We have no doubt that with the right policies and support, from the regulatory agencies, the compliance profession will take root fully in Nigeria and we will begin to see the emergence of a culture of compliance.

About Us

OpenSpaces was established in August 2010 with the aim of providing practical, sound and innovative compliance advice and services to regulated financial services companies operating in the United Kingdom and Africa.

Since commencing business in May 2010, we have made

steady progress in achieving our core objective of providing an innovative compliance advisory services to top tier financial institutions seeking guidance in today's ever changing global regulatory landscape. This has given us the opportunity to advise on complex and intricate compliance issues facing financial institutions both within and outside the UK. Please see "our recent engagement sections below."

Our Philosophy and Approach

At OpenSpaces we believe that compliance is essentially an issue of culture and business practice underpinned by high standards of client care and business practice. However, behind these simple concept, lays volumes of constantly changing regulations, lessons from enforcement actions, informal guidance from the regulators through speeches and Dear CEO Letters amongst many others. Unfortunately, these

can often be a burden on business especially smaller firms who may not be able to afford the ever increasing cost of compliance. This often leads to conflicts between running the business and compliance.

Finding and maintaining a balance is key to resolving this inherent conflict and this is where our expertise comes in. Our people are all professionally qualified and have vast practical experience and knowledge of compliance having either worked at

the FCA or as compliance officers for major UK financial services institutions. This combination gives us the ability to understand regulatory requirements and their commercial implications for clients, thus, enabling us provide insight and innovative advice.

Our unique approach focuses on working with clients to devise unique solutions in achieving their business goals whilst ensuring that they remain within the ever changing boundaries of

regulations. And because compliance is all we do, we are well placed to take you through every aspect of the compliance process,

Our philosophy is simple and straightforward: providing you with, clear, direct and commercially sound compliance advice and solutions underpinned by our ethos of Respect, Integrity, Excellence and Innovation. Virtues that enable us, "Make compliance a source of strength for your business and not a source of concern".

Our Services

We offer a wide range of compliance services for UK authorised financial services firm, firms seeking authorisation by the UK regulators, or firms seeking to improve internal compliance structure and strategy and this includes the following:

- Implementation of an effective compliance structure and strategy
- Advice on and interpretation of financial services regulation
- Implementation of an effective anti-money laundering strategy and internal procedures
- Review of internal processes and procedures to highlight areas of weaknesses and make suitable recommendations for remedial actions
- Providing advice on developing the transparency and effective regulation of financial services markets e.g. settlements and trading systems.

Recent Engagement

- FBN Capital Limited - Investment banking & Asset management subsidiary of FBN Holdings Plc – review of compliance systems and controls and drafting Compliance and AML Manuals
- FirstRand Bank (UK) - Corporate and Investment Bank & London branch of FirstRand Bank South Africa – Compliance Monitoring Review
- Manulife Asset Management (Europe) Limited – In house compliance assistance
- GTBank Plc - Wholesale and retail Bank – Advice on on-going compliance with respect to its GDR listing on the London Stock Exchange
- Standard Bank Plc – AML review
- Rand Merchant Bank (UK) – Advice on whether it's UK business is subject to UK financial services regulation.

Aim

At OpenSpaces we aim to be the best and to provide you with compliance advice and solutions that is second to none and will stand the test of time. We never settle for less because we are passionate about compliance.



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Edited by: Dayo Joseph
Contributors: Dapo Ako
Design: Theo' (daviddeji@gmail.com)

T. (UK) +44 7764322560
(Nigeria) +234 705 274 0485

OpenSpaces
Compliance Consultants Ltd
68 King William Street, London
EC4N 7DZ, United Kingdom

E. info@openspacesltd.com
W. www.openspacesltd.com

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