

FSA's Consultation Paper 10/12: Competency and Ethics

Response by Resolve Compliance Ltd

Please direct any comments to angelaamess@resolvecompliance.co.uk

1. *Do you agree with our proposals to introduce an overall time limit of thirty months, within which individuals must be qualified?*

A route to competency should require evidence of an individual's relevant skills, knowledge and experience as well as the holding of an appropriate qualification. We therefore believe that the wider issue of full competency should be included in our response to this question to reflect our more holistic view and put our response in context.

We are of the opinion that the FSA should adopt a balanced approach to introducing an imposed time limit, ensuring that it is flexible enough to cater for different study needs whilst not unduly protracting the time it takes for an individual to pass all modules of a qualification. Resolve Compliance Ltd believes that too tight a time limit e.g. one that is just beyond the expected study time, could put unnecessary pressure on some individuals which could, in turn, impact their ability to study effectively.

We therefore agree in principle with the proposals to introduce an overall time limit of thirty months, within which individuals must be qualified provided that this allows a reasonable period beyond the expected study time (as indicated by the qualification provider) for re-sits/extended study to cater for individual requirements.

Resolve Compliance Ltd is of the view that firms should, as a matter of course within their own T&C framework, consider setting an overall expected timescale for an individual's route to competency, including but not limited to the passing of appropriate exams, taking into account any risk associated with an individual continuing under supervision. This would make clear to those concerned what is expected of them and help minimise the risk of individuals becoming long term "trainees" that require ongoing supervision, which is a drain on business resource and does little to encourage an individual's professional development. The FSA's proposal to impose a deadline for passing appropriate exams may go some way to encourage firms to take this stand point.

Firms will need to consider how they will minimise the risk of individuals having to cease performing their associated regulated activity as a result of failing to pass the necessary exams within the deadline. This may be, for example, by assessing an individual's capability and willingness to study/pass the exams and by providing appropriate support to enable staff to meet their study commitments.

Resolve Compliance Ltd agrees that individuals should not operate under supervision indefinitely and suggests that the FSA considers providing guidance on what action it expects firms to take where an individual fails to meet any appropriate qualification deadline imposed, including whether the firm should impose its own further deadline for eventual qualification and, linking with full competency, at what point should a firm decide that an individual is not suitable for the specified role.

2. *Do you agree that no Transitional Provision is required to accommodate the new thirty month time limit for attaining qualifications?*

Resolve Compliance Ltd agrees that no Transitional Provision is required to accommodate the new thirty month time limit for attaining qualifications; subject to comments in response to Q1 above.

3. *Do you agree that these Transitional Provisions should now be removed on the basis that individuals relying on them will have thirty months (noting activities that involve overseeing on a day to day basis will not be subject to a time limit), provided through a further Transitional Provision, in which to attain a qualification?*

We agree in principle that the FSA should remove existing Transitional Provisions and introduce new Transitional Provisions as this would simplify and align requirements; subject to comments in response to Q1 above and the FSA findings from other consultation responses as to the extent to which existing Transitional Provisions are relied upon.

4. *Do you agree that we should amend APER to clarify our expectations of competence governance within firms as suggested in the draft Handbook text?*

Resolve Compliance Ltd believes that amending APER to clarify FSA expectations of competence governance within firms as suggested would move towards aligning individual responsibilities with firm responsibilities under PRIN 2; however we believe that the phrase “without good reason” as contained in the proposed additional text under 4.2.14E [“Failing to pay due regard to the interests of a customer, without good reason, falls within APER 4.2.2.E”] is ill-defined and would benefit from further clarification to put into context what is considered “good reason”.

5. *Do you think that we should create a separate activity for 'dealing in securities and/or derivatives'?*

No response to this question.

6. *Do you agree that we should add guidance to our Handbook suggesting that firms may wish to implement a TC scheme?*

We agree in principal that the FSA should add guidance to its Handbook suggesting that firms may wish to implement a TC scheme as we believe that an effective TC scheme that has been well designed, is easy to understand and is implemented with appropriate staff training will help promote good training and supervision practice, positive consumer outcomes and demonstrable competence. To aid firms that wish to implement a TC scheme, the FSA should also consider providing guidance on what a good TC scheme looks like, using examples of different types and size organisations.

7. *Do you agree that all the appropriate examination standards should be updated every three years?*

We believe that appropriate examination standards should be regularly reviewed to ensure that they are up to date and relevant; however are not convinced that introducing a set three year cycle across the board is the most effective way forward.

Roles within the financial services sector do evolve; however some more than others and some at a faster rate than others, depending on the nature of the product or service involved, the market and other forces. The FSAs proposal is a one size fits all approach and does not seem to reflect the FSAs own “risk- based regulator” approach.

Resolve Compliance Ltd is not suggesting that examination standards go unchallenged indefinitely but believe that in deciding the appropriate interval after which a standard should be reviewed and updated, the FSA should take into account:

- The nature and extent to which a role has changed since the standard was introduced or last reviewed;
- The nature and extent to which the technical knowledge required to be competent in that role has changed since the standard was introduced or last reviewed;
- The extent of consumer detriment already identified since the standard was introduced or last reviewed; and
- The likelihood and extent of any consumer detriment should the standards remain unchanged.

Where new roles are created, for example as a result of new products being developed, we do agree that new examination standards should be introduced as appropriate.

Resolve Compliance Ltd strongly supports the idea of professional standards and believes that any individual that has passed the appropriate examination that was fit for purpose and has appropriate skills, knowledge and experience to be considered competent in that field, should be considered as a professional in that specific role and not need to sit further exams. Competency should be maintained thereafter through ongoing CPD.

Our opinion is that professionals would typically maintain their knowledge and expertise as part of their day to day role, monitoring changes to the market, products and relevant regulation etc, undertaken through a number of CPD activities as appropriate. This may be, for example, through further reading/study, workshops, seminars etc and supported perhaps by membership of a professional association, of which its code of conduct would also typically require a minimum set of standards.

We believe that financial services professionals should not need to keep jumping through hoops to prove competence in line with the ever changing landscape of financial services regulation; it should be demonstrated by evidence of positive consumer outcomes as a result of good advice and information being given and suitable products being purchased.

8. *Which appropriate examination standards do you think we should review first and why?*

Resolve Compliance Ltd believes the FSA should consider a number of factors in reaching its decision as to which standards should be reviewed first, including but not limited to:

- When the standard was prepared or last reviewed
- The level of customer detriment/market failure in recent years linked to a specific role/product/service
- The level of change in regulation or other factors relating to the subject covered in a standard since its preparation/last review
- The level of change in the nature of a role individuals perform since its preparation/last review, indicating that the standard may no longer be fit for purpose
- The level of perceived or actual risk of customer detriment linked to a specific role/product/service to which an AES applies

9. *Are there any other criteria we should consider when determining whether qualifications meet regulatory requirements?*

No response to this question.

10. *Do you agree that we should add additional descriptions of behaviour to APER as outlined in paragraph 5.7?*

We generally agree that the FSA should add additional descriptions of behaviour to APER; however repeat part of our response to question 4 above:

We believe that the phrase “without good reason” as contained in the proposed additional text under 4.2.14E [“Failing to pay due regard to the interests of a customer, without good reason, falls within APER 4.2.2.E”] is ill-defined and would benefit from further clarification to put into context what is considered “good reason”.

Resolve Compliance Ltd August 2010