

Phoenix Firms

Many firms applying for authorisation do so because of changing circumstances within an existing authorised firm. These circumstances can be wide and varied – ranging from a change of legal status or a restructure because of retirement or commercial reasons, to problems with liabilities emerging within the existing firm.

Regulatory undertaking

With a change of legal status, the directors or the applicant firm's partners can sign the Transfer of Business Undertaking included in the change of legal status application pack. This regulatory undertaking gives us some assurance about the protection of the firm's customers when the client banks transfer to the new firm, usually at nil or little value. Sometimes this undertaking may not be suitable and the directors or partners of the new firm do not sign it. Our authorisation policy is to refer these applications for further consideration. This does not mean the case for not signing it is not valid. It just means these cases may present added consumer risk that we need to consider before making a decision on the application. Our overriding concern in these cases is for the consumer. To that end, the applicant firm needs to put forward suitable arrangements to provide adequate and continuing protection for consumers for any complaints or claims made. This can mean a cash-based provision, if appropriate.

Fair value

Within a limited company, client banks are essentially a corporate asset – often the only real corporate asset of value. And we would expect to see fair value paid to the existing firm if the applicant buys these banks – particularly where this involves the transfer of trail commission. The most important outcome is that consumers are provided with adequate recourse, if necessary and within reasonable bounds, to the full asset value within that limited company.

Approval of directors

When we are dealing with applicant firms seeking to take value out of an existing authorised limited company, our principal concern from an Approved Persons perspective is about the suitability of those in governing functions – namely the directors. This applies both to their role in the existing firm and how that might affect their suitability for their new role with the applicant firm. However, in cases where we consider there has been extreme financial damage to consumers we could take the view that the lack of integrity shown is such that we would not grant approval for any controlled functions involving customers.

In cases where value is taken out of an existing firm, we work closely with our colleagues responsible for supervising and cancelling existing firms, and with the Financial Ombudsman Service – which may be dealing with any outstanding complaints. After taking into account all factors, we decide about the applicant firm and its individual directors. We will grant approval if we think the applicant firm and its directors have acted properly in purchasing the ongoing business of an existing authorised firm.

In cases where a straight sale/purchase is not appropriate, the applicant firm must allow for suitable provisions to be made in dealing with complaints and claims against the existing authorised firm. However, we may consider that suitable arrangements have not been made. We may decide the application has been contrived to allow company assets to be stripped out, or has been structured in a way that the company's liabilities are evaded or consumers disadvantaged. If so, we will take the view that the directors in question have failed to demonstrate the integrity expected of an Approved Person. If the applicant is applying to become an Approved Person we will recommend that their approval is refused. This fits in with our general approach in dealing with directors of firms who seek to avoid liabilities or act to the detriment of consumers.



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England and Wales No. 1920623.
Registered Office as above.