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November 2017

Governance & Professionalism Policy
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Response to Consultation Paper 17/25 – Individual Accountability: Extending the Senior Managers & Certification Regime to all FCA firms

The CFA Society of the UK (CFA UK) represents about 11,000 investment professionals working across the financial sector including portfolio managers, buy-side analysts, sell-side analysts and credit rating analysts, among others. Our mission is to educate investment professionals, to promote high ethical and professional standards and to explain the profession to our stakeholders. For advocacy purposes, our members are represented by several committees including the Professionalism Committee. The Professionalism Committee welcomes the opportunity to respond to the FCA's consultation paper 17/25 on the extension of the Senior Managers and Certification regime (SM&CR).

We respond directly only to a few of the specific questions in the paper, but provide a general response and make some broad comments

We welcome the extension of the SM&CR to all financial services firms. The purpose of the SM&CR is to raise conduct standards across financial markets – to the benefit of individual clients and to society more broadly – by 'making senior people in firms more responsible and accountable for their actions'.

Responsibility and accountability are key elements within CFA Institute's Code of Ethics and Standards of Professional Conduct. The Code of Ethics make it clear that members and candidates <u>must</u>:

- Act with integrity, competence, diligence, respect and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.
- Place the integrity of the investment profession and the interests of clients above their own personal interests.
- Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.
- Practice and encourage others to practice in a professional and ethical manner that will reflect credit on themselves and the profession.
- Promote the integrity and viability of the global capital markets for the ultimate benefit of society.
- Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.

The seven Standards of Professional Conduct then describe specific requirements relating to duties to clients, employers, the market and CFA Institute.

Every member and each candidate signs annually to attest that they have read, understood and agreed to comply with the code and standards. On renewal, members are required to complete a professional conduct statement and must attest that their responses are truthful, accurate and complete. They also acknowledge that failure to comply with the code and standards is grounds for disciplinary action and that failure to cooperate with any CFA Institute investigation is grounds for summary suspension.

In short, CFA Institute's members and candidates have clear personal responsibilities and are accountable to CFA Institute to maintain that commitment.

Given our belief in the power and value of personal responsibility and accountability, we clearly welcome the FCA's intent to assign clear responsibilities and duties to senior managers, to require firms to certify that other key individuals are competent to perform their roles and to apply the basic conduct rules to almost all employees.

In terms of how the FCA might choose to apply the regulations underpinning the Senior Manager's Regime, it was helpful to read the comments delivered by Mark Steward in April 2017.

In listing four practical observations, he confirmed that:

A senior manager is not liable just because the firm has breached a requirement. The senior manager's liability arises because he or she has failed to take reasonable steps to prevent the firm from being in breach and the firm is in breach.

And that

The relevant duty applies not only to acts but also to omissions. Accordingly, a failure to act, which may include a failure to know what a senior manager ought reasonably to be cognisant of, may be enough to constitute a breach.

There is a significant reliance here on what is 'reasonable'. We believe that it would be helpful for practitioners and the market more broadly to have a clearer idea of what might or might not be reasonable. While this will become apparent in time as the body of actions brought by the FCA begins to build, it would be better to provide early guidance on these issues. Consumers would be protected sooner by helping managers to take reasonable steps or to ensure their reasonable knowledge than by relying alone on the preventive power of enforcement actions at a later date.

Responses to specific questions

Q5: Do you agree with our list of Prescribed Responsibilities? If not, please explain why.

It would be helpful to understand more clearly how a senior manager would demonstrate that they had adhered to the responsibility to act in investors' best interests. We believe that this is an appropriate responsibility for a senior manager to hold, but are concerned that, whereas many of the other responsibilities are relatively easier to define and meet, this responsibility only easily observed when it is breached. As a consequence, we expect that a standard form of 'legalese' will come to be used which will likely diminish the regulatory value of the responsibility.

Q9: Do you think the identity of people performing Certification Functions should be made public by firms? If so, which Certification Functions should be made public?

There are practical reasons why we believe that firms should not be obliged to publicise the identities of their employees performing Certification Functions. We hope that firms apply the Certification Functions widely across their organisations. Given turnover and the cost of monitoring and updating a public list, we worry that a requirement to publicise might encourage firms to take a narrow approach to application. We are also unsure as to how publicity would add value? Would consumers be able to use this information if different firms took different approaches to certifying different roles?

Q20: Do you agree with our proposed approach of using the objective criteria set out above to identify firms for the enhanced regime? If not, please explain why and propose alternative approaches.

Q.21: Do you agree with our proposed approach to moving firms between core and enhanced? If not, please explain why.

It would be helpful to know how many firms are currently close to the criteria used to identify enhanced firms – both below and above the levels defined under the various criteria. We would not support criteria which would cause firms regularly to switch between the core and the enhanced regimes. This would add cost and uncertainty to mid-sized firms that may already bear a greater regulatory burden relative to very large firms. It would also not be helpful for a firm's clients to have to be regularly notified of changes to a firm's regulatory requirements as it switched back and forth between different regimes.

We also note that there are some inconsistencies between the IFPRU significant firm and large CASS firm requirements and believe it would be better if these were eliminated.

I trust that these comments are useful and would be pleased to discuss them in person.

Yours sincerely,

Will Goodhart,
Chief Executive
CFA Society of the UK

About CFA UK and CFA Institute

The CFA Society of the UK (CFA UK) represents the interests of more than 11,000 leading members of the UK investment profession. The society, which was founded in 1955, is one of the largest member societies of CFA Institute and is committed to leading the development of the investment profession through the promotion of the highest ethical standards and through the provision of continuing education, advocacy, information and career support on behalf of its members. Most CFA UK members have earned the Chartered Financial Analyst® (CFA®) designation, or are candidates registered in CFA Institute's CFA Program. Both members and candidates attest to adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct.

CFA Institute is the global association for investment professionals. It administers the CFA and CIPM curriculum and exam programs worldwide; publishes research; conducts professional development programs; and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry. CFA Institute has more than 100,000 members in 140 countries, of which more than 90,000 hold the Chartered Financial Analyst (CFA) designation.