

BBA/AFME to response to FCA CP16/26 and 16/27

Guidance on duty of responsibility
and
Apply Conduct Ruled to all non-executive directors

January 2017

On behalf of their members BBA and AFME are pleased to respond to the FCA's consultations papers CP16/26¹ and 16/27².

The BBA is the leading association for UK banking and financial services representing members on the full range of UK and international banking issues. It has over 200 banking members active in the UK, which are headquartered in 50 countries and have operations in 180 countries worldwide. Eighty per cent of global systemically important banks are members of the BBA, so as the representative of the world's largest international banking cluster the BBA is the voice of UK banking.

BBA members manage more than £7 trillion in UK banking assets, employ nearly half a million individuals nationally, contribute over £60 billion to the UK economy each year and lend over £150 billion to UK businesses. BBA members include banks headquartered in the UK, as well as UK subsidiaries and branches of EU and 3rd country banks. The BBA is registered on the EU Transparency Register, registration number 5897733662-75.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

CP16/26 – Guidance on the Duty of Responsibility

Q1: Does the draft guidance in Appendix 1 provide clarity on the FCA's proposed application of the duty of responsibility?

¹ <https://www.fca.org.uk/sites/default/files/cp16-26.pdf>

² <https://www.fca.org.uk/sites/default/files/cp16-27.pdf>

Yes the draft guidance is helpful and we are pleased that it is broadly aligned with the PRA's draft Supervisory Statement PS 28/15, incorporated as Appendix 3 in PRA consultation paper 34/16³.

We suggest a minor amendment as follows:

6.2.9-A G The *FCA* is able to take action against an *SMF manager* under section 66A(5) of the *Act* where:

(1) there has been (or continued to be) a contravention of a relevant requirement by the *SMF manager's firm*;

and the deletion of 6.2.9 E G (13) which requires the outgoing SMF senior manager to take reasonable steps to ensure an orderly handover. We do not think it is reasonable to require an out-going manager, who may not always be leaving on the best of terms with their employer, to ensure that this happens.

We recognise that this will be subject to a test of what can be reasonably expected of a senior manager in the circumstances pertaining at the time but think the deletion of the requirement is preferred.

CP16/27 – Applying conduct rules to all non-executive directors

Q1: Do you agree with our proposal to apply the 5 FCA individual conduct rules and the senior conduct rule 4 to standard NEDs?

We support the extension of the Individual Conduct Rules 1-5 to standard NEDs in RAPs. We agree that it is appropriate only to apply the senior conduct Rule 4 to standard NEDs, given their non-executive status and the fact that they have no managerial duties in relation to specific parts of the bank. We agree that it also introduces an element of fairness in ensuring individuals in the senior echelons of a bank are subject to the same Individual Conduct Rules as their more junior colleagues.

Q2: Do you agree that Senior Conduct rule 1,2 and 3 should not apply to a standard NED unless, as well as being a standard NED, they also fall into one of the other categories of 'senior conduct rules staff' as defined in the Glossary?

Yes.

Q3: Do you agree with our proposal to amend Handbook guidance to Rule 2 to clarify that this rule includes a director's conduct (whether executive or non-executive) when acting as a member of the Board or other governing body or of its committees?

Yes.

Q4: Do you agree that the guidance COCON 1 Annex 1 on the role and responsibilities of NEDs should also apply to insurance firms?

As neither the BBA nor AFME represent insurance companies we do not express a view on this question.

³ <http://www.bankofengland.co.uk/pradocuments/publications/cp/2016/cp3416.pdf>

Q5: Do you have any comments on our proposals to amend column J of the conduct breach report (Form H) to allow us to recognise which conduct breaches have been made by standard NEDs in RAPs?

No. The amendment, and associated timelines, is clear and sensible. We note that the trigger for reporting is a disciplinary sanction following a HR related process. As Notified NEDs are not 'employees' they might not be subject to similar HR processes e.g. written warnings, dismissal and / or remuneration reduction or clawback as an employee.

Terminology

We would welcome alignment of the terminology used by the PRA and FCA when referring to non-authorised NEDs. Currently the terms used by each are either 'Notified' or 'Standard'. It would be helpful if the authorities agreed to keep with one term either Standard or Notified, (we prefer 'Notified') this should alleviate any confusion about the population being discussed.

Responsible Executives

BBA Simon Hills
E simon.hills@bba.org.uk
T 020 7216 8861

AFME Will Dennis
E will.dennis@afme.eu
T 020 7743 9341