

Nigel Fray
Operational and Reporting Policy Team
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

28 April 2010

Dear Nigel,

CP10/3: Effective corporate governance (Significant influence controlled functions and the Walker review)

On behalf of ILAG, I have pleasure in submitting the following comments on the above consultation.

ILAG is a trade body representing members from the Life Assurance and Wealth Management industries. ILAG members share and develop their practical experiences and expertise, applying this practitioner knowledge to the development of their businesses, both individually and collectively, for the benefit of members and their customers.

Our specific comments in relation to the questions for discussion in the paper are noted below.

If you would wish to discuss our response in more detail we would be happy to do so.

Yours sincerely

Mark Searle
Administration Team

Questions

Q1: Do you agree with our proposal to separately identify certain key roles that are performed within the CF1 (director) CF2 (NED) or CF 28 (systems and controls) controlled functions?

Whilst we can understand the pressures which might have contributed to this proposal, on the whole we do not welcome it. It is a retrograde step, restoring previous arrangements which FSA had thought to be inappropriate before sufficient time has elapsed to judge the new ones fairly.

Changes such as these involve costs, often considerable, and the Approved Persons concerned, although anxious to comply with the Rules, tend to be confused and frustrated by constant changes.

Q2: Are there any other key roles we should be identifying?

No the significant influence function is sufficient enough to provide a 'catch all' for important positions of influence that are otherwise not specified.

Although a good case could be made for the inclusion of such functions as the Heads of IT and HR, on balance we still feel that the definition of "significant influence" is sufficiently wide to encompass such functions, which are often outsourced in any case.

Q3: Do you agree that we should separately approve all candidates for a systems and controls function, even if they have, or are seeking, approval to perform a governing function?

Whilst we do not fully welcome the proposal, we agree that in the interests of consistency there might be a case for this, and suggest that this is restricted to larger firms. The proposal may, in some cases, create unintended consequences for smaller firms where it is common for individuals to need to hold more than one AP function, and it could create difficulties if the individual was approved for one but not all of the functions. That said this should not be an issue if it is obvious from the CF1's background and qualifications that they are also able to undertake the SYSC function e.g. an Accountant should be able to undertake either the Finance or Audit function without requiring additional approval.

Q4: Do you agree that we should automatically grant the new controlled functions to individuals already performing the relevant role within their existing approvals?

Yes, we believe that to do otherwise would incur significant cost which is unlikely to be outweighed by the benefits.

Q5: Do you agree that a phased approach of between 3 and 12 months is sufficient for the notification process, and that the Remuneration Code provides an appropriate basis for this phasing?

No, larger firms with many regulated entities and large numbers of APs would require at least 6 months.

Q6: Do you agree that we should extend the proposed CF00 (parent entity SIF) to apply irrespective of the corporate status of the UK subsidiary?

Yes, arguably such individuals should already be CF29 of any company or subsidiary over which they exert influence.

Q7: Do you agree that we should extend the proposed CF00 (parent entity SIF) regime to apply to regulated firms whose parent entity is also FSA-authorized?

We feel the proposals are disproportionate as those affected already have a responsibility and commitment to FSA.

Whilst our argument is not primarily based on costs, there are inevitably cost implications that require consideration.

Q8: Do you agree that these transitional periods are sufficient?

No, these are insufficient for larger firms. Please see our answer to question 5.

Q9: Do you agree that it is appropriate for us to extend CF29 to UK branches of incoming EEA banks accepting retail deposits?

We find it difficult to argue against this proposal.

Q10: Do you agree that our proposed guidance on compromise agreements is useful in clarifying the current position?

We do not oppose the proposal. Our understanding is that the number of instances where this requirement would be relevant is likely to be small, either because most such agreements contain a clause permitting employers to disclose information to help regulatory and other enquiries or because firms would have disclosed the reasons for the Approved Persons leaving employment to FSA before any compromise agreements had been drawn up.

However, in the absence of such a clause we think that a change in the law would be required to give effect to FSA's proposal.

Q11: Do you agree with our proposed guidance on the time commitment required for chairmen and NEDs?

Yes. However, it should be recognised that it is not the number of days that is important, but the quality of what is achieved. We do not disagree that a time commitment must be made, but wonder how this might be monitored given that a percentage of work will, inevitably be undertaken away from the firm's offices, at home for instance.

Furthermore demands on their time will depend on the size, nature, and complexity of each firm and the issues that they have to deal with.

Monitoring will prove both impractical and potentially costly.

Q12: Do you agree that we should delete the guidance in SYSC 2 and 4 on NEDs' responsibilities?

We believe that there should be a clear distinction between the roles of NEDs and Executive Directors.

It would be helpful if the current guidance in SYSC 2 is retained, but clarified by adding to it the language that FSA uses in paragraph 5.3 of CP10/3.

Q13: Do you agree that we should amend our rules to reflect the introduction of the new Corporate Governance Code?

Yes, once the code has come into effect we would assume that FSA would then consult on the amendment of the rules.

We would wish to see that any proposal to extend the Combined Code to regulated firms generally recognises in particular that mutual firms are different and that there is currently ongoing consultation on a revised Code for Life Mutual's.

Q14: Do you agree with the content of our proposed guidance on board risk committees?

Yes. A committee has to be independent from the main Board, this will create closer links, although FSA does not expect every firm to have these committees it would be helpful to have some indication as to where the boundary might lie, and we would welcome clarification as to whether FSA intends to extend the scope of this beyond FTSE 100 listed banks and insurers.

New SYSC Chapter 21 indicates that all firms should consider forming a risk committee but little guidance is given to help firms decide whether, on grounds of proportionality, it is necessary to do so.

Q15: Do you agree with the content of our proposed guidance on CROs?

In line with our response to the previous question we would agree but also ask that there be a degree of proportionality for smaller firms.

We do not think the guidance goes far enough in helping firms to determine whether they are of the size, nature and complexity that would require a CRO. Whilst it is for firms to decide, we understand that FSA is indicating via Arrow visits that firms should be considering this issue, but they give little if any guidance on the question of proportionality. Whilst the paper encourages discussion with Supervisors if a firm is in any doubt, how likely is it that a Supervisor will discourage firms from creating a CRO role?

Ends