

Senior Management Responsibilities – The Challenge Continues

In October of last year, we hosted a Breakfast Briefing on Senior Management Responsibilities . The New Challenges. Since then, the FSA's focus on the role of senior management has intensified further and Consultation Paper 10/3 (CP10/3), published last month, contains significant rule and guidance changes as well as a clear insight into FSA's thinking in this area.

This short note revisits some of the issues that we addressed in the Breakfast Briefing and seeks to bring you up to date with the latest developments.

Further Changes to Significant Influence (SIF) Controlled Functions

FSA is proposing to revisit the categories of SIF Controlled Functions yet again. In part, this will mean reinstating previous categories that were removed when the categories were simplified.

They justify this move by stating that ~~in~~ line with [their] more intrusive supervisory approach, [they] wish to be able to vet and regulated individuals appropriately according to their specific role.+ The main proposed changes are:

- A new CF00 category for parent entity SIFs
- The sub-categorisation of NEDs into more specific roles:
 - Chairman (CF2a)
 - Senior Independent Director (SID) (CF2b)
 - Chairman of the Risk Committee (CF2c)
 - Chairman of the Audit Committee (CF2d)
 - Chairman of the Remuneration Committee (CF2e)
- The re-splitting of the Systems and Controls Function into the :
 - Finance Function (CF13)
 - Risk Function (CF14)
 - Internal Audit Function (CF15)
- An increase in the scope of CF28 to include UK branches of EEA banks

The FSA also indicates that they are considering the introduction of two additional, new SIF roles in response to the issues highlighted by the insolvency of Lehman Brothers; namely, the individual responsible for the protection of client assets and money and the Business Resolution Officer (BRO) responsible for planning the orderly wind down of the business. The FSA plans to address this proposal further in a separate CP in the first quarter of 2010.

Walker Recommendations

In CP 10/3, FSA welcomes Sir David's thorough and insightful conclusions, and Annex 4 of the paper contains a useful table showing FSA's planned contribution to the implementation of each of the Walker Report recommendations.

In addition to changes to the Controlled Functions categories outlined above, new rules and guidance are planned to address the time commitment of NEDs and the role of the Risk Committee and Chief Risk Officer (CRO). The recommendations on remuneration will be addressed in the review of the Remuneration Code planned for later in 2010.

The FSA also uses the CP10/3 to flag that implementation of other Walker recommendations will be achieved not through rule and guidance changes but through the enhanced supervision process. This means even greater focus on:

- The competence and training of SIFs
- Their performance during ARROW interviews
- The balance and diversity of the board
- The evaluation of the board's performance

Non-Executive Directors

The FSA devote a separate section of CP10/3 to NEDs. As discussed above, the new CF2 sub-categories serve to break down the role into more specific functions. FSA also proposes that the current guidance on the liability of NEDs contained in SYSC 2.1.2G and 4.4.4G be removed. Their rationale is that the existing guidance could be misinterpreted and taken to mean that [they] would not hold NEDs responsible for, for example, failing to intervene and challenge the executive. They go on to say that such challenge and intervention [is] a key part of any NEDs responsibilities. NEDs have been warned!

Approving and Supervising SIFs

The FSA also uses CP10/3 to explain in some detail its more intrusive approach to the approval and supervision of SIFs. They clearly state that the ARROW process will be used to review the performance and competence of SIFs in post against the new enhanced standards. CP10/3 also provides a useful insight into the SIF approval process, the interview format, the role of the senior adviser panel and FSA's expectations. It is clear that the responsibility for the recruitment and sponsoring of SIF candidates rests solely with the firm and that it is the firm's responsibility to ensure that the candidate is fit and proper for the role in question. Relationship-managed and higher risk firms who are recruiting new SIFs are advised to read the guidance contained in CP10/3 carefully.

To conclude, it is clear that senior management responsibilities and corporate governance are to remain at the top of FSA's list of priorities for 2010.

Eukleia Training offers a number of on-line training courses specifically aimed at the senior management of FSA regulated firms. These have been updated to take account of the latest developments. We also offer instructor-led senior management and ARROW preparation training.

If you are interested in finding out more about how Eukleia Training can assist you meet the on-going challenges in this area, please contact Liz Hornby on 020 7220 4060 or at liz.hornby@eukleia-training.com.