

**FCA PROPOSES NEW MEASURES TO MAINTAIN  
FOCUS ON INDIVIDUAL ACCOUNTABILITY  
AND CULTURE IN BANKING**  
OCTOBER 2016



On 28 September 2016, the Financial Conduct Authority (**FCA**) marked six months since the implementation of the Senior Managers and Certification Regimes by providing feedback on its implementation so far and proposing measures to further strengthen the regime.

The new measures are part of the FCA's continued focus on culture, and build on initiatives to further empower it to identify and hold senior individuals in banking and insurance firms to account.

This alert will explain the significant impact on the relevant firms and individuals that results from the following FCA publications:

- FCA Consultation Paper ([C16P/26](#)), Guidance on the duty of responsibility: amendments to the Decision Procedure and Penalties Manual;
- FCA Consultation Paper ([CPI6/27](#)), Applying out conduct rules to all non-executive directors in the banking and insurance sectors. The alert will also address the related Prudential Regulatory Authority (**PRA**) Consultation Paper ([CP34/16](#)), on strengthening individual accountability in banking and insurance: amendments and optimisations;
- FCA Policy Statement ([PS16/22](#)), Strengthening accountability in banking and insurance: regulatory references final rules. The alert will also address the related PRA Consultation Paper ([CP27/16](#));
- FCA Discussion Paper ([CPI6/4](#)), Overall responsibility and the legal function;
- Supervisory review of statement of responsibilities and responsibilities maps contained in four Feedback Statements ([FS16/6](#), [FS16/7](#), [FS16/8](#), and [FS16/9](#));
- FCA Consultation Paper ([CPI6/25](#)), Whistleblowing in UK branches of overseas banks; and
- FCA Consultation Paper ([CPI6/28](#)), Remuneration in CRD IV firms: new guidance and changes to Handbook.

These publications propose new rules and guidance that reinforce the importance of individual accountability at the most senior levels of firms. They set out the regulators' expectations on how firms should document responsibilities and provide final rules on regulatory references. Such references allow firms to share relevant information to support their assessment of potential new recruits as fit and proper for their regulated roles.

The publications also propose subjecting the role of general counsel to the Senior Managers Regime (**SMR**) and ensuring that all non-executive directors (**NEDs**) are subject to the conduct rules which impose enforceable behavioural standards, including to act with integrity and due care, skill and diligence.

## BACKGROUND

### New Individual Accountability Regime

On 7 March 2016, the new FCA and PRA Individual Accountability Regime (**IA Regime**) came into effect. The IA Regime governs certain individuals in UK banks, building societies, credit unions, PRA-designated investment firms and branches of foreign banks operating in the UK (**relevant authorised persons** or **RAPs**). The IA Regime was introduced by the Banking Reform Act 2013 and driven by the findings of the Parliamentary Commission into Banking Standard's report, *Changing Banking for Good*.

There are three key elements of the IA Regime - the SMR, the Certification Regime and the Conduct Rules.

The SMR applies to individuals who perform a Senior Management Function (**SMF**) in RAPs (**Senior Managers**). These Senior Managers perform some of the most senior roles in RAPs with SMFs for the Chairman, Chief Executive Officer and Chief Finance Officer, for example, as well as the Chairs of Board Risk, Audit and Remuneration committees. Regulatory pre-approval is required before individuals may commence performing their SMF. RAPs are required to submit a statement which sets out the responsibilities of a prospective Senior Manager (**Statement of Responsibility**). They are also required to develop a Management Responsibilities Map which sets out how responsibilities are allocated amongst SMFs within the firm. Double or dotted reporting lines are highly discouraged. Regulators will consider these documents when determining whether, and to what extent, Senior Managers have carried out their responsibilities.

The Certification Regime applies to all individuals (**Certified Persons**) who are 'material risk-takers' (staff subject to the [Dual Regulated Firms Remuneration Code](#)) and other staff who pose a risk of significant harm to the firm or any of its customers. Certified Persons do not require regulatory pre-approval but must be assessed and certified by their firm as fit and proper before performing their role and on an annual basis thereafter. RAPs must take reasonable care to ensure that no staff member performs a significant-harm function without a valid certificate which enables them to carry out that function.

The third element of the IA Regime are the enforceable behavioural Individual Conduct Rules and Senior Manager Conduct Rules found in the FCA's Code of Conduct sourcebook (**COCON**) and the PRA's Rulebook (together, the **Conduct Rules**). The Individual Conduct Rules require individuals (both Senior Managers and Certified Persons) to act with integrity, diligence, due skill and care and other behavioural standards. The Senior Manager Conduct Rules require Senior Managers to take reasonable steps to control their business and ensure that it complies with the requirements and standards of the regulatory system. The regulators may enforce the Conduct Rules by levying a financial penalty against both RAPS and individual Senior Managers/Certified Persons personally.

The regulators enforce the Conduct Rules differently based on their statutory objectives. The FCA's focus is particularly on protecting consumers and preserving market integrity. Accordingly, the FCA will take action against a much broader range of conduct than protected by the PRA. RAPS are required to notify the regulators when they have taken formal disciplinary action against a person relating to any action, failure to act, or circumstance that amounts to a breach of any conduct rule. From 7 March 2017, the Conduct Rules will apply to all RAP employees excluding ancillary staff (such as receptionists, post room staff etc). A complete list of the Conduct Rules is found in this client alert.

### **A Focus on Culture**

The introduction of the IA Regime is part of the FCA's focus on conduct and culture. In a speech on 12 July 2016, Jonathan Davidson, Direct of Supervision at the FCA, stated that the IA Regime is the "formal embodiment" of the FCA's attempts to establish "a culture of accountability for conduct at the heart of a firm's activities".

When releasing the new publications on 28 September 2016, Andrew Bailey, Chief Executive of the FCA, stated "Six months on and, in a great many cases, firms have made a substantial effort to get this right and embrace the importance of the key principles underlying the Senior Managers and Certification Regime, namely responsibility and accountability". Whilst recognising that a change in culture takes time, Andrew Bailey stated that the FCA will continue to "keep a watchful eye on the progress firms are making".

### **Expansion of the IA Regime across the financial services industry**

On 15 October 2015, HM Treasury published a Policy Paper announcing that the IA Regime would be extended to the whole of the UK financial services industry in 2018; entirely replacing the Approved Persons Regime. The IA Regime currently applies to RAPS and a modified version of the IA Regime also applies to insurers. The announcement by HM Treasury of the expansion of the IA Regime to all authorised persons under the Financial Services and Markets Act 2000 (**FSMA**) brings all investment firms and consumer credit firms in scope. This change also has implications for fund managers who provide investment services or advice under FSMA.

Accordingly, you should consider how the IA Regime would apply to your business, if it does not do so already. DLA Piper has a dedicated regulatory team with extensive experience in advising firms on their obligations under the IA Regime.

### **FCA PUBLISHES CONSULTATION PAPER CONTAINING NEW DRAFT GUIDANCE ON THE DUTY OF RESPONSIBILITY**

The FCA published Consultation Paper (**CPI6/26**) which sets out proposed amendments to the Decision Procedure and Penalties Manual in the FCA's Handbook. If implemented, the proposed amendments will provide useful new guidance on how the FCA will enforce the duty of responsibility.

### **Leaving the Presumption of Responsibility Behind**

The UK Government decided to introduce a statutory duty of responsibility to be applied consistently to all Senior Managers as part of the IA Regime. This duty of responsibility supersedes the much-criticised 'reverse burden of proof' under which Senior Managers would have been liable for a breach of the Senior Managers Conduct Rules where they could not show the regulator that they took 'reasonable steps' to prevent a breach occurring or continuing. This presumption of responsibility was expected to be subject to legal challenge for potential breach of European human rights law. Following the UK Government's decision, the FCA released a statement on 15 September 2015, stating that the presumption of responsibility was "never a panacea" and risked "distracting senior management within firms from implementing both the letter and spirit of the regime".

## The Duty of Responsibility

The Bank of England and Financial Services Act 2016 introduced the duty of responsibility which replaced 'the presumption of responsibility'. The duty of responsibility is now contained in s 66A(5) of FSMA. The duty of responsibility allows the FCA and PRA to take action against Senior Managers if:

- they are responsible for the management of any activities which result in their firm contravening a regulatory requirement; and
- they do not take such steps as a person in their position could reasonably be expected to take to avoid the contravention occurring or continuing.

Importantly, the duty of responsibility requires the regulators to prove a contravention of a regulatory requirement by the firm, and that the Senior Manager was responsible for the management of any activities of the firm in relation to that contravention. The burden of proof now lies with the regulators to show that the Senior Manager did not take such steps as a person in their position could reasonably be expected to take to avoid the firm's contravention occurring.

The Senior Managers Conduct Rules require Senior Managers to take reasonable steps to: (a) ensure that the business of the firm is controlled effectively; (b) that the business complies with regulatory requirements; and (c) that any delegation of responsibility is appropriate and properly overseen. The regulators may take disciplinary action against a Senior Manager for breaching the Conduct Rules, being knowingly concerned in a firm's contravention of a regulatory requirement, or for breaching the duty of responsibility, or a combination of the above.

## Summary of FCA Proposals

The FCA's proposed guidance sets out the circumstances in which it is able to take action against a Senior Manager. The guidance also indicated that Senior Managers will not be bound by findings of the FCA's Regulatory Decisions Committee which they were not "privy or party to".

The FCA provided a non-exhaustive list of the considerations that may be relevant when determining whether a Senior Manager was responsible for the management of the activity which resulted in the contravention of a regulatory requirement. For example, the FCA may consider the Senior Manager's actual role and responsibilities by referring to documents stored

within the firm, how the firm operated and how responsibilities were allocated in practice. It may also consider the relationship between the responsibilities of the Senior Managers at the firm in addition to considering the Statement of Responsibility and Management Responsibilities Map.

The FCA clarified that, when considering the criteria of whether steps could have been reasonably taken, it would consider the steps that another Senior Manager could have reasonably taken at that time, in that specific Senior Manager's position, with that Senior Manager's role and responsibilities. This flexible approach is welcomed and means that Senior Managers should benchmark and compare proposed reasonable steps with a view to satisfying regulatory expectations.

The FCA's proposed guidance also includes a non-exhaustive and wide-ranging list of the factors it will consider when determining whether or not a Senior Manager has taken such steps as a person in their position could reasonably have been expected to take to avoid the regulatory breach. There are 18 different factors listed in CPI6/26 which range from considering the nature, scale and complexity of the firm's business to considering whether the Senior Manager acted in accordance with their statutory, common law and other legal obligations.

These proposed considerations demonstrate the FCA's pragmatic and realistic approach to providing guidance on the duty of responsibility. If implemented, these lists will provide a helpful indication of the factors that the FCA may take into account when investigating whether to take action against Senior Managers.

## Next Steps

The FCA has asked that all comments on its proposals set out in CPI6/26 are submitted by 9 January 2017. The FCA has indicated that, after it has considered the feedback to the CPI6/26, it plans to publish a policy statement in early 2017 setting out guidance on how it will enforce the duty of responsibility. If these proposals are implemented, Senior Managers will need to be aware of, and comply with, the FCA's guidance, unless the Senior Manager has received specific legal and regulatory advice about where their reasonable steps will still meet regulatory expectations.

As indicated by the FCA's proposed guidance, Senior Managers should ensure that an accurate Statement of Responsibility is submitted and kept updated according to their actual role and responsibilities. The Management

Responsibilities Map should mirror the responsibilities contained in the Statement of Responsibility. Ensuring these documents are up-to-date enables the FCA to understand the current scope of what is included (and what is not included) in a Senior Manager's responsibilities. As a result, the FCA is less likely to find Senior Managers responsible for a contravention of a regulatory requirement that is expressly outside the scope of their responsibilities.

## FCA AND PRA PROPOSE TO APPLY CONDUCT RULES TO ALL NON-EXECUTIVE DIRECTORS

The FCA published Consultation Paper (**CP 16/27**) which proposed the extension of the FCA COCON to all NEDs in banks, building societies, credit unions and dual-regulated investment firms (relevant authorised persons) and insurance firms. The PRA has also published Consultation Paper (**CP 34/16**) which also consults on extending the Conduct Rules to relevant firms and insurers.

These proposals resolve an ongoing debate regarding the application of the Conduct Rules to NEDs. If the proposals are adopted, NEDs should be alert to their additional legal and regulatory obligations, as well as being aware of the possibility of regulatory fines against them personally for failing to meet their duties.

### Present Application of the Conduct Rules

There has, for a long time, been one notable exemption from the application of the Conduct Rules. NEDs who are neither the Chairman, Senior Independent NEDs, nor the chairs of board committees (referred to as **Standard NEDs**) have not been accountable to the regulators for any breach of the Conduct Rules.

From 7 March 2017, the Individual Conduct Rules will apply to all banking sector staff who do not perform a SMF and are not Certified Persons. The PRA notes in CP 34/16 that it would be 'unusual' for the Conduct Rules to apply to relatively junior employees from 7 March 2017 but not Standard NEDs.

### Changed Regulatory Approach to NEDs

The policy objective underlying the IA Regime is to enhance individual accountability and corporate culture. The current omission to include NEDs in the application of the Conduct Rules undermines these objectives and results in the inconsistent position that relatively junior staff are subject to the Individual Conduct Rules whereas NEDs are not. Not applying the same high behavioural

Conduct Rules to both junior and more senior staff sends the wrong regulatory message on culture, values and individual accountability. The driving impetus for the IA Regime was the Parliamentary Commission on Banking Standard's Report, *Changing Banking For Good*, which has identified that "non-executive directors in systemically important financial institutions have a particular duty to take a more active role in challenging the risks that businesses are running and the ways that they are being managed". Failing to make Standard NEDs accountable for failing to meet their duties is a major gap in the regulatory regime.

The regulators had initially proposed in [FCA CP 14/13](#) and [PRA CP 14/14](#) that all Standard NEDs be in scope of the SMR and captured under SMF15. However, following consultation, the position was revised in [FCA CP 15/5](#) and [PRA CP 7/15](#). In CP 15/5, the FCA noted at 1.18 that "arguments in favour of excluding Standard NEDs from the SMR outweigh those in favour of including them". The FCA noted that Standard NEDs do not have specific responsibilities and that the presumption of responsibility would encourage Standard NEDs to take a more "executive" role contrary to their purpose as independent members of the Board. The unfortunate corollary of this decision was to exclude Standard NEDs from being individually accountable under the Conduct Rules. Only 'Approved NEDs' who perform SMFs like SMF9 Chairman and SMF10 Chair of Risk Committee are directly accountable to the regulators for the Conduct Rules. SMF15 remains unused and conspicuously absent from the list of FCA and PRA designated SMFs. As an interim fix, the PRA in Policy Statement [PS 16/15](#) required Standard NEDs to be contractually obliged to their firms to comply with Individual Conduct Rules 1–3 and Senior Management Conduct Rule 4. Despite the replacement of the presumption of responsibility with the duty of responsibility, there appears to be no regulatory appetite to subject Standard NEDs to the SMR.

The inability of the regulators to enforce the Conduct Rules against standard NEDs does not mean standard NEDs have been totally unaccountable for their decisions. They are bound by their common law directors duties and by their duties under the Companies Act 2006. Many of these duties are similar to the Conduct Rules, such as the statutory duty to exercise reasonable care, skill and diligence overlapping with Individual Conduct Rule 2 to act with due skill, care and diligence. A key difference however, are the lower hurdles that the regulators need to overcome in order to levy a financial penalty as a result of a breach of the Conduct Rules.

## Changing the Regulatory Approach to Standard NEDs

As originally drafted, section 64A of FSMA allowed the regulators to apply the Conduct Rules to:

- individuals subject to pre-approval by regulators (including SMFs); and
- individuals who are employees (as defined in section 64A(6) of FSMA) of RAPs.

As Standard NEDs were not subject to pre-approval by the regulators and did not meet the definition of an 'employee' in FSMA, they were excluded from the application of the Conduct Rules.

This legislative gap was closed with the Bank of England and Financial Services Act 2016, which amended section 64A of FSMA to include 'directors' - thereby empowering the regulators to take enforcement action for misconduct against all NEDs for breach of the Conduct Rules regardless of whether they perform a SMF or other controlled function.

## New Regulatory Framework and Regulatory Proposals

The FCA, in CP 16/27, proposes to exercise its recently allocated power and make the following proposals:

1. Standard NEDs will be subject to the Individual Conduct Rules set out in COCON 2.1. These rules include the duty to act with integrity (Rule 1), the duty to act with due skill, care and diligence (Rule 2) and the duty to be open and cooperative with regulators (Rule 3).
2. Senior Conduct Rules 1, 2, 3 should not apply to standard NEDs, unless a person is both a notified NED and also falls into one of the other categories of 'Senior Conduct Rules Staff' as defined in the Glossary of COCON (i.e. a SMF manager, an employee of a relevant authorised person who performs the function of a SMF manager, an approved person performing a controlled function in a Solvency II firm or a small non-directive insurer where the controlled function is a significant-influence function, or a standard non-executive director of a relevant authorised person, a Solvency II firm or a small non-directive insurer).
3. Additional guidance to individual conduct rule 2 is suggested in order to clarify that this rule applies to a director when acting as a member of the Board and any other governing body and any of that body's committees.

4. Applying senior conduct rule 4 (**SCR4**) to all standard NEDs. SCR4 imposes the duty to disclose any information of which the FCA or PRA would reasonably expect notice.
5. The extension of the COCON guidance on the role and responsibilities of NEDs to insurance firms.
6. Column J of the conduct breach report (Form H) should be amended in order to identify which conduct breaches are being notified by standard NEDs.

Similar proposals are put forth by the PRA in CP 34/16.

Both consultations will close on 9 January 2017. After feedback from the consultations has been received and reviewed, the final rules will be issued later in 2017.

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### INDIVIDUAL CONDUCT RULES

### SENIOR MANAGER CONDUCT RULES

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**ICR 1:** You must act with integrity

**SMCR 1:** You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively

**ICR 2:** You must act with due skill, care and diligence

**SMCR 2:** You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system

**ICR 3:** You must be open and co-operative with the FCA, the PRA and other regulators

**SMCR 3:** You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively

**ICR 4:** You must pay due regard to the interests of customers and treat them fairly (FCA only)

**SMCR 4:** You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

**ICR 5:** You must observe proper standards of market conduct (FCA only)

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## OVERALL RESPONSIBILITY AND THE LEGAL FUNCTION

The FCA issued a Discussion Paper (**DP 16/4**) on the overall responsibility and the legal function under the SMR. The current legislative and regulatory framework does not contain any requirement that the role of the general counsel be designated as a Senior Manager within the SMR. Despite this, considerable industry debate and concern has arisen where general counsel have still been caught within the IA Regime by virtue of being classified within **SMF18** - Other Overall Responsibility function.

The IA Regime requires a Senior Manager to have overall responsibility for each area of the firm's business. This may extend to the legal function within each RAP. Where a specific SMF does not exist to cover each area of the business, the regulators use SMF18 as a general catch-all to ensure complete coverage of a firm by a responsible Senior Manager. In practical terms, the head of the legal function may be appointed as a SMF18, if not already classified as performing another SMF.

On 10 May 2016, the British Bankers' Association (**BBA**) and Association of Financial Markets in Europe (**AFME**) jointly wrote to the FCA questioning the appropriateness of the inclusion of the legal function in the SMR. They noted that the role was fundamentally advisory and not executive in nature and did not fit into the statutory definition of SMFs in section 59ZA of FSMA. That provision generally requires SMFs to be "managing one or more aspects" of a RAP's affairs where those aspects (may) involve "a risk of serious consequences" to either the RAP or business or other interests in the UK. The BBA and AFME warned that where a general counsel was required to demonstrate reasonable steps have been taken by them, there was a "real risk that would require a waiver of (legal professional) privilege".

The FCA acknowledged these concerns in DP 16/4 but moved to reassure industry that legal safeguards, such as legal professional privilege, will be maintained. The FCA acknowledged that section 59ZA of FSMA does not extend to giving legal advice instead noting that it was the management of the function and not the provision of legal advice that brings the head of the legal function into the SMR. Having overall responsibility for the legal function is likely to come within section 59ZA, as it will involve management of that function.

In DP 16/4, the FCA noted the concerns about using privileged information to demonstrate "reasonable steps" may have been driven by the formerly applying presumption of responsibility. The replacement of the presumption with the duty of responsibility now places the burden on the regulators to prove whether or not reasonable steps have been taken - not the Senior Manager. The FCA also reassured the legal profession that section 413 of FSMA protects legal privilege by providing that no power under that Act can be used by the FCA to require the disclosure of "protected items". The FCA did not express a final view but invited feedback from stakeholders on the FCA's policy analysis, as well as views on whether the legal function should be included within SMR. Interested parties should submit their response by 9 January 2017.

## FCA PUBLISHES FINAL RULES ON REGULATORY REFERENCES IN A POLICY STATEMENT

The FCA and PRA have published separate Policy Statements (FCA: **PS 16/22** and PRA: **PS 27/16**) relating to regulatory references. Regulatory references are a key tool in allowing firms to share relevant information on individuals with each other to support their assessment of potential new recruits as fit and proper. Regulatory references are designed to counter the risk to the financial system if individuals who have been shown not to be fit and proper for particular positions or have engaged in unacceptable conduct can simply move between firms without relevant information about them being disclosed to future employers.

In their earlier consultation on the IA Regime ([FCA 15/31](#) and [PRA 36/15](#)), the regulators had set out a standard form template for regulatory references which was required to be used where a firm sought a regulatory reference for a particular individual. Importantly, the template prescribed the key information that a firm should be required to supply another firm in respect of an individual. The regulators had not finalised their position when the IA Regime commenced, so they put in place an interim measure applying existing reference requirements to RAPs and proposing to revisit the issue with final rules.

These final rules are now contained in PS 16/22 and PS 27/16. Generally, they require firms to seek (or update) regulatory references from all previous employers for the last six years irrespective of the firm type or regulated status. The rules apply regardless of whether the individual seeking to perform a regulated role is a contingent/contract worker or a full-time employee.

The FCA did recognise however that regulatory references are not required for intra-group moves (between entities within the same corporate group) where the group has centralised records or alternative means of sharing relevant information as part of the fit and proper assessment of candidates.

The regulators updated and simplified the standard regulatory reference template by, for example, removing the requirement to provide details of an employee's responsibilities in addition to their role. The template has also been updated to allow them to be made on a group basis as opposed to only being able to be completed by the particular legal entity that employed the individual performing the regulated role. The final template will be inserted as 22 Annex 1R of the FCA's Senior Management Arrangements, Systems and Controls Sourcebook.

The regulators have provided for a five month transitional period to allow firms to take the time necessary to change their processes and systems. Firms will therefore need to be ready to comply with the full regulatory reference regime on 7 March 2017.

## FCA STATEMENT OF RESPONSIBILITIES AND MANAGEMENT RESPONSIBILITIES MAP

The FCA engaged in an in-depth supervisory review of large range of Statements of Responsibilities and Management Responsibilities Maps and provided the following:

- Feedback for all UK banks, investment firms and building societies (FS16/6)
- Feedback for branches of banks from outside the EEA (FS16/7)
- Feedback for branches of banks from within the EEA (FS16/8)
- Feedback for credit unions (FS16/9)

The FCA found that most firms had engaged with the challenges of implementing the IA Regime and had invested a considerable amount of effort in preparing for it. In the vast majority of cases, firms had considered how the SMR applied to them and had identified Senior Managers and allocated SMFs and prescribed responsibilities appropriately.

The FCA did however identify a number of issues where some firms were not meeting the relevant rules and guidance as set out in the FCA Handbook. In summary:

- In a few cases, it was not clear whether firms had identified sufficiently senior individuals to hold SMFs or particular responsibilities
- In some firms' submissions, it was not clear that all the business functions and activities of the firm had been allocated as overall responsibilities. Where responsibilities had been shared or divided, Statements of Responsibilities and Management Responsibilities Maps were not always clear enough to understand how the sharing or division of responsibilities worked
- Responsibilities, as given in the Statement of Responsibilities and Management Responsibilities Maps, were not always clear. Some firms did not provide enough detail in these documents to delineate the scope of an individual's responsibilities. In other cases, they were not sufficiently focused on what an individual was actually responsible for. In a few cases, Statements of Responsibilities were not consistent with management responsibilities maps
- There was wide variation in the quality of Management Responsibilities Maps
- In a number of cases, Management Responsibilities Maps did not give enough information around governance arrangements, particularly where the RAP was part of a wider corporate group.

Firms should review their Statement of Responsibilities and Management Responsibilities Maps in light of this feedback and, where necessary, revise them using the rules and guidance provided by the Regulators. If this review results in a significant change to the responsibilities of a Senior Manager, firms should notify the FCA using [Form J](#).

## REMUNERATION IN CRD IV FIRMS

The FCA published a Consultation Paper (**CP 16/28**) introducing proposals to amend its Handbook rules and guidance. The FCA intended for firms subject to the CRD IV Directive (2013/36/EU) to better understand the rules that apply to their remuneration policies and practices. In December 2015, the European Banking Authority (**EBA**) published its guidelines on sound remuneration policies. In its consultation, the FCA introduced some changes to remove inconsistencies with the EBA guidelines and proposed a new non-Handbook guidance, in order to ensure that firms implement sound remuneration policies based on sound governance processes. The FCA touched upon material risk takers, governance, groups and variable remuneration. It also simplified its guidance on proportionality.



Firms must ensure their compliance with the EBA guidelines by 1 January 2017. Interested parties can respond to the FCA questions by 28 November 2016.

## WHISTLEBLOWING IN UK BRANCHES OF OVERSEAS BANKS

The FCA issued a Consultation Paper (**CP 16/25**) on whistleblowing in UK branches of overseas banks. The FCA and the PRA published new rules in October 2015, requiring internal whistleblowing arrangements to be introduced by banks, building societies, credit unions, PRA-designated investment firms and insurers. These rules were designed to formalise for UK firms the generally good practice which already exists in the financial services industry. Their aim is to encourage a culture in which individuals feel comfortable raising concerns and challenging poor practice and behaviour.

Since these rules did not apply to UK branches of overseas banks, the FCA presented its approach for the application of whistleblowing requirements to such branches, excluding however, UK branches of overseas insurers.

The FCA proposes that:

- UK branches of overseas banks must inform their UK-based employees about the FCA and PRA whistleblowing services;
- where a branch of an overseas bank sits alongside a UK-incorporated bank that is subject to the FCA whistleblowing rules, the UK-based staff must be informed of the subsidiary's whistleblowing arrangements; and
- UK branches of overseas banks are not required to implement any other of the FCA rules relevant to whistleblowing.

The consultation closes on 9 January 2017. The FCA will publish its final rules in a policy statement, after it has considered the feedback received.

## HOW CAN WE ASSIST YOU

In light of the FCA's focus on corporate cultural reform and individual accountability, we can advise and assist you in order for you to meet these regulatory obligations.

DLA Piper has a dedicated regulatory team with extensive experience acting for the financial services and financial market participants, and dealing with complex regulatory matters. We have extensive experience in advising both companies and individuals on the scope of their responsibilities, dealings with regulators and what constitutes their "reasonable steps".

If you would like advice on your regulatory compliance or dealings with the FCA and/or the PRA, please contact **Michael McKee, Ian Mason, and/or Chris Whittaker**.

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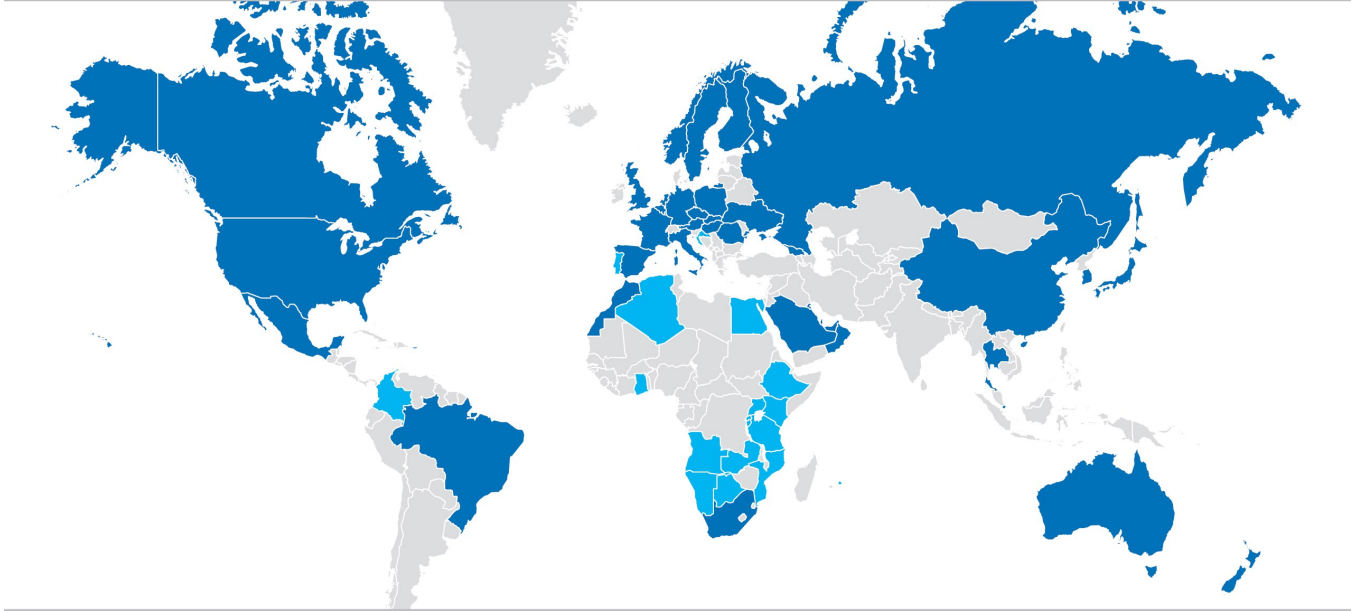
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