

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Financial Conduct Authority
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Dear Emily,

CP15/5 – Approach to non-executive directors (NEDs) in banking and Solvency II firms & application of the presumption of responsibility to Senior Managers in banking firms.

This is the Financial Services Consumer Panel's response to the proposals outlined in CP15/5.

The Panel believes that all relevant staff should be included within the scope of the new Senior Managers Regime (SMR). The primary purpose of the regime is to prevent misconduct from occurring by ensuring staff are competent to perform their roles. The same, therefore, must apply to NEDs: NEDs must be competent to perform their role of providing independent oversight and constructive challenge.

The Companies Act 2006 provides no legal distinction between executive and non-executive. NEDs, therefore, have the same legal duties, responsibilities and potential liabilities as their executive counterparts. It follows that NEDs are subject to the codified duties of directors contained in the Companies Act 2006 in the same way as executive directors. We therefore see no reason why certain NEDs should be exempted from prior approval, conduct rules or the presumption of responsibility.

We disagree that applying the regime to all NEDs could prompt them to take on executive responsibilities, which would in turn compromise their independence. NEDs have a responsibility to act in accordance with the company's terms of reference. Their independence of the management of the company is of utmost importance, and the ability of the NED to distinguish in principle and practice between oversight and executive action is a core competence.

Yours sincerely



Sue Lewis
Chair
Financial Services Consumer Panel