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Dear Katharine,

CP15/9 – Strengthening accountability in banking: additional guidance

This is the Financial Services Consumer Panel's response to the proposals set out in CP15/9.

The Panel remains disappointed that some NEDs will not be included within the scope of the Senior Managers Regime. As we have already said in our response to CP15/5¹ the Panel believes that all relevant staff, including NEDs, should be included within the regime. The Panel is concerned that we might otherwise end up with a two tier concept of non-executive directorship, which could be at odds with "universal" directors' duties.

The primary purpose of the regime is to prevent misconduct by ensuring staff are competent to perform their roles. NEDs are there to provide independent oversight and constructive challenge. Consumers expect the non-executive management of firms they entrust their money with to perform this role with competence. There have been a number of examples of recent failures where some NEDs have apparently been unable to do so.

We would also note that The Companies Act 2006 provides no legal distinction between executive and non-executive directors. 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.

While the Panel remains supportive of the new Certification Regime for all banking staff with a 'significant harm' function, we are still concerned about how these rules will be enforced in practice. We support the proposal that all line managers of certified persons should be certified themselves. However, success of the new rules will be dependent on the will of senior managers across the industry to take responsibility for their implementation. Full transparency from firms and clear and regular reporting of any breaches, are necessary to ensure staff are not able to fall through the gaps. Middle managers should not be able to move between firms, under the radar of this regime.

We hope the FCA will be proactive in its supervision of firms to ensure that the new rules are fully implemented in a meaningful way.

Yours sincerely



Sue Lewis
Chair
Financial Services Consumer Panel

¹ https://www.fs-cp.org.uk/sites/default/files/fscpr_response_ned_senior_managers.pdf