FCA Practitioner Panel

Capital Markets Policy Team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

22 October 2021

Dear Sir/Madam,

Practitioner Panel Response to CP 21/24: Diversity and inclusion on company boards and executive committees[1]

In our response to the FCA and PRA's joint discussion paper on diversity and inclusion earlier this year we emphasised that this will be a defining issue of a generation, both in a moral as well as a business context, and that it is vital that the regulators should be involved in driving progress forward. In particular, we commend the proposed guidance on standardising reporting on this issue. As we emphasised in our response to the joint consultation, the regulator is uniquely positioned to set the perimeters required to ensure the industry moves forward in a consistent manner. The Panel welcomes the aims and direction of travel of these proposals, although we do have some reservations which we have detailed below. These issues do of course affect many more companies than this consultation addresses and go much wider than gender and ethnicity. However, we recognise that these proposals are only a first step in addressing this much broader challenge.

Our key message is that the FCA should avoid being too prescriptive in its approach and seek to ensure its recommendations focus on the macro-outcomes we need to see to enable change. In particular we note that the definition of 'senior Board positions' (Chair, CEO, SID or CFO) is too narrow and does not consider the importance of other key roles on the Board such as the chairs of key sub-committees. More flexibility in implementation, within broad guidelines, will, in our view, achieve better outcomes for diversity and inclusion than meeting very narrowly defined targets and we believe this is already demonstrated by the success of initiatives like the Hampton Alexander Review. It will also allow for a more proportionate, and scalable, approach amongst smaller companies which typically have smaller Boards and Executive teams, including those which have the potential to grow.

The FCA should also consider the timeframe companies will have to comply with the new rules and the unintended consequences of implementing such changes within such a short timeframe. We wholeheartedly support the importance of driving greater diversity in the most senior levels of our industry. However, we note that unfortunately the diversity of existing Boards and the pipeline of future talent does not necessarily support the achievement of this ambition within a tight timeframe without the risk of inadvertently encouraging companies to leverage practices such as positive discrimination. The majority of UK listed companies have a 31 December year end. If the proposed timetable is followed and final rules are published late in 2021 then companies wishing to "comply" with the new targets rather than explain non-compliance would have little time to achieve this. We recommend that these new provisions be effective for reporting periods commencing on or after 1 January 2023 at the earliest. Another option would be to explore introducing these requirements through the Corporate Governance Code rather than via the listing

[1] https://www.fca.org.uk/publication/consultation/cp21-24.pdf

rules, as this Code has more of a history of adopting a 'comply or explain approach' meaning companies may be more comfortable to 'explain' whilst they implement the required changes in their organisation.

We also advise against using regulation to enforce a link between remuneration and the achievement of diversity targets, as we believe this can be counterproductive and potentially send the wrong signals about the importance of being a diverse and inclusive business. Instead, we recommend an update to the Corporate Governance Code to mandate that firms update their reward principles and policies to support the values and outcomes we are looking to achieve here. The Code should also be utilised to ensure companies are transparent about these practices and publish their diversity policies and diversity statistics. Best practice can then be used to identify where key targets should lie. This approach will enable key stakeholders, such as investors, to hold companies to account to drive long-term, sustainable change as it will create an environment in which competitive forces naturally shift expectations and drive greater adoption of best practice. We believe this is likely to change behaviours more effectively, produce more consistent practices and create targets which can adjust in an agile manner as the expectation for greater diversity changes over time.

Yours faithfully,

[signed]

Paul Feeney
Chair, FCA Practitioner Panel