

By online survey

**Financial Conduct Authority – "Diversity and Inclusion in the Financial Sector - Working Together to Drive Change" Consultation.**

**Link:** [CP23/20: Diversity and inclusion in the financial sector – working together to drive change | FCA](#)

18<sup>th</sup> December 2023

Dear Sir / Madam,

The Chartered Governance Institute UK & Ireland is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead effective governance and efficient administration of commerce, industry, and public affairs working with regulators and policymakers to champion high standards of governance and providing qualifications, training, and guidance. As a lifelong learning partner, the Institute helps governance professionals to achieve their professional goals, providing recognition, community, and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and in many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in companies' governance arrangements. They are therefore well placed to understand the issues raised by this consultation document. In preparing our response we have consulted, amongst others, with our members. However, the views expressed in this response are not necessarily those of any individual members, nor of the companies they represent.

Our views on the questions asked in your consultation paper are set out below.

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## **General comments**

We have responded to this consultation on the assumption that the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) persist with these proposals.

Our view is that they should not at this stage and we are surprised that there may be an intention to do so, given the decision of government to suspend the introduction of new regulations pending the completion of the review of non-financial reporting, and the sensible response of the Financial Reporting Council (FRC) to that decision.

Whilst we and many of our members do not agree with a lot of the arguments being put forward by those who see the UK regulatory and governance system as a disincentive to companies to list or domicile here, with a consequent impact on the growth of UK plc, it cannot be denied that they have a case. It would seem appropriate, therefore for the FCA and PRA to postpone action in this area until a way forward has been defined by the government behind which all relevant regulators, can develop consistent and complementary requirements.

While we have no objection to the FCA and PRA developing regulations to manage the behaviour of organisations in regulated markets – for example, the recent rules about greenwashing investment products, we do not believe it appropriate for them to develop rules like these which interfere with the way in which companies are managed and, in particular, which require reporting as we believe that should be a matter for the Financial Reporting Council. Our feedback should be read in that context.

This is not because we are opposed to measures to improve diversity and inclusion (D&I), on the contrary, we believe it very important. However, we do not see any material difference between D&I in the financial sector and D&I in any other sector of the UK market. A properly thought through and joined up approach from government and all relevant regulators will be much more effective in achieving our common goals.

## **Specific questions in the consultation form.**

### **Chapter 3 - Overall Approach**

**Q1. To what extent do you agree that our proposals should apply on a solo entity basis?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

As noted above, we do not agree that the FCA should be creating reporting obligations for issuers. However, if the FCA insists on doing so, then it would be more helpful were the proposals to apply across a group. While the solo entity approach is beneficial for companies operating as standalone entities without subsidiaries or related entities, it becomes more complicated for larger corporations. Adhering to the proposed requirements in such scenarios becomes more intricate, heightening the risk of issues such as duplication.

Moreover, we believe that companies should have the freedom to decide whether to apply a consistent approach across a group should they choose to do so. This flexibility may pose challenges for the FCA when measuring the

achieved targets, as there will be a high degree of variability from one company to another in the data gathered, but this seems a minor issue compared with the flexibility for companies to take the approach that they believe works better for them.

**Q2. To what extent do you agree with our proposed proportionality framework?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

The proposed framework seems proportionate.

**Q3. Are there any divergences between our proposed regulatory framework and that of the PRA that would create practical challenges in implementation?**

In some instances, the regulatory proposals include different metrics and definitions, and this could create practical challenges.

For example, the FCA adopts a flexible approach and does not enforce specific plan details, whereas the PRA takes a more prescriptive approach.

Under the PRA, companies are required to meet minimum expectations for their D&I strategy, including core values, culture, and commitment to diversity. Firms must establish clear objectives, measurable goals, and an improvement plan. Additionally, the PRA recommends the creation of a new senior manager role responsible for the company's D&I strategy and outlines expectations for risk and control functions. The PRA also suggests considering behaviour patterns in fitness and propriety assessments.

On the other hand, the FCA does not prescribe a one-size-fits-all approach to D&I maintaining a flexible approach and refraining from amending rules to specify D&I under a particular Senior Management Function.

For firms that are dual-regulated, this could create an unnecessary regulatory burden, because in this case, the more prescriptive rules of the PRA would apply creating a lot more compliance work for some companies.

**Q4. To what extent do you agree with our definitions of the terms specified?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

The definition of the terms is sound. However, the FCA could expand the list of protected characteristics to include what, for the time being, are non-protected characteristics, as this status may change in the future,

making them protected. This is because there have been ongoing discussions in recent years to broaden the scope of protected characteristics under the UK's Equality Act 2010. This expansion is intended to offer improved protection against discrimination based on an extended range of personal characteristics.

We acknowledge the practical challenges this may present, and it might require a staggered approach over time to expand the list of protected characteristics. However, such an approach would demonstrate a more strategic and measured progression over rigid policy implementations.

#### **Chapter 4 - Proposals for firms of any size**

##### **Q5. To what extent do you agree with our proposals to expand the coverage of non-financial misconduct in FIT, COCON and COND?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

We agree with the proposal to expand the coverage of non-financial misconduct in FIT, COCON, and COND. However, guidance needs to be balanced and neutral enough to steer clear of becoming a sort of moral compass. Moreover, considering the latitude of the definitions, a staggered approach to implementation would be helpful.

##### **Q6. To what extent do you agree with our proposals on data reporting for firms with 250 or fewer employees, excluding Limited Scope SM&CR firms?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

We agree with the proposal. However, it would be better if the reporting window was expanded to six months.

#### **Chapter 5 - proposals for large firms and for CRR and Solvency II firms of any size**

##### **Q7. To what extent do you agree with our proposals on D&I strategies?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Q8. To what extent do you agree with our proposals on targets?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Q9. To what extent do you agree with the date of first submission and reporting frequency?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

We agree with the date of the first submission and reporting frequency. However, we suggest that a staggered approach might be more practical due to the large amount of data that needs to be submitted. For example, an annual submission for the report on the mandatory demographic characteristics and a two or three-yearly submission for the report on the mandatory demographic characteristics.

**Q10. To what extent do you agree with the list of demographic characteristics we propose to include in our regulatory return?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Q11. To what extent do you agree that reporting should be mandatory for some demographic characteristics and voluntary for others?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

We agree that reporting should be made mandatory for some demographic characteristics and voluntary for others. However, it should be with the aim of making all demographic characteristics mandatory over time, using a staggered approach to reporting.

**Q12. Do you think reporting should instead be mandatory for all demographic characteristics?**

- Yes
- Neutral
- No

**Please provide any further detail you would like us to consider in relation to your response.**

We understand the importance of bringing about change but implementing mandatory reporting for all demographics can be challenging and lead to a mere tick-box exercise instead of significant change. To prevent this, we recommend a phased approach with incentives for early adopters, but no penalties for those who choose not to participate.

**Q13. To what extent do you agree with the list of inclusion questions we propose to include in our regulatory return?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

As noted above, we do not agree that the FCA should be creating reporting obligations for issuers. However, if the FCA insists on doing so, then we agree with the list of inclusion questions in the regulatory return. However, some of our members would appreciate further guidance, or need to identify, where categories of employees might overlap to ensure no distortion in reporting.

**Q14. To what extent do you agree with our proposals on disclosure?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response**

As noted above, we do not agree that the FCA should be creating reporting obligations for issuers. However, if the FCA insists on doing so, then we support the proposals on disclosure, but we believe that the FCA should provide guidance on how to address employee privacy concerns regarding the collection, storage, and use of data. Some of our members have reported that some companies have high levels of survey engagement, but also receive numerous 'prefer not to say' or 'no response' returns. This presents an opportunity for the FCA to provide

guidance to companies on how to engage employees with D&I matters and highlight the work being done in this area rather than viewing it as a negative disclosure.

**Q15. To what extent do you agree that disclosure should be mandatory for some demographic characteristics and voluntary for others?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

As noted above, we do not agree that the FCA should be creating reporting obligations for issuers. However, if the FCA insists on doing so, then we agree that not all data collection should be mandatory due to the need to safeguard employee privacy. Moreover, we feel that the FCA needs to provide guidance that explains how the data will be used to support diversity within the industry. This will reassure the industry that the data sets created from the data gathered will not be used to draw conclusions about the workplace culture of a firm.

**Q16. Do you think disclosure should instead be mandatory for all demographic characteristics?**

- Yes
- Neutral
- No

**Q17. To what extent do you agree that a lack of D&I should be treated as a non-financial risk and addressed accordingly through a firm's control functions?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree

**Please provide any further detail you would like us to consider in relation to your response.**

We agree that a lack of D&I should be treated as a non-financial risk and therefore we suggest the use of qualitative and quantitative metrics to manage non-financial risks associated with D&I.

**Q18. Please provide any comments on our Cost Benefit Analysis**

We have no comments on your Cost Benefit Analysis.

**Please provide any other feedback you wish to provide on this Consultation Paper**

We would like to make five final points:

- We reiterate that we do not agree that the FCA should be creating reporting obligations for issuers and that, given the wider debates around the balance between governance and reporting obligations and the

UK's growth agenda, believe that this is not the right time for any regulator or regulators to be introducing unilateral rules.

- Companies that work with multiple regulators should be subject to the same or similar definitions and metrics for diversity and inclusion. This would prevent smaller firms from being burdened with two different measurement metrics.
- The proposal should allow for the gathering of both qualitative and quantitative metrics.
- Companies should be allowed to explain how they have improved matters further down the organization's structure to promote long-term improvement in D&I pipelines and measures.
- Overall, what we are asking, as noted above, is that the government should define a way forward on corporate reporting behind which all relevant regulators can develop consistent and complementary requirements. The overriding need is for a properly thought through and joined up approach from government and from all relevant regulators, which will be much more effective in achieving our common goals.