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Annex – FCA D&I Requirements for Larger Firms

This is a summary of the proposed requirements which will be placed on larger firms. The proposed rules are still subject to change, but the following summary gives a broad outline of what is expected to be required.

A. D&I Strategies/Policies

- Larger firms would be required to put in place an effective D&I strategy, using a clear format and easy to understand language, which is free and easily accessible.[1] The FCA suggests that making it accessible on a firm's website would indicate compliance.[2]
- The content would need to have "clear objectives and goals", a "plan for meeting and measuring progress against those objectives and goals", a summary of the arrangements in place to "identify and manage any obstacles" and ways to ensure adequate knowledge of the strategy by staff.[3]
- The strategy needs to be based on evidence about the current levels of diversity, mindful of the Aim of these rules.[4]
- The firm's management body is tasked with responsibility for the D&I strategy, and it should be regularly reviewed and updated as appropriate.

B. Setting D&I Targets

- Firms must set "appropriate" targets to address underrepresentation of demographic characteristics within the firm,[5] which are "stretching but realistic" in the context of the firm's D&I strategy, available data within the firm, data on the UK and regional population's diversity profile.[6]
- The FCA would expect firms to set at least one target to address demographic underrepresentation for each of: (i) the management body; (ii) the senior leadership; and (iii) all of its employees.[7]
- The FCA does not propose to mandate which demographic characteristics the firm should target.[8]
- Firms may also set inclusion targets but this is voluntary.
- The firm must set out its rationale for choosing its targets and should review its targets periodically (although the frequency of such reviews is not mandated by the rules).[9] The management body is responsible for overseeing, monitoring, taking appropriate action in relation to the targets and recording the monitoring and actions taken.[10]

C. Reporting Data

- At the same time as the report on employee numbers, larger firms would be required to report on their target setting (see Section B above) and the current demographic composition of the firm via the FCA's RegData platform.[11]
- The data on demographic characteristics is divided into mandatory and voluntary characteristics.[12]
  - The mandatory demographic characteristics are: age, sex or gender (firms may report on either sex or gender or both), disability/long-term health condition(s), ethnicity, religion and sexual orientation.

- The voluntary demographic characteristics are: gender identity, socio-economic background, parental responsibilities and/or carer responsibilities.

- The above data would need to be reported on a numerical rather than percentage basis and should reported for the three categories of (i) management body, (ii) senior leadership and (iii) all employees (including management body and senior leadership).
- Larger firms would also be required to report data on employee responses to questions relating to culture and inclusion.[13]
  - It is proposed that there would be specified questions, for example, do employees feel safe to speak up if they observe inappropriate behaviour or misconduct? Do employees feel safe to make an honest mistake? Are their contributions valued and meaningfully considered? Does their manager cultivate an inclusive work environment?
  - Employees would be required to respond on a five-point scale of 'strongly agree' to 'strongly disagree'.
  - Again, this data would need to be collected and reported grouped to the three categories of management body, senior leadership and all employees.
- The intention is for the reporting rules to come into force 12 months after the date of publication of final rules. Data as at that reference date would need to be reported to the FCA within three months. Reporting would be subject to a transitional period for the first year during which a compliance or explain approach could be adopted, whereby any gaps in available data could be explained.

D. Public Disclosures

- Larger firms would also be required to make public disclosures of the similar data that they report to the FCA, except disclosures would be made on the basis of percentage figures rather than the raw numbers.[14] For the purposes of data collected from employees for the purposes of public disclosures, employees must be given the option of "prefer not to say" or not to respond, and the proportion of employees who choose this must be published by the firm.[15]
- The disclosures would need to be made at the same time as the firm's annual report and accounts, or (if it is not required to file an annual report and accounts), on a day within six months of the end of its financial year.[16] As with the regulatory reporting obligation, the disclosure obligation would come into force 12 months after publication of final rules. The first year's disclosures would be voluntary.
- There are exceptions to this requirement if publication of the data would lead to a breach of laws.[17] In particular, firms may be required to aggregate all data into "all employees", rather than separating out management body/senior leadership, if not doing so would lead to individuals being identified.[18] Firms would need to explain this aggregation or non-disclosure.[19]

E. Risk and governance

- The FCA intends to introduce new guidance for larger firms clarifying that D&I should be considered as a non-financial risk and should, consequently, be "treated accordingly" within the firm's relevant functions, including applicable operational and audit functions.[20]
- The FCA has made clear consideration should not be only within the context of the audit function (as was proposed in the discussion paper) but to consider D&I in a wider context.[21] The FCA provides an example of the risk function considering risks arising from lack of D&I, including increased groupthink and poor decision-making. However, the FCA are not proposing to mandate how firms consider risks arising from D&I.

F. Penalties

- Failure to provide D&I returns on time will be subject to the standard FCA administrative penalty of a £250 fee. Additional supervisory or enforcement powers would apply for repeated or continuing non-compliance.[22]

[1] Proposed SYSC 29.2.1 R.

[2] Proposed SYSC 29.2.2 E.

[3] Proposed SYSC 29.2.3 R (3).

[4] Proposed SYSC 2.2.3 R (1) and (2).

[5] Proposed SYSC 29.3.1 R.

[6] Proposed SYSC 29.3.3 R.

[7] Proposed SYSC 29.3.2 G.

[8] Proposed SYSC 29.3.2 G (2).

[9] Proposed SYSC 29.3.4 R.

[10] Proposed SYSC 29.3.5 R.

[11] Proposed SYSC 29.4.

[12] The mandatory reporting being in “Part 3” of the proposed template, see Proposed SYSC 29.4.3 R (2), and the voluntary reporting being in “Part 4”.

[13] This reporting being in “Part 5” of the proposed template, see Proposed SYSC 29.4.3 R (3).

[14] Proposed SYSC 29.5.11 R.

[15] Proposed SYSC 29.5.16 R and SYSC 29.5.17 R.

[16] Proposed SYSC 29.5.3 R.

[17] See Proposed SYSC 29.5.12 R.

[18] Proposed SYSC 29.5.12 to 14 R.

[19] Proposed SYSC 29.5.15 R.

[20] Proposed SYSC 29.6.1 R.

[21] See CP23/20, para 5.87 et seq.

[22] Proposed SYSC 29.4.7 G.