withersworldwide

FCA consults on its implementation of CRD IV

05 NOVEMBER 2013

Harvey Knight
PARTNER | UK

CATEGORY:
ARTICLE

The FCA has published a Consultation Paper (CP13/12) on its implementation of Capital Requirements Directive ('CRD') IV and in particular, the controversial CRD IV bonus cap provisions.

These specify that the basic ratio between the variable and fixed components of total remuneration that can be paid to a staff member subject to the remuneration provisions should be capped at 1:1. The FCA proposes to copy out this requirement directly into its Remuneration Code.

No implementation of CRD IV's discretionary requirements

Where CRD IV allows Member State regulators their own discretion to impose stricter requirements to either lower the upper limit set for bonuses and/or lower the maximum percentage of total variable remuneration to be discounted and/or place restrictions or prohibit certain types of deferred instruments the FCA proposes not to apply these discretions.

Proportionality

CRD IV requires the principle of proportionality *'The provisions of this Directive on remuneration should reflect differences between different types of institutions in a proportionate manner, taking into account their size, internal organisation and the nature, scope and complexity of their activities. In particular it would not be proportionate to require certain types of investment firms to comply with all of those principles.'*

The FCA proposes to apply this principle of proportionality through its existing levels of general guidance on proportionality of the CRD III provisions of the Remuneration Code. The existing levels will apply the principle as follows:

- Level 1 (firms with assets exceeding 50bn) and Level 2 (firms with assets between 15bn and 50bn) 'full scope investment firms'. These firms are expected to apply the limits on bonuses. There are no firms prudentially supervised by the FCA in these levels ie this only applies to dual regulated firms.
- Level 3 investment firms (that could be 'full scope', 'limited licence' or 'limited activity' depending on their permissions). All investment firms subject to CRD IV that are prudentially regulated by the FCA are in level 3. Within the current CRD investment firm population, for each 'activity' type of investment firm in level 3 there is a concentration of a small number of large investment firms and a significant number of small and medium sized investment firms.

Groups

There are no plans to change the existing guidance where a firm is part of a group. Where a group of firms has individual firms that would otherwise fall into different lower proportionality levels, each firm is put into the highest proportionality level of a firm in that group. For example, where a group has an investment firm in level 3 and another firm in level 1, then all its firms are to be treated as if they were in level 1. However it will still be available for a level 3 firm to apply for a change in the proportionality level and the FCA could issue individual guidance to 're-tier' the level 3 firm after considering the particular circumstances.

The FCA's consultation will remain open until 10 November, following which, the FCA expects publish finalised rules in January 2014.

Authors

Harvey Knight

PARTNER | LONDON

Litigation

+44 20 7597 6199

harvey.knight@withersworldwide.com