FINANCIAL
SERVICES
INSTITUTE
of Australasia

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By email
bear@treasury.gov.au

Dear Manager, Banking, Insurance and Capital Markets Unit

Re: Banking Executive Accountability Regime

The Financial Services Institute of Australasia (FINSIA) welcomes the opportunity to comment on the Bank Executive Accountability Regime Consultation Paper issued by Commonwealth Treasury.

Founded in 1886, FINSIA is Australasia's peak professional membership body in financial services that has a heritage of over 130 years with approximately 10,000 supporting members in banking and finance.

Accountability needs to be founded on demonstrated competency for the role, on the principle that it is better for industry to raise standards to minimise failure before focusing on accountability through regulation.

In this regard FINSIA advocates for a requirement that executives have an appropriate professional qualification and undertake continuing professional development via an appropriate professional body.

FINSIA recently announced the crucial role it will play, connecting with key stakeholders to deliver an industry-led initiative to help deepen trust in financial services by raising standards of professionalism, with a focus on improving standards of competency, conduct, and culture.

Through a new partnership with the UK-based Chartered Banker Institute (CBI), FINSIA plans to bring the globally-recognised Chartered Banker qualification to Australia. This pathway was developed over the last 10 years specifically to build professionalism in the banking sector and has proven to positively influence conduct and public trust of the industry.

The Chartered Banker Professional Standards Board has measured the effectiveness of the Chartered Banker qualification by surveying consumer trust in the UK banking industry since the professional qualification was introduced. It has found:

> A 10% increase in UK adults reporting that they have 'high' or 'some' confidence and trust in the banking industry (2013: 31%, 2017: 41%).
> An 8% increase in UK adults reporting that they have 'high' or 'some' confidence in individuals who work in the banking industry (2013: 49%, 2017: 57%).[1]

The effectiveness of the Chartered Banker qualifications is evident with nearly 40,000 banking practitioners engage in the Chartered Banker pathway annually across

[1] Chartered Banker Professional Standards Board (2017) 'Building Professionalism in Banking: CB:PSB Research 2012–2017' p. 5 https://www.cbpsb.org/news/CBPSB-research-2012-to-2017.html

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33 countries, making the Chartered Banker qualifications the de facto bankers' standard globally.

FINSIA members agree that there is considerable appetite for change in the banking industry to restore levels of consumer trust and raise standards of industry conduct. By professionalising the industry — through implementation of the Chartered Banker qualification and supporting the establishment of a Professional Banking Council to define standards of competence, conduct, and culture — FINSIA will work collaboratively with the industry and key stakeholders to make this change.

In preparing this submission, FINSIA consulted with member stakeholders including those working in major and regional banks, customer-owned banks, and foreign banks. Additionally, FINSIA consulted with CBI for insights into the adoption of the UK Senior Manager Regime (SMR).

Overall, while the intent of the accountability regime is laudable, FINSIA members are concerned that the proposed regime does not adequately take account of differences between domestic, foreign, and customer-owned ADIs in management of functions and remuneration. FINSIA also notes concerns that BEAR is not proposed to apply to the non-ADI sector, e.g. superannuation funds and insurers.

In complying with the proposed regime, FINSIA received feedback that the focus on intensive record keeping in demonstration of effective oversight and mapping of accountability may lead to a change in executive style. The evidence requirements may lead to executives being overly legalistic and defensive with the effect that they avoid proper risk-taking. This would be to the detriment of business performance and consumer outcomes by deflecting executive skill from the proper practice of banking.

Further, experience from the implementation of the SMR suggests that it has had unintended consequences for remuneration policies and the acquisition of talent at UK banks. It was noted that the test of reasonable steps has created uncertainty for banks covered by the regime and added to their compliance burden.

Given that the SMR itself is only newly implemented, it is submitted that Australia — known to have a robust conduct framework in the APRA standards and the Corporations Act — gathers further evidence on the success of SMR and comparable regimes before contemplating its application here.

Individuals to be covered by the BEAR

FINSIA members have expressed concern that the proposed regime does not take account of differences in size and complexity of ADIs.

If the definition of accountable persons is implemented uniformly without regard to differences in size, complexity and systemic importance of ADIs it may pose challenges for the acquisition of talent, particularly for small ADIs. These concerns were expressed in respect of both executive and oversight functions.

Expectations of ADIs and accountable persons under the BEAR

FINSIA members expressed concern about the interaction between BEAR and APRA's pre-existing standards in CPS 220: Risk Management, CPS 510: Governance, and CPS 520: Fit and Proper.

While heightened standards of conduct and culture are desirable for the improved reputation of the industry, FINSIA members suggested that any identified gaps be rectified in the pre-existing APRA guidance.

Remuneration

FINSIA members noted that the proposed standards, in taking a 'one-size-fits-all' approach again fail to take account of the differences between ADIs.

In the case of small ADIs, variable remuneration levels were noted to be modest and a lever in attracting key talent.

If a deferral regime is to be implemented, it was suggested that a threshold approach could be taken to the deferral of variable remuneration — i.e, that deferral only applies when it is above a defined limit.

As noted in the consultation paper, a potential consequence of requiring that variable remuneration is deferred is that firms may shift the balance from variable to base remuneration. The guidance FINSIA received from its UK partner CBI is that the SMR has resulted in this shift, which may itself lead to a culture of short-termism and risk taking.

FINSIA members also questioned the practicalities of implementing deferral of variable remuneration from the perspective of the regulator, including whether the regulator approves the release of deferred variable remuneration.

Implementation and transitional issues

Concerns were raised about accountability mapping, particularly where accountabilities overlap. If an overly prescriptive approach is taken to the mapping of accountability, it was noted that the effect may be to assign accountability to persons that only have a degree of responsibility.

It is also noted that the UK Financial Conduct Authority is currently consulting on expanding the application of the SMR and that it would be prudent for Australian regulators to investigate these proposals and gather evidence on their application before reviewing their applicability to the Australian regulatory landscape.

Future policy development

FINSIA welcomes the opportunity to contribute to further policy development in this area.

Please refer any future enquiries to Caroline Falshaw A Fin, Head of Industry Affairs and Policy: c.falshaw@finsia.com

With kind regards,

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CEO and Managing Director