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18 August 2021



FINSIA SUBMISSION: FINANCIAL ACCOUNTABILITY REGIME BILL 2021

Introduction

FINSIA (the Financial Services Institute of Australasia), welcomes the opportunity to make a submission in relation to the Financial Accountability Regime Bill 2021 (the Bill).

FINSIA's purpose is to deepen trust in financial services by raising standards of professionalism. It is a not-for-profit professional membership body for individuals working across the full spectrum of financial services industry in Australia, including the banking industry.

As a connector between finance professionals and industry, FINSIA is keen to support the financial services industry's commitment to earn back trust and create an enduring customer focussed culture.

Overview of response

Given the importance and impact of financial services to communities and customers FINSIA supports the principle that finance professionals, including senior executives, should be held accountable for their actions and those of their firm, within functions where they hold the primary executive authority. Developing and maintaining the essential competencies for finance professionals together with a professional code of conduct is FINSIA's purpose. From our engagements and consultation with leading professional associations in the UK, initial reviews of the effectiveness of similar regimes by the FCA and PRA conclude that the SM&CR is having a positive culture change in firms. However, our consultations show that the BEAR and FAR diverge from the SM&CR in that they allow firms to 'self-declare' whom they consider to be accountable and also self-determine whether the proposed accountable executive is fit for the role in terms of their capability and conduct standards. FINSIA considers there should be a more objective process required for accountable entities to declare that a nominated person is suitable for registration. Consideration should also be given to the establishment of industry-wide standards of competency and conduct specifically for executives to ensure consistency across organisations.

Coverage of the Bill

FINSIA notes para 1.56 of the Exposure Draft Explanatory Materials (EDEM) that obligations apply to a foreign accountable entity in the banking and insurance sectors and comments that it considers it important that subsidiaries of all foreign entities are covered and not excluded.

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Obligations on accountable entities

FINSIA supports the requirement on entities to proactively support compliance by accountable persons EDEM 1.70. However, what is missing is a consistent definition of competency and conduct expectations and an objective and transparent process for entities to determine a person is appropriate.

FINSIA suggests that professional education and professional standards are proper matters for the accountable entity to consider in nominating an accountable person for registration. The Bill provides that the accountable entity must provide a declaration that a person is suitable 1.122 EDEM.

FINSIA proposes there should be a greater requirement for a more objective and transparent process to ensure accountable entities nominate qualified accountable persons. FINSIA believes the current draft bill allows too much room for a lack of proper process for that declaration and the risk that entities may nominate persons who are not suitable through want of a proper objective process.

What would support good outcomes is a requirement for entities – before being able to declare qualification of a proposed accountable person – to have undertaken an evidence-based independent assessment of capability and suitability. FINSIA’s Chartered Banker by Experience is a good example. This kind of process requirement could readily be included without regulators requiring further involvement in qualification of accountable persons.

There should also be obligations to support them with continuing professional support and development.

The onus as to “qualification” of accountable persons should be and remain very squarely on the entity. This is important in fairness to individual finance professionals and good outcomes for the community given the power of the regulator to disqualify a person from being an accountable person due to breach of accountability obligations EDEM 1.145, or the power to direct an entity to reallocate responsibilities of an accountable person EDEM 1.161.

As to secrecy and EDEM 1.171 ff, while FINSIA notes the need for secrecy in some cases, it considers that care is needed in this area due to the need for accountability of regulators and public debate around important public policy issues.

Obligations of accountable persons

FINSIA considers it important that the obligation be achievable and that obligations to take reasonable steps rather than achieve absolute outcomes is important. FINSIA notes s 19 is drafted in that way although this is not reflected in EDEM 1.65.

Operation of provisions where accountable person leaves employment

It is assumed a person ceases to be an accountable person when leaving employment of an entity and it may also be useful to provide greater clarity on how the provisions are intended to apply where the accountable person leaves employment with the entity.

Conclusion

In FINSIA's view the FAR Bill has the potential to support professionalism and professional standards in the financial services industry, and good outcomes for the community. While the Bill rightly puts the obligation on the entity to ensure the accountable person is suitable, FINSIA believes the current draft bill allows too much room for a lack of proper process for that declaration and the risk that entities may nominate persons who are not suitable through want of a proper objective process.

FINSIA's Council, leadership team and members are eager to engage with Treasury as to the important issues the Bill raises about suitability, and how FINSIA may be able to assist. We would very much appreciate the opportunity to meet with Treasury to discuss this further.

A handwritten signature in black ink, appearing to read 'C Whitehead', written in a cursive style.

Chris Whitehead
CEO & Managing Director