

Diversity and inclusion in the financial sector – working together to drive change.

FCA CP 2320 Response.

Executive Summary

The Diversity Project welcomes the FCA's focus on diversity and inclusion and the publication of this Consultation Paper. Our organisation has a single purpose; to attract and develop a new generation of diverse talent across all dimensions in the investment and savings industry. We believe this will improve opportunities for diverse talent, future-proof our industry, reduce risk and help ensure the best outcomes for customers. We have 110 member firms from across the investment and saving industry with over £13.3trillion AUM and just under 86,000 employees. Some of our members are providing their own responses to CP 23/20; the views expressed here do not necessarily reflect the views of each and every member firm.

We are also pleased to be submitting this response on behalf of Reboot¹ and the Global Institute for Women's Leadership².

We have provided a response to all questions, but would first make some broader observations.

The proposals place emphasis on the reporting of demographic diversity statistics; we believe it would be helpful when publishing the final rules if the FCA reinforces the benefits it expects to flow from this for firms and individuals. It would be unhelpful if firms saw the new rules as onerous without fully recognising the benefits.

The FCA has prominently recognised *diversity of thought* in many speeches and statements in recent years. The FCA's own July 2021 literature review says, however, 'The evidence base surrounding the business benefits of diverse teams is ...quite mixed. Broadly, diverse teams bring benefits in terms of creativity and wellbeing but can cause efficiency losses due to conflict, although this can be moderated by inclusive workplace practices.' We agree that diversity on its own is not enough; we encourage 'inclusive working practices' to be more prominent in the final set of proposals.

The strongest arguments around the benefits of diversity and inclusion lie in improved culture and risk mitigation for firms alongside more opportunities and equitable treatment for diverse individuals. Capturing the data asked for in the proposals will be a really useful tool for firms to

¹ Reboot is a cross-industry team of ethnic minority and ally professionals united around a single mission, to use the power of storytelling and research to support positive action in the United Kingdom regarding race and ethnicity in the workplace. By engaging leadership across large organisations (focusing on financial and professional services), the media and policymakers, Reboot is working to educate stakeholders to help tackle conscious and unconscious biases through recommendations based on data and insights. Reboot is advocating to make ethnicity pay gap reporting mandatory – identified as a key metric to help support a fairer industry and society.

² The Global Institute for Women's Leadership works towards a world in which women of all backgrounds have fair and equal access to leadership. Chaired by former Australian Prime Minister Julia Gillard, the institute brings together rigorous research, practice and advocacy to break down barriers to women becoming leaders, while challenging ideas of what leadership looks like. The Diversity Project is also grateful for the valuable input of Dr Ylva Bäckström, Senior Lecturer in Finance, King's Business School.

be able to identify any inequity in their processes and approach. Real life examples where diversity, equity and inclusion have enabled the recruitment and development of outstanding 'non-traditional' talent would also be powerful. There is additional merit in the FCA's supervisory approach evolving to analyse the effectiveness of decisions at firms, both right and wrong, and to track how this links back to diversity and inclusion.

We also suggest that the FCA sets out clearly how it will store and review the data it is seeking, how it will consider this from a supervisory perspective and how this interfaces with its own statement on culture. We suggest that explicit reference is made to DEI in the FCA Handbook Guidance on supervisory principles, particularly in the section detailing the FCA's focus on culture and governance. We feel that firms will benefit from explicit references to DEI in relation to (1) what drives behaviour within a firm and (2) a firm's conduct risk framework.

It will also be important for buy-in (and therefore if real progress is to be made) for firms to be able to see follow-through from the FCA after the required disclosures are made. It is discouraging to supply extensive data that seems to disappear into a 'black hole'. An annual FCA report on progress across the industry would be a relatively straightforward way of showing how the data are improving and how this is driving better outcomes for firms, customers and the industry (again, case studies could be included).

We note that the proposals place considerable reliance on boards for overseeing a firm's progress on all aspects of diversity and inclusion. In reality, we have seen a wide range of board level interest on the subject. More robust board effectiveness reviews including probing examples where diversity of thought has improved challenge, decision-making and outcomes (for both boards and management teams) would help build the evidence base for the linkage between demographic and cognitive diversity, and the positive impact on decision-making. Properly conducted, these reviews would also encourage the issue to be taken seriously.

As set out in our answers to Questions 2, 6, 7, 8 and 14 we see the proposal to delineate between data disclosure requirements for all firms and firms with over 250 employees as arbitrary in this context and unhelpful. The Companies Act parameters are not necessarily relevant when it comes to diversity, equity and inclusion; smaller firms should be encouraged to – and many already do – adopt practices that will stand them in good stead as they grow. It is also helpful for monitoring progress across the whole industry that the data are as comprehensive as possible, especially given the preponderance of smaller firms. We note that of 84 Diversity Project members who responded to our 2023 Goals and Progress Tool, 85% collect their gender pay gap data but around a quarter do not publish this because they fall below the 250 employee threshold. This makes it difficult to establish accurate figures for the industry. We suggest that all firms should collect and publish their data, with the provision that they may 'opt out'; in other words, they may 'comply or explain'.

There are several questions in the Consultation Paper asking which specific elements of diversity disclosure should be mandatory and which voluntary. There are several issues arising here. First, we don't think the FCA should be creating a hierarchy of characteristics. This may have developed from a sense that some characteristics lend themselves to having targets (e.g. gender, ethnicity), others do not (e.g. religion, motherhood). But these are two separate issues

and just because one form of 'identity' does not lend itself to a target doesn't mean it is less important to understand the levels of representation.

Our experience suggests that unless requirements are mandatory, many firms simply will not adopt them. The argument around *why* the data are useful needs to be strengthened, as set out above, but if this is done, we suggest the FCA makes it mandatory to collect and publish the data points requested, subject to the comply or explain provision. There could be a phased approach for new companies (those in existence less than 5 years could have a three-year transition phase). If the FCA wants to narrow down the number of categories, we suggest that gender, ethnicity and socio-economic background are the priorities. We note that the Diversity Project's Goals and Progress Tool shows that socio-economic data collection is currently the weakest link across the industry, with just 35% of respondents collecting and monitoring their data around this aspect of diversity (although that is a considerable improvement on the prior year, when only 10% did so). Yet this is an aspect where greater diversity might make a particularly significant positive impact on cognitive diversity and culture. It seems strange that this is currently proposed to be a 'voluntary' data point, whereas sexual orientation and religion would be mandatory. We also urge the FCA to request that firms disclose the proportion of employees who choose not to respond or 'would rather not say' as that gives an indication of psychological safety and cultural inclusivity. It is ambiguous whether firms would need to disclose this under the current proposals.

The CP's proposals around data place insufficient emphasis on the 'middle' levels of talent; progress is currently most likely at junior levels which can paint an inaccurate picture and risks missing gaps in the talent pipeline. In addition, in our experience, the 'tone from the top' is necessary but not sufficient to achieve progress; the 'tone from within' - middle management - is critical as well.

To clarify requirements, enhance consistency and make it straightforward for firms to report, we suggest that the FCA publishes a template for reporting data. We would ask the FCA to consider using the guidance available on EDIS as a basis of creating a template that firms can use. The link is: <https://edisgroup.org/resources/practical-tools-and-guidance/diversity-and-inclusion-survey-daisy-question-guidance-v2/>

Legal mechanisms such as Settlement Agreements or Non-Disclosure Agreements that may be used by firms for various purposes, sometimes with good reason. However, they may also effectively cover up problems and restrict people talking about issues. We suggest that firms are also asked to disclose (in aggregate) their annual usage of such instruments to 'resolve' grievances or complaints. This data would only be visible to the regulators, so supervisory teams can see the scale of usage, and any material change.

We welcome the proposals around including 'non-financial misconduct' in Conduct Rules - although argue that poor behaviours can indeed have a financial, even existential impact, as seen in the case of Odey Asset Management. We understand the reasons why the threshold for breaches of COCON is proposed as 'serious' misconduct. However, in 4.23 there is a further reference to the FCA only taking disciplinary action in the case of 'particularly' serious misconduct. This needs clarification (or removal of the word 'particularly').

Finally, we note that (ironically) the subject of 'diversity, equity and inclusion' can be divisive. It is critical that rule changes are seen as proportionate, that there is confidence that they will be effective, and that they are genuinely inclusive of all groups, including the majority white male heterosexual senior and middle management population in FCA-regulated firms. The FCA and PRA's joint focus is an opportunity for the financial services industry to shift gears, help firms improve and ensure better behaviours and culture as well as faster progress on DEI. If the financial services sector becomes more diverse, inclusive and equitable, we would also expect better customer communications, greater accessibility and improved financial resilience across society, helping 'Financial Lives'. Reinforcing these arguments, providing a data template, a logical explanation for the data requested, clarifying how it will be used and stored and then linking the proposals to supervision, culture and equity would all be helpful refinements.

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.

Whilst we recognise the rationale behind application on a solo entity basis there are both pros and cons in taking this approach.

A positive aspect is that information about boards/leadership teams is typically already made available via company websites so there would be no additional burden to make disclosure on a solo entity basis.

Most businesses however, do not employ staff in each regulated entity. There is often a holding company which employs staff where contracts are in place for the provision of services to all other firms. Each of the solo entities will have contracts in place with the same or similar staff, so there would be little to be gained by reporting each separately.

There do not appear to be any provisions outlining considerations for global or multi-jurisdictional firms. For those entities which are multi-jurisdictional, the option to report on a group basis by defining a UK group would be more useful for benchmarking purposes. This approach incorporates the nature of legal and contractual relationships firms have in place, and has the added benefit of (a) providing a true picture of diversity across UK financial services firms (b) ring-fences the UK from different approaches taken overseas which may not be aligned and in some cases deemed unlawful and (c) does not skew the figures e.g. including global

leadership where a parent entity is in Asia-Pac for example would show more diversity than is actually present from a UK perspective.

We would welcome clear rules detailing how to define a UK group for reporting on these proposals as we feel that this would be the best approach to understand the diversity reflected in our firms. It may be more suitable to require reporting and disclosure at group level for companies with up to 250 employees in total and reporting on a solo entity basis for those with more than 251 employees.

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.

We welcome the setting of minimum standards for all regulated firms that have the aim of reducing discrimination and misconduct. We are in agreement that the size of a firm should not dictate what behaviours are deemed unacceptable, this approach should (rightly) be set across the industry.

We also believe the rules should be proportionate and not create unnecessary administrative burdens for firms.

However, we believe the 251 employee threshold suggested for the proposed additional requirements should be removed. We accept that this is the 'long-standing, widely used and simple threshold' for the definition of a large firm and is consistent with the current Gender Pay Gap reporting requirements. But diversity and inclusion are relevant for firms of all sizes. We do not, for example, support the proposal that only CRR And Solvency II firms of any size and other FSMA firms with 251 or more employees would be required to set a diversity strategy. It can be easier to devise a strategy, develop good culture and establish sound data collection methods in smaller companies, that will then stand firms in good stead as they grow. The FCA seems to have recognised that in the listing requirements for boards of companies undergoing

an IPO, for example, and senior management teams and boards are expected to be diverse, even for small companies.

Academic research conducted by King's Business School confirms anecdotal evidence that large firms are often well ahead of smaller firms, with better policies, stricter adherence to policies and facilitating career progression for a more diverse talent pool. Placing lesser requirements on smaller firms would enable them to avoid addressing these important issues and to maintain an organisational culture that operates on the basis of homogeneous decision-making. Smaller firms both interact with larger firms in the financial system and may become larger firms in the future. Firm size, both in employment and market cap terms, is not necessarily always equivalent to impact or power in the financial system.

We believe that a set of sensible proposals to apply to all firms would be better suited to further the objective to drive change in financial industry. We propose that all companies are asked to collect and publish their data on a 'comply or explain' basis. We also suggest a phased approach for new companies (less than 5 years since being founded), with the expectation that they also collect their data at the earliest possible moment and publish it when they are able to. Good habits are easier to form when companies are starting out and/or are small.

Noting the above, diversity data are just part of the story. As the CP sets out in 5.62-5.65, culture and inclusion are equally important if diversity is to be sustainable and its benefits realised. All firms should assess their culture and degree to which employees feel included. We do not think this is onerous.

It would be useful for firms to be encouraged to collaborate with academic researchers to analyse the impact on introduced measures across multiple areas, including for example: staff retention, satisfaction and progression, firm performance including innovation, governance and sustainability as well as success with customers / clients. This will create a repository of data that can be used to evaluate practices and inform future development. This is of particular importance for an industry that thinks in numbers.

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

Where firms have groups that include both dual and solo regulated entities, it is likely that they will take the highest standard of requirements and apply at group level (where it can be applied e.g. prescribed responsibilities are not identical for solo and dual regulated firms). We do not see this as a challenge given that part of a group would be required to apply a higher standard in any event.

We note that the PRA has applied a slightly more detailed and higher standard in some areas as outlined below. We would consider diversity, equity and inclusion to have the same level of

importance in both types of firms and would therefore recommend a completely consistent approach, e.g. raising the standard for solo regulated firms where possible.

The PRA CP18/23 includes slightly more detail around how risk, compliance and audit have a role to play in embedding diversity practices, monitoring progress and supporting senior leadership accountability. However, whilst not technically a divergence and we recognise that no one size fits all, we would welcome detail on expectations around implementation in the form of guidance and/or examples. Clarity around GDPR should also be provided (e.g. confirming that HR sharing such data with the aforementioned teams in the UK is not a contravention of GDPR), in some firms such data are considered sensitive and not necessarily shared.

Under its proposals, PRA firms would be expected to set targets for gender and ethnicity at a minimum. The FCA proposals allow firms to consider the demographic(s) for which targets are set. For solo regulated firms this should also be widened to at least mirror PRA proposals. In the absence of further guidance, it is very likely that most solo regulated firms will select gender and only gender, given the work already undertaken in this area. This would obviously not move the dial on other dimensions of diversity. The regulators should make it clearer what they expect here. For example, that firms would be expected to select three demographics for which targets are set and which are considered most relevant for the firm.

PRA firms where prescribed responsibilities for culture apply will already embed diversity and inclusion strategies; we would expect that the statement of responsibilities for those impacted will be updated once the rules are finalised. From an FCA solo regulated perspective, whilst we agree that diversity and inclusion cannot be the responsibility of one individual in a firm, and the FCA proposed rules do indicate that a firm's management body would be responsible for overseeing targets, we would welcome further guidance around how to uphold accountability in relation to this and assurance that targets and values are live throughout firms. As set out below and in our executive summary, the board may be the 'obvious' place, but may not be the best place as things stand, with boards showing varying degrees of interest in DEI.

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.

We acknowledge the comments made in the earlier Discussion Paper, that the concepts in DEI are evolving. We agree with the concepts and definitions outlined and the acceptance that they may need to change as society and the finance industry learns and understands more. Given most entities who have started to establish thinking and strategies in this area now acknowledge that equity and equality are also important considerations, the term used should be DEI not D&I.

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 strongly believe that in order to reduce and ultimately prevent poor behaviours (bullying, harassment, discrimination) happening, everyone within the industry needs to understand that these standards apply to them. We would not be supportive of any variation in terms based on size of company and agree with your approach of these being proposals for firms of any size. We agree that bullying, sexual harassment and discrimination, proven under the standards required under employment law, should all be considered misconduct and a breach of the conduct rules required to be reported to the FCA and disclosed in future regulatory references. However, there are many ways in which these behaviours (bullying, harassment, discrimination) manifest themselves. All three are normally listed in employee handbooks with examples (but not exhaustive lists). Harassment and discrimination are covered by the Equality Act 2010, but there is no legal definition for bullying. It will therefore be essential to provide guidance and a clear list of examples of what constitutes unacceptable behaviour. 'Non- financial' misconduct should also be considered holistically - for example, 'mild', non-financial misconduct should not be disregarded if someone has also made policy breaches, had other complaints upheld against them or does not uphold a firm's culture.

One area that we believe requires careful consideration is inadvertent misconduct. In employment cases, the norm when finding that there has been misconduct – which is judged on the basis of the 'victim's' experience not the intention of 'perpetrator' – would likely be a

warning, but not dismissal and typically require the perpetrator to attend training aimed at preventing similar incidents in the future. A repeat of similar behaviour would likely trigger a further warning or dismissal. Consideration needs to be taken with regards whether a verbal warning is reportable or reportable and disclosed in future regulatory references or whether these actions are only triggered upon the repeat incidence / written warning(s). We believe that the latter would be appropriate, given the need for proportionality.

We note the additional guidance provided regarding regulatory references and non-financial misconduct. This guidance refers to considerations a firm 'may' wish to undertake. We believe that clear rules/guidance are required to maintain consistency of regulatory references. Further, in line with our comments about data reporting, conduct breach reporting has been provided to the regulators since 2016. We have not yet seen any guidance regarding good and bad practices, improvements or expectations from the regulator, or any clarification around consistency. For example, one firm may be very strict in handing out conduct breaches in comparison with another, and there may be wide variations in the types of behaviour that are recorded. What does the regulator expect to see? To ensure reasonably consistent application of conduct breaches under the new requirements, further explanation and guidance needs to be provided; appropriate measurement and analysis of firm level applications would assist this.

Upon reviewing Annex C of the Draft Handbook, clause 1.3.6 G refers to conduct that is outside / inside scope of COCON in relation to a person's conduct in their personal or private life. We do not agree with misconduct in relation to a member of the public whilst the individual is commuting to work as being outside the scope of COCON, nor do we agree with misconduct in relation to a fellow member of the workforce at a social occasion organised by the individual in their personal capacity as being outside the scope of COCON and outline our rationale below.

When commuting to work, if an individual defrauded the railway company by fare jumping, this would constitute a breach of conduct (financial). We believe, therefore non-financial conduct such as sexual harassment should be treated in the same way if it happened outside work. In terms of misconduct occurring in a social occasion arranged by an individual for a fellow worker or workers, employment law would deem that behaviour investigable under employment policies. For example, if a manager invited his/her team to a barbeque at their house or one individual invited colleagues to a local bar immediately after work, at any of these situations, if sexual harassment were to take place, the employer could be deemed liable and expected to investigate and take action if sufficient evidence to say, on the balance of probabilities the act of harassment was to have occurred.

There appears to be a typo in 1.3.7 G (5) misconduct against a fellow member of the workforce 'even though it is <insert NOT> a breach of the firm's internal code about treatment of employees.'

In terms of threshold conditions, we agree with the proposal that authorisation should NOT be withheld simply because firms are not sufficiently diverse as there are many situations this could occur that would not meet the spirit of these proposals. For example, in a small firm with low or no growth or a small team (the board, executive team etc.), singular or small numbers of minority employees leaving or joining can make a significant impact on the percentages of diverse talent. We would recommend that firms are encouraged to develop well thought-through plans and to demonstrate incremental improvements (which need to be measured over time) rather than implementing a punitive approach.

The Diversity Project launched a 'Safe Space' initiative in May 2023, following the CBI scandal. Our Advisory Council members (mainly CEOs) agreed that while each member firm has its own 'speak up' hotlines, it was impossible to know that people felt safe to report issues. To date, 25 people have come forward. The most striking common feature is a 'fear factor'; a significant reluctance to report bullying, harassment and/or discrimination for fear of unwanted consequences for the person who would be reporting (retaliation, being sidelined, defined as a troublemaker). We believe that victimisation needs to be added to the definition of misconduct. Additionally, it would be very helpful if the FCA were to provide guidance and support on how to create psychological safety within a firm, to ensure more incidents are actually reported via a firm's own channels and to be able to gauge whether these proposals actually drive a change in behaviours.

We repeat a concern around 4.23: 'We will only take disciplinary action for serious breaches of COCON. In the current context, we will therefore only take such action for particularly serious instances of bullying, harassment or similar behavior, or multiple instances that are collectively particularly serious.' It is unclear what the definition of 'particularly serious' is, especially relative to 'serious'.

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 note that the FCA's cost benefit analysis states that there are a total of 43,552 firms with under 251 employees (as of Jan 2022) and only 1,570 over 251. It would be a big missed opportunity if the vast majority of firms do not participate in data reporting – given it is well accepted that what gets measured gets done. Many small firms already receive regular requests from potential clients/investors regarding their approaches to diversity and inclusion and are frequently asked to disclose data that captures age, sex/gender, disability and ethnicity. (For example, the Asset Owner Diversity Charter sets out detailed data requirements of fund managers). In addition, these smaller firms may have substantial power in the financial markets. They interact with larger firms, share clients with them and staff frequently move between firms in both categories.

It would be far more effective to make data collection a minimum for all companies (covering all the characteristics outlined) subject to a comply or explain provision. Most firms are set up to track data (although they may not collect it on all the suggested characteristics), and it can actually be easier for smaller firms to do so, as well as establishing good habits at an early stage.

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

- Strongly agree
- Agree
- Neutral (Points of agreement and disagreement)
- Disagree
- Strongly disagree

Without a strategy and goals it is hard to envisage how real change will occur. We therefore propose that all firms are required to have a published DEI strategy, setting out their approach and including goals for at least one under-represented group where the firm monitors progress, identifies obstacles and takes steps to address these. Having such an approach raises the level

of accountability, taking into account smaller firms' resources. We don't agree with the idea that the smallest firms would be distracted from a focus on outcomes for their customers by having such a strategy. Contrary to this, many customers welcome and even demand such change. We therefore propose that a DEI strategy is expected of all firms, irrespective of size.

Given this may be new territory for some firms, it would be helpful for the FCA to provide resources around initiatives that work/don't work and suitable approaches for firms of different sizes, ownership structures (for example if they are part of a US-headquartered entity) and stages in their maturity.

Our view is that strategies for large firms and CRR/Solvency II firms of any size as well as firms developing in both size and maturity should be more comprehensive, incorporate more than one under-represented group and consider intersectionalities.

Firms that operate across multiple jurisdictions may have several different requirements from the respective regulatory bodies and will be expected to adhere to the highest standards. For these firms, some flexibility in terms of the review process, reporting cycle and updates is pragmatic and appropriate.

While a diversity strategy is important we note this can sometimes sit on a shelf gathering dust until a formal reporting moment. We would like to see supervisory teams asking firms for evidence regarding strategy implementation. It is important that the strategies lead to meaningful action and that evidence of impact and progress forms part of the submission. Examples of targets would be useful to guide organisations on the formulation of their own ambitions.

We agree that the Board (or equivalent) is responsible for the maintenance of the DEI strategy – however, the FCA should look for evidence that the Board takes this seriously and doesn't review the topic in a tick-box way. This might be incorporated into board effectiveness reviews, for example, with evidence provided around the relevant Board discussions and decisions. The assessment period should be clearer, with guidance on cadence for review (e.g. at least once annually) and incorporating the connections to risk, talent and operations strategies.

We also support the FCA's expectation that the DEI strategy is publicly available on the firm's website for all interested parties (e.g. customers, candidates, employees) to view.

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

Strongly agree

Agree

Neutral

Disagree

Strongly disagree

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

Targets can play an important role in driving progress on DEI. By setting targets for different levels of seniority, a firm can ensure that its DEI initiatives address relevant pipeline issues. There should, however, be increased scrutiny of middle management as this population has the most direct day-to-day influence on the experiences of more junior employees. We therefore encourage the FCA to extend the target groups (board, senior leadership and all employees) to include an additional specific target for mid-level employees and/or people managers.

The expectation that oversight for targets would sit with a firm's board is welcomed, provided the board takes this seriously. We note in 5.66 that the FCA will monitor large firms' progress against targets they have set.

It is, however, important to note that setting targets without a proper action plan to reach them could lead to unintended consequences such as poaching within the industry rather than a firm developing its own talent. We believe that mechanisms such as balanced scorecards, where senior executive remuneration is tied directly to progress against targets and behaviours in achieving those targets, can be effective in incentivising senior leaders to actively contribute to progress against the DEI strategy. Such approaches are currently directed at senior executives which in many cases have resulted in this group being more committed to achieving targets than the board. We recommend that progress against DEI targets is also considered in board effectiveness reviews to ensure that boards appropriately oversee progress. Measuring and recording board actions and progress can assist both firms and the FCA in DEI reviews.

The FCA should provide examples of targets it considers appropriate or important (e.g. % increase in representation, target populations and timeframes). The FCA may also wish to consider incorporating a timeframe for renewing/ re-evaluating targets over a set period of time.

The FCA should be explicit about its long-term goal. If the goal is for specific levels of representation, it would be helpful to spell this out. If the FCA believes, for example, that firms should be broadly representative of the societies in which they operate then this should be communicated. The FCA has taken this approach in the past, for example in its policy statement PS22/3, mandating set targets for listed firms on gender and ethnicity at board and executive

level. Further detail on action that could be taken against firms who do not demonstrate progress against targets over time would be welcomed. For our response to disclosure of these targets and progress against them, see also our comments on Q14.

Clearly, in order for targets to be considered and set, firms will need to have collected their employees' diversity data and the FCA should consider making this mandatory for all firms, on a comply or explain basis. Smaller/newer firms are often best-placed to develop good practices for data collection and target setting, and should not be excluded from establishing these processes. Publication of targets could be phased in over a 3-year time frame for new companies.

In order to genuinely tackle DEI-related under-representation in the industry, the FCA should move away from a focus on "at least one target" to a "set of targets". This would align to the proposals outlined by the PRA, which require firms to set targets for gender and for ethnicity. Wherever possible we would encourage the regulators to ensure consistency across the proposals, particularly to support implementation by dual-regulated firms.

Some firms may respond that it may be impossible to reach targets without positive discrimination and/or more progress in the industry generally. The Diversity Project is not supportive of positive discrimination. We believe that setting appropriate targets and actively managing efforts to attain them can work and be entirely consistent with a focus on merit. Problems occur when targets are set in a vacuum, without a plan and without carefully setting out (to hiring managers) why targets are relevant and how they are compatible with merit-based appointments. There are clearly some roles – fund manager positions, for example – where under-representation of women and minorities have persisted for many years. These issues cannot be addressed simply by setting targets; the Diversity Project is working on initiatives such as the [Pathway programme](#) to specifically develop more female fund managers.

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 proposal to report on an annual basis and for reporting to commence 12 months after final publication rules. We would not want to see the timeframe slip further than the proposed timeline, particularly given the length of time since the original Discussion Paper.

We strongly agree with the “comply or explain” requirement to provide an explanation during the first year regarding any data gaps and how they will be closed. Both percentages and absolute numbers should be considered in relation to the “numerical figures” proposal.

We strongly agree with the FCA’s proposal to produce an aggregated disclosure report in order to enable firms to benchmark against the industry and peers. We would encourage the regulators to publish this by sector (e.g. Investment Banking, Asset Management, Retail Banking etc) to take account of existing variances in representation across each sector.

We strongly agree with the proposal to issue a joint FCA and PRA regulatory return to support jointly regulated firms in submitting their data.

We support the FCA’s provision in 5.83 for combining reporting groups (levels of seniority) if the population is too small and may lead to identification of an individual.

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 (Points of agreement and disagreement)
- Disagree
- Strongly disagree

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

We have some concern around possible implications of firms reporting to the Regulator on characteristics that are not part of the UK Equality Act 2010, especially where this may pertain to conduct. Firms may have limited legal scope for taking action in such circumstances. The Equality Act 2010 may have inadvertently created a hierarchy of characteristics and needs reviewing. We encourage the Regulators to work with lawmakers on behalf of the financial services industry to update the Act.

We welcome that firms must include a 'prefer not to say' option and/or that employees may choose not to respond. In recognising that some employees may not disclose their diversity information, we recommend that the FCA includes a requirement under each diversity dimension (if not already done so) to firstly report on the overall disclosure rate for that diversity characteristic, and for this disclosure percentage to specifically include the proportion of those responding 'prefer not to say' (5.45 says that employees will have this option and also can choose not to respond, but does not specify that a firm should disclose these figures). Disclosure will give an indication of how safe an employee feels in reporting their data. There are also techniques that firms can use to encourage broader participation in such surveys, for example separating out data collection from any employee engagement studies. We suggest that the FCA sets out its expectations for best practice in this area rather than simply accept lower response rates.

We propose that the FCA introduces a threshold for minimum disclosure rates. The regulatory return would ask firms to firstly provide their disclosure rate against each diversity characteristic. Only those firms who have met or exceeded the minimum threshold for disclosure would then provide further detail on the make-up of their employees within that diversity characteristic. Firms who do not meet the minimum threshold would be required to set out a plan for increasing their disclosure rates.

We would like to see more information on how the FCA will store the data and how data will be used, particularly with regards to how firms are benchmarked against 'success criteria' or other perceived positive outcomes.

For some of the demographic characteristics, it would be helpful to understand how the FCA intends to evaluate the data. It would be beneficial to develop an evaluation strategy that contributes to future knowledge and assists further policy development.

Some of the categories that firms are being asked to report on do not have a clear benchmark representation rate (e.g. there is no 'right' proportion of carers or pregnant women). At the Diversity Project, we do not focus on the number of employees who are parents or carers but rather on evidence about the experience those individuals have at their firms. For example, if women do not return to work after maternity, or leave shortly after returning, this may suggest an environment that does not support working mothers. Similarly, if men do not take parental leave in a firm which offers an enhanced formal policy, this may be for cultural reasons.

We understand that some firms may push back on the list of demographic characteristics saying that they do not or cannot collect data on sexual orientation or religion and may suggest it is

irrelevant. However, if a firm has no employees who are openly LGBTQ or, say, Jewish, that may indicate an environment where some people feel unsafe, unwelcome or excluded.

Finally, we note that neurodiversity is omitted from the list of demographic characteristics but should be included.

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.

Please note our comments in the executive summary that first, a clearer case must be made around why demographic diversity can help drive cognitive diversity, better decision-making and organisational culture.

Provided that this argument is strengthened, data collection on diversity demographics should be mandatory for regulated firms if real change is sought.

It is unclear why certain characteristics are proposed for mandatory versus voluntary reporting. For example, both religion and sexual orientation are proposed as mandatory yet socio-economic background is suggested as voluntary. Socio-economic diversity and inclusion are important when we think of consumers and the workplace, and after some debate there is now a widely-supported data point – parental occupation at age 14. The Diversity Project’s second Goals and Progress Tool, completed by 84 member firms, suggests that while data collection around this characteristic is low (just 35% of all respondent firms said they collected this in 2023) the proportion of firms focusing on this is rising sharply (the previous year, just 10% of our member firms collected data on socio-economic characteristics). We also note that the current proposals do not allow for intersectionality to be explored.

It would help if the FCA suggested a recommended data collection template for firms to use, and suggest it refers to the guidance available on EDIS as a basis of creating a template that firms can use. The link is: <https://edisgroup.org/resources/practical-tools-and-guidance/diversity-and-inclusion-survey-daisy-question-guidance-v2/>



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.

See response above and our executive summary.

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 in the CP, inclusion is critical to ensure the benefits of diversity are fully realised. Yet the approach outlined seems to somewhat downplay the criticality of inclusion or treat it as an afterthought. This may be unintentional, but it would be helpful if inclusion was given greater prominence in the final set of proposals.

We clearly welcome the proposal that firms ask their employees inclusion-related questions. The question set proposed is a helpful starting point for firms. However, the six questions outlined may not be sufficient and we suggest that firms may supplement these. [The Financial Services Skills Commission Inclusion Measurement Guide](#) that is referred to sets out a more comprehensive framework, with a helpful staged approach for firms at different levels of maturity, something the FCA might consider adopting.

Further to our comments outlined in Q10, the responses to the questions themselves may not provide sufficient evidence of inclusion. It is well-evidenced, for example, that homogenous groups generally feel a higher level of inclusion than more diverse groups. Given that as the proposals stand, the FCA will not have the inclusion data split by diversity dimensions, it may not be particularly useful (i.e. the majority will feel included, but this does not mean the culture is inclusive for the minority). We would encourage the FCA to consider requiring firms to report

inclusion data by diversity dimension to allow for greater comparison and analysis. Some of the Diversity Project members already do this – as does Reboot in its survey – and there is quite a variance in the responses when these are split by diversity characteristics.

We suggest that the question set is periodically reviewed and that the FCA also asks employers to declare data about their leavers and any linkage to informal and formal grievances. We also recommend asking firms to report on the usage of legal mechanisms such as Settlement Agreements to ‘resolve’ grievances or complaints. Sometimes, regardless of fault, these are useful for all parties. But firms may also be too quick to use these rather than seek to address underlying problems. Such agreements may directly contravene an individual’s ability to speak up as they often include a confidentiality clause. Obviously, this information would need to be handled with sensitivity and would only be reported on an aggregate level and only visible to the FCA. It would help the FCA to see when firms are experiencing significant changes in usage of settlement agreements and to be able to explore the reasons behind any spike or unusual patterns, as well as gauge the prevalence of their usage in ‘normal’ times.

We also encourage the FCA to consider how firms with headquarters outside the UK are expected to implement these proposals. In many cases, such firms roll out a global employee engagement survey where the questions are set at headquarters. It may be necessary for such firms to ask supplementary or alternative questions. In such cases, the FCA may allow provision (time/system changes) to implement a new reporting methodology, exclusive to their UK employees to meet requirements.

As for demographic data, it would be helpful if the FCA sets out how it plans to store and use inclusion data.

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 outlined in our answer to Q9, we agree with the proposed timing and frequency of disclosure and would not want to see a slippage in the timetable. We support the proposal that firms have a choice around the timing of their reports. We have suggested that data reporting requirements apply to smaller firms as well, and that new firms (in existence for less than 5 years) have a three-year transition phase, with reporting voluntary in the first three years. We note that firms

typically do NOT report where this is voluntary (e.g. gender pay gap reporting), so we do believe the requirements to disclose need to be mandatory if these data are regarded as important. We also suggest firms are required to disclose (to the FCA only) their annual use of legal mechanisms such as Settlement Agreements or Non-Disclosure Agreements relating to a grievance that may limit someone's ability to disclose poor behaviour. This would not prompt action unless the usage was especially high or spiked. At present, it is impossible to know the prevalence of Settlement Agreements, for example.

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.

See answer to Q 11

Q16. Do you think disclosure 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.

While we have suggested that all demographic characteristic data be disclosed as a mandatory requirement (provided that the case is strengthened around why this is important), it should be made clear that there may be differences around the relevance of setting targets. For example, disclosure of numbers around parental leave and caring responsibilities will paint a picture around a firm's family-friendly environment and inclusive culture, but it would not make sense to have a target here.

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 (Points of agreement and disagreement)
- Disagree
- Strongly disagree

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

We believe that a lack of DEI is a risk with potential financial as well as non-financial consequences. We recognise, however, that the framework for addressing DEI risk is different from dealing with immediate financial impact such as market abuse. We would point to the example of Barclays and the failure of the board to take faster action against former CEO Jes Staley as a good example of the risks associated with a culture that is not sufficiently diverse, inclusive or equitable. We believe the FCA's proposals outlined in 5.89 – 5.92 are good, and only caution that it is important that those working to assess potential risks stemming from a lack of DEI are appropriately trained so they truly understand what is meant by diversity of thought. There is evidence (e.g. Coutts Wealth Reputational Risk Committee's report on Nigel Farage) that low risk is wrongly perceived as accepting and tolerating only one view. In fact, people should have a licence to disagree, to challenge and improve oversight within companies. Thoughtful education is needed around this topic, often treated more as political correctness. Only then will a risk committee, audit function, management team or board be able to accurately interpret what is happening within a firm and drive a programme of change with intent and success.

We suggest that any analysis of the risks around a lack of DEI is conducted as a joint exercise between the risk control team and DEI or HR specialists at the firm, so there is a combination of the experience and understanding around DEI as a specific issue and knowledge around risk analysis.

Q18. Please provide any comments on our Cost Benefit Analysis

The approach taken by the FCA – the roundtables and surveys – appears thorough and the output reasonable. We do not think the average estimated costs look especially onerous compared with other regulatory requirements and believe that, if done correctly, the benefits will be significant. The more guidance and more templates the FCA provides, the lower the costs will be.



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

Please refer back to our executive summary.