

Bank of England  
Prudential Regulation Authority

By email: [clawback@bankofengland.co.uk](mailto:clawback@bankofengland.co.uk)

9 May 2014

Dear Sirs

## Consultation Paper CP6/14 Clawback

We welcome the opportunity to comment on your Consultation Paper CP6/14: Clawback.

The Institute of Chartered Secretaries and Administrators (ICSA) is the professional body that qualifies Chartered Secretaries. As company secretaries, many of our members have overall responsibility for their company's remuneration policy and reporting and, as such, are well placed to understand the practical issues around the proposals to extend the Remuneration Code to require all PRA-authorised firms to apply clawback to vested variable remuneration on a group-wide basis.

In our response we have some general comments in addition to our responses to your specific questions.

### 1. General comments

It is clearly inappropriate for bonuses to be paid and retained by those guilty of misbehaviour or material error, and we therefore support the steps that the Bank of England is taking to require PRA-authorised firms to amend contracts as necessary to ensure that vested bonus awards are susceptible to clawback, where appropriate. However, we wonder whether it might have been more helpful to address the issue in the context of the current legal and regulatory landscape, in particular those from the EU. In addition to the specific questions set out in the consultation, we think there are a number of issues with the current proposals which need further consideration and we have outlined our concerns below.

- 1.1 It is our view that any changes to clawback should be considered at the same time as deferral. These are inter-related issues and we consider longer deferrals as a more practical and effective way to improve the risk-alignment of remuneration.



- 1.2 Despite the proposed requirement that the company need only take *'all reasonable steps to apply them to historic vestings, or to awards that have been made but not yet vested,'* in practice, this presents a number of difficulties, including obtaining the agreement of the recipient. Achieving that agreement may not be easy and what constitutes 'reasonable steps' is likely to be the subject of some detailed legal argument in due course. We are also concerned that clawback of awards that have vested may be incapable of legal implementation, particularly in relation to PRA-authorized firms that operate across a number of territories.
- 1.3 Our greatest concerns involve the potential consequences of putting PRA-authorized firms at a competitive disadvantage. We have already seen the impact of CRD IV on the composition of remuneration and we think that the clawback proposals are likely to have an even greater impact than CRD IV, with the likely consequence of driving up either overall compensation, as a result of the increased uncertainty that will hang over employee compensation for many years, or the fixed pay element.

## 2. Specific Questions

### 2.1 The proposal that the grounds for applying clawback should be as wide as the grounds for malus

If clawback is to be introduced, it is our view that it should not be required in the same broad circumstances as for malus, but should be restricted to the most serious cases of personal misconduct, and should not be extended to those who are not directly culpable. Without such limitation, there is an increased risk that clawback powers will be either unenforceable or challenged by employees.

### 2.2 The proposal to limit the application of clawback to a period of six years from the point of vesting

It is our view that clawback should apply from the date of the award rather than the date of vesting, and that the total potential period for clawback should be reduced from the proposed six years to three to five years, to align the time period with deferred awards under CRD IV.

We hope you find our comments useful and we would be happy to expand on any of these points should you wish to discuss them further.

Yours faithfully



Peter Swabey  
Policy & Research Director  
Phone: 020 7612 7014