



FIRSTRAND

MEMO

To Financial Stability Board
From Carnita Low/FirstRand Limited
Subject Recommendation for consistent national reporting of data on the use of compensation tools to address misconduct risk
Date 5 July 2018

1. As a principle, while compensation tools are somewhat structured and designed to promote and encourage good conduct, it becomes challenging where it is expected to be effectively used to address misconduct risk. The concept of wilful misconduct presents various challenges in the compensation context.
2. Misconduct as a rule, would result in some form of disciplinary process and any offence serious enough to be recognised as a category of employee misconduct, would carry a commensurate sanction. If compensation were to be monitored as an additional tool to address misconduct, firms would have to be very clear of the various categories of misconduct that would carry a compensation penalty/impact – which is where serious challenges may be experienced in identification of the data sets. Some of the potential cultural challenges that this methodology presents: are
3. In addition, the review of and identification of material risk takers may not be useful as the potential for misconduct exists throughout firms, and firms could endeavour to contain the population in scope, whereas cultural interventions are a more pro-active, mitigatory approach to reach wide employee populations as opposed to punitive.
 - Certain categories of misconduct could be perceived to be less unacceptable than others;
 - Could encourage risky behaviour, as the consequence for “less serious” offenses relates to compensation penalties (only if found out or caught);
 - The perception and possible expectation that not having found to be guilty of unacceptable or improper behaviour is rewarded, when it should be part of both a firm and an employee DNA, and misconduct leading to any form of loss or penalty are not acceptable in any way or tolerated.
4. If one accepts that the potential for misconduct extends wider than the material risk takers, firms with international or widespread geographical footprints could find challenges in data collation and inconsistencies in application of the data collection process as well as varying cultural/jurisdictional approaches that would flaw the validity of the data sets collected.
5. Firms should be encouraged to keep record / data on wilful misconduct incidences. However, in country

laws would dictate how misconduct is treated within the confines of country laws and also may impact the quality of the data set.

6. Incidents where individuals are found guilty of misconduct, the preferred approach to compensation impacts, relate to situations where the seriousness of the misconduct may lead to all outstanding compensation considered to be "at risk". Usually, dismissal is accompanied by *malus* and *claw back* policies and governance principles in the remuneration frameworks. *Albeit* that these concepts are relatively new in certain geographical jurisdictions, it may be too early to implement monitoring regulations as these concepts are not without their limits and could still be legally challenged by affected employees, if outstanding compensation refers to past performance periods. These concepts are yet to be tested and data sets from jurisdictions who are just starting to adopt these concepts may not be meaningful.

For the link between compensation and conduct to be meaningful, the focus must therefore, be on the firm culture, initial employee introduction to the firm, clear policies of unacceptable conduct and firm interventions to entrench good conduct citing clear consequences for misconduct. Employees should be remunerated and leadership play a profound role in setting a clear tone for good conduct.

Perhaps by monitoring firm culture and employee relationships with firms to emphasize the importance of creating supportive working conditions for and motivating good conduct as part of the employee's longer-term relationship with the employer. Professional development and continually improved reward should reflect a shared commitment to firm values that should be entrenched in good conduct.