

Minutes

Meeting: FCA Board

Date of Meeting: 30 May 2019

Venue: 12 Endeavour Square, London, E20 1JN

Present: Charles Randell (Chair) – *except Item 14*

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|-----------------|-------------------|
| Andrew Bailey | Catherine Bradley |
| Amelia Fletcher | Sarah Hogg |
| Richard Lloyd | Sam Woods |

Chris Woolard (items 6 & 7 by telephone)

Apologies for absence: Nick Stace,

In attendance: Set out in Annex A

1 Quorum and declarations of interest

- 1.1 It was noted that a quorum was present and the meeting proceeded to business.
- 1.2 Except as described below, none of the persons present declared any interest in the matters to be considered at the meeting.
- 1.3 Baroness Hogg informed the Board that she had been invited to join the board of Royal Mail Group plc as the senior independent director. It was noted that HM Treasury has confirmed that it was content for Baroness Hogg to take up this appointment and the Board **agreed** that she should be permitted to do so.

2 Minutes of the FCA Board Meeting

- 2.1 The minutes of the FCA Board meeting held on 24 and 25 April were **approved**.

3 Matters arising

- 3.1 The Board noted the progress with the matters arising from previous meetings. The Secretary was asked to confirm the expected dates of completion for those not specified on the schedule. It was noted that Lloyds Banking Group had announced that Sir Ross Cranston had been appointed to conduct an Assurance Review of the review conducted by Professor Griggs and that the action should be completed when the outcome of the Cranston review was known. The Secretary was asked to amend the schedule accordingly.

4 Report from the Chief Executive

- 4.1 The Board was briefed on the work being carried out by the Specialist Supervision Division in relation to mini-bonds. The strategy was outlined and the Board noted the approach to
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prioritisation. The Board was informed that the team was also assessing the quality of the financial promotions and noted the co-ordination with Enforcement and Authorisations divisions.

- 4.2 The Board requested an analysis of the potential scale of harm in the event of further failures in the sector. The Board recognised that the FCA had already issued communications to alert consumers to the risks of the sector but felt that an enhanced campaign should be undertaken.
- 4.3 The Board also recognised the role of social media in disseminating financial promotions in this sector. It was briefed on the challenges of alerting the major tech companies, such as Facebook and Google, to the risks of the adverts they carry relating to high-risk investment products and the executive was asked to develop a strategy for addressing this. The Board also requested an update on the extent to which firms approving financial promotions had been referred to Enforcement.
- 4.4 The Board also received updates on the following matters:
- Work in relation to SIPP operators that accepted non-standard investments and for which redress may be due.
 - The temporary permissions regime for claims-management companies (CMCs). The Board noted that CMCs that have registered for the regime are expected to adhere to FCA standards from 1 April 2019 and that the authority had already acted on intelligence received in relation to some firms. In one particularly egregious case, the firm concerned had already been banned from issuing its financial promotions.
 - Equivalence of MiFID share and derivatives trading obligations (STO). It was noted that ESMA had now moved to exclude UK shares that would be caught by the STO in a no-deal scenario, leaving only EU and EEA shares within scope. While this is seen as a positive move, EU shares traded in London remained within scope and so the proposal was still unsatisfactory.
 - Lendy. The Board noted that it had entered into administration.
- 4.5 The Board discussed the blockchain-based digital coin that Facebook appeared to be planning to launch. Mr Bailey explained that the FCA was working closely with the Bank of England to consider the implications. The Board requested a briefing on industry developments in this area.

5 Report from the PRA

- 5.1 The Board received an update from Mr Woods on matters relating to the PRA.

6 High Cost Credit – Overdrafts

- 6.1 The Board was reminded that, in December 2018, the FCA had consulted on proposed pricing and repeat-use remedies in the overdraft market and had published its rules for competition remedies. It was noted that the authority had also consulted on aligning the implementation date of both the pricing and competition remedies.
- 6.2 The Board noted that as part of the package of remedies it was proposed to issue guidance in relation to Refused Payment Fees (RPFs). This would reiterate that RPFs should reasonably correspond to the costs of refused payments.
- 6.3 The Board was informed that assessment of the consultation responses, evidence and arguments presented had confirmed the team's view that the proposed package of remedies is proportionate and likely to be effective in addressing the harms identified. However, it was

accepted that for some firms the six-month implementation period for all remedies would be unachievable. As a consequence, it was proposed that firms should implement:

- The RPF guidance immediately
- the competition remedies and repeat-use guidance within six months; and
- the alignment, APR and simplification remedies within ten months.

6.4 The Board recognised that overall adjustments to pricing as a consequence of the rules may lead to some customers being adversely affected. It was confirmed that firms would be required to ensure suitable transitional arrangements were in place for such customers.

6.5 The Board also accepted that the proposals may encourage more widespread use of risk-based pricing. It was recognised that pricing for risk was an important principle for lending and already existed in the market but the authority would need to be alive to the risks of poor outcomes.

6.6 The Board was informed that it was proposed to consult on a requirement that firms should publish overdraft pricing information as part of the existing quarterly current account service metrics. It was also the intention to consult on minor changes to the competition rules.

6.7 After discussion, the Board **approved**:

- the Personal Current Accounts and Overdrafts Instrument 2019 (FCA 2019/71)
- the implementation dates for the overdraft rules as set out in paragraph 6.3 above, and
- a consultation on new requirements for firms to publish overdraft price information and to make small changes to the competition rules.

7 High Cost Credit – Buy Now Pay Later (BNPL)

7.1 The Board was reminded that, in December 2018, the FCA had made rules about disclosure for (among other things) BNPL agreements, and consulted on other proposed BNPL remedies. These were intended to address the harms identified from unclear information about BNPL offers and the backdating of interest in relation to amounts repaid during the offer period.

7.2 The Board was informed that industry and consumer groups were supportive of the proposals for a package of disclosure-related remedies. There was, however, strong opposition from industry to the proposed ban on backdating interest on repaid amounts, although this was countered by strong support for the proposal from consumer groups. There had also been strong opposition from industry to the proposed three-month implementation period for this remedy.

7.3 The Board considered the objection from industry that the backdating of interest was akin to the practice of the credit card industry. The Board was persuaded, however, that there were important differences that justified the proposed remedy, namely:

- BNPL operates over a longer period; and
- it is a more complex product, marketed in a different way, with an emphasis on the “offer” period.

7.4 The Board also noted that the remedy was partly predicated on the view that customers could be confused by the current charging regime and, although this had not been specifically tested, there was evidence that indicated customers being confused by, and not understanding, how interest charges worked.

7.5 After discussion, the Board **approved**:

- the proposed response to feedback received on the proposals consulted on in CP18/43 for publication in a Policy Statement;
- an extension to the implementation period for the ban on backdating interest on repaid amounts from three months to five months, and
- the making of the Buy Now Pay Later Instrument 2019 (FCA 2019/72);

8 Draft FCA Annual Report and Accounts 2018/19

8.1 The Board reviewed and discussed the draft of the 2018/19 Annual Report. The Board sought to ensure that the report gave an appropriate balance in its discussion of events and activities during the year.

8.2 The Board felt that the FCA's progress in respect of its competition objective could be more clearly referenced in the report. The Board also noted the references in the draft to the regulatory perimeter and was informed that it was the intention to publish the FCA's Perimeter Report in advance of the Annual Report and prior to the June Board meeting. The Board would therefore be asked to approve publication of the Perimeter Report by written procedure.

9 Draft PSR Report and Accounts 2018/19

9.1 The Board reviewed and discussed the draft annual report of the Payment Systems Regulator for 2018/19 and the team explained the overall approach that had been taken in drafting it.

9.2 It was also suggested that the report should record thanks to Hannah Nixon in view of her significant contribution to the success of the PSR.

10 Staff Consultative Committee Annual Report

10.1 The Board welcomed the report from the Chair of the Staff Representatives of the Staff Consultative Committee. The ensuing discussion covered the following issues:

- The ability of staff to "Speak Up" on matters of concern to them;
- The visibility of the Board – and Board members – to staff;
- Staff appetite for change throughout the organisation – and how the Senior Leadership Team could do more to help staff through periods of change.

10.2 The Board felt it would be valuable for staff to be aware of this discussion and it was agreed that a blog should be published outlining the discussion on Pulse, the FCA intranet site.

11 Policy Statement on proposals to improve shareholder engagement

11.1 The Board was reminded that, in January 2019, the FCA had consulted in Consultation Paper CP 19/7 on proposals to implement the revised Shareholder Rights Directive (SRD II). The team briefed the Board on continued work to implement the directive following feedback and stakeholder engagement on the proposals.

11.2 The Board was informed that proposals to implement the relevant SRD II requirements for asset managers and life insurers were largely welcomed by stakeholders, although there were some specific points of feedback that had been taken into account in finalising the rules.

11.3 After discussion, the Board **approved**:

- the Shareholder Rights Directive (Asset Managers and Insurers) Instrument 2019 (FCA 2019/68); and
- the Listing and Disclosure Sourcebooks (Shareholder Rights Directive) Instrument 2019 (FCA 2019/73).

It was noted that these rules were as consulted on with technical clarifications where necessary for asset managers and other in-scope regulated firms, and some modifications for related-party rules for issuers with securities traded on a regulated market.

12 Loan-based crowdfunding rules

12.1 The Board was reminded that, July 2018, the FCA had consulted in Consultation Paper CP18/20 on rules applicable to operators of electronic systems in relation to lending - i.e. loan-based crowdfunding platforms or Peer-to-Peer (P2P) platforms. The Board noted that the proposals had generally been well received, with the strongest feedback, both in favour and against, relating to the proposal to extend marketing restrictions to the sector. The Board noted that these proposals essentially sought to apply the same restrictions as already applied to investment-based crowdfunding platforms in relation to non-readily realisable securities.

12.2 The Board discussed the proposals. The Board thought it was important to signal that these proposals were not necessarily the end of the story, since the broader question of access by ordinary investors to high risk investments required further consideration. The Board nevertheless agreed that the rules and guidance should be implemented as consulted on with the proposed technical amendments, and some additional guidance on:

- what sort of marketing is permitted by P2P platforms under the direct offer marketing restriction; and
- the appropriateness assessment for P2P investments.

12.3 Accordingly, the Board **approved**:

- the Operating and Electronic System in Relation to Lending (Peer-to-Peer Lending) Instrument 2019 (FCA 2019/69)

The Board also **approved**:

- the Mortgages and Home Finance (Peer to Peer) Instrument 2019 (FCA 2019/75)

13 Potential impact of audit changes on the FCA's role as a securities regulator

13.1 The Board was given an overview of three separate reviews currently in progress into different aspects of the UK audit market and discussed the strategic issues these raised for the authority. It was agreed that the FCA should not attempt to take a role in the reorganisation of the audit market but did have a significant interest in how it developed. The Board therefore discussed a number of key principles around which it felt any eventual structure should be based, as set out in the paper presented to the meeting, and agreed that the team would need to return for a more detailed discussion when the revised audit model started to emerge.

14 RBS Global Restructuring Group Report

Charles Randell left the room at this point and Baroness Hogg took the Chair. Sheree Howard informed the Board that, as she had previously been employed by Direct Line Group while it was part of RBS, she recused herself from discussion of the item and also left the room.

- 14.1 The Board recalled that, on 31 July 2018, the FCA published a statement on the further investigative steps it had taken in relation to the RBS Global Restructuring Group (GRG) and committed to publishing a fuller account of its findings (the Report). The Board was informed that the Report had now been prepared and had been sent to RBS and relevant individuals for Maxwellisation.
- 14.2 The Board noted that representations had been received from each party. It was informed that the EMO investigation team, in conjunction with EMO Legal, had made amendments to the Report where it considered it appropriate and the rationale for those changes, as well as changes it was not considered appropriate to make, had been recorded and provided to the Executive Risk and Policy Committee on 29 April 2019. The Board was informed that the representations included a joint submission, on behalf of the individuals, on a single issue relevant to all of them – the naming of them in the Report. This joint representation had argued against the naming of the individuals, in part due to the heightened risk of physical safety naming would create.
- 14.3 The Board noted that the Report was to be published as guidance and agreed that it was not necessary for the individuals to be named to achieve the purpose of publishing the Report. The Board therefore **agreed** that the individuals should not be named. In reaching its decision, it took note of the joint representation, and the evidence that had been provided to support it in respect of individuals' personal security, and concluded that it supported the decision not to name the individuals but was not the determinative factor in the decision not to name them.

Charles Randell and Sheree Howard returned to the room.

15 Papers for noting

- 15.1 The Board **noted** the agenda of the Audit Committee meeting held on 23 May 2019 and Ms Bradley gave a summary of the matters considered at the meeting.
- 15.2 The Board noted the minutes of the External Risk and Strategy meeting held on 10 April 2019.
- 15.3 The Board noted the reports from the Consumer Panel, the Practitioner Panel and the Smaller Business Practitioner Panel.

16 Decisions of the Board

- 16.1 The Board **approved**:
- the Investment Case for the Future of Data Collections (FDC) Project, total programme costs, delivery plan and associated funding requests;
 - that the programme will make future drawdown requests directly from the Executive Operations Committee (EOC), updating the Board appropriately;
 - a drawdown of £1.3m to fund the programme during May and June
 - the FDC service forecast spend (exceeding £13m) in Amazon Web Services (AWS) over a five-year period
- 16.2 The Board **approved**:

- the Strategic Security Programme on to the change portfolio and to commence the initial phase of the first transition state (Stage 1); and
- an initial drawdown of £2.5m (all in 2019/20) against the portfolio placeholder of £6m to undertake the start of Stage 1

16.3 The Board **approved** the re-appointment of Andrew Bailey to the Board of the Payment Systems Regulator with effect from 1 July 2019 for a two-year term ending 30 June 2021 to coincide with his term as Chief Executive of the FCA.

16.4 The Board **approved** the following appointments:

- Nikhil Rathi as the Chair of the FCA Markets Practitioner Panel from 1 July 2019 to 31 October 2021, subject to the approval of HM Treasury.
- Hannah Meakin as a member of the FCA Markets Practitioner Panel from 1 June 2019 to 31 May 2022
- Philippe d'Orgeval as a member of the FCA Markets Practitioner Panel from 1 June 2019 to 31 May 2022

16.5 The Board **approved** the appointment of Richard Parkin as a non-executive director of the Financial Services Compensation Scheme for a period of three years. It was noted that the appointment is expected to commence on 1 July 2019.

16.6 The Board noted the additional responsibilities Catherine Bradley had taken on as Chair of the Audit Committee and **approved** her standing down from the Oversight Committee with immediate effect.

16.7 The Board **approved** the updated FCA/PRA Memorandum of Understanding as presented to the meeting.

17 Rules and Guidance

17.1 To the extent it had not already done so earlier in the meeting, the Board **passed** the resolution set out in Annex B.

18 Papers to be noted

18.1 The minutes of meetings of the Executive Committee held on 8, 25 and 29 January and 5 and 2 February 2019 were **noted**.

18.2 The minutes of meetings of the Executive Risk and Policy Committee held on 4, 7, 11 and 14 February 2019 were **noted**.

18.3 The Board **noted** the forward agenda.

There being no further business, the meeting closed.

Charles Randell
Chair

ANNEX A: Attendees

Attending all, or substantially all, of the meeting:

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| Nausicaa Delfas | Director, International |
| Allyson Milano | Assistant Company Secretary |
| Nicholas Holloway | Head of Department, General Counsel's Division |
| Sheree Howard | Director, Risk and Compliance Oversight Division (from Item 9 and except Item 14) |
| Simon Pearce | Company Secretary |
| Georgina Philippou | Chief Operating Officer |
| Mark Steward | Director, Enforcement and Market Oversight |

Attending for the following agenda items:

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| 4.1 & 4.2 | Alison Barker | Director – Specialist Supervision Division |
| 6 | Nisha Arora Graeme McLean Neil Marshall Jody Whitehorn | Director – Consumer & Retail Policy Head of High-cost Credit (HCC) review Manager – HCC review Manager - GCD |
| 7 | Nisha Arora Graeme McLean Neil Marshall Jody Whitehorn | Director – Consumer & Retail Policy Head of HCC review Manager – HCC review Manager – GCD |
| 8 | Stephen Humphreys | Head of Department - Communications |
| 9 | Keren Oser Jane Gosling | Head of Department – Finance Manager – PSR Communications & Operations |
| 10 | Mark Roberts | Chair of the Staff Representatives |
| 11 | Richard Fox Nike Trost Mark Manning | Head of Department – Markets Policy Manager – Markets Policy Manager – Markets Policy |
| 12 | Richard Fox Nike Trost Mark Manning | Head of Department – Markets Policy Manager – Markets Policy Manager – Markets Policy |
| 13 | Clare Cole Richard Fox Henry Postlethwaite Nike Trost Toby Wallis | Head of Department – Primary Market Oversight Head of Department – Markets Policy Manager – Market Integrity Unit Manager – Markets Policy Manager – Markets Analysis & Risk |
| 14 | Laura Dawes Lauren Rafter | Head of Department – Enforcement Retail Technical Specialist – Enforcement Retail |

ANNEX B: Resolution

The Board of the Financial Conduct Authority resolves to make the following instruments:

1. Shareholder Rights Directive (Asset Managers and Insurers) Instrument 2019 (FCA 2019/68)
2. Operating an Electronic System in Relation to Lending (Peer-to-Peer Lending) Instrument 2019 (FCA 2019/69)
3. Supervision Manual (Reporting No 10) Instrument 2019 (FCA 2019/70)
4. Personal Current Account and Overdrafts Instrument 2019 (FCA 2019/71)
5. Buy Now Pay Later Instrument 2019 (FCA 2019/72)
6. Listing and Disclosure Sourcebooks (Shareholder Rights Directive) Instrument 2019 (FCA 2019/73)
7. Enforcement (EU Securitisation Regulation) (No 2) Instrument 2019 (FCA 2019/74)
8. Mortgages and Home Finance (Peer to Peer) Instrument 2019 (FCA 2019/75)

The Board is invited to approve in principle the making of the following instruments and to agree that they be made at a future date by way of written resolution:

1. Prospectus Regulation Rules Instrument 2019
2. Securitisation Repositories (DEPP and EG) Instrument 2019