Financial Conduct Authority

Minutes

Meeting:	FCA Board
Date of Meeting:	30 January 2014
Venue:	25 The North Colonnade, Canary Wharf, London E14 5HS

Present:	Clive Adamson	Mick McAteer
	Andrew Bailey	Tracey McDermott
	Amanda Davidson	Sir Brian Pomeroy
	Amelia Fletcher	Lesley Titcomb
	David Harker	Martin Wheatley
	John Griffith-Jones (Chair)	
In attendance:	Set out in Annex A	
Apologies:	Jane Platt	

Quorum and Conflicts

The Meeting noted apologies from Jane Platt and that Mr Bailey would join the meeting at approximately 1pm. The Board noted that there was a quorum present and proceeded to business.

Members were asked to declare conflicts of interest at the start of any relevant items.

Sir Brian Pomeroy declared that, at the request of the Treasury and the Department for International Development, he had recently been appointed as Chair of the Action Group on Cross Border Remittances. Sir Brian explained that he had discussed potential conflicts with the FCA Chairman and with the Head of Financial Crime at the FCA prior to taking up the position. He had also alerted the Treasury to this issue and ensured that the terms of his appointment allowed him to exclude himself from the consideration of any issues by the action group where a conflict with the work of the FCA may arise.

The Board noted this declared potential conflict and authorised it pursuant to Article 10.2, noting the safeguards that had been put in place.

1 Minutes

1.1 Minutes of the FCA Board meeting

The minutes of the FCA Board meeting held on 12 December 2013 were approved subject to some minor typographical changes.

1.2 Matters arising

The Board noted the progress in respect of the matters arising.

1.3 Update on the Remuneration Committee meeting held on 29 January 2014

The Board received an oral update from Amanda Davidson noting the items discussed by the Remuneration Committee which included agreeing the annual pay and incentive awards for the Directors for whom the Committee was responsible and the amount available for the pay and incentive award pool for the remainder of staff.

1.4 Monthly reports from the Independent Panels

The Board noted the reports from the Consumer Panel, Practitioner Panel, Smaller Business Practitioner Panel and Markets Practitioner Panel and discussed the following points in particular:

- the Practitioner Panel, Smaller Business Practitioner Panel and the Consumer Panel commented on the draft Risk Outlook, in particular in relation to its purpose and relationship with the Business Plan. The Board noted that the Risk Outlook was intended to be a generic piece of work, not directed at specific audiences, but that feedback had been received that it was used by risk professionals within firms and informed them where there may need to be further focus (e.g. for training requirements). The Board discussed that the purpose of both the Risk Outlook and Business Plan would be clearly defined and it would review these in February;

- the comments made by the Smaller Business Practitioner Panel regarding the need for investment in digital communication with smaller firms. It was accepted that further work on effective communication with smaller firms was required and that this could be informed by lessons learned from the engagement with firms on consumer credit. Consideration should also be given to whether there were further opportunities to increase transparency; for example by publishing the FCA's intended thematic reviews;

- the concerns of the Markets Panel in relation to the way in which the FCA would use its competition powers, and the suggestions that it should be focusing particularly on "helping markets function well". The Board concurred with the Panel's view that the FCA should play a key role in international discussions and undertook to ensure that the Panel understood the respective roles of the senior FCA Executives responsible for international engagement; and

- the comments of the Smaller Business Practitioner Panel in relation to the appropriate focus of a market study on income products at retirement.

2 Reports from Executive Directors

2.1 CEO Report

The Board received the CEO's Report, and noted and discussed the following:

- the Co-op Bank had successfully completed its Liability Management Exercise in December 2013. The FCA was undertaking further work to supervise the bank and undertake enforcement investigations;

- Mr Adamson reflected on his appearance before the Treasury Select Committee and the focus of the questioning regarding decisions taken in relation to the merger between the Co-op Bank and Britannia Building Society and the appointment of the Co-op Bank Chairman, Reverend Flowers. The evidence given demonstrated confidence in the decisions taken by the FSA, based on the information known at the time. The Board considered the implications for and expectations of the Senior Managers Regime and the need to ensure that the FCA's ability to assess "fitness and propriety" versus firms' responsibilities to do sufficient checking was made clear;

- the Board would consider further the policy and final rules in relation to crowdfunding at its meeting in February; it would need to consider its consumer protection objective when deciding whether to restrict the ability of ordinary retail investors to engage in this market;

- the thematic work on the annuities market was now complete and the Executive was in discussions with stakeholders to agree an appropriate timeline for the publication of its findings and the launch of a market study;

- a short update on the status of the Consumer Credit and INTACT projects, which were on track in terms of timing and budget; the Board discussed briefly the duty of the FCA to introduce a cap on High-Cost Short-Term credit and noted that this would be considered in detail in February; this duty was mandatory and had a defined timeline. The FCA had the power to introduce a wider cap on credit, which was discretionary, but the immediate focus would be on the work to determine the mandatory cap;

- the thematic work carried out on transition management and the need for firms to ensure that risks were monitored to avoid them crystallising to the detriment of consumers; there was a closely linked enforcement case that would soon be published to demonstrate poor conduct and encourage compliance; and

- in response to the independent reports criticising RBS's lending practices and its treatment of small and medium sized enterprises, the FCA had appointed independent skilled persons to carry out a review of the allegations. This would be carried out under section 166 of the Financial Services and Markets Act and would include a review of whether the practices used raised any concerns with governance and culture issues (given the FCA's limited jurisdiction over commercial lending).

3 Specific items of business

3.1 AIFMD External Spend Approval

The Board received the report and noted and discussed the following points:

- the Alternative Investment Fund Managers Directive was a European directive that introduced a comprehensive regulatory and supervisory framework at European level; as a maximum harmonisation directive the FCA has minimal discretion over its implementation or timing;

- the increase in the cost of the project arose from: the delay by firms in submitting their applications; the complexity of applications received; absorbing two other non-discretionary projects; and the use of additional external contractors, due to the stretch on resources being used for consumer credit;

- the Directive had the benefit of requiring the regulator to collect regular fund data, which could provide information on leveraging in firms and therefore contribute to a better understanding of stability as well as assist in market monitoring; and

- whether it might be possible in future to improve the efficiency of data collection, or set up partnerships with other countries to build systems jointly and influence policy from an operations point of view. The Board agreed it should review this in due course.

The Board approved the external spend.

3.2 Setting enforcement penalties

The Board received an update on how policy for setting enforcement penalties was applied in practice and discussed the following key points:

- the current policy, which was introduced in March 2010 in part in order to increase transparency of how fines were set, applied to misconduct that occurred after this date; there were some complications in cases where misconduct overlapped the previous regime and any changes to the regime in the future would create similar issues;

- the current penalties policy had a five step process, but was not intended to be mechanistic and allowed for some discretion. The policy was based on disgorgement, discipline and deterrence with a predominantly revenue-based approach as a proxy for the risk of harm that breaches were likely to cause and the size of the penalty necessary to act as a credible deterrent;

- for a number of cases, where revenue is not an appropriate metric, the FCA seeks to identify alternatives;

- the policy also allows for discretionary increases to penalties, although if there was a need to intervene regularly in this way it would suggest that the policy should be reviewed;

- the FCA was looking at the effectiveness of the different regulatory tools and how these could be publicised to create maximum deterrence. The Board noted that the use of supervisory tools was rarely publicised as this was often prevented by statute;

- the Board supported the FCA's consideration of the impact of different regulatory tools. The Board discussed the factors which are relevant to the impact of regulatory action and its deterrent effect including, for instance, reputational damage, the time and effort of paying redress and potential action against individuals (including use of bonus restrictions or claw-backs).

Mr Bailey joined the meeting at 1.20pm

3.3 Approval of external spend for Consumer Credit

The Board received the report and noted and discussed the following key points:

- the business case for the consumer credit programme had been comprehensively reviewed and the expected spend had increased. The Executive had reflected on the lessons to be learned in relation to the long-range projections of projects, and noted that in this case the outline business case had been prepared prior to legal cutover and without full information on the scale and complexity of the programme;

- the additional costs reflected further research on firm volumes; the application of significant extra resource to achieve delivery to the timeframes, most of which was specialist external resource; and further spend to support the business beyond April 2014;

- the Board asked the Executive as to whether the cost could be reduced, but recognised that any reduction may decrease the readiness of the organisation to supervise and authorise consumer credit firms. Also, if less were spent on communicating with firms, it could lead to a significant amount of (potentially unintended) unauthorised business;

- the Board's early decisions on risk appetite - to undertake checking at the gateway – had had a significant impact on the cost of the project. However, it was recognised that this decision had been taken in light of the experience of taking on Mortgage and General Insurance regulation and the likelihood of grandfathering Consumer Credit firms leading to deferred costs through increased supervision and enforcement;

- the programme spend was in line with the 2014/15 budget approved by the Board and each item would be subject to the usual procurement controls. The Board discussed the process for agreeing expenditure on projects and the limits that required Board approval. It agreed that it was important for the Board to have oversight, even with the additional controls at the Executive level; and

- there was a risk in amortising the cost of the project and recouping funds over a ten year period but it was acknowledged this was appropriate in order to make the costs manageable for the firms in this sector.

The Board agreed the revised external spend for the programme and asked that if the programme was forecast to exceed the agreed level the team should report to the Audit Committee.

3.4 Tackling Financial Crime and Money Laundering: An Overview

The Board received the report, and noted and discussed the following key points:

- the legislative and regulatory framework in which the FCA operated and the extent of the FCA's responsibilities to regulate firms, particularly those that operated internationally and outside the EU;

- the risks to the FCA objectives as an anti-money laundering competent authority and the way in which the FCA approached the mitigation of those risks;

- the FCA's concerns around anti-money laundering compliance and the action that had been taken, which included early intervention work as well as enforcement cases with penalties imposed on non-compliant firms; and

- the level of resource available to the team and the focus for it during 2014/15.

3.5 The FCA's Approach to Prudential Supervision

The Board received the report, and noted and discussed the following key points:

- the FCA's approach to prudential supervision for the firms for which it had this responsibility, which aimed to minimise harm to consumers and markets arising from financial strain and failure;

- firms were categorised according to their impact rather than likelihood of failure in order to aim to ensure significant firms could wind down their businesses in as orderly a manner as possible;

- the prudentially significant firms were proactively supervised via monitoring, regular engagement and assessment of financial resources and wind-down capability, while the remainder of firms considered to be low risk were reactively supervised and the focus was achieving an orderly wind-down in the event a firm failed, drawing on professional indemnity insurance and ultimately the FSCS as necessary;

- there were challenges for supervision in this area; the Executive intended to develop the monitoring of the non-relationship managed firms, recruit prudential specialists and increase training for staff;

- the Board recognised that in accepting the approach it was implicitly endorsing the risk appetite set out by the Executive;

- Board members were supportive of the distinction between orderly and disorderly failure and queried whether there should be any additional intervention to re-classify certain firms to a higher priority if they had a significant public profile; it noted that there had been a thorough review of the impact of firms' failure and firms with a low "prudential" rating holding client assets had already been re-classified so they were given more attention; and that the Executive was of the view that the resources available limited the scope to extend intensive supervision to any additional firms; and

- the classifications were communicated to individual firms but not made available to the wider public. The FCA would be publishing a document setting out its approach to conduct and prudential supervision which would make clear that the FCA could not prevent a firm failing or remove the possibility of failure.

The Board agreed it was important to consider proportionality in respect of potential disruption to markets and in respect of consumers.

3.6 Payment Systems Regulator – Governance

The Board received the report and agreed the recommendations in respect of the establishment and governance of the Payment Systems Regulator (PSR).

The Board noted the following points in the discussion that followed:

- the recruitment of the Managing Director of the PSR had started, and it was hoped that an appointment could be made by April 2014;

- it was expected that the PSR corporate body would be set up by 1 April 2014, although it was suggested that the Directors-elect of the PSR would meet in advance to discuss the appropriate governance arrangements; and

- the FCA Board should be kept informed of the development of the PSR's work through a regular reporting mechanism.

3.7 FPC recommendation

Mr Wheatley and Mr Bailey declared interests in this item as members of the Financial Policy Committee. The Board noted these declared potential conflicts and after consideration authorised them pursuant to Article 10.2.

The Board received the report, and noted and discussed the following key points:

- the Financial Stability Report published on 28 November 2013 recommended that the FCA require mortgage lenders to have regard to any future FPC recommendation on appropriate interest rate stress tests to use when assessing affordability;

- the Report recommended that the affordability test under MMR should include a requirement for firms to have regard to FPC recommendations on a further stress test, in addition to the interest rate test; and

- the implications for firms of any recommendations should the FCA accept them and implement a rule.

The Board agreed with the Executive's decision to consult on a draft rule to implement the FPC recommendation and that it would be useful for the FCA to discuss further with the FPC and the Bank of England the process by which any recommendation was made.

4 Report from the PRA

The Board received an oral update from Mr Bailey and noted the following key points:

- the focus on shadow banking; the implementation of the PCBS and Vickers recommendations (which may have some conduct implications as consumers were provided services from different sides of the ring-fence);

- the issues that had been arising in larger banks, including provision against legal risks, continuing PPI liabilities and IT failures; and

- the issues in the insurance market, including the risks of regulatory arbitrage which was affecting other sectors such as crowdfunding and primary information providers.

5 Decisions reserved to the Board

5.1 Rules & Guidance to be determined:

The Board made nine instruments set out in Annex B.

The Board asked for additional information in relation to the rules on the statutory regime for primary information providers, particularly the risk of relocation outside the UK.

5.2 Matters requiring a decision of the Board:

The Board approved:

- the appointment of Robert Mass as a member of the Markets Practitioner Panel, with effect from 1 March 2014 for a period of three years;

- the appointment of John Pollock as Deputy Chairman of the Practitioner Panel for a two year term with effect from 1 February 2014 and to extend his membership of the Panel for the same amount of time;

- the reappointments of Robert Talbut and Malcolm Cooper as members of the Listing Authority Advisory Panel, with effect from 1 February 2014 for a period of three years and the reappointment of James Palmer as Chairman of the Listing Authority Advisory Panel with effect from 1 April 2014 for a period of two years;

- the reappointments of Maeve Sherlock, Alan Jenkins and Pat Stafford as Non-Executive directors of the Financial Ombudsman Service for a further three years until 22 February 2017; and

- the Communications Policy.

6 Papers for noting

6.1 Minutes of ExCo meeting held on 26 November 2013

6.2 Draft Minutes of Risk Committee meeting held on 19 November 2013

6.3 Draft Minutes of Audit Committee meeting held on 28 November 2013

6.4 Forward Agenda

The Board noted the papers.

7 Any other business

There was none.

8 HBOS review update

Mr Griffith-Jones left the meeting having previously declared a conflict in this matter through his former employment as Chairman of KPMG LLP, auditors of HBOS.

The Board noted the previously declared conflicts, and as no decisions were being requested of the Board at this point, authorised them pursuant to Article 10.2 and agreed that the Directors could attend the discussion of the matter on this occasion.

The Board received an update from Sir Brian Pomeroy on developments since the Board meeting in November 2014.

The meeting closed at 4.45pm

Claire Strong

Deputy Company Secretary

Annex A: <u>Attendees</u>

Sean Martin	General Counsel
Claire Strong	Deputy Company Secretary
Simon Pearce	Company Secretary
William Amos	Director of Wholesale Banking & Investment (for item 3.5)
Celyn Armstrong	Manager, Enforcement Legal Group (for item 3.2)
Fiona Bisset	Manager, Alternative Investments Team (for item 3.1)
Sharon Campbell	Head of Department, FCID (for item 3.4)
Nadege Genetay	Head of Department, Banking, Lending and Protection (for item 3.7)
Gareth Lewis	Director, Information Systems (for item 3.1)
Mark Nicol	Head of Department, Consumer Credit Programme (for item 3.3)
Ian Rainsby	Manager, Programme & Project Management (for item 3.1)
Gerald Sampson	Manager, Prudential Supervision & Specialists (for item 3.5)
Mary Starks	Director, Competition (for item 3.6)
Daniel Thornton	Head of Department, Legal Group (for item 3.2)
Chris Woolard	Director, Policy Risk & Research (for items 3.1, 3.6)

Relevant Technical Specialists and Associates also attended the meeting

ANNEX B: <u>Resolution</u>

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

Senior Management Arrangements, Systems and Controls Sourcebook (AIFM Remuneration Code) Instrument 2014 [FCA 2014/2]

Capital Requirements Directive IV (Handbook Administration) Instrument 2014 [FCA 2014/3]

Training and Competence Sourcebook (Accredited Bodies and Qualifications Amendments No 10) Instrument 2014 [FCA 2014/4]

Retail Distribution Review (Adviser Charging No 7) Instrument 2014 [FCA 2014/5]

Supervision Manual (Listing Authority Review Committee) Instrument 2014 [FCA 2014/6]

Supervision Manual (Suspicious Transaction Reports) (Amendment) Instrument 2014 [FCA 2014/7]

Over-the-Counter Derivatives, Central Counterparties and Trade Repositories (No 2) Instrument 2014 [FCA 2014/8]

Listing Rules and Disclosure and Transparency Rules (Primary Information Providers) Instrument 2014 [FCA 2014/9]

Fees (Consumer Credit) Instrument 2014 [FCA 2014/10]