

## **PROTOCOL**

### **For the conduct of the lessons learned review commissioned by the Non-Executive Directors of the Financial Conduct Authority (FCA) of the redress scheme for Interest Rate Hedging Products**

#### **A. Introduction**

1. John Swift QC (hereafter "you") have been appointed by the FCA, to carry out an independent review of the redress scheme for Interest Rate Hedging Products (IRHPs).
2. The scope of the review is set out in the Terms of Reference published by the FCA on 20 June 2019.
3. This Protocol sets out the procedures under which the review is to be carried out, reflecting the requirement for this review to be, and to be seen to be, independent.

#### **B. Administrative Matters**

4. You will be given specific individual contacts at the FCA, including the Accountable Executive ('AE') to whom the Sub-Committee of the Board has delegated responsibility for oversight of this review.
5. The AE will be supported in his/her role by a Project Review Board which will provide advice to the AE when he/she requests it but which will not have any delegated decision-making powers. Any interactions you have (or may have) with the Project Review Board will be at the discretion of, and through, the AE.
6. To facilitate you in conducting the review, particularly in relation to requesting and obtaining relevant documents and information, a dedicated email inbox for communications relating to the review has been set up. You should send communications relating to the review to this inbox as this will ensure that they are logged and actioned efficiently.

#### **C. Documents, other information and meeting**

##### **Documents: requests and production**

7. You will send all requests for the production of relevant documents (to include, for the purposes of this Protocol, documents, information and communications in hard copy and in electronic form) to the email address referred to in paragraph 6 above. Such requests will set out the documents or class of documents requested for production.
8. Provided that the documents requested for production are within the FCA's power, custody or possession, they will be provided to you either in hard

copy or in electronic form (via a secure IT route) as soon as possible. No such documents will be withheld from you.

9. Where documents are not within the FCA's power, custody or possession you should follow the procedure above and the FCA will contact the organisation holding the documents and request the documents on your behalf.

#### **General information requests and general explanations**

10. In the event that you require other information and/or explanations relating to the FCA's activities, and falling within the scope of the Terms of Reference, you will send a request to the email address referred to in paragraph 6 above.
11. The FCA will respond as soon as possible to any such request.
12. In the event that you require other information and/or explanations relating to the activities of another organisation, falling within the scope of the Terms of Reference, you should follow the procedure above and the FCA will contact the relevant organisation to request its assistance and to obtain the relevant information and/or explanations for you.

#### **Meetings with individuals**

13. In the event that you wish to meet with any individual currently or formerly employed by the FCA, you will notify the FCA of the individuals whom you wish to meet (using the email address referred to in paragraph 6 above, attaching a letter from you to the individual for the FCA to pass on to the individual).
14. The FCA will endeavour to secure the attendance at a meeting of any identified individuals who are current or former employees of the FCA. It should be noted, however, that attendance by an individual at a meeting with you is not required under statutory powers.
15. Any meetings with individuals not within paragraphs 13 and 14 will be arranged by your team (the Independent Reviewer's team).
16. Meetings will be arranged at a mutually convenient time for yourself and the individual. You will provide to the FCA, no less than six working days in advance of the meeting (i) a broad outline of the topics you wish to cover during the meeting and (ii) a list of the principal documents you may wish to reference during the meeting (together the "meeting information"). The FCA will pass the meeting information to each individual no less than five working days in advance of the meeting between that individual and yourself. Meetings will be recorded by your professional services team and transcript provided to the individual<sup>1</sup>. The information obtained by reason

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<sup>1</sup> For the avoidance of doubt, the transcripts will not be made available to the FCA. The transcripts, however, will be retained by the FCA after the review has been completed in a secure electronic area, in accordance with the FCA's Records Management Policies and Standards

of the interviews may be relied upon by you in preparing your report.

17. To the extent possible you will endeavour to hold any meetings at a mutually convenient location for yourself and the individual with whom you are meeting. If you require it, the FCA will make available for any meeting a suitable room at its premises at 12 Endeavour Square, Stratford.

#### **Third party assistance**

18. You may contact third parties directly for assistance in relation to the review and the FCA will, to the extent that it is able to do so, facilitate such assistance (for the avoidance of doubt this is not in relation to your professional services team).

#### **Escalation**

19. The FCA is committed to providing you with assistance to facilitate your conduct of the review. However, in the event that you consider that the FCA is not providing you with the co-operation or information that you reasonably require to fulfil your responsibilities, please escalate matters promptly to the Chairman of the FCA.

### **D. Legal privilege and confidentiality**

#### **Privilege**

20. It may be necessary for the FCA to provide you with information that is subject to the FCA's legal privilege. The FCA will not withhold documents from you on the grounds of legal privilege but, for the avoidance of doubt, the provision of such material to you does not constitute a more general waiver of legal privilege.
21. You may refer to privileged documents in your report but the Board Sub-Committee will decide whether to redact parts of the material provided to persons as part of the representations process referred to in paragraphs 25 and 26 below or of the final report before its publication on the basis that this is necessary to protect and preserve privilege. If the Board Sub-Committee decides to redact parts of the final report on that basis, it will include in the published report an explanation of the reason for the redactions.

#### **Confidentiality**

22. It may be necessary for the FCA to provide you with information that is deemed to be confidential within the meaning of section 348 of the Financial Services and Markets Act 2000 ("FSMA").
23. You may refer to such confidential information in your report. If required it will be the responsibility of the FCA, for the purposes of such references, to obtain the consent of the person from whom the information was obtained by the FCA and, if different, the consent of the person to whom it relates. If

such consent is not obtained, you may nevertheless refer to such confidential information in your final report and the Board Sub-Committee will then decide whether to redact parts of the final report before its publication on the basis of the restrictions in section 348 of FSMA. If the Board Sub-Committee decides to redact parts of the report on that basis, they will include in the published report an explanation of the reasons for the redactions.

### **Naming personnel**

24. Your final report will not name or identify the position of any personnel (whether current or former FCA or former FSA employees) who were below the level of Director at the time of their actions.

### **E. Representations Process**

25. Insofar as you intend in your report to criticise individuals, groups of individuals whose members are identifiable or organisations, including the FCA (both in its own right and/or as the successor of the FSA for actions pre-April 2013), you will (i) identify those individuals, groups or organisations (ii) provide them with a reasonable opportunity to make representations in relation to your proposed criticism and (iii) consider any representations made before finalising your report.
26. The contacts referred to in paragraph 4 above will (i) assist you, if so requested, in deciding which individuals, groups or organisations should be given the opportunity to make representations and (ii) provide you with such administrative assistance as you may reasonably require for the purposes of conducting the representations process.

### **F. Governance and reporting**

27. You will keep the AE informed in relation to the logistical progress of the review, including its costs, but not in relation to matters of substance.
28. You should raise directly with the AE any matter which you consider to be so urgent or important that it needs to be disclosed to him/her.
29. You will share a draft of your report with the AE for information only. The AE may at his/her discretion share, and discuss, the draft with the Project Review Board, Board Sub-Committee and subject matter experts.
30. To the extent that you consider it necessary for the FCA to address issues relating to factual accuracy, or confidential information pursuant to section 348 of FSMA or legal privilege, you may share the relevant sections of your draft report with the contacts referred to in paragraph 4 above. These contacts will, with your specific and express permission, be entitled to share these sections with appropriate individuals at the FCA for the purposes of assisting you and finalising the draft report.

**G. Publication**

31. The FCA will arrange for the publication of your final report on behalf of the Board Sub-Committee.