

Minutes

Meeting: FCA Board
Date of Meeting: 03 June 2013
Venue: 25 The North Colonnade, Canary Wharf, London E14 5HS

Present:	Clive Adamson	Mick McAteer
	Andrew Bailey†	Tracey McDermott
	Amanda Davidson	Jane Platt
	Amelia Fletcher	Sir Brian Pomeroy
	David Harker	Lesley Titcomb
	John Griffith-Jones (Chair)	Martin Wheatley

In attendance: Set out in Annex A

Apologies: N/A

† Present for part of the meeting

Quorum and conflicts

The Meeting noted there was a quorum present and proceeded to business.

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

1 Minutes

1.1 Minutes of FCA Board meeting

The minutes of the FCA Board meeting held on 25 April 2013 were approved, subject to amending section 3.3 to reflect the wording in the letter sent on 13 April 2013 to Mr Bailey and Mr Wheatley by the Chancellor.

1.2 Matters arising

The Board noted the matters arising from previous meetings and actions being taken to address them.

2 Reports from Committees and Independent Panels

2.1 Update on the Audit Committee meeting held on 23 May 2013

The Board received an oral update from Sir Brian Pomeroy on the issues discussed at the Audit Committee which included:

- a reprise of some outstanding and ongoing items for the new committee members;
- the annual report and accounts, which would be discussed later on the Board agenda;
- the terms on which the PRA could audit the FCA when the FCA was providing services to the PRA; and
- it was the last Audit Committee meeting before the Director of Internal Audit stepped down and left the organisation; the recruitment of a successor to that post would be very important and was underway.

2.2 Update on the Remuneration Committee meeting held on 29 May 2013

The Board received an oral update from Ms Davidson on the issues discussed at the Remuneration Committee which included:

- a review of the fees for the non-executive Directors of FOS, FSCS and MAS, and members of the Consumer Panel, the Smaller Business Practitioner Panel, the Regulatory Decisions Committee and the members of the Pension Plan Trustee Board which resulted in a recommendation from the Committee to the Board to leave the fees unchanged and review them in 12-18 months (with no guarantee of change at that time). The Board agreed with this recommendation;
- a review of the objectives of the Directors and individuals who fell within the Committee's remit; and
- a review of the plan for emergency succession for the senior management team.

2.3 Monthly reports from the Independent Panels

The Board noted the reports from the Independent Panels and noted in particular the following issues:

- the comments made by the Practitioner Panel regarding the publication of warning notices. Ms McDermott offered to brief the new Board members on the background to the current consultation prior to a discussion on the results in July;
- the observations by the Smaller Business Practitioner Panel regarding the effect of firms outside the FCA's regulatory remit affecting the regulated sector (e.g. IT software providers); the Board agreed that the PRR Division should review this and report to the Executive Committee in the first instance, with any issues being brought to the Board and progress communicated to the SBPP in due course;
- the comments made by the Smaller Business Practitioner Panel about prudential regulation at the FCA; the Board recognised the need to ensure there was clear communication with all firms regarding the prudential regulation that the FCA would be undertaking and asked Mr Adamson to follow up in this regard;

- the views of the Consumer Panel on the results of the Wealth Management Thematic Review and on how these should be communicated; and
- the comments made by the Consumer Panel on transparency, noting that the team was currently reviewing the responses and preparing a Feedback Statement that will be published in the summer.

3 Specific items of business

3.1 Interest Rate Hedging Products and Legal Risks of Conduct Intervention

Prior to the presentation, Mr Martin explained to the Board:

- that all public bodies had a duty of candour to put all relevant material before a court in any judicial review proceedings; and
- the presentation intended to focus on the two pieces of litigation involving the FCA and the legal risks of different powers of FCA intervention and therefore he considered them to be legally privileged.

Mr Bailey joined the meeting at 10.30am

The Board noted the presentation and discussed the issues.

- the various legal issues concerning the judicial review of the scope of the Interest Rate Hedging Product (IHRP) review agreed with the major banks; and
- the various legal issues involved in the intervention in the Court of Appeal in *Green & Rowley v Royal Bank of Scotland*, which would look at the interpretation of the FSA/FCA rules.

3.2 Mortgage Terms (including SVRs) – Discussion Paper

The Board received a presentation on the options for communicating with firms to clarify the FCA's views on Standard Variable Rate (SVR) changes and the wider issues of fairness in mortgage contracts.

The Executive recommended publishing a discussion paper inviting comments about the best way to balance firms' contractual rights and consumers' reasonable expectations and communicate the way in which the FCA might intervene to prevent firms from varying their mortgage contracts against reasonable expectations.

The Board agreed with the Executive proposal to finalise a discussion paper on fairness in mortgage contracts and to circulate to the Board prior to publication.

3.3 Pulse Survey – results

Ms Titcomb outlined the results of the recent FSA staff survey, carried out in February 2013. The results were split between staff going to the FCA or the PRA and therefore would provide a useful benchmark for future surveys.

The Board noted the positive feedback on staff engagement and the staff's excitement about moving to a new organisation but queried the Executive about the proposed actions to address the areas for improvement, including career and talent management and retention.

Ms Titcomb explained that the results had also been analysed from a diversity perspective and would be followed up by the Executive Diversity Committee and discussed with the various Diversity networks. A Diversity report would be provided to the Board later in the year.

The Board agreed with the Executive's approach and that there should be annual surveys in future, with some degree of continuity of questions in order to measure progress.

3.4 Independent Panels – Annual Reports

Consumer Panel

The Board noted the presentation on the annual report from the Consumer Panel. In the discussion that followed, the Board noted Mr Phillips' views in particular on:

- the need for the regulator to assist the industry by clearly communicating expectations and the way it would be regulating; and
- the potential unintended consequences of the retail distribution review creating an "advice gap" for those unable or unwilling to pay for financial advice; it might be possible to track the growth of execution only sales to keep this under review and consider basic product regulation.

Mr Griffith-Jones thanked Mr Phillips for the annual report and on behalf of the FSA and the FCA for his leadership of the Consumer Panel during his tenure as Chair.

Smaller Business Practitioner Panel

The Board noted the presentation on the annual report from the Smaller Business Practitioner Panel (SBPP). In the discussion that followed the Board noted in particular that the SBPP would like greater emphasis on the FCA's role in prudential regulation for smaller firms and better communication from the FCA to the large number of non-relationship-managed firms.

Practitioner Panel

The Board noted the presentation on the annual report from the Practitioner Panel. In the discussion that followed the Board noted in particular that:

- the Practitioner Panel was keen for the FCA to consider its tone when communicating with firms, identify areas of best practice and give credit to those firms trying to work well within the regulatory perimeter; and
- the number of "shadow" s166 reports, and use of skilled persons was increasing, and therefore adding more cost to regulation.

Practitioner Panel Industry Survey 2013

The Board noted the presentation on the results of the survey that had been published on 3 May 2013.

The Board noted that the development of FCA communication channels was very important, particularly for smaller firms and that the Executive should consider the free-form comments which could be provided in more detail from the Survey, which focused on the key messages of proportionality, proactiveness and predictability.

Mr Griffith-Jones thanked the Practitioner Panel for its work on the survey, which was very helpful to have as a benchmark at the start of the FCA. The Board agreed with the proposal that the Practitioner Panel carry out an annual survey of practitioners and provide

a report to the Board; it suggested reviewing the free-form comments and picking up any key themes to be incorporated into the questions.

3.5 Annual Report – approval

The Board noted the presentation of the annual report of the FSA and that the information relating to relevant prudential issues had been checked with the PRA. The Report had been reviewed in detail by the Executive Committee and the Accounts had been scrutinised by the Audit Committee.

Sir Brian Pomeroy reported that the Audit Committee was content to recommend that the Board approve the accounts, subject to the comments that were made at the Audit Committee being incorporated.

The Board noted the explanations regarding:

- the level of pension deficit, its impact on net assets and how the FCA satisfied itself that it could meet its liabilities in future, taking account of the overdraft and credit facilities in place and the statutory power to levy firms to make up funds if needed; and
- the level of reserves, some of which would be returned to the industry.

The Board:

- approved the front sections of the Annual Report (i.e. Executive Chairman's Introduction and sections 1-7) (subject to any changes suggested at the meeting and any non-material changes thereafter);
- authorised the Chairman and the Chief Executive to agree the front sections of the Annual Report, including metrics where data had not yet been finalised.
- considered and approved the Financial Review and the Financial Statements; authorised (i) the Chairman and Chief Executive to sign the Financial Statements; and (ii) the Chief Executive to sign the letter of representation to the auditor;
- considered and approved the Directors' Report and authorised the Company Secretary to sign the Directors' Report;
- considered and approved the Corporate Governance Statement;
- delegated approval to the Chairman and Chief Executive of the appendices that are published on the website; and
- delegated approval to the Chairman and Chief Executive of the responses to the Independent Panels' annual reports.

The Board noted the proposed format of the annual public meeting.

3.6 Wholesale Conduct Strategy

The Board noted the presentation and discussed the following key points:

- the work on wholesale conduct was not designing a separate process to broader supervision (i.e. there would be no simple wholesale/retail split. Rather, wholesale issues arose in a variety of contexts, particularly in the Supervision and Markets Divisions);

- there was a broader link to the efficiency of markets, which would need more analysis for example via the use of market studies;
- the differences between thematic reviews, which related to non-firm-specific supervision work and market studies, which were detailed examinations of specific markets and how they worked; and
- the Executive needed to do more work to identify metrics to select reviews or studies and consider communicating when thematic reviews were to be carried out to enable relevant stakeholders to provide any relevant evidence. (Thematic reviews were generally communicated in advance via the business plan or the risk outlook or if arising during the year had some element of public communication).

4 Decisions reserved to the Board

4.1 Rules & Guidance to be determined

The Board received a presentation regarding the proposed “Unregulated collective investment schemes and close substitutes instrument 2013” setting out the background to the proposals and the changes made since the consultation.

Following discussion of the key issues, including the definition of a high net worth individual and the interaction with EU directives and UK legislation, the Board made the instrument. Two other instruments were discussed and made.

The instruments made by the Board are set out in Annex B.

4.2 Matters requiring a decision of the Board

The Board approved:

- the re-appointment of Sir Brian Pomeroy as Director and Chairman of FSA Pension Plan Trustee Limited until 31 March 2016 and Christina Sinclair as Director of FSA Pension Plan Trustee Limited until 31 December 2013;
- the re-appointment of Julian Lee as a non-executive director of the Financial Ombudsman Service for one final term, to 22 February 2015;
- an amendment to the Remuneration Committee Terms of Reference to include the Director of Internal Audit in the Committee’s remit; and
- the Finance Policy (noting that there would be a further review later in the year).

5 Reports from Executive Directors and the PRA

5.1 PRA Update

The Board received an oral report and noted the following key points:

- the interaction of EU directives with the work the PRA’s approach to remuneration;
- the increasing risks of cyber-attacks on firms and their underlying systems;
- the work the PRA had done to encourage overseas firms to ensure there were appropriate senior individuals taking responsibility in the host country; and
- the PCBS report was likely to have recommendations for and affect the way in which the PRA and FCA authorised and supervised approved persons.

Mr Bailey left the meeting.

5.2 CEO Report

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

- the recent IOSCO work on benchmarks;
- the results of a number of individual enforcement investigations;
- there had been a slight increase in staff turnover and although still at a relatively low level compared to other companies, the FCA was still losing some key individuals;
- the work on portfolio projects, including the upgrade of the contact centre's telephony systems and the plans for transfer of OFT staff to the FCA for consumer credit in April 2014;
- the publication of the findings of the FCA review into interest-only mortgages had been well-received; and
- the work the FCA had been doing to discourage inappropriate financial promotions. In nearly all circumstances, firms voluntarily withdrew or amended their promotional material following contact from the FCA, therefore it was difficult to be transparent about action taken; the Executive would consider publishing information on the number and type of promotions over which it had raised concerns in order to publicise this work.

5.3 Performance Report

The Board noted and discussed the performance report for January to March 2013, the last quarter of the FSA. The Board noted that the performance report, which would be updated into a new format focusing on the FCA's objectives and desired outcomes, would be brought for the first time in the new format to the Board in July.

6 Any other business

The Board noted that the Chair had invited members of the Treasury Select Committee to attend a breakfast meeting with the Board on the morning of 27 June.

The Secretary had circulated proposed dates of meetings in 2014, and asked for the Board to provide comments on them in the next week so that they could be finalised.

7 Papers for noting

7.1 Minutes of Executive Committee meeting held on 9 April 2013

The Board asked the Secretary to investigate if it was possible to circulate the most recent Executive Committee minutes.

7.2 Forward agenda

The Board noted the papers.

The meeting closed at 4.15pm

Claire Strong
Deputy Company Secretary

ANNEX A: Attendees

Sean Martin	Acting General Counsel
Simon Pearce	Company Secretary
Claire Strong	Deputy Company Secretary
Graeme Beale	Chair, Practitioner Panel (for item 3.4)
Julia Dunn	Director, Retail Banking (for item 3.1)
David Godfrey	Director, Finance & operations (for item 3.5 and 5.3)
Claudine Hilton	Manager, Unfair Contract Terms (for item 3.2)
David Lawton	Director, Markets (for item 3.6)
Caroline Mabon	Manager, GCD Retail Conduct Team (for item 3.1)
Adam Phillips	Chair, Consumer Panel (for item 3.4)
Jason Pope	Technical Specialist, Products Team (for item 4.1)
Christina Sinclair	Head of Department, Retail Banking 2 (for item 3.1)
Gavin Stewart	Head of Department, Risk & Strategy (items 3.5 and 5.3)
Andrew Turberville-Smith	Chair, Smaller Businesses Practitioner Panel (for item 3.4)
Linda Woodall	Director, Mortgage and Consumer Lending (for item 3.2)
Christopher Woolard	Director, Policy Risk & Research Division (for item 4.1)

In addition relevant Associates attended for the following items:

item 3.1

item 3.2

item 3.4

item 3.5

item 4.1

ANNEX B: Resolution

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

Financial Conglomerates Directive (FCA Handbook Amendments)
Instrument 2013 [FCA 2013/45]

Unregulated Collective Investment Schemes and Close Substitutes
Instrument 2013 [FCA 2013/46]

Employers' Liability Insurance: Disclosure by Insurers (No 3) Instrument
2013 [FCA 2013/47]