

Minutes

Meeting:	FCA Board	
Date of Meeting:	21 and 22 September 2016	
Venue:	25 The North Colonnade, Canary Wharf, London E14 5HS	
Present:	Andrew Bailey	Sarah Hogg
	Amelia Fletcher	Jane Platt
	Bradley Fried	Sam Woods
	John Griffith-Jones (Chair)	Christopher Woolard
In attendance:	Set out in Annex A	
Apologies:	Catherine Bradley	Ruth Kelly

Quorum and Conflicts

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

The Board noted that Amelia Fletcher had been appointed to the board of the Competition and Markets Authority

1 Specific items of business

1.1 Market Abuse Strategy

The Board received the presentation and noted the work undertaken by various teams across the organisation to define a new five-year strategy for combating market abuse. The Board recognised that market abuse represented one of the clearest risks to market integrity and noted the changing external factors and evolution of risks that necessitated a change of approach.

After discussion, the Board approved the strategic interventions set out within the 5 Year Strategy for Combating Market Abuse.

1.2 Board Evaluation Review

The Board noted that an externally-facilitated review of the Board's effectiveness had been conducted in 2015 and that an internal review had therefore been conducted this year. The review had been based on a questionnaire and responses had been summarised in the

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paper. The Board discussed the findings of the review. The principal areas where Board members had indicated scope for further improvement were:

- Prioritisation of agendas and quality of papers
- Terms of reference and agenda prioritisation of Board committees
- Succession planning

The Board also discussed the suggested priorities for the Board over the forthcoming year and considered how these were being addressed.

It was agreed that a summary of the agreed outcomes of the review should be prepared.

1.3 Nominations & Remuneration Committees

The Board noted that it had been a recommendation of the externally-facilitated Board effectiveness review in 2015 that a Nominations Committee of the Board be established. The Board recognised that certain duties formerly carried out by other committees now fell within the remit of the Nominations Committee. In particular, the Board wished to clarify the respective responsibilities of the Nominations and Remunerations Committees. The Board discussed and agreed the proposals set out in the paper and requested they be reflected in the FCA's governance documentation.

2 Minutes and meetings

2.1 The Board approved the minutes of the FCA Board meeting held on 27 and 28 July 2016.

2.2 The Board noted the minutes of the PSR Board meeting held on 13 July 2016. Mr Griffith-Jones summarised the matters discussed at the meeting of the PSR Board held on 14 September 2016, notably the future role of the Payment Systems Forum.

2.3 The Board noted the minutes of the External Risk and Strategy meeting held on 1 September 2016.

2.4 Mr Griffith-Jones provided an update on the matters discussed at the Oversight Committee meeting held on 7 September 2016, noting that the implications for the FOS of the proposed time limit for making PPI claims had been discussed.

2.5 Mr Griffith-Jones also provided an update on the matters discussed at the Audit Committee meeting held on 8 September 2016.

2.6 The Board reviewed and discussed the reports from the Independent Panels. In particular it noted:

- The Practitioner Panel's view of the importance of continued close engagement with Europe as the negotiations of Britain's exit from the European Union proceed
- The views of the Practitioner Panel and Smaller Business Practitioner Panel in relation to implementation of the MiFID requirements relating to taping of telephone calls. Both Panels had concerns that the cost of implementation would be disproportionate for smaller firms
- The Consumer Panel's concern with the FCA's proposals for a time limit for making PPI claims

2.7 The Board noted the progress with the matters arising at its previous meetings.

3 Report from the Chief Executive

Mr Bailey presented his report and the Board noted in particular the following issues:

- a senior steering group had been established to coordinate the work the FCA was doing in relation to UK's withdrawal from the EU. The group was identifying the areas within the FCA's remit that would need to be considered during the transition phase. Plans were in place to ascertain the value of business that was dependent on access to the single market, as well as firms' priorities and concerns related to UK withdrawal. The Board noted that the FCA continued to work closely with HM Treasury and the Bank of England and emphasised the need for these organisations to work closely together and share information, acknowledging that the government would need to take the lead in shaping the future framework
- there had been several changes to the legislative landscape relating to Peer-to-Peer (P2P) firms, continuing evolution in firms' business models and an increasing awareness of both firm and sector-based risks, meaning that the assessment of P2P applications was challenging. A comprehensive review of the remaining applications had been carried out to stratify the firms according to the risk they posed to the FCA's statutory objectives, based on their business models, complexities and market share. The FCA was assessing each firm to determine the appropriate action to take
- the Debt Management sector was characterised by poor-quality advice and cross-selling amongst firms with the result that numerous firms were not being authorised. The FCA would be working with partners, such as the Money Advice Service, to ensure that there was adequate protection for customers whose debt management firm had left the market
- the Review of Royal Bank of Scotland's (RBS) treatment of customers within its Global Restructuring Group (GRG). The Board noted that this was a complex issue as much of the relevant activity was not regulated business.
- the ongoing assessment of appropriate remediation for customers where mortgage payment arrears had been automatically capitalised and reflected in a new monthly payment but the arrears were still pursued separately through a collections processes. The Board noted the FCA would publish non-handbook guidance on the fair treatment of such mortgage customers. The guidance would set out a clear expectation on firms to deliver remediation proportionately
- the Payment Systems Regulator (PSR) was expecting to receive a super-complaint from Which?. This related to concerns that consumers were being misled into transferring money to a fraudster via a 'push' payment, such as when the consumer instructs their bank to send money, and there was not an appropriate level of protection compared to other types of payment. The Board noted that the legislation required that the super-complaint should be received by the PSR although a joint FCA/PSR team would be formed to prepare a response within the requisite 90 days
- the views expressed by staff in the recent survey about the move to Stratford. The Board agreed with Mr Bailey's proposal that a board committee should have oversight of the Stratford project

3.1 FCA Mission

The Board considered the proposed Mission document which aimed to provide a framework to explain how the FCA chose to act on its objectives.

The Board provided detailed comments on the document including a reference to UK withdrawal from the EU in the Foreword, increased focus on the organisation's prioritisation framework, the role of House Views, market intelligence and a holistic view of risk. The

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Board also suggested that the document should focus on why the organisation carries out the activities it does, how redress was decided and resources apportioned.

The Board noted that the document would be launched in October for public consultation, and the final version would be published alongside the 2017/18 Business Plan.

The Board was keen for the document to have sufficient traction within the organisation and noted that an internal consultation with staff would take place in parallel with the public consultation.

4 Report from the PRA

Mr Woods updated the Board on various matters including bank profitability and life insurers.

5 Specific items of business

5.1 Business planning – agreeing budget principles

The Board was presented with an outline of budget principles for business planning for 2017/18, an update on the 2016/17 forecast and an update on the current position on the Stratford programme.

Considering the budget principles for financial year 2017/18, the Board did not feel it was possible to frame the On-going Regulatory Activity (ORA) budget in detail at this stage, without the further analysis that would be provided at the strategy away day of how the overall budget would be used and the implications for the Annual Funding Requirement

The Board advised that in finalising the budget, careful consideration should be given to defining special projects. The Board also emphasised the importance of co-ordinating the budget with the Mission.

5.2 Competition in Retail Banking

Ms Fletcher noted her appointment to the board of the Competition and Markets Authority (CMA). The Board authorised this conflict in accordance with Article 8 of the Company's Articles and authorised Ms Fletcher to participate in the discussion of this item.

The Board was presented with a report on the next steps for the FCA in relation to the CMA's retail banking market investigation. The Board noted and discussed the following points:

- In its final report, the CMA made recommendations to the FCA to take forward work in relation to some of its remedies. The majority of the recommendations constituted advice under section 140B FSMA. The FCA must publish a response within 90 days
- The report found that older and larger banks, which still account for the large majority of the retail banking market, did not have to work hard enough to win and retain customers and it was difficult for new and smaller providers to attract customers. These failings were having a pronounced effect on certain groups of customers, particularly overdraft users and smaller businesses
- To address these concerns, the CMA had confirmed a set of remedies which aimed to boost competition through increased consumer engagement and activity
- The FCA intended to accept the recommendations in the report and commit to undertaking work in relation to them. The FCA would work with the CMA to implement the recommendations

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- The FCA was working to finalise a plan of policy work and research that would pursue the CMA's recommendations whilst satisfying the FCA as to the evidence base and effectiveness of remedies

The Board agreed with the proposed next steps and noted that final proposed response to the CMA's retail banking market investigation would be circulated to the Board for information prior to publication.

5.3 Firm classification: conduct and prudential

The Board noted and discussed the following points:

- All firms regulated by the FCA are allocated to either the Fixed or Flexible portfolio for the purpose of conduct supervision according, amongst other things, to the risk they posed to the FCA's objectives. A recent review of conduct categories had resulted in the fixed and flexible portfolio populations being adjusted in a number of sectors to formalise the proactive supervision that was required for a number of firms previously categorised as flexible portfolio
- Supervision was proposing that all firms rated as P1 for prudential purposes and dual-regulated firms rated as CASS Large should be automatically included in the fixed portfolio population, to ensure that sufficient oversight was in place for these firms
- The approach to prudential classification had not been changed and firms were still rated as P1 to P3, with class P4 for those firms in administration or liquidation. Firms rated as P1 or P2, and P3 firms in scope of CRD IV, were subject to proactive prudential assessment.

After discussion, the Board approved:

- the list of Fixed portfolio firms;
- the automatic promotion of CASS Large and P1 firms to the Fixed portfolio; and
- the list of P1 and P2 firms.

5.4 Implications of a change in the UK's relationship with EU on FCA's change portfolio

The Board noted that there were:

- four projects in progress to deliver EU legislative changes - MiFID II, CRDIV, AIFMD and Trade Repositories
- eight projects in the 2016/17 change pipeline to deliver EU legislative changes. The recommendation was to continue with three projects as planned, to investigate the correct approach for four projects and to hold taking action on one project whilst a manual option was assessed
- five potential policy projects for 2017/18 to deliver EU legislative changes. Though it was too early to estimate the investment range, the recommendation was to continue as planned for two and for the remaining three consider the approach in the light of discussions with the Treasury.

After discussion, the Board approved the proposed approach to these projects.

5.5 Implementation of the MiFID II - Consultation Paper III

The Board was presented with the draft third MiFID II consultation paper and key issues for consideration. The Board noted that the consultation paper would mainly cover conduct of business, product governance and changes to the Perimeter Guidance Manual.

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The Board discussed the proposals to extend the requirements for taping client conversations. It noted that domestic taping rules, which took effect in 2009, would be superseded by MiFID II, which would introduce a minimum harmonising EU regime in this area. This would require the FCA to extend the taping requirements in a number of respects and put in place analogous requirements for firms, including a large number of retail financial advisers, that benefit from an exemption from MiFID under Article 3 of the Directive.

The presenting team highlighted some of the benefits of applying a taping regime to retail financial advisers. This included providing a clear audit trail of the understanding and intentions of the parties leading up to the conclusion of a transaction, consumer benefit from the self-disciplining effect on advisors from recording calls as well as the supervisory and enforcement benefits. The Board heard that technology had improved and costs had reduced significantly since the FSA had introduced the requirement to tape.

The Board also noted the strong opposing views held by small businesses on the grounds of it being disproportionate and impractical, costly and giving rise to concerns around data protection when personal calls were recorded on devices used for business purposes.

After considering the issues, the Board requested that the Consultation Paper was clear about the objectives the FCA was trying to achieve by introducing taping rules to these retail financial advisers and was open to alternative proposals that would meet the objectives. Subject to this, the Board approved the publication of the Consultation Paper on the implementation of MiFID II on 29 September 2016.

The Board requested that steps were taken to encourage small businesses to reply to the consultation with their ideas on alternatives to taping. The Board also requested that during the consultation period the team determines how other EU countries were implementing MiFID II taping requirements.

5.6 Sourcing Programme

The Board received an update on the Sourcing Programme and noted;

- the recovery plan was now complete and the programme was reporting Amber in terms of delivery status but remained at Red overall pending approval of additional funding above the original target
- the programme was forecast to remain within the Outline Business Case range approved by the Board in January, but with a higher target forecast spend of £45m and an increased upper range cost (£38.9m to £51.1m)
- the key underlying reasons for the change in cost forecast included slippage, particularly to the Application Development & Test and Service Desk & End User Computing projects, due to more work required and insufficiently robust governance and controls
- the revised benefits forecast was 16% savings against a supplier spend of £50.6m. The programme had moved from an overall positive net benefit of £2.9m to an overall negative net benefit of -£8.8m. This was a conservative estimate of benefits and there were further opportunities which the programme was advancing. Steps had been taken to address these issues
- the approach to the Data Centre (DC) had been altered to extend the current contract to support the cloud strategy and reduce the potential risk, cost and complexity of a physical data centre move

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- The contract extension would be from April 2018 to March 2022. The Programme Board was satisfied that the two criteria for extending the contract compliantly; technical interoperability and significant inconvenience or duplication of costs to move; had been met
- While it was expected that the overall end user experience would be improved by the delivery of the End User Computing estate, such as faster laptop boot up times and improved mobile devices, there was a risk that some functionality changes may have a negative impact on the end user experience when considered in isolation to the overall experience. The Board noted that to mitigate this risk, the programme was actively engaging with end users.

After discussion, the Board approved the revised target cost and range (£38.9m to £51.1m) and the contract extension for the Data Centre.

5.7 Regulatory References

The Board was presented with the final policy and rules for regulatory references, following the FCA's consultation (CP15/311) in October 2015, and noted the following:

- Regulatory references were a tool to help firms assess their potential new recruits as fit and proper
- Firms would still need to apply judgement on a case by case basis. Firms would also be subject to the general obligation in law on employers that references are true, fair and accurate
- The Fair and Effective Markets Review (FEMR) recommended that regulators mandate more detailed regulatory references to help firms prevent 'recycling' of individuals with poor conduct
- The Prudential Regulation Authority (PRA) had considered and approved its equivalent rules.

After discussion, the Board:

- approved the final regulatory reference requirements for banks and insurers
- approved the final regulatory references requirements applicable to all firms
- approved the effective date of 7 March 2017
- agreed to publish the Policy Statements and final rules on 28 September 2016 simultaneously with the PRA.

6 Decisions reserved to the Board

6.1 Rules & Guidance to be determined

The Board passed the resolutions set out in Annex B.

6.2 Decisions of the Board

- The Board approved the FCA Crisis Planning Policy
- The Board approved:

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- (i) the revised "Policy on Conflicts of Interest in connection with the appointment of "appointed members" to the FCA Board" (the Conflict Policy) for publication on the FCA website
 - (ii) the revised "Code of Conduct for Non-executive Directors" (the NED Code of Conduct), subject to clarification of the position on investment in collectives and to publish the NED Code of Conduct on the FCA website alongside the Conflict Policy
 - (iii) to delegate authority to John Griffith-Jones to approve any minor changes to the Conflict Policy and the NED Code of Conduct that may be required prior to publication; and
 - (iv) to delegate authority to John Griffith-Jones to provide the Conflict Policy and the NED Code of Conduct to HM Treasury and the Treasury Committee
- The Board approved the appointment of Gemma Harle as a member of the FCA Smaller Business Practitioner Panel from 26 September 2016 to 30 September 2019
 - The Board approved the appointment of Stuart McIntosh for an initial three-year term as a member of the Regulatory Decisions Committee from 1 October 2016 to 30 September 2019

7 Papers for noting

7.1 The Board noted the minutes of the Executive Committee meetings held on 24 & 21 May, 27 June, 8, 14, 18, 26 & 29 July 2016.

7.2 Forward agenda

The Board noted the forward agenda.

The meeting closed at 5:00 pm

Alana Christopher
Acting Deputy Company Secretary

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ANNEX A: Attendees

Megan Butler	Director, Supervision, Investment, Wholesale & Specialists
Jeanette Bateman	Manager, Risk, Compliance and Oversight (item 6.3)
Greg Choyce	Head of Department, Legal (item 6.3)
Alana Christopher	Acting Deputy Company Secretary
Sean Martin	General Counsel
Simon Pearce	Company Secretary
Hilary Bourne	HoD, CAD - Head of Debt Permissions (for item 3)
David Geale	Director, Policy (for items 5.2, 5.5 & 5.7)
Gina Gill	Manager, BTS (for item 5.6)
David Godfrey	Director, Finance (for item 5.1)
Simon Hargreaves	Manager, EMO-MO-MM (for item 1.1)
Richard Johnson	Manager, PPGI (for item 5.7)
Deb Jones	Director, Competition (for item 5.2)
Gareth Lewis	Director, BTS (for item 5.4 & 5.6)
Jeremy Marsden	Head of Department, Retail Banking
Sarah McKenzie	Manager, Competition Dept 2 – Retail Sectors (for item 5.2)
Nick Miller	HoD, International (for item 3)
Richard Monks	HoD, Strategy Development (for item 3.1)
Mark Nicol	HoD, Authorisation-Main (for item 3)
Karen Northey	Manager, Consumer Information & Cross-Cutting Investments (for item 5.5)
Clive Parker	Manager, Framework & QA (for item 5.3)
Damien Shanahan	Manager, Wholesale Conduct Policy (for item 5.5)
Mark Steward	Director, EMO (for item 1.1)
Marc Teasdale	Director, EMO-MO (for item 1.1)

Relevant associates and technical specialists also attended the meeting

ANNEX B: Resolution

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

Individual Accountability (Regulatory References) Instrument 2016 (FCA 2016/57)

Training and Competence Sourcebook (Qualifications Amendments No 15) Instrument 2016 (FCA 2016/58)

Disclosure Documents (Amendment No 2) Instrument 2016 (FCA 2016/59)

Mortgages and Home Finance (Miscellaneous Amendments) Instrument 2016 (FCA 2016/60)

UCITS V Level 2 Regulation Instrument 2016 (FCA 2016/61)

Supervision Manual (Reporting No 3) Instrument 2016 (FCA 2016/62)

Small and Medium Sized Business (Finance Platforms) instrument 2016 (FCA 2016/63)

Small and Medium Sized Business (Finance Platforms) (Fees) Instrument 2016 (FCA 2016/64)

Investment Funds (Securities Financing Transactions) Instrument 2016 (FCA 2016/65)

Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 (FCA 2016/66)