

Terms of Reference

Inquiry by the Non-Executive Directors of the Financial Conduct Authority (FCA) into the events of 27/28 March 2014 relating to the press briefing of information in the FCA's 2014/15 Business Plan

1. The Non-Executive Directors of the Financial Conduct Authority (FCA) are commissioning an independent inquiry into the events leading up to and following the publication on Thursday 27/ Friday 28 March 2014 of the FCA's intention to review during 2014 certain long term life assurance products. The review was included in the FCA's Business Plan which was published on 31 March 2014.
2. Subject to legal considerations, the Board intends to publish the report of the independent inquiry in full.
3. The inquiry will address the following issues and questions:
4. Business Plan
 - a) Was there an appreciation that the Business Plan could contain information that was price-sensitive;
 - b) What was the process for selecting the items on which press briefings would be made.
5. Press briefing
 - a) Why and with whose knowledge and authorisation was this briefing given, particularly to a single journalist;
 - b) What was communicated to the journalist;
 - c) Were other briefings made and if so, how were these reported;
 - d) Was the content of **any** briefing appropriate and did it go further than the agreed line;
 - e) Was the briefing consistent with any internal guidance available to FCA staff or with previous practice, and who authorised such guidance or practice;
 - f) To what extent this specific briefing is an isolated exception. If not, does this represent more general practice at the FCA, who authorised this approach and why.
6. Handling of price-sensitive information
 - a) What procedures exist to identify and control the release of price-sensitive information;
 - b) What process was or should have been followed to confirm whether or not the information was likely to be price-sensitive.

7. Friday 28 March
 - a) How and when did the FCA first become aware of a problem;
 - b) How was this communicated to the Executive/Board/other relevant persons in the organisation;
 - c) How was the FCA's reaction determined;
 - d) Why the FCA's clarificatory statement was issued so late during the day after the story was published, rather than Thursday night;
 - e) What exchanges (particularly any involving price-sensitive information) took place with individual regulated firms or other market participants before the clarificatory statement was issued and who authorised the exchanges;
 - f) Whether a false or disorderly market was present during this period;
 - g) Does the FCA have an emergency action plan for situations such as this and if so, was it followed.
8. For the future
 - a) What lessons these events hold for the FCA's approach to security around any draft Business Plan;
 - b) What lessons these events hold for the FCA's approach to publicity and the media;
 - c) Where senior accountability should lie. The conclusions reached by the inquiry will be considered by the FCA Non-Executive Directors who will decide on any disciplinary action in respect of employees, or by HM Treasury in respect of the Non-Executive Directors.
9. The inquiry will be led by Simon Davis of Clifford Chance who will prepare the report. Simon Davis can examine any other matters he might reasonably consider relevant and make such recommendations as he sees fit.
10. The FCA will provide the necessary supporting resources to enable the inquiry to be carried out.
11. The aim is to publish the final report as quickly as is reasonably possible, bearing in mind the time needed by Simon Davis to complete his investigation and allow any individuals subject to potential criticism an opportunity to make representations in response to the inquiry's proposed findings.