Financial Conduct Authority

Minutes

Meeting:	FCA Board	
Date of Meeting:	26 September 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	

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.

Mr Griffith-Jones explained there had been a change to the agenda and the PCBS report would be discussed again at this meeting prior to the FCA providing its response.

1 Minutes

1.1 Minutes of the FCA Board meeting

The minutes of the FCA Board meetings held on 25 July 2013 and 5 September 2013 were approved, subject to two small factual issues being corrected.

1.2 Matters arising

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

2 Report from Committees and Independent Panels

2.1 Update on the Risk Committee meeting held on 5 September 2013

The Board received an oral update from Mr McAteer on the issues discussed at the Risk Committee which included the following:

- Mr Woolard had attended as a guest speaker to discuss competition; the Committee noted progress had been made and further work was underway to embed competition issues into the organisation;

- Mr Adamson had attended as a guest speaker to discuss supervision;

- the Conduct Risk Outlook, which would be led by the Executive and aligned with the business plan, with oversight from the Board;

- the operation of the RDC and confirmation of its ability to deal with its forthcoming case load in timescales agreed with Enforcement;

- the risk report, presented by Mr Stewart, had noted that the risk team was seeing good engagement and co-operation from around the organisation and the Committee supported the provision of additional support for Mr Stewart if needed; and

- the Board would discuss various risks in more detail at its awayday.

2.2 Update on the Audit Committee meeting held on 16 September 2013

The Board received an oral update from Sir Brian Pomeroy on the issues discussed at the Audit Committee which included a number of Information Systems items, including a positive report regarding the INTACT project (which would cover authorisations and the transfer of consumer credit regulation in 2014) which was currently on schedule and meeting its deliverables.

2.3 Monthly reports from the Independent Panels

The Board noted the reports and the following key points were discussed:

- the lines of communication between the FCA and the Panels especially in circumstances when the FCA may not be able to share or consult on certain issues in advance of publication (for example in respect of potentially price sensitive information) and the need to ensure that communication with the Panels was handled appropriately;

- the Practitioner Panel's work on consumer responsibility had been discussed at the Executive Committee; the Practitioner Panel was reviewing the findings prior to it being presented to the FCA Board;

- the Consumer Panel had provided comment on the Consumer Credit proposals, which would be considered as part of the item later on the agenda;

- the Markets Practitioner Panel had provided input to the FCA on its approach to market abuse and was keen to ensure that the FCA was tackling market abuse to the same high standard across all market sectors; and

- the concerns of the Smaller Business Practitioner Panel that some of the firms it represents were unclear about the definitions of "independent" and "restricted" and that some independent IFAs believed that it was difficult to prove they were independent due to this confusion.

2.4 Update on the Listing Authority Advisory Panel (LAAP) annual report

Mr Palmer presented the report and discussed the following key points:

- the Panel was supportive of regulation to enable proper running of the market and encouraged the FCA to communicate more about its responsibilities in the primary markets area;

- there had been a trend in primary debt markets of issuers moving from London to Dublin and elsewhere. The Panel encouraged the FCA to continue to improve effectiveness in reviewing debt documentation and to raise with ESMA the need for consistency of standards across all EU regulated markets;

- the Kay report had identified various challenges with respect to UK equity markets and LAAP had been discussing these with the FCA. Points of focus included the need for the FCA to focus on impact of regulation on market structure and the need for immediate transparency with good governance;

- the Panel had extensive involvement in the review of Listing Rules, which the Panel believed was the most significant set of measures since the premium and standard listings were created. There had been significant debate within the Panel regarding the appropriate governance and level of the free float; and

- LAAP understood the FCA's desire to look at the value chain in markets, and urged the FCA to keep in mind that in primary markets there was a need to protect consumers from detriment, but consideration needed to be given both to which areas were in most need of protection and to the objectives of the listing regime (to facilitate investment in listed securities).

Mr Griffith-Jones thanked Mr Palmer for his attendance and extended his thanks to the LAAP for their work.

3 Specific items of business

3.1 Value for Money (VFM) Strategy

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

- in future the National Audit Office (NAO) would be conducting periodic value for money reviews of the FCA and it was currently undertaking a baseline study of the FCA and the PRA;

- the value for money strategy is to maximise the FCA's impact on its statutory objectives and desired outcomes, while keeping costs to a minimum;

- assessing value for money was important and there would need to be careful consideration of how the benefits gained from any activity undertaken by the FCA were assessed. Benefits might not necessarily be a reduction in the cost of the activity but could, for example, be a reduction in detriment or the increase in the deterrent effect created;

- the Board supported the concept and encouraged the Executive to assist the NAO in understanding the strategy and intended measures and the alignment of work against statutory objectives in order to ensure there was a functional starting point;

- it was important that there was a drive across the organisation to look at the impact of each team's work. There were already examples of this, such as the business excellence team in the Authorisations division;

- while some stakeholders may expect that value for money would mean cutting costs and aligning work of the FCA and PRA, the Board recognised that while the PRA and FCA needed to co-ordinate their activities where possible, the strength of the new organisations related to the clarity of their objectives, and the activities of one regulator could not always be aligned with those of the other; and

- comparisons were sometimes made between the FCA and other regulators so it was important to ensure that these were clear on the role of the regulators in the UK and overseas.

The Board approved the strategy for implementation and that it should retain ownership of the FCA VFM strategy, with support from ExCo in governing the work.

3.2 Update on the Mortgage Market Review (MMR)

The Board received a report on the background to the review.

The Board discussed the following points arising from the presentation:

- the changes in market conditions between 2007-2012, trends in pricing, number of loans and type;
- the FCA had not banned interest-only loans, or put limits on loan-to-value ratios, but some firms had highly automated approaches to underwriting which limited loans in some specialist areas;
- queries about whether the market was working in a competitive way, particularly considering the use of exit fees; whether those finding it difficult to get mortgage finance from the highly automated providers were being serviced elsewhere; and the potential impact of the Mortgage Credit Directive in removing conditional offers (e.g. for buying off-plan);
- the FPC view of the mortgage market was consistent with that of the PRA and FCA, although the regulators were pursuing different objectives so needed regularly to review how each other's actions were affecting the market; and
- the Board recognised the need to have robust communications around the aims of the MMR.

The Board endorsed the current direction and agreed it should review the state of the mortgage market in six months if required (or earlier if there was any change in the FPC's views).

3.3 Warning Notices Publicity Policy

The Board noted the amendments made to the warning notice publicity policy in light of responses to the consultation. The revised policy set out a three-stage test, in which it would presume that it would normally be considered appropriate to publish details of a notice and identify the subject if it was a firm (but not if it is an individual) subject to the application of a fairness test.

The Board approved the recommended revised policy for the exercise of the warning notice publicity power.

3.4 Supervision

The Board noted the report setting out a detailed description of the supervision model and the presentation from Mr Adamson during which he highlighted the following points:

- the aim of supervision was to ensure firms have the interests of their consumers and the integrity of the market at the heart of how they run their business;
- the development of the Supervision division had proceeded as planned in the first five months since the start of the FCA and during this period there had been a significant change in the style of engagement with firms; and
- the challenges facing the division were in both changing the culture in firms and shifting the focus of FCA staff to better quality interactions and judgements, although initial feedback from the market was encouraging.

The Board questioned and discussed the issues facing the Supervision division and noted a number of points, including resourcing against risk and co-ordination across the organisations, as well as the following points:

- the fact that the supervision model was based on supervisors recognising issues and applying good judgement in order to focus on the most appropriate issues; the supervision structure had been changed so that responsibilities were clearer and staff had greater understanding of the issues that were appropriate to pursue;

- there were various ways of gathering intelligence, such as through the Ombudsman Service, the Statutory Panels, the FCA helplines and other stakeholder groups; and

- the Board's line of sight into the work being done in the major firms.

3.5 Measuring our performance

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

- the Board noted the paper had been brought as an early steering discussion before a fuller item scheduled for December 2013;

- the Board was content with the proposed framework for measuring performance. It noted before committing to publishing particular performance information, it should check the stability of the measures. The NAO would review whether these were fit for purpose when it reported in February 2014; and

- the Board agreed that performance measures should be included each year in the annual report and encouraged the team to continue with the work.

3.6 Consumer Credit Transfer: Further consultation and forward work programme

The Board noted the outline of the revised proposals on high-cost, short-term credit for consultation following discussions at the Board meeting on 5 September 2013. It also discussed the following points:

- the Board noted the Consumer Panel's views on the proposals, where it broadly supported the enforcing of affordability requirements but had concerns about the proposal to put "risk warnings" on adverts for payday loans, believing that consumers can equally find themselves in significant debt through misuse of other forms of unsecured lending like credit cards or overdrafts;

- the Board noted that the Competition Commission would publish the results of its market study by late 2014 and it was possible that the FCA may be able to use the research undertaken to inform its decisions. Mr McAteer explained that the Financial Inclusion Centre had undertaken some work on the cost of selling loans and he would provide the information to the FCA;

- the Board encouraged the team to write the paper in such a way that a range of options were clearly presented; and

- the Board discussed the timing of implementation of the proposals on high-cost, short-term credit and agreed that it would be desirable to implement the new regime as soon as possible. It agreed to consult on implementing the full regime within three months of the transfer of regulation to the FCA for firms which would require system changes. The FCA would consider responses to the consultation to assess whether this three month implementation timetable would be feasible.

The Board approved the package of proposals on high-cost, short-term credit; agreed to publication of the consultation paper; and endorsed the further work programme designed to enhance readiness for the transfer.

3.7 PCBS Report

Ms McMillan attended and explained that there had been developments in relation to the proposed response to the PCBS report. Ministers had taken the decision to limit the Senior Persons Regime to deposit-taking institutions.

The Board considered the options that had been discussed by the Executive the previous day, which included delaying publication of the FCA's response to consider the implications of the recent developments more fully.

The Board noted that the use of two regimes was likely to be more costly in future, even if the initial implementation costs were potentially slightly less.

The Board agreed no commitment should be given to publish a response until it had an opportunity to consider this further.

3.8 Use of dealing commission regime

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

- the team's view was that the principal–agent relationship could be hampering the efficient running of the markets and the current model, where payment for research is funded out of dealing commission, appeared to be flawed;

- research had been undertaken between 2000-2006 which identified a number of benefits of full unbundling and the Executive believed it would be beneficial to have an open debate about this; and

- the Board encouraged the team to seek views on whether the use of dealing commission for corporate access had potential to cause or actually had caused consumer detriment.

The Board agreed that in the short term, the FCA should consult on clarifying the definition of research under our existing rules, and that a discussion should be launched in the UK of potential reforms to the dealing commission regime. The Board was clear that the FCA should be very open about its views and seek stakeholder input, to ensure there were no unintended consequences of this strategy. There was also agreement to further thematic supervisory work to follow up on previous review findings, using dealing commission as an example of how firms have responded to the FCA's concerns and looking at both buy-side and sell-side practices.

3.9 Options for additional consumer protections for investors on loan-based crowdfunding (peer-to-peer lending) platforms

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

- the Board stressed the importance of focusing on the important things to inform consumers, particularly as the nature of risk differed across platforms;

- the Board queried the definition of default (e.g. late payments or never) and suggested that this should be made clear (or set as a standard) across platforms;

- the Board discussed whether it was necessary for investors lending in the ordinary course of business to be subject to consumer credit regulation, even if the platform was authorised;

- the Board was content with the communications regarding the compensation scheme; and

- the approach to crowdfunding had been generally well received and although all firms subject to regulation were pressing for a "light touch" approach, the team believed they would recognise the balance that had been struck between the different risk profiles.

The Board agreed the approach and to publish the consultation paper taking forward these proposals.

4 Decisions reserved to the Board

4.1 Rules & Guidance to be determined

Ms Davidson declared an interest in the proposed deferral of the capital adequacy arrangements for IFAs etc.

The Board made the eight instruments set out in Annex B.

In making the instruments the Board noted that the Executive would communicate the deferral of the new capital rules for personal investment firms (originally expected to come into effect from 31 December 2013) and its intention to re-consult on whether these were appropriate in future.

Review of the Listing Regime

The Board noted that members of the Board had been briefed on the background to the listing regime review on the previous day. It noted and discussed the following key points:

- following consultation the proposals had been amended and some issues would be subject to further consultation; the team were confident that the proposals were robust and would lead to overall increased confidence in markets; and

- whether introducing requirements for election of independent directors would reduce numbers of these directors; the team explained that the requirement is aimed at increasing the dialogue between minority shareholders and the company leading to better engagement; respondents to the original consultation did not raise potential reduction in the number of independent directors as a concern.

The Board agreed to publish the feedback on CP12/25 together with the rules that will be implemented once the whole package has been finalised. The Board recognised that it was not formally approving the rules at this stage and that a further consultation on a limited set of issues arising as a result of the feedback to the CP would be issued in due course.

4.2 Matters requiring a decision of the Board

The Board discussed and approved:

- the re-appointment of Rommel Pereira as a Director of the Financial Services Compensation Scheme Limited (FSCS) for a further three-year term from 7 September 2013;

- the extension of the three year first term appointments of Laurie Edmans, Stephen Locke and Joanne Shaw as Non-Executive Directors of the Money Advice Service (MAS), by six months, from 3 January 2014 until 3 July 2014;

- the extension of Ralph Barber's term of membership of the Listing Authority Advisory Panel (LAAP) for nine months, from 1 September 2013 until 1 June 2014;

- the ratification of resolutions passed by the Board on 1 August 2013:

  - to make the Fees (Consumer Credit Interim Permission) Instrument 2013;

  - to make the Consumer Credit Designation Instrument 2013;

- the revised and updated Code of Conduct for the Regulatory Decisions Committee;
- an extension of the contract term of the Complaints Commissioner to 30 April 2014, (noting that the Treasury and the PRA had also approved this);
- the delegation of the safe custody of the Mutuals Societies Seal to the Mutuals Team;
- the delegation to the Regulatory Transactions Committee (RTC) the authority to determine who may affix the Mutual Societies Seal and sign documents to which the seal is affixed;
- the use of the Mutuals Societies Seal in electronic format;
- the ratification of the affixing of the Mutual Societies Seal and signing of those documents to which the Mutual Societies Seal has been affixed since legal cutover on 1 April 2013.

5 Reports from Executive Directors and the PRA

5.1 CEO Report

The Board received the CEO's report and in particular noted that the Treasury was proposing that payment systems regulation be moved into the remit of the FCA.

The Board agreed with the principles suggested and encouraged Mr Wheatley to seek clarification of the responsibilities to be transferred.

5.2 PRA Update

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

- the Government had launched a legal challenge to the EU regulations on remuneration under the Capital Requirements Directive (CRD IV); there were concerns regarding the application outside the EU and more generally that the risk that the effect could be to push up fixed remuneration. In the meantime the PRA would be implementing the requirements;
- developments on Solvency II; and
- updates on specific firms including that the Financial Stability Board had designated Aviva and Prudential as globally significant insurers.

Mr Pearce and Mr Bailey left the meeting at 5pm.

5.3 October CRD IV CP: CRD IV changes to remuneration (limits on bonuses)

The Board noted the FCA would be required to implement CRD IV and discussed the Executive's proposals for doing so.

The Board noted that the Government had appealed against the bonus limit provisions, but that in the meantime the FCA would need to implement the requirements.

The Board agreed with the approach to transpose the requirements and suggested that the team should take an approach that was consistent with the PRA with respect to the use of discretion, noting that if there was consumer detriment the FCA had the ability to take action without consultation if necessary.

6 Any other business

Update on the HBOS report

Sir Brian Pomeroy reported that he would like to provide the meeting with an update on the HBOS report. Mr Griffith-Jones left the meeting as per his previous notification of prior employment at KPMG. Sir Brian took the Chair and provided an update on the progress of the report and likely next steps.

The Board thanked Sir Brian and the HBOS Committee members for their work in reviewing the report to date.

7 Papers for noting:

7.1 The Board noted the minutes of the ExCo meeting held on 13 August 2013 and minutes of weekly meetings held on 6 August and 27 August 2013

7.2 Forward Agenda

The Board noted the papers.

The meeting closed at 5.30pm

Claire Strong

Deputy Company Secretary

ANNEX A: <u>Attendees</u>

Sean Martin	Acting General Counsel
Simon Pearce	Company Secretary
Claire Strong	Deputy Company Secretary
Celyn Armstrong	Manager, Legal Group (for item 3.3)
Lynda Blackwell	Manager, Mortgages (for item 3.2)
Belinda Davies	Manager, Business Unit Delivery (for item 3.1)
Nausicaa Delfas	Head of Mortgages and Consumer Credit (for item 3.6)
David Geale	Head of Savings, Investments & Distribution (for item 3.9)
Nadege Genetay	Head of Banking, Lending & Protection (for item 3.6)
David Lawton	Director, Markets (for item 3.8)
Andrew Long	Chair, RDC (for item 3.3)
Zitah McMillan	Director of Communications and International (for item 3.7)
Mark Nicol	Accountable Executive, Consumer Credit Programme (for item 3.6)
James Palmer	Chair, Listing Authority Advisory Panel (for item 2.4)
Henry Postlethwaite	Manager, Transaction Review (for item 4.1)
Paul Rich	Manager, Prudential (for item 8.1)
Gavin Stewart	Head of Risk & Strategy (for item 3.1, 3.5)
Daniel Thornton	Head of Legal Group, Enforcement (for item 3.3)
Toby Wallis	Manager, Primary Markets (for part of item 4.1)
Christopher Woolard	Director of Policy, Risk & Research (for item 3.1, 3.2, 3.5, 3.6)

Relevant Technical Specialists and Associates attended for items 3.5, 3.9 and 4.1

ANNEX B: Resolution

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

Handbook Administration (No 31) Instrument 2013 (FCA 2013/61)

Mortgage Market Review (Training and Competence) Instrument 2013 (FCA 2013/62)

Consumer Insurance (Disclosure and Representations) Act 2012 Instrument 2013 (FCA 2013/63)

Mortgage Market Review (Pipeline Business) (Transitional Provisions) Instrument 2013 (FCA 2013/64)

Client Assets Sourcebook (Indirect Clearing) Instrument 2013 (FCA 2013/65)

Enforcement Guide (Warning Notices Publicity) Instrument 2013 (FCA 2013/66)

Capital Resources Requirements for Personal Investment Firms (Amendment No 2) Instrument 2013 (FCA 2013/67)

Consumer Credit (High-level Standards and Interim Regime) Instrument 2013 (FCA 2013/68)