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## Minutes

**Meeting:** Transitional Board of the FCA  
**Date/Time:** 19 March 2013  
**Venue:** 25 The North Colonnade, Canary Wharf, London, E14 5HS

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**Present:** John Griffith-Jones (in the Chair)  
Amanda Davidson  
Sir Brian Pomeroy†  
Martin Wheatley

**In attendance:** Set out in Annex A

**Apologies:** Mick McAteer

† *Present for part of the meeting*

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### 1. MINUTES OF THE PREVIOUS MEETING

The minutes of the FCA Transitional Board meeting held on 28 February 2013 were approved.

### 2. FCA HANDBOOK

The Transitional Board noted that:

- only those changes that were necessary to comply with the new statutory requirements were being made to the Handbook at this time;
- feedback on the proposals had been broadly positive although three significant changes had been made following the consultation process:
  - the transitional period for certain mandatory regulatory disclosures had been increased from six to twelve months;
  - a more streamlined split of responsibilities had been agreed in respect of controlled functions for dual regulated firms; and
  - some clarification was proposed in respect of the decision-making procedures described in DEPP.
- the interaction of the FCA's proposed rules for Primary Information Providers with the EU e-commerce directive had been raised as an issue so no decision was being requested at this stage. HM Treasury was aware of this;
- although the paper submitted to the meeting set out 22 instruments, some amendments were needed to one of the instruments and accordingly the Transitional Board was only being asked to make 21 instruments at this stage. The further instrument (covering certain Handbook forms) would be circulated for approval by written resolution shortly;

- regulated firms would welcome the extension to the transitional period for certain disclosures; and
- the Transitional Board approvals would be followed by the Board of the Prudential Regulation Authority (PRA) being asked to approve the instruments insofar as they related to the PRA.

Following consideration, the Transitional Board resolved that:

- the 21 instruments detailed in the paper submitted to the meeting be made, insofar as the provisions covered are to be adopted by the FCA;
- the instruments be published on 25 March (alongside the relevant Handbook Policy Statement), once it has also been considered by the PRA Board on 22 March;
- the designations, modifications and rule-making covered by the instruments be published in the online version of the Handbook in the week commencing 25 March 2013, before legal cutover and before they come into effect; and
- subsequent technical, drafting or branding amendments be permitted to be made to the text of the relevant instruments, provided they are within the scope of the Transitional Board's decision, and agreed by the staff member responsible for the instruments and the General Counsel or his representative.

### **3. RULES AND GUIDANCE TO BE DETERMINED**

The Transitional Board considered the seven instruments that it was asked to make and the three instruments that it was proposed be made by the Board of the Financial Ombudsman Service. In the ensuing discussion, the following points were noted:

- some respondents to the FSA's consultation had sought clarification regarding the use of expert judgement in the methodologies for submitting information to benchmarks and Mr Wheatley advised that he would consider this as necessary; and
- the European Commission was currently formulating its proposals for legislation regarding financial benchmarks which would be published in Q2 2013. There was a risk that the EU would propose regulations that were inconsistent with the FCA's but it was considered appropriate to proceed at this time and to make changes at a later stage if necessary.

Following consideration, the Transitional Board:

- resolved that the seven instruments detailed in the paper submitted to the meeting be made;
- approved the making by the Board of the Financial Ombudsman Service of the three instruments detailed in the paper submitted to the meeting; and
- resolved that subsequent technical or drafting or branding amendments be permitted to be made to the text of the relevant instruments, provided they are within the scope of the Transitional Board's decision, and agreed by the staff member responsible for the instruments and the General Counsel or his representative.

**4. REGULATORY FAILURE REPORTING – POLICY STATEMENT**

Ms Barker introduced the paper which explained the FCA's approach to statutory regulatory failure investigations and reports and included the statement of policy and the FCA's approach. The paper was discussed and the following points were noted:

- in respect of the two-limbed test, loss caused by fraud or from a situation which arose quickly following a supervisory visit, which could therefore not have been discovered, would not constitute regulatory failure;
- it would be important to find a balance so that a reasonable number of reviews were undertaken and, generally, shorter but more frequent reviews might be more appropriate. The threshold figures for losses were a useful guideline for occasions when a review might be appropriate but were not something that the FCA would hide behind. Judgement would always be an important factor based on particular circumstances;
- the Transitional Board considered that the use of examples contained in the discussion document was helpful; and
- an earlier version of the document had been considered by the Independent Panels and no significant comments had been received, and HM Treasury had also reviewed the draft but still needed to agree the Statement of Policy ahead of its publication in April.

Following consideration, the Transitional Board:

- approved the Statement of Policy and the messaging in the paper submitted to the meeting; and
- resolved that minor drafting and editorial amendments be permitted to be made to the documents by John Griffith-Jones or Martin Wheatley ahead of publication shortly after legal cutover and following HM Treasury's consent.

Brian Pomeroy joined the meeting.

**5. TEMPORARY PRODUCT INTERVENTION RULES – POLICY STATEMENT**

The Transitional Board considered the paper submitted to the meeting and, in the ensuing discussion, the following points were noted:

- FSMA required the FCA to produce a Statement of Policy on its intended use of Temporary Product Intervention Rules (TPIRs);
- TPIRs gave the FCA a range of powers in addition to the banning of products. It was not expected that the powers would be used very often but the Statement of Policy set out the process that the FCA would follow before the Board decided to use the powers;
- the powers would only be used when there was a significant actual or potential detriment and the process would be reviewed after the TPIRs were used for the first time. It was agreed that it was preferable to encourage firms to act appropriately through regulation rather than through using TPIRs where possible;

- whilst responses to the consultation had been broadly supportive, some firms queried how the FCA would communicate the use of TPIRs, and whether the likely impact upon innovation had been fully captured;
- it was agreed that it would be helpful to make reference to examples of products where, subject to other considerations, TPIRs might have been used, which had previously been published on the FSA website;
- it was intended that the TPIRs would, where necessary, be used quickly to prevent detriment and further investigation would be carried out subsequently; and
- the intention would be to engage with firms before using TPIRs but it was acknowledged that, on occasion, while the FCA might liaise with the main providers of a particular product, it may not be practicable to speak to all providers.

Following consideration, the Transitional Board:

- approved publication of PS11/3, which would include a summary of the feedback to CP12/35 (the FCA's use of temporary product intervention rules), and also the Statement of Policy on the FCA's intended use of Temporary Product Intervention Powers (as required under the Financial Services Act); and
- resolved that minor drafting and editorial amendments be permitted to be made to the documents by Martin Wheatley or the General Counsel if necessary.

## **6. MEMORANDA OF UNDERSTANDING WITH OTHER BODIES**

The Transitional Board noted that:

- a significant amount of work had been done on the Memorandum of Understanding (MoU) between the FCA and the PRA, which was considered to be the most important MoU in the new regulatory structure;
- operating manuals were also in place under the statutory MoUs, setting out how these would operate on a day to day basis;
- concern had been expressed by some in the City about how the FCA and PRA would operate together and the MoU had tried to address issues of duplication and lack of co-ordination. Although reasonable endeavours would be used to minimise duplication it was unlikely that this could be avoided completely. In particular, it was noted that it would be impracticable to carry out joint supervisory visits; and
- the development of the MoU with the PRA had been a constructive process and the discussions had resulted in the inclusion of some helpful statements which would provide useful clarification. While the MoU was a legal requirement, however, it was the culture of the two organisations and the co-operation between them that would be crucial. In this regard, Martin Wheatley and Andrew Bailey would have regular meetings to discuss what was working well and what was not working so well and Mr Wheatley would provide updates on these meetings in his reports to the FCA Board. Feedback would also be sought from some major firms once the new structure had been operating for a time.

Following consideration, the Transitional Board:

- approved the statutory Memoranda of Understanding as set out in the paper submitted to the meeting subject, where relevant, to them also being approved by the Board of the Prudential Regulation Authority;
- agreed to amend and execute the existing non-statutory Memoranda of Understanding and agreements to which the FSA is a signatory and to enter into any new non-statutory Memoranda of Understanding and agreements which are necessary to assist the FCA in carrying out its functions after legal cutover, ahead of legal cutover to come into force on 1 April 2013. It was noted that the FCA Board would be asked to ratify these Memoranda of Understanding and to approve the delegations for future amendments at the first Board meeting after legal cutover; and
- noted the non-statutory, operational Memoranda of Understanding set out in the paper submitted to the meeting.

The Transitional Board asked Jeremy Heales to pass on their thanks to the team for all the work which had been done in respect of the Memoranda of Understanding and other agreements.

## **7. COMPLAINTS AGAINST THE REGULATORS – POLICY STATEMENT**

Mr Corbyn noted that:

- the proposed new Complaints Scheme had been through a consultation process and had already been approved by the Bank of England and the Prudential Regulation Authority;
- 17 responses had been received to the Consultation Paper with the main area of concern being the continued exclusion of the Financial Services Compensation Scheme (FSCS) from the Complaints Scheme. It would not be appropriate to include the FSCS, however, as the Scheme was for complaints against the regulators; and
- the FCA would manage the administration of the Complaints Scheme initially but all three regulatory bodies would be involved in the appointment of the Complaints Commissioner at the relevant time.

Following consideration, the Transitional Board approved the new Complaints Scheme.

## **8. MATTERS REQUIRING A DECISION OF THE BOARD**

Following consideration of the paper submitted to the meeting, the Transitional Board approved:

- The FCA's statement of "eligible practitioners" for the Smaller Business Practitioner Panel.
- The appointment of members of the Smaller Business Practitioner Panel, from 1 April 2013. The term of the appointments to be made be in line with current remaining membership terms as members of the Smaller Businesses Practitioner Panel of the Financial Services Authority.

- The appointment of members of the Markets Practitioner Panel, subject to the acceptance of a formal offer of appointment of membership, with effect from 1 April 2013, for a term concurrent with existing panel membership.
- The Chairman of the Listing Authority Advisory Committee to serve as an ex officio member of the Markets Practitioner Panel.
- A proposal to refer to the Smaller Business Practitioner Panel as the FCA Smaller Business Practitioner Panel.
- A proposal to refer to the Markets Practitioner Panel as the FCA Markets Practitioner Panel.

**9. ANY OTHER BUSINESS**

The Transitional Board noted that Jeremy Heales would shortly be moving to a new role within the Supervision Division and thanked him for his work on the regulatory reform project during the last two years.

The meeting closed at 3.25pm

Stuart Mead  
Secretary

**ANNEX A – OTHER ATTENDEES**

Jeremy Heales      *Head of Department, FCA Design, Co-ordination & Implementation*  
*Associate*      *Chairman's office*  
Sean Martin      *Acting General Counsel, General Counsel's Division*  
Stuart Mead      *Secretary*  
Simon Pearce      *Company Secretary*

Alison Barker      *Manager, CBU - Supervisory Oversight Function (for item 3)*  
*Associate*      *Complaints Team (for item 6)*  
*Associate*      *Products Team (for item 4)*  
Richard Corbyn      *Manager, Complaints Team (for item 6)*  
*Associate*      *GCD-Deposit Takers (for item 2)*  
*Associate*      *General Insurance Policy (for item 4)*  
Mike Deveney      *Manager, EU & Cross-Cutting Issues (for item 2)*  
David Geale      *Head of department, Head of Investments Policy (for items 2 and 4)*  
Simone Lobo      *Manager, CBU - Supervisory Oversight Function (for item 3)*  
Christopher Woolard      *Director, Policy, Risk and Research (for items 3 and 4)*