
PROTOCOL

For the conduct of the inquiry into the disclosure on 27/28 March 2014 of the FCA's Business Plan 2014/15

A. Introduction

1. Simon Davis and Clifford Chance (together hereafter "you" or "your") have been appointed by the Non-Executive Directors of the FCA's Board to carry out an independent inquiry into the circumstances leading up to and following the briefing and disclosure by the FCA relating to its Business Plan for 2014/15.
2. The Terms of Reference set out the scope of the inquiry.
3. This Protocol sets out the procedures under which the inquiry is to be carried out, reflecting the requirement for this Inquiry to be, and to be seen to be, independent.

B. Administrative Matters

4. You will be given specific individual contacts at the FCA.
5. A dedicated email in-box for communications relating to your inquiry has been set up. You should send communications relating to the inquiry to this in-box.
6. The FCA will arrange for you to be given reasonable access to the FCA's premises in Canary Wharf.

C. Documents, other information and interviews.

(1) FCA documents: requests and production

7. You will send all requests for the production of relevant documents (to include, for the purposes of this Protocol, both documents and communications in hard copy and electronic form (such as recordings of telephone conversations or text messages)) by email to the email address referred to in clause 5 above. Such requests will set out the document or class of documents required for production.
8. Provided that the relevant documents requested are within the FCA's power, custody or possession, such documents will be provided to you (either on disc or in hard copy) as soon as possible. No such documents will be withheld from you.

(2) FCA general information requests and general explanations

9. In the event that you require other information and/or explanations as to the FCA's activities falling within the Terms of Reference, any such request will be sent by email to the email address referred to in clause 5 above.
10. The FCA will respond as soon as possible to any such request, and no such information will be withheld from you.

(3) Interviews of FCA personnel

11. In the event that you wish to carry out interviews with individuals currently or formerly employed by the FCA, you will notify the FCA (by email to the email address referred to in clause 5 above, attaching a letter from you to the potential interviewee, for the FCA to pass on to the interviewee) of the individuals whom you wish to interview.
12. The FCA will endeavour to secure the attendance at interview of all such potential interviewees who are current or former employees of the FCA. Interviews will be arranged at a mutually convenient time. You will provide to the FCA, to allow the FCA to pass on to interviewees no less than 3 working days in advance, (i) a broad outline of the topics you wish to raise with the interviewee and (ii) a list of the principal documents which you wish to put to the interviewee.
13. The FCA will provide the facilities necessary for the carrying out of those interviews. In particular, it will provide a suitable room at its premises at 25 North Colonnade or 1 Canada Square; and it will ensure that all interviews are recorded on dual recording equipment. It will also ensure that a transcript is prepared shortly after the interview, and provided on disc and in hard copy to you, to the interviewee and to the FCA.
14. Interviewees may be accompanied by a legal adviser, Human Resources or other suitable representative.
15. The information obtained by reason of the interviews may be relied upon by you in preparing your report.

(4) Third Party assistance

16. You may contact third parties directly for assistance in relation to the inquiry and the FCA will (to the extent it is able to do so) facilitate such assistance.

(5) Escalation

17. In the event that you consider that the FCA is not providing you with the cooperation or information you reasonably need, you can escalate this to HM Treasury.

D. Privilege & Confidentiality

(1) Privilege

18. It may be necessary for you to receive information which is subject to the FCA's legal privilege. The FCA will not withhold documents from you on grounds of privilege, but the FCA is not thereby waiving privilege in the documents so provided to you.
19. You may refer to privileged documents in your report, but the Non-Executive Directors will decide whether to redact parts of the final report before its publication on the basis that it refers to such privileged documents. If the Non-Executive Directors decide to redact parts of the final report on that basis, they will include in the published report an explanation of the reasons for the redactions.

(2) Confidentiality

20. You may be provided by the FCA with "*confidential information*" within the meaning of section 348 FSMA. If so, when providing such information to you, the FCA will identify the fact that it is confidential. You may refer to such confidential information in your report. It will be for the contacts in Clause 4 to seek to obtain the consent of the person from whom the information was received and, if different, the person to whom it relates. If such consent is not obtained, you may nevertheless refer to such confidential information in the final report and the Non-Executive Directors will then decide whether to redact parts of the final report before its publication on the basis that it refers to such information. If the Non-Executive Directors decide to redact parts of the final report on that basis, they will include in the published report an explanation of the reasons for the redactions.

(3) Naming junior FCA personnel

21. Your final report will not name FCA personnel below the level of Head of Department but you will identify such personnel to the Non-Executive Directors.

E. Maxwellisation

22. Insofar as you intend in your report to make criticism of individuals, groups of identifiable individuals or organisations (including the FCA), (1) you will identify those individuals, groups or organisations, who will be given a reasonable opportunity to make representations in relation to such proposed criticisms and, having received any responses, (2) you will consider those responses prior to producing your report.
23. The contacts listed in clause 4 above (1) will assist you (if so requested) in deciding which individuals, groups or organisations should be given an opportunity to make such representations, and (2) will provide you with such administrative assistance as is reasonably required by you for the purpose of conducting this Maxwellisation process.

F. Publication

24. The FCA will arrange for publication of your report on behalf of the Non-Executive Directors.

G. Governance and reporting

25. You will not keep the Non-Executive Directors informed as to the progress of the report, except with respect to the logistical progress and the cost of the inquiry, which will not include matters of substance. You should raise with the FCA Chairman or, if you consider it necessary, HM Treasury at any time any matter which you consider to be so urgent or important that it needs to be disclosed to them.

26. To the extent that you consider it necessary for the FCA to address issues relating to factual accuracy, or to address issues relating to information which may be confidential under section 348 FSMA, you may share the relevant parts of your report with your contacts at Clause 4. These contacts will be entitled to share these with the appropriate people at the FCA for these purposes only, and only with your specific permission.