

October 2016

Financial Conduct Authority

Policy on conflicts of interest in connection with the appointment of 'appointed members' to the FCA Board

1. The Financial Services and Markets Act 2000¹ (FSMA) states that the governing body (the Board) of the FCA must consist of, in addition to the Bank's Deputy Governor for prudential regulation, the following members:
 - a chair appointed by the Treasury;
 - a chief executive appointed by the Treasury;
 - two members appointed jointly by the Secretary of State and the Treasury; and
 - at least one other member appointed by the Treasury
2. A person appointed in accordance with this requirement is referred to as an 'appointed member'.
3. Members of the FCA Board must have the necessary expertise and experience to carry out their roles effectively. This need raises the possibility that individuals will be considered for appointment who, through their employment history or financial and other interests, have other duties, associations and relationships that could create a conflict of interest were they to be appointed to the Board.
4. The Executive members of the Board must adhere to the 'Exclusive employment' clause in the FCA employee handbook, which requires any paid or unpaid employment to be approved by the FCA prior to appointment. Agreement will not be given where a potential conflict of interests exists e.g. if the role involves any firm, person or organisation that is or has been regulated, monitored or investigated by the FCA or has applied for authorisation.
5. This policy is the framework against which the Treasury and, where appropriate, the Secretary of State, will judge a potential candidate's or current appointed member's relationships, financial and other interests with a view to deciding whether the individual concerned is subject to an unacceptable conflict of interest or is not sufficiently independent to be appropriate for appointment to the FCA Board, or to continue in office.
6. The principal purpose of this policy is to set out the principles, guidelines and procedures for identifying, monitoring and managing actual or potential conflicts of interest with a view to:
 - Ensuring the independence, integrity, impartiality and propriety of the Board's decision-making in the performance of its functions;
 - To ensure public confidence in the FCA is maintained by avoiding a perception that:

¹ As amended. Schedule 1ZA FSMA provides for the Board of the FCA.

- i. an individual could be unduly influenced or may not be wholly independent, disinterested and impartial when acting as a member of the FCA Board, or
 - ii. a firm with which a member is connected may have an unfair competitive advantage by reason of assumed access to information or policy thinking.
7. There are various relevant statutory and code provisions referred to below. These set minimum standards and do so in general terms and therefore do not prevent the Treasury and, where appropriate, the Secretary of State, adopting a more rigorous policy to avoid the risks associated with a conflict of interest.

Relevant Statutory requirements

8. Before appointing a person as an appointed member, the Treasury (or, as the case requires, the Treasury and the Secretary of State) must 'consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge'².
9. The terms of service of appointed members are to be determined by the Treasury, in consultation with the Secretary of State where appropriate³. The terms of service of an appointed member must, amongst other things be such as "to prohibit [the appointed member] from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for [the appointed member] to discharge".⁴
10. Furthermore, Treasury, in consultation with the Secretary of State where appropriate, may remove an appointed member from office on the grounds that "the member's financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge"⁵.
11. In managing its affairs, the FCA is required to have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.⁶ The Board is committed to meeting high standards of corporate governance and has decided that the FCA should comply with the UK Corporate Governance Code where appropriate and applicable.
12. The FCA is a company incorporated under the Companies Act 2006 and directors are accordingly subject to the provisions of that Act, in particular the duty to avoid conflicts of interest under section 175, and of the Articles of Association of the FCA, including those relating to conflicts of interest. In accordance with section 175 of the Companies Act 2006 and where the provisions of Article 8 of the Articles of Association are satisfied, the Board may authorise any conflict proposed to them by any member which would otherwise involve a breach of the duty to avoid conflicts of interest.

Meaning of "conflict of interest"

13. For the purposes of this policy, an actual or potential 'conflict of interest' may arise where a relevant individual has an interest (whether personal or professional) in any dealing or business being considered by the Board which may give rise to a perception of undue influence or that the individual concerned may not be wholly independent, disinterested and impartial when acting as a member of the FCA Board, in particular with regard to the exploitation of any property, information or opportunity. A conflict may also arise where an individual has duties owed to a third party (for instance to a company of which the individual is a director, or arising from a past association) which may conflict with the functions that it would be proper to discharge as a member of the

² FSMA Schedule 1ZA para. 3(3)

³ FSMA Schedule 1ZA para 3(1) and 3(2).

⁴ FSMA Schedule 1ZA para. 3(4)(c).

⁵ FSMA Schedule 1ZA para. 4(1)(b) and 4(2)

⁶ FSMA Section 3C

Board. Financial interests, directorships and employment and consultancy arrangements are the most obvious examples of conflict but these examples are not exhaustive.

14. References to potential conflicts of interest or duty include situations where a relationship already exists and where an actual conflict may arise if and when a particular course of action is considered.

Conflicts which may disqualify an individual from becoming, or continuing as, a member of the FCA Board

15. Whether a conflict of interest can be authorised and how it can be managed is judged by reference to the risk that the reputation of the FCA may be impaired or whether it would have a material effect on the extent of the functions as member that it would be proper for the appointed member to discharge. This risk may be managed by the board member subject to a conflict of interest excluding themselves from Board decisions and discussions, although not necessarily so. A reputational risk can materialise even where an individual has not had to exclude themselves from decisions and discussions in the past. It is also unacceptable if an individual has to exclude himself/herself from so many decisions and discussions that their effectiveness becomes impaired.

Financial interests

16. A member of the FCA Board may hold securities in a Financial Services Company on appointment unless the size of such holdings or their nature may give rise to a perception that the individual concerned may not be wholly independent, disinterested and impartial when acting as a member of the FCA Board. A member is under a duty to disclose all financial interests when joining the Board.
17. A member of the FCA Board is generally prohibited from acquiring any Financial Services Securities during his or her term of office and is restricted from selling any such securities without the permission of the FCA Company Secretary.
18. A member of the FCA Board may acquire shares in a Financial Services Company of which they are a director where (a) such directorship has previously been approved in accordance with this policy and (b) the acquisition of such shares is a condition of holding such directorship.
19. A member of the FCA Board may acquire Financial Services Securities in circumstances beyond their control – for example by way of gift or inheritance – but should disclose such acquisition to the FCA Company Secretary without delay and obtain permission to hold such securities. If the size of the holding acquired in this way, or its nature, may give rise to a perception that the individual concerned may not be wholly independent, disinterested and impartial when acting as a member of the FCA Board, the FCA may require the member to dispose of the holding.
20. The following definitions apply for this purpose:
 - ‘Financial Services Company’ means a company whose business is involved to a material extent in activities which in the UK would be regulated by the FCA (excluding those which fall under the FCA’s jurisdiction solely as a result of its listing responsibilities); and
 - ‘Financial Services Securities’ means any share, bond, debt instrument or similar security issued by and forming part of the equity or debt capital of any Financial Services Company and any derivative thereof including, but not limited to, contracts for difference and spread betting positions. This definition is not intended to include (a) any instrument issued or marketed by a Financial Services Company solely in its capacity of providing retail fund management or investment products or (b) an indirect investment in a Financial Services Security that forms part of the underlying portfolio of a diversified retail fund management or investment product.

Directorships & Partnerships

21. Persons considered for appointment as an appointed member of the FCA Board are expected to have extensive relevant experience for the role. Consequently, such individuals may hold, or have recently held, executive or non-executive directorships or partnerships at other organisations, including FCA-authorized firms⁷. However, the existence of such a relationship with the larger authorised firms would disqualify an individual from appointment to the FCA Board. The panel responsible for recommending appointable candidates to Ministers makes a judgement on a case by case basis whether the size, significance and nature of the firm's business, and the individual's role within it, in the context of the FCA's objectives is such as to require disqualification.
22. Board membership of an unregulated parent of a FCA-authorized firm would normally be judged in the same way as board membership of the authorised firm itself, given the presumed influence the parent would have over the authorised firm. An individual would not normally be disqualified by reason of sitting on the board of an unregulated group company (other than the parent company) where the group includes a FCA-authorized firm since the individual would not be expected to be in a position of influence in relation to the FCA-authorized firm or the group as a whole.

Employment and Consultancy arrangements

23. Employment and consultancy arrangements include full time employment, part time employment and 'contracts for services' e.g. consultancy arrangements. This section does not apply to employees who are also directors of the firm in question (as to whom paragraph 18 applies).
24. Full time, or substantially full time, employment in an FCA-authorized firm, particularly in a senior position, or any role requiring the individual to be an Approved Person (other than as a non-executive director) is likely to be regarded as giving rise to a potential conflict of interest, but would not necessarily disqualify an individual. As in the case of a director, a judgement is made on a case by case basis whether the size, significance and nature of the firm's business in the context of the FCA's objectives is such as to require disqualification. In general, however, the existence of such a relationship with the larger authorised firms (typically those within the 'fixed' supervision portfolio) will disqualify an individual from appointment to the FCA Board.
25. Whether part time employment or consultancy arrangements disqualify an individual will depend on the nature of the services to be provided. There is likely to be a difference in perception between the provision of technical advice and a role which enables the individual to influence the business or strategy of the firm. The size, significance and nature of the firm's business and the degree of influence that the individual has will be relevant to the decision; for example, there will be less concern where it is clear that the individual's duties do not relate to the business of the FCA-authorized firm.
26. The policy in relation to full or part time employment or consultancy arrangements with an unregulated parent of a FCA-authorized firm or group company will follow the same principles in relation to a directorship as set out in paragraph 22.

Charity Roles

27. The FCA encourages its staff to support and participate in charitable organisations. Board Members must nevertheless disclose any existing charity roles prior to appointment to the Board (e.g. trusteeships) and obtain the FCA's consent when seeking to take on new charitable roles. Any Board member wishing to be a member of a Charity's investment committee should discuss this with the Company Secretary to ensure it will not contradict the policy relating to financial interests.

⁷ 'FCA-authorized' includes 'dual-regulated' firms where relevant.

Duty to disclose

28. In determining whether or not a potential conflict of interest may exist that would disqualify an individual from being appointed to the FCA Board it is important that at the time any such decision is to be made, all relevant information about the individual is made available to the appointing body (i.e. Ministers or a delegated appointing panel). Once a person becomes an appointed member, he/she has an ongoing duty to disclose any information that may be relevant to a potential or actual conflict of interest.

Register of interests

29. The Company Secretary is responsible for maintaining a register of Board Members' declared interests.
30. The FCA will publish information on Board Members on its website in relation to their positions as directors of other companies, partnerships or major charitable institutions.

The Code of Practice for Ministerial Appointments to Public Bodies.

31. The Code of Practice for Ministerial Appointments to Public Bodies states that an appointing panel must satisfy itself that a candidate can meet the standards set out in the Seven Principles of Public Life and has no conflicts of interest that would call into question their ability to perform the role. Relevant principles include acting solely in the public interest and not placing themselves under any financial or other obligations to others who might seek to influence them in the performance of their duties.

Political activity

32. There is legislation in place to disqualify any member of the FCA Board from membership of the House of Commons, the Northern Ireland Assembly, the National Assembly for Wales or the Scottish Parliament.
33. In their public role, Board Members should be, and be seen to be, politically impartial. Board Members should not occupy a paid party political post or hold a particularly sensitive or high-profile role in a political party. They should abstain from all controversial political activity.
34. On matters directly related to the work of the FCA, Board Members should not make political statements or engage in any other political activity.
35. In their official capacity, Board Members should be even-handed in all dealings with political parties.
36. Subject to the above, Board Members may engage in political activity but should, at all times, remain conscious of their responsibilities as a board member and exercise proper discretion. Board Members should inform the Chair of the FCA (who may consult the Treasury) before undertaking any significant political activity.