



Financial Conduct Authority
25 The North Colonnade
London
E14 5HS

26 January 2017

Dear Sirs,

Response to the FCA Mission

Thank you for the opportunity to provide feedback on the FCA Mission.

This submission is made by PricewaterhouseCoopers LLP (PwC), the UK member firm of the PwC network. In the UK, PwC audits and advises many regulated firms. This letter is not intended to represent the views of our clients, but rather to identify and to comment on certain aspects of the Mission which we believe to have particular significance.

The document as presented is useful and generally based on sound principles. It provides some additional clarity on the FCA's role in some areas, although we believe that many of the FCA's stakeholders would welcome a more fundamental analysis going back to first principles. While the underlying powers afforded to, and the statutory objectives set for the FCA have clearly not changed, we feel that many stakeholders expected a more detailed analysis of the FCA's interpretation of its statutory objectives and an explanation of how the FCA's strategy and operating model is designed to meet those objectives.

Furthermore, we believe it's important that the Mission and FCA Handbook fully reflect the challenges and opportunities arising from the digital age, and would appreciate further consideration of how digital products and services fit into the current regulatory regime. Many of the rules in COBS, for example, date back to a time preceding the growth of FinTech, and are based on assumptions and concepts that may need to be reviewed and updated.

While we're broadly supportive of the FCA's stance on the matters discussed in the paper, we have specific views on a number of the questions which are expressed in the attached annex.

We would be happy to discuss any of these issues in more detail with you.

A handwritten signature in black ink, appearing to read 'DK' followed by a stylized flourish.

David Kenmir

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Specific questions:

Question 6

We agree in principle with the intervention framework. But greater clarity on why, when and how the FCA believes each of the tools is likely to be deployed would be welcomed. We also think that the FCA could explicitly articulate how its powers under the Senior Managers and Certification Regime (SM&CR) will be operated in parallel with, or instead of, its powers over regulated firms and competition powers.

Question 7

We believe that the critical factor in determining the success of the intervention framework is how success will be measured, although the design of metrics to demonstrate success are likely to be complex. An outcome which results in improved consumer trust, openness and transparency.

Question 9

We believe that the FCA may be missing some additional points on price discrimination: affordability and customer behaviour. Certain products and services have been made so expensive to deliver that they're not affordable to the mass market – notably retail investment advice. And some price differentiation is driven by customer behaviour. Many products are priced in a way that correlates with customer behaviour e.g. the price of credit is partly based on credit ratings (which are driven by customers' behaviour), and the price of car insurance is partly based on customers' driving behaviour.

While we welcome the FCA's acknowledgement that some level of cross-subsidisation is inevitable, we believe this could go further. Previously articulated support for lifetime pricing in insurance products, or the explicit five-year cross-subsidisation rule for investment products in vertically integrated firms, demonstrate the FCA's view of the importance of commercial realities in regulated markets.

Cross-subsidy can, in some circumstances, have beneficial impacts on more vulnerable customers, in effect providing them with greater access to financial services through cross-subsidisation within firms from charges paid by more affluent customers. The combination of increased regulatory cost and a regulatory focus on cross-subsidy could further reduce the viability of parts of the market, reducing vulnerable people's access to products and services.

Question 11

We agree with the FCA that a Duty of Care is not necessary to ensure well-functioning markets.

We are concerned that there is a risk that imposing a statutory Duty of Care on firms could subsequently increase the duty placed on consumers in achieving an equilibrium.

Instead, we believe that under current requirements if you clearly define the roles and responsibilities of market participants, and the steps which end customers are meant to take in responsibility for their actions, you should be able to see a form of duty of care in practice today.

We also see no need for consumers to be able to bring civil claims based on an alleged breach of Principle 6. The Financial Ombudsman Service provides a critical function, in allowing consumers access to dispute resolution in a quicker, more cost effective way than through the courts, with a wider interpretation of 'fair and reasonable' than could be secured in a court. The FOS is already able to consider not only FCA rules, but FCA principles and appropriate industry-led guidance (such as the use of the FISA code in PPI adjudications). It also has discretion to make awards based on what it deems to be fair and reasonable in the circumstances.

The Mission was produced before additional measures were presented by the Ministry of Justice proposing corporate liability for economic crime. The potential addition of this, together with increased emphasis on individual accountability as a result of the SM&CR, will also help address this issue.

Should the FCA decide to proceed with the Duty of Care, we urge it to assess how it would have changed the outcomes of recent regulatory issues such as PPI or other large scale redress schemes, as we remain unclear how the Duty would have resulted in better consumer outcomes.

The FCA would also need to carefully consider how firms would discharge their duty of care. We caution that firms may turn to additional disclosure, which the FCA's own research demonstrates can be counterproductive.

Question 12

While in principle protecting vulnerable customers and those buying more complex products is appropriate we are concerned by the potential unintended consequences of this approach.

Firms often seek to minimise regulatory risk. An unintended consequence could be a 'de-risking' by firms either choosing not to serve vulnerable customers, or stifling their willingness to innovate. This could reduce access, choice or competition, which would exacerbate the vulnerability of the very groups the FCA wants to better protect. The additional regulatory burden of extra measures to protect vulnerable customers and those buying complex products could also raise costs, which may make services unaffordable to some people.

We also think the industry would benefit from further clarity on the difference between the emphasis in the Mission on FCA's role in 'protecting vulnerable customers' and the FCA's historic focus on ensuring that 'firms protect vulnerable customers'.

Question 14

We support the approach taken by the FCA to redress schemes for issues outside its regulatory perimeter. Given the scope of FCA's powers set by Parliament under FSMA, a voluntary approach is correct.

Question 15

In any large redress scheme, it will never be possible to meet all customers' expectations. But redress schemes can be complex, nuanced and require detailed analysis. The more a customer is clear about the methodology of a review scheme, whether, how and why they will be due redress and the means of calculating it, the more they're likely to be happy. The FCA may wish to consider the way it discloses this information to consumers at the start of any redress programme, to ensure it's as clear as possible.

We understand that the Mission's reference to a lack of transparency particularly relates to the interest rate hedging product review. That had particular characteristics that may have made customers less happy: in some cases redress took the form of an alternative product, and the process created by the FCA was slow as it required each and every outcome to be reviewed by an independent reviewer.

Question 19

The FCA should not intervene where loss is driven by factors that are out of the control of individual firms, the industry as a whole or customers, or could not be reasonably foreseen by them. Such factors

may work in a customer's favour, or against them, but they do not automatically mean that the sale of a product at a particular point in time was unsuitable or inappropriate.

PwC

January 2017