Lloyd's Market Association – Written evidence (SCG0031)

Thank you for the opportunity to input into the Committee's inquiry.

About the LMA

The Lloyd's Market Association (LMA) represents the fifty-two managing agents at Lloyd's, with ninety-four active syndicates (including SPV's) underwriting in the market and the four members' agents, which act for third party capital.

Managing agent members are "dual regulated" firms, regulated by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA); whilst members' agents are solo regulated by the FCA. For 2023, total gross premium was £52.1billion. The Lloyds's Market distributes through both the UK and over two hundred countries worldwide forming a key part of the London and UK economy.

In addition to the PRA and FCA, Lloyd's managing agents are subject to byelaws and an oversight framework set by the Corporation of Lloyd's which is itself a statutory regulator.

1. What opportunities or changes should be prioritised in order for the regulators to meet their secondary growth and competitiveness objectives ("SCGO") effectively?

It is a priority for the UK regulators to apply proportionality to their rules and guidance based on the type of customer and risk of harm and also an appropriate cost/ benefit analysis. FSMA mandates regulators to adhere to its regulatory principles, including the requirement that

…a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

Despite this, UK regulators have taken a 'one size fits all' approach to the regulation of general insurance. This was arguably necessary to enable a consistent European approach to insurance regulation. However this has led to the London wholesale market being disincentivised from selling small scale tailored products through a disproportionate approach to customer protections. The Regulators now have the opportunity to apply the regulatory principles in a manner appropriate to the UK insurance wholesale insurance market and remove excessive regulatory burden from commercial and specialist products.

Much of the specialist and international business written by the London

Market is brought into Consumer Duty despite being covered by local consumer protection rules or where customers are advised by brokers acting on their behalf. Regulators should be able to reflect the roles of market participants (eg broker and insurer) when seeking to implement new rules.

Rolling back protections imposed on commercial business which are designed to protect individuals purchasing home, pet and motor insurance would help meet the secondary objectives.

Gold plating and layering

The Regulators have heard industry concerns about data and information requests: number, scope, time to respond. Yet the volume of recent multi-firm reviews/thematic review/market studies and good and poor practice publications suggests they are not taking these concerns into account.

By way of example, since January 2023, in addition to the rules and guidance themselves, the FCA has issued 17 further publications related to the Consumer Duty alone. This includes multi-firm reviews, speeches, Dear CEO letters and good and poor practice updates. The FCA expects firms to review these 'urgently' and implement necessary changes. It is incredibly burdensome to expect firms, especially smaller firms to carry out additional reviews, and revisit ongoing implementation projects.

These layers add to the complexity and weight of the overall "rulebook" which is much more extensive than the official Handbook. The FCA should give the industry more time to implement regulatory change before adding further requirements.

The PRA also regularly issue new Supervisory Statements which layer over their rules. These add complexity to the expectations and are also difficult to navigate for smaller firms. We would welcome both regulators limiting this continuous change.

2. **To what extent are the regulators focused on the objective to promote international competitiveness and growth? Are there areas where the ability of the regulators to fulfil their secondary objectives might be constrained by having to fulfil their primary objectives?**
5. **How effectively have the FCA and PRA consulted or engaged with industry in relation to the new secondary growth and competitiveness objective?**
9. **Does the requirement within the secondary growth and competitiveness objectives to align with international standards create any constraints to fulfilling those objectives?**

The FCA has engaged with us directly as a trade body to consider competitiveness and this has resulted in the recent Discussion Paper on regulation of commercial and bespoke insurance business (DP24/1). This Discussion Paper is a good example of the Regulator recognising that the London subscription market may require a different regulatory approach in particular, avoiding duplication of efforts between brokers and underwriters, and lead insurers and follow insurers, can result in reduced regulatory burden with no material increase in risk for customers.

This was, however, undermined by the recent publication of a Thematic Review on "Product Oversight and Governance" which set out very prescriptive expectations which is inconsistent with applying proportionate, outcomes-based, regulation. This is one example of layering prescriptive guidance and highlights the tick-box process expectation of supervisors when reviewing what should be outcomes-based rules.

We also welcome the FCA Handbook Review which has been started through a call for input but in addition would like more scope and appetite for the Regulators to automatically retire rules, where they have been superseded or are no longer necessary.

Recent consultations, most notably the enforcement consultation, have not considered competitiveness within a cost benefit analysis or have omitted a CBA.

The PRA has not engaged in similar discussions with the LMA. However, they have worked with Lloyd's to streamline oversight of the market, resulting in some Lloyd's Managing Agents having a reduced impact categorisation.

The PRA have articulated their intention to apply SCGO only where it supports an implementation of the primary objective. We would expect the PRA to be considering the SCGO in all of its activities not just when producing new rules. We are therefore concerned that there is no indication within the regulatory initiatives grid that the PRA intends to make change which supports the SCGO.

The consultation on solvent exit planning for insurers is another example of new rules that are unlikely to materially improve customer protections relative to the burden imposed.

There has been some movement through the new mobilisation regime, SPV/ILS Regime and New Insurer Startup Unit. But, these do not provide material and direct benefits for existing firms. The PRA could be considering how to reduce the burden on existing firms, not just at the gateway.

Key Constraint It is important that the UK market maintain suitable levels of regulation which reflect standards set by the International Association of Insurance Supervisors. We would expect that part of the SGCO would require UK regulators to push back on the continuous incremental change to these expectations where they are disproportionate.

3. **What are some of the barriers in the current regulatory framework (including the role and responsibilities of other regulators and bodies such as the Payment Systems Regulator, The Pensions Regulator and the Financial Ombudsman Service) that could hinder efforts to drive economic growth and international competitiveness in (a) the UK economy and (b) the financial services sector?**

Level of risk appetite

On 29 July, the FCA published its first annual report on its new secondary objective. The FCA has referred to the Consumer Duty as pro-competition due to its outcomes-based nature. However as explained in our answer to question one, the layering of 17 subsequent publications on the subject does not align to this characterisation. It is not clear how smaller firms and start-ups such as Insurtech can engage with or digest such large volumes of information from the regulators.

We welcome the FCA's request that other stakeholders such as Parliament and the Government have a debate about society's wider risk appetite. This is because the FCA and PRA are limited in what they can do in the current zero failure expectation environment. A fear of failure drives conservative expectations from the regulators. This results in an expensive and burdensome regime which acts as a drag on firms.

Siloed approach

The twin peaks regulatory model invites a siloed approach to regulation with overlaps in remit. For example, both regulators are required to approve individual senior leadership appointments or changes in control adding time and weight to the system.

This silo issue is also revealed in approach to policy and supervision, even within the same organisation. For example, proposals by the PRA on FSCS eligibility in their discussion paper (DP2/23) would have had material impact on the PRA's own risk approach to supervising third country branches making the UK less attractive.

The interaction between the Ombudsman and the FCA is also a key area of friction. The Ombudsman's wide remit and international

jurisdiction is particularly challenging when applied to commercial insurance and conflicts with the jurisdiction of the Courts which are the appropriate jurisdiction for disputes between commercial parties. This adds regulatory uncertainty as the Ombudsman is free to interpret rules independently. We welcome the call for input announcement by the Chancellor in her Mansion House Speech, but do not believe that the current proposals are sufficient to bring about any growth and competitiveness advantages.

4. **Do the regulators have the right capability and capacity to fulfil their regulatory objectives on growth and competitiveness? To what extent might the culture of the FCA and PRA influence their ability to fulfil their growth and competitiveness objectives?**

The FCA and PRA do not have a mandate to promote the UK as a jurisdiction or support negotiations for access to international markets. As such their ability to influence growth and competitiveness is limited to rule changes and overall regulatory burden. There should be an explicit mandate to promote the UK as a jurisdiction.

We also believe that both the FCA and PRA would benefit from recruiting more staff with market experience and knowledge of the London and international insurance market.

The structure of dedicated policy teams within the regulators, and a project delivery mindset driven through business planning cycles, creates a constant conveyor of new rules and updates. The focus of these incremental changes seems to be on "zero failure" which is expensive, undeliverable and incompatible with growth and competitiveness.

Approach to enforcement

We support the FCA's expectation that enforcement is accelerated to ensure this is proportionate and informs other market participants in good time. But the recent consultation on enforcement, is an example of the FCA's "awareness gap". The proposed changes and naming of firms prior to proceedings being concluded poses significant potential for harm to firms and market confidence. The FCA failed to undertake a cost benefit analysis or consider the SCGO in their consultation.

6. **In delivering their secondary objective on growth and competitiveness, what opportunities are there for the regulators to help to promote and support innovation in the financial services sector? How effective has the FCA's regulatory sandbox been for supporting greater innovation in the financial services industry?**

Generally, the role of regulators should be to avoid excessive barriers to innovation. It is difficult for commercial insurance providers and products to qualify for the FCA Sandbox. The bar for access to the sandbox seems to be inappropriately for the London slip market where there is more than one participant in the innovation, resulting in limited use.

11. Are there examples of regulatory policies in other jurisdictions that should be considered by UK regulators to help facilitate the new secondary objective? What might the FCA and PRA be able to learn and apply from comparable supervisors in other markets in terms of applying secondary objectives on growth and competitiveness?

The Regulators are making advances towards being more approachable. However, the regulators tend to measure themselves against the statutory deadlines in FSMA. These appear slow when compared with smaller more nimble jurisdictions.

Statutory deadlines should be seen as the maximum time allowed and not a Service Level or target. Delays in the time taken to approve new senior managers and special purpose vehicles create frictional opportunity costs for firms which make other jurisdictions potentially more attractive. UK regulators are influential and as mentioned above, they are in a position to promote SCGO by discouraging gold plating in international standards and ensuring that they are not promoting excessive regulatory burden in the UK which reduces the attraction of it to international purchasers of insurance.

The Regulators should actively consider the approaches of other jurisdictions in their cost-benefit analysis when proposing regulatory changes. For example, when proposing changes to general insurance FSCS compensation in DP2/23, the PRA did not appear to consider how other jurisdictions structure insurance guarantee schemes or conduct international research on the topic.

We would like to thank the FSRC for this inquiry. Should you have any questions please do not hesitate to contact us.

29 November 2024