

20 March 2012

The Bilateral Complaint Handling Process

1. Introduction

Compensation practices at large financial institutions were a key contributing factor to the global financial crisis. The FSB [Principles for Sound Compensation Practices](#) and their [Implementation Standards](#) (Principles and Standards, P&S) were developed to align compensation with prudent risk-taking, particularly at significant financial institutions.

The [October 2011 peer review on compensation practices](#) set out several recommendations to address these issues, including the following one:

- that the nature of level playing field concerns (particularly with regard to the implementation of Standards 6-9, 11 and 14), the actions taken to address them via supervisory cooperation and the outcomes should be reported at least annually to the FSB and should inform the scope and intensity of its ongoing monitoring.

The G20 Leaders Cannes Summit Declaration also called on the FSB, as part of its ongoing monitoring and public reporting on compensation practices, to “carry out an ongoing bilateral complaint handling process to address level playing field concerns of individual firms.”¹

This document provides an overview of the main features of the Bilateral Complaint Handling Process (BCHP) as agreed by the FSB Standing Committee on Standards Implementation (SCSI). Future refinements to the framework described in this document may be adopted by the SCSI in the light of experience with the functioning of the BCHP.

2. Objectives

The objectives of the BCHP are to:

- Address evidence-based complaints raised by financial institutions (FIs) to their home supervisors that document a competitive disadvantage as a result of the inconsistent implementation of the P&S, particularly with regard to Standards 6-9, 11 and 14, by firms headquartered in other jurisdictions.
- Produce and report information to the FSB on the nature and outcomes of such complaints so as to inform the scope and intensity of the ongoing monitoring.

The process is expected to generate evidence-based information on specific cases of inconsistent implementation of the P&S that have been brought to the attention of the home supervisor. It is also expected to encourage supervisory dialogue on compensation issues. Over time, the analysis of firm-specific cases via bilateral supervisory consultations and their

¹ See para. 25 on page 5 of the G20 Leaders Cannes Summit Final Declaration (4 November 2011, <http://www.g20.org/Documents2011/11/Cannes%20Declaration%204%20November%202011.pdf>).

reporting to the FSB as part of its ongoing monitoring in this area are expected to provide more clarity on the appropriate flexibility and transparency in the application of the P&S across firms and jurisdictions.

The BChP is intended to complement and reinforce normal bilateral or multilateral supervisory channels that may be used by supervisors to address remuneration issues. In case of complaints by firms addressed through supervisory channels other than the BChP, national authorities will report to the FSB on the nature and outcomes of these processes as part of the FSB’s ongoing monitoring in this area.

3. Process of bilateral complaints

3.1 Communication to industry

Supervisory authorities will be informing firms and (where appropriate) relevant national industry associations in their jurisdiction about the BChP. The FSB will be reaching out to relevant international trade groups as well as creating a dedicated page on its website for this purpose (see below).

3.2 Information template for submission of complaint

The complaining firm (Firm 1) should address its complaint about compensation practices in Firm 2 (object of complaint) to its home supervisor. The complaint should involve practices that occurred since 1 January 2012.

Firm 1 should provide to its home supervisor detailed evidence substantiating why the matters subject to the complaint are inconsistent with the P&S, including detailed information on the relevant elements of the pay package offered by Firm 1 to the employee and (where available) elements of the pay package offered by Firm 2. A difference in the level of pay should not in itself be deemed to be evidence of an uneven playing field. The same applies for improvements in the pay package attributable to general career moves that involve promotions in title and level of responsibility.

In order to substantiate a complaint, the home supervisor of Firm 1 should collect the following information:

1.	Date the complaint is filed	2.	Date(s) of the events that are the object of complaint
3.	Identity of complaining firm (Firm 1)	4.	Identity of firm that is object of the complaint (Firm 2)
5.	Home jurisdiction of Firms 1 and 2	6.	Jurisdiction where the complaint has arisen
7.	Description of the complaint, including the specific P&S involved and the reason why the specific compensation practice is inconsistent with the P&S.	8.	Nature and magnitude of the competitive disadvantage caused by the inconsistent application of the P&S
9.	Information about the employee(s) at	10.	If relevant, information on the employee(s) at

	Firm 1 (rank, title, function, whether designated as Material Risk Taker)		Firm 2 (rank, title, function, whether designated as Material Risk Taker)
11.	Information on relevant elements of the pay practices or package at Firm 1, including for example: <ul style="list-style-type: none"> • Actual payouts and bonus • Relationship between fixed and variable remuneration • Deferral arrangements • Clawbacks • Guarantees 	12.	Information on relevant elements of the pay practices or package at Firm 2 (on a best effort basis), including for example: <ul style="list-style-type: none"> • Actual payouts and bonus • Relationship between fixed and variable remuneration • Deferral arrangements • Clawbacks • Guarantees If relevant elements of the pay package are not available, please provide other evidence that supports the complaint.
13.	Other information (applicable in the case of an employee move), for example: <ul style="list-style-type: none"> • Whether the firm can confirm that the difference in pay package is the most important / an important reason for an employee move. • Whether the employee received a higher base salary, a higher expected bonus or a promotion in title by moving to the new firm. 		

3.3 Handling of complaint

The national supervisory authority will review the information in order to verify that it is accurate and relevant and that that the complaining firm’s understanding and interpretation of the P&S is reasonably correct. The national supervisory authority will discuss the information with the firm that has filed the complaint. Complaints that are deemed to be reasonably substantiated based on the information provided by Firm 1 will be brought to the attention of the home supervisor of Firm 2.

The two supervisors will discuss the relevant issues bilaterally and will strive to resolve the complaint within 3 months of the day that the supervisor of Firm 2 has been informed of it, although in some complex cases the process might take longer to complete. The supervisor of Firm 1 will inform that firm on the outcomes of the complaint once the process is concluded.

3.4 Sharing of confidential information

The BCHP may involve the collection and sharing of confidential information pertaining to employees’ pay packages, depending on the provisions applicable in different jurisdictions. In those cases, the following provisions apply:

- A complaining firm will be informed that, to resolve a complaint, the sharing of certain confidential information among supervisors may be necessary.
- Information sharing will be covered by existing protocols for sharing supervisory information and will be done in line with existing legal constraints in terms of confidentiality requirements and privacy laws in each jurisdiction.

- Supervisors will not reveal to their respective firms any proprietary information pertaining to the other firm and acquired in the course of the BHP.

4. Reporting to the FSB

The FSB has established a Compensation Monitoring Contact Group (CMCG) under the SCSI, comprising national experts from member jurisdictions with regulatory or supervisory responsibility on compensation practices. The CMCG is responsible for monitoring and reporting on national implementation of the FSB P&S and on the outcomes of the BHP.

The number and nature of complaints, their relationship to specific P&S as well as the outcome (including any follow-up actions) of the bilateral discussions will be reported periodically by CMCG members to the FSB. The information reported to the FSB will not include the names of the relevant firms and employees or any other details that are not consistent with existing legal requirements in terms of confidentiality and privacy in each jurisdiction. The main findings from the BHP will be included in a periodic progress report on the implementation of the FSB P&S that will be published.