

F.A.O. Margaret Hope,
Solicitors Regulation Authority,
Ipsley Court,
Berrington Close,
Redditch
B98 OTD

15 August 2012

Dear Sirs

Re: SRA Consultation – “On the future of authorised professional firms”, 24 May 2012

The City of London Law Society (“CLLS”) represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response to your 24 May 2012 consultation paper “On the future of authorized professional firms” (the “consultation paper”) has been prepared by the CLLS Professional Rules and Regulation Committee (see list of members attached).

Background

The vast majority of the CLLS’s member firms do not provide mainstream financial services to their clients and so the issues flagged in the consultation paper do not affect them directly.

However, that said:

- (A) all CLLS firms clearly have an interest in SRA resources being used appropriately and in access to the SRA Compensation Fund being appropriate - both are funded by authorisation fees collected by the SRA, to which CLLS member firms make a significant contribution; and
- (B) there are some general public interest issues at stake here (e.g. whether retail consumers in particular understand, when deciding who should advise them on key personal investment decisions, what compensation

fund they may have access to if things go wrong and whether another provider may therefore be more suitable in their particular circumstances)

which is why the CLLS has decided to respond to the consultation paper.

In addition, most CLLS firms do provide incidental financial services, relying on the Part XX FSMA exemption, and so the CLLS wishes to ensure that that exemption is not affected by the SRA's proposals.

Answers to consultation questions:

Question 1 – Do you agree with the overall approach to the issues identified in this consultation?

The CLLS agrees that:

- (A) the SRA Compensation Fund should not be exposed to risks which are unrelated to the provision of legal services;
- (B) the SRA should only offer compensatory protection in relation to activities which it authorises and regulates; and
- (C) the SRA should only regulate areas of work which it has the experience and expertise to do so, meaning that its regulatory coverage should be limited to legal services and anything which is genuinely ancillary to legal services.

However, the CLLS does not agree that it would necessarily be a disadvantage if APFs (as defined in the consultation paper) would not benefit from the carve-outs in the FSA Handbook which will continue to be available to law firms which provide incidental financial services only. On the contrary, the CLLS sees benefit in:

- (D) avoiding “turf wars” between regulators; and
- (E) making regulatory matters easier for consumers to understand (and, as a consequence, their choices better informed).

Question 2 – Which of the options do you favour?

On balance, and subject to what is said below, the CLLS favours Option 2.

The CLLS does not see Option 1 as a viable option (for the reasons identified in paragraph 21 of the consultation paper).

Option 3 brings a number of difficulties with it. In particular, where financial services are provided to a client which comprise both mainstream and non-mainstream financial services (“mixed financial services”), it is unlikely to be completely clear, if dual regulation continues, where the remit of each of the SRA and FSA begins and ends – and there could be regulatory gaps and/or overlapping regulatory requirements as a result. Further, where a client receives mixed services, will he/she fully understand a proposition which involves him/her having recourse to the SRA Compensation Fund for some matters and the Financial Services Compensation Fund for others? Will he/she appreciate the differences between the two funds - e.g. in summary, that the former is only available where his/her adviser has been dishonest and is uncapped whereas the

latter is available where his/her adviser has been negligent etc. but is capped – and therefore able to judge whether he/she would be better off, in his/her particular circumstances, seeking advice from someone who is regulated solely by the FSA in relation to all the financial services they provide?

Whilst the CLLS favours Option 2 for these reasons, this is subject to an important caveat. It is possible that a law firm which does not wish to provide mainstream financial services nevertheless strays into doing so – in these circumstances, it would be disproportionate for all the financial services provided by that firm (the majority of which will be incidental and therefore covered by the Part XX exemption) to then be regulated by the FSA. It seems to us that the SRA and FSA would need to agree a protocol for dealing with such cases. In the absence of that, the CLLS would (reluctantly because of the associated funding and public interest issues) favour Option 3.

Question 3 - Do you agree with the SRA's interpretation of the risk issues?

We agree with the principal risks identified by the SRA in the consultation paper, as listed in sub-paragraphs (A) to (C) of our answer to question 1 above. However, in addition, the CLLS thinks that “turf wars” between regulators and consumer confusion are also risks (see our answer to question 2 above) and that these could be exacerbated by pursuing Option 3.

Question 4 – Do you have any comments on the costs and benefits of the various options, and the indicative cost-benefit analysis which accompanies this consultation?

Only to add that, when considering the impact on consumers, the point we have made above about being able to understand the regulatory proposition on offer (and key differences between the availability and characteristics of the compensation funds) needs to be taken into account.

Question 5 – Are there any other comments you wish to make?

See the section of this letter above headed “Background”. We would like the SRA to confirm, perhaps in its review of responses to this consultation paper, that law firms which provide incidental financial services only, relying on the Part XX FSMA exemption, will be unaffected by the SRA's proposals and that that exemption will continue to be available to those firms, and they will continue to be regulated by the SRA in relation to these incidental services, as now.

Yours sincerely

Chris Perrin
Chair
Professional Rules & Regulation Committee

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**THE CITY OF LONDON LAW SOCIETY
PROFESSIONAL RULES AND REGULATION COMMITTEE**

Individuals and firms represented on this Committee are as follows:

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