

**Minutes of Meeting of the
City of London Law Society Regulatory Law Committee (the "Committee")**

Held on Tuesday 14 February 2017 at 12.30pm
at Exchange House, 12 Primrose Street, London EC2A 2EG

ATTENDEES

Present	Firm Represented
Karen Anderson (chair)	Herbert Smith Freehills LLP
Simon Crown	Clifford Chance LLP
Robert Finney	Holman Fenwick Willan LLP
Tamasin Little	Reed Smith LLP
Brian McDonnell	Addleshaw Goddard LLP
Simon Morris	CMS Cameron McKenna LLP

1. APPROVAL OF MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 13 December 2016 were approved.

**2. FCA CP16/43: CONSULTATION ON MARKETS IN FINANCIAL INSTRUMENTS
DIRECTIVE II IMPLEMENTATION**

The Committee discussed the various proposals in the consultation paper, in particular those relating to the specialist regimes and tied agents.

The Committee considered the proposal to apply MiFID II taping requirements to non-MiFID business related to commodity or exotic derivative instruments. The Committee discussed whether this was a proportionate requirement given the reporting obligations many smaller firms already have, for example, under the Market Abuse Regulation (MAR). It was decided that a member would draft a response and circulate to the Committee for comments.

The Committee also discussed the proposed changes in respect of tied agents, and whether the transitional provisions appropriately address the potential issue of late implementation of a tied agent regime in other member states. It was noted that new businesses would be disproportionately affected if this were the case. It was decided that a member would draft a response and circulate to the Committee for comments.

It was decided that no response would be submitted on the other chapters.

3. MOJ: CALL FOR EVIDENCE ON PREVENTING ECONOMIC CRIME

The Committee discussed at length various aspects of the call for evidence.

The Committee discussed the merits of imposing civil rather than criminal liability, for example the potential for cases to be concluded in a shorter time-frame and the reduced resourcing levels.

Comparisons were made with the success of MAR, although it was noted that the same approach may not necessarily be appropriate for all industries.

The benefits of alternative approaches were put forward, in particular imposing greater liability on individuals, for example codifying the duty to prevent economic crime in directors' duties.

The Committee also discussed the appropriateness of making effectively a 'systems and controls' failure a crime.

It was decided that the Committee would draft a response on the basis of the discussions and circulate to the members for comment.

4. **EBA: DRAFT GUIDELINES ON SUPERVISION OF SIGNIFICANT BRANCHES**

The Committee considered the extent to which the guidelines on enhanced supervision of branches may provide a potential model to supervision post-Brexit which might apply to, for example, EEA authorised firms with a branch in the UK. While it was noted that certain jurisdictions applied a "whole legal person" test when assessing appropriate authorisation, the Committee discussed whether this approach would be acceptable to all Member States. It was decided that members would consider this issue further more generally, although not necessarily with a view to submitting a response to this paper.

5. **AOB**

5.1 **Meeting with Miles Bake, new Head of PRA Regulatory Action Division**

It was noted that following Miles Bake's appointment as the new Head of PRA Regulatory Action Division, the joint discussion meetings would continue as before on a six monthly basis.

5.2 **Future scheduling of the Regulatory Committee meetings**

The Committee discussed whether the current timetabling of the meetings to occur on the second Tuesday of every month continued to be the most convenient time for the whole Committee. It was decided that views from all members would be obtained before a decision was made.



.....
Karen Anderson
Chair, CLLS Regulatory Law Committee