

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

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

ATTENDEES

Present	Firm Represented
Karen Anderson (chair)	Herbert Smith Freehills LLP
Peter Bevan	Linklaters LLP
Simon Crown	Clifford Chance LLP
Richard Everett	Travers Smith LLP
Tamasin Little	Reed Smith LLP
Kevin Hart	City of London Law Society

1. APPROVAL OF MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 14 February 2017 were approved.

2. MOJ: CALL FOR EVIDENCE ON PREVENTING ECONOMIC CRIME

It was noted that the CLLS Corporate Crime and Corruption Committee was also intending to submit a response to this call for evidence. It was decided that the Committee would submit a supporting response focusing on regulatory implications.

The Committee discussed at length the implications on regulated firms if new criminal offences were introduced, including the potential duplication issues for firms under both criminal and regulatory investigation, the sharing of information between the criminal prosecutor and the regulator, and appropriate sequencing and co-ordination of any dual investigation.

It was also noted that the regulators already have a wide range of powers to sanction firms and individuals, and the Senior Managers and Certification Regime was further strengthening individual accountability. This brought into question the need for an additional criminal framework.

It was decided that a member would contact the CLLS Corporate Crime and Corruption Committee for a copy of its draft submission, and a draft supporting response would be prepared.

3. MIFID II PRODUCT GOVERNANCE RULES IMPACT ON CAPITAL MARKETS

The Committee considered a query raised by the CLLS Company Law Committee in relation to the MiFID II product governance obligations faced by sponsors, book-runners, brokers and Nomads (as "manufacturers" for the purposes of MiFID II) in the context of equity capital markets.

It was noted that not all trade associations take the same position in their interpretation of the scope of the manufacturers' obligations.

The Committee noted that for the most part, it was accepted that in the context of shares launched to the market, the target market would need to include retail clients. The additional product governance obligations in this context were unlikely to be onerous, and listed companies were already subject to regulatory scrutiny. However, the Committee noted that the position was not as straightforward for products such as GDRs and preference shares, given that many retail clients would not necessarily fully appreciate their nature.

The Committee also discussed the more complex position in the debt capital markets. It was noted that various jurisdictions were exploring the possibility of setting up new markets where the

products would only be available to professional or wholesale clients, thereby ensuring that the target market was appropriately restricted.

The potential issues relating to the flow of information between distributors and manufacturers, and how in practice this might work in the equity market context, were also discussed. The Committee also considered the scope for the FCA to provide rules or guidance in this area.

It was decided that members of the Committee would contact the various trade associations of which they were also members to find out the range of views in the market, and to determine whether it would be helpful for the Committee to write to the appropriate regulatory body on any issue.

4. FCA SMARTER COMMUNICATIONS ROUNDTABLE

A member discussed the key points from a recent FCA roundtable on Smarter Communications attended by two Committee members further to the Committee's response on the topic.

Whilst the Committee had commended the move towards clearer communications, there remained considerable concern about the extent to which it was possible as a matter of contract law to move away from full written terms and conditions. While multimedia may be an effective way to communicate to customers, issues about integration and durability remained.

The members had suggested that while there may be scope to improve terms and conditions, it may be more constructive to encourage more key information documents for products and services to be provided in addition to the full terms. The members had also suggested that the FCA could work towards best practice standards and greater use of plain English, but that each sector will require its own approach.

The member reported that the FCA was intending to create specific work-streams to further reflect the needs of individual sectors.

5. FCA RECENT CONSULTATION PAPERS ON PRIMARY MARKETS

The Committee discussed the various recent consultation papers relating to UK primary markets and the equity IPO process, in particular, the content relating to the role of analyst presentations during the process and the potential disclosure of inside information.

It was noted that the CLLS Company Law Committee were intending to produce a response to FCA CP 17/5 on reforming the availability of information in the UK equity IPO process.

It was decided that a member would contact the CLLS Company Law Committee for more information about the content of their response, and to determine whether it would be useful for the Committee to submit a separate response, or to contribute to a joint response.

6. FCA AND HMT CONSULTATION PAPERS ON THE INSURANCE DISTRIBUTION DIRECTIVE

The Committee discussed the two consultation papers in relation to the Insurance Distribution Directive. It was decided that all Committee members should give further consideration to whether a response should be submitted.

7. UPDATED ESMA Q&A ON APPLICATION OF AIFMD

The Committee discussed a draft letter prepared by a member in advance of the meeting endorsing AIMA's letter to FCA setting out its concerns on the implications a recent ESMA Q&A would have on the contractual and operational arrangements in place between AIFs and their key providers.

While there was no indication that the FCA was intending to implement ESMA's position on delegation, the Committee agreed that it was worth clarifying the position.

Following comments from members, it was decided that a revised draft would be circulated for review.

8. OTHER CONSULTATIONS TO WHICH THE COMMITTEE MAY WISH TO RESPOND

The Committee discussed other papers currently open for consultation to decide whether or not they may wish to respond. It was decided that the Committee would review the following papers, with a view to submitting a response:

- 8.1 FCA Quarterly Consultation No. 16
- 8.2 EIOPA Consultation Paper on Guidelines under the Insurance Distribution Directive on complex insurance-based investment products

9. **AOB**

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

It was noted that Miles Bake would suggest a date for the initial joint discussion meeting.

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

The Committee discussed various options for the scheduling of the meeting following comments submitted by the members. It was decided that generally the preference was to keep the lunchtime meeting slot, but that further views would be sought about moving the day on which the meeting was held.

9.3 **CLLS Annual General Meeting**

The members of the Committee were invited to the annual general meeting and champagne reception to be held on Monday 12th June 2017. Full details will be circulated in due course.



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Karen Anderson
Chair, CLLS Regulatory Law Committee