

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

Held on Tuesday 12 May 2020 at 12.30pm  
via conference call

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson (Chair)	Herbert Smith Freehills LLP
Peter Bevan	Linklaters LLP
Chris Borg	Reed Smith LLP
Simon Crown	Clifford Chance LLP
Richard Everett	Travers Smith LLP
Angela Hayes	TLT LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Hannah Meakin	Norton Rose Fulbright LLP
Simon Morris	CMS Cameron McKenna Nabarro Olswang LLP
Rob Moulton	Latham & Watkins LLP
Kevin Hart	City of London Law Society

**1. MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of the Committee held on 14 April 2020 were approved.

**2. FCA CALL FOR INPUT ON ACCESSING AND USING WHOLESALE DATA**

The members discussed the key points raised in a draft response to the call for input prepared by two members and circulated in advance of the meeting.

In particular, the members discussed the proposed response to some of the comments in Section 4 of the paper on accessing and using data using advanced analytics. The members considered that including concepts of lawfully obtained information being "too expensive" to be widely available would introduce uncertainty and complexity, and would present added risk to the market. The members did not consider that it was abusive behaviour per se to apply greater resources to information which was in principle publically available.

The members also agreed that the response should not address other FCA rules on topics connected to some of the issues raised in the call for input.

It was agreed that an updated draft letter would be circulated to members for final comments with a view to submitting it shortly after.

### **3. HMT CONSULTATION ON NEW OVERSEAS FUNDS REGIME**

The members briefly discussed whether there were any issues to which the Committee should respond. It was noted that while the proposals were broadly sensible, more detail on the legislation itself was not yet available. There were no issues of legal uncertainty which had been identified, and the Chair noted that other trade associations had already submitted responses to the paper on more practical points.

It was agreed that the Committee would not submit a response but would keep any draft legislation under review.

### **4. BOE DISCUSSION PAPER ON TRANSFORMING DATA COLLECTION FROM THE UK FINANCIAL SECTOR**

The members discussed the key proposals set out in the paper and considered the draft response, which had been circulated in advance of the meeting, highlighting some of the potential legal challenges.

In particular, the members considered the complexities which could arise in translating rules into machine-readable format, and the move from a “push” model of data provision (where firms would proactively provide the data) to a “pull” model (where the regulator could extract the data required directly from the firm’s internal systems).

It was also noted that a speech from James Proudman at the Bank of England published in April provided further insight into the PRA’s future ambitions for changing the way data was collected from firms.

It was agreed that the draft letter would be recirculated to members for final comments with a view to submitting it shortly after.

### **5. ESMA CONSULTATION PAPER ON DRAFT RTS UNDER THE BENCHMARKS REGULATION**

A member who had considered the paper in advance of the meeting summarised the key proposals set out in the paper, noting there were three potential issues for the Committee to be aware of.

The first related to the scope of the draft RTS. Only one of the five draft RTS expressly excluded certain benchmarks which were exempt under the Level 1 Benchmark Regulation. This could lead to uncertainty around the application, although it was noted that the Level 1 Regulation should override the RTS.

The second related to a requirement on NCAs to take into account whether supervised entities had identified the same or different fall-back benchmarks when deciding whether a benchmark could cease to be provided. The member noted that this could present a challenge to the launch of a new critical benchmark, imposing an anti-competitive element into the RTS. However, the potential impact was mitigated because it was only a factor NCAs needed to take into consideration rather than an explicit requirement for supervised entities to have the same fall-back benchmark.

The final point was that the RTS set out a great deal more detail than the Level 1 Regulation on the standards applicable to authorised benchmark administrators, with which existing authorised administrators may not currently be compliant. It would likely be helpful to existing benchmark administrators if NCAs were able to exercise regulatory forbearance or to implement transitional periods to allow any necessary changes to be made to comply with the new requirements.

It was agreed that the Chair would consider whether any competition issues should be raised with ESMA, but otherwise the Committee would not submit a response.

### **6. HMT/DCMS CONSULTATION ON EXPANDING THE DORMANT ASSETS SCHEME**

The members who had considered the paper in advance of the meeting noted that the focus was more on policy matters than areas of legal uncertainty. HMT would need to provide more detail on the form of new legislation as a later stage if the proposals were taken forward, and it would likely be more appropriate for the Committee to comment then, rather than submit a response to this paper.

It was agreed that members would review the paper to determine whether they also considered this to be a paper to which the Committee should not submit a response on.

**7. IRSG REPORT ON THE ARCHITECTURE FOR REGULATING FINANCE AFTER BREXIT**

The members reiterated their support of the Report and recommendations made in it, and discussed the points noted in a letter of support drafted by a member.

Members noted that the UK regulators could play a more active role in encouraging competition, especially in light of the uncertain impact of Brexit. The challenge of simplifying existing rules whilst not threatening any trade agreements the UK would seek to make (including obtaining equivalence assessments from the EU) was also discussed. It was noted that the Regulatory Initiatives Grid which had been recently published already showed greater regulatory co-ordination, and the Committee should keep this document under review.

It was agreed that the draft letter would be recirculated to members for final comments with a view to submitting it shortly after.

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

The Committee discussed other papers currently open for consultation. It was decided that the Chair would review the **Joint ESA consultation paper on ESG disclosure rules** to consider whether the Committee should submit a response.

**9. AOB**

**9.1 CLLS membership**

It was agreed that an advertisement would be placed on the CLLS website opening invitations to new members, then the members would formally consider the applications, including the two expressions of interest already received.



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