



THE CITY OF LONDON LAW SOCIETY

4 College Hill
London EC4R 2RB

Telephone 020 7329 2173
Facsimile 020 7329 2190
DX 98936 – Cheapside 2
mail@citysolicitors.org.uk
www.citysolicitors.org.uk

BY E-MAIL

The TPC Secretariat
Bay 2.38
102 Petty France
London SW1H 9AJ

E-mail: TPCSecretariat@justice.gsi.gov.uk

23 November 2009

Dear Sirs,

CONSULTATION ON AMENDMENTS TO THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008 TO ACCOMMODATE THE TRANSFER OF THE FINANCIAL SERVICES AND MARKETS TRIBUNAL TO THE UPPER TRIBUNAL

The City of London Law Society ("CLLS") represents approximately 13,000 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 17 specialist committees. This response has been prepared by the CLLS Regulatory Committee (the "**Committee**"). Members of the Committee advise a wide range of firms in the financial markets including banks, brokers, investment advisers, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure providers such as the operators of trading, clearing and settlement systems.

In the consultation document the Secretariat asks for views on whether the existing Upper Tribunal rules need amendment, supplementing or disapplication to any extent in order to accommodate the migration of the Financial Services and Markets Tribunal (FSMT) to the Upper Tribunal. The existing Upper Tribunal Rules contemplate either an appellate or a judicial review jurisdiction. The FSMT is, however, a tribunal that is set up to provide the fair hearing protections required under the European Convention on Human Rights. Accordingly, its jurisdiction is for a complete rehearing of matters between the Financial Services Authority (FSA) and those against whom it has taken formal action. It is not alone in having this kind of jurisdiction – the Pensions Regulator Tribunal has the same kind of jurisdiction and (like the FSMT) is scheduled to become part of the Upper Tribunal.

We note that one of the objectives in creating a new framework for tribunals was to simplify it. As part of that the Tribunals Service wish to have a single set of rules applicable to the Upper Tribunal. In principle we agree that this is a sensible objective. However, as a result of the different kind of jurisdiction for the

FSMT, it is our view that the existing rules will need significant amendment, although we also anticipate that many of the more general provisions will be applicable or readily adaptable for the FSMT. In particular, the rules will need to cater for reference notices and the way these interact with statements of case, for disclosure and for handling applications by parties not directly involved in action by the FSA but to whom rights to apply to the FSMT are given. We anticipate that the Upper Tribunal Rules would draw upon the existing FSMT rules on these matters. We suggest, given the potential application of the additions to other tribunals, that the draft revisions to the rules are consulted upon in due course.

We would be delighted to discuss the above observations and suggestions with you. You may contact me on +44 (0)20 7295 3233 or by e-mail at margaret.chamberlain@traverssmith.com.

Yours faithfully



Margaret Chamberlain
Chair, CLLS Regulatory Law Committee

Members of the Committee:

Chris Bates, Clifford Chance
David Berman, Macfarlanes
Peter Bevan, Linklaters
Patrick Buckingham, Herbert Smith
John Crosthwait, Slaughter and May
Richard Everett, Lawrence Graham, LLP
Robert Finney, Denton Wilde Sapte
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