

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

Held on Tuesday, 12 May 2015 at 12.30pm  
at Exchange House, Primrose Street, London, EC2A 2EG

**1 ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson ("KA") (Co-chair)	Herbert Smith Freehills LLP
Peter Richards-Carpenter ("PRC") (Co-chair)	Berwin Leighton Paisner LLP
Peter Bevan ("PB")	Linklaters LLP
Richard Everett ("RE")	Travers Smith LLP
Mark Kalderon ("MK")	Freshfields Bruckhaus Deringer LLP
Etay Katz ("EK")	Allen and Overy LLP
Ben Kingsley ("BK")	Slaughter and May
Tamasin Little ("TL")	King & Wood Mallesons LLP
Simon Morris ("SM")	CMS Cameron McKenna LLP
Stuart Willey ("SW")	White & Case LLP

**2 APPROVAL OF MINUTES OF PREVIOUS MEETINGS**

The minutes of the meeting of the Committee held on 14 April 2015 were approved.

**3 UPDATE ON LETTER TO FCA REGARDING WITHDRAWAL OF UNFAIR TERMS IN CONSUMER CONTRACTS GUIDANCE**

The Committee's letter on the FCA's withdrawal of guidance on Unfair Terms in Consumer Contracts had been submitted to the FCA on 22 April 2015 with a note that the Committee would be interested to discuss further with the FCA regarding this; however, no response had been received to date.

**4 UPDATE ON MEETING WITH BETTER REGULATION EXECUTIVE**

Further to the special meeting held on Tuesday 21 April with Michael Ridley from the Better Regulation Executive (part of the Department for Business Innovation and Skills), at which attending members shared their thoughts on what good regulation looks like, it was agreed that the Committee should follow up with Michael Ridley regarding further inputs and progress.

**5 EBA CONSULTATION ON LIMITS ON EXPOSURES TO SHADOW BANKING ENTITIES**

EK briefed the Committee on a draft response to the EBA Consultation Paper on Limits of Exposures to Shadow Banking Entities. The Committee discussed whether or not it would be worthwhile to make any comments regarding broader policy issues (e.g. potential lack of consistency with the Capital Markets Union and lack of cost/benefit analysis undertaken by the EBA); as well as scope/definitional issues such as whether or not it is necessary to define the term "shadow banking".

In that regard, the Committee discussed alternative approaches such as focusing on specific entities and activities which are a narrower subset within shadow banking. It was agreed that EK would update the draft response to reflect the points discussed and that Committee members would send any additional thoughts on this to him. It was noted that EK would attend the EBA public hearing on 18 May 2015.

## **6 FCA GUIDANCE: ASSET MANAGEMENT FIRMS AND THE RISK OF MARKET ABUSE (TR 15/1)**

The Committee discussed a discrete point regarding the FCA's feedback on its thematic work "Asset management firms and the risk of market abuse" (TR 15/1), regarding whether a good practice example provided in the paper suggested that a legal person's intention to trade could make it an insider, notwithstanding the "own intention" defence. The Committee agreed that the example could be better worded but that the general point was that inside information must be handled properly.

## **7 EBA: CRD IV CONSULTATION ON DRAFT GUIDELINES ON SOUND REMUNERATION POLICIES**

RE and SW updated the Committee on discussions with the PRA and the FCA regarding the EBA's proposed approach to proportionality issues. It was noted that the regulators had invited the Committee to share its draft response on the consultation paper with them. The Committee had formally requested the Commission's opinion (/letter) to the EBA on proportionality.

MK briefed the Committee on a draft response on certain technical employment aspects of the consultation.

It was agreed that Committee members would send any comments on proportionality to RE and SW, and on the employment points to MK.

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

The Committee discussed other papers currently open for consultation to decide whether there were any legal points of uncertainty on which the Committee may wish to respond.

### *HMT Consultation on MiFID II Transposition: Power to remove board members*

The paper proposes to give the regulators a new power to remove board members, separate from its existing powers in relation to approved persons (which include the ability to withdraw their approval to a person performing a controlled function). The Committee discussed whether the proposed new power was necessary in view of the existing mechanisms available to the regulators (e.g. to impose requirements or through an urgent variation of permission). Further consideration would be given to whether the Committee wished to respond on this point.

### *Issues in relation to the implications of the FCA consultation on MiFID II (DP 15/3)*

Proposals in the paper regarding gold-plating in relation to insurance-based products, the application of new inducement standards to restricted advice, and the inability of direct offer financial promotions to meet the appropriateness test were considered. It was decided however that these did not raise significant points of legal uncertainty on which the Committee would wish to respond at this time.

## **6 AOB**

### *PRA/FCA co-operation*

A point was raised whether there was a requirement for the PRA and FCA to report on how well they are co-operating with each other. SM agreed to look at this point. It was decided that all members would give some thought to any useful/illustrative examples of issues in coordination or potentially

conflicting approaches of the two regulators, with a view to discussing whether the Committee should raise the issue for discussion with the regulator.

There being no other business the meeting was declared closed.

Handwritten signatures of Karen Anderson and Peter Richards-Carpenter in blue ink.

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

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**Peter Richards-Carpenter**  
Co-Chair, CLLS Regulatory Law Committee