

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

Held on Tuesday, 13 October 2015 at 12.30pm  
at Exchange House, Primrose Street, London, EC2A 2EG

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson (Co-chair)	Herbert Smith Freehills LLP
Peter Bevan	Linklaters LLP
Richard Everett	Travers Smith LLP
Robert Finney	Holman Fenwick Willan LLP
Imogen Garner	Norton Rose Fulbright LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Ben Kingsley	Slaughter and May

**1 APPROVAL OF MINUTES OF PREVIOUS MEETINGS**

The minutes of the meeting of the Committee held on 8 September 2015 were approved.

**2 NEW FINANCIAL SERVICES REGISTER**

The Committee reviewed a draft letter to the FCA regarding the new format of the financial services register and in particular a lack of clarity in the information displayed about the ability of a firm to hold client money. The Committee considered that the register might usefully also specify a firm's prudential categorisation and suggested that generally the importance of the accuracy of data on the register be underlined. It was agreed that the letter would be updated to reflect these points and circulated to members for any additional comments.

**3 PRA CALL FOR INPUT ON WEBSITE IMPROVEMENTS**

The Committee discussed the new format of the PRA's online rulebook and whether this was something on which the Committee would wish to respond. It was decided that a letter containing high-level user points on the new format for circulation to members for comments should be drafted.

**4 HMT CONSULTATION ON PENSION TRANSFERS AND EARLY EXIT FEES**

It was noted that the paper raises significant issues for the industry to consider. However, these did not involve issues of legal uncertainty on which the Committee would wish to respond.

## **5 FCA/PRA CONSULTATION ON AMENDMENTS TO SMR/SIMR FORMS (FCA CP15/29, PRA CP35/15)**

The Committee was briefed on the consultation. The PRA and FCA had made changes to certain SMR/SIMR forms using their powers of direction under FSMA with immediate effect, and in tandem with this had published proposals for consultation on identical changes to several forms made under rule-making powers (in respect of which there is a statutory obligation to consult), whilst simultaneously informing firms that, if they were to submit those forms during the period of the consultation, they would be answering questions phrased in the form being consulted on. The Committee considered that, while this approach was pragmatic, it created the impression that the regulators had pre-determined the outcome of the consultation and might create an unhelpful precedent for other consultations relating to a less benign change of rules. It was decided to raise this point in response to the consultation.

## **6 FCA CP 15/31: STRENGTHENING ACCOUNTABILITY IN BANKING AND INSURANCE: REGULATORY REFERENCES**

The Committee discussed the proposal in the consultation paper for firms to request regulatory references from former employers of candidates applying for SMFs/SIMFs and certification functions, covering the past six years' employment. The Committee considered potential issues for former employers arising from the proposal, in particular, from the proposed obligation for former employers to refresh references after the relevant employee has left in light of facts which would, had the employer known them, changed their opinion of whether the employee was fit and proper to perform a function. The Committee also considered how the proposal would work in practice where a person has had more than one employer during the relevant period. It was decided to circulate high-level thoughts on the paper to members with a view to further discussion of this at the next meeting.

## **7 MIFID II/MIFIR DRAFT RTS/ITS; MAR ITS**

The Committee discussed ESMA's final draft MiFID II/MiFIR RTS/ITS and MAR RTS recently sent to the European Commission for adoption. The Committee considered whether there were points of legal uncertainty which the Committee may wish to raise, including in relation to commodities, systematic internalisers, and best execution requirements in the MiFID II RTS, and issues of territorial scope and identification of the issuer of a derivative arising in connection with the MAR RTS. It was agreed that members would consider potential issues further with a view to sending a letter on any discrete points to Dr Kay Swinburne MEP ahead of discussions being held with the European Commission on the RTS/ITS.

## **8 EC CALL FOR EVIDENCE ON THE EU REGULATORY FRAMEWORK**

The Committee discussed the list of topics on which feedback was being sought and agreed that the Committee would be minded in principle to respond to the call for evidence. It was decided that members would give consideration to particular areas of the paper which the Committee may wish to take forward with a view to further discussion of this at the next meeting.

## **9 OTHER CONSULTATIONS ON 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. It was decided that there were no other items on which the Committee wished to respond at this time.

**10 ANY OTHER BUSINESS**

Meeting with Robert Dedman (PRA)

It was noted that a special meeting of the Committee with Robert Dedman of the PRA would be held in November at HSF offices.

Bank of England Open Forum

It was noted that a member of the Committee would attend the Bank of England open forum on 11 November 2015.

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