

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

Held on Tuesday, 10 November 2015 at 12.30pm  
at Adelaide House, London Bridge, London, EC4R 9HA

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Peter Richards-Carpenter (Co-chair)	Berwin Leighton Paisner LLP
Karen Anderson (Co-chair)	Herbert Smith Freehills LLP
David Berman	Macfarlanes LLP
Peter Bevan	Linklaters LLP
Richard Everett	Travers Smith LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Simon Morris	Cameron McKenna LLP
Richard Small	Stephenson Harwood LLP

**1 APPROVAL OF MINUTES OF PREVIOUS MEETINGS**

The minutes of the meeting of the Committee held on 13 October 2015 were approved.

**2 APPLICATION FOR MEMBERSHIP TO THE COMMITTEE**

The Committee discussed an application for membership from Brian McDonnell, a partner in the Financial Services Regulatory Team of Addleshaw Goddard LLP. The Committee unanimously agreed to accept Brian McDonnell as a new member.

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

The Committee discussed the proposals in the consultation and in particular the potential issues for former employers arising 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 considered that the obligation was cast too widely. It was decided that the Committee would seek to co-ordinate its consultation response with that of the CLLS Employment Committee.

**4 EUROPEAN COMMISSION – CALL FOR EVIDENCE ON THE EU REGULATORY FRAMEWORK**

It was noted that the call for evidence provided an opportunity to feed information to the European Commission, in particular with regard to whether post-financial crisis legislative measures have created unnecessary regulatory burdens, and also with regard to the exercise by ESMA of its powers. It was noted that the House of Lords was also engaged in preparing a response to the call

for evidence. The Committee agreed to review previous materials it had contributed in relation to MiFID, AIFMD, EMIR and other EU measures, with a view to further discussion at the next meeting.

#### **5 LAW SOCIETY RESPONSE: JOINT ESAS CP ON PRUDENTIAL ASSESSMENT OF ACQUISITIONS OR INCREASES OF QUALIFYING HOLDINGS IN THE FINANCIAL SECTOR (CONSULTATION CLOSED 2 OCTOBER 2015)**

The Committee was briefed on the joint consultation issued by the European Supervisory Authorities (ESAs) and reviewed the response that had been submitted by the Law Society. The Committee agreed with the points raised by the Law Society and it was agreed that the Committee would send a letter to the ESAs expressing its support for the Law Society's response, notwithstanding that the deadline for consultation responses had passed.

#### **6 HM TREASURY CONSULTATION: IMPLEMENTATION OF UCITS V**

The Committee discussed proposals in the consultation and in particular the possibility that UCITS V implementation might create a strict liability regime for depositaries. It was decided that the Committee would not prepare a consultation response at this time but would revisit the issue of UCITS V implementation after the publication of Level 2 measures.

#### **7 FCA CP 15/35: IMPLEMENTATION OF THE MARKET ABUSE REGULATION**

The Committee noted that the draft Statutory Instrument which will be necessary to effect changes to UK legislation was not yet available from HM Treasury. The Committee considered that a thorough review of that instrument will need to be made prior to the preparation of any formal response to the FCA consultation. The Committee noted that the FCA proposed to retain as much of the FCA Handbook provisions as it was able but that a number of issues of legal uncertainty arise from the removal of existing rules and guidance. It was agreed that the consultation proposals would be considered in detail at the next meeting.

#### **8 FCA CP 15/32: REMOVAL OF INEFFECTIVE DISCLOSURE OBLIGATIONS FROM THE FCA HANDBOOK**

The Committee discussed the proposals in the consultation and noted that there were no issues on which the Committee which to respond.

#### **9 EUROPEAN COMMISSION CONSULTATION: COVERED BONDS IN THE EUROPEAN UNION**

The Committee discussed the proposals in the consultation and concluded the issues involved were likely to fall within the remit of the CLLS Finance Committee. Accordingly it was decided that the Committee would not prepare its own response.

#### **10 EUROPEAN BANKING AUTHORITY CONSULTATION: GUIDELINES ON THE APPLICATION OF THE DEFINITION OF DEFAULT UNDER ARTICLE 178 OF REGULATION (EU) 575/2013.**

The Committee queried whether the consultation proposals might impact the way in which financial instruments were drafted, and was also concerned that any artificial construction of "default" might have a severe impact. It was decided that the proposals would be considered in detail at the next meeting.

**11 JOINT COMMITTEE OF EUROPEAN SUPERVISORY AUTHORITIES:  
CONSULTATIONS ON RISK BASED SUPERVISION AND RISK FACTORS UNDER  
THE FOURTH MONEY LAUNDERING DIRECTIVE**

The Committee considered that no response was required, as the consultation was directed at Competent Authorities rather than at institutions.

**12 EUROPEAN BANKING AUTHORITY CONSULTATION: GUIDELINES ON  
DISCLOSING CONFIDENTIAL INFORMATION UNDER THE BANK RECOVERY AND  
RESOLUTION DIRECTIVE.**

The Committee queried whether the options set out in the consultation proposals were sufficient. It was decided that the proposals would be considered in detail at the next meeting.

**13 FCA CP 15/33: PROPOSALS IN RESPONSE TO THE CMA'S RECOMMENDATIONS  
ON HIGH COST SHORT TERM CREDIT.**

The Committee decided that the proposals would be considered in detail at the next meeting.

**14 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.

**15 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 on 23 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.



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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