

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

Held on Tuesday 8 November 2016 at 12.30pm  
at Exchange House, 12 Primrose Street, London EC2A 2EG

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson (chair)	Herbert Smith Freehills LLP
Peter Bevan	Linklaters LLP
Richard Everett	Travers Smith LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Brian McDonnell	Addleshaw Goddard LLP
Stuart Willey	White & Case LLP
Kevin Hart	City of London Law Society

**1. APPROVAL OF MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of the Committee held on 11 October 2016 were approved.

**2. POTENTIAL ISSUES FOR SUBMISSION TO THE FCA IN RELATION TO THE MARKET ABUSE REGULATION (MAR)**

The Committee discussed the draft response circulated ahead of the meeting addressing areas of legal uncertainty in relation to the conflict of laws with non-EEA jurisdictions on the cancellation of pending orders. It was decided that the draft response would be circulated for final comment by the Committee, before submission to the FCA.

**3. FCA CP16/29: CONSULTATION ON MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE II IMPLEMENTATION**

The Committee discussed various proposals in the consultation paper, in particular the proposals relating to investment research and underwriting and placing. It was decided that the Committee would not submit a response in respect of these chapters.

The Committee also discussed the proposals in relation to the perimeter guidance. It was noted that while it had no initial comments of the proposals, it was agreed that a member would consider further whether the Committee should submit a response.

The Committee noted that the members who had been proposed to lead the discussion relating to the remaining chapters in the consultation paper were unable to be present at the meeting. It was agreed that the consultation paper would be discussed further at the next meeting.

**4. FCA AND PRA RECENT SMR-RELATED CONSULTATIONS**

The Committee discussed the various consultation papers relating to SMR. The Committee discussed FCA CP16/27 on applying conduct rules to all non-executive directors, in particular how the conduct rules relating to treating customers fairly and market conduct would apply to non-

executive directors in practice. It was agreed that a member would consider whether the Committee should respond.

The Committee also discussed FCA CP16/26 on guidance on the duty of responsibility. It was noted that the scope of individual contributions of Senior Managers in collective decision making was not currently clear. It was decided that the Committee would consider this issue further.

#### **5. FCA DP16/4: OVERALL RESPONSIBILITY AND THE LEGAL FUNCTION**

The Committee discussed the contents of the discussion paper in detail.

The Committee noted that while the proposed extension of the Senior Managers & Certification Regime was only proposed to cover the management of the legal function (and legal risk), there may be situations where the content of privileged advice would help the Senior Manager of the legal function to evidence that reasonable steps were taken.

Further difficulties of extending the regime to include the legal function were discussed, such as the potential risk of conflicts between the legal function and the rest of the business, defensive behaviours, and the potential for onerous dual regulation if a lawyer were to become a Senior Manager.

It was decided that the Committee would consider further whether a response was required.

#### **6. HMT CONSULTATION ON AMENDING THE DEFINITION OF FINANCIAL ADVICE**

The Committee discussed in detail the draft response circulated by a member in advance of the meeting. In particular, the Committee noted the complex interaction between investment advice, personal recommendations and financial promotion.

The Committee also generally agreed with the alignment of the definition in MiFID II, although it noted that there may be repercussions on the FCA guidance available. The Committee further discussed the impacts this may have on other business types, such as investment research and corporate finance advice.

Following further comments from members at the meeting, it was decided that the draft response would be updated and re-circulated to the Committee for review and final comment, before submitting it to HMT.

#### **7. ECB CONSULTATION ON DRAFT ECB GUIDANCE TO BANKS ON NON-PERFORMING LOANS**

The Committee noted that the member who had been proposed to lead the discussion was unable to be present at the meeting. It was agreed that a member should consider whether the Committee should submit a response.

#### **8. FCA AND PRA CONSULTATIONS ON REMUNERATION**

The Committee discussed the consultation papers published by the FCA and PRA on remuneration. The Committee welcomed the approach taken by the regulators in respect of their proportionality framework.

The Committee also discussed whether treatment of retention awards in the FCA consultation paper (CP16/28) was potentially misleading, as it appeared inconsistent with the treatment of retention awards under EBA guidelines (in that retention awards are not guaranteed variable remuneration).

It was decided that a member would prepare and circulate a draft response for the Committee to consider.

#### **9. ECB CONSULTATION ON DRAFT TECHNICAL STANDARDS UNDER THE BENCHMARKS REGULATION**

The Committee discussed the consultation paper and it was agreed that a member of the Committee should consider the paper further.

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

The Committee discussed other papers currently open for consultation to decide whether or not it may wish to respond. It was decided that the Committee would review the following papers, with a view to submitting a response:

- 10.1 PRA Occasional Consultation Paper on proposed changes to the PRA Rulebook, existing and new supervisory statements
- 10.2 FCA Consultation Paper on future mission
- 10.3 EBA/ESMA Consultation Paper on Joint ESMA/EBA Guidelines on the assessment of the suitability of members of the management body and key function holders
- 10.4 EBA Consultation Paper on revised guidelines on internal governance

11. **AOB**

11.1 **Resignation and Vacancy**

It was noted that the Chair had been informed of David Berman's intention to resign from the Committee as he was leaving Macfarlanes LLP. The Committee accepted David's resignation effective as of end November 2016.

It was decided that an advertisement for the vacancy would be prepared by the CLLS and published on their website.

11.2 **Annual City of London Solicitors' Company and Committees of the City of Law Society Dinner**

The members of the Committee were invited to the annual dinner to be held on 31<sup>st</sup> January 2017. Full details to be circulated in due course.



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