

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

Held on Tuesday 9 May 2017 at 12.30pm
at Exchange House, 12 Primrose Street, London EC2A 2EG

ATTENDEES

Present	Firm Represented
Karen Anderson (chair)	Herbert Smith Freehills LLP
Matthew Baker	Berwin Leighton Paisner LLP
Richard Everett	Travers Smith LLP
Robert Finney	Holman Fenwick Willan LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Stuart Willey	White and Case LLP
Kevin Hart	City of London Law Society

1. MINUTES OF PREVIOUS MEETING

The minutes from the meetings of the Committee held on 14 March 2017 and 11 April 2017 were approved.

2. MIFID II PRODUCT GOVERNANCE RULES IMPACT ON CAPITAL MARKETS

The Committee noted that the impact of the MiFID II product governance obligations on capital markets had been raised by other trade bodies in response to ESMA and FCA consultation papers. It was decided that a member would contact those trade bodies to determine whether it would be constructive to draft a joint submission to ESMA (or the FCA) on the issue, in particular how the principle of "proportionality" would apply in this context.

3. FCA SUPERVISION REVIEW REPORT ON ACQUIRING CLIENTS FROM OTHER FIRMS

The Committee considered a query raised by a member regarding the FCA's view on the validity of a contract once a new firm starts to undertake services for clients. The Committee discussed whether the FCA's position ran counter to the experience of the members, and whether it was consistent with the law of assignment more generally.

It was decided that a member would draft a letter requesting that the FCA clarify their view.

4. UPDATED ESMA Q&A ON APPLICATION OF AIFMD

The Committee discussed the latest draft of the letter circulated in advance of the meeting, which set out the Committee's concern on the implications a recent ESMA Q&A would have on the contractual and operational arrangements in place between AIFs and their key providers.

It was decided that a member would undertake a final review of the draft, before the letter was submitted to the FCA.

5. **HMT GUIDANCE ON SANCTIONS**

This issue will be discussed at the next meeting.

6. **FCA CONSULTATION PAPER ON THE IMPLEMENTATION OF PSD2 AND PSR:
CONSULTATION PAPER ON PSR'S PROPOSED APPROACH TO MONITORING AND
ENFORCING THE REVISED PSD2**

The Committee considered both papers, and were generally supportive of the FCA's intention to combine the Approach Documents for Electronic Money and Payment Services into a single document.

A member noted that the FCA consultation does not detail all the changes to the Approach Document, although a link to the proposed text with tracked changes is available on the site.

It was decided that all members would consider further whether the Committee should submit a response on any issues in the papers more generally.

7. **EC CONSULTATION PAPER ON CONFLICT OF LAWS RULES FOR THIRD PARTY
EFFECTS OF TRANSACTIONS IN SECURITIES AND CLAIMS**

The Committee discussed the paper, in particular, the potential consequences post-Brexit should EU legislation prescribe rules which are incompatible with UK law.

It was decided that a member would find out whether another CLLS sub-committee was considering submitting a response, and would report back at the next meeting.

8. **FCA DISCUSSION PAPER ON DISTRIBUTED LEDGER TECHNOLOGY**

The Committee discussed the paper, in particular the key potential risks and opportunities which had been identified, for example use of distributed ledger technology in custody and payments systems.

Although it was noted that the paper was aimed at responses from industry, it was decided that a member would consider further whether the Committee should submit a response.

9. **AOB**

9.1 **On-going practical issues with MAR compliance**

The Committee members discussed some of the queries they had received from clients in relation to MAR compliance. In particular, the Committee discussed what "*on behalf of or on the account of*" encompasses in terms of the relationship between the issuer and the firm and the services being provided, the use of market soundings, and how announcements in the debt market could be considered.

9.2 **Committee Membership**

Before the meeting, the Chair had received two CVs in response to an advertisement published on the CLLS website for new members to apply to join the Committee.

The Committee considered the applications of Rob Moulton (Latham & Watkins LLP) and William Garner (Charles Russell Speechlys LLP), and decided that the Committee would welcome both joining as new members.



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Karen Anderson
Chair, CLLS Regulatory Law Committee