

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

Held on Tuesday 12 September 2017 at 12.30pm
at White & Case LLP, 5 Old Broad Street, London, EC2N 1DW

ATTENDEES

Present	Firm Represented
Peter Bevan	Linklaters LLP
Simon Crown	Clifford Chance LLP
Richard Everett	Travers Smith LLP
Angela Hayes	King & Spalding International LLP
William Garner	Charles Russell Speechlys LLP
Hywel Jenkins	Herbert Smith Freehills LLP
Etay Katz	Allen & Overy LLP
Brian McDonnell	Addleshaw Goddard LLP
Rob Moulton	Latham & Watkins LLP
Richard Small	Stephenson Harwood LLP
Stuart Willey	White and Case LLP
Kevin Hart	City of London Law Society

1. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 11 July 2017 were approved. No meeting was held in August.

2. ESMA SECTOR SPECIFIC PRINCIPLES ON RELOCATIONS FROM THE UK TO THE EU27

The Committee discussed the ESMA sector specific principles and the broader issues arising from the papers. The Committee discussed its concerns with some of the views contained in the papers, in particular relating to delegation, although it was noted that these principles did not have legislative status and national regulators in the EU27 were not obliged to change their rules as a result of these papers.

It was decided that it was of limited benefit for the Committee to submit a letter to ESMA.

The Committee then discussed the broader point that there was a continuing lack of equivalent policy from the UK Government setting out its position in relation to supervision post-Brexit. The merits of the Committee writing to an appropriate UK body to address this point were then discussed.

In particular, the Committee noted that there was a risk that the UK financial services industry could be prejudiced by the continuing absence of a clear policy from the UK Government. The Committee discussed the most appropriate forum to address their concerns to, and it was decided that a member would prepare a draft letter to send to HMT setting out the Committee's view.

3. MIFID II IMPACT ON THE CORPORATE FINANCE EXEMPTION

Certain members of the Committee provided an update on industry and house views on the impact of MiFID II on the corporate finance exemption. It was noted that there was still divergence of views among various trade associations. It was decided that members would continue to provide updates on this issue as they became available.

4. HOUSE OF LORDS CALL FOR EVIDENCE FOR INQUIRY INTO FINANCIAL REGULATION AND SUPERVISION

The Committee discussed the call for evidence and the questions that the Committee could most helpfully contribute to. The Committee considered whether it would submit a response highlighting the absence of a clear UK supervision policy post-Brexit, and the impact this could have on the UK financial services industry. It was decided that while the paper raised important points, the Committee would not submit a response.

5. FCA CONSULTATION PAPER ON EXTENDING THE SMCR TO ALL FCA FIRMS

The Committee considered various proposals in the consultation paper.

The Committee noted that the proposals relating to individuals who hold the role of Head of Legal (or equivalent) under the extended regime were different to the current banking regime. The Committee also discussed its concerns in relation to the effectiveness of the regulatory reference rules to identify individuals who might not be fit and proper, but who leave their firm before an investigation into their behaviour was concluded, under the new extended regime.

Finally, the Committee noted the potential for the FCA to inadvertently become an "economic regulator" with the proposed introduction of a new prescribed responsibility to be allocated to the appropriate Senior Manager in authorised fund managers to ensure their firm complies with its obligation to act in the best interests of investors, including assessing value for money.

It was decided that two members would consider the paper further and prepare a draft response setting out the Committee's concerns.

6. OTHER PAPERS DISCUSSED AT THE MEETING

The Committee briefly discussed the following consultations papers and it was decided that the Committee would not submit a response:

- 6.1 **FCA Consultation Paper on FAMR implementation part II and insistent clients**
- 6.2 **ESMA Consultation Paper on guidelines on certain aspects of the MiFID II suitability requirements**
- 6.3 **FCA Consultation Paper II on IDD implementation**
- 6.4 **FCA Consultation Paper on proposed changes to rules and guidance on assessing creditworthiness in consumer credit**

7. OTHER CONSULTATIONS TO WHICH THE COMMITTEE MAY WISH TO RESPOND

The Committee discussed other papers open for consultation. It was decided that the Committee would consider the following papers, with a view to submitting a response:

- 7.1 **FCA Consultation Paper on extending the SMCR to insurers**
- 7.2 **PRA Consultation Paper on extending the SMCR to insurers**

8. AOB

8.1 Update on recent submissions to the FCA

The Committee discussed the outcome of two recent submissions to the FCA.

In response to an approach by the Committee in relation to the MiFID II Implementation Policy Statement II, the FCA has confirmed that the expression "*MiFID, equivalent third country or*

optional exemption business" is shorthand for "MiFID business, the equivalent business of a third country investment firm or MiFID optional exemption business".

In response to a separate approach in respect of a recent Supervision Review Report on acquiring clients from other firms, the FCA confirmed that the report was not intended to contradict the current law on assignment and novation. In particular, it was not the intention to cast doubt on the proper use of assignment as a legal mechanism to help facilitate business transfers. A clarificatory note has been published on the FCA's website.

8.2 FCA Response to AIMA on application of MiFID II on non-EU delegates

The Committee discussed a response from the FCA to a letter sent by AIMA requesting clarification of how the obligations in MiFID II apply to non-EU delegates. The Committee were concerned that the FCA's response could have unintended consequences, in particular with regards to arrangements involving the receipt of third party research.

It was decided that a member would prepare and circulate a draft letter setting out the Committee's concerns for members to provide their comments on.



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Karen Anderson
Chair, CLLS Regulatory Law Committee