

**Minutes of Meeting of the
City of London Law Society Regulatory Law Committee (the "Committee")**
Held on Tuesday 13 March 2018 at 12.30pm
at Herbert Smith Freehills LLP, Exchange House, 12 Primrose Street, London, EC2A 2EG

ATTENDEES

Present	Firm Represented
Karen Anderson	Herbert Smith Freehills LLP (chair)
Peter Bevan	Linklaters LLP
Richard Everett	Travers Smith LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Tamasin Little	Reed Smith LLP
Stuart Willey	White & Case LLP

1. MINUTES OF PREVIOUS MEETING

Too few of the members who had attended the meeting held on 13 February 2018 were present to approve the minutes of the previous meeting of the Committee. It was agreed that the Chair would separately contact those who had attended the previous month for comments on the minutes.

2. MIFID II CHANGE IN CONTROL FORMS

The Committee discussed a draft letter circulated by a member in advance of the meeting setting out the Committee's concerns with the FCA's new MiFID II change in control forms.

The letter concerned the requirement to submit a due diligence report as part of the supporting documentation accompanying the form. It was noted that in the course of a transaction, there may be no formal due diligence report created, or there may be several (for example by lawyers, financial advisers, compliance consultants etc.).

More broadly, the Committee noted that due diligence was carried out on the target of a transaction, whereas the change in control notification form was focused on the buyer (and its intentions for the regulated entity in future). Much of the content would be irrelevant to the FCA (for example, the status of pension contributions), but nevertheless could be commercially sensitive. The application of legal advice privilege would not always be clear.

A revised version of the letter would be prepared and circulated to the members for final review before being submitted to the FCA as matter of urgency.

3. FCA QUARTERLY CONSULTATION

The Committee briefly discussed the Quarterly Consultation Paper and it was decided that the Committee would not submit a response.

4. FCA CALL FOR INPUT ON USING TECHNOLOGY TO ACHIEVE SMARTER REGULATORY REPORTING

The Committee discussed the call for input, in particular the potential scope of the proposals to use technology to assist firms with their regulatory reporting requirements, and the particular areas of concern. The concept being proposed was to develop "machine executable" rules, reducing the reliance on human interpretation.

The Committee noted there could be various challenges in converting some of the current rules in to a machine executable format (given the range of current interpretation), and there could be a risk that incorrect data could be pulled out of firm's databases and reported to the regulator.

The Committee felt it might be helpful to receive detailed guidance on how the rules were to be applied, which would be necessary to convert rules into machine executable format.

The Committee noted that the use of "crowdsourcing" would be helpful to identify ambiguities in the rules, but from a governance perspective, the final rules themselves would still need to properly consulted on and be approved by the FCA Board.

It was also not clear to the Committee where the liability would fall if, for example, the algorithm being used produced abnormal results. Further consideration would need to be given to the apportionment of liability as between firms, the regulator and regtech providers.

It was decided that a member would discuss the TechSprint event in more detail with a colleague who had attended the event. The Chair would also ask members to indicate whether they wished to attend one of the roundtables hosted by TechSprint participants to further discuss some of the relevant legal, technological and regulatory issues.

5. AOB

5.1 CLLS Membership

As had been discussed at previous meetings it was decided that the Chair would ask Kevin Hart to arrange for an advertisement to be uploaded onto the CLLS website for new members with a particular expertise in retail and consumer finance.

5.2 Brexit

As had been agreed at the previous meeting, the Chair had contacted CLLS to ensure the Committee would not cut across work being done by other sub-committees in this area by reaching out to HM Treasury.

The Chair briefly set out the work currently being done by the CLLS on Brexit (including advising DoJ and DExEU). The CLLS would be happy to assist the Committee in engaging with HM Treasury, but would wish to be clear on the issues of concern.

It was decided that the Chair would ask all members to contribute a summary of the issues on which they were looking to engage with HM Treasury.

5.3 European Commission - CMU proposals

A member noted that the European Commission had published a draft Regulation and Directive on facilitating cross-border distribution of collective investment funds as part of its wider Capital Markets Union proposals. It was decided that the draft legislation would be discussed at the next meeting.



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Karen Anderson

Chair, CLLS Regulatory Law Committee