



The City of London Law Society



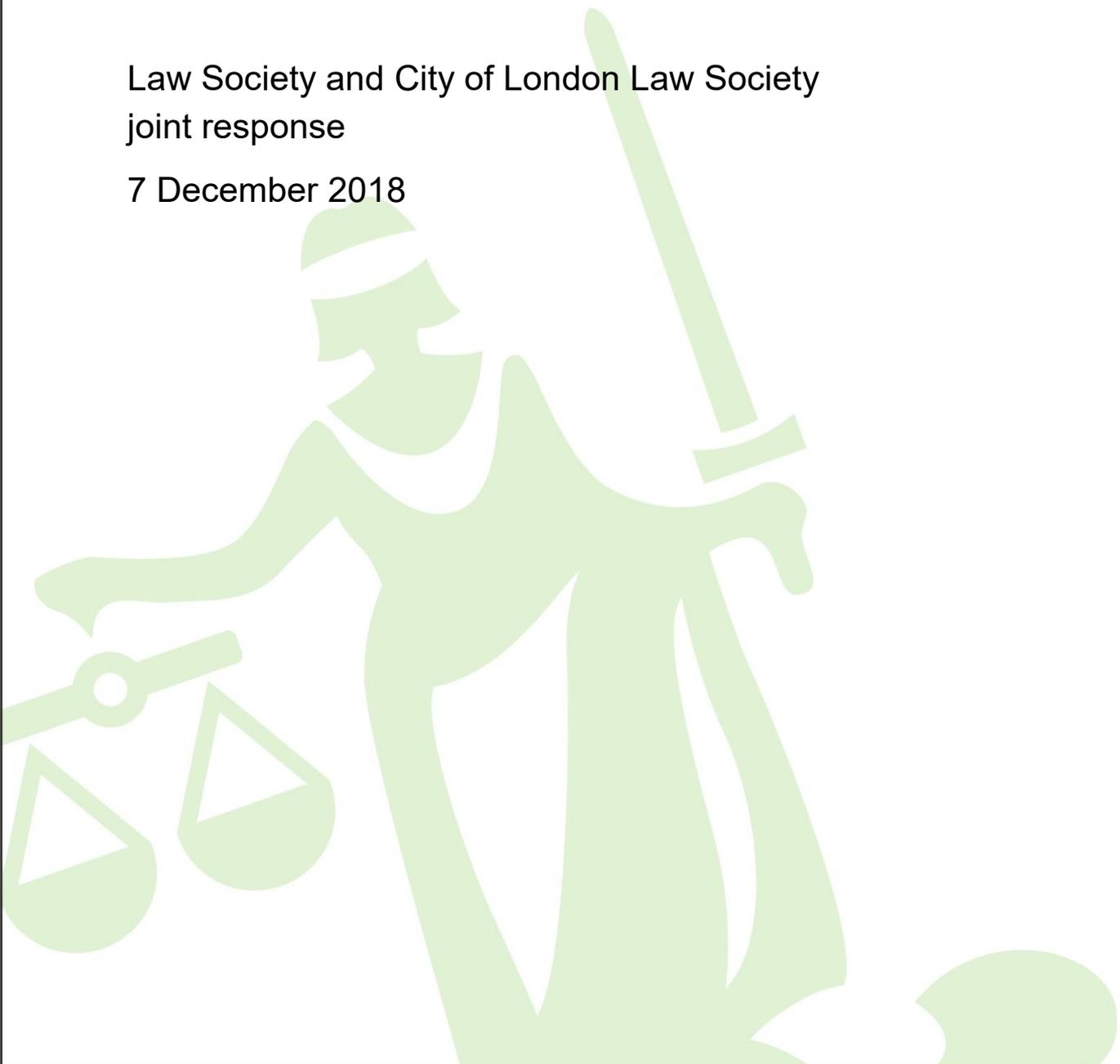
The Law Society

FCA consultation paper 18/28

**Brexit: proposed changes to the
Handbook and Binding Technical
Standards – first consultation**

Law Society and City of London Law Society
joint response

7 December 2018



Introduction

1. The views set out in this paper have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).
2. The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 160,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to capital markets.

Response

5. We refer to the FCA's consultation paper 18/28 on 'Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation' (the "**First Consultation Paper**").
6. Our Joint Working Party is responsible for considering any proposed changes to the regulation of the UK's equity capital markets. We note that this is the first of the consultation papers published by the FCA on consequential amendments to the Handbook in the event that the UK and the EU do not agree on the terms of the Withdrawal Agreement and there is no implementation period following 29 March 2019. We look forward to reviewing, and commenting on, subsequent consultation papers to be published in due course which propose changes to regulation within our remit (including the recently published 'second consultation paper' 18/36 which proposes, among other things, changes to the Listing Rules, Disclosure Guidance and Transparency Rules and Prospectus Rules).
7. In this First Consultation Paper, our Joint Working Party considers that only the FCA's proposed changes to the Short Selling Regulation associated Binding Technical Standards and the 'Draft Guidance – our approach to EU non-legislative materials' are within our remit for review.
8. We set out below our comments on these proposed amendments.

Short Selling Regulation BTS

9. We agree with the proposed changes to the Short Selling Regulation BTS as set out in the First Consultation Paper and have no further comments to raise.

Draft Guidance on the FCA's approach to EU non-legislative materials

10. Whilst we expect that market participants should be able to interpret sensibly and purposively the majority of EU non-legislative material in the light of the UK's withdrawal process and the consequential amendments made to the relevant legislation, it is possible that there will be some areas of ambiguity which may not be possible to foresee during this consultation process or, indeed, before the scheduled Brexit date.
11. We therefore wonder whether the FCA would consider implementing a mechanism for market participants with urgent queries to obtain guidance on its interpretation of the non-legislative

material, perhaps by way of a designated hotline or email address which would be available for a finite period of time until the regulatory position is sufficiently clear for markets to operate confidently in the new regime. Any answers provided to market participants through this process could be published on a 'no-names' basis in the FCA's Knowledge Base.

12. Clearly, the UK's anticipated withdrawal from the EU without any implementation period is an unprecedented event that is likely to trigger a degree of uncertainty amongst stakeholders. Consequently, any process to resolve issues of uncertainty would be most welcome in order that the markets can operate as smoothly as possible.
13. We would be very happy to explore or discuss with you any proposals for such a mechanism. Please do let us know if you would like to discuss.

FOR FURTHER INFORMATION PLEASE CONTACT:

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