

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

Held on Tuesday 15 January 2019 at 12.30pm
at Herbert Smith Freehills LLP, Exchange House, 12 Primrose Street, London, EC2A 2EG

ATTENDEES

Present	Firm Represented
Karen Anderson (Chair)	Herbert Smith Freehills LLP
Peter Bevan	Linklaters LLP
Richard Everett	Travers Smith LLP
William Garner	Charles Russell Speechlys LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Brian McDonnell	Addleshaw Goddard LLP
Rob Moulton	Latham & Watkins LLP
Julia Smithers-Excell (alternate for Stuart Willey)	White & Case LLP

1. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 11 December 2018 were approved.

2. FCA CONSULTATION PAPER ON LIMITING CFDS AND OTHER SIMILAR PRODUCTS

A member had circulated comments on the consultation paper to the Chair in advance of the meeting. There were concerns that the scope of the proposed new definitions (relating to restricted options and restricted speculative investments) may have unintended consequences.

It was agreed that a member would prepare a draft response and circulate to the members for comment. The Chair also agreed to seek a short extension for the Committee to submit a response.

3. THE COMMITTEE'S RESPONSE TO THE FCA CONSULTATION PAPER ON THE TEMPORARY PERMISSIONS REGIME

The Committee discussed elements of its response to the FCA's consultation paper on the temporary permissions regime with the FCA, considering challenges in relying on 'substituted compliance' with respect to safeguarding and client assets, and potential mitigants.

4. OTHER PAPERS TO WHICH THE COMMITTEE MAY WISH TO RESPOND

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

- 4.1 **FCA High Cost Credit Review: overdrafts consultation paper**
- 4.2 **PRA consultation paper on banks implementing the PRA's assessment and disclosure requirements for resolution and resolvability**
- 4.3 **BoE consultation paper on the BoE's proposed approach to assessing resolvability**

5. **AOB**

5.1 **CLLS membership**

The Chair reported that James Perry (Ashurst LLP) and Jonathan Herbst (Norton Rose Fulbright LLP) were stepping down from the Committee. The Chair had also received an application from a potential new member, and an expression of interest. The Chair will circulate an email sounding members' views.

5.2 **Chair of CLLS – visit to February 2019 meeting**

The Chair confirmed that the Chair of the CLLS, Ed Sparrow, would be attending the Committee meeting on 12 February.

5.3 **Query on interpretation of application of the group exemption under MiFID**

The Committee discussed the scope of the application of the group exemption in MiFID II.

A member had been informed that the FCA had expressed the view that the group exemption was not available where, in the course of providing investment services to their group entities, a firm deals with another counterparty (for example, executes a trade with a bank). The reason provided was that by dealing with the bank counterparty, the firm is no longer providing investment services "exclusively" to group entities.

The Committee felt that this interpretation appeared to be overly restrictive. The question of who is a "client" is ultimately fact dependent. There may be scenarios where the counterparty with which a firm deals could be deemed to be an eligible counterparty to which the firm is providing an investment service (in which event the group exemption would not be available). However, if the firm's dealing does not involve it in providing an investment service (to which MiFID applies) to a non-group entity, the firm should still be able to rely on the group exemption in respect of the services it provides solely to other group companies.



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Karen Anderson

Chair, CLLS Regulatory Law Committee