

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

Held on Tuesday 13 August 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
Chris Borg	Reed Smith LLP
Richard Everett	Travers Smith LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Simon Morris	CMS Cameron McKenna Nabarro Olswang LLP
Stuart Willey	White & Case LLP
Kevin Hart	City of London Law Society

1. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 9 July 2019 were approved.

2. FCA CONSULTATION PAPER ON MORTGAGE CUSTOMERS: PROPOSED CHANGES TO RESPONSIBLE LENDING RULES AND GUIDANCE

The member who was due to lead the discussion could not be present. It was agreed that the member would be invited to provide their comments at the next meeting.

3. FCA CONSULTATION PAPER ON ASSESSING ADEQUATE FINANCIAL RESOURCES

The Committee discussed the draft response circulated by a member before the meeting.

The members noted that the scope of the framework was currently unclear, and needed further clarification. As a general comment, the Committee considered that the document seemed to be driven by existing regulation for those investment firms already subject to more onerous prudential supervision. The members noted that the framework would likely be welcome clarification for such firms.

The members also noted that it was unclear whether the framework was interpreting existing requirements, providing guidance for those already subject to certain requirements (such as and risk assessment and stress testing), or introducing new expectations for firms which do not currently have to comply with prescriptive prudential rules. The framework did not state that the FCA was exercising its powers to make rules, nor that it was exercising its powers to make guidance (notwithstanding that it appeared to be drafted as more formal guidance). It was noted that if these were new expectations, it would be a significant burden for some firms to comply.

The members were also concerned that the detail of the paper was not modulated in way consistent with the foreword, where it was suggested that "*firms with limited potential to cause harm*" may need to take fewer steps to meet regulatory expectations relating to adequate financial resources.

It was agreed that a member would prepare a revised draft response for the Committee to review in advance of the next meeting.

4. **FCA CONSULTATION PAPER ON PROHIBITING THE SALE TO RETAIL CLIENTS OF INVESTMENT PRODUCTS THAT REFERENCE CRYPTOASSETS**

The Committee discussed the proposed prohibition set out in the consultation paper. While the members understood the potential harm to retail clients that the FCA was seeking to prevent, they considered that it was somewhat pre-mature to impose the ban before HMT had consulted on widening the regulatory perimeter to bring in further types of cryptoassets.

The members also considered that the ban would not prevent retail clients investing directly in the underlying asset, but merely removed any regulated intermediary. There was also a potential risk of constricting innovation in such products, which could conflict with the FCA's statutory objective to promote effective competition.

Finally, the members considered that the particular risks of investment products that reference cryptoassets highlighted in the paper, such as volatility and the potential for market abuse, were not unique to these instruments, but were present in a wide range of financial instruments, including equities, for which there was no such ban.

It was agreed that a member would prepare a draft response for the Committee to review in advance of the next meeting.

5. **EIOPA CONSULTATION ON THE PROPOSAL FOR GUIDELINES ON OUTSOURCING TO CLOUD SERVICE PROVIDERS**

The Committee briefly discussed the proposals included in the paper, noting that they were similar to those in the equivalent EBA guidelines (albeit with some differences in terminology). The Committee noted that there could be challenges for firms complying with some of the requirements in the guidelines in the context of outsourcing to cloud service providers, but these were not necessarily specific to the EIOPA guidelines.

The Chair agreed to contact the Chair of the Insurance CLLS sub-committee again to determine whether the paper was being considered by that committee.

6. **FCA GUIDANCE CONSULTATION ON GUIDANCE FOR FIRMS ON THE FAIR TREATMENT OF VULNERABLE CUSTOMERS**

The Committee discussed the paper, with a particular focus on the scope of the definition of "vulnerable". The guidance as currently drafted used an intentionally broad definition of "vulnerable" to include those customers who were potentially vulnerable as well as actually vulnerable. The members considered that for the purposes of the guidance, it would be preferable for "vulnerable" to refer to those customers who were actually vulnerable, with the relevant aspects of the guidance specifically extended as appropriate to potentially vulnerable customers. There were also some concerns raised around how firms would practically be able to assess when customers were potentially or actually vulnerable.

It was agreed that a member would prepare a draft response for the Committee to review in advance of the next meeting.

7. **FCA FEEDBACK STATEMENT ON FAIR PRICING IN FINANCIAL SERVICES**

The Committee briefly discussed this paper. While the paper dealt with an important issue, it was noted that further papers were due to be published by the FCA, including a paper on the Duty of Care in the autumn of 2019.

It was decided that the Committee would not submit any comments on the feedback statement, but would wait to respond to the subsequent papers.

8. **OTHER CONSULTATIONS TO WHICH THE COMMITTEE MAY WISH TO RESPOND**

The Committee discussed other papers currently open for consultation. It was decided that all members would review the **HMT call for evidence on the Financial Services Future Regulatory Framework Review (on regulatory co-ordination)** to consider whether the Committee should submit a response.

9. **AOB**

9.1 **Nominations for the CLLS Lifetime Achievement Award**

The Chair noted that it was still possible to submit nominations for the CLLS Lifetime Achievement Award. Nominations could be made individually, or collectively by the Committee. The deadline for submitting nominations was Friday 13 September.



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Karen Anderson

Chair, CLLS Regulatory Law Committee