

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

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

ATTENDEES

Present	Firm Represented
Matthew Baker	Bryan Cave Leighton Paisner LLP
Peter Bevan	Linklaters LLP
Chris Borg	Reed Smith LLP
Clive Cunningham (alternate for Karen Anderson)	Herbert Smith Freehills LLP
Richard Everett	Travers Smith LLP
William Garner	Charles Russell Speechlys LLP
Mark Kalderon (acting Chair)	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Hannah Meakin	Norton Rose Fulbright LLP
Simon Morris	CMS Cameron McKenna Nabarro Olswang LLP

1. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 12 February 2019 were approved.

2. FCA CONSULTATION PAPER ON OPTIMISING THE SMCR

The Committee discussed the proposals in the paper.

The Committee welcomed the clarification in the paper that the Head of Legal would be excluded from the requirement to be approved as a Senior Manager. However, it was noted that the new guidance in the proposed Handbook text as currently drafted did not clearly reflect this position. The Committee considered further clarification should be provided, in particular whether only responsibility for the activity of advising (as part of the Head of Legal's role) should be excluded from the SMCR, or, in accordance with what is suggested elsewhere in the paper, that the whole of the legal function should be excluded.

The Committee also considered that additional guidance should be provided to firms around the appropriate process to be followed when firms ceased to be "enhanced" firms, and become "core" firms.

The Committee then discussed the proposal to amend the scope of the client dealing function. It was noted that as the new proposed guidance was currently drafted, there was a possible risk that certain individuals may be excluded from the definition of the client dealing function, for example those who may have a role that is largely automated but which nonetheless requires significant technical skill. It was considered that the guidance could be clarified by providing some examples of roles the FCA considers to be purely administrative and therefore outside the scope of the client dealing function.

Finally, the Committee discussed the proposals relating to the application of the Certification regime to systems and controls roles. The Committee considered that the proposal should be amended to clarify that a Senior Manager should be fit and proper to carry out any role that falls outside of the scope of their designated senior manager function, rather than requiring an individual to be both a Senior Manager and a member of certified staff.

It was agreed that a member would draft a response setting out the Committee's concerns.

3. FEEDBACK FROM CALLS WITH THE FCA

The Committee briefly discussed the outcomes of two calls held with the FCA on two of the Committee's previous responses, namely the Committee's letter to the FCA on the MiFID change in controller notification forms, and the Committee's response to the FCA consultation paper on restricting contract for difference products sold to retail clients.

It was confirmed by those who had attended the calls that there were no action points arising for the Committee.

4. BOE CONSULTATION PAPER ON THE BOE'S PROPOSED APPROACH TO ASSESSING RESOLVABILITY

The Committee discussed the draft response circulated to the members ahead of the meeting.

Further the discussions at the February meeting, the response mainly addressed the Committee's concerns relating to the public disclosures on resolvability to be made by both the Bank of England and the firms themselves.

The Committee discussed the nature of the information disclosed in the public statements, and in particular whether such information was likely to be "inside information". The Committee considered that it was unlikely that there would be justifiable reasons for delaying publication of any such inside information in accordance with the applicable market abuse regulations, but there would be merit in suggesting that care should be taken by the Bank of England in the manner and timing of its disclosure. As part of this, the Committee agreed with the Bank of England's preferred option presented in the paper for both the Bank of England's and firm's public statements to be published on the same day.

The Committee also discussed the potential risk of the Bank of England's public statements producing a "league table" of banks and their resolvability, presenting a false impression that some banks were safer than others.

It was agreed that a member would update the draft response and circulate for members to review.

5. FCA CONSULTATION PAPER ON THE REGULATORY PERIMETER FOR CRYPTOASSETS

The Committee briefly discussed the paper. It was noted that generally the new guidance from the FCA was welcomed, although there were divergent views relating to regulation of cryptoassets (beyond the scope of this paper) across EU and regulators in other jurisdictions which would need to be resolved in due course. It was also noted that further consultation papers were due later in the year which may be more appropriate for the Committee to comment on.

It was decided that the Committee would not submit a response.

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

The Committee briefly discussed the HMT inquiry into the future of the UK's financial services after Brexit and it was decided that the Committee would not submit a response. There were no other open consultation papers to which the Committee wished to respond.

7. **AOB**

7.1 **CLLS membership**

Hannah Meakin was formally welcomed to the Committee.

A handwritten signature in black ink, appearing to read "Karen Anderson". The signature is written in a cursive style with a large initial 'K' and 'A'.

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Karen Anderson

Chair, CLLS Regulatory Law Committee