

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

Held on Tuesday 12 November 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
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton LLP
Brian McDonnell	Addleshaw Goddard LLP
Simon Morris	CMS Cameron McKenna LLP
Rob Moulton	Latham & Watkins LLP
Stuart Willey	White & Case LLP

1. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 8 October 2019 were approved.

2. LAW COMMISSION CALL FOR EVIDENCE ON INTERMEDIATED SECURITIES

It was noted by a member that since the previous meeting, the High Court has dismissed a strike out application made by Tesco plc in the group litigation brought by its shareholders (who held their shares through CREST) under section 90A FSMA relating to the false and misleading statements made by Tesco regarding its commercial income and trading profits in 2014 (*SL Claimants v Tesco plc* [2019] EWHC 2858 (Ch)).

3. ESMA CONSULTATION PAPER ON MAR REVIEW REPORT

The Committee discussed the draft response circulated before the meeting, with members presenting on the specific topics which had been allocated to them at the previous meeting.

The members discussed ESMA's proposals to extend the MAR regime to spot FX contracts, noting that the FX market has already undergone a significant amount a change and scrutiny and is already effectively supervised. Members thought that the largest firms targeted by the MAR regime extension would be adequately captured by other regimes, such as PSD 2, and that the smaller retail-facing institutions would likely fall outside of its scope, so the extension of the MAR regime may be unnecessary.

On the proposed extension of the application of MAR to certain aspect of the benchmarks regime, it was noted by a member that the issues which the extension seems to be trying to address (ie. manipulation of a benchmark or manipulation of the market) are already in-scope of the current Benchmarks or MAR regime. The Committee expressed concern that 'shoe-horning' in a lacuna of regulation which still exists to the MAR review by making MAR do more could lead to unintended consequences.

On the definition of inside information, the Committee discussed the advantages and disadvantages of the current definition with one member noting that it is difficult to point to a single case which has been decided incorrectly because of the definition. In the Committee's view, it would be difficult to formulate a new definition which would benefit the market.

The Committee also considered the proposed extension of the delayed disclosure regime for insider lists with multiple members commenting on the practical issues which firms could face if required to notify NCAs when they were no longer relying on delayed disclosure because inside information had gone 'stale'.

It was agreed that a member would liaise another CLLS committee also considering this paper and consider that committee's comments in the Committee's revised response. It was agreed that the members would prepare their revised draft responses which a member would collate ready for review and submission in advance of the next meeting.

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Karen Anderson
Chair, CLLS Regulatory Law Committee