

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

Held on Tuesday 10 March 2020 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
Angela Hayes	TLT LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Rob Moulton	Latham & Watkins LLP
Simon Morris	CMS Cameron McKenna Nabarro Olswang LLP
Richard Everett	Travers Smith LLP
Peter Bevan (by phone)	Linklaters LLP
Brian McDonnell (by phone)	Addleshaw Goddard LLP
Chris Borg (by phone)	Reed Smith LLP

1. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 11 February 2020 were approved.

2. FCA AND PRA JOINT DOCUMENTS ON OPERATIONAL RESILIENCE

The Committee returned to its discussion from the previous meeting regarding the operational resilience papers published by the FCA and PRA. A number of areas of potential concern and broader observations on implementation challenges were highlighted during the discussion. A main area of concern were the proposals to further increase the burden of regulation on payment services firms, a sub-sector characterised as a space for innovation which has seen a significant increase in regulatory requirements and expectations in recent years. The operational resilience expectations may be argued as a barrier to entry, particularly for smaller payments firms.

Another area of concern highlighted was the discrepancy between transitional periods for existing firms, which would be accorded a three year transitional period to implement to new rules, and newly authorised firms, which would not benefit from such a period and would be required to demonstrate compliance immediately.

The members also discussed the challenges which would be faced by an individual holding SMF24 for a firm which placed reliance on a non-UK parent entity for key systems. It was not clear whether the proposals included in the papers would ultimately lead to better discussion on operational risk and resilience at Board and RiskCo levels.

Another key area of concern discussed was that in cases where groups contained a small regulated entity that was or could be integral to a larger unregulated business, the regulators may use operational resilience as a platform for examination of unregulated business activities more widely.

It was agreed that as the papers raised practical rather than specific legal issues the Committee would not submit a response.

3. ESMA CONSULTATION PAPER ON TRANSPARENCY REGIME FOR EQUITY AND EQUITY-LIKE INSTRUMENTS AND CONSULTATION ON MIFIR REPORT ON SYSTEMATIC INTERNALISERS IN NON-EQUITY INSTRUMENTS

The members who had considered the papers in advance of meeting briefly discussed the two papers. It was noted that there was little content in the papers which was appropriate for the Committee to comment on.

It was agreed that the Committee would not comment on the papers at this stage, but would consider commenting in future once the proposals are further developed.

4. BOE DISCUSSION PAPER ON TRANSFORMING DATA COLLECTION FROM THE UK FINANCIAL SECTOR

The Committee discussed the proposals in the discussion paper, noting that the Bank seemed to be moving to a 'pull' method of data collection rather than 'push'. It was suggested that the FCA may wish to follow the Bank's lead on this topic.

The members discussed a number of challenges with the proposals including how the data collection process would be managed, whether any consent issues would arise and whether clients would have concerns over regulator access rights. Other challenges discussed included what limits there might be on the regulator's access rights, how SMF oversight would operate and what the potential increased security risks to the Bank would be.

A particular concern discussed was the interplay between the proposed pull method of data collection and a firm's obligation to proactively notify its regulators of anything they ought to be aware of under Principle 11 and SUP 15.

It was agreed that two members would consider the proposals in more detail, and the Chair would contact Chairs of other CLLS Committees to find out whether they were intending to respond to the paper.

5. HMT/DCMS CONSULTATION ON EXPANDING DORMANT ASSETS SCHEME

The Committee discussed the proposals in the consultation paper, noting that the main focus was on how liability was dealt with on insolvency of firms, and the complexities of legal ownership.

It was agreed that a member would consider whether there were any substantive legal questions raised in the paper which the Committee may wish to respond to.

6. FINANCIAL SERVICES (DUTY OF CARE) BILL

The Committee briefly discussed the private member's Bill. It was agreed that the Committee would not take any action at present, but would monitor its progress.

7. FCA QUARTERLY CONSULTATION PAPER

The Chair highlighted some of the key points from the consultation paper to the Committee.

The paper proposed minor amendments to DEPP and EG in the FCA Handbook to implement the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (MLRs), together with consequential changes to the Financial Crime Guide to reflect provisions in the MLRs.

Other proposals included adding the Institute of Financial Accountants to the list of bodies whose members can provide a statement of high net worth to individuals, clarifying notification procedures making changes to the new Directory persons report; and amending MiFID II rules relating to the tick size regime (as part of the implementation of the forthcoming IFD).

It was agreed that the Committee would not respond to the consultation paper as the subject matter was best suited to other industry bodies.

8. AOB

8.1 CLLS membership

The Chair had received an expression of interest from two applicants to join the Committee and had circulated a CV from one of the applicants.

It was agreed that an advertisement would be placed on the CLLS website opening invitations to new members, then the members would formally consider the applications.

8.2 Increasing associate involvement in the CLLS

The Committee returned to its discussion on inviting associates who had been involved in drafting responses to consultation papers to present their work at Committee meetings.

It was agreed that members should notify the Chair when they intended to bring an associate to a meeting, and that the Chair would approve attendance (with a maximum of 1-2 associates per meeting).

It was confirmed that associates should not become alternates when Committee members were unable to attend.

8.3 IRSG Report on the architecture for regulating finance after Brexit

Further to the discussion held at the February meeting, a member had collated the views of the Committee. The member discussed the draft response letter and asked the members to feed back any additional comments.

It was agreed that the content of the letter would be appropriately tailored.

8.4 FCA Call for Input on accessing and using wholesale data

The member who raised this item noted that a small portion of the paper focussed on the Market Abuse Regulation, and proposed some potentially wide-ranging additional circumstances in which individuals could be considered to be holding insider information. Examples included cases where the volume of information was so large that only a few people could process it, or the information itself was so expensive that only a few people could afford to purchase it.

It was agreed that a member would prepare a draft response for discussion by the Committee at the next meeting.

8.5 FCA webpage on PRIIPs

A member noted that the FCA webpage related to PRIIPs might usefully be updated to take into account ESMA guidance.



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Karen Anderson

Chair, CLLS Regulatory Law Committee