

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

Held on Tuesday 18 August 2020 at 12.30pm
via conference call

ATTENDEES

Present	Firm Represented
Matthew Baker	Bryan Cave Leighton Paisner LLP
Peter Bevan	Linklaters LLP
Simon Crown	Clifford Chance LLP
Richard Everett	Travers Smith LLP
Mark Kalderon (acting Chair)	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Hannah Meakin	Norton Rose Fulbright LLP

1. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 14 July 2020 were approved.

2. FCA DISCUSSION PAPER ON A NEW UK PRUDENTIAL REGIME FOR MIFID INVESTMENT FIRMS

A member had circulated a memo in advance of the meeting setting out key observations and points for discussion.

The first key observation related to the potential uncertainty for those entities without corporate form (ie sole traders and LLPs) in assessing whether their capital instruments fulfilled the regulatory requirements. It was considered that it would be helpful for the FCA to issue further guidance and interpretation on this topic.

It was also noted that the new regime would now apply to exempt CAD firms who had not previously been subject to IFPRU or BIPRU. The members agreed that it would be helpful if the FCA considered implementing appropriate transitional rules to enable this large cohort of firms to comply with the new regime. It was agreed that a member who was involved with a trade association considering this issue would confirm that this point had been raised with the FCA.

The next key observation related to how the calculation of K-AUM would interact with the definition of "financial entity", and in particular how the rules on prevention of double counting of AUM would ensure that in scenarios where there was delegation of management of assets, a 'gap' would not arise if the delegation was to a firm that was not itself subject to the new regime.

Another observation related to the definition of consolidation group, and whether this new regime presented an opportunity to provide greater clarification on interpreting terms such as "controls" and "ancillary services undertaking".

The final key observation related to the proposals on remuneration. The members supported the new proportionality rule for those small and non-interconnected firms, but it was noted that it would be helpful for there to be some flexibility around the requirements for the composition of remuneration committees, as often such committees were at group level not individual regulated firm level.

It was agreed that the Committee would not respond to this paper, but would consider in detail the upcoming consultation papers setting out the proposed draft text for the new regime.

3. FCA CONSULTATION PAPER ON HIGH-RISK INVESTMENTS: MARKETING SPECULATIVE ILLIQUID SECURITIES (INCLUDING SPECULATIVE MINI-BONDS) TO RETAIL INVESTORS

Further to the discussion at the previous meeting, the members briefly revisited the proposals set out in the paper. While it was noted that the proposed regime would mean there were now several separate marketing regimes for different products, the paper indicated that there may be a future rationalising process to simply the rules on marketing in the UK.

It was agreed that the Committee would not respond to this paper.

4. ESA JOINT CONSULTATION ON ESG DISCLOSURES

The members briefly discussed the joint consultation. It was noted that while the paper addressed important issues, the Committee did not consider that it was the most appropriate body to consider the topics raised.

It was agreed that the Committee would not respond to this paper.

5. FCA GUIDANCE CONSULTATION ON THE FAIR TREATMENT OF VULNERABLE CUSTOMERS

The Chair noted that the Committee had submitted a response to a previous guidance consultation paper on this issue, and some of the suggestions appeared to have been incorporated into the latest paper. It was noted that the paper had a wide-ranging scope, with guidance relating to product and service design, as well as customer service and communications.

It was agreed that the previous response submitted by the Committee would be recirculated to the members, and that the members would review the latest paper to determine whether the Committee should submit a response.

6. HMT CONSULTATION ON A REGULATORY FRAMEWORK FOR THE APPROVAL OF FINANCIAL PROMOTIONS

The Chair noted that the paper's key proposal marked a fundamental change to the current regulatory framework. The members understood the policy objectives, but considered the proposals seemed disproportionate to the scale of the mischief HMT were seeking to address.

The solutions proposed would not necessarily ensure that firms would maintain the necessary expertise needed to properly approve financial promotions of third parties, and there was still a lacuna for the approval of financial promotions made by a group entity, as such financial promotions were out of scope.

Members also noted that the existing regulatory framework already permitted the FCA to put limitations on firms' permissions as necessary.

It was agreed that a member would prepare a draft response addressing these concerns for the Committee to review.

7. HMT CONSULTATION ON CRYPTOASSET PROMOTIONS

The members briefly discussed the additional HMT consultation on the promotion of cryptoassets. It was noted that the proposals would bring unregulated cryptoassets into the section 21 regime.

It was agreed that the members would review the paper to determine the Committee should submit a response.

8. **AOB**

8.1 **Update on Law Commission scoping study on intermediation of securities**

A member of the Committee, who was also member of the CLLS Joint Working Group on Intermediated Securities, provided a brief update on the recent work carried out by the Joint Working Group. The Law Commission has approached the CLLS to request input on accessible statements of law on insolvency and the good faith purchaser defence to accompany the scoping study on intermediated securities due to be published in the autumn.

Members of the Committee who were also on the Joint Working Group had contributed to the statement of law on insolvency, and in particular describing how the CASS regime worked and the application of compensation scheme rules in sub-custody scenarios.

8.2 **New Financial Services Register**

Emma Reid (the Secretary of the Committee) was invited by the acting Chair to present some initial comments on the new Financial Services Register, summarising some concerns around usability and reprioritising of content on individual firms' entries.

While some elements of the new design were considered helpful, in particular the additional detail on the SMFs allocated to individuals, there were some elements which were more challenging, in particular, the change to how regulated activities were displayed.

Activities were now shown on the Register grouped first by sector (such as banking and insurance) and with new drop down menus for each activity, which had made the process of obtaining a comprehensive overview of what activities a regulated firm could do more challenging and time-consuming.

It was agreed that a short draft response would be prepared requesting additional functionality be added to the Register to include an option for a more simplified view (similar to the previous version of the Register) containing all the necessary data but in a more printer-friendly format.

A member also asked for the response to request a clarification from the FCA in respect of how the search function on the Register dealt with punctuation.



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Karen Anderson

Chair, CLLS Regulatory Law Committee