

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

Held on Tuesday 8 September 2020 at 12.30pm
via conference call

ATTENDEES

Present	Firm Represented
Matthew Baker	Bryan Cave Leighton Paisner LLP
Chris Borg	Reed Smith LLP
Simon Crown	Clifford Chance LLP
Richard Everett	Travers Smith LLP
Mark Kalderon (acting Chair)	Freshfields Bruckhaus Deringer LLP
Brian McDonnell	McDonnell Ellis LLP
Rob Moulton	Latham & Watkins LLP
Kevin Hart	City of London Law Society

1. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 18 August 2020 were approved.

2. 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 that one of the suggestions made appeared to have been incorporated into the latest paper, whilst others had not.

The members discussed the concept of firms taking “reasonable steps” to identify customers’ vulnerability and what this might require in practice.

It was agreed that the Committee would not submit a further response on this paper.

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

The Chair noted that, as discussed at a previous meeting, the paper’s key proposal marked a fundamental change to the current regulatory framework and the Committee had noted that the existing regulatory framework already permitted the FCA to put limitations on firms’ permissions as necessary.

One member noted that the FCA’s primary concern seems to be the ability of poorly run third parties to approve financial promotions, and the FCA only being able to take action when these issues are brought to its attention (ie. the FCA is reactive).

However, the Committee again noted that the FCA could apply the existing regulatory framework to achieve many of the intended goals – for example, use of Thematic Reviews, information requests, examples of “good” and “bad” practice. Members raised questions as to whether the activity of “approving financial promotions” should be brought within the regulatory perimeter and be a stand-

alone regulated activity, and as to who would bear liability if a promotion was approved by a 'non-approved'

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

4. HMT CONSULTATION ON CRYPTOASSET PROMOTIONS

The members briefly discussed the additional HMT consultation on the promotion of cryptoassets and noted that the proposals would bring unregulated cryptoassets into the regulatory perimeter of the financial promotions regime.

The Committee again considered that these additional financial promotions restrictions in relation to cryptocurrency, and the different definitions of cryptoassets across various pieces of legislation cause undue confusion and complexity to regulation. Members were also concerned about extending the financial promotion regime to cover unregulated activities and wondered whether a better approach would be to consider the extent to which cryptoassets should be brought within the financial perimeter and to adjust the financial promotion regime in line with that.

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



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Karen Anderson

Chair, CLLS Regulatory Law Committee