

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

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

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson	Herbert Smith Freehills LLP
Matthew Baker	Bryan Cave Leighton Paisner LLP
Peter Bevan	Linklaters LLP
Richard Everett	Travers Smith LLP
Angela Hayes	TLT LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Brian McDonnell	McDonnell Ellis LLP
Hannah Meakin	Norton Rose Fulbright 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 10 November 2020 were approved.

**2. BOE/PRA PROPOSALS ON RESOLUTION POLICY**

A member briefly summarised the key proposals in the various papers, noting that the fundamental proposals were not new in and of themselves, and there were few, if any, points of legal uncertainty to which the Committee could helpfully respond.

It was agreed that if on further reflection any member considered there were any points to which it would be helpful to prepare a response they should contact the Chair and member who had presented the papers. Otherwise, the Committee would not submit a response.

**3. FEEDBACK FROM CALL WITH THE FCA TO DISCUSS CONSULTATION PAPER ON APPROACH TO INTERNATIONAL FIRMS**

Members provided a brief summary of a call with the FCA to discuss a comment made in the consultation paper on the FCA's approach to international firms.

At the previous meeting, it had been noted that while there were some risks connected with branch insolvency, it was not necessarily the case that a third country branch would be wound up as part of insolvency proceedings in its home state (as the paper implied might be the case).

The members noted that the call had been constructive, and that the FCA had confirmed that the aim was to ensure that firms would properly consider the issue and were alive to the "worst case" scenario.

#### 4. **FCA CALL FOR INPUT ON THE CONSUMER INVESTMENTS MARKET**

Further to the discussion held at the previous month's Committee meeting, the Chair introduced this item by noting that there were several broader themes which were not reflected in the Call for Input, including consumer protection legislation more generally, 'Duty of Care' obligations and potential changes to the financial promotions regime.

The key proposals in the paper to which the Chair considered that the Committee should submit a response were those relating to the supervision of unregulated activities, the role of 'just in time' consumer education and changes to the applicable thresholds for high-net worth investor and self-certified sophisticated investor exemptions.

It was agreed that the Chair and another member would prepare a response to the key areas of concern, and would circulate to the members for comment ahead of submission.

#### 5. **HMT PHASE II CONSULTATION ON THE REGULATORY FRAMEWORK REVIEW**

Draft responses prepared by members who had agreed to consider this paper had been circulated in advance of the meeting, and the members summarised the key conclusions.

The paper requested input on the past operation of the FSMA model as well as the proposals put forward for adapting the model post-EU framework. The members considered that while the current model was effective, there were some changes that could be made to further improve it, such as clearly stating the objectives of the legislation and including review periods. Under the proposed future model, whereby Parliament and HM Treasury set the overall policy direction and financial services regulators work on the detailed rules, the members considered it would be important to ensure the regulators were sufficiently resourced and that Parliament/HM Treasury had appropriate oversight.

The members discussed the benefits of additional principles, for example a principle to have regard to international standards, and to avoid conflict and inconsistency with the regimes of other jurisdictions where possible. The members were also supportive of a cross-sectoral principle of competitiveness (as opposed to a regulatory objective).

Finally the members discussed the proposals relating to accountability and scrutiny. The members agreed that it would be appropriate for there to be effective recourse to take problems to the FCA, as judicial review was not a viable option for most parties. Other proposals members suggested included greater transparency of panels' input into policy and rule-making, a more rigorous and transparent approach to cost-benefit analyses (including post-implementation of any changes) and the establishment of an independent scrutiny function.

It was agreed that a member would prepare a draft response reflecting the comments made in the meeting and circulate it for review ahead of the next meeting.

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

The Committee discussed other papers currently open for consultation. It was decided that members would review the **FCA consultations on proposed policy with respect to the designation of benchmarks under Article 23A and with respect to the exercise of the FCA's powers under new Article 23D**, the **FCA Quarterly Consultation** and the **FCA guidance consultation for insolvency practitioners of how to approach regulated firms** to consider whether the Committee should submit a response.

#### 7. **AOB**

##### 7.1 **Committee membership**

It was confirmed that an advertisement had been placed on the CLLS website opening invitations to new members.

##### 7.2 **CLLS Practice Area Research**

The members considered a request from the CLLS for feedback on how COVID and Brexit had impacted the Committee's practice area.



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**Karen Anderson**

Chair, CLLS Regulatory Law Committee