

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

Held on Tuesday 8 June 2021 at 12.30pm  
via conference call

**ATTENDEES**

| <b>Present</b>        | <b>Firm Represented</b>                 |
|-----------------------|---|
| Karen Anderson        | Herbert Smith Freehills LLP             |
| Matthew Baker         | Travers Smith LLP                       |
| Peter Bevan           | Linklaters LLP                          |
| Simon Crown           | Clifford Change LLP                     |
| Richard Everett       | Travers Smith LLP                       |
| Mark Kalderon         | Freshfields Bruckhaus Deringer LLP      |
| Brian McDonnell       | McDonnell Ellis LLP                     |
| Hannah Meakin         | Norton Rose Fulbright LLP               |
| Simon Morris          | CMS Cameron McKenna Nabarro Olswang LLP |
| Rob Moulton           | Latham & Watkins LLP                    |
| Julia Smithers Excell | White & Case LLP                        |
| Kevin Hart            | City of London Law Society              |

**1. MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of the Committee held on 11 May 2021 were approved.

**2. VIRES FOR PURPORTED EXTENSION OF FCA'S MORTGAGES AND CORONAVIRUS: PAYMENT DEFERRAL GUIDANCE AND TAILORED SUPPORT GUIDANCE**

An updated draft of the letter reflecting comments received following the previous month's meeting had been circulated to members for final review.

It was agreed that subject to any final comments, the letter would be engrossed and submitted to the FCA.

**3. FCA DISCUSSION PAPER ON STRENGTHENING FINANCIAL PROMOTION RULES FOR HIGH-RISK INVESTMENTS AND FIRMS APPROVING FINANCIAL PROMOTIONS**

The members discussed the proposals in the discussion paper

While the members understood the harm that the FCA was aiming to prevent, as it was acknowledged that unsuitable products could be made available to retail clients, the members considered that there were possible unintended consequences. For example, in the venture capital and private equity market, there were individuals who would be categorised as retail clients for whom such restrictive investor protection rules may not be appropriate.

It was agreed that a member would prepare and circulate for review a draft response to the members reflecting the discussion held at the meeting.

#### **4. HMT CONSULTATION ON REGULATION OF NON-TRANSFERABLE DEBT-SECURITIES (MINI-BONDS)**

The members discussed the proposals set out in the paper.

It was considered that of the proposed approaches, amending the scope of the exclusion under the RAO, which provided an exclusion from the regulated activity "dealing in investments as principal" for firms who issued their own debt securities, would provide the neatest solution.

The members noted that care would need to be taken when amending the scope of the exclusion to ensure that other forms of non-transferable debt, such as debt issued by corporates to raise capital, would not be adversely impacted.

The Chair agreed to confirm whether the CLLS Company Law Committee were considering the paper. It was also agreed that a member would collate the view of the members with a view to preparing a draft response.

#### **5. LAW COMMISSION PROGRAMME OF REFORM**

As had been discussed at previous meetings, the area of reform on which the Committee was most interested in responding was the UK statute book. Given the potential broad scope, it was noted that this may be a topic on which co-ordination with other CLLS committees might be productive. Some of the comments the Committee would be likely to make, for example regarding consolidation of on-shored legislation, would be applicable to a broad range of laws, not only financial services legislation.

The Chair agreed to make enquiries about whether other CLLS committees were preparing a response. It was also agreed that two members would consider how the Committee could best respond in support of the proposal to reform the UK statute book.

#### **6. FCA CONSULTATION PAPER ON A NEW CONSUMER DUTY**

A member who had considered the paper in advance of the meeting summarised the proposals in the papers and highlighted what they considered to be the key areas of focus for the Committee.

It was noted that in most cases, the FCA's existing rules could prevent the harm the new Consumer Duty was trying to address. The members considered that it was preferable from a legal certainty perspective for the FCA to maintain its existing rules, as these were already well-understood by firms and the market more generally.

The members noted that the paper did not provide clear guidance on what the FCA expectations would be in respect of the proposed Consumer Duty, in particular in respect of certain of the proposed cross-cutting rules.

The members were also concerned about the potential implications of a new private right of action and the broad scope of the proposed Consumer Duty, which could impact firms which did not hold Part 4A permissions to deal with retail customers.

It was agreed that a member would prepare and circulate for review a draft response to the members reflecting the discussion held at the meeting.



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**Karen Anderson**

Chair, CLLS Regulatory Law Committee