

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

Held on Tuesday 13 July 2021 at 12.30pm  
via conference call

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson	Herbert Smith Freehills LLP
Richard Everett	Travers Smith LLP
Anthony Ma	Grant Thornton UK LLP
Brian McDonnell	McDonnell Ellis LLP
Simon Morris	CMS Cameron McKenna Nabarro Olswang LLP
Rob Moulton	Latham & Watkins LLP
Julia Smithers Excell	White & Case LLP

**1. MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of the Committee held on 8 June 2021 were approved.

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

An updated draft of the letter reflecting comments received following the previous month's meeting had been circulated to members for final review. While the view of the Committee remained that no changes to the regulatory regime were required, the proposal to amend the relevant exclusion in the Regulated Activities Order (**RAO**) was Committee's preferred option. The draft response also set out the conditions which would need to be met in order to disapply the exclusion in the RAO.

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

**3. FCA CONSULTATION PAPER ON A NEW CONSUMER DUTY**

An updated draft response had been circulated in advance of the meeting. The members briefly discussed the concerns with application of a private right of action to the new Consumer Duty and the Principles.

It was agreed that members would provide final comments on the draft response so that it could be finalised for submission.

**4. LAW COMMISSION 14<sup>TH</sup> 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. The members considered that the key point to raise on this topic from a financial services perspective was that there had been an increase in rule-making across different regimes without sufficient co-ordination, and that there was an opportunity to bring greater coherence, for example through consolidation of legislation.

It was agreed that a member would prepare and circulate for comment a draft response to the members.

5. **RECENT COMMENTARY ON APPROACH TO LEGAL RISK IN FCA BOARD MINUTES**

The Committee noted the FCA board's support of proposals to recalibrate the degree of legal risk the FCA was willing to take set out in the minutes of the April board meeting. The members considered that without further information, it was challenging to fully understand the change in approach being suggested. The Committee noted that it would, for example, be inappropriate if the recalibration meant that due legal process was not adhered to. The Committee felt it would be helpful to have a better understanding of the background to the proposals and a member agreed to make further inquiry..

6. **LACUNA IN ON-SHORING PROVISIONS FOR FINANCIAL PROMOTION REGIME**

In advance of the meeting, it had been noted that a failure had been identified in the amendments to provisions in the Financial Promotion Order made as a consequence of Brexit, the effect of which was that companies could inadvertently be making unauthorised financial promotions. This was because the definition of "relevant market" (relevant to the scope of certain exemptions) now excluded UK markets, including the London Stock Exchange.

It was agreed that the Committee should contact the FCA and HMT requesting that this issue be addressed, preferably with retrospective effect, and that a policy statement confirming the intent to address the issue be published promptly.

7. **OTHER CONSULTATIONS TO WHICH THE COMMITTEE MAY WISH TO RESPOND**

The Committee discussed other papers currently open for consultation. It was decided that a member would review the **FCA consultation paper on diversity and inclusion in the financial sector** to consider whether the Committee should submit a response.

8. **AOB**

8.1 **August meeting**

It was decided that, subject to the publication of any new papers requiring urgent consideration before September, there would not be an August meeting.



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**Karen Anderson**

Chair, CLLS Regulatory Law Committee