

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

Held on Tuesday 8 February 2022 at 12.30pm
via conference call

ATTENDEES

Present	Firm Represented
Karen Anderson	Herbert Smith Freehills LLP
Matthew Baker	Bryan Cave Leighton Paisner LLP
Richard Everett	Travers Smith LLP
Angela Hayes	DAC Beachcroft LLP
Anthony Ma	Deloitte UK
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

1. MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting of the Committee held on the 11 January 2022 were approved.

2. FCA: CONSULTATION ON A NEW CONSUMER DUTY

The Committee discussed its draft response to the FCA's consultation paper on a new consumer duty. It was noted that, where possible, the Committee should provide examples of where there are potential conflicts or other difficulties in the proposals. The Committee also noted that the territorial scope potentially needed to be clearer for EEA firms.

The Committee discussed in detail the status of handbook and non-handbook guidance and highlighted the need for a mechanism for determining the guidance in place at the time of an incident when a complaint is brought by a retail customer some years later.

It was agreed that a member would reflect the comments of the Committee in the draft response ahead of the deadline for the response which was 15 February 2022.

3. HMT: CALL FOR EVIDENCE TO GATHER INFORMATION ON HOW MARKET PARTICIPANTS USE THE AR REGIME AND HOW EFFECTIVELY THE REGIME WORKS

IN PRACTICE AND FCA: CONSULTATION PAPER ON IMPROVING THE APPOINTED REPRESENTATIVES REGIME

A member gave a brief summary of the Committee's draft response to the HMT's call for evidence to gather information on how market participants use the AR regime and how the regime works in practice. It was noted that the draft response generally highlighted that no case was made out for significant change and that the FCA already possess sufficient powers to address the issues identified.

It was agreed that the Committee's suggested alternative changes to the primary legislation (in particular, in relation to expanding the concept that an AR cannot start until it appears on the Register and a potential deeming position for written acceptance of responsibility) should be included in its response.

The Committee then discussed its draft response to the proposals in the FCA's consultation paper on improving the AR regime. A member gave a brief summary of the Committee's draft response noting that the Committee could be neutral and favourable to many of the proposals.

It was discussed in particular that a 60-day notification period would likely introduce a significant delay and have a detrimental impact on flexibility. It was agreed that the Committee would suggest a reduction and that the notification period should not apply to all ARs.

In addition, the Committee discussed the proposal for increased principal firm oversight over ARs to a level equivalent of the ARs being employees of the principal. It was noted that this proposal was problematic in terms of increased costs and there would be an additional risk of principal firms being deemed shadow directors.

The Committee discussed regulatory hosting, in particular, with reference to the potential problems with the FCA's working definition of "*regulatory host*". It was noted that the Committee's response included a suggested definition for the FCA which included reference to secondment. It was agreed that two members would consider this further after the meeting.

It was agreed that the Committee would submit any comments by 21 February 2022 ahead of the deadline for both responses on 3 March 2022.

4. HMT: CONSULTATION PAPER ON FUTURE REGULATORY FRAMEWORK REVIEW – PROPOSALS FOR REFORM – FINAL COMMENTS ON COMMITTEE'S RESPONSE

The Committee briefly discussed its final comments on its draft response to the proposals in the HMT's consultation paper on future regulatory framework review – proposals for reform. The Committee briefly discussed the prospect of an independent body and how best to address this in the draft response.

It was agreed that any final comments would be submitted by the end of the day ahead of the deadline for the response which was 9 February 2022.

5. FCA: CONSULTATION PAPER ON STRENGTHENING OUR FINANCIAL PROMOTION RULES FOR HIGH RISK INVESTMENTS, INCLUDING CRYPTOASSETS

It was agreed that the Committee would prepare a response to the proposals in the FCA's consultation paper on strengthening financial promotion rules for high risk investments, including cryptoassets.

A member agreed to collate all comments from the Committee and prepare a response, to be discussed at the next Committee meeting ahead of the deadline for response of 23 March 2022.

6. HMT: CONSULTATION PAPER ON THE FUTURE REGULATORY FRAMEWORK REVIEW FOR CENTRAL COUNTERPARTIES AND CENTRAL SECURITIES DEPOSITORIES

A member volunteered to prepare a short response to the HMT's consultation paper on the future regulatory framework review for central counterparties and central securities depositories. It was agreed that the draft response would be circulated to the Committee for comments ahead of the deadline for response of 28 February 2022.

7. **AOB**

7.1 **CSDR onshoring infelicity**

A member noted that in the exercise of removing material not in force by the end of the implementation period, provisions in the original CSDR designed to bring into effect the settlement discipline provisions in articles 6 and 7 separately (and later) that the main body of the regulation were removed. This appears to have had the effect of bringing articles 6 and 7 into force, ahead of their equivalents in the EU and contrary to HMG and FCA's expressed intention not to implement the settlement discipline provisions of the CSDR. The matter was raised with the CLLS International Law Committee who suggested the Committee raise the issue through its usual channels, but indicated they would also be prepared to raise the matter or write in support.

7.2 **Applications received to the Committee**

It was noted that four applications to the Committee had been received to date. The Committee briefly discussed the applications and it was agreed that the one applicant would be invited to the next meeting. The Chair requested further comments from the Committee in regard to the other applicants.



Karen Anderson

Chair, CLLS Regulatory Law Committee