

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

Held on Tuesday 13 December 2016 at 12.30pm
at Exchange House, 12 Primrose Street, London EC2A 2EG

ATTENDEES

| Present | Firm Represented |
|------------------------|-----------------------------|
| Karen Anderson (chair) | Herbert Smith Freehills LLP |
| Matthew Baker | Berwin Leighton Paisner LLP |
| Peter Bevan | Linklaters LLP |
| Richard Everett | Travers Smith LLP |
| Brian McDonnell | Addleshaw Goddard LLP |
| Simon Morris | CMS Cameron McKenna LLP |
| Stuart Willey | White & Case LLP |

1. APPROVAL OF MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 8 November 2016 were approved.

2. PRA CP 36/16: OCCASIONAL CONSULTATION PAPER ON PROPOSED CHANGES TO THE PRA RULEBOOK AND NEW SUPERVISORY STATEMENTS

The Committee discussed the various proposals in the consultation paper. It was decided that a member would consider whether the Committee should respond on the proposals relating to the clarifications and corrections to the pre-issuance notification rules.

3. FCA CP16/29: CONSULTATION ON MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE II IMPLEMENTATION

The Committee discussed various proposals in the consultation paper. In particular, the Committee discussed the proposals relating to recording of telephone conversations and electronic communications. The Committee noted that the recent Market Abuse Regulation had already made several changes in this area, and there was a potential for the requirements to be unnecessarily onerous on certain firms.

The Committee also discussed the proposed changes to the perimeter guidance in the FCA Handbook, specifically how accessible the new content was for the intended audience.

It was decided that members would prepare a draft response for the Committee to review on these issues.

The Committee also briefly discussed the proposals relating to client categorisation and suitability. It was decided that the members who had been proposed to lead the discussion relating to the remaining chapters and who were unable to be present at the meeting would circulate draft responses for the Committee to review, if appropriate.

4. FCA CP16/29: CONSULTATION PAPER ON GUIDANCE ON THE DUTY OF RESPONSIBILITY

The Committee discussed the consultation paper and it was decided that since the proposals were broadly consistent with current case law on this topic the Committee would not submit a response.

5. **FCA DP16/4: DISCUSSION PAPER ON OVERALL RESPONSIBILITY AND THE LEGAL FUNCTION**

The Committee discussed the consultation paper and it was decided that although the discussion paper raised some important points relating to legal privilege and the potential conflicts which certain individuals could face, the Committee would not submit a response.

6. **FCA CP16/27: CONSULTATION ON APPLYING CONDUCT RULES TO ALL NON-EXECUTIVE DIRECTORS IN THE BANKING AND INSURANCE SECTORS**

The Committee discussed the consultation paper and it was decided that the Committee would not submit a response.

7. **FCA CONSULTATION ON ITS FUTURE MISSION**

The Committee discussed various aspects of the FCA's Future Mission. One element discussed was how this document related to previous guidance on the FCA's statutory objectives, and the annual business statements.

The Committee also discussed the proposal for the FCA to introduce a duty of care for firms in relation to their dealings with retail customers, as well as the scope of the FCA's remit.

It was decided that the Committee would consider the paper further, and members would prepare a draft response on certain issues.

8. **ESMA AND EBA CONSULTATION ON JOINT GUIDELINES ON THE ASSESSMENT OF THE SUITABILITY OF MEMBERS OF THE MANAGEMENT BODY AND KEY FUNCTION HOLDERS**

The Committee discussed the consultation paper and in particular how it may impact the existing Senior Managers and Certification Regime in the UK.

It was agreed that a member should consider whether the Committee should submit a response.

9. **EBA CONSULTATION ON DRAFT GUIDELINES ON INTERNAL GOVERNANCE**

The Committee discussed the consultation paper and in particular how it may impact the existing Senior Managers and Certification Regime in the UK.

It was agreed that a member should consider whether the Committee should submit a response.

10. **ESMA: UPDATED Q&A ON APPLICATION OF AIFMD**

The Committee considered a letter sent by AIMA to the FCA in respect of the latest version of the ESMA Q&A on the application of AIFMD. The letter addressed the impact that a recent Q&A response relating to delegation (Question 2, Section VIII) will have on the way many AIFs and AIFMs structure the provision of services to AIFs. The effect of the response in the Q&As from ESMA could be to make AIFMs liable for legal advisers, administrators, placement agents and various other third party advisers that they would not currently be responsible for.

The Committee discussed AIMA's position, as well as a wider point relating to the status of ESMA guidance.

It was decided that a member would prepare a draft response endorsing AIMA's position set out in its letter for consideration by the Committee.

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

The Committee discussed other papers open for consultation and concluded that the Committee did not currently propose to respond to any of the papers considered.



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Karen Anderson
Chair, CLLS Regulatory Law Committee