

FINANCIAL MARKETS LAW COMMITTEE
BREXIT ADVISORY GROUP
MINUTES



Meeting Date: Monday 28 January 2019

Tea and coffee: 9.00am

Meeting Time: 9.20am

Venue: Bank of England, 20 Moorgate, London, EC2R 6DA

Attendees:

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| Joanna Perkins (Chair) | FMLC |
| Gregg Beechey | Fried, Frank, Harris, Shriver & Jacobson (London) LLP |
| Rebecca Chalk | Blackrock |
| Paul Double | City of London Corporation |
| Jonathan Gilmour | Travers Smith LLP |
| Saima Hanif | 3 Verulam Buildings |
| Professor Trevor Hartley | London School of Economics and Political Science |
| Vanessa Knapp | |
| Anne MacPherson | Gibson Dunn & Crutcher LLP |
| Vlad Maly | Morrison & Foerster LLP |
| Ian Mathers | |
| John McGrath | Sidley Austin LLP |
| Michelle Moran | K & L Gates LLP |
| Bob Penn | Allen & Overy LLP |
| Marke Raines | Raines & Co |
| Professor Arad Reisberg | Brunel University London |
| Nathalie Robertson –Nugent | NatWest Markets |
| Venessa Parekh | FMLC Secretariat |
| Clare Wiles | FMLC Secretariat |

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Minutes:

1. Introduction.

- 1.1. Joanna Perkins opened the meeting and delivered a brief introduction.

2. Update on parliamentary developments relating to Brexit (Paul Double)

- 2.1. Mr Double provided an overview of the developments over the past two weeks in Parliament about Brexit. This included the meaningful vote about the Withdrawal Agreement, the failed no confidence vote, Dominic Grieve's amendment which compelled the Government to set out its next steps within three days of the meaningful vote and the Prime Minister's speech in Parliament which set out six "key issues" in respect of the negotiations. He highlighted two amendments proposed by MPs to HM Government's motion to discuss the U.K.'s future relationship with the E.U. The first, sponsored by MP Yvette Cooper, would suspend the order bestowing precedence on the Government's business to enable a debate on her proposed E.U. (Withdrawal) (No. 3) Bill. This Bill stated that, if no deal is agreed between the U.K. and the E.U. by 26 February, a motion would be tabled to debate the extension of the Article 50 notice period. The second key amendment supports the Withdrawal Agreement subject to the replacement of the Northern Ireland backstop with alternative arrangements to avoid a hard border.
- 2.2. Mr Double noted that these were two of approximately 15 proposed amendments and there was no indication as to which were likely to be debated in the House of Commons on the following day (29 January). That decision was at the discretion of the Speaker which made it difficult to predict. Support in Parliament for any of the amendments depends also on political and party considerations which seemed in flux at the time. An attendee asked whether there was any information about what steps were proposed during any extension period.

3. Discussion on the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (Joanna Perkins)

- 3.1. Dr Perkins noted that the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (the "equivalence SI") fulfills four key purposes:
- 1) It provides emergency powers to ministers to make equivalence directions and exemption directions for the E.U. and E.E.A. Member States over the first 12 months upon Brexit;
 - 2) At the end of that period, HM Treasury is given the powers to make equivalence decisions;

- 3) An example of this transfer of function can be found in the central securities depositories statutory instrument; and
- 4) It provides that existing E.U. equivalence decisions will become retained E.U. law. It is anticipated that this will contain deficiencies that need to be addressed in order to ensure that these retained decisions continue to operate effectively. Dr Perkins noted that equivalence decisions which relate to third country Central Counterparties (“**CCPs**”), made under Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (“**EMIR**”) will be revoked.

3.2. An attendee queried this decision; another attendee observed that it was probably linked to the E.U. legislative proposal to reform EMIR. Advisory Group members then discussed attempts by individual Member States to provide winding down regimes for contracts entered into before exit day.

4. Update on FMLC’s work on Brexit (Joanna Perkins)

4.1. Dr Perkins provided an update on the FMLC’s recent publications with a Brexit focus and encouraged attendees to contact the Secretariat with any feedback on the Brexit statutory instruments.

5. Meetings after March 2019

5.1. Dr Perkins observed that the next meeting is scheduled for 24 May, nearly two months after exit day. She asked whether Advisory Group members were content with meeting at that date, whether they’d like to meet sooner or whether a decision should be made after exit day depending on the circumstances. Attendees agreed that there was value in meeting before exit day and suggested the beginning of March—after the 26 February deadline proposed in the amendments discussed above. (A meeting was subsequently scheduled for 1 March 2019.)

6. Any other business

6.1. No other business was raised.