

Financial Markets Law Committee (“FMLC”)

Brexit Advisory Group

Meeting Date: Thursday 5 September 2019

Tea and coffee: 9.30am

Meeting Time: 10.00am

Venue: Bank of England, Threadneedle Street, London, EC2R 8AH



Attendees:

Joanna Perkins (Chair)	FMLC
Gregg Beechey	Fried, Frank, Harris, Shriver & Jacobson (London) LLP
Nick Brittain	Sidley Austin LLP
Charles Clark	Linklaters LLP
Thomas Donegan	Shearman & Sterling LLP
Jennifer Donohue	Algorithm and External Consulting Limited
Kate Gibbons	Clifford Chance LLP
Saima Hanif	3 Verulam Buildings
Alexander Hewitt	Dentons U.K. and Middle East LLP
Jim Ho	Cleary Gottlieb Steen & Hamilton LLP
Katy Hyams	The London Metal Exchange
Ian Jameson	Sumitomo Mitsui Banking Corporation Europe Limited
Bruce Johnston	Morgan, Lewis & Bockius U.K. LLP
Mark Kalderon	Freshfields Brucjhaus Deringer LLP
Dorothy Livingston	Herbert Smith Freehills LLP
Anne MacPherson	Gibson Dunn & Crutcher LLP
Ian Mathers	
John McGrath	Sidley Austin LLP
Sinead Meany	Bank of England
Michelle Moran	K & L Gates LLP
Oliver Moullin	Association for Financial Markets Europe
Hamish Patrick	Shepherd and Wedderburn LLP
Marke Raines	Raines & Co
Kate Sumpter	Allen & Overy LLP
Sanjev Warna-kula-suriya	Latham & Watkins LLP
Dr Peter Werner	International Swaps and Derivatives Association

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Stuart Willey

White & Case LLP

Venessa Parekh

FMLC Secretariat

Hwee Peng Ngoh

FMLC Secretariat

Katja Trela-Larsen

FMLC Secretariat

Guest Speaker:

Nigel Lefton

City of London Corporation

Minutes:

1. Introduction

1.1. Dr Perkins opened the meeting. She briefly recounted the developments in the Brexit process since the last meeting and introduced the meeting speakers.

2. Update on parliamentary developments relating to Brexit (Nigel Lefton)

2.1. Mr Lefton explained that Members of Parliament who wished to prevent the U.K. from withdrawing from the E.U. without a withdrawal agreement (known in government documents as a “no deal” scenario), had proposed European Union (Withdrawal) (No.6) Bill (referred in media reports as the “**Benn Act**” after Hilary Benn MP who had sponsored it). Mr Lefton described the Parliamentary procedures by which the Benn Act had been introduced and passed in the House of Commons. Although 91 amendments were tabled for review in the House of Lords, agreement was reached between the Lords and Commons to drop these. It was expected that the Bill would return to the House of Commons on Friday, 6 September, for a final reading. The aim of the Benn Act is to require the Prime Minister to ask the E.U. for an extension to the Article 50 negotiating period, to avoid a no-deal Brexit on 31 October.

2.2. A substantive question is whether the Benn Act can be relied upon to stop a “no deal” Brexit. The Benn Act provides that the prime minister must send a letter requesting to extend Article 50 to 31 January 2020 unless Parliament agrees a withdrawal agreement with the E.U. or approves a “no deal” exit from the E.U. by 19 October 2019. The Benn Act is unusual in that it specifies the exact wording of the letter to be sent.

- 2.3. Mr Lefton then turned to the possibility of a general election. The next general election will be held in June 2022, unless the conditions in the Fixed Term Parliament Act 2011 for the calling of an early election are met. These conditions are either agreement by a two-thirds majority of the House of Commons for an early election or a successful motion in the House of Commons of no confidence in the government. If the motion in the latter condition were successful, the government would have 14 calendar days during which it must regain confidence. If it were unsuccessful, a general election will be called on a date determined by the Prime Minister. A third route to an election, not offered by the Fixed Term Parliament Act 2011, is the enacting by a simple majority in both Houses of a short bill changing the date of the election. Parliament must be dissolved 25 days before an election is held.
- 2.4. Finally, Mr Lefton turned to the two cases being progressed through courts in the U.K. protesting the prorogation of Parliament. Appeals from both *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent)* [2019] EWHC 2381 (QB) and *Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] CSIH 49 would be heard together by the Supreme Court on 17 September 2019. Both cases had questioned the legality of the Prime Minister's decision to prorogue Parliament for five weeks. Mr Lefton described the judgments of the lower courts in both cases and drew attention to a third case, in Northern Ireland which raises objections to a no deal Brexit based on the Good Friday Agreement.
- 2.5. A discussion was then had amongst attendees on various political possibilities.
3. **Bank of England and PRA [Joint Consultation](#) on U.K. withdrawal from the E.U.: Changes following extension of Article 50 (Sinead Meany)**
 - 3.1. Ms Meany introduced the Joint Consultation published by the Bank of England and the Prudential Regulatory Authority ("PRA") on changes to the onshoring regime necessitated by the extension to the Article 50 period. She said that the Consultation highlights tweaks to the PRA's Rulebook and new Binding Technical Standards. The Consultation sweeps up any pieces of E.U. law which become applicable between 1 April 2019 and 31 October 2019.
 - 3.2. The Consultation also refreshes the transitional relief provided to firms in event of a no deal Brexit.

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

4.1. Dr Perkins provided an update on the FMLC's recent work on Brexit.

5. Meeting after October 2019¹

5.1. Attendees agreed that the next meeting of the Advisory Group, scheduled for November, should go ahead.

6. Any other business

6.1. No other business was raised.

¹ The next meeting is scheduled for Thursday 21 November (9.30am to 11.00am).