

## Financial Markets Law Committee (“FMLC”)

### Asset Management Scoping Forum

Supplementary Video Conference

Date: Thursday 9 April 2020

Time: 2.00pm to 3.00pm



#### Attendees:

Gregg Beechey (Moderator)	Fried, Frank, Harris, Shriver & Jacobson (London) LLP
Iain Cullen	Simmons & Simmons LLP
David Gasperow	Orbis Investments
Laura Houet	CMS Cameron McKenna Nabarro Olswang LLP
Michelle Kirschner	Gibson, Dunn & Crutcher UK LLP
Ida Levine	Impact Investing Institute
Philippa List	Dechert LLP
Owen Lysak	Clifford Chance LLP
Vlad Malý	Morrison & Foerster LLP
Michelle Moran	K&L Gates LLP
Emma Rachmaninov	Freshfields Bruckhaus Deringer LLP
Neil Robson	Katten Muchin Rosenman UK LLP
Selina Sagayam	Gibson, Dunn & Crutcher UK LLP
Mark Simpson	Baker McKenzie LLP
Ezra Zahabi	Akin Gump Strauss Hauer & Feld LLP
Venessa Parekh	FMLC Secretariat
Chhavi Sinha	FMLC Secretariat
Katja Trela-Larsen	FMLC Secretariat

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## Minutes:

### 1. **Introductions**

1.1. Mr Beechey opened the meeting.

### 2. **HM Treasury’s Consultation on the Overseas Funds Regime**

2.1 Mr Beechey provided an overview of HM Treasury’s Consultation on the overseas funds regime.<sup>1</sup> The Consultation sets out the proposal for a new process for allowing investment funds domiciled overseas to access the U.K. market, to replace the existing regime, which is not viable over the long term. He commented that the proposal is essentially an equivalence regime, including a regime for retail investment funds and another for money market funds.

2.2 Mr Beechey explained that the Consultation focuses mainly on overseas retail funds. These funds, namely Undertakings for Collective Investment in Transferable Securities (“UCITS”), can currently access the U.K. market under Section 264 of the Financial Services and Markets Act 2000 (“FSMA”), which transposes E.U. Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the “UCITS Directive”) into domestic legislation. Alongside Directive 2011/61/EU on Alternative Investment Fund Managers (the “AIFMD Directive”), it provides the main “passporting” regimes for funds in the E.U. Upon the U.K.’s withdrawal from the E.U., HM Treasury has offered a temporary regime to E.U. funds that have exercised their rights to market in the U.K. via a passport before the end of the Brexit transition period, permitting them to continue marketing in the U.K. for a limited period beyond the end of the transition period. The proposed new regime will be available to E.U. funds at the end of that temporary permissions regime.

2.3 Members discussed the new proposals, including how the equivalence process would work and whether an outcome-based equivalence regime would develop. Members agreed it would be helpful to have clear information on what areas would be considered when determining equivalence. Mr Beechey commented that the application process would likely be clarified over time. A member commented that there is lack of clarity and guidance within the existing E.U. regime. Members agreed it might be useful to

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<sup>1</sup> HM Treasury, *Overseas Funds Regime: A Consultation*, (11 March 2020), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/871744/Overseas\\_Fund\\_Regime\\_Consultation\\_Publication\\_for\\_publication\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871744/Overseas_Fund_Regime_Consultation_Publication_for_publication_.pdf)

recommend that the FMLC submit a response requesting that the new regime clarify uncertainties in the existing regime. They agreed to email the Secretariat with their thoughts on the Consultation.

### **3. ESMA’s Consultation Paper on Guidelines on Article 25 of AIFMD**

3.1. Mr Beechey gave a brief overview on a Consultation Paper published by the European Security and Markets Agency (“**ESMA**”) on Guidelines on Article 25 of the AIFMD Directive.<sup>2</sup> He reminded attendees that Article 25 governs National Competent Authorities’ use of data for the purposes of identifying the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system. The Consultation follows up on a recommendation from the European Systemic Risk Board (“**ESRB**”) that ESMA provide guidance on the framework to assess the extent to which the use of leverage within the alternative investment fund sector contributes to the build-up of systemic risk in the financial system.

3.3 Members discussed the Consultation but commented that it was fairly technical and suggested fund managers would be better placed than lawyers to comment on the guidelines. Members agreed they did not recommend the Committee to respond to the Consultation.

### **4. Any other business**

4.1. No further business was raised at the meeting.

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<sup>2</sup> ESMA, *Consultation Paper: Guidelines on Article 25 of Directive 2011/61/EU* (27 March 2020), available at: [https://www.esma.europa.eu/sites/default/files/library/esma34-39-967\\_consultation\\_paper\\_on\\_guidelines\\_on\\_art\\_25\\_aifmd.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-39-967_consultation_paper_on_guidelines_on_art_25_aifmd.pdf)