

City of London Law Society Regulatory Law Committee – Written evidence (SCG0017)

The City of London Law Society (“**CLLS**”) represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees.

This letter has been prepared by the CLLS Regulatory Law Committee (the “**Committee**” or “**we**”), a list of whose members can be found on the CLLS website. The Committee not only responds to consultations but also proactively raises concerns where it becomes aware of issues which it considers to be of importance in a regulatory context.

The House of Lords Financial Services Regulation Committee (the “**HoL Committee**” or “**you**”) is seeking views on the FCA’s and PRA’s secondary objective of facilitating the UK economy’s growth and international competitiveness, how that is being implemented by the regulators and integrated with their other objectives, and what the implementation of those objectives might mean for the financial services sector in the UK.

Importance of the secondary objective

We consider the secondary objective an important feature of the UK regulatory regime which the regulators should proactively consider not only in connection with all new regulatory initiatives but also both in connection with whether current regulation should be reviewed / changed and in the general supervisory approach to regulated firms. We also welcome positive, pro-growth signals from the regulator, for example that sent by Nikhil Rathi in October in his speech “Rising to the occasion on private markets”, which followed constructive engagement by him with a number of private markets firms in the USA.

While more competitive financial services regulation is unlikely to outweigh factors such as tax, employment regulation and market access in attracting financial services business to the UK, overly burdensome regulation can be enough to tip the balance against establishing, or continuing to operate, in the UK.

Limited use of “Brexit freedoms”

There has, since Brexit, been an inadequate effort to consider the areas of regulation that could be reformed or rationalised to facilitate the

competitiveness of UK financial services particularly in the area of wholesale and funds regulation. Partly this has been due to concerns by some to maintain alignment with the EU in what might appear to be the forlorn expectation of market access arrangements being negotiated in the future.

Where the regulators have reviewed existing regulation, they have been not been sufficiently ambitious. By way of example, we note the FCA's proposals for Payment Optionality for Investment Research (in PS24/9). In spite of industry representations, the FCA pursued an overly prescriptive approach contrary to the U.S. and, to the extent currently proposed, the EU. It appears that, on this matter, the FCA gave inadequate consideration to its policy objective of facilitating the UK economy's growth and international competitiveness by failing, at the least, to align our research requirements with those of other major jurisdictions.

In our view, this is becoming an increasingly serious issue as firms (e.g. fund managers) continue to scale up operations in the EEA and less business is routed through the UK than before Brexit.

Uncompetitive regulation / implementation

Often, competitiveness can be negatively impacted when new financial regulation is being introduced or implemented by HM Treasury or the regulators. For instance, HM Treasury's super equivalent implementation of the 5th Money Laundering Directive (with a definition of cryptoasset which went beyond the Directive) made the UK a less attractive place to originate crypto and NFT projects.

We note that the FCA's proposals in CP23/20: Diversity and inclusion in the financial sector, particularly the introduction of target "quotas", would make the UK an outlier compared to other international financial services centres.

Uncooperative approach of the FCA

In our view, the international competitiveness of the UK financial services is not only a function of black letter regulation, but also administrative efficiency and the supervisory approach of the regulators to their regulated firms.

We have seen examples where the FCA has adopted an oppositional approach to its firms (and applicants for authorisation). There is scope for a more helpful cooperative approach from the FCA which can arise when managers are enabled to sensibly exercise administrative discretion.

The more oppositional approach, in the context of how the FCA uses its enforcement tools, has been most publicly in evidence with the FCA's consultation, CP24/2 – Our Enforcement Guide and publicising enforcement investigations, about which we have previously submitted our views to the HoL Committee.

Even where the FCA is not oppositional, it can also inadvertently require firms to devote unnecessary time and cost to regulatory engagement in a manner which serves no useful end. One example was the way that, at the end of last year, it unilaterally revoked the permission of a number of firms for "establishing, operating or winding up a collective investment scheme" and then made them go through a variation of permission procedure to reacquire it; a more constructive approach would have been for it simply to have asked these firms whether they still needed the permission. Another example is that, whilst FCA processing times have improved since the pandemic, there are still too many examples of it mechanically asking and sometimes re-asking several rounds of questions on applications for authorisation, for example, where these seem to reflect a 'tick the box' approach rather than meaningful engagement.

The Financial Ombudsman Service

Given the increasingly activist role of claims management companies, the decisions of the FOS can be existential for businesses. There is an argument for allowing third party businesses which consider that they may be impacted by a decision (or decisions) of the FOS to intervene in the Ombudsman's considerations.

Financial services and the broader economy

There is also a role for the regulators to look more broadly at whether the needs of the UK economy are being met by UK financial services. For instance, we note that many UK businesses have been debanked or find it difficult to source banking services. Regulatory risk aversion of banks appears to be a key factor.

We hope the above feedback will be useful to you. If you would like to discuss any of these comments then we would be happy to do so.

28 November 2024