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By email only

Mr Matthew Hill
Chief Executive
Legal Services Board
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Dear Matthew

Thank you for the opportunity to respond to the LSB consultation on proposed changes to the rules for applications to alter regulatory arrangements.

Our over-arching comment is that the LSB should use this opportunity to significantly simplify its rule change procedure and reduce the volume of information that it expects from the frontline regulators during the rule change process. We do not consider that the current proposals achieve this.

In terms of detail, our main comment is that we disagree with the LSB's proposal to include a requirement that rule change applications must include "any draft guidance or policy that will support the implementation". Our concern about this proposal is based on the observations that:

- As the LSB correctly states at paragraph 23 of the draft Guidance, guidance does not require approval by the LSB:

  Ordinarily, changes to guidance or policy documents that do not impose mandatory requirements will not be considered to be regulatory arrangements and therefore will not require LSB approval. However, there may be circumstances where guidance or policy documents fall within the meaning of an alteration or alterations to regulatory arrangements requiring LSB approval. The focus ought to be on content and intent, rather than what a particular document might be labelled as. This is most often relevant in circumstances where an approved regulator proposes to issue guidance that impose obligations on or in relation to regulated persons that are not underpinned by existing regulatory arrangements – and therefore likely to require approval under the Act before they can have lawful effect.

  The Legal Services Act 2007 provides a safeguard in Schedule 4 paragraph 19(6) which states that if a question arises whether approval is required then it is the LSB who decides. However, we do not consider that this can (or should) be extrapolated to require the submission of guidance or policy (as part of a rule change or otherwise) for prior consideration by the LSB. If, after approving a change to a regulatory arrangements, the LSB subsequently formed the view that a regulator's

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associated guidance or policy might in fact be a regulatory arrangement, then the LSB could take action at that stage.

- Notwithstanding the fact that we disagree with this proposal within the rules change process, there also appears to be a significant risk that the LSB intends to require all guidance to be submitted to it for approval, whether or not the guidance is drafted as part of a rule change. Guidance is a means by which the frontline regulators can respond in targeted and proportionate way to changing market conditions and risks to the regulatory objectives. Any requirement to submit all guidance to the LSB would have a significant chilling effect on regulators' ability to assist registrants quickly on issues that arise in the market(s) they regulate.

- The current process for obtaining an exemption direction is practically indistinguishable from the process that the LSB has put in place for a full rule change. We therefore suggest that this is also an opportunity for the LSB to significantly reduce the quantity of information required for an exemption application so that it becomes a more targeted and proportionate process. In addition, we disagree with the proposal that changes to guidance and/or policy might be included in a general exemption direction. Inherent in this proposal is that all guidance and policies are regulatory arrangements which, as the LSB has set out, they are not. It is therefore not clear how an exemption direction could apply to something that is not a regulatory arrangement.

Yours sincerely

Fran Gillon
Chief Executive