



Join EVIALEBA Monthly Compliance Zoom Meeting;0830 Wednesday 04th November 2020[Virtual Meeting via ZOOM](#)

Meeting ID: 879 5357 0624

i. Matters arising**a. "Virtual Home Office Environment" [aka Home Working]**

- i. SMCR as a tool for HR Risks / Risk Registers / Op Risks / Resilience
 - 1. [PS20/12: Extending implementation deadlines for the Certification Regime and Conduct Rules](#)
 - 2. the Treasury has made a statutory instrument to delay the deadline for solo-regulated firms to have undertaken the first assessment of the fitness and propriety of their Certified staff from 9 December 2020 until 31 March 2021.
- ii. Monitoring Working from Home
 - 1.  [The global home office; what are some of the legal risks; Ruth Stone; Oct2020.pdf](#)
- iii. Cyber Risks ([More than one in four UK cyber-attacks related to Covid-19](#))

b. FCA Cyber Resilience Workshop

- i.  [Slides and Notes from FCA Trade Associations Cyber Insights Group Q2 2020; 20Oct2020.pdf](#)
- ii.  [October 2020 TACIG Slides non cbest themes.pptx](#)
- iii. See attachments and readout

c. Latest FCA Policy Development updates:

- i. No MarketWatch since [#65](#)
- ii. Brexit - [Summary of FCA Trade Association roundtable](#) on 23rd October 2020
 - 1. [Recording](#)
- iii. Nihil Rathi yet to make any opening gsmbits
- iv. [Regulatory Activities and Initiatives Grid & Report; 29Oct2020.pdf](#)
- v. [CP20/20: Our approach to international firms](#)

d. [Joint Statement on UK-U.S. Financial Regulatory Working Group Meeting](#)

- i. The Working Group meeting focused on five key themes:
 - 1. *the economic response to, and potential financial stability impacts of, the COVID-19 crisis,*
 - 2. *international cooperation and 2021 priorities,*
 - 3. *cross-border rules and overseas recognition/equivalence/substituted compliance regimes,*
 - 4. *sustainable finance, and*
 - 5. *financial innovation.*
- ii. At the meeting, UK and U.S. participants discussed the economic response to, and potential financial stability impacts of the COVID-19 crisis. Participants also discussed the outlook for financial regulatory reforms and future priorities, including possible areas for deeper bilateral and multilateral regulatory cooperation to further facilitate safe and efficient financial services activity between U.S. and UK markets, and provided updates on certain aspects of their respective domestic frameworks.
- iii. Participants took stock of ongoing public and private sector efforts in relation to benchmark transition and provided updates on their respective cross-

border rules, overseas recognition, equivalence, and substituted compliance regimes.

- iv. Participants also welcomed the announcement of the signing of a Memorandum of Understanding between the Bank of England and CFTC regarding supervisory cooperation in relation to UK and U.S. central counterparties that operate on a cross-border basis.

- e. **FCA extends deadline for call for input on accessing and using wholesale data;** *On 1 September, the FCA extended the deadline to its open call for input on accessing and using wholesale data until 7 January 2021.*
 - i. It notes that the roundtables that had been due to be held at the end of April have also been postponed. The FCA will confirm timings for the rescheduled roundtables later in the year as well as the timings for the Feedback Statement.
 - ii. The Call for input aims to identify possible issues caused by the changing use and value of data and decide whether the FCA needs to do further work to assess or address harm. [Read more](#)

- f. **FCA SM&CR annual reporting requirement put back by 3 months by statute – except for BA's**

- g. **UK Government**
 - i. [141020_Final_Phase_II_Condoc; HMT.pdf](#)
 - ii. [UK Cabinet Office briefing of MiFID QuickFix by HMT.pdf](#)
 - iii. [Central bank digital currencies_ Drivers, approaches, and technologies.pdf](#)

- h. **ESMA / EBA**
 - i. [esm22-103-1158_keynote_speech_-_verena_ross_-_afme_legal_and_compliance_conference.pdf](#)
 - ii. [ESMA adds UK venues to opinions on third-country trading venues](#)
 - iii. **ESMA issues statement on Brexit impact on MiFID II/MiFIR;** *On 27 October 2020, ESMA issued a public statement on the impact of Brexit on the continued application of MiFID II and MiFIR. The statement provided clarifications in respect of three aspects of MiFID II, namely:*
 - 1. The ESMA opinions on third-country trading venues for the purpose of post trade transparency;
 - 2. The position limits regime and post-trade transparency for OTC transactions; and
 - 3. The C(6) carve out;
 - iv. **ESMA sets out final position on Share Trading Obligation;** The European Securities and Markets Authority (ESMA), the EU's securities markets

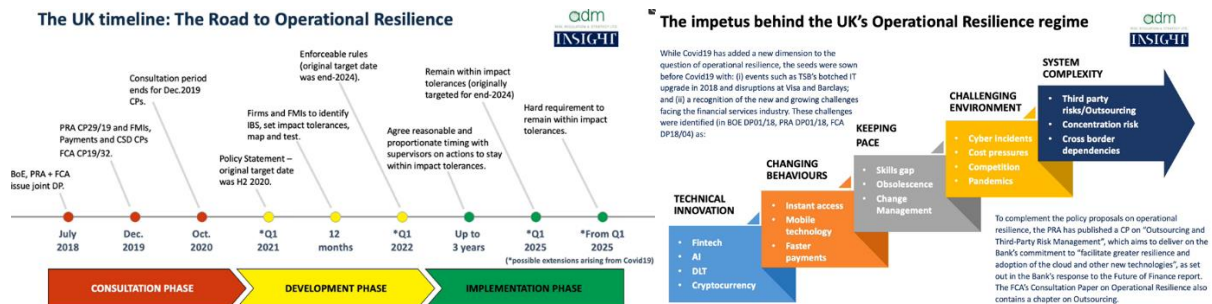
- regulator, has released a public statement that clarifies the application of the European Union's (EU) trading obligation for shares (STO) following the end of the UK's transition from the EU on 31 December 2020. [/bit.ly/31L3zkt](https://bit.ly/31L3zkt)
- v. **EBA launches consultation on revised guidelines on sound remuneration policies;** On 29 October 2020, **EBA** issued a [public consultation](#) on its guidelines on sound remuneration policies. The consultation proposals take into account the amendments introduced by the Fifth Capital Requirements Directive (**CRD V**) in relation to institutions' sound remuneration policies and in particular the requirement that those remuneration policies should be gender neutral

i. Consultation Responses

- i. ACER RTS the only response in October

j. IFPR – IFR

- i. vimeo link – [here](#) – to a (25 minute) recording of a presentation on Building Operational Resilience. [Slides](#):



k. UK MM CoC: PreTrade Name GiveUp for Money Market Brokerage

- i. **Text:** (Point 8.5 of the revised code) - *“Any communication given on general market background should be restricted to information that is effectively aggregated, anonymised, and in such a manner that protects confidential information. On the basis that such information is anonymised and aggregated it is acceptable practise to share information around market colour to ensure that the UK money market retains transparency for participants. Information regarding general market levels may be shared widely, but specific permission with regard to confidentiality must be granted for an intermediary to share market levels in relation to particular participants.”*

l. PTNGU: Following the summer’s FCA interest in US Rule Finalisation ESMA is considering either putting this into the OTF CP due October or to make a Level guideline

- i. Meeting with ESMA in October
- ii. Ongoing Cross border difficulties to US MATt has drawn in all parties

m. AML / KYC

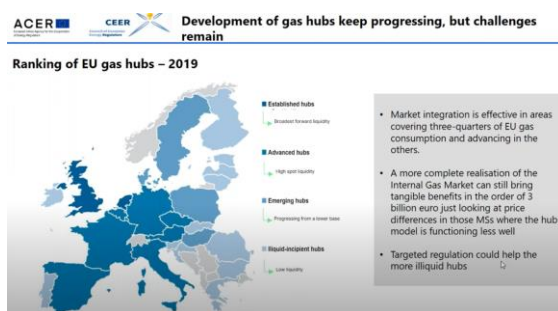
- i. JMLSG Update
- ii. FinCEN ; [pdf](#) [FINTRAIL and Jumi; Ongoing Customer Due Diligence and Remediations; October 2020.pdf](#)
- iii. EU ; [pdf](#) [AFME-EY-Scope-and-Evolution-of-Compliance-2.pdf /](#)
[pdf](#) [AFME-EY-set-out-future-of-compliance-function-within-investment-banks \(1\).pdf](#)
- iv. [pdf](#) [Bribery and money laundering considerations for joint ventures.pdf](#)

n. Market Conduct Fines

- i. [pdf](#) [A&O 6th annual review of FCA & PRA enforcement themes & trends; FCA and PRA; Enforcement themes and trends; 21Oct2020.pdf](#)
- ii. [pdf](#) [FCA fines ARCM £873,118 for breaches of short selling disclosure rules.pdf](#)

o. Energy & ACER

- i. UK Government Update
 - 1. GB-SEM trading arrangements 1 January 2021
 - 2. UK-EU Future Relationship Negotiations update
- ii. [ACER Annual Report](#): *Whilst gas wholesale markets for the most part function efficiently, challenges remain for both electricity and retail energy markets across Europe*
- iii. [ACER/CEER Market Monitoring Report 2019](#)



p. Environmental, Social, Governance (ESG)

- i. EU Regulation on Firm ESG Disclosures
- ii. CSFI: *ESG priorities beyond the pandemic*, form 23 October. with Leon Kamhi (Federated Hermes), Catherine Howarth (ShareAction) and Jonas Rooze (BloombergNEF). You can watch this [here](#).
- iii. CSFI; *ESG ETFs: why these 'themed' funds are catching investors' imaginations'*: with Deborah Fuhr (EFTGI), Cosmo Elms (Legal and General Investment Management) and Billy Nauman (Financial Times). [Click Here to Watch](#);

q. BOE

- i. [Code circulation 16th October 2020.pdf](#)
- ii. [money-markets-committee-minutes-september-2020.pdf](#)
- iii. The FCA would like a call with the brokers most concerned about the need to add the section to the Code about brokers sharing market levels of payers to their clients (Chap 1 section 8.5). The questions they would like to cover are:
 1. What are the compliance concerns about the Code and the practice?
 2. What information is actually being shared (is it anonymised)?
 3. Why is sharing of market axes seen as market colour rather than confidential information (market colour is providing a 'view' on the market whilst the market axes are a specific list of rates for a bank)?
 4. What are the arrangements for the bank providing permission to share market axes?
 5. What are the arrangements for the receiving parties handling market axes as confidential information?
 6. What are the arrangements for receiving parties who do not want to receive market axes?
 7. How else does the broker use the market axes as confidential information provided by the bank?
 8. Could we have a call with you and a couple of the broking firms (especially BGC) on the above? I'll ask my secretary to get in touch to arrange something.

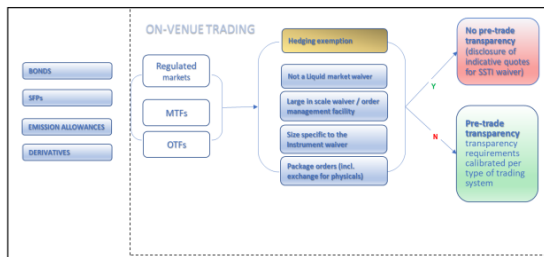
- r. [FSB; report on the use of supervisory \(SupTech\) and regulatory \(RegTech\) technology by FSB members and regulated institution; 09Oct2020; P091020.pdf](#)

ii. Brexit MA.

- a. Brexit - [Summary of FCA Trade Association roundtable](#) on 23rd October 2020
 - i. [Recording](#)
- b. [Note of Meeting with UK MIS on Brexit Negotiations State of Play & Policy Wishlists 1300 Tuesday 20th October 2020.pdf](#)
- c. [HMT response to HL EU Services Sub-Committee on post-Brexit relationship in financial services; 08Oct2020.pdf](#)
- d. [eu_exit_remit_comms_-_oct_20_update_0.pdf](#)
- e. [Stock exchanges prepare to activate their Brexit contingency plans - Financial Times.pdf](#)
- f. [Post-Brexit-the-way-ahead-in-international-capital-markets-081020.pdf](#)
- g. [london-recharged-our-vision-for-london-in-2025.pdf](#)

iii. MiFID2.2/ MiFIR

FIGURE 1 THE PRE-TRADE TRANSPARENCY REGIME FOR TRADING VENUES



- a. [Open Access; Reply Letter to EVIA from John Berrigan; 14Oct2020.pdf](#)
- b. [Executive-Summary-The-Study-on-the-Creation-of-an-EU-Consolidated-Tape.pdf](#)
- c. [FIX Trading Community - CT for FI Session 8.pdf](#)
- d. [The MiFID Review - a 'stocktake' on recent publications impacting wholesale financial markets participants - Allen & Overy.pdf](#)

e. **EFET Questions on Business Org**

- i. *Arranging Blocks onto a UK RM*
- ii. *Ancillary Activities Exemption:*
- iii. *Size of UK situated trading portal entity*
- iv. *Swaps / Options*
- v. *WEP Migration Dates*
- vi. *Liquidity Fragmentation*
- vii. *Roadmap*
- viii. *Country by Country Approach to reverse solicitation*
- ix. *Testing Period*

- f. ESMA published a [Call for Evidence \(CfE\)](#) in the context of its intention to review [Commission Delegated Regulation \(EU\) No 2017/587 \(RTS 1\)](#) and [Commission Delegated Regulation \(EU\) No 2017/583 \(RTS 2\)](#) starting from Q4 2020-Q1 2021.
- g. ESMA consults on MiFIR reference data and transaction reporting;
- h. ESMA Report and Recommendations on MiFIR Transparency;
- i. ESMA publishes draft rules for third-country firms under the new MiFIR and MiFID II regimes
- j. [ESMA working paper on DVC mechanism and impact on EU equity markets](#)
- k. European Commission proposes legislation on markets in crypto-assets

iv. **CoronaVirus MA:** *Regulatory interventions & round tables, Home_Office Protocols, Risk Registers and operational resilience*

- a. [Market abuse in a time of coronavirus; Speech by Julia Hoggett, Director, Market Oversight - UK FCA; 12Oct2020.pdf](#)
- b. [GFXC Report; operational-challenges-facing-fx-industry-covid19; Sept2020.pdf](#)
- c. No Specific FCA Coordination Calls over the last month
- d. Corp London - Coordination Call on 21st September

v. Benchmarks and LiBOR Topics

- a. [ClarusFT; SONIA DAY 2 – LIVE BLOG; Chris Barnes October 26, 2020.pdf](#)
- b. The Fallback supplement is here (or not!); [October 25, 2020](#); *The new fallback supplement has been published by ISDA ([Supplement 70 in Supplements to the 2006 ISDA Definitions](#)). It is 107 pages long! It is very long but does not contain any information about the fallback mechanism itself!! Moreover the fallback mechanism can be changed at the caprice of a third party (or actually a fourth party) and it will cost you USD 20,000 or more a year!!! Even after reading it, I still don't understand what the fallback mechanism is!!!!*
- c. [ISDA launches Ibor fallbacks supplement and protocol](#); *the Ibor fallbacks supplement and protocol on Friday with 257 market participants having adhered to the protocol during the preceding escrow period. "With the fallbacks in place, derivatives market participants will be able get on with transitioning their IBOR exposures with confidence that there is a robust back-up in case of need," said ISDA chief executive Scott O'Malia. [Futures & Options World](#), [Bloomberg](#), [Regulation Asia](#), [International Swaps and Derivatives Association](#)*

vi. SFTR

- a. [ICMA-SFTR-recommendations-2020-10-29-public-TC.pdf](#)

vii. US, No-Action, Interpretative Letters, Other Written Communications, and Advisories

- a. **CFTC's Enforcement Division Issues Staff Guidance on Recognition of Self-Reporting, Cooperation, and Remediation**; *The CFTC today announced the Division of Enforcement (DOE) issued new guidance for enforcement staff when recommending the recognition of a respondent's cooperation, self-reporting, or remediation in CFTC enforcement orders. The guidance, which will be published in the agency's Enforcement Manual, follows recent updates of the manual's civil monetary penalty guidance and compliance program evaluation guidance. [See CFTC Press Release Nos. 8165-20 and 8235-20] [/bit.ly/31RHxww](#)*
- b. **NEW BLOCK TRADING RULES FOR DERIVATIVES**; [Chris Barnes](#) September 30, 2020
 - i. The [block](#) threshold for Swaps, and all other [OTC](#) derivatives, will increase from 50% to 75% of notional.
 - ii. This will substantially increase transparency in the [SDR](#) data.
 - iii. Block Trades (and capped notionals) will continue to be reported in 15 minutes, with no change to the delay granted to these large trades.
 - iv. We have to wait 30 months for these changes to come into effect.
 - v. The CFTC
 - vi. Two week's ago, at [their 17th September meeting](#), the [CFTC](#) rejected a change to the current block trading deferral period for swap trades. Large swap trades will continue to be publicly reported 15 minutes after execution. The proposed rule to extend this period to 48 hours was rejected.

viii. Compliance Horizon Topics: Table

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Compliance Horizon Topics:	Topics	Comments
Venue Compliance	MiFID2/R Refit Process [ESMA / NCAs]	SwapsInfo-03-of-2020-and-Year-to-September-30-2020-Review-Full-Report.pdf AFM opinion memo of 28 th Aug 2020 OTF CP Published ESMA Call for Evidence on MiFIR Transparency ESMA Feedback on Transparency FISMA Crypto Proposals ESMA MAR Report 6. ESMA CP on Third Country Trading Venues ESMA working paper on DVC mechanism and impact on EU equity markets PTNGU ESMA Updates Q&A on MIFIR Data Reporting Money Market Perimeter FX Perimeter ESMA Feedback on Third Country Venues List (TOTV)
	MiFID2.2 Review [FISMA]	EC Published MiFID QuickFix; ECON opinion on MiFid2 Review of October 2020
	Reference Data: FIRDs/ FITRs/	ESMA Call for Evidence ESMA CP on Reporting UK FITRs & FIRDs
	ANNA-DSB	Product Committee TAC Committee [See Oct 2020 Update meeting]
	Reporting/ Reference Data:	UK ESMA CfE - Sept 2020 ESMA Report back to FISMA - Sept 2020 ESMA CP on Data Reporting - Sept 2020
	EMIR, Margin and Post-Trade	EMIR Best Practices - EMIR TS Consultation Responses

		<p>IM Phases 5 and 6</p> <ul style="list-style-type: none"> • The veterans of Phases 1-4 need no reminding of the challenges represented by IM compliance and, with the exception of the Phase 1 custodian-onboarding bottleneck, the introductory phases of IM compliance have been relatively smooth going. • Despite Regulatory acknowledgement and assistance via bifurcation and delay, the remaining two phases constitute a hugely significant, if not historic challenge. IM 5 and 6 differ from their antecedents primarily by the vast volume increase- 314 in-scope entities for Phase 5 and a further 775 for Phase 6. This amounts respectively to 3,616 and 5,443 counterparty relationships that require de novo documentation. The volume of Phase 5 alone represents a multiple of all other phases to date-combined. • ISDA Create and online portals into the major custodians will introduce some marginal efficiencies, but compliance remains a complex task of negotiating and harmonising multiple documents. • The typical new entrant IM “start to finish” time is 18 months, volume multiplication will not compress this timeline. Given the lack of experienced IM resource- 2021 should be the year of IM, regardless of what phase you expect to be. • Cancellation of Phase 6, or further delay of either phase, is overwhelmingly unlikely.
	<p>CSDR Implementation</p>	<p>Delayed first by a lack of regulatory coordination, then by a one year Coronavirus delay, market participants now have at least a chance to comply.</p> <p>The likely 1 February 2022 deadline is outside this note’s 2021 documentation doom remit, but will impact resources earlier. Although largely operational, requiring systems upgrade and testing to avoid settlement failure and subsequent penalties and buy-ins; the settlement discipline regime of the CSDR (“SDR”) is also a significant documentation challenge. This is particularly the case for custodians- the regulation requiring bilateral amendment across the board of their clients.</p> <p>While a typical financial firm will only face a limited number of custodians, the SDR imposes an operational burden and another amendment straw on the 2021 camel’s back. While the latest delay has enabled the UK to kick compulsory compliance into the post-Brexit wilderness, the regulation’s extensive extra-</p>

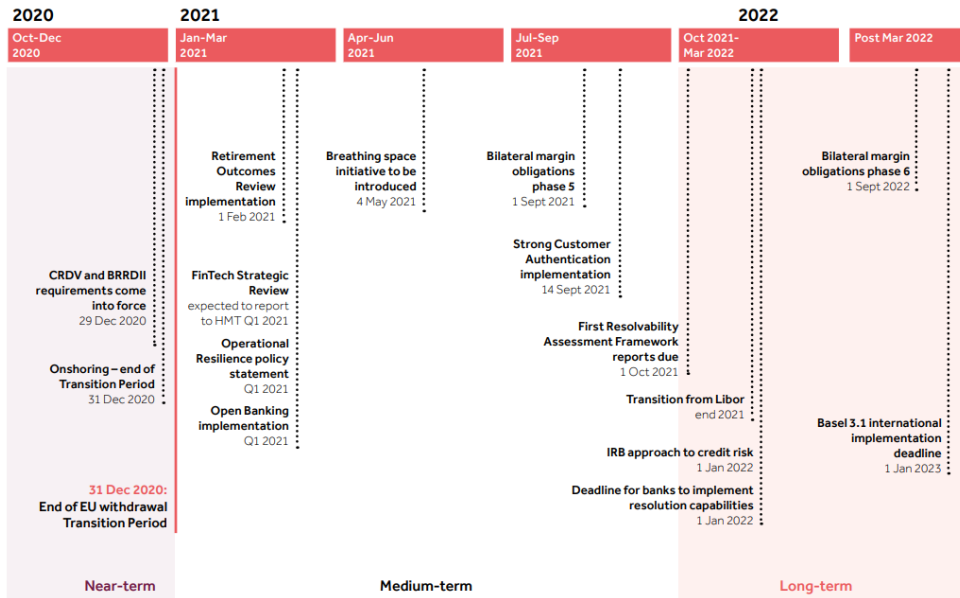
		territorial effect will compel compliance, largely regardless of location.
	SFTR Implementation	ICMA Weekly Updates No reported complications from members / TVs
	CFTC	Rulemaking Finalisations Overseas TV List Updated Foreign Swap Dealer Exemptions Parts 43, 45, 49 Rules now adopted
	AML_KYC Subgroup	JMLSG Updates (Guidance, Crypto) Draft EVIA/LEBA letter to Client Associations re Onboarding
	ACER Topics	<p>LEBA Speaking at and ACER invites to, the Energy Market Integrity and Transparency Forum 2020; opens today registration for the IV ACER Energy Market Integrity and Transparency Forum, which will take place as a virtual meeting on 9 October 2020.</p> <ul style="list-style-type: none"> The Forum's theme is "REMIT – safeguarding the energy market in changing times and beyond". The morning sessions will focus on various policy initiatives impacting wholesale energy trading, consequences of COVID-19 measures and latest fines and cases. In the afternoon the focus will be on market trends and outlook and "REMIT beyond: The international dimension". <p>TRUM Revisions (published July with more to come in October).</p> <p>Fines</p> <p>ACER - New REMIT Quarterly published; <i>ACER issued the latest "REMIT Quarterly" newsletter on Friday Aug 17, which can be found here. Topics covered include:</i></p> <ul style="list-style-type: none"> <i>Data quality – Work that ACER and National Regulatory Authorities (NRAs) are carrying out to improve data quality. This section also announces that:</i> <ul style="list-style-type: none"> A new "letter on data quality" will soon be published. They are going to pay attention will be paid to the application of the new TRUM. There will be a supervisory focus on life-cycle events.

		<ul style="list-style-type: none"> • <i>Fees</i> – Fees will soon be levied on RRM's which will be passed on to market participants. The recent consultation can be found here. • <i>Completeness/delivery profiles</i> – ACER have been checking for consistency in reporting between total energy reported and that contained within the delivery profile. • <i>Negative prices</i> – An article is included starting on page 3 looking at negative prices and how they may lead to market abuse.
Off Venue Compliance	FX Spot:	<p>ESMA MAR Report; 30 Sept 2020 – further review mandated on Spot perimeter</p> <p>FSB Ongoing Code of Conduct Review Q3 2020</p> <p>FX Platform SubAssoc</p>
	Money Markets: Code of Conduct 3 year Review	<p>Restarting – now into 4 workstreams</p> <p>a. Background, key principles, explanatory notes</p> <p>b. Unsecured markets</p> <p>c. Repo markets</p> <p>d. Securities lending markets</p> <p><i>“Any communication given on general market background should be restricted to information that is effectively aggregated, anonymised, and in such a manner that protects confidential information. On the basis that such information is anonymised and aggregated it is acceptable practise to share information around market colour to ensure that the UK money market retains transparency for participants. Information regarding general market levels may be shared widely, <u>but specific permission with regard to confidentiality must be granted for an intermediary to share market levels in relation to particular participants.</u>”</i></p>
	Role of Agency	<p>PFOF Quiet since Q1 2020</p> <p>29th July Dear CEO Letter</p> <p>ESMA OTF Review – noting MiFID2.2 inducements questions</p>
	Exchange Block Rules	<p>CME Block Rule revisions [Name Passing]</p> <p>FIA thematic guidance</p>
	Benchmarks	<p>The ISDA Fallbacks Protocol is now open for adherence, and has got off to a promising start, with 271 adherents as of</p>

		<p>writing. While the Protocol and Supplement are efficient mechanisms to amend derivative contract fallbacks, reversion to fallback is not the “officially” approved method of amendment.</p> <p>Applying to a wide range of Master and Credit Support Agreements, the Protocol’s coverage is extensive, if not universally supported by accompanying legal opinion. Though it seems likely that this somewhat convoluted method will suffice for adherents’ vanilla legacy derivative portfolios, the Protocol will be of no assistance for a range of more “complex” product types such as swaptions, or packages where the hedge must entirely accord with the underlying.</p> <p>Equally, there is no Protocol for loans or bonds; amendment for each broad product class will require careful bilateral handling, being fraught with the potential for litigation. While some vague hope of respite, in the form of a continued publication of a “synthetic” LIBOR, has been offered by the FCA in respect “difficult” legacy transactions, Regulators have been univocal in their insistence that end’ 2021 will mark the end of the IBORs.</p> <p>The publication of the Protocol and Supplement mark the beginning of the largest repapering exercise yet undertaken by the market.</p>
	Commodities Topics	<p>FMSB Code of Conduct restarting this week</p> <ul style="list-style-type: none"> • Energy Markets • Metals Markets
	CBDCs, Crypto-Assets and Stablecoins	<p>EU FISMA CP on cyber framework Oct 2020 and Pilot Project</p> <p>CBDC Work ongoing</p> <p>China Digital Currency</p> <p>Libra Rejuvenation as a CBDC Basket</p>
Conduct / People	Work from Home Office Supervision	<p>COVID-19: FCA and PRA update information on key workers and working from home; <i>On 24 September 2020, the FCA updated its web page on ‘Key workers in financial services’.</i></p>
	Fines /investigations	Reopening – See JPM etc
	Broker Gifts and Entertainment	Paused (?)

	FMSB	<p>Likely forward EVIA compliance session with FMSB and FCA Wholesale supervision to unpack all 6 FMSB conduct spotlights written by Rupak Ghose</p> <p>Codes of Conduct Development</p> <ul style="list-style-type: none"> • Energy Markets • Metals Markets
	Training / Apprenticeships	<p>Reopening of consultation</p> <p>https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work/apprenticeship-levy-how-it-will-work</p> <ul style="list-style-type: none"> • Monitoring FICC markets and the impact of machine learning • Examining remote working risks in FICC markets • LIBOR transition: Case studies for navigating conduct risk • The critical role of data management in the financial system • Emerging themes and challenges in algorithmic trading and machine learning • Measuring execution quality in FICC markets
Operational Risk / Prudential	IFR Level 2	<p>EBA K-FACTOR ITS/RTS - ongoing</p> <p>EBA Consultation (closed)</p> <p>FCA Consultation (closed)</p> <p>KPMG [Remuneration workshop planned]</p>
	Pillar 2 Add-ons	<p>FCA Thematic work on Broker Compensation Q4</p> <p>FCA CP on resilience (closed)</p> <p>IOSCO work on Op Res</p>
RegTech, FinTech & CyberCrime Topics		<p>EU FISMA CP on cyber framework Oct 2020 and Pilot Project</p> <p>FCA Reg Tech Committee initiated</p> <p>JWG Reg Tech Council</p>
EVIA/LEBA Weekly Roundups for October 2020		<ol style="list-style-type: none"> 1. EVIA Weekly News; Week 40, 05th October 2020 to 10th October 2020 2. Weekly update on Key Regulatory Topics (EVIA Weekly News; (Week 41, 12th October 2020 to 17th October 2020) 3. Weekly update on Key Regulatory Topics (Week 42, 19th October 2020 to 24th October 2020)

4. [Weekly update on Key Regulatory Topics \(Week 43, 26th October 2020 to 31st October 2020\)](#)



Highlights for the 2021 Regulatory calendar

- **Benchmark Reform**
- The ISDA Fallbacks [Protocol](#) is now open for adherence, and has got off to a promising start, with [271 adherents](#) as of writing. While the Protocol and Supplement are [efficient mechanisms](#) to amend derivative contract fallbacks, reversion to fallback is not the “officially” approved method of amendment. Applying to a wide range of Master and Credit Support Agreements, the Protocol’s coverage is extensive, if not universally supported by accompanying legal opinion. Though it seems likely that this somewhat convoluted method will suffice for adherents’ vanilla legacy derivative portfolios, the Protocol will be of no assistance for a range of more “complex” product types such as swaptions, or packages where the hedge must entirely accord with the underlying. Equally, there is no Protocol for loans or bonds; amendment for each broad product class will require careful bilateral handling, being fraught with the potential for litigation. While some vague hope of respite, in the form of a continued publication of a “synthetic” LIBOR, has been offered by the FCA in respect “difficult” legacy transactions, Regulators have been univocal in their insistence that end’ 2021 will mark the end of the IBORs. The publication of the Protocol and Supplement mark the beginning of the largest repapering exercise yet undertaken by the market.
- **IM Phases 5 and 6**
- The veterans of Phases 1-4 need no reminding of the challenges represented by IM compliance and, with the exception of the Phase 1 custodian-onboarding bottleneck, the introductory phases of IM compliance have been relatively smooth going. Despite

Regulatory acknowledgement and assistance via bifurcation and delay, the remaining two phases constitute a hugely significant, if not historic challenge. IM 5 and 6 differ from their antecedents primarily by the vast volume increase- 314 in-scope entities for Phase 5 and a further 775 for Phase 6. This amounts respectively to 3,616 and 5,443 counterparty relationships that require de novo documentation. The volume of Phase 5 alone represents a multiple of all other phases to date- combined. ISDA Create and online portals into the major custodians will introduce some marginal efficiencies, but compliance remains a complex task of negotiating and harmonising multiple documents. The typical new entrant IM "start to finish" time is 18 months, volume multiplication will not compress this timeline. Given the lack of experienced IM resource- 2021 should be the year of IM, regardless of what phase you expect to be. Cancellation of Phase 6, or further delay of either phase, is overwhelmingly unlikely.

- **CSDR**
- Delayed first by a lack of regulatory coordination, then by a one year Coronavirus delay, market participants now have at least a chance to comply. The [likely](#) 1 February 2022 deadline is outside this note's 2021 documentation doom remit, but will impact resources earlier. Although largely operational, requiring systems upgrade and testing to avoid settlement failure and subsequent penalties and buy-ins; the [settlement discipline regime of the CSDR](#) ("SDR") is also a significant documentation challenge. This is particularly the case for custodians- the regulation requiring bilateral amendment across the board of their clients. While a typical financial firm will only face a limited number of custodians, the SDR imposes an operational burden and another amendment straw on the 2021 camel's back. While the latest delay has enabled the UK to kick compulsory compliance into the post-Brexit wilderness, the regulation's extensive extra-territorial effect will compel compliance, largely regardless of location.
- **BRRD 2**
- The second Bank Recovery Resolution Directive ("BRRD 2") and the accompanying second Single Resolution Mechanism Regulation, are due to be transposed into national law by 28 December 2020- temptingly close to the final Brexit date. BRRD 2 introduces an exemption where it would be legally/otherwise impracticable to include a contractual recognition of bail-in, early intervention powers for regulators and a requirement for contractual recognition of resolution stay powers- each and all will require bilateral amendment. While the BoE has indicated that UK-specific compliance will not be expected, forthcoming deadlines will apply in respect of EU counterparties with attendant repapering obligations.
- **Brexit**
- While we are hesitant to make any predictions about Brexit, it is clear that whatever last-minute FTA is or is not cobbled together, the parties have run out of time for a comprehensive agreement in respect of financial services. With the exception of "too big not to exempt" LCH, ESMA's grants of equivalence are now likely to take place post-Brexit, and potentially be (even more) subject to political machination. While both UK and EU firms have prepared by setting up complementary entities and novating contracts across as applicable, a disorderly financial Brexit poses a number of problems for 2021. A typical example is the confusion in respect of cross-border trade lifecycle events, UK entities will potentially require authorisation by national regulators, such authorisation varying by product and activity. While, not a purely documentation issue, the Brexit aftermath will add a number of stressors to an already manic 2021 legal calendar.
- **Summary**

- LIBOR's demise and IM Phase 5 would each make for a landmark year in the documentation world, in combination they represent a unique challenge. The nearest comparable is the market-wide VM repapering exercise of 2017, during which the market largely failed to comply by the deadline. The added elements of CSDR, BRRD 2 repapering, Brexit unknowns and the additional operational burdens of legislation such as the Shareholder Rights Directive 2, promise to stretch resources to the utmost. To paraphrase Donald Rumsfeld's now-immortal miscommunication, these are the "known knowns" of 2021. If 2020 has taught us anything, it should be the wisdom of having capacity enough to deal with a least a degree of the "unknown unknowns".

Derivatives Compliance Calendar		
2020		
Expected Q4 2020	US	Expected effective date for the FDIC, Federal Reserve, FCA, OCC and FHFA swap margin rules exempting interaffiliate swaps from initial margin requirements and allowing swaps to maintain legacy status when amended to replace an IBOR.
Q4 2020	US	US Effective date for SEC and CFTC Customer Margin for Security Futures Rules, available at: https://www.sec.gov/rules/final/2020/34-90244.pdf (awaiting publication in Federal Register).
November 1, 2020	US	Compliance date for Post-Trade Name Give-Up on Swap Execution Facilities for swaps subject to the trade execution requirement.
November 5, 2020	US	Extension of SEC relief of temporary exemptions from Section 8[1] of the Exchange Act and from Exchange Act rules 8c-1, 15c2-1, 10b-16, 15c2-5, and 15a-1 [2] in connection with the revision of the definition of "security" to encompass security-based swaps. (See 85 Fed. Reg. 2763-2766 (January 16, 2020)).
November 13, 2020	US	Effective date: CFTC Rules for Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants [Awaiting publication in Federal Register]
November 15, 2020	US	US Expiration of an extension of relief for the following package transactions (CFTC Letter No. 17-55):
	US	• MAT/New Issuance Bond • MAT/Futures • MAT/Non-MAT (Uncleared) • MAT/Non-Swap Instruments • MAT/Non-CFTC Swap
November 15, 2020	US	Expiration of an extension of relief to SEFs in connection with the execution of block trades (CFTC Letter No. 17-60).
November 16, 2020	US	Effective: CFTC Capital Requirements of Swap Dealers and Major Swap Participants (See 85 Fed. Reg. 57462 (September 15, 2020), available at: https://www.federalregister.gov/documents/2020/09/15/2020-16492/capital-requirements-of-swapdealers-and-major-swap-participants).
November 20, 2020	US	Effective: CFTC Rule titled Registration With Alternative Compliance for Non-US Derivatives Clearing Organizations (See 85 Fed. Reg. 67160-67200 (October 21 2020)).

November 30, 2020	US	Expiration of relief to SEF CCOs providing them with 90 calendar days after the end of a SEF's fiscal year to concurrently file the Annual Compliance Report and fourth quarter financial report (CFTC Letter No. 17-61).
December 1, 2020	US	Expiration of an extension of relief from Parts 45 and 46 for swaps with non-US counterparties that are not guaranteed affiliates, or conduit affiliates, of a US person (CFTC Letter No. 17-64) (previously No. 16-79). Applies to CFTC-registered SDs and MSPs that are non-US persons established under the laws of Australia, Canada, the EU, Japan or Switzerland, and that are not part of an affiliated group in which the ultimate parent entity is a US: SD, MSP, bank, financial holding company or bank holding company.
December 7, 2020	HK	AIDG 1.7 becomes effective for HKTR reporting.
December 20, 2020	EU	The three-year derogation from non-cleared margin rules for intragroup transactions concerning entities located in third-country jurisdictions where no EMIR Article 13(2) equivalence determination is in place is extended until December 20, 2020. Following this date, in the absence of an extension, intragroup transactions in derivatives in scope of the non-cleared margin rules, between EU entities and entities located in non-equivalent third-countries, would need to be margined in compliance with the Margin RTS (Commission Delegated Regulation (EU) 2016/2251).
December 20, 2020	EU	The first three-year derogation from the clearing obligation for intragroup transactions concerning entities located in third-country jurisdictions where no EMIR Article 13(2) equivalence determination is in place expired on December 21, 2018. On October 31, 2018, ESMA published a statement to ask national competent authorities to not prioritize their supervisory actions towards group entities that benefit from the derogation for intragroup transactions meeting certain conditions on and after December 21, 2018, pending adoption of a Commission Delegated Regulation extending the derogation. In April 2019, ESMA has proposed extending the derogation until December 21, 2020. On April 29, 2019, Commission Delegated Regulation 2019/667, amending Delegated Regulation 2015/2205 was published in the Official Journal of the European Union, extending the derogation from the clearing obligation for intragroup transactions concerning third country affiliates until December 21, 2020. Following December 21, 2020, in the absence of another extension, intragroup transactions in G4 currency interest rate swaps or credit derivatives (where relevant) subject to the clearing obligation, between EU entities and entities located in non-equivalent third-countries, would need to be cleared through a CCP, in compliance with the relevant Clearing RTS.
December 30, 2020	EU	The European Supervisory Authorities (ESMA, EBA, EIOPA) shall submit the draft Regulatory Technical Standard (RTS) specifying the details of the content and presentation of information in relation to the principle of 'do no significantly harm' under the EU Taxonomy Regulation (Article 8).

December 30, 2020	EU	The European Supervisory Authorities (ESMA, EBA, EIOPA) shall submit five Regulatory Technical Standard (RTS) to specify requirements under the sustainability-related disclosures in the financial sector (SFDR), in particular: <ul style="list-style-type: none"> - RTS on website disclosure of adverse environmental sustainability impacts at entity level (Article 4); - RTS on pre-contractual disclosure for products promoting environmental and social characteristics (Article 8); - RTS on pre-contractual disclosure for products with sustainable investment objectives (Article 9); - RTS on promotion of environmental or social characteristics and sustainable investment on websites (Article 10); and - RTS on disclosure in periodic reports (Article 11).
December 31, 2020	Global	The Financial Stability Board (FSB) recommends that regulators implement the CPMI-IOSCO Unique Transaction Identifier (UTI) Technical Guidance to take effect no later than December 31, 2020.
December 31, 2020	US	Expiration of an extension of relief to Eligible Affiliate Counterparties who do not claim the InterAffiliate Exemption from the trade execution requirement (CFTC Letter No. 17-67) (previously No. 16-80).
December 31, 2020	US	Expiration of relief to Eligible Affiliate Counterparties from the Outward-Facing Swaps Condition in the Inter-Affiliate Exemption (CFTC Letter No. 17-66) (previously No. 16-81).
December 31, 2020	EU	Date by which the European Commission has to publish a legislative proposal on the capital requirement regime for commodity trading firms.
December 31, 2020	EU	The European Commission shall adopt delegated acts to specify the technical screening criteria with respect to 'climate change mitigation' and 'climate change adaptation', with a view to ensuring its application from January 1, 2022.
December 31, 2020	UK	End of UK-EU transition period.
Q1 & Q2 2021	EU	As a result of the COVID-19 crisis, the European Commission will is now planning to publish its next banking legislative proposal (CRR III) in Q1 2021. The CRR III will transpose the market risk standards (FRTB) as a binding capital constraint, the output floor, the revised credit valuation adjustment framework, alongside operational and credit risk framework, amongst others. The proposal will also take into consideration the impact of the COVID-19 crisis on the EU banking sector
1H 2021	India	Basel III: Expected SA-CCR implementation.
1H 2021	India	Basel III: Expected implementation of standards for the capitalization of banks' exposures to CCPs.
January 1, 2021	US	Compliance date for FDIC, Fed, OCC, SEC, CFTC Final Rule on Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds (See 84 Fed. Reg. 61974-62277 (November 14, 2019)).
January 1, 2021	EU	The European Commission shall adopt a delegated act, identifying sectors to be excluded from the methodology of Paris-aligned benchmarks under the European Benchmarks Regulation (BMR).
January 1, 2021	Australia	Expected commencement of revised Prudential Standard APS 111 Capital Adequacy: Measurement of Capital, which establishes the criteria for ADIs' regulatory capital requirements.

January 1, 2021	HK	Effective date of the revised Financial Services Providers (FSP) List under the clearing obligation.
January 1, 2021	EU	In the context of EMIR 2.2, ESMA shall submit a draft RTS specifying the conditions under which the Union currencies that are considered as the most relevant (driving representation of central banks in the college) and the details of the written agreement between college members (EMIR article 18 (6)).
January 2, 2021	EU	In the context of EMIR 2.2, ESMA shall submit a draft RTS develop draft regulatory technical standards specifying the conditions under which changes to a CCP's models and parameters are significant (EMIR article 49 (5)).
January 2, 2021	EU	The three-year derogation from margin rules in respect of non-centrally cleared over-the-counter derivatives which are single-stock equity options or index option where no EMIR Article 13(2) equivalence determination is in place is extended until January 4, 2021. Following this date, in the absence of an extension, equity option transactions will be in scope of the non-cleared margin rules in compliance with the Margin RTS (Commission Delegated Regulation (EU) 2016/2251).
January 2, 2021	EU	In the context of EMIR 2.2, ESMA has to provide a draft RTS on conditions under which additional services of a CCP require a new authorization and also specifying the procedure for consulting the college established in accordance with Article 18 on whether or not those conditions are met (EMIR 2.2 article 1 (2)).
January 15, 2021	US	<p>Expiry of relief for certain members of DCMs and SEFs from time stamp requirements to facilitate separation of personnel in response to the COVID-19 pandemic (See CFTC Letter No. 20-02)</p> <p>Expiry of relief for FCMs and Introducing Brokers to facilitate physical separation of personnel in response to the COVID-19 pandemic (See CFTC Letter No. 20-03)</p> <p>Expiry of relief for Floor Brokers to facilitate physical separation of personnel in response to the COVID 19 pandemic (See CFTC Letter No. 20-04)</p> <p>Expiry of relief for RFEDs from recording, time stamp requirements due to COVID 19 pandemic (See CFTC letter No. 20-05)</p> <p>Expiry of relief for Swap Dealers from recording, time stamp, requirements due to COVID-19 pandemic (See CFTC Letter No. 20-06)</p> <p>Expiry of relief for SEFs from recording of oral communications, audit trail, and recordkeeping requirements due to COVID-19 pandemic (See CFTC Letter No. 20-07, 20-08)</p> <p>Expiry of relief for DCMs from audit trail and related requirements due to COVID-19 pandemic (See CFTC Letter No. 20-09)</p> <p>Expiry of relief for Insured Depository Institutions from the requirement to include certain swaps when calculating if it exceeds the registration threshold for MSPs, due to COVID-19 pandemic (See CFTC Letter No. 20-10)</p> <p>For extension of this relief see CFTC NAL 20-26</p>

Topic: EVIA/LEBA 04th November Monthly Compliance Meeting via Zoom

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+44 203 051 2874 United Kingdom

Australia +61 2 8015 6011

Austria +43 120 609 3072

Belgium +32 1579 5132

Denmark +45 32 71 31 57

France +33 1 7037 9729

Germany +49 69 3807 9883

Ireland +353 1 653 3898

Netherlands +31 20 241 0288

Spain +34 91 787 0058

Switzerland +41 31 528 09 88

United States of America +1 646 558 8656(New York)

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EVIA

Warnford Court
29 Throgmorton Street
London, EC2N 2AT

evia@evia.org.uk
www.evia.org.uk
+44 (0)207 947 4900

LEBA

Warnford Court
29 Throgmorton Street
London, EC2N 2AT

leba@leba.org.uk
www.leba.org.uk
+44 (0)207 947 4900