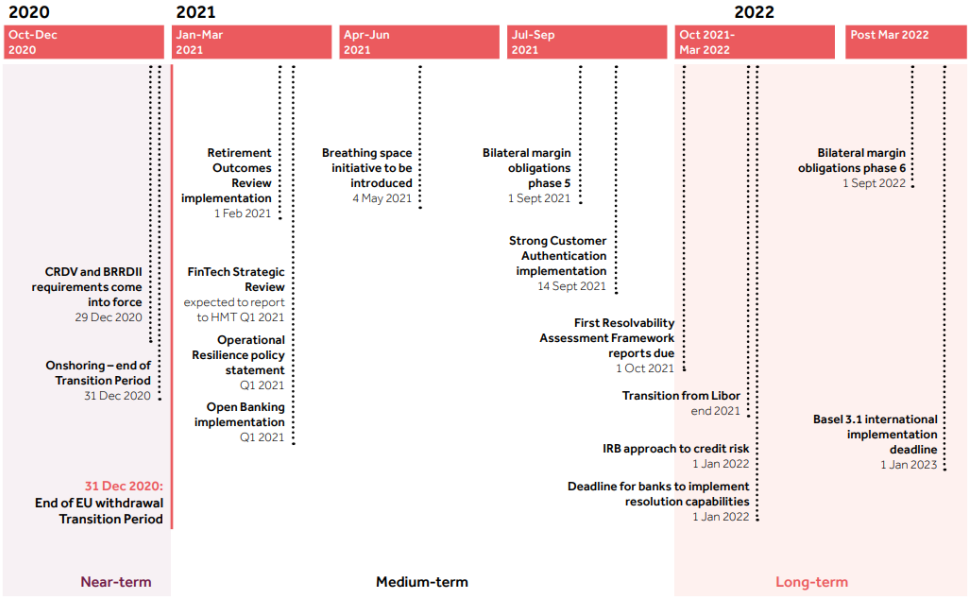
EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

EVIA LEBA Monthly Compliance Meeting

0830 Wednesday 07th October 2020

Virtual Meeting via ZOOM



i. Matters arising

a. ***Latest FCA Policy Development update;*** *On 11 September 2020, the FCA published its latest Policy Development update. The Policy Development update provides information on recent and upcoming FCA publications but should not be regarded as comprehensive. In terms of upcoming FCA publications, these include:*

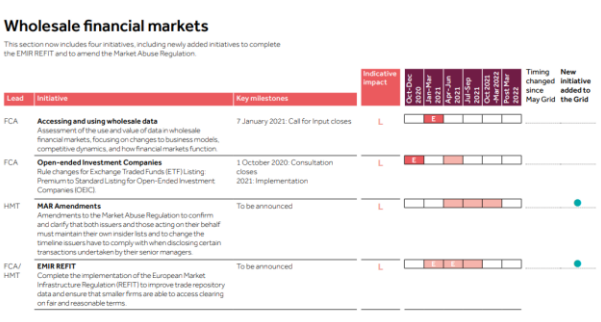
i. ***FCA Multi Firm Review: Wholesale Broker Remunerations H2 2020 & FCA planned Consultation Paper: Our approach to market integrity and wholesale markets***

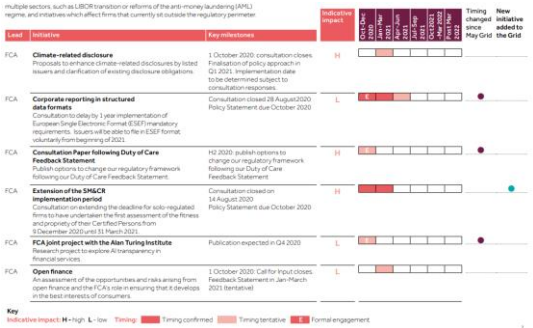
ii. *Expected Q4 2020: Consultation Paper on amendments to accommodate Breathing Space Regulations.*

iii. *Expected Q4 2020: Policy Statement to Consultation Paper 20/5: Open-ended Investment Companies – Proposals to facilitate standard listing.*

iv. *Expected Q4 2020: Consultation on fees policy.*

v. *Expected 2021: Consultation Paper on exit fees in investment platforms and comparable firms.*





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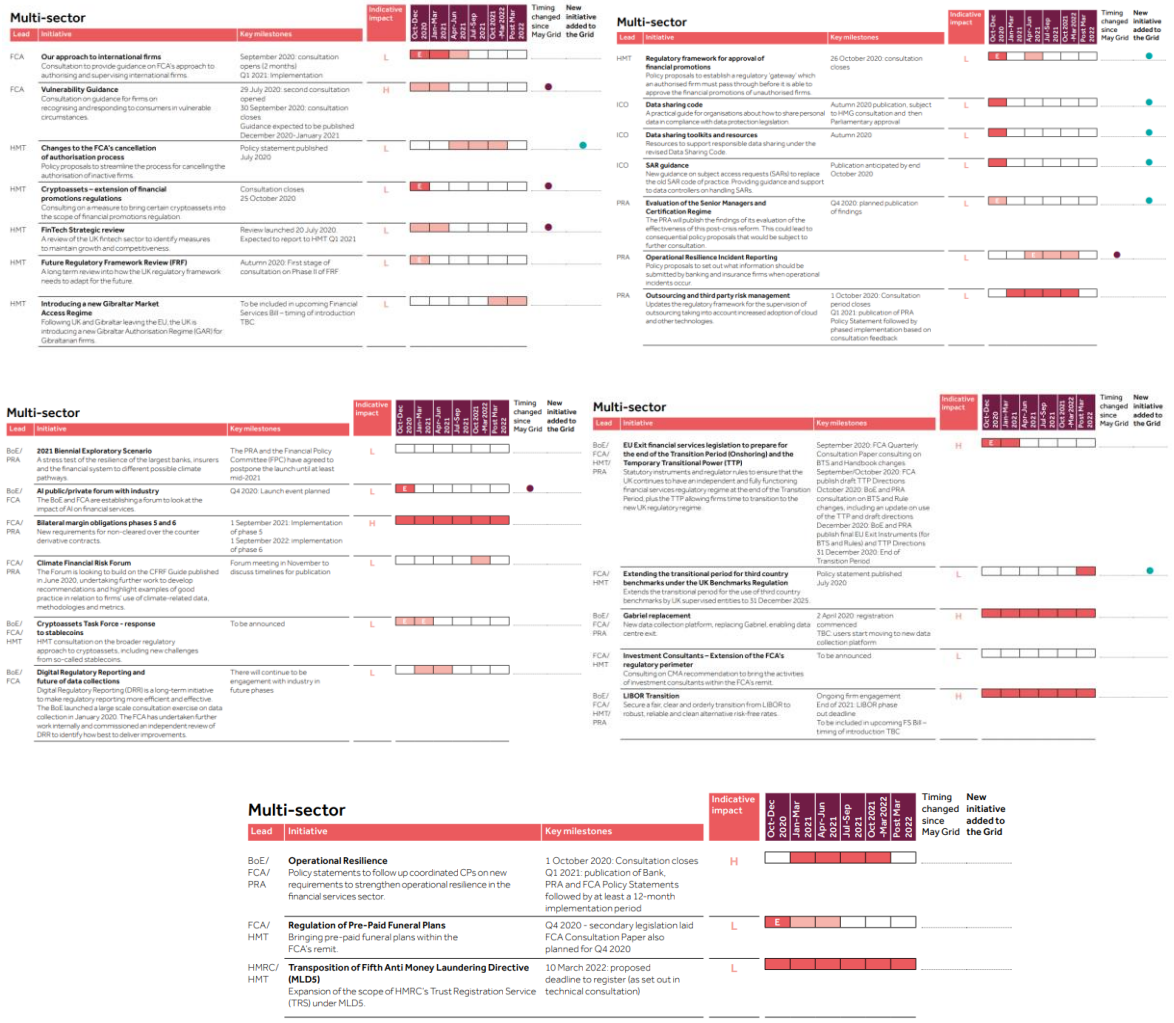


Multi-sector

Lead	Initiative	Key milestones	Indicative impact	Timing changed since May Grid	New initiative added to the Grid
FCA	**Our approach to international firms** Consultation to provide guidance on FCA's approach to authorising and supervising international firms.	September 2020: consultation opens (2 months) Q1 2021: implementation	L		
FCA	**Vulnerability Guidance** Consultation on guidance for firms on recognising and responding to consumers in vulnerable circumstances.	29 July 2020: second consultation opened 30 September 2020: consultation closes Guidance expected to be published December 2020–January 2021	H		
HMT	**Changes to the FCA's cancellation of authorisation process** Policy proposals to streamline the process for cancelling the authorisation of inactive firms.	Policy statement published July 2020	L		
HMT	**Cryptoassets – extension of financial promotions regulations** Consulting on a measure to bring certain cryptoassets into the scope of financial promotions regulation.	Consultation closes 25 October 2020	L		
HMT	**FinTech Strategic review** A review of the UK fintech sector to identify measures to maintain growth and competitiveness.	Review launched 20 July 2020. Expected to report to HMT Q1 2021	L		
HMT	**Future Regulatory Framework Review (FRF)** A long term review into how the UK regulatory framework needs to adapt for the future.	Autumn 2020: First stage of consultation on Phase II of FRF	L		
HMT	**Introducing a new Gibraltar Market Access Regime** Following UK and Gibraltar leaving the EU, the UK is introducing a new Gibraltar Authorisation Regime (GAR) for Gibraltarian firms.	To be included in upcoming Financial Services Bill – timing of introduction TBC	L		

Multi-sector

Lead	Initiative	Key milestones	Indicative impact	Timing changed since May Grid	New initiative added to the Grid
HMT	**Regulatory framework for approval of financial promotions** Policy proposals to establish a regulatory 'gateway' which an authorised firm must pass through before it is able to approve the financial promotions of unauthorised firms.	26 October 2020: consultation closes	L		
ICO	**Data sharing code** A practical guide for organisations about how to share personal data in compliance with data protection legislation.	Autumn 2020 publication, subject to HMG consultation and then Parliamentary approval	L		
ICO	**Data sharing toolkits and resources** Resources to support responsible data sharing under the revised Data Sharing Code.	Autumn 2020	L		
ICO	**SAR guidance** New guidance on subject access requests (SARs) to replace the old SAR code of practice. Providing guidance and support to data controllers on handling SARs.	Publication anticipated by end October 2020	L		
PRA	**Evaluation of the Senior Managers and Certification Regime** The PRA will publish the findings of its evaluation of the effectiveness of this post-crisis reform. This could lead to consequential policy proposals that would be subject to further consultation.	Q4 2020: planned publication of findings	L		
PRA	**Operational Resilience Incident Reporting** Policy proposals to set out what information should be submitted by banking and insurance firms when operational incidents occur.		L		
PRA	**Outsourcing and third party risk management** Updates the regulatory framework for the supervision of outsourcing taking into account increased adoption of cloud and other technologies.	1 October 2020: Consultation period closes Q1 2021: publication of PRA Policy Statement followed by phased implementation based on consultation feedback	L		

Multi-sector

Lead	Initiative	Key milestones	Indicative impact	Timing changed since May Grid	New initiative added to the Grid
BoE/ PRA	**2021 Biennial Exploratory Scenario** A stress test of the resilience of the largest banks, insurers and the financial system to different possible climate pathways.	The PRA and the Financial Policy Committee (FPC) have agreed to postpone the launch until at least mid-2021	L		
BoE/ FCA	**AI public/private forum with industry** The BoE and FCA are establishing a forum to look at the impact of AI on financial services.	Q4 2020: Launch event planned	L		
FCA/ PRA	**Bilateral margin obligations phases 5 and 6** New requirements for non-cleared over the counter derivative contracts.	1 September 2021: implementation of phase 5 1 September 2022: implementation of phase 6	H		
FCA/ PRA	**Climate Financial Risk Forum** The Forum is looking to build on the CFRF Guide published in June 2020, undertaking further work to develop recommendations and highlight examples of good practice in relation to firms' use of climate-related data, methodologies and metrics.	Forum meeting in November to discuss timelines for publication	L		
BoE/ FCA/ HMT	**Cryptoassets Task Force – response to stablecoins** HMT consultation on the broader regulatory approach to cryptoassets, including new challenges from so-called stablecoins.	To be announced	L		
BoE/ FCA	**Digital Regulatory Reporting and future of data collections** Digital Regulatory Reporting (DRR) is a long-term initiative to make regulatory reporting more efficient and effective. The BoE launched a large scale consultation exercise on data collection in January 2020. The FCA has undertaken further work internally and commissioned an independent review of DRR to identify how best to deliver improvements.	There will continue to be engagement with industry in future phases	L		

Multi-sector

Lead	Initiative	Key milestones	Indicative impact	Timing changed since May Grid	New initiative added to the Grid
BoE/ FCA/ PRA/ HMT	**EU Exit financial services legislation to prepare for the end of the Transition Period (Onshoring) and the Temporary Transitional Power (TTP)** Statutory instruments and regulator rules to ensure that the UK continues to have an independent and fully functioning financial services regulatory regime at the end of the Transition Period, plus the TTP allowing firms time to transition to the new UK regulatory regime.	September 2020: FCA Quarterly Consultation Paper consulting on BTS and Handbook changes September/October 2020: FCA publish draft TTP Directions October 2020: BoE and PRA consultation on BTS and Rule changes, including an update on use of the TTP and draft directions December 2020: BoE and PRA publish final EU Exit Instruments (for BTS and Rules) and TTP Directions 31 December 2020: End of Transition Period	H		
FCA/ HMT	**Extending the transitional period for third country benchmarks under the UK Benchmarks Regulation** Extends the transitional period for the use of third country benchmarks by UK supervised entities to 31 December 2025.	Policy statement published July 2020	L		
BoE/ FCA/ PRA	**Gabriel replacement** New data collection platform, replacing Gabriel, enabling data centre exit.	2 April 2020: registration commenced TBC: users start moving to new data collection platform	H		
FCA/ HMT	**Investment Consultants – Extension of the FCA's regulatory perimeter** Consulting on CMA recommendation to bring the activities of investment consultants within the FCA's remit.	To be announced	L		
BoE/ FCA/ HMT/ PRA	**LIBOR Transition** Secure a fair, clear and orderly transition from LIBOR to robust, reliable and clean alternative risk-free rates.	Ongoing firm engagement End of 2021: LIBOR phase out deadline To be included in upcoming FS Bill – timing of introduction TBC	H		

Multi-sector

Lead	Initiative	Key milestones	Indicative impact	Timing changed since May Grid	New initiative added to the Grid
BoE/ FCA/ PRA	**Operational Resilience** Policy statements to follow up coordinated CPs on new requirements to strengthen operational resilience in the financial services sector.	1 October 2020: Consultation closes Q1 2021: publication of Bank, PRA and FCA Policy Statements followed by at least a 12-month implementation period	H		
FCA/ HMT	**Regulation of Pre-Paid Funeral Plans** Bringing pre-paid funeral plans within the FCA's remit.	Q4 2020 - secondary legislation laid FCA Consultation Paper also planned for Q4 2020	L		
HMRC/ HMT	**Transposition of Fifth Anti Money Laundering Directive (MLD5)** Expansion of the scope of HMRC's Trust Registration Service (TRS) under MLD5.	10 March 2022: proposed deadline to register (as set out in technical consultation)	L		

b. *The Financial Services Regulatory Initiatives Forum has today issued the second edition of the Regulatory Initiatives Grid.*
   i. *Upcoming work in the latest iteration includes the LIBOR transition and ongoing work to prepare the financial services sector for the end of the EU exit transition period.*
   ii. *Also included are Government reviews, including the payments landscape review and the future regulatory framework review.*
   iii. *The first edition of the Grid, which aims to give firms a clear idea of upcoming regulatory work, was published in May.*
   iv. *The Forum is comprised of the Bank of England (including the Prudential Regulation Authority), Financial Conduct Authority, Payment Systems Regulator and Competition and Markets Authority, with HM Treasury attending as an observer member.*
   v. *The update also includes upcoming initiatives by the Pensions Regulator and the Information Commissioner's Office, which have both joined the Forum. See the Regulatory Initiatives Grid.*

c. ESMA publishes outcomes of MAR review; *On 24 September 2020, the European Securities and Markets Authority (**ESMA**) published a review report of the Market Abuse Regulation (**MAR**). The report is the first in-depth review of the functioning of MAR since*

its implementation in 2016, and its recommendations will feed into the European Commission's review of MAR.

i. Background The report covers the topics mentioned in Article 38 of MAR which requires the Commission to present a report to the European Parliament and the Council to assess various provisions of MAR. These include: the appropriateness of introducing common rules on the need for all Member States to provide for administrative sanctions for insider dealing and market manipulation; the definition of inside information; the appropriateness of the trading prohibition for persons discharging managerial responsibilities (PDMRs) and the appropriateness on the level of certain thresholds for the notification of managers' transactions; the possibility of establishing a cross-market order book surveillance framework and the scope of the benchmark provisions. The report also covers a set of connected topics that arose from the Commission's mandate on the scope of MAR including buy-back programmes, the delayed disclosure of inside information, the usefulness of insider lists, different aspects of PDMR notification requirements and cross-border enforcement of sanctions. Also, the report covers certain issues closely linked to the aforementioned topics.

ii. Recommendations: In its report ESMA proposes targeted amendments to MAR, including on the following issues where it makes recommendations on:

iii. Market soundings – clarify that the MAR requirements represent an obligation for disclosing market participants that, if complied with, will protect them from the allegation of having unlawfully disclosed inside information.

iv. Benchmark provisions and the interplay between MAR and collective investment undertakings – clarify the responsibility of management companies in relation to the disclosure of inside information.

v. Withholding tax reclaim schemes – removing the legal limitations for Member State competent authorities to exchange information with tax authorities.

vi. In relation to spot FX contracts, ESMA to perform further analysis once the revision of the FX Global Code has been finalised.

vii. Guidance: In the report ESMA also suggests additional guidance in the following areas:

viii. Inside information and disclosure – ESMA will issue further guidance in relation to the application of the definition and for specific scenarios concerning delayed disclosure.

ix. Pre-hedging – the report identifies factors which may be considered when assessing if a specific pre-hedging conduct poses risks of market abuse and of violation of conduct rules. ESMA may assess pre-hedging in the future, considering specific circumstances such as its importance for illiquid instruments or the consequences of pre-hedging activities on the markets.

x. ESMA MAR Review report; Article 38 of MAR requires the European Commission (EC) to present a report to the European Parliament and the Council to assess various provisions of MAR. *In light of this requirement, the EC addressed a formal request for technical advice to ESMA1 . This Final Report originates from the EC's mandate to ESMA, and it follows the CP on the same topic published in October 2019.*

xi. It covers three types of topics:

xii. - Topics originally included in Article 38 of MAR, i.e. the appropriateness of introducing common rules on the need for all Member States to provide for administrative sanctions for insider dealing and market manipulation; the definition of inside information; the appropriateness of the trading prohibition for persons discharging managerial responsibilities (PDMRs) and the appropriateness on the level of certain thresholds for the notification of managers' transactions; the possibility of establishing a cross-market order book surveillance framework and the scope of the benchmark provisions.

xiii. - A set of connected topics arising from the EC's mandate on the scope of MAR, that includes buy-back programmes, the delayed disclosure of inside information, the usefulness of insider lists; different aspects of PDMR notification requirements; and cross-border enforcement of sanctions.

xiv. - Issues closely linked to some of the above-mentioned topics, raised by ESMA.

xv. *The report builds upon the extensive feedback received from market participants representatives in reply to the CP and also integrates the advice received from the Securities and Markets Stakeholder Group (SMSG).*

xvi. Contents

xvii. Section 2 deals with the scope of MAR, concluding to further analyse at a later point in time whether the scope of MAR should be extended to spot FX contracts once the Global FX Code has been revised and analysing the issues related to benchmark provisions in MAR.

xviii. Section 3 contains proposals to improve the reporting and transparency obligations derived from buy-back programmes (BBPs) not only addressing the EC's mandate stricto sensu, but also revising other related obligations, proposing to change the reporting obligation for issuers to reduce the amount of information and ensuring that issuers only report to one NCA in cases of multiple-listings.

xix. Sections 4, 5, 6 and 7 address inside information from different angles: the definition itself, the delayed disclosure of inside information, a revision of the protections created by the market soundings regime and the reassessment of the usefulness and user-friendliness of insider lists. As regards inside information, the Final Report deals with the definition applicable to financial instruments, to commodity derivatives 11 and to front running and includes considerations on pre-hedging practices.

xx. No amendments are proposed for the definition of inside information applicable to financial instruments and commodity derivatives, as they allow for adequate protection of investors and of market integrity, and ESMA stands ready to issue guidance on several aspects of the definitions and concrete scenarios on which clarifications were sought.

xxi. It is recommended to amend the definition of front running, in order to broaden the scope of the relevant persons and cover also orders conveyed by persons other than clients. As regards pre-hedging, the Final Report identifies both areas for further guidance and factors which may be considered when assessing if a specific pre-hedging conduct poses risks of market abuse and of violation of conduct rules.

xxii. As regards the delayed disclosure of inside information, having assessed whether the conditions to delay disclosure are sufficiently clear, the Final Report does not propose amending them.

xxiii. ESMA commits nevertheless to reviewing the Guidelines on the delay in the disclosure of inside information. Proposals contained in the CP concerning the introduction of further requirements linked to delayed disclosure were dropped, while a few consensual amendments to Article 17(5) of MAR are being proposed.

xxiv. As regards market soundings, Section 6 deals with the enforceability of market soundings and the relevant definition, and with certain simplification of the market sounding procedures and requirements.

xxv. Section 7 addresses insider lists from different angles: ESMA concludes that insider lists remain a key element to investigate possible market abuse cases, provides clarification on the individuals who should be included in them and on the individuals who should elaborate their own insider lists; ESMA also concludes that the permanent insider section should remain an option available for those who want to make use of it and introduces other proposals to reduce the administrative burden that insider lists entail.

xxvi. Section 8 assesses the MAR thresholds and requirements for PDMRs and the scope of application of the trading prohibitions. Among other things, this section focuses on the closed period and on possible further exemptions for consideration by the EC. The Final Report recommends keeping the thresholds currently provided by MAR for the notification of managers' transactions and proposes to insert further exemptions to the restriction from conducting transactions in the 'closed period'. The extension of the closed period to closely associated persons and to issuers was dropped as considered too burdensome compared to the benefit it could entail.

xxvii. Section 9 contains different proposals to clarify the MAR obligations applicable to collective investment undertakings in relation to PDMRs, the obligation to disclose inside information and insider lists. 1 Formal request to ESMA for technical advice on the report to be submitted by the Commission under Article 38 of Regulation (EU) No 596/2014 on Market Abuse, available at the following link: https://www.esma.europa.eu/sites/default/files/library/esma_art_38_mar_mandate.pdf.

xxviii. Sections 10 and 11 refer to three different angles of market surveillance by national competent authorities: the possibility of establishing a pan-European cross-market order book surveillance framework, the possible ways to address multiple withholding tax reclaim schemes involving financial markets, the issues related to the lack of administrative sanctions, but only criminal offences, in certain jurisdictions and issues related to the cross border enforcement of sanctions.

xxix. Finally, the Report addresses the maximum retention period of personal data by NCAs.

XXX. Next Steps *This report is submitted to the EC and is expected to feed into the review report of MAR. ESMA stands ready to provide further technical assistance to develop the legislative amendments suggested in the report. ESMA also makes stakeholders aware of the publication of its Consultation Paper on the MiFIR review in relation to the obligations to report transactions*

and reference data. That Consultation Paper addresses the coexistence of Article 4 of MAR and Article 27 of MiFIR and proposes to align the text of Article 27 of MiFIR with that of Article 4 of MAR and contemplates the possible deletion of Article 4 of MAR. The Consultation Paper is available on the ESMA website2 . In the consultation paper, ESMA is also proposing to add a new reporting flag for BBP transactions. As indicated in the Report, this proposal might eventually have an impact in the long term on the obligations prescribed in Article 5(3) of MAR.

d. 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

e. FCA Trade Association Coordination Committee (TACC) on Tuesday 29th September 2020
   i. Introduction by the chair – Edwin Schooling-Latter
      1. LIBOR transition – Benchmark team
      2. Progressing transition
      3. Statements of policy relating to the proposed BMR amendments
      4. CP 20/15 Liquidity mismatch in authorised open-ended property funds – Mhairi Jackson, Nike Trost and Michael Collins
      5. FCA's approach to withdrawing COVID 19 related measures – Adam Wreglesworth
      6. AOB
   ii. CEO Switch: Nikhil Rathi became the Chief Executive in October 2020. Read Nikhil's biography
   iii. On 16 September 2020, the FCA announced that Chris Woolard will chair a review of the future regulation of the unsecured credit market.
      1. The review will concentrate on how regulation can better support a healthy unsecured lending market. It will take into account the impact of the coronavirus pandemic on employment security and credit scores, changes in business models and new developments in unsecured lending including the growth of unregulated products in retail and the workplace.
      2. He will be assisted by an advisory group and will make recommendations to the FCA Board in early 2021.
   iv. Incoming Evolution of a new model for financial regulation in the UK; Speech by Christopher Woolard, FCA interim chief executive, at the 10th annual International Financial Services Forum
      1. *Coronavirus (Covid-19) is bringing the future forward and with a potential impact on firms' business models.*
      2. *The economic impact of the pandemic has underscored the need for change within the regulator.*
      3. *To do so effectively, the FCA must learn lessons from the past, but it needs to look to the future.*
   v. Governor Andrew Bailey statement on Chris Woolard's departure from the Financial Conduct Authority

f. *FCA New SM&CR annual reporting requirement; SM&CR introduces a new annual reporting requirement which firms must complete and submit using GABRIEL. The report is called REP008 and firms need to tell us whether they have taken disciplinary action against individuals who are not Senior Managers for breaches of the Conduct Rules. A nil return is required if there have been no breaches resulting in disciplinary action.*
   i. *The first REP008 is due on **02/11/20 for the period 09/12/19-31/08/20, unless you are a limited permission consumer credit firm.***
   ii. ***For the first return, only certain individuals will be in scope.***
   iii. *We have published guidance to help firms understand the new REP008 reporting obligation.*

g. UK Government proposals to strengthen the Modern Slavery Act
   i. On 22 September 2020, the UK Government published its response to a 2019 consultation on potential options for strengthening section 54 of the Modern Slavery Act 2015 (the MSA), which requires certain commercial organisations to publish a slavery and human trafficking (SHT) statement on an annual basis.
   ii. Of most interest to businesses will be the Government's commitment to amend section 54(5) of the MSA such that the matters to be addressed in an organisation's SHT statement are mandatory. Also significant will be the introduction of a single reporting deadline (30 September) and a Government run reporting service.
   iii. A number of the proposed changes will align the MSA more closely with its Australian cousin, the Modern Slavery Act 2018 (the Australian Act), and are intended to facilitate scrutiny and comparison of SHT statements by civil society, investors and other stakeholders.

h. Consultation Responses
   i. EVIA Response to FCA DP20_02 A new UK prudential regime for MiFID investment firms
   ii. EVIA Response to the APPG for EMS consultation regarding the role of the UK parliament in the future regulatory framework for financial services
   iii. EVIA Response to FCA CP 19_32: Building operational resilience: Impact tolerances for important business services

i. IFPR – IFR
   i. EVIA Response to FCA DP20_02 A new UK prudential regime for MiFID investment firms
   ii. Operational resilience and key learnings from operational incidents across the financial services industry; Operational incidents show no signs of abating: in recent years, there have been a number of high profile cyber-attacks by third parties, as well as IT incidents such as those resulting from system updates and migrations. Certain of these have attracted regulatory attention and in this final part of our three-part series on operational resilience we draw out key learnings regarding the expectations around operational resilience from enforcement cases in this area:

j. 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. "*

k. 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 next week
   ii. Cross border difficulties

l. AML / KYC
   i. JMLSG Update
   ii. FinCEN finalizes AML requirements for certain banks; asks for comments on possible rulemaking on AML compliance programs; *On September 15, 2020, the Financial Crimes Enforcement Network (FinCEN), the US anti-money laundering (AML) agency, published a final rule that completes the circle of all banking organizations being treated the same for purposes of AML compliance requirements for banks. The final rule covers banks that do not have a Federal functional regulator, such as private banks and non-federally insured credit unions. With the final rule, these banks will be subject to the following federal AML requirements:*
      1. Anti-money laundering compliance programs
      2. Customer Identification programs

3. Beneficial ownership requirements for legal entity customers
4. The final rule is effective November 16, 2020.
5. On September 17, 2020, FinCEN published an Advance Notice of Proposed Rulemaking (ANPRM) asking for comments concerning a potential rulemaking to incorporate a requirement for an "effective and reasonably designed" AML compliance program for financial institutions subject to AML compliance program requirements.
6. After discussing the background and reasoning for issuing the ANPRM, FinCEN poses eleven questions, including the following:
7. Has FinCEN clearly explained its proposed "effective and reasonably designed" AML program requirement and its core elements?
8. Should the proposed "effective and reasonably designed" requirement be applicable to all financial institutions currently required to establish AML compliance programs?
9. Should there be an explicit requirement for an AML risk-assessment process and are there ways to articulate objective criteria for examination of that risk assessment process?
10. Should there be changes to other AML regulations if FinCEN decides to incorporate the "effective and reasonably designed" requirement into the FinCEN regulations?
11. FinCEN notes that one of the reasons for the proposed "effective and reasonably designed" AML program requirement would be to provide financial institutions with greater flexibility to reallocate resources for AML compliance, but wants to know whether financial institutions believe that it would increase or decrease their AML regulatory burden?
12. Comments are due on or before November 16, 2020.

iii. FATF report – virtual assets red flag indicators of money laundering and terrorist financing; *On 14 September 2020, the Financial Action Task Force (FATF) published a report, Virtual Assets – Red Flag Indicators of Money Laundering and Terrorist Financing.*

1. The report is based on more than 100 case studies and is designed to help national authorities and financial institutions identify potential money laundering and terrorist financing activity involving virtual assets by highlighting the most important red flag indicators that could suggest criminal behaviour.
2. The report will also help reporting entities' application of a risk-based approach to their customer due diligence requirements, which require knowing who their clients and the beneficial owners are, understanding the nature and purpose of the business relationship, and understanding the source of funds.
3. Key red flag indicators in the report focus on:
    a. Technological features that increase anonymity – such as the use of peer-to-peer exchanges websites, mixing or tumbling services or anonymity-enhanced cryptocurrencies.
    b. Geographical risks – criminals can exploit countries with weak, or absent, national measures for virtual assets.
    c. Transaction patterns – that are irregular, unusual or uncommon which can suggest criminal activity.
    d. Transaction size – if the amount and frequency has no logical business explanation.
    e. Sender or recipient profiles – unusual behaviour can suggest criminal activity.
    f. Source of funds or wealth – which can relate to criminal activity.
4. The report complements the June 2019 FATF guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers which explains how to understand the money laundering and terrorist financing risks of virtual assets, how to license and register the sector, actions sectors need to take to know information about their customers, how to store this information securely, and how to detect and report suspicious transactions.

iv. EBA response to Commission's call for advice on its AML and CTF plan; *On 10 September 2020, the European Banking Authority (**EBA**) published its response to the European Commission's (**EC's**) call for advice on the future of the EU anti-money laundering (**AML**) and counter-terrorist financing (**CTF**) framework. The EBA set out a number of recommendations, in summary these include:*

1. Harmonising specific aspects of the Fifth AML Directive, including:
2. Customer Due Diligence (**CDD**) measures – focus should be placed on financial institutions using CDD measures as a means to identify and assess the risks in relation to the particular customer or transaction, while the requirements should be

more technologically neutral to promote and support innovation and development of secure and reliable digital identification technologies.

3. Occasional transaction threshold – "occasional transaction" and "linked transactions" should be defined, while the current threshold should be lowered or even removed for financial institutions or sectors associated with higher money laundering (ML) / terrorist financing (TF) risk.
4. AML/CTF systems and controls requirements – financial institutions should be required to directly report to the board all cases of material weaknesses in their AML/CTF systems and controls, while AML/CTF policies and procedures should be better streamlined within group structures and should allow for AML/CTF-related information sharing within the group. Interestingly, the EBA proposes to introduce an exemption from the requirement to appoint an AML/CTF officer for smaller businesses or those with a limited ML/TF risk.
5. Clarifying the scope and types of entities which should be caught by Fifth AML Directive: the EBA specifically requests clarification on the scope of AML/CTF obligations for entities such as crowdfunding service providers, virtual asset service providers, investment firms and investment funds or (non-life) general insurers and general insurance intermediaries.
6. Aligning AML/CTF provisions with relevant provisions in sectoral financial services legislation: the EBA recommends a comprehensive review of financial services legislation in relation to authorisation, passporting, ongoing supervision and cooperation between prudential, AML/CTF competent authorities and other public stakeholders.
7. Commentary; The EBA's proposals are quite ambitious, but definitely welcome. We have seen first-hand firms' struggle with identifying occasional transactions and differentiating these from a business relationship scenario, especially in the context of third party payments. Furthermore, the COVID-19 pandemic has placed obstacles for firms on the conventional methods of CDD and accelerated the drive towards the adoption of digital verification tools. Any additional, Financial Action Task Force-style, guidance or clarification on the use of technology for CDD purposes or ML/TF monitoring more generally is much needed. Finally, divergence in approaches to AML/CTF, in particular, AML/CTF policies and procedures, can occur across groups. An express regulatory requirement would send a clear message to firms on the importance of having a unified, group-wide approach towards AML/CTF, especially managing the ML/TF risks.
8. The EBA's opinion can be accessed here while the full report is available here.

v. SFC launches consultation on anti-money laundering guidelines; The SFC has launched a public consultation on proposed amendments to its guidelines regarding anti-money laundering and counter-financing of terrorism (AML/CFT) for licensed corporations and prevention of money laundering and terrorist financing for associated entities. Amongst other things, the proposed amendments are intended to:

1. facilitate the adoption of a risk-based approach to AML/CFT measures by the securities industry, with a view to providing further guidance to the industry on implementing these measures in a risk-sensitive manner with reference to the guidance for a risk-based approach for the securities sector published by the Financial Action Task Force (FATF) on 26 October 2018;
2. help licensed corporations address and improve certain areas identified in the latest FATF Mutual Evaluation Report of Hong Kong published on 4 September 2019;

vi. ESMA proposes to help prevent and detect WHT reclaim schemes; ESMA has published the final report on its inquiry into Cum/EX, Cum/Cum and withholding tax (WHT) reclaim schemes. ESMA has proposed increased cooperation between NCAs for securities markets and tax authorities to assist in detecting WHT reclaim schemes.

1. The report also considers the schemes from the perspective of regulated firms' obligations under the MiFID2 legal framework, including the requirements for both investment firms and management body members to act with integrity.

m. CSDR: – CSDR RTS on Settlement Discipline – Postponement until 1 February 2022; ESMA Proposes To Further Postpone CSDR Settlement Discipline

n. Market Conduct Fines

i. FCA Ditches Half Of Criminal Probes Into AML Breaches; *dropped half of its investigations into financial companies suspected of breaching the U.K.'s anti-money laundering rules since the start of 2020 and has brought no criminal prosecutions, according to newly disclosed data.*

ii. Former JPMorgan trader sentenced to prison for currency rigging; *A former JPMorgan Chase foreign exchange trader was sentenced Thursday to eight months in prison, following his November 2019 conviction for conspiring with traders at other banks to rig currency trades. Akshay Aiyer, 37, was also sentenced to two years supervised release and fined $150,000 by Manhattan Federal Judge John Koeltl. /bit.ly/2ZOlSmN*

iii. Ex-HSBC Banker Can't Get Redo On 2nd Circ. Fraud Appeal *A Second Circuit panel declined on Wednesday to rethink its decision to uphold the fraud conviction of former HSBC foreign currency executive Mark Johnson, who had argued that newly decided case law on jury instructions warranted another look.*

iv. JPMorgan to pay $920m in largest-ever spoofing settlement

1. JPMorgan to pay over $920M to settle spoofing probes; JPMorgan Chase admitted to manipulating markets through the illegal practice of spoofing over a period of eight years and agreed to a record $920 million settlement with US authorities. The bank said it was responsible for the actions of traders that created losses of more than $300 million for other participants in precious metals and US Treasury markets Bloomberg, The Wall Street Journal, Financial Times
2. US spent years building manipulation case against JPMorgan It took years for the Justice Department to put together the case it brought against JPMorgan Chase for market manipulation in metals trading. Authorities established that the bank's trading desk constituted a racketeering operation that could be prosecuted under the Racketeer Influenced and Corrupt Organizations Act. Bloomberg
3. 2020 is ideal year to hide Wall St trading scams; JPMorgan is paying a $920 mln fine and admitting its traders manipulated metals and Treasury markets. It's the latest of a long list of industry wrongdoing. Online chats helped snare the perpetrators. Remote work means there are more ways to conceal such shenanigans.

v. ASIC bans BGC Securities fixed income broker for ten years; ASIC has banned former BGC Securities (Australia) Pty Limited (BGC) broker David Moore, of Pullenvale, QLD, from providing financial services for ten years. /bit.ly/33fBByj ASIC found that Mr Moore breached a contractual agreement between BGC and a referring broker by:

1. charging unpermitted spreads on transactions entered on behalf of a number of accounts of clients referred to BGC by the referring broker; and
2. trading at prices other than the agreed independent valuation on transactions entered on behalf of a number of accounts.
3. ASIC also found that Mr Moore engaged in conduct in relation to his transactions in corporate bonds on behalf of his clients' accounts that was misleading or deceptive, or likely to mislead or deceive, and that he attempted to take steps to conceal this conduct. Further, Mr Moore caused BGC's records to be altered improperly, causing investment statements to contain false information that deceived clients and the referring broker as to whether Mr Moore had adhered to the contractual agreement.
4. Mr Moore's banning is part of ASIC's ongoing efforts to improve standards across the financial services industry.

vi. FCA publishes Decision Notice against Corrado Abbattista for market manipulation; *The FCA considers that between 20 January and 15 May 2017, Mr Abbattista repeatedly placed in the market large misleading orders for Contract for Differences (CFDs), referenced to equities, which he did not intend to execute. At the same time, he placed smaller orders that he did intend to execute on the opposite side of the order book to the misleading orders.*

1. Through his large and misleading orders, Mr Abbattista falsely represented to the market an intention to buy/sell when his true intention was the opposite. At the same time, his misleading orders were for volumes of shares far greater than the typical market size, which would also have created a false and misleading impression regarding the true supply of and demand for the shares in question to other market participants.
2. Mr Abbattista was aware of the risk that his actions might constitute market manipulation, but recklessly went ahead with those actions anyway.
3. The trading undertaken by Mr Abbattista was initially identified by the FCA's internal surveillance systems. The FCA ingests order book data from the leading UK equity trading

venues and then runs surveillance algorithms, designed to identify potentially abusive behaviours, across that consolidated data set.

4. The Decision Notice for Abbattista (PDF)

vii. Trader Acquitted In 1st FCA Evidence Destruction Trial; FCA Says Trader Lied About Reasons For Deleting Texts A jury acquitted a former trader on Monday over allegations that he destroyed evidence by deleting WhatsApp records while under arrest to hinder an insider trading probe, in the first case of its kind brought by the Financial Conduct Authority.

viii. CFTC fines Citi $4.5M for deletion of audio files The CFTC imposed a $4.5 million fine on Citigroup for deleting 2.77 million audio files, which included recordings of traders that had been subpoenaed by the agency. The CFTC said Citigroup failed to take corrective action after an employee warned in 2014 that the way the bank's audio preservation system was set up could cause the large-scale deletion of audio files. Reuters

ix. CFTC Nails Another Two Spoofers; In its continuing battle against spoofing, the US CFTC has issued two orders filing and settling charges against Thomas Donino and his employer FNY Partners Fund, for spoofing Comex gold futures and NYMEX oil futures.

x. CFTC has fined Morgan Stanley Capital Services $5 million for reporting failures under its obligations as a registered swap dealer – the firm is also instructed to retain a qualified outside consultant to verify its remediation of the violations of CFTC rules.

xi. Ex-Deutsche Traders Convicted Of Market Spoofing Scheme; An Illinois federal jury on Friday convicted two former Deutsche Bank traders of wire fraud but cleared them of conspiracy charges stemming from what prosecutors called an unlawful precious metals market spoofing scheme that tricked competing market participants and helped them execute orders at better prices.

xii. Deutsche, JPMorgan Top Banks Flagged in Fraud Report: Highlights; *About 90 financial institutions appear in the leaked documents; The report analyzed more than $2 trillion in transfers*

1. The global financial industry is under the spotlight again after a cache of leaked documents show years of transactions handled by the world's largest banks linked to money laundering, corruption and fraud. The report dubbed the FinCEN files, released by the International Consortium of Investigative Journalists and based on leaked documents obtained by BuzzFeed News, said that in some cases the banks kept moving illicit funds after receiving warnings from U.S. officials. Here are some of the key facts and figures. /bloom.bg/2HoB5FX

xiii. Deutsche Bank Leaders Were Warned of Control Lapses: Report; *Top leaders were told as early as 2013, BuzzFeed reports; Deutsche Bank says issues have been investigated and resolved*

1. Deutsche Bank AG's top leaders were warned multiple times about serious compliance failures that exposed the bank to money launderers, a news investigation shows. The supervisory board and committees that included Chairman Paul Achleitner were informed in 2013 and 2014 of anti-money laundering problems on at least three occasions, according to a BuzzFeed News story. Presentations at the time showed how the bank was struggling to vet its clients and facing technology as well as staffing issues for its compliance team, BuzzFeed wrote. /bloom.bg/3kG8SbF

xiv. HSBC Orders Social Media Blackout After Suspect Funds Report; *All social media posting paused immediately, staff memo says; Bank concerned about 'negative reactions' after FinCEN leak*

1. HSBC Holdings Plc told its staff to stop posting on all the bank's social media accounts over fears of "negative reactions" to the revelations in leaked suspicious activity reports. In a memo to employees on Monday, Tricia Weener, head of marketing for HSBC's global commercial and investment banking arms, said the London-based company would not post until at least 11 a.m. U.K. time Tuesday. /bloom.bg/2Hnp3fT

xv. Regulators reportedly reprimanding Citi's risk systems; *The Office of the Comptroller of the Currency and the Federal Reserve are preparing to issue a public reprimand of Citigroup for failing to correct shortcomings in its risk management systems, sources said. The Wall Street Journal*

xvi. Swedbank Faces Market Abuse Probe Over Insider Info; *Swedbank AB, one of Sweden's largest banks previously fined for money laundering failures, said Friday that it is being investigated by the country's financial watchdog for suspected breaches of market abuse regulation related to "disclosure of insider information."*

xvii. this *In the FICC of It* podcast with Matt Kulkin of US law firm Steptoe, where he explained how the calendar can dictate the CFTC's agenda.

xviii. CME

1. CME Group; X-Change Financial Access, LLC; CME RULE VIOLATION: 526.F. BLOCK TRADES. On September 3, 2020, pursuant to Rule 512, a fine in the amount of $1,500 was assessed against X-Change Financial Access, LLC for its violation of CME Rule 526, and CME Rule 526.F. /bit.ly/3hWT4j8

2. Notice of Disciplinary Action; CME Group; Timothy O'Leary; CME RULE VIOLATION: Rule 534 Wash Trades Prohibited
3. Notice of Disciplinary Action; CME Group; Ronin Capital; CME RULE VIOLATIONS: Rule 432. General Offenses /bit.ly/2Sbv5SZ
4. Barry Sher; CME RULE VIOLATION: Rule 534 - Wash Trades Prohibited /bit.ly/2S97cvb

o. DG COMP, LEBA and EFET: Next steps regarding compliant on access to SEE3 Gas and power market operation

i. EU news on Hidroelectrica's case; *From our angle the main strategy is to maintain the matter in DG COMP. Of course we cannot "impose" an instruction in abusive practices, but indirectly the Hidroelectrica case has helped to argue our case.*
ii. The illegality on obstructing the trade in power (being goods), mutatis mutandis applies to providing services, and combined with the foreclose we may have a good case for an immediate cross border competition infringement, which in theory, the DG COMP is meant o deal with…
iii. I am happy that you are happy to enlarge the mailing list substantially as the noise created by the complaint letter will be better. We will get you the last version later today and you can spread the message. If you wish to share a copy with the EFET Secretariat share this with Sandra Milardovic, s.milardovic@efet.org. The next EFET working group meeting south-east Europe is on 8 October and this matter is already on the agenda.

p. ACER

i. LEBA Speaking at ACER Energy Market Integrity and Transparency Forum 2020 which will take place as a virtual meeting on 9 October 2020.
   1. 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.
   2. In the afternoon the focus will be on market trends and outlook and "REMIT beyond: The international dimension".
ii. ESMA updates statements on the impact of Brexit on MiFID II / MiFIR and Benchmarks Regulation; *On 1 October 2020, the ESMA updated its statement on the impact of Brexit on MiFID II / MiFIR.*
   1. The statement updates the issues covered in the statement published on 7 March and 7 October 2019. These issues concerned: the C(6) carve-out, ESMA's opinions on third country trading venues for the purpose of post-trade transparency and the position limits regime and post-trade transparency for over-the-counter transactions. The statement also covers the implementing technical standards on main indices and recognised exchanges under the Capital Requirements Regulation.
   2. ESMA has also updated its statement on the impact of Brexit on the Benchmarks Regulation. The statement covers the consequences of Brexit for the ESMA register for benchmark administrators and third country benchmarks under the Benchmarks Regulation.
iii. ACER and CEER organise this webinar to present the key findings of their latest Annual Report on the results of monitoring the internal electricity and gas markets [the Market Monitoring Report (MMR)].
   1. This year the MMR comprises three volumes analysing Europe's energy markets in 2019: the Gas Wholesale Volume (which you can already access) as well as the Electricity Wholesale Market Volume and the Retail Markets and Consumer Protection volume, both to be published in late October here.
   2. Gas volume of the latest ACER-CEER Market Monitoring Report is published; *EU gas market rules successful and ACER/CEER recommend decarbonisation to be built on the current market design.*
   3. The MMR shows that common rules governing gas transportation systems have contributed over the last five years to more competition and better prices in the EU. In this volume, ACER and CEER also recommend that any upgrading of rules aimed at decarbonising the gas sector be built on the current EU market design. This gas wholesale volume can be found on the CEER website here.

4. In addition to this gas part published today, the MMR comprises two other volumes: Electricity Wholesale; and Retail Markets and Consumer Protection, both to be published in mid-October.
5. The EU gas market rules are working; Gas market monitoring results show that the common rules governing access and operation of EU gas transportation systems – the Gas Network codes – have contributed to high levels of gas price integration between EU Member States, increased supply side competition and helped create liquid wholesale markets over the period of the last five years.
6. As a result, big gas companies have less market power and more EU gas consumers can benefit from increased competition and lower prices. To safeguard these developments, ACER-CEER recommend that the adaptation of Gas Network codes is made more dynamic, so that the market framework can be adjusted in response to evolving market conditions.
7. The MMR also shows that the presence of increasingly liquid hubs and the large EU regasification and storage capacities are attracting global LNG suppliers to Europe. In an oversupplied market, record LNG deliveries arriving from the Middle East, the US and Russia drove down the gas price to record lows in 2019, saving 29 billion Euros according to data from the European Commission. Maintaining competition between suppliers from outside of the EU will grow in importance in the coming years as domestic gas production in Member States continues to decrease while gas consumption has been growing in recent years.
8. Decarbonising together at EU level; New supply of carbon neutral gas could contribute decisively to the EU climate strategy, with the added benefit of further rebalancing the current market power asymmetry between European gas buyers and third-country suppliers. However, monitoring results show that today, carbon neutral gases account for a relatively minor share of EU gas consumption at around 4%, predominantly biogas, which is mostly not injected into the gas grid, and are far from being competitive at current prices.
9. Given the framework of the European Green Deal, particularly the increasing ambitions for reducing emissions by 2030 as well as the resources that have been earmarked for climate projects as part of the EU recovery plan, the low uptake of carbon neutral gases will need to accelerate. Therefore, the ACER-CEER recommend that any upgrading of internal gas market rules aimed at decarbonising the sector be built on foundations of the current market design, so that the transition to carbon neutral gas does not lead to market fragmentation along national borders and keeps the significant benefits for consumers in place. The data underlying the Market Monitoring Report is available here.

iv. ACER finds EU gas market rules successful and recommends decarbonisation to be built on current market design
   1. Common rules governing gas transportation systems have contributed over the last five years to more competition and better prices in the EU according to the gas wholesale volume of the latest Annual Report on the results of monitoring the internal electricity and natural gas markets (MMR) published today by the European Union Agency for the Cooperation of Energy Regulators (ACER). In this volume the Agency also recommends that any upgrading of rules aimed at decarbonising the gas sector be built on the current EU market design.
   2. This year there will be two other volumes of the MMR analysing the markets in 2019: an Electricity Wholesale market volume and a combined volume including Retail markets and Consumer protection both to be published in mid-October. The MMR is developed in cooperation with the Council of European Energy Regulators (CEER) and increasingly with the Energy Community Secretariat.

v. ESMA Agrees Position Limits Under MIFID II; https://www.esma.europa.eu/press-news/esma-news/esma-agrees-position-limits-under-mifid-ii-7
   1. Opinion on position limits on EEX TTF gas contracts https://www.esma.europa.eu/document/opinion-position-limits-eex-ttf-gas-contracts
   2. Opinion on position limits on Nordic Power contract https://www.esma.europa.eu/document/opinion-position-limits-nordic-power-contract

3. Opinion on position limits on Farmed Salmon contract https://www.esma.europa.eu/document/opinion-position-limits-farmed-salmon-contract

vi. CEER Webinar: The Future Role of LNG in Europe; t*he tale of two LNG: despite JKM recovering by 40% in August, the average Asian LNG import price fell by almost 20% month-on-month, as the lower crude prices continue to filter through the price structure of LTCs. the prevalence of oil-indexation in Asian LNG import contracts; the growing tension between market fundamentals (driving JKM) and the regime of oil-indexation.*

vii. *ACER and ENTSOG consult on recommendations to mitigate misconduct in EU gas balancing markets;* a four-week public consultation on their joint recommendations to mitigate potential misconduct in EU gas balancing markets. The public consultation ends on 19 October.

viii. ACER and the EFTA Surveillance Authority increase their cooperation; The Agency and ESA - the European Free Trade Association (EFTA) Surveillance Authority, comprising Iceland, Liechtenstein and Norway - have concluded a Memorandum of Understanding (MoU) to put in place practical arrangements to ensure good cooperation between ESA and ACER in relation to the European electricity and natural gas markets. Read more.

ix. EU hydrogen targets are a bunch of hot air; *The European Union has officially bumped up its 2030 emissions target from a 40% reduction relative to 1990 levels, to a 55% reduction. The European Commission is banking on hydrogen to meet this goal. Green hydrogen, or hydrogen produced using renewable-powered electrolysis, could be a game changer for Europe's energy sector. But the Commission's hydrogen production targets are extremely ambitious given the current state of the industry.*

q. Environmental, Social, Governance (ESG) –

i. *Taxonomy Regulation (ESG); What Asset and Fund Managers Need to Know*

1. A key plank in the European Commission's work programme to help it move to a carbon neutral, sustainable EU involves the Taxonomy Regulation. This is a framework which allows for the progressive development over time of a taxonomy, meaning a classification system that will essentially define what activities are "green" and what are not.
2. Taxonomy regulation (ESG) – what asset and fund managers need to know A key plank in the European Commission's work programme to help it move to a carbon neutral, sustainable EU involves the Taxonomy Regulation. This is a framework which allows for the progressive development over time of a taxonomy, meaning a classification system that will essentially define what activities are "green" and what are not. A brief update on what asset and fund managers need to know about this is set out below. (For our separate briefing on the European Green Deal see here1 .)
3. 8 March 2018 – The Commission published an Action Plan on Financing Sustainable Growth, which stated as follows (among other things). For a copy see here2 : "A shift of capital flows towards more sustainable economic activities has to be underpinned by a shared understanding of what 'sustainable' means.
4. A unified EU classification system – or taxonomy – will provide clarity on which activities can be considered 'sustainable'. It is at this stage the most important and urgent action of this Action Plan.
5. Clear guidance on activities qualifying as contributing to climate change mitigation and adaptation, environmental and social objectives will help inform investors. It will provide detailed information on the relevant sectors and activities, based on screening criteria, thresholds and metrics. This is an essential step in supporting the flow of capital into sustainable sectors in need of financing. An EU taxonomy will be gradually integrated into EU legislation to provide more legal certainty."
6. Two specific actions that were recommended:
7. – Table a legislative proposal to ensure the progressive development of an EU taxonomy for climate change, and environmentally and socially sustainable activities. The aim is to "embed the future EU sustainability taxonomy in EU law and provide the basis for using such a classification system in different areas (eg standards, labels, green-supporting factor for prudential requirements, sustainability benchmarks)".
8. – Set up a technical expert group. The EU Technical Expert Group on Sustainable Finance (TEG) was subsequently formed and issued its "Taxonomy Technical Report" in June 2019 (for a copy see here3). This was a vast endeavour, looking at the development of an EU classification system for environmentally sustainable economy

activities as regards 67 activities across 8 sectors. It was accompanied by a call for feedback that closed on 16 September 2019. The TEG has now considered this feedback and published its final report (for a copy see here4).

9. In parallel, the Commission progressed work on a regulation "on the establishment of a framework to facilitate sustainable investment". This has become known as the Taxonomy Regulation. – The Council of the EU reached political agreement on this on 17 December 2019. A copy of the Council's press release published on 18 December 2019 can be found here5 . A copy of the agreed text was published on 18 December 2019 and can be found here6 . – The Commission has published a Q&A on the regulation and more recently some FAQs – these can be found here7 and here8 . – The text of the regulation was approved by the European Parliament in June 2020. A copy of the press release can be found here9 . – The Commission's further work will be assisted by a technical expert group, the "platform on sustainable finance", which will be mandated to provide advice for developing and revising the technical screening criteria as well as reviewing its usability. The Commission will also be advised by a "Member State Expert Group".

ii. Ahead of the implementation of an ambitious EU classification system for sustainable activities, known as the EU Taxonomy, FTSE Russell this week launched a Green Revenues 2.0 model to classify the "green" revenue exposure of global listed companies, a segment of the economy that FTSE Russell estimates is worth approximately $4 trillion.
    1. *A final Taxonomy report, published by the EU technical expert group on sustainable finance in March 2020, set out detailed criteria for 70 economic activities that contribute to climate change mitigation and 68 to adaptation activities.*
    2. *Some 6,000 large EU companies are subject to the EU's Non-Financial Reporting Directive and will be required to disclose if their activities are Taxonomy-aligned, and to what extent, by January 2022.*

iii. ESAs launch survey on environmental and social financial product templates; *The European Supervisory Authorities (ESAs) have published a survey on the layout of product templates pursuant to the Regulation on sustainability-related disclosures in the financial services (SFDR). The ESAs propose to standardise the disclosure of information for financial products that promote environmental and/or social characteristics or have a sustainable objective. The ESAs believe that using such mandatory templates will improve comparability of different financial products across EU Member States. The templates are intended to be included in existing disclosures provided by:*
    1. alternative investment fund managers (AIFMs);
    2. undertakings for collective investment in transferable securities (UCITSs);
    3. insurance undertakings;
    4. institutions for occupational retirement provision (IORPs); or
    5. providers of pan-European personal pensions products (PEPPs).
    6. Comments are due by 16 October 2020.

iv. EC FAQs on platform on sustainable finance; *On 1 October, the EC published a set of FAQs on the setting-up and work of the platform on sustainable finance. The Taxonomy Regulation requires the platform to advise the EC on several tasks and topics related to the EU Taxonomy and support it in the technical preparation of delegated acts – the EC states that the platform will have an unlimited duration, taking into account the different tasks provided for in the Taxonomy Regulation and the need to amend the technical screening criteria of the EU Taxonomy over time, in order to reflect, for instance, changing EU environmental legislation or technological developments. Read more*
    1. ESG Compass for the Disclosure Regulation; The new European Disclosure Regulation provides the central schedule of obligations for ESG-related disclosures in the EU financial services sector. Many of the disclosure requirements start to apply from 10 March 2021 and therefore all financial market participants and financial advisors need to start considering the content of the requirements in order to address the issues in good time and take advantage of any opportunities.

v. ESMA response to EC targeted consultation on the establishment of an EU Green Bond Standard; *Dear Vice-President Dombrovskis, Dear Valdis, I am writing to you to provide ESMA's response to the European Commission's targeted consultation on the establishment of an EU Green Bond Standard (GBS) which was launched on 12 June 2020.*
    1. *The SMSG believes that the synergy between different pieces of legislation (in particular the Non-Financial Reporting Directive (NFRD), the Taxonomy Regulation, and the Sustainable Finance Disclosure Regulation (SFDR), but also adjacent legislation such as*

the Shareholders Rights Directive II and the scheduled reviews of MiFID and UCITS/AIFMD) can contribute significantly to enhancing sustainability in the economy. However, neither the timings nor the concepts of these different pieces of legislation are fully synchronized or aligned with one another.

2. ***SMSG advice on ESG disclosure*** *https://www.esma.europa.eu/document/smsg-advice-esg-disclosure*
3. ***EBA seeks input from institutions on their ESG disclosure practices;*** On 17 September 2020, the EBA published an online survey to receive input from credit institutions on their practices and views in the area of disclosure of information on environmental, social and governance (ESG) risks. The survey, which is addressed to large credit institutions that will be required to disclose prudential information on ESG risks, aims to support the EBA's policy work on Pillar 3 disclosure and its wider efforts to develop a robust policy framework in the area of sustainable finance.

vi. https://www.isda.org/2020/10/02/the-role-of-derivatives-in-esg/; *There is no doubt that sustainable finance and environmental, social and governance (ESG) products are becoming increasingly important to policy-makers and financial market participants all around the world. Earlier this week, ISDA hosted a virtual conference on ESG and derivatives, which highlighted the very important role the derivatives market has to play in the transition to a sustainable economy.*

1. Sustainable finance is set to be at the heart of the recovery from the coronavirus pandemic in Europe. On September 16, European Commission president Ursula von der Leyen announced that 30% of the €750 billion recovery fund will be raised through green bonds. This will equate to a huge amount of new financing in this area, and both issuers and investors will be looking to the derivatives market to hedge their exposures. Product innovation is already developing rapidly to support the hedging needs of participants in this nascent market.
2. BIS research questions benefits of green bonds Green bonds are growing rapidly in popularity, but a study from the Bank for International Settlements raises questions on their effectiveness beyond virtue signaling. The study finds green bonds have not yet made significant progress in curbing carbon emissions or lowering the cost of borrowing. The Economist (tiered subscription model) , Bank for International Settlements

vii. **The climate-related market risk advisory subcommittee of the CFTC published a report on managing the financial risks of global warming on September 9 –** the first to be sponsored by a US federal authority. Although some of the 53 proposals, including the tent-pole plan to put a price on carbon emissions, would require lawmakers and the executive branch of the US government to implement, a number could be put into action under existing regulatory authorities – offering amenable regulators the ability to compel firms to get a grip on their climate-related risks. "States do have a lot of control in terms of regulations, so you may see some forward-leaning states willing to pick up these recommendations,

viii. **LCH launches clearing of ESG index series via CDSClear;** ***LCH has gone live with clearing the new environmental, social and governance (ESG) iTraxx index series via its credit default swaps division CDSClear.***

ix. ESG report: The role of data in sustainable investment; *Climate issues highlight technical gaps in the practical usage of non-financial data.*

1. Granular tracking through technology has improved, but regulators and investors struggle to determine precise attribution e.g. via Scope 3 emissions along global value chains
2. New data demands in the wake of the Covid-19 pandemic; regulatory and industry emphasis has rebalanced away from principally environmental issues to a more holistic focus across the three ESG pillars
3. The move towards sustainability is accelerating even as the global economy grapples with the consequences of Covid-19, an OMFIF-Refinitiv report shows. Socioeconomic resilience in the face of risks such as the pandemic and climate change is moving to the forefront of agendas across the financial sector. Stakeholders are unanimous in the belief that clear and consistent environmental, social and governance data will be critical to realign the financial markets towards sustainable development and help achieve the sustainable development goals. While there has been significant progress in disclosure of information in relation to environmental and societal impacts over the past decade, this field is still young with unrealised potential.
4. Sherry Madera, chief industry and government affairs officer at Refinitiv, said: 'The findings in this report are a milestone in the journey to a global sustainable financial

system, and as a global financial data provider, Refinitiv is proud to be a strategic partner to OMFIF. As the world continues to assess the impacts of Covid-19 on global economies, the pressure to prioritise sustainability in financial markets remains paramount.'

5. 'Investors, regulators and policy-makers need to know what constitutes material information, and to know what data are already available to answer that question as well as what data still need to be collected. They need to know how information is collected and standardised across sectors, asset classes and different geographies,' said Danae Kyriakopoulou, chief economist and director of research at OMFIF. 'Once they have the data, they need to know how best to incorporate them into models and scenarios so they can be used to make decisions.'
6. Developing a reliable and equitable financial market will require regulators, supervisors, standard-setters and investors to answer key questions around materiality, data transparency and technical capacity-building. These actors are expanding their focus to the issue of data gaps. This report's findings bring together diverse, and at times, contrasting opinions from public and private stakeholders to illustrate the main areas that need to be developed to advance the use of sustainable data in the financial community.

x. NGFS technical document: overview of environmental risk analysis by financial institutions; *On 10 September 2020, the Central Banks and Supervisors' Network for Greening the Financial System (**NGFS**) issued the following publications:*
   1. The Overview of Environmental Risk Analysis by Financial Institutions. This report provides wide-ranging examples of how environmental risks translate into financial risks, and an in-depth review of the tools and methodologies for environmental risk analysis (ERA) used by financial institutions including banks, asset managers and insurance companies. The report also identifies the major barriers to wider adoptions of ERAs by the financial services industry, including the lack of awareness of environmental risks, inadequate data, incomplete methodologies and limited capacity.
   2. NGFS Occasional Paper "Case Studies of Environmental Risk Analysis Methodologies". This paper presents a more detailed and in-depth discussion of the tools and methodologies for ERA through case studies conducted by over 30 organizations. This paper aims to inform the financial community of the ERA methodologies and inspire interested institutions to further develop or enhance them.

xi. The EMA FS Risk and Regulatory Insight Centre (RRIC) is pleased to announce the launch of a new thought leadership paper Delivering sustainable finance, which is the third instalment of the Financial Services: regulating the new reality publication series.

r. BOE / Andrew Bailey;

i. Andrew Bailey rules out UK negative rates in near future; Bank of England governor warns of 'hard yards ahead' for economy as coronavirus infections rise

ii. BOE's Bailey Says Get an EU Trade Deal or Everyone Loses Out; 29 September 2020, *Bank of England Governor Andrew Bailey urged the U.K. government and the European Union to reach a trade deal or risk seeing their economies suffer.* "It is in the interests of all parties to this process that we can get an agreement and we have open markets," he said in a webinar hosted by Queen's University Belfast on Tuesday. "Nobody benefits from closing borders, and nobody benefits from closing markets, and nobody benefits from protectionism."

iii. Reinventing the wheel (with more automation) - *Andrew Bailey looks at recent innovations in payments and the challenges they bring. He examines the benefits and risks that so-called 'stablecoins' present and explores the implications of the Financial Policy Committee's recent expectations for payments and stablecoin regulation. He says while elements of the technology are novel, many of the challenges are not new in the history of money.*
   1. Digital currencies are not just a new type of money. They also bring their own payment infrastructure. So when considering how we regulate them we must look at both the 'money' and the 'payment' aspects, both domestically and globally.
   2. One alternative to a private stablecoin is a central bank digital currency. While they have great potential, we need to work out what they mean for the shape of the financial system and the role of the central bank.

ii. **Brexit MA;**

a. **Summary of FCA Trade Association roundtable on 25th September 2020;** *FCA via Skype: Nausicaa Delfas; Zertasha Malik; Greg Sachrajda; Stephane Amoyel; Andrew Whyte (Director of Comms). 31 Trade Association participants dialled in.*

i. FCA Brexit Call; 25Sept2020.m4a
ii. *The FCA gave short introductions/context before answering the pre-submitted questions:*
iii. The FCA reiterated the message that firms should continue to prepare for all Brexit scenarios.
iv. Reference to the recent UK Internal Market Bill and the next round of EU/UK negotiations led by David Frost which will take place in Brussels in October. General updates on onshoring and 'inflight files' were provided. Flagged the UK Government approach to a number of 'in-flight' files. Noting optimistic shoots in the media for an umbrella trade deal before year end, but less clarity around the FS chapter which is likely the only route open to circumvent the deferrals within the EC paper and footnote 21 of that July paper.
v. The FCA have provided technical advice to UK government on other Free Trade Agreements: Japan (see EVIA note on the FS aspects including substituted supervision and applications); Round II with Australia just beginning; Mutual recognition Agreements with Switzerland.
vi. Nausicaa Delfas welcomed and outlined the formalisation in European Council of CCP Equivalence through until mid-2022. She also outlined the ongoing mutual recognition MOUs between the FCA and the EU ESA's. FCA reconfirmed that they will aim to publish these MOUs closer to December.
vii. The FCA noted a new consultation CP20/20: Our Approach to International Firms [see EVIA email note on this consultation] and further clarified that this will apply to firms within the TRP and TPP. Nausicaa said that they were strengthening their engagement with firms and had updated their Brexit webpages.
viii. The FCA are reopening their TPR window next week (30 September) and added that the process of onshoring had continued over the last summer quarter.
    1. GS was asked by Giles Swan (QCA) if the reported parliamentary move to extend the TPR from 3 years to 5 years was likely. The FCA responded that they had not been approached in this regard, but again set out the aspiration for reciprocal equivalence.
    2. GS was asked whether the FCA intend to publish a list or register of the TPR firms and he confirmed that these would be a part of the FCA register as from 04th January 2021.
ix. The TPP has been extended until the end of March 2022, Nausicaa set out that further communications on the TTP are forthcoming immediately and also that the FCA Handbook will set out a clear display of the changes.
x. FCA communications on the scope and impacts of Brexit in general are set to increase over Q4, including a media advertising campaign. Noting that the new CEO, Nikhil Rathi will take post at the FCA at the end of October and that Chris Woolard has resigned.
xi. Greg Sachrajda set out the approach and progress on reference data:
    1. FCA FIRDs remains openly available for testing[1]
    2. FCA FITRs will open for Industry testing from 05th October

[1] ***For those IFs who are registered with the TPR, there could be a time during the end of the TTP (March 2021) and their full authorisation that they might need to double report OTC transactions to APAs (both UK and EU).*** *This also raises the question of ToTV.*

- *A3: TPR firms will be reporting trades through UK and EU APAs from Day One because the UK and EU trade reporting obligations have different scopes and for a given trade an obligation to report may arise in the UK and not the EU and vice versa.*
- *Whilst in the TPR if a firm is required to report a trade under UK rules and also under EU rules – it is ToTV there and in the UK - then substituted compliance will apply and only one trade report will be made through an EU APA.*
- *At the end of the TPR then substituted compliance no longer applies and because ESMA takes the view, in a way that FCA does not, that branches are subject to home state rules, then there will be a large swathe of instances when the same trade has to be reported through an APA in the UK and in the EU.*
- *Where the TTP is potentially relevant is for trades a TPR firm carries out with EU firms. If the instrument is ToTV in the UK and in the EU and under EU rules has to be reported by the TPR firm's counterparty then the TPR firm will not have to report it in the UK. When the TTP expires then the TPR firm will need to report the trade through a UK APA and its counterparty will report the same trade through an EU APA.*

3. Video: The EU withdrawal transition period
4. Industry workshops wil be commencing in October (details TBA on the website)
5. in third countries, so UK branches of EU firms will have to report the same transactions twice – under both the UK and EU regimes. The same is not true for EU branches of UK firms, because the FCA doesn't require third-country branches of UK firms to report under the UK regime.

xii. Q& A.

xiii. EVIA

1. *Concerning the ongoing ability of UK licenced IFs and TVs to service customers situated in the EU. On the basis of the EU Comm advice from Mr Barnier earlier this month to seek a country-by-country approach to the provision of Investment Services into the EU 27 member states in the event of no overarching EU level agreement, what approach or principle will the FCA effect to the enforcement of solicitation or reverse solicitation by UK entities which contravenes local rules?*
2. Greg Sachrajda & Stephane Amoyel noted that there was no corollary to the TPR in the EU, and that much media coverage had recently focused on retail clients to UK banks [noting the eIDAS Consultation on open banking].
3. They reaffirmed that in the absence of an EU level agreement or equivalence, so this remains a matter of local law in each of the EU 27, so they therefore encourage a country-by-country outreach. They also added that there was ongoing localised discussion around quite what constitutes an activity within an EU jurisdiction.
4. They also noted the connections between Brexit measures and Covid_19 via the current CP concerning the Financial Resilience of Firms. With reference to the focus on the safeguarding of client assets.

xiv. ICMA

1. Asked to confirm that the FCA/ESA's MOUs shall remain in force into 2021. Zertasha Malik confirmed that to be the case.
2. Paul Richards went on to describe the patchwork country-by-country approach that ICMA was expecting.

xv. ISDA

1. Asked about the plan for UK MiFIR Transparency thresholds given the new sample quantum, and what the cut-over plan will be for UK firms, especially noting that the current FCA guidance stems from Q4 2019. Stephane Amoyel answered that the FCA is discussing with ESMA and joint announcement will be made. Clearly there is plenty of political contingency in this.
2. Fiona Taylor also asked if the FCA could set out the meaning of, "to enter into a transaction" under EMIR, as it is unclear where the post trade aspects apply to UK branches trading derivatives. The FCA noted this and would consider a reply.

xvi. TechUK

1. Neil Ross, Policy Manager for Digital Economy asked whether there would be a Data Adequacy assessment made at the end of the Transition Period. GS replied that indeed the FCA had made a statement that they shall invite relevant Tech firms to become authorised at that stage.

xvii. AIMA

1. Asked about Cross jurisdictional structures for AIFs who operate in both the UK and the EU. ZM responded that indeed these entities would need to become categorised at Financial Counterparties under both UK EMIR and EU EMIR and therefore make reports to both under the corresponding EMIR, MiFIR and SFTR rules. GS added that the FCA here, together as in many other cases has decided to take the parallel approach to ESMA, such that whether acting either as an AIF or as an Investment Manager, the firm will be required to submit dual reports.

xviii. LMA

1. Andrew Brooks asked about proposed retail MiFID changes for the UK on-shored version, especially in reflection of the *Quickfix* changes: STO, Costs and Charges, and RTS27 Best execution. GS responded that unless these legal amendments are processed through the EU OJ before year then then indeed the UK has a choice, and that choice is owned in parliament. He supposed that the FCA would ask the industry for views and advise parliament accordingly.

xix. *The FCA aim to hold the next roundtable on the 23rd October 2020*

b. UK FCA Measures:

1. **FCA publishes rules that will apply at the end of the transition period;** *On 1 October 2020, the FCA published an updated version of the FCA Handbook to show the rules and guidance that will apply at the end of the transition period.*
    a. To assist firms the FCA has also published a Guide to the FCA Handbook for Post-Brexit Transition.
    b. **FCA holds off on decision for trading EU shares**; The UK Financial Conduct Authority is delaying a decision on whether to let shares listed in the EU trade in the UK until at least an EU summit in mid-October. EU states have discussed the so-called share trading obligation this week, while traders are eager for clarity on where they must execute customer orders starting next year.
2. TPP; **FCA updates information on the TTP and publishes rules that will apply at the end of the transition period;** On 1 October, the FCA published an updated version of the FCA Handbook to show the rules that will apply at the end of the transition period. Furthermore, the FCA has published updated information on the TTP.
    a. FCA Webpage – Onshoring and the TTP
    b. FCA Webpage – Transitional Directions
    c. FCA Webpage – Transitional Provisions and Regimes
    d. FCA Webpage – Key requirements of firms
    e. FCA Updated Guidance – Approach to EU non-legislative materials
    f. FCA Updated Guidance – Approach to non-Handbook
    g. FCA Updated Guidance – Completing forms after Brexit
    h. FCA Navigational Guide
3. TPR; **FCA updates temporary permissions regime (TPR) webpage - EEA firms and fund managers can now notify the FCA if they wish to use the TPR;** On 30 September, the FCA updated its webpage on the TPR to announce that EEA firms and fund managers can now notify the FCA if they wish to use the TPR.
    a. Notifications should be submitted via the FCA's Connect system before the end of 30 December. The FCA has also published the relevant revised directions (dated 29 September) for: (i) EEA or Treaty firms; (ii) EEA operators of collective investment schemes (CISs); (iii) EEA alternative investment fund managers (AIFMs), managers of European Venture Capital Funds (EuVECAs) and managers of European Social Entrepreneurship Funds (EuSEFs); (iv) authorised payment institutions (APIs) and registered account information service providers (RAISPs); and (v) e-money institutions (EMIs).
    b. FCA Updated Webpage
    c. FCA Revised Direction – EEA or Treaty firms
    d. FCA Revised Direction – EEA Operations of CISs
    e. FCA Revised Direction – EEA AIFMs, EuVECAs and EuSEFs
    f. FCA Revised Direction – APIs and RAISPs
    g. FCA Revised Direction – EMIs
4. HMT Draft Brexit SI: Equivalence & FCA Powers: The Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020 Explanatory Memorandum
5. **FCA RegData Platform Open for Testing;**
    a. All 52,000 firms that provide regular regulatory submissions in Gabriel will need to use RegData [1] in the future. We're moving firms and their users to RegData in groups to minimise the impact this has on them. Your firm's moving date will be determined by the nature of your reporting obligations and reporting schedules.
    b. Your firm won't be able to access RegData until all its data, including all its users' data, have been moved from Gabriel. We'll email your firm's principal user and associated users 3 weeks before your moving date, with reminders 5 days and 1 day to go.
    c. Compliance consultants will receive reminders for every firm their user account is currently associated with in Gabriel. All your past Gabriel submission data will be made available on the new platform.
6. **FCA consults on regulation of international firms;** published a consultation paper (CP20/20) on its general approach to the authorisation and supervision of international firms operating in the UK.
    a. In anticipation of an expected increase in firms applying for temporary permission or permanent authorisation to continue operating in the UK at the end of the transition period, the paper sets out guidance on the FCA's

expectations for international firms seeking full UK authorisation under Part 4A of the Financial Services and Markets Act 2000 (FSMA).

b. The FCA is not proposing any changes to existing rules. Instead, views are sought on the specific challenges for international firms in meeting the threshold conditions set out in Schedule 6 to FSMA, including during the FCA's authorisation and on-going assessments and in mitigating risks of harm relevant for international firms.
c. Following the consultation, the FCA intends to publish a finalised document supplementing existing guidance.
d. The consultation closes on 27 November 2020

iii. MiFID2.2/ MiFIR

a. 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. RTS 1 and RTS 2 contain the main implementing measures in respect of the MiFID II/MiFIR transparency regime for equity and non-equity instruments. *The purpose of this exercise is to gather input and views on practical issues related to the application of RTS 1 and RTS 2 that market participants have identified since the application of MiFID II/ MiFIR. ESMA would also like to receive feedback on any technical issue and policy gap that market participants have encountered at implementation level, as well as unclear provisions. Respondents are invited to provide their suggestions and, where possible, related solutions by filling in the ESMA template. The deadline is 31 October 2020.*

#	Question	EVIA Comments / Answer
1	What are your views about the current OTFs landscape in the EU? What is your initial assessment of the efficiency and usefulness of the OTF regime so far?	Noting the reference to "in the EU"
2	Trading in OTFs has been fairly stable and concentrated in certain type of instruments throughout the application of MiFID II. How would you explain those findings? What in your view incentivizes market participants to trade on OTFs? How do you see the OTF landscape evolving in the near future?	Possibly a reference to WEPs and the ESMA opposition to the C6 exemption
3	Do you concur with ESMA's clarifications above regarding the application of Article 1(7) and Article 4(19) of MiFID II? If yes, do you agree with the ESMA proposed amendment of Level 1? Which other amendment of the Level 1 text would you consider to be necessary?	The definition is specified in Article 4(19) of MiFID II: a multilateral system "means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system". Article 1(7) of MiFID II: "All multilateral systems in financial instruments shall operate either in accordance with the provisions of Title II concerning MTFs or OTFs or the provisions of Title III concerning regulated markets. (…)"
4	Do you agree with ESMA's two-step approach? If not, which alternative should ESMA consider?	ESMA considers that any system that allows trading interests in financial instruments to interact, including information exchange between parties on essential terms of a transaction (being price, quantity) with a view to dealing in those financial instruments is sufficient to require authorisation as a trading venue. The information exchanged does not need to be a contractual agreement between parties for the interaction to occur. ESMA also intends to further clarify the conditions under which a facility should request authorisation as a trading venue via an ESMA Opinion.
5	Do you agree with ESMA's proposal not to amend the OTF authorisation regime and not to exempt	The challenge posed by the new definition of multilateral system in MiFID II is indeed to delineate the boundary

	smaller entities? If not, based on which criteria should those smaller entities potentially subject to an OTF exemption be identified?	between well-established interdealer brokers that operate systems that are well-organised and other less sophisticated arrangements that exist in the broker space. ESMA remains sceptical about the real burdens that would justify that small entities are exempted from the OTF regime. On the contrary, ESMA considers the current authorisation regime which is not construed on a proportionality principle ensures a more level playing field between the different stakeholders and a better level of protection of EU investors and EU markets in general.
6	Which provisions applicable to OTFs are particularly burdensome to apply for less sophisticated firms? Which Level 1 or Level 2 amendments would alleviate this regulatory burden without jeopardising the level playing field between OTFs and the convergent application of MiFID II/MiFIR rules in the EU?	
7	Do you consider that ESMA should publish further guidance on the difference between the operation of an OTF, or other multilateral systems, and other investment services (primarily Reception and Transmission of Orders and Execution of orders on behalf of clients)? If yes, what elements should be considered to differentiate between the operation of multilateral systems and these other investment services?	ESMA has been made aware of concerns about the blurring distinction between multilateral and bilateral trading and the development of other types of arrangements that facilitate the execution of transactions between multiple buyers and sellers without being authorised as a regulated market, an MTF or an OTF.
8	Do you consider that there are networks of SIs currently operating in such a way that it would in your view qualify as a multilateral system? Please give concrete examples.	networks of SIs? Huh>!
9	Do you agree that the line differentiating bilateral and multilateral trading in the context of SIs is sufficiently clear? Do you think there should be a Level 1 amendment?	
10	What are the main characteristics of software providers and how to categorise them? Amongst these business models of software providers, which are those that in your view constitute a multilateral system and should be authorised as such?	The software provider concept however encompasses a multitude of different types of providers and business models making their regulatory analysis more challenging. ESMA does not consider that the fee structure can be used to demonstrate that a software provider does not operate a multilateral system. Similarly, the technology used is not a relevant criterion to exempt those providers from the MiFID II regulatory framework. It is the core business of a trading venue to bring together interests and the mere fact that this activity is conducted through new protocols should not lead to the conclusion that those systems are outside the boundaries of MiFID II. multilateral systems should not be authorised as RTO but authorised as trading venues. In particular, systems broadcasting trading interest to multiple clients with those clients being able to interact, within the system or through the software, with those trading interests, is likely to constitute a multilateral system in the MiFID II sense. 71. Similarly, in ESMA's view, the fact that the finalisation of transactions negotiated through the software does not formally take place in the system but on an authorised trading venue (or OTC) should not exempt the software provider to seek authorisation as a multilateral system under MiFID II.

11	Do you agree with the approach suggested by ESMA regarding software providers that pre-arranged transactions formalised on other authorised trading venues? Do you consider that this approach is sufficient to ensure a level playing field or do you think that ESMA should provide further clarifications or propose specific Level 1 amendments, and if so, which ones?	This guidance, clarifying that only one trading venue at a time could officially be involved in a transaction, was meant to allow for an adequate allocation of responsibilities and therefore application of relevant obligations. It should however not be interpreted as automatically exempting from the MiFID II authorisation regime all software providers that pre-arrange transactions that are only formalised on authorised trading venues. In ESMA's view, a software provider that operates a multilateral system but without executing trades (the transaction being formalised on another authorised venue) may still require authorisation as a trading venue. For ESMA, in this case, it could be considered that the software provider operates an OTF or MTF but with an execution system outsourced to another trading venue (acting here not as trading venue but as a simple service provider). Consistently with the clarifications explained in the above sections, ESMA considers that it is the design of the system operated and the type of interactions it allows that determine whether it should be authorised as a multilateral system regardless of whether transactions are formalised on this system or outside the system. In addition, it is important to stress that outsourcing all or part of their operational functions should not exempt trading venues from complying with all relevant MiFID II/MiFIR provisions, the outsourced functions remaining subject to all relevant obligations as if they were directly by the trading venue.
12	Do you agree with the principles suggested by ESMA to identify a bulletin board? If not, please elaborate. Do you agree to amend Level 1 to include a definition of bulletin board?	ESMA believes that there should be a principle-based approach on what should be considered a bulletin board to ensure that those systems where it is not possible for users to act upon advertised interests are not to be subject to authorisation as a trading venue. Such interpretation is supported by the reading of Recital 8 of MiFIR as "(…) [OTF] should not include facilities where there is no genuine trade execution or arranging taking place in the system".
13	Are you aware of any facility operating as a bulletin board that would not comply with the principles identified above?	ESMA does not consider it appropriate to broaden further the concept of the bulletin board category. If there could be legitimate reasons to discuss about what would constitute an appropriate regulatory framework for crypto-asset and crowdfunding platforms, this discussion should be held independently from this proposal to include a definition of bulletin board in MiFID II.
14	Market participants that currently operate such systems are invited to share more detailed information on their crossing systems (scale of the activity, geographical coverage, instruments concerned, etc…), providing examples of such platforms and describing how much costs & fees are saved this way as opposed to executing the relevant transactions via brokers or trading venues.	
15	Do you consider that internal crossing systems allowing different fund managers within the same group to transact between themselves should be in scope of MiFID II or regarded as an investment management function covered under the AIFMD and UCITS?	

	Please explain. In your view, should the regulatory treatment of these internal crossing system be clarified via a Level 1 change?	
16	Do you agree with the interpretation provided by ESMA regarding how discretion should be applied and do you think the concept of discretion should be further clarified?	Those that operate voice trading systems apply discretion to the orders received by clients regularly. Brokers are in control of the orders both in terms of how they are processed and which counterparties to target. In addition, brokers in voice trading systems also have an impact in the negotiation of the price of the orders providing their market knowledge to the benefit of the client. Hybrid systems that would for instance use a combination of both voice and quote-driven trading apply discretion differently according to the execution system. For electronic trading systems, the use of discretion does not seem to be applied in practice where the order meets the conditions set out in the order book. For OTFs that operate an RFQ system, discretion is exercised differently than for those who use voice. In particular, the role of the OTF brokers becomes active where the orders sent by the client is not satisfied by an electronic RFQ. In those circumstances, the OTF brokers will fulfil the order by exercising discretion on which counterparties to contact, when to make that contact and how to design or change the order in order to achieve execution. The order will always ultimately be executed by sending another RFQ request.
17	For OTF operators: Do you apply discretion predominantly in placement of orders or in execution of orders? Does this depend on the type of trading system you operate? Please explain.	ESMA considers that the "exercise of discretion" and "execution on a discretionary basis" does not create any supervisory concern and that it has been sufficiently clarified in ESMA Q&As. Hence ESMA currently does not deem it necessary to propose further clarifications. Furthermore, ESMA understands that the application of discretion might vary depending on the type of trading system used by the OTF operator and might be less intuitive for those OTFs that operate automated systems.
18	For OTF clients: Do you face any issue in the way OTF operators exercise discretion for order placement and order execution? If so, please explain. Does it appear to be used regularly in practice by OTF operators?	
19	Do you think ESMA should clarify any aspect in relation to MPT or that any specific measure in relation to MPT shall be recommended?	three conditions should be fulfilled for a transaction to qualify as MPT: (i) the facilitator should take no market risk exposure in the transaction, (ii) the timing of execution of the two sides of the transaction shall be simultaneous, (iii) the remuneration of the facilitator should be based on a previously disclosed fee or charge for the transaction.
20	In your view what is the difference between MPT and riskless principal trading and should this difference be clarified in Level 1?. In addition, what, in your view, incentivizes a firm to engage in MPT rather than in agency cross trades (i.e. trades where a broker arranges transactions between two of its clients but without interposing itself)?	ESMA does not consider that the use of MPT raises any supervisory concerns. The use of MPT appears to be limited to few instruments and ESMA further understands that the consent of the client is either requested before engaging in MPT or included in the rulebook with a detail of the fees applied, to which the client agrees there are six OTFs which do not use MPT and seven OTFs that allow for MPT20.

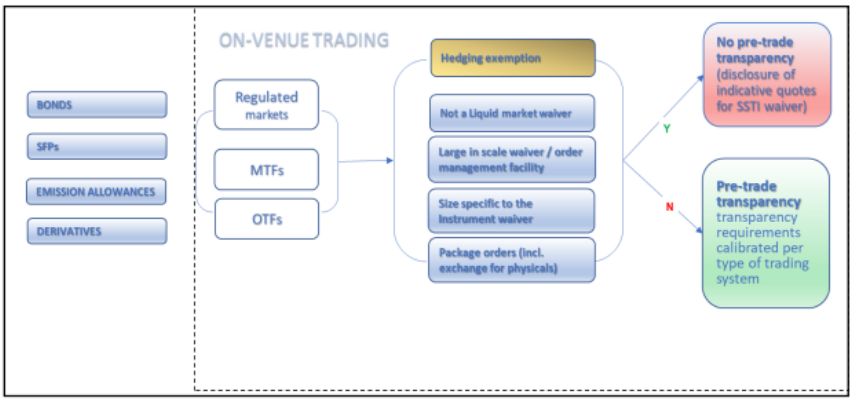
		All of the OTFs which allow for MPT do so in bonds (excluding ETNs and ETCs). One of those OTFs allows for MPT in structured finance products and one in C10 derivatives. There is currently no MPT offered in the remaining instruments that can be traded on an OTF and for which MPT is allowed, i.e. emission allowances and derivatives not subject to the clearing obligation.
21	Do you agree with ESMA's proposal to clarify that the prohibition of investment firms or market operators operating an MTF to execute client orders against proprietary capital or to engage in matched principal trading only applies to the MTF they operate, in line with the same wording as applicable to regulated markets?	ESMA believes that it would be relevant to clarify in Level 1 that the restriction on dealing on own account in Articles 19(5) of MiFID II should be interpreted as applying only to the MTF operated by the investment firm and not that an investment firm operating an MTF could not act in a principal capacity. ESMA deems such clarification relevant as diverging interpretations could contribute to the creation of an unlevel playing field in the EU.

b. **ESMA consults on MiFIR reference data and transaction reporting;** *MiFID II MiFIR review report - ESMA consults on MiFIR reference data and transaction reporting*

c. **ESMA Report and Recommendations on MiFIR Transparency;** *ESMA seeks permission from FISMA to kill the SSTI, together with the "other/ Hybrid" RTS TV classification. Refocus on the Call-for-Evidence to lower LIS waiver thresholds. ESMA pushes the 15 minutes free data down the road.*

i. ESMA proposes amendments to the MiFIR transparency regime for non-equity financial instruments
ii. deleting the specific waiver and deferral for respectively orders and transactions above the "size-specific to the instrument" threshold;
iii. streamlining the deferral regime with both a simplified system based on volume masking and full publication after two weeks as well as removing the supplementary deferral options left to National Competent Authorities (NCAs) under the current MiFIR text;
iv. transforming the possibility granted to NCAs to temporarily suspend MiFIR transparency provisions into a mechanism coordinated at EU-level;
v. including the possibility to suspend on short notice the application of the derivative trading obligation similarly to the mechanism available in EMIR; and
vi. complementing the criteria used to grant equivalence to third-country trading venues for the purpose of the derivative trading obligation with conditions relating to transparency and non-discriminatory access.
vii. These recommendations are part of a wider effort by ESMA to bring more transparency into the derivative and bond markets notably through the adoption of guidance, the promotion of more convergent supervision or the inclusion of targeted amendments to the delegated Regulation within the ESMA remit. ESMA intends to pursue those efforts in the future and continues to align market practices with the objectives of MiFIR.
viii. Today's report on non-equity transparency is part of a larger review exercise and complements the RTS 2 Annual Review Report and the Review Report on equity transparency.
ix. **Next steps;** ESMA invites the European Commission to translate these recommendations into legislative proposals. For the recommendations that require Level 2 changes, ESMA intends to publish amendments to the ESMA RTS 1 and RTS 2 in due course.

FIGURE 1 THE PRE-TRADE TRANSPARENCY REGIME FOR TRADING VENUES



d. **ESMA publishes draft rules for third-country firms under the new MiFIR and MiFID II regimes;** *On 28 September 2020, ESMA published a final report containing draft regulatory and implementing technical standards (RTS and ITS) on the provision of investment services and activities in the EU by third-country firms under MiFIR and MiFID II.*
    i. Third country firms providing investment services and activities in the EU in accordance with Article 46 of MiFIR will be required to report, on an annual basis, granular information to ESMA on their activities in the EU such as: information about the scale and scope of such activities, specific figures regarding their dealing on own account and underwriting and placing activities, the turnover and aggregated value of the assets corresponding to their activities in the EU, their investor protection and risk management arrangements, their governance arrangements and any other information necessary to enable ESMA to carry out their tasks in accordance with MiFIR.
    ii. The IFR also gives ESMA the power to: ask third-country firms registered in the ESMA register to provide: (i) any further information in respect of their operations (where necessary for the accomplishment of the tasks of ESMA or Member State competent authorities in accordance with MiFIR) (last subparagraph of Article 46(6a) of MiFIR); and (ii) data relating to all orders and all transactions in the EU, whether on own account or on behalf of a client, for a period of five years (Article 46(6b) of MiFIR); and conduct on-site inspections (Article 47(2) of MiFIR).
    iii. *In addition to ESMA's powers to withdraw the registration of a third-country firm in the ESMA register (in accordance with Article 46(6c) and Article 49(2) of MiFIR), the new MiFIR third-country regime gives ESMA the power to temporarily prohibit or restrict the provision of investment services or activities in the EU by a third-country firm under Article 46 of MiFIR:*

e. ***ESMA working paper on DVC mechanism and impact on EU equity markets***

f. ***European Commission proposes legislation on markets in crypto-assets;*** *The outline of the anticipated EU legislative framework for markets in crypto-assets is becoming clearer and the European Commission is preparing to publish a legislative proposal by the end of September. The legislative initiative on markets with crypto-assets fall within the broader Commission policy initiative on digital finance, which will also include a legislative proposal on operational resilience of the financial services sector. Through regulating the Commission aims to increase legal certainty and consumer and investor protection while at the same time ensuring financial stability.*
    i. *Legislative regime for markets in crypto-assets*
    ii. *Pilot regime for DLT market infrastructure*
    iii. *MiFID definition of financial instruments*

iv. CoronaVirus MA:

Regulatory interventions & round tables, Home_Office Protocols, Risk Registers and operational resilience

a. No Specific FCA Coordination Calls over the last month
b. Corp London - Coordination Call on 21st September

c. COVID-19: FCA and PRA update information on key workers and working from home; *On 24 September 2020, the FCA updated its web page on 'Key workers in financial services'. The web page reminds financial services firms that it remains important for them to continue to identify and monitor key workers to ensure that firms respond effectively in the event of further local or national lockdowns.*
   i. The FCA also reminds firms that they themselves are best placed to decide which staff are essential for the provision of financial services and to help with the identification process firms should identify the activities, services or operations which, if interrupted, are likely to lead to the disruption of essential services to the real economy or financial stability.
   ii. Firms should then identify:
   iii. (i) the individuals that are essential to support these functions; and
   iv. (ii) any critical outsource partners who are essential to the continued provision of services, even where these are not financial services firms.
   v. The web page then lists the types of roles that may be considered as providing essential services and the FCA recommends that the chief executive officer senior management function is accountable for ensuring an adequate process so that only the roles meeting the definition are designated.
   vi. On the same day the PRA updated its web page concerning a statement on key financial workers who are critical to the COVID-19 response. The PRA notes that the UK Government and the Devolved Administrations have recently issued new guidance to address rising cases of COVID-19 in the UK. The use of face covering in close contact services will now be mandatory, and where office workers can work effectively from home, they should continue to do so over the winter, anyone else who cannot work from home should go to their place of work. The PRA states that previous guidance on identifying key financial workers and the responsibilities of senior managers still apply.

d. FCA update following the recent coronavirus restrictions statements on Tuesday 22 September

e. KPMG 01st Oct *New reality for business leaders webinar* Watch event with Standard Chartered and GlaxoSmithKline PLC access the recording here and download the slides here.
   i. **Clare Francis, Chief Executive Officer U.K. & Regional Head Client Coverage Europe at Standard Chartered.** Clare said "A healthy economy needs a healthy banking system." She provided a banking perspective on economic recovery and what she thinks businesses need from their banks right now.
   ii. "Vaccine development is not a race, the world will need more than one" said **David Redfern, Chief Strategy Officer at GlaxoSmithKline PLC.** He provided an update on the progress for a COVID-19 vaccine and the reasons for his cautious optimism.
   iii. From KPMG, **Alasdair Murray, Director of External Affairs** discussed key announcements from the Chancellor's Winter Economy Plan and the implications for business. **Tim Payne, Partner, People Consulting,** discussed how lockdown and extended restrictions are affecting mental health and what business leaders should be considering as part of their people agenda.
   iv. In addition, **Donna Sharp and Richard Bernau** answered questions on the Job Support Scheme and COVID economic measures respectively.

v. *EFET Questions on Business Org*

#	Topic	EFET Question	Possible Response (version 1.2)
1	Arranging Blocks onto a UK RM	*EFET members are extremely concerned that a good portion of the trading activity, such as on the London Metal Exchange or ICE Europe, would be at risk, affecting many brokers.* *Could LEBA provide practical details of what they consider to be feasible to continue activity (legal and regulatory measures), such as trading via indirect access with UK Branches on broker or client side? [By Monday, 5 October, COB]*	LEBA understands that as the access to an exchange market is done under the RM Rulebook, and that the RM is not itself soliciting to EU participants, but solely remains open and available to them, so no reverse enquiry can occur. Therefore, UK situated staff of both UK firms and EU branches are able to receive and transmit orders. (based on LEBA conversation with FCA on 24 Sep 2020) LME has been granted licences to operate into Germany and France post-Brexit. LME is not required to apply for third country trading venue licence in France, Ireland, Norway or Cyprus.

			However, contracts traded on LME (and other UK exchanges) may still be deemed OTC derivatives for the purposes of EMIR. LEBA members can continue to provide block registration services to EU and UK based customers through combination of permissions through new EU based entities and Temporary Permissions Regime into the UK. LCH and LME regarded as systemically important by ESMA and have been granted access to the EU for 18 months. ICE Clear Europe has been recognised by ESMA as a third country CCP in accordance with EMIR.
2	Ancillary Activities Exemption: Size of UK situated trading portal entity	*EFET members understand that some foreseen measures, such as opening or using existing UK branches, will make them susceptible to MiFID II licensing requirements. Is there a workaround that LEBA recommends? [By Monday, 5 October, COB]*	As supervised entities, LEBA members cannot engage in "workarounds". LEBA understands that in acting as the UK branch of a main firm, a trader at a market participant would not be differentially impacted by new MiFID licencing requirements due to OTF Rulebooks. LEBA acknowledges that Brexit will affect the overall market test in the AAE because the UK commodity derivative markets may no longer count towards the EU27 overall market size calculations. This will be particularly relevant for markets where trading takes place predominantly on UK exchanges. Where remaining EU market size is significantly reduced, this might lead to some NFCs breaching the relevant market size thresholds. This may push some NFCs to trade outside the EU.
3	Swaps / Options	*What is the LEBA recommended legal solution for other financial products, outside the MiFID II? [By Monday, 5 October, COB]*	LEBA understands this question refers to derivatives arranged and executed in a Third Country, likely the UK or the US. The LEBA recommended legal solution would be for clients to use either of two legs: 1. Arrange, negotiate and/or place the order from a market participant trader who is a person situated outside the EU 2. Arrange, negotiate and/or place the order from inside the EU with a TV representative who is also a person inside the EU. This may include UK situated staff of an EU OTF_OMP.
4	WEP Migration Dates	*EFET members need to know where any transferred product goes from which to which entities on go live date. Could LEBA provide such a list, differentiated per broker? [By Friday, 16 October, COB]*	LEBA Reiterates the advice from 2019. All WEPs Emissions and related on screen spread products will become instruments admitted to OTF_OMPs inside the EU on or before 04th January 2021. The go live date for any changes not already made will therefore be in place for commencement of trading 04th January 2021. ICAP/Tullett, GFI/BGC, Griffin will relocate their energy OTFs to Paris prior to 4th January 2021.

			Marex Spectron are already operating their energy OTF from Ireland. Therefore, all C6 REMIT carve out products will be listed by LEBA members in the EU by 4th January 2021. [All answers are subject to and conditional on political outcomes between now and year end. LEBA members will also offer block registration services from the EU].
5	Liquidity Fragmentation	*If products are not moving due to liquidity fragmentation or other reasons, could LEBA provide possible solutions to clients? [By Friday, 16 October, COB]*	LEBA does not envisage any split liquidity. All WEPs, Emissions, and related on screen spread products [Coal?] will become instruments admitted to OTF_OMPs inside the EU on or before 04th January 2021. [No LEBA member will operate more than one energy OTF_OMP at the same time] For the avoidance of doubt, this includes UK Power and Gas instruments. Other products will remain as they have been in 2020.
6	Roadmap	*EFET members need to make burdensome legal, technical, and procedural adjustments for the changes related to continuing trading activity following the Brexit date.* *Could LEBA provide a roadmap [what by when - products are transferred, procedures are implemented, etc.], so that EFET members can make those required adjustments gradually? [By Friday, 16 October, COB]*	We understand that all legal preparations have been completed and market participants are papered with LEBA members' new EU entities. Technical changes will also be very limited. We note that because the same single instruments will be changing permission inside the same and single software interface, the principal requirement for market participants will only be to ensure that the new broker entities are recognised in their ETRM systems. Nothing will change in the Trayport front end. Instruments and logins will remain the same. These would only have needed to change in the event of a broker operating two OTFs at the same time.
7	Country by Country Approach to reverse solicitation	*Could LEBA inform EFET members for what countries and products reverse solicitation is a solution? [By Friday, 16 October, COB]*	LEBA emphasises that until or unless a decision is made at EU level, Michel Barnier last on and around 10th September 2020 recommended a country by country approach as a fallback to any trade deal. On 09th July 2020 DG FISMA noted that Article 47 equivalence may need to wait for forward IFR clauses to take effect later in 2021. Any country by country approach will need to take account ongoing legal and supervisory changes as well as stays and forbearances as they eventuate, most especially with respect to NCA interpretations of MiFIR Recital 111.

			Therefore, reverse solicitation from countries within the EU 27 currently would appear to be more likely between the UK and Ireland, Benelux and Scandinavian countries. In any event, LEBA firms are not intending to rely on reverse solicitation as a solution. All LEBA firms are establishing an EU presence with Temporary Permissions Regime access into the UK.
8	Testing Period	*Is LEBA envisioning a testing period for the transferred products? If yes, could that testing period be communicated to EFET members and EFET members be involved in testing? [By Monday, 2 November, COB]*	In response to the requests on the call of Monday 21st September, LEBA Members do foresee the provision of testing environments during the month of December and these will be subject to customer bilateral requirements and facilities.

v. Benchmarks and LiBOR Topics

Benchmark Reform And Transition From Libor

- Letter to FSB OSSG – Timing Update for IBOR Fallbacks Protocol
- RFR Conventions and IBOR Fallback Product Table
- New Webinar Recording: Collateral Changes for US Dollar and Euro Derivatives (GoToWebinar recording and slide presentation)
- Regulators Urge Use Of Sonia In Interest Rate Swap Market The Financial Conduct Authority and the Bank of England on Tuesday called on liquidity providers to switch to using the Sterling Overnight Index Average interest rate benchmark, or Sonia, in the sterling swaps market in a move away from Libor.

a. Summary of the main proposals and issues in relation to the revised EU presidency compromise text 2nd October 2020 General overview; *The latest draught of the presidency compromise text consists of three main elements:*

1. Extension to the third country transition period until 2025
2. Designatory power for the European Commission to take FX rates which reference a currency which is not freely convertible out of scope of BMR
3. Power to designate a statutory full back in certain contracts governed by EU 27 laws and in certain cases, contracts between EU entities which are governed by third country laws.
4. Taking each of these in turn:

1. New proposal to extend third country benchmark transition to 2025.

- The latest compromise text includes a provision which would extend the transitional period for 3rd country benchmarks until 2025 with the intention, we understand, of a second more holistic review process being undertaken before then. A request by one member state to memorialise the intention to conduct a second review within the recitals has not been taken up however.

2. NDF FX proposals.

- Space this proposal is not significantly changed since the last iteration despite is ISDA's advocacy on the issues it raises.
- The proposal is for the EC to be given the power to designate rates which are spot foreign exchange benchmarks referencing the spot exchange rate of the third country currency that is not a freely convertible where it is used on a frequent systemic and regular basis for hedging against adverse foreign exchange rate movements.
- The EC will conduct a public consultation prior to 31 December 2024 to identify such rates and will publish a list of designated benchmarks by 31 December 2025 and then regularly update that list.
- The presidency text deletes the requirement for NC A's to report to the EC and to ESMA on the number of derivative contracts using the benchmarks.

b. ESMA updates statements on the impact of Brexit on MiFID II / MiFIR and Benchmarks Regulation; *On 1 October 2020, the ESMA updated its statement on the impact of Brexit on MiFID II / MiFIR.*

- The statement updates the issues covered in the statement published on 7 March and 7 October 2019. These issues concerned: the C(6) carve-out, ESMA's opinions on third country trading venues for the purpose of post-trade transparency and the position limits regime and post-trade transparency for over-the-counter transactions. The statement also covers the implementing technical standards on main indices and recognised exchanges under the Capital Requirements Regulation.
- ESMA has also updated its statement on the impact of Brexit on the Benchmarks Regulation. The statement covers the consequences of Brexit for the ESMA register for benchmark administrators and third country benchmarks under the Benchmarks Regulation.

c. ESMA updates RTS under the Benchmarks Regulation; On 29 September 2020, the ESMA published a final report containing new sets of RTS under BMR.

- The ESMA final report has five chapters covering each of the areas for which ESMA is required to develop draft RTS (see below). Each chapter provides background information on ESMA's mandate and the feedback it received to an earlier consultation on the draft RTS. ESMA also outlines its approach to the draft RTS following the consultation with the RTS themselves set out in Annex I to the final report.
- The draft RTS are produced by ESMA under the following mandates:
    - Article 4(9) of the BMR states that "ESMA shall develop draft RTS to specify the requirements to ensure that the governance arrangements referred to in paragraph 1 [of Article 4 of the BMR] are sufficiently robust."
    - Article 12(4) of the BMR states that "ESMA shall develop draft RTS to specify the conditions to ensure that the methodology referred to in paragraph 1 [of Article 12 of the BMR] complies with points (a) to (e) of that paragraph."
    - Article 14(4) of the BMR states that "ESMA shall develop draft RTS to specify the characteristics of the systems and controls referred to in paragraph 1 [of Article 14 of the BMR]."
    - Article 5(6)(b) of Regulation (EU) 2019/2175 adds to Article 21 of the BMR, mandatory administration of a critical benchmark, a new paragraph 5 stating that: "ESMA shall develop draft RTS to specify the criteria on which the assessment referred to in point (b) of paragraph 2 [of Article 21 of BMR] is to be based."
    - Article 26(6) of the BMR states that "ESMA shall develop draft RTS to specify the criteria under which competent authorities may require changes to the compliance statement as referred to in paragraph 4 [of Article 26 of the BMR]."
- The key benefits of the draft RTS are as follows:
    - The main benefit of the proposed draft RTS under Article 4(9) of the BMR is to further specify aspects of the governance arrangements of the administrator, such as the organisational structure and the roles and responsibilities for persons involved in the provision of a benchmark. In this way the draft RTS expand the governance arrangements to provide administrators with a practical indication on how to implement Article 4(1) of the BMR in their organisations.
    - The proposed approach of the draft RTS under Article 12(4) of the BMR is to ensure that the methodology complies with the requirements of Article 12(1) of the BMR and promote a consistent methodological framework across different administrators of benchmarks to the benefit of users.
    - The proposed approach of the draft RTS under Article 14(4) of the BMR for the characteristics for the systems and controls is to ensure the integrity of input data in order to be able to report to the Member State national competent authority (NCA) any conduct that may involve manipulation or attempted manipulation of a benchmark.
    - Both administrators of critical benchmarks and NCAs will benefit from the application of the proposed draft RTS under Article 21(5) of the BMR. The draft RTS contain a set of criteria to be taken into account by NCAs ensuring that Article 21(2)(b) of the BMR is applied consistently throughout the EU.
    - Both administrators of non-significant benchmarks and NCAs will benefit from the application of the proposed RTS under Article 26(6) of the BMR. The draft RTS contain a set of aspects to be taken into account by NCAs when reviewing the compliance statement of an administrator of non-significant benchmarks. The application of these elements by NCAs in their review would ensure that Article 26(4) of Regulation (EU) 2016/1011 is applied consistently throughout the EU.

- The draft RTS will be submitted to the European Commission. The Commission has three months to decide whether to endorse the regulatory technical standards.

- *Over the last six weeks we have seen a continuous stream of updates that will assist market participants in the transition from LIBOR, which we summarise below.*

d. Sterling market developments -Updated RFRWG priorities and targets

i. On 28 July, the Sterling Risk-Free Reference Rates Working Group (RFRWG), published a statement on LIBOR transition with a range of materials designed to assist firms in implementing their transition plans. These included: a) a set of updated priorities for 2020-21, including an updated roadmap; b) Q&A on RFRWG's revised end-Q3 milestones for loan markets; and c) a series of educational videos providing background on the key issues in the LIBOR transition.

ii. The roadmap has become more detailed and now also includes a helpful product-by-product view of intermediate steps and milestones. However, across all products, the working group's targets are to cease initiation of new Sterling LIBOR products maturing after 2021, by end Q1 2021, and complete active conversion where viable by end Q3 2021.

iii. In the very near term, RFRWG deliverables for Q3 2020 are:
   1. Loans enablers taskforce: to publish detailed roadmap to Q1 2021 target
   2. Cash credit spread adjustment: statement on credit spread methodology and successor rates
   3. Cash legacy: RFRWG to publish papers on active conversion of bonds and loans

iv. In terms of market developments and external dependencies, RFRWG targets for Q3 2020 are:
   1. Lenders should be able to offer non-LIBOR alternatives to customers
   2. Lenders should include contractual arrangements in new and re-financed LIBOR-referencing loan products to facilitate conversion to SONIA or other alternatives
   3. Key infrastructure available from Treasury Management Systems and loans vendors to use compounded SONIA

v. **SONIA Loan Market Conventions;** To support the transition to SONIA in the sterling loan market, the RFRWG published, on 1 September, a recommendation on standard market conventions for sterling loans based on compounded in arrears SONIA.
   1. The recommendations cover a number of aspects in relation to calculation of interest to support new lending on a SONIA-linked basis, and on the treatment of interest rate 'floors' in existing LIBOR-linked contracts moving to SONIA. The standard approach recommended is the 'five banking days lookback without observation shift', which aligns with the approach recommended by ARRC for the US dollar loan market. The RFRWG has published explanatory slides and worked examples to help lenders be able to offer non-LIBOR alternatives to customers by the RFRWG end-September target.

vi. **Euro market developments**
   1. **Tough legacy products;** Following on from the UK Government's June proposal to amend the UK version of the EU Benchmarks Regulation (BMR) to help manage the risk of 'tough legacy' products (see issue 12), on 24 July, the European Commission issued its own proposal to amend the EU BMR to help prevent disruption caused by the cessation of LIBOR.
   2. The proposal is open for consultation until 6 October. In a slightly different methodology to the UK, the amendments proposed to the EU BMR would empower the Commission to designate a replacement benchmark to cover all references to a critical benchmark, such as LIBOR, when such a benchmark ceases to be published and could result in significant disruption to EU financial markets. The statutory replacement rate will be available only for financial contracts that reference the critical benchmark at the time it ceases to be published.
   3. With the ARRC proposal on New York State legislation, there are now three proposals to address the 'tough legacy' issue. However, pending further information from the authorities, it is not yet clear, for any of these solutions, exactly how they will apply or the economic impact they may have on

individual contracts. All these solutions also require legislative approvals at a time when legislators are likely to be occupied with measures to combat the pandemic or other national developments. Therefore, it is crucial that individual firms focus on transitioning as many of their LIBOR-referencing exposures as possible. Firms should expect steadily increasing scrutiny from supervisors as the end of 2021 draws nearer.

4. **ECB assessment of banks' preparedness for benchmark reform;** On 23 July, the European Central Bank (ECB) published an assessment of the preparedness of banks it supervises for benchmark reforms.
5. The assessment, carried out in H2 2019, found that while banks are generally well-aware of the complexity of the reforms and the challenges involved, their level of preparation leaves room for improvement: their action plans were generally behind schedule. Banks had focussed more on the transition from EONIA to the euro short-term rate (€STR) than on the risks associated with the reform of the euro interbank offered rate (EURIBOR). This is despite the fact that EURIBOR is currently the most frequently used benchmark rate for contracts in the euro area. Therefore, alongside the assessment, the ECB published good practice examples outlining how banks can best structure their benchmark-rate related governance, identify benchmark-rate related risks, and create action plans and documentation in relation to the reforms.
6. **€STR compounded term rates;** On 24 July, the ECB launched a consultation on the publication of compounded term rates based on the euro short-term rate (€STR). The publication would take place daily, shortly after the €STR publication.
7. Published maturities could range from one week up to one year. A daily index, making it possible to compute compounded rates over non-standard periods, is also envisaged as part of the publication. The consultation closed on 11 September. For comparison, the Bank of England has published, since 3 August, a daily SONIA compounded index but has decided not to publish SONIA 'period averages' given lack of consensus on usefulness and methodology. And the New York Federal Reserve has published daily SOFR averages and index since 2 March.

e. **US dollar market developments; CFTC no-action letters;** On 31 August the Commission issued three revised no-action letters, which will allow market participants to qualify for relief when amending swaps to update provisions references LIBOR or others IBORS.

i. The letters provide relief from, amongst other things, uncleared swap margin rules, business conduct requirements, uncleared swap margin rules, and time limited relief from the trade execution requirement and the swap clearing requirement. This should help reduce the operational implications of LIBOR contract transition for market participants.
ii. **ARRC updates;** The Alternative Reference Rates Committee (ARRC) continues to publish guidance, recommendations and supporting material across market sectors to assist with LIBOR transition. Key ARRC targets for end-September 2020 are:
    8. Hardwired fallbacks incorporated into student loans
    9. Cessation of the new use of USD LIBOR for closed-end residential mortgages maturing after 2021
iii. On 10 September, the ARRC requested proposals for an administrator for a forward-looking term rate for SOFR. The aim is to publish in the first half of 2021, if liquidity in the SOFR derivatives market has developed sufficiently. Regulators have questioned the need for forward-looking term rates for the RFRs, but market participants have continued to request them. The announcement stresses that it does not guarantee that any SOFR term rate or administrator will ultimately be recommended by the ARRC.
iv. On 27 August, the ARRC published updated recommended hardwired fallback language for newly-originated USD LIBOR bilateral business loans. ARRC's 'Best Practices' state that new bilateral loans should incorporate hardwired or hedged fallback language by 31 October 2020. The changes are similar to the recent revisions made by the ARRC to its recommended fallback language for newly-originated syndicated loans.
v. The ARRC also released a technical reference document for syndicated loan conventions, which includes example calculations of the different methodologies.
vi. On 18 August, the ARRC published the LIBOR ARM Transition Resource Guide, which focuses on LIBOR-based adjustable rate mortgages, including home equity products, and the Legacy LIBOR-Based Private Student Loan Transition Resource Guide, which focuses on LIBOR-

based variable rate private student loans. Developed by the ARRC's Consumer Products Working Group, both resources offer guidance for all stakeholders throughout the LIBOR transition process, with consideration of the potential consumer impacts.

f. Other markets developments

i. **Second Consultation on Japanese Benchmark Reform;** On 7 August, the Bank of Japan's Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks published a second consultation on interest rate benchmark reform, gathering views on specific outcomes from **f**allbacks triggered in cash products referencing JPY LIBOR. It also presents the Committee's recommendations for enhancing the robustness of Term Reference Rates and a transition plan for cash products referencing JPY LIBOR and maturing beyond end-2021; specifically, a deadline of end-Q2 2021 of ceasing issuance of new cash products referencing LIBOR.

ii. **Bank of Japan review of financial institutions' preparedness for LIBOR cessation;** On 11 August, the Bank of Japan published a review of the preparedness of financial institutions for the cessation of LIBOR. This highlighted the results of a survey jointly conducted with the Japanese Financial Services Agency from October to December 2019 covering a total of 278 entities across financial services. Similar to the ECB survey detailed above, the Japanese survey suggests that "although there has been progress in financial institutions' preparations overall, such as in terms of their awareness of challenges posed by LIBOR cessation and their identification of contracts referencing LIBOR, there remains some room for further efforts on their part."

g. ISDA updates

i. **IBOR fallback protocol;** At the time of writing, the market is expecting the publication of the ISDA IBOR fallback protocol. ISDA is awaiting a positive business review letter from the US Department of Justice, giving approval, and similar feedback from competition authorities in other jurisdictions. The IBOR fallback protocol is the most efficient way for firms in most non-cleared linear derivatives markets to mitigate against risks associated with the discontinuation of a key IBOR. It forms a critical part of addressing the systemic risks related to the expected discontinuation and/or non-representativeness of LIBOR, in particular. Central counterparties clearing derivatives that reference key IBORs have already confirmed that they will use the powers in their respective rule books to implement the new fallbacks across all new and legacy over-the-counter transactions.

ii. On 22 July, ISDA sent a letter to all the chairs of the RFRs working groups asking them to encourage regulated entities and other key market participants to sign up to the protocol 'in escrow' in the two weeks prior to the official launch date. ISDA will then be able to publish a comprehensive list of adherents when the protocol is launched. The hope is that this will indicate to the market an expectation of widespread usage and therefore encourage further adherence.

iii. On 29 July, the ISDA Board of Directors published a statement signalling its strong support for broad adherence to the protocol.

iv. On 19 August, ARRC updated its recommended Best Practices, encouraging dealers and other firms with significant derivatives exposures to adhere to the protocol during the escrow period. As Tom Wipf, the ARRC chairman said, "The IBOR fallback protocol is crucial to ensuring that the derivatives market continues to function and that LIBOR derivatives contracts continue to perform through the transition away from LIBOR."

v. **Landmark LIBOR date delayed;** ISDA yesterday announced a further delay to the publication of the long-awaited IBOR Fallbacks Protocol. CEO Scott O'Malia used the ISDA derivatiViews blog to inform the market that the effective date of the protocol is now expected to be mid-late January, referencing a letter to this effect sent to the Bank of England and the Federal Reserve.

vi. Fallback provisions expected to be effective in January 2021; ISDA is expected to shortly launch amendments to its standard interest rate derivatives definitions plus a related protocol that will incorporate new fallbacks into derivatives trades that reference key interbank offered rates. The effective date for the changes — which will ensure a fallback rate kicks in if an Ibor ceases to exist or Libor is deemed to be non-representative — will not occur before the second half of January 2021.

vii. Early to mid October 2020- ISDA informs the market of publication date with two weeks' notice

viii. Participants may sign up to the protocol during the 2 week notice period on a binding but non-public basis. The intention of this "escrow" period is to give a kick start to the official launch date.

ix. Protocol published mid-late October 2020- triggering an approximately 3 month adherence before the effective date. Note that adherence may continue after the effective date.
x. Protocol becomes effective for all adherents mid to late January 2021
xi. **The increased likelihood of a fallback requires an improved flexibility on analytics libraries. But where should the flexibility should be. The LIBOR fallback is not a curve issue, it is a trade description issue.** There is at the maximum one LIBOR (at some stage maybe even zero LIBOR) but there are many legal frameworks for LIBOR trades. Some have early trigger to fallback, some not, the fallback mechanism maybe different with different ways to incorporate RFR. All those trades reference to the same LIBOR, there is only one LIBOR curve. But there are many fallback mechanism. Looking at the fallback pricing under the "curve" glass is incoherent, the flexibility should be in the trade description mechanism and curves should have one clear purpose.

h. **ESMA keeping Euribor benchmark for now** European Securities and Markets Authority Chairman Steven Maijoor says that the Euro Interbank Offered Rate performed well during the coronavirus-related volatility and will be available for the foreseeable future. Maijoor told an online event that "ESMA will substitute the Belgian FSMA as supervisor of Euribor in January 2022 and I can clearly state that, as of today, the discontinuation of Euribor is not part of our plans." Reuters

i. **ECB's Holthausen calls for more activity in €STR** Markets need to start making the transition from the Euro Overnight Index Average to the Euro Short Term Rate, a shift that should have accelerated in July when clearinghouses started using the new rate to discount euro interest rate swaps, said Cornelia Holthausen who oversees benchmark rates at the European Central Bank. "I would have hoped for more activity at this point," she said. Risk
ii. **ECB's Holthausen urges market to ditch Eonia;** A senior European regulator has urged the market to embrace the euro short-term rate, or €STR, after market participants abandoned the new benchmark in favour of the outgoing Eonia during Covid-19 volatility in March and April.
iii. **Euribor fallback consultation set for November;** ***Participants in euro interest rate markets will be asked for their views on alternative benchmarks for Euribor-linked products in two new consultation papers, due to be published by a key working group in November.***
iv.

i. **Working Group on Sterling Risk-Free Reference Rates issues recommendations on conventions to support the use of SONIA in loan markets for Sterling Bilateral and Syndicated Facilities (September 2020);** The recommendations reiterate that market participants should be ready to offer non-LIBOR loans' products by end Q3 2020. SONIA compounded in arrears remains the Working Group's recommended alternative to Sterling LIBOR and the intent of the recommendations is to enable and expedite the transition away from the use of LIBOR based products for the loan market. Summary of recommendations:

v. **LMA exposure draft of multicurrency facility agreement including provisions for LIBOR switch to Risk-Free Reference Rates; On 11th September the Loan Market Association published an exposure draft multicurrency term and revolving facilities agreement incorporating rate switch provisions (the Rate Switch Agreement). The draft is for the purposes of switching from an initial IBOR forward looking term rate referenced Loan in any currency determined by reference to an existing forward looking term rate, to an agreed alternative Risk-Free Rate calculated on a compounded basis on the occurrence of a pre-agreed date prior to 31 December 2021, or an alternative trigger event for any currency.**
vi. **Bonds and loans clash on Sonia compounding style;** A new fracture in Sonia cash markets has disappointed some market participants, as recently issued conventions for calculating interest payments on loans have diverged from recommendations for bonds and swaps, threatening a nasty operational headache. The standards have been issued as part of the interest rate market's transition away from sterling Libor.
vii. **UK Finance – Discontinuation of LIBOR: a guide for business customers;** On 16 September 2020, UK Finance published a guide which is intended for business customers with LIBOR-linked loans to help them understand:

j. **Rival providers of Libor alternatives given until next year to prove their worth;** Rival financial data companies competing to become the dominant provider of alternatives benchmark interest rates to Libor are working on the assumption that the Bank of England is expecting operational versions of their forward-looking risk-free rates to be available by the first quarter of next year.

k. **LIBOR transition: getting my firm ready;** On 17 September 2020, the FCA published a new web page, LIBOR transition: getting my firm ready. On this web page the FCA explains what firms need to know about LIBOR transition.

vi. SFTR

a. [ICMA -publishes updated Guide to Best Practice in the European Repo Market](). ***The ICMA European Repo and Collateral Council (ERCC) publishes, and routinely updates, the Guide to Best Practice in the European Repo Market. The Guide provides recommended practices, conventions, and clarifications intended to support the orderly trading and settlement of repos.***
   i. The latest version of the Guide, published today, introduces a number of new guidelines intended to address issues that have arisen since the last publication (in December 2018) as the market continues to evolve and develop.
   ii. These include best practices for the termination of open repos late in the day, the calculation of transaction exposure for forward dated trades, and defining stale prices.

b. ***ICMA's European Repo and Collateral Council (ERCC)* SFTR and Repo : Noting this quite informative ICMA state of play webinar around SFTR Reporting (UPIs and MiFID, but not RTNs) https://lnkd.in/dXpGD-3**
   i. to date the UPI/UTI/RTN labelling of Repo trades for SFTR would appear to be working?

   ii. Noting as well the ERCC Repo Annual event 2pm on 07th October (*which Godfried was prompting me on yesterday*)
   iii. 15.05 Introductory remarks; Godfried De Vidts, Senior Adviser, ICMA ERCC
   iv. 15.10 Repo market data: The 39th European Repo Survey & SFTR public data; Richard Comotto, Senior Adviser, ICMA
   v. 15.25 Panel discussion: The European Repo Market in 2020; Moderator: Andy Hill, Senior Director, ICMA
   vi. Panellists
      1. Gareth Allen, Managing Director, UBS; ERCC Chair
      2. Emma Cooper, Head of EMEA FI Repo, BlackRock; ERCC vice chair
      3. Richard Hochreutiner, Head Global Collateral, Swiss Re
   vii. 16.00 ERCC Ops initiative on intraday liquidity James Upton, Commercial Services Director, LCH Limited; ERCC Ops co-chair
   viii. 16.15 Legal updates Lisa Cleary, Senior Director, ICMA
   ix. 16.25 Regulation:
   x. SFTR implementation Alexander Westphal, Director, ICMA
   xi. CSDR mandatory buy-ins Andy Hill, Senior Director, ICMA
   xii. 16.45 CDM and repo Gabriel Callsen, Director, ICMA
   xiii. 16.55 Closing remarks Godfried De Vidts, Senior Adviser, ICMA ERCC

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

a. **CFTC Finalizes Rules to Improve Swap Data Reporting, Approves Other Measures at September 17 Open Meeting;** The Commission at its open meeting today unanimously approved three final rules to revise CFTC regulations for swap data reporting, dissemination, and public reporting requirements for market participants.
   i. Final Rule: Amendments to the Real-Time Public Reporting Requirements (Part 43); The Commission unanimously approved a final rule that revises its regulations for real-time public reporting and dissemination requirements for swap data repositories (SDRs), derivatives clearing organizations (DCOs), swap execution facilities (SEFs), designated contract markets (DCMs), swap dealers (SDs), major swap participants (MSPs), and swap counterparties that are neither SDs nor MSPs. The Commission also made revisions that, among other things, will change the "block trade" definition and the block swap categories; update the block thresholds and cap sizes; and address issues market participants have had in publicly reporting certain types of swaps.

ii. **Final Rule: Amendments to the Swap Data Recordkeeping and Reporting Requirements (Part 45)**; The Commission unanimously approved a final rule that revises its regulations that establish swap data recordkeeping and reporting requirements for SDRs, DCOs, SEFs, DCMs, SDs, MSPs, and swap counterparties that are neither SDs nor MSPs. This will for the first time give the CFTC access to uncleared margin data, thereby significantly improving the CFTC's ability to monitor for systemic risk. The Commission also finalized revisions that, among other things, streamline the requirements for reporting new swaps, define and adopts swap data elements that harmonize with international technical guidance, and reduce reporting burdens for reporting counterparties that are not SDs or MSPs.

iii. **Final Rule: Amendments to the Commission's Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements (Part 49 Verification)**; The Commission unanimously approved amendments to parts 43, 45, and 49 of CFTC's regulations to improve the accuracy of data reported to, and maintained by, swap data repositories (SDRs), and to provide enhanced and streamlined oversight of SDRs and data reporting generally. Among other changes, the amendments modify existing requirements for SDRs to establish policies and procedures to confirm the accuracy of swap data with both counterparties to a swap and require reporting counterparties to verify the accuracy of swap data pursuant to those SDR procedures. The amendments also update existing requirements related to corrections for data errors and certain provisions related to SDR governance.

iv. **Final Rule: Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations**; The Commission unanimously approved the adoption of a rule that will permit DCOs organized outside of the U.S. to be registered with the CFTC, yet comply with the core principles applicable to DCOs as in the Commodity Exchange Act through compliance with their home country regulatory regimes, subject to certain conditions and limitations. The Commission also approved amendments to certain related delegation provisions in its regulations.

v. **Supplemental Notice of Proposed Rulemaking: Part 190 Bankruptcy Regulations**; The Commission unanimously approved a supplemental notice of proposed rulemaking regarding amendments to the CFTC's regulations that govern bankruptcy proceedings for commodity brokers. In response to comments on the amendments proposed in April, the Commission is proposing a revision with respect to efforts to foster a resolution proceeding under Title II of the Dodd-Frank Act for a systemically important derivatives clearing organization (SIDCO). This proposed rule has a 30-day comment period after publication in the Federal Register.

vi. ***All three measures are part of the CFTC's efforts to improve the quality, accuracy, and completeness of the data reported to the agency and streamline CFTC regulations.***

vii. The Commission also unanimously approved a final rule that will permit derivatives clearing organizations (DCOs) organized outside of the U.S. to be registered with the CFTC.

viii. Finally, the Commission unanimously approved a supplemental notice of proposed rulemaking regarding amendments to the CFTC's regulations that govern bankruptcy proceedings for commodity brokers. /bit.ly/3iVUUCp

b. **CFTC drops proposal to extend trade reporting timeline for some swaps;** regulator on Thursday said it was backing away from a controversial proposal to delay the trade reporting of some swaps, after a number of market participants said that it would make it more costly and difficult to trade the contracts.

i. CFTC in April proposed that the reporting of block trades be delayed for 48 hours, compared with 15 minutes now. These trades comprise around one third of the $300 trillion U.S. swaps market.

ii. But on Thursday Chairman Heath Tarbert said that the CFTC has dropped the proposal, adding that "public transparency is a bedrock of vibrant markets."

iii. Large banks have argued that a longer delay is needed for block trades so that information isn't revealed to the market before they can hedge or offset the position.

iv. But academics and asset managers including Citadel, Vanguard and T. Rowe Price said there was a lack of data supporting the notion that a reporting delay would improve market conditions.

v. Many also expressed concern it would make it harder to determine a fair price for swaps and make it more expensive for all but the largest market participants to trade.

c. **CFTC Staff Extends Relief from Certain Reporting Obligations under the Ownership and Control Reports Final Rule**; The CFTC's DMO issued a no-action letter that extends current relief from reporting obligations under the ownership and control reports final rule (OCR Final Rule). The OCR Final Rule,

approved in 2013, requires the electronic submission of trader identification and market participant data. /bit.ly/337CZ60

d. **CFTC extends swap dealers' remote working compliance deadline** The CFTC has extended the compliance deadline for requirements on recording communications, time stamping and audit trails to Sept. 30. "This time-limited extension recognizes the reality that work-from-home arrangements have become commonplace and will be standard operating practices indefinitely for many firms," says CFTC Division of Swap Dealer and Intermediary Oversight Director Joshua Sterling. Futures & Options World

e. **CFTC Staff Letter No. 20-29; Letter Type: No-Action; Division: DMO; Regulation Part:** 37.3 **Tags:** SEF, Reinstatement Requirements; **Issuance Date:** 09/15/2020; **Description:** No-Action Relief from Swap Execution Facility Reinstatement Requirements under Commission Regulation 37.3(d); This letter responds to your letter, dated August 10, 2020, by which you request, on behalf of Tassat Derivatives LLC ("Tassat"), the Division of Market Oversight ("DMO" or the "Division") of the CFTC (the "Commission") grant Tassat no-action relief, pursuant to Commission Regulation 140.99,1 from the reinstatement requirements under Commission Regulation 37.3(d)2 (the "Request Letter").

f. **CFTC Issues No-Action Relief for FCM Treatment of Separate Accounts Under Rule 1.56;** Division of Swap Dealer and Intermediary Oversight, and Division of Clearing and Risk (together, the Divisions) jointly issued (1) new no-action relief and advisory guidance on the requirements of Rule 1.56 for separate accounts; and (2) an extension of time for existing no-action relief of Rule 39.13(g)(8)(iii) concerning futures commission merchant (FCM) margining practices for customers with separate cleared derivatives accounts.

g. **CFTC rule gives it access to uncleared margin data** The Commission's new swap data reporting rule will give the agency access to uncleared margin data for the first time. "The better visibility the CFTC has into the uncleared swaps markets, the more effectively it can address what until now has been a black box of potential systemic risk," says CFTC Chairman Heath Tarbert. Futures & Options World

h. **Calls for climate change stress testing grow louder** The Commission is pressing other federal bank regulators to start stress testing banks to evaluate the risks brought by climate change. Regulators are giving more attention to climate change risks but they haven't gone as far as formalizing their concerns in stress testing. American Banker online

i. **Bill would put crypto exchanges under CFTC;** A bill proposed in the House aims to establish guidelines for the Commodity Futures Trading Commission to regulate crypto exchanges. The Digital Commodity Exchange Act would designate some crypto exchanges as a registered Digital Commodity Exchange, much like the designations of Swap Execution Facilities and Designation Contract Markets. The Block

j. **Joint Statement of Concurrence of Commissioners Dawn D. Stump and Rostin Behnam Regarding JPMorgan Chase & Co., et al.** We concur with the Commission's decision to accept the Offer of Settlement from JPMorgan Chase Bank, N.A.; J.P. Morgan Securities LLC; and JPMorgan Chase & Co. (the "Respondents"). We concur with the Commission's findings that the Respondents engaged in unlawful spoofing, manipulation, and attempted manipulation in precious metals and treasuries markets, and that Respondent J.P. Morgan Securities LLC further breached its duty of diligent supervision, all in violation of the Commodity Exchange Act ("CEA") and the Commission's regulations. /bit.ly/33do8Hc

   i. Supporting Statement of Commissioner Dan M. Berkovitz Regarding Historic Penalty against JPMorgan and Opposing "Bad Actor" Waiver; I support today's Commission action ordering JPMorgan[1] to pay $920 million—the largest monetary settlement in this agency's history—for manipulating the precious metals and U.S. Treasury futures markets. However, I oppose the CFTC's determination that JPMorgan's conduct should not result in any disqualifications under the "bad actor" provisions of the securities laws, for the reasons outlined below. /bit.ly/33grDwQ

viii. Compliance Horizon Topics: Table

Join EVIALEBA Month Compliance Zoom Meeting; 0830 Wednesday 07th October 2020 Virtual Meeting via ZOOM		
Compliance Horizon Topics:	**Topics**	**Comments**

	Venue Compliance	MiFID2/R Refit Process [ESMA / NCAs]	AFM opinion memo of 28th 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 Published MiFID QuickFix; EC CWG Published MiFID QuickFix;
		Reference Data: FIRDs/ FITRs/	ESMA Call for Evidence ESMA CP on Reporting Markit Axess buys DB2 Utility Brexit Duality / deference
		ANNA-DSB	Product Committee TAC Committee
		Reporting/ Reference Data:	ESMA CfE - Sept 2020 ESMA Report back to FISMA - Sept 2020 ESMA CP on Data Reporting - Sept 2020 EMIR Best Practices - EMIR TS Consultation Responses
		CSDR Implementation	ESMA Delay until Feb 2022 or never
		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) Onboarding
		ACER Topics	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. • 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". TRUM Revisions (published July with more to come in October). Fines ACER - New REMIT Quarterly published; *ACER issued the latest "REMIT Quarterly" newsletter on Friday Aug 17, which can be found here. Topics covered include:*

			• *Data quality* – Work that ACER and National Regulatory Authorities (NRAs) are carrying out to improve data quality. This section also announces that:
			  • 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.
			• *Fees* – Fees will soon be levied on RRMs which will be passed on to market participants. The recent consultation can be found here.
			• *Completeness/delivery profiles* – ACER have been checking for consistency in reporting between total energy reported and that contained within the delivery profile.
			• *Negative prices* – 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:	ESMA MAR Report; 30 Sept 2020 – further review mandated on Spot perimeter FSB Ongoing Code of Conduct Review Q3 2020 FX Platform SubAssoc
		Money Markets: Code of Conduct 3 year Review	Restarting – now into 4 workstreams a. Background, key principles, explanatory notes b. Unsecured markets c. Repo markets d. Securities lending markets *"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. "*
		Role of Agency	PFOF Quiet since Q1 2020 29th July Dear CEO Letter ESMA OTF Review – noting MiFID2.2 inducements questions
		Exchange Block Rules	CME Block Rule revisions [Name Passing] FIA thematic guidance
		Benchmarks	FCA Applies SMR to BAs: Further Guidance; Sept 2020 2026 UK Stay on 3rd Country Benchmarks now mirrored in the EU BMR Review ESMA RTS Published Sept 2020 BMR Revision CWG Oct 2nd Report on the [FISMA] Roadmap of July 2020 Libor Transition Topics
		Commodities Topics	FMSB Code of Conduct restarting this week • Energy Markets • Metals Markets
		CBDCs, Crypto-Assets and Stablecoins	EU FISMA CP on cyber framework Oct 2020 and Pilot Project CBDC Work ongoing China Digital Currency Libra Rejuvenation as a CBDC Basket

	Conduct / People	Work from Home Office Supervision	COVID-19: FCA and PRA update information on key workers and working from home; *On 24 September 2020, the FCA updated its web page on 'Key workers in financial services'.*
		Fines /investigations	Reopening – See JPM etc
		Broker Gifts and Entertainment	Paused (?)
		FMSB	Likely forward EVIA compliance session with FMSB and FCA Wholesale supervision to unpack all 6 FMSB conduct spotlights written by Rupak Ghose Codes of Conduct Development • Energy Markets • Metals Markets
			• 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
		Training / Apprenticeships	Reopening of consultation https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work/apprenticeship-levy-how-it-will-work
	Operational Risk / Prudential	IFR Level 2	EBA K-FACTOR ITS/RTS - ongoing EBA Consultation (closed) FCA Consultation (closed) KPMG [Remuneration workshop planned]
		Pillar 2 Add-ons	FCA Thematic work on Broker Compensation Q4 FCA CP on resilience (closed) IOSCO work on Op Res
	RegTech, FinTech & CyberCrime Topics		EU FISMA CP on cyber framework Oct 2020 and Pilot Project FCA Reg Tech Committee initiated JWG Reg Tech Council
	EVIA/LEBA Weekly Roundups for September 2020		1. Weekly update on Key Regulatory Topics (Week 36, 07th September 2020 to 12th September 2020) 2. Weekly update on Key Regulatory Topics ((Week 37, 14th September 2020 to 19th September 2020)) 3. Weekly update on Key Regulatory Topics ((*Week 38, 21st September 2020 to 26th September 2020*)) 4. Weekly update on Key Regulatory Topics: (*Week 39, 28th September 2020 to 03rd October 2020*)

Topic: EVIA/LEBA Monthly Compliance Meeting via Zoom
Time: Sep 9, 2020 08:30 London

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