

## EVIA LEBA Monthly Compliance Meeting

0830 Wednesday 08<sup>th</sup> July 2020

[Virtual Meeting via LoopUp](#)

### i. Matters arising

- a. One immediate request for **discussion is the 'Authorised Trader List'** as members would like to consider the most effective approaches towards managing and updating this process as clients move from firm to firm. Some firms are also grappling with the Nex and DB closures of DSRPs and related PII'd facilities.
- b. **Reporting/ Reference Data: NEX Abide closing Down**
  - i. EVIA conference calls
  - ii. PII'd data
  - iii. Various media articles
- c. **FCA [Policy development update](#)** - Noting that over the intervening month, the FCA has mooted restarting their Wholesale Conduct thematic work for Q4 this year, have asked that [firms to prepare for phased move to FCA's new data collection platform RegData](#); have [fined Commerzbank London £37,805,400 over anti-money laundering failures and has now appointed Nikhil Rathi as new Chief Executive of the FCA](#)
  - i. [FCA regulated fees and levies 2020/21: Including feedback on P20/06 and 'made rules'](#)
    - For firms operating MTFs & OTFs reporting of their income as a measure of the size of their regulated activities (tariff data). This was the second stage of our consultation to introduce income as the basis for calculating periodic fees for these sub-sets of the market infrastructure provider B fee-block. In response to feedback we received on the first stage consultation we also proposed a clarification of the definition of income for firms operating MTFs and MTFs which will also apply to Recognised Investment Exchanges,

A.13	Advisors, arrangers, dealers or brokers	Solo	£81.1	£79.4	+2.1%
B.	Recognised investment exchanges, recognised overseas investment exchanges, multilateral trading facilities, organised trading facilities, recognised auction platforms, service companies, regulated benchmark administrators, third-country legal representative, benchmark endorsers	Solo	£8.2	£7.9	+3.7%
<p><i>In the case of the A.13 fee-block the 2020/21 AFR allocation in CP20/06 increased 1.6% compared to an average 5.2% AFR increase. This reflected that A.13 was subject to the exceptional allocations, for example, of the SM&amp;CR scope change recovery. But it also reflected the reduced recovery arising from reallocating AFR from A.13 (and the other A fee-blocks) to the consumer credit fee-blocks and an additional allocation reduction from the return of underspend on MiFID II scope change recovery in 2019/20. The higher</i></p>					

increase in the fee-rate compared to the allocation was due to a 7.5% decrease in the tariff data (income from A.13 activities) reported by A.13 firms which varies each year.

**Table 3.1: Variance in fee rates from 2019/20 – CP20/06 compared to actual**

Fee-block (variable fee rate)	CP 20/06 Variance	Actual
B: Recognised investment exchanges	-2.5%	-3.4%
B: Regulated benchmark administrators	-18.9%	-25.8%
B: Service companies	-10.1%	-52.5%

**MTF and OTF tariff data reporting (FEES 4 Annex 1Ar Part 3 and Part 5, FEES 4 Annex 13G – final rules in Appendix 1) Summary of proposals**

For the second stage consultation, in line with the consultation timetable in CP19/30, we proposed a requirement for firms operating MTFs and OTFs to report their annual income tariff data from these regulated activities. Annual income is now defined in FEES 4 Annex 11AR (following the first stage consultation). Based on their financial year ending in the calendar year ending 31 December 2019, these firms should submit this tariff data by 30 September 2020 for the purposes of the third stage consultation planned for our November 2020 CP.

We received feedback from three firms operating trading venues. Two supported the proposals consulted on under this second-stage consultation including the proposed modification to the guidance under FEES 13G for RIEs, MTFs and OTFs. The third trading venue referred to their feedback to the first-stage consultation covered in CP19/30 (November 2019) in which they suggested we should take account of a qualitative assessment of the relative business risk of individual MTFs/OTFs when setting regulatory fees.

We have therefore implemented the modification to the guidance under Part 1 section 10(c) of FEES 4 Annex 13G for RIEs, MTFs and OTFs. We have also implemented the tariff data reporting rules that will require firms operating MTFs and OTFs to report their annual income, as defined in FEES 4 Annex 11AR (following the first-stage consultation). Based on their financial year ending in the calendar year ending 31 December 2019, these firms should submit this tariff data by 30 September 2020.

We will contact these firms nearer that time. We will also move to the third-stage consultation. Using the total income data reported by the end September 2020 we will set the proposed threshold for the minimum fee level and calculate indicative minimum and variable fee-rates.

We propose to consult on these in our November 2020 fees policy CP which will allow MTFs and OTFs to assess the impact of the changes to their fees. Depending on responses to the third-stage consultation, we will implement the threshold for the minimum fee level from the 2021/22 fee-year and consult on the fee-rates to recover our annual funding requirement (AFR) allocated to the MTF/OTF sub-set of the B fee-block in our April 2021 fees rates CP.

Suggested inclusion of a qualitative assessment of risk. We repeat our response provided in Chapter 3 of Handbook Notice 74 (February 2020):

- *The allocation of our annual funding requirement (AFR) to fee-blocks including the MTF/OTF sub-set of the B fee-block represents the resources applied to the regulation of all the firms that make up the fee-block. • A measure of size, in this case income from those MTF/OTF regulated activities, represents an objective and transparent proxy for the impact risk the individual firms pose to our objectives should they fail.*
- *The ~40 fee-blocks we use to target the recovery of our costs from the 56,000 firms we regulate is an operationally efficient way of raising fees.*
- *A qualitative assessment of the probability of failure is subjective and linking that to the level of fees firms pay would lead to firms challenging their fees which would be impractical given the number of firms we regulate.*

- ii. [Nikhil Rathi appointed as new Chief Executive of the FCA](#)
- iii. [Approved Persons Regime \(APR\) and coronavirus: our expectations](#)
- iv. [Extension of the Senior Managers & Certification Regime \(SM&CR\) implementation periods for solo-regulated firms](#)
- v. [FCA seeks industry views on a new prudential regime for UK investment firms](#)
- vi. [FCA statement on planned amendments to the Benchmarks Regulation](#)
- vii. [Firms to prepare for phased move to FCA's new data collection platform RegData](#)
- viii. [June 2020 update of position limits for some commodity derivative contracts](#)
- ix. [FCA fines Commerzbank London £37,805,400 over anti-money laundering failures](#)
- x. [Open access regime for the trading and clearing of exchange-traded derivatives](#)

#### d. Consultation Responses

- i. EVIALEBA Response to ESMA CP on Non-Equity Transparency on MiFID2.2
- ii. EVIALEBA Response to EU further CP on the Regulatory perimeter for Digital Assets and Crypto-Currencies
- iii. EVIALEBA Response to ESMA CP on the Technical Standards for BMR
- iv. ACER TRUM Revisions [see below]

**e. IFPR – UK's new prudential regime unveiled;** *The FCA's discussion paper makes it clear that although the UK is no longer in the EU, it supports the goals of the EU prudential regime for investment firms – known as IFR/IFD. However, the UK regulator intends to have targeted deviations from the EU regime where they are necessary to reflect the number, size and nature of investment firms in the UK and the structure of the UK market. This IFR/IFD with UK characteristics is called the Investment Firms Prudential Regime, or IFPR. The consultation period ends on 25 September 2020. The Government have indicated that they will endeavour to implement IFPR by summer 2021, which is broadly consistent with the EU's applicability date for IFR/IFD.*

- i. **EVIA call with HMT last week – consequent draft letter [attached]**
- ii. The discussion paper: [Prudential requirements for MiFID investment firms](#) was published on 23<sup>rd</sup> June with the consultation closing on 25<sup>th</sup> September. HM Treasury have also made it clear that they intend to legislate for such a regime with application by next summer. It's interesting to note that the discussion paper does not appear to have taken into account the [consultation papers issued by the EBA on various aspects of IFR/IFD](#) in early June 2020.

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- iii. **What does the FCA's prudential discussion paper mean in practice?** *It appears to be aiming for a quite high degree of convergence.*
  - iv. **Application;** Matched principal firms – they will no longer have specific rules separate from other firms which deal on own account
    - Large firms which deal on own account with > €5b assets – the FCA will be able to decide whether these firms should remain on CRR
    - Thresholds for small and non-interconnected firms (SNIs) – those relating to AUM, client orders handled (COH), balance sheet assets and gross revenues will be applied on a consolidated basis
  - v. **Capital and Own Funds** Non corporates – the FCA intends to recognise eligible LLP members' capital and others as being CET1 capital
  - vi. **Own funds requirements** Matched principal brokers / OTFs with permission to deal on own account – they will have to hold permanent minimum capital of €750k
  - vii. **Fixed Overhead Requirement (FOR)** – the FCA wants to know what level of detail firms want on how to calculate it
  - viii. **K-factors**
    - K-AUM – the AUM should be measured at market value and also appointed reps' AUM will have to be included in calculations
    - **K-COH – the client orders handled from appointed reps will have to be included. OTF and MTF buying and selling is excluded**
    - K-CMH (client money held) – this should be measured in line with how it is measured under MiFID
    - K-ASA (assets safeguarded and administered) – these should be measured at market value or best efforts estimates
    - K-DTF (daily trading flows) – these should be based on total value paid or received
    - K-NPR (net position risk) – firms wanting to use internal models will have to seek FCA approval
  - ix. **Consolidated prudential requirements**
    - Group service companies – these may be caught as being ancillary service undertakings
    - Consolidated PMC – this should be the sum of the individual firms which are consolidated
    - Double counting – the FCA has made it clear that it wants to remove any potential for this
    - Consolidated financial statements unavailable – the FCA may ask for a firm's own consolidation workings to be independently verified
    - Group Capital Test (GCT) – this is an alternative to consolidation and the FCA has indicated many UK groups will be able to take advantage of it
  - x. **Liquidity requirement;** SNIs – the FCA will apply it to them
    - The minimum level of 1/3 of FOR should be recognised as just being a baseline
    - Liquidity assessments – these will be carried out alongside the Internal Capital Adequacy and Risk Assessment (ICARA) process for non SNIs (see below)
  - xi. **ICAAP replacement;** The new assessment will be the ICARA. This will cover the risk the firm faces as well as the risks that the firm poses to others
    - Groups – the ICARA will take place on an individual basis

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- ICG (individual capital guidance) – replaced by Pillar 2 Guidance (P2G)
  - Wind down planning – to include capital and liquidity will be mandatory
  - Stress and scenario testing / Reverse stress test – also mandatory
- xii. **Remuneration;** Consolidation groups – the new rules will apply on a solo and consolidated basis
- Threshold for dis-applying provisions on pay-out, deferral and pensions holding/retention periods, and risk or remuneration committee – firms with balance sheet assets <€300m will be able to dis-apply these
- f. PTNGU: CFTC just unanimously adopted its final rule against post-trade name give-up for cleared swaps (together with several other rule changes in a long session last week).**
- i. Whilst the case for the rule was widely made, the other side was expedited by JPM in a comment letter authored by Marc Badrichani which we have attached and which clearly provided for the exemptions which were proposed and accepted last week. Indeed, we are currently wrestling with Packages in use cases concerning CSDR\_SD buy-in's for that matter!
  - ii. **If it would be useful at some point to touch on this topic, we are as ever at your disposal.** We mention this because the FCA has been gathering industry views on the matter over the last couple of weeks and we had discussed with FISMA earlier in the year in the context of the MiFID review. For the record, our member firms do not hold absolute views on the matter given the prevalence of contingent liquidity and packages across the market participants.
  - iii. To summarise the source materials attached, and compared to its original proposal, the proposals brought last week made **two changes:**
  - iv. Firstly, further to concerns expressed by some in the market (including us) the rule confirms that pre-arranged trades by **introducing brokers** will be part of the ban.
  - v. Secondly, **package transactions** ('where one leg is not a swap intended to be cleared') are exempt from the rule. (The other exemption, for RFQ or 'any method of execution where the identity is disclosed prior to execution' remains part of the proposal).
  - vi. For swaps that are Made Available To Trade (MATT) the **compliance deadline** for the new rule will be November 1st, 2020, while the date for all other swaps is July 5, 2021. Interestingly, the Commission noted that the market may attempt to evade these rules, and -quite unusually- the CFTC, therefore, stressed it has 'a **broad anti-evasion authority**' which it intends to use. What was also noteworthy, is that various Commissioners referred to the '**excellent cooperation**' with third-country regulators. In addition, for NFA IB firms who are guaranteed by US firms, it places a lot of emphasis on those firms (or even the SEFs that are used) to provide another layer of supervision, we are definitely seeing that from our US Compliance and Audit functions where they are asserting authority on various matters, including scrutiny of IBs arranging activities will increase on the back of this.
- g. CSDR: Topics for the CSDR review (deadline 10 July 2020 – see attached draft response)**
- i. EVIA has been considering consequential use-cases for Matched Principal arrangements and venue execution under CSDR\_SD. An illustrative deck does not

itself draw conclusions, but two early ones that we would draw would be some form of pass-through exemption or provision for the legs transacted within the trading venue, and the utility of having market-agreed contractual solutions operating at T+4/7 with the absolute legal backstop coming in at a longer timeframe, say 30 days since the threat of multiple buy-in's (of the same bond) along the settlement chain is substantive?

- ii. Given that almost all wholesale bond markets are arranged as matched principal and that CCP interposition between the TVs and the CSDs [virtually always Euroclear Brussels] is not common, the risk to trading venues is the prudential imposition of both credit risk (Herstatt: counterparty participant goes bust before settlement) and market-risk (to the buyer).

**h. Noting that our TRUM changes will wait for September, ACER just formally published those three updates on REMIT guidance documentation which they shared with us last week; ACER published today three updates on REMIT Guidance documentation concerning the Questions and Answers (Q&As) on REMIT, the Transaction Reporting User Manual and the FAQs on REMIT transaction reporting.**

- i. The Knowledge Base tool available on the [REMIT Portal](#) will be updated in due time. However, stakeholders and reporting parties should note this might take longer because of the high number of updates introduced.
- ii. The new edition of the [Q&A on REMIT](#) contains the most up-to-date information concerning REMIT policy issues and is developed in cooperation with the national regulatory authorities. The Q&As are prompted by the discussions ACER has with its stakeholders during webinars and Roundtable meetings, as well as by the queries received via the [REMIT Query form](#).
- iii. This edition includes 11 new Q&As and provide additional information on:
  - 1. REMIT definitions,
  - 2. obligations and prohibitions for market participants,
  - 3. inside Information.
- iv. The new edition of the [Transaction Reporting User Manual \(TRUM\)](#) contains updates and alignment with the [FAQs on REMIT transaction reporting](#), and it introduces further guidance on reporting lifecycle events in a dedicated new Annex.
- v. These updated documents are the outcome of a comprehensive exercise ACER carried out in 2019 and 2020, together with national regulatory authorities and other REMIT stakeholders.
- vi. Further, ACER acknowledges that, because of COVID-19 pandemic, reporting parties may face difficulties in implementing the changes foreseen by the updated guidance by the end of 2020. Nevertheless, reporting parties shall strive to achieve compliance with the transaction reporting guidance to the greatest extent possible.
- vii. **The ACER REMIT Team has circulated a reminder for the upcoming deadline for the [survey on spread and swap reporting](#) examples on Annex II.** Please find [here the link to the survey](#).
- viii. **The ACER REMIT Team has sent us an invitation letter from DG ENER for the REMIT fees stakeholder workshop on 15 July.** LEBA will take part and not our recent email on this subject, but in case you would like to participate in the workshop, please register by Thursday, 9 July 2020, 24h00 under the following link:

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ix. <https://surveys.acer.europa.eu/eusurvey/runner/remit-fees-workshop-registration-form>

- i. **DG COMP Compliant on access to SEE3 Gas and power market operation [see attached]**
  
- ii. **CoronaVirus MA:** Regulatory interventions & round tables, Home\_Office Protocols, Risk Registers and operational resilience - see most recent FCA Roundtable and TA coordination meeting notes although there have been no meetings for three weeks
  
- iii. **Brexit MA;** *there have been no FCA Coordination Calls since Tuesday 02 June.*
  - a. No-deal likelihood rises with Barnier comments last week online to EuroFI
  - b. PM meeting with the EU 3 Presidents early part of this week
  - c. John Glen: Call last week and further HMT APPG meeting next week together with exchange of letters with the HoL EU Affairs Sub-committee],
  - d. operational concerns & preparations.
  - e. Noting Gas workaround proposals and BEIS/FCA Emissions outreach

**iv. Compliance Horizon Topics: Table**

Compliance Horizon Topics:	Topics	Comments
<b>Venue Compliance</b>	MiFID2/R Refit Process [ESMA / NCAs]	Transparency CP Advocacy; <i>Conflicts/ Matched Principle/ Discretion</i> Reports (Commodities); Ongoing CPs , Timings; recent NCA discussions
	MiFID2.2 Review [FISMA]	EVIA response submitted in May (attached)
	Reference Data: FIRDs/ FITRs/	NEX Abide closing Down
	ANNA-DSB Review Consultation	<a href="https://www.anna-dsb.com/download/2021-industry-consultation-paper/">Open currently</a> <a href="https://www.anna-dsb.com/download/2021-industry-consultation-paper/">https://www.anna-dsb.com/download/2021-industry-consultation-paper/</a>
	Reporting/ Reference Data: MiFID Topics [FX]	Note on FX Lobby
	Reporting: EMIR Best Practices	Refit TS / implementation Consultation currently open
	CSDR Implementation	Mandatory buy-ins / Settlement Chains / Timing / Listed Derivs
	SFTR Implementation	UTI Generation; ICMA Revised Best Practices; Central Banks;
	CFTC Parts 43, 45, 49 Review	
	AML_KYC Subgroup	JMLSG; Onboarding
	ACER Topics	Fees; TRUM Revisions; Fines Note two ACER calls this week
<b>Off Venue Compliance</b>	FX Spot: Code of Conduct Review	Ongoing
	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
	Role of Agency	For comments – noting MiFID2.2 inducements questions
	CME Block Rule revisions	CME / FIA Webinar earlier this month
	Benchmarks	<a href="#">FCA Applies SMR to BAs: Final Rules</a> BMR Review [ESMA]; BMR Revision [FISMA]; Libor Transition- BOERFR Newsletter (attached) and 2* minutes published
	Commodities Topics	Scope; FMSB Code of Conduct



<b>Conduct / People</b>	Home Office Supervision	Best Practices
	Fines /investigations	Paused (?)
	Broker Gifts and Entertainment	Paused (?)
	FMSB	<p><b>24 June:</b> We published a <a href="#">Transparency Draft of 'Algorithmic trading in FICC markets: Statement of Good Practice for FICC market participants'</a> and an accompanying <a href="#">press release</a>. This Statement of Good Practice sets out 10 Good Practice Statements which cover the governance of, and management of conduct risks associated with, the use of algorithmic trading. FMSB members and other interested parties are invited to comment on the proposed Statement of Good Practice. This consultation will run until Friday 21 August 2020.</p> <p><b>11 June:</b> Read the FMSB Spotlight Review '<a href="#">LIBOR transition: Case studies for navigating conduct risk</a>' published today. This paper includes good practice observations and practical case studies to support firms when considering the risks to fairness and effectiveness as the market moves to risk-free rates as more sustainable and representative benchmarks. We also issued a <a href="#">press release</a>.</p>
<a href="#">Training / Apprenticeships</a>	Reopening of consultation AIMA initiative <a href="https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work/apprenticeship-levy-how-it-will-work">https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work/apprenticeship-levy-how-it-will-work</a>	
<b>Operational Risk / Prudential</b>	IFR Level 2	EBA;HMT; FCA; KPMG [soundings]
	Pillar 2 Add-ons	Noting IOSCO work on Op Res
<b>RegTech, FinTech &amp; CyberCrime Topics</b>	Various CPs but notably EU FISMA work to produce a cyber framework	<p>EVIA responded to FISMA CP in February <a href="#">RSVP RegTech IT and data risk virtual panel – 21 July CS</a>; <i>How a firm manages data is now intrinsic to its value, yet the FS risk management framework provides no way to account for IT obsolescence, cloud concentration and data risks on the balance sheet.</i></p> <p>New operational resilience obligations, 3<sup>rd</sup> party risk management guidelines and cloud registries are due soon. ESG could provide a path forwards, but only if we can agree RegTech standards.</p> <p>Regulatory risk experts on 21 July, as they share their industry perspectives on some of the topics highlighted in the latest research report from <a href="#">JWG</a>, independent analyst group. A free copy of the paper will be made available to registrants after the virtual event. <a href="#">Register here</a></p> <p><b>Shining light on your FS IT and data risk blind spots</b> <b>Speakers:</b> Francis Gross, Senior Advisor, <b>European Central Bank</b> Tom Bingham, Partner, Technology and Digital Risk, Risk Advisory, <b>Deloitte</b></p>

		<p>Suchitra Nair, Director Centre for Regulatory Strategy, <b>Deloitte</b>          Tim Palmer, Head of data management risk, <b>Deutsche Bank</b>          Dr. Richard Harmon, MD Financial Services, <b>Cloudera</b>  <b>Chair:</b> PJ Di Giammarino, Founder &amp; CEO, JWG Group  <b>Key topics:</b>          New regulatory concerns over third party risk, operational resilience and cloud          Overcoming data and infrastructure policy challenges in a cloud centric world          The future of RegTech standards for idiosyncratic and systemic technical risk measurement</p>
<p><b>EVIA/LEBA Weekly Roundups</b></p>		<p><a href="#">EVIA_LEBA Weekly update on Key Regulatory Topics (Week 23, 08th June to 13th June 2020)</a>  <a href="#">EVIA_LEBA Weekly update on Key Regulatory Topics (Week 24, 15th June to 20th June 2020)</a>  <a href="#">EVIA_LEBA Weekly update on Key Regulatory Topics (Week 25, 22nd June to 27th June 2020)</a>  <a href="#">EVIA_LEBA Weekly update on Key Regulatory Topics (Week 26, 29th June to 05th July 2020)</a></p>

**EVIA Compliance Committee Monthly LoopUp Meeting Room: First, click:**

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Attachments

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