
EVIA LEBA Monthly Compliance Meeting

0830 Wednesday 09th September 2020

[Virtual Meeting via ZOOM](#)

i. Matters arising

a. **EVIA reply to FCA Dear CEO Letter of 24th July 2020; Inappropriate use of title transfer collateral arrangements ('TTCAs') and regulatory permissions for financing transactions**

- i. Dear Mr Teasdale, Please find attached a letter from the European Venues and Intermediaries Association in reply to the FCA Dear CEO Letter of 24th July 2020. As ever, we remain at your disposal for any further questions or queries on the context. Regards,
- ii. I acknowledge that the concerns raised in the letter may not be directly relevant to all firms who the FCA described as 'acting as brokers in wholesale financial markets'.
 1. The letter was sent directly to 357 firms in the wholesale brokers supervision portfolio, which incorporates a wide range of broker business models, including those of EVIA members who exclusively or predominantly operate trading venues. We considered however that the failings we had identified were sufficiently important, and potentially widespread, that it was necessary to share our views with all known wholesale broking firms, as well as publishing our letter on the FCA website for other firms to consider.
 2. Many firms have mixed business models, making the letter potentially relevant to some if not all of their business activities. We also observe that firms' business models tend to evolve with time, and so could incorporate these features in future.
 3. We have asked relevant Senior Managers at firms who received the letter directly from us to consider its messages and confirm receipt by 14 August. Only those firms for which this is relevant and where there are issues to report, are asked to engage further with us.
 4. It is entirely right, as you suggest, that in the current environment both the FCA and your member firms should be focussed on financial resilience and the response to the COVID-19 pandemic. This was very much the context that the FCA had at the forefront of its thinking when we issued the Dear CEO letter. The COVID-19 pandemic will undoubtedly put certain firm business models under financial stress, and there is therefore an increased risk of firm failure, including the prospect that such failure could be disorderly. It is therefore vital that those who hold money or assets belonging to clients apply appropriate protections to safeguard them in the case of firm failure, and that firms mitigate the risk of failure by holding required amounts of regulatory capital.
 5. As you note, our intention was not to harm the reputation of the sector, but to seek continued improvements in standards of this important group of firms through the sharing of material concerns. We thank EVIA for raising its members concerns and for continuing to engage with us in our work.

b. **FCA Multi Firm Review: Wholesale Broker Remunerations H2 2020**

- i. Hi Alex, Hope you're well. The two items you highlight in the FCA's plan are separate, as Stephen notes.

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- ii. On the remuneration work for wholesale brokers, you may be aware from some of your members that the FCA undertook a survey of firm's remuneration practices in 2019. This continued on with further supervisory engagement last year and at the start of 2020. Our intention is to publish the findings of that work and then engage with the wider population of firms (beyond those surveyed) on areas where firms appear to not be meeting our expectations when it comes to the remuneration rules.
 - iii. No related changes to the rules are intended, so no consultation is expected to take place. However, if you haven't seen it already, you might be interested to see the FCA's recent discussion paper on Prudential requirements for MiFID investment firms (the new IFD/IFR regime), which has a chapter on the remuneration rules and which is relevant to wholesale brokers (as well as other investment firms).
 - iv. The multi-firm work has been delayed as a result of COVID-19. We are hoping this will be back on the table soon. We'd be very pleased to engage with you at the appropriate time on that work and hear your questions and views.
 - v. Best wishes, Daniel Measor Manager / Wholesale Brokers (flexible) team / Wholesale Markets Supervision / Investment, Wholesale & Specialists Division
 - c. FCA planned Consultation Paper: Our approach to market integrity and wholesale markets**
 - i. Market Integrity paper is one of the 'FCA's approach to...' documents of which we have published multiple editions, for instance on supervision, authorisation and supervision.
 - ii. It is intended as a broad look at what we understand by market integrity and how we seek to uphold it. Therefore, it is separate and distinct from a piece of supervisory work on remuneration.
 - iii. **At this moment we cannot give a clear steer on when the Market Integrity document will be published.**
 - iv. Regards, Stephen Hanks Markets Policy
 - 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. The next FCA Trade Association Coordination Committee (TACC) meeting will be taking place on Tuesday 29th September 2020, 11:00-12:30 and will be a conference call.**
 - i. *Alessandro Puce would also be grateful if you could send us any suggestions for agenda items by Thursday 10th September 2020.*
 - f. 'Messages from the Engine Room' 5 Conduct Questions – Industry Feedback for 2019/20 Wholesale Banking Supervision; On 4 September 2020, the FCA issued its [2019/20 report](#) covering engagement work for the 5 Conduct Questions Programme. Due to prioritising COVID-19 work, the FCA is publishing the report later than usual.**
 - i. This latest report reflects the FCA's widening engagement. It hosted conduct roundtable sessions with 18 wholesale banks, each represented by a group of 10 staff at vice president level, typically reflecting about 10 years of industry

experience. Each session included a short, written survey and a longer discussion of organisational, operational, regulatory and personal topics.

ii. Key messages in the report include:

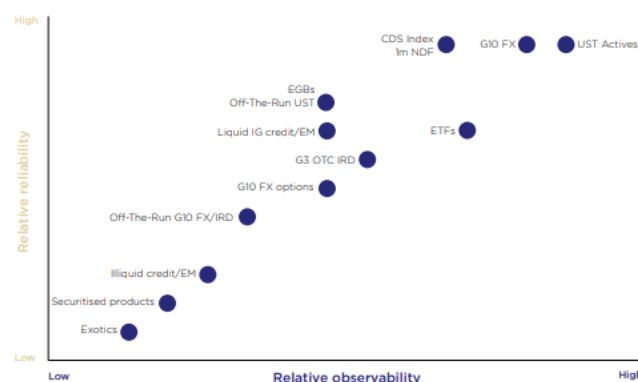
1. Conduct and culture change programmes are having a positive effect.
2. While awareness of conduct risk is higher, skills to identify these risks must improve. This is especially important in the evolving work from home operating model predominately in use.
3. Psychological safety for day-to-day speaking up and challenge still needs attention from staff at all levels.
4. Remuneration strategies that focus on the 'how' as well as the 'what' are a positive development but more can be done to fully harness strategic benefits.
5. Corporate purpose and principles have become confused. CEOs and line managers can help clarify how these terms link to individual roles and responsibilities.
6. The report also mentions that many issues were raised during the conduct roundtable sessions that warranted follow-up. The report notes that some of these are best addressed by staff directly, some by line managers and some by executives. Key points include:
7. Have staff had sufficient training to be able to identify conduct risk in their day-to-day roles beyond general awareness?
8. Does the firm's overall framework for identifying and mitigating conduct risk reflect adequate, bottom-up exercises to understand those risks?
9. Do staff understand how their own roles and responsibilities can potentially create conduct risk or harm for the customers, the firm or markets?
10. Are messages from the top, including corporate purpose and values, translated in a meaningful way to the specific roles and responsibilities, targets and objectives at the individual and unit level across the firm?
11. Is enough being done to support line managers in their efforts to enable their teams to perform at their best?

iii. Key takeaways from the report include:

1. there has been a significant improvement in awareness and engagement with the conduct agenda by the larger wholesale banks, but the depth of understanding and the ability to identify conduct risk in day-to-day working life remains unacceptably weak, with some firms latching on to one or two areas of conduct risk to the exclusion of others – a more comprehensive identification of conduct risk is needed;
2. many firms have taken steps to ensure the contribution of personal conduct and behaviour in achieving objectives is a prominent factor along with what is achieved - however, some firms have taken insufficient steps to ensure substantive feedback discussions with staff, keep future-oriented records, analyse trends and develop a governance feedback loop;
3. firms expressed an earnest appetite for driving healthy cultures and looked to their immediate line managers for cultural leadership, though noted that pockets of resistance persisted which firms often attributed to differences between regions, business areas or professional disciplines;
4. while official whistleblowing and escalation channels existed, participants described them as largely unused and reserved for the most serious cases – the FCA observed a persistent and significant lack of psychological safety in day-to-day speak up and challenge;

5. staff were often unclear about their firm’s corporate purpose statements and how their own roles and responsibilities contribute to that purpose – corporate purpose and principles have become confused. The FCA notes in its updated 5CQ webpage, that Covid-19 has created new and greater conduct risks, and that it is important that firms engage staff at home to identify potential sources of harm in their individual environments. The FCA will continue with its supervisory engagement with firms on their change programmes and their effectiveness and will also be focusing on new risks emerging from LIBOR transition and other market developments more generally.
 - iv. [5CQ Webpage](#) / [5CQ industry report](#)
 - g. FMSB Spotlight Review Review [‘Measuring execution quality in FICC markets’](#) and an accompanying [press release](#). *While not a new concept, in the last four years there has been a significant focus on best execution and transaction cost analysis by both market participants and regulators.*
 - i. **Likely forward EVIA compliance session with FMSB and FCA Wholesale supervision to unpack all 6 FMSB conduct spotlights written by Rupak Ghose**
 1. [Monitoring FICC markets and the impact of machine learning](#)
 2. [Examining remote working risks in FICC markets](#)
 3. [LIBOR transition: Case studies for navigating conduct risk](#)
 4. [The critical role of data management in the financial system](#)
 5. [Emerging themes and challenges in algorithmic trading and machine learning](#)
 6. [Measuring execution quality in FICC markets](#)
 - ii. As a result, measuring and evidencing trade execution quality has become critical to client servicing as well as to demonstrating ongoing compliance with investor protection regulations. A firm’s ability to do this well depends heavily on the quality of data available.

Data quality across OTC FIC products



- iii. While the various regulatory requirements for measuring execution quality vary by jurisdiction and asset class, wholesale fixed income, currencies and commodities (FICC) markets face specific challenges in achieving high standards of transparency, openness and fairness. This Review explores the root cause of these challenges, highlights the progress made in regulation and market participants’ practices with regard to data reporting and best execution, and sets out key points of focus for firms in navigating these difficult waters.
- iv. This Review therefore examines the following topics:

1. the observability of relevant data sources;
 2. the reliability and quality of data sources;
 3. variations in data observability and reliability across different products;
 4. obligations and priorities in measuring execution quality; and
 5. a role for industry standards.
- v. This Spotlight Review is intended to benefit front office trade execution on the buy-side as well as within market makers, and those responsible for overseeing regulatory requirements in compliance and risk functions.
- vi. This Spotlight Review is the fourth and final in a series that is collectively looking at issues of FICC market structure and the impact of regulatory and technological change on the fairness and effectiveness of wholesale markets. The other three Spotlight Reviews in the market structure series are available at:
- vii. [Emerging themes and challenges in algorithmic trading and machine learning.](#)
- viii. [The critical role of data management in the financial system.](#)
- ix. [Monitoring FICC markets and the impact of machine learning](#)

h. Environmental, Social, Governance (ESG) – Pillar 2/3

- i. **CP 20/3: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations** *Thank you all for confirming your availability to join a virtual roundtable session on 15 September to discuss our proposed TCFD-aligned disclosure rule for premium-listed commercial companies (CP20/3).*
1. We want regulated financial services firms to integrate consideration of material climate change risks and opportunities into their business, risk and investment decisions
 2. We have prepared the attached slide-deck to help frame the discussion. This includes a series of discussion topics/questions which we hope will stimulate an active debate. We very much look forward to seeing you in due course and any questions in the meantime do get in touch.
 3. **Discussion topic 3: Next steps on climate-related disclosures - In CP 20/3, we said:**
 - a. “we consider our proposed rule to be a first step towards adoption of the TCFD’s recommendations more widely within our rules, both as they apply to listed companies, and as they apply to financial services companies”
 - b. We welcome roundtable participants’ views on appropriate next steps.
 - c. **In particular, we welcome views on:**
 - Pre-requisites for expanding the issuer scope of the proposals and strengthening the compliance basis
 - How best to enhance climate-related disclosures by regulated firms, including asset managers and life insurers
 - noting that existing/prospective customers are a crucial audience
 - Implications of progress towards international disclosure standards in this area (IFRS Foundation, SASB/GRI, NFRD)
 4. Mark Manning, Federico Cellurale, Thorben Heidrich all in Markets Policy / Strategy & Competition

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- ii. **NGFS publishes its 2020-2022 work program and announces changes in the governance; On 3 September 2020, the Network for Greening the Financial System (NGFS) [announced](#) its 2020 – 2022 work program that will include continuing its work on climate scenario analysis and scaling up green finance. The NGFS will also create two new work streams focussing on addressing data gaps and research.**
1. The NGFS, launched at the Paris One Planet Summit on 12 December 2017, is a group of central banks and supervisors, which on a voluntary basis are willing to share best practices and contribute to the development of environment and climate risk management in the financial sector, and to mobilize mainstream finance to support the transition toward a sustainable economy.
 2. Three new members have joined the NGFS over the last two months: Bangko Sentral ng Pilipinas, Bank of Mauritius and Isle of Man Financial Services Authority. In the coming weeks, the NGFS plans to publish documents on environmental risk assessments by financial institutions. An update of the Guide for Sustainable Responsible Investments for Central Banks is scheduled to be published before the end of 2020.
 3. The charter is the outcome of a periodic review to ensure the adequacy of the NGFS governance framework with the Network's objectives and an important result of this review is the extension of the Steering Committee, the executive body of the NGFS, to include the ECB. In a press release, NGFS note that it has identified lack of data as a crucial element for effective climate-related and environmental risk analysis. To bridge these data gaps, the NGFS has set up a new workstream to identify what data is missing and determine whether it can be obtained. NGFS also announces a new workstream to identify NGFS research topics and ensure smooth coordination of research efforts. [Press release Charter](#)
- iii. **FMLC response to ESAs' joint consultation paper on ESG disclosures; On 2 September 2020, the Financial Markets Law Committee (FMLC) published its [response](#) to the joint consultation paper that the European Supervisory Authorities (ESAs) published on 22 April 2020 dealing with proposed regulatory technical standards (RTS) under the Sustainable Finance Disclosure Regulation (SFDR).**
1. The FMLC has submitted a response drawing attention to the divergence in relation to international standards on sustainability-related disclosure requirements, which creates uncertainty in relation to reporting obligations vis-à-vis cross-border investment activities. The FMLC also notes that there is also some divergence across EU law in relation to disclosure obligations set out under the SFDR, the Non-Financial Reporting Directive and the Taxonomy Regulation.
 2. In addition, the FMLC notes that there are requirements in existing EU regimes such as those to disclose environmental or social objectives provided by Article 8 (3)(c)(ii) of the Regulation for packaged retail and insurance based investment products and under the principles to make "fair, clear and not misleading" disclosures under the UCITS Directive, the Alternative Investment Fund Managers Directive and the revised Markets in Financial Instruments Directive There is a risk that a new mandatory disclosure under the SFDR will cause confusion and overlap.
 3. The FMLC urges the ESAs to ensure that the RTS are aligned closely to the objectives set out in the SFDR. In the future, when EU legislation in this area

is reviewed, it would be beneficial for the objectives and requirements imposed on financial markets participants by each piece of legislation to be aligned with the others.

- i. FCA Updated webpage: Fake FCA emails, websites, letters and phone calls;** On 3 September, the FCA updated its webpage alerting firms to fake emails, websites, letters and phone calls. The FCA have received reports that there are fake FCA emails circulating from the email address fcaimpact1@fcanewsletter.org.uk (also [fcaimpact2](mailto:fcaimpact2@fcanewsletter.org.uk), [fcaimpact3](mailto:fcaimpact3@fcanewsletter.org.uk) and [fcaimpact4](mailto:fcaimpact4@fcanewsletter.org.uk)). The email is requesting firms to complete a survey around conduct rules and Covid-19. [Read more](#)
- j. [FCA To Postpone Senior Manager Rules Amid Crisis](#);** The Financial Conduct Authority said on Friday that it plans to push back for almost four months the date on which part of the regime for senior managers comes into force at finance companies, as it offers leeway to finance companies struggling during the coronavirus pandemic.
- k. Reinventing the wheel (with more automation) – speech by Andrew Bailey;** *On 3 September 2020, the Bank of England (BoE) published a [speech](#) by its Governor, Andrew Bailey, in which he looks at recent innovations in payments and the challenges they bring. Mr Bailey also examines the benefits and risks that stablecoins present.*
 - i. Mr Bailey states that a stablecoin that intends to launch with sterling-based activities in the UK must first meet relevant standards and be appropriately regulated. If a sterling stablecoin wishes to operate at scale in the UK, then the BoE will strongly consider the need for the entity to be incorporated in the UK. This is similar to the subsidiarisation of banks that the BoE requires if they are holding UK retail transactional customer deposits above a de minimis level.
 - ii. In terms of a global stablecoin, which is a cross-border phenomenon, Mr Bailey mentions that the BoE is looking forward to the Financial Stability Board's final report on the topic which is expected in October. He also adds that current proposed global stablecoin offerings will need to demonstrate how they meet domestic and international standards. They must do so before the global regulatory community can be comfortable with their launch and widespread adoption.
 - iii. Mr Bailey also discusses central bank digital currency (CBDC) and the discussion paper that the BoE published earlier this year that sets out the key considerations and an illustrative model based on a central bank core ledger and private payment interface providers offering overlay services to users. Mr Bailey reports that the discussion paper received a wide range of responses that the BoE is working through and it will set out more information next year.
 - iv. Furthermore, the starting point for a global stablecoin should be based on single currencies. Mr Bailey states that a stablecoin which intends to launch with sterling-based activities in the UK should first meet relevant standards and be appropriately regulated – if a sterling retail stablecoin wishes to operate at scale in the UK, the BoE will strongly consider the need for an entity to be incorporated in the UK.
 - v. Mr Bailey emphasises that host regulators of global stablecoins must work with other regulators in other jurisdictions to ensure that they are appropriately regulated and gaps in coverage, opportunities for regulatory

arbitrage, do not emerge. Mr Bailey states that an important question is whether a better outcome would be for central banks themselves to harness much of the technological and IT systems innovation and directly digitise cash – though, any launch of a CBDC requires careful prior consideration to fully explore all the issues and implications in order to make an informed decision.

- vi. He states that CBDC raises questions about the shape of the financial system and the implications for monetary and financial stability and the role of the central bank. Mr Bailey further states that stablecoins and CBDC are not necessarily mutually exclusive – depending on design choices, they could sit alongside each other, either as distinct payment options, or with elements of the stablecoin ecosystem. Mr Bailey concludes that the point in the cycle of innovation in payments has been reached where it is essential that standards are set early on, and thus the expectations for how innovation will take effect

I. SMCR

- i. SI delaying the deadline for solo-regulated firms to undertake their first assessment of the fitness and propriety of certified persons; *On 2 September 2020, there was published on legislation.gov.uk [The Bank of England and Financial Services Act 2016 \(Commencement No. 6 and Transitional Provisions\) \(Amendment\) Regulations 2020](#).*
1. The statutory instrument amends the Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) Regulations 2019 (the 2019 Regulations) as follows:
 2. Regulation 2(2) of the statutory instrument amends regulation 2(6) of the 2019 Regulations which brings into force on 9 December 2020 the employee certification provisions (as defined in regulation 2(8) of the 2019 Regulations) in relation to solo-regulated firms other than benchmark firms. Regulation 2(2) of the statutory instrument amends that date from 9 December 2020 to 31 March 2021; and
 3. Regulation 2(3) of the statutory instrument amends Regulations 3(2) and 3(3) of the 2019 Regulations by aligning the commencement of employee certification provisions for claims management companies to the revised date of 31 March 2021.
 4. They amend regulation 2(6) of the Bank of England and Financial Services Act 2016 (Commencement No.6 and Transitional Provisions) Regulations 2019 (The 2019 Regulations), which bring into force SM&CR in relation to solo-regulated firms other than benchmark firms, by delaying the commencement date of those provisions from 9 December 2020 to 31 March 2021, in the light of the Covid-19 pandemic.
 5. They amend regulation 3(2) and (3) of the 2019 Regulations, which contains a transitional provision in relation to claims management companies (CMCs), which provides that the commencement of the SM&CR provisions on 9th December 2020 does not apply until the CMC has had full permission from the FCA to carry on claims management activity for 12 months or has permission to carry on any other regulated activity. The period of 12 months does not apply if the firm receives full permission before 9th December 2019.

6. The amendment changes this this period to 15 months and 22 days to align with the revised commencement date of the SM&CR provisions for solo-regulated firms. The FCA has also updated its webpage on the extension of the SM&CR implementation period. The FCA has consulted on extending to the same deadline (31 March 2021): (i) the date the Conduct Rules come into force, for staff who are not Senior Managers or Certification Staff; (ii) the deadline for submission of information about Directory Persons to the Register. The FCA expects to publish final rules in October.
7. [FCA webpage Regulations](#) - The FCA also held a [consultation](#) in July 2020, whereby firms were asked to provide feedback relating to extension of implementation deadline for the certification regime and conduct rules for FCA solo-regulated firms. The FCA notes that it received mostly positive responses to this consultation and intends to publish final rules and responses next month in a policy statement.

m. Consultation Responses

- i. Response to EU Comm on ACER Fees
- ii. Response to EBA on IFR Framework

n. IFPR – IFR

- i. 3 EVIA WG Meetings on FCA Response due 19th September
- ii. FCA Webinar in Remuneration Controls withing IFPR
 1. Following today's EVIA call ~> attached and below - EVIA Responses concerning CoH& DTF under IDB & TV matching; Questions 6,7,8
 2. **Also attached is a precis of Chapter 13 on Rem for later consideration**
 3. **Also attached is the Question list from both FCA and EBA**
 4. <https://www.fcawebinars.org.uk/webinars/2d872d0a-c7dc-49eb-b2cd-3c306cfb52d2> - a webinar was held on Discussion Paper 20/2: A new UK Prudential Regime for MiFID investment firms on 17 August 2020.
 5. Richard Monks, Director of Strategy / Paul Rich, Technical Specialist on prudential requirements for investment firms / Alison Wade, Technical Specialist on Remuneration



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

- i. **Context:** To date, the protocol around sharing names pre-trade when arranging transactions in money-market instruments or showing customer axes and runs has been based upon the approach that once an interest is deemed to be material, then the identity could be disclosed or made implicitly evident.
- ii. Because this has not been simple and straightforward, the current revision process to the [Bank of England MM Code](#) is seeking to change this from

- procedural into the basis of explicit permission received from the seller. (*This may resemble the recent changes several Exchanges have implemented into their rule books for name passing when arranging block matches.*)
- iii. This does not address the related complexity we are taking up with the FCA/BOE with regards to money market instruments, which is their situation visa-vie the MiFID2/R perimeter as whether or not they are financial instruments and derivatives in certain instances. Therefore, certain protocols around whether activity occurs on venue or OTC and recast as primary versus secondary market activity still create some artificial barriers and differentials in such matters as reference data, reporting and transparency.
 - iv. **Ask:** As described earlier today at the compliance group, the Bank of England MM Code secretariat are keen to know to what extent this proposed language in the code revision helps clarify the cases and extent to which the issuer or selling names can be disseminated pre-trade by broking desks and whether, *“those brokers who have not yet signed the statement of commitment may then do so”*.
 - v. The final phrase is designed to express this point and does so deploying ideas of “specificity” and “must do.” It leaves open the notion of an intermediary and the scope of instruments so as not to interfere with MiFID2/R.
 - vi. Does this work? Could it be better? - *Whilst there is no specific timeframe, comments by early/mid-September would enable the next rounds of drafts to be validated / amended.*
 - vii. **Caveat:** As this is still draft and neither agreed by the MMC or seen by BOE lawyers. Both ourselves and the BOE would be grateful if some confidentiality and discretion could be used in discussing the text internally.
 - viii. **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.”*
- p. 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
- q. AML / KYC
- i. JMLSG Update
 - ii. AFME has responded to the [European Commission’s](#) Action Plan for a comprehensive Union policy on preventing [money laundering](#) and [terrorism financing](#).
 1. We are pleased to be part of the dialogue with policymakers to encourage the development of a comprehensive, harmonised and robust [AMLCFT](#) regulatory and supervisory framework that will be effective in the fight against financial crime in the EU.
 2. Our response to the European Commission’s consultation paper expands on our discussion paper on the enhancements of the EU’s legal framework to

strengthen the fight against money laundering and terrorism financing that was published in May 2020.

3. Read the discussion paper here: <https://lnkd.in/dbQx45T>
 4. Our current submission, for instance, provides more details on the areas in the current AML/CFT framework that we believe could benefit from more harmonisation, as well as comments on the idea of a single EU-level supervisor in the AML/CFT space.
 5. Please see our response for more details: <https://lnkd.in/dbwuSsC>
- iii. **OFSI annual frozen asset review;** On 3 September, the Office of Financial Sanctions Implementation (OFSI) reminded firms that all persons that hold or control funds or economic resources belonging to a designated person, must complete the reporting form and submit it to the Office of Financial Sanctions Implementation (OFSI) by Friday 16 October 2020. [Read more](#)
- iv. **Cybersecurity: Not just an IT issue, but a regulatory one too;** *We have updated our popular online briefing note, Cybersecurity: Not just an IT issue, but a regulatory one too. The briefing note is [here](#).*
- r. **CSDR: – [CSDR RTS on Settlement Discipline – Postponement until 1 February 2022;](#) [ESMA Proposes To Further Postpone CSDR Settlement Discipline](#)**
- i. published a final report on draft regulatory technical standards (RTS) definitively postponing the date of entry into force of the Commission Delegated Regulation (EU) 2018/1229 (RTS on settlement discipline) until 1 February 2022.
 - ii. This postponement is due to the impact of the COVID-19 pandemic on the implementation of regulatory projects and IT deliveries by Central Securities Depositories and a wide range of market participants and follows a request from the European Commission (EC).
 - iii. The measure is additional to the Commission Delegated Regulation (EU) 2020/1212, based on ESMA's proposal to amend the RTS on settlement discipline to postpone its date of entry into force from 13 September 2020 to 1 February 2021.
 - iv. The RTS on settlement discipline cover measures to prevent and address settlement fails including:
 1. rules for the trade allocation and confirmation process;
 2. cash penalties on failed transactions;
 3. mandatory buy-ins; and
 4. monitoring and reporting of settlement fails.
 - v. Next steps; Following the endorsement of the RTS by the EC, the Delegated Regulation will then be subject to the non-objection of the European Parliament and of the Council
 - vi. <https://www.esma.europa.eu/document/csdr-rts-settlement-discipline-%E2%80%93-postponement-until-1-february-2022>
 - vii. <https://www.esma.europa.eu/press-news/esma-news/esma-proposes-further-postpone-csdr-settlement-discipline>
- s. **CSDR: – HMT consulting EVIA on the impact and outcome of the UK disapplication of CSDR wrt EU&I in the UK Bond Settlement activity**

t. Energy Market Conduct Fines

- i. [Bundesnetzagentur fines 3 energy market participants in REMIT case on market manipulation](#); *Market manipulation in the wholesale energy market in connection with imbalances in June 2019*
1. Bundesnetzagentur opens administrative fines proceedings against three market participants - The Bundesnetzagentur has started administrative fines proceedings against three electricity market participants on suspicion of market manipulation. Administrative fines proceedings due to possible market manipulation
 2. The Bundesnetzagentur has analysed the considerable system imbalances that occurred in June 2019 for evidence of breaches of the prohibition on market manipulation.
 3. Market manipulation occurs when, among other things, a market participant enters into a transaction or issues an order that gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products. The authority investigated whether individual market participants had been deliberately selling electricity on the intraday market at very high prices without actually intending to procure or generate the electricity.
 4. **Administrative fines proceedings separate from supervisory proceedings on the upholding of balancing group commitments**; In accordance with Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT), the administrative fines proceedings are conducted independently of the five Bundesnetzagentur supervisory proceedings that identified breaches on the part of the respective balance responsible parties of their obligation to properly balance their balancing groups in the same context.
 5. The administrative fines proceedings under REMIT focus on the trading behaviour of the market participants and thus the issue of whether the extreme situation on the three days in June was exploited on the trading side. The supervisory proceedings, by contrast, were concerned with the obligation of balance responsible parties to properly manage their balancing groups.
 6. **Background: events in June 2019**; Severe imbalances in the German electricity system occurred on three days in June 2019. On these days, the transmission system operators had to make full use of balancing energy for longer periods and take other measures to keep the system stable.
 7. Detailed evaluations of over one hundred million pieces of trading and balancing group data from the three days in June 2019 indicated that there were 21 trading situations in which offers were placed that gave false or misleading signals as to the supply of electricity. Administrative fines proceedings have now been initiated against the three market participants involved.
- ii. **SSE fined £2M for breach of REMIT Article 4**; September 3, 2020 - [Ofgem, the National Regulatory Authority for Great Britain, has made this announcement publicising a fine levied on SSE Generation Limited for a breach of REMIT Article 4, the part of REMIT that contains the obligation to disclose Inside Information](#).
1. [The full notice, which can be found here](#), reveals that the fine relates to agreements signed and decisions taken relating to the provision of ancillary services and to retain Transmission Entry Capacity in March 2016. The

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- notice considers that on that date, all four of the criteria for a piece of information to become “Inside Information” were met, and that as a result a REMIT disclosure was required.
2. The fine is still subject to appeal, and has been discounted, not only for “early settlement”, but also because the rules were still relatively new at the time.
 3. Earlier this year, ACER published the 5th Edition of the REMIT Guidance (see here), which contains further guidance as to the definition of “Inside Information”. The question of whether a piece of information is considered to be “inside” is one that consumes a great deal of industry time.
- iii. **Large settlement in US precious metals spoofing case and more;** *Late August it was announced that the CFTC has agreed with the Bank of Nova Scotia that they pay \$127.4 million to settle allegations of market manipulation in precious metals futures on the COMEX exchange.*
1. The order can be found [here](#). [This](#) article on the Bloomberg web site also covers the story.
 2. The order states that 4 traders carried out spoofing “on thousands of occasions”. It also refers to a previous sanction for these activities in 2018, and states that some of the representations made then were false. It states that “false statements and omissions resulted in part from BNS’s incomplete and inconsistent record-keeping”.
 3. In addition, the order reveals that the compliance function failed to detect the activity, and that the function’s response to enquiries from FCMs, that the trading was legitimate, was in fact erroneous. All of these issues have led to such a large settlement.
 4. In another story found [here](#) on the Wall Street Journal web site, it has been revealed that in an ongoing case against traders from the Bank of America for market manipulation, the Department of Justice is alleged to have tried to discourage the Bank from running their own analysis on trading data to determine whether an abuse had occurred.
- iv. **Alleged manipulation around negative oil price;** *Last week, allegations started to emerge of market manipulation around the negative oil price seen a few weeks ago.*
1. The story found [here](#) on Bloomberg talks about unusual profits gained by certain London based traders who sold WTI futures and bought TAS, thus locking in a large profit as the price fell after the pricing window.
 2. US Senator Sherrod Brown has written to Heath Tarbert, CFTC Chair expressing his concern. A copy of the letter can be found [here](#).
- v. **Articles and papers about market manipulation and surveillance;** *There have been several articles and papers published in recent days around market manipulation and surveillance, which may be of interest to readers:*
1. **Energy spot markets** – Equias has published [this](#) paper on “Spot Market Data Analysis in Trade Monitoring”.
 2. **Machine learning** – The FICC Markets Standards Board (FMSB) has published [this](#) spotlight review on “Monitoring FICC markets and the impact of machine learning”.
 3. **Power outage in California** – [This](#) article by S&P Platts Global on recent power outages and whether they may constitute “withholding”.
- u. **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.*

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- i. 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.
 - ii. In the afternoon the focus will be on market trends and outlook and "REMIT beyond: The international dimension".
 - iii. Register and find out more.
 - v. **ACER - New REMIT Quarterly published; ACER issued the latest "REMIT Quarterly" newsletter on Friday Aug 17, which can be found [here](#). Topics covered include:**
 - i. **Data quality** – Work that ACER and National Regulatory Authorities (NRAs) are carrying out to improve data quality. This section also announces that:
 - 1. A new "letter on data quality" will soon be published.
 - 2. They are going to pay attention will be paid to the application of the new TRUM.
 - 3. There will be a supervisory focus on life-cycle events.
 - ii. **Fees** – Fees will soon be levied on RRM's which will be passed on to market participants. The recent consultation can be found [here](#).
 - iii. **Completeness/delivery profiles** – ACER have been checking for consistency in reporting between total energy reported and that contained within the delivery profile.
 - iv. **Negative prices** – An article is included starting on page 3 looking at negative prices and how they may lead to market abuse.
 - v. **Artificial intelligence (AI)** – An article is included starting on page 6 on the application of AI and machine learning (ML) in energy trading and surveillance. It alludes to the use of AI/ML in trading, and how this may lead to abuse (inadvertent or not) as well as the use of AI and ML in surveillance.
 - vi. There are also a few final matters mentioned such as the recent set of documents published (see [here](#)).
 - w. **DG COMP, LEBA and EFET: Next steps regarding compliant on access to SEE3 Gas and power market operation**
 - i. Role of DG Energy / OPCOM / Bulgarian Ministry of Energy and AFEER and their Balkan Partner Associations: CEZ / ATEB / MEKSZ / E.S.E.P.I.E / AAES
 - ii. **ACER workshop to present upcoming study on barriers to competitive electricity markets** invites you to register for an online workshop on 30 September (10.00am to 12.00pm CET). ACER will present an upcoming study aimed at identifying barriers to the development of competitive electricity prices and the entry and participation of new market players in the EU electricity wholesale markets. Find out [more and register](#).
 - iii. **ACER consults to decide on coordination of operational security in power systems of 13 Member States**; launches today a public consultation on two methodologies aiming to establish coordination of operational security and remedial actions in the so called Core capacity calculation region for electricity formed by Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia. Read [more](#).
 - x. **[LEBA Response to DG Energy on Consultation on ACER Fees for REMIT](#)**
 - i. *Yes, LEBA agrees with the methodology proposed which is simple, straightforward and built on sensible core principles that are legally established in Article 32 of the ACER Regulation.*

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- ii. Yes, LEBA agrees with the construction such that that reporting parties registered with ACER should be charged with paying the fees. This achieves the balance of simplicity with universality. It is clear that given the quantum under consideration, so the collecting mechanism needs to be as simple and straightforward as possible.
 - iii. We note that the level 1 legal construct, which is the text that this addition needs to reference, cites the term "Reporting parties" to mean what the market commonly understands to be Registered Reporting Mechanisms ["RRMs"]. It would be helpful if the Commission could clarify that the population of Reporting parties is exactly the same as the population of 120 such RRM as listed on the ACER Remit Portal. Yes, LEBA agrees that given the spread of firms and specialist entities within the population of RRM, that the optimal solution for the REMIT fee structure would be a mixed fee structure encompassing a fixed and a variable component that takes into consideration the main cost drivers for the relevant activities.
 - iv. In the two meetings LEBA attended with DG Ener on this topic, EEX/Europex were quite sanguine as to the approach proposed to collect the fees through RRM. Since OTF_OMP do not report to RRM under the ACER Law
 - v. [In these conjoined responses to the formal consultation \(EEX Response, Europex Response, CP all attached\) the exchanges firmly refute that neither RRP nor RRM should be the paying party \("Reporting Party"\) has a definition in REMIT Imo Org Reg ... but its convoluted beyond fundamental data and we would not suppose it covers OMP.](#)
 - vi. (ACER'S Draft Outline of the 2021 Work Programme (Version 23.10.2019) envisages a budget for the Agency of EUR 91 million for the next seven years, i.e. EUR 13 million on average per year. The EUR 8.8 million as stated in the Consultation paper as an estimate for ACER Article 8 activities in 2021 would constitute 67.7% of this number.)
 - vii. [Begg the Question we thought we knew: Are you a "reporting parties registered with ACER"?](#)
 - viii. From CP: "Therefore, the most cost-effective solution seems to be having ACER collecting REMIT fees directly from reporting parties registered with ACER. In addition, since ACER is only collecting REMIT information through registered reporting parties, ACER can de facto only provide data collection services to these entities."

ii. MiFID2.2/ MiFIR/ MAR

- a. New ESMA opinions on MiFID II position limits; Early August ESMA issued opinions on a variety of MiFID II position limits. The list can be found [here](#). The limits are on EEX and ICE Endex contracts covering freight, gas and power.
 - i. ESMA published opinions on limits set by National Competent Authorities. When opinions diverge from the original limit, the new limit takes effect after a "lead in" period. In this case, ESMA has not changed any of the limits from those proposed by the National Competent Authority in question.
 - ii. Recently the European Commission DG FIMSA proposed significant changes to the position limits regime, following a consultation on the topic, and moved forward by the desire to simplify some regulatory matters due to COVID-19 (see [here](#)).
- b. FCA Advices on 14th Aug - You will be aware of the [Opinion](#) on third-country trading venues which ESMA published on 3 June. In this Opinion ESMA lists the third-country

trading venues that in its view offer, in respect of specified classes of financial instruments, a sufficient level of post-trade transparency such that, when trading on these venues, EU investment firms do not need to report these transactions to the public in the EU through an Approved Publication Arrangement (APA).

- i. Conversely, ESMA says that it expects transactions in financial instruments also traded on trading venues in Europe which are concluded on third-country trading venues that are not on the list to be trade reported through an APA. The Opinion applies from October 2020.
- ii. The Opinion will not be part of our supervisory expectations for the time being. This means we do not expect UK investment firms to report to an APA transactions executed on an overseas venue. In the event that this position changes we will talk to market participants to understand the challenges of implementation before setting any supervisory expectations.
- iii. FCA - We do not yet know whether UK trading venues will be part of ESMA's list of positively assessed third-country trading venues after the transition period.

c. [Transparent price formation in the fixed-income and derivatives market still leaves room for improvement](#); 28 August 2020 - A study by the Dutch Authority for the

Financial Markets (AFM) on the effectiveness of the MiFID II regulatory framework for the fixed-income and derivatives markets shows price formation still needs to be more transparent. The MiFID II rules are also considered less suitable for the fixed-income markets. The AFM does, however, note a shift towards on-venue trading for bonds and derivatives.

- i. In anticipation of potential changes to the current MiFID II framework, the AFM has conducted an [analysis of the fixed-income and derivatives markets focussing on the primary bond markets and the secondary fixed-income markets](#). The AFM's recommendations include increasing the degree of standardisation in fixed-income instruments. After all, transparent price formation requires a financial instrument to be sufficiently liquid, which in turn means a certain degree of standardisation.
- ii. **Efficient price formation**; *Transparent and liquid bond markets are essential for efficient price formation for both issuers and investors. This makes it easier to issue new fixed-income instruments, which will ultimately lead to lower financing costs. Broadening the mix of available finance and reducing dependence on tailored bank loans fits within the philosophy of the Capital Markets Union.*
- iii. **A visible shift**; *The AFM notes there has been a shift of trading in bonds and derivatives towards trading platforms. Especially trading in derivatives subject to the clearing obligation has moved to multilateral platforms. We also observe an increase in the use of multilateral electronic trading platforms in the fixed income markets. Unfortunately, so far this shift has not led to greater transparency in price formation, due to the low liquidity of most of these instruments*
- iv. **Primary Market Structure**
 1. A broader assessment of the role of primary dealers and a deeper review of existing mechanics around issuance, underwriting, distribution and liquidity provision;
 2. How to include non-bank participants in the issuance, underwriting, distribution and liquidity provision process for both government bonds (DMOs) and corporate (issuers);

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3. How to create incentives for issuers and dealers to broaden liquidity provision requirements and quoting obligations across multiple types of platforms (in the interdealer market).
 4. Incentives for increasing instrument standardization
 5. The AFM is of the opinion that the MiFID II goals of transparent fixed income markets can best be realized by stimulating a standardization of issuance practices and by reducing complexities for eligible instruments and issuers.
 6. This requires a concerted effort between market participants, issuers and the regulatory community.
- v. **Specific recommendations related to the review of MiFID/MiFIR**
- vi. **Recommendations to increase the level playing field:**
1. To protect the integrity of the European capital markets and prevent regulatory arbitrage, Article 1.7 of MiFID should be added to the MiFIR to ensure regulatory clarity on the definition of multilateral trading systems.
 2. The AFM endorses more supervisory convergence around the enforcement of MiFID Article 1.7. on the scope multilateral trading systems at ESMA level.
 3. To ensure orderly markets and protect the level playing field with multilateral trading venues, Systematic Internalisers should be included in the MiFID algo trading requirements by adjusting Article 17 of MiFID II to include algorithmic OTC trading.
 4. Recommendations to reduce complexity and focus on achieving meaningful transparency
- vii. **Fixed income transparency**
1. Given the characteristics of the fixed income markets, types of participants and the bespoke nature of such instruments, we believe there is very little added value in pre-trade data that cannot be used for price discovery or for obtaining a consolidated market view. The AFM recommends removing illiquid non-equity instruments from the scope of pre-trade transparency.
 2. In order to ensure a consolidated market view, increasing the level playing field with access to information and a concentrated effort on improving overall data quality, the transparency focus should shift to liquid instruments with post-trade transparency as close to real-time as possible.
 3. Once data quality is improved on this basis, a logical next step is that market visibility could be further improved by the introduction of a post-trade consolidated tape (CTP) containing basic information such as price, size, trading venue, volume, timestamp of execution, yield and tenor.
 4. In addition to reducing the transparency scope, the AFM also believes that to ease resources, reduce the data burden and realign efforts within secondary markets supervision, fixed income instruments that are illiquid for transparency purposes should no longer be required to provide an instrument identifier based on the Instrument-by-Instrument (IBIA) approach. Rather, an ID of the (illiquid) class of financial instruments should suffice (COFIA).
 5. Given the rather uniform requirements of data handling and report querying, large costs savings could be achieved with data quality supervision and application development at EU level. This could be achieved by consolidating data collection at ESMA level through a centralized depository. This would converge data standards, reduce redundancies, and capture economies of scale and lower supervisory costs across the EU.
- viii. **Specific recommendations for the OTC derivative markets**

1. The AFM recommends expanding the Derivative Trading Obligation (DTO) by aligning the separate liquidity assessment of the DTO with that of the MiFIR transparency assessment.
2. This reduces complexity, broadens the scope and strengthens centrally cleared and transparent derivatives markets.
3. We see merit in expanding the scope of OTC derivative instruments in scope of the Traded on a Trading Venue (ToTV) methodology for post-trade transparency purposes, particularly for OTC derivative transactions involving a systematic internaliser as counterparty.
4. The AFM would also invite ESMA and other stakeholders to consider expanding the scope of the EMIR clearing obligation towards foreign exchange (FX swaps and forwards) and commodity derivatives that are cash-settled.
5. Overall, the main objective of MiFID II in the fixed income markets was to increase transparency and competition by moving the still largely OTC fixed income markets towards a structure that has more similarities with the equity markets. This was the result of the post-crisis G20 commitments in 2009.
6. In order to create a more transparent mechanism for price discovery, the intention was to encourage execution of fixed income trading via regulated markets, Systematic Internalisers, OTFs and MTFs, as well as aligning fixed income instruments with MiFID's pre- and post-trade transparency requirements. As a result, the requirements have affected nearly all aspects of the secondary market structure and the manner in which fixed income products are marketed, traded and reported. In this context, it is important to consider the new requirements in the right perspective.
7. Given the specific characteristics of these markets, the diversity of asset classes covered, existing trading protocols and lack of standardisation, MiFID II offered a wide range of exemptions and waivers for the requirements based on the liquidity of the in-scope product. While MiFID II has strongly amplified the existing trend of electronification of fixed income trading protocols towards platforms, only a small fraction of the EU fixed income market has become subject to the requirements on transparency and on-venue trading, despite initial concerns voiced by market participation prior to the entry into force. [This is demonstrated by the fact that around 96% of the trading in bonds benefits from waivers and deferrals from transparency, mainly as a result of lack of liquidity of the instrument.](#)
8. In general, we note that the overall sentiment is that MiFID II has not yet delivered on its goals in the fixed income markets and can still be considered work in progress. The main finding is that MiFID II's focus on transparency based on liquidity has proven to be counterproductive given the lack of liquidity in the fixed income markets where most instruments are tailor-made and not designed to be traded on a secondary market in the first place. This view is echoed by market participants who argue that MiFID II has merely sought to replicate equity market conventions onto so-called "non-equity" segments and that enforcing transparency on such markets is counterproductive. Instead, it can be argued that sufficiently liquid fixed income markets in which higher levels of transparency are sustainable, can only be achieved by incentivizing standardization of instruments and addressing primary market fundamentals.

- ix. Overall, there is still broad support for the original G20 goals of migrating fixed income markets and derivatives towards more transparent and open markets. At this stage, MiFID II can be considered unfinished business and requires action from regulatory authorities to ensure it reaches its goals. Besides the goal for addressing market fundamentals through creating incentives for more standardization, this review provides a number of concrete recommendations for improving the level playing field between bilateral and transparent multilateral forms of trading by creating more regulatory certainty. In addition, the right conditions for meaningful transparency can be achieved by focusing on improving data quality through an enhanced focus on liquid instruments, as well as the introduction of a post-trade consolidated tape.

Key Recommendations		
1	The AFM sees room to further commence a discussion on primary market fundamentals with market stakeholders, including but not limited to:	<p><i>A broader assessment of the role of primary dealers and a deeper review of existing mechanics around issuance, underwriting, distribution and liquidity provision;</i></p> <p><i>How to include non-bank participants in the issuance, underwriting, distribution and liquidity provision process for both government bonds (DMOs) and corporate (issuers)</i></p> <p><i>How to create incentives for issuers and dealers to broaden liquidity provision requirements and quoting obligations across multiple types of platforms (in the interdealer market)</i></p>
2	The AFM is of the opinion that the MiFID II goals of transparent fixed income markets can best be realized by stimulating a standardization of issuance practices and by reducing complexities for eligible instruments and issuers.	<p><i>This requires a concerted effort between market participants, issuers and the regulatory community.</i></p>
3	MiFIR	<p><i>1. To protect the integrity of the European capital markets and prevent regulatory arbitrage Article 1.7 of the Directive should be added to the Regulation.</i></p> <p><i>2. Endorse more supervisory convergence around enforcement of article 1.7. at ESMA level.</i></p> <p><i>3. Adjust article 17 of MiFID II to include algorithmic OTC trading.</i></p> <p><i>4. Remove illiquid non-equity instruments from the scope of pre-trade transparency.</i></p> <p><i>5. Focus on improving (real-time) data quality for all liquid instruments.</i></p> <p><i>6. Introduce a post-trade consolidated tape for all instruments</i></p> <p><i>7. Remove the reference data requirement based on</i></p>

		<p><i>IBIA for illiquid instruments.</i></p> <p><i>8. Expand the DTO by aligning the liquidity assessment for the DTO with that of transparency. This reduces complexity and strengthens centrally cleared and transparent derivatives market.</i></p> <p><i>9. Expand the scope of ToTV for OTC instruments, especially those traded on systematic internalisers</i></p> <p><i>10. Expand the clearing obligation to FX and cash settled commodity markets.</i></p>
Specific Recommendations		
Level 1	Standardisation	Introduce targeted instrument design standards that promote the liquidity of certain classes of financial instruments.
Level 1	Licensing Requirements - MiFID II Article 1(7)	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. <i>Add the licensing requirement of the directive (article 1.7) to the regulation (MiFIR).</i>
Level 1	OTC Algorithmic Trading - MiFID II Article 17	An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls. <i>Adjust article 17 of MiFID II to include algorithmic OTC trading.</i>
Level 1	Pre-trade Transparency	<i>Waive pre-trade transparency for illiquid non-equity instruments.</i>
Level 1	Post-trade consolidated tape	<i>Introduce a post-trade consolidated tape for liquid instruments.</i>
Level 1	Reference data	<i>Remove the individual reference data requirements and/or ISINs for illiquid instruments (classes).</i>
Level 2	Liquidity Assessments DTO	<i>Align the liquidity assessments for the DTO and transparency to reduce complexity and strengthen cleared, transparent trading models in derivatives market.</i>
Level 2	Clearing obligation	<i>Expand the clearing obligation to FX and cash-settled commodity markets.</i>
Level 1	Data supervision centralization	<i>Pool investments and the coordination of the development of data driven supervisory solutions at the ESMA level.</i>

Level 1	ToTV	<i>Expand the scope of ToTV for OTC instruments, especially those traded on systematic internalisers</i>
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- d. 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.*
- i. ESMA has already undertaken or is in the process of undertaking reviews of the MiFIR transparency regime for equity and non-equity instruments. The CPs as well as the Final Reports contain ESMA's proposals for possible legislative amendments to the regime based on in-depth data analyses of the effects of the current regime since January 2018.
 - ii. However, although the RTS 1 and RTS 2 review is closely linked to the review of the transparency regime mentioned above, this CfE constitutes a separate exercise. The transparency regime review covers a vast array of MiFID II/MiFIR provisions whereas the main objective of the CfE is to draw up a comprehensive list of practical issues related to provisions set out in RTS 1 and RTS 2. This allows ESMA to better target a number of practical issues before proceeding with an in-depth review through a consultation paper and a report to the European Commission entailing concrete legislative proposals.
 - iii. Next steps; ESMA will consider the feedback to this CfE to prepare the Consultation Paper for the RTS 1 and 2 review, which will follow in 2021.
- e. [optional 1-week deferral due to option expiries... ESMA Provides For The Option To Apply The Annual Transparency Calculations For Non-Equity Instruments From 21 September](#)
- i. ESMA has today decided that trading venues and investment firms may postpone, for operational reasons, the application of the annual transparency calculations for non-equity instruments other than bonds to 21 September 2020.
 - ii. This decision also applies to the quarterly calculations for the purpose of the systematic internaliser (SI) regime for non-equity instruments other than bonds.
 - iii. ESMA published the [results](#) of the liquidity assessment for non-equity instruments other than bonds and the determination of the pre- and post-trade sizes specific to the instrument (SSTI) and large in scale (LIS) thresholds for non-equity instruments on 15 July 2020. Furthermore, ESMA published on 31 July the [first calculations](#) for the SI regime for non-equity instruments other than bonds. The application date for both calculations is 15 September 2020.

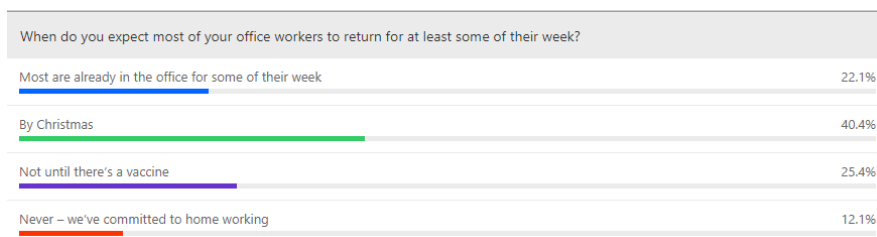
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- iv. Since the publication of these results, ESMA has been approached by stakeholders raising concerns that the application of the non-equity transparency calculations coincides with the quarterly expiry week of many equity derivatives, a week characterised by high trading volumes and a higher level of volatility due to the rolling over of many contracts. In order to avoid technical issues that might be exacerbated by high market volatility during the current sensitive period, ESMA agreed that trading venues and investment firms may apply the non-equity transparency calculations from 21 September instead of 15 September 2020.
 - v. As announced on 15 July 2020, ESMA will provide the annual transparency calculations for non-equity instruments at instrument (ISIN) basis, both liquid and illiquid ones, as of 14 September 2020. This information will be made available through the Financial Instruments Transparency System (FITRS) both by [publishing XML files](#) and through the [Register web interface](#).
 - vi. In addition, in order to avoid potential misalignments between the application of the non-equity transparency calculations and the start of the mandatory SI-regime for non-equity instruments other than bonds, investment firms, applying the non-equity transparency calculations on 21 September instead of 15 September 2020, may perform the SI-test for non-equity instruments other than bonds by 21 September 2020.
 - vii. Next steps; The transparency requirements based on the results of the annual transparency calculations for non-equity instruments will apply from 15 September 2020, with the option to delay application to 21 September 2020, until 31 May 2021. From 1 June 2021, the results of the next annual transparency calculations for non-equity instruments, to be published by 30 April 2021, will become applicable.
 - viii. ESMA will publish the next quarterly publication of data for the purpose of the SI regime by 1 November 2020 with an application date of 15 November 2020 for equity and equity-like instrument, bonds and non-equity instruments.
 - f. **ISDA urges global identifier alignment; ISDA has written [this](#) letter to the Financial Stability Board (FSB) urging a better coordination of efforts worldwide to harmonise different aspects of regulatory reporting.**
 - i. In particular a lack of harmonisation of Unique Transaction Identifiers (UTI), Unique Product Identifiers (UPI) as well as other Common Data Elements (CDE) leads to difficulty in implementation for global firms.
 - ii. [This](#) article on the Regulation Asia site discusses the letter and the issues raised. IOSCO and other global organisations have been leading efforts to harmonise reporting for the past years (see [here](#)).
 - iii. A recent consultation on changes to EMIR Reporting (see [here](#)) also looks at moving to such a harmonised model.

iii. 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. [Capital market regulation and coronavirus](#); *Speech by Mark Steward, Executive Director of Enforcement and Market Oversight, delivered at the ShareSoc Webinar: building market and investor confidence.*

- i. Capital markets work well when investors have confidence that there are effective rules or standards directed to tackling distortions and unfairness. Our secondary market surveillance capability gives us visibility over trading in the market so that we can more readily identify and probe potential suspicious activity and distortions in the market.
 - ii. In cases of market abuse, investor confidence is encouraged when companies take effective internal remedial steps, such as over their governance and oversight structures. Compensation to affected shareholders will play an important part in addressing the consequences of market abuse.
 - iii. The FCA has introduced many temporary measures to address the difficulties faced by capital markets during coronavirus (Covid-19). We continue to actively monitor these measures to ensure our markets continue to work well and safely bridge between pre-coronavirus and post-coronavirus worlds.
- c. Corp London - Coordination Calls**
- d.** KPMG 05th Sept [New reality for business leaders webinar](#) with NewRiver and Flint Global [access the recording here](#) and [download the slides here](#).



- e. FCA continues to promote innovation through DataSprint and digital sandbox to solve Covid-19 challenges;** *On 2 September 2020, the Financial Conduct Authority (FCA) launched a [new webpage](#) updating market participants on the pilot of its "digital sandbox" and recent DataSprint.*
- i. The FCA notes that its latest DataSprint, held in July and August 2020, enabled 120 market participants from multiple sectors and disciplines to collaborate to develop data models and typologies, critically evaluate methodologies and produce reliable reference data to fuel future sandbox testing.
 - ii. The focus of the digital sandbox at present is to enable firms to test and develop innovative solutions to challenges arising due to the Covid-19 pandemic, including fraud and scams; handling vulnerable customers; and enhancing access to financial services for small and medium-sized enterprises.
 - iii. The FCA will be opening applications for participation in the digital sandbox in the coming few weeks.
 - iv. The FCA also hopes the datasprint serves as a catalyst for collaboration around the development of synthetic data assets in the financial services industry. Over 50 of the participants are continuing work over the coming weeks to refine and expand the data assets produced, with applications opening to the digital sandbox once this work is completed. The digital sandbox will enable innovative firms to test and develop proofs of concept in a digital testing environment around three use cases related to Covid-19: (i)

detecting and preventing fraud and scams; (ii) supporting the financial resilience of vulnerable consumers; and (iii) improving access to finance for SMEs. [Read more](#)

f. FCA extends submission deadlines complaints data summary returns – Covid-19;

On 28 August, the FCA announced that it was allowing flexibility in relation to the 31 August 2020 deadline for the publication of the complaints data summary required by DISP 1.10A.1R. Firms may apply a 2-month extension to this deadline, meaning firms must publish summary data for complaints reports submitted to the FCA covering reporting periods ending between 1 January and 30 June 2020 no later than 31 October 2020. [Read more](#)

iv. Brexit MA:

Late July FCA Coordination Meeting – see notes attached/below

a. Ongoing discussions with UK Govt, FCA, EU Commission and ESMA on market access and concomitant impacts upon the location of liquidity

b. The issue in EU/UK talks is not time, but substance: we don't think UK will fold over state aid

- i. There is an element of theatre to all critical negotiations in the EU. At one point it looks that failure is certain. In the EU/UK talks we are at this moment now. For the first time, we have heard the UK lay down an ultimatum. One media story even suggested that the talks could formally end this week. We don't think so. The Daily Telegraph writes this morning that Boris Johnson is giving the EU 38 days to strike a deal.
- ii. One sure thing is that deadlines will once again prove a little more flexible than they appears at first. The year-end deadline is hard. Both sides can ratify quickly if they want to. A deal can be signed off as late as December.
- iii. Brexit brinkmanship revives risk of worst outcome; Talks with the European Union over a trade deal are at an impasse. Now Boris Johnson's government is planning legislation which would undermine the prime minister's exit agreement, the FT says. It may be a negotiating ploy. Even so, it means a chaotic Brexit is back on the table.

State of play

LOCAL MEASURES IN A 'NO EQUIVALENCE SCENARIO' POST TRANSITIONAL PERIOD

Jurisdiction	Measure
UK*	Passporting style measure for new and existing clients – cross border and branch
Ireland, Belgium*, Italy**, and Finland*, Denmark*	New and existing per se professional and ECP clients - cross border
Sweden*	New and existing clients - branch only
France	Limited exemption for proprietary trading between certain entity types
Germany*	Limited proprietary trading exemption
Spain	Contractual run-down measure
Luxembourg and The Netherlands	Measure subject to further confirmation
Remaining EEA jurisdictions – no relief available	

*Notification or application required
** Application required similar to that for a full scale local licence

Click on a country opposite to learn more about the local transitional measures.
Use the home button in the bottom left corner to navigate back to this map.

Please send any questions to
FinancialRegulatoryEvents@ashurst.com

- c. A&O are looking at rejigging their matrix, but CC and NRF both suppose too mobile currently as you point out.
- i. from Ashurst's in a webinar today: not quite mapped to our use case, but restates that likely the more straightforward "no-deal" list is Ireland, Belgium, Holland, Italy, Finland, and Denmark
 - ii. we have been most engaged with France, Holland, Spain, Germany and Ireland for evident reasons (Reverse Solicitation / placing Screens/ servicing RTO (and IOI). Not easy
 - iii. working with HMT on the role of the OPE for the UK to deliver substituted compliance – noting also the narrow topic of the Irish version of the OPE and its deployment alongside EU MiFIR and on shored Irish MiFID2
 - iv. i tried to update a table i put together back in January this am per below:

1	Austria	<p>https://www.fma.gv.at/en/fma-spotlight-on/brexit/</p> <p>No recent updates.</p> <ul style="list-style-type: none"> In Austria the Brexit-Begleitgesetz (accompanying legislation in relation to Brexit) (Link to external page), which is a collective package of legislation across all ministries, in which precautions are prescribed in the case of a hard Brexit. Cooperation agreements have been concluded with UK authorities (MoUs in relation to banks, insurance undertakings, investment firms asset management and infrastructures) <p>Brexit Accompanying Bill 2019 - BreBeG 2019 does not provide for a temporary permissions regime which makes it possible for UK investment firms to provide services in Austria</p>
2	Belgium	<p>https://www.fsma.be/en/brexit</p>

		No recent updates. FSMA need domestic application to service “qualifying professional investors”
3	Denmark	<p>https://www.dfsa.dk/News/Press-releases/2019/Brexit-220319 Remote undertakings offering investment services and activities. Such undertakings have the option of applying for permission to continue providing cross-border activities directly from the UK under the Danish third country rules in section 33 of the Danish Financial Business Act.</p> <p>In light of the uncertainty surrounding Brexit, it may well be possible for the Danish FSA only to provide temporary permissions for cross-border investment services and activities for approved counterparties and professional customers. The permissions are expected to run for 12 months from the date of a no-deal Brexit. The Danish rules regarding conduct of business apply to undertakings with a permission of this type.</p> <p>DFSA has finished permit applications from UK investment firms</p>
4	Finland	<p>https://www.finanssivalvonta.fi/en/capital-markets/authorisations-registrations-and-notifications/investment-service-providers/brexit-and-third-country-firm-cross-border-authorization-regarding-investment-services/</p> <p>From Brexit perspective an EEA investment firm or credit institution which currently provides investment services or activities in Finland under a relevant EU passport and whose home state has notified of its withdrawal from the EU in accordance with Article 50 of TEU has to apply for the cross-border authorization by the date the withdrawal of said Member State takes effect in order to continue to provide services in Finland. A firm which has applied for an authorization on time can continue to provide investment services and activities together with ancillary services to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU and eligible counterparties in accordance with the terms of its EU passport in Finland until the FIN-FSA has processed the firm’s authorization application.</p> <p>or the time being, the FIN-FSA has not prepared application form for this type of application, so free-form is an assumption. Documents/information can be attached in pdf-format. If needed, the FIN-FSA will ask the originals later.</p> <p>Application for authorization can be made in Finnish, Swedish or English.</p> <p>Investment service providers applying for authorization must submit the application to the FIN-FSA Registry: kirjaamo@fiva.fi.</p>
5	France	<p>https://www.amf-france.org/en/taxonomy/term/50 No recent updates. AMF requires a domestic application to service “qualifying professional investors”</p>
6	Germany	<p>https://www.bafin.de/EN/Aufsicht/Uebergreifend/Brexit/brexit_node_en.html https://www.bafin.de/EN/Willkommen/Zulassung/zulassung_node_en.html?sessionId=6CBB7BB5E2A0558D3851806DD5A176AA.1_cid361</p> <p>No recent updates.</p> <p>BaFin is empowered to allow regulated UK institutions that have operated in Germany under the European passport regime so far to continue to provide certain services for up to 21 months following a hard Brexit without a German license. Beyond that a national permission will be required without an EU level deal.</p>
7	Italy	http://www.consob.it/web/consob-and-its-activities/brexit

		<p>CONSOB need domestic application to service “qualifying professional investors” [see <i>conversations with CONSOB in August 2020</i>]</p> <p>Consob Communication no. 8 of 23th July 2020 - Expiration of the transition period of the UK withdrawal agreement - Instructions to British investment firms providing investment services and activities in Italy</p>
8	Netherlands	<p>https://www.afm.nl/en/professionals/veelgestelde-vragen/brexit-vestiging-nl</p> <p>Dutch Brexit Act is a Decree.</p> <p>Apply to AFM to supply FI services to Dutch RO/ECP firms (same as Italy)</p> <p>With the start of the transition period, the current system of exemption does not apply anymore, as the exemption applies only until 1 January 2021, and only if a no deal Brexit occurs.</p> <p>This exemption is no general exemption. You will be regulated by the AFM. Beside an exemption from licensing you will also be exempted from some ongoing requirements, such as capital requirements and some organizational requirements. Many business conduct requirements however still apply, for example cost transparency.</p> <p>Click here for more information on how to apply for the exemption.</p>
9	Republic of Ireland	<p>No recent updates.</p> <p>National OPE subservient to MiFID2/R third country</p>
10	Sweden	<p>https://www.fi.se/sv/publicerat/nyheter/2020/brexit--nu-inleds-overgangsperiod-for-storbritannien/</p> <p>https://www.government.se/government-policy/brexit/important-links-to-information-about-brexit/</p> <p>No recent updates. Reliance on MiFID Third Country Framework</p>

- d. **EVIA Webinar to urge market counterparties to facilitate execution coordinated with the location of liquidity**
- e. **[UK TPR to commence in October](#); Update: 20 August 2020**
 - i. The UK left the EU on 31 January 2020 and entered a transition period which is due to operate until 31 December 2020. During the transition period, EU law will continue to apply in the UK and passporting will continue.
 - ii. The TPR will now take effect at the end of the transition period.
 - iii. The window for firms and fund managers to notify us that they want to use the TPR is currently closed. Firms and fund managers that have already submitted a notification need take no further action at this stage.
 - iv. We will re-open the notification window on 30 September 2020. This will allow firms and fund managers that have not yet notified to do so before the end of the transition period. There will also be an opportunity for fund managers to update their previously submitted notifications, if necessary.
 - v. We will communicate further on this in September.
- f. **FCA Trade Association roundtable on July 24, 2020; FCA via Skype: Nausicaa Delfas; Zertasha Malik; Greg Sachrajda; Stephen Hanks; Andrew Whyte (Director of Comms). The FCA reiterated the message that firms should continue to prepare for all Brexit scenarios.**
 - i. Reference to the [statement published by David Frost](#). The next round of EU/UK negotiations will take place 17-21 August in Brussels.
 - ii. The FCA have provided technical advice to UK government on equivalence.

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- iii. Reference was also made to the FS section of the EC Communication from a few weeks ago and the upcoming temporary equivalence for UK CCPs. Flagged the [EC paper and footnote 21 of that paper](#).
 - iv. General updates on onshoring and 'inflight files' were provided. Flagged the [UK Government approach to a number of 'in-flight' files](#). [FCA published consultation paper at the same time](#).
 - v. Referred to a new Government campaign launched called '[Check, Change, Go](#)'.
 - vi. The FCA said that they were strengthening their engagement with firms [and had updated their Brexit webpages](#).
 - vii. The [FCA are reopening their TPR window on 30 September](#).
 - viii. Flagged the recent announcement that their MoUs with ESMA will remain relevant after the end of the transition period. FCA confirmed that they will aim to publish them closer to December.
 - ix. Their new CEO, Nikhil Rath, due to start at the FCA at the end of October.
 - x. To be clear, it is not the FCA's intent to lower standards – it is their intent to have the highest possible standards. It is highly possible for different regimes to produce equivalent outcomes (on Day one, UK will have the same regime as EU due to onshoring).
 - xi. The ICO is the regulator for Data Protection (not FCA) but FCA flagged that it is really important for firms to think about their contingency planning if there is no adequacy in this area. Reference made to recent CJEU judgement (see: [Updated ICO statement on the judgement of the European Court of Justice in the Schrems II case](#)).
 - xii. It is good news that the UK industry can continue to participate in SEPA. There will be some changes that UK firms will have to follow and firms need to take action now to fill in those information gaps (details of the payer being mentioned).
 - xiii. noted the FCA Discussion Paper on UK IFR and confirmed that it aims to achieve the same intended outcomes as the IFR and that it will be based on international standards, however that the UK may deviate from it where they will deem appropriate to do so, considering the structure of its markets.
 - xiv. They mentioned that FCA will consult on changes to the reporting regime under UK EMIR Refit after the end of the transition period, however they were not drawn to provide more detail on that. They also confirmed that they were aware of a technical issue relating to trade reporting under MiFID II/EMIR, which will likely arise for some firms after the end the transition period. ESMA interprets the EMIR/MIFID II reporting requirements such that they apply also to branches of EU firms located 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.
 - g.** The recording from our recent financial services 40 minute briefing, *Brexit: Where have we got to and what should you do now?* is now available [here](#).
 - h.** The A&O team will be hosting regular Brexit updates at 9am on alternate Thursdays until Christmas, starting on 10 September. To register your interest for these sessions, please [click here](#).
 - i.** PEG Workaround – wider client adoption likely given EDFT views on Agency provision of Shipping Licencing

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- i. Testing through July/August now finished
 - ii. Protocol finalisation call this week
 - j. PRA Dear CEO letter: Temporary Permissions Regime – Operational Readiness;**
On 1 September 2020, the Prudential Regulation Authority (PRA) published a [Dear CEO letter](#) from Sam Woods, Deputy Governor and CEO of the PRA to remind firms to be operationally ready for the Temporary Permissions Regime (TPR).
 - i. [Dear CEO letter](#)
 - ii. [BoE TPR webpage](#)
 - v. Benchmarks and LiBOR Topics**
 - a. FCA; [LIBOR transition – the critical tasks ahead of us in the second half of 2020](#)**
 - b. IBOR Transition - Sterling RFR Group - June minutes published September 07th Summary**
 - i. Update from HMT on UK legislative support for Tough Legacy (lots more detail required coming months)
 - ii. Expectations Q1 21 milestone for significant reduction of legacy LIBOR exposures
 - iii. Update on Loan Enablers Task Force’s (Q&A now published, conventions now published, spread adjustments – still outstanding)
 - iv. Brief update from sub-groups, ARRC and ISDA derivatives (not sure how realistic the Nov date for ISDA protocol adherence will be considering continued delays in the launch)
 - c. Derivatives Update on term rate and OIS streaming .**
 - i. The FCA noted that the first Term SONIA Reference Rate was expected to enter ‘beta’ stage within 7 to 10 days of the meeting. Discussions around removal of the ‘beta’ tag were expected towards the yearend.
 - ii. It was noted that the Infrastructure Subgroup could play a role through producing information to be made available to market participants on the different Term SONIA Reference Rates. Update on non-linear derivatives work stream 5
 - iii. The Working Group agreed the formation of a new Task Force to focus on non-linear derivatives.
 - iv. Expressions of interest in membership would be sought and should be sent to the RFR Secretariat. Update from ISDA
 - v. Bloomberg was aiming to begin publishing indicative fallback rates from 17 July onwards. ISDA, Linklaters and Bloomberg had jointly published a factsheet on IBOR fallbacks.
 - vi. Subject to external dependencies including receiving regulatory comfort with competition clearances, the Supplement to the 2006 ISDA Definitions and associated IBOR fallbacks protocol were nearing the final stages of development. A strong message was being sent out to all market participants encouraging broad sign up to the protocol.
 - vii. ISDA was additionally working on template language counterparties could use for fallbacks in respect of non-linear derivatives, though it was noted that trading out of these positions (i.e. active transition) was likely to be the preferred solution for market participants.
 - viii. Members discussed whether more was needed to promote SONIA as the quoting convention in interest rate swap markets. It was agreed that more

information was needed to determine what products should be targeted and any blockers.

- ix. The FCA mentioned that LIBOR often appeared in performance benchmarks for funds and that therefore an effect of the transition away from LIBOR would be that performance benchmarks need to change from LIBOR to alternative risk free rates. The FCA noted that it had received one such proposal already which had identified a fair way to do this.
- x. <https://lnkd.in/dRQgCwU>
- d. Key Milestone Dates • September 2020 –**
 - i. expected publication of amendments to ISDA 2006 Definitions and related protocol (pending regulatory clearance) • Q3 2020 – by end-Q3 2020, lenders should be in a position to offer non-LIBOR linked products to borrowers and include clear contractual arrangements in new and re-financed LIBOR loans to convert to alternative rates by end-2021 •
 - ii. Q4 2020 – market participants should be in a position to progress the active conversion of cash products, where viable, to reduce the legacy volume of LIBOR • Late 2020 – amendments to ISDA 2006 Definitions and related protocol expected to take effect (or 3-4 months after publication).
- e. Key Liquidity Indicators •**
 - i. Loans referencing risk-free rates (from LMA website) •
 - ii. Floating rate notes (provided by ICMA using Bloomberg L.P) The cumulative subtotal of outstanding SONIA-linked FRNs (2018, 2019 and 2020) is 141 deals, totalling c.£62bn.
 - iii. Listed Futures (data provided by futures exchanges)

Aggregated across all products as at end-July				
	Monthly traded volume	Change since last month	Number of contracts outstanding (Open Interest)	Change since last month
GBP LIBOR	8,648,664	-2,277,716 (-21%)	3,926,485	334,537 (9%)
SONIA	843,848	-44,285 (-5%)	112,340	21,424 (24%)

• **LCH Swaps Statistics** (from [LCH website](#))

As at end-July (£billions)				
	Notional traded	Change since last month	Notional outstanding	Outstanding change since last month
GBP LIBOR**	4,127	-1,276 (-23.6%)	17,762	-1,142 (-6%)
SONIA	5,279	1,119 (26.9%)	10,749	1,332 (14.1%)

** Including FRAs

- f. Working Group on Sterling Risk-Free Reference Rate Updates •**
 - i. Working with ACT and CBI, the RFRWG will host a webinar for corporates on 18th September at 9.00-12.00. This event will equip firms with the necessary information and practical examples to support the broad-based transition away from LIBOR before end-2021. The session will include remarks from Andrew Hauser (Bank), Tushar Morzaria (RFRWG Chair) and Edwin Schooling Latter (FCA), followed by a series of targeted sessions joined by banks, advisers and corporates.

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- ii. To expedite the transition away from the use of LIBOR products in the loans market, the RFRWG released a recommendation on the market conventions for sterling loans based on compounded in arrears SONIA. These recommendations cover a number of aspects relating to the calculation of interest for SONIA-linked lending. In addition, the Working Group published supporting slides and worked examples detailing the various methodologies considered, and results to a survey of members' views on these issues. The RFRWG's aim remains clear that market participants should be ready to offer non-LIBOR loans products by end Q3 2020.
 - iii. The RFRWG published the minutes to its June meeting, including an update on the Government's intention to make changes to the Benchmarks Regulation, in order to strengthen the FCA's powers in dealing with the orderly wind-down of critical benchmarks. The FCA reiterated that any eventual 'synthetic' methodology for LIBOR may not meet particular needs of all different markets, and as such active transition remains the way forward for parties who wished to retain control over the economics

g. Non-Sterling RFR Updates

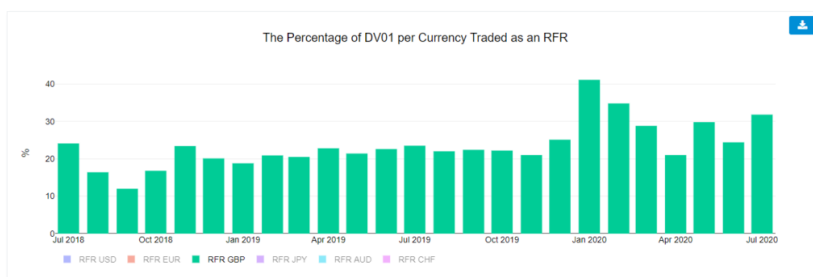
- i. The Commodity Futures Trading Commission issued revised no-action letters providing relief to swap dealers and other market participants related to the transition of swaps referencing LIBOR. The revised letters provide relief for additional types of amendments and refine relief previously provided in December 2019 no-action letters.
- ii. The US ARRC released a range of material including: o updated recommended contractual fallback language for USD-LIBOR referencing bilateral business loans. This updated language makes adjustments to the "hardwired approach" and the "hedged loan approach". The ARRC now recommends that new bilateral loans should incorporate this fallback language by 31 October 2020.
- iii. a technical syndicated loans conventions document, providing worked examples of the different SOFR calculations considered by the ARRC.
- iv. updated Best Practice recommendations encouraging prompt adoption of the ISDA Protocol once available. o resource guides for residential adjustable-rate mortgages and private student loans, to supplement firms' broader LIBOR transition programmes and facilitate transition for relevant industry participants. •
- v. The US' Financial Industry Regulatory Authority (FINRA) issued a regulatory notice reminding firms to evaluate their exposure to LIBOR. In addition, FINRA provided a summary of results highlighting how firms are preparing for the phase-out of LIBOR. •
- vi. In a series of firsts for SARON, Basler Kantonalbank and Bank Cler launched SARON-based retail mortgages. In addition, Basler Kantonalbank began offering SARON-based wholesale funding. •
- vii. The Monetary Authority of Singapore (MAS) announced a number of key initiatives to support the adoption of the Singapore Overnight Rate Average (SORA). These initiatives include, the issuance of SORA-based floating rate notes on a monthly basis to facilitate the adoption of SORA as a floating rate benchmark. In addition, MAS will publish SORA, compounded SORA and a SORA Index on a daily basis.

h. Market Developments

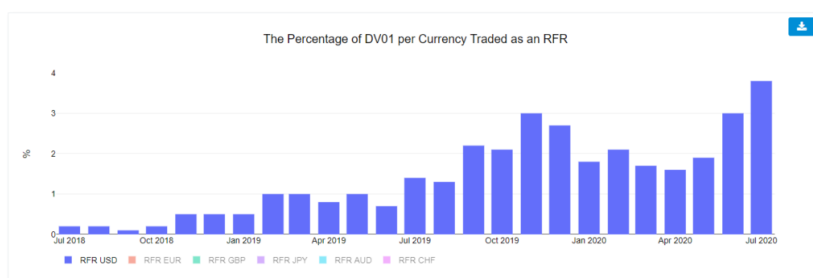
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- i. The EIB issued the first sterling FRN linked to the Bank's new SONIA Index. The Index was launched on 3 August and provides a straightforward way to calculate index payments for products using this convention. •
 - ii. From 16 to 19 October, CME and LCH members respectively will switch PAI/PAA and discounting from EFR to SOFR on all Dollar denominated products
 - iii. Official Sector Updates
 - iv. In the Bank's August Financial Stability Report, the FPC highlighted the known weaknesses of LIBOR and the need for parties to work together to execute LIBOR transition plans at pace, in order to ensure the risks of relying on LIBOR are removed before end-2021. The PRA and FCA expect firms to progress against the RFRWG transition milestones across all key currencies, and expect to scrutinise risk mitigation plans where industry best practice or timelines are not being met. • Edwin Schooling Latter (FCA) delivered a speech at ISDA's LIBOR event, highlighting that the next 4-6 months are arguably the most critical period in the transition away from LIBOR, and urging market participants from all sectors to adhere to the ISDA Protocol.
 - i. Working Group's recommendations for SONIA loan market conventions;** *On 1 September, the Working Group on Sterling Risk-Free Reference Rates published a statement of recommendations on standard market conventions for sterling loans based on compounded in arrears SONIA to support the transition away from the use of LIBOR.*
 - i. The aim continues to be for market participants to be ready to offer non-LIBOR loans products by end Q3 2020. In summary the recommendations include that:
 - ii. (i) SONIA remains the recommended alternative to Sterling LIBOR, implemented via a compounded in arrears methodology, and loan markets should now move consistently towards this;
 - iii. (ii) use of a Five Banking Days Lookback without Observation Shift is the recommended standard approach - however, where lenders are also able to offer lookback with an observation shift this remains a viable and robust alternative;
 - iv. (iii) where an interest rate floor is used, it may be necessary to apply the floor to each daily interest rate before compounding; and
 - v. (iv) on prepayments, accrued interest should be paid at the time of principal prepayment. [Read more](#)
 - j. Synthetic LIBOR: panacea or pandora's box? A public law perspective.** An article in the latest edition of the Journal of International Banking & Financial Law with my talented colleagues, Chloë Bell and John McKendrick QC, on potential public law implications of the UK Government's plans for synthetic LIBOR to address tough legacy contracts. <https://lnkd.in/d5RhFZ4>
 - k. ClarusFT; 40% of the GBP Market Trades Versus SONIA; Chris Barnes; September 1, 2020;** *The ISDA-Clarus RFR Adoption Indicator includes currency specific measures on how much RFR risk is trading.*
 - i. These values are available as interactive charts on rfr.clarusft.com.
 - ii. Notable adoption of RFRs has occurred in both GBP markets (40%) and CHF (8%).
 - iii. We look at each of the six currencies covered by the indicator in this blog.
 - iv. **Data vs Perception;** Speaking to people this week, I've noticed distinct differences in how people measure "market activity". With brokers, it is always actual traded volume.

From bank sales people, it might be about the numbers of client enquiries. For traders, it tends to be about the big-ticket risk trades.

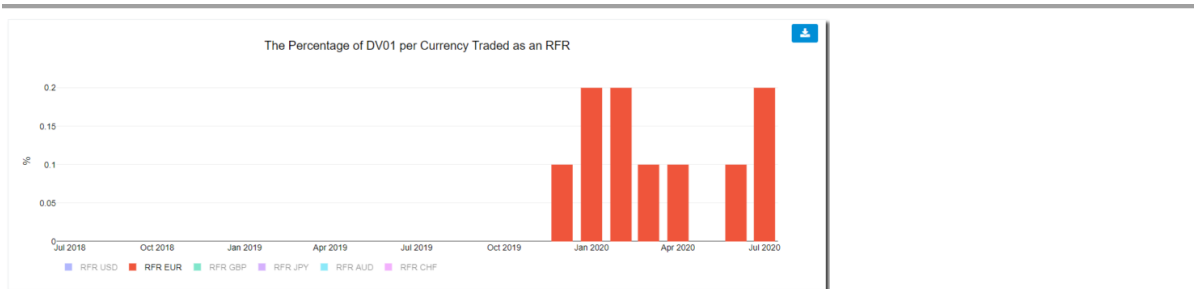
- v. It's therefore useful to have hard data. The [ISDA-Clarus RFR Adoption Indicators](#) measure how much risk is transacted in [cleared](#) derivatives in six currencies. Splitting this out currency-by-currency via our [new interactive charts](#) therefore allows us to state definitively how advanced each interest rate derivative market is in terms of RFR adoption – as measured by trading activity.
- vi. **GBP**; In the [monthly report](#), *Charts 5a and 5b show the proportion of risk traded versus an RFR in each currency.*
- vii. Due to the vast differences between currencies in the percentage of risk traded as an RFR product, we find this particular data is more satisfying to look at via the interactive charts at rfr.clarusft.com. First up, GBP:



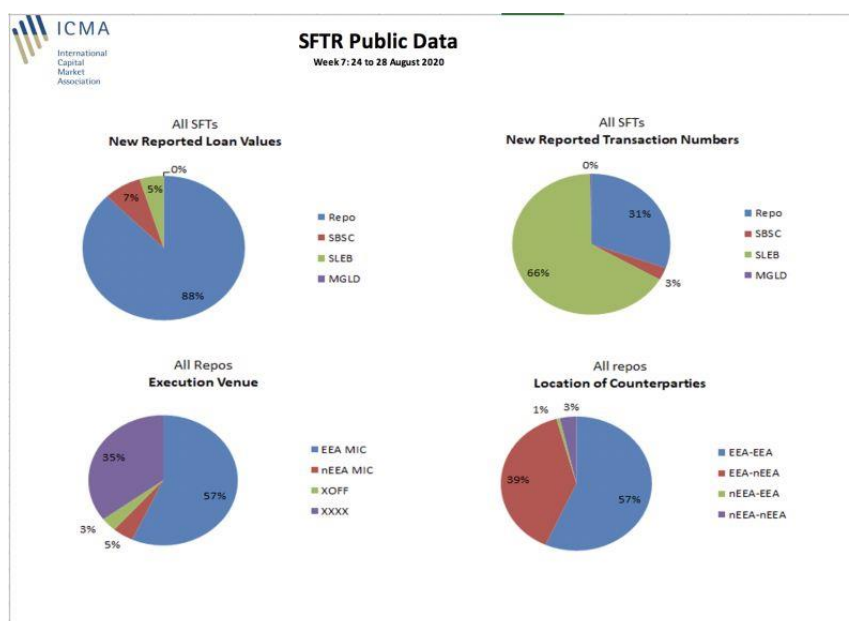
- i. Percentage of [DV01](#) traded as an RFR in GBP markets; Showing;
- ii. Up to 40% of risk is traded versus SONIA in GBP markets.
- iii. This is across both [OTC](#) derivatives and futures (exchange traded derivatives).
- iv. It covers all maturities.
- v. The high point for SONIA trading was in January 2020, when 41% of all risk was traded versus SONIA.
- vi. This has receded somewhat to stand at 32% in July 2020 (the third highest month on record).
- vii. Q4 2019 saw 23% of risk traded versus SONIA. The last three month period saw 29%. It is not massive growth, but the time-series shows RFR trading is increasing over time.
- viii. **USD**; The SOFR market in USD is clearly not as developed as SONIA – it is a [relatively new benchmark](#). However, trading is noticeably picking up:



- i. Percentage of DV01 traded as an RFR in USD markets; Showing;
- ii. Back-to-back records for the proportion of risk traded versus SOFR in USD markets.
- iii. June saw 3%, July 3.8%. Small portions, but a healthy trend.
- iv. This covers activity across both OTC and futures remember. It is impressive how much larger SOFR futures are than OTC for example.
- v. Contact us for a [CCPView](#) subscription to see all of the input data for this fast developing market.
- vi. **EUR**; EUR €STR markets saw the [discounting switch from EONIA to €STR](#) at the very end of July 2020. We really need to see the August data (coming soon!) to notice any pick-up in activity:



- i. Percentage of DV01 traded as an RFR in EUR markets; Just 0.2% of risk is being transacted versus €STR right now. It will be fascinating to see the impact that the [CCP](#) discounting switch has had on this activity.
- l. **SGD RATES: SORA AND THE FALLBACK RATE (SOR);** A new Fallback Rate (SOR) will be used on SOR-referencing contracts in the event of a cessation of USD LIBOR. This rate should not be used in any new derivatives and is only expected to be published for a period of about three years.
- vi. Seventh week of SFTR Public Data now available on the [ICMA - International Capital Market Association](#) website. ICMA 'SFTR in action' webinar is to be held on 17 September.
 - Data for weeks 1 to 7 is available <https://lnkd.in/d/f7Uhph>
 - The first phase of SFTR reporting went live on 13 July. Building on the experience of the first two months, ICMA will be holding a webinar on 17 September to take stock of the progress so far and the key outstanding issues.
 - **compliance** The webinar will feature a few short presentations to provide participants with an update on ICMA's ongoing work on SFTR implementation, followed by an in-depth panel discussion with practitioners.
 - For the webinar, ICMA's [Alexander Westphal](#) and [Richard Comotto](#) will be joined by [Craig Laird \(Morgan Stanley\)](#), the chair of ICMA's SFTR Task Force, [Catherine T. \(UnaVista\)](#) and [James Stacey \(LCH\)](#) who will all look at the experience and challenges of SFTR reporting from their specific angle.



- [FSB extends implementation timelines for securities financing transactions](#) - Implementation timelines for minimum haircuts adjusted.

- FSB September 05th announced [extensions to the implementation timelines](#) for minimum haircut standards for non-centrally cleared securities financing transactions (SFTs), to ease operational burdens on market participants and authorities, and thereby assist them in focusing on priorities from the impact of COVID-19.
- SFTs such as securities lending and repurchase agreements (repos) play a crucial role in supporting price discovery and secondary market liquidity for a wide variety of securities. However, such transactions can also be used to take on leverage as well as maturity and liquidity mismatched exposures, and therefore can pose risks to financial stability.
- As part of its work to enhance the resilience of non-bank financial intermediation, the FSB developed 18 policy recommendations to address financial stability risks that arise from SFTs. These recommendations were published in the FSB's August 2013 report [Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos](#) and updated in the November 2015 report [Regulatory framework for haircuts on non-centrally cleared securities financing transactions](#).
- The Group of Central Bank Governors and Heads of Supervision decided in [March 2020](#) to defer the implementation of the Basel III framework by one year to January 2023. Since the FSB framework for numerical haircut floors for bank-to-non-bank transactions is expected to be implemented through the Basel III framework in many jurisdictions, the FSB has therefore decided to also extend the implementation dates by one year for its policy recommendations related to minimum haircut standards for non-centrally cleared SFTs. For bank-to-non-bank transactions, the updated implementation date is January 2023 (instead of January 2022). For non-bank-to-non-bank transactions, the updated implementation date is January 2025 (instead of January 2024). This is in line with the re-prioritisation of the FSB's work in light of the COVID-19 pandemic and will give market participants (both banks and non-banks) more time to prepare for the implementation of the framework of numerical haircut floors set out in minimum haircut standards.
- Going forward, the FSB will continue to monitor the implementation of its policy recommendations to address financial stability risks in the SFT markets and to enhance the resilience of non-bank financial intermediation.

vii. [Exemptive, No-Action, Interpretative Letters, Other Written Communications, and Advisories for CFTC.gov](#). The following letter has been added:

- i. [CFTC Staff Letter No. 23](#); Letter Type: No-Action; Division: DSIO
- ii. Regulation Parts: 1.3, 23.150, 23.151, 23.152, 23.153, 23.154, 23.155, 23.156, 23.157, 23.158, 23.159, 23.400, 23.401, 23.402, 23.410, 23.430, 23.431, 23.432, 23.433, 23.434, 23.440, 23.450, 23.451, 23.501, 23.502, 23.504, 23.505, 23.701
- iii. Issuance Date: 08/31/2020
- iv. Description: DSIO is providing relief to swap dealers from registration de minimis requirements, uncleared swap margin rules, business conduct requirements, confirmation, documentation, and reconciliation requirements, and certain other eligibility requirements. This relief is to help facilitate the orderly transition from swaps that reference the London Interbank Offered Rate (LIBOR) and other interbank offered rates to swaps that reference alternative benchmarks.
- v. [CFTC Staff Letter No. 24](#); Letter Type: No-Action; Division: DMO; Regulation Part: 2(h)(8)
- vi. Issuance Date: 08/31/2020
- vii. Description: DMO is providing time-limited relief from the trade execution requirement in order to facilitate the orderly transition from swaps that reference the London Interbank Offered Rate (LIBOR) and other interbank offered rates to swaps that reference alternative benchmarks.
- viii. [CFTC Staff Letter No. 25](#); Letter Type: No-Action; Division: DCR; Regulation Parts: 2(h)(1), 2(h)(7), 50, 50.2, 50.4, 50.50, 50.51; Issuance Date: 08/31/2020

- ix. Description: DCR is providing time-limited relief from the swap clearing requirement and related exceptions and exemptions. This relief is to help facilitate the orderly transition from swaps that reference the London Interbank Offered Rate (LIBOR) and other interbank offered rates to swaps that reference alternative benchmarks.

viii. Compliance Horizon Topics: Table

Join EVIALEBA Month Compliance Zoom Meeting; 0830 Wednesday 09 th September 2020 Virtual Meeting via ZOOM		
Compliance Horizon Topics:	Topics	Comments
Venue Compliance	MiFID2/R Refit Process [ESMA / NCAs]	AFM opinion memo of 28 th Aug 2020 OTF CP in Q4 PTNGU Money Market Perimeter FX Perimeter ESMA Feedback on Third Country Venues List (TOTV)
	MiFID2.2 Review [FISMA]	EC Published MiFID QuickFix last week <ul style="list-style-type: none"> • Best Execution • Commodities Language for Ancillary Exemptions and impact on C6 reliance
	Reference Data: FIRDs/ FITRs/	ESMA Call for Evidence NEX Abide closing Down Brexit Duality / deference
	ANNA-DSB	All DSB Users; Summary: <i>The purpose of this notification is to inform DSB users that functionality to allow a search for a date range using the attribute LastUpdateTime will be applied to the Production and UAT2 systems. Details are documented in:</i> <ul style="list-style-type: none"> • Github 9: Unable to search for a date range in LastUpdateDateTime • The new functionality requires a rebuild of the system indexes used when searching. Due to the size of the data this has to be undertaken over several weekends and will take place during the DSB weekly maintenance window. (DSB Operating Hours). • This re-indexing will commence during the maintenance window of 13th September 2020 in Production and will continue each weekend during the maintenance window until completed. For UAT2, the re-indexing task is expected to be completed within the early maintenance window due to the smaller data set. • The DSB will send a status update on 4th October 2020 to inform DSB users of the current status and a further update will be sent once re-indexing has completed.

		<ul style="list-style-type: none"> This functionality has been in place in the UAT environment since 28th April 2018.
Reporting/ Reference Data:		MiFID Perimeter Topics [FX] EMIR Best Practices - EMIR TS Consultation Responses
CSDR Implementation		ESMA Delay until Feb 2022
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 Review
AML_KYC Subgroup		JMLSG Updates (Guidance, Crypto) Onboarding
ACER Topics		<p>TRUM Revisions (published, more top come in September). Fines ACER - New REMIT Quarterly published; <i>ACER issued the latest "REMIT Quarterly" newsletter on Friday Aug 17, which can be found here. Topics covered include:</i></p> <ul style="list-style-type: none"> <i>Data quality</i> – Work that ACER and National Regulatory Authorities (NRAs) are carrying out to improve data quality. This section also announces that: <ul style="list-style-type: none"> A new "letter on data quality" will soon be published. They are going to pay attention will be paid to the application of the new TRUM. There will be a supervisory focus on life-cycle events. <i>Fees</i> – Fees will soon be levied on RRM's which will be passed on to market participants. The recent consultation can be found here. <i>Completeness/delivery profiles</i> – ACER have been checking for consistency in reporting between total energy reported and that contained within the delivery profile. <i>Negative prices</i> – An article is included starting on page 3 looking at negative prices and how they may lead to market abuse. <p>LEBA Speaking at and ACER invites to, the Energy Market Integrity and Transparency Forum 2020; opens today registration for the IV ACER Energy Market Integrity and Transparency Forum, which will take place as a virtual meeting on 9 October 2020.</p> <ul style="list-style-type: none"> The Forum's theme is "REMIT – safeguarding the energy market in changing times and beyond". The morning sessions will focus on various policy initiatives impacting wholesale energy trading, consequences of COVID-19 measures and latest fines and cases. In the afternoon the focus will be on market trends and outlook and "REMIT beyond: The international dimension".

Off Venue Compliance	FX Spot:	Ongoing Code of Conduct Review MiFID Advocacy EVIA 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 <i>“Any communication given on general market background should be restricted to information that is effectively aggregated, anonymised, and in such a manner that protects confidential information. On the basis that such information is anonymised and aggregated it is acceptable practise to share information around market colour to ensure that the UK money market retains transparency for participants. Information regarding general market levels may be shared widely, <u>but specific permission with regard to confidentiality must be granted for an intermediary to share market levels in relation to particular participants.</u>”</i>
	Role of Agency	PFOF 29 th 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: Final Rules UK Stay on 3rd Country Benchmarks BMR Review [ESMA] Published June 2020 BMR Revision [FISMA] Published July 2020 Libor Transition Topics- Ongoing - Picking up threads
	Commodities Topics	FMSB Code of Conduct restarting this week <ul style="list-style-type: none"> • Energy Markets • Metals Markets
	CBDCs, Crypto-Assets and Stablecoins	BoE speech on innovation in payments; <i>On 3 September, the BoE published a speech given by its Governor, Andrew Bailey, in respect of innovation in payments. Read more</i> EU Legislative CP due in October MAS CP on Legislative Perimeter UK Legislative Approach (JMLSG) FSB / IOSCO OMFIF; Navigating the digitalisation transformation; Virtual panel; Friday 25 September, 07:45-10:30 London 14:45-17:30 Singapore; As technological innovation in the financial sector continues with advances in artificial intelligence, blockchain and digital currencies, central banks are assessing how best to regulate the sector’s transformation. This seminar gives an overview of what central banks are doing to respond to

		these challenges and risks, and how they are preparing for potential cyber attacks and approaching cryptocurrency regulation.
Conduct / People	Home Office Supervision	Best Practices
	Fines /investigations	Paused (?)
	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 <ul style="list-style-type: none"> • Energy Markets • Metals Markets <ul style="list-style-type: none"> • Monitoring FICC markets and the impact of machine learning • Examining remote working risks in FICC markets • LIBOR transition: Case studies for navigating conduct risk • The critical role of data management in the financial system • Emerging themes and challenges in algorithmic trading and machine learning • Measuring execution quality in FICC markets
	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 Consultation (closed) FCA Consultation (19 th Sept) KPMG [Remuneration workshop planned]
	Pillar 2 Add-ons	FCA Work on resilience IOSCO work on Op Res
RegTech, FinTech & CyberCrime Topics		EU FISMA CP due on cyber framework Oct 2020 MAS Open CP UK Approach RegTech Council
EVIA/LEBA Weekly Roundups for August 2020		<ol style="list-style-type: none"> 1. Weekly update on Key Regulatory Topics (Week 31, 03rd August 2020 to 08th August 2020) 2. Weekly update on Key Regulatory Topics (Week 32, 10th August 2020 to 15th August 2020) 3. Weekly update on Key Regulatory Topics (Week 33, 17th August 2020 to 22nd August 2020) 4. Weekly update on Key Regulatory Topics; Week 35, 01st September 2020 to 05th September 2020.pdf

Topic: EVIA/LEBA Monthly Compliance Meeting via Zoom

Time: Sep 9, 2020 08:30 London

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