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## EVIA LEBA Monthly Compliance Meeting

0830 Wednesday 05<sup>h</sup> August 2020

[Virtual Meeting via ZOOM](#)

### i. Matters arising

- a. **FMSB Spotlight Review** [‘Monitoring FICC markets and the impact of machine learning’](#) and an accompanying [press release](#); Market surveillance in FICC has undergone, and continues to undergo, significant change as a result of regulation, the evolution of market structure, and technological developments.
- i. This Spotlight Review considers these structural and technological changes, in particular the emergence of machine learning trading strategies, and sets out some of the challenges associated with these developments for surveillance teams in FICC markets. The review then examines the role of technology as a potential solution to these challenges, creating as it does opportunities to improve market surveillance through the application of machine learning.
  - ii. This review outlines:
  - iii. factors driving the pace of change in market surveillance;
  - iv. the acute impact of data on surveillance effectiveness;
  - v. surveillance of complex algorithms and machine learning;
  - vi. employing machine learning to empower surveillance; and
  - vii. the vital role agility plays in effective surveillance.
- b. **Blocks.** As you've seen, there has been a wave of enforcement cases relating to failures relating to audit trails and poor understanding of Exchange rules.
- i. Furthermore, we've touched upon issues relating to market practices and the potential disclosure of information/last traded price prior to reporting blocks to the Exchange.
  - ii. Increased use of chat rooms during the current working environment.
  - iii. UK-based traders working from overseas (tax implications)
- c. **FCA Dear CEO letter on Inappropriate use of TTCAs and regulatory permissions for financing transactions**
- i. this is the small firm 50k licensed firms who may have c. £3m of going concern capital may hold £300mm of client monies not actually categorised as such because it resides in non-seg house accounts, no reconciled statements etc.
  - ii. "Harm we are concerned about is the protection of client money and custody assets (collectively 'client assets') - concerning those business models that use TTCAs to hold collateral for leveraged client trading. [would your
  - iii. we are concerned about firms who "*may in the future*" ... over 300 Recipients got this letter, beyond the relevant clearing and mini-Prime firms and their clients
  - iv. two topics:
  - v. Inappropriate use of title transfer collateral arrangements ('TTCAs')
  - vi. regulatory permissions for financing transactions.
  - vii. "*Additionally, we have seen examples of these same types of firms incorrectly classifying financial transactions as falling within the prudential matched principal exemption, and thus holding lower financial resources than may be required and also acting outside the limitations of their regulatory permissions.*"

- d. [FCA launches enhanced Financial Services Register to protect consumers](#); On 27 July 2020, the FCA announced that it had [launched](#) an enhanced Financial Services Register. Key enhancements include:
- i. A clearer navigation and design.
  - ii. Simpler language.
  - iii. More information on the Register's purpose, how to use it and how to avoid scams.
  - iv. Important information being made more prominent, including past actions against individuals and firms, and consumer protections.
  - v. Optimisation for some mobile devices.
  - vi. Under the Senior Managers and Certification Regime (SM&CR), the FCA had announced its commitment to publishing and maintaining a directory of certified and assessed persons on the Financial Services Register. Having already announced a delay to this, the FCA now intends to publish it later this year.
  - vii. The FCA is also currently proposing to extend the previous deadline of 9 December 2020 for solo-regulated firms to
- e. **The Joint Money Laundering Steering Group (JMLSG) today publishes two new pieces of Guidance.** *The Board approved text includes a new annex within Part I: Annex 5-V on Pooled Client Accounts, and a new sectoral piece within Part II: Sector 22 Cryptoasset exchange providers and custodian wallet providers. There is also a minor amendment to paragraph 5.3.53 within Part I.*
- i. The new text, which has been submitted to HM Treasury for approval, has been incorporated into the Guidance, which may be accessed under "Current Guidance". The relevant material is also available separately under the "Revisions" tab.
  - ii. [July 2020 Amendment to 5.3.53 in Part I 5.3.53](#)
  - iii. In addition, an organisation should have processes that allow the enquirer to capture and store the information they used to verify an identity, and/or return a level of assurance that can be stored by the enquirer as evidence of the organisations' verification processes
  - iv. [ANNEX 5 – V POOLED CLIENT ACCOUNTS](#) Note: This guidance is confined to Pooled Client Accounts
  - v. [22: Cryptoasset exchange providers and custodian wallet providers](#) Note: This sectoral guidance is incomplete on its own. It must be read in conjunction with the main guidance set out in Part I of the Guidance. This is because the sectoral guidance deals with the specific aspects of the law as it relates to cryptoasset exchange providers and custodian wallet providers; aspects of the law that relate to all obligated entities are addressed in Part I of the Guidance and are not reproduced below. Definitions Cryptoasset / Cryptoasset exchange provider / Custodian wallet provider / Money
  - vi. [FCA gets new powers to supervise cryptoassets](#); The UK finance ministry is to hand the Financial Conduct Authority greater powers to oversee cryptoassets in a bid to rein in unregulated activities. The FCA will have more capacity to penalize unauthorized operators and block misleading sales claims. [Reuters](#)
  - vii. HMT Monday proposed giving the City's watchdog new powers to regulate crypto assets like bitcoin, and also outlined a crackdown on misleading sales literature bombarding consumers over the internet. Currently any firm authorised by the FCA can approve any financial promotion from an unauthorised firm, but the system is not working properly, the ministry said.

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- viii. The ministry is proposing a “regulatory gateway” to pre-vet an authorised firm that wants to give the nod to marketing material from an unauthorised financial services firm. “Any firm wishing to approve the financial promotions of unauthorised firms would first need to obtain the consent of the FCA,” the ministry said in a statement.
- ix. Britain also proposes to extend the FCA’s “perimeter” to bring the promotion of some types of crypto-assets under its wing for the first time. “It is the government’s assessment that many of these unregulated cryptoassets expose consumers to unacceptable levels of risk,” the finance ministry’s consultation paper said.
- f. [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.
- g. On 24 July 2020, the FCA published [Handbook Notice 79](#). This Handbook Notice describes the changes to the FCA Handbook made by the FCA Board under its legislative and other statutory powers on 30 June, 13 July and 23 July 2020. On these dates the FCA Board made the following instruments: COVID-19 Credit Cards and Personal Loans (No.2) Instrument 2020, COVID-19 Motor Finance and High Cost Credit (No 2) Instrument 2020, Glossary Amendment (Multilateral Development Banks) Instrument 2020, Financial Services Compensation Scheme (Determination of Default) Instrument 2020, Enforcement (Fifth Money Laundering Directive) Instrument 2020 and Consumer Credit (Bounce Back Loans) Instrument 2020.
- h. Nikhil Rathi; [New FCA Head Puts Consumer Protection Atop Agenda](#); The Financial Conduct Authority is set to transform its regulatory agenda by laying out preventative measures to stop consumer harm and weed out economic crime, the watchdog's incoming chief executive told MPs Wednesday.
- i. Consultation Responses
- i. Response to ESMA on CSDR Review concerning settlement discipline and Matched Principal Model
- j. IFPR – IFR
- i. vMeeting with HMT [see notes]
- ii. vMeeting with FCA [see notes]
- k. PTNGU: FCA interest in US Rule Finalisation
- l. [CSDR](#): – ESMA delays 12months until Feb 2021
- i. HMT dis-applies
- m. DG COMP LEBA Interview regarding compliant on access to SEE3 Gas and power market operation [see note]

- ii. **CoronaVirus MA:** Regulatory interventions & round tables, Home\_Office Protocols, Risk Registers and operational resilience
- a. No FCA Coordination Calls over the last month
  - b. Corp London - latest version of our tracker "Economic and Regulatory Measures taken by Countries to Respond to the COVID-19 Pandemic".
  - c. See Covid#19 Update Document attached
  - d. **27 July 2020 – The FICC Markets Standards Board (FMSB) has today published a Spotlight Review which examines remote working risks in FICC markets.**
    - i. Following COVID-19 being declared a global pandemic and the closure of many offices, FMSB formed a working group of members and other interested market participants to consider the impacts of financial services activities being undertaken by a workforce which is widely distributed and using remote working. The working group set about identifying and capturing the main priorities from a wide range of risks that arise from the new working environment, with a focus on areas which impact the fairness and effectiveness of wholesale FICC markets, and then to consider mitigants or strategies to manage these risks.
    - ii. As part of this, FMSB has created a risk register that shares the experience and observations of the working group for market practitioners to use when conducting their own risk assessments.
    - iii. The Review categorises risks into nine thematic categories:
      1. Control limitations
      2. Execution risks
      3. Governance
      4. Heightened cyber risk
      5. Sales lifecycle
      6. Sharing of confidential information
      7. Staff treatment and productivity
      8. Third party risk
      9. Threats to market effectiveness
    - iv. Within these nine categories, the risk register outlines over 40 specific risks, including cultural leakage and reduced employee engagement, weakened control of confidential information, poorer identification of suspicious trading activity, and physical and mental stress resulting from home office environments. For each risk there is an outline of the potential impact and example control and mitigation measures.
  - e. KPMG Weekly [Covid#19 Series: "Preparing for the new reality"](#) // To subscribe to this series, sign in or create an account on [preference centre](#) and select "COVID-19 Insights".
- iii. **Brexit MA;** *note of FCA Coordination Calls since Friday 24<sup>th</sup> July.*
- a. Ongoing discussions with UK Govt, FCA, EU Commission and ESMA on market liquidity
  - b. **Four different scenarios are possible in 2021:**
    - i. no agreement or World Trade Organisation (WTO) rules;
    - ii. equivalence decisions;
    - iii. a Comprehensive Free Trade Agreement (CFTA);
    - iv. or both,

Summary table: EU authorities can mitigate adverse impacts of Brexit by taking the following actions

<b>EMIR</b>	Extend the exemptions to the Bank of England and the UK debt management office. * ✓	<b>UCITS Directive</b>	Determine that UK institutions are subject to equivalent prudential regulation in relation to exposures of EU UCITs to UK institutions. ‡		
	Determine the equivalence of UK regime regulating markets for exchange-traded derivatives for the purposes of the definition of OTC derivatives. †		<b>Short selling regulation</b>	Determine that the principal trading venue of relevant shares is in the UK. ‡	
	Recognise UK CCPs for clearing (and QCCP treatment under CRR and protection from resolution action under BRRD). †‡‡	<b>BRRD</b>		Determine that the UK recognition regime for EU resolution actions meets the requirements of the RTS under Art 55. ‡	
	Recognise UK trade repositories for reporting. †‡‡‡		<b>MAR</b>	Extend the benefit of the exemption to UK public bodies and Bank of England. * ✓	
<b>MiFIR</b>	Extend the central bank exemption to the Bank of England. * ✓	<b>Benchmarks Regulation</b>		Include benchmarks in ESMA register based on UK equivalence (†‡‡) or a decision on recognition (‡) or endorsement of UK/third-country benchmarks (‡).	
	Confirm the equivalence of UK trading venues for the purposes of the EU post-trade transparency regime. ‡		<b>Key:</b>	Immediate/high impact	Immediate/lower impact
	Determine the equivalence of the UK regime for trading venues and the UK trading obligation for the purposes of the derivatives trading obligation. †	* Requires European Commission to adopt delegated act, subject to no objection by Council and European Parliament.		† Requires European Commission to adopt implementing act or decision, after review by European Securities Committee.	‡ Requires decision by EU or national authority.
<b>CRR</b>	Determine the equivalence of the UK regulatory framework for institutions and other entities for the purposes of risk-weighting exposures to UK entities. †	✓ Action taken before 31 January 2020 takes effect at end of transition period.			
	Approve endorsement of relevant ratings by an EU credit rating agency or certification in the EU under the Credit Rating Agencies Regulation to allow use for regulatory capital purposes. ‡‡ (and † for certification).				

- c. UK TPR to commence in October
- d. [ISDA](#), [Clifford Chance/UK Finance](#), [CEPs](#), [EBF](#) and [AFME](#) Papers on Equivalence and the impacts of fragmentation
  - i. *The impact of Brexit on OTC derivatives Other 'cliff-edge' effects under EU law at the end of the transition period Stock-take of mitigating action taken to prepare for a no-deal Brexit*
  - ii. *What the MiFIR Third Country Regime Means for UK-EU Cross-Border Services*
  - iii. *UK-EU financial market access in 2021*
  - iv. *AFME priorities for the future EU-UK relationship*
  - v. *EBF paper on EU equivalence regime under Brexit*
- e. **A summary of the Brexit briefing call for trades hosted by the FCA on Friday 24 July 2020. The FCA representatives included Nausicaa Delfas, Executive Director of International, Andrew Whyte, Communications Director, as well as Greg Sachrajda and Zertasha Malik, both from their International Division. Stephen Hanks was on the call too. FCA provided the following updates:**
  - i. They reiterated the messages that firms should continue to prepare for all Brexit scenarios. They've been providing technical advice to the Government on equivalence. 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.
  - ii. The FCA continue to update their Brexit webpages and they encouraged all to periodically check for updates there. They confirmed the re-opening of the notification window for the TPR on 30 September and that the MoUs previously signed with ESMA and EU securities regulators will remain relevant after the end of the transition period. They confirmed that they aim to publish them closer to December. General updates on onshoring and 'inflight files' were provided.
  - iii. They 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.
- iv. Topics of data protection (i.e. the importance of lawful data transfers and data processing after the end of the transition period) and payment services (UK's participation in SEPA) were also mentioned.
  - v. 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.
- f. ESMA updates transparency opinions for 3rd country venues;** [announced](#) that it had updated the list of third-country venues (TCTV) in the context of the opinion on post-trade transparency under MiFIR, following new requests from the industry.
- i. An updated annex to the opinion related to post-trade transparency, with the list of venues with a positive or partially positive assessment.
  - ii. Additional guidance on the implementation of the list of TCTV venues.
  - iii. updated the [list of third-country venues](#) (TCTV) in the context of the [opinion on post-trade transparency under MiFIR](#), following new requests from the industry.
  - iv. Following the publication of the opinion and the list of third-country venues in June 2020, ESMA has received requests from market participants to assess more venues against the criteria set out in the opinion. The review is now finalised and ESMA is publishing:
    - v. an updated [annex](#) to the opinion related to post-trade transparency, with the list of venues with a positive or partially positive assessment; and
    - vi. additional [guidance](#) on the implementation of the list of TCTV venues.
    - vii. For market participants to automatically process the list of venues included in the annex of both the opinion on transparency and the opinion on position limits, ESMA published them in csv format.
    - viii. The relevant links related to the opinions and their annexes are now available on a dedicated [webpage](#).
- g. FCA confirms MoUs with ESMA and EU securities regulators**
- i. On 17 July, the FCA and ESMA released public statements confirming the validity of the previously agreed Memoranda of Understanding on cooperation and information exchange, which will come into effect at the end of the transition period. The MoUs were initially agreed in case the UK left the EU without a withdrawal agreement. In addition, ESMA urges financial market participants to finalise preparations and implement suitable contingency plans in advance of the end of the transition period. ESMA also confirms that it's previously published Brexit statements, in particular ESMA's general opinion to support supervisory convergence in the context of the UK withdrawing from the EU and sector-specific opinions, remain relevant and should continue to be followed.
  - ii. [FCA statement & ESMA statement](#)

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- h. HMT / Swiss Statement
  - i. Roland Philips replaces Mark Griffin
  - j. PEG Workaround – wider client adoption likely given EDFT views on Agency provision of Shipping Licencing
  - k. Below is a useful [paper from Johnathan Herbst at NRE](#), although the substantive work remains the June Cliffords Technical paper [reattached] although it doesn't add much this point caught my attention: "*HM Treasury will publish a guidance document in the near future on the UK's equivalence framework.*"
    - i. Given conversation on Friday, wherein FISMA emphasised that they wanted a forward-looking statement from the UK
    - ii. The FCA remark that they saw an early draft of this Guidance Note: "*It is not going to tell you anything you do not already know, it will just use more words to do so than have hitherto been collected in one document.*"
    - iii. *it would be helpful if the MiFIR aspects could be politically aligned in this forward framework to move that dialogue*
    - iv. *the EU liked the UK forward policy on LiBOR, yet the UK has kicked 3rd Country Benchmarks into touch for 4 more years from 2022 to 2026 which the EU has not (yet anyway) in that flurry of statements on Friday*
    - v. *the UK have noted to us that keeping up with the EU MiFID changes is a legal framework challenge - we opened the Best Execution no-action matter with them*
    - vi. HMT have asked for suggestions as to how any mutual recognition framework for Wholesale FMS should be structured, with particular reference to whether the [Article 72 of the Regulated Activities Order](#) (Overseas persons) works instead of or alongside any formal recognition of third-country jurisdictions
  - l. With Parliament and as part of the [APPG\\_WMFS](#) we have opened a request for comment on the structural relationship between Parliament and the FCA going forwards, this is attached - views welcome.
  - m. fyi we understand the AMF are working up guidance on the MiFID perimeter for "Multilateral Systems"
  - n. *Les services de l'AMF préparent un rapport sur la multilatéralité. Il y sera notamment question de clarifier la notion de multilatéralité, afin de permettre entre autres à la réglementation de capturer les entités opérant actuellement dans la négociation multilatérale sans être capturées par les textes en l'état.*
  - o. they have our distilled views on that topic from the processes over that last 12 months, and we have offered further dialogue on our views
  - p. There seems to be substantial puzzlement across ISDA at the internal opposition to the CFTC measures to close out DoddFrank by seeking not to reach cross border to non-US Swapdealers. ISDA will remain completely silent on PTNGU both in the US and Europe. Some long CFTC hearings last week now on youtube.
  - q. [Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants](#)
  - r. The CFTC noted to us their ongoing challenge to identify venues for the [equivalence/ exemption determination](#) as neither LEI nor MIC-code were deemed appropriate
  - s. **Post-transition regime takes shape**
    - i. The UK Government has [indicated](#) plans for divergence from EU regulation in its post-transition approach to UK financial services regulation, stating that "*there will be some defined areas where it is appropriate for the UK – as a large*

and complex financial services jurisdiction – to take an approach which better suits our market”. In particular:

1. The UK will not implement the settlement discipline requirements of the **Central Securities Depositories Regulation (CSDR)**, due to apply in the EU from February 2021, which are unpopular with market participants. However, given the extra-territoriality requirements of the regime, UK firms settling trades on EU CSDs will still need to comply.
  2. The UK will not implement the reporting obligations for non-financial counterparts (NFCs) under the **Securities Financing Transactions Regulation (SFTR)**, applicable in the EU from January 2021.
  3. There may be divergence in the UK implementation of the **Bank Recovery & Resolution Directive II (BRRD II)**. HM Treasury is [consulting](#) on the aspects that do not need to be complied with until after the end of the transition period, in particular MREL requirements.
  4. A **review of Solvency II** will cover risk margin, matching adjustment, operation of internal models and reporting requirements, and will start with a Call for Evidence in Autumn 2020.
  5. Smaller amendments are planned to the **Benchmarks Regulation** and **Market Abuse Regulation**.
  6. There will be improvements to the functioning of the **PRIIP KID regime** and to address potential risks of consumer harm.
- ii. However, implementation of the European Market Infrastructure Regulation (REFIT) will be completed. Further policy statements will be published in July 2020.
  - iii. **Divergence may ease requirements in some areas but will add to the complexity of regulatory change programmes and future operating models of firms planning to operate in both the UK and the EU.**
  - iv. In the meantime, the FCA [confirmed](#) that regulators and firms need to continue to prepare for a range of scenarios at the end of the transition period. To support this, the **notification window for the Temporary Permissions Regime** will re-open on 30 September, allowing EEA firms to continue providing services and EEA funds to continue to be marketed in the UK once passporting ends at the end of the year. The FCA will consult later this year on how these EEA firms will apply for permanent authorisation.
  - v. Looking longer term, a [speech](#) by FCA Chair, Charles Randell indicated that **the FCA plans to operate in a fundamentally different manner in the future**. His speech described a conduct regulator which is more outcomes-focused, acknowledges the limitations of regulatory disclosure and is trying to steer firms away from tick-box compliance. He identified five shortcomings with the current rules-based approach:
    1. It does not automatically follow that rules will result in good outcomes for consumers and markets
    2. It assumes that the regulator is always able to judge whether firms are following the rules and to intervene in a timely way
    3. Rules tend to assume a consumer journey that is no longer typical – if it ever was
    4. Retail consumers are sometimes offered a bewildering array of products unsuited to their needs
    5. The polluter does not pay: the cost of bad behaviour by firms which then fail is met by others, via the FSCS



vi. This speech is a clear trail for the future of conduct regulation review that is planned for this year and gives a strong indication of the FCA's ambition for change.

t. [Some further reflections on the Commission communication: The simple story July 2020](#)

- i. [Introduction](#)
- ii. [No Commission equivalence decisions in the short- or medium-term](#)
- iii. [The political backdrop](#)
- iv. [Unpacking the meaning of equivalence](#)
- v. [What this all means in practice?](#)
- vi. **Introduction**
- vii. On July 9, 2020, the European Commission issued a [communication](#) on readiness at the end of the transition period between the EU and the UK. In the communication, the Commission refers to little progress in the negotiations so far on the UK/EU free trade agreement (FTA) arguing that all stakeholders should be made aware of this and that they should be ready for changes that arise under any scenario. The communication throws into question the ability of financial services firms in either the UK or the EU to conduct certain cross-border business into each other's territory for some time. The Commission advises EU businesses to revisit their existing preparedness plans as even though these were prepared for a no-deal Brexit, part of them will still be very relevant should the transition period end and the UK and EU not enter into a FTA.
- viii. **No Commission equivalence decisions in the short- or medium-term**
- ix. Perhaps the most concerning part of the communication for financial institutions was the statement made at the top of page 15 where the Commission states that it will not adopt equivalence decisions in the "short or medium" term in those areas set out further in footnote 21. Whilst it's unclear what exactly the Commission means by "short or medium term," the list of directives and regulations covered in footnote 21 may trouble financial services firms. These are:
  - x. Directive 2004/109/EC - Transparency Directive - Accounting Standards; Art. 23(4) first subparagraph, point (ii).
  - xi. Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (Statutory Audit); Art. 45(6) - Equivalence to the international auditing standards of the standards and requirements in the third country.
  - xii. Regulation (EU) N° 600/2014 on markets in financial instruments (MIFIR); Art. 33(2) - Derivatives: trade execution and clearing obligations; Art. 38(3) - Access for third-country trading venues and CCPs; Art. 47(1) - Investment firms providing investment services to EU professional clients and eligible counterparties.
  - xiii. Directive 2014/65 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID 2 – recast; Art. 25(4) - Regulated markets for the purposes of easier distribution in the EU of certain financial instruments.
  - xiv. Regulation (EU) No 596/2014 on insider dealing and market manipulation (Market Abuse Regulation); Art.6(6) - Exemption for climate policy activities.
  - xv. Regulation (EU) No 236/2012 on short selling and certain aspects of Credit Default Swaps; Art. 17(2) - Exemption for market making activities.

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- xvi. Regulation (EU)2017/1129 of June 14, 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC; Art. 29(3) – Prospectus rules.
- xvii. A small glimmer of light in the Commission’s list above is that Article 23 / Article 28 MiFIR is not mentioned which might provide some welcome relief to investment firms as regards the share trading obligation / derivatives trading obligation (all TBC of course). In addition, the communication refers to the possibility of the Commission adopting a time limited equivalence decision for central clearing counterparties of derivatives. Arguably, such a decision is in the Commission’s own interest with the communication noting that such a time limited decision will allow EU-based central counterparties to further their capacity to clear relevant trades in the short- and medium-term.
- xviii. Following contact between the President of the Commission and the Prime Minister on June 16, there has been an acceleration of the work on the FTA negotiations which must be welcomed. But whether this is enough to change the Commission’s view remains to be seen.
- xix. **The political backdrop**
- xx. However, whilst the Commission’s comments on equivalence are troubling, financial institutions would be well advised to be conscious that in its current guise the communication is part of the political brinkmanship that is part of the Brexit FTA negotiations. This is not in reality a purely legal document when viewed through this prism.
- xxi. For example, the Political Declaration on the future relationship stated that the EU and the UK would endeavour to conclude their respective equivalence assessments before the end of June 2020. The communication states that the Commission shared with the UK questionnaires covering 28 equivalence areas and that by the end of June, only four completed questionnaires had been returned. The Commission asserts that on that basis it could not conclude its equivalence assessments by the end of June. When providing evidence to the House of Lords’ select committee on the EU for its inquiry into financial services after Brexit, John Glen MP painted a somewhat different picture: “As I said, we have completed our assessment of it. It [the Commission] has sent over 1,000 pages of detailed questionnaires, 248 of those pages as late as the end of May, and we have responded to those at pace. We will be able to conclude that in the next couple of weeks.”
- xxii. The subtext of this is that the UK recognised that the original aim of equivalence by the end of June was never going to happen given the political reality of the state of the negotiations. This explains the Treasury’s decision to release its papers on June 23 and places the Commission’s statements in context.
- xxiii. **Unpacking the meaning of equivalence**
- xxiv. Whilst it is acknowledged that the equivalence assessments conducted by the UK and the EU are autonomous processes for each party’s authorities, they are nonetheless an essential building block of the future economic partnership for cross-border trade in financial services. The constructions of the political declaration to stabilise cross-border market access would build on these equivalence decisions. Consequently, it is fair to say that these decisions remain bound up in the overall negotiations.

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- xxv. The Commission has also commented that equivalence assessments have a forward looking element, which is also noteworthy for firms. The UK has taken the approach that such assessments should be made on the basis of compliance with international standards and in any event be made at a point in time and not look forward into the future. In addition, whilst recent statements from HM Treasury have indicated that the UK will not be pursuing identical rules in the future there is alignment as regards achieving similar outcomes which in turn gives the EU a degree of clarity for the future.
- xxvi. Whether the Commission will change its approach to equivalence as stated in the communication remains to be seen and will be impacted by the development of negotiations on the FTA. From the UK perspective, HM Treasury will publish a guidance document in the near future on the UK's equivalence framework. In that document the UK Government will set out the principles and processes that it will apply not just to the EU but also the rest of the world.
- xxvii. **What this all means in practice?**
- xxviii. One of the questions for firms will be how useful any final FTA will be in the absence of equivalence assessments. Access to the EU on the same terms as passporting has always been off the table and the equivalence regimes in various pieces of EU legislation, with their obvious drawbacks, may not now be granted for some time. With this in mind, financial services firms are asking themselves whether an FTA is actually more akin to no deal.
- xxix. If this is the case, then for EU firms that currently passport into the UK there is the regulatory relief provided by the UK's temporary permission regime (TPR). Such firms need to be reminding themselves of how the UK is onshoring EU legislation and the PRA/FCA near final rules produced last year for the possibility of a no-deal Brexit. There is also expected in September an FCA consultation paper on the authorisation procedure for firms in the TPR. For UK firms that passport into the EU there is no EU wide regime that is comparable to the TPR and instead they will have to rely on any domestic relief measures that EU27 Member States implement (if any). Such firms should also remind themselves of the Commission's Brexit no-deal notices that were previously published (and now being re-issued) plus the supervisory statements that the European Supervisory Authorities issued. In relation to the ESA supervisory statements, it's worth noting that recently the European Central Bank (ECB) issued a Brexit blog to the banks that it supervises reasserting a number of points made in these documents. In particular, the ECB warns that banks that have failed to hire staff with sufficient seniority and skills', neglected to make necessary transfers of material assets, or unduly split trading desks across multiple legal entities, will not be considered as complying with its supervisory requirements.
- u. On 20 July 2020, the House of Lords EU Services Sub-Committee published a [letter](#) it has sent to City Minister John Glen MP about UK-EU equivalence decisions, future UK-EU regulatory cooperation and the Government's plans for financial services, particularly the role for Parliament in the future regulatory framework. The letter follows Mr Glen's appearance before the Sub-Committee on 2 July 2020 on the UK-EU negotiations in financial services and UK financial services after Brexit. Among other things the Sub-Committee's letter asks:**
- i. Given the EU not completing its equivalence assessments by June does that mean the Government's own equivalence decisions should not be expected

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until autumn and that these will only be published alongside the EU's decisions?

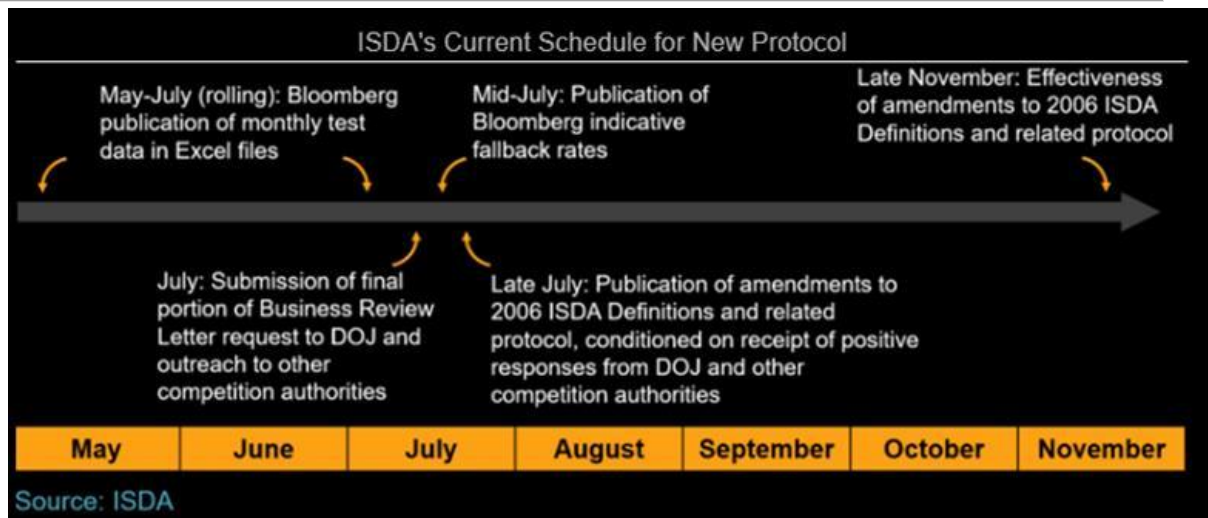
- ii. The Government has repeatedly called for the creation of a "structured dialogue" with the EU on financial services, as have both UK and EU industry groups. However, in a speech given on 30 June, Michel Barnier reaffirmed the EU's position that there should only be a "voluntary framework for dialogue" on financial services. How would such a voluntary framework differ from the structured dialogue being proposed by the Government?
- iii. [An uncorrected transcript from this meeting is available here.](#)

iv. **Benchmarks and LIBOR Topics**

- a. **HMT on amending the transitional period for third country benchmarks under the UK BMR;** On 22 July, HMT published its policy statement setting out its rationale for extending the transitional period for third country benchmarks under the UK BMR from 31 December 2022 to 31 December 2025. This will allow UK supervised entities to continue using benchmarks provided by administrators located outside the UK in new financial contracts and instruments without these benchmarks being registered with the FCA. This prevents the risk of UK firms losing access to important benchmarks provided by non-UK administrators who are unable or unwilling to apply for continued market access through the existing third country regime under the UK BMR. HMT explains that as of June 2020, only a limited number of third-country benchmarks or administrators have come through the current EU BMR access routes. HMT will bring this measure forward at the next legislative opportunity. The Government will also consider and operationalise potential changes to ensure an appropriate third country benchmarks regime for the UK. [Read more](#)
- b. **Commission adopts Delegated Regulations supplementing the BMR;** *On 22 July 2020, the European Commission adopted the following Delegated Regulations supplementing the Benchmarks Regulation on sustainable finance issues:*
  - i. [Commission Delegated Regulation \(EU\) of 17.7.2020 supplementing Regulation \(EU\) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks.](#) The objective of this Delegated Regulation is to set out the minimum standards that EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks should meet in order to be labelled as such, and lay down the transparency requirements on the methodology for both benchmarks.
  - ii. [Commission Delegated Regulation \(EU\) of 17.7.2020 supplementing Regulation \(EU\) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on how environmental, social and governance factors are reflected in the benchmark methodology and annex.](#) The objective of this Delegated Regulation is to lay down the minimum content of the explanation of how the key elements of the benchmark methodology reflect environmental, social and governance (ESG) factors for each benchmark, with the exception of interest rate and foreign exchange benchmarks, as well as the standard format to be used.
  - iii. [Commission Delegated Regulation \(EU\) of 17.7.2020 supplementing Regulation \(EU\) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published \[EVIA  
Warnford Court  
29 Throgmorton Street  
London, EC2N 2AT\]\(https://ec.europa.eu/transparency/regdoc/rep/3/2020/EN/C-</a></a></li></ol></li></ol></div><div data-bbox=\)](#)

- [2020-4744-F1-EN-MAIN-PART-1.PDF](#) and [annex](#). The objective of this Delegated Regulation is related to the benchmark statement and how ESG factors are reflected in each benchmark or, where applicable, family of benchmarks provided and published.
- iv. The next step will be for the Council of the EU and the European Parliament to consider the Delegated Regulations. If neither the Council nor the Parliament object to the Delegated Regulations, they will be published in the Official Journal of the EU (OJ). The Delegated Regulations will enter into force and apply 20 days after publication in the OJ.
- c. [ICE, Tradeweb publish yield curve-based Libor alternative](#); Intercontinental Exchange and Tradeweb Markets have begun publishing an alternative to Libor based on a daily Treasury yield curve. ICE says the benchmark would be easier for consumers to understand than the Secured Overnight Financing Rate. [BNN Bloomberg \(Canada\)](#)
- i. [BA, TradeWeb Investigate Libor Alternative](#); Tradeweb Markets and ICE Benchmark Administration are introducing the daily Tradeweb ICE Constant Maturity Treasury Rates, which have been designed to provide market participants with a daily overview of US Treasury yields for standard maturities and thus potentially becoming another alternative benchmark to Libor.
- ii. [Refinitiv launches term SONIA prototype](#)
- iii. [ICE aims to offer solutions on all new benchmarks](#); Intercontinental Exchange's benchmarking arm, ICE Benchmark Administration, is positioning itself to become the lead administrator for the Sterling Overnight Index Average Rate and the Secured Overnight Financing Rate, as well as building the market norm for the Euro Short-term Rate. "We're trying to come up with all the solutions and tools that market participants need to support the transition to risk-free rates," said IBA chief Stelios Tselikas. [Futures & Options World](#)
- d. **ECB consultation on the publication by the ECB of compounded term rates using the €STR**; [On 24 July 2020, the European Central Bank \(ECB\) issued a public consultation on the publication by it of compounded term rates using the euro short-term rate \(€STR\)](#).
- e. The motivation behind the consultation is that the ECB is to provide benchmark users with compounded values of the €STR for selected maturities. These values will be published every TARGET2 day, similarly to the €STR itself. This initiative has two aims:
- f. In line with the recommendations from the Financial Stability Board, to encourage and support the wider use of the near-risk-free rates (RFRs) and hence the €STR, by providing a "golden source" for the compounded €STR values.
- g. In line with the EU Benchmarks Regulation, to provide a rate that may be used in contractual fall-back provisions by users of the EUR LIBOR and EURIBOR who are required to prepare in their contingency planning for a scenario in which the EUR LIBOR and the EURIBOR may cease to exist.
- h. The consultation seeks feedback from market participants and benchmark rate users about a number of parameters that would be applied when publishing these compounded values.
- i. The deadline for comments on the ECB consultation is 11 September 2020.

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- j. ECB announces public consultation on the publication of compounded €STR rates; 24 July 2020**
- i. Consultation launched to seek feedback on the publication of compounded €STR rates by the ECB
  - ii. Comments by interested stakeholders to be received by 11 September 2020
  - iii. The European Central Bank (ECB) is considering the publication of compounded term rates based on the euro short-term rate (€STR) and solicits views of the public on this matter by [launching a public consultation](#). The publication would take place on a daily basis shortly after the €STR publication. Published maturities could range from one week up to one year. A daily index, making it possible to compute compounded rates over non-standard periods, is also envisaged as part of the publication.
  - iv. The public consultation, which asks for the public's views on specific characteristics of the compounded rate, has been launched today and will expire on 11 September 2020 at 18:00 CET. Interested stakeholders are invited to respond using the [template](#) provided by the ECB. An anonymised summary of all the views expressed will be published following the solicitation period.
- k. [LCH exec says €STR switch working well](#)**; London Stock Exchange Group clearinghouse LCH's Philip Whitehurst says Monday's switch from the euro overnight index average to the euro short-term rate has established a foundation for October's industry-wide transition. "Both the event-specific activities and the subsequent standard service processes are all performing exactly as planned," says Whitehurst.
- l. Bloomberg Begins Publishing Calculations Related to IBOR Fallbacks; July 21, 2020** – ISDA will soon publish amendments to its standard interest rate derivatives definitions to incorporate these new fallbacks, which are adjusted versions of various risk-free rates (RFRs). RFRs, which are overnight rates without a credit component, are inherently different from IBORs, which have term structures and credit sensitive elements. Accordingly, ISDA is implementing adjusted versions of the RFRs to serve as IBOR fallbacks based on feedback received from several market consultations regarding these differences. In July 2019, [ISDA announced](#) that Bloomberg had been selected to calculate and publish these adjusted RFRs as fallbacks following an in-depth selection process. The contractual changes to embed the fallbacks are due to take effect in ISDA's derivatives documentation at the end of the year.



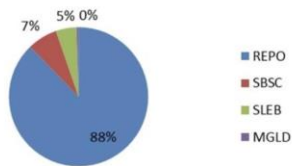
- m.** Bank of England Governor discusses need to transition from LIBOR by end of 2021; *Andrew Bailey, Governor of the Bank of England (BoE), has given a [speech](#) on the need to have plans in place and to take action to transition from LIBOR to alternative interest rate benchmarks by the end of 2021.*
- i. Mr. Bailey stated that the initial impact of COVID-19 on the financial markets in March had reinforced the importance of removing the financial system's dependence on LIBOR in a timely way. He emphasised that although some of the phasing of key milestones in the UK were changed as a result of COVID-19, necessary progress still needs to be made over the next eighteen months.
  - ii. In particular, Mr. Bailey discussed:
  - iii. adapting to the impact of COVID-19;
  - iv. the progress made in sterling markets; and
  - v. the challenge of legacy business.
  - vi. Mr. Bailey emphasised that those who can transition away from LIBOR should do so on terms that they themselves agree with their counterparties. Mr. Bailey also stated that market participants need to take action now to ensure new issuance moves to alternative rates and that plans are in place to deal with legacy exposures.
  - vii. According to Mr. Bailey, communication for those exposed to LIBOR remains a challenge. In September the Working Group on Sterling Risk-Free Reference Rates intends to begin a further programme of public communications to help those with LIBOR linked exposures navigate onto more robust alternatives.
- v.** **Almost 1.5 million trades reported under SFTR in week one;** *In the first week of reporting under the Securities Financing Transactions Regulation (SFTR), firms reported 1,435,727 SFTs with a cash value of EUR 14.3 trillion and collateral value of EUR 17.8 trillion. Repo accounted for 398,006 transactions (27.7% of the total), a total cash value of EUR 13.5 trillion (94.7%) and collateral value of EUR 17.5 trillion (98.4%). While exercising caution in interpreting the data at this early stage, the figures from the first week of operation, broadly confirm some of what is already known about the European SFT markets.*
- a. You can find a detailed statistical breakdown <https://lnkd.in/dkfEngK>
  - b. Since 13 July, EU-incorporated and located banks and investment firms, as well as CCPs and CSDs, have had an obligation to report all new SFTs and subsequent life-cycle events to authorised trade repositories (TRs). All TRs

authorised under SFTR - currently these are DTCC, Regis-TR, UnaVista and KDPW - are required to publish every Tuesday a set of summary statistics for the previous week

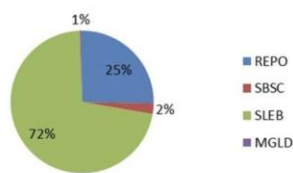
- c. first SFTR data published  
Of UV's 135,082 new reports, just 9.5% have reconciled loan data fields and none have reconciled collateral data fields. Of the 81,092 outstanding reports, just 4.2% have reconciled loan data fields and one has reconciled collateral data fields.
- d. **In the first week of reporting under Europe's stock loan and reporting rules, there were almost 1.5 million trades reported with a cash value of €14.3 trillion (£13 trillion) and a collateral value of €17.8 trillion.** *The data, published by the International Capital Markets Association (Icma), revealed that repo transactions accounted for 398,006 transactions (27.7% of the total), representing a total cash value of €13.5 trillion (94.7%) and a collateral value of €17.5 trillion (98.4%). As of July 13, EU-incorporated and located banks, investment firms, central counterparties and central securities depositories have had an obligation to report all new securities financing transactions (SFTs) and subsequent life-cycle events to authorised trade repositories (TRs) under the Securities Financing Transactions Regulation (SFTR).*
- e. At present, the only authorised TRs are DTCC, Regis-TR, UnaVista and KDPW. The four organisations are responsible for validating the reports, reconciling the data and making the reports accessible to regulators. The association said: "The figures from the first week of operation, broadly confirm some of what is already known about the European SFT markets. The repo market is shown to be the largest by value, while securities lending is the largest by number of transactions, with 398,006 transactions in new repo but 1,031,434 in new securities lending and average deal size in repo of about €34 million but only some EUR 666,000 in securities lending."
- f. The TRs are required to publish a set of summary statistics for the previous week every Tuesday, and Icma will be collecting, aggregating and tabulating the data each week, while also committing to publish detailed analysis in the form of charts and commentary, which will "contribute to enhanced transparency of the repo market". Icma said: "
- g. The SFTR data will also be used to enrich other Icma publications on repo, such as the twice yearly European repo survey, which will continue." However, the association highlighted that the quality and consistency of the reported data is expected to "gradually improve over time", owing to the fact that not all aspects of the European regime have been finalised



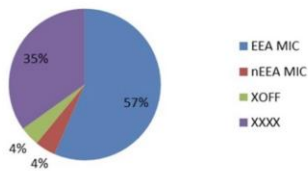
All SFTs  
New Reported Loan Values



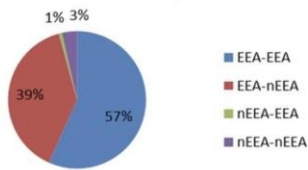
All SFTs  
New Reported Transaction Numbers



All Repos  
Execution Venue



All Repos  
Location of Counterparties



vi. Compliance Horizon Topics: Table

Join EVIALEBA Month Compliance Zoom Meeting; <a href="https://us02web.zoom.us/j/84179479643">https://us02web.zoom.us/j/84179479643</a> Meeting ID: 841 7947 9643 0830 Wednesday 05 <sup>h</sup> August 2020		
Compliance Horizon Topics:	Topics	Comments
Venue Compliance	MiFID2/R Refit Process [ESMA / NCAs]	ESMA Feedback & Report to both Equities and Non-Equities Transparency CPs ESMA Feedback on Third Country Venues List (TOTV)
	MiFID2.2 Review [FISMA]	EC Published MiFID QuickFix last week <ul style="list-style-type: none"> <li>• Best Execution</li> <li>• Commodities</li> </ul>
	Reference Data: FIRDs/ FITRs/	NEX Abide closing Down
	ANNA-DSB	<a href="#">The Derivatives Service Bureau 2020 Consultation Report – July results</a> Ongoing Updates - <a href="#">Monthly DSB Metrics – June 2020</a> & <a href="#">FIRDS Analysis for June 2020</a> Notes from Product Committee <a href="#">The Derivatives Service Bureau Extends Global Participation in Technology Forum</a>
	Reporting/ Reference Data:	MiFID Topics [FX] SFTR Go Live EMIR Best Practices - <a href="#">EMIR TS Consultation Responses</a>
	CSDR Implementation	ESMA Delay by 12 Months quickly following CP closure
	SFTR Implementation	Two weeks of Reporting Almost 1.5 million trades reported under SFTR in week one; <a href="https://lnkd.in/dkfEngK">https://lnkd.in/dkfEngK</a>
	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	Fees; 15 <sup>th</sup> July Workshop TRUM Revisions (published, more top come in September). Fines
Off Venue Compliance	FX Spot:	Ongoing Code of Conduct Review MiFID Advocacy EVIA FX Platform SubAssoc
	Money Markets: Code of Conduct 3 year Review	EVIA July 24 <sup>th</sup> Meeting with BOE: PTNGU / Brokerage / HomeOffice / Diversity Restarting – now into 4 workstreams a. Background, key principles, explanatory notes b. Unsecured markets

		c. Repo markets d. Securities lending markets
	Role of Agency	PFOF 29 <sup>th</sup> July Dear CEO Letter ESMA OTF Review – noting MiFID2.2 inducements questions
	Exchange Block Rules	CME Block Rule revisions [Name Passing]
	Benchmarks	<a href="#">FCA Applies SMR to BAs: Final Rules</a> UK Stay on 3rd Country Benchmarks BMR Review [ESMA] Published June 2020 BMR Revision [FISMA] Published July 2020 Libor Transition Topics- Andrew Bailey July Speech / FCA Picking up threads
	Commodities Topics	FMSB Code of Conduct restarting this week
	CBDCs, Crypto-Assets and Stablecoins	EU Legislative CP due in October MAS CP on Legislative Perimeter UK Legislative Approach (JMLSG) FSB / IOSCO
Conduct / People	Home Office Supervision	Best Practices
	Fines /investigations	Paused (?)
	Broker Gifts and Entertainment	Paused (?)
	FMSB	<b><u>27 July 2020 – The FICC Markets Standards Board (FMSB) has today published a Spotlight Review which examines remote working risks in FICC markets.</u></b> Following COVID-19 being declared a global pandemic and the closure of many offices, FMSB formed a working group of members and other interested market participants to consider the impacts of financial services activities being undertaken by a workforce which is widely distributed and using remote working. The working group set about identifying and capturing the main priorities from a wide range of risks that arise from the new working environment, with a focus on areas which impact the fairness and effectiveness of wholesale FICC markets, and then to consider mitigants or strategies to manage these risks. As part of this, FMSB has created a risk register that shares the experience and observations of the working group for market practitioners to use when conducting their own risk assessments. The Review categorises risks into nine thematic categories: Control limitations Execution risks Governance Heightened cyber risk Sales lifecycle Sharing of confidential information

		<p>Staff treatment and productivity Third party risk Threats to market effectiveness</p> <p>Within these nine categories, the risk register outlines over 40 specific risks, including cultural leakage and reduced employee engagement, weakened control of confidential information, poorer identification of suspicious trading activity, and physical and mental stress resulting from home office environments. For each risk there is an outline of the potential impact and example control and mitigation measures.</p>
	<a href="#">Training / Apprenticeships</a>	<p>Reopening of consultation AIMA initiative <a href="https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work/apprenticeship-levy-how-it-will-work">https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work/apprenticeship-levy-how-it-will-work</a></p>
Operational Risk / Prudential	IFR Level 2	<p>EBA Consultation EVIA Call with ;HMT July 2020 EVIA Call with FCA July 2020 KPMG [workshop]</p>
	Pillar 2 Add-ons	<p>FCA Work on resilience IOSCO work on Op Res</p>
RegTech, FinTech & CyberCrime Topics		<p>EU FISMA CP due on cyber framework Oct 2020 MAS Open CP UK Approach RegTech Council</p>
	EVIA/LEBA Weekly Roundups for July	<ol style="list-style-type: none"> <li><a href="http://cdn.evia.org.uk/content/AM_Content/Weekly update on Key Regulatory Topics (Week 29, 20th July to 25th July 2020).pdf">http://cdn.evia.org.uk/content/AM_Content/Weekly update on Key Regulatory Topics (Week 29, 20th July to 25th July 2020).pdf</a></li> <li><a href="http://cdn.evia.org.uk/content/AM_Content/Weekly update on Key Regulatory Topics (Week 28, 13th July to 18th July 2020).pdf">http://cdn.evia.org.uk/content/AM_Content/Weekly update on Key Regulatory Topics (Week 28, 13th July to 18th July 2020).pdf</a></li> <li><a href="http://cdn.evia.org.uk/content/AM_Content/Weekly update on Key Regulatory Topics (Week 27, 06th July to 11th July 2020).pdf">http://cdn.evia.org.uk/content/AM_Content/Weekly update on Key Regulatory Topics (Week 27, 06th July to 11th July 2020).pdf</a></li> <li><a href="#">Weekly review/update on Key Regulatory Topics (Please click through for Week 26, 29th June to 05th July 2020)</a></li> </ol>

Join EVIALEBA Month Compliance Zoom Meeting; <https://us02web.zoom.us/j/84179479643>

Meeting ID: 841 7947 9643

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