

EVIA & LEBA Monthly Compliance Zoom Meeting:

0830 Wednesday 03rd February 2021

[Virtual Meeting via ZOOM](#)

[Meeting ID: 85030396280](#)

i. **Matters arising**

a. Dennis McCombie


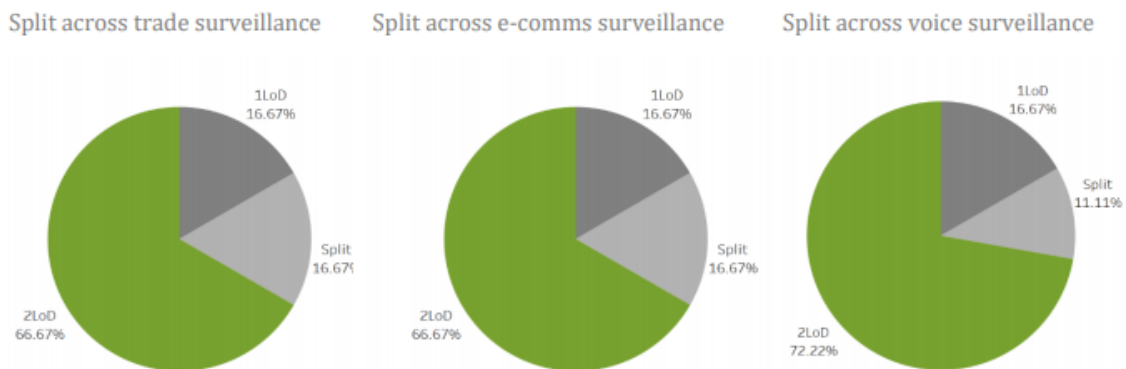
b.  Advancing effective market abuse surveillance controls; Report by AFME & EY; 18Jan2021.pdf

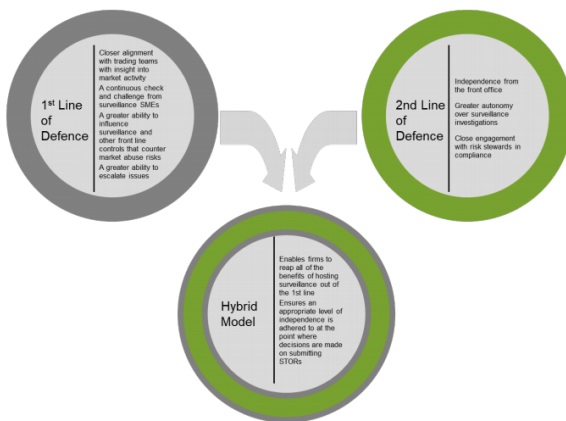
Figure 1.1: Split of Trade, e-comms and V-comms across Lines of Defence:



- i. **Establishing effective surveillance requires a multi-faceted approach:** Teams must be clearly structured to align skills and provide delineation of tasks through an operating model. Processes must be designed, documented, and implemented both pre- and post-submission of a suspicious transaction & order report (STOR). A framework of supporting processes is also needed to support and govern the STOR process. Traders, booking models, and data sources must be mapped to understand the completeness of coverage. If firms are able to critically assess their own strategy across each of these five areas, then they will be well positioned to manage their market abuse risks over the next five years:
- ii. **Restructuring the operating model...** There is a strong desire for change in the structure of surveillance teams amongst financial institutions.
- iii. **Navigating risks through the STOR process...** Following a robust, well-governed and well-documented process from the inception of an alert through to conclusion has become paramount to ensure a consistent outcome.
- iv. **Establishing a well-governed surveillance framework...** In order to accelerate the surveillance roadmap whilst sustainably managing risks and staying compliant, surveillance tools and scenarios must be supported by a robust framework approach aligned to the surveillance strategy.
- v. **Chasing completeness...** Surveillance has continued to develop since the introduction of MAR in 2016, coverage has vastly increased across products and data and regulatory expectations have evolved in line with this.

- vi. **A change in approach: focusing on risk-driven methodologies...** *With a robust framework established and confidence in coverage, firms at the leading edge of surveillance are now looking to tackle the effectiveness challenge.*
- vii. **A force for change...** *The need for further enhancements in the governance of surveillance is clear, however maintaining this can be a moving target as regulatory expectations, technological capabilities and what is considered good practice continue to shift.*




Figure 1.2: Benefits of operating surveillance in 1LoD, 2LoD and Hybrid model:




c. Latest FCA Policy Development updates:

- i. [FCA Trader Chat Warning Hints At Virus Misconduct Probes](#) The Financial Conduct Authority's recent demand that traders and bankers working from home should record their communications has put finance companies on notice that the City watchdog is investigating potential misconduct arising from the shift to remote working during the COVID-19 pandemic. [Read full article »](#)
- ii. **Competition Law;** In Jan 2021 FCA recently uncovered evidence that suggested a potential competition **law infringement by two trading venues**. This related to a suggested/potential joint approach to commercialise market data. We issued formal 'on notice' letters to these firms.
 - 1. Firms need to make sure they comply with competition law. We remind regulated firms of their duty to notify us if they have or believe they may have committed a significant infringement of competition law (under Sup 15.3.32 and following). The FCA does also encourage firms and individuals to use our whistleblowing regime.
 - 2. For more information about our competition activities, please refer to the FCA's Approach to Competition.
- iii. [EVIA Response to FCA CfE on Accessing using wholesale data; Final; 07th January.pdf](#)
- iv. [FCA publishes coronavirus financial resilience survey data](#)
 - 1. The survey results show that between February (pre-lockdown) and May/June (during the impact of the first lockdown), firms across the sectors experienced significant change in their total amount of liquidity. This was defined as cash, committed facilities and other high-quality liquid assets. Three sectors saw an increase in liquidity between the 2 reporting periods:




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- Retail Investments (8%), Retail Lending (8%) and Wholesale Financial Markets (83%), the latter seeing the greatest increase. The other 3 sectors saw a decrease in available liquidity: Insurance Intermediaries & Brokers (30%), Payments & E-Money (11%) and Investment Management (2%).
2. Wholesale Financial Markets (16% had furloughed staff and 11% had received a loan)
 3. [The coronavirus \(Covid-19\) financial resilience survey data](#)
- v. **Third FCA Covid-19 Impact Survey;** *Many of you will be aware that we issued the first phase of the Covid-19 Impact Survey in June, covering around 13,000 firms across 15 Supervision portfolios (Tranche 1), and then rolled this out to a further 9,500 firms in 21 portfolios (Tranche 2) at the beginning of August. We then repeated this survey for both Tranches 1 and 2 to understand the change in firms' financial positions with time. The survey has helped us obtain an accurate view of the impact of Covid-19 and supported our work to mitigate risks of harm to consumers, the market and competition within it.*
1. We are now repeating this survey for a third time, having already sent a third survey to firms in Tranche 1 in January 2021. We are planning to send this survey to the relevant firms in Tranche 2, some of which may be members of your associations, on one of the following dates:
 - o Batch 1: to be sent on 8 February 2021 - response due by **1 March 2021**
 - o Batch 2: to be sent on 9 February 2021 - response due by **2 March 2021**
 - o Batch 3: to be sent on 10 February 2021 - response due by **3 March 2021**
 - o Batch 4: to be sent on 15 February 2021 - response due by **8 March 2021**
 1. Liquidity/ cash availability and needs
 2. Recent financial performance
 3. Scale of business activity
 4. Access to government schemes
 5. The survey will be sent to all firms in the following Tranche 2 portfolios unless they satisfy specific exclusion criteria: Exchanges / Wholesale Brokers / Multilateral Trading Facilities and Organised Trading Facilities
 6. **Completion of the survey is mandatory** under section 165 of the Financial Services & Markets Act (FSMA) 2000. We may exercise our powers under FSMA for firms who do not respond. We have designed this survey so that it is quick and simple to complete. However, if due to exceptional circumstances a firm cannot access its financial information, they will need to ensure that they complete the questions where the relevant information is available.
 7. At the FCA, our core responsibilities include protecting consumers and enhancing the integrity of the UK financial markets. We know that financial stresses can put additional pressure on firms and so we are seeking to understand the effect Covid-19 is having on the finances of the firms we regulate and better guide our supervisory actions.
 - vi. [FCA Officials Should Face Consequences For LC&F, MPs Told](#); British lawmakers should consider taking action against senior Financial Conduct Authority officials over the string of failures that allowed one of the country's biggest financial scandals, the author of an independent review into the collapse of London Capital & Finance said Monday.
 - vii. [The final countdown: Completing sterling LIBOR transition by end-2021](#)
 1. In support of this, the Working Group on Sterling Risk-Free Reference Rates (the Working Group) has published an update to its [priorities](#)

- [and roadmap](#) for the final year of transition to help businesses to finish planning the steps they will need to take in the coming months.
2. The Working Group's top priority is for markets and their users to be fully prepared for the end of sterling LIBOR by the end of 2021. In particular the Working Group has recommended that, from the end of March 2021, sterling LIBOR is no longer used in any new lending or other cash products that mature after the end of 2021.
 3. All businesses with existing loans in sterling should already have heard from their lenders about the transition, and those seeking a new or refinanced loan today should be offered a non-LIBOR alternative. Throughout the remainder of the year, existing contracts linked to sterling LIBOR should be actively transitioned where possible.
 4. In addition, the Working Group has recommended that firms no longer initiate new linear derivatives linked to sterling LIBOR after the end of March 2021, other than for risk management of existing positions or where they mature before the end of 2021.
 5. **ESL Speech: [LIBOR – are you ready for life without LIBOR from end-2021?](#)**
- viii. **Brexit**
1. **EEA transitional regimes;** Several EEA states have introduced temporary measures for UK firms providing financial services in the EEA. FCA have updated [information about Brexit from EEA regulators](#) to include these temporary measures where they exist. The list is not exhaustive, and firms doing business in the EEA should check directly with the relevant national regulator to make sure they act in accordance with their expectations and the jurisdiction's local laws.
- ix. **[Half of reporting firms moved to FCA's new data collection platform;](#)** *50% of firms who have previously submitted their regulatory reporting on Gabriel are now using RegData.*
1. The main improvements are summarised in our [Welcome to RegData video](#), and we have a series of explainer videos and user guides on our dedicated [RegData resources page](#).
- x. **[FCA reminds firms to regularly review regulatory permissions;](#)** *If you have a Part 4A permission but have not carried on any regulated activities for 12 months or more and have no current plans to do so, please apply for cancellation using [Connect](#). If you have a Part 4A permission and have not used and no longer need some of the permissions, please apply to remove the permissions you no longer need by completing and submitting a Variation of Permission application using [Connect](#).*
- xi.  **[FCA RegTech Forum Slides; Why Sustainability Matters; 20Jan2021.pdf](#)**
1.  **[FCA; Speech; Green Horizon Summit- Rising to the Climate Challenge; 09Nov2021.pdf](#)**
 2.  **[FCA; Speech; Building trust in sustainable investments; 21Oct2020; Richard Monks.pdf](#)**
- xii. **[Why does the FCA care about diversity and inclusion?](#)** *Speech by Georgina Philippou, Senior Adviser to the FCA*
1. Financial services generally are not diverse and that is not a good thing for anyone. But it is also important to remember that diversity is one

thing and inclusion is another; without an inclusive culture, the value of diversity, when achieved, will not be realised.

2. As the FCA, we want to see a healthy financial services industry; we want to mainstream diversity and inclusion into all of our regulatory processes.
 3. The responsibility for creating and maintaining more ethnically diverse and inclusive cultures in the financial service industry sits with us all.
- xiii. [FCA publishes first consultation on new prudential regime for UK investment firms](#)
1.  [Bovill - New Prudential Regime - CP2024 summary-2.pdf](#)
- xiv. [Supreme Court judgment in FCA's business interruption insurance test case](#)
- xv. Strengthening accountability: SM&CR forms update – PS1/21; *On 22 January 2021, the PRA published [Policy Statement 1/21: Strengthening Accountability: SM&CR forms update](#) (PS1/21). Due to the short nature of PS1/21 the PRA has presented the text on a webpage without a separate document. With PS1/21 the PRA is:*

d. UK Government

- i.  [APPG FMS - role of parliament in FS reg framework - consultation report - Dec 20 - draft.pdf](#)
- ii.  [HMT; Overseas_Framework_CfE_FINAL.pdf](#)
- iii.  [201127 Final Interim report UK regime for overseas firms.pdf](#)






e. ESMA / EBA

- i. [ESMA launches a Common Supervisory Action with NCAs on MiFID II product governance rules; EU Launches Probe Into Investment Marketing Rules](#); *Europe's securities regulator said on Monday that it is launching a probe to ensure that the European Union's rules on marketing financial products are being applied consistently across the bloc so that consumers are getting the right investments.*
 1. launching a common supervisory action (CSA) with national competent authorities (NCAs) on the application of MiFID II product governance rules across the European Union (EU). The CSA will be conducted during 2021.
 2. This action will allow ESMA and the NCAs to assess the progress made by manufacturers and distributors of financial products in the application of these key requirements. The CSA will help in the analysis of:
 3. how manufacturers ensure that financial products' costs and charges are compatible with the needs, objectives and characteristics of their target market and do not undermine the financial instrument's return expectations;
 4. how manufacturers and distributors identify and periodically review the target market and distribution strategy of financial products; and


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5. what information is exchanged between manufacturers and distributors and how frequently this is done.
 6. ESMA has issued guidelines on the topic in 2017 and has also more recently published a series of Q&As, all of which will be considered for this 2021 CSA.
 7. ESMA believes this initiative, and the related sharing of practices across NCAs, will help ensure consistent implementation and application of EU rules and enhance the protection of investors in line with ESMA's objectives.
 8. The CSA contributes to fulfilling ESMA's mandate on building a common supervisory culture among NCAs to promote sound, efficient, and consistent supervision throughout the EU. ESMA's promotion of supervisory convergence is done in close cooperation with NCAs
- ii. **ESMA's [updated opinion](#) providing guidance on pre-trade transparency waivers for equity and non-equity instruments; this ESMA opinion is focused on equities and Order Management Facilities, there are some relevant areas in this opinion to the rules as they stand:**
1. noting the SSTI pre-trade waiver hones-in on the "AIOI" - to date the focus has been on post-trade SSTI and we gather firms have just used the LIS or characterised as IOI only. With LIS supposed to be staging tighter, and recalling our response to ESMA visavie not removing the SSTI - is there any role for this?
 2. Is ESMA clear around the application of SSTI to venues offering Multiple trading systems and Indicative pre-trade prices
 3. Op MIC v Seg MIC application of waivers
 4. Noting the guidance on aggregation and partials - which are frequent questions, as is the reference to pre-arranged trades
 5. Some extracts below, guidance is attached
 6. Changes sought? - MiFIR 1.2 L1 proposals / Brexit divergence?
 7. 52. On the basis of the assessments of waiver notifications received so far, ESMA considers that the following features should be complied with when making use of the SSTI waiver:
 8. 53. Multiple trading systems: While the SSTI waiver is only available for RFQ or Voice Trading System, in accordance with Article 9(1)(b) of MiFIR, a trading venue may in parallel operate other multiple trading systems, as long as only orders in the RFQ or Voice Trading System may benefit from the SSTI waiver.
 9. 54. Indicative pre-trade prices: Trading venues make indicative pre-trade prices public in accordance with Article 8(4) of MiFIR. They are free to determine the calculation method used, as long as (i) it is one of the methodologies set out in Article 5(2) of RTS 2 (the best available price; or the simple average of AIOI Bid and Offer prices; or a weighted average price) and (ii) the trading venue clarifies in each publication which methodology is used.
 10. 63. Moreover, the trading venue, should describe how it will ensure that only package orders that do not have a liquid market as a whole, as specified in the RTS on package orders, are eligible for a waiver. As per Article 9(1)(e)(i) and (ii) of MiFIR, only package orders that are not liquid as a whole may benefit from the package waiver.


11. 16. With respect to different types of LIS orders, ESMA considers that the following features should be complied with when making use of the LIS waiver:
 12. a) Aggregation of orders: Orders should not be aggregated by the trading venue applying for the waiver in order to meet the LIS thresholds. To benefit from a LIS pre-trade transparency waiver, the size of the single order should be equal to or above the LIS threshold.
- iii. **Publication of transparency calculations update after the end of the Brexit transition period** <https://www.esma.europa.eu/press-news/esma-news/publication-transparency-calculations-update-after-end-brexit-transition-period>
 1. ESMA published [today](#) its first Financial Instruments Transparency System (FITRS) file following the end of the Brexit transition period. In particular, the equity transparency calculation results delta file (DLTECR) published by ESMA contains updated transparency calculation results for equity instruments which previously had a UK venue as the most relevant market.
 2. ESMA would like to remind users to process this file in accordance with their systems implementation to capture all these updates.
 3. ESMA will resume processing of FITRS files received during the maintenance window in the coming days between 9 and 11 January 2021 and will resume processing of DVCAP files received during the maintenance window on 11 January 2021, as per Brexit data operational plan published on [ESMA's website](#).

f. Consultation Responses

- i.  [EVIA Consultation Paper Planner.xlsx](#)
- ii.  [EVIA Response to DG FISMA Targeted Review of Regulation on Improving Securities Settlement in the EU and on CSDs.pdf](#)
- iii.  [EVIA Response to FCA CfE on Accessing using wholesale data; Final; 07th January.pdf](#)
- iv. ESMA Market Data CP -  [ESMA_GOMD_EVIA_RESPONSEFORM.docx](#)
- v.  [APPG FMS - role of parliament in FS reg framework - consultation report - Dec 20 - draft.pdf](#)

g. IFPR – IFR

- i. UK Lowers minimum Capital for TVs 730k to 150k
- ii. FCA Data Request: Role of COH and DFT
- iii.  [Bovill - New Prudential Regime - CP2024 summary-2.pdf](#)
- iv. EBA; [Consultation on Guidelines on remuneration policies for investment firms \(EBA/CP/2020/26\)](#)
- v. [FCA publishes first consultation on new prudential regime for UK investment firms](#) IFPR: (Back to December 2021 now)
 1. <https://www.fca.org.uk/publication/consultation/cp20-24.pdf>

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2.  [EVIA Collected Responses to FCA IFPR Questionnaire.pdf](#)
 3. FCA-IFPR-CBA-Survey FCA-IFPR-CBA-Survey@fca.org.uk - *We just wanted to follow up on our discussion regarding the deadline to submit responses to the survey. We have decided to extend this to the 18th of January, which should hopefully give firms more time.*
 - vi. [EBA publish final draft technical standards on the prudential treatment of investment firms](#); 16 December 2020
 1. a package of [seven final draft Regulatory Technical Standards \(RTS\)](#) on the prudential treatment of investment firms. These final draft RTS, which are part of the phase 1 mandates of the [EBA roadmap on investment firms](#), will ensure a proportionate implementation of the new prudential framework for investment firms taking into account the different activities, sizes and complexity of investments firms.

h. AML / KYC

- i. **JMLSG Update:**
- ii. Comments from firm on standing subcommittee suspended last year for Covid after Q1.
- iii. [UK Crime Fighter Urges Banks To Scale Back AML Reports](#); The head of Britain's command center for fighting economic crime called for reforms of the system for reporting potential money laundering on Monday, telling an influential committee of lawmakers that too many low-quality reports are being submitted to criminal investigators.
- iv. Fines:
 1. [Sweden fines Nasdaq Clearing \\$36M over 2018 default](#); Sweden's financial regulator fined Nasdaq Clearing \$36 million for operational deficiencies discovered after the 2018 default of trader Einar Aas. The default resulted in the clearinghouse's members having to help cover a €114 million loss. [Reuters Risk](#), [Financial Times](#)
 2. [Charles Schwab £9m CASS fine](#); The FCA has published its first CASS-related Final Notice for nearly three years. And with a fine of around £9,000,000, the Regulator has not held back when it comes to putting client money and assets back at the top of the compliance pile.
- v. [Washington raises scrutiny of PFOF practices](#) Payment for order flow arrangements between online brokerages and market makers are coming under scrutiny in Washington amid the recent Reddit-fueled retail trading frenzy. **Full Story:** [The Washington Post \(tiered subscription model\)](#)
- vi. **NRF Report - Financial Crime Outlook: 2021 and beyond**; *Senior management and boards are increasingly acknowledging the threat of financial crime as a critical risk to their business that must be addressed.*
- vii. **Part 2: Trends in reporting to regulators and transaction monitoring arising out of COVID-19**
 1. **Regulatory Reporting**
 2. COVID-19 and the resulting lockdowns have affected our daily lives and the economy, in both an unprecedented and ongoing way.

Jurisdictions that still rely on legacy paper-based reporting systems or where the regulated entities, or financial intelligence units, are constrained by remote working have been adversely impacted. This poses particular challenges for both in effectively discharging their respective AML/CTF regulatory obligations.

3. Many regulators across the world are overhauling their IT regulatory reporting systems in order to keep pace with firms, but more specifically to enable them to slice and dice reported data sets more readily and in different ways to facilitate more targeted and meaningful financial crime risk management.
4. Last year, the Financial Action Task Force (**FATF**) published guidance on the risks and policy responses to COVID-19. It emphasised that with global trade being in decline and individual travel at a near standstill, conventional transnational organised crime schemes, which take advantage of global supply chains, have been greatly affected. Consequently, organised crime has diversified further into fraud and cybercrime to respond to the changing economic environment.
5. FATF in its guidance advised that all regulated entities should remain vigilant to detect suspicious financial transactions, particularly in the context of cross-border flows from countries that are receiving emergency COVID-19-related funding. One such example, reported by the National Crime Agency in the UK, has been how companies have claimed for furloughed employees and have used the funds to pay the employees' salaries, without informing them that this was the case. The employees have therefore been continuing to carry out their regular duties. Also in the UK, work is already underway to redefine the national Suspicious Activity Reporting (**SAR**) framework (the UK Home Office's "SARs Transformation Programme"). This seeks to enhance the quality of SARs and capitalise on technological developments to streamline operations with respect to SAR submissions.
6. The identification and escalation of suspicious activity by regulated entities has also changed with greater emphasis on transaction monitoring due to fewer in-person transactions. Furthermore, effective communication, re-assessment of policies and procedures and enhanced training have been necessary due to the evolving risks posed by COVID-19. In Australia for example, amendments were made to legislation to enable greater use of electronic identification and verification of customers. This provided a practical solution given the need to identify customers remotely, but is of course subject to exploitation as face-to-face verification becomes less common and the resulting anonymity provides organised crime a shield.
7. **Transaction Monitoring**
8. The global COVID-19 pandemic has caused seismic shifts in our spending habits. This has affected the ability of institutions to understand whether customer activity and behaviour diverges from a baseline "normal" and has led to an increase in alerts which need to be investigated and cleared. It has also created new trends in terms of how criminals are seeking to launder ill-gotten gains. For example, in Australia the New South Wales Crime Commission has observed a reduction in drug importation caused by restricted international travel,


however, the use of dedicated encrypted communication networks have increased and are now regarded as essential tools for organised crime to arrange transactions and launder funds.

9. Another impact relates to wholesale markets and trading. In October 2020 the Director of Market Oversight at the UK's Financial Conduct Authority Julia Hoggett highlighted that the permanent working from home set-ups currently in place across the globe hinder "self-policing" in the business (first line of defence) and limit the ability of compliance functions (second line of defence) to act in an oversight and advisory capacity. This increases the risk of potential market manipulation and insider dealing offences, generating proceeds of crime which are then laundered through the financial system.
 10. The US's FinCEN, amongst other global authoritative bodies, has published a series of Advisory papers outlining the evolving anti-financial crime challenges posed by COVID-19 pandemic, including those noted above (such as scams and money mule schemes), but also additional issues including cybercrime and insurance fraud.
 11. Whilst there are a broad range of new and emerging challenges facing organisations as a direct impact of the pandemic, firms should consider the following to strengthen their position and ride the wave of uncertainty: Actively and proactively engaging with regulators or authoritative bodies to gain greater understanding of the typologies and trends emerging from the pandemic, and factor these into their transaction monitoring rules and calibrations;
 12. Investment in technology to apply sophisticated risk-based scoring and prioritisation to manage spikes and prevent backlogs; and
 13. Continue to apply rigour and challenge when assessing customer behaviour and activity – data from previous global events (for example the 2007–8 financial crisis) indicate that criminals actively work to find new ways to exploit public uncertainty and fear.
- viii. [A&O's Annual Cross-Border White Collar Crime and Investigations Review](#); *Whilst there was a slow-down in enforcement in 2020 in response to the Covid-19 pandemic, most authorities are now back up and running. Many countries are introducing or amending financial crime laws, more businesses are being brought into the scope of existing laws, and there is a flow of new guidance from enforcement authorities. Successfully managing the resulting complexities and risks is a challenge, requiring careful navigation.*
1. Our annual Cross-Border White Collar Crime and Investigations Review analyses the major developments and trends from the past year and identifies some of the most significant issues that white collar crime and investigations in-house counsel face in 2021.
- ix. [The EU could be doing more to crack down on money laundering, according to a report by the](#) Centre for European Policy Studies. The paper recommended that instead of creating yet another European agency to tackle the flow of dirty money, member states should streamline their national financial intelligence units and encourage co-operation on anti-money laundering by improving in areas such as data sharing.






i. Energy & ACER

- i. January 2021 Discussions with EFET wrt Brexit – TV Identification
- ii. While there has not been a large fine levied so far in 2021, a few anti abuse pieces of news are of note:
 1. The UK's Financial Conduct Authority (FCA) has published the 66th "Market Watch" newsletter, which can be found [here](#). The newsletter reminds firms in scope that the rules around the recording of communications are expected to be adhered to, including for those working off site due to Covid-19. The SYSC 10A recording rules in the FCA handbook apply for those in scope.
 2. A proposal to implement a version of REMIT in the Ukraine has moved forward, as reported [here](#) on the Lexology web site in an article by CMS Ukraine.
 3. At the end of last year, the CFTC released their annual report which records a record number of enforcements. The report, which can be found [here](#), records that Financial Year 2020 actions resulted in \$1,327,869,760 in ordered monetary relief, the fourth highest total on record and the third straight year-over-year increase.
- iii. **[New REMIT Quarterly just published:](#)** *The 23rd edition of ACER's REMIT Quarterly has been published on the REMIT Portal. Covering the last quarter of 2020, this edition highlights the impact that Brexit and Covid-19 have had on the implementation of REMIT, describes ACER's data quality work in 2020, and summarises some important publications recently published, including the Q&As on REMIT fees and the Open Letters on Brexit, Covid-19, and data quality.*
 1. [The new edition also recaps the virtual Roundtable meetings with stakeholders](#) that were held in November 2020 and provides a report on a recent sanction of market manipulation in Great Britain.
 2. **The statistics on RRM contingency reports and REMIT cases in Q4 2020** are also included, along with an updated overview of the sanction decisions for the last four quarters.
 3. **Updated List of accepted EIC codes;** The last 2020 quarterly update of the List of accepted EIC codes was published on the REMIT Portal on 22 December. A total of six new EIC codes were included in the list, while four no longer active EIC codes were delisted. Furthermore, the Q4 2020 update provided evidence of all the EIC codes that will be deactivated in 2021 due to Brexit. Access the latest List of accepted EIC codes [here](#). The next update of the List of accepted EIC codes will occur in Q1 2021
 4. **Updated EMIR Q+A ([here](#))** – With one updated answer TR 3b about reporting valuations and a new answer TR 57 about terminating trades in a TR when a counterparty ceases to exist.
- iv. **2021 – Another year of regulation begins:**
 1. **[Continued focus on anti-abuse activity](#)** – As last year, the focus on anti-abuse activity in the form of organisation, processes and technology is likely to continue, given the time since rules such as MAR and REMIT started and the continuation of enforcement cases. We saw several high-profile REMIT fines last year (for example see [here](#)) and







also a large number of fines worldwide, especially in the US (for example see [here](#)). There is no reason to think that this trend will not continue.

2. Improvements to internal monitoring – A growing proportion of the industry has been rolling out trade surveillance systems over the past years, driven by both regulations and enforcement cases. This is likely to not only continue in 2021, but also grow into different areas. These could include communications surveillance improvements (particularly in the light of COVID 19) and also in other ways. For example, several of the cases in 2020 involved fines for breaches related to physical notifications (for example see [here](#)). Methods to monitor for such breaches will need to be considered.
 3. Major changes to existing rules – The end of last year saw the publication of a report on the new EMIR reporting formats (see [here](#)), which, although they will not apply yet in 2021, will likely occupy a great deal of time. The “quick fix” package relating to MIFID II (see [here](#)) will also, when it applies, require some change, although the outcome of those changes will likely see a drop in burden. Changes to REMIT and the bedding down of Brexit will also lead to a great deal of regulatory activity.
 4. Continued change by precedent and announcement – In addition to major changes, the stream of precedents via cases and enforcements and announcements via documents such as questions and answers, only seem to grow with time. Those who have not already done so will need to improve their framework for dealing with such changes, be they related to reporting, anti-abuse measures, organisation changes or other aspects of compliance.
- v. **TRUM Annex II revision**
1. Update and align the content with the last version of TRUM 4 0 (e.g cardinality fields)
 2. Discussion around 3.18 / 3.22 Sleeves was postponed - LEBA pre-letter to ACER noting that it was better as it was
 3. Include new examples on SIDC and SDAC reporting
 4. Include additional examples (e.g *within day contracts, day after markets, sleeve trades, vertically implied orders, etc based on ACER analysis and on the interaction with NRAs and stakeholders*)
 5. Provide the description of each example (*today provided only for Table 2 examples*)
 6. Fix inconsistencies and typos in the existing examples
 7. Provide more examples on lifecycle events
 8. Inputs and feedback will be collected via the dedicated survey until the end of 2020
 9. In case of specific issues, or need for additional clarifications, OMPs might be contacted bilaterally
 10. The outcome of the consultation will be shared by the end of February 2021
 11. TRUM Annex II 4 0 and TRUM 4 1 to be published by the end of March 2021
- vi.  [ACER - Updated Open Letter on Brexit - 18 Dec 2020.pdf](#)

ii. **Brexit MA.**

- a. [UK Treasury opens door to ditching Mifid open access rules](#); Champion of competition in derivatives clearing may throw in the towel
- b.  [City of London stumbles through first week of Brexit _ Financial Times.pdf](#)
- c.  [City of London to bring back Swiss stock trading following EU exit _ Financial Times.pdf](#)
 - i.  [UK Legal Instrument Recognising Swiss Financial Services Laid before Parliament 13th January 2021.pdf](#)
- d.  [HMT; Table of UK Equivalence Decisions Jan 2021.xlsx](#)
- e.  [Brexit - Overview of the EU-UK trading relationship.pdf](#)
- f.  [IRSG Draft MoU discussion paper.pdf](#)

iii. **MiFID2.2/ MiFIR**

- a.  [Aggregated ESMA OTF Responses.xlsx](#)
- b.  [EVIA Approach to MiFID2_2 & MiFIR1_2.docx](#)
- c. NCA Meetings January 2021: ESMA; AMF; AFM; CNMV
- d.  [US emerges as early winner of shift in derivatives trading from London _ Financial Times.pdf](#)
 - i.  [ClarusFT; New Brexit Rules Move \\$4trn of Derivatives to the US; Chris Barnes; January 26, 2021.pdf](#)
- e.  [EVIA Comments to ESMA on an Activity Perimeter; examples of entities that may be recast as TVs under an 'Activities Based' Multilateral Perimeter.pdf](#)
- f.  [esma70-156-2401_annual_report_2020 - equity waivers and deferrals.pdf](#)
- g. **PTNGU: US Rule Finalisation started in October and ClarusFT study on volumes**
 - i. Ongoing: FCA and FISMA Discussions



iv. **Benchmarks and LIBOR Topics**

- a. **Regulation amending BMR to address benchmark cessation risks and exempt certain third-country FX benchmarks** On 22 January 2021, the Council of the EU published the [text](#) of the proposed Regulation amending the Benchmarks Regulation to address benchmark cessation risks and exempt certain third-country FX benchmarks. The Council also published an ['I' item note](#) on the draft Regulation inviting the Permanent Representatives Committee to decide that the Council may use the written procedure to adopt the legislation.
- b. [WGRFR are consulting on successor rate to GBP LIBOR in legacy bonds referencing GBP LIBOR - 4 questions, 6 weeks - any comments welcome.](#)
 - i. This Consultation Paper focuses on the recommendation of a successor rate for the GBP LIBOR bond market, including (but not limited to) FRNs,


securitisations, covered bonds, capital securities and structured products. It is not intended to apply to bonds which directly reference SONIA. Responses to this Consultation Paper should be sent to the RFR Secretariat (RFR.Secretariat@bankofengland.co.uk) by 16 March 2021.

- ii. Questions for consultation:
- iii. 1. Do you consider that it would be helpful for the Working Group, in its capacity as a relevant nominating body, to make a recommendation on the successor rate to GBP LIBOR for the purposes of the operation of:
 1. Type 2 fallbacks in bond documentation, where the relevant fallback triggers are intended to operate upon the occurrence of a permanent cessation event, and
 2. Type 3 fallbacks in bond documentation, where the relevant fallback triggers are intended to operate upon the occurrence of a pre-cessation event?
- iv. 2. Do you consider that the recommended successor rate to GBP LIBOR for Type 2 fallbacks and Type 3 fallbacks should be overnight SONIA, compounded in arrears (Option 1)?
- v. 3. If you answered "no" to question 2, do you consider that the recommended successor rate to GBP LIBOR for Type 2 fallbacks and Type 3 fallbacks should be term SONIA (Option 2) or any other SONIA based methodology? Please explain your answer.
- vi. 4. Do you consider that details regarding further conventions to be used to accompany the successor rate, such as use of observation lag or shift,²⁷ should be left to the issuer to agree on a case by case basis?
- vii. ***The various potential considerations set out in relation to the two options presented in this paper may be summarised as follows:***
- viii. **Alignment with other products:** As set out above, use of compounded in arrears SONIA as a successor rate (Option 1) would be consistent with existing market conventions in a wide range of products in sterling markets, including all SONIA-linked bonds issued to date, the SONIA swaps market and the new ISDA fallbacks for LIBOR-linked swaps. By contrast, use of a term SONIA rate (Option 2) may be more consistent with the ARRC recommended fallbacks for legacy bonds linked to USD LIBOR, if a USD term rate becomes available. In the case of securitisations, consistency of rates between the underlying assets and the bond may also be a relevant factor.
- ix. **Overall market structure:** As noted in its statement published on 11 January 2021, the Working Group anticipates that the large majority of sterling markets will be based on SONIA compounded in arrears, to provide the most robust foundation for the overall market structure, and has been working with the FMSB to support development of a market standard for FMSB members in relation to an appropriately limited use of Term SONIA Reference Rates. The proposed FMSB standard is expected to be released for public comment in February. Once available, respondents may wish to take into account the proposed FMSB standard when considering their preferred potential successor rate for sterling bonds.
- x. **Implementation:** As described above, respondents may wish to take into account the degree to which the potential forms of a successor rate are compatible with the existing design of contracts and processes, as changes are likely to be required under both of the available options. Greater similarity in the structure of term SONIA rates relative to LIBOR under Option 2 may




allow for these changes to be limited, including in relation to firms' approaches to cash flow planning, while use of SONIA compounded in arrears (Option 1) may require more change relative to legacy processes but provide greater alignment with established processes for newly issued bonds in respect of which the determination of the interest rate and amount towards the end of the interest period is not considered to be significantly problematic.

- c. **New IBOR Fallbacks Take Effect for Derivatives** *On January 25, new fallbacks for derivatives linked to key interbank offered rates (IBORs) came into effect, ensuring a viable safety net is in place in the event an IBOR becomes permanently unavailable while firms continue to have exposure to that rate.*
- i. **The [IBOR Fallbacks Protocol](#) is legally effective as of 25th January.** *Following a permanent IBOR cessation, or an FCA determination that a LIBOR has "become" non-representative, fallbacks in the form of adjusted risk-free rates will apply to in-scope derivatives contracts. Clearly, the Protocol only applies to those who have adhered- 11902 to date. Purely in terms of adherence, this number marks the Protocol as a qualified success. By contrast, the March 2013 DF Protocol has 25614 adherents, while the ill-fated 2016 VM Protocol has 1251. The Protocol remains open for adherence by all, but the \$500 fee will now apply, regardless of ISDA member status.*
 - ii. **[A Big Milestone for Benchmark Reform](#)**
 - iii. **[The Shift to a Digital Master Agreement](#)**
 - iv. **[Countdown to New Fallbacks](#)**
- d.  **[ClarusFT; Cessation Of Libor; Why Is So Much New Risk Still Being Transacted; Chris Barnes; January 12, 2021.pdf](#)**
- e.  **[esma81-393-83_final_report_bmr_advice_fees.pdf](#)**
- f. **Libor-rigger Tom Hayes tells of his faith and fears during five years in prison; Tom Hayes has spoken of the violence he encountered in prison and his conversion to Christianity in his first interview since his release after serving five and a half years for manipulating Libor The former star trader has told of his experiences in some of Britain's toughest prisons following his conviction in 2015 of rigging Libor, a key global financial benchmark, for profit. He was speaking following his release on licence last week from Ford open prison, having served half of an 11-year sentence.**
- g. **ESMA publishes report on proposed fees for Benchmarks Administrators**
[/jlne.ws/3ctKoSg](http://jlne.ws/3ctKoSg)



v. CSDR

- a.  **[EVIA Response to DG FISMA Targeted Review of Regulation on Improving Securities Settlement in the EU and on CSDs.pdf](#)**
- b. *The consultation seeks input from stakeholders for the Commission's report. The Commission's report will consider a range of specific areas where targeted action may be necessary to ensure the fulfilment of the objectives of the CSDR in a more proportionate, efficient and effective manner.*

vi. [US, No-Action, Interpretative Letters, Other Written Communications, and Advisories](#)

- a.  [ClarusFT; 2020 SEF Market Share Statistics; Amir Khwaja January 5, 2021.pdf](#)
- b.  [SwapsInfo-Full-Year-2020-and-Q4-of-2020-Review-Summary.pdf](#)
- c.  [cftc_esma_enhanced_mou_final_jan2021.pdf](#)

vii. Compliance Horizon Topics: Table

Compliance Horizon Topics:	Topics
Venue Compliance	MiFID2/R Refit Process [ESMA / NCAs]
	MiFID2.2 Review [FISMA]
	Reference Data: FIRDs/ FITRs/
	ANNA-DSB
	Reporting/ Reference Data:
	EMIR, Margin and Post-Trade
	CSDR Implementation
	SFTR Implementation
	CFTC
	AML_KYC Subgroup
	ACER Topics
Off Venue Compliance	FX Spot:
	Money Markets: Code of Conduct 3 year Review
	Role of Agency
	Exchange Block Rules
	Benchmarks
	Commodities Topics
	CBDCs, Crypto-Assets and Stablecoins
Conduct / People	Work from Home Office Supervision
	Fines /investigations
	Broker Gifts and Entertainment
	FMSB
	Training / Apprenticeships
Operational Risk / Prudential	IFR Level 2
	Pillar 2 Add-ons
RegTech, FinTech & CyberCrime Topics	FCA Trade Assoc Cyber Round Table
	JMLSG ISDA CDM JWG Working Group
EVIA/LEBA Weekly Roundups for January 2021	<ol style="list-style-type: none"> 1.  Weekly update on Key Regulatory Topics (Week 4; 25th January 2021 to 30th January 2021).pdf 2.  Weekly update on Key Regulatory Topics (Week 3; 18th January 2021 to 23rd January 2021).pdf

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| | <ol style="list-style-type: none">3.  Weekly update on Key Regulatory Topics; Week 2; 10th January 2021 to 16th January 2021.pdf4.  Weekly update on Key Regulatory Topics (Week 1; 04th January 2021 to 09th January 2021).pdf |
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