EVIA
European Venues & Intermediaries Association

01st October 2020

EVIA Response to FCA CP 19/32; Building operational resilience: Impact tolerances for important business services

The European Venues and Intermediaries Association welcomes this opportunity to respond to this consultation on matters of Operational Resilience but does so under a number of caveats.

Firstly, that as investment firms acting as operators of MiFIR and REMIT trading venues in the UK and Europe and similarly around the globe under corresponding rules and supervision, there are more detailed and specific requirements usually applying. The examples of Sector specific requirements (annex4/ Paragraphs 9, 10), do indeed helpfully specify some of the requirements as set out in the Market Conduct Sourcebook (MAR). We note that even in the closing days of this consultation, the importance and attention on trading venue resilience has been highlighted [1]in the media, and against this context the approach set out on CP19/32 seems overly general and non-specific, but still fails to ground the approach solely in principles which would allow for the various sector specific rules across international jurisdictions to apply as appropriate.

Secondly we consider both Covid_19 and Brexit. We commend that in considering the feedback to this consultation, the FCA defer progressing rules concerning operational resilience until both the impact and lessons of 2020 have been distilled and made effective, and further that the related and overlapping frameworks of UK MiFIR, IFPR and SMCR are all better established. Specifically, as it stands, we do consider that the SREP approach embodied in CP 19/32 operational resilience is compatible with the IFR yardstick supervisory approach.

Finally, we consider that whilst the consultation does set out some useful terms and definitions, it fails to establish and clearly define what “Resilience” really means and what the scope of the term is when applied to companies with global and wholesale operating models which comprise separately capitalised subsidiaries and branches, and whose clients are wholesale firms without any dependence or reliance on any single service provision. In fact, resilience is primarily a system property and needs to primarily stem from the market structure framework rather than the at microeconomic scale at firm level.

We consider that because the FCA are yet to implement the necessary underlying measures, notably ISO data standards such as UTIs and UPIs, but most particularly effective considerations of the TOTV perimeter together with the “Open Access” provisions within both EMIR and MiFID2 (applying not only to trading venues and to post-trading FMIs, but also to information), there is an incomplete underlying environment for wholesale market participants to “shop around.” Its clear that if a competitive landscape functions and service provisions such as liquidity provision, clearing and settlement are transferable, then the system reliance’s are far less and the resilience of the market firms is commodified and induces a “race to the top”.

Taken together, especially considering the still early stage considerations of measuring reliance’s on outsourcing, and the ongoing Fintech and Covid_19 resilience revolutions in this particular aspect; we would like to see the FCA reconsider the approach to implementation towards a longer and more holistic timeframe. Should specific sectors require bespoke approaches such as the ‘payments firms,’ highlighted in CP19/32, then these measures should be taken on a sectoral basis.

Answers to questions

[1] Tokyo’s bourse to reboot trading on Friday after worst outage since 1999; World’s third-biggest equity market shut down for entire day due to system error [FT, 01 Oct 2020]

Q1: Do you agree with our proposal for firms to identify their important business services? If not, please explain why.

EVIA agrees with the proposal and notes that in most cases this is currently normal business practice. However, we consider that for complex firms operating across borders, this is not a simple process and may not deliver the sought-after outcomes. The responsibility mapping delivered under the SMCR regime may be a more appropriate foundation to a firm's core service offerings.

Q2: Do you agree with our proposed guidance on identifying important business services? Are there any other factors for firms to consider?

EVIA does not consider that the predication on a "consumer" is appropriate for global wholesale markets where professional and eligible counterparties come together. We also consider that the approach to related harms overlaps with the embryonic IFPR approach.

Q3: Do you agree with our proposals for firms to set impact tolerances? If not, please explain why.

We remain cautious. In light of the interim experiences with Covid_19 and the transfer of Europe's wholesale markets, central banks and supervisors to bedrooms and garages, we would question whether any deemed appropriate approach made under this framework prior to March 2020 would have captured the operational risks, nor their impact tolerances in the out-turn. It may be that any quantifiable approach would lead to false comforts, and at the same time may not fit into either the Operational Risk metrics nor the incoming k-Factors within IFPR.

Q4: Do you agree that duration (time) should always be used as 1 of the metrics in setting impact tolerances? Are there any other metrics that should also be mandatory?

In light of recent experiences, we remain cautious about any metical approach and would prefer to see a principles led framework.

Q5: Do you agree with our proposal for dual-regulated firms to set up to 2 impact tolerances and solo-regulated firms to set 1 impact tolerance per important business service?

EVIA has no comment.

Q6: Do you have any comments on our proposed transitional arrangements?

Yes, it follows from our comments above that either a deferral or a substantial transitional period would be highly appropriate. Clearly these questions were framed prior to 2020.

Q7: Do you agree with our proposed approach to mapping? If not, please explain why.

In principal we do agree with this approach and note that it would normally already be offered under SREP preparations. We would like to see Risk mapping, Resilience mapping and SMCR mapping to be integrated under SREP gong forwards.

Q8: Do you agree with our proposed approach to testing? If not, please explain why.

It follows from our answers above that testing and metrics should be more carefully developed under the approach to Operational Resilience still need to be integrated into the panoply of related evolving frameworks such as the onshored European tort, UK SMCR and outsourcing and Fintech/RegTech developments.

Q9: Do you agree with our proposals for communication plans? If not, please explain why.

Yes, EVIA agrees with the proposals for communication plans, and would consider that many of these ideas may already be commonplace under SMCR implementation.

Q10: Do you have any comments on our proposed requirement for a self-assessment document?

In general, EVIA supports these proposals. We understand that the impetus behind the SMCR regime is to recreate firms as SROs with more formal internal lines of defence and effective governance. The self-assessment document aligns with this and with our opinion of how the SREP and ICARA are intended to evolve. However, we again call for more coordinated and considered process and framework in combining ICARA, SREP, Operational Risk, K-Factors and UK MiFIR rather than proceeding with this approach alone.

Q11: Do you have any comments on the cost benefit analysis?

EVIA has no comments.

Q12: Do you have any comments on the examples of existing legislation?

Considering comments above, EVIA considers it is still too early to tell.