
By Email to reg-impact-mmc@bankofengland.co.uk

EVIA response to MMC Discussion Group

31 Oct 2019

Dear Sirs,

Thankyou for offering EVIA and its members the opportunity to participate in your survey concerning UK recognised industry codes. EVIA member firms arrange wholesale transactions in unsecured deposits, certificates of deposit and commercial paper, repo and securities lending; these markets constitute the full scope of the UK Money Markets Code and therefore we are providing a response to the survey understanding the relevance of both the code its interaction with the regulated perimeter across our members' business lines.

It is fair to say that this perimeter has never been clearly delineated and the advent of the suite of post-crisis regulations¹ together with codes of conduct and their supervisory inclusion, has further blurred the boundary and the relevant obligations. In particular, MiFID2 defines money market instruments in a circular fashion² dependent upon readily observable prices. The consequence to this is that the regulated perimeter drives through the middle of the UK Money Markets Code and creates different conduct outcomes in the arrangement of Commercial paper and repo markets from those observed in unsecured lending and the certificates of deposit wherein the price and liquidity is a function of the counterparties and their mutual credit capacities. Furthermore, the term to maturity is considered germane to the perimeter and the juxtaposition of both securities lending regulations and FX Codification add further cross-referencing dimensions.

From the perspective of arranging intermediaries and trading venues therefore we list the following themes:

- i. Classification and categorisation of products, counterparties and activities with respect to the regulatory perimeter.
- ii. Overlapping regulations either within a domain, such as MiFID and SFTR or between domains such as the supervision of branches.

¹ Together: MiFID2/R, MAR, PSD2/PSR, MMR, CSDR, SFTR, BMR, CRD4/CRR, IFR, AMLD V.

² **money-market instruments:** [Note: article 4(1)(19) of [MiFID](#)] those classes of [financial instruments](#) which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

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- iii. The status of the specified codes of conduct in the UK is it the case that the following identity is legally true: [Specified Codified Conduct + SMCR] = [Market Abuse Regulation]
 - iv. Dramatic effects of regulatory compliance across the MMC product markets where margins and maturities are both very small. For instance, the cost of such impositions such as CCP Clearing or SFTR requirements on a repo market where counterparties provide services and balance sheet for under a single basis point will have disproportionate and as yet non-modelled impacts on market structure.
 - v. Where the instrument is effectively the name, faith and credit of the counterparty, such as unsecured lending, deposits and CDs, so the requirement to pass the names when arranging transactions. We believe that regulations and the code to give effect to the active encouragement and the facilitation of the communications of runs of trade axes.
 - vi. The dissuasive impacts of overlapping regulation on the capacity to build secondary market liquidity and associated infrastructures in money market instruments such as T-Bills, commercial paper and CDs
 - vii. The extra-territorial reach of pertinent regulations onto a market participant set who are global and wholesale in nature but not necessarily financial counterparties operating through EU or UK branches or subsidiaries
 - viii. Impact of the CSDR mandatory buy-in regime has been widely commented upon and we defer to the recent detailed concerns set out by the ICMA_ERCC.
 - ix. The disproportionate impact of regulation and categorisation on the interactions with and the activities of local authorities.
 - x. The advent of new technologies, especially in the hosted ledger and crypto asset space, such as stable-coins and mutual credit tools, which permit settlement cycles to be shrunk to close to real-time
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Question 1

A list of your top 5 themes, which regulations impact those themes, and why they are impactful would be appreciated.

- i. *Conduct Regulations*
 - a. *MiFID II*
 - b. *SFTR*
 - c. *CSDR*
- ii. *Brexit*
- iii. *Benchmark reform*
- iv. *Significant increase of operational costs*
- v. *Leverage ratio and HQLA*

Conduct Regulations

EVIA

Warnford Court
29 Throgmorton Street
London, EC2N 2AT

evia@evia.org.uk
www.evia.org.uk
+44 (0)207 947 4900

LEBA

Warnford Court
29 Throgmorton Street
London, EC2N 2AT

leba@leba.org.uk
www.leba.org.uk
+44 (0)207 947 4900

a. MiFID II & Brexit

One example of concerns around the delineation of the perimeter are ongoing widely held uncertainties expressed trading venue clients on the treatment of primary issue Certificates of Deposit and whether, during any transition into the secondary market their transactions become applicable to MIFID II. Whilst the definition revolves around common perception, the pricing is particular and idiosyncratic to the trade and the counterparties perceptions of credit which would give cause for exclusion.

EVIA observes that there is continued and indeed increasing uncertainty around client jurisdictions and with the prospect of Brexit in Q1 2020, the ability for UK depositors to take monies from counterparty entities in EU member states.

This extends beyond rules to the laws pertaining to activity and solicitation. In the absence of any certified equivalence and mutual recognition before the end of 2020 and likely some way beyond, there is uncertainty around EU lenders being able to trade with UK institutions or to solicit new business.

b. SFTR – REPO

Industry is seeking to set out published guidance on UTI generation and maintenance for SFTs. EVIA, in respect of arrangers and trading venues and ICMA in respect of market counterparties shall therefore establish protocols and any reference in the MMC should be aligned to these.

We note that the implementation of SFTR may likely facilitate best execution disclosures by improving disclosed transparency, for instance data on off-venue trades such as those between banks and their direct clients becoming publicly available. Presently buy-side firms generally have to solely rely on indicative dealer quotes and RFQ modality.

We would query however the operational burden, and quite how the requirement to populate and to submit 153 fields per transaction demonstrates a balance between the requirements for core economic terms that are struck to be made public versus the semantic and automated possibilities for the static reference details. RegTech automation and the semantic labelling of operations may recast these processes, but a phased and longer implementation may therefore be more appropriate.

And it's not clear that MiFID reporting requirements have improved transparency in CD/CP markets. Members noted difficulty in secondary market pricing with price disparity between some brokers and some issuers.

Noting the observed demand for volume matched auctions, it may also be the case that coerced trade level transparency may have negative consequences for market participants transferring risk capital and liquidity. For example, global participants who are essential to the well-functioning of the liquidity pools such as Sovereign Wealth Funds, may prefer to

move to other trade execution domains. (We note that SWFs account for 60-70% of bond lending, and their risk appetite e.g. lending government bonds vs Russell 500 equities, may be difficult to find in other participants).

Members also raise concerns that the implementation of SFTR may also create new barriers to entry within a market that operates on margins of under a single basis point per transaction. Given the reporting requirements requiring the coordination of trading venues together with counterparties who are frequently agents to an onward chain or otherwise tied to their agent lender given existing set-up, and delegated responsibility may create potential risks. We would therefore urge the MMC to monitor and document the effect of the SFTR upon the objective outcomes which are the development of fair and effective markets, with reference to measures to improve real transparency.

c. CSDR

The ongoing concerns with CSDR mandatory buy-ins are well documented and we concur that supervisory application of the regulation will be pivotal as to whether it directly leads to reduced fails, and to better collateral move more quickly.

We would urge that the Code could perhaps provide interpretation around reuse of collateral as this is currently the most evident gap in guidance around market practice.

EVIA would also propose that the Code could consider mitigating the effect of settlement fails under CSDR by incentivising remedial facets of market practice such as measures to encourage partial settlements.

d. Leverage ratio

The Leverage Ratio directly impacts market participants rather than EVIA members yet retains direct relevance to us because it has had material adverse impact on market liquidity. The most specific and disproportionate impact falls where compliance to the LR is required by segments of market that don't have direct access to central bank windows since those participants that do have access or liquidity are not themselves able to intermediate.

EVIA also notes that whilst the UK exemption of reserves from leverage ratio has been widely welcomed, a market counterparty firm's structural balance sheet is normally fully invested and would therefore not be in a position to be deployed into regulatory compliance with the LR.

The Leverage Ratio generally closes down arbitrage opportunities that may then raise barriers to the efficient deployment of balance sheets, especially because market counterparties are observed to plan use of capital very far in advance. Because there is a floor to amount of capital a firm holds, we are also concerned that CSDR could encourage race towards lower conduct standards because it is of no consequence whether

transactions comprise either sovereign repo or unsecured deposits, because counterparties have got to hold same amount of capital as per ratio.

e. Benchmark reform

The main impact of transitioning from transactional and valuation references related to LIBOR across to a basis from the UK RFR– SONIA are substantive but we defer to the detailed comments submitted by the direct user group associations save noting that the transition to a well anchored benchmark such as SONIA is even causing confusion and creating additional work/protocols across our members' clients.

EVIA proposes that the MMC could be included in appendix relevant to best practice for RFR transition, for example, the best practice for coupon structuring. In addition, the MMC could codify suggested controls for benchmark submissions and related input data.

In respect of the continued operation of the product and consumption of indices and benchmarks, the BMR may hold significant increase of operational cost on:

- i. technology upgrade for the requirements for MiFID II transparency, best execution, monitoring and surveillance obligation
- ii. Appropriate skills and knowledge to implement regulatory change
- iii. Implementation of GDPR and ongoing protection of personal data

Question 2

There are a number of regulations impacting different users of the UK Money Markets. Are there parts of these new regulations that you think it might help all participants of the market to adhere to as best practice even if they are not required under their specific rules. Please provide a list of simple descriptions of the part of the regulation and the value added from implementing?

All users should have Legal Entity Identifiers ["LEIs"], most especially if they are issuers of money market instruments. Clearly ESMA has laid down a zero-tolerance approach, but this fails to recognise the global nature of wholesale money markets traded in the UK and the widespread absence of LEIs outside of Europe. For example, the Bank of England recently designated Chinese sovereign paper as HQLA, yet Chinese entities do not have, nor are allowed to transmit LEIs.

As a general rule all market participants should adhere to the FCA Code of Conduct part 2.1 Individual conduct rules listed below:

- [*Rule 1: You must act with integrity.*](#)
- [*Rule 2: You must act with due skill, care and diligence.*](#)

- [Rule 3](#): You must be open and cooperative with the [FCA](#), the [PRA](#) and other regulators.
- [Rule 4](#): You must pay due regard to the interests of [customers](#) and treat them fairly.
- [Rule 5](#): You must observe proper standards of market conduct

It would benefit to incorporate the FCA Conflicts of Interest Policy into the MMC.

We would also highlight the impact of the forthcoming implementation of the SMCR and specifically propose that the UK Money Market Code restate these provisions as a mutual recognition:

- Introducing raising conduct behaviour, identifying responsible and accountable persons
- SMR apply to solo-regulated firms 9 December 2019 and Certification Regime Jan 2020, administrative process to ensure required individuals are registered and training at the start of the new regime
- Greater scrutiny of the most senior individuals within firms and their operations on a day to day basis, firms needing to ensure senior managers understand their obligations and duty of responsibility
- UK Money Market Code is recognised on the FCA register as an industry codes of conduct, FCA will expect firms to align the code to the SM&CR to demonstrate they comply with the of Conduct Rule 5 'you must observe proper market standard. Firms will need to demonstrate they comply with the code.

Question 3

Many UK Money Market participants also operate in other jurisdictions around the world where other rules and practices have evolved. What international/foreign rules or best practices could the UK Money Market benefit from? Please indicate why you think these would be of benefit. How might such adoption make it easier for international participants to demonstrate compliance with both their local rules and the Code?

[The FICC Markets Standards Board](#) ["FMSB"] sets itself out to be an international body and has a global membership designed to be representative of the entire wholesale FICC market. With a mission to enhance standards of behaviour in FICC markets by developing clear Standards and Guidelines on conduct which fill the gap between high-level principles and detailed regulation, their work is germane to this outreach and is well known to the BoE MMC. With 5 standards and 9 statements of good practice, the UK Money Market could benefit from a clear adoption of these principles.

The common and clear adoption of ISO standards relevant to the identification of products and entities is widespread, but still not ubiquitous. The extension of a global standard to the anonymous transfer and storage of Personally Identifiable Information ["PII"] would add the missing third pillar to the ability of money markets to function in a way compatible to

the money laundering concerns and requirements to take reliance on counterparty disclosures.

We note that the prior Non-Investment Product Code ["NIPs"] was last updated in 2011 and ceased to be supported and recognised in 2013. However large and useful sections of this code were not transplanted to the MMCoC, most notably those concerning expectations on conduct and the reliance's upon communications. We would advocate a further consideration of any gaps that could be filled by an updated version of these chapters, particularly when recognising that much to the money market is still waiting to adopt any of the "RegTech" and "FinTech" semantic capabilities that are now widely available.

The industry has witnessed a widespread entrenchment of ethics based internal rules and guidance into firm's employment rules and contracts. There is now scope for these to be referenced in an overarching code to add a facet of disclosure and reliance between these, such that, for instance those transactions or valuations transmitted to a third party such as a trading venue or a benchmark can be recognised.

A further useful practice adopted in the FXGCoC is the application of a Question and Answer approach to illustrate adherence with the core principles. Allied to this and underlying importance of disclosure is easy facilitation and simple tolerance of "comply or explain." Given the very wide and heterogeneous nature of the global counterparties, a high importance should be ascribed to intent to comply to the principles and the outcomes attained.

It may be the case that a full triennial review proves too frequent. Regular, but not too frequent reviews are a common feature of overseas regulation as well as being a legal requirement in European legislation. We would suppose that two reviews per decade would be an appropriate best practice to ensure conduct keeps pace with technological and institutional changes.

Question 4

Do you think there is an imbalance either in the UK Money Market Code or Market regulation in the application to Unsecured Money Markets, Repo and Stock Lending?

- **Do any such imbalances create a bias in participation e.g. cause some market participants to withdraw or abstain from trading certain products?**
- **Does such a bias increase or decrease risk and why?**

EVIA notes that the critical imbalances currently reside in the prudential requirements for capital and liquidity which pose barriers to access institutional balance sheets and often penalise the maturity and credit transformation of risk capital. We defer to the responses of the dealer community in this regard.

We also note nascent cross border frictions to access and participation as both market participants and trading venues sub-divide their operations into subsidiaries and branches thereof based upon geographical regulatory permissions. This is witness in money markets as a credit tiering of pricing and access to liquidity. Whilst more of an urgent issue in derivatives and commodities markets, we urge a clear and urgent path towards deference and mutual recognition.

Question 5

Are there areas of regulation that are still in their infancy where the UK Money Market Code could assist the safe development of the Market place?

Example ESG standards, Tokenisation of Money Market Products on Blockchain...?

EVIA agrees that the prime focus for the code should be on "RegTech" noting that the European Commission has found that automation and standardisation should ultimately pave the way towards reducing the regulatory burden for the industry – improving both systemic risk supervision and further law making in the EU. Intelligent NCA rulebooks and semantic architectures such as the ISDA Common Domain Model will start to impact post trade compliance from the end of this year. We would remind on quite how many respondents as early as the 2017 EU Call of Evidence highlighted that diverging and inconsistent supervisory approaches contribute to unnecessary regulatory burdens, expressing the following concerns about the compliance burden stemming from reporting requirements:

- i. Reporting requirements are perceived as too numerous and too complex due to duplications and overlap across different reporting frameworks but also, due to insufficient standardisation and lack of clarity as to what has to be reported
- ii. Regulatory reporting is costly – IT systems and internal procedures need to be augmented to meet changing requirements
- iii. Ad hoc requirements, e.g. requests by supervisors that go beyond the regular reporting requirements, were perceived as particularly disruptive and costly.

Innovative RegTech will be critical to these efforts. In identifying these solutions, the Commission will explore the merits of automation technology, reducing the amount of human intervention in both reporting and data analysis.

The second area we would highlight is the ability of new technologies, especially in the hosted ledger and crypto asset space, such as stable-coins and mutual credit tools, which permit settlement cycles to be shrunk to close to real-time. Already we note that Tether is able to settle delivered FX in minutes without recourse to CLS Settlement Bank in a manner explained to the [03rd October meeting of the CFTC Technology Advisory Council](#).

Clearly there is also a great scope for change by the adoption of crypto currencies such as Libra which would presumably require further consideration of how to apply the commonly accepted principles underpinning the MMC.

We stand by to assist the committee in its deliberations and to provide quantitative or experienced evidence.

Yours Faithfully,

Alexander McDonald

Chief Executive Officer