WMBA/LEBA Response to the FSA consultation on Revising the Remuneration Code (CP10/19)

Summary

- **This response should be read in conjunction with the individual responses of member firms.**
- **WMBA/LEBA believes that the nature, risk profile and absence of complexity in the business models of our members does not reflect the concerns and objectives that the FSA seeks to address in the changes to the Code**
- **WMBA/LEBA is surprised at the FSA's current proposal to extend its Remuneration Code to approximately 2,500 firms, including CAD investment firms which may capture our members who do not take on credit and market risk in arranging trades and whose permissions expressly define their risk**
- **We therefore are requesting a meeting with the FSA to clarify whether IDBs are really meant to be caught in the scope of the policy**
    - **If that is the case we query whether the FSA is asking our member firms to comply with requirements to mitigate risks they do not face**
    - **Further we would query whether the FSA is aware that staff likely to be identified as Code Staff employed by our member firms are almost exclusively engaged in control, monitoring and compliance functions**

1. Introduction

The Wholesale Market Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) are the European industry associations for the wholesale intermediation of Over-The-Counter (OTC) markets in financial, energy, commodity and emissions markets and their traded derivatives. Our members are predominantly Limited Activity and Limited License firms and all act solely as arrangers or intermediaries in the said wholesale financial markets. As interdealer brokers (IDBs), our members' principal client base is made up of global banks and primary dealers.

This response should be seen in the context of member firms acting exclusively as arrangers/ intermediaries, not as own account traders and consequently not incurring any market risk.

WMBA/LEBA are supportive of the principles of better risk management and the governance framework required supporting it. However, it believes that the nature, risk profile and absence of complexity in the business models of our members does not reflect the concerns and objectives that the FSA seeks to address in the changes to the Code

Given that the initial research undertaken by the FSA prior to the implementation of its Remuneration Code in 2009 concluded that only 26 Banks and Building Societies were undertaking material risk, WMBA/LEBA is surprised at the FSA's current proposal to extend its Remuneration Code to approximately 2,500 firms, including all banks and building societies, most hedge funds, UCIT investment firms and CAD investment firms.

(*Please see www.wmba.org.uk and www.leba.org.uk for information about the associations, its members and products*.)

2. Inter-Dealer Brokers Business Model

WMBA/LEBA members take no principal market risk in the markets in which they operate or in which they act as arranger. Indeed, in the case of Limited Activity firms, their license prohibits them from taking market risk other than that recognised by the FSA to facilitate client business. The exclusion of our members from the Bank Payroll Tax and the existing FSA rules on remuneration illustrates the acceptance that IDBs do not take any trading book risk. This was further demonstrated by FSA in not applying the full scope of the new liquidity requirements to Limited Activity firms. All members have systems and controls in place to prevent employees from taking proprietary trading positions on behalf of their firms.

IDBs do not take any proprietary positions. Their function is that of price and/or volume discovery which is facilitated by aggregating pools of liquidity from their clients' orders. IDBs are not "risk takers" and this is supported by the fact that during the recent financial crisis, no IDB in the UK, or elsewhere, has relied on taxpayers support as a result of excessive risk taking or any other activity.

We would highlight that our member firms have been excluded from the "Bonus Tax" by HMRC on grounds of their limited permissions, and further that as infrastructure providers (together with Regulated Markets) they were not considered systemic and were therefore excluded when the short selling ban was introduced in 2008.

3. CRD 3/FSA's International Character of Good Regulation Principle

The FSA Consultation Paper states that the extension of the Remuneration Code is a direct consequence of the proposals contained in CRD3. However, the FSA in its paper do not seem to have applied the discretion afforded to it by Recital 4 of the said CRD3 (which allows for non compliance with all principles) which, from the limited information available, it would appear other EU regulators have used to excluded investment firms from these new requirements

FSA's International Character of Good Regulation Principle is to protect "the international character of financial services and markets and the desirability of maintaining the competitive position of the UK". However, the FSA in the Consultation Paper acknowledges that EU regulators will not be implementing rules on remuneration in a uniform manner or timeframe thus risking the creation of an unlevel playing field. This fact, along with regulators in other major third country financial centers (US, Switzerland, Japan, Hong Kong, Singapore) either not proposing to extend any remuneration rules to non-banks or by not implementing any rules at all, will not "maintain the competitive position of the UK, as it would not if the same isolationist approach was implemented in any other European jurisdiction".

WMBA/LEBA is concerned that these factors will actually undermine the competitiveness of the UK markets. In respect of the apparent gold-plating of the proposed scope of the regime included in the consultation paper, we would ask the FSA to outline to us how it has taken these factors into account.

4. FSA's Proportionality Principle

The FSA Proportionality Principle states "The restrictions we impose on the industry must be proportionate to the benefits that are expected to result from those restrictions: In making judgments in this area, we take into account the costs to firms and consumers. One of the main techniques we use is cost benefit analysis of proposed regulatory requirements. This approach is shown, in particular, in the different regulatory requirements we apply to wholesale and retail markets."

Furthermore, the FSA provides an example of different regulatory requirements for wholesale and retail firms.

WMBA/LEBA would ask the FSA to explain;

- Other than the introduction of CRD which is discussed above, why it now considers (after a comparatively short period) that the Code should be extended to include all investment firms?
- How by expanding the scope of the Remuneration Code to include firms operating in a Limited Activity or Limited License capacity, how it is demonstrating a "proportional approach"? The FSA is asking such firms to comply with requirements to mitigate risks they do not face.

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Whilst WMBA/LEBA realises the FSA is awaiting feedback from CEBS on proportionality, it would ask the FSA to consider the prospect of delaying the implementation of the legislation until clarity is provided and, in the interim, examine different regulatory requirements for remuneration for firms, such as its members, who do not take trading book market risk.

WMBA/LEBA is encouraging member firms to reply to CP 10/19 individually reflecting their own firm's remuneration and governance arrangements and these will be sent under separate cover but please consider this response as an addendum to each member reply.

The WMBA/LEBA officers detailed below would welcome the opportunity to discuss these conclusions and explain further the role of the IDB with the FSA so that FSA can form a balanced view.

Contact Details

Alex McDonald (CEO) +44 (0)203 207 9741 amcdonald@wmba.org.uk

David Clark (Chairman) +44 (0)203 207 9742 dclark@wmba.org.uk

Member Firms

- BGC Partners LP
- EBS Group Ltd
- GFI Group Inc
- ICAP plc
- Martin Brokers (UK) Ltd
- Reuters Transaction Services Ltd
- Sterling International Brokers Ltd
- Tradition (UK) Ltd
- Tullett Prebon Ltd
- Vantage Capital Markets LLP
- APX Power UK
- Evolution Markets Ltd
- ICAP Energy Ltd
- PVM Oil Associates Ltd
- Spectron Group Ltd
- Tradition Financial Services Ltd
- Tullett Prebon Energy