

European Venues and Intermediaries Association (EVIA) and London Energy Brokers' Association (LEBA) – Written evidence (SCG0028)

1. What opportunities or changes should be prioritised in order for the regulators to meet their secondary growth and competitiveness objectives effectively?

(a) Wholesale markets supervision and policy should be segregated from domestic and retail regulation. Whilst the optimal framework would likely be in creating a new “Markets Agency” subordinated to the Bank of England, this was looked at under the last Parliament and deferred due to other ongoing work within the business plans. From its post-crisis inauguration the FCA has been predicted to oversea against harms to the “consumer”. Whilst the notion of the consumer has run through all of its doctrines, the term has never been defined as pertaining solely to “retail customers” and it remains highly inappropriate for a wholesale global markets regulator.

We do concur that from the status quo, the operational disruptions which would be caused by legal separation would likely outweigh the benefits of such a move. Instead, we would advocate for both to remain within the same legal entity but for the FCA to embed operational separation to effectively split the supervisory and policymaking functions across retail and wholesale in half. This would better ensure that both sides are staffed with the right people and that decision-making is taken by experts in those areas. Furthermore we consider that

- a. This would be under the single auspices of “Predictability”, as opposed to oscillations resulting from the varying crystallisations of risk.
 - b. This would leave the remaining FCA open to “serving citizens” (noting the comments of former FCA Chair, Charles Randell to the inquiry).
 - c. Any “Markets Agency” should have staff with industry experience and stakeholder governance.
- (b) More emphasis on Principles led supervision for wholesale services: The “Regulatory Decisions Committee” should be reinstated and reengineered to operate as a parallel and wholesale equivalent to the ‘Financial Ombudsman.’
- a. This may give scope to include considerations around competitiveness.
 - b. This should have the objective to establish and evidence general understanding without the costs, duration and risks of seeking legal jurisprudence.

- c. This should commit to a bigger role for guidance and for exceptionalism ["comply or explain"].
- (c) More emphasis on Principles led supervision for wholesale services: The regulation of Wholesale markets in the UK should be formally predicated on an "activities basis". In practice this means that aspects related to product and to entity (e.g. branch versus subsidiary) should be secondary to what is actually going on. We note that when at the Bank of England, Lord King utilised the question, "*what's really going on here.*"

Furthermore the scope of the Consumer Duty should be clearly and concisely delineated away from wholesale services including where dealing with Professional Counterparties and Eligible Clients.

- (d) Using its new powers under FSMA 2023, the FCA should properly reconsider the regulatory perimeter which should be better and more appropriately delineated:
 - a. Reinforce the intended outcomes of the Overseas Persons Exemption without requiring unnecessary UK onshoring. We note that [Nikhil Rathi speech of 26 April 2022](#)¹ addressed the OPE and sought to close down the pre-existing "openness of the UK as a wholesale market place".
 - b. Remove the "with and through" restrictions in the RAO
 - c. Reassess and clarify the perimeter definitions of financial instruments and derivatives, especially in relation to "Non-Investment Products" such as FX, Commodities, Treasury products and Certificates/Licences.
 - d. Specifically, the prior to MiFID2 approach to FX, FX Forwards and closely related products (FX Option and Cash settled FX) should not be treated as either a "derivative" nor an "investment Product" in the UK. This would align with the rest of the world outside of the scope of MiFIR and enable the UK to reestablish itself as the global centre for currency hedging.
 - e. Recreate a proportionate regime for "Non-Investment Products" such that FX, Treasury products, forwards, and other short term liquidity instruments (Repo, CD, Commercial Paper, Structured Deposits) are not treated as "investments" under MiFID. We recall the prior "NIPs Code" to be effective.
 - f. Extend the MAR Regime to cover "Non-Investment Products."
- (e) Given the increasing regulatory constraints and costs for banking deployment of trading book capital and liquidity the capability for markets to perform transformation services to credit, maturity, liquidity and product should be prioritised. Three relatively straightforward measures in this regard would be:

¹ [Nikhil Rathi speech of 26 April 2022](#); Critical issues in financial regulation: The FCA's perspective

- a. Enable “Matched Principal Trading” to facilitate intraday risk layoff more effectively than the recent punitive restraints under MiFID2 which preclude even short periods of making arrangements as well as the general application of risk-factor layoff.
 - b. Take measures to enable collateral fluidity such as better rules for the Repo markets, wider prescription of high grade quality assets [“HQLA”] and the development of toolboxes for the tokenisation of collateral and payments.
 - c. Adopt incentives for the widespread usage of standard instrument identifiers and for digital regulatory reporting. Currently the UK stands towards the back to the global uptake for UPIs and UTIs, whilst offering no safe harbours for innovative reporting.
- (f) Conduct measures should adhere to accepted international standards and not seek to gold plate. Specifically in relation to:
- a. Payment for Order flow
 - b. Diversity and Inclusion
 - c. Enforcement scope, publicity and timelines
 - d. Non-financial misconduct
 - e. ISO standards and identifiers
- (g) Third country deference and mutual recognition should be sought via both international standards and more so by utilising prescribed treaties, such as the current UK-Swiss approach by HMT, which would enable a variation from strict mutuality.
- (h) Better coherence should be required between governmental and Treasury preferred policy outcomes and the regulatory mandate and behaviour. This should include delivery and timing of policy outcomes as well as more transparency to the process.

We appreciate the UK regulatory grid as a valuable step in this direction, but also note that it has been frequently delayed, deferred and lacking relevant content.

2. To what extent are the regulators focused on the objective to promote international competitiveness and growth? Are there areas where the ability of the regulators to fulfil their secondary objectives might be constrained by having to fulfil their primary objectives?

- (a) In general the FCA has been concerned to set out that the competitiveness objective is properly secondary to its [primary statutory objectives](#)² and that they may indeed sometimes act to contradict these. Constraints from primary objectives do not materialise simply because the FCA has very fully segregated the primary objectives from the new tertiary ones.

² [statutory objectives - FCA Handbook](#)

- (b) That said, in the recent weeks since the [Financial Services Mansion House Dinner](#)³, there has been a succinct change of tone.
- (c) It remains correct that authorisations and developmental objectives are subordinate to markets effectiveness; however, any segregated consumer orientated supervisory division or entity (i.e. a “Ringfence FCA”) would engage a greater level of focus onto operational effectiveness towards these ends; leaving an autonomous markets and wholesale division to better consider the forward innovation agenda and challenges (such as ‘Sandboxes’ and ‘Scaleboxes’).
- (d) The subordinate “Net Zero” objective appears to be a failing statutory mandate where applicable to international wholesale firms conduct of business activities. A functional segregation for wholesale activities could enable it to be rephrased to apply to domestic and retail facing activities only.

3. What are some of the barriers in the current regulatory framework (including the role and responsibilities of other regulators and bodies such as the Payment Systems Regulator, The Pensions Regulator and the Financial Ombudsman Service) that could hinder efforts to drive economic growth and international competitiveness in (a) the UK economy and (b) the financial services sector?

- a) Barriers in the current regulatory framework include, but are not limited to:
 - i) Absence of widespread and activity based mutual recognition agreements across the G20
 - ii) Absence of an effective, prompt and independent appeals route or committee to act as a “wholesale markets ombudsman”; such as the prior “RDC”.
 - iii) Inappropriate Prudential rules which add more cost to UK based operations
 - iv) Inappropriate or unclear perimeter and instrument definitions. This includes the concept of an “OTC derivative” being an instrument traded on organised trading venues such as OTFs and MTFs.
 - v) Restrictions of economic commercial models, notably for prescriptive “Rate Cards” for wholesale clients
 - vi) Inability or reluctance for the FCA to provide guidance and advice
 - vii) Absence of an electronic, cross-referencing and machine readable FCA Handbook

4. Do the regulators have the right capability and capacity to fulfil their regulatory objectives on growth and competitiveness? To what extent might the culture of the FCA and PRA influence

³ [Growth: mission possible | FCA](#)

their ability to fulfil their growth and competitiveness objectives?

- a) No, the FCA has too broad a scope of objectives, too many and too heterogeneous supervisory breadth, together with too little governance and accountability to fulfill subordinated objectives on growth and competitiveness. In short, it is too big.
 - i) Noting that Charles Randell commented to the Committee about inheriting approximately 110 different objectives on entering office in 2017.
- b) The FCA remains predicated on the primacy of the “consumer”, a term ill-suited to wholesale markets activities with no retail participation.
- c) The FCA resolutely, and over several generations of executive committees, fails to hire and/or retain senior staff with markets experience, or to train staff immersively within markets firms.
- d) FCA culture has generally been quite happy to go along with standards set by international standard-setting bodies such as FSB, BIS, IOSCO and CPMI; and generally has expressed pride in meeting their requirements.
 - i) However, historically we observe that the FCA and the PRA/BOE have not taken an active enough stance in standard-setting bodies and this has allowed other jurisdictions to dominate the conversation and the outcomes regarding the development of standards. We would therefore strongly recommend they dedicate more resource and prioritise to become bigger players at these forums.
 - ii) Conduct is the one area where the FCA has not sought to align with international standards. This is most evident across recent unilateral initiatives where it has sought to move as a trailblazer across a number of conduct and prescriptive issues. None of these have met with any industry support.

5. How effectively have the FCA and PRA consulted or engaged with industry in relation to the new secondary growth and competitiveness objective?

- a) The FCA have made reasonable and proactive efforts to engage with industry in relation to the new objective, certainly more so in respect of competitiveness than for any of the other secondary objectives.
- b) The issue lies with the barriers and subordination rather than the consciousness of the mandate.

6. In delivering their secondary objective on growth and competitiveness, what opportunities are there for the regulators to help to promote and support innovation in the financial services sector? How effective has the FCA’s

regulatory sandbox been for supporting greater innovation in the financial services industry?

- a) It is generally well accepted, and by replication elsewhere, that the conception of sandboxes and scaleboxes have formed a route for effective innovation. However, it remains unclear to us that these resources are helpful for wholesale markets in general and for wholesale markets products, including derivatives in particular.
- b) Notably, the FCA have been purposeful and demonstrative in excluding these segments on account of the risks and leverage involved. It also remains unclear to us that any of the graduates of these facilities have progressed into the wholesale markets arena so far.
- c) Mindful that we are in the midst of an AI revolution, and quite possibly on the cusp of a quantum computing revolution, questions arise as to whether there are any other routes to foster and encourage the application of new technologies in the cross-border and wholesale markets. Here the FCA may not be able to deliver beneficial outcomes by acting alone. Likely any such may be founded within the Basel institutions, global standard setters, or other such international entities as ISO, FATF or the Wolfsberg Group.

7. How should the regulators ensure that any measures introduced to meet the secondary growth and competitiveness objectives work for businesses of all sizes across the sector, including startups, scaleups, and incumbents?

- a) The creation of a wholesale markets regulator would aid the universality of any benefits by dint of more deference to the role of supervision and to the refocus on activities rather than entities or products. That is, such a body would inherently hold more of a risk-based approach.

8. Are there any additional metrics over and above those already agreed by the regulators that would better enable stakeholders to track progress and support scrutiny of their work against the secondary growth and competitiveness objective? How should a measure of growth be included in these metrics?

- a) For wholesale markets there are macro type trackers and surveys with back histories such as "Global Financial Centres Index" or others published by the Corporation of London, City UK, the global consultancies and audit firms.

- b) Other measures may include more micro type evidence from prescribed cohorts or technologies such as Sandbox and Scalebox graduates or measurements of firms' activities under granular regulated permissions in the UK.

9. Does the requirement within the secondary growth and competitiveness objectives to align with international standards create any constraints to fulfilling those objectives?

- a) No we do not believe this to be the case. "Standardisation" is a tool and is empowering.
- b) It is more challenging for firms to effectively replicate both activities and controls around the world without recourse to both common standards, and also to common processes and data elements.

10. Are the existing accountability measures around the secondary growth and competitiveness objective adequate?

- a) No. The accountability measures should include the common establishment of the set of widely cited barriers and hurdles which should be measured by an annual survey of supervised firms.
- b) It is not apparent that any quantitative measures such as: the number of people directly employed; or capital raised; or traded risk metrics; or FCA permissions granted; or any other, could currently provide for a suitable time series measurement.

11. Are there examples of regulatory policies in other jurisdictions that should be considered by UK regulators to help facilitate the new secondary objective? What might the FCA and PRA be able to learn and apply from comparable supervisors in other markets in terms of applying secondary objectives on growth and competitiveness?

- a) Some other jurisdictional models:
 - i) Regulatory focus such as the segregation of the AMF from the ACPR in France or the CFTC, SEC from the banking supervisors in the US.
 - ii) Regulatory proportionality such as the focus and onshore versus offshore segregation as deployed by the MAS, by ASIC and by Bank Negara Malaysia. These authorities also properly treat FX and other treasury products as commercial products rather than as derivatives and investments.
 - iii) A codified approach to Non-Investment Products such as that under the Bank of England prior to 2013 or the "Grey Book" under the UK Securities and Investments Board prior to subsummation into the FCA in 2001.
- b) FCA learning and application:

- i) There are no notable explicit and primary objectives in third countries predicated on growth and competitiveness, although these could be inferred across a number of ASEAN and Middle East jurisdictions.

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