HM Treasury

Responses to the UK's Overseas Framework: Call for Evidence

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Introduction:

FIA EPTA
EUROPEAN PRINCIPAL TRADERS ASSOCIATION

FIA PTG
PRINCIPAL TRADERS GROUP

HM Treasury

The FIA European Principal Traders Association (FIA EPTA) and the FIA Principal Traders Group (FIA PTG) appreciate the opportunity to respond to HM's Treasury Call for Evidence on the UK's Overseas Framework. FIA EPTA and FIA PTG are supportive of HM Treasury's current overseas framework and the call to provide industry insight on how to continue and create flexible approaches for non-UK firms to access various UK markets and exchanges. We would like to use this opportunity to set out why we support this approach and how we believe it would benefit UK financial markets and FIA EPTA and FIA PTG members holistically.

FIA EPTA represents 30 independent European Principal Trading Firms (PTFs) which deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-cleared markets for a wide range of financial instruments, including shares, options, futures, bonds, ETFs and OTC derivatives. All of our members are investment firms authorised under MiFID, and approximately 70% of our members having been licensed by the Financial Conduct Authority (FCA). Other FIA EPTA members have taken advantage of the FCA's Temporary Permissions Regime (TPR). For the purposes of this response, we comment from the perspective of our members' global affiliate entities, which also seek access to UK markets from disparate locations abroad. FIA EPTA members note that most of their firms are part of global groups of principal trading firms, in many cases with parent companies or subsidiaries, which have provided or can provide liquidity to UK markets and end-investors separate from, and in addition to, the activities of our member firms based in the UK.

FIA PTG is a US-based association of firms who trade their own capital on exchanges in futures, options, and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy. As noted above, FIA PTG members also currently provide liquidity to UK markets and seek reliable, open access to UK markets so that they may continue this liquidity provision.

As market makers and liquidity providers, our members contribute to efficient, resilient, and high-quality secondary markets that serve the investment and risk management needs of end-investors and corporates throughout the globe. Our members are active participants on almost all international exchanges and platforms. Moreover, our members are important sources of liquidity for institutional investors accessing liquidity pools across the globe. We support transparent, robust and safe markets with a level playing field and appropriate regulation for market participants.

From HM's Treasury Call for Evidence publication, we understand that there is an interest in gathering information on distinct regulatory regimes, including the overseas person exclusion (OPE) and investment services equivalence under the Markets in Financial Instruments Regulation (MiFIR). The two regimes would further benefit the UK markets in so far as allowing our members direct access to such markets. Prior to Brexit, the City of London was a vibrant trading hub that linked 24-hour global markets. Our members believe the City of London will remain the key marketplace connecting the Americas, Europe, and Asia Pacific. We strongly hope the current flexible approach from the UK remains in place as a leading precedent for the rest of the world on open markets.

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For all firms

Q1: Please describe your business model, entities, and the types of financial services activity your firm (or group, where relevant) undertakes in relation to the UK, or will undertake after the end of the transition period.

As our member firms have global footprints, the response to this question varies depending on their business models and legal structures. Whilst some of our members have applied for TPR, given the cumbersome registration requirements associated with the TPR, many are opting out before the three-year period ends and prefer to utilize the OPE. For other firms, the TPR is not an eligible pathway for market access, as discussed in further sections, and the OPE is their only route into the UK markets.

Some examples:

1. US trading firm that trades directly into the UK: US firm is a direct member of UK recognised investment exchange (RIE): 1) to buy/sell derivative instruments. Such activity is a regulated activity under Article 72 of the Regulated Activities Order (RAO),[1] an entity that is placing and dealing in investments as principal,[2] is carrying on regulated activities as found in this article but for exclusion found in this Article 72. In addition, these activities are with or through an authorized or exempt person,[3] which include recognised investment exchanges (such as LME or ICE), clearinghouses, and UK brokers.
2. Hong Kong-based trading firm that trades directly into the UK: the Hong Kong firm places orders with regulated UK prime brokers as principal: 1) to buy/sell equities via direct market access, 2) borrow securities and/or 3) enter into equity swaps. This is a regulated activity under Article 72 of RAO,[4] an entity that is placing and dealing in investments as principal[5] and is carrying on regulated activities as found in this article but for exclusion found in this Article 72. In addition, these activities are with or through an authorized or exempt person,[6] which include regulated entities, recognised investment exchanges (such as LSE, Cboe) and clearinghouses. The firm's principal activities would be regulated activities absent the exclusion.
3. EU-based trading firms that trade directly into the UK with FCA regulated eligible counterparties: This is a regulated activity under Article 72 of RAO,[7] an entity that

[1] The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Chapter XVII, Article 72 Overseas Persons, The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (legislation.gov.uk)

[2] Id at 2, Chapter V, Article 21, Dealing in investments as agent, The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (legislation.gov.uk)

[3] Financial Services and Markets Act 2000, Section 31, Authorized Persons, Financial Services and Markets Act 2000 (legislation.gov.uk)

[4] Id at 2

[5] Id at 2., Chapter IV, Article 14, Dealing in investments as principal, The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (legislation.gov.uk)

[6] Id at 4

[7] Id at 2

is placing and dealing in investments as principal[8] and is carrying on regulated activities as found in this article but for exclusion found in this Article 72. In addition, these activities are with or through an authorized or exempt person,[9] which include regulated entities, recognised investment exchanges (such as LSE, Cboe) and clearing houses. A firm's principal activities would be regulated activities absent the exclusion.

4. EU-based trading firms that trade directly into the UK with non-authorised persons: EU firms which trade directly with counterparties on an OTC basis via dealing in investments as principal, would be considered a regulated activity if it were not for the exclusion found in Article 72. Specifically, EU firms relying on using a "legitimate approach" as defined in Article 72(7) of the RAO, which includes any approach made to the overseas person that either is not solicited in any way, or is an approach that has been solicited, or made by or on behalf of, the overseas person in a way that does not breach the financial promotion restrictions set out in Section 21 of FSMA (the "Financial Promotion Prohibition").
5. Our members based in the UK also benefit from other market participants' reliance on the 'Overseas Persons Exclusion,' (OPE) such as Bolsa de Madrid, MEFF and AIAF. All the trading venues in the Bolsas y Mercados Espanoles (BME) Group currently rely on the OPE to ensure that UK firms can continue to benefit from participation on Spanish markets without disruption.[10]

Q2: Do you think that the route of access to the UK market provided for by overseas framework adequately advance the principles set out in paragraph 1.7?

Our members recognize and appreciate that the overseas access framework of HM Treasury envisions principles of an open and globally integrated financial system,[11] proportionate regulation,[12] which ensure resilient and safe financial markets[13] and especially provide a transparent, predictable, stable and reliable arrangement for cross-border market access.[14] Our members urge continued dialogue and regulatory sponsorship in this direction.

The OPE advances the principles in paragraph 1.7 by: 1) allowing global financial entities to transact in UK markets via UK exempt persons, thereby maintaining the level of UK market openness in place prior to Brexit; and 2) offering transparency and predictability to financial services firms because there would be a clear pathway for them to know: (i) what types of activities they could embark on and (ii) the entities they could transact with in order to successfully and safely trade in the UK.

We recognize there are other pathways to access the UK markets, such as TPR and equivalence via MiFIR, which would also ensure resiliency, transparency, cross-border trading, and safe markets via FCA oversight.

[8] Id at 2., Chapter IV, Article 14, Dealing in investments as principal, The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (legislation.gov.uk)

[9] Id at 4

[10] Nota Overseas Person Exclusion.pdf (meff.es)

[11] HM Treasury Call for Answers Section 1.7, Call for Evidence on the Overseas Framework - GOV.UK (www.gov.uk), (last visited 26 January 2021)

[12] Id at 9

[13] Id at 9

[14] Id at 9

On balance, however, we believe the OPE provides for more 3) proportionate regulation when compared against the time, complexity and cost of adhering to TPR or MiFIR registration requirements. We also believe the OPE offers 4) stability and reliability, given it has been a stable legislative framework for years. By contrast, MiFIR equivalence can be at risk of immediate withdrawal based on politics, and likewise, under the registration framework, the FCA has the power to withdraw a firm's registration on a mere 30 days' notice, at which point the overseas firm will no longer be able to perform activities in the UK which could lead to market volatility.

Q3: Are there any specific risks that the current regimes of market access for overseas firms do not adequately address?

For overseas firms currently relying on the OPE to access UK markets, a MiFIR equivalence decision triggers a switch in regimes, with the attendant requirements of MiFID Article 47. After a three-year period, the OPE would not be available for firms undertaking overlapping activities into the UK from the relevant, equivalent jurisdiction.

Article 46 of MiFIR contains the relevant criteria and sets out the relevant preconditions that must be met before an overseas firm can undertake investment activities in the UK, which include that the overseas firm is authorised in its home jurisdiction and subject to effective supervision and enforcement. While we believe this to be the case for the majority of firms relying on the OPE, it may not hold true in all cases of our membership. For example, clients of UK prime brokers using (potentially sub-delegated) DMA to access UK markets may have no legal requirement to be regulated. Likewise, principal trading firms located in the ever-growing financial hub of Singapore could be shut out of the UK markets, since there is no legal basis for obtaining regulatory approvals to conduct proprietary trading in Singapore, even if such firms desire to become authorised. Some of our US-domiciled members are under no requirement to register with regulators and currently rely on OPE; if this option ceases to be available, they will be forced to stop trading UK altogether. In such examples, a non-regulated firm would fail to meet the pre-conditions of MiFIR equivalence, which could result in firms temporarily ceasing or permanently withdrawing from UK markets. This in turn would have a significant adverse impact on UK market liquidity. Because the risks of allowing access to non-regulated entities are mitigated by the OPE's requirement to carry out the otherwise regulated activity 'with or through' an authorised or exempt person, we believe the principles of stability, reliability and robust supervision of open UK markets would be better served by preserving the OPE framework regardless of any future MiFIR equivalence decision.

Additionally, firms would welcome the ability to seek guidance on the scope of activities and transactions subject to the exclusion via a Q&A mechanism.

Q4: Are there specific complexities around the regime that you think need addressing?

No. In fact, our members appreciate the simplicity of the OPE regime because overseas firms are able to self-assess whether they meet the eligibility requirements for exclusion and, if so, rely on the OPE for access without requiring authorisation, recognition, registration and costly processes.

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Q5: Please could you comment on the overlap between article 47 of MiFIR and the OPE. If an article 47 decision was issued, how may this affect your decisions to undertake activity in the UK?

FIA EPTA and FIA PTG members commend HM Treasury in its work with overseas countries in order to facilitate a positive outcome under MiFIR; we view this as a positive step for jurisdictional-specific mutual recognition agreements or equivalence decisions and overseas firms seeking equivalence determinations. If an equivalence determination is made under MiFIR Title VIII, this route would substitute for the OPE for those services which overlap. Relevant for our members, the investment services and activities included in these provisions include dealing on own account. Firms may still rely on the OPE for other activities and on other exclusions in the RAO. To our members, that would introduce difficult to manage complexities as they would at a minimum have to be compliant with their home regulators, MiFIR and OPE.

As we noted in Question 3 above, for overseas firms currently relying on the OPE to access UK markets, a MiFIR equivalence decision triggers a switch in regimes, with all the attendant requirements of MiFID Article 47. After a three-year period, the OPE would no longer be available for firms undertaking overlapping activities into the UK from the relevant, equivalent jurisdiction. We observe that again, this would be a complicated operational and regulatory change for our members. The nature of a MiFIR equivalence decision and the potential for it to be revoked in short order is an additional concern we would like to stress. This uncertainty is not presented in the case of the OPE.

We view one of the preconditions that must be met before an overseas firm can undertake investment activities in the UK under MiFIR equivalence is that the overseas firm is authorised in its home jurisdiction and subject to effective supervision and enforcement. While we believe this to be the case for the majority of firms relying on the OPE, we remarked it may not hold true in all cases, for example in countries where a registration category for principal traders does not exist – for such firms, the withdrawal of the OPE could result in such firms ceasing to be able to trade UK markets altogether.

Nevertheless, for the vast majority of firms relying on OPE who are regulated in their home jurisdictions and meet this pre-condition, registering with the FCA will likely double their costs and regulatory burden. Such firms will need to comply with their local regulator(s) as well as the FCA. While we are aware Brexit has created dual regulatory structures for many firms, we do not believe this is a helpful precedent that should be perpetuated. As a result, we believe most overseas firms would prefer to rely on the OPE exemption rather than the route provided by a MiFIR equivalence determination. Ultimately, under OPE, the UK markets can continue to flourish and grow, while under MiFIR, this may not be the case.

Q6: Are there national exclusions/exemptions in other jurisdictions that provide benefits comparable to those provided by the UK's regime?

Yes, national exclusions exist in one form or another in many countries. In the majority of global markets, firms are permitted to trade for their own account on exchanges, via a broker and in many cases as direct member, without a requirement to be locally authorized.

In Singapore, proprietary trading firms may become members of and/or market makers on Singapore Exchange while based offshore. There are no licensing or base capital requirements. Proprietary trading members must appoint a clearing member to clear their trades (similar to the "with or through" approach of OPE).[15]

Even in Europe, which globally imposes some of the strictest regulatory requirements on participants, there are nevertheless multiple examples of national regimes permitting third-country firms, in particular investment firms dealing on own account, to have continued access to national market centers without requiring authorisation.

Germany issued a national transition regime for regulated market participants from the UK in case of a hard Brexit. The Brexit-StBG introduced transitional rules for certain regulated market participants and trading venues that target the German market from the UK. Likewise, as MiFID II was being implemented, Germany offered global market participants an opportunity to apply for temporary exemption from authorisation requirements[16] pursuant to the transitional provision of § 64x (8) sentence 1 of the KWG**.**

France issued Ordinance No. 2019-75 in 2019, relating to the preparatory measures for the withdrawal of the UK from the EU with respect to financial services. France also permits trading venues to have market members based outside the EEA to the extent there is a cooperation and information sharing agreement between the AMF and the competent authority in the member's home country.[17]

Italy has a transitional regime that would run from the date of UK withdrawal from the EU (in a no-deal scenario) to the following eighteenth month, which covers investment firms carrying out investment activities.

The Netherlands offered a transitional regime for investment firms (*beleggingsondernemingen*) that allowed investment firms with their seat in the UK to be exempted from the license obligation for providing investment services and/or the investment activity dealing on own account in the Netherlands, insofar provided to professional investors or eligible counterparties.[18] Further, several UK venues have received special dispensation from the *Autoriteit Financiële Markten* (AFM) to deal with Dutch customers.[19]

In 2019, the Swedish Government authorized the right to issue temporary regulations, or to delegate the authority to issue such regulations to the Swedish Financial Supervisory Authority (the SFSA) making it possible for UK MiFID II investment firms to provide services into Sweden until the end of 2021. It is a possibility that these dates may have been extended in the meantime.

Finland added a provision to the *Investment Services Act (747/2012)* (ISA), that enables third-country investment firms to offer services into and conduct investment activities in Finland without establishing a branch, so long as the firm is authorised in its home country and has

[15] https://www.sgx.com/regulation/memberships

[16] https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Anlage/171205_Informationsblatt_Erlaubnispflicht_grenzueberschreitendeGe_en.html;jsessionid=324FD2E24631221E82F4462D1F952CA0.2_cid363

[17] http://www.amf-france.org/en_US/Reglementation/Reglement-general-et-instructions/RG-mode-d-emploi

[18] https://www.afm.nl/en/professionals/veelgestelde-vragen/brexit-vestiging-nl/vrijstelling-vergunningplicht

[19] https://www.afm.nl/en/professionals/registers/vergunningenregisters/handelsplatformen

sufficient capital.

Belgium, Denmark, Ireland, Spain and Poland also have provisions in place for third-country firms, whether temporary or permanent.[20]

In the US, principal trading firms (PTFs) are not required to obtain a license from national authorities. For futures trading, there is in fact no registration category for PTFs.

Q7: What changes do you think should be made to the operation of the OPE, and what would be the advantages and disadvantages?

None, we do not suggest any changes at this time.

Q8: Which aspects of the market access framework are relevant to the conduct of your business, how easy they are to use and how well do they suit the nature of your business?

For the global corporate groups to which FIA EPTA and FIA PTG members belong, OPE is very relevant and the predominant way to access the UK, as the industry trades on a global, 24-hour basis. Overseas trading firms across the globe desire to be able to provide liquidity to and have access to UK markets, and UK market investors benefit from a large and diverse ecosystem of participants, including professional intermediaries. In addition, there are always ancillary economic benefits to the industries of the City of London and more importantly the UK, as more participants are able to access and trade UK markets, thereby drives the need for infrastructure, technology, advisory, legal and other services.

We firmly believe the UK will continue to operate as a leading player on the global financial stage, given its longstanding expertise in derivatives, trading, fintech and sustainable finance. The UK has long shaped global standards, and post-Brexit, now has the opportunity to further develop trade in financial services and closer partnerships with markets like the U.S., Japan, Switzerland, and other markets such as Singapore and Australia. We believe the OPE is an essential part of a successful UK post-Brexit model for regulating finance and keeping it competitive.

Q9: Please comment on your current and future use of the OPE, ROIE and FPO exemptions, specifically as well as any other specific regimes under the access framework setting out in particular:

9a. Your primary location.

The parent, subsidiary and affiliate entities of FIA EPTA and FIA PTG member firms are located in the EU, the US, various jurisdictions in the APAC region such as Australia, Singapore, Hong Kong, Korea, and the Republic of China, as well as Switzerland and the Cayman Islands.

9b. The type of client/counterparty you interact with in the UK.

FIA EPTA and FIA PTG would like to clarify their members largely trade with counterparties, unless dealing in the context of the UK's Systematic Internaliser regime, which would deem those

[20] https://www.regulationtomorrow.com/de/brexit-doing-business-in-the-eu/

counterparties, clients. The main clients/counterparties involved include: (prime) brokers, trading venues, clearing banks, eligible counterparties, FCA/PRA regulated financial institutions.

9c. The type of activity conducted and through which regime (please be as specific as possible).

Dealing on own account as principal.

9d. Whether you have regulatory permission in your home state.

All FIA EPTA member firms in the EU operate under home country permission; many parent, subsidiary, and affiliate entities are likewise regulated in the jurisdictions in which they operate. For FIA PTG members based in the US, PTFs are not required to obtain a license from national authorities. However, PTFs in securities or equity options that are engaged in dealing activities, including most FIA PTG members, are registered with the U.S. Securities and Exchange Commission ("**SEC**") as broker-dealers. Registered broker-dealers must also be members of at least one self-regulatory organization, such as the Financial Industry Regulatory Authority ("**FINRA**"), or a securities exchange. In addition, for futures trading where there is no registration category for PTFs, due to their business models, most PTFs are members of the exchanges on which they actively provide liquidity. US futures exchanges are self-regulatory organizations and members of the exchange must comply with all exchange rules which generally include language requiring compliance with the Commodity Exchange Act.

9e. Whether, and if so how, your use of these regimes enables you to manage business between different group entities, for example for risk management, or is used in conjunction with other group entities or structures as an alternative means of access or to expand the range of services that may be offered?

Globally active PTFs sometimes transfer risk on trading books to group entities in different regions, in a "follow the sun" trading approach. Firms may provide liquidity or act as market makers on UK markets; likewise, they may use UK market access to hedge risk of liquidity provided in other global markets and/or trade UK financial instruments on UK markets as part of global trading strategies.

9f. How your use of these regimes may change in the future?

If the regimes continue as-is, our members do not see the need to change how they utilise the regimes as they offer access to the UK wholesale markets (via the OPE) as well as to counterparties who may not be directly authorized/exemption (via the legitimate approach).

Specifically, if the OPE is used:

9g. Volume of business of different types connected to the OPE per annum.

Please refer to input from exchanges, who should be able to indicate what percentage of PTF volume per annum stems from the OPE route.

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9h. Benefits accruing from the OPE, including capital treatment or access to clients.

Access to counterparties is a noted benefit for firms utilizing the OPE, whether this is 'with or through' an exempt person or via the 'legitimate approach' there has been and continues to be benefits for firms utilizing the OPE which began well before Brexit and the UK's departure from the EU. In terms of capital treatment, we would stress that the ongoing consultations around the IFPR implementation within the UK will be critical to the scope of any possible capital increases for our member firms. Specifically, if the OPE were to be removed and the result of such would require direct UK authorization on firms utilizing the OPE, then this would require IFPR capital charges to be included on the UK-based entity as well as possibly wider group entities. We believe this approach would be discouraging and wish to highlight the benefit of the current structure of the OPE in allowing truly international firms, with no physical presence in the UK, to continue to trade with UK counterparties and maintain capital based on their local regulatory status.

Q9i. How important is the existence of the OPE for your current business model, booking arrangements and your use of the UK as a risk management hub? Please explain its advantages and any disadvantages.

While the degree of importance, and availability of other potential options, may vary amongst our constituents, the use of the OPE is overall very critical to our firms. Some of the specific advantages are:

1) As noted in responses to Question 3 and Question 5, in several overseas jurisdictions there are no alternatives for firms trading strictly on their own account to become authorized in their home country. Therefore, without the existence of OPE, these firms would quite possibly not be able to access and provide liquidity to the UK markets.
2) The existence of the OPE makes the UK markets very accessible and attractive for overseas firms when evaluating markets to allocate resources to. For overseas firms, the costs of having to set up a UK regulated entity, obtaining physical office space, hiring individuals, and other associated costs may not justify the trading opportunity. The past 12 months have certainly evidenced how global markets are shifting to more remote access and less reliance on physical presence.
3) In addition to providing more liquidity to the UK markets, overseas firms provide other benefits to ancillary industries as we noted in our response to Question 8 (i.e. technology, legal, advisory).
4) The existence of OPE keeps the UK competitive with other European markets in terms of being a global presence. The existence of other similar regimes is outlined in response to Question 6.

In terms of disadvantages of the OPE, we could not readily identify any at this time. As noted in our responses to Questions 4 and 7, the simplicity of the OPE accomplishes its goal of providing access and enhancing liquidity to its markets for overseas firms. We do not feel that any changes to the OPE regime are warranted at this time.

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Q9j. The type of approach used. Please be specific about using 'with or through' or 'legitimate approach'. If using a 'legitimate approach', please also be specific about the legal basis on which you rely not to breach the financial promotions regime.

As noted in the above responses, we have multiple members who access the UK markets via both the 'with or through' as well as the 'legitimate approach' depending on the type of business conducted.

We make use of the OPE via the 'with or through' approach when trading on-exchange, either directly or via authorized persons (brokers) who are regulated by the FCA in their own right. This ensures our members market access is always chaperoned by an authorised entity subject to FCA supervision.

We make use of the 'legitimate approach' under Article 72(7), for example, when trading directly with UK counterparties on an OTC basis. To allow this activity to occur, consideration for the financial promotion rules set out in section 21 of FSMA (the "Financial Promotion Prohibition") must be considered. We utilise the exemptions provided for from the Financial Promotion Prohibition, and hence "legitimate approaches", which are enumerated in the Financial Markets and Services Act 2000 (Financial Promotions) Order 2005 ("**FPO**"). Specific reference can be made to Articles 19 and 49 for example, which permit communications to be made solely to investment professionals (i.e. authorised or exempt persons etc.) as well as to entities which meet specific thresholds defined in that article, respectively.

Q9k. Whether you could rely on different approaches to the one your firm uses. If so, which approaches would be available to you? This includes not only relying on 'with or through' instead of a 'legitimate approach', as well as different legal bases for making a legitimate approach.

For our member firms and their global affiliates, the "with or through" approach most appropriately suits their business of on-exchange trading or direct market access. As noted above, firms that trade directly into the UK with non-authorised persons (e.g. trade directly with counterparties on an OTC basis via dealing in investments as principal) could potentially rely on using a "legitimate approach" as defined in Article 72(7) of the RAO, which includes any approach made to the overseas person that either is not solicited in any way, or is an approach that has been solicited, or made by or on behalf of, the overseas person in a way that does not breach the financial promotion restrictions set out in Section 21 of FSMA (the "Financial Promotion Prohibition"). However, this example refers to a specific sort of business that not all PTFs engage in. Therefore, the "with or through" approach is more critical.

9l. If there are several different approaches available to you, could you comment on why you have chosen the approach you rely on?

We appreciate the multitude of approaches available to international firms and believe this adequately reflects the different business models which firms operate when trading with the UK. Each approach, as outlined in our answers above, has benefits and drawbacks. As a body representing firms which deal in investments as principal, our members prefer the OPE based on the business conducted, namely on-exchange and OTC trading with professional and UK authorised institutions. For this purpose, the OPE provides the most streamlined and cost-efficient approach for international firms.

9m. Does the OPE raise any practical challenges for you, either generally or more specifically in terms of ensuring your firm's compliance with it from a systems and controls point of view?

No.

9n. Are there specific aspects of the OPE which give rise to uncertainty, for example over its application in some circumstances, and how might these be remedied?

No, we find the OPE as a matter of longstanding, settled law to provide more certainty than, for example, the equivalence regime of UK MiFIR -- because even if MiFIR equivalence is granted, it can be revoked by either jurisdiction within 30 days.

9o. To what extent is your use of the OPE driven by tax residence considerations and/or any other non-regulatory considerations?

Tax and/or other considerations are not the primary drivers of the use of the OPE by our members and/or their global affiliates.

9p. As an overseas firm, do you use the OPE as a basis for undertaking business with other entities within your group, and if so, how do you use it?

Not highly applicable to our members.

9q. If you are a firm authorised in the UK, what business benefits do you get from dealing directly with overseas firms which rely on the OPE?

Not highly applicable to our members.

9r. How important is the intragroup exemption for your current business model, booking arrangements and your use of the UK as a risk management hub? Please explain its advantages and any disadvantages.

As mentioned in responses to other questions in this document, most of our firms operate globally. The intragroup exemption provides maximum flexibility for

allowing firms to maintain a presence in the UK in the event they wish to operate in the UK as a risk management hub. This intragroup exemption provides an additional alternative for these firms to provide 24-hour coverage for their organization. Removal of this exemption would remove the flexibility to allow these firms to operate and provide liquidity to the UK markets from London and/or during London market hours.

For insurers and insurance intermediaries

Q10: Should the list of jurisdictions in regulation 10 of, and Schedule 2 to, the FPO be amended?

Q11: Should the insurance products to which FPO exemptions apply be amended?

For trading venues

Q12: Do you think the routes of access to the UK market for all types of trading venue adequately advance the principles set out in paragraph 1.7?

Q13: Are there any specific risks that the current regimes of market access for trading venues do not adequately address?

Q14: Are there specific complexities around the regime of market access for trading venues that you think need addressing?

Q15: Do you think that it is appropriate to include investment firm MTFs and OTFs in a general market access regime for cross-border provision of investment services by investment firms, or should they be part of a separate regime for trading venues?

Q16: Do you think that the current scope of the ROIE regime is appropriate from a market participant's point of view?

Q17: Does the ROIE regime strike the right balance between regulatory oversight by the FCA and reliance on substituted compliance?

Q18: Are there any other aspects of the ROIE regime that you think need to be changed in the light of market developments and the evolution of trading technologies?

Q19: There is an overlap between the ROIE regime and the OPE. Firms are invited to comment on their choice of access route and the reasons why they chose it.

HM Treasury

Call for Evidence - Processing of Personal Data

This notice sets out how HM Treasury as the data controller, will use your personal data for the purposes of Overseas Framework: Call for Evidence and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.

Legal basis of processing

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this Call for Evidence the task is consulting on departmental policies or obtaining opinion data in order to develop good effective government policies.

Special categories data

Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

This function is consulting on departmental policies, or obtaining opinion data, to develop good effective policies.

Purpose

The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

Information provided in response to a Call for Evidence may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within other public bodies involved in this Call for Evidence to assist us in developing the policies to which it relates (including with the Bank of England, Financial Conduct Authority and Payment Systems Regulator). Examples of these public bodies appear at: https://www.gov.uk/government/organisations.

HM Treasury

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

Personal information in responses to a Call for Evidence will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.
Personal information in responses that is not published will be retained for three calendar years after the Call for Evidence has concluded.

Your Rights

- *You have the right to request information about how your personal data are processed and to request a copy of that personal data.*
- *You have the right to request that any inaccuracies in your personal data are rectified without delay.*
- *You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.*
- *You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.*
- *You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.*
- *You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.*

How to submit a Data Subject Access Request (DSAR)

To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11
1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.
If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

HM Treasury

Contact details

The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
London
020 7270 5000
public.enquiries@hmtreasury.gov.uk

The contact details for HM Treasury's Data Protection Officer (DPO) are:

The Data Protection Officer
Corporate Governance and Risk Assurance Team
Area 2/15
1 Horse Guards Road
London
SW1A 2HQ
privacy@hmtreasury.gov.uk