Electronic Money Association
Crescent House
5 The Crescent
Surbiton, Surrey
KT6 4BN
United Kingdom
Telephone: +44 (0) 20 8399 2066
www.e-ma.org

Alexander Byron
Senior Policy Advisor - Payments
HM Treasury
1 Horse Guards Road SW1A 2HQ

24 October 2022

Dear Alexander

Re: EMA response to HMT Payments Regulation and the Systemic Perimeter: Consultation and Call for Evidence

The Electronic Money Association (EMA) has been representing electronic money issuers and payment service providers in the UK for over 20 years. Our members include leading global payments and e-commerce businesses, providing online payments, e money wallets, cryptoasset services, TPP and online banking payments, card-based products, electronic vouchers, and mobile payment instruments. A list of current EMA members is provided at the end of this document for reference.

Thank you for taking our comments into consideration.

Yours sincerely,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA response to consultation

1 Do you agree that in line with the principle of 'same risk, same regulatory outcome', the Bank of England should have responsibility for supervising systemic actors within payment chains?

We do not object to the principle 'same risk, same regulatory outcome'. However, in this case, the key issue is whether the risk being addressed by the proposed regime is the same i.e. whether or not the market actors that are contemplated under the extended regime are indeed systemic. In this regard the not yet specified criteria for the recognition of market actors as systemic are of key importance. We elaborate further in our response to question 2.

2 Do you agree with the government's approach that the existing architecture of Part 5 of the Banking Act 2009 should be reflected in any expansion in the scope of Bank supervision – with criteria to determine systemic importance, and recognition by the Treasury?

We agree that responsibility for systemic risks and their mitigation should be with the Bank of England, including risks related to new market actors within payment chains who are deemed to be of systemic importance. We also concur with HMT's analysis that the more recent developments in the payment landscape, the evolving payment ecosystems and corresponding changes to the payment chains, have to be taken into account and warrant monitoring going forward. Over time these new market actors - to the extent they are providing critical services - may indeed pose systemically relevant risks. However, we query whether expanding the perimeter of Part 5 of the Banking Act in anticipation of what appears at present to be a hypothetical systemic threat may be regarded as premature. We would welcome further clarity from HM Treasury on what it deems to be the systemic risks in the current market that require immediate action by extending this regime.

In any case, in the absence of a much clearer indication of the targeted perimeter, we find it difficult to comment on the potentially covered new market actors and the kind and size of critical services that may make them candidates for recognition as systemic. As it is difficult to understand the urgency behind the need to provide the Bank with the proposed new powers in the immediate future, it is imperative to provide market participants with further detail around the circumstances under which these powers are meant to be exercised, including hypothetical examples. This will give market participants the opportunity to provide meaningful feedback before the proposed changes are enshrined in legislation. It would be helpful, in particular, to further develop and quantify (where possible) the criteria for recognition as systemic. As discussed in the CP, this could draw on the currently applicable criteria set out in section 185 (2) of the Banking Act. It would also be helpful to develop not only the quantitative criteria but also the more qualitative criterion of substitutability, which may be of critical importance in determining whether a market actor, given the competitive landscape and the presence of alternative service providers, would be regarded as systemic or not. We do not think that the proposed expansion of the perimeter of Part 5 of the Banking Act can be pursued in a meaningful

manner without further developing an understanding of, and a formal consultation on, the criteria that will guide the designation of market actors as systemic.

Finally, we would draw HMT's attention to a likely inadvertent but possibly significant extension of the scope of the proposed new powers implied in the sentence on page 7 and 8 of the CP. The sentence reads: "*A recognition-based model also ensures proportionality and that only entities that are judged to be systemic or likely to become so, are brought within the Bank's regulatory remit*". In contrast, we understand that only entities that are judged as currently being of systemic importance (applying clear criteria) will be captured within the expanded perimeter, not entities that are judged to be *likely* to become systemic in the future. Extending the scope to entities that are only *likely* to become systemic would be disproportionate, and would not be in line with the principle of 'same risk, same regulatory outcome' since it would draw market actors into the expanded Part 5 perimeter that are not (yet) systemic and may never become systemic, and could amount to predetermination.

3 Do you agree with the government's approach to supervising different types of systemic service provider described above?

It is difficult to respond to this question without more detail regarding which kind of service providers, based upon what quantitative and qualitative criteria, might be designated as systemic.

4 Do you agree that general IT and technology firms should typically fall within the critical third party framework instead of the Banking Act, and do you have views on if the current reference to these entities in the Banking Act should be modified, and how?

Yes, we concur with the government's view that general IT and technology firms should typically fall within the critical third party framework instead of the Banking Act.

5 Do you agree with the government's view that the Bank should have the ability to gather information for the purposes of keeping markets under review from the perspective of understanding systemic risk, in the way proposed above? Are there any features that you consider would be important for this to be an effective and proportionate power?

We acknowledge the need for the Bank to monitor developments in payment markets and have up to date information on whether new evolving payment chains and related individual market actors outside the current scope of Part 5 are becoming systemically relevant. A comprehensive analysis and understanding of payment markets will be vital to assist HM Treasury when considering recognition of market actors as systemic under the proposed new regime. Up-to-date market data will be needed to ensure that the systemic relevance of market actors is assessed properly and in a timely fashion.

However, any new powers conferred on the Bank to request information for such monitoring purposes should be subject to strict proportionality. The information objective, the likelihood and potential impact of the systemic risks giving rise to the request, its proper targeting and timing, must all be commensurate with the reporting costs that firms will incur. A remote possibility of systemic risk must not give rise to demanding and costly data requests.

In particular, any related power given to the Bank should be subject to strict subsidiarity. The Bank should only be allowed to issue a data request if it provides evidence that the data provided by firms as part of mandatory regulatory reporting (both periodic and ad hoc) and available to be shared by the FCA or other regulatory authorities is insufficient for the Bank's monitoring of systemic risks as they relate to the evolving payment chains. We therefore urge HMT to incorporate an obligation on the Bank to carefully consider and be able to explain, prior to any data request, the information objective, the underlying rationale, and its proportionality. Such a requirement for specific justification of information requests would also be beneficial in introducing an intellectual discipline when shaping, formulating, and issuing such information requests.

At the same time, interaction between the Bank and the addressees of information requests should not be limited to the firm-specific level of assessing systemic risks. In our experience it can be of great assistance to carry out formal and/or informal consultation with information request recipients in order to inform any information requests. This provides the opportunity for recipients to clarify the information objective of the information request, to flag any issues in terms of how the information is being requested, and also, as the case may be, agree a realistic and convenient timeframes for the provision of information. Communication prior to the issuing of information requests can contribute significantly to the efficiency, accuracy and speed of response, and to the well-informed interpretation and validation of information provided to the Bank.

In summary, we believe the importance of carefully designing the process of developing and formulating information requests in cooperation with, and after consultation of, the industry cannot be overestimated. In particular, the process should be sufficiently flexible to respond to issues related to firms' internal data systems and related reporting processes and capabilities. Such issues will inevitably occur where the Bank's requests are targeted at information outside the perimeter of data capture and processing firms have to set up for mandatory regulatory reporting.

6 Do you agree with the government's proposal to clarify the Bank's ability to apply limits where necessary for recognised entities within an expanded regulatory perimeter; to specify the circumstances in which they may be relevant; and views on what those circumstances might be?

This appears to be a very wide reaching power, with the potential to introduce significant asymmetries in the market. There is therefore a need for guidance on how these powers will be used and we consider such guidance should be consulted on prior to the introduction of these powers.

Please see our comments in response to Question 8 for further detail.

7 Do you consider that providing greater clarity as to the nature of the Bank's supervisory powers would provide greater transparency? If so, do you have views on how this should be provided, for example directly in the legislation, or as a supplementary annex, or in some other form?

We agree that it would be helpful to provide greater transparency around the Bank's powers and the designation process. It would be preferable to provide this clarity in a non-legislative form, thus enabling greater transparency and consultation, whilst also maintaining flexibility for the BoE and HMT.

Please see our comments in response to Question 8 for further detail.

8 Do you agree with the government's proposed approach to requirements for establishment under the Banking Act and the rationale provided? What are your views on the adequacy of the existing requirements under the Payment Services and Electronic Money Regulations?

The issues raised in questions 6 to 8 regarding clarification in legislation or otherwise of the Bank's powers, including its ability to apply limits to the business activities of recognised systemic entities, are closely related and are addressed jointly in the comments below.

Regarding the nature and scope of the powers to be conferred to the Bank, we agree to the proposed approach of creating a regime that is consistent with the wider FRF Review. It would be prudent to provide clarity on these powers, at least in terms of basic principles, directly in legislation. The regime should also specify the areas that will be left to the Bank for the setting of firm-facing standards. The related non-exhaustive list in point 2.26 of the CP provides a helpful indication of key areas the Bank's standards should cover, which, we agree, should include:

- entities' legal and operational structure, including its establishment and relationship with the wider group;
- their management, governance, risk management and operational processes; and
- the applicable prudential requirements, including capital and liquidity management.

Given that incorporating a non-exhaustive list in legislation is not an option, the proposed regime should specify in suitably general language all areas where the Bank will have standard-setting powers, and the underlying basic principles and objectives. At the same time, it should set out in sufficient detail the process for the setting of standards by the Bank, including the applicable consultation procedures. Also in this regard we welcome the government's commitment to developing a regime that is fully consistent with the wider FRF Review.

In terms of desirable clarity and transparency, we would highlight that the more the Bank's standard-setting powers are intrusive (and/or allow for intrusive firm-specific measures) affecting and constraining firms' business activities, the more they need to be specified directly in legislation in relation to both scope and standard setting processes. This should apply not only to any

ema

prudential requirements related to firms' capital and liquidity but also, and even more so, to the potential business limitations the CP is proposing.

Moreover, we do acknowledge that the provision of critical and systemically relevant services by private companies may call for public intervention and, as the case may be, firm-specific measures by the Bank. However, as elsewhere in financial regulation, proportionality and a risk-based approach should also apply to any powers conferred on the Bank, to specific standards it will be mandated to set, and to any firm-specific measures it may eventually take. The related powers, standards and measures should aim primarily at ensuring firms' capacity to mitigate and/or absorb risks. Accordingly, in terms of proportionality, we consider that prudential requirements should take precedence, including risk management, capital, and liquidity requirements. Direct limitations of firms' business activities as discussed in the CP should be considered only as a last resort in extreme cases and should be subject to specific requirements spelt out as clearly as possible in legislation.

More generally, we believe further analysis of the evolving new payment chains is needed in order to develop a better understanding of the systemic risks that they, the involved market actors, and the interaction between the different participants across the payment chain may pose. A particularly thorough analysis is warranted in particular since the proposed regime will go beyond the traditional boundaries of financial sector regulation. It would complement the hitherto primarily firm-specific perspective of regulation addressing systemic risks associated with the business activities of authorised providers of financial services (potentially including providers of related critical non-financial services) by a regulatory approach targeted at systemic risks associated with payment chains, the related network effects, and specifically at the business activities of non-authorised providers of related critical non-financial services.

The CP highlights that the proposed regime is meant to respond to "*the proliferation of new services, and greater interconnectivity within the payments sector*", which "*have transformed how risks are spread across payments networks*" (p.2). It aims at addressing systemic risks related to "*substitutability problems or network effects for payment chains or the wider economy*" (p. 17). Accordingly, the CP states that "*if the Bank is going to take on greater responsibility for supervising risk across the payment chain, there is a rationale to giving the Bank broader information-gathering powers in order for it to be able to assess market risk more holistically and evaluate the market for which it is responsible.*" However, we consider that a holistic assessment and analysis of potentially systemic payment chains must occur prior to, and should be use to inform, the proposed new and expanded regime. This assessment should not only explore potential systemic risks as posed by the new payment chains and the complexities of related network effects. For a truly proportionate and risk-based regulatory approach it will be important to also understand and evaluate if and to what extent the efficiency and safety gains of the evolving new payment chains and networks may help mitigate systemic risks and hence present a welcome upside.

In particular, HM Treasury should be mindful of the potential adverse consequences of redrawing the systemic perimeter for healthy competition in payment markets. Such compeition can contribute to additional choice by innovative new payments solutions that EMIs and PIs are providing, thus additional substitutability and hence mitigation of systemic risk. These markets are considerably more diverse and competitive than the landscape of payment systems currently

subject to the Banking Act framework, and thus may well offer the welcome systemic upside HMT should foster. This upside may well be jeopardised if the ability of a newly-designated entity to compete effectively with non-designated entities operating in the same markets were compromised by the additional costs of doing business they will likely have to bear (especially if moving from single to dual regulation) and the new restrictions to their activities they may face.

The risk-based and proportionate regulation that would truly comply with the principle of 'same risk, same regulatory outcome', will have to be based upon a balanced assessment of the risks it is designed to address, and any mitigating effects of the developments in payment markets to which it is designed to respond. Pending a more in-depth analysis of the evolving new payment chains, we believe that by providing choice and substitutability they rather *contribute to the mitigation* of systemic risks rather than creating new systemic risks that warrant legislative action.

We do not think that the more recent developments regarding value chains and new market actors in payment markets suggest a need for review, let alone reform, of the current regime. Part 5 as applied by the Bank has worked well. Accordingly, we agree with HM Treasury's general approach of leaving the Part 5 regime untouched. However, we do wonder whether the expansion of Part 5 to the new market actors is the right regulatory response to these more recent developments, which, in terms of changes of traditional value chains have not just affected payment markets but financial markets much more generally. Accordingly, a broader assessment, which as mentioned above we believe is still outstanding, should explore whether these fundamental changes to value chains across financial markets, including key banking services, call for a more holistic and integrated regulatory approach. Instead of targeting specific non-regulated providers of critical services, it would be preferable to formulate risk management and governance requirements that address financial services value chains in a more holistic and integrated fashion. Within this broader context, a more in-depth analysis is required in order to identify the powers that are needed to address and mitigate related systemic risks in payment markets in the most effective and proportionate manner.

In summary we remain unconvinced that a simple extension of the Part 5 perimeter combined with the application of the traditional, financial sector-specific regulatory regime to, so far, un-regulated market actors - providing critical but non-financial services for (one or) more than one payment chain - is the most sensible and effective regulatory approach. As mentioned before, the necessarily holistic analysis of payment markets cannot be left to ongoing market monitoring by the Bank once the new regime has been passed. It is needed now in order to inform the pending review and help deliver a regime that is sufficiently forward-looking and agile to address the evolving, and, ideally, further iterations of payment markets. It should anticipate to the extent possible innovations of payment chains and related network effects, and, at the same time, be consistent with regulatory responses to changes of value chains elsewhere in financial markets. These changes call for a more holistic and integrated regulatory approach not just with regard to payment chains and the involved market actors but also with regard to the third party regulatory framework for financial services that has been created recently.

Accordingly, as set out before, we consider legislative action to be premature and urge HM Treasury not to pursue its regulatory intentions without a prior, more in-depth analysis of the

evolving new payment chains, the complexities of related network effects, and the systemic impact in terms of heightened or possibly even mitigated systemic risks. At this stage it is unclear to us which market actors would fall within the expanded perimeter, the criteria for their recognition as systemic, and whether at this stage the potential candidates HM Treasury may or may not have in mind are anywhere close to posing systemic risks that warrant legislative change and the introduction of new, far-reaching powers being conferred on the Bank. We also believe that this analysis should be part of a broader exercise looking at how regulation should respond in an effective and consistent manner to the ongoing changes of value chains in financial markets well beyond payments.

Location requirements:

Regarding more specifically the location requirements discussed in the CP we do welcome the government's intention

- not to create an automatic or ex ante location requirement for an entity recognised under the Banking Act to be established in the UK, and
- to clarify in the legislation that the Bank has the ability to apply such a requirement where it deems this necessary as part of its role in overseeing the risk posed by a particular recognised entity's operations.

In our view the approach to location requirements should follow the framework already established for EMIs and PIs under the PSRs and EMRs. Accordingly, the possibility under the EMRs to authorise a 3rd country body corporate to engage in the issuance of electronic money through the operation of a branch located in the UK should be retained. The same

should apply for the provision of payment services through a branch located in the UK. We cannot see any justifiable reasons for differentiation and any existing inconsistencies in this regard should be removed.

At the same time we acknowledge that the FCA should have discretion to require the setting up of a body corporate in the UK, if deemed necessary, in particular with a view to the protection of consumers. However, the related conditions should be set out clearly in legislation.

Authorisation and supervision of domestic branches of 3rd country banks and other financial institutions is a globally well-known and wide-spread feature of national regulatory systems. However, the regulatory and supervisory approach to authorised branches has to address the specific features of branch operation including in particular the branch governance and the role of the head office abroad. Drawing on the UK approach to the regulation and supervision of branches of 3rd country banks, the basic regulatory and supervisory principles should be set out in legislation. In this regard, we would be keen to learn how the government would envisage addressing any senior management requirements applicable to branch operations.

Legislation should also address the question raised in the CP as to when business is conducted and hence should be regulated and supervised in the UK. However, given the rapid, technology-driven change of how, and through which channels, financial services are being provided and financial products delivered across borders, legislation should only set out the basic principles.

Developing the details of how such principles are to be applied in practice should be left to regulatory authorities.

If, in line with government's intentions, branches of 3rd country body corporates can, and be authorised to, engage in regulated financial activities, it would be obviously inconsistent to require for activities subject only to registration the setting up of a body corporate in the UK. Accordingly, legislation should allow, where applicable, for registration of 3d country body corporates and their UK branches.

9 Do you support the co-supervisory model proposed between the regulatory authorities, allowing the Bank of England to take primacy for systemic entities for reasons of financial stability? Do you support the principle of the primacy of the FMI SAR for systemic payments entities?

We support the co-supervisory model proposed between regulatory authorities in general, in order to allow the Bank of England to supervise stablecoin issuers or providers classified as having systemic importance.

We would request clarification on the process and criteria under which stablecoin issuers and service providers will be designated as "systemic". We also seek clarity around the boundaries and responsibilities of the individual regulators within the co-supervision model, and the data reporting obligations on firms. It is important that regulators cooperate with the sharing of already reported data, as per our comments in response to Q5.

We agree that the FMI SAR should take primacy in the event of insolvency of a systemic payment entity, particularly with the planned introduction of the additional objective to focus on the return of customer funds. This is a welcome development, and should increase consumer trust and certainty.

We would welcome further information around the process and considerations that the Bank of England will have to direct administrators as to which objective (service continuity or return of customer funds) will take priority in the event of insolvency. We would also seek clarity around the extent to which the FCA will be involved in this process, given that it is the current supervisor of cryptoasset businesses management of the risk of money laundering and counter-terrorist financing, and is the designated authority responsible for establishing a new authorisation and supervision regime for stablecoins and their use as a means of payment.

10 Do you consider that the government should apply the FRF accountability framework to the Bank of England in its supervision of a wider payments perimeter?

Yes. However, we believe that if the Bank of England's supervisory mandate is extended, potentially to entities falling within the co-supervisory model, the Bank's primary financial stability objective should also be informed by its secondary objective for competitiveness.

11 Do you have views on the government's proposed approach to aligning the FRF Review with the regulatory landscape for payments?

We believe that there is no alternative option to the government's proposed approach.

12 Do you think that the Senior Managers & Certification Regime should apply to recognised payments entities within the Bank of England's regulatory perimeter, including if this is expanded?

On the basis of 'same risk, same regulatory outcome' principle – yes. The application of SM&CR to firms subject to Bank's regulatory perimeter, including with regard to firms recognised as systemic under current proposals, should be based on legislation (rather than Bank's discretion to impose firm-specific requirements) to provide consistency, clarity and level playing field.

13 Do you consider that a SM&CR regime would be beneficial within the FCA's sphere of supervision, and on what basis?

Extending the SM&CR to the e-money and payments sector within the FCA's sphere of supervision would bring the electronic money institutions (EMIs) and payment institutions (PIs) within the scope of the SM&CR.

Without any detail on what the SM&CR would entail specifically for the EMIs and PIs, it is difficult to comment on its appropriateness and/or the implications for the e-money and payments sector. We would welcome further clarity and detail on the proposed application of SM&CR to EMIs and PIs; any concrete proposals should be subject to further public consultation.

In the absence of any concrete detail and drawing from the examples of current SM&CR requirements for FCA solo regulated firms, we believe that extending SM&CR to EMIs and PIs could be disproportionate considering the factors outlined below.

Risk-based outcomes

The principle of 'same risk, same regulatory outcome' should equally apply in considering the appropriateness of extending the SM&CR to EMIs and PIs. We do not believe that the risks associated with the e-money and payment services sector necessarily justify the extension of the SM&CR to EMIs and PIs.

The risks associated with e money issuance and/or providing payment services are different and, in our view, much lower than the risks associated with other types of financial services, such as lending or engaging in investment activities. E-money is a prepaid instrument/value used for payments, whereby e-money holders have a right to redeem e-money, at par value. PIs can only receive funds from users for the execution of payments in accordance with the user payment instructions, and some payment services (for example, account information services) do not involve the receipt of any customer funds at all. Funds received in exchange for e-money or in relation to payment services must be safeguarded, ensuring protection of those funds, including in the event of insolvency of an EMI/PI. The regulatory regime as applied to EMIs and PIs should be proportionate to the risks associated with their services. The e-money and payments sector

covers a heterogenous group of firms, varying in their size and scale of activities. The size of (some) EMIs and PIs should not be the sole justification for applying the SM&CR to the sector.

Existing regime for EMD/PSD Individuals

Directors and other managers responsible for the management of e-money and/or payment services business of EMIs and PIs are already subject to supervisory requirements (including fitness and propriety assessments) and the FCA's disciplinary powers pursuant to the Electronic Money Regulations 2011 (EMRs) and the Payment Services Regulations 2017 (PSRs). These directors and managers are referred to as 'EMD Individuals' (for EMIs) or 'PSD Individuals' (for PIs).

EMIs and PIs are required to satisfy the FCA that EMD/PSD Individuals are of good repute and possess appropriate knowledge and experience[11], both at application for authorisation or registration and whenever EMD/PSD Individuals change. This includes confirmation by EMIs and PIs to the FCA, on the basis of due and diligent enquiry, that EMD/PSD Individuals are fit & proper and competent to fulfil their duties. If the FCA has concerns about EMD/PSD Individuals (e.g. as regards their fitness and propriety), it has powers to vary or impose conditions to the authorisation or registration of the EMI or PI or, ultimately, take action to cancel it[2].

Further, the FCA has disciplinary powers and can take a direct enforcement action against EMD/PSD Individual if the individual is found to have been knowingly concerned in the firm's breaches of the EMRs and/or PSRs[3].

The EMA would welcome further clarity, given the existing regulatory framework, regarding specific issues the extension of the SM&CR to EMIs and PIs is intended to address. If SM&CR was to be introduced, further clarity is needed on how the EMD/PSD Individual and SM&CR regimes would interact with each other in the event they were both to apply. Further, any proposals for SM&CR application to EMIs and PIs should be accompanied by a robust cost-benefit analysis.

Additional regulatory burden at the time of significant regulatory change

SM&CR would impose an additional regulatory burden on EMIs and PIs. For example, it is expected that this would include a more formal process in seeking senior management approval from the FCA as well as annual fit & proper certification and training requirements. Putting in place compliance with these requirements will require firms to invest time and resources - there should be a clear benefit to extending the SM&CR requirements to justify the additional burden.

The SM&CR changes would also come at a time where EMIs and PIs are already having to tackle a significant amount of regulatory change resulting from Brexit and evolving FCA's policies and

---

[1] Regulation 6(6)(b) of the EMRs; Regulation 6(7)(b) of the PSRs.

[2] Regulations 10 and 11 of the EMRs; Regulations 10, 12 of the PSRs.

[3] Schedule 3, paragraph 1 of the EMRs; Schedule 6, paragraph 1 of the PSRs.

requirements. The anticipated repeal and replacement/amendment of the EMRs and PSRs pursuant to the recently introduced Financial Services and Markets Bill and the implementation of the new Consumer Duty are just some of the examples of such regulatory change. In summary, in the absence of a risk and/or evidence-based justification for extending the SM&CR requirements to EMIs and PIs, we believe it may not be appropriate to introduce additional changes by extending SM&CR to EMIs and PIs at this time.

Impact on competitiveness and ability to grow

EMIs and PIs are an important part of the UK's Fintech sector, which includes start-ups and smaller firms with limited resources, operating in a highly competitive environment, including as regards talent acquisition. For example, it is not uncommon for such firms to be managed by, at least initially, a small number of directors and managers performing multiple roles. The senior managers within EMIs and PIs come from various backgrounds, i.e. not exclusively with the traditional financial services experience, which contributes to their ability to innovate. It is also not uncommon for EMIs and PIs to pool their expertise and resources group-wide, particularly after Brexit, with senior management roles being performed by managers based outside of the UK.

We are concerned that the additional requirements imposed as a consequence of SM&CR on EMIs and PIs could impact the availability of, and consequently the ability to attract and retain suitably qualified staff for senior management roles. In other EU jurisdictions that already have a similar regime to the SM&CR for EMI and PIs, including strict location requirements, the Fintech, EMI and PI industry experiences great difficulty attracting and retaining talent, so much so that the government has had to get involved.

to a delays to significant changes caused by administrative delays The FCA is currently regularly unable to meet core SLAs for EMD and PSD Individual applications, which are taking months to complete. If the FCA is unable to manage the lighter touch EMD Individual regime in an efficient and timely manner, it is questionable whether they would be able to deal with the higher volume of applications that the extension of the SM&CR to EMIs and PIs will necessarily entail. Firms in this sector must be agile in order to remain competitive, and this extends to their ability to hire new senior individuals. Administrative delays such as these can have an impact on a firm's ability to hire and retain senior management personnel throughout the application process.

It is important to ensure that the regulatory environment supports the ability of EMIs and PIs to grow and compete with other, more established players, both in the UK as well as in the international context. The 2021 Khalifa Review of UK Fintech[4] acknowledged that a core component of the UK's "levelling up" agenda would need to be met by addressing the Fintech skills and talent gap in the UK.

[4]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978396/KalifaRe viewofUKFintech01.pdf

If SM&CR were to be extended to EMIs and PIs, we urge the government to ensure that the proposed regime is proportionate and tailored to the e-money and payments sector. This would involve, at minimum, ensuring that:

(i) SM&CR does not result in the need for EMIs and PIs to create and/or employ for additional senior roles or to relocate senior management roles to be UK-based. As mentioned above, smaller firms are often characterised by a small number of directors and other senior staff who may be performing multiple roles. They may not have the resources for, or their size may not necessitate nor justify, employment of additional senior managers for dedicated roles. Further, EMIs and PIs often leverage the group-wide resources and experience, whereby senior management roles might be located outside of the UK. The SM&CR requirements should allow for flexibility in how EMIs and PIs organise themselves and allocate responsibilities. Assuming the required senior management and/or certification functions for EMIs and PIs were to be designated by the FCA, such designations should reflect the currently existing roles and allow for sharing of responsibilities. For example, it may not be appropriate to apply the FCA's requirements on Prescribed Responsibilities to EMIs and PIs, which generally require that each Prescribed Responsibility is held by one person. Further, it is important to ensure that the SM&CR does not result in a requirement for the senior management roles to be located in the UK.

(ii) existing EMD/PSD Individuals are automatically recognised as approved by the regulator for the relevant senior management roles. This takes into account that EMD/PSD Individuals would have already been assessed, including by the FCA, for their fitness and propriety. Any requirement to apply for new approvals would waste valuable time and resources and could create bottlenecks in the FCA's approval process.

(iii) any specific proposals as regards the application of SM&CR to EMIs and PIs are subject to public consultation and an adequate transition period before any such requirements come into force. This consultation does not provide any substantive detail on what the SM&CR would look like for EMIs and PIs in practice. It is essential that the industry is allowed to evaluate and consider any detailed proposals and respond accordingly. Further, a transition period would be needed to allow EMIs and PIs sufficient time to plan for and implement compliance with the new requirements.

14 Do you agree with the government's proposals to simplify the regulatory regime governing access to payment systems?

We agree with the government's proposals to simplify the regime governing access to payment systems.

The open access regime under the PSRs 2017 applies to players across the board, irrespective of their size and whether or not their infrastructure is essential for other players, whereas the FSBRA regime more closely reflects the original objectives of the open access rules: the scope is

ema

limited to FSBRA designated entities and thus entities which have been found to offer essential infrastructures. We think this is the right approach.

Please note however that whilst the EMA supports repealing regulations 103 and 104 of Part 8, it does not support repealing regulation 105 of the PSRs, on the application of POND criteria to PSP access to payment/bank accounts.

15 Do you consider that there is merit in the PSR being able to impose a penalty on designated systems and their participants for 'misleading information', where a person knowingly or recklessly provides the PSR with false or misleading information? Do you have any views on what would be a fair and effective route of appeal?

We do not consider there is merit in giving the PSR the power to impose a penalty in relation to misleading information, as this is primarily a supervisory function that is already held by the FCA. It is not clear why the PSR should also be given this power; this risks duplication of effort. There should only be repercussions if an entity is compelled to provide information pursuant to s 81 FSBRA notice and it does not do so or provides false information in that context.

16 The government would welcome views on any of the issues identified above in relation to the operation of FSBRA.

[Note: No EMA comment so far. EMA members wishing to make a comment here are invited to respond.]

Members of the EMA, as of October 2022

AAVE LIMITED
Account Technologies
Airbnb Inc
Airwallex (UK) Limited
Allegro Group
Amazon
American Express
ArcaPay Ltd
Azimo Limited
Banked
Bitstamp
BlaBla Connect UK Ltd
Blackhawk Network Ltd
Boku Inc
Booking Holdings Financial Services International Limited
CashFlows
Checkout Ltd
Circle
Citadel Commerce UK Ltd
Contis
Corner Banca SA
Crypto.com
Curve
eBay Sarl
ECOMMPAY Limited
Em@ney Plc
emerchantpay Group Ltd
Etsy Ireland UC
Euronet Worldwide Inc
Facebook Payments International Ltd
Financial House Limited
First Rate Exchange Services
FIS
Flex-e-card
Flywire
Gemini
Global Currency Exchange Network Limited
Globepay Limited
GoCardless Ltd
Google Payment Ltd
HUBUC
IDT Financial Services Limited
Imagor SA
Ixaris Systems Ltd
MANGOPAY
Modulr FS Europe Limited
MONAVATE
Moneyhub Financial Technology Ltd
Moorwand
MuchBetter
myPOS Payments Ltd
NOELSE PAY
NoFrixion Ltd
Nuvei Financial Services Ltd
OFX
OKTO
One Money Mail Ltd
OpenPayd
Own.Solutions
Park Card Services Limited
Paymentsense Limited
Paynt
Payoneer Europe Limited
PayPal Europe Ltd
Paysafe Group
Plaid
PPRO Financial Ltd
PPS
Ramp Swaps Ltd
Remitly
Revolut
Ripple
Sable International FX Limited
Securiclick Limited
Skrill Limited
Soldo Financial Services Ireland DAC
Square
Stripe
SumUp Limited
Syspay Ltd
Transact Payments Limited
TransferMate Global Payments
TrueLayer Limited
Trustly Group AB
Uber BV
Vitesse PSP Ltd
Viva Payments SA
Weavr Limited
WEX Europe UK Limited
Wirex Limited
Wise
WorldFirst
WorldRemit LTD
Yapily Ltd