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Joint Regulatory Oversight Committee (JROC)

Sue Rossiter,

Open Banking Policy

Financial Conduct Authority

12 Endeavour Square London

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Submitted by email to: jroc@fca.org.uk

20 May 2024

Dear Sue,

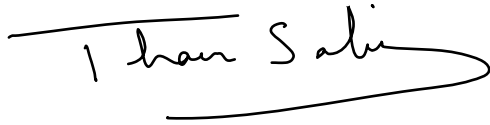
EMA response to JROC's proposals for the design of the Future Entity for UK open banking (April 2024)

The EMA is the EU trade body representing electronic money issuers and innovative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, mobile payments, merchant acquiring services, and increasingly payment initiation services (PIS) and account information services in the UK and globally. A list of current EMA members is provided at the end of this document.

The EMA joined the UK Open Banking initiative (OBIE) when it was established; representing non-bank payment service providers on the Implementation Entity Steering Group and participating at all levels of the programme as OB policy and standards have developed. We therefore very much welcome the opportunity to contribute to the next stage of Open Banking's development and respond to JROC's proposals for the Future Entity. We appreciate that JROC's proposals are focused on keeping up momentum in the market until the regulatory framework is in place to support a long-term operating model for Open Banking and beyond, and we propose some suggestions for ensuring that the entire ecosystem can move forward.

I would be grateful for your consideration of our comments that we have set out in our response below, and we are available to discuss in more detail at your convenience.

Yours sincerely,

A handwritten signature in black ink, which reads 'Thaer Sabri'. The signature is written in a cursive style and is underlined with a long horizontal stroke that extends to the right.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA responses

Future Entity

1. Do you agree with JROC's preliminary recommendation of the Future Entity being a company limited by guarantee? If not, what corporate structure would you recommend and why?

The EMA agrees with JROC's preliminary recommendation that the Future Entity could be a company limited by guarantee.

However, we note that in order for the Future Entity to be able to transparently act in the interests of the wider open banking ecosystem, further consideration needs to be given to its constitution (as anticipated by the DPDI bill's requirements for secondary legislation establishing 'interface bodies'). In particular, this should include the composition of the Board and decision-making procedures, including the role of each firm using the entity (or "members" of the entity).

JROC's recommendation for a tiered funding model may give rise to the emergence of a governance model where the largest firms (contributing the most) will have undue influence on the design and independence of the Future Entity, and thereafter have significant leverage over the Entity's decision making.

We therefore suggest that JROC's proposals for governance extend to include:

- Broader stakeholder representation on the Future Entity's Board to reflect the diverse nature of the ecosystem – large and small ASPSPs and TPPs, technical service providers, broad spectrum of "business" users etc.
- Equal weight in voting procedures for each Board member, and
- A permanent advisory committee to the Board that could consist of broader stakeholder representation.

We also urge JROC to further consider the role that member companies could play in the Future Entity's decision-making procedures, to ensure a fair and balanced approach to the Future Entity's strategy and operation. For instance, member companies could be afforded constitutional rights to appoint Board members, approve annual plans, and budgets. We appreciate that this would increase the operational complexity and costs of the Future Entity, but an expanded role of member companies could help ensure that all materially interested parties have the opportunity to participate. It may also increase interest from firms in participating in and contributing towards the entity.

2 Do you consider there to be a risk that the recommended funding model, and underlying principles, may unintentionally engender behaviours that are not in the best interests of the entire open banking ecosystem? If yes, how might these be mitigated?

Overall, the EMA supports in principle the high-level funding options as set out in paragraphs 2.40 – 2.46 of the JROC proposals, but recognises that there is still significant work to determine the final funding model. In particular, the lack of certainty regarding the role of the Future Entity and the long-term regulatory framework means it is difficult to fully assess if the funding options are appropriate. We also note that one aspect that has not yet been considered

is how the tiered model for recovering the fixed costs of the Future Entity will apportion costs when a participant is both an ASPSP and TPP.

Finally, we consider that the proposal for funding 'premium services' does give rise to the risk that larger ecosystem participants may be in a position to unduly influence whether or not a particular premium service is developed or not, simply by participating in the funding of an initiative or not. However, we believe this could be mitigated by a balanced governance of the Future Entity and, where necessary, regulatory intervention.

Interim Entity

3 Do you agree that the Interim Entity should be a subsidiary of Open Banking Limited? If not, what structure do you prefer? Please explain why.

The EMA strongly supports JROC's objective of finding an interim operating model which will enable the market to move forward with the JROC non-Order workstreams, including premium API services, while the long-term regulatory framework is put in place. We also recognise the challenges this presents within the current construct of OBL.

However, we are uncertain from the proposals why the creation of a temporary subsidiary entity is the preferred governance structure to enable the JROC workstream activity to be ring-fenced from OBL's on-going functions under the CMA Order. OBL already separates the functions of the Office of the Trustee, the services delivered to the OB ecosystem, and the development activity for the JROC workstreams.

The establishment of a temporary subsidiary will take time, and will not be complete before the voluntary funding model for the JROC workstream implementation activities has already begun. The market participants who are willing to provide temporary funding will be doing so with the knowledge that the OBL governance structure is initially as is, with the assumption the current OBL operating model of representation via advisory working groups and ecosystem consultation will continue, and that the wider (non-funding) OB ecosystem can benefit from the developments. In other words, voluntary funding will not initially guarantee any changes in participation and decision making.

If the rationale for establishing a separate Interim entity is so that it can establish the commercial framework for premium API services (notably the proposals for extending VRPs), this implies that it is the intention that the Interim entity can rapidly transition to become the Future Entity as soon as the regulatory framework allows. Otherwise, there is a risk of significant cost and disruption to any live premium API framework that is established between the set-up of the Interim entity and the Future Entity. However, it is not clear from the proposals whether this is JROC's strategy, and there is uncertainty that this could be possible until the future regulatory framework is finalised.

In the interests of maintaining the momentum on the JROC workstream activity that OBL has already undertaken, and assuming the temporary funding model is implemented, we consider the **most efficient approach would be to construct temporary governance structure within OBL** to take forward the JROC workstreams and build on the transition planning that OBL has already undertaken.

We consider that the temporary governance could take the form of a ring-fenced programme operated by OBL with its own budget and oversight by a steering committee comprising representatives from across the ecosystem, which reports directly to JROC. This would be a much quicker option leveraging on OBL's existing operations, and allow the Future Entity to be

established in parallel. We would welcome more information on why JROC has disregarded this as a viable option (as indicated in paragraph 1.19 of the Proposals).

The creation of the Interim entity as a 'shadow' Future Entity also implies that there is a risk that the long-term regulatory framework may take much longer to put in place than currently anticipated. If the likelihood of this risk is high, then we recognise and support the practicality that establishing an Interim entity may bring.

4 JROC is seeking input on the method of obtaining appropriate advice for the Board in the interests of the entire ecosystem, including consumers and businesses. Would this best be achieved through advisory groups, or would directors representing certain areas of the ecosystem work better? Please set out your preference and if you believe another mechanism should be explored, please explain what and why.

If JROC decide to establish a subsidiary Interim entity with an independent board, we consider that obtaining appropriate advice and representation from the entire ecosystem should be constructed in the same way as we suggest in our response to question 1. With both Board members representing all types of ecosystem participants (including consumers and businesses), and a permanent board advisory committee comprising stakeholders and representatives of the wider ecosystem.

Only with this type of structure can the interests of both the funding and non-funding ecosystem participants be represented to the Board in a balanced and proportionate manner. While we acknowledge this may increase the operating cost of the Interim entity, it will ensure that a fair and proportionate governance structure is implemented from the start as OB moves into its next phase.

Additionally, as there is a risk that the Interim entity could be in place for longer than currently anticipated, and therefore could become the de-facto Future Entity, it has to be established with ecosystem-wide representation in the decision-making governance and ensure that all ecosystem stakeholders have to opportunity to be heard in decision making processes so that the Entity can meet JROC's objective of enabling the Board to "act in the interest of the entire ecosystem".

5 Which option do you think is most appropriate for the appointment of the Board for the Interim Entity? Why do you think that option is preferable?

If JROC decide to establish a subsidiary Interim entity, then the procedure to appoint the Board must be closely aligned to that envisaged for the Future Entity to ensure independence and transparency of the selection process. Hence the EMA believes the Appointment Committee option is the preferred route.

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