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## CHAIRMAN'S COMMENTS

Dear Members,

I have the pleasure of introducing this edition of the AFEP newsletter which as ever provides members with invaluable guidance on regulatory developments and updates on association developments. In this edition we are able to provide an update on the new Payments Account Directive (2014/92/EU) which was adopted by the European Union on 28<sup>th</sup> August 2014 and must be transposed into local legislation by 18<sup>th</sup> September 2016. At first sight "PAD" seems to bear little relevance to our membership because its' focus is on making switching bank accounts easier. This is similar to the Current Account Switching Service which has already been voluntarily adopted by UK banks. However "PAD" has defined accounts to include payment accounts that have day to day use which could have important implications for some members. In this edition we have delved into the detail of "PAD" and provided our guidance on the scope so I urge you to read on. As ever we provide further updates on our recent meetings with the industry's regulatory bodies and future developments such as the release of the MiFID 2 delegated acts in September/October.

The main aspect to my introductory comments is to notify members of any association business and with it being our AGM month there are a number of important updates. I can confirm that this year we have a number of applicants put themselves forward to sit on the Executive Committee which is very encouraging. In addition to the proposed applicants, we had six existing Executive Committee members resign with three putting themselves forward for re-election. Due to a limit on the size of the Committee at twelve we were therefore in a position that we have asked members to nominate their preferred Committee members. The voting will take place in September and we will be able to confirm the final Executive Committee for 2015/16 in October. I would like to place on record my thanks to Robin McEwen, Alastair Constance and Nick Fullerton who have resigned from the Executive Committee and are not able to put themselves forward for re-election due to work commitments. All three have sat on the Committee for a number of years and made significant contributions to the development of the Association.

I can confirm that Francesca Maritan will be the new AFEP Chairperson for 2015/16 with myself standing down but retaining the role of Director of the association. As I commented upon at our recent AFEP member meeting in September, I could not think of anyone better to lead AFEP in the coming years. Francesca has been an active Committee member and associate member since its inception and she has wonderful ideas on how to develop and grow the association. Her passion for what AFEP has and will achieve knows no bounds and the association needs someone with that level of commitment to take on the challenging and time consuming Chairperson role.

For my part it has been both a pleasure and honour to have served as your Chairman for the past few years. I could not have maintained the role without the assistance of all the Committee members who I am indebted and importantly our wonderful Secretary, El Martin. I am delighted that the association has grown in members and associate members during this time and developed links with key external stakeholders. Whilst there are numerous challenges ahead our association is in a good place to overcome these challenges.

Jamie Cooke

**Chairman**

## Payments Account Directive (PAD)

The Payments Account Directive (PAD) sets common regulatory standards that member states are required to meet in order to:

- Improve transparency and comparability of fees related to payment accounts which are used for day-to-day purposes
- Facilitate switching of those accounts
- Ensure access to bank accounts with basic features.

All these benefits are for accounts held by consumers only. That is, micro-enterprises are out of scope.

The government is required to have implemented PAD in the UK by 18 September 2016. To achieve this the UK is aiming to finalise the measures needed to implement the directive by the end of 2015 and to lay the final legislation in Parliament in Autumn 2015.

Broadly the PAD imposes obligations on credit institutions to offer bank accounts with basic features. In the UK the Bank of England, NS&I, credit unions and municipal banks are definitely exempt.

For credit institutions and other payment account providers, the PAD will introduce standardised terms and definitions for the most common services linked to payment accounts. These will be standardised across the EU. This will facilitate clarity and ease of comparison for consumers.

Finally the PAD will establish switching requirements to enable consumers to be able to switch easily and places obligations on the old and new payment services providers.

The directive states that accounts which have very limited functions should be excluded from scope e.g.

- Savings accounts
- Credit card accounts
- Current account mortgages
- E-money accounts.

Conversely accounts used for day-to-day purposes and allow consumers to:

- Place funds on account
- Withdraw cash
- Execute credit transfers

are likely to be included.

AFEP is in discussion with the FCA and is following the progress of the consultation currently under way to determine impacts on any of our members.

## FX Forwards under MiFID II

On behalf of members, we have again been in contact with the FCA and HM Treasury regarding the current situation for FX forwards.

At the last meeting AFEP attended, the FCA outlined the background to their recent consultation meetings with the European Commission on MiFID II, which specifically focused on treatment of deliverable FX Forwards and the current UK “commercial purpose” exemption that applies under the UK Regulated Activities Order.

As reported last year, it is becoming increasingly likely that FX contracts used as a means of payment for goods and services will be carved out of MiFID II. It is expected that the European Commission will place a cap on long dated deliverable FX Forwards and define ‘commercial purpose/means of payment’ in more detail, and that deliverable FX Forwards that are longer than the ‘cap’ will be treated as investment products. Any deliverable FX Forward beneath the ‘cap’ that meets the tightened definition of ‘means of payment’ will still be considered outside the scope of MiFID II and, therefore, not an investment product.

In terms of what constitutes ‘means of payment’ it was indicated that any forward which is supported by an invoice would fall within the definition. FCA also indicated that corporate treasury management/hedging products would not meet the definition. FCA and HMT seem absolutely clear that the ‘cap’ and the redefined means of payment will come into force by 3<sup>rd</sup> January 2017 with MiFID II. The only issue at stake is the tenor of the “cap” (3/6/9/12 months) and what is defined as “means of payment”.

As far as any impact on members, clearly this would be driven by the new definitions above and some firms may be able to continue with the majority of their current business. It will also mean other members may need to seek investment firm permissions should they wish to offer corporate hedging services and/or long dated forwards.

FCA Authorisations have previously stated that FCA would not expect to receive any application for a regulated activity/instrument (e.g. non-commercial forwards) that has not yet been introduced into UK legislation, let alone consulted on. The last comment from the Head of Authorisations at FCA was that applications resulting from the application of new MiFID II requirements would be considered from Q1 2016 depending on EC/ESMA progress

Last week HMT confirmed that they are currently waiting for the Commission to adopt their delegated acts which will clarify the scope of FX contracts captured by MiFID 2. Until the Commission has done so it is difficult to assess the final position reached on this issue and whether further guidance may be needed. HMT are currently expecting the adoption of the delegated acts in either September or October 2015.

We will, of course, keep members posted of any developments in this area as they arise.

### Upcoming Member Meeting

**Wednesday 2<sup>nd</sup> December**

**Venue:** Field Fisher LLP, Riverbank House, 2 Swan Lane, London, EC4R 3TT

**Time:** 5.00pm

**Agenda:** To be confirmed closer to the time.