

Upcoming Member Meeting

5th September 2013

Venue: Maclay Murray & Spens
1 London Wall
EC2Y 5AB

Time: 5.00pm (Doors open at
4.30pm)

Programme:

AGM: Appointment of the AFEP
Director and confirmation of the
Executive Committee for the next
membership year.

Garry Hunter from FOS: Garry is the
ombudsman for the API industry
and will be talking about the role of
the ombudsman service, fees, types
and number of complaints they deal
with, fair and reasonable
jurisdiction and the role of the
ombudsman. Nick Fullerton will be
introducing Garry and fielding
questions. If you have any
questions you would like to submit
in advance please email either Nick
or me.

Ian Benson from MMS: Ian is a
partner at MMS and will be talking
about both FATCA (its impact on the
UK API industry) and EMIR
derivatives.

CONTACT US:

www.afep.org.uk

CHAIRMAN'S COMMENTS

Dear Members,

Let me begin by thanking everyone who attended our last member meeting at Barclays in June. By all accounts the meeting was a great success with a record turnout of members and associate members. Special thanks go to our guest speakers, Christine Andrews from DQM and Martin Griffiths of Barclays, who gave up their time to address the membership.

Whilst AFEP was launched in May 2012 the next members meeting represents the end of the first formal year for the Association. Accordingly our next meeting in September will also double as the formal Annual General Meeting. When the Association was launched the keynote speeches outlined the need for members to drive forward the development of AFEP and crucially become a recognised industry body. I am in no doubt that these objectives have been achieved and are reflected by the quality of the speakers at our member meetings.

Further recognition of the standing of AFEP was our attendance at the July Stakeholder Liaison Group meeting held with other members to discuss the implications of PSD 2. There has been much discussion on the implications of PSD 2 and the effects on foreign exchange firms. We have therefore provided a summary of the main changes that will affect our members in this newsletter.

The Executive Committee spent a significant amount of time during the summer reviewing the progress of the Association against their stated objectives. As a result of this review one area that they highlighted for immediate improvement was the Association website and members area. The Committee's Principle concern was that the existing website was not reflective of a professional organisation and the member's area was not user friendly. In light of this the Committee has approved a project to overhaul the existing website and create a members area that facilitates the flow of information to members and is easy to navigate. At our next members meeting I am delighted to announce that we will be able to present to members the new AFEP website and brand.

Finally I look forward to seeing everyone soon at our September members meeting which for the first time will be held in the City. The speaker panel that was chosen by the Committee again consists of industry and supervisory experts and the areas of discussion pertinent to current issues that the Committee feel are impacting on members.

Jamie Cooke

Chairman

HMRC Update

Supervisory Visits

As mentioned in our previous issue, further HMRC visits are proposed and we have reviewed data security arrangements with the supervisory team. A number of members have already had one or more of such visits. The Anti-Money Laundering Supervision Team is conducting ongoing assessments of firms through a series of 3 or 4 relationship visits per annum.

The subject of data security has arisen in relation to HMRC Inspectors removing client data from firm premises. HMRC inspectors are legally entitled to collect client personal data from an official supervisory visit. Currently they may record the data they request in notebooks and remove this information from the premises. As the data controller, you remain responsible for the security of the data you hold. At the point where HMRC takes possession of the information, it, (HMRC) becomes the data controller for that information and assumes all of the obligations and responsibilities that are laid down in the Data Protection Act 1998. These obligations cannot be amended or altered.

We have spoken with Chris McKenna, Head of AML Supervision Team who has confirmed that HMRC are happy to receive this data by any secure method in which we are comfortable to provide it. Please consider the use of:

- Encrypted Email for scanned documents
- Encrypted discs

If you are happy for officers to remove any documents from your business's premises following a visit, always obtain a receipt, (see last edition of AFEP newsletter for template Agreement for the Security of Data removed off site by HMRC as a result of a Supervisory Visit). On this we also spoke with the Information Commissioners Office. The ICO confirmed that under the Act, as soon as HMRC are in possession of the data, they assume all obligations for that data. Any unlawful use of client data from this point becomes the responsibility of HMRC.

HMRC have released fact sheets covering, amongst other things, supervisory visits. These are generic and may not reflect the specific approach taken for large businesses but worth taking a look at here:

<http://www.hmrc.gov.uk/mlr/aml-factsheets.htm>



35 Vine Street London EC3N 2AA
www.afep.org.uk

AFEP on LinkedIN

Jonathan Quin from the member firm World First recently posted a discussion on the AFEP LinkedIN page relating to members paying VAT to affiliates for referrals. There has been much discussion in the past on the issue of whether VAT should be charged to affiliates where they refer clients onto a foreign exchange firm. Jonathan has raised the issue directly with HMRC and received clarification for members. In summary foreign exchange firms should only be paying VAT to affiliates where they are registered for VAT. Your affiliate should issue an invoice for any referrals and including VAT if they are registered. If the affiliate is not VAT registered then you should not be paying VAT on the invoice. Jonathan has the full response from HMRC and if you wish to receive a copy please contact him through the AFEP LinkedIN site.

We would encourage all members to join the AFEP LinkedIN group and please post any discussion items.

The PSD2

Following approval by the European Parliament and EU Member States, the Payment Services Directive (“PSD”) is to be replaced by the PSD2. The PSD2 seeks to improve transparency, innovation and security in the market and create a level playing field amongst payment service providers. These proposals mark part of a general legislative shift towards enhanced consumer protection. Whilst foreign exchange providers are not expected to undergo significant substantial changes as a result of the legislation, it is advised that all those affected nevertheless remain aware of these developments and consequently implement the requisite technical and contractual changes to avoid sanctions under the PSD2. The main changes are summarised below.

PSD2 is currently at consultation stage and has to be formally approved by the European Parliament. We therefore do not anticipate PSD2 to be enacted before 2015.

- The scope of the PSD will be extended regarding the geographical areas and currencies covered. Transparency and information requirements will soon apply to so-called “one-leg transactions” where payment transactions carried out in the EU are made to third countries when only one of the payment service providers is located within the EU. Unlike the current PSD, applying solely to EU currencies, the PSD2’s transparency and information requirements will apply to all currencies.
- Under the PSD2, payment systems will have to implement objective, non-discriminatory and proportionate rules regarding access of authorised or registered payment institutions, these of which must not reach beyond that necessary to mitigate specific risks.
- New rules prohibiting surcharges will prevent payment service providers from requesting a charge from the payer, offering a reduction or steering him towards the use of a given payment instrument.
- Provisions on unauthorised payment transactions will also be harmonised. Save in cases of fraud or gross negligence, the maximum amount a payment user will have to pay will be reduced from 150 to 50 Euro.
- Refund rights for direct debit transactions have been clarified by the new legislation bringing this into line with the SEPA Core Direct Debit Rulebook. Refunds will be granted where the good/service paid for has not yet been consumed.
- The PSD2 will also address security aspects and aspects of authentication in line with the proposed Directive on Network and Information Security which will require payment service providers to report annually on incidents and risk management procedures for electronic payments.
- Payment service providers will be required to implement appropriate consumer complaint resolution procedures. This necessitates replying to customers in writing and addressing the issues within 15 business days.

FRAUD ALERT

In August an AFEP member kindly issued the following fraud alert to all members. The alert was emailed by El Martin to all members but a summary is provided below.

We have become aware that a client may be attempting to use currency brokers to defraud individuals of money. The individuals are encouraged to deposit funds (usually £2-10,000) into broker accounts as a third party payment, with instructions then given by the fraudsters to move the money on to other accounts, while the original payment was actually the result of some kind of deception. We are not yet convinced as to whether some of the transactions are genuine or all are fraudulent, but in the interests of protecting innocent third parties please be aware and apply enhanced due diligence to the following and any payments made to them or on their behalf:

Mr Matthew Suttill

And/or **Nationwide
Materials Ltd**

European Markets and Infrastructure Regulation (EMIR) Update

The European Union regulation on derivatives, central counterparties and trade repositories (EMIR) introduces new requirements to improve transparency and reduce the risks associated with the derivatives market. The new regulation requires entities that enter into any form of derivative contract to:

- (a) Report every derivative contract that they enter into a trade repository;
- (b) Implement new risk management standards, including operational processes and margining for all bilateral over-the-counter (OTC) derivatives, i.e. trades that are not cleared by a central counterparty (CCP);
- (c) Clear, via a CCP, those OTC derivatives subject to a mandatory clearing obligation.

The types of derivative contract falling within the scope of the EMIR are stipulated within the Markets and Financial Instruments Directive (MiFID) which is supported by FCA Perimeter Guidance.

The scope of derivatives which are covered by the Act include derivative instruments relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or measures, that may be settled physically or in cash; derivative instruments for the transfer of credit risk and financial contracts for differences.

The FCA has stipulated that the following instruments are outside the scope of the EMIR:

- (1) Forward foreign exchange instruments unless caught by the scope of the Regulated Activities Order (RAO);
- (2) A non-deliverable currency forward that is not a future for the purposes of the RAO because it is made for commercial purposes;
- (3) Spot transactions in both foreign exchange and commodities.

In light of these guidelines, we would encourage members to seek independent opinion on whether foreign exchange forwards fall outside the scope of EMIR and therefore the firm are not obliged to comply with the EMIR's obligations.

For those firms which do fall within the scope of the EMIR, it is advised that you ascertain to what extent you must adhere to the reporting, clearing and risk management requirements of the Regulation.

Seven Charged Following Investigation of Currency Exchange Firm

Seven people have been charged following the collapse of currency exchange company, Crown Currency Exchange Ltd, and associated companies, Crown Holdings Ltd and Mayfair & Grant.

Joint directors of Currency Exchange Ltd and Crown Holdings Ltd, Peter Benstead and Edward James, are alleged to have knowingly carried on a business for fraudulent purposes and falsified accounts. The companies' secretary and senior management are also charged.

Benstead is being charged with theft following allegations of removing £1 million from the company and faces two counts of perverting the course of justice; one relating to the alleged burning of company documents in which both of his daughters are inculpated. Benstead is further charged with converting criminal property in relation to a property purchase. His son, Julian Benstead, is being charged for fraudulent trading and theft. Peter Benstead, Edward James, Stephen Matthews and Roderick Schmidt will each face two counts for failure to keep adequate accounting records for Crown Currency Exchange Ltd and Crown Holdings Ltd.

Criminal proceedings are underway with all seven defendants to appear in Westminster Magistrates Court on 17th September 2013.

FATCA: Impact and Analysis

HMRC has recently issued regulations and guidance on the implementation of FATCA in the UK. In September 2012, the UK and US signed a Treaty to implement FATCA in the UK. Enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act of 2010, the Foreign Account Tax Compliance Act requires financial institutions to use enhanced due diligence procedures to identify US persons who have invested in either non-US financial accounts or non-US entities. Financial institutions (FIs) outside the US must pass information about their US customers to the Internal Revenue Service, (IRS). As prescribed by the Treaty, UK financial institutions will provide HMRC with the requisite information who will then forward this onto the IRS. The core objective behind the Act is to prevent US persons from concealing income and assets overseas.

The UK legislation implementing the UK-US Treaty is contained in Clause 219 of the 2013 Finance Bill. FATCA applies to UK financial institutions. Firms falling within the definition on a financial institution, (FI), for the purposes of the Act must adhere to the requisite due diligence and reporting requirements of FATCA. Revised obligations require UK FIs to implement procedures to identify all the jurisdictions in which an account holder is a tax resident, not just whether the account holder is a US person. UK reporting FIs must establish procedures which facilitate compliance not only with their own obligations under FATCA, but also under similar agreements which the UK may enter into with other jurisdictions. As FATCA is expected to come into force in 2014, FIs are advised to invest in three key areas:

- 1) Documentation: capturing process changes and analysing the customer base
- 2) Withholding: building functionality for withholding on recalcitrant account holders;
- 3) Reporting: building and sustaining an annual reporting model for all US individuals to cover account balances and gross payments.

We would encourage members to seek independent advice on whether the activities they conduct fall within the scope of FATCA. For more information see HMRC Guidance at: <http://www.hmrc.gov.uk/fatca/130814-guidance.pdf>