

**Response to the EBA Consultation Paper CP2013/11  
Draft Technical Standards for the Definition of Material Risk Takers for Remuneration  
Purposes**

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### **Introduction**

The Wholesale Markets Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) (jointly referred to in this document as the 'WMBA') are the European industry associations for the wholesale intermediation of Over-the-Counter (OTC) markets in financial, energy, commodity and emissions markets and their traded derivatives. Our members act solely as intermediaries in wholesale financial markets and do not undertake any proprietary trading. As a result they are classified as Limited Activity and Limited Licence firms by the UK Financial Conduct Authority.

WMBA welcomes the opportunity to respond to the issues raised in these technical standards on behalf of members and looks forward to further active engagement in this respect at the association's pleasure. Based on our member firms' business profiles, we have not responded to the individual questions raised in this consultation but have summarised our observations and comments in respect of the EBA's interpretation of the Directive and the proposed Technical Standards.

### **Key Points**

- **WMBA respectfully suggests that the proportionality between credit institutions and investment firms envisaged in Recital 66 of the Directive<sup>1</sup> has not been reflected in the current EBA proposals. Credit institutions have a very different risk profile to investment firms and this should be reflected in the technical standards.**
- **The WMBA notes that the RTS being drafted by the EBA are directed at exposures relating to the risks assumed by credit institutions in respect of credit and market risk at a level of 0.25% of CET 1 or more taken by 'Identified Staff'. Member firms do not hold regulatory permissions to take credit and market risk. The capital that they are required to hold by the FCA is calculated on the basis of the Internal Capital Adequacy Assessment Process under Pillar 2. Member firms do not have 'Identified Staff' in the sense of employing staff who have a '...material impact on the Institutions risk profile' (EBA executive summary).**
- **The WMBA consider that the object of the Directive is to cover material risk takers and request that the EBA reflect this distinction in their current proposals. WMBA members, whilst classified as investment firms under MiFID, are not material risk takers and hence should be outside the scope of this Directive on the basis that they do not intentionally (i)**

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<sup>1</sup> (66) In order to ensure that the design of remuneration policies is integrated in the risk management of the institution, the management body should adopt and periodically review the remuneration policies in place. The provisions of this Directive on remuneration should reflect differences between different types of institutions in a proportionate manner, taking into account their size, internal organisation and the nature, scope and complexity of their activities. In particular it would not be proportionate to require certain types of investment firms to comply with all of those principles.

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incur any Market or Credit Risk, Risk of a Systemic Nature and only limited Operational Risk; (ii) deal exclusively in the wholesale markets and (iii) do not have any direct contact with consumers. WMBA considers that requiring its members to adopt the same policies and procedures as a credit institution is totally disproportional to the risk posed.

- The impact assessment is based on limited data received from 30 banks and 2 competent authorities. It does not appear that any data has been collected from any non-bank investment firms and hence does not reflect the impact it will have on these institutions. It also fails to recognise the potential indirect costs associated with the renegotiating of staff contracts.
- In common with other non-bank investment firms, WMBA members are not supervised and regulated by the prudential supervisor in the UK [PRA], but by the conduct authority [FCA]. Therefore, we remain concerned that oversight of the CRD by both the EBA and the national competent authority on prudential issues fails to address issues arising in our sector. In order to address this, a 'twin peaks regime' by way of a prudential competence within conduct [i.e. the FCA in the UK] needs to have direct input into the EBA. We would therefore urge the EBA to acknowledge that many sectors need representation to them via a conduct authority in national member states.
- The WMBA attended the EBA open hearing in London on 4<sup>th</sup> July this year and noted that many member firms have permissions to hold client monies despite having a Limited Licence and Activity in the UK which means that they cannot take any market nor credit risk. We note that the position of the EBA at the hearing was that the client money exemption was sufficient [*Rummel*], and that all investment firms need to be on a level playing field with banks [*Vaillant*]. WMBA does not consider either of these positions to be plausible nor proportionate.

If you would like any further information/clarification in respect of these issues please do not hesitate to contact:

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