How fair and Effective are fixed income, foreign exchange and commodities markets?

Consultation responses from Statoil ASA

Q1 *The Review would welcome respondents' views on the definition of 'fair and effective' FICC markets proposed in Section 3.*
Does it strike the right balance between safeguarding the interests of end-users without unnecessarily impeding the effectiveness of FICC markets?
Are the concepts of transparency, openness and equality of opportunity appropriately specified?
And how does the definition compare with those used in other markets, jurisdictions, organisations or legislation?

Q1 Statoil Response:

The markets included under the umbrella of "FICC" have diverse histories, practices and characteristics. Some FICC markets share common traded instruments but the way that instruments are used and, in some cases, the characteristics of the instruments themselves vary between markets: eg a Futures contract in currency markets will be financially settled but a Futures contract in the natural gas market is likely to be converted to a physical contract with the Clearinghouse as counterparty. The definition of 'fair and effective' FICC markets is an attempt to apply a single measure to an arbitrary grouping of diverse markets. Such a definition can only be generic and the most appropriate definition is IOSCO Objectives and Principles of Securities Regulation, Principle 34 "integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants". This does not mean a "one size fits all" approach to groups of markets but rather a targeted approach that categorizes market participants, recognises the characteristics of individual market segments and treats each participant category appropriately without stifling the ability of innovators, risk takers and those with better judgement from being rewarded.

Yes, the concepts of transparency, openness and equality of opportunity are appropriately specified.

We do not believe that all FICC regulation must be applied to the same degree to all FICC market participants, regardless of their level of participation in the relevant market. We support the principle (outlined by IOSCO) of categorising market participants to ensure proportionate regulation. Without adequate categorisation of market participants, regulation can become a barrier to entry for those who would be disproportionately affected. We also believe that the categorisation of all FICC market participants should be a matter of public record that comes with regular verification (that could be incorporated within the annual audit process), rather than a self-determined and self-policed judgement potentially made by market participants who may not have a sound basis for that judgement.

Q2 *Of the six themes identified in Table A on page 5*
(market microstructure; competition and market discipline; benchmarks; standards of market practice; responsibilities and incentives; and surveillance and penalties), which do you consider to be the most important factors contributing to the recent series of FICC market abuses?

In which other areas do you believe the fairness and effectiveness of FICC markets globally may be deficient?
Do these answers vary across jurisdictions, or specific markets within FICC?
Are there any other important areas of vulnerability that are not identified in the table?

Q2 Statoil Response:

It is not possible, based on sensationalised media accounts and the scant information provided by regulators to determine a common theme behind all of the recent FICC market abuses. One conclusion would therefore be the need for the relevant industry to receive a transparent and open post-mortem by the relevant regulator on significant market abuse events that identifies the main issues behind that event. The superficial information currently available indicate that a lack of adequate supervision of traders and trading desks was a contributing factor and seems to be linked to supervising individuals lacking the competence to develop a culture where abusive trading behaviours are not tolerated.

We do not agree that these market abuse events indicate a global deficiency in the fairness and effectiveness of all FICC markets. Regulatory initiatives in the US and Europe (notably MAD II/MAR, MiFID II/MiFIR, EMIR, REMIT and Dodd Frank) are still being matured or are in the early stages of implementation. It would be prudent to complete a detailed analysis of recent market abuse events and look for common trends, then cross-reference these trends to the objectives of existing regulatory initiatives and finally allow sufficient time to test if existing regulatory initiatives, once fully implemented, are effective in addressing these trends.

The allocation of responsibility / accountability is not addressed within the table on page 5. The current focus of attention is on either: individual traders or the CEO / CFO but rarely anyone in between these two levels. This separates the corporate chain of delegated responsibility / accountability from those who are generally held accountable by regulators. As corporations strive to develop an ethical culture throughout the organisation, regulatory focus on only the top and bottom of the organisation does not incentivise the influential "middle organisation" to buy into cultural change.

Q3 *Do trading practices involving barrier or digital options pose risks to the fairness and effectiveness of one or more FICC markets?*
How hard is it to distinguish between hedging and 'defending' such options in practice?
Should further measures be taken to deal with the risks posed by barrier options, whether through market-wide disclosure of significant barrier positions, an extension of regulation or some other route?

Q3 *Statoil Response:*

The abuse of specific instruments in FICC markets is a symptom and not an underlying cause. Whether a barrier option or other financial instrument is used as a hedge or not is a subjective question based upon the definition of "hedge" that has been applied and whether the underlying strategy is consistent with that definition. Transaction monitoring is a small part of the compliance picture. The main burden of ensuring compliance rests with the line managers responsible for developing trading strategies and managing strategy execution. Effective measures would address the training, competence and incentives to help those middle managers to develop an ethics-based company culture.

Q4 *Does the market microstructure of specific FICC markets — including trading structures, transparency, asset-heterogeneity or market access — enhance or diminish fairness and*

effectiveness?
Where there are deficiencies, will recent or in-train regulatory or technological changes improve the situation, or are further steps needed?
How do these answers vary across jurisdictions, or specific markets within FICC?

Q4 *Statoil Response:*

The heterogeneity of assets within commodity markets makes it impossible to provide a single, simple set of rules that are equally applicable for all commodities. Within the discussion section 5.1.4, there is a statement indicating that energy and precious metals are similar markets, both lacking transparency because they are traded "OTC". Closer examination would reveal that the Natural Gas and Power "OTC" markets make extensive use of electronic platforms that give real time access, for all participants on these OTC platforms, to anonymised details of all transactions as they are executed. The market microstructures of individual commodity markets are too diverse for broad generalisations about fairness and effectiveness.
Regulatory initiatives in the US and Europe (notably MAD II/MAR, MiFID II/MiFIR, EMIR, REMIT and Dodd Frank) are still being matured or are in the early stages of implementation. It would be prudent to allow sufficient time to test if existing regulatory initiatives, once fully implemented, are effective in addressing any identified deficiencies.
However, unlike Dodd Frank, it is already clear that EMIR and REMIT cast a very wide net capturing physical transactions and even UK government subsidies, including the UK Electricity Market Reform CfDs. Any potential future steps should focus on removing unintended consequences, like the treatment of subsidies as financial instruments, rather than further extending the regulatory perimeter.

Q5 *Is greater use of electronic trading venues for a wider range of market participants possible or desirable?*
Are there barriers preventing a shift to a more transparent market structure?

Q5 *Statoil Response:*

Competition between trading venues, including exchanges and the new OTFs, can only benefit market efficiency. Not all types of trading venue will flourish in all market segments and that is a function of the characteristics of each market segment. Multi-broker electronic platforms in the Energy markets (eg Trayport) have created an alternative to market makers as participants can view multiple bid/offers across a number of brokers and can also see, in real time, anonymised details of executed transactions. In many ways this type of venue is more transparent than exchanges that have clearing brokers and the vagueness of aggregated client margins. Regulatory initiatives in the US and Europe (notably MAD II/MAR, MiFID II/MiFIR, EMIR, REMIT and Dodd Frank) are still being matured or are in the early stages of implementation but these initiatives are likely to change the proportionate use of trading venues. It would be prudent to allow sufficient time to test if existing regulatory initiatives, once fully implemented, have the expected effect before considering further steps.

Q6 No comment to this question

Q7 No comment to this question

Q8 No comment to this question

Q9 No comment to this question

Q10 Are there any material barriers preventing greater transparency in OTC commodity derivatives markets?
If so, what could be done to remove them?

Q10 Statoil Response:

The present wave of regulatory changes is likely to impose extra burden on smaller market participants who use the markets to manage risks coming from their main business rather than as the focus of main activity. Such players are an essential element to the relevant market segment but typically struggle with the resource to set up and manage the infrastructure required to ensure compliance to the growing number of FICC market rules.

It is worth waiting until the current wave of regulatory changes (including the recent approval of REMIT Implementing Acts) have been fully implemented before making an assessment of the measures required to remove any remaining barriers to market transparency.

Q11 Are there any areas of FICC markets where regulatory measures or internationally co-ordinated regulatory action are necessary to address fundamental structural problems that exist?

Q11 *Statoil Response:*

There are a number of areas where key definitions vary between different jurisdictions (notably between EU and US):
The differences in the definition of a hedge/commercial purpose has created significant challenges for companies exposed to both Dodd Frank and EMIR / MiIFD II. The Dodd Frank focus for this definition is on intent of the parties and physical capability of receiving or delivering the underlying product, whereas, for EMIR/MiIFD II, the focus for this definition is on wording of contractual clauses.
Similarly, MiFID II includes forward transactions as derivatives whereas Dodd Frank excludes forward contracts. This lack of international alignment has a disruptive effect in global markets and incentivises regulatory arbitrage. Delays in establishing equivalence between EU and non-EU markets has been a further disruptive factor and the current EMIR Q&A advice to report US exchange traded derivatives as OTC transactions highlights the problem.

Q12 *Where do potential conflicts of interest arise in the various FICC markets, and how do they affect the use and potential abuse of confidential information, both within and between firms?*

Q12 *Statoil Response:*

The role of brokers in the trade of standardised products has become unclear in a technology-sophisticated market place and the absorption of broker services into diversified financial institutions that also have divisions in direct competition with broker clients is a concern. However, existing regulatory initiatives (including MAD/MAR) targeting conflicts of interest are still being matured or are in the early stages of implementation. It would be prudent to allow sufficient time to test if existing regulatory initiatives, once fully implemented, have the expected effect before considering further steps.

Q13 *How can the vulnerabilities posed by such conflicts be reduced?*
Are existing internal structures and control procedures sufficient?
Where they are not, are further internal management controls required (such as better trading floor

design and/or closer monitoring of electronic communications within and between firms) or is more radical action required to remove conflicts altogether?

Q13 *Statoil Response:*

The vulnerabilities posed by conflicts of interest and information flows can be reduced through physical separation of the groups whose proximity to one another could potentially result in such a conflict occurring.

Existing internal structures and control procedures and MAR legislative proposals have the potential to address these vulnerabilities. It is too soon to measure the effectiveness of these initiatives. It would be prudent to allow sufficient time to test if existing regulatory initiatives, once fully implemented, have the expected effect before considering further steps. Internal structures and controls like compliance manuals exist but regulatory focus has been to detect effectiveness of such controls rather than to provide training or competence resource as a preventative measure.

Conflicts of interest and information flows can also be addressed by internal awareness training.

Q14 *Is there a relationship between the level of competition in FICC markets globally and the fairness and effectiveness of those markets?*
What risks are posed by the increase in concentration seen in some FICC markets?
In answering this, please have regard to the geographical scope of any relevant markets.

Q14 *Statoil Response:*

Supply and demand are not evenly distributed for all global markets and governments take actions to safeguard supply and/or protect retail customers in certain (but not all) FICC market segments. Any assessment of competition in individual FICC markets segments must take account of the contradictions between National, Regional and Global regulatory focus for that segment. Theoretically, competition leads to fairness and effectiveness as service providers are well aware of the need to deliver fair service in an effective manner or risk losing market share to a competitor.
However conflicting National, Regional and Global market rules, including inconsistent definitions, can distort Global markets.
Alignment between National, Regional and Global market rules and definitions, recognition of equivalent trading venues in other jurisdictions and alignment of regulatory scope across jurisdictions would have a more immediate impact in supporting the development of competition than adding additional market rules to the existing regulatory mix.

Q15 *To the extent that competition is currently ineffective in any of the FICC markets, are there market-led initiatives, technological or structural changes that may remedy this situation*?

Q15 *Statoil Response:*

Industry associations are the main source of market-led initiatives. They have a more holistic view of the patchwork of regulations affecting markets and are therefore in a better position to promote alignment between jurisdictions. The development of international regulatory standards (as has happened with accounting standards) is another means to achieve alignment and IOSCO principles being mandatory and accompanied by an enhanced IOSCO role to regulate the regulators could be a way forward.

Q16 *Are there any lessons that can be drawn from experiences in other financial markets (or indeed other markets) about the ways that alternative or evolving market structures could impact on competition in FICC markets?*

Q16 *Statoil Response:*

No comment to this question

Q17 *How effective is market discipline in enforcing sound market practices in each of the key FICC markets?*
What could be done to strengthen it?

Q17 *Statoil Response:*

Self-regulation generally equates to regulation by consensus or regulation by a group of dominant market players. Consensus regulation will limit scope to no more than the bare essentials and will allow any practices that benefit most market players regardless of the broader economic implications. Dominance regulation will protect outdated practices that help to maintain dominant positions.

Self-regulation relies on adequate training and development of a supportive culture. It would be prudent to allow sufficient time to test if existing regulatory initiatives, once fully implemented, have the expected effect before considering further steps. Internal structures and controls like compliance manuals exist but there could be a role for regulators to provide training or a competence resource as a preventative measure rather than focusing on detecting deficiencies.

Q18 *In what ways might competition in any of the key FICC markets usefully be addressed by competition authorities (eg by assessing the state of competition in relevant markets)?*

Q18 *Statoil Response:*

It would be prudent to allow sufficient time to test if existing regulatory initiatives, including MAR once fully implemented, have the expected effect before considering further steps.

Q19 *Are there any additional regulatory reforms that could be helpful in promoting competition and market discipline in FICC markets?*

Q19 *Statoil Response:*

There are a number of initiatives currently underway that are seeking to address the issue of promoting competition. It may be best allowing those initiatives to run their course. However, there could be a role for regulators to provide training or a competence resource as a preventative measure rather than focusing on detecting deficiencies.

Q20 *Is there a need for better awareness and understanding of the existing competition framework among FICC market participants, both at firm and individual level?*
How do you think that might be best achieved?

Q20 *Statoil Response:*

There are a number of initiatives currently underway that are seeking to address the issue of promoting competition. It would be prudent to allow those initiatives to be implemented and

bedded-in. However, there could be a role for regulators to provide training or a competence resource as a preventative measure rather than focusing only on detecting deficiencies.

Q21 *Do current domestic and international initiatives by industry and regulators to improve the robustness of benchmarks go far enough, or are further measures required?*

Q21 Statoil Response:

While there are domestic and international initiatives by industry and regulators in development or only recently implemented, it is too soon to determine how effective they have been. Ensuring alignment and mutual recognition of financial market legislation between the EU, US and similar financial centres as well as simplification of reporting requirements, is more urgent than post implementation reviews or addition of further steps.

The effectiveness of existing initiatives will depend heavily on implementations that are sympathetic to the individual peculiarities of specific market segments.

Q22 What steps could be taken to reduce the reliance of asset managers and other investors on benchmarks?

Q22 *Statoil Response:*

Reliance on benchmarks in itself is not the problem and the acceptance of a central benchmark for each product supports efficient markets by facilitating price discovery. The challenge with benchmarks is whether the data used is representative and whether the methodology applied is transparent. Greater transparency on how benchmarks are constructed and greater transparency / predictability in the data used would improve confidence.

Q23 *What additional changes could be made to the design, construction and governance of benchmarks?*

Q23 *Statoil Response:*

There are EU and other international initiatives by industry and regulators in development or only recently implemented and it is too soon to determine how effective they have been. Ensuring alignment and mutual recognition of financial market legislation between the EU, US and similar financial centres as well as simplification of reporting requirements, is more urgent than post implementation reviews or addition of further steps.

The effectiveness of existing initiatives will depend heavily on implementations that are sympathetic to the individual peculiarities of specific market segments.

Q24 *Should there be an industry panel to discuss benchmark use and design with the aim of assisting industry transition?*

Q24 *Statoil Response:*

This transition is from individual market segment practices toward a more standardised approach which will still retain some asset class-specific characteristics. The value of an industry panel would depend heavily on their ability to recognise and address the individual

peculiarities of specific market segments.

A single panel for all FICC markets or even three panels to address the 3 main component parts (Fixed Income, Interest Rates, Commodities) would be less effective, greater granularity is required.

Q25 *What further measures are necessary to ensure full compliance with the IOSCO Principles for financial benchmarks by all benchmark providers?*

Q25 *Statoil Response:*

A greater role for IOSCO in the post implementation review of IOSCO principles by NRAs and regional authorities could contribute to greater global regulatory alignment.

Q26 *How can the regulatory framework provide protection to market participants for benchmarks administered in other jurisdictions in a proportionate way?*

Q26 *Statoil Response:*

A greater role for IOSCO in the post implementation review of IOSCO principles by NRAs and regional authorities could contribute to greater global regulatory alignment.

Q27 Are existing sources of information regarding standards of market practice across FICC markets globally:
(a) already sufficiently clear (or will be once current regulatory reform has concluded);
(b) sufficient, but in need of clearer communication or education efforts; or
(c) not sufficiently clear, requiring more specific guidance or rules to provide more detail or close genuine gaps?

Q27 *Statoil Response:*

The markets included under the umbrella of “FICC” have diverse histories, practices and characteristics. The three answers offered may each apply to different market segments within this arbitrary grouping of diverse markets. It is not possible today to determine if existing sources of information regarding standards of market practice across FICC markets globally will be sufficiently clear once current regulatory reform has concluded. Until current reforms have been fully implemented, it would be premature to take further steps

Q28 *Box 7 on pages 36–37 discusses a number of uncertainties over FICC market practices reported by market participants, including: the need for greater clarity over when a firm is acting in a principal or an agency capacity; reported difficulties distinguishing between legitimate trading activity and inappropriate front-running or market manipulation; and standards for internal and external communication of market activity.*
To the extent that there are uncertainties among participants in the different FICC markets over how they should apply existing market standards in less clear-cut situations, what are they?

Q28 *Statoil Response:*

Current MAR proposals include vague indicators of market manipulation without identifying "safe harbours" for traders. This approach coupled with personal liability to criminal sanctions will create an atmosphere where each trader must apply their own interpretation of

MAR in preference over any Company-based controls, advice or interpretations. There could be a role for regulators to provide training or a competence resource to assist market segments to develop and disseminate acceptable market practice.

Q29 *How could any perceived need to reduce uncertainties best be addressed:*
(a) better education about existing standards;
(b) new or more detailed market codes on practices or appropriate controls; or
(c) new or more detailed regulatory requirements?

Q29 *Statoil Response:*

We support using better education initially and allowing existing initiatives to take root before supplementing with further market codes and regulations

Q30 *How can the industry, firms and regulators improve the understanding of existing codes and regulations by FICC market participants and their managers?*

Q30 *Statoil Response:*

Mandatory internal compliance courses

Q31 *Should there be professional qualifications for individuals operating in FICC markets? Are there lessons to learn from other jurisdictions — for example, the Financial Industry Regulatory Authority's General Securities Representative (or 'Series 7') exam?*

Q31 *Statoil Response:*

We agree with the principle that market participants must fully understand the risks they are taking. We also believe that regulators have a duty to ensure that relevant categories of market participants should have training appropriate to their participation in that market. This can be achieved through categorising all market participants and developing "entry requirements" for each category. The market participant categories should be separated by the sophistication of market participation which should be assessed by NRAs based upon factors that include internal controls, trading systems, market code compliance, training within the relevant firm and purpose for trading. Categories linked to the EMIR categories of: FC, NFC+ and NFC- could be an approach.
We also believe that the categorisation of all FICC market participants should be a matter of public record that comes with regular verification (that could be incorporated within the annual audit process), rather than a self-determined and self-policed judgement potentially made by market participants who may not have a sound basis for that judgement.
However we believe that a holistic assessment of internal compliance programmes within firms categorised as less sophisticated market participants (NFC-), may be a more pragmatic approach than the mandatory testing of everyone.

Q32 *What role can market codes of practice play in establishing, or reinforcing existing, standards of acceptable market conduct across international FICC markets?*

Q32 *Statoil Response:*

Market codes can serve as the minimum standard expected, or the generally held view of what is acceptable.

We believe that regulators have a duty to ensure that relevant categories of market participants should have training and regulation appropriate to their participation in that market. This can be achieved through categorising all market participants and developing “entry requirements” for each category. The market participant categories should be separated by the sophistication of market participation which should be assessed by NRAs based upon factors that include internal controls, trading systems, market code compliance, training within the relevant firm and purpose for trading. If each market participant category has “entry requirements” then the risk of losing that category (due to non-compliance with market code) will "give codes teeth".

Q33 *How would any code tackle the design issues discussed in Section 5.4.3, ie: how to ensure it can be made sustainable given industry innovation over time?*
How to differentiate it from existing codes? How to give it teeth (in particular through endorsement by regulatory authorities or an international standard setting body)?
How to communicate it to trading teams?
Whether, and how, to customise it for individual asset classes?

Q33 *Statoil Response:*

Market codes can serve as the minimum standard expected, or the generally held view of what is acceptable.

We believe that regulators have a duty to ensure that relevant categories of market participants should have training and regulation appropriate to their participation in that market. This can be achieved through categorising all market participants and developing “entry requirements” for each category. The market participant categories should be separated by the sophistication of market participation which should be assessed by NRAs based upon factors that include internal controls, trading systems, market code compliance, training within the relevant firm and purpose for trading. If each market participant category has “entry requirements” then the risk of losing that category (due to non-compliance with market code) will "give codes teeth".
We also believe that the categorisation of all FICC market participants should be a matter of public record that comes with regular verification (that could be incorporated within the annual audit process), rather than a self-determined and self-policed judgement potentially made by market participants who may not have a sound basis for that judgement.

Q34 In the context of implementing MiFID 2, which of the FCA Principles for Businesses should apply in relation to MiFID business with Eligible Counterparties?

Q34 *Statoil Response:*

All of the Principles of Business should apply, but many are already reflected in MiFID II

Q35 *Are there any financial instruments that should be brought more fully into the scope of regulation in order to improve the fairness and effectiveness of specific FICC markets?*
For any instruments proposed:
(a) what protections does the current framework provide;
(b) what gaps remain of relevance to fairness and effectiveness; and
(c) what is the cost/benefit case, bearing in mind the Review’s Terms of Reference as set out in Section 1?

Q35 *Statoil Response:*

There are EU and other international initiatives by industry and regulators in development or only recently implemented and it is too soon to determine how effective they have been. Ensuring alignment and mutual recognition of financial market legislation between the EU, US and similar financial centres as well as simplification of reporting requirements, is more urgent than post implementation reviews or addition of further steps.

Q36 How much of a role did inadequate governance, accountability and incentive arrangements play in the recent FICC market abuses, and to what extent do these remain potential vulnerabilities in FICC markets globally?
In addition to on-going regulatory changes, what further steps can firms take to embed good conduct standards in their internal processes and governance frameworks?
And how can the authorities, either internationally or domestically, help to reinforce that process, whether through articulating or incentivising good practice, or through further regulatory steps?

Q36 *Statoil Response:*

It is not possible, based on sensationalised media accounts and the scant information provided by regulators to determine a common theme behind all of the recent FICC market abuses. One conclusion would therefore be the need for the relevant industry to receive a transparent and open post-mortem by the relevant regulator on significant market abuse events and identifying the main issues behind each event. The superficial information currently available indicate that a lack of adequate supervision of traders and trading desks was a contributing factor and seems to be linked to supervising individuals lacking the competence to develop a culture where such behaviours would not be tolerated.

Q37 *Do respondents' agree that the thematic areas highlighted in Section 5.5 are key priorities for FICC firms (fine-tuning performance measures; adjustments to remuneration; attitudes towards hiring, promotion and advancement; closer board involvement in governance of FICC activities; and clearer front line responsibilities)?*
What specific solutions to these challenges have worked well, or could work well? And how best can the authorities help to support these initiatives?

Q37 *Statoil Response:*

No answer to this question

Q38 *To what extent could the Banking Standards Review Council help FICC market participants to raise standards collectively — in particular, are there other steps that could be taken to help complement or extend this initiative in FICC markets for non-banks and internationally?*

Q38 *Statoil Response:*

There are EU and other international initiatives by industry and regulators in development or only recently implemented and it is too soon to determine how effective they have been. Ensuring alignment and mutual recognition of financial market legislation between the EU, US and similar financial centres as well as simplification of reporting requirements, is more urgent than post implementation reviews or addition of further steps.

Q39 Are there other regulatory measures the authorities could take to strengthen personal accountability or otherwise improve the way firms manage incentives and governance?

In particular, should any or all of the measures in the Senior Managers and Certification regime be extended to non-bank firms active in FICC markets?

Q39 *Statoil Response:*

We believe that regulators have a duty to ensure that relevant categories of market participants should have training and regulation appropriate to their participation in that market. This can be achieved through categorising all market participants and developing "entry requirements" for each category. The market participant categories should be separated by the sophistication of market participation which should be assessed by NRAs based upon factors that include internal controls, trading systems, market code compliance, training within the relevant firm and purpose for trading.

We also believe that the categorisation of all FICC market participants should be a matter of public record that comes with regular verification (that could be incorporated within the annual audit process), rather than a self-determined and self-policed judgement potentially made by market participants who may not have a sound basis for that judgement.

Q40 What role can more effective surveillance and penalties for wrongdoing play in improving the fairness and effectiveness of FICC markets globally? How can firms and the industry as a whole step up their efforts in this area? And are there areas where regulatory supervision, surveillance or enforcement in FICC markets could be further strengthened?

Q40 *Statoil Response:*

There are EU and other international initiatives by industry and regulators in development or only recently implemented and it is too soon to determine how effective they have been. Ensuring alignment and mutual recognition of financial market legislation between the EU, US and similar financial centres as well as simplification of reporting requirements, is more urgent than post implementation reviews or addition of further steps.

Q41 How can firms increase the effectiveness of their own surveillance efforts across FICC markets globally?
What role could the industry play in helping to explore best practices on how to make whistleblowing and other similar regimes more effective?
Is there scope to make greater use of large scale market data sets and electronic voice surveillance to help detect cases of abuse in FICC markets?
Are there other potentially effective tools?

Q41 *Statoil Response:*

We believe that regulators have a duty to ensure that relevant categories of market participants should have training and regulation appropriate to their participation in that market. This can be achieved through categorising all market participants and developing "entry requirements" for each category. The market participant categories should be separated by the sophistication of market participation which should be assessed by NRAs based upon factors that include internal controls, trading systems, market code compliance, training within the relevant firm and purpose for trading.

In addition, in-house surveillance would take a different form in each category. The availability of anonymised transactions published by each trading venue by t+1 assist in-house surveillance tests.

Q42 Are there processes or structures that can allow firms to punish malpractice by their own staff more effectively (for example, penalties for breaching internal guidelines)?

Q42 *Statoil Response:*

Firms typically have an internal code of conduct which is enforced if individuals have breached them.

Q43 Could firms active in FICC markets do more to punish malpractice by other firms, for example by shifting business and reporting such behaviour to the authorities?

Q43 *Statoil Response:*

The market typically reacts to firms who behave in a manner that is not acceptable. However, there is a fine line between avoiding the abusive actions of a firm and colluding to exclude a competitor. Both market actions and regulatory authority action must be subject to the same requirements of proof.

Q44 Is the current supervisory approach and level of intensity dedicated to supervising conduct within the UK wholesale FICC markets appropriate?

Q44 *Statoil Response:*

There is no single answer to this question as not all FICC markets are subject to the same regulations. Part of the energy segment is subject to REMIT but the same segment is also subject to EMIR despite the substantial overlap between the two pieces of legislation. Although market conduct is not the main focus of EMIR, the information gathered through this legislation will be used for that purpose. Unlike Dodd Frank, EMIR and REMIT cast a very wide net capturing physical transactions and even UK government subsidies (including the UK Electricity Market Reform CfDs). The original “lessons learned” from the Financial Crisis appear subsumed in a political objective to manage markets.

Q45 Are there ways to improve the data on FICC market trading behaviour available to the FCA, whether through the extension of the regulatory perimeter or otherwise?

Q45 *Statoil Response:*

Harmonisation and simplification of data requirements across regional and national regulatory authorities would have a more immediate effect on data quality than extending the regulatory perimeter. One has only to consider the low matching rate for commodity transactions reported under EMIR to know that current complex transaction reporting requirements do not provide any meaningful end product.

Q46 What further steps could regulators take to enhance the impact of enforcement action in FICC markets?

Q46 *Statoil Response:*

There are EU and other international initiatives by industry and regulators in development or only recently implemented and it is too soon to determine how effective they have been. Ensuring alignment and mutual recognition of financial market legislation between the EU, US and similar financial centres as well as simplification of reporting requirements, is more urgent than post implementation reviews or addition of further steps.

Q47 Should consideration be given to greater use of early intervention, for example, temporary suspension of permission for a particular trading activity for firms or individuals or increased capital charges?

Q47 *Statoil Response:*

We believe that regulators have a duty to ensure that relevant categories of market participants should have training and regulation appropriate to their participation in that market. This can be achieved through categorising all market participants and developing "entry requirements" for each category. The market participant categories should be separated by the sophistication of market participation which should be assessed by NRAs based upon factors that include internal controls, trading systems, market code compliance, training within the relevant firm and purpose for trading.

We also believe that the categorisation of all FICC market participants should be a matter of public record that comes with regular verification (that could be incorporated within the annual audit process), rather than a self-determined and self-policed judgement potentially made by market participants who may not have a sound basis for that judgement.

Q48 Is there a need to widen and or strengthen criminal sanctions for misconduct in FICC markets?

Q48 *Statoil Response:*

There are EU and other international initiatives by industry and regulators in development or only recently implemented and it is too soon to determine how effective they have been. Ensuring international alignment with what is being implemented by the EU, is more urgent than post implementation reviews or addition of further steps.