



Reply form for the EBA Discussion Paper on the EBA's approach to Financial Technology (FinTech)

Responding to this paper

The EBA welcomes comments on this Discussion Paper on financial technology (FinTech) and in particular on the specific questions set out in Chapter 4.

Comments can be sent by clicking on the 'send your comments' button on the consultation page of the EBA website. Please note that the deadline for the submission of comments is 06/11/2017. Comments submitted after this deadline, or submitted via other means, may not be processed.

Comments are most helpful if they:

- a. Respond to the question stated;
- b. Indicate the specific question or point to which a comment relates;
- c. Are supported by a clear rationale; and
- d. Provide evidence to support the views expressed/rationale proposed.

It is important to note that although you may not be able to respond to each and every question, the EBA would encourage partial responses from stakeholders on those questions that they believe are most relevant to them.

All contributions received will be published following the close of the consultation unless you request otherwise by ticking the relevant box in the consultation form. If you request that your response be treated as confidential, it will not be published on the EBA website or shared with any third parties.

Please note that a request to access a confidential response may be submitted in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA Board of Appeal and the European Ombudsman.



Association of Financial Markets in Europe (AFME)

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to share our views on the Consultation Paper issued by the European Banking Authority (EBA) published on 18 May 2017, with a deadline for a response by 18 August 2017.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

Should you wish to discuss any of the points please do not hesitate to contact:

- Emmanuel Le Marois on 44 203 828 2674, email Emmanuel.LeMarois@afme.eu
- David Ostojitsch on 44 203 828 2761, email: David.Ostojitsch@afme.eu.

Executive Summary

The Association of Financial Markets in Europe (AFME) welcomes the opportunity to support the European Banking Authority (EBA) on its approach to financial technology (FinTech). We believe this consultation and similar requests for information by supervisors provide an extremely important tool to gather information and perspectives on both risks and benefits.

The pace of technological change continually accelerates, bringing both new potential risks and benefits into the banking system. While this consultation reflects the EBA's perspective in viewing FinTech developments as an "emerging risk" for banks and the overall financial system, AFME views that supervisory responses to emerging risks must be balanced against the present and potential benefits provided by these developments.

Overall AFME agrees with the EBA's recommendations to further analyse FinTech developments to clarify supervisory expectations and increase regulatory harmonisation across the EU and globally.

In summary of our response to this proposal:

- Where the EBA emphasizes on the risks posed by FinTech firms, AMFE views that FinTech provides users the benefits of i) enhancing business models, ii) rationalising costs and iii) enhancing customer servicing;
- The EBA should ensure that any existing, new and or modified regulations are technology neutral;
- Certain activities warrant careful attention by regulators, regardless of who is engaging in them, as the risks associated with these activities have far reaching impacts to consumers and the broader financial system;
- AFME is supportive of regulatory efforts to increase regulatory requirements harmonisation, ensuring a level playing field and further clarity on how firms can transfer innovation across borders;
- AFME believes the EBA, should work in close collaboration with other regulators, to foster a globally, i) consistent, ii) relevant and adaptive, iii) proportionate supervisory and regulatory framework for FinTech and financial innovation;
- Where the EBA is looking to produce a report to further analyse FinTech, the report should be i) dynamic to avoid becoming quickly outdated, ii) global to encompass the global nature of innovation and iii) identify practical conclusions which can be used by the various stakeholders involved.
- Supervisors have a need to modernize their staffing and training to better understand the holistic developments in banking and financial services including the rapid technological changes occurring outside of the banking system;
- Regulators should be attuned to the latest fintech innovations and, using that knowledge, strive to create a technology-neutral regulatory framework that encourages innovation balanced with prudent risk management.

AFME looks forward to the opportunity to continue supporting the EBA on its approach to financial technology (FinTech) in Q4 2017 and beyond.

4. Preliminary views and next steps

4.1. Authorisation and registration regimes and sandboxing/ innovation hub approaches

Question 1

Are the issues identified by the EBA and the way forward proposed in section 4.1 relevant and complete? If not, please explain why.

- AFME welcomes the European Banking Authority (EBA) initiative to assess national regulatory regimes, while technology is still under development. We encourage regulators to make use of tools such as regulatory sandboxes and innovation academies, as outlined in the AFME response to the European Commission's FinTech consultation¹. Harmonisation efforts amongst EU member states and with third country jurisdictions will allow technology to develop in a safe, coordinated environment and can help identify the appropriate parties to be involved at these early stages. Full engagement by regulators can then be harnessed to address areas where current legal frameworks require amendments in order to permit the benefits of these technologies to be realised on a larger scale. It is key that this is driven at a global level to prevent instances of legal or regulatory fragmentation, which could prevent market-wide technology solutions.

AFME is supportive of regulatory efforts to increase harmonisation of regulatory requirements ensuring a level playing field, and that further clarity on how firms can transfer innovation across borders in the European Union (EU) and globally is delivered. In this area AFME views the FinTech firms should be required to meet existing regulatory requirements (such as KYC/AML, consumer protection) at the level required of existing market participants. Regarding regulatory Sandboxes, AFME notes that FinTechs and incumbents have the ability to operate across jurisdictions, as the new technologies they are implementing are not limited by geographic boundaries or a single legal and regulatory regime. If each sandbox exists in a silo, then solutions cannot be developed to cross borders and market segments. Regulators should consider whether such initiatives could be 'transferrable', where approval from one regulator is sufficient for another.

- The EBA should ensure harmonisation efforts in the EU and globally do not stifle innovation efforts in specific jurisdictions which are aligned to globally recognised or EU regulations.
- AFME would like to bring forward the following suggestions to the upcoming EBA report:
 - The report should be dynamic in nature as technology innovation is constantly evolving and a static observation would become quickly outdated;
 - The report should be global in nature, with a focus on the EU, to encompass the global nature of innovation;

¹ <https://www.afme.eu/en/reports/consultation-responses/afme-response-to-european-commissions-consultation-on-FinTech-a-more-competitive-and-innovative-european-financial-sector/>

- The report should aim to identify practical conclusions which can be used by global forums, regulators and supervisors, financial service firms, financial market infrastructures and Fintech alike.
- AFME supports the regulatory sandbox concept, especially for new entrants, and believe that if structured correctly, it has the potential to facilitate robust dialogue between banks, nonbank FinTech firms and regulators on the policy barriers to partnerships or deploying innovative services/technologies.
 - We believe participation should be voluntary for established financial institutions, as they already have robust controls and risk management processes in place;
 - Any sandbox initiative should include appropriate controls to ensure consumer and investor protection.
 - As innovation is global, to remain relevant AFME views that the report should encompass other jurisdictions as well as the EU, for instance active geographies such as the United States, Hong Kong, Singapore and Australia.
- With regards to Regulatory Technical Standards (RTS) the EBA should ensure that any existing, new and or modified regulations are technology neutral. Regulators are looking at FinTech and its applications in markets at a time when the technology and the technology providers that support it are developing rapidly. Given the ongoing changes in the technology landscape, regulation needs to be designed to allow for substitutability of technology, so regulations do not lock in any one provider or technology configuration. Regulation should not result in the market being locked into vertically integrated technology monopolies. This will enable both maximizing the ability of firms to innovate in a safe and sound manner, and also help ensure that regulations are 'future proof.'

AFME believes careful consideration should be brought to the implications of the EU Payment services Directive 2015/2366 (PSD2)² implementation with regards to cyber threats. By increasing access to payment service user's account (e.g. account information) to third party providers, banks may see an attack surface increase, therefore increasing their exposure to cyber threats. While the EU Payment services Directive 2015/2366 (PSD 2) offers significant benefits to achieving an EU Digital Single Market³, to remain on top of cyber threats financial service firms will have to:

- Review their architectural approach to ensure security requirements are integrated with fundamental business drivers;
- Within this architecture, the design of API's will require encompassing:
 - Access control to ensure identity, authorisation and access to data is appropriately managed;
 - Threat detection to ensure monitoring, identification and prevention of potentially malicious actors on the network;
 - Confidentiality to ensure potentially sensitive and confidential data is appropriately managed;

² https://ec.europa.eu/info/law/payment-services-psd-2-directive-eu-2015-2366_en

³ <https://ec.europa.eu/digital-single-market/en/policies/shaping-digital-single-market>

- System integrity to ensure firms continue performing their functions without being degraded or impaired by changes or disruptions in its internal or external environments.

4.2. Prudential risks and opportunities for credit institutions, payment institutions and electronic money institutions

4.2.1 Prudential risks and opportunities for credit institutions

Question 2

Are the issues identified by the EBA and the way forward proposed in subsection 4.2.1 relevant and complete? If not, please explain why.

- AFME welcomes the EBA's initiative to further develop their analysis of FinTech. While the EBA emphasizes on the risks posed by FinTech innovation, AFME views that FinTech offer significant benefits. FinTech, considered generally, can improve safety and soundness by reducing errors and making firms more efficient. Collaborating with FinTech companies can also bring efficiencies and improved services/products, by connecting external ideas with incumbent knowledge, data, space and other resources to co-create solutions. AFME supports the growing use of FinTech within the wholesale markets, noting that FinTech provides opportunities for more efficient customer servicing at lower costs.

Broadly, FinTech provides users the ability to:

- Enhance business models;
 - Rationalise costs; and
 - Enhance customer servicing.
- Regarding competitive pressure stemming from new operators entering their traditional markets, regulators must establish a fair and level competitive playing field to address the concern that FinTech firms would be able to offer services and products in direct competition with full-service banks, but subject to a more limited and less burdensome regulatory regime.
FinTech firms should have similar, if not the same, capital/liquidity/consumer requirements for a given activity as a financial institution. There are specific activities that do warrant careful attention by regulators, regardless of who is engaging in the activity – namely payments, lending activities, and data storage – as the risks associated with these activities have far reaching impacts to consumers and the broader financial system (e.g. money laundering, terrorist financing, fraud, identity theft, unauthorized transfers, etc.).
 - AFME supports the EBA's proposed in-depth analysis of the risks and opportunities for credit institutions resulting from technological innovations. AFME views that a risk evaluation of FinTech would need to be i) dynamic to capture the rapidly evolving nature of innovation and remain relevant, ii) holistic to capture the global nature of innovation, iii) proportionate to capture the smaller and larger firms involved and iv) technology neutral

to focus on the business models adopted or underlying behaviours rather than the specific type of technology adopted.

Furthermore, the EBA should consider encompassing a large cohort of stakeholders involved in FinTech to achieve a broad industry view, and should encompass other jurisdictions to ensure the analysis is global in nature.

- AFME believes that the involvement of regulators and industry stakeholders, in particular firms operating globally, in a task force and/or working groups, would, i) support drawing experiences learned at the global level; ii) increase the overall level of education, awareness and expectation early on in the process.

Question 3

What opportunities and threats arising from FinTech do you foresee for credit institutions?

- AFME believes that FinTech can deliver a more competitive and innovative financial sector. Successful FinTech adoption could reduce costs for existing financial institutions, improving their Return on Equity (RoE) and making more funds available for the real economy to empower growth.
- However, as innovation develops and is adopted, AFME expects certain challenges to be posed by technology which may fall under the following categories:
 - **Control:** Ensuring that the technology allows control over the outcome;
 - **Transparency:** Ensuring that the technology allows transparency on the outcome;
 - **Consumer protection:** Ensuring that the technology allows fairness of customer treatment (e.g. such as meeting the required regulatory requirements for processes such as KYC/AML/consumer protection).
- As the FinTech ecosystem evolves, regulators should monitor for emerging risks and act when warranted, while ensuring there are no constraints on collaboration within the ecosystem. Engagement beyond this may have unintended consequences. Certain activities warrant careful attention by regulators, regardless of who is engaging in them, – namely payments, lending activities, and data storage – as the risks associated with these activities have far reaching impacts to consumers and the broader financial system.

4.2.2 Risks and opportunities for payment institutions and electronic money institutions

Question 4

Are the issues identified by the EBA and the way forward proposed in subsection 4.2.2 relevant and complete? If not, please explain why.

- Yes, AFME welcomes the EBA's initiative further to develop their analysis of FinTech. While the EBA rightly places emphasize on the risks posed by FinTech innovation, AFME believes that FinTech offer significant benefits. As previously stated, AFME supports the

growing use of FinTech within the wholesale markets, noting that FinTech provides opportunities for more efficient customer servicing at lower costs.

- As previously stated, AFME is supportive of regulatory efforts to increase harmonisation of regulatory requirements ensuring a level playing field, and that further clarity on how firms can transfer innovation across borders in the European Union (EU) and globally is delivered. In this area AFME views the FinTech firms should be required to meet existing regulatory requirements (such as KYC/AML, consumer protection) at the level required of existing market participants.
- AFME welcomes the EBA's initiative to conduct further work on Distributed Ledger Technology (DLT) and Virtual Currencies (VCs) as new technologies stemming from FinTech. As identified in other consultation responses⁴, the risks posed by DLT and VCs are no different than operational risks currently managed by market actors. AFME believes that to effectively manage operational risks within a DLT enabled securities market, the following principles should apply:
 - **Private and permissioned:** DLT solutions should be based upon a private and permissioned design with adherence to a rigorous governance framework;
 - **Technology neutrality:** DLT remains largely untested compared to technologies that are currently prevalent. AFME views the that the principle of technology neutrality should be maintained while the technology is tested and matures;
 - **Collaboration:** Active collaboration of all actors of the ecosystem; when appropriate would ensure interoperability and resilience against external threats;
 - **Regulatory engagement:** AFME believes that continued engagement of regulators in the early development of the technology would avoid that DLT takes an unacceptable path to regulators.
 - **Regulatory flexibility:** The regulatory framework is key to ensure that appropriate rules and controls are applicable as the technology matures;
 - Specific considerations will have to be devised to address **operational risks regarding the implementation of DLT and VC solutions** such as for i) Testing, ii) Integration, iii) Interoperability, iv) Privacy, v) Fraud and vi) Cybersecurity;
 - Specific considerations will have to be devised to address **operational risks for system wide issues on DLT and VC solutions** such as for i) Incorrect data, ii) Interconnectedness risk, iii) Cross border dispute resolution;

For more detail on these points please see AFME's response to the FCA Consultation on Distributed Ledger Technology published July 17th 2017, pages 6 to 10 ([link](#)).

AFME believes a governance framework for DLT and VCs would further support adoption and allow for speed of processing whilst maintaining appropriate controls for safety and financial stability. A governance framework for DLT would have to solve for the following principles, i) Roles and responsibilities; ii) Vetting and approving participants, iii) Monitoring compliance, iv) Enforcing standards, v) Managing cross-border disputes, vi) Liability in the event of a cyber breach, vii) Regulatory accountability.

⁴ ESMA Consultation on Distributed Ledger Technology, 2016 ([link](#)) – p.15-17
 FCA Consultation on Distributed Ledger Technology, 2017 ([link](#)) – p.6-10
 European Commission Consultation on FinTech, 2017 ([link](#)) – p. 23-26

For more detail on DLT governance framework please see AFME’s response to the FCA Consultation on Distributed Ledger Technology published July 17th 2017, pages 9 and 10 ([link](#)).

Question 5

What opportunities and threats arising from FinTech do you foresee for payment institutions and electronic money institutions?

- In addition to comments provided in response to Question 4, AFME views FinTech firms should be required to meet existing regulatory requirements, such as KYC/AML/resiliency requirements, at the level required of existing market participants.

4.3. The impact of FinTech on the business models of credit institutions, payment institutions and electronic money institutions

4.3.1 Impact of FinTech on incumbent credit institutions’ business models

Question 6

Are the issues identified by the EBA and the way forward proposed in subsection 4.3.1 relevant and complete? If not, please explain why.

- Yes, AFME is of the view that the issues identified by the EBA and the way forward proposed are generally relevant and complete.
- Yes, AFME supports an EBA study assessing i) the relationship of incumbents and new players; ii) business model viability and sustainability; iii) emergence of new business models, to monitor FinTech developments across regions.

As previously stated AFME recommends the evaluation to be i) dynamic, to capture the rapidly evolving nature of innovation and remain relevant, ii) holistic, to capture the global nature of innovation, iii) proportionate, to capture the smaller and larger firms involved and iv) technology neutral, to focus on the business models adopted or underlying behaviours rather than the type of technology used.

Furthermore, the EBA should consider encompassing a broad spectrum of stakeholders involved in FinTech to achieve an ecosystem view and should encompass other jurisdictions to ensure the analysis is global in nature.

Question 7

What are your views on the impact that the use of technology-enabled financial innovation and/or the growth in the number of FinTech providers and the volume of their business may have on the business model of incumbent credit institutions?

- Many aspects of emerging technologies are occurring outside of the banking sector, or involve technologies which are not specific to banking but can be applied to a broad range of financial services (e.g. distributed ledgers, artificial intelligence, cloud, big data, etc) which may transform how firms operate and their underlying business models. As technology is adopted, we encourage regulators to look beyond specific business models to understand the regulatory and policy impacts of emerging technology. For example, the recent market activity around Initial Coin Offerings (ICOs) seems to blur the lines between securities, commodities and banking regulation. Similarly, third party applications that allow customers to take information from their financial accounts raise data protection and other concerns both within, and outside the bank regulatory perimeter.

As highlighted in the consultative document published by the Bank for International Settlement (BIS) “Sound Practices: Implications of FinTech developments for banks and bank supervisors”⁵ published in August 2017, “FinTech developments remain fluid, the impact on banks and their business models is uncertain” (p.4) “supervisors should review their current regulatory, supervisory and licensing frameworks in light of new and evolving risks arising from innovative products and business models (...) supervisors should consider whether these frameworks are sufficiently proportionate and adaptive to appropriately balance ensuring safety and soundness and consumer protection expectations with mitigating the risk of inadvertently raising barriers to entry for new firms or new business models.”(p. 35)

- Often “banking risks” are equated with new technologies and business models, i.e. that the technology is thought to be the risk. We would argue by contrast that the nature and scope of banking risks have evolved as a result of new technologies and business models; the risk comes not from the technology itself but from how the technology is incorporated, and how the market responds. There must be a balance between prudential supervision against the risks of inhibiting useful innovation. AFME believes a principles-based approach to regulation should be considered to allow firms to design risk management programs capable of adapting to the developing financial services landscape. AFME believes FinTech firms do not present a risk to the business model of incumbents, rather a complement, potentially leading to efficiency gains. Our view is that more analysis is required to compare the risk and benefits of FinTech.
- AFME believes the EBA, should work in close collaboration with other regulators, to foster a Globally, **i) consistent, ii) relevant and adaptive, iii) proportionate** supervisory and regulatory framework for FinTech and financial innovation.
 - i) Consistent:** Innovation is global. AFME believes cross-sectoral cooperation between bank supervisors and other public authorities should be increased globally (e.g. conduct authorities, data protection authorities, competition authorities and financial intelligence units) to increase coordination efforts, providing a more consistent and effective supervisory and regulatory framework.

⁵ <https://www.bis.org/bcbs/publ/d415.pdf>

For instance, licencing is an important step to ensure consistent standards are applied across all entities, new and existing, and to protect consumers and the safety and soundness of the financial system. The application of existing requirements to new entrants – irrespective of business model, type of entity or type of license – should ensure that the risks of a new entrant’s business activities are fully addressed and monitored. The idea of “same service, same rules” should be applied to secure consistent standards and fair competition. We caution against soft touch regulation, as this may threaten market integrity and financial stability.

As a key regulatory initiative in this area, AFME welcomes the recent publications of the European Central Bank Guide on draft guidance for FinTech banking licences⁶. The two consultative documents aim to i) re-iterate and clarify the process for obtaining a banking licence in the EU, ii) reinforce consistency between EU National Competent Authorities and iii) prompt an important dialogue on the evaluation of business models emerging from FinTech.

- ii) Relevant and adaptive:** The EBA should engage with other regulators and in global forums such as the Basel Committee for Banking Supervision, to define global principles and guidance to modernize cultures, processes and overall frameworks. As stated by the BIS “supervisors should review their current regulatory, supervisory and licensing frameworks in light of new and evolving risks arising from innovative products and business models. Within applicable statutory authorities and jurisdictions, supervisors should consider whether these frameworks are sufficiently proportionate and adaptive.”⁷

Cooperation between regulators in different jurisdictions should also include exploration of coordination of sandbox participation procedures to allow a firm to easily take part in multiple international sandboxes for a given pilot project, so cross-border firms can explore projects with an international scope. Coordination between sandboxes would help remove challenges firms face today due to different rules and requirements for sandboxes across jurisdictions. While harmonization of standards for sandboxes would be most efficient, memoranda of understanding would be helpful to firms as well.

Regulatory adjustments could be contemplated (including regulatory simplifications) and new status could be introduced, focusing on the main risks raised by the activity. For example, regulation could be promoted by “test and learn” initiatives. For example, French law acknowledges blockchain technology for the register on non-listed equities. Based on that first live experiment, blockchain technology could later be acknowledged for an extended scope of services.

- iii) Proportionate:** Regulation and supervision should be driven by considerations of risk scale (e.g. consumer protection, AML/CFT, financial stability). Various instances

⁶ <https://www.bankingsupervision.europa.eu/press/pr/date/2017/html/ssm.pr170921.en.html>

⁷ <https://www.bis.org/bcbs/publ/d415.pdf> - p.35

exist where policy developments have enabled the adoption of technology in line with new developments. For example, The UK Financial Conduct Authority (FCA) and the Bank of England (BoE) have jointly set up a New Bank Start-up Unit, which, among other things, seeks to ensure that there are no disproportionate barriers to entry for new entrants, whether FinTech or traditional banks.

Global coordination should be reinforced to further develop more consistent and comparable regulatory and supervisory standards, similarly to the Basel framework (I, II and III), where capital adequacy regimes are not obligatory in each jurisdiction; therefore consistent, in principle, with the concept of “proportionality”⁸.

4.3.2 Impact of FinTech on incumbent payment institutions and electronic money institutions business models

Question 8

Are the issues identified by the EBA and the way forward proposed in subsection 4.3.2 relevant and complete? If not, please explain why.

- Yes, AFME is of the view that the issues identified by the EBA and the way forward proposed are generally relevant and complete.

Question 9

What are your views on the impact that the use of technology-enabled financial innovation and/or the growth in the number of FinTech providers and the volume of their business may have on the business models of incumbent payment or electronic money institutions?

- AFME does not have further comments further to the response provided on Question 7.

4.4. Consumer protection and retail conduct of business issues

4.4.1 Unclear consumer rights due to unclear regulatory status

Question 10

Are the issues identified by the EBA and the way forward proposed in subsection 4.4.1 relevant and complete? If not, please explain why.

- Yes, AFME is of the view that the issues identified by the EBA and the way forward proposed are generally relevant and complete.
- AFME believes regulators should study, promote and support continued innovation. Innovation has been a core driver of success in the banking industry (e.g. computerized

⁸ <https://www.bis.org/fsi/publ/insights1.pdf> - p.3

records, automated teller machines, mobile applications) and FinTech technology promises to do more of the same. However, it will be aided in doing so to the extent that the regulatory response to the pace of change is one that does not limit the capabilities of the technology, but rather shapes its adoption and usage to ensure safety and soundness and consumer protection needs are met.

- Regulators should stay abreast of technology developments happening beyond the financial services industry – such as in large technology providers (“BigTech”) – to understand the broader technology context the firms they supervise are operating in and to see models of future innovations in which may be applied in their regulated markets.
- It is also important for regulators to recognize areas where a lack of clear guidance is holding back innovation or the adoption of new technologies. As firms look to implement technologies whose scope and capabilities were not foreseen in earlier regulations (such as artificial intelligence). Guidance and a willingness to revisit existing rules as necessary will help support innovation and remove impediments to the use of new technologies. Industry dialogue and close engagement between regulators and banks will help identify these areas where regulatory uncertainty is a barrier to adoption.
- While further detail is required on any proposal from the EBA to amend current guidelines and Regulatory Technical Standards (RTS), AFME notes the following general points:
 - **Consumer protection:** Issues of consumer protection and financial inclusion must be the subject of consistent, rigorous, and transparent application. There are specific activities that do warrant careful attention by regulators, regardless of who is engaging in the activity – namely payments, lending activities, and data storage – as the risks associated with these activities have far reaching impacts to consumers and the broader financial system (i.e. money laundering, terrorist financing, disparate impact, fraud, identity theft, unauthorized transfers, etc.)
 - **Regulatory framework:** Relevant regulators must provide a clear and comprehensive regulatory and supervisory framework before making amendments/recommendations in light of FinTech activities.
 - **Same service, same rules:** The idea should be applied to secure consistent standards and fair competition. This is particularly important for standards on cybersecurity, AML/CFT, data protection and consumer protection. Regulatory arbitrage must be avoided. Regulators should monitor the evolving landscape of firms conducting financial services activities, with an aim to identify potential regulatory gaps in a regulator’s respective jurisdiction. FinTech should have similar, if not the same, capital/liquidity/consumer requirements for a given activity as a financial institution. When determining what activities are core banking activities, the question ought to be what activities are necessary for a company to undertake in order for it to be eligible to be licensed as a national bank. Discretion should be reserved for activities that are not routine for conventional banks.

- **Level playing field:** Regulators must establish a fair and level competitive playing field to address the concern that FinTech would be able to offer services and products in direct competition with full-service banks, but subject to a more limited and less burdensome regulatory regime.
There are financial stability concerns if established tech industry players and/or merchants are able to provide financial services without full compliance with the regulatory regime license, in addition to FinTech. Large techs and/or merchants would have systemic implications, therefore any proposal for amendments must have a well-defined scope.
- **FinTech business model:** Existing FinTech companies often have atypical funding models and complex equity and ownership structures due to their venture capital and private equity investors, and in many cases, will also have non-traditional balance sheet compositions that do not fit readily into the existing capital frameworks for banks.

4.4.2 Unclear consumer rights in the case of cross-border provision

Question 11

Are the issues identified by the EBA and the way forward proposed in subsection 4.4.2 relevant and complete? If not, please explain why.

- AFME does not have further comments further to the response provided on Question 10.

Question 12

As a FinTech firm, have you experienced any regulatory obstacles from a consumer protection perspective that might prevent you from providing or enabling the provision of financial services cross-border?

- FinTech have the ability to operate across jurisdictions, as the new technologies they are implementing are not limited by geographic boundaries or a single legal and regulatory regime. New regulatory and supervisory frameworks promulgated by local and regional authorities to address FinTech innovation should strive to be harmonious with existing innovation frameworks, in order to mitigate against regulatory arbitrage and conflicting rule sets that limit the development of innovative products and services.
- AFME is seeing encouraging efforts to increase international cooperation between regulators on the regulation of FinTech initiatives, as highlighted in the consultative document published by the Bank for International Settlement (BIS)⁹, under Recommendation 6: “International Regulatory Coordination”. Cross border contracts and firms operating new technology initiatives in multiple markets internationally would be supported by more coordination and regulatory harmonization.

⁹ <https://www.bis.org/bcbs/publ/d415.pdf>

- This can be undertaken in a number of ways, including the creation of FinTech regulatory bridges between the relevant authorities in jurisdictions, such as the UK-Singapore partnership. The UK Financial Conduct Authority (FCA) and the Monetary Authority of Singapore (MAS) signed a co-operation agreement in 2016 to support innovator businesses, primarily to help innovators understand regulatory frameworks in each authority's jurisdiction. The FinTech bridge includes a co-operation agreement which enables the UK regulator to refer FinTech firms to its international counterpart and vice versa (e.g. MAS). The FinTech bridge makes it essentially easier for the UK and the other participating jurisdiction (e.g. MAS) to invest in FinTech, connect the UK to "priority export markets" and make it easier for UK FinTech to scale.
- Cooperation between regulatory jurisdictions should also include exploration of coordination of sandbox participation procedures to allow a firm to easily take part in multiple international sandboxes for a given pilot project, so cross-border firms can explore projects with an international scope.
- It may be useful for a "regulatory college" to be set up to help develop regular dialogue between the regulators and the sharing of best practices and cross-border issues regarding FinTech. Regulatory dialogue with foreign counterparts will also assist regulators in their assessment of potential regulatory gaps from new market players and technologies. The work of the International Organization of Securities Commissions (IOSCO) around FinTech is an example of this coordination.

Question 13: Do you consider that further action is required on the part of the EBA to ensure that EU financial services legislation within the EBA's scope of action is implemented consistently across the EU?

- In addition to comments provided in response to Question 12, AFME believes that financial services legislation implemented consistently will support the need for a level playing field across all jurisdictions and types of service providers.

4.4.3 Unsuitable or non-existent complaints handling procedures

Question 14

Are the issues identified by the EBA and the way forward proposed in subsection 4.4.3 relevant and complete? If not, please explain why.

- Yes, AFME is of the view that the issues identified by the EBA and the way forward proposed are generally relevant and complete.
- From the perspective of regulated financial companies, the benefits associated to the use of Big Data may range from a better understanding of risk profiles, and a better management of fraud and of the balance sheet.

- As previously stated, AFME believes the challenges posed by Big Data technology may fall under the following categories:
 - **Control:** Ensuring that the technology allows control over the outcome;
 - **Transparency:** Ensuring that the technology allows transparency on the outcome;
 - **Consumer protection:** Ensuring that the technology allows fairness of customer treatment.

However, these challenges are not dissimilar to the challenges faced and managed by financial services today; although these may be exacerbated by the technology itself. Therefore, AFME believes that the technology should be explored further, with the active participation of various actors, to enshrine the appropriate design and controls required.

- With regards to the use of Big Data, it is important to note that several existing EU legislations and/or other regulatory requirements such as the Payment Services Directive 2, the General Data Protection Regulation (GDPR), the Markets in Financial Instruments Directive (MIFID 2), etc. are expected to mitigate potential risks which could be linked to the lack of transparency, misuse of data, recognising that the difference between the use of data and big data is principally about scale.
- AFME believes the potential risks and remediation for Big Data use are as follows:
 - **No customer harm:** Customer trust is vital to banks' business, requiring high levels of security and reliability. New uses of data should be evaluated from the perspective of "no customer harm" and a review of a firm's reputational risk review.
 - **Sound risk management:** It is difficult to anticipate the extent to which more risk-based credit scoring might limit credit to those who cannot afford it as this ultimately depends on the risk appetite of various financial institutions. Any decision not to extend credit would be taken in the context of sound risk management, which would involve human decisioning, to further the goals of safety and stability.
 - **Implementation of appropriate controls:** There is a potential for differential treatment of consumers due to Big Data use, but this can be mitigated through the implementation of appropriate controls, including de-identification and aggregation of data, appropriate human interpretation of findings and how to apply the findings to banking practices. The human interpretation should adopt the "no customer harm" review lens and should align with the EU Directive on Unfair Commercial Practices¹⁰ and the EU Directive on Unfair Contract Terms¹¹.
 - **Cyber risks:** Any new channels for sourcing data could potentially increase cyber risks by effectively broadening the network and attack surface. However, banks have demonstrated a robust and sustained commitment to ensuring the protection of customer information and integrity of financial systems and networks. The greater concern is around any requirements to allow open access to data or data sharing with third parties that may not have equivalent protections or are not subject to the same strict requirements around data security.

¹⁰ http://ec.europa.eu/consumers/consumer_rights/unfair-trade/unfair-practices/index_en.htm

¹¹ http://ec.europa.eu/consumers/consumer_rights/rights-contracts/unfair-contract/index_en.htm

4.4.4 Inadequate/insufficient disclosure to consumers in a digital environment

Question 15

Are the issues identified by the EBA and the way forward proposed in subsection 4.4.3 relevant and complete? If not, please explain why.

- AFME does not have further comments further to the response provided on Question 14.

Question 16

Are there any specific disclosure or transparency of information requirements in your national legislation that you consider to be an obstacle to digitalisation and/or that you believe may prevent FinTech firms from entering the market?

- AFME as a pan-European association has no comments in response to this question about national legislation.

4.4.5 Low levels of financial literacy

Question 17

Are the issues identified by the EBA and the way forward proposed in subsection 4.4.5 relevant and complete? If not, please explain why.

- Yes, AFME is of the view that the issues identified by the EBA and the way forward proposed are generally relevant and complete.
- However, AFME believes that the greater adoption of new technology by banks has the potential to create improvements in financial inclusion for individuals and enterprises. However, FinTech should not be apportioned as the primary means for achieving these outcomes.
- For example, while emerging technologies may allow existing or new financial firms to engage previously underbanked enterprises or individuals in new ways, financial inclusion is best addressed through other channels. Market participants themselves will continue to find innovative ways to engaging new and underserved markets, and this process may be supported by specific regulatory initiatives or through existing regulations. An example is the EU Initiative for Financial Inclusion in 2015, which aims to increase access for finance to small and medium enterprises to increase competition.
- Initiatives to further develop the continuous improvements of educational standards for all actors in the ecosystem would facilitate the development and implementation of the most promising FinTech uses cases.

- Issues of consumer protection and financial inclusion must be the subject of consistent, rigorous, and transparent application across FinTech licenses and full-service national banks.

Question 18

Would you see the merit in having specific financial literacy programmes targeting consumers to enhance trust in digital services?

- AFME does not have further comments further to the response provided on Question17.

4.4.6 Financial exclusion associated with artificial intelligence and data-driven algorithms

Question 19

Are the issues identified by the EBA and the way forward proposed in subsection 4.4.6 relevant and complete? If not, please explain why.

- Yes, AFME is of the view that the issues identified by the EBA and the way forward proposed are generally relevant and complete.
- AFME believes the use of artificial intelligence and data driven algorithms to achieve risk-based credit scoring, could improve credit conditions for some users, and in some cases, could involve denying credit to those that cannot afford it. However, if the data used is unreliable then results might not be accurate and customer detriment could result. Overall, AFME views that any innovative use of customer data for lending purposes should be consistent with responsible lending principles. For further detail please refer to the response provided on Question14.

4.5. The impact of FinTech on the resolution of financial firms

Question 20

Are the issues identified by the EBA and the way forward proposed in section 4.5 relevant and complete? If not, please explain why.

- Yes, AFME is of the view that the issues identified by the EBA and the way forward proposed are generally relevant and complete.
- AFME believes that the impact of FinTech on recovery and resolution is not dissimilar to risks currently assessed and mitigated by financial services firms.
 - Financial services firms interacting with FinTech should follow a risk based approach to implement appropriate governance, controls and processes to mitigate risk associated with FinTech.

While AFME agrees to the general statement that FinTech firms are less mature than traditional actors, additional risk assessment should be completed, AFME would caution against a one size fits all approach in the assessment of FinTech.

FinTech firms may vary greatly depending on their business model, product, service and their potential impact on a financial service firms may depend on the nature of the business relationship. Specific considerations such as interdependencies and contagion risks may provide additional useful information in the assessment of FinTech on recovery and resolution.

- With regards to the recovery and resolution of FinTech firms, AFME believes that regulators and actors involved in the FinTech ecosystem should cooperate closely to better understand the implications of FinTech on financial stability. As FinTech firms can operate more globally than traditional firms there maybe benefit in developing such a global forum on FinTech.

Generally, AFME believes that FinTech are providing similar services that traditional financial service firms, the “same service, same rules” should apply, including on recovery and resolution planning.

- Further, FinTech could greatly increase the resolution planning of Financial Service firms, in a recovery and resolution event, by leveraging financial technology to gain real-time data on firms and supporting potential real-time resolvability (e.g. data aggregation), assisting in specific areas such as financial crime. However, we feel that to fully leverage such developments, a change in attitude from regulator’s and supervisor’s on how they view FinTech would assist further, we provide more detail in our answers to the questions below.

- Finally, the implementation of instant payments may offer significant benefits but come with risks that will require appropriate governance and adaptations to the regulatory framework.

We believe further analysis is required to understand how market participants will implement and adapt to instant payments, in particular shifts in liability along the trade life-cycle and impacts to downstream post-trade processes. Regulators should work closely with market participants to assess if a new or revised regulatory regime is required to reflect the potential new business models emerging.

4.6 The impact of FinTech on AML/CFT

Question 21

Do you agree with the issues identified by the EBA and the way forward proposed in section 4.6? Are there any other issues you think the EBA should consider?

- AFME is of the view that all market participants should comply with all anti-money laundering and counter terrorist financing regulation.
- While we are generally in favour of regulatory forbearance for market entrants, as indicated in the response provided on Answer 7, it is firmly our view that FinTech start-ups

should not benefit from any regulatory forbearance in the AML/CTF space. They are just as at risk of being used for money laundering or terrorist financing as larger firms and large banks, possibly more so. For additional detail please see Answers provided in response to Question 22.

Question 22

What do you think are the biggest money laundering and terrorist financing risks associated with FinTech firms? Please explain why.

- The main issues here are size, corporate governance and culture, knowledge and understanding of the regulations, and resourcing. FinTech firms may not have adequate resources or governance focused on activities that are at risk of the concerns (KYC/AML/CTF programme), compared to existing financial institutions.
- Thus, they could easily become an unwitting conduit for money laundering or terrorist financing. AFME sees this risk as both real and significant, irrespective of the size of the FinTech firm concerned.

Question 23

Are there any obstacles present in your national AML/CFT legislation which would prevent (a) FinTech firms from entering the market, and (b) FinTech solutions to be used by obliged entities in their customer due diligence process? Please explain.

- AML/CFT legislation and regulation, as well as data privacy and data management laws (e.g. EU GDPR, EU ePrivacy), are generally extremely onerous on banks and other financial services firms. Small, start-up FinTech firms will find this regulation particularly difficult to deal with. For additional detail please see comments provided in response to Question 22.
- Customer Due Diligence (CDD) and Know Your Customer (KYC) could certainly benefit from FinTech innovation such as KYC utilities. These utilities, which contain relevant data about customers that banks can use in their CDD/KYC process, are capable of speeding up and making more efficient the CDD/KYC process, reducing the risks associated with manual error and resulting in a less risky AML/CTF environment. The information has only to be supplied once by the customer to the utility (apart from the need to be kept up to date of course).
- It is a matter of regret, however, that the undoubted benefits and efficiencies of KYC utilities will not be available widely until such time regulators permit banks to rely, without further checking, on the information contained in such utilities. AFME recommends that the EBA and other regulators reconsider their position urgently on this important issue.