



Neutral Citation: [2023] UKFTT 00856 (TC)

Case Number: TC08957

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House, London

Appeal reference: TC/2020/03842

VAT – Whether single or multiple supplies – If a single supply whether standard rated or exempt – If more than one supply whether any supply, individually or collectively, is an exempt supply – Appeal dismissed

Heard on: 9-11, 15-17, 19, 22 & 23 May 2023

Judgment date: 29 September 2023

Before

TRIBUNAL JUDGE BROOKS

Between

JPMORGAN CHASE BANK, NA

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Andrew Hitchmough KC and Laura Poots instructed by Baker McKenzie

For the Respondents: Kieron Beal KC, Andrew Macnab and Ajay Ratan instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. JPMorgan Chase Bank, NA (“CBNA”), appeals against VAT assessments issued by HM Revenue and Customs (“HMRC”), on 30 June 2017, 1 May 2019, 28 May 2020 and 7 December 2021 respectively, to give effect to a decision, dated 20 February 2020, that services CBNA supplied to JPMorgan Securities plc (“SPLC”), which it describes as “Support Services” and “Business Delivery Services”, were “single, composite supplies of standard rated services” (“the Liability Decision”) and a decision dated 3 September 2021 to reject a claim made by the appellant.

2. As CBNA and SPLC are members of the same VAT group supplies from one to the other would ordinarily be disregarded under s 43(1)(a) Value Added Tax Act 1994 (“VATA”). However, as CBNA bought in services from overseas in order to enable it to make those intra-group supplies, HMRC contend (and CBNA disputes) that those intra-group supplies are taxable pursuant to s 43(2A) and (2B) VATA.

3. The appeal, which relates to CBNA’s 06/13 to 12/20 prescribed accounting periods (“the Relevant Period”), raises two broad issues:

(1) The Supply Issue: whether CBNA makes single or multiple supplies to SPLC, in particular whether CBNA makes a single supply of, what HMRC described as “Support Function Services” which encompasses both Support Services and Business Delivery Services or whether it makes separate supplies of:

- (a) Support Services and
- (b) one or more Business Delivery Services.

(2) The Exemption Issue: whether any supply by CBNA to SPLC of Business Delivery Services, individually or collectively, is an exempt supply.

4. With regard to the Supply Issue, HMRC, represented by Kieron Beal KC, Andrew Macnab and Ajay Ratan, contends that CBNA makes a single taxable supply of what it describes as “Support Function Services” to SPLC.

5. CBNA, which was represented by Andrew Hitchmough KC and Laura Poots, contends that it makes separate supplies of Support Services and Business Delivery Services to SPLC.

6. It describes Support Services as the services which support SPLC generally as a business. These are typically generic services which are not specific to a particular part of the business and include Human Resources, Real Estate and Legal. In contrast, the services which make up the trading infrastructure (which comprises a number of functions including Quantitative Research (“QR”), Technology, Operations and Market Risk which are described more fully below) which is necessary for SPLC to carry out transactions with clients is described by CBNA as Business Delivery Services. I have adopted these terms and unless otherwise stated subsequent references to “Support Services” and “Business Delivery Services” should be construed accordingly.

7. CBNA accepts that its supplies of Support Services are taxable. However, its alternative argument in the event that I were to conclude that there was a single supply, is that that single supply is exempt on the basis that financial transactions by SPLC’s Markets business segment are themselves overwhelmingly exempt.

8. In relation to the Exemption Issue, CBNA submits that it makes separate supplies of Business Delivery Services in respect of each business area within SPLC’s Markets business segment (eg Equities, Credit, Rates) and that such supplies are exempt supplies within Articles

135(1)(d) and/or (f) of the Council Directive 2006/112/EC, the Principal VAT Directive (“the Directive”) in those cases where the transactions entered into by that business area are exempt. Alternatively, it contends that if the Tribunal concludes that there was a single supply of Business Delivery Services in respect of the entire Markets business segment, that entire supply is exempt on the basis that the financial transactions entered into by Markets are themselves overwhelmingly exempt.

9. HMRC contend that even if CBNA makes one or more separate supplies of “Business Delivery Services” (which HMRC say it does not), none of those supplies falls within any of the exemptions for financial services (the “Finance Exemptions”) provided by Article 135(1)(d) (the “Payment Exemption”) and/or (f) of the Directive (the “Securities Exemption”), as implemented by Item 1 (the “Payment Exemption”) and/or Item 6 (the “Securities Exemption”) of Group 5 of Schedule 9 to VATA, including in both cases exemption for “negotiation” implemented by Item 5 (in relation to Items 1 and/or 6) of Group 5 of Schedule 9 to VATA.

10. In addition, HMRC contend there is a third issue, the “Identification Issue” – whether CBNA has identified any specific exempt supplies and for what consideration those supplies were given. Mr Beal submits that CBNA has not done so and, as such, it has failed to discharge the legal and evidential burden that it bears.

11. I was very much assisted by the clear submissions, both written and oral, on behalf of the parties but, although carefully considered, I have not found it necessary to refer to each and every argument advanced or all of the authorities cited in reaching my conclusions.

EVIDENCE

12. In addition to electronic Hearing and Supplementary Bundles, comprising 1,308 and 107 pages respectively, I heard from the following witnesses on behalf of CBNA:

(1) Blaise Bradley, who from May 2019 has been the head of VAT in Europe, the Middle East and Africa (“EMEA”) for the JPMorgan corporate group. Mr Bradley is employed by CBNA. Mr Bradley joined the JPMorgan VAT team (the “VAT Team”) in September 2004 and has since then consistently reported to the Global Head of Indirect Tax, performing various different roles within the VAT Team. Mr Bradley, who Mr Beal described as a “straightforward witness”, gave an overview and background of the operating model and the business.

(2) Conor Richardson, a Managing Director within the Equity Derivatives Group (“EDG”) at SPLC. Mr Richardson has been in his current role since 2019 and has had oversight responsibility for the corporate non-linear trading desk. For the last three years he has had additional oversight responsibility for the convertible bond trading desk and, until the end of September 2021, also had oversight responsibility for the single stock flow options trading desk within EDGE. Mr Richardson’s evidence primarily concerned the ‘Equities’ business area of SPLC.

(3) Sven Morawitz, who from July 2021, has been a Managing Director and Control Manager for Equities for CBNA with direct responsibility for Control and Regulatory Managers. Before July 2021, Mr Morawitz held a number of leadership roles in Operations and his evidence was in relation to the roles and activities of ‘Operations’.

(4) Michael Sanders, a Managing Director and Head of Macro Technology for CBNA, part of the Technology management team, is responsible for the technology used by the Rates, Foreign Exchange (“FX”), Currency and Emerging Markets and Commodities business areas globally within Markets (a ‘business segment’ within the Corporate & Investment Bank, a line of business within the Wholesale division of the global business

of JPMorgan Chase & Co, see below). In addition, Mr Sanders has a regulatory responsibility for Markets Technology overall within the EMEA region, which includes the non-Macro parts of the Markets business, including Equities and Credit. He gave evidence in relation to the Technology function.

(5) Ian Christopher Dowker, an Executive Director for CBNA and part of the Corporate & Investment Bank (“CIB”) QR function on which he gave evidence.

(6) Juan Reig Mascarell, a Managing Director within the EMEA Credit, Global Exotics & Global EM & Japan Credit sub-business (the “EMEA Credit sub-business”) at SPLC which is part of the Markets business, and is a sub-business which falls within the Global Credit Trading, Syndicate and Public Finance business area (“Credit”). It was in relation to Credit that he gave his evidence.

(7) Tom Prickett, a Managing Director within the Rates business area (a sub-division of Markets, see below) at JPMorgan SE (“JPMSE”), a subsidiary of CBNA which was the subject of his evidence.

I found all of the witnesses, who all clearly sought to assist the Tribunal, to be reliable and credible witnesses.

13. No witnesses were called on behalf of HMRC.

FACTS

14. In making my findings of fact I have been greatly assisted by CBNA’s ‘Note on Evidence’ which I have largely adopted having also taken into account Mr Beal’s submissions on that Note.

Background

15. CBNA and SPLC are part of the JPMorgan global corporate group. It is a global financial services business whose parent company is JPMorgan Chase & Co (“JPMC”) which has its headquarters in the United States and operations throughout the world.

16. JPMC has a number of locally-incorporated subsidiaries conducting various business activities with clients. Mr Bradley explained that locally-incorporated subsidiaries are necessary due to the regulatory requirements in each jurisdiction and the US, in particular because of a combination of factors including US regulations, local regulations (eg in the UK, the regulations and requirements of UK regulators that apply to investment banking activity), client expectations (to deal with a single entity for multiple products and to deal with an entity with a published and sufficient credit rating), and capital/funding (the extent to which individual entities must be separately capitalised and the efficient use of capital and funding within JPMC). He accepted that, for JPMC, there was not a choice between making money and complying with regulations.

17. CBNA is a US-regulated bank with New York headquarters. It has branches in various cities around the world, including London. The London branch employs several thousand staff, owns multiple offices and conducts significant business operations with UK and international clients. It is the primary bank subsidiary of the parent company and provides significant services to those group companies. These are known as “affiliates” as although all are direct or indirect subsidiaries of JPMC they may not be subsidiaries of CBNA. CBNA is the main infrastructure-providing entity within the JPMorgan group. It employs the majority of the personnel providing both Business Delivery Services and Support Services to other entities within the group (including SPLC which has no infrastructure of its own), enabling those other entities to trade in a globally consistent manner.

18. CBNA is the representative member of the JPMorgan VAT group in the UK. SPLC is a member of that VAT group. In his evidence Mr Bradley agreed that, at a “high level” CBNA is an “infrastructure providing entity” that provides data centres, networks servers and systems supported by personnel to its affiliates including SPLC. In evidence Mr Bradley accepted that it would not be possible for an affiliate to decline a service provided by CBNA as to do so would undermine the aim of standardisation throughout the JPMC group.

19. SPLC is a UK-incorporated entity. It is an indirect subsidiary of CBNA. SPLC is regulated in the UK by the Prudential Regulatory Authority (“PRA”) and the Financial Conduct Authority (“FCA”).

20. JPMC’s global business comprises a variety of distinct lines of business. These include those aspects of the business which generate revenue and the functions which support those lines of business. The hierarchy of the business comprises:

(1) Divisions: JPMC’s global business comprises a Wholesale division and a Consumer division. It is the Wholesale division that is relevant to this appeal. SPLC does not engage in the Consumer division. Clients of the Wholesale division include multinational corporations, banks, funds and governments.

(2) Lines of business: There are three lines of business within the Wholesale division:

- (a) Corporate & Investment Bank (“CIB”),
- (b) Commercial Bank, and
- (c) Asset & Wealth Management.

(3) Business segments: There are four business segments within CIB:

- (a) Markets,
- (b) Banking,
- (c) Securities Services, and
- (d) Pricing Direct.

21. Although SPLC engages in both the CIB and Commercial Bank lines of business, it is only CIB, which is aimed at corporate clients and fulfils client needs such as raising capital and financial risk management, that is relevant to this appeal. SPLC engages in the Markets and Banking business segments.

22. Markets provides its clients with access to the global financial markets and enables its clients to enter into financial transactions. Because of its international nature, as Mr Bradley explained, one “line of business may be carried on by employees who are employed in different legal entities and in different locations across the globe.” This is particularly the case with Markets of which Mr Bradley said it:

“... operates as a single global business, it means that the different parts of Markets work cohesively regardless of which entity they are part of.”

23. The non-Markets aspects of the business in which SPLC engages are Commercial Banking and Banking within CIB. Mr Bradley explained that SPLC would be involved in Commercial Banking “to the extent that there’s lending done by the commercial bank” which would be commercial loans to smaller clients.

24. Banking within CIB comprises the following business areas:

(1) Mergers and Acquisitions: advising clients in respect of the buying and selling of companies or businesses including arranging these transactions. In response to a question

about CBNA providing a “technological platform” for this purpose, Mr Bradley described Mergers and Acquisitions as an “advisory business” which “wouldn’t need a trading platform”.

(2) Equity Capital Markets: assisting clients in raising capital through arranging and underwriting share issuances and similar transactions including initial public offerings of companies. Mr Bradley described its main role finding “investors for clients and help them to price the transactions”. He said that “most of that business is very much a people-oriented business” which is “not reliant on a huge trading infrastructure”.

(3) Debt Capital Markets: assisting clients in raising finance through underwriting and arranging the issuance of debt securities or syndicated loans. Mr Reig Mascarell explained that here JPMorgan “arranges the primary issuance” and distributes that.

(4) Lending: the lending of working capital to clients through various loan offerings.

25. Although Markets is a global business, JPMC operates that business (and its other lines of business) through locally-incorporated subsidiaries such as SPLC which engages in the Markets business in the UK (and, until Brexit, in the EU). Until Brexit, SPLC was responsible for approximately 35% of JPMorgan’s global Markets business (by revenue). It is the client-facing entity for those Markets transactions, in the sense that it is the contractual counterparty in the client transactions and also employs most of the front office staff, ie those employees who are traders and sales people responsible for dealing with clients, offering products and services to them.

26. Clients of SPLC can trade a wide range of financial instruments with Markets, such as equities, bonds, currencies and commodities. In addition to transacting directly in those instruments, Markets also transacts in many forms of derivatives: ie contracts which derive their value from an agreed-upon financial asset or other measure (such as an index)

27. The Markets business segment is sub-divided into seven business areas reflecting the type of transactions undertaken:

(1) Equities – transactions relating to listed company shares, including derivatives over those shares;

(2) Rates & Rates Exotics (“Rates”) – transactions relating to fixed income assets (such as certain government bonds and interest rate swaps, but excluding corporate bonds), including derivatives over those assets;

(3) Currencies and Emerging Markets or CEM – foreign exchange/currency transactions and government bond transactions involving securities and currency issued by emerging market countries, including derivatives over those assets;

(4) Fixed Income Financing – predominantly repurchase and reverse-repurchase transactions in respect of fixed income securities (government or corporate bonds) so as to provide financing or collateral;

(5) Commodities – transactions in commodities, such as metals and power, including both physical transactions and financial transactions;

(6) Credit Trading & Syndicate (“Credit”) – transactions relating to corporate bonds and credit risk (including credit default swaps); and

(7) Securitised Products Group or SPG – securitisation transactions backed by various types of collateral, including transactions in and derivatives that reference securitized assets.

28. A further business area is Credit Portfolio Group (“CPG”) Derivatives. Its function is to hedge credit and funding risk on behalf of the other business areas. However, it does not carry out client transactions and, as SPLC does not operate any CPG trading books (ie it does not carry out any CPG transactions), is not relevant to this appeal.

“Business Delivery Services”

Overview of Trading Infrastructure

29. The Business Delivery Services are those services which make up the trading infrastructure consisting of four functions, QR, Technology, Operations and Market Risk.

30. QR develops and oversees the running of complex statistical models which are used in pricing transactions, valuing instruments, quantifying market risk and executing transactions. The models are embedded into the trading applications and systems that are built and maintained by Technology which Mr Dowker described as being “in a sense under the hood” and integrated into Technology.

31. Technology provides the systems needed by the front office and used by Operations to enable transactions to take place and fulfil commitments under those trades. This part of the infrastructure consists of a large number of interconnected trading systems and applications, together with hardware (mainly servers) and personnel with the aim to provide, as far as possible, “straight-through processing” or “STP”, ie the automated end-to-end processing of trades/payment transfers (including where relevant, the automated completion of confirmation, matching, generation, clearing and settlement of orders) so that each step in a client transaction is processed and fed through to the next system.

32. The extent of that STP and the need for human involvement or intervention is dependent on the type of transaction concerned. In this context Technology is not the general technology of a type used in a business such as email, Microsoft Office and Zoom. Such general technology is provided by another function within CBNA, Enterprise Technology.

33. Operations is responsible for all of the operational processes involved in processing Markets transactions including ensuring that all transactions are cleared and settled. Operations works closely alongside Technology as most of the operational processes are performed automatically by technology systems, using STP.

34. However, Operations personnel are responsible for stepping in where the STP cannot work automatically. This is referred to as a “break” or “exception”. In evidence, Mr Richardson described the role of Operations as:

“... managing the full end-to-end lifecycle of our transactions.”

In carrying out this role, as both Mr Richardson and Mr Morawitz confirmed, Operations will regularly have direct interaction with clients (whether the client’s own operation team, or their front office).

35. Market Risk is a team that identifies, measures, monitors and controls the market risk on all relevant trades between the Client and SPLC. Market risk means the risk of financial loss from the portfolio of transactions on the books at any given point which arises from movements in market variables and includes data/information gathering, collection, transmission, holding, processing, monitoring, analysis, reconciliation, verification, storage and Management. Mr Richardson explained that the role of Market Risk is:

“... actually quite involved with the trading desk on a practical basis. They set the rules by which I can trade.”

36. The QR, Technology, Operations and Market Risk functions work together to provide a specific combination of Business Delivery Services to each business area. As Mr Richardson explained, the trading infrastructure is made up of a:

“... complex web of different systems, trading platforms and applications, as well as large number of specialist employees that together perform many of the key functions that are required in order to carry out the transaction entered into by SPLC.”

In cross-examination he acknowledged that “I need all of them”, and the different parts of CBNA work:

“... seamlessly to provide an integrated system for you to trade with”.

37. Mr Richardson described it as a complex web that provides:

“... an end-to-end solution to traders across the whole trade lifecycle (in some cases running as an STP with no human involvement).”

Mr Prickett agreed with Mr Richardson’s summary, and noted that:

“... the trading infrastructure touches every part of the lifecycle of a trade.”

38. Mr Richardson also explained that the products traded by each business area differs:

“... in the following fundamental ways:

(a) Shares give you partial ownership in a company, while bonds are a loan from the holder to a government (in the case of government bonds) or company (in the case of corporate bonds). Shares can appreciate in value and be sold later, and can also earn dividends. However, in most cases, neither of these returns are guaranteed. In contrast, most bonds pay fixed interest over time thereby providing the holder with a steady, guaranteed income stream.

(b) The factors that affect a share price can be different to the factors affecting a bond price. There are numerous reasons why a company’s performance could struggle and its share price could fall. For bonds, the value of a bond is directly affected by interest rates. Generally when interest rates fall, the bond prices rise, and when interest rates rise, bond prices fall.

(c) The way in which shares and bonds are valued differs. Bonds receive fixed, regular returns, it is known when they will expire (or “mature”), and the amount which will be repaid to the bond holder at expiration is known. In contrast, shares have uncertain expiration dates (a business can, in theory, go on forever or go insolvent at any time), returns are uncertain and the owner of the shares does not know whether it will receive any amount at expiration (if and when the business stops trading).

(d) There is often a difference in the way in which dividends (on shares) and coupon payments (on bonds) are treated for withholding tax purposes.

(e) The shares we trade in are listed on exchanges, which means that there is a market price which is observable by the public and everyone can see how the market price is impacted by global events. Most bonds are not traded on an exchange and not everyone has easy access to a wide range of bond prices.

(f) Another important difference between shares and bonds is that they tend to have an inverse relationship in terms of price. By this I mean that when share prices rise, bond prices tend to fall, and vice versa.”

39. Because of these differences Mr Richardson said that it is not generally possible to use the same models, operational processes and technology when trading in listed shares (and

related derivative products) as are used when trading in government bonds or corporate bonds (and related derivative products).

40. The differences between government and corporate bonds, which Mr Prickett described as “very important”, requires a very different approach in modelling risk for the purposes of pricing a transaction and the sourcing of information for that purpose. He said in evidence that:

“... the sourcing and the way in which that information was ultimately used to construct a price would be very different.”

41. There is also a contrast within Commodities in which certain transactions will require functions unique to physical commodities, including Operations functions such as physical inventory management or physical settlement (ie delivery or receipt of that commodity) which will not be relevant to any other business area. Mr Morawitz confirmed that in the majority of CIB operations “the transactions are dematerialised in form so we are not really dealing with anything physical.” But, he said, within Commodities:

“... they actually need to be concerned with physically procuring and depositing those assets in certain locations ... if you’re actually having a container ship in a dock and get the barrels off and that sort of thing ... there’s a lot more to it”.

42. As a result of the difference in the products traded, the Business Delivery Services provided to meet the needs of each of SPLC’s business areas are tailored to meet the needs of each and the different products concerned. In his oral evidence Mr Richardson explained:

“Within Equities, we have teams of Technology, Operations, QR and MR staff that are dedicated to our Equities business globally, which means that the trading infrastructure we use in Equities is very different to the trading infrastructure used in other business areas within Markets. This is simply down to the different asset types and financial instruments that are traded in the different business areas.”

43. Mr Bradley made the same point saying:

“One business area could not use the Business Delivery Services provided to another business area to conduct its business. There may be elements in common between different business areas, but the complete package is bespoke.”

44. Mr Morawitz similarly confirmed that “the parts” of the trading infrastructure received by SPLC are “very different, depending on the businesses”. Mr Prickett described the different business areas as benefiting from the trading infrastructure “in very different ways” and explained that it would be:

“... different part of Operations and Tech that would be used depending on the area of Markets that we’re talking about.”

45. Most of the Technology systems and applications (more than 75% by reference to cost) are used exclusively or primarily by a single business area and include systems which interact with external software. Although some systems are used for multiple business areas, each business area has its own bespoke mix of systems and even where systems are used across more than one business area, the systems will be tailored with “specific functionality” to the product traded, or the business area. By way of example Mr Sanders referred to “JPMM Execute” which is used for trading foreign exchange and also interest rate swaps and is common to CEM and Rates which he described as:

“... two different modules within the application umbrella”.

46. When asked about another system “Risk Central” which is common to three business areas (Credit, Commodities and SPG), Mr Sanders explained that this presents risk to different business areas for sign off at the end of the day. He said that the reporting seen by the users will be:

“... customised to a particular business because they’ll need to see the risk in a particular way that’s relevant for that business, and Risk Central will be an application that will bring that together with customised screens.”

47. However, the business areas do not receive supplies in relation to the systems that they do not use. As Mr Richardson put it in evidence:

“I wouldn’t have, for example, a risk management system that credit use. I would use a risk management system that is unique to equities. So in that regard I am not receiving the whole package. I’m receiving a package that is bespoke and unique to my needs.”

48. The bespoke nature of the services supplied by Technology to each business area is reflected not only in the software, but also in the hardware, in particular the servers on which software is run.

49. Turning to QR, the models vary considerably across business areas, because the “underlyings” (ie assets or variables from which a derivative derives its value) to which the derivatives refer have fundamentally different natures. Mr Dowker explained that:

“... the model will be tailored to the product that it’s intended to be used for.”

He gave the following examples of those differences:

“(a) In Rates: The main ‘underlying’ (namely interest rates) is a whole curve, because there are different rates to different time horizons - the rate to borrow for 2 years might be 1.5%, whereas the rate to borrow for 10 years might be 2.5%.

This compares with, say, Equities, where a stock price is just a single number.

There are in fact derivative products that are specifically designed to be sensitive to the *slope* of the interest rate curve: a “Yield Curve Spread Option” or YCSO, which is a popular product consisting of an option on the future value of the *difference* (ie *spread*) between two points on the yield curve e.g. the difference between the 2-year swap rate and the 10-year swap rate. The model needed for such a product must be capable of capturing future movements of the interest rate curve that include changes to the slope of the curve, not just parallel shifts. This increases the dimensionality of the modelling challenge and is a unique feature of models in the Rates space.

(b) In Credit: Many credit derivatives, such as the “Credit Default Swap”, depend on the default of a reference company or sovereign. Credit models primarily need to capture the uncertainty in the timing of the default event. This requires models that make use of different probabilistic techniques, capturing the default event as the first jump in the so-called Poisson process, a process that moves in discrete increments. This compares with the models in Equities, FX, Commodities and Rates, that typically use continuous, non-jumpy processes, based on Brownian motion, to capture the future behaviour of Equities share prices, FX rates, Commodities prices and Rates curves.”

50. As a result of these differences, the vast majority of QR models (around 80%) are used by only one business area.

51. With regard to Operations, Mr Morawitz accepted that at a certain level of abstraction there are common features in the transactions and processes across the business areas.

However, he confirmed that there were extensive differences in the asset classes traded reflected in the systems and Operations processes used to carry out those transactions. Although he confirmed that there would be some common payment and settlement processes, he said that the processes for determining the amounts of payments would be “very different” and that the systems that “actually do” payment and transfer “are different in every case”. Mr Morawitz also said that Market risk is:

“... very different by line of business or by asset class”,

He explained that the implications of a geopolitical event would be

“... different by asset class, so bonds would react differently to ... equities”.

Personnel

52. The various business areas require specialised personnel in all parts of the trading infrastructure. This is reflected in the organisation of the Business Delivery Service functions. Mr Richardson summarised the position:

“Representatives from the functions that comprise the trading infrastructure (Technology, Operations, QR and MR) work closely with the front office throughout the transaction lifecycle and often sit on the trading floor.”

53. The teams within QR are primarily organised around, and work for, specific business areas. For example, QR Equities works on trading models and execution algorithms for Equities only. Mr Dowker said that while people do move between asset classes throughout the course of a career, most ‘quants’ become specialists in the models in a particular area and stay in that area for their entire career.

54. Within Technology, the majority of the personnel are employed in groups which are aligned to a specific business area. There are Operations and Market Risk teams dedicated solely to each business area, as these require specialist skillsets and functions. Mr Prickett explained that for some Operations roles:

“... it would be almost impossible to take members of an Operations team for another business area within Markets and require them to work in Rates without any prior training or supervision.”

55. Mr Richardson explained that for certain Business Delivery Services personnel, the alignment with the business area goes even further as they sit with traders on the trading floor in order to carry out their roles. In particular:

- (1) Representatives from MR sit on the same floor as traders, but typically sit together with their MR colleagues in a specific area. Traders can, and often do, have face to face discussions with MR personnel on individual client transactions.
- (2) Operations personnel known as “Trade Assistants” serve each trading desk, and sit in close proximity to the trader.
- (3) Representatives from QR sit with traders “on the desk”, which means they sit on the trading floor in close proximity to the trading desk to whom they are aligned, so that they “become embedded into the trading desks”.

Although there are some Operations teams that work across all of Markets, the charges for these are allocated separately to business areas, so that the business area pays for the services it receives.

56. Any operations teams supporting the non-Market aspect of the business in which SPLC engages are separate from the Operations teams supporting Markets. Although there is an operations team (or “syndicates middle office team”) to support the Capital Markets business

(within CIB Banking), the business carried out by Capital Markets can be contrasted to that carried out by CIB Markets. Mr Morawitz said:

“... although they do transactions, I’m not sure how much assistance they need from an operations team outside of the syndication.”

Commissioning and Governance

57. The bespoke nature of the Business Delivery Services is also reflected in the governance and commissioning processes.

58. The front office personnel will be actively involved in, and directly influence, the Business Delivery Services they receive. The business areas within Markets are continually evolving and adapting to take account of the way clients wish to engage with SPLC and changing regulations. As a result the trading infrastructure is also continually adapting to meet the demands of each business area. Mr Sanders described SPLC personnel as “designing what they effectively need”, and said that they were:

“... heavily involved with CBNA’s technology and operations teams to design how these systems should operate.”

59. SPLC has implemented a commissioning process to deal with the need to develop and adapt the trading infrastructure to reflect the need and specific demands of each business area. It has also implemented governance processes which allow each business area to scrutinise the Business Delivery Service functions and hold them to account.

60. Each business area is allocated a budget for improvements within the trading infrastructure it uses. The business areas play an active role in ‘bidding’ for that budget. Taking Equities by way of an example, the Equities front office works with Technology, QR and Operations to identify ways to improve the Business Delivery Services received, understand the costs for improvements and put together a business case for a budget to be able to make such improvements in the form of an Investment Proposal. That process is comprehensive and can take months. Mr Richardson, in his oral evidence, said that the business areas:

“... procure and provision the functionality from our Technology, Operations and QR partners. So typically how that would work is that the business – well “business” being myself within – the front office - would identify a potential – either some functionality that we require to service our clients, additional functionality, potentially new products that we want to trade with our clients or potentially issues that we’ve identified with existing infrastructure or working with technology to identify strategic initiatives.

We would work with our own business heads to come up with a business proposal to effectively get the budget and the resource that we would need effectively for Technology and QR in order to provide that functionality that we need for the business. So essentially a business plan that each trading desk or function would need to come up with.

That would then be taken to our global head and it would be – all of those proposals would be discussed in depth around the merits of each of those or not and also the allocation of budget to develop those and what kind of resource, costing, et cetera, is needed to actually develop it. Based on that negotiation, those proposals will then get approval to be implemented and deployed and the budget for our Technology, QR delivery, will be defined from the top of the firm down.

So based on the success of that process, we may or may not get approval to go ahead and implement, you know, a certain piece of trading infrastructure that we need for our business. From there it’s then a project-based approach

between the front office, as the business sponsors, the technology functions, in terms of delivering the software that we need, also the quantitative research where needed to build the necessary models, if it's the example of where we're offering a new product, and also our Operations partners to ensure that we have the full infrastructure – full end to end infrastructure. That would be typically how we would go about procuring and provisioning new technology and infrastructure for our business.”

61. Another example of the continuing evolution of the trading structure, is the development of new QR models. This involves the front office traders commissioning the relevant QR team to design and create the model, which ultimately has to be signed off by the front office staff who commissioned it.

62. In relation to governance, there are regular meetings between the front office personnel in a particular business area and the relevant teams from Operations, Technology, QR and Market Risk. In these meetings, the trading performance and delivery of the trading infrastructure are reviewed. That includes identifying where things have gone wrong and considering what can be done to improve the position. These meetings give the business area a high degree of scrutiny over the trading infrastructure provided to meet its needs. Where there are mistakes or failures which could lead to poor levels of service to SPLC's clients, a plan will be put in place for remediation, and the front office personnel within the business area will hold the Business Delivery Services functions to account in actioning that plan.

63. Mr Richardson gave a further example of the Desk Control Forum which is a monthly meeting between a desk head (a trader who is the head of a desk within a particular business area) and the relevant Operations personnel. At these meetings, the trader will hold Operations to account for any issues and work with Operations to identify solutions (eg training of personnel, seeking additional resources). The Desk Control Forum is part of the process of ensuring that Operations provides that business area with the level of service needed and expected, in order to serve SPLC's clients and meet the financial targets of the business area.

64. Similarly, the Business Control Forum involves each business area which has a monthly meeting for reviewing and assessing the effectiveness and risks associated with the controls implemented for that business area. The Forum, as Mr Sanders explained, focuses on controls and risks, identifying any business issues which need to be resolved for that particular business area and involves all of the key stakeholders for the relevant business area, including front office, Technology and Operations.

65. In his witness statement Mr Sanders explained that:

“6.4 ... each business area agrees to an annual general budget and has to manage this throughout the financial year. Technology investment priorities and spend form a key part of this budget, as do specific Investment Proposals (“Ips”) – which are Technology projects that Markets and, in particular, business areas, wish to prioritise and ensure that Markets Technology delivers on and to the agreed budget.

6.5 There is a Technology Council for each business area. This is a monthly meeting during which the progress on IPs is reviewed. The Technology Council is made of the head of each business area, and the technology head of that business area, as well as any other key Technology leaders. There will also be representation from QR.

6.6 The Technology Council focusses on the following:

(a) reviewing whether the Technology teams in particular are on track or running behind their deliverables and milestones set out in each IP;

(b) discussing the larger projects, such as Athena migration, and see whether the teams are on track to deliver the milestones set out in these IPs – with particular regard to the aspects that impact each business area; and

(c) for a number of projects, reviewing how the Technology teams are doing in terms of budget, and whether the allocation set out in the IP is under control. For example, if the budget set out in an IP is \$2.6 million, management need to check whether, based on the monthly financial forecasts for each IP (these forecasts are fed into the allocation systems of each IP), the budget will be enough, and if not, what actions need to be taken.”

“Support Services”

66. The Support Services essentially form part of the overall corporate functions of JPMC, such as real estate, compliance, legal, human resources and tax. They are mainly routine, typical functions that would be necessary to the running of any large business (and, indeed, many small businesses) and are generally shared across JPMC rather than being specific to the business being carried out. In the main they are services which are required both by the revenue-generating parts of the business (such as Markets) and also by non-revenue generating parts of the business.

67. It is not disputed that the Support Services are “necessary” for SPLC to be able to carry on business. This was confirmed in evidence by Mr Bradley, Mr Richardson, Mr Morawitz and Mr Reig Mascarell. When asked about HR and payroll, Mr Morawitz confirmed that those services are needed for SPLC to be able to conduct business “at an entire entity level” but were not needed “to do a trade” as they are not “as intrinsic to the trade”.

68. Mr Bradley gave a number of examples of Support Services. these include:

(1) Human resources: CBNA employs the HR staff within JPMC, and provides services to each entity in the corporate group. Those services include managing payroll, designing and administering bonus programs, administering employee performance and appraisal, recruitment, training courses and advising on employee disputes and performance issues. These are needed by the revenue-generating parts of the business (such as the business areas within Markets, but also other lines of business) in addition to the teams which carry out Business Delivery Services and the teams which carry out the Support Services (eg both the Operations team and the Tax Team also need HR services). Each team within JPMC (whether revenue-generating or not) is supported by HR in a consistent manner.

(2) Real estate: The real estate function manages the JPMC buildings, including planning for new buildings, letting buildings that are no longer required and managing buildings occupied by JPMC (including dealing with eg desks, lighting and cleaning). This function is needed by all teams within JPMC, whether revenue-generating or not, and is provided to those teams by CBNA.

(3) Enterprise Technology: Enterprise Technology provides general business technology services to the whole JPMorgan group (but not the technology systems and applications included within the bespoke trading infrastructure). Those services include, for example, provision of Zoom and Microsoft Office, plus the ‘virtual desktop’ used by all JPMC personnel.

69. Mr Bradley explained that in distinguishing between Business Delivery Services and Support Services the VAT Team were:

“... trying to identify those things that were close to the actual conducting of the business, as opposed to those that were supportive and controlling and governing that business”.

Mr Richardson explained that for some of the categories of Support Services which involve providing advice, such as legal and tax, external advisors are sometimes brought in.

70. As well as the general corporate functions, the CBNA treats certain “control functions” such as the Model Risk Governance Review Group (“MRGR”) and Valuation Control Group (“VCG”) as Support Services. The MRGR supervises the models produced by QR, which Mr Dowker described “as part of a rigorous model risk control framework.” He described the role of MRGR as:

“They validate, they check that the model is fit for purpose, that it’s conceptually sound, that it’s been implemented correctly, that it’s been tested”.

Mr Bradley described the MRGR as a:

“second line of defence control function”.

71. The VCG is also a control function. It has the responsibility of ensuring that the fair value estimates for assets and liabilities that are recorded on the balance sheet are appropriate, as these go to the balance sheet of JPMorgan as a whole. The purpose is to satisfy regulators and auditors, and also to verify the financial information that will ultimately be published. Mr Richardson described the VCG and the MRGR as being among a list of functions which:

“... provide governance and oversight functions our trading. They’re not directly involved in effecting the trade, but ... they are involved in providing governance, control and oversight and policy, within which we execute.”

72. He explained that the MRGR was “embedded” in the assessment of risk and that this was “critical for the entire trading business” and without the MRGR, SPLC would, based on its current infrastructure, be unable to function.

73. The MRGR also has a role in the development of execution algorithms which are, as Mr Dowker put it, “subject to a lot of regulation and scrutiny.” He explained that MRGR together with QR engages with regulators in a number of jurisdictions:

“... to explain how our execution algorithms work and behave the way they do, and whether they are safe and will not lead to market disruptions.”

74. Mr Dowker also explained that the MRGR has a function after a model has been approved and deployed to ensure that it is being used appropriately once it has been released into production with discussions taking place between the trading function and the MRGR with QR also involved “to determine whether a new transaction can be priced with an existing model”. In his witness statement Mr Dowker said that:

“The trading models developed by QR are subject to extensive and rigorous governance and review procedures to ensure that the trading models that QR creates are fit for purpose and used appropriately; these are crucial risks that must be identified and managed”

75. Mr Bradley confirmed that the MRGR is “heavily involved” in the review and governance of the QR function and Mr Sanders described how it was “intimately involved” in making sure that SPLC has working models that meet “regulatory requirements” and “internal standards of model development.”

76. Although the valuation of assets, which Mr Bradley said was “essential” for regulatory compliance is initially undertaken by Technology and Operations, the role of the VCG is to provide verification of valuations independently from those valuations carried out by the trading business areas. This is in order to confirm the valuations on the balance sheet or make any necessary adjustments. The purpose of this is to satisfy regulators and auditors, and also to

verify the financial information that will ultimately be published. For standardised products, the VCG will have access to, and effectively verify, the same market data and valuation models as the trading business areas. For more bespoke products which do not fit within valuation models, the VCG checks and challenges the approach taken by the trading business area.

77. Mr Richardson described the role that the MRGR and the VCR play in regard to transactions in derivatives by SPLC in his witness statement in which he said:

“Once the client has decided on the derivative solution that it wants, the front office will also have to engage with and obtain input from various other stakeholders, such as the VCG, legal, tax, accounting, capital, compliance, the Model Risk Governance Review Group and the reputational risk committee. Whether it will be the trader or Sales engaging with these groups will depend on the individual transaction. Following engagement with the aforementioned groups, the trader will send a final, firm price offer to the client.”

78. Also described as Support Services are the ‘Product Control’, ‘Regulatory & Compliance’ and ‘CIB Finance & Business Management’ functions.

79. Mr Morawitz described Product Control as a team within Corporate Finance who are responsible for producing accurate financial records and for recalculating the value of all of the portfolios to make sure they have the ‘fair value’ of an asset or liability based on the current market price and confirm the updated value to the trader for the next day. The Product Control team considers the trading records prepared by Operations on a daily basis and feeds any amendments back to the traders before the start of the next trading day.

80. Regulation & Compliance personnel attend regular meetings to review trading performance and the delivery of the trading infrastructure. Mr Richardson, in his witness statement, said:

“In addition to performance management, there are regular meetings where front office personnel within Equities, together with colleagues from Operations, Technology, QR and MR, as well as compliance functions, review the trading performance and the delivery of the trading infrastructure aligned to Equities, including its constituent desks. It is through these meetings that we can identify what has gone wrong, what can be done to improve the position (including identifying upgrades in technology systems) and how we can provide our clients with the best service in a way that minimises risk.

These meetings provide the front office with a high degree of scrutiny over the trading infrastructure. Where we identify mistakes or failures that could lead to poor levels of service to our clients, we put in place plans for remediation. The remediation plan is carefully monitored and I will hold my colleagues to account for actioning it. In my experience, these meetings are an effective mechanism to make sure that I receive the trading infrastructure needed to deliver for my clients and the business. The expectation in terms of our general business principles for individual conduct is that we should be transparent and highlight any concerns or problems. Any issue that I fail to resolve will be escalated to more senior personnel.”

81. The role of CIB Finance & Business Management was described by Mr Bradley as acting as advisors to the heads of the business areas:

“... working with other Support Functions to identify and escalate risks such as legal, tax, regulatory or similar issues.”

Mr Bradley also explained that CIB Finance includes groups responsible for external reporting:

“... typically working alongside legal entity and product controllers to ensure external financial reporting is performed correctly”.

This includes CIB Treasury which ensures there is appropriate funding to undertake financial transactions with third party clients and the coordination of the process for a business area of undertaking new business activity, such as a new financial product.

Delivery of Support Services

82. The Support Services are delivered by different teams within CBNA which reflect divisions within JPMorgan. By way of example there is an HR team and a team dealing with payroll which are organisationally separate from, for example, the Operations team and the Technology team.

83. As described above (at paragraphs 32 and 33), Technology provides technology services (including hardware and software) only for the purposes of Markets. That is also reflected in the hardware with the servers used by Technology to run the various trading applications being “dedicated” to Markets Technology. By contrast, software used for Support Services such as HR or payroll are run from different servers.

84. Also, in contrast with the Business Delivery Services, the way in which all JPMC personnel interact with many of the Support Services will be the same, whether the individual is part of the SPLC front office or an employee within one of the non-revenue generating parts of the business. For example:

(1) a manager within any team can access the same internal online systems to deal with HR matters. If the manager has questions, these can be resolved through a HR tool or directly to an HR contact. All functions (revenue-generating and not) are supported by HR in a consistent manner.

(2) Any employee in any team can use the same HR systems to manage their training, see their pay and book annual leave. In his oral evidence Mr Sanders said that technology is built by a “different group”, and as a member of CBNA personnel he:

“... would be a consumer of that technology, just as any other part of the firm would be a consumer of that common technology.”

He said that it is a portal which everyone:

“... would all use across the firm”, which is “one size fits all”.

(3) The technology provided by Enterprise Technology is common to all personnel within JPMC, and they do not make bespoke products at the request of those personnel. Any employee experiencing an issue with that technology can log a ticket, and will then be assisted by a member of staff within Enterprise Technology, not aligned to any specific business area.

85. The front office does not get involved in procuring or overseeing the Support Services. This was confirmed by Mr Richardson who confirmed that the procurement process for Business Delivery Services is not used for Support Services.

Contractual Materials

86. Following several mergers, in 2005 JPMorgan had adopted SAPCO, a cost allocation system, for management information purposes and, in 2006, for the recognition of inter-company fees. Mr Bradley explained that the need for ensuring that inter-company payments are based on the expense allocations was driven by:

(1) US regulatory requirements, particularly for arm's length charging between CBNA and its subsidiaries on the one hand and group companies not owned by CBNA on the other; and

(2) Corporate tax, transfer pricing and accounting needs, to ensure the expenses were in the "correct" entity for tax deduction and revenue matching purposes. Although this was driven predominantly by US tax and accounting considerations, it was also relevant for the entities in other jurisdictions both when paying for services and when receiving services, since they were often equally subject to transfer pricing requirements and potential challenge on deduction of expenses.

87. Mr Bradley understood, having been involved in 2005/6 in a junior capacity, that having an umbrella agreement was more efficient and lowered the risk of having multiple agreements as it eliminated the requirement to update multiple agreements whenever a new issue arose or a new service was to be provided.

Global Master Services Agreement

88. Such an umbrella agreement, the Global Master Services Agreement ("GMSA"), was implemented. It came into effect on 1 January 2006 and applied to all inter-company services with the JPMorgan group.

89. The GMSA provided the legal framework, terms and conditions under which services were provided on an inter-company basis between CBNA and its Affiliates, including SPLC. Each Affiliate received its services pursuant to the terms of an Addendum to the GMSA. The GMSA was a single global agreement which covered a range of ongoing technology and other services provided by CBNA to SPLC.

90. An interoffice memorandum dated 14 August 2006, headed Global Master Services Agreement, stated:

"Attached is a copy of the Global Master Service Agreement (the "MSA"), effective as of January 1, 2006, by and among JPMorgan Chase & Co. ("JPMC") and each of its branches, subsidiaries and affiliates ("Affiliates") completing an Addendum thereto. The MSA, which has been executed by a duly authorized officer of JPMC, is to be used to substantiate expense allocations and payments among Affiliates of JPMC.

Procedure

Unlike other Master Service Agreements in which all relevant services and products covered therein are described in that Agreement or in attached Schedules, this MSA references the Expense Allocation Policy and Guidelines and the Product and Price Guide, both located on JPMC's internal website on the Finance Workspace, and by its terms includes all expense products within the scope of the Product and Price Guide and, therefore, separate Schedules are not required for those Products. Attached to the MSA is an Addendum which is to be executed by each JPMC Affiliate to indicate its agreement to be bound by the provisions of the MSA, including an agreement to pay for Services based on the underlying cost for the expense products set forth in the Expense Allocation Policy and Guidelines which are within the scope of the Product and Price Guide, both as set forth in the MSA. Please note that any existing Service Agreements or Service Level Agreements which are in existence that relate to Expense Products within the scope of the Product and Price Guide, as the same may be amended from time to time, that are not specifically identified in an Addendum as not being terminated, shall be deemed terminated effective as of December 31, 2005 or as of the date of the relevant Addendum.

In addition, the Addendum makes provisions for each legal entity to describe any other services provided to, or received from, one Affiliate to another Affiliate and which are not included in the Product and Price Guide by describing those services in a Schedule to be attached to an Addendum. Each line of business (“LOB”) should work with its designated lawyer in each location to ascertain the type and nature of services that any legal entity in the LOB is providing to, or receiving from, another Affiliate taking into account relevant regulatory, tax or other considerations to determine whether any such services need to be described in such a Schedule.”

The memorandum concluded by setting out the information required from an Affiliate in an Addendum.

91. The recitals to the GMSA included the following:

“...

WHEREAS, JPMC is a bank holding company registered under, and subject to the provisions of, the Bank Holding Company Act of 1956, as amended;

WHEREAS, in providing Services to one another, Affiliates of JPMC are subject to certain provisions of the Federal Reserve Act, particularly Sections 23A and 23B, in dealings with other Affiliates as well as analogous rules imposed by other jurisdictions that require a fair allocation of expenses among affiliated entities (the “Bank Regulatory Rules”);

WHEREAS, in providing Services to one another, Affiliates of JPMC are also subject to United States federal, state and non-United States income tax laws of the various jurisdictions in which JPMC and its Affiliates operate which require that compensation be paid for services provided in accordance with specified transfer pricing rules, including Section 482 of the United States Internal Revenue Code of 1986, as amended (the “Tax Rules”);

WHEREAS, JPMC has adopted an expense allocation policy entitled the Expense Allocation Policy and Guidelines (the “Expense Allocation Policy”) that is posted on the internal website maintained by JPMC and is available to, and accessible by, all Affiliates which sets out the principles that JPMC and its Affiliates are to follow in determining the component cost by Expense Product (as defined below) to make up the total compensation to be paid for Services such that JPMC and its Affiliates will be in compliance with the Bank Regulatory Rules and the Tax Rules with respect to those Services;

...

WHEREAS, certain of the Expense Products within the scope of the Expense Allocation Policy are more fully described in the annual Product and Price Guides (as defined below) and any annotations thereto located on JPMC’s internal website in the Finance Workspace (it being understood that the items detailed in the Product and Price Guide may not necessarily be complete Services for purposes of value added tax or other analogous indirect taxes but rather may be viewed as components of Services);

WHEREAS, the Expense Allocation Policy sets out the guidelines necessary to determine the nature of the Expense Products reflected in the Product and Price Guide that can be amalgamated to represent the consolidated price of Services provided for purposes of value added tax or other analogous indirect taxes;

...”

92. Definitions of terms used in the GMSA are contained in Clause 1 which provides:

“(a) “Provider” shall mean JPMC or any Affiliate providing Services pursuant to an Addendum, as such term is hereinafter defined.

(b) “Recipient” shall mean JPMC or any Affiliate receiving Services pursuant to an Addendum.

(c) “Product & Price Guide” or “PPG” shall mean each SAPCO Product Reference Information table and the PAR (project accounting and reporting) Reference Data Information table, each of which is updated as needed and archived on an annual basis.

(d) [...]

(c) “Services” shall mean the activity performed by an affiliate for another the consideration for which is represented by the total cost of Expense Products related to that activity. These Services may be provided by a Provider to a Recipient pursuant to an Addendum.”

The Product and Price Guide (“PPG”) is a granular list of over 5,000 individual cost/expense products.

93. Clause 2 of the GMSA provides:

“2. Services; Compensation. (a) In General. Each Provider shall, or may, provide Services to a Recipient, from time to time, upon request. The material terms and conditions upon which such Services are provided shall in each instance be as mutually agreed as evidenced in an Addendum to this Master Service Agreement (each, an “Addendum” and, collectively, the “Addenda”), which may, but need not, be appended hereto. This Master Service Agreement and all such Addenda together constitute a single agreement and are referred to collectively as the “Agreement.”

(b) Support Services. Except as otherwise mutually agreed, or if the relevant amounts are *de minimis*, for Expense Products within the scope of each annual Product and Price Guide (as the same may be revised and updated from time to time) that are identified singly or collectively as Services for which amounts are to be charged, each Recipient agrees to pay for the Services provided to it by the Provider the amount invoiced by the Provider to the Recipient, provided that the invoiced amount is calculated in accordance with the provisions of the Expense Allocation Policy. (It is understood and agreed that the detail provided on an invoice may encompass components of Services which in and of themselves are not complete services for purposes of value added tax or other analogous indirect taxes.)

(c) Other Services. For all Services not described in paragraph (b) above, the nature of the Services to be provided, the charges therefor and other material terms and conditions shall in each instance be as mutually agreed, as evidenced in an Addendum to the Master Service Agreement. Charges for all such Services shall be based upon an arm's length charge determined pursuant to the provisions of the Tax Rules and the Bank Regulatory Rules. It is understood that compensation paid for such other services rendered will be based on one of the following methods and in accordance with applicable laws, regulations or regulatory guidelines: (1) fully loaded costs with no markup or (2) estimated fair market value of rendering the Services (which may include, as appropriate, fully loaded costs plus a markup thereon).”

94. Pursuant to clause 3, which is headed “Accounting; Billing Procedures; Taxes”:

“(a) Each Provider and each Recipient shall each maintain on their general ledgers special intercompany payable and receivable accounts for the exclusive accounting of the Services.

(b) For Services, the cost of which is determined on the basis of the Expense Products within the scope of the Product and Price Guide, the Provider thereof shall charge the Recipient monthly, or as otherwise agreed between the parties, by preparing an invoice (“Invoice”) addressed to the Recipient in accordance with the terms of this Master Service Agreement and describing on the Invoice (substantially in the form of Appendix A attached hereto, or in some other form to which the parties mutually agree) the Expense Product singly or collectively that forms the basis of the consideration for Services performed and the charges therefore. For all such Services provided pursuant to this Agreement, and any other Services set forth in a Schedule to an Addendum, the Provider shall provide such other details and documentation as may reasonably be requested by the Recipient in order to substantiate and approve the charges.

(c) In addition to the charges for the Services, the Recipient shall pay all applicable taxes based on or measured pursuant to this Agreement or the Services, excluding taxes based upon the Provider’s net income. The Provider agrees to provide all reasonable cooperation to the Recipient in the determination of any tax liability or in any claim or dispute the Recipient may have with any taxing authority relating to the imposition, computation or payment of any tax on a Service.”

95. Clauses 8 and 9 state:

“8. Independent Contractors. It is understood and agreed that the relationship between each Provider and each Recipient under this Agreement will be as an independent contractor and as principal and neither party (nor any of its employees) will be deemed to be employees of the other party. Each party further represents and warrants that, at all times, it will be the employer of its personnel in the performance of this Agreement. Such employees shall be selected by their employer in its sole discretion and shall not be considered the employees of the other party in any respect. The party providing Services pursuant to this Agreement agrees to arrange directly with such employees for all salary and other payments and will assume all responsibilities of an employer with regard to such employees including, but not limited to, (i) the arrangement of appropriate policies of insurance, including, but not limited to, worker’s compensation and unemployment insurance, and (ii) the withholding, where appropriate, of all taxes required by law to be withheld by an employer from an employee.

9. Audit/Regulatory Inspection of Records. Each Provider shall from time to time upon request of the Recipient of Services allow any regulatory agency with supervisory responsibility for the Recipient, or any of its affiliates and the Recipient, its internal and external auditors, agents and such third parties as the Recipient may designate (a) access to and the right to examine all of the Recipient’s and any such affiliate’s records and other materials in the Provider’s possession, custody or control, (b) access to and the right to examine the Provider’s books and records as they relate to the Services, and will allow them to make copies and take extracts there from, and (c) to interview employees, subcontractors and agents of the Service Provider, and to discuss the provision of the Services with them and with the relevant auditors and regulators, if required. The Provider shall reasonably cooperate with and assist any such efforts. In addition, the Provider shall allow the Recipient and all affiliates of the Recipient, and any external auditors on behalf of any such entity, to perform such periodic on-site reviews as such party deems appropriate. The Provider agrees that it shall not share any examination reports performed by a United States regulator (or information

contained therein) with any regulator not from the United States without the express prior written consent of the appropriate United States regulatory authority. Each Provider hereby agrees to inform in writing any Recipient of Services if such Provider has been notified that any auditor, examiner or other regulator has requested access to any information of the Recipient held by the Provider.”

96. Clause 15 provides:

“**15. Conflicts of Interest Waiver.** Each Recipient acknowledges and agrees that the any Provider may provide the same Services, including those specified in any Schedule to an Addendum, to a range of legal entities. Each Recipient expressly waives any conflicts of interest which may arise from the Provider’s role in providing such Services.”

97. Clause 18 states:

“**18. No Agency.** Unless otherwise expressly agreed, neither party shall be deemed to be the agent nor representative of the other, and neither party may bind the other party to any obligation or liability.

Addendum

98. A draft Addendum, the method by which each Affiliate agrees to be bound by the GMSA, accompanied the 2006 GMSA. The recitals to the Addendum confirm that the Provider or Affiliate:

“... may provide certain services to other Affiliates (as such term is defined in the Master Service Agreement) of JPMC from time to time ...”

and that the Affiliate:

“... wishes to engage other Affiliates of JPMC to provide certain services to it from time to time ... for good and valuable consideration, the receipt of which is hereby acknowledged, ...”

99. Material provisions of the Addendum include:

“**1. Services.** Services within the scope of the Product and Price Guide that are provided by JPMC Affiliate as a Provider, or received by JPMC Affiliate as a Recipient, will be described in detail in the Product and Price Guide. Other Services will be as described in a Schedule or Schedules attached hereto and made a part hereof.

2. Compensation. For Services listed in the Product and Price Guide (as the same may be amended from time to time), JPMC Affiliate agrees to be bound by the provisions of the Master Service Agreement and this Addendum, both in charging for Services it provides to, and paying for Services it receives from, other Affiliates. With respect to other Services provided to JPMC Affiliate by an Affiliate, the JPMC Affiliate agrees to pay the Affiliate the amounts set forth on the applicable Schedule.

3. Master Service Agreement. Each Recipient and the Provider hereby agrees to be bound by the terms and conditions of the Master Service Agreement, and further agrees that this Addendum is hereby incorporated by reference therein and made a part thereof.

...”.

Although Clause 1 refers to “Other Services” being described in detail in a “Schedule or Schedules” attached to the Addendum there are no schedules attached that are relevant to the present case.

Expense Allocation Policy

100. The JPMorgan Chase ‘Expense Allocations – Policy and Guidelines’ was revised on 12 September 2009.

101. Under the heading “Overview” it explains that:

“The objective of the indirect expense allocation process is to accurately align the costs incurred for providing internal services with the intended beneficiary of those services. This policy covers costs that are charged through SAPCO (the JPMC expense allocation system) and is applicable for both management reporting (MIS) and financial accounting purposes. This is accomplished by reflecting the allocation in a Line of Business (LOB) cost center (for Management Reporting purposes) and reflecting the payment for the allocation in the legal entity books and records (for financial accounting purposes).

The charges are made at a Secondary Cost Element (SCE)/Expense Product Level for MIS and financial accounting transparency. As defined in the Global Master Services Agreement, one or more SCE/Expense Product combinations can make up a Functional Service for VAT and analogous tax purposes. Also, for financial reporting purposes the individual expense products may not define the service provided but may be cost components of that service: the value of a service can be ascertained by combining one or more SCE/expense products and/or combining costs from different cost centers; the nature of the service will be determined by the overall functions undertaken by a legal entity for specific businesses in another legal entity and may be a single composite service made up of multiple expense products.

Expense allocations are charged between cost centers. A cost center is aligned to a unique JPMC Line of Business and resides in a unique JPMC legal entity. Throughout this document, guidance presented for “Management Reporting purposes” or “MIS” refers to LOB expense allocations to cost centers. Similarly, guidance presented for “Financial accounting purposes” refers to the same expense allocation, but from a legal entity standpoint. A service provider is any business that provides a service or product to an internal customer within JPMC. A customer is any organization within JPMC that is the recipient of an internal service or product.

From an MIS perspective, a major goal of the expense allocation process is to provide the necessary transparency for LOBs to identify and understand costs and to promote cost savings. From a financial accounting perspective, the goal is to ensure a proper matching of revenue and expense evidenced by recording the payment for these allocations in the financial books and records of the legal entity. In general, each JPMC legal entity that provides a service to another JPMC legal entity or develops intangible property for another legal entity which results in a benefit to the other JPMC legal entity (all such services, “Recoverable Services”) is to receive payment of an appropriate amount from the benefited legal entity (or its surrogate) unless the probable benefits are so indirect or remote that an unrelated party would not have paid for a similar activity, or performed it itself. (As an exception to this general policy, expenses for support services need not be allocated among State branches of a single juridical legal entity.) Depending on the facts, and as described more fully below in Section 5, the amount charged is to be based on an amount reflecting an arm’s length charge.

For regulatory purposes, costs incurred by JPMC banks and their subsidiaries which benefit JPMC&Co and its non-banking subsidiaries are to be charged and cash settled between JPMC&Co and the JPMC banks in a manner and at

a rate which ensures that the transaction is at least as favorable from the point of view of the banks and their subsidiaries as comparable transactions with third parties.”

102. In a section headed “Abbreviations”, “JPMC&Co” is defined as meaning JPMC (the holding company).

103. Under “Reporting Considerations” it is stated:

“For financial accounting purposes, all MIS expense allocations made to a JPMC legal entity from another JPMC legal entity are to be cash settled but for compelling commercial, regulatory, economic or other considerations. All cash settled charges between JPM legal entities appear on an invoice generated and retained in i-Vault.

...

The MIS organization hierarchy groupings for the Service Provider sending allocations at the SCE/Expense product level within the MIS primary reporting categories listed above, either singly or grouped together, form Functional Classification headings. These categories are used to describe the functional service being provided (as opposed to the expense product.)

➤ ...

➤ The Functional Classification is the combination of:

(a) the grouping of charges from the originating cost centers at summary points in the MIS/business hierarchy at which the essential function of the business from a VAT and indirect tax perspective can be identified, together with

(b) the classification of those summary points as the essential element of a service, ancillary elements of that service, or distinct support services .

...”.

104. The next section of the document sets out the “Allocation Methodology”, which for a “specific product, “must be consistently applied to all global recipients.” It then gives descriptions of four “acceptable methodologies for expense allocations using SAPCO”. These are:

(1) Rate x Volume (Activity-based), which is described as “the preferable methodology for allocating costs”. Under this method rates are fixed for a full year during the annual planning process and can only be modified due to material changes in planning assumptions, with prior written agreement of both parties, the respective CFOs in addition to Corporate Planning and Analysis.

(2) Fixed Monthly Charges (Assessment Rule-based) under which fixed charges based on monthly Plan amounts are allowed in lieu of activity-based allocations subject to agreement of both parties.

(3) Percentage-based Allocations (Assessment Rule-based) which uses percentages to determine Actual monthly charges, including those dynamically calculated through the automated reference of statistical data. However, this methodology is “to be discouraged” but is permissible “to support the internal accumulation along product/activity lines, allocating charges internal to a business unit for administrative support and for those fully dedicated charges where an LOB has agreed in advance to accept the charge on that basis.”

(4) Technology Development Expense (Software Applications) under which expenses relating to technology development and intangible property “should be allocated to business units and legal entities that have agreed to bear the risk of the technology services in proportion to their shares of reasonably anticipated benefits from use of the technology.”

105. At section 5 the document refers to the requirement for all internal transactions to be “charged at an arm’s length price”, ie the same price as would be charged to third party customers or a comparable third party market price for the same service being provided internally which is below the Provider’s fully loaded cost.

106. The Allocation Policy continues and, at section 7, sets out “Internal Service Descriptions/Service Levels”, stating:

“All Secondary Cost Element and Expense Product descriptions and Product prices are to be documented in current versions of the SAPCO and PAR Product & Price Guides located in the Expense Management section of the Finance Workspace on the JPMC Intranet at Global Expense Management. For each SCE/Expense Product, the guide must provide a plain English description of the service being provided or intangible property being developed with detail sufficient to permit a basic understanding of the product and a basic understanding of the benefit that the service confers, or is expected to confer, upon the recipient. Also, for each SCE/Expense Product there is to be a plain English description of the methodology used to attribute the costs of the service provider or developer to the receiver or user sufficiently detailed to permit a basic understanding of the allocation methodology. The Product and Price guide must also provide names of persons to contact for more information with respect to the nature of the service or the allocation methodology. This information is to be stored and made reasonably accessible for future reference....”

107. Section 8 explains that:

“The difference between the total actual expense incurred by an organization and the amount charged from that organization for the comparable time period is the residual expense.”

Section 10 makes provision for “settling charge disputes between service providers and customers” in addition to an arbitration process.

108. Under section 11:

“All expenses allocated to a JPMC legal entity from another JPMC legal entity are to be charged and cash settled but for compelling commercial, regulatory, economic or other considerations. Non-cash settling entities are to use all reasonable efforts to cash settle, and the Senior Country officer for a legal entity must be prepared to substantiate reasons for non-cash settlement.

...

Upon cash settlement by a surrogate entity, withholding taxes or transactional taxes like VAT/GST may be payable depending upon whether the underlying service is taxable. When a surrogate entity pays on behalf of a service recipient, the service recipient should still determine whether it is required to account for VAT by consulting with Corporate Tax as necessary. The functional classification of the organizational hierarchy will provide Service definitions for the purpose of differentiating taxable versus exempt services where appropriate. Corporate Tax should be consulted in connection with new

outsource and insource relationships to ensure that VAT/GST considerations are appropriately taken into account.

The Provider legal entity is to generate an invoice detailing all cash settled services provided to the Customer legal entity. The invoice, among other requirements, is to (a) contain a reference to the SCE/Expense Product identified in the applicable SAPCO Product and Price Guide sufficient to give service recipients detailed information for each charge, and (b) show the combination of SCE/Expense Products into single services as specified by the Functional classification of the MIS hierarchy. ...”.

109. Appendix A to the Expense Allocation Policy is headed ‘Indirect Expense Allocation Adjustments on CMR’. It includes, under ‘Responsibilities of Service Receivers (Corporate Functions and LOB’s)’:

- “● Assume accountability for understanding and co-managing the expenses charged to them
- Understand the services provided and the cost drivers of these services
- Ensure all expenses are properly reflected in the correct LOB and the correct Legal entity
- Partner with the service providers to find ways to improve efficiency and effectiveness
- Communicate changes to service providers with as much advance notice as possible
- Work with service providers to determine budget requirements to support their on-going analysis
- Maintain ongoing dialogue with Service Providers of any issues/concerns
- Periodic review and associated maintenance of SAPCO/CMR account structures and relationships
- ...
- Maintain appropriate Indirect Tax reference tables to determine Indirect Tax treatment of incoming charges based on sub-hierarchy mappings.”

110. Appendix B to the Expense Allocation Policy, which is headed ‘Indirect Tax Implications’ states:

- “1. As stated in the Overview and Policy Summary, the objective of the indirect expense allocation process is to accurately align, for both management and financial accounting purposes, the costs incurred when providing internal services in relation to expense allocations with the intended beneficiary of those services. The process for such inter-entity charges is therefore geared towards identifying cost components of service teams and defining them at a granular Expense Product level. The Product and Price guide unit is therefore more accurately defined as an Expense Product rather than as a service. This is reflected in the Global Master Services Agreement which provides the contractual framework for these inter company allocations and financial charges.
2. Global indirect tax rules require that services must be defined by their essential features but may be made up of a number of elements, some of which are ancillary or subordinate to the essential features of the functional service being performed but are nevertheless part of a single composite service. The aggregate of the cost of each of these elements is the charge for the single supply.

3. This means that a number of Expense Products spread across different businesses or organisational divisions, which are separately identified for management information and accounting purposes, should be aggregated to be the charge for a single service provided by the overall legal entity. Multiple Expense Products in SAPCO or projects in PAR which identify the component functions carried on by a particular internal corporate organization can be grouped with component products from other business organizations in the same legal entity to provide core or ancillary elements of an overall single service.
4. The organizational hierarchy used by the firm for management reporting is operated on a functional view according to the particular business roles needed. At this broader level the essential functions carried out can be more readily identified for indirect tax purposes. The service will be characterized by what the recipient legal entity desires to receive and the essential features of that service as desired by the recipient. This service will have a single treatment for indirect tax (and particularly VAT and analogous taxes).
5. In order to correctly identify the service provided and the total consideration for that service, Expense Products must be grouped by the functional group (in the management accounting hierarchy) which receives a service in the particular legal entity. Certain functional groups in a provider legal entity operate in a stand alone or an independent manner and will provide distinct services not part of a single Service. Other functional groups, particularly business aligned operational support groups, rely on corporate functions and the firm's global infrastructure to deliver a service.
6. Thus:
 - 6.1. In a single legal entity, the recipients of expense allocations that are financial allocations (ie cash-settled) should be identified. These recipient organizations at the lowest level should be grouped in accordance with the management accounting hierarchy at an appropriate level for indirect tax purposes. This level will be sufficiently high to capture all organizations whose input is required to provide a service and this will allow the service to be categorized for indirect tax purposes.
 - 6.2. Providing organizations (or groupings of organizations in the management accounting hierarchy) which provide standalone and distinct services will be identified and all financial allocations from such providers will be treated as distinct services. These allocations will not be grouped with allocations from other providers for the purpose either of invoicing or of assessing liability for VAT and analogous charges.
 - 6.3. Additionally, there will need to be identified providing organizations which can be grouped according to their functions as providers of either:
 - a. the essential element of a service (such as business-aligned support groups responsible for the operational support of a front office); or
 - b. ancillary elements to a service.
 - 6.4. In a legal entity to legal entity relationship, allocations from groups falling into 3 (a) and (b) above which are identifiable to a single

group in 1 above will be grouped together and identified as providing a single service for invoicing and indirect tax purposes.

Example 1:

- 7.1 JPMorgan Securities Ltd might receive management accounting and financial allocations from JPMorgan Chase Bank NA in the US. The recipient cost centres might include various organizations within the Investment Bank front office. These cost centres would fall within a grouping of EMEA Equities whose role is broadly to provide various equities products to clients and manage those products. This Global EMEA grouping would fall within [6.]1 above
- 7.2 Allocations to this grouping might be made by cost centres from groupings such as End User Technology, Human Resources, Office of the General Counsel or Global Finance. These all have specific roles which involve providing services that are essentially distinct and allocations from each grouping would be treated as a separate service with its own consideration (the total sum of financial charges for products in that grouping). These will be separately identified on an invoice. These allocations would fall within examples from [6.]2 above.
- 7.3 In addition, allocations might be made from various cost centres which group under IB Operations to provide, say, EMEA Equities with clearing, settlement and associated accounting controls and reporting. This would be an essential business-aligned operational support function and potentially the essential element of a single service (as per 3a above) provided to the group identified. In addition:
 - IB Technology would be charging for IB specific systems used to facilitate the trade and by the operations teams;
 - cost centres in GTI responsible for providing the network and processing might also charge the Front Office in relation to IB applications running on the network;
 - groups responsible for funds transfer and cash reconciliations might also charge for processing any cash movements relating to the business.

These charges would be ancillary to the essential aim of providing the operational support to allow the trade to be cleared, settled and monitored. They would fall within 3b above. All together, these allocations (as Expense Products) would be treated as a charge for a single service. This single service should be identified on the invoice and should be given a single indirect tax liability

Example 2:

- 8.1 JPMorgan Suisse might make allocations to various legal entities within the Private Banking business around EMEA including JPMCB Milan Branch. The allocations to JPMCB Milan might be made only to cost centres which group under the Private Bank (this would be a grouping as per [6.]1 above).
- 8.2 The allocations might all be made from cost centres that fall into two groups: a group responsible for PB Operations; and a group responsible for PB technology. The overall role of these groups is to enable JPMCB Milan to do business with PB clients and offer them various cash or securities products including derivatives. The technology enables JPMCB Milan to do this but the essential function would again be the processing of the trades and the operational activity in JPM Suisse. These

allocations would fall within point [6.]4 above and be treated as a single complete service with its own tax characterisation and would be invoiced as such with a single total consideration.

Application of Service analysis and Single Supply approach

1. To achieve the required groupings, LEC and lines of business controllers will work with the tax team to identify appropriate points in the management hierarchy where functional groupings exist both from a provider and a recipient perspective. Those groups who provide essential functions which would be the principal feature of a service would also be identified. This grouping by means of the Functional classification of the hierarchy is being embedded into SAPCO for invoicing purposes; this will allow the indirect tax classification of the hierarchy to be read against the cash-settled charges in SAPCO at the cost centre level . Indirect tax rules will be applied to operate the grouping identified and generate the correct invoicing.”

111. Appendix A of the Expense Allocation Policy concludes, under the heading, “Responsibilities of Service Receivers (Corporate Functions and LOB’s)” with a list setting out those responsibilities. These include:

- “● Assume accountability for understanding and co-managing the expenses charged to them
- Understand the services provided and the cost drivers of these services Ensure all expenses are properly reflected in the correct LOB and the correct Legal entity
- Partner with the service providers to find ways to improve efficiency and effectiveness
- Communicate changes to service providers with as much advance notice as possible
- Work with service providers to determine budget requirements to support their on-going analysis
- ...
- Periodic review and associated maintenance of SAP CO/CMR account structures and relationships
- Ensure relevant agreements / discussions with service provider filter down to all impacted legal entities, sub-functions/LOB's and Regions. LOBs must receive LEG signoff on plan allocations.
- ...
- Maintain appropriate Indirect Tax reference tables to determine Indirect Tax treatment of incoming charges based on sub-hierarchy mappings.”

2010 GMSA

112. In 2010 the GMSA was revised. An interoffice memorandum, dated 6 October 2010, states:

“Global Master Service Agreement

Attached is a copy of the Global Master Service Agreement (the “GMSA”), effective as of January 1, 2006, revised as of December 1, 2006, as of March 1, 2007, June 1, 2009, and October 6, 2010 by and among JPMorgan Chase & Co. (“JPMC”) and each of its branches, subsidiaries and affiliates

(“Affiliates”) completing an Addendum thereto. The GMSA, which has been executed by a duly authorized officer of JPMC, is to be used to substantiate expense allocations and payments among Affiliates of JPMC.

Revisions

There are substantive revisions effective October 6, 2010 regarding termination.

Procedure

Unlike other Master Service Agreements in which all relevant services and products covered therein are described in that Agreement or in attached Schedules, the GMSA references the Expense Allocation Policy and guidelines and the Product and Price Guide, both located on JPMC’s internal website on the Finance Workspace, and by its terms includes all expense products within the scope of the Product and Price Guide. Therefore, separate Schedules are not required for those Products. Attached to the GMSA is an Addendum which is to be executed by each JPMC Affiliate to indicate its agreement to be bound by the provisions of the GMSA, including an agreement to pay for Services based on the underlying cost for the expense products set forth in the Expense Allocation Policy and Guidelines which are within the scope of the Product and Price Guide, both as set forth in the GMSA. Please note that any existing Service Agreements or Service Level Agreements which are in existence that relate to Expense Products within the scope of the Product and Price Guide, as the same may be amended from time to time, that are not specifically identified in an Addendum as not being terminated, shall be deemed terminated effective as of December 31, 2005 or as of the date of the relevant Addendum.

In addition, the Addendum makes provisions for each legal entity to describe any other services provided to, or received from, one Affiliate to another Affiliate and which are not included in the Product and Price Guide by describing those services in a Schedule to be attached to an Addendum. Each line of business (“LOB”) should work with its designated lawyer in each location to ascertain the type and nature of services that any legal entity in the LOB is providing to, or receiving from, another Affiliate taking into account relevant regulatory, tax or other considerations to determine whether any such services need to be described in such a Schedule.

Completing an Addendum and Schedule

The following information is required to be included in an Addendum or a Schedule thereto:

- Name of the legal entity signing the Addendum;
- A list of definitions to be used in the Addendum, if required;
- Any local legal and regulatory requirements, if any;
- A description of services rendered or received which are not included in the Product and Price Guide (to be added in the Schedule to the Addendum);
- Any other pertinent details required regarding the services;
- Name and title of the duly authorized officer signing the Addendum; and
- If a Schedule is attached to an Addendum, it must be signed by duly authorized officers of the Service Provider and the Service Recipient.”

113. The following recitals are included in the 2010 GSMA:

“WHEREAS, JPMC and its Affiliates provide or receive various services including Services (as such term is hereinafter defined) from time to time to or from each other;

WHEREAS, JPMC is a bank holding company registered under, and subject to the provisions of, the Bank Holding Company Act of 1956, as amended;

WHEREAS. In providing services to one another, Affiliates of JPMC are subject to certain provisions of the Federal Reserve Act, particularly Sections 23A and 23B, in dealings with other Affiliates as well as analogous rules imposed by other jurisdictions that require a fair allocation of expenses among affiliated entities (the “Bank Regulatory Rules”);

WHEREAS, in providing services to one another, Affiliates of JPMC are also subject to United States federal, state and non-United States income tax laws of the various jurisdictions in which JPMC and its Affiliates operate which require that compensation be paid for services provided in accordance with specified transfer pricing rules, including Section 482 of the United States Internal Revenue Code of 1986, as amended (the “Tax Rules”);

WHEREAS, JPMC has adopted an expense allocation policy entitled the Expense Allocation Policy and Guidelines (the “Expense Allocation Policy”) that is posted on the internal website maintained by JPMC and is available to, and accessible by, all Affiliates which sets out the principles that JPMC and its Affiliates are to follow in determining the component cost by Expense Product (as defined below) to make up the total compensation to be paid for Services such that JPMC and its Affiliates will be in compliance with the Bank Regulatory Rules and the Tax Rules with respect to those Services;

WHEREAS, in allocating expenses it is understood that the Services performed by one JPMC affiliate to another represent an activity and the cost of this activity may be an amalgamation of more than one Expense Product;”

This recital is new to the 2010 revision. The 2006 GMSA did not contain a similar provision.

114. The recitals continue:

“WHEREAS, certain of the Expense Products within the scope of the Expense Allocation Policy are more fully described in the annual Product and Price Guides (us defined below) and any annotations thereto located on JPMC’s internal website in the Finance Workspace (it being understood that the items detailed in the Product and Price Guide may not necessarily be complete Services for purposes of value added tax or other analogous indirect taxes but rather may be viewed as components of Services);

WHEREAS, the Expense Allocation Policy sets out the guidelines necessary to determine the nature of the Expense Products reflected in the Product and Price Guide that can be amalgamated to represent the consolidated price of Services provided for purposes of value added tax or other analogous indirect taxes;

WHEREAS, in allocating expenses it is understood that the Services performed by one JPMC affiliate to another represent an activity and the cost of this activity may be an amalgamation of more than one Expense Product; ...”

115. Although the definitions in clause 1 are broadly similar to those in the 2006 GMSA, some of these have been slightly amended. Clause 1 of the 2010 GMSA provides:

“(a) “Expense Product” shall mean the line items identified at the granular Product and Price Guide level to determine the individual cost component

incurred and allocated in accordance with the Expense Allocation Policy by JPMC entities.

(b) "IT Development Services" shall mean services for the development of information technology that are paid for by the Sponsor.

(c) "PAR" shall mean the project and reporting system used by JPMC to track certain technology expenses and is commonly referred to as the "PAR" tool.

(d) "Product & Price Guide" or "PPG" shall mean each SAP CO Product Reference Information table and the PAR (project accounting and reporting) Reference Data Information table, each of which is updated as needed and archived on an annual basis.

(e) "Provider" shall mean JPMC or any Affiliate providing services pursuant to an Addendum, as such term is hereinafter defined,

(f) "Recipient" shall mean JPMC or any Affiliate receiving services pursuant to an Addendum.

(g) "SAP CO" shall mean the accounting system which is used by JPMC to effect certain corporate expense allocations and is commonly referred to as the "SAPCO" tool.

(h) "Services" shall mean the activity performed by an affiliate or another the consideration for which is represented by the total cost of Expense Products related to that activity. These Services may be provided by a Provider to a Recipient pursuant to an Addendum,

(i) "Sponsor" shall mean the JPMC Affiliate that bears the risk of IT Development Services.

(j) "Technology" shall mean the intellectual property rights arising out of IT Development Services performed or procured by Provider for Recipient(s).

(k) "Technology Product" shall mean a product or service that utilizes Technology."

116. The definition of "Support Services" (in clause 2(b)) is also in similar terms to the definition in the 2006 GMSA. The 2010 version states:

"Support Services, Except as otherwise mutually agreed, or if the relevant amounts are *de minimis*, for Expense Products within the scope of each annual Product and Price Guide (as the same may be revised and updated from time to time) that are identified singly or collectively as Services for which amounts are to be cash settled through SAP CO, each Recipient agrees to pay for the Services provided to it (i) for Services that are identified in the relevant systems as charged at their estimated fair market value, the price specified therein and (ii) for all other such Services, its appropriate share of the fully-loaded costs of the Provider attributable thereto (plus, if applicable, a markup applied thereto as specified in an applicable Addendum or as otherwise agreed by the parties; provided that in all cases there will be a markup of 10% for IT Development Services performed by the Provider). It is understood and agreed that the detail provided on an invoice may encompass components of Services which in and of themselves are not complete services for purposes of value added tax or other analogous indirect taxes."

117. "Other Services" (clause 2(c)) are defined by reference to other bespoke services not agreed in the GMSA but dealt with in an addendum with any charges being on an arm's length basis. It provides:

“(c) Other Services. For all services not described in paragraph (b) above, the nature of the services to be provided, the charges therefor and other material terms and conditions shall in each instance be as mutually agreed, as evidenced in a Schedule to an Addendum to the Master Service Agreement. Charges for nil such services shall be based upon an arm’s length charge determined pursuant to the provisions of the Tax Rules and the Bank Regulatory Rules. It is understood that compensation paid for such other services rendered will be based on one of the following methods and in accordance with applicable laws, regulations or regulatory guidelines: (1) fully loaded costs with no markup or (2) estimated fair market value of rendering the services (which may include, as appropriate, fully loaded costs plus a markup thereon).”

118. The 2010 GMSA does, however, contain a new provision in relation to “Technology” in clause 2(d). This provides:

“Technology. In consideration for the amounts paid by Sponsor to Provider in respect of IT Development Services as specified in 2(b) above, Provider grants an exclusive, worldwide, perpetual, fully paid up license to Sponsors) to make, have made, use, have used, sell, offer for sale, import, enhance, modify and make derivatives of Technology Products (“Technology License”) and agrees to assign all rights, title and interest in the Technology, subject to the Technology License to Sponsors), to JPMorgan Chase Bank, N.A, (“Holder”). To be clear, in no event shall Provider in its capacity as Provider of IT Development Services retain any economic interest or beneficial rights in the Technology. Holder shall not sell, license or otherwise dispose of the Technology to any third party not affiliated with JPMC without the consent of Sponsor(s). In the event that any or all Sponsors) are no longer Affiliates, such Sponsor may not withhold consent. Any patents, patent applications, copyrights, copyright applications or other filings necessary to perfect and preserve ownership of the Technology shall be the responsibility of the Holder, and Provider and Sponsor(s) agree to assist or comply with any request necessary to perfect and preserve such ownership.

Holder shall not initiate a legal action arising out of or with respect to the Technology without consent from Sponsor(s). In the event that any or all Sponsor(s) are no longer Affiliates, such Sponsor(s) may not withhold consent. In the event either the Holder or Sponsor(s) becomes aware of an actual, alleged or potential claim of infringement, misappropriation or other violation of the Technology, then such party shall notify the other party, and the Sponsor may then request Holder to initiate suit at Sponsor(s)’s direction and expense.”

119. Other material clauses provide:

“**3. Accounting; Billing Procedures; Taxes**, (a) Each Provider and each Recipient shall each maintain on their general ledgers special intercompany payable and receivable accounts for the exclusive accounting of the services,

(b) For Services, the cost of which is determined on the basis of the Expense Products within the scope of the Product and Price Guide, the Provider thereof shall charge the Recipient monthly, or as otherwise agreed between the parties, by preparing an invoice (“Invoice”) addressed to the Recipient in accordance with the terms of this Master Service Agreement and describing on the Invoice (substantially in the form of Appendix A attached hereto, or in some other form to which the parties mutually agree) the Expense Products singly or collectively that form the basis of the consideration for Services performed and the charges therefore. For all such Services provided pursuant

to this Agreement, and any other services set forth in a Schedule to an Addendum, the Provider shall provide such other details and documentation as may reasonably be requested by the Recipient in order to substantiate and approve the charges.

(c) In addition to the charges for the services, the Recipient shall pay all applicable taxes based on or measured pursuant to this Agreement or the services, excluding taxes based upon the Provider's net income. The Provider agrees to provide all reasonable cooperation to the Recipient in the determination of any tax liability or in any claim or dispute the Recipient may have with any taxing authority relating to the imposition, computation or payment of any tax on a service.

(d) Each version of the Product and Price Guide, the PAR Reference Data Information table and the monthly Invoice in effect at the end of each calendar year shall be archived for ten (10) years by JPMC in a system that permits access to each such version by each Provider and each Recipient.

...

14. Additional Parties. Affiliates may subscribe to the terms and conditions of, and become parties to, this Master Service Agreement by executing an Addendum as described in Section 2 hereof, whereupon they shall be bound hereby to the same extent as if they had executed this Master Service Agreement, mutatis mutandis,

...

17. No Agency. Unless otherwise expressly agreed, neither party shall be deemed to be the agent nor representative of the other, and neither party may bind the other party to any obligation or liability.”

Addendum

120. An Addendum, in broadly the same format as that attached to the 2006 GMSA, under the 2010 revision was entered into by JPMC and JPMorgan Securities Limited on 1 May 2012. Although JPMorgan Securities Limited is a different entity to SPLC, it appears that the Addendum it entered into with JPMC was included in the Hearing Bundle as the result of a clerical error. However, it is common ground that the Addendum also reflects the contractual obligations between the parties in this case and I have proceeded on this basis.

121. Material clauses of that Addendum provide:

“**1. Services.** Services, comprised of the amalgamation of one or more Expense Product in the Product and Price Guide, that are provided by JPMC Affiliate as a Provider, or received by JPMC Affiliate as a Recipient, will be identified and characterized on invoices. The Expense products forming the cost components of these Services will be described in detail in the Product and Price Guide. Where additional detail is required to describe the Service this may be described in a Schedule or Schedules attached hereto. Any Schedule attached hereto which describes a Service for which consideration is charged by means of Expense Products in SAPCO or PAR will prevail over the description in the Product and Price Guide in the event of a conflict between the Schedule and the Product and Price Guide. Other Services will be as described in a Schedule or Schedules attached hereto and made a part hereof.”

Although this clause refers to other Services being described in an attached schedule or schedules there were, in fact, no schedules attached to the Addendum.

122. The Addendum continues:

“2. Compensation. For Services the cost of which is determined on the basis of the Expense Products listed in the Product and Price Guide (as the same may be amended from time to time), JPMC Affiliate agrees to be bound by the provisions of the Master Service Agreement and this Addendum, both in charging for Services it provides to, and paying for Services it receives from, other Affiliates. With respect to other Services provided to JPMC Affiliate by an Affiliate, the JPMC Affiliate agrees to pay the Affiliate the amounts set forth on the applicable Schedule.

3. Master Service Agreement. Each Recipient and the Provider hereby agrees to be bound by the terms and conditions of the Master Service Agreement, and further agrees that this Addendum is hereby incorporated by reference therein and made a part thereof.”

123. Provisions are included in clause 5 for “Performance Management”, “Disaster Recovery” and “Data Protection”. The only modification to the GMSA is in appendix A which imposes data protection requirements on those dealing with SPLC under the applicable legislation in force at that time.

2015 GMSA

124. A further revision of the GMSA came into effect and, as with the previous iterations of the GSMA, was introduced by an interoffice memorandum dated 15 May 2015. Although essentially in the same terms as the 2010 revision the memorandum explains that:

“The main change from the October 2010 version is the addition of a business continuity-section.”

This is borne out by the terms of the GMSA which expressly incorporates the Expense Allocation Policy and contains essentially identical definitions as the previous iteration. “Services”, for example continue to mean:

“the activity performed by an affiliate for another the consideration for which is represented by the total cost of Expense Products related to that activity. These Services may be provided by a Provider to a Recipient pursuant to an Addendum”

2019 GMSA

125. JPMorgan had been engaged in discussions with HMRC regarding outsourcing from 2014. In 2017, the discussions had expanded to consider matters which led directly to the present appeal. During that process it was recognised that the nature of the intra-group services being supplied had not been adequately explained by the 2006 GMSA. Therefore, the JPMorgan VAT Team (with input from other individuals and teams) considered how best to explain those services and their VAT treatment to HMRC. Also, in 2017 and 2018, JPMorgan was undertaking a review of its approach to outsourcing governance in light of evolving regulation and regulatory expectation (including the European Banking Authority Outsourcing Guidelines) and business concerns to ensure a streamlined outsourcing process. As part of the review a process known internally as a “war room” – a process to make quick decisions on how to implement changes – took place in May to June 2018.

126. The conclusion of that process was that the GMSA should be streamlined to avoid the requirement (in a number of non-UK jurisdictions) of having a schedule for each outsourced activity and, in response to the VAT dispute which led to this appeal, the nature of the services should be clarified and better defined. The VAT Team viewed this as an opportunity to include an appropriate description of the services and address the gap in the 2006 GMSA. Mr Bradley was responsible for the initial drafting of the detailed description of the services. That detailed description went through a process to get firm-wide approval, including ultimately approval by

the CFO of each line of business, together with approval by the CFO of JPMC. Although VAT was one of the factors involved in the 2019 restatement, it was not the sole factor. Mr Bradley explained that the VAT Team would not have had “the clout” to call for a war room.

127. The amended and restated GMSA came into effect on 30 September 2019. For the first time in a GMSA there was a description of the inter-group services in the contractual documents. However, as Mr Bradley confirmed in evidence, there was no alteration in the nature or number of such services supplied or change in the underlying business as a result of the 2019 restatement of the GMSA.

128. The material recitals of the 2019 GMSA, which was dated 30 September 2019, state:

“A. WHEREAS, JPMC and its Affiliates are engaged in various businesses and, in conducting those businesses, provide or receive various services including Services (defined below) from time to time to or from each other;

...

C. WHEREAS, Affiliates are subject to certain provisions of the Federal Reserve Act, particularly Sections 23A and 23B, in dealings with other Affiliates, including in providing Services to such Affiliates, as well as analogous rules imposed by other jurisdictions that require a fair allocation of expenses among affiliated entities (the “**Bank Regulatory Rules**”);

D. WHEREAS, Affiliates are also subject to United States federal, state and non-United States income tax laws of the various jurisdictions in which JPMC and its Affiliates operate which require that compensation be paid for Services provided in accordance with specified transfer pricing rules, including Section 482 of the United States Internal Revenue Code of 1986, as amended (the “**Tax Rules**”);

E. WHEREAS, under the Bank Regulatory Rules and the Tax Rules an Affiliate benefitting from a Service generally must compensate the Affiliate providing the Service with what is considered an “arm’s length price”;

F. WHEREAS, to determine arm’s length compensation for Services provided, JPMC has adopted a pricing policy entitled the Expense Allocation Policy and Guidelines (the “**Expense Allocation Policy**”) that is posted on the internal website maintained by JPMC and is available to, and accessible by, all Affiliates, and that sets out the principles that JPMC and its Affiliates are to follow in determining the total compensation to be paid for Services;

...

H. WHEREAS, certain Services are Business Delivery and Support Services (identified and described in Appendix C), each of which is a single economic supply provided by a single Affiliate, the compensation for which may be determined by reference to an amalgamation of multiple underlying Expense Products.

I. WHEREAS, JPMC and its Affiliates desire to use this GMSA, its Appendices, Addenda (as hereinafter defined), and any supplemental documentation or online tools, to document, consistent with Inter-Affiliate Policies, and to govern the provision of, and charging for, Services between Affiliates whether or not they are currently subject to existing service agreements among JPMC and its Affiliates; and

...”.

129. Clause 1, the definition provision, in so far as applicable states:

“...

(d) “Expense Product” shall mean any line item identified in the PPG.

...

(f) “Invoice” shall mean an invoice substantially in the form of Appendix D or for Services provided between any pair of Affiliates in such other form as those Affiliates may agree.

...

(h) “PPG” (also known as the Product & Price Guide) shall mean each SAPCO Product Reference Information table as updated from time to time and archived on an annual basis.

(i) “Provider” shall mean JPMC or any Affiliate providing Services pursuant to an Addendum.

(j) “Recipient” shall mean JPMC or any Affiliate receiving Services pursuant to an Addendum, including beneficiaries under the Inter-Affiliate Service Process.

(k) “SAPCO” shall mean the accounting system which is used by JPMC to calculate, allocate, and effect payment of compensation for Services pursuant to the Expense Allocation Policy.

(l) “Services” shall mean (i) the Business Delivery Services and Support Services identified in Appendix C that to the extent applicable, may be further defined by the detailed activities in an agreed upon taxonomy of component activities and captured in an online tool(s) or (ii) any other service set forth in any other documentation or tool(s) that details the activities being performed ...”.

130. Mr Bradley’s evidence was that the taxonomy and online tool referred to in Recital (l) were to be created for the purposes of regulation and governance and, as with the PPG, it contains a granular list of the many components that combine to make up the services contained in Appendix C. However, there is no documentation and there are no online tools defining the activities. Although there is an amended and restated addendum, dated 22 December 2020, for the purposes of this case, other than for a matter of days, it is the 2012 addendum which applied, and which did not identify any separate services that is applicable.

131. Clause 2, which is headed “Services; Compensation”, provides:

“(a) In General. A Provider may provide Services to a Recipient, from time to time, upon request of a Recipient(s) in accordance with this GMSA. The material terms and conditions upon which such Services are provided, other than as set forth in this GMSA, shall in each instance (i) be as mutually agreed as evidenced in an addendum to the GMSA (each, an “**Addendum**” and, collectively the “**Addenda**”) and/or (ii) in accordance with the instructions of Recipient from time to time. Additional requirements related to the outsourcing of certain Services within the EMEA region and the processing of European Economic Area Personal Information are set forth in Appendix A and B, respectively. This GMSA, its appendices, all such Addenda and any other documentation or tool(s) that details the activities performed hereunder together constitute a single agreement and are referred to collectively as the “**Agreement**.” Each Provider and each Recipient shall exercise due care in accepting or rendering Services under this Agreement, as applicable.

(b) Compensation for Services. Except as otherwise mutually agreed, or if the relevant amounts are *de minimis*, each Recipient agrees to pay compensation to each Provider from which it receives Services.

(i) When such compensation is calculated in SAPCO, the compensation shall (A) consist of the Recipient's appropriate share of the Provider's fully-loaded costs attributable to such Services (which costs shall comprise all component Expense Products) and any applicable markup (which may be applied to some or all of the costs) or such other arm's length amount as determined through SAPCO; and (B) be reflected on an Invoice issued by the Provider specifying the compensation for each Service provided in accordance with Appendix D.

(ii) ...”

In so far as material, Clause 3 provides:

“3. Accounting; Billing Procedures; Taxes.

(a) ...

(b) Each Provider of Services for which the compensation identified in Section 2 is paid through use of the SAPCO tool shall prepare and issue to each Recipient of such Services a monthly Invoice. The Invoice shall identify the Service(s) provided and, for each such Service, the compensation due, and shall be addressed to the Recipient in accordance with the terms of this Agreement. For all such Services, and any other applicable Services, the Provider shall provide such other details, invoices, and documentation as may reasonably be requested by the Recipient in order to substantiate and approve the charges.

132. Appendix C contains new provisions that had not been included in previous iterations of the GMSA. Material provisions of that appendix state:

“BUSINESS DELIVERY AND SUPPORT SERVICES

The Services identified in this Appendix shall consist of: (1) those essential for and specific to Recipient's business transactions (Business Delivery Services), and (2) all other Services (Support Services). Business Delivery Services are identified separately for each material JPMC line of business. The Services descriptions in this Appendix may be modified for particular Affiliates in Schedules to Addenda.

A. BUSINESS DELIVERY SERVICES

Business Delivery Services consist of Transaction Execution, Fund Administrative Management, and Sales and Relationship Management Services which include but are not limited to the following.

1. Transaction Execution Services:

As more specifically described below for particular lines of business of JPMC and its Affiliates, or divisions of such lines of business, Transaction Execution Services entail Recipient's outsourcing to Provider, and Provider's assuming responsibility for, end-to-end technical fulfilment of transactions between Recipient and Clients. In performing Transaction Execution Services for a Recipient, Provider is responsible for all personnel, operations, technology, and ancillary activities necessary or helpful to the performance of the Services. Provider is also responsible for, in consultation with the Recipient, identifying, planning, developing, operationalizing, and implementing appropriate systems and technologies.

a) For the **Corporate Investment Bank (CIB) Markets and Capital Markets** businesses, Transaction Execution Services consist of any or all of the following:

i. by means of the appropriate technology, operations and other relevant support functions facilitate interaction between Recipient

and its Clients in trading relationships, including through the technology platforms calculating and electronically quoting prices for Recipient or providing prices for Recipient to quote so that Clients can trade with Recipient; through systems accept orders or transmit orders for acceptance on behalf of Recipient's Clients, systematically reviewing trade and order parameters and terms to ensure accuracy and acceptability; and execute electronic transactions for Recipient, subject to the control of and the limits set by Recipient;

ii. fulfilling Recipient's obligations to Clients by ensuring agreement as to trade details, recording transactions in Recipient's books, settling securities and cash obligations arising under the agreement, and accepting settlement amounts from Clients;

iii. facilitating collateral processing for Recipient, including by calling for more collateral, agreeing to repayment of collateral in line with valuation of collateral and transactions, and setting-off collateral and settlement through payment or delivery of cash or securities;

iv. carrying out related activities for Recipient, to include initial set-up of Clients and data, including any standard transaction elements necessary for trade acceptance; performing pre-trade customer checks and validations, implementing regulatory and legal compliance measures and reporting, complying with post-trade controls and reconciliations, and setting up Client asset management tools; and

v. otherwise enabling the processing, management and execution of trades.

b) For the **CIB Banking** (including Wholesale Payments, Lending and Other divisions), **Commercial Bank, and Consumer and Community Banking (CCB) General Banking and Consumer Finance** businesses Transaction Execution Services consist of any or all of the following:

i. end-to-end processing of cash transfers and other cash transactions for Recipient and its Clients, through maintenance of bank accounts and effecting cash movements through appropriate debits and credits to those accounts;

ii. creating and sending appropriate payment instructions for Recipient based on requests from Clients and validating payment instructions received by Recipient;

iii. ensuring appropriate reporting for all Recipient and Client transactions and related balances and booking of all changes to the value of accounts in Recipient's books and records;

iv. authorizing Recipient transactions with third-party banks and clearing banks;

v. assigning cash received by Recipient to appropriate Client accounts in accordance with payment instructions from other banks, and reconciling cash received and paid with advice from third-party banks and other Affiliates;

vi. booking loans and overdrafts agreed by Recipient into Recipient's books and records;

vii. processing loan repayments and interest into Recipient's books and, where relevant, directly debiting amounts due from Client accounts;

viii. processing drawdown requests on credit extended by Recipient, including making payments into the designated Client account;

ix. liaising with Clients in relation to payments, account queries, interest and loan amounts and related activities, for Recipient; and

x. otherwise ensuring that accounts maintained by Recipient are operated appropriately, including by conducting anti-money-laundering and sanctions checks, and fee processing and billing in relation to Client accounts and transactions.

c) For the **CIB Securities Services** business, Transaction Execution Services consist of any or all of the following:

i. asset servicing, trade processing and maintenance of custody records/accounts for Recipient's Clients;

ii. processing income amounts received by Recipient's Clients as dividends or interest payments and implementing associated withholding and reporting processes;

iii. calculating and reconciling cash received by Recipient and appropriate crediting of amounts to Client accounts;

iv. processing all relevant corporate action trades for Recipient in accordance with instructions received;

v. ensuring delivery or receipt of securities for Recipient where the Client has instructed such transactions;

vi. establishing ownership of securities with the relevant central securities depository for Recipient;

vii. processing for Recipient all trade-settlement related payments into or out of relevant accounts;

viii. ensuring recognition of ownership by Clients of securities, including by giving all necessary instructions to sub-custodians; and

ix. fee processing and billing for Recipient in relation to transactions.

d) For the **Wealth Management** business, Transaction Execution Services consist of:

i. asset servicing, trade processing and maintenance of bank and custody accounts for Recipient's Clients;

ii. facilitating interaction between Recipient and its Clients in trading relationships, including through: initial set-up of Clients, accepting orders, systematically reviewing trade and order parameters to ensure accuracy and acceptability, and processing, managing and executing trades;

iii. fulfilling Recipient's obligations to Clients to process transactions, ensuring agreement as to trade details, and settling securities and cash obligations;

iv. end-to-end processing of cash transfers and other cash transactions for Recipient and its Clients through maintenance of bank accounts and effecting cash movements through appropriate debits and credits to those accounts;

- v. creating appropriate payment instructions based on requests received from Recipient's Clients;
- vi. performing reporting for all Recipient transactions and related balances;
- vii. booking of all changes to the value of Client accounts in Recipient's books and records;
- viii. authorizing Recipient transactions with third-party banks and clearing banks;
- ix. assigning cash received by Recipient to appropriate Client accounts in accordance with payment instructions from other banks and reconciling cash received and paid with advice from third party banks and other Affiliates;
- x. processing all relevant corporate action trades for Recipient in accordance with instructions received;
- xi. ensuring delivery or receipt of securities for Recipient where the Client has instructed such transactions;
- xii. establishing ownership of securities with the relevant central securities depository for Recipient;
- xiii. booking loans and overdrafts agreed by Recipient into Recipient's books and records;
- xiv. processing loan repayments and interest into Recipient's books and, where relevant, directly debiting amounts due from Client accounts;
- xv. processing drawdown requests on credit extended by Recipient, including making payments into the designated Client account; and
- xvi. fee processing and billing for Recipient in relation to transactions.

e) For the **CCB Card Issuance and Acquiring** business, Transaction Execution Services consist of any or all of the following:

- i. performing end-to-end settlement and individual transaction card payment processes related to Recipient's card acquirer and/or card issuer business, including by capturing transactions; validating and authorizing transactions in accordance with credit limits and other relevant controls, including money laundering and sanctions requirements; reconciling and providing relevant substantiation of settlement amounts with card schemes and other scheme members where required; maintaining accounts and credit and debit relevant amounts from those accounts; settling relevant amounts with card schemes and/or other scheme members; processing chargebacks and other amendments and corrections; and
 - ii. provision of Client service and related operational activities for Recipient required to support the delivery of the Services set out in (e)(i) above
-”.

2. Fund Administrative Management Services

...

3. Sales and Relationship Management Services

...

B. SUPPORT SERVICES

Support Services include, but are not limited to the following Services:

1. Business Technology Services: Business Technology Services consist of production support, maintenance and enhancement of business systems that are not Business Delivery Services.
2. Audit: Audit Services consist of reviewing the adequacy and effectiveness of risk controls and providing opinions, analyses and recommendations concerning the respective processes, activities and departments/entities.
3. Central Technology & Operations: Central Technology and Operations Services consist of providing and supporting information technology, day-to-day technology implementation and support, and information technology development for Recipient's corporate functions and legal-entity operations.
4. Corporate Finance & Finance Aligned: Corporate Finance & Finance Aligned Services consist of providing financial accounting and management accounting and reporting functions, including treasury support and analysis, tax risk management, and advisory and accounting support services.
5. Human Resources Services: Human Resources Services consist of support for resource planning, organizational development, human resources policy and procedure, and training and development for all employees.
6. Insurance Services: Insurance Services consist of (a) recovering share of group insurance premiums incurred by the group, including casualty insurance, financial insurance, professional liability insurance and property insurance; and (b) managing risks, including casualty insurance, financial insurance, professional liability insurance and property insurance.
7. Legal & Compliance Services: Legal Services consist of providing legal advice and risk management associated with Recipient's activities by identifying risks and pertinent local laws and regulations, and implementing policies and procedures to mitigate risk. Compliance Services consist of providing oversight, guidance and independent challenge associated with Recipient's activities by identifying, measuring, assessing, and monitoring compliance risks across the applicable laws and regulations for the jurisdictions and issuing policies and evaluating compliance control processes designed to mitigate these risks.
8. Real Estate & Security Services: Real Estate & Security Services consist of providing dedicated premises or spaces within buildings for Affiliates including related management such as lease, repair, maintenance, global security and investigation.
9. Risk Management & Advisory Services: Risk Management and Advisory Services consist of providing assistance with respect to local risk management functions, and regional risk-monitoring for market risk, credit risk, operational risk, and compliance.
10. Research Services: Research Services consist of providing market research for global and emerging markets.
11. Strategy Marketing & Communications Services: Strategy Marketing & Communications Services consist of providing public relations management and coordination and internal (among JPMC and its Affiliates) and external communications.

12. Operational Services: Operations Services consist of sourcing, procurement, event management and oversight, business and product management, and other activities supporting the operation and implementation of global/regional business.”.

133. Appendix D contains a specimen invoice which itemises services supplied which align with Business Delivery Services and Support Services as described in Appendix C. The services described on the first page of the invoice are, on subsequent pages, attributed to the individual business areas to which they relate.

134. A schedule to an amended and restated addendum effective from 22 December 2022 sets out the various affiliates, which include CBNA and SPLC, that have agreed to be bound by the GMSA.

Identification and Classification of Supplies

135. The services provided under the 2006 GMSA were invoiced using the SAPCO cost allocation system. The accounting for these services in SAPCO merely recorded “Inter-company Fees paid SAPCO” and “Inter-Company Fees received SAPCO” without identifying the specific services provided. Therefore, in parallel to the adoption of the 2006 GMSA, a project was started to produce a mechanism for identifying (for VAT purposes) the value of taxable and exempt services supplied under the 2006 GMSA. Mr Bradley explained that the aim of this was to incorporate a ‘bolt-on’ to the SAPCO invoicing process, in the form of a piece of software, allowing for additional reporting that would enable the VAT Team to determine the VAT treatment of the items covered by each invoice. The project resulted in the inter-entity tax invoicing tool, or “IETI”.

136. In his witness statement Mr Bradley explained that:

“In broad terms, IETI sought to take individual cost allocations and amalgamate them at the level in the hierarchy where the individual components formed a recognisable function and contributed to a single service. It also, critically, enabled the VAT Team to identify that the service in question was received by a particular business area, or sub-business.”

137. Under IETI the level at which services were received amalgamated were identified and could be, and were, amalgamated at that level, using a principal-ancillary approach resulting in inter-entity invoices. In creating summary invoices, IETI applies a “service description” to each service identified by it. Before the 2019 GMSA, those service descriptions were applied from a list of the 22 descriptions shown in the table below:

1	E1	Clearing and Settlement of trades
2	E2	Financial Intermediary Services
3	E3	Cash transfers, clearing and settlement
4	E5	Global Custody Services
5	E6	Funding, lending and debt management
6	E7	Securities processing and servicing
7	E8	Card Payment Processing
8	E9	M&A/Corporate Finance intermediary services
9	E10	Fund/Investment Management & Administration
10	E12	Account operating
11	E13	Investment Management

12	E11	Commodity Intermediary Services
13	E14	Proprietary Trading Services
14	E4	Insurance*
15	E15	Occupancy Charges*
16	A99	WSS Financial Intermediary Services
17	A98	GCB Financial Intermediary Services
18	A96	Occupancy Charges
19	A97	Insurance
20	A	Technology or business support services
21	A1	Technology for Clearing and Settlement of trades
22	T	Support Services
	* superseded by A96 and A97	

Mr Bradley confirmed in evidence that these descriptions have been updated in line with the 2019 GMSA.

138. The invoices produced show two different levels of detail. The first page shows the relevant service by description, using the appropriate of the above 22 service descriptions (or so many of them as are relevant). On subsequent pages the same service descriptions are itemised and are broken down and grouped by reference to the “receiving business area”.

139. Each invoice is accompanied by an even more detailed breakdown, often running into thousands of pages, which is organised by the recipient business area, and then by the service descriptions. The additional detail is the specific Expense Products which have been amalgamated to make up the identified service, together with itemised amounts of those Expense Products.

140. In simple terms, the amount charged by CBNA to SPLC is the total of all of the Expense Products allocated to that inter-company relationship in SAPCO, plus a margin. As recorded by SAPCO and shown on those detailed invoices, those Expense Products are allocated by reference to a “receiving business area”. Mr Bradley explained, the cost allocation process is designed:

“... to ensure that all costs are allocated (to the extent practicable) to the relevant business areas that benefit from the services.”

As such, each business area pays for the services received by it, and does not pay for services it does not require.

141. IETI does not determine the VAT treatment of the identified services. The invoices do not show the VAT position as they are invoices between entities in the same VAT group. However, as Mr Bradley acknowledged in evidence, IETI was intended to generate the consideration for a supply of services, before getting to the question of classification which is a semi-manual process carried out by the VAT Team. Mr Bradley described IETI as:

“... an internal solution to produce invoices for services so that we could quantify the consideration for those services and account for UK VAT. IETI did not define the nature of the contractual services provided. It was merely a VAT invoicing solution in respect of the charges for services provided under the 2006 GMSA.”

142. The starting point of that semi-manual process for the VAT Team is the information on the invoices. Using this information and a report produced by IETI, the VAT Team decides how to account for VAT with guidance from Mr Bradley. The VAT Team uses the “service descriptions” shown on the invoices to decide how to classify a supply. In broad terms, the services that were classified as exempt were those provided by Technology, Operations and Market Risk.

143. Prior to the implementation of the 2019 GMSA the approach to VAT classification was as set out in the paper provided to HMRC in October 2017. This shows that the service descriptions in rows 1 -11 of the table in paragraph 137, above, were used only when an activity qualified for exemption from VAT, with the descriptions in rows 12 and 13 used when the service was treated as taxable.

144. The categories in rows 16 – 19 were used to classify activities provided by particular Business Units in order to ensure the charges, which were generally expected to qualify for exemption, are separately identified on invoices.

145. The categories in rows 20 and 21 were used when an activity is such that the recipient would be unlikely to obtain it unless it obtained also an activity from a provider group which is classified as providing one of the ‘E’ activities. When these were provided from groups in the same legal entity as the groups providing the ‘E’ activities, they would be treated as forming an overall service classified as the ‘E’ activity but, if provided on a stand-alone basis would be treated as standard rated. Support Services, row 22, were always treated as standard rated.

146. Following the 2019 GMSA the service descriptions were updated although the process, as described above, has been the same throughout the Relevant Period.

147. The aim of the classification process, which recognised that the services supplied to SPLC by CBNA met different business needs, was to classify supplies as either exempt or taxable. In doing so, Mr Bradley said, the VAT Team were:

“... trying to identify those things that were close to the actual conducting of the business, as opposed to those that were supportive and controlling and governing that business.”

However, he also said that it was “difficult” to identify:

“... any specific supply with exempt characteristics that represents a clear exempt supply from CBNA to SPLC”

148. Mr Bradley fairly accepted, that this was the:

“... challenge we were trying to address with the IETI tool”

He agreed that while the identification process undertaken by IETI produced “reasonable results”, some of those were “wrong in certain aspects”. In particular, IETI incorrectly treated certain costs as components of taxable Support Services which resulted in CBNA making a claim to correct that position. He also described CBNA’s invoicing structure as “opaque” and accepted that there was no written document at any stage of the process that confirmed “in terms: these are the distinct exempt supplies of services for this specific consideration.”

149. The approach adopted by IETI was a “bottom up” one, considering the various components of the supply and aggregating them, rather than a “top down” approach which starts by looking at the nature and objective of the whole service. As Mr Bradley recognised, such an approach could cause confusion because:

“... the integrated service as a whole is often more than, or different from, the sum of its component parts”.

I was told that CBNA intends to modify IETI to reflect the outcome of these proceedings.

150. Also created around this time was the Business Capability Taxonomy or “BCT”. However, the BCT was produced for reasons unrelated to VAT and had no relevance to the IETI tool or invoicing process (and had not been created when IETI was developed). Although referred to in the 2019 GMSA, the BCT was developed for the purpose of regulatory requirements which required a particular level of detail which could be met by the BCT.

Transactions

151. I was provided with eight example transactions undertaken by SPLC from three business areas which were intended to be representative of the range of transactions undertaken throughout Markets. However, it is not necessary to set these out in full as they can be summarised to highlight the key themes. However, before turning to the examples it is helpful to set out some of the features of the Markets business segment including the range of transactions undertaken.

152. While the assets traded by each business area are fundamentally different, and the systems and personnel needed for the transactions reflect those differences, a number of common themes can be identified. Markets is a client-servicing business, acting as a “market maker” which, in broad terms, means it carries out transactions in order to meet the needs of clients, rather than for the purposes of taking financial positions on a standalone or investment basis. SPLC serves its clients’ needs by offering the ability to transact in the wide range of financial transactions they demand, in a competitive and reliable way.

153. Markets generates revenue in two broad ways:

- (1) By applying a ‘margin’ to prices. That is, the difference between the cost of the transaction or security to SPLC and the price offered by SPLC to its client; and
- (2) In certain transactions, SPLC acts as a broker and charges a commission based on the value of the transaction.

Range of Transactions

154. In very general terms, Markets will generate more revenue if it can carry out a greater volume of trades, more complex trades (which tend to have a wider margin) or more high value trades. Clients transact with SPLC for a number of reasons, including reliable technology systems and processes, the range of transactions offered (including the ability to structure the most complex and bespoke derivative transactions) and the financial stability and reputation of the JPMorgan global brand.

155. As can be seen from the summary of the business areas (at paragraph 27, above) SPLC enters into a wide range of transactions across different instruments. Across that range there are two broad distinctions, the first between cash transactions and derivative transactions, and the second between exchange traded transactions and non-exchange traded transactions (or, in certain business areas, venue traded and non-venue traded transactions, or platform traded and non-platform traded transactions).

156. An example of a cash transaction (from the Equities business area) is a client purchasing listed shares. Following the execution of the transaction, payment for the shares by, and delivery by SPLC to, the client there are no ongoing obligations. This typically all takes place within two days.

157. A derivative is a contract between two parties which derives its value from some other underlying financial asset or variable. An example would be an option, under which the client can oblige SPLC to sell listed shares at a set price on or before a future date. Derivative

transactions have a longer duration, and carry ongoing obligations for the parties to the derivative.

158. Turning to the distinction between exchange traded transactions and non-exchange traded transactions. There are a large number of exchanges on which financial instruments can be traded, including both traditional exchanges (eg London Stock Exchange) and alternatives such as multilateral trading facilities (eg Chi-X Europe). The products traded on exchanges are generally standardised. Both cash transactions and derivative transactions can be traded on an exchange. Non-exchange traded transactions are traded directly between the two parties to the trade (in the present case, SPLC and its client). These are also referred to as “over-the-counter” or “OTC”, or bespoke. The same terminology is also used to refer to Credit and Rates transactions which are not traded on a venue or platform.

Automation and Complexity

159. As explained at paragraph 31, above, for all transactions carried out by SPLC, the aim is for the trading infrastructure supplied by CBNA to provide STP so as to automate as much of the transaction as possible. Automation involves both the systems developed and maintained by Technology and the QR models which are integrated into those systems.

160. The role of QR models is described in more detail below. However, in the example transactions these fall into two broad categories:

- (1) ‘Trading models’ which calculate the value of financial instruments (including proposed instruments), and the level of risk. These models are used in a number of ways, but one important example is that they are used in the process of pricing certain transactions.
- (2) ‘Execution algorithms’ which automatically execute certain transactions on various financial exchanges. An execution algorithm will break the client transaction down into smaller orders, and decide how, when and where to place those orders, without any human involvement. Those decisions have a significant impact on the price at which a trade is executed.

161. The extent to which automation is possible depends on the complexity of the transaction. The transactions entered into by SPLC range from (comparatively) straightforward transactions entered into in large volumes every day to very complex OTC transactions that are only entered into every few weeks. High volume, simpler transactions can be fully automated from start to finish with little to no human intervention. Complex transactions will require human involvement, including the involvement of traders and personnel within the trading infrastructure. However, even in these complex transactions the trader is heavily reliant on automated processes in both building and fulfilling the transaction. Technology and the QR algorithms built into Technology are subject to regulatory requirements to ensure that they can handle volumes, volatility and technical shocks. In his oral evidence Mr Sanders said:

“... we have to be able to prove that our algorithms can handle large price moves, if it can handle a certain number of trades per second, if it can handle a certain P&L growth.”

Risk management and hedging

162. Managing risk is clearly a very important part of the Markets business. The traders rely heavily on CBNA’s trading infrastructure to calculate and monitor risk and risk management will impact the nature and type of transactions that SPLC can enter into. Mr Dowker explained that risk will also affect:

“... the decision of whether or not to go ahead with the trade.”

163. Risk will also have a direct impact on the pricing of transactions. Mr Richardson said in relation to this:

“The bid offer spread that I would charge clients for various financial transactions would be a function of the risks that we are assuming under that transaction.”

Mr Reig Mascarell explained:

“... assessing what amount of risk we carry at each point of time is critical to determining what we’re going to be doing in terms of, like, the liquidity we’re going to be providing to the market or how we’re going to be responding to client enquiries or how we might want to increase or reduce the risk that we run at each point of time.”

164. Risk limits and parameters are set by external regulators. However, the Market Risk team set and monitor the policies and procedures to control the amount of risk taken on by SPLC using sophisticated tools developed by QR. The greatest financial risk faced by SPLC is market risk, ie the risk of a loss as a result of unfavourable change in market prices.

165. In his witness statement Mr Richardson explained that the management of market risk involves two distinct but related elements:

“The first element is that we have to manage the risk that comes with each new transaction with a client (I will refer to these simply as “client transactions”). We have to evaluate the risks that come with each client transaction and identify how we can mitigate them to the best of our ability. In order to mitigate the risk arising from client transactions, it may be necessary to enter into other client transactions that also serve as hedging transactions. This management of market risk needs to be factored into the pricing we offer our clients before we transact and determines the spread on any particular transaction. I will give examples of hedging transactions later in this statement.

The level of risk that we are exposed to varies between different types of transactions, as does the length of time for which we remain exposed.

- (a) Some transactions expose SPLC to risk for no more than a day or two. For example, a Cash Equities (listed shares) transaction in which we act as riskless principal (where we purchase shares to meet a specific client order) has very limited market risk because we are unlikely to hold the shares for a long time before selling them onto the client at the price we purchased them for (plus our transaction fee). It is only those transactions where SPLC buys shares to hold as inventory that SPLC becomes more exposed to market risk.
- (b) Other transactions will expose SPLC to risk for several months or even years. For example, a complex OTC derivative transaction in which SPLC enters into financial commitments for a period of time, where those commitments depend on underlying assets that are constantly changing values.

The second element of our risk management activities is closely related to the first element and pertains to the management of our overall risk position arising from all our client and hedging transactions, we refer to this as our “portfolio risk”. Portfolio risk looks at the risk in the overall position in the portfolio, rather than any individual transaction. Depending on the context, the term “portfolio” can be used to refer to all the transactions entered into and recorded in the financial records of any one or more of the levels in the hierarchy Portfolio risk is dynamic and constantly changes as the market

changes, requiring continual revaluation, representation, monitoring and rebalancing, for example by entering into further hedging transactions.”

166. Hedging transactions are themselves transactions in securities, undertaken with clients or (in some cases) with other JPMorgan legal entities. Mr Richardson said, in evidence:

“... hedging may involve entering – SPLC entering offsetting transactions with other clients.”

He went on to say:

“The vast majority of our transactions we perform delta hedging as soon as possible upon execution of the transaction.”

167. Mr Prickett explained that:

“Hedging is most commonly an external transaction. In every case where we conduct a transaction, our primary objective will be to find a hedge which costs the minimum amount or, where possible, indeed, captures a further bid offer with another client trade. So the exercise of hedging is really one of the differentiating factors in whether we make money as a business versus our competitors. The more that we are able to manage out of our risk using other client transactions, the more profitable our business is. So I struggle with the explanation that hedging is an internal transaction because we’d always think about our hedging opportunity with respect to offsetting risks elsewhere in the market”

The trader and the trading infrastructure

168. A trader’s role is to manage the portfolios of their trading desk which involves ensuring that client transactions are entered into in a regulatorily-compliant manner whilst remaining within acceptable risk parameters and managing the overall financial and operational risk of trading within the overarching business strategy and internal and regulatory risk patterns.

169. Although the trader has ultimate responsibility for the client transactions, many of the functions which build and fulfil those transactions are performed (in whole or part) by the trading infrastructure which, as set out at paragraph 29, above, comprises Technology, Operations, Market Risk and QR.

Example Transactions

170. As previously noted these examples were provided to cover the range of transactions and key distinctions (cash, derivative, exchange traded and OTC) and varying levels of complexity within the selected business areas.

Cash Transactions

171. The example cash transactions (referred to together as the “Cash Examples”) included in the examples are:

- (1) Equities 1 (a client wishing to purchase 20 million shares in BP plc);
- (2) Credit 1 (a client wishing to purchase Vodafone Group plc bonds for a value of £5m); and
- (3) Rates 1 (a client wishing to purchase a 10-year government bond).

172. For cash transactions, the key characteristics are the sale or purchase of the asset, and the resulting transfer of ownership of the asset. However, the transfer of ownership can be more complex than a straightforward sale of other assets. In particular:

- (1) For Equities 1, the overall transaction involves multiple transfers of ownership involving different entities; and

(2) The process of fulfilment (ie ultimate delivery and exchange of shares and payment) can take two days.

173. While there are differences in how the Cash Examples are undertaken, the functional aspects which bring about each transaction can be described in two broad categories. The first, determining and agreeing the economic terms of the transaction and the second the performance and implementation of the transaction.

174. The determination and agreement of the economic terms will include both (a) SPLC and the client agreeing to trade and (b) determining the price, or determining the mechanism by which the price will be identified. Depending on the level of automation, CBNA either carries out these tasks on behalf of SPLC, or plays an integral role, working in tandem with the trader to determine and agree the economic terms. Although as Mr Richardson confirmed in evidence it is the SPLC trader that sets the price quoted to the customer and determines the actual price at which SPLC will buy or sell a financial instrument.

175. Starting with fully-automated transactions, the role of CBNA, which occurs prior to any transaction between SPLC and the client, is agreeing to trade and either (i) setting the price or (ii) setting the mechanism by which the price will be determined. This is done on behalf of SPLC, with SPLC having set the parameters for the systems. Four examples can be given from the Cash Examples:

(1) Rates 1, for certain government bond transactions, CBNA's systems and QR models will calculate prices and stream those to SPLC's trading platforms as "click to trade" prices. The client, generally another dealer, can click on the published price. At that point, the trade between the client and SPLC (which is the regulated party to the automated transaction) has been agreed.

(2) In addition, also in Rates 1, there are other government bond transactions which are 'effectively' click to trade in the sense that, as Mr Prickett described, the transacting bank has "a last look but that they have set up their systems such that that last look does not reach the trader". Again, the client can click on the published price and the trade will be agreed (with SPLC) without any intervention by the trader. Mr Prickett described this as a good example of where:

"... technology is almost taking the place of the trader ... we incorporate within our technology, in order to give ourselves a competitive edge, the ability of the technology to make that decision."

(3) Similarly, in Credit 1, for corporate bond transactions of a certain value, CBNA's systems and algorithms will calculate indicative prices, stream them to the market, and then respond automatically to requests for quotes ("RFQs"). When the client accepts the price, the trade is agreed. However, as with the Rates 1 example, as confirmed in evidence by Mr Bradley, Mr Sanders and Mr Dowker, the transaction concerned would have been between the client and SPLC.

(4) Equities 1 is an example where CBNA's systems will agree to trade with the client and will agree the mechanism by which the price will be determined. The 'mechanism' is the selection by the client of the execution algorithm, from the suite of CBNA algorithms offered. The price will then be determined by that algorithm going out to the market to buy the shares, as part of the performance of the transaction. However, although using CBNA's systems and algorithms the client's contract would nevertheless be with SPLC and, as Mr Dowker explained in evidence:

"... the algorithm is acting on behalf of SPLC".

176. In each of these examples there is no human intervention by a trader in the individual transactions. The role of the trader is limited to setting the parameters for the CBNA systems, and the systems then make decisions within those parameters. As Mr Sanders explained, the traders are responsible for:

“... configuring how the algorithm should be parametrised, but – so the human is there as oversight whereas the technology is the engine that’s actually interacting with the markets and doing the actual electronic transfer, electronic messaging.”

177. For the transactions which are not fully-automated, the role of CBNA involves calculating indicative prices and streaming those to the market. CBNA then receives the client’s RFQ and, on behalf of SPLC, either confirms the indicative price or sends back the price as adjusted by the trader. In making such an adjustment, the trader will use tools provided by CBNA, so that again CBNA plays an integral role. When the client accepts the price, the trade, which is between the client and SPLC, is agreed.

178. There are two examples of such non fully-automated transactions within the Cash Examples:

(1) In Credit 1, for medium value trades, CBNA’s systems and algorithms will calculate indicative prices and stream them to the market. Clients will submit RFQs based on those prices. The trader will determine the price using the indicative price already published, but will be able to adjust the price using tools provided by CBNA. Those tools provide the trader with details such as the directionality of the market and the impact of the proposed trade on SPLC’s risk position. Pricing is done very quickly: the trader will respond within 30-45 seconds.

(2) In Rates 2, CBNA’s systems will again calculate indicative prices and stream them to the market. The systems will generate a price which can be reviewed by the trader, and either adjusted or sent back without adjustment.

179. For all of these transactions, the parameters set by Market Risk will impact whether the transaction can go ahead at all. For Credit 1 and Rates 1, where SPLC is acting as principal at risk, the management of market risk (including the cost of hedging transactions) will have had a direct impact on the pricing of those transactions, by CBNA taking risk into account in calculating the prices (whether indicative or firm).

180. Where the two work in tandem, the trading infrastructure exercises significant influence in the setting of that price and is responsible for a substantial part of the process. However, the final decision is that of the SPLC trader.

181. Equities 1 involves an extra stage which is unique to it which is going out to the market to buy or sell assets. That stage is not required in other examples (Rates 1 and Credit 1), because SPLC already holds the assets in its inventory or is willing to add the assets to its inventory.

182. In all three Cash Examples, the performance and implementation of the transaction will involve delivery of assets in exchange for payment.

183. With regard to the Equities 1 extra stage, the CBNA algorithm selected by the client will fill that transaction (on behalf of SPLC) by purchasing shares on the exchange in order to immediately sell them on to the client.

184. The algorithm determines and implements the execution strategy. Although a very complex process, in broad terms the algorithm breaks the overall order down into multiple child orders and then decides when and where to place each trade, and at what price. However,

while the algorithm delivers the necessary instruction it is not involved in the transfer of ownership of the funds or asset.

185. In relation to the delivery of assets in return for payment, this is relevant to each of the Cash Transactions. They will be settled (and in some cases cleared) using a complex automated process which involves third-party systems (CREST, DTCC or some other third-party trade-settlement system, depending on the transaction).

186. On behalf of SPLC, CBNA is responsible for ensuring that all of SPLC's obligations to deliver the assets are met, by interacting with the third-party provider and generating instructions on behalf of SPLC.

187. Given the role of the third party, the role of the parties is relatively limited, as such CBNA's role is in turn also similarly limited. However, using Equities 1 as the example, CBNA's role, which all takes place after the transaction between SPLC and the client, includes:

- (1) CBNA (in particular Operations) will be responsible for resolving any breaks in the process (around 12,000 per day in cash Equities trades);
- (2) Given the volume of transactions, payments and delivery of assets are netted. CBNA is responsible for carrying out netting calculations and checking those against the calculations carried out by the London Clearing House. This is an administrative function which involves data verification and does not effect the transfer of funds or any change in the financial situation between SPLC and the client; and
- (3) If the netting calculations do not match, Operations is responsible for resolving this.

188. The role of Operations in ensuring settlement has occurred is critical. In his oral evidence Mr Reig Mascarell gave an example:

“... if we go back to what happened a few weeks ago with Credit Suisse, which was in the press ... throughout the weekend the regulator decided to buy down those particular securities so Operations, throughout Friday/Saturday, they had to go through every single transaction to ensure that that process had happened.”

189. Finally, the transactions must be confirmed, affirmed, and correctly allocated to the relevant client account(s). Focusing on allocation, certain types of clients will have a number of accounts. For example, a fund manager may have purchased shares on behalf of four different sub-funds, each with an identifiable account with SPLC. Those shares, and the payment for them, must be allocated to the correct sub-fund.

190. In each of the Cash Examples, the allocation, confirmation and affirmation processes are done automatically using the systems provided by Technology interacting with the relevant third-party systems. Operations is responsible for resolving any issues.

Derivative Transactions

191. The example derivative transactions (referred to together as “the Derivative Examples”) included in the examples are:

- (1) Equities 2 (Exchange traded derivatives – a client wishes to purchase call options over 10 million Tesco plc shares);
- (2) Equities 3 (OTC derivative – a client wishes to purchase dividend-adjusted call options over 150 million Vodafone Group plc shares);

- (3) Credit 2 (a client wishes to purchase a credit default swap (“CDS”) over Vodafone Group plc debt);
- (4) Rates 2 (Euro interest rate swap); and
- (5) Rates 3 (swaption – ie an option to enter into a swap contract at a specified date).

192. As explained above (at paragraph 158) at its simplest a derivative is a contract between two parties which derives its value from some other underlying financial asset or variable (known as an underlying). An example of a derivative would be an option, under which the client can oblige SPLC to sell listed shares at a set price on or before a future date. In entering into derivative transactions, SPLC’s clients will (depending on the type of client) either want to be exposed to the economic risk of that underlying, or will want to fix the price in respect of an underlying in order to minimise risk.

193. In some cases the derivative transaction comprises a chain of contracts, with parties such as the exchange forming part of the contractual chain in order to facilitate the overall transaction.

194. Once the derivative is in place, there are ongoing obligations and actions. Some of these obligations and actions require action from the parties, in particular:

- (1) Collateral management – all of the Derivative Examples are ‘collateralised’ derivatives which means one or both of the parties provides cash or securities as collateral to guarantee liabilities arising under the derivative, in order to largely remove the credit risk associated with the derivative (ie the risk of a client defaulting on its payment obligations). The collateral required under the derivative needs constant valuation and adjustment throughout the life of the derivative, to reflect:

- (a) changes in the performance of the underlying, and
- (b) changes in the value of assets held as collateral.

Collateral posted at the outset of a trade is known as “initial margin”, and ongoing payments or transfers are known as “variation margin”

- (2) Management of payment obligations between the parties – certain derivatives are designed to create ongoing payment obligations between the counterparties (the credit default swap at Credit 2, and the interest rate swap at Rates 2 are two such derivatives). Those payments must be constantly managed, which might involve carrying out calculations, and calling for payment.

- (3) Dealing with corporate actions – a corporate action is an event in relation to the underlying, such as, in the case of shares:

- (a) The issuer announcing a rights issue;
- (b) The issuer being subject to a takeover; or
- (c) The issuer declaring a dividend.

Some corporate actions may involve a party needing to make and implement a decision, others may simply involve the parties monitoring and recording the impact of the action on the value of the derivative.

195. In addition, one or both of the counterparties will be under an ongoing obligation to manage risk as derivatives entail a number of inherent risks, including market risk. One or both counterparties to a derivative transaction will be subject to regulatory obligations to monitor and manage risk. For SPLC, the obligations derive from financial regulation, and similar obligations will apply to other financial entities acting as counterparties (eg asset managers).

For other counterparties, such as listed companies, obligations to manage risk will derive from corporate governance regulation.

196. The need for risk monitoring and management arises from the nature of derivatives as contracts with an extended lifecycle, where the positions of the counterparties change frequently according to market variables. Accordingly, SPLC will monitor and manage the risks of derivative transactions on an ongoing basis.

197. Finally, a derivative may come to an end in a number of ways, all of which will involve changes in the legal and financial positions of the parties:

- (1) Expiration: reaching maturity date without being exercised.
- (2) Performance or exercise: a party who has a right to, for example, buy or sell chooses to do so, and/or a party who has the obligation to, for example, buy or sell performs that obligation.
- (3) Offsetting: the parties may agree to cancel the derivative after identifying or entering into equal and opposite derivative contracts.
- (4) Compression: in certain business areas (including Rates), where SPLC has a substantial number of trades with a particular client, these might be compressed, ie replacing a large number of trades with a smaller set of 'netted' trades.
- (5) As a result of a corporate action, such as where the underlying is shares in a company which becomes private, so that the shares are no longer publicly traded.

198. The key characteristics of a derivative transaction therefore go beyond creating or transferring ownership of an asset and will include:

- (1) Becoming a party to the derivative, so as to be exposed to the economic risks and rewards of the derivative. Although similar to the first functional aspect identified for cash transactions (ie determining and agreeing the economic terms), with derivative transactions, that does not necessarily involve the transfer of an existing asset (ie stepping into the shoes of one of the parties to an existing derivative). It might instead involve the creation of a new contractual relationship (ie a new derivative). It might also involve more than one contractual relationship and may involve changes to the legal and financial positions of different entities.
- (2) Ongoing performance of the derivative, by:
 - (a) Dealing with and giving effect to any corporate actions which occur;
 - (b) Managing collateral, so as to manage the credit risk of the derivative;
 - (c) Managing other payment obligations; and
 - (d) Monitoring and managing risk.
- (3) Performance at the end of the derivative, by settlement, fulfilment and payment as appropriate. This might include performing obligations in relation to a sale of shares, or it might include recognising that the rights of the parties have been extinguished upon the expiry of the derivative.

199. As with the Cash Examples, the determination and agreement of the economic terms will include both (a) SPLC and the client agreeing to trade and (b) determining the price, including any mechanism by which the price will be adjusted. CBNA's role in this functional aspect will depend on the level of automation. CBNA either carries out these tasks on behalf of SPLC (although all contractual arrangements are between SPLC and the client), or plays an integral

role, working in tandem with the trader who will determine and agree the economic terms with the client.

200. Starting with examples closest to the Cash Examples:

(1) Rates 2 includes fully-automated trades. The prices calculated and streamed by CBNA (on behalf of SPLC) can, as in Rates 1, be ‘click to trade’; and

(2) Credit 2 and Rates 2 are similar to Credit 1 and Rates 2, in that CBNA’s systems stream indicative prices, prompting RFQs from clients. The trader will, using CBNA’s systems, either confirm the indicative price or make an adjustment to that indicative price, doing so in a short amount of time and using tools provided by CBNA.

201. Turning to the two Equities examples:

(1) While Equities 2 does not involve the streaming of indicative prices, the pricing process upon receiving an RFQ has similarities to Credit 2 and Rates 2. In particular, CBNA’s systems will calculate a book price, and the trader can deviate up or down from that in arriving at the price offered to the client, using tools provided by CBNA in making that decision; and

(2) In Equities 3, while the process is less automated, CBNA’s systems will again calculate a book price, either using an existing QR model or through a bespoke or approximated QR model. The trade will use this book price to determine the price to offer, again using further CBNA tools to determine that.

202. In both Equities examples, there is a further stage involved in finalising the price, and executing the transaction, in many of these transactions. These transactions can be quoted “with Delta”, which means that the price will be impacted by an initial Delta hedge. That initial Delta hedge will be performed, on behalf of SPLC, by CBNA’s execution algorithms, as part of the execution of the client transaction. Once that hedge has been executed, CBNA’s systems will calculate the adjusted price for the client transaction.

203. In Rates 3, CBNA will determine and publish indicative volatility levels, which clients use to work out whether SPLC is likely to offer them a competitive price. The trader will then use CBNA systems and QR models to build an initial price, and Sales will then negotiate that price with the client. Given the complexity of the pricing for these products, a trader would not be able to price a trade without CBNA’s trading models.

204. As in the Cash Examples, the parameters set by Market Risk will impact whether the transaction can go ahead at all. In addition to the initial Delta hedges, the management of market risk (including the cost of hedging transactions) will be taken into account by CBNA in calculating the prices for each of these Derivative Examples.

205. In relation to all derivatives the performance and implementation of the transaction at the outset can include:

(1) making an upfront payment of a premium;

(2) posting initial margin (collateral); and

(3) allocating transactions to the correct client account.

206. Operations is responsible for managing all payments, including resolving any breaks or disputes. Upfront payments can be netted against payments due under other trades with management of that process also being the responsibility of Operations. As a result in some cases, Operations (on behalf of SPLC and using Technology systems) carry out netting calculations, to be matched against calculations carried out by a third-party (eg Equities 2) and in other cases, Operations (on behalf of SPLC and using Technology systems) carrying out

netting calculations, and agreeing those calculations with the client where necessary (Equities 3, Rates 3).

207. Each Derivative Example will involve collateral, including the posting of initial margin at the outset. Operations is responsible for managing, booking and reconciling collateral on behalf of SPLC, using CBNA's systems. The extent of that role depends on whether a central clearing counterparty ("CCP") – a central body through which derivatives and securities trading takes place – is involved in the transaction.

208. In cases where a CCP is involved (Equities 2, Rates 2), the CCP will be responsible for the calculation of collateral and so the parties are not required to play a significant role in this aspect. Operations teams are responsible for dealing with and resolving any exceptions. Where a CCP is not involved (Equities 3, Credit 2, Rates 3), Technology systems will calculate the initial margin, and Operations will (where necessary) discuss with the client the amount and type of collateral needed, as well as managing any disputes.

209. Allocation is explained as part of the Cash Examples above (see paragraph 190), and involves establishing and altering the rights and obligations of both parties (in relation to the asset and the payment). Operations is responsible for ensuring allocation occurs, and resolving any issues.

210. In some of the Derivative Examples (Equities 2, Rates 2, Rates 3), the process is, as with Cash Examples, done automatically using the systems provided by Technology interacting with third-party systems. In other cases, the process is carried out manually by Operations, with instructions received from the client by email (Credit 2).

211. Once the derivative is in place, there are ongoing obligations and actions. Some of these obligations and actions require action from the parties, in particular:

- (1) collateral management;
- (2) management of payment obligations between the parties; and
- (3) dealing with corporate actions.

In addition, one or both of the counterparties will be under an obligation to manage risk.

212. During the life of the derivative, the collateral required needs constant valuation to reflect changes in the performance of the underlying and changes in the value of assets held as collateral, resulting in calls for variation margin. As with initial margin (see paragraph 209, above) Operations is responsible for managing, booking and reconciling variation margin on behalf of SPLC, using CBNA's systems. The extent of that role depends on whether a CCP is involved in the transaction.

213. In cases where a CCP is involved (Equities 2, Rates 2), the CCP will be responsible for the calculation of collateral and issuing of margin calls, and so the parties are not required to play a significant role in this aspect. Operations teams are responsible for dealing with and resolving any exceptions.

214. In cases where a CCP is not involved (Equities 3, Credit 2, Rates 3):

- (1) Operations and Technology calculate the variation margin during the life of the derivative, and produce a daily collateral statement to be provided to the client, which is required under the CSA.
- (2) Where a margin call needs to be made, CBNA's systems flag this to Operations.
- (3) Operations generates and sends the margin call to the client. In around 90% of cases this is done via a CBNA system, and in other cases the margin call is sent by email.

(4) Operations is responsible for discussing with the client the amount and type of collateral needed, as stipulated in the CSA, and managing any disputes as to the collateral required. Resolving disputes is a large part of the collateral teams' responsibilities.

(5) Operations is responsible for booking and capturing margin calls, and monitoring whether payment has been received or made.

(6) Operations deals with any breaks or errors that occur (such as a payment not having been received or made, or a problem with the Technology systems).

(7) Operations is also responsible for tracking corporate actions in relation to any collateral held.

215. Collateral disputes are usually driven by SPLC and the client valuing the assets differently (eg where the client is a sophisticated investor with their own valuation models). Operations will be notified of any such dispute, and is responsible for resolving the dispute. This is a large part of the responsibility of the collateral teams as around half of the margin calls made each day are disputed (even if only partially). Operations resolves the vast majority of those. However, where the dispute remains unresolved after 30 days, Operations may need to involve front office personnel in resolving the dispute.

216. A number of the Derivative Examples involve ongoing payments throughout the life of the derivative, such as the annual premiums in Credit 2 and ongoing payments in Rates 2. As with payments at the outset (and indeed all payments), Operations is responsible for managing payments, including resolving any breaks or disputes. Where netting arrangements are in place, the calculations will be carried out by Operations, and if there was any disagreement on that calculation, it would also be dealt with by Operations.

217. Some calculations for ongoing payments can be particularly complex, and will require oversight and intervention by the Operations teams. As Mr Prickett explained, disagreements as to the amounts of payments can indicate that there is an underlying problem with the original trade, and the Operations expertise is needed to rectify that.

218. For corporate actions, the Business Delivery Services play a relatively minor role (subject to one exception). Operations, using Technology systems, tracks and notifies traders of those actions, together with the relevant deadlines for any decisions. Where a decision is required, that will be made by the trader, but if the trader fails to make the decision then Operations will apply a default decision. The exception occurs where SPLC holds a large number of positions that will be affected by a corporate action. In those circumstances, Operations will perform a bulk re-booking of these positions, using a Technology tool. Operations has sole responsibility for this.

219. SPLC is also under an obligation to monitor and manage the risk associated with each derivative throughout its life, and manages that risk as part of its portfolio. However, this is not a contractual obligation owed by SPLC to its client but a regulatory obligation. The Market Risk function sets and monitors procedures and policies to control the level of risk in accordance with those obligations. In monitoring and managing the risk, the trader relies on the bespoke CBNA systems which analyse and update the real-time risk position, and provide snapshots of risk at specific points in time acquiring and processing significant amounts of data from various sources.

220. The nature of performance and implementation at the end of the derivative will depend on how the derivative comes to an end. This could include performing obligations in relation to a sale of shares, or it might include recognising that the rights of the parties have been extinguished upon the expiry of the derivative.

221. For example, an option such as Equities 2 might come to an end by being exercised, in which case performance will involve the transfer of ownership of the underlying, and payment in accordance with the terms of the option. That process, and CBNA's role in it, will be analogous to a sale or purchase of the underlying. Other derivatives might 'cash settle' (such as Equities 3 and Rates 3), which means that one party will pay a sum to the other to reflect the outcome. CBNA's Technology systems will carry out calculations to determine that sum, and Operations is responsible for ensuring those calculations are agreed with the client, where agreement is needed. Where netting arrangements are in place, CBNA (on behalf of SPLC) will carry out the netting calculations and seek to agree those with the client.

222. However, an event may occur before reaching the end of the term of the derivative which alters the positions of the parties. This could be a novation, compression or an unwinding/termination.

223. **Novation:** Either party could exit the derivative by transacting with another party to 'step in' and take their position. This would involve a payment between the new party and the exiting party by reference to the current value of the swap, the exiting party novating the swap to the new party and adjusting the collateral position as between SPLC and the original client. CBNA's role would depend on whether or not a CCP is involved. However, in either case CBNA's role is essentially administrative/managerial as it is not a party to the transaction.

224. Where a CCP is involved, the processes do not require significant involvement from the parties, but Operations will be responsible for ensuring that any calculations carried out by the CCP are correct (using Technology systems). The Operations teams are responsible for managing, booking and reconciling payments, including collateral, on behalf of SPLC, together with resolving any issues.

225. Where no CCP is involved, the payment between the exiting party and the new party will be calculated by a Technology system, Sapphire (with the trader overseeing). As Mr Prickett put it:

"There would always be a system needed to calculate. There's no way this could ever be done without, and indeed sometimes the system is pretty much the only input to the price and the trader will not deviate from the price that the system produces."

Operations will be responsible for calculating adjustments to the collateral position, as with collateral management generally, and also for managing the payment of that collateral.

226. **Trade compression:** For clients with a substantial number of trades, Rates may be required to compress trades. This involves replacing a large number of trades with a smaller, simplified, set of trades, while retaining the same overall economic terms. Operations is responsible for this (using Technology systems). Operations and the Technology systems will, as Mr Prickett explained:

"... summarise the swaps that we believe are best submitted to the compression process, that we would get most benefit from compressing. And they work with both technology and with front office in determining a level of tolerance of remaining risk after the compression run or valuation difference if we're prepared, for example, to accept a small amount of valuation difference for the sake of compressing a large number of trades. So that is a dialogue every time there is a compression run that the operations team lead with technology and with the front office"

Mr Prickett described Operations as receiving guidance from front office staff, but that Operations:

“... would also themselves control the process through which we submit a portfolio.”

227. **Unwinding/termination:** If the parties agree to unwind the derivative, its value is calculated and payment is made from one party to the other to reflect that. In calculating that amount, the trader relies on Technology systems. Operations is responsible for managing any payments.

Hedging Transactions

228. Hedging transactions are, with the exception of Equities 1 (where SPLC acts as riskless principal), relevant to all of the example transactions. They are part of risk management, which is essential to SPLC’s Markets business. It is accepted that CBNA’s service to it in relation to risk management is indispensable. This is clear from the oral evidence of Mr Richardson who said:

“... the management of risk underpins everything we do”.

229. Management of market risk involves managing the risk of each new client transaction and managing the overall risk within a portfolio. Both elements of risk may be managed using hedging transactions, which are themselves transactions in securities. Therefore, although the trader is responsible for the hedging strategy, the trading infrastructure plays an integral role in monitoring, analysing and calculating the level of risk, and identifying and executing hedging transactions.

230. Market risk is taken into account in deciding whether SPLC will enter into a transaction with the client. CBNA’s systems will flag where SPLC may not be able to enter into the transaction as a result of the risk levels. In such circumstances the trader will discuss with Market Risk whether the transaction can proceed or whether its terms require adjustment or should be subject to further conditions. Market risk is also taken into account in pricing the proposed client transaction. For example, Mr Richardson explained that the:

“... bid offer spread that I would charge clients for various financial transactions would be a function of the risks that we are assuming under that transaction.”

The complex calculations undertaken by CBNA’s systems, using QR models, are relied upon by the trader when taking risk into account to decide whether to deviate from a book price or indicative price.

231. For Equities 2 and 3, CBNA’s systems will identify the initial Delta hedge that will be required at the time of the transaction. Where the price is quoted “with Delta”, the price paid by the client will be directly impacted by the initial Delta hedge transaction, and the client will give instructions on how to execute that transaction by selecting one of CBNA’s execution algorithms.

232. CBNA’s systems perform valuations and undertake complex calculations which analyse market risk and, with varying degrees of automation, play an integral role in identifying, building and executing hedging transactions. A trader is fully reliant on CBNA risk management tools to continuously calculate and display all of the different risk sensitivities at portfolio level, enabling the trader to identify hedging transactions. In some cases, the systems will recommend hedging transactions.

233. While risk is managed at a portfolio level, hedging transactions are directly prompted by client transactions. Mr Richardson explained for:

“... the vast majority of our transactions we perform delta hedging as soon as possible upon execution of the transaction.”

The CBNA systems will identify when a risk limit has been breached, or is being approached, so that the trader will need to enter into hedging transactions.

234. Once the CBNA system has identified the need for a hedging transaction (and in some cases recommended a transaction), the trader can then implement hedging transactions in a number of ways:

(1) Where the hedging transaction is a purchase of shares, that transaction can be executed by CBNA's execution algorithms on a fully-automated basis.

(2) Where the hedging transaction involves buying or selling listed options, the trader can use a CBNA tool which automatically executes options transactions, again using execution algorithms developed by QR.

(3) The trader can enter into hedging transactions with other JPMorgan clients, using both the front office and the trading infrastructure for the relevant business area within the Markets business segment. This might involve, for example, one trading desk within Equities placing hedging transactions via another trading desk within Equities. In some cases, the hedging transaction will involve a product traded by another business area. For example, a Rates transaction might be used to hedge a Credit transaction. In that situation, the Credit trader placing the hedging transaction will interact with the Rates business as if it were another customer. While the precise process for placing, executing and fulfilling that hedging transaction will depend upon the specific transaction, the trading infrastructure's role will be in line with the range of example transactions.

(4) The trader can enter into a transaction with another bank or dealer. This might be facilitated by a broker, or by the SPLC Sales team. The precise process for placing, executing and fulfilling the hedging transaction will depend upon the specific transaction, but the trading infrastructure's role will be in line with the range of example transactions.

235. In some cases (eg in Rates 1), the hedging transaction is undertaken by CBNA, on behalf of SPLC which nevertheless remains the contracting party, on a fully automated basis, known as "auto-hedging". In those circumstances, the decision to hedge is made by a CBNA system, using QR algorithms, and that system instructs another CBNA system to execute the trades.

Procedural Background and HMRC Decisions

236. This appeal arose out of wider discussions concerning s 43(2A) VATA methodology of the JPMorgan VAT group. On 30 June 2017 and 1 May 2019 HMRC raised 'protective' assessments which covered charges under section 43(2A) VATA in respect of the entire VAT group and were not restricted to SPLC or Markets. Together, these assessments covered the periods 06/13 to 04/18.

237. CBNA engaged in extensive discussions with HMRC to seek to explain its business and the supplies. As part of that process, in August 2019 the Appellant produced a paper which focused on the Equity Derivatives Group ("EDG", part of the Equities business area) as a "case study" of a typical transaction ("the EDG Paper"). That paper was produced following a meeting with HMRC when a "sample business", EDG, was discussed. As part of that paper, CBNA was seeking to answer specific questions raised by HMRC, by reference to the EDG example.

238. Following the EDG Paper, on 4 October 2019 HMRC wrote to CBNA setting out their view on the VAT treatment of intra-group supplies from CBNA to SPLC. CBNA responded on 31 October 2019 with a summary of its position, making representations for the purposes of HMRC's internal governance procedures. In that letter, CBNA expressly noted:

“We are unclear as to whether the [4 October 2019 Letter] applies to EDG (and by implication “Markets” generally) only or whether it applies to all of the business areas, to include non-Markets and non-CIB businesses (ie private wealth, fund services, treasury services and custody) and therefore the VAT assessments as a whole.”

The letter continued with CBNA expressing the following concern as a result of that lack of clarity:

“If it is HMRC’s intention that the [4 October 2019 Letter] should apply with respect to all of the business areas, then we have concerns as to whether HMRC have sufficient detail to come to a final decision at this stage. This is because there are significant factual differences between EDG (and by implication “Markets” generally) and the other businesses – not only the nature of the products that are being supplied but also the fact that different legal entities are involved other than CBNA and SPLC. There are also different legal rules applicable across the different businesses, specifically with respect to the different VAT exemptions in question.”

239. On 20 February 2020 HMRC wrote to CBNA. The first paragraph of the letter stated:

“Further to our meetings, correspondence and HMRC’s internal governance procedures, I am writing to confirm HMRC’s decision with regard to the VAT treatment of the intra-group supplies from JP Morgan Chase Bank NA (“CBNA”) to JP Morgan Securities Plc (“SPLC”) in the trading sector of SPLC’s business that is referred to as “Markets”.”

The letter went on to confirm that it was “HMRC’s final decision on the VAT treatment of the services between CBNA and SPLC” – the Liability Decision.

240. On 28 May 2020, HMRC issued a further ‘protective’ assessment to cover later periods, (05/18 to 12/19). In that assessment, HMRC stated:

“As discussions remain ongoing and we have yet to arrive at a clear conclusion regarding the correct amounts due, HMRC feel it is appropriate to issue further assessments to protect our position from 05/18 onwards. We do not intend to enforce the assessments regarding the Non-Markets sector while constructive discussions are ongoing. However, as we have issued a decision in relation to the Markets sector (ref [the Liability Decision]) we will be writing to you again to set out the amounts due in relation to the Markets trading sector once we have agreed the correct figures.”

241. In line with that explanation, and having been provided with figures by CBNA, on 22 October 2020 HMRC issued an assessment specific to Markets, headed “Notice of VAT Assessments – S43 (2A) MARKETS”. This was described as follows:

“We have finally concluded our discussions and issued a decision in relation to the services relating to the Markets business. We have subsequently arrived at the total amount of VAT that HMRC believe is due from 06/13 to 12/19 on the Markets services deemed exempt by JPM.”

That assessment set out the amounts assessed in respect of Markets only.

242. On 30 October 2020 CBNA notified the Tribunal of its appeal against the Liability Decision and the assessment notified on 22 October 2020.

243. On 29 July 2021 CBNA filed a claim under s 80 VATA for repayment of VAT it contends was overpaid on the basis that IETI had erroneously classified QR as a standard rated supply of services. On 3 September 2021 HMRC rejected CBNA’s s 80 VATA claim. CBNA notified its appeal to the Tribunal against the rejection of that claim on 1 October 2021.

244. On 7 December 2021, HMRC issued a further assessment to cover the whole of 2020, in respect of Markets only. CBNA notified its appeal to the Tribunal against this assessment on 22 December 2021.

245. The Tribunal issued a direction consolidating the appeal against the Liability Decision and the appeal against the rejection of the s 80 VATA claim on 17 January 2022. On 3 May 2022 the appeal against the 7 December 2021 assessment was consolidated with the other appeals and all were assigned to the ‘complex’ category.

APPLICABLE LEGISLATION

The Directive

246. Article 135 of the Directive provides, as far as material:

(1) Member States shall exempt the following transactions:

[...]

(d) transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;

[...]

(f) transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2);

UK Law

247. Section 31 VATA provides:

(1) A supply of ... services is an exempt supply if it is of a description for the time being specified in Schedule 9

248. Group 5 of Schedule 9 to VATA, in so far as is material, read with s 31 VATA, provides that supplies of the following description are exempt supplies:

Group 5—Finance

Item No

1 The issue, transfer or receipt of, or any dealing with, money, any security for money or any note or order for the payment of money.

... [...]

5 The provision of intermediary services in relation to any transaction comprised in item 1,2,3,4 or 6 (whether or not any such transaction is finally concluded) by a person acting in an intermediary capacity.

6 The issue, transfer or receipt of, or any dealing with, any security or secondary security being—

(a) shares, stocks, bonds, notes (other than promissory notes), debentures, debenture stick or shares in an oil royalty; or

(b) any document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognises an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement,

the right to receive that stated amount, with or without interest is transferable; or

(c) any bill, note or other obligation of the Treasury or of a Government in any part of the world, being a document by the delivery of which, with or without endorsement, title is transferable, and not being an obligation which is or has been legal tender in any part of the world; or

(d) any letter of allotment of rights, any warrant conferring an option to acquire a security included in this item, any renounceable or scrip certificates, rights coupons, coupons representing dividends or interest on such a security, bond mandates or other documents conferring or containing evidence of title to or rights in respect of such a security; or

(e) units or other documents conferring rights under any trust established for the purpose, or having the effect of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

NOTES

...

(5) For the purposes of item 5 “intermediary services” consist of bringing together, with a view to the provision of financial services—

(a) persons who are or may be seeking to receive financial services, and

(b) persons who provide financial services,

together with (in the case of financial services falling within item 1, 2, 3 or 4 the performance of work preparatory to the conclusion of contracts for the provision of those financial services, but do not include the supply of any market research, product design, advertising, promotional or similar services or the collection, collation and provision of information in connection with such activities.

(5A) For the purposes of item 5 a person is “acting in an intermediary capacity” wherever he is acting as an intermediary, or one of the intermediaries, between—

(a) a person who provides financial services, and

(b) a person who is or may be seeking to receive financial services ...

249. The material parts of s 43 VATA provide:

43 Groups of companies

(1) Where under sections 43A to 43D any persons are treated as members of a group, any business carried on by a member of the group shall be treated as carried on by the representative member, and—

(a) any supply of goods or services by a member of the group to another member of the group shall be disregarded; and ...

...

(2A) A supply made by a member of a group (‘the supplier’) to another member of the group (‘the UK member’) shall not be disregarded under subsection (1)(a) above if—

(a) it would (if there were no group) be a supply of services to which section 7A(2)(a) applies made to a person belonging in the United Kingdom;

(b) those services are not within any of the descriptions specified in Schedule 9;

(c) the supplier has been supplied (whether or not by a person belonging in the United Kingdom) with any services which do not fall within any of the descriptions specified in Schedule 9 and section 7A(2)(a) applied to the supply];

(d) the supplier belonged outside the United Kingdom when it was supplied with the services mentioned in paragraph (c) above; and

(e) the services so mentioned have been used by the supplier for making the supply to the UK member.

(2B) Subject to subsection (2C) below, where a supply is excluded by virtue of subsection (2A) above from the supplies that are disregarded in pursuance of subsection (1)(a) above, all the same consequences shall follow under this Act as if that supply—

(a) were a taxable supply in the United Kingdom by the representative member to itself, and

(b) without prejudice to that, were made by the representative member in the course or furtherance of its business.

...

ISSUES

250. I now turn to the issues: first, the identification issue – whether CBNA has identified any specific exempt supply and for what consideration those supplies were given; secondly the supply issue – whether CBNA makes a single or multiple supplies to SPLC; and finally the exemption issue – whether any supply by CBNA to SPLC, taken individually or collectively, is an exempt supply.

Identification Issue

251. It is common ground that the burden of proof in this appeal is on CBNA (see *Grunwick Processing Laboratories Ltd v Commissioner of Customs and Excise* [1987] STC 357). Mr Beal contends that CBNA has failed to discharge the evidential and legal burden of identifying relevant supplies that separately, distinctly and clearly fall within the scope of an exemption to VAT. Mr Hitchmough describes this as a “submission of last resort” given the volume and detail of evidence and the enduring importance of the outcome of this case to both parties.

252. However, notwithstanding the extent of the evidence, if CBNA is unable to establish it made relevant exempt supplies Mr Beal is quite right, its appeal cannot succeed.

253. Mr Beal contends that, having regard to the contractual terms entered into which govern the relationship between CBNA and SPLC, there is a core contractual obligation on CBNA to make a supply of services if they are requested to do so by another legal entity within the JPMorgan group. That obligation is discharged when CBNA supplies those services. The contractual framework makes clear that CBNA’s services (and the consideration paid for those services) are defined by reference to its invoicing. However, Mr Beal says none of that contractual framework or invoices identify specific sums due to specific exempt supplies that are capable of being verified.

254. He submits that this remains the position even after the 2019 GMSA as the consideration payable for services under the 2019 GMSA remains defined by reference to the invoicing and

the invoicing still fails to identify what the specific services are. None of these supplies, he says, identifies the services by reference to, for example, specific supplies from Technology, Operations, QR and MR to a defined business unit and therefore it is simply not possible to discern a carved-out supply of exempt supplies which meet the threshold.

255. However, on this issue I agree with Mr Hitchmough who contends that as the appeal concerns intragroup supplies one would “hardly expect” the contractual documents to identify whether any given supply is taxable or exempt. The invoices are not concerned with individual components but with supplies made and received as a whole. The issue of the VAT liability for those supplies only arises when s 43(2A) VATA is applied. As Mr Bradley explained this involves the VAT team considering the invoices and applying to them the “semi-manual” process (see paragraph 141 and 142, above).

256. In the circumstances, I do not consider it appropriate to dismiss this appeal on the basis of the Identification Issue and therefore turn next to the Supply Issue.

Supply Issue

257. Mr Beal contends that CBNA makes a single supply of what he described as “Support Function Services” which includes both Support Services as defined in the GMSA prior to 2019, but also Support Services and Business Delivery Services as disaggregated in the 2019 GMSA. He says it is difficult to distil any workable difference between Support Function Services that are said to be sufficiently close to the transaction and those which are sufficiently distanced from the transaction to operate in a meaningful way. This is because CBNA provides everything to SPLC and SPLC needs it all. So from SPLC’s perspective, whilst it could carry on business without trading, it cannot carry on trading without having the whole of the supplies made to it as a business.

258. Mr Hitchmough accepts that both the Business Delivery Services and Support Services are necessary for SPLC to carry on its business. However he says HMRC have failed to recognise the default position, that every supply should be regarded as distinct and independent, which should be applied in this case. Mr Hitchmough submits that applying that principle CBNA’s case is that it makes a separate supply of Business Delivery Services to meet the needs of each business area in the Markets business segment with most of those supplies being exempt as the transactions entered into by the business area to which they relate are exempt.

259. The relevant principles to be applied in determining whether a transaction should be regarded as a single supply or several independent multiple supplies was considered by the Upper Tribunal in *Honourable Society of Middle Temple v HMRC* [2013] STC 1998 and, more recently, in *Spectrum Community Health CIC v HMRC* [2022] UKFTT 237 (TC) (“*Spectrum*”).

260. In *Spectrum* Judge Sinfield said:

“48. It has been settled law for many years that there are two types of single composite supply, namely:

(1) where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which do not constitute for customers an end in themselves but a means of better enjoying the principal service supplied (see *Card Protection Plan Ltd v Customs and Excise Comrs* (Case C-349/96) [1999] STC 270, [1999] ECR I-973 (‘*CPP*’) at [30]); and

(2) where two or more elements or acts supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (see *Levob Verzekeringen BV v Staatssecretaris van Financiën* (Case C-41/04) [2006] STC 766, [2005] ECR I-9433 (‘*Levob*’) at [22]).

49. I attempted to summarise the key principles for determining whether a particular transaction should be regarded as a single composite supply or as several independent supplies (whether of a *CPP* or *Levob* type) in *Honourable Society of Middle Temple v HMRC* [2013] UKUT 250 [2013] STC 1998 (*'Middle Temple'*), at [60]:

- (1) Every supply must normally be regarded as distinct and independent, although a supply which comprises a single transaction from an economic point of view should not be artificially split.
- (2) The essential features or characteristic elements of the transaction must be examined in order to determine whether, from the point of view of a typical consumer, the supplies constitute several distinct principal supplies or a single economic supply.
- (3) There is no absolute rule and all the circumstances must be considered in every transaction.
- (4) Formally distinct services, which could be supplied separately, must be considered to be a single transaction if they are not independent.
- (5) There is a single supply where two or more elements are so closely linked that they form a single, indivisible economic supply which it would be artificial to split.
- (6) In order for different elements to form a single economic supply which it would be artificial to split, they must, from the point of view of a typical consumer, be equally inseparable and indispensable.
- (7) The fact that, in other circumstances, the different elements can be or are supplied separately by a third party is irrelevant.
- (8) There is also a single supply where one or more elements are to be regarded as constituting the principal services, while one or more elements are to be regarded as ancillary services which share the tax treatment of the principal element.
- (9) A service must be regarded as ancillary if it does not constitute for the customer an aim in itself, but is a means of better enjoying the principal service supplied.
- (10) The ability of the customer to choose whether or not to be supplied with an element is an important factor in determining whether there is a single supply or several independent supplies, although it is not decisive, and there must be a genuine freedom to choose which reflects the economic reality of the arrangements between the parties.
- (11) Separate invoicing and pricing, if it reflects the interests of the parties, support the view that the elements are independent supplies, without being decisive.
- (12) A single supply consisting of several elements is not automatically similar to the supply of those elements separately and so different tax treatment does not necessarily offend the principle of fiscal neutrality.”

50. Since *Middle Temple*, the CJEU has given further guidance on how to determine whether a transaction that comprises a bundle of elements and acts should be regarded as a single composite supply or several separate supplies. In Case C-581/19 *Frenetikexito – Unipessoal Lda v Autoridade Tributária e Aduaneira* (*Frenetikexito*), the CJEU identified three exceptions to the principle that each individual supply must be regarded as distinct and independent for VAT purposes.

51. The first exception is where two or more elements or acts supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split. This is the single supply first identified in *Levob*. In paragraphs 22 to 33 of her opinion, which were specifically approved by the CJEU, the Advocate General (Kokott) in *Frenetikexito* set out how to determine whether a bundle of goods and services is a *Levob* type single supply. The first step is to ascertain the essential features or characteristic elements of the transaction from the perspective of the ‘typical consumer’, ie the typical recipient of the supply. The perspective of the typical consumer is to be determined according to the generally accepted view, ie the understanding of the general public. The Advocate General then identified four “indications” which should be considered from the perspective of the typical consumer. These are:

- (1) Indivisibility of the elements of the supply, ie do the individual elements of the supply merge into a new distinct supply such that, in the generally accepted view, there is only a single supply?
- (2) Separate availability of the supplies, ie are the different elements that make up the supply available separately or must the customer take all the elements together?
- (3) Indispensability of the elements of the supply for the aim of the supply, ie does the transaction have a single economic aim or is the combination of different elements important to the typical recipient of the supplies?
- (4) Separate invoicing as an indication that supplies are divisible, ie is there a single invoice and price for all the elements or are they invoiced and/or charged separately?

52. The CJEU condensed the Advocate General’s observations into a single paragraph as follows (cases references removed):

“39 ... it is necessary to identify the characteristic elements of the transaction in question from the perspective of the average consumer. The body of evidence relied on for this purpose comprises various elements, the first of which, being of an intellectual nature and of decisive importance, seek to establish whether or not the elements of the operation in question are indivisible and its economic purpose, whether or not this is unique, and the second of which, being of a substantive nature and not of decisive importance, support, where appropriate, the analysis of the first elements, such as separate access or joint access to the services in question or the existence of a single invoice or a separate invoice.”

53. Although the CJEU endorsed the Advocate General’s analysis, it went further than she did. The CJEU did not call two of the matters to be considered, ie indivisibility and indispensability, “indications” but described them as “of decisive importance” while assigning the other two elements only a supporting, and not decisive, role.

54. The second exception to the principle that each supply must be regarded as a distinct and independent supply is where one or more elements are to be regarded as constituting the principal supply while, by contrast, other elements are to be regarded as one or more ancillary supplies which share the tax treatment of the principal supply. This is the single supply first clearly identified in CPP. The CJEU described the criteria to be considered in relation to a CPP type supply in paragraphs 41 and 42 (cases references removed): “41 It follows from the Court’s case-law that the first criterion to be taken into consideration in this respect is the absence of a distinct purpose of the supply from the perspective of the average consumer. Thus, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied. 42 The second criterion, which in fact constitutes evidence of the first, is that account should be taken of the respective value of each of the benefits making up the economic transaction, one being minimal or even marginal in relation to the other.”

55. The third exception to the principle that every individual supply is independent is the provision that ‘closely related activities’ share the exemption of an exempt supply in order to make that exemption fully effective. This exception differs from the other two in three respects:

- (1) it is not derived from case law but is contained in the PVD;
- (2) it does not have general application but is limited to specific exempt supplies; and
- (3) it does not create a single supply from different elements.

56. The scope and nature of the third exception is determined by reference to the particular Article of the PVD in which it appears. The Advocate General in *Frenetikexito* gave the following example at paragraph 45 of her opinion:

“An example is the exemption of hospital and medical care under Article 132(1)(b) of the VAT Directive. In order to achieve the therapeutic aim, further supplies which are distinct from pure medical and hospital care may be necessary in an individual case, such as the services provided by an external laboratory. Making such supplies subject to VAT would run counter to the aim of reducing costs for the health system. The legislature therefore declares in Article 132(1)(b) of the VAT Directive that ‘closely related activities’ are also exempt alongside the care itself.”

57. The CJEU in *Frenetikexito* referred to the third exception identified by the Advocate General but did not discuss it as it was not applicable on the facts of that case.”

261. Judge Sinfield continued:

“59. Accordingly, it seems to me that I must approach the issue of whether Spectrum makes a single composite supply or separate supplies by identifying the essential features or characteristic elements of the transaction in question from the perspective of the average consumer, ie the typical recipient of the supply. In this case, the typical recipient of the supply is easy to identify. It is NHSE. There is no other recipient of the supply by Spectrum.

60. Ms Hall [counsel for the appellant] sought to persuade me that the prisoners were the consumers of Spectrum’s supplies. She submitted that each element of the contractual package, although related, constituted an end in itself for the prisoners. She contended that the pharmacy services in particular

had a purpose which was distinct from the provision of medical care and the other elements in the contractual package. In my view, that is not the correct analysis. While the prisoners are undoubtedly beneficiaries of the provision of medical care by Spectrum, that does not mean that they are recipients of the supply for VAT purposes. As the Supreme Court has made clear on a number of occasions, determining who makes and receives a supply is a two-stage process which starts with consideration of the contractual position and then looks at whether that is consistent with the economic and commercial reality (see *WHA Ltd v HMRC* [2013] UKSC 24, [2013] STC 943 ('WHA') at [27], *Secret Hotels2 Ltd v HMRC* [2014] UKSC 16, [2014] STC 937 ('SH2') at [35], *HMRC v Airtours Holidays Transport Ltd* [2016] UKSC 21, [2016] STC 1509 ('Airtours') at [47]). There is no suggestion in this case that the contractual position does not reflect the economic reality of the transactions. On the basis of the contracts and the evidence, it is clear that NHSE is the recipient of the supplies made by Spectrum.

61. Accordingly, NHSE is the average consumer from whose perspective I must view the elements of the transactions. However, I am not concerned with how NHSE subjectively views the transactions and, indeed, I had no evidence from NHSE on the point. The perspective of NHSE is to be determined according to the generally accepted view of the transactions. Viewed through that lens, I must consider whether:

- (1) the essential features or characteristic elements of the transactions in combination are to be regarded as a distinct single supply; and
- (2) whether the combination of different elements has a single economic purpose, ie is important or indispensable to NHSE for achieving the aim of the supply.

The above points are determinative if they are established on the evidence.

62. In relation to those decisive points, evidence that the customer cannot obtain the elements of the transaction separately but can only purchase them together as a group supports a conclusion that the transaction is a single, indivisible supply. The fact that the customer could choose to take elements of a transaction separately, even if they take them together, suggests that there are separate supplies of the different elements. The existence of a single charge and a single invoice for the transaction indicates that there is a single supply of all the elements included in the price or invoice whereas separate pricing and/or invoicing suggests that the elements in the transaction are divisible into separate supplies. I must bear in mind that these matters are not necessarily determinative. For example, a single price may be a matter of accounting convention or convenience and not necessarily an indication of a single supply. An apparent ability to choose which elements to take may not be consistent with separate supplies if, in reality, all the elements are essential for the customer to achieve their aim in entering into the transaction."

262. The summary of the relevant principles by Judge Sinfield in *Spectrum* was endorsed by the Upper Tribunal in *R (oao Gloucestershire Hospitals NHS Foundation Trust) v HMRC* [2023] UKUT 28 (TCC) ("*Gloucestershire Hospitals*") which also noted, at [105], that as the decision in *Frenetikexito* was handed down after "IP completion day" (ie the end of the implementation period following the UK's withdrawal from the European Union on 31 December 2020):

"By virtue of s 6(1)(a) of the European Union (Withdrawal) Act 2018 ('the Withdrawal Act'), a court or tribunal is not bound by any principles laid down or any decisions made by the European Court on or after that date."

However, although it was not bound by the judgment of the CJEU or the Advocate General's opinion in *Frenetikexito*, the Upper Tribunal nevertheless considered, at [106], that:

“... by virtue of s 6(2) of the Withdrawal Act we may have regard to the Court's judgment in *Frenetikexito* and we consider it particularly useful to do so in circumstances where that judgment attempts to summarise principles from existing law by which we are bound.”

263. As to the approach to be adopted, in *Gloucestershire Hospitals* the Upper Tribunal said:

“116. We remind ourselves that we must decide whether Genmed's supply to the Trust under the Agreement is a single composite or integrated supply of managed theatre services which falls within the description in [the Contracted-Out Service Direction]. The parties agree that we should apply the *Levob* test in answering this question, namely, whether, from the perspective of a typical consumer, two or more elements or acts supplied by the taxable person are so closely linked that they form (when viewed objectively) a single, indivisible economic supply which it would be artificial to divide up or split. We accept that we must stand back and apply this test holistically. But in the present case we find it useful to break it down into its constituent elements and to address the following four issues:

- (i) Are the different elements of the transaction closely linked?
- (ii) Do they form a single, indivisible economic supply?
- (iii) Would it be artificial to split the different elements into separate supplies?
- (iv) How would the typical consumer regard the different elements of the transaction?

117. In addressing these questions we have had regard to the CJEU's judgment in *Frenetikexito* and have checked our conclusions against the test of decisive importance set out at para 39, namely, whether or not the elements of the operation in question are indivisible and share an economic purpose. We also have in mind the four questions set out by the Advocate General at paras 22 and 23:

- (1) *Indivisibility of the elements of the supply*: Do the individual elements of the supply merge into a new distinct supply such that, in the generally accepted view, there is only a single supply?
- (2) *Separate availability of the supplies*: Are the different elements that make up the supply available separately or must the customer take all the elements together?
- (3) *Indispensability of the elements of the supply for the aim of the supply*: Does the transaction have a single economic aim or is the combination of different elements important to the typical recipient of the supplies?
- (4) *Separate invoicing as an indication that supplies are divisible*: Is there a single invoice and price for all the elements or are they invoiced and/or charged separately?”

264. CBNA accepts that it is not possible to identify any “predominant” or principal supply to which any other supplies are ancillary. As Mr Hitchmough said in closing:

“In this case, of course we're only concerned with the second exception to the general principle that every supply should normally be regarded as distinct and independent, it is the *Levob* exception. *CPP* can't apply because each and every service supplied by CBNA to SPLC, whether within the overall category

of support services or the overall category of business delivery services, is an aim in itself for SPLC. One element isn't ancillary to the other or others, there is no predominant element."

265. It therefore necessary to consider all circumstances and "essential features" of the transaction from the point of view of "a typical customer" (see point (2) of *Middle Temple*). As the only customer of CBNA, Mr Hitchmough says, it is the point of view of SPLC that needs to be considered. However, as is apparent from the decision of the CJEU in C-71/18 *Skatteministeriet v KPC Herning*, EU:C:2019:660 (CJEU) at [26], it is necessary:

"... in accordance with the case-law of the Court, to take account of the objective nature of the transaction and not the subjective intention of the parties."

266. The relevance of contractual terms in considering the essential features of the transaction was considered by the Court of Appeal in *Mainpay Ltd v HMRC* [2023] STC 30. In that case the issue before the court was whether a supply was an exempt supply of medical care. Whipple LJ said, at [61(iii)]:

"... the analysis of what is being supplied depends, in any given case, on economic realities of the transaction, that being a 'fundamental criterion' for the application of the common system of VAT (see *Revenue and Customs Comrs v Airtours Holidays Transport Ltd* [2016] UKSC 21, [2016] STC 1509, [2016] 4 WLR 87, at [48], citing *Revenue and Customs Comrs v Loyalty Management UK Ltd, Baxi Group Ltd v Revenue and Customs Comrs* (Joined cases C-53/09 and C-55/09) EU:C:2010:590, [2010] STC 2651, [2010] ECR I-9187, at paras 39–40); the contracts are the most useful starting point in that exercise, but not necessarily the end point: see *WHA Ltd v Revenue and Customs Comrs* [2013] UKSC 24, [2013] STC 943, [2013] 2 All ER 907."

267. As Lord Neuberger put it in *HMRC v Airtours Holidays Transport Ltd* [2016] STC 1509 at [47]:

"... as I said in *Secret Hotels2 Ltd (formerly Med Hotels Ltd) v HMRC* [2014] UKSC 16, [2014] STC 937, [2014] 2 All ER 685 (at [35]), when assessing the VAT consequences of a particular contractual arrangement, the court should, at least normally, characterise the relationships by reference to the contracts and then consider whether that characterisation is vitiated by [any relevant] facts."

268. In *ING Intermediate Holdings Ltd v HMRC* [2018] STC 339 Arden LJ, as she then was, said, at [37]:

"I accept that, when determining the nature of a transaction for VAT purposes, the court must look at the economic purpose of the transaction. However, the starting point is to determine what the parties have agreed. In my judgment, the correct reading of *Newey* and *Secret Hotels2* is that the court only goes behind the contract if the contract does not reflect the true agreement between the parties."

269. Mr Beal contends that the contractual documents in this case reflect the true agreement between CBNA and SPLC and, as such, it is not necessary to "go behind" them. Mr Hitchmough does not agree and contends that the contracts, which were produced primarily with transfer pricing and regulatory considerations in mind, cannot be the end point in this case.

270. As it is agreed that the contractual arrangements should be the starting point to determine whether or not these accurately reflect the relationship and economic reality that exists between CBNA and SPLC which, as JPMC "Affiliates", are parties to, and bound by, their terms it is

therefore necessary to consider the various iterations of the GMSAs bearing in mind, as Lord Neuberger said *Secret Hotels2* at [32]:

“When interpreting an agreement, the court must have regard to the words used, to the provisions of the agreement as whole, to the surrounding circumstances in so far as they were known to both parties, and to commercial common sense. When deciding on the categorisation of a relationship governed by a written agreement, the label or labels which the parties have used to describe their relationship cannot be conclusive, and may often be of little weight.”

271. The original GMSA came into effect on 1 January 2006 (see paragraph 88, above). It was revised in 2010 (see paragraph 112, above) and again in 2015 (see paragraph 124, above). It is not disputed that the core features remained constant throughout these three iterations of the GMSA and that it is these versions of the GMSA that are applicable for most of the Relevant Period.

272. Turning to the provisions of the GMSAs, it is apparent from the definitions of “Provider”, “Recipient” and “Services” in clause 1 of the 2006, 2010 and 2015 GMSAs (see above at paragraphs 92, 115 and 124 respectively) that the services under the contracts are provided by one legal entity (ie JPMC or one of its affiliates) to another legal entity (ie JPMC or one of its affiliates).

273. In Clause 2 of the 2006, 2010 and 2015 GMSAs (see above at paragraphs 93, 116-117 and 124 respectively), “Services” are undifferentiated and consist of those requested and provided in accordance with GMSA and relevant addenda. It is common ground that there is no distinction drawn between what CBNA describes as “Support Services” and “Business Delivery Services” in these versions of the GMSA.

274. The relevant addendum, at clause 1 (see paragraph 121, above) provides that the services “will be identified and characterized on invoices”, ie the scope of the services is defined by the invoices. It is also clear from, clause 2(b) and 3(b) of the 2006 GMSA and clause 3(b) of the 2010 and 2015 GMSAs (see above at paragraphs 93-94, 119 and 124 respectively) that, in respect of all expense products identified in the PPG payment obligations and consideration (referred to as compensation in the GMSAs) are also defined by invoicing.

275. All versions of the GSMA expressly refer to and incorporate the Expense Allocation Policy (see above at paragraphs 91 for the 2006 GMSA, paragraph 113 for the 2010 GMSA and paragraph 124 for the 2015 version).

276. Under paragraph 6.2 of Appendix B to the Expense Allocation Policy (see paragraph 110, above), the Provider of “standalone and distinct services will be identified and all financial allocations from such providers will be treated as distinct services. These allocations will not be grouped with allocations from other providers for the purpose either of invoicing or of assessing liability for VAT and analogous charges”. It is therefore clear that any distinct services are to be identified and invoiced separately.

277. The recipient legal entity was also required under the Appendix A to the Expense Allocation Policy (see paragraph 109, above) to maintain appropriate “Indirect Tax reference tables to determine Indirect Tax treatment of incoming charges based on sub-hierarchy mappings.” Mr Bradley confirmed in evidence that CBNA has not prepared separate invoices for Business Delivery Services.

278. The 2019 GMSA came into effect on 30 September 2019 (see paragraph 127, above) and, as such, is not applicable for most of the Relevant Period. However, as Mr Bradley confirmed it did not reflect any change in the underlying business. It, like previous iterations

of the GMSA, at Recital F (see paragraph 128, above) referred to the Expense Allocation Policy under which separate invoices are required for any distinct service for VAT.

279. Payment obligations and consideration under the 2019 GMSA is defined by reference to invoicing. In particular, when compensation is calculated using “SAPCO” (“the accounting system... used by JPMC to calculate, allocate, and effect payment of compensation for Services pursuant to the Expense Allocation Policy”), the relevant compensation shall, pursuant to clauses 1(k) and 2(b) of the 2019 GMSA (at paragraphs 129-130, above):

“...be reflected on an Invoice issued by the Provider specifying the compensation for each Service provided in accordance with Appendix D”

280. The 2019 restatement of the GMSA, unlike the previous iterations, recognises the distinction that CBNA contends exists between Business Delivery Services and Support Services. However, this iteration of the GMSA was brought into effect during the period when CBNA and HMRC were in discussions prior to the issue of the Liability Decision in February 2020 (see paragraph 125, above) and it is not disputed that this was one of the reasons behind the restatement of the GMSA in 2019 (see paragraphs 125-127, above). In any event there was no alteration in the nature or number of such services supplied or any change in the underlying business (see paragraph 127, above)

281. The first reference to “Business Delivery Services” is in the 2019 GMSA at recital H (see paragraph 128, above). Recital I, which Mr Beal describes as a “slightly strange” provision if the GMSA is a “purely commercial document rather than trying to signpost a VAT issue”, refers to supplemental “documentation or online tools” which, Mr Hitchmough says, is a reference to the business capability taxonomy, the BCT, which Mr Bradley explained was concerned with regulations and had no bearing on the issues in this appeal.

282. Appendix C (see paragraph 132, above) defines “Business Delivery Services” and “Support Services”, making the point that Business Delivery Services are “essential” for and specific to a Recipient’s business transactions. By contrast Support Services are a residual category. Mr Hitchmough contends that this conclusion is supported by the evidence and that the Business Delivery Services have a “direct and immediate link” to the transactions that SPLC enters into with its clients whereas the Support Services do not.

283. Under the express terms of Appendix C, Business Delivery Services are grouped into three categories of “Transaction Execution Services”, “Fund Administrative Management Services” and “Sales and Relationship Management Services”. The services provided by CBNA under Appendix C under the heading “Transaction Execution Services” extend to five separate areas (see paragraph 132, above), namely, CIB Markets and Capital Markets; CIB Banking; CIB Securities Services; Wealth Management; and CCB Card Issuing and Acquiring. However, CBNA suggests that the relevant Business Delivery Services comprise the four heads of Technology; Operations; QR; and MR, although, as Mr Bradley explained in his evidence, there is no formal document setting out that these are the four heads that are intended to make up the “Business Delivery Services” covered by Appendix C.

284. Mr Hitchmough contends that these contractual arrangements do not reflect the true agreement between the CBNA and SPLC citing clause 18 of the 2006 GMSA, the “no agency” clause (see paragraph 97, above, a similar “no agency” clauses is at clause 17 of the 2010 revision, see paragraph 119, above), as a:

“... good example of where the terms of the agreement are incompatible with the reality of the relationship between CBNA and SPLC. A number of examples were given by the witnesses when discussing the example transactions of situations in which CBNA quite clearly acts on SPLC’s behalf.

... But just in those circumstances, as the authorities you've been taken to make plain, for the purposes of VAT, economic reality prevails. Economic reality trumps the contractual terms in those circumstances. It's the point Lady Justice Whipple recognised in paragraph 61 of her judgment in *Mainpay* ... that I took you to. She reminded us there that an: "... analysis of what is being supplied depends, in any given case, on [the] economic [reality] of the transaction ...". And the contracts are merely a means of identifying what that reality might be."

285. Mr Hitchmough is correct, as is clear from authorities, that it is the economic reality that matters and the contractual terms can vitiated by relevant facts. However, when it was put to them by Mr Beal in cross-examination all of the witnesses accepted (and it is not disputed) that the contractual counterparty in each of the relevant supplies of financial instruments to the end client was SPLC not CBNA.

286. Although he accepts that, read together and side by side, the contractual documentation does provide "a high level of proximation of the economic reality", Mr Hitchmough says that viewed individually it clearly has issues and cannot provide an exhaustive and definitive analysis for VAT purposes. He also refers to the 2006 GMSA being "concerned in the main with the number of supplies made as a result of its incorporation of the Expense Allocation Policy" and there being only a passing reference to classification in the example transaction involving SPLC and CBNA. He submits, in relation to the 2019 GMSA, with its focus on classification, that it "tells us nothing at all about the number of supplies made or the composition, merely recognising there may be several supplies between the same legal entities."

287. In relation to the contracts he emphasises the following:

- (1) The GMSAs were produced primarily with transfer pricing and regulatory considerations in mind;
- (2) The contracts are not specific to CBNA and SPLC but govern all of the worldwide JPMorgan corporate group intra-group supplies and, as such, the contracts are "incredibly wide-ranging" in their scope; and
- (3) As intra-group agreements there is not the same level of detail that might be expected in a commercial agreement that has been negotiated at arm's length.

288. While it is true that there is a lack of detail in the contracts, I agree with Mr Beal that is not, in itself, a reason to conclude that they do not reflect economic reality. The contractual arrangements concerned are those of a large multinational bank, with extensive resources available for the task, in circumstances where the Expense Allocation Policy expressly envisages that the invoicing arrangements deployed under the contractual arrangements will be used for addressing indirect tax consequences of intra-group recharging. There was nothing to prevent the adoption of a much more detailed framework agreement had it been considered appropriate to do. Therefore, on balance, I agree with Mr Beal that the contracts in this case do reflect the true agreement between CBNA and SPLC and, as such, it is not necessary to "go behind" them.

289. Taking the contractual documents as a whole it is clear that CBNA makes a single supply to SPLC providing everything that it (SPLC) needs to enable it to achieve its aim of regulatory compliant trading in globalised markets. Under the 2006, 2010 and 2015 CMSAs, CBNA provided undifferentiated Support Services. Although the 2019 GMSA did refer, for the first time, to Business Delivery Services and Support Services this was in the context of ongoing discussions with HMRC and did not result in change in the nature or number of such services

supplied or alteration to the underlying business. As such, there was no change to the services provided before and after 30 September 2019 when the 2019 GMSA came into effect.

290. In addition there is nothing in the contractual documents to suggest that the services are not closely linked or that the focus should be on internal divisions within the business as the contractual analysis reflects the VAT classification of examining which legal entity has made what supplies to which legal entity for consideration. As a matter of economic reality it is not possible for SPLC to trade using the Business Delivery Service and not the Support Services (legal, accountancy, compliance, email etc) and vice versa.

291. The different elements of the supply provided by CBNA to SPLC are “closely linked” (see *Gloucestershire Hospitals* at [116(i)]). While the “Business Delivery Services” are necessary for SPLC to carry out trades and all operations in the business areas selected, they are not sufficient on their own. The “Supply Services” include essential functions which are necessary for SPLC to be able to undertake its business. Mr Bradley, Mr Richardson, Mr Morawitz and Mr Reig Mascarell all accepted that generic services, such as legal and payroll, which CBNA described as Support Services are essential for SPLC to function (see paragraph 67, above).

292. Further examples of that close link between the elements of the supply can be seen, as described above (in paragraphs 70-81), in the integral part played by the MRGR, the VCG, Product Control, Regulatory & Compliance and CIB Finance & Business Management functions in the business of JPMC to the extent that the different elements form a “single, indivisible economic supply” (see *Gloucestershire Hospitals* at [116(ii)]). The economic purpose of the services provided by CBNA under the GMSA is to allow SPLC (and other JPMC affiliates in other jurisdictions) to carry on business in a consistent fashion in compliance with the various regulations in the globalised environment in which they operate.

293. Any attempt to split these different elements into separate supplies would, in my judgment, be artificial (see *Gloucestershire Hospitals* at [116(iii)]). In evidence, Mr Bradley acknowledged that, for JPMC, there is no choice to be made between making money and complying with regulatory obligations (see paragraph 16, above). He also accepted, as did Mr Bradley, Mr Richardson, Mr Morawitz and Mr Reig Mascarell that CBNA needs what it describes as Support Services to function (see paragraph 67, above). Quite clearly, the different elements of that supply are not available separately (see *Gloucestershire Hospitals* at [117(2)]). It is not, as Mr Bradley accepted in evidence, possible for SPLC (or any other affiliate) or any of SPLC’s trading areas to decline any service provided by CBNA as it would undermine the aim of standardisation across the JPMorgan group if it did (see paragraph 18, above).

294. Also, viewed objectively, the “typical consumer” in SPLC’s position would reasonably regard the different elements as a single supply (see *Gloucestershire Hospitals* at [116(iv)]). This is reflected in the recognition by CBNA’s witnesses that not only the “Business Delivery Services” but also the “Supply Services” are essential for SPLC to carry on its business (see paragraph 67, above).

295. As such, it must follow that as the different elements of the supply are indivisible and indispensable in order to achieve the aim of the supply (*Gloucestershire Hospitals* at [117(1) & (3)]), CBNA makes a single supply to SPLC of what Mr Beal described as “Support Function Services” which encompasses and includes both Support Services and Business Delivery Services.

296. Having reached such a conclusion, it is therefore necessary to consider whether that single composite supply is standard rated, as HMRC contend or, as CBNA argues, exempt.

297. It is common ground that the classification of a supply cannot depend on the use of goods or services supplied. However, if authority were needed to support such a proposition it can be found in the decision of the CJEU in *BlackRock Investment Management (UK) Ltd v HMRC* [2020] STC 1445 (“*BlackRock*”) at [41] – [49].

298. In *Gray & Farrar International LLP v HMRC* [2023] STC 327, Simler LJ (with whom Newey and Lewison LJ agreed) reviewed the relevant authorities with reference to the “predominant element test” applied in the CJEU decision of *Město Žamberk v Finanční ředitelství v Hradci Králové* (Case C-18/12) [2014] STC 1703. Having referred to the decision of the Upper Tribunal in *Metropolitan International Schools Ltd v HMRC* [2017] STC 2523 (“*MIS*”), she said:

“49. In *MIS*, Mann J and Judge Ashley Greenbank reached the same conclusions and found that there was a hierarchy of tests to be applied in characterising a single supply for VAT purposes. They described it as follows at para [78]:

‘(1) The *Mesto* predominance test should be the primary test to be applied in characterising a supply for VAT purposes.

(2) The principal/ancillary test is an available, though not the primary, test. It is only capable of being applied in cases where it is possible to identify a principal element to which all the other elements are minor or ancillary. In cases where it can apply, it is likely to yield the same result as the predominance test.

(3) The “overarching” test is not clearly established in the ECJ jurisprudence, but as a consideration the point should at least be taken into account in deciding averments of predominance in relation to individual elements, and may well be a useful test in its own right.’

50. I respectfully endorse that approach.”

299. Judge Falk (as she then was) also referred to *Město* at [79] and [80] in *Target Group Limited v HMRC* [2018] UKFTT 226 (TC) before saying, at [81]:

“I think it is clear that the starting point is to identify the individual elements of a single complex supply. Whether that supply falls to be treated as exempt will generally (but not necessarily exclusively) be determined by reference to predominance, but this might either be a single predominant element or in some cases a combination of elements. The test is an objective one, from the perspective of a typical consumer, and based on the contract and the economic realities. I agree with Mr Cordara [counsel for the appellant] that the reference by Advocate General Tizzano to “economic purpose”, referred to by Jonathan Parker LJ in *Tesco* (see [66] above) is relevant. Also relevant are the descriptions referred to by the same judge in EDS at 130, where he referred to the expression “single or core supply” used by Laws LJ in *FDR* at [62] and to the references to “the essential feature of the scheme or its dominant purpose” and “main objective” by Lord Slynn in the House of Lords decision in *CPP*, [2001] STC 174 at [25] and [26].”

300. On appeal to the Upper Tribunal (*Target Group Limited v HMRC* [2019] UKUT 340 TCC) it was noted at [30]:

“In the FTT, as before us, both parties agreed that the services provided by Target to Shawbrook comprise a single (composite or complex) supply for VAT purposes rather than multiple separate supplies. The parties disagreed, however, in their view of how the supply should be classified and whether it

was exempt or standard rated. In relation to the first issue, the FTT concluded, at [81], that “the starting point is to identify the individual elements of a single complex supply” and that “whether that supply falls to be treated as exempt will generally (but not necessarily exclusively) be determined by reference to predominance, but this might either be a single predominant element or in some cases a combination of elements”. Before us, neither party raised any objection to the FTT’s description of the proper approach to the question of how to determine the nature of a single complex supply for VAT purposes and, for the purposes of this appeal, we are content to adopt it.”

301. Although the case was subsequently appealed to the Court of Appeal (*Target Group Limited v HMRC* [2021] STC 1662) (“*Target CA*”) and Supreme Court, which heard the case in July 2023, I understand, given the agreement of the parties in the First-tier and Upper Tribunal, that the proper approach to classification of a single supply was not subsequently in issue.

302. In the present case however, I agree with Mr Beal, it is impossible to identify any particular element as principal. Technology, Operations, Market Risk and QR are all necessary for a fully functioning trading platform and for trading exercises to be conducted as are those support services provided by CBNA on which SPLC relies and could not trade without.

303. In similar circumstances, where it was not possible to identify a predominant element, the CJEU in *Finanzamt Frankfurt am Main V-Höchst v Deutsche Bank AG* (Case C-44/11) [2012] STC 1951 stated:

“41. However, it is apparent from para 27 of this judgment that it is not possible to regard the elements of which that service consists as constituting a principal service on the one hand and an ancillary service on the other. Those elements must be placed on the same footing.

42. In that regard, it is established case law that the terms used to specify the exemptions referred to in art 135(1) of Directive 2006/112 are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, inter alia, *Assurandør-Societetet, acting on behalf of Taksatorringen v Skatteministeriet* (Case C-8/01) [2006] STC 1842, [2003] ECR I-13711, para 36, and *DTZ Zadelhoff* (para 20)).

43. Consequently, since that service may be taken into account for VAT purposes only as a whole, it cannot be covered by art 135(1)(f) of Directive 2006/112.”

304. It must therefore follow that as the service in the present case may only be taken into account for VAT purposes as a whole, that supply cannot be covered by an exemption and, accordingly must be a taxable supply.

Exemption Issue

305. Having concluded that CBNA made a single taxable supply to SPLC it is not strictly necessary to consider the Exemption Issue any further for individual supplies. However, as it was argued before me and in case of any further appeal, I have done so, albeit not as comprehensively as might have been the case had I reached a different conclusion in relation to the Supply Issue. In doing so, I have proceeded on the basis, contrary to my conclusion, that CBNA made separate supplies of Support Services and Business Delivery Services to SPLC and considered whether, in such circumstances the supplies of Business Delivery Services are exempt.

306. CBNA relies primarily on the securities exemption but also relies on the payment exemption which it contends is also relevant because the client transactions undertaken by SPLC also involve payments.

307. In *Target CA Simler LJ* (with whom Henderson LJ and Underhill VP agreed), having reviewed the applicable CJEU authorities, said:

“77. In light of the guidance given by the CJEU (as summarised above), the starting point is that the financial services exemptions contained in art 135(1)(d) have an autonomous EU law meaning (in order to avoid divergences in the application of the VAT system as between member states); and are to be strictly construed, though that is not to be equated with a restricted construction. In other words, the exemptions are to be construed in a way that does not have the effect of extending their scope beyond the fair meaning of the words used, having regard to the context and the objective of the common system of VAT.

78. Nor is an exclusively literal interpretation appropriate: for example, although general accountancy services that include conducting negotiations on a client’s behalf with HMRC, would, as a matter of ordinary language, appear on the face of it to fall within ‘transactions, including negotiation, concerning ... payments, transfers’, nobody doubts that such services are not within the exemption. As Laws LJ put it in *FDR*, ‘Something altogether more intimate to the actual process of moving money is required.’

79. More specifically, following *SDC* it is clear that the exemption is determined by reference to the nature of the services provided, and not by reference to the person supplying or receiving the service. To fall within the exemption, the transactions in question must be financial transactions in nature, and not administrative or technical transactions in nature.

80. The decisive feature of a transaction concerning payment or transfer is the existence of a transaction consisting of the execution of an order for transfer of a sum of money, involving a change in the legal and financial situation as between the relevant parties. Although a complex supply of services can be broken down into separate services which then constitute ‘transactions concerning transfers’, to be within the exemption the transactions must form a distinct whole that has the functional effect (irrespective of cause) of making the legal and financial changes that are characteristic of the transfer of a sum of money.

81. Moreover, as the CJEU has said repeatedly, there is a distinction between a service which is indispensable for the performance of an exempt supply by another (which is insufficient for exemption) and a service which itself contains the essential elements of an exempt supply defined in art 135(1)(d) and is therefore an exempt supply. The mere fact of being an indispensable constituent element to completing an exempt transaction does not alter that position.

82. Since art 135(1)(d) does not prescribe or envisage any particular method for effecting the transaction, the transaction may be a transfer effected by the actual transfer of funds, or depending on the facts of the particular case, a transfer effected by accounting entries, as occurred in *ATP*. However, the mere physical or technical supply of software or a data-handling system to a bank that does not effect a transfer of funds with a change in the legal and financial position (for example, ownership), will not fall within the exemption

...

86. The CJEU concluded, clearly and unambiguously, that actual execution is necessary to qualify as a transaction concerning transfer or payment, and the mere giving of an instruction is not sufficient in itself, even if the instruction or order is indispensable to the transaction taking effect, and even if the instruction triggers an entirely automatic process leading to payment: electronic messaging services in a payment chain, that merely transmit information or instructions but do not themselves perform any of the functions of transmitting funds to constitute a transfer, do not fall within the exemption.

87. Both the Advocate General and the CJEU in *DPAS* identified the obvious tension between the two lines of authority and the debate that had existed as to whether an instruction to another party to effect a transfer was sufficient. Having done so, both deliberately followed the *Nordea/Bookit II* line of reasoning, concluding that the services supplied by *DPAS* (involving instructions to transfer funds through the direct debit system) were administrative only and did not effect the transfer and the legal and financial changes which characterise a transfer of a sum of money. In *DPAS* issuing instructions to financial institutions to carry out a transfer was regarded as comparable to the card processing services in *Bookit II* and *NEC*. All were merely preparatory steps or steps prior to the transfer, and the importance of the financial consequences of such steps to the transaction as a whole, was not relevant. That conclusion as a matter of general principle (and not merely as application to the particular facts) is reinforced, as Ms McCarthy [counsel for HMRC] submitted, not only by the fact that the court was identically constituted in these three cases, but also by the statements in *DPAS* that AXA CJEU cannot be relied on any longer in relation to the payment/transfer point (see the Advocate General’s Opinion at paras 56–65 and paras 48–50 of the CJEU’s judgment).

...

89. The critical factual distinction Mr Cordara [counsel for Target] sought to draw between a party who is a mere communications interface, and a party who, in the context of operating a continuing financial relationship through the provision of loan accounts, constructs and delivers binding instructions for money to be moved between accounts, is unsustainable in light of *DPAS*. In both cases, however legally significant the service is in a chain of binding messages, if the taxpayer’s role is limited to instructing another party to make the transfer and effect the change in payor/payee positions, that is not sufficient to fall within the exemption.”

She continued, in relation to the facts of that case:

“98. Applying the CJEU jurisprudence culminating in *DPAS*, and based on the findings of the FTT, all of the activities, taken together or individually, carried out by Target and viewed broadly, do not form a distinct whole that fulfils the essential functions of a financial transaction within the meaning of art 135(1)(d). First, Target does not provide loan origination services to Shawbrook: it does not assess credit worthiness, value potential security or otherwise decide whether to make a loan or process the making of any advances to borrowers. Instead, it provides an outsourced business process service that starts with the creation of a loan account once the loan is made, and includes the day-to-day operation of the loan account, and Shawbrook’s bank accounts, and dealing with the borrower to the point of final repayment.

99. Secondly, although Shawbrook has delegated part of its functions to Target, and Target has full authority to bind Shawbrook, operates bank accounts on behalf of Shawbrook and is responsible for matching payments

to individual loan accounts and identifying missing payments, it does not itself debit or credit an account directly, or intervene by way of accounting entries on the accounts of an account holder. The functions delegated to Target are limited to passing the necessary information to BACS to enable it to give the relevant instructions to the borrower's bank and Shawbrook's bank so that the transfer of funds can take place; and do not include the necessary steps ordinarily undertaken in effecting the transfer of funds or payments themselves. Just as a customer of a bank (including Shawbrook) does not effect a financial transaction by instructing their bank to make transfers or payments, equally a person with authority to give instructions on behalf of the bank's customer does not provide an exempt financial service. The transfers and payments are effected between the borrower's bank and Shawbrook's bank, and neither of these banks delegated any part of these functions to Target.

100. Thirdly and as noted, Target's role is limited to giving instructions or orders that are executed by a different party. Target generates instructions or requests for payment by direct debit, in the form of a BACS file containing electronic payment instructions to banks operating the borrower bank accounts, which are then processed automatically by BACS. In other words, Target triggers the chain of steps leading to a transfer, but does not itself execute or effect the legal and financial changes which are characteristic of the transfer of money. The fact that Target itself uses the BACS payment systems rather than instructing a financial institution to do so is a distinction without a difference. Likewise, that Target performs a 'legally significant service under authority within the chain of binding messages' as Mr Cordara described it, which results in alterations to payor and payee accounts, is not sufficient to qualify for exemption, even though it may be a necessary step in order for the payment to be made. Were it so, *DPAS* and the cases preceding *DPAS* (including *Nordea*, *Bookit II* and *NEC*) would have been differently decided.

101. Fourthly, Target does not assume responsibility or liability for achieving a transfer or payment in the services it provides, as Mr Cordara submitted. The service performed by Target does not go beyond an exchange of information or request for payment to somebody else to make the transfer or payment. That third party, and not Target, would be responsible for the failure or cancellation of, for example, a direct debit mandate. Target's role is a prior step and in this regard I can see no basis for distinguishing *DPAS*, *NEC* or *Bookit II*."

308. In essence CBNA's case is that SPLC has outsourced to CBNA the performance of key functional aspects of those transactions that are specific and essential to a transaction in securities and/or it performs a role that is intrinsically connected with one or more of those functions in a manner that is consistent with the clear guidance of the CJEU in *Sparekassernes Datacenter v Skatteministeriet* [1997] STC 932 ("*SDC*") at [59]:

"... that the exemption provided for by points (3) and (5) of art 13B(d) is not subject to the condition that the service be provided by an institution which has a legal relationship with the end customer. The fact that a transaction covered by those provisions is effected by a third party but appears to the end customer to be a service provided by the bank does not preclude exemption for the transaction."

309. Although it would appear that the exemption can still apply where a supply is outsourced, it is clear, as Simler LJ observed in *Target CA* at [79], that it is determined by reference to the nature of the services provided and not by reference to the person supplying or receiving the service. It is therefore necessary to consider whether the transactions in the present case are

essentially administrative or technical transactions in nature and outside the exemption, as Mr Beal contends, or, as Mr Hitchmough contends, they are financial in nature and fall within the exemption.

310. Mr Hitchmough contends that the evidence supports CBNA's case. For example, with regard to the hedging transaction, described at paragraphs 234 and 235 above, he says it is clear that CBNA's role isn't confined to giving instructions or providing some elaborate form of technical support, rather that CBNA, through the trading infrastructure, was pointing out to SPLC's front office traders opportunities to enter into other transactions in securities and in some case identifying and executing the hedging transaction itself with no involvement at all from the trader. In other cases where there is trader involvement, Mr Hitchmough contends that in addition to pointing out opportunities, CBNA will play a specific essential and intrinsic role in setting the key economic terms of that hedging transaction, such as the price.

311. However, I do not agree. It would seem that, although it is accepted that SPLC would not be able to function without the trading infrastructure of CBNA, as Mr Beal submits what CBNA is in fact providing is a technical or administrative service for SPLC. He describes the services as provided by CBNA as data/information gathering, collection, capture, transmission, holding, processing, monitoring, analysis, reconciliation, checking, verification, storage, management, giving or receiving instructions, none of which alter the legal and financial situation between SPLC and its clients or creates, alters or extinguishes those parties' rights and obligations in respect of securities and none of which could be characterised as an exempt supply.

312. The fact that SPLC could not trade without the service it receives from CBNA is not, however, in itself not enough to bring it within the exemption as can be seen from the unsuccessful arguments advanced in *Bookit*, *NEC* and *DPAS* regarding the performance of services that were essential features of the transactions concerned, namely sales of Odeon or NEC tickets (in *Bookit* and *NEC*, respectively) or payment of dentists (*DPAS*).

DECISION

313. Therefore, for the reasons above, the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

314. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**JOHN BROOKS
TRIBUNAL JUDGE**

Release date: 29 September 2023