EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

EVIA & LEBA Compliance Advisory; Regulatory Activities & Initiatives Grid;

Wednesday 2nd March 2022

Full Grid and Outlook Below

1. February Update
2. Regulatory Outlook and Diary
3. Regulatory Activities and Initiatives Inventory
4. Highlights from the Regulatory Environment
5. LiBOR Transition Update
6. Energy Market Reg developments, ESG, Fines and Enforcements

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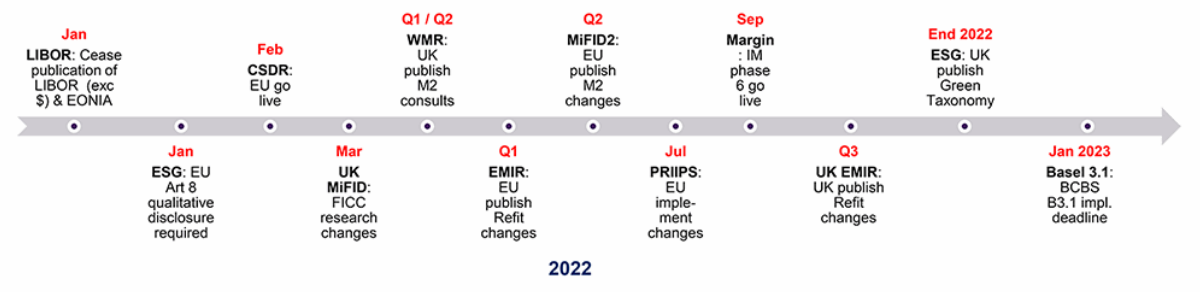
Main Themes in 2022,

Timeline...



Conduct

A&O; In Case You Missed It - 2022 - The Year In Regulation; *In January, partners from our UK team considered regulatory updates on the horizon for 2022 including the latest MiFID Review and other financial markets regulation initiatives, resolvability assessments, operational continuity and outsourcing, updates in relation to the regulation of digital assets and ongoing changes to the UK regulatory framework in light of Brexit.*

- If you missed it, you can catch our '2022 – The Year in Regulation' seminar by clicking below.
- Watch the webinar
- To download our team's 2022 Financial Services Horizon Report, including an interactive timeline of the financial regulatory calendar, click below.
- Download interactive timeline

- To download the slides from the session, click below.
- Download webinar slides

TPR: Meeting the FCA's expectations; *When passporting rights ended on 31 December 2020, European firms conducting regulated activities in the UK had to either stop doing business in the UK; or apply to remain under the 'Temporary Permissions Regime' (*TPR*).*

- The TPR is in place to allow European firms to go through an orderly transition after Brexit, and continue their operations as regulated entities, while seeking full authorisation in the UK for the long term. Ultimately, firms in the TPR are required to submit an application to the relevant UK regulator during its allocated 'landing slot'. Prior to the landing slot, firms are required to comply with certain regulatory requirements.
- The FCA has provided specific examples of where firms might fail to meet the regulatory expectations, including[1]:
    - FSMA firms that miss their landing slot*:* only under very exceptional circumstances will the FCA allow for an extension and this has to be agreed with the regulator in advance of the deadline.
    - Firms that fail to respond to mandatory information requests*:* requests such as those made under section 165 of FSMA[2] are mandatory and firms that do not cooperate with the regulator may be found to be incapable of being effectively supervised.
    - Firms that do not intend to apply for full authorisation*:* unless the firm falls within any of the exemptions within UK law or policy exemptions set out by the FCA (such as not looking for full authorisation due to being merging with another entity and intending to cancel thereafter), then firms should not expand their business in the UK if they do not have a long term business plan and should consider their alternative options instead.
    - Firms whose authorisation application is refused or withdrawn*:* where firms fail to meet the Threshold Conditions[3]/Conditions for Authorisation, the regulator will refuse their application unless voluntarily withdrawn.

- Firms are expected to maintain clear, transparent and open communications with the FCA before, during and after their TPR transition and during the application process. The FCA has set out specific courses of action that it may take in the event that firms fail to meet their standards, which include:
    - Removing the firm from the TPR.
    - Asking the firm to confirm that they have voluntarily stopped undertaking new business (i.e. on boarding new customers) or, if they do not voluntarily agree to this, seeking to use their powers to prevent firms from undertaking new business.
    - Directing a FSMA firm to apply in a landing slot sooner than the existing landing slot.
    - For payments and e-money firms, requesting the firm to specify a date when they will cease to engage in new business – if they fail to do so, the FCA may specify the date.

- Recent FCA comments and actions have highlighted the need for firms to make sure they meet all of the relevant regulatory requirements, and in particular Emily Shepperd's comments highlight that the "UK is open for business, but not to firms who do not meet our regulatory expectations"[4].
- The FCA has now, for the first time, publicly demonstrated its willingness to use these powers, and in particular have issued four final notices (the **Final Notices***)*[5] in respect of firms that, despite multiple opportunities, failed to respond to mandatory information requests. As a result of these failures, the firms have all had their temporary permissions cancelled. It is important to note that, following the Final Notices, the firms that have had their permissions cancelled can no longer conduct regulated business in the UK and may be committing a criminal offence if they do so.
- The Final Notices highlight some key points, which include that the firms were deemed not fit and proper and failed to satisfy a number of the Threshold Conditions.[6] In particular, the FCA deemed that the firms were not suitable persons and that they could not be effectively supervised.

- *Key points for firms to takeaway;* The Final Notices identify a number of key takeaways for firms including:
  - Firms in the TPR need to carefully consider the consequences of failing to communicate with the FCA in an open and cooperative manner when being asked for information. In particular, failing to respond to information requests from the FCA may result in a decision notice being issued, and, the consequences of this are extensive, both in the UK and in other jurisdictions.
  - Furthermore, firms should be considering their obligations under Principle 11 of the FCA Principles for Business and proactively communicating with the FCA in a prompt and comprehensive manner which assists in demonstrating the firms' ability to remain willing, ready and organised.
  - Demonstrating the ability to be supervised and that the firm remains a suitable person is key throughout all communications with the FCA. This is best demonstrated through maintaining an open channel with the FCA, and communicating with the FCA in an open manner.
  - When the firm is submitting an application for authorisation in order to exit the TPR, demonstrating that the firm is ready, willing and organised when the authorisation application is submitted is key. This may include seeking advice about the requirements that the firm needs to comply with in order to submit a comprehensive application, as well as embedding the requirements into the firm's compliance framework.
- The FCA has also consulted on its "use it or lose it[7]" power to address those instances where firms that have been already authorised are not actually using their permissions, which could result in harm to consumers and the market itself. Firms within the TPR will need to carefully consider what permissions they apply for to make sure their permissions are aligned to the activities that are being conducted in the UK.
- As the FCA continues to focus on the permission profiles of firms and streamline its decision making processes, it is likely that additional scrutiny will be placed on firms, both those in the TPR and those outside of the regime.
- [1] https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr/firms-do-not-meet-our-expectations
- [2] s165 Financial Services and Markets Act 2000

- [3] COND 2.2
- [4] FCA confirms approach to European firms temporarily operating in the UK | FCA
- [5] Arumpro Capital Limited FN; Esfera Capital, Agencia de Valores, S.A. FN; Evest Limited FN; INZMO Europe GmbH FN.
- [6] COND 2
- [7] See CP21/28 New cancellation and variation power: Changes to the Handbook and Enforcement Guide

FCA Handbook Notice 95; *On 28 January 2022, the FCA published Handbook Notice 95, which describes the changes to the FCA Handbook and other material made by the FCA (FCA) Board under its legislative and other statutory powers on 16 December 2021 and 27 January 2022.* The FCA has made changes to the Handbook using the following instruments:

- Application Fees (Amendment) Instrument 2021: the changes will make the FCA's application fees more transparent, restore the value of charges which have been eroded by inflation, reducing the costs recovered from existing firms through periodic fees; simplify our online applications system so that the FCA can in the future adjust its fees more easily and inexpensively; and improve the targeting of cost recovery for certain applications.
- Handbook Forms (EU Exit) Instrument 2022: the changes will ensure that the FCA removes EU-related references which are no longer valid or relevant from our Handbook forms. Further, the changes replace these EU-related references with the relevant UK-related references. As such, the FCA anticipates that updated forms will support firms in meeting their regulatory obligations, including preventing consumer harms and creating better outcomes for consumers.
- Handbook Administration (No 58) Instrument 2022: the FCA Board has made minor changes to various modules of the FCA Handbook. These changes were not consulted on separately because they are minor amendments which correct or clarify existing provisions which have previously been consulted on.
- To view Handbook Notice 95, please click here.

FCA publishes webpage on competency and capability of MLROs and heads of compliance; *On 28 January, the FCA published a webpage where it set out its expectations regarding the competence and capability of MLROs and heads of compliance at authorised and registered firms. The FCA's webpage contains a number of points that firms can use to determine whether or not an individual is suitable to perform the MLRO or head of compliance role.*

- The first area is training, and the FCA expects that 'successful applicants' would have already completed relevant training before applying, as well as having attended training courses that are relevant, up to date and of a sufficient length and depth to provide sufficient coverage.
- In terms of experience, the FCA acknowledges that this can come in many different forms, but notes that individuals applying for a 'head of' role need not have performed such a role in the past, and can still come from a more junior position; but that for the MLRO or head of compliance role, purely 'front line' experience may not be sufficient.
- With respect to relying on third party support, the FCA makes the point that "Applicant firms have tended not to be successful where the external support services proposed is

the firm's only compliance resource", indicating that even where a firm intends on using external support, the applicant in question should still have sufficient experience to make decisions for the business and know when to seek external assistance when required.

- Finally, the FCA comments on the capacity required to perform the role of MLRO or head of compliance, indicating that the commitment to the role must be proportionate and sufficient.
- To view the webpage, please click here.

The FCA (FCA) has appointed Direct Line Group CEO, Penny James, as Chair of its Practitioner Panel. *Penny, who has been a member of the Panel since September 2020, will take up the post from 1 March 2022. She succeeds Paul Feeney, CEO of Quilter. The FCA Practitioner Panel is an independent statutory body providing input from the industry to help the FCA meet its objectives.*

- The FCA also has statutory Panels representing the interests of consumers, practitioners at smaller businesses and wholesale market participants.
- Welcoming the appointment, FCA Chair Charles Randell said:
- 'As an experienced Panel member, Penny already understands the Panel's role in providing robust and constructive challenge to help guide our transformation and approach to the future of regulation. I look forward to working with her in her new role. I would like to thank Paul for his contribution as both a member and Chair, and especially for his skilful steering of the Panel through the challenging pandemic period.'
- Penny James, Chief Executive of Direct Line Group, said:
- 'The Panel is an important forum for senior industry practitioners, spanning a range of sectors, to engage and use its expertise as a critical friend to support the FCA's work. I look forward to continuing to work with Panel colleagues, where our collective experience and insight can be called upon to help the FCA with its strategic and operational objectives.'

The reality of whistleblowing at work; FT; Whether you're the boss, the deputy or on your way up, we're shaking up the way the world works. This is the podcast about doing work differently. Join host Isabel Berwick every Wednesday for expert analysis and watercooler chat about ahead-of-the-curve workplace trends, the big ideas shaping work today - and the old habits we need to leave behind. Brought to you by the Financial Times. /jlne.ws/3omOfpc

NFA Extends Relief from On-Site Inspection Requirement through 2022; *NFA extended relief through the end of 2022 from the requirement to conduct on-site annual inspections of branch offices and guaranteed introducing brokers. Firms may conduct these examinations remotely.*

- In a notice to its members, NFA clarified that a member who conducts a remote examination in 2021 is still eligible to conduct a remote examination in 2022 if "its risk assessment indicates it is appropriate to do so."

GameStop Saga one year on: a stark difference between the US and European financial market infrastructures but...; Javier Hernani, head securities services at SIX, writes exclusively for The TRADE. Today marks the one-year anniversary of the GameStop saga - when retail brokers halted the buying of the stock citing the inability to post sufficient collateral at clearing houses to execute their clients' orders. As explained by analysts, this event was driven by the Reddit bloggers WallStreetBets pumping up the price of Ga meStop which put a short squeeze on hedge fund Melvin Capital as a result. /jlne.ws/3J2fWf1

FCA Rejects Call To Investigate Rate-Hedging Scandal The FCA has rejected a call by MPs to investigate the treatment of consumers who were excluded from a compensation program for a bank misselling scandal, saying that the plan delivered a fair outcome. Read full article »

CFTC Charges Five Entities and Five Individuals with $58 Million Foreign Currency Fraud and Misappropriation Scheme The CFTCtoday announced it filed a civil enforcement action in the U.S. District Court for the Southern District of Florida, charging five individuals and five companies with fraud, misappropriation, and registration violations in connection with a fraudulent foreign currency (forex) scheme. /jlne.ws/3rS0rzq

Anything Meta could have done digital currency project a success explains why it was doomed to fail fail. Facebook's parent company has more than 2.9 billion monthly users, sits on $58 billion in cash and marketable securities, and has a marketplace primed for transactions that bypass the traditional financial system. Its size is a serious challenge to the status quo.

- What's weird is that Meta didn't anticipate this. It hoped that by working with other organizations and getting approval from regulators, it would prove that this wasn't a data heist. But the proposal of a new global digital currency separate from central banks posed a potential threat to the US dollar's dominant role in the global currency.
- The project, first announced in 2019 as Libra (now Diem), was envisioned as a large coalition of companies, including Visa and PayPal, tasked with building a blockchain and governing a new global digital currency. Backed by a range of fiat currencies and securities, the coin should avoid the volatility that plagues the world's largest cryptocurrencies.
- Still, convincing users to accept a new form of payment would have been a challenge. Less than a fifth of Americans have dipped their toes in cryptocurrencies.
- Regulatory hostility halted the experiment. But for Meta and the crypto community, the outage is not a critical blow. Selling assets to crypto-loving bank Silvergate for $182 million is a convenient exit. The proceeds go to the Diem association.
- Silvergate's share price has halved since its peak last November. The equity portion of the transaction represents approximately 4 percent of the bank's outstanding shares. Silvergate plans to issue a dollar-backed stablecoin, suggesting association members can get involved in digital coins.
- There are two unintended consequences: Meta has encouraged central banks to accelerate their own digital currency plans and focused regulators – mainly against the notion of unbanked stablecoins. Issuers like Tether can expect closer scrutiny reserves.
- The demise does not bode well for Meta's Metaverse virtual reality plans. But these are linked to digital advertising, a market it is leading. Despite this, Meta tried to work with the system only to hit a wall. The old Move Fast and Break Things model needs to look appealing.

UK financial regulators launch wider implications framework; *The Financial Ombudsman Service (FOS) has announced a formal agreement between certain UK financial services regulators for collaboration on matters of common interest.*

- The wider implications framework builds on existing collaboration arrangements between the FOS, the FCA (FCA), the Financial Services Compensation Scheme (FSCS), The Pensions Regulator (TPR) and the Money and Pensions Service (MaPS), and establishes a procedure for its members to discuss and agree approaches to:
  - activities by one or more financial services firms that give rise to common interest questions; and
  - by one or more of the members that impact on the activities of another member.
- The framework is aimed at achieving a better outcome for consumers, small businesses and the financial services industry.

FCA consults on approach to compromises for firms who seek to limit liabilities; *The FCA has launched a consultation (GC22/1) on its proposed guidance on the FCA's approach to compromises for regulated firms. Compromises are arrangements that allow a firm to settle its liabilities with creditors and/or shareholders.*

- GC22/1 sets out:
  - how the FCA considers compromises and the factors it considers when assessing them; and
  - the FCA's role when a firm proposes a compromise.
- In GC22/1, the FCA states that if firms do propose a compromise in respect of redress liabilities, they should ensure it is the best proposal that the firm can make, which includes the firm providing the maximum amount of funding for the compromise so that consumers receive the greatest proportion of what is owed to them.
- The FCA also reminds firms of their regulatory obligations to notify the FCA immediately and to provide relevant information at an early stage if they are considering proposing a compromise to manage liability.
- Comments are due by 1 March 2022.

FCA publishes webpage on data transformation programme; *The FCA has published a new webpage on its joint transformation programme with the Bank of England (BoE) on data collection.*

- The programme is aimed at increasing value and reducing the burden on firms, and will focus on:
  - integrating reporting to increase consistency in designing and delivering collections for value, reuse and efficiency;
  - modernising reporting instructions to improve how data is interpreted and implemented by firms; and
  - defining and adopting common data standards that identify and describe data in a consistent way.
- The FCA intends to broaden its engagement with solo regulated firms in 2022 and to provide an update on its work in this area in the coming months.

[Irish Securities Markets Urged To Focus On Misconduct Risk]; The Central Bank Of Ireland has called on securities businesses to review their adherence with market abuse rules, saying the risk of misconduct will be a key area of focus in the coming year. [Read full article »]

The AFM examines quality of order execution on PFOF trading venues; *On 9 February 2022, the Dutch Authority for the Financial Markets (Autoriteit Financiële Markten, the* ***AFM****) published the results of a study into the quality of order execution on payment for order flow (****PFOF****) trading venues. The* *[report containing the AFM's findings]* *is titled 'Assessing the quality of executions on trading venues: The "Comparative Pricing Model"'(the* ***Report****).*

- In the introduction of the Report, the AFM notes that this study follows the emerging worldwide public debate on the risks and presumed benefits of the practice of PFOF and the call from the European Securities Markets Authority (ESMA) on national regulatory authorities to further investigate the risks arising from PFOF. According to ESMA and the AFM, PFOF causes a conflict of interest between the firm and its clients, because it provides the firm with an incentive to choose the third party offering the highest payment, rather than the best possible outcome for its clients when executing or routing their orders for execution.
- For this study, the AFM has assessed the execution quality of two PFOF trading venues and one non-PFOF trading venue, all three used by pan-European operating low-cost neo-brokers, as well as one low-cost investment firm. According to the AFM this selection was made on the basis of criteria such as data availability and a substantial presence of activities in multiple European countries. The AFM notes that the initial results of its analysis show that the PFOF trading venues structurally offered worse execution prices when comparing with real transactions with multiple other trading venues.
- In order to assess execution quality, the AFM developed an assessment methodology which should provide a robust indicator of a trading venue's execution quality based on post-trade data: the Comparative Pricing Model. According to the AFM, this methodology is easy to replicate by other national regulatory authorities using their own available data sets. The AFM applied the Comparative Pricing Model to review how execution prices of shares on one trading venue compare to prices of execution on multiple other trading venues. The AFM believes that this use of multiple trading venues establishes an appropriate benchmark.
- As part of its analysis, the AFM considers the price of a transaction to be:
  - better in case a client is settling at a higher price (or buying at a lower price) than the price of any transaction on any reference trading venue (in the same instrument in the same second);
  - worse in case a client is settling a lower price (or buying at a higher price than the price of any transaction on any reference trading venue (in the same instrument in the same second); or
  - of similar quality if neither of the above applies.
- The AFM notes that the results show that for the two PFOF trading venues, most retail client transactions were executed at a worse price in comparison to the most liquid reference markets. For most of the transactions (68 to 72% for PFOF trading venue X and 81 to 83% for PFOF trading venue Y) the execution price was worse. On PFOF trading venue X the average price deterioration for a transaction of € 3,000 is € 1.44, on

PFOF trading venue Y this was € 3.46. For the third trading venue (Z), a non-PFOF trading venue, most of the retail client transactions were executed at a similar price (74 to 77%) compared to the reference markets, with the average price deterioration for a trade of € 3,000 being € 0.24. For the investment firm that was examined, the percentages of worse, better or similar execution prices are almost evenly divided, with the average price deterioration for a transaction of € 3,000 being € 0.42.

- The Report contains a description of the methodology used by the AFM (section 2), the outcome of its analyses (section 3), specification of the Comparative Pricing Model (Annex I) and a set of Q&A (Annex II).
- The AFM has been making it clear that it believes that PFOF is an undesirable model and prohibited in the Netherlands. The AFM wants to see an EU-wide ban to prevent lack of cost transparency towards investors, but also to ensure a level playing field.

Enhancing the UK's capital markets - The FCA's role and priorities; I'm pleased to be addressing this City and Financial Global summit today with the opportunity to discuss the future of UK financial services regulation and in particular the opportunities that lie ahead for financial markets. This is a topic which is really important to us in our role as the UK's conduct regulator (not forgetting that we are Europe's largest prudential regulator by number of firms). /jlne.ws/3GukOba

Italian City Loses Bid To Appeal Deutsche Bank Swaps Deal; A judge denied an Italian city the chance Friday to appeal her findings that its interest rate payment agreement with Deutsche Bank was binding, saying there's little chance of overturning her conclusions that it had capacity to restructure its €70 million ($80 million) debt. Read full article »

Standard Chartered Denies Withholding Compliance Issues Standard Chartered PLC has pushed back on institutional investors suing over its $1.1 billion settlement for breaching Iranian sanctions, arguing that it did not withhold the extent of its compliance issues from the market. Read full article »

SFC publishes updated anti-money laundering and counter-financing of terrorism self-assessment checklist

- The Securities and Futures Commission (SFC) has published an updated anti-money laundering and counter-financing of terrorism (AML/CFT) self-assessment checklist, which reflects the latest guideline on AML/CFT for licensed corporations. The AML/CFT self-assessment checklist is intended to provide a structured framework for licensed corporations (LCs) and associated entities (AEs) to assess compliance with the key AML/CFT requirements.
- The SFC advises LCs and AEs to use the self-assessment checklist as part of their regular review to monitor their AML/CFT compliance. Moreover, the frequency and extent of such reviews should be commensurate with the risks of ML/TF and the size of the firm's business. The SFC also requires senior management of LCs and AEs to ensure that any compliance deficiencies identified during the regular reviews are rectified in a timely manner.

Cantor Trader on Trial for Taking 'Off the Books' Commissions; Adam Mattessich claims arrangement didn't violate SEC rules; Cantor's former equities boss Phil Marber expected to testify.

- For over a decade, even after he was promoted to Cantor Fitzgerald LP's global co-head of equities, Adam Mattessich received personal checks from other traders who paid him half their commissions from certain clients. Whether he did anything wrong is at issue in a trial that gets underway Wednesday in Manhattan federal court. Mattessich, who resigned from Cantor in 2018, doesn't deny the conduct alleged in a Securities and Exchange Commission lawsuit but claims the firm's equities division had a permissive culture in which such arrangements were "open and notorious," and traders received no compliance training to suggest they were not allowed. /jlne.ws/3B9K0CD

Fair game. Bank regulators in Asia are taking a firm hand against technology transgressors. Punishment was expected against DBS Group after the Singaporean bank's customers struggled to access digital banking services over a three-day period in November. Instead of a slap-on-the-wrist fine, however, The Monetary Authority of Singapore is temporarily applying a 1.5 times multiplier to DBS' risk-weighted assets for operational risk, costing it roughly $690 million in regulatory capital.

- That's manageable but awkward for boss Piyush Gupta, who leads a well-capitalised $70 billion lender that touts it was named the "World's Best Digital Bank" in 2021 by Euromoney. It's not the first time MAS has used such punishments, but the latest rebuke comes as more of the region's traditional banks venture into fintech. In late 2020, India's $109 billion HDFC Bank was temporarily banned by its regulator from onboarding new credit card customers after multiple technology fails.
- Both incumbent banks are notable for their strong digital offerings that have made it hard for online-only upstarts to take market share. The penalties serve as a strong warning for all those with financial technology ambitions. (By Una Galani)

UK banks warned of possible Russian-backed cyber attack; Britain's banks have been warned by the Financial Conduct Authority to be prepared to defend their systems against a possible cyber attack backed by Russia, as tensions over the possibility of the country invading Ukraine remain high. UK financial firms could be targeted if the UK imposes sanctions on Russian companies and individuals, the FCA said in a "dear CEO" letter. Full Story: Financial Times Reuters

JMLSG publishes revisions to Part II Sector 17; On 17 February 2022, the Joint Money Laundering Steering Group published a revision to Part II Sector 17 (Syndicated Lending) of its Guidance, being the insertion of Paragraph 17.29A. The new text is available under the "Revisions" tab under "Guidance" and has been submitted to HM Treasury for Ministerial approval.

FMSB publishes final standard for the sharing of investor allocation information; On 15 February 2022, the FICC Markets Standards Board published its third standard in a series aimed at making primary capital markets more transparent, fair and effective. This latest standard sets out certain minimum expected behaviours of syndicate banks in relation to the sharing investor allocation information within their institutions. It seeks to promote consistent baseline industry practices for this sharing of information and provide both issuers and investors with certain protections and controls as to how their allocation information is used.

UK financial crime enforcement: what lies ahead in 2022? *- 2021 was an extraordinary year in financial crime. In this blog we consider recent UK developments, the key issues emerging in 2022 and the practical implications for companies.*

- Taking a step back from these developments, we see four key overarching themes:

1. An increased focus from authorities on the effectiveness of preventative systems and controls when considering how to resolve investigations. Companies need to consider how they can best allocate their resources to manage their key risks, meet authorities' increasing expectations and to ensure they are able to *evidence* effectiveness.
2. Fraud has become a front page issue and we expect to see significant changes in how fraud is regulated, investigated and prosecuted, as well as a continued increase in civil disputes alleging fraud. Many companies will need to significantly enhance their anti-fraud compliance programmes as a result.
3. The way in which financial crime is being investigated is changing as we move to a hybrid working model. We will continue to see criminal and regulatory authorities demanding more in terms of mobile data and a shift away from typical dawn raids.
4. Regulators are turning their attention to ESG disclosures published by companies in response to an array reporting requirements, from climate risk to human rights impacts. At the same time companies are grappling with vast amounts of data to support their public commitments. This is likely to result in significant future enforcement action and litigation.

- Fraud; The scale of fraud increased exponentially in 2021 and we expect to see increasing litigation, regulatory scrutiny, and public inquiries in relation to the following issues:

1. Payment fraud: In the first half of 2021 alone, £754m was stolen from bank customers. Expectations are continuing to increase on firms to prevent their customers from falling victim to fraud – and on refunding them. This is particularly pertinent in light of the Treasury Committee's recently published report on fraud, scams and economic crime which recommends that the Government urgently legislates to make reimbursement for victims of 'authorised push payment fraud' mandatory. We are also likely to continue to see increased civil litigation arising out payment fraud issues.
2. Misuse of COVID-19 relief schemes such as furlough fraud and loan schemes: We can expect to see significant investigations, litigation and inquiries in relation to misuse of these schemes. HM Revenue & Customs has instigated a taskforce to investigate COVID-19 related fraud, and we expect to see an increase in related investigations by the National Crime Agency and Serious Fraud Office (SFO).
3. Trade finance: We expect to see heightened scrutiny in this area following the FCA/PRA Dear CEO letter published in September 2021. See here for our commentary on this.
4. Auditors and their role in preventing fraud: In May 2021, the Financial Reporting Council (FRC) published a revised version of its auditing standard setting out more stringent

requirements for auditors in relation to identifying fraud and there have been various FRC investigations and civil litigation on this point, which is impacting on how auditors approach fraud issues and discussions around disclosures.

5. Multilateral banks: Increased enforcement activity by multilateral banks. Significant funds have been disbursed as a result of the pandemic, and investigations have increased with it. By way of example, the World Bank has recently reported an increase in fraud investigations.

- We are also likely to see further steps towards enhancing the ability to prosecute fraud, both in terms of enhancing corporate criminal liability laws and changing how (and by whom) fraud is investigated (see here for our article on this). We may also see authorities using their powers more widely to seize or restrain assets.
- Money laundering; We saw significant anti-money laundering (AML) fines in 2021 and UK authorities will continue to focus on this area, including:

1. AML systems and controls: We expect to see an increased focus on firms' AML systems and controls following the Dear CEO summarising systems and controls weaknesses identified by the FCA. See here for our views on this.
2. Cryptoassets: We expect an increased focus on the role of cryptoassets in money laundering, as criminals continue to move away from cash, and online fraud increases.

- In 2021, FCA actions resulted in financial organisations in the UK facing significant fines totalling over £500m relating to money laundering. In November 2021, the FCA reformed its decision-making processes with the aim of streamlining and speeding up investigations, so we may see a drive for more efficient enforcement in 2022.
- Bribery and Corruption; 2021 saw further major deferred prosecution agreements (DPAs) and guilty pleas by corporates, as well as FCA fines related to anti-bribery and corruption (ABC). We expect to continue to see:

1. Coordinated global settlements against major corporates and financial institutions: With an increasing focus by authorities on assessing the effectiveness of companies' compliance programmes in considering the resolution of investigations. We recently reported on the results of our survey regarding how companies' ABC compliance programmes compare against current global best practice expectations.
2. Increases in the exchange of information: Multilateral banks have also recently been driving for an increase in the exchange of information relating to anti-corruption investigations, and so we expect to see greater co-operation between localised anti-corruption agencies and multilateral banks.
3. Scrutiny in relation to conflicts of interest: Further scrutiny and investigations in relation to potential conflicts of interests regarding COVID-19 related government procurement.
4. Civil claims: Significant increases in civil claims arising of out ABC issues, including investor claims where material ABC issues are not disclosed in accounts.
5. A shift in approach to the prosecution of individuals: The SFO has failed to secure convictions of any individuals following a DPA, and in 2021 came under fire for disclosure failures leading to the collapse of high profile trials of individuals. The SFO may be forced to change tack when approaching DPAs and also the prosecution of

individuals, and there may be an increased focus on securing the co-operation of individuals to assist in securing convictions both of companies and individuals.

- Sanctions; While sanctions enforcement activity remains low in the UK with HM Treasury's Office of Financial Sanctions Implementation (OFSI) imposing its largest fine of over £20m back in March 2020, the steady flow of enforcement by US authorities continues and may inform the areas of focus by the UK and EU authorities in the year ahead. Some of the key themes include:

1. Indirect sanctions risks: Companies have been found liable for referring business or payments to subsidiaries and/or affiliates where they are unable to undertake the business directly due to sanctions prohibitions. These cases highlight the importance of ensuring that sanctions compliance policies and procedures address both direct and indirect sanctions risks, and that procedures are not implemented which allow indirect involvement in a transaction where direct involvement is prohibited.
2. Deficient due diligence: Several enforcement actions have been brought over deficient due diligence, even where certain compliance measures were in place. These cases highlight the importance of a risk-based approach to sanctions compliance: where transactions are larger and the parties are based in high-risk jurisdictions, sanctions due diligence should be more thorough and not rely on basic processes set out for low and medium risk transactions.
3. Post-acquisition compliance programs: A number of recent cases have involved insufficient implementation of sanctions compliance programs following an acquisition. For example, where cessation of certain business of the target that would expose the acquirer to sanctions risks is a condition of closing and that business continues. It is clear that authorities expect to see adequate post-acquisition due diligence and a well-executed remediation plan to ensure compliance with applicable sanctions.

- Whether OFSI increases its enforcement activity in these areas remains to be seen, but there is no doubt that complying with sanctions is becoming even more complex for companies navigating multiple and often competing sanctions regimes. The on-going tensions in Russia and the Ukraine are also increasing the likelihood of further wide-ranging sanctions being imposed by the US, EU, UK and other nations, which could have a material impact on many businesses operating in or with links to the region.
- Environmental, social and governance (ESG); In the last few years, "ESG" has quickly developed into a board-level issue and has risen up the agenda. ESG-related risks for businesses may manifest in various ways – including reputational risk, insurance risk, operational risk and litigation risk. Amongst these risks, ESG related regulatory issues will continue to emerge as a prominent issue in 2022. As far as the UK is concerned:

1. Modern slavery: The Government committed to strengthening the Modern Slavery Act 2015, most notably by mandating the topics to be covered in businesses' modern slavery statements (e.g. key risks and steps taken to assess and manage risks). The Government has also since announced that it plans to introduce fines for non-compliance. The timing of these changes is unclear, but the Government is now under pressure to implement these changes so progress is expected in 2022.

2. Deforestation: The Environment Act 2021 makes it illegal for larger businesses to use certain "forest risk commodities" or products derived from those commodities, unless they have been produced in compliance with local laws. The Act also introduces due diligence and reporting requirements. The Government is consulting on secondary legislation until March 2022.
3. Import bans and export controls: Taking the lead of the US, the Government is reviewing its export controls regime to address the risk that UK goods may be exported to Xinjiang, China, and then used in connection with alleged human rights abuses in the region. The Government has also confirmed it is reviewing possible import bans.
4. Online Safety Bill: In early 2022, the Government announced amendments to the Online Safety Bill to extend the proposed duty of care on internet services providers to remove illegal content to a broader range of offences including fraud and financial crime, and hate crime.
5. Regulators: The FCA and FRC have been recruiting subject matter experts in order to develop their internal expertise in the ESG area. Both regulators will increase their scrutiny of public disclosures made by listed entities and financial institutions regarding how climate related and other ESG risks are being managed.

- Beyond the UK, the European Commission is expected to table a draft directive requiring mandatory human rights and environment due diligence on 23 February 2022, after several delays. This follows mandatory due diligence laws in other jurisdictions including France, Norway and Germany. The UK Government faces increasing calls from civil society and institutional investors to develop its own legislation.

Regulation Around the World Podcast – Crypto asset regulation; The first instalment in our new monthly podcast series, Regulation Around the World, is available now to stream and download. In Regulation Around the World we take a hot topic in financial services and apply a global lens, examining key developments in different jurisdictions.

- In this month's episode, in line with our financial services team's Regulation Around the World updater, we are taking a look at the regulation of crypto assets.
- The size of the crypto market has exploded in recent years, prompting regulators to sit up and take notice, whether from a consumer protection perspective or owing to fears relating to financial crime.
- In Regulation Around the World this month, we hear from Etelka Bogardi in Hong Kong, Jeremy Wickens in Australia, Glen Barrentine in the USA, Albert Weatherill in the UK and Nikolai de Koning in the Netherlands.
- Regulation Around the World is available to stream and download on Apple Podcasts, iTunes, Spotify and Soundcloud. To listen to this episode on Apple, please click here. If you would like to skip to a particular section, please see the episode description for timings.

MAR/MAD & Financial Crime

Research shows huge increase in use of DeFi protocols for money laundering; *Blockchain analytics firm Chainalysis have recently published the results of research showing that there has been a huge increase in the use of decentralised finance (***DeFi***) protocols to launder money over the last year. DeFi is an emerging financial technology based on secure distributed ledgers similar to those used by cryptocurrencies.*

- In 2021, there was a 30% increase in overall cyber money laundering activity compared to 2020, with cybercriminals laundering a total of US$8.6 billion in cryptocurrencies. Over this period, cybercriminals have increasingly turned to DeFi protocols as a means by which to launder cryptocurrency: DeFi protocols received 17% of all cryptocurrency sent from illicit addresses in 2021, compared to just 2% in 2020.
- DeFi is one of a number of crypto-related means of money laundering that has seen its use increase. Chainalysis found that cybercriminals sent more crypto to mining pools, high-risk exchanges and mixers in 2021 than they had previously, although centralised exchanges still remain the most commonly used method for laundering funds, receiving nearly half of the estimated US$8.6 billion laundered last year.
- According to Chainalysis, cryptocurrency obtained through theft is more likely to be laundered through DeFi protocols. This is put down to the substantial technological demands of obtaining crypto through theft and the consequent likelihood of sophisticated groups being behind the offence. Scammers on the other hand, are more likely to use centralised exchanges.
- The key takeaway is that cybercriminals are finding and using more sophisticated ways to covertly launder their money. DeFi protocols, which are still in their developmental stage, are the latest platforms to be exploited. This behaviour is starting to draw the attention of regulators, but how regulatory mechanisms would work without traditional financial intermediaries remains to be seen.

The lawsuit brought against Currenex, State Street, Goldman Sachs and HC Tech has been updated, with the plaintiffs, now joined by XTX Markets, citing "secret" rules that allowed the platform to provide undisclosed privileges to certain customers. *It also alleges that HC Tech was provided with administrative access that allowed it to see all orders on the platform and the participants behind them.*

- The lawsuit now argues, "This case is not about whether trading platforms must use FIFO, or any other particular matching logic, to break ties.
- Rather, this case is about the illegality of platform operators implementing practices that were (a) highly material, (b) adverse to the interests of most users, (c) shocking departures from industry norms, and (d) never disclosed."
- It claims the "secret" rules, gave a "narrow subset of participants unfair bidding advantages" in what was tantamount to an auction process. These rules, and the advantages they gave the defendants, were neither revealed to the plaintiffs and class members, the lawsuit states, nor were they reasonably expected.
- "Chief among these was a secret, never-before-seen rule for breaking "tie" bids," the lawsuit states. "In case of a tie, Currenex operated under secret agreements with a few privileged customers, providing that their bids would always be declared the winner. Currenex also provided these same privileges to its own parent company, State Street, which operated as one of the largest liquidity providers on the platform."

- One of the key aspects of the initial lawsuit was whether or not Currenex had, or even had to, disclose the absence of a "first-in, first-out" (FIFO) matching policy on the platform, but perhaps even more potentially damning is the claim in the updated lawsuit, that Currenex also gave at least one customer, named as HC Tech, administrative level access to the platform, thus allowing it to view all orders placed on the platform. Clearly if one participant has a view of all orders, a significant advantage accrues, in this case to a firm that was, the lawsuit states, seeing about 10% of all business on the platform.
- Citing a "platform employee" the lawsuit says that the preferential system with HC Tech was carried out at one point at least by Currenex simply giving the prop trading firm the platform's head of sales Russell Sears' personal API log-in username and password. "As a result, HC Tech "basically saw everything." This may have even included access to trader codes that would have allowed HC Tech to determine *who* was behind each quote," the lawsuit claims.
- Labelling this as a "shocking breach of trust" the plaintiffs argue they only discovered this mechanism by way of their, or counsel's investigations.
- The lawsuit argues that the rule regarding a "tie" between competing bids and offers, normally FIFO, should be disclosed as per industry standards, but that while Currenex and State Street purported to be following the industry norm that additional rules would be disclosed – the lawsuit cites its website in 2005 as stating "Limit Orders are filled automatically by the first counterparty bank to stream a price that matches the order" – it was not doing so. This wording, or something similar, was on the website until 2015, the lawsuit says.
- In 2015, the lawsuit further alleges, Currenex disclosed a change to the platform's rules, prioritising firm bids and offers, i.e. not subject to last look, but was not actually following those rules, rather it had operating according to the aforementioned "secret" rules. This was reaffirmed, the lawsuit states, in a 2017 update to its disclosures.
- Noting that the defendants would have their orders jump in line where necessary, the plaintiffs argue "Not only was this rule unfair, it was blatantly anticompetitive. As the beneficiaries of this secret rule—select Trading Defendants win every tie—the Trading Defendants had no incentive to compete on either on price or the firmness of their quotes. "Instead, the Trading Defendants could simply sit back, watch the screen, and then swoop in at the last moment and grab any trade they wanted without ever having to enter a competing bid or offer," it continues. "As a result, prices became artificial, and Plaintiffs and class members paid too much when buying, received too little when selling, and incurred increased execution costs."
- Regarding the alleged access provided to HC Tech, the plaintiffs argue "it is difficult to overstate the harm caused" by this access, adding, "for instance, HC Tech could see its rivals' potential and actual trading patterns – which in many cases were the result of proprietary algorithmic trading systems. HC Tech could even see the "hidden" orders, allowing it to trade out ahead and make guaranteed profits, at the expense of other users."
- As was suspected at the time of the initial lawsuit, the information in it was sourced from a (presumably former) employee of Currenex, however the updated lawsuit also references documentation with XTX Markets signed by David Newns, then head of Currenex and now head of digital assets group Six, and Beverly Doherty, head of North America for Global Link, the umbrella business of State Street's trading platforms and

cites them as evidence State Street was fully aware of what was going on and was, as the original lawsuit stated, one of the privileged trading firms.

- There is little doubt that the class action has received a considerable boost from the support of XTX, rather than it being led by two now defunct trading firms. XTX also seems to have brought some evidence to the table regarding its own correspondence with Currenex, not least one occasion when it emailed to ask if there was anything it could do, or was missing, that could help it do more business on the platform.
- The updated lawsuit says that questions in a May 2016 email included asking for information on the typical Currenex liquidity provider response times, whether Currenex offered "market maker rebate programs," and about "unknown unknowns…is there anything we are missing?"
- XTX says in the lawsuit that it stated it understood, based on the 2015 Revised Disclosures, that Currenex switched "from FIFO to prioritising firm orders" in September 2015, and specifically asked if there were other features the engine also considered?
- "In response," the lawsuit states. "Currenex simply pointed XTX to the Disclosures discussed above. This led XTX to again review the Disclosures discussed above. Currenex also tried to shift blame to XTX itself, saying XTX should be using a different way of interfacing with Currenex's systems if it wanted to perform better.
- "Currenex's responses to XTX's inquiries were false and misleading and were intended to help conceal the fact that Currenex's secret tiebreaking rule, discussed below, was the real reason XTX was not more successful on the Platform," the lawsuit alleges.
- While there are new allegations and detail in the updated lawsuit, the original claims still represent the core of the case – that Currenex negotiated the special deals and even ran tests (allegedly under the supervision of Newns according to the lawsuit) to monitor the impact of the scheme.
- The new document, also refers to the consequences of the original filing, which was followed, it states, by Newns' departure some eight days later; a recent rebranding of Currenex under the GlobalLink FX banner; and calls from senior Currenex staff to major clients, including XTX, to "try to convince them to keep using the platform, even while refusing to comment on the specific allegations".
- There was a school of thought after the original filing that the case would either be settled, or the plantiffs "strung out until they run out of money" as one industry source told *The Full FX* at the time, this now seems to be out of the question. This means that, once again, the FX industry will be in the legal spotlight, with the resulting headlines.
- As was the case with the original filing, the crux of the matter will be whether or not the alleged mechanism was deliberately not disclosed (and actively hidden), however the allegations regarding administrative access to HC Tech have raised the stakes considerably. As the lawsuit argues, "Not only did Currenex's representations hide the scheme, but Currenex's behaviour was so shocking, unique, and out of step with industry norms, that Plaintiffs could not have reasonably anticipated any ECN operator would have acted this way."
- It will probably be for yet another New York jury to decide whether they were or not.

The European System of Central Banks (ESCB) has welcomed the July 2021 update to the FX Global Code and collectively have renewed their Statements of Commitment. *In a release, the ESCB also highlight the "related guidance material", namely additional guidance of pre-hedging and last look, which was published just after the Code update, and pointedly include this in their* *adherence statements. This brings the ESCB into line with the UK, where the local regulator, the FCA, also endorsed the Code update, and highlighted the additional guidance around last look.*

- In a statement, the ESCB says, "Well-functioning financial markets benefit all market participants and are important to central banks because they ensure the smooth transmission of monetary policy to the real economy. This ultimately benefits the public at large.
- "Today all members of the ESCB, including the European Central Bank, simultaneously issued renewed Statements of Commitment to the Code," it continues. "This demonstrates their strong commitment to adhere to its principles when acting as foreign exchange market participants, to align their internal practices and processes with its updated principles, and to support and promote adherence to the Code.
- "With these Statements of Commitment, they emphasise that the principles of the Code are important in ensuring the continued integrity and effective functioning of the foreign exchange market," the ESCB adds. "To fully achieve the objective of the Code, the EU central banks also encourage foreign exchange market participants in their jurisdictions to review the updated Code and renew their Statements of Commitment."

On 18 February 2022, the FCA updated its webpage on 'Submit a change in control notification'. *The update states that the FCA has seen a significant increase in section 178 notifications. Due to these high volumes, the FCA has experienced delays in allocating FCA-led notifications to case officers. Currently, there is a delay of approximately two months between submission of a complete notification and allocation to a case officer.*

- The FCA adds that a substantial proportion of the notifications it receives are incomplete and that processing incomplete applications takes much longer. Therefore, the FCA recommends that all relevant information and documents are provided in the initial submission.
- The only date by which the FCA can guarantee a decision is the end of the statutory assessment period, which is 60 working days from the date it acknowledges a notification as complete. This can be extended by up to 30 working days if the assessment period is interrupted to request clarifying information.

ECB opinion on a proposal for a regulation establishing the AMLAR; *On 17 February 2022, the Council of the European Union (Council) published the European Central Bank's (ECB) opinion on the European Commission's proposed regulation establishing an EU authority for anti-money laundering and countering the financing of terrorism (AMLAR). In its opinion the ECB sets out both general and specific observations on the AMLAR. These include welcoming the creation of the AMLAR and standing ready to cooperate with it. The ECB also strongly supports broadening the criteria for identifying those entities that come within direct AMLAR supervision.*

- The proposed regulation establishing the AMLAR was part of a package of legislative proposals published by the Commission on 20 July 2021, with the aim of strengthening the EU's rules on anti-money laundering (AML) and countering the financing of terrorism (CFT).
- The legislative package also included a proposal for a: (i) regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist

financing (AML Regulation); (ii) sixth AML directive (Sixth MLD); (iii) regulation on information accompanying transfers of funds and certain crypto-assets.

- On the same date the Council also published the ECB's opinion on the Commission's legislative proposal for the proposed AML Regulation and the Sixth MLD. Like its opinion on the AMLAR the ECB sets out general and specific observations on both legislative proposals.

Council of the European Union

Brussels, 17 February 2022
(OR. en)

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ECOFIN 140
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ENFOPOL 81
CT 31
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COTER 48
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COVER NOTE

From:	Ms Christine LAGARDE, President of the European Central Bank
date of receipt:	17 February 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
Subject:	Opinion of the European Central Bank on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism ('AMLAR') (CON/2022/4)

Delegations will find attached the document mentioned above, and its technical annex.

Encl.:

Targeted consultation on options to enhance the suitability and appropriateness assessments; *On 21 February 2022, the European Commission published a targeted consultation on options to enhance the suitability and appropriateness assessments. The level of retail investor participation in capital markets remains very low compared to other economies which is why the Commission is preparing a new retail investment strategy, which aims to take a holistic view of investor protection rules.*

- A public consultation was launched in 2021 which stated that many stakeholders called for simpler and more client-focused ways to assess clients' investment needs and constraints. This consultation aims to investigate ways to achieve this in particular by improving so-called suitability and appropriateness tests, which assess investors' profiles.
- The consultation explores whether retail investors would benefit from a new type of suitability assessment, focused on their personal situation and investment needs, which could provide them with more support along their investment journey to better achieve their investment objectives.
- The consultation is open until 21 March 2022.

Inclusion across financial services: Piloting a common approach to measurement; *In April 2021 the Banking Standards Board relaunched itself as the Financial Services Culture Board (FSCB), with an expanded membership scope to include firms across financial services. On 23 February*

2022, the FSCB together with the Financial Services Skills Commission (FSSC) published a report [‘Inclusion across financial services: Piloting a common approach to measurement’].

- The report is based on the largest sector survey in the UK on inclusion to date with over 3,000 employee responses. The survey findings show that, while the majority of employees surveyed felt their managers promoted an inclusive environment at work, individual experiences differed by (for example) disability, ethnicity, tenure and leadership responsibility. This was particularly the case when it came to concerns relating to being stereotyped, speaking up about issues, and the perceived fairness of workplace processes. Other key findings include that one third of firms participating in the survey do not currently discuss inclusion metrics at board level. Many firms compile diversity statistics, and these are likely to be discussed at senior level, but data on inclusion is less frequently reviewed.

- Based on the report’s findings, there are four actions organisations can take to help improve inclusion in the workplace:
    - Understand and measure inclusion – not just diversity – within firms. Firms should aim to measure both diversity and inclusion in the workplace, in a way that allows different views across employees to be gathered and assessed. A detailed firm wide view is necessary to uncover the variations in employment sentiment and experience.
    - Develop and demonstrate a culture of listening and learning. Firms should visibly demonstrate that employee feedback is being listened to, and that giving feedback is recognised and valued.
    - Maintain and demonstrate fair and transparent processes and systems. As the workplace evolves, firms should keep internal processes and systems under review from a fairness perspective.
    - Demonstrate strong leadership on inclusion. Ambitions around inclusion need to be reflected at all levels within the company with clear leadership and managers ensuring individuals are being recognised when they promote inclusion.

Corporate sustainability and due diligence: the new EU Directive; *Last week, the European Commission published a draft Directive on Corporate Sustainability Due Diligence introducing minimum due diligence obligations in the EU-27. It follows French and German supply chain legislation and is based on international standards and conventions, obliging companies to embed sustainability and human rights standards in their own operations and to establish due diligence throughout their value chains.*

- The proposal covers actual and potential adverse impacts on human rights and the environment stemming from international conventions set out in an Annex. This includes for instance the International Labour Organization conventions, the Paris Agreement, and violations of prohibitions to unlawfully evict or to cause pollution of soil or drinking water. It covers companies' own activities, those of their subsidiaries, and most significantly, companies involved in their value chain operations with whom they have an "established business relationship".
- Which companies will be in scope

- The proposal applies to both EU and non-EU companies. For those established in the EU, the thresholds are
  - Group 1: With over 500 employees and a worldwide net turnover of over €150 million in the last financial year;
  - Group 2: With over 250 employees and a worldwide net turnover of over €40 million in the last financial year if over 50% of this turnover was generated in a specific sector (manufacturing and wholesale of textiles, leather and footwear; agriculture, forestry and fisheries, including raw materials, live animals, beverages; and mineral resources including fossil fuels, quarry products, construction materials, fuels and chemicals).
- For those companies established outside the EU, the thresholds are:
  - Group 1: Generated a net turnover of over €150 million in the EU in the last financial year; or
  - Group 2: Generated over €40 million net turnover in the EU in the last financial year, 50% or more of which in one of the abovementioned sectors.
- When will companies have to comply?
- As it stands, the new rules would apply to Group 1 companies **after two years** once the law is in force and to Group 2 companies operating in the specific sectors **after four years**. These dates may still be adjusted as the draft law is amended.
- What are the obligations?
- The obligations are numerous, incurring significant compliance costs for most businesses. Selected key points include:
  - Including due diligence into all company policies: Companies will need to integrate due diligence across the board and regularly publish and update a due diligence policy that meets the Directive's specific criteria;
  - Identifying potential and actual adverse impacts: This can be done through Environmental, Social and Governance (ESG) audits, independent reports, stakeholder consultations, and more. It is left to each Member State to provide further guidance. Financial services companies will face special obligations in that they will have to carry out an impact assessment before providing a credit, loan or other financial service.
  - Preventing or mitigating potential and actual adverse impacts: This will require companies to take actions including developing prevention action plans, seeking contractual assurances from their business partners, investing into management of production processes, etc. They will also have to verify whether their business partners adhere to their contractual obligations and suspend or end the business relationship where this is not the case.
  - Establishing a complaints procedure: Companies will be required to establish a complaints procedure for those who may reasonably be affected by the company's activities, including individuals, trade unions, and civil society organisations.
  - Reporting: Companies must monitor the effectiveness of their due diligence policy, publishing an annual statement in line with the Corporate Sustainability Reporting Directive.
  - Civil liability: Member States are required to establish civil liability for failure to prevent or end adverse impacts which have led to damage.

- The Directive also imposes a **duty of care on company directors.** The setup and implementation of any due diligence strategy will be the responsibility of the company director, with this individual being tasked with ensuring it remains embedded in corporate strategies. When taking decisions on behalf of the company, all directors will be required to take human rights, environmental, and climate considerations into account when assessing consequences. Any variable remuneration should also take the contribution of the business model and strategy towards achieving the Paris climate targets into account.
- **Supervision and sanctions**
- The proposal is a Directive, which means that each EU-27 Member State will have some flexibility when adapting the text into their own law. Supervision will be in the hands of national authorities, who are also tasked with imposing sanctions. Pecuniary sanctions should be based on turnover, though no more guidance is given. For comparison, German national law currently allows for a 2% annual global turnover fine for severe non-compliance. This set up is already raising concerns over a patchwork of 27 different sets of rules and a race-to-the bottom for sanctions.
- **Next,** the proposed text will be discussed and amended by the European institutions.

EBA launches 'EuReCA'; *On 31 January 2022, the EBA (**EBA**) launched 'EuReCA', its central database for anti-money laundering (**AML**) and counter-terrorist financing (**CFT**). EuReCA will contain information on material weaknesses in individual financial institutions in the EU that Member State competent authorities have identified.*

- Competent authorities will also be reporting the measures they have imposed on financial institutions to rectify those material weaknesses.
- The EBA will use information from EuReCA to inform its view of money laundering/terrorist financing (**ML/TF**) risks affecting the EU financial sector. It will also share information from EuReCA with competent authorities as appropriate, to support them at all stages of the supervisory process. In this regard, EuReCA will act as an early warning tool, which will help competent authorities to act before ML/TF risk crystallise.
- EuReCA has been established based on provisions in article 9a (1) and (3) of the EBA Regulation and in the draft Regulatory Technical Standards (**RTS**) on a central database on AML/CFT in the EU that were published on the EBA's website on 20 December 2021.
- EuReCA will not start to collect personal data until the approval of the draft RTS by the European Commission.

HM Treasury guidance on monetary penalties for breaches of financial sanctions; *The Policing and Crime Act 2017, as amended by the Sanctions and Anti-Money Laundering Act 2018, (**2017 Act**) creates powers for HM Treasury to impose monetary penalties for breaches of financial sanctions. The Office of Financial Sanctions Implementation (**OFSI**) is the part of HM Treasury that applies these powers.*

- On 28 January 2022, the OFSI issued guidance setting out an:
    - explanation of the powers given to HM Treasury in the 2017 Act and a summary of its compliance and enforcement approach;
    - overview of how HM Treasury will assess whether to apply a monetary penalty, and what it will take into account;

  - overview of the process that will decide the level of penalty; and
  - explanation of how they will impose a penalty, including timescales at each stage and rights of review and appeal.
- The guidance applies from 28 January 2022 and replaces guidance for all cases where OFSI becomes aware of a potential breach after 28 January 2022.

US reportedly briefs banks on Russia sanctions Members of the US National Security Council staff and other Biden administration officials briefed executives of the biggest US banks on the sanctions the US is likely to impose on Russia if it invades Ukraine, sources said. The discussions were part of an effort to make sure the sanctions don't destabilize the global financial system. Bloomberg (28 Jan.), The Hill (28 Jan.), The Wall Street Journal

- Sanctions on Russia likely to influence other markets Potential sanctions against Russia over Ukraine has already sent markets falling beyond the country's borders, and the uncertainty about what action will be taken is likely to bring further consequences, market participants say. "It's not just about what sanctions are in place now, the issue is where this is heading and whether we can expect more sanctions," said Timothy Ash, senior emerging markets sovereign strategist at Bluebay Asset Management. International Financial Law Review
- Gov't Accused Of Dragging Feet On Russian Laundering The government is failing to successfully combat Russian money laundering in London by not prioritizing an economic crime bill and continuing to attract oligarchs with "golden visas," lawmakers said on Monday. Read full article »

Brazilian Bank Fights Wise For £22M In Forex Transfers Suit A Brazilian bank has fought a £6 million ($8 million) lawsuit brought by the international money transfer company Wise over allegedly unpaid transfers, saying the company owes it £21.8 million for unlawfully pocketing an undisclosed extra percentage off the exchange rate. Read full article »

British Man Gets Over 11 Years For 'Breathtaking' $50M Fraud A New York federal judge sided with prosecutors Tuesday as he sentenced a convicted British fraudster to more than 11 years in prison and $57 million in restitution for his role in a "breathtaking" $50 million scheme to bolster the Bar Works startup. Read full article »

Libor Reversal Draws Fine Line Between 'Wrong' And Fraud The Second Circuit's controversial decision last week to overturn convictions for two former Deutsche Bank traders accused of rigging Libor has drawn criticism from some former government attorneys and underscores the proven challenges of prosecuting fraud on Wall Street. Read full article »

The U.S. Department of Treasury issued a timely read on Friday about the art market and money laundering and terror finance. The title is "Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art." The Treasury report is a great backdrop to today's lead story from The Atlantic "The Internet Is Just Investment Banking Now."

Credit Suisse faces money laundering charges in Bulgarian cocaine traffickers trial; Credit Suisse faced charges in a Swiss court on Monday of allowing an alleged Bulgarian cocaine trafficking gang to launder millions of euros, some of it stuffed into suitcases.

- Landmark Credit Suisse money laundering trial opens; Prosecutors allege bank processed millions of euros of transactions for Bulgarian mafia; Credit Suisse became the first Swiss bank in the country's history to answer criminal charges on Monday, with the opening of a case involving millions of euros in allegedly laundered drug money. At the centre of the trial are allegations, set out in a 500-page indictment, about the bank's processing of funds for a Bulgarian mafia between 2004 and 2008. /jlne.ws/3B9Ks3N

US investigates potential short selling abuses, Department of Justice sends subpoenas seeking information on more than two-dozen firms US criminal authorities are gathering information on contacts among dozens of short selling hedge funds and research outfits as they investigate possible trading abuses, according to a firm with first-hand knowledge of the probe. /jlne.ws/3ovvUXg

- The Justice Department is collecting a trove of information on dozens of investment firms and researchers engaged in short selling as part of a sweeping U.S. hunt for potential trading abuses, according to people with knowledge of the matter. /jlne.ws/3L8rteL
- DOJ reportedly probes short selling firms; The US Department of Justice is in the early stages of probing possible trading abuses among firms engaged in short selling and is seeking contact information and communications from over two dozen hedge funds and researchers, sources say. The DOJ probe reportedly is focused on whether market participants are illegally coordinating their activities. ThinkAdvisor (free registration) (2/4), Financial Times (2/4), BNN Bloomberg

DOJ Charges Two Individuals with Conspiracy to Launder Billions in Stolen Cryptocurrency; *The DOJ charged two individuals with conspiracy to commit money laundering and conspiracy to defraud the United States, related to cryptocurrency stolen during a 2016 hack of Bitfinex, a virtual currency exchange*.

- The criminal complaint against the two individuals alleges that they utilized various "sophisticated laundering techniques," including: (i) utilizing fictitious identities for online accounts; (ii) using computer programs to automate transactions; (iii) depositing the stolen crypto funds into "accounts at a variety of virtual currency exchanges and darknet markets and then withdrawing the funds"; (iv) converting bitcoin into other cryptocurrencies by using a practice called "chain hopping"; and (v) using "U.S.-based business accounts to legitimize their banking activity."
- The DOJ stated that it seized over $3.6 billion in cryptocurrency linked to the hack.
- DOJ Press Release: Two Arrested for Alleged Conspiracy to Launder $4.5 Billion in Stolen Cryptocurrency

Former Warburg Banker Gets 3½ Years For Cum-Ex Fraud; A German court sentenced a former banker with the Warburg bank to three and a half years in prison Wednesday for two counts of tax evasion linked to the cum-ex trading scandal, multiple sources confirmed. Read full article »

Anti-dirty money agency: The EU seeks to create a new dedicated agency to tackle money laundering, to be operational by 2026. Many questions remain, however, on how it will ensure the better implementation of rules across the EU, according to this paper by the Centre for European Policy Studies.

Denmark Gets £1.5B Cum-Ex Fraud Claim Revived On Appeal; An English appellate court on Friday revived Denmark's £1.5 billion ($2 billion) dividend tax fraud case against British hedge fund trader Sanjay Shah and others, overturning a decision dismissing the case as an inadmissible foreign revenue claim.

- Denmark Gets £1.5B Cum-Ex Fraud Claim Revived On Appeal; An English appellate court has revived Denmark's £1.5 billion ($2 billion) dividend tax fraud case against British hedge fund trader Sanjay Shah and others, ruling on Friday that the case was not an attempt to enforce foreign tax law in the U.K.

Broker Looks To Pare Down Partner's FX Trading Row; A British foreign exchange broker has asked a London court to gut a trader partner's $15 million lawsuit over an exclusivity contract, saying on Friday that their agreement did not restrict trading index swaps with rivals.

Published in OJ – new Delegated Regulation on the list of high risk countries under 4MLD; *On 21 February 2022, there was published in the Official Journal of the EU (OJ), Commission Delegated Regulation (EU) 2022/229 of 7 January 2022 which amends the list of high-risk third countries with strategic anti-money laundering (AML) and counter-terrorist financing (CTF) deficiencies set out in Delegated Regulation (EU) 2016/1675.*

- Delegated Regulation 2016/1675 is provided for under Article 9(2) of the Fourth Money Laundering Directive (4MLD) and identifies in an annex third countries that have strategic deficiencies in their AML/CTF regimes that pose significant threats to the financial system of the EU.

- The Delegated Regulation makes the following changes to Delegated Regulation (EU) 2016/1675:
  - Burkina Faso, Cayman Islands, Morocco, Senegal, Haiti, the Philippines, South Sudan, Jordan and Mali are added to the list of third countries that are identified as having strategic AML and CTF deficiencies.
  - Ghana, Botswana, Mauritius, the Bahamas and Iraq are removed from the list of countries identified as having strategic AML and CTF deficiencies.
- The Delegated Regulation enters into force on the twentieth day following that of its publication in the OJ (13 March 2022).

Sanctions

New CER insight 'Stronger sanctions on Russia: Essential, but not a strategy' by Ian Bond

Invasion, Sanctions and What It All Means for the Markets Nasdaq Chief Economist Phil Mackintosh offers a brief economic overview on the impact the Russian invasion of Ukraine and the West's sanctions will have on markets and the global economy. In case the volatility should get heavy, Mr. Mackintosh revisits the trading industry's guardrails in this article and offers a refresher on circuit breakers, limit up/limit down and erroneous trades. More

Russian banks cut from US dollar, sterling clearing With half of Russia's current trade conducted in US dollars and sterling, both the US and the UK announced they would cut off Russian banks from clearing payments as part of targeted sanctions. "These powers will enable us totally to exclude Russian banks from the UK financial system, which is of course by far the largest in Europe, stopping them from accessing sterling and clearing payments through the UK," Prime Minister Boris Johnson told Parliament. Reuters (2/24), Financial News

- US, UK banks move to ensure sanctions compliance With financial institutions responsible for being the primary sanctions enforcers, banks in the UK and the US are relying on their legal teams to implement the details of the newly announced sanctions against Russia. Many firms are trying to get ahead of any future sanctions in order to ensure full compliance. Reuters (2/24), Financial News

- Banks working intensely to gauge exposure to Russia; International banks are assuring investors that their direct exposure to Russia is well contained, but the indirect costs of the latest round of sanctions imposed on Russia are more difficult to calculate. Big banks are engaged in mapping exercises to work out their exposure to counterparties that invest with capital from Russian sources, a lawyer who works with several major banks said. BNN Bloomberg
- Russia's central bank to help banks ride out sanctions Russia's central bank said it will provide liquidity in rubles and foreign currencies to domestic banks that are affected by Western sanctions. All requests to withdraw foreign exchange deposits will be honored, the central bank said. Reuters
- Moscow Exchange delays start of Friday trading Volatility due to the Russian invasion of Ukraine prompted the Moscow Exchange to cancel its 7 a.m. Friday morning derivatives and securities trading session. MOEX said it would open its securities market at 9:50 a.m. in Moscow, followed by its derivatives market at 10 a.m. Global Investor

United Kingdom Sanctions; *The UK implemented a further package of sanctions last night and also announced a dramatic extension of the sanctions regime, which will take effect once legislation is laid before the House of Commons early next week.*

- Sanctions effective immediately; 5 oligarchs and 6 entities have been added to the consolidated list, with the effect that their assets are immediately frozen. The entities in question include VTB Bank and 5 companies involved in the Russian military's supply chain. See full details in the Treasury Notice here.

- Announced sanctions, but not yet effective
    - All other major Russian banks will have their assets frozen and will be excluded from the UK financial system. The PM's statement was not explicit, but this is expected to include Sberbank and Gazprom Bank.
    - More than 100 individuals and entities will be added to the consolidated list, leading to the freezing of their assets. The particular entities and individuals have

not been named, except to the extent these persons overlap with those that are the subject of today's Treasury Notice, but will include all the major manufactures supporting the Russian military.
    - New legislation will be laid before Parliament on Tuesday to stop major Russian companies and the Russian state from raising funds on UK markets.
    - Similar financial sanctions will be extended to Belarus for its role in the assault on Ukraine.
    - Trade sanctions and export controls will be introduced, blocking the export of 'dual use' equipment with a military purpose and technological equipment used to support key Russian sectors. This will require further legislation.
    - The Aeroflot airline will be banned from landing in the UK.
    - Capping the amount of money Russian nationals can deposit into UK bank accounts.
- The PM also was clear that cutting Russia out from the Swift payments system was not off the table. It appears to be the case that various Western governments, most prominently the UK and Canada are pushing for SWIFT to be closed to Russian entities, but that was – for the moment - opposed by various European governments, the EU and the USA.
    - It was also announced that the UK would bring forward part of the Economic Crime Bill before Easter, including measures on Unexplained Wealth Orders, and would establish a "Kleptocracy Unit" within the National Crime Agency to target sanctions evasion in the UK. The heavy implication is that a significant and near term wave of enforcement activity is being envisaged by the Government.

European Union Sanctions; *The EU has not implemented and published the text of any further sanctions since our call, save today in order to extend existing sanctions on Belarus. The EU's previous package of sanctions, published just before our call was significant and included the following:*

- Extension of the investment ban restrictions to transferable securities and money-market instruments issued after 9 March 2022 by the Russian government, the Central Bank of Russia, or any related entities, and a prohibition on making (or being part of an arrangement to make) any loans or credit available to any of those persons after 23 February 2022.
    - Designation of 22 people and 4 entities under asset freeze provisions, including members of the government and military, pro-Russian media and business persons.
    - Designation of 336 members of the Russian Duma under asset freeze provisions.
    - Various trade restrictions including an import ban on goods from the non-government controlled areas of the Donetsk and Luhansk, a prohibition on certain investment in those regions; an export ban for goods and technologies suited to the transport, telecommunications, energy or oil, gas and mineral sectors; a ban on the provision of technical assistance, brokering, construction or engineering services to infrastructure in the regions and within the aforementioned sectors; and a prohibition to supply tourism services.
    - A derogation mechanism where making available funds is necessary for the termination of contracts/operations by 24 August 2022.

- However the EU has announced that a further package of sanctions will be implemented to the following effect. It is not clear when legislation to this effect will be published, and further details are likely to be released over the course of this evening and the weekend.
    - Financial sanctions targeting 70% of the Russian banking market and key state owned companies, including in defence.
    - Further export controls, particularly in relation to the oil sector, aerospace and semi-conductors.
    - Restrictions on visas for Russian nationals.
- There are also further reports that the EU is likely to announce sanctions against the foreign held assets of President Putin and Foreign Minister Lavrov. Various European leaders have commented on the possibility of freezing Russia out of SWIFT but that does not appear to be an element of the upcoming package. However, the European Central Bank will shortly be delivering an analysis of the impact of such a step if it was taken.

FCA: Following the Prime Minister's statement to the House of Commons on 22 February 2022, the UK has announced a tranche of sanctions on Russia. The full details of the measures are available on the Foreign, Commonwealth & Development Office website. If you require a licence to permit any activity which would otherwise be prohibited by sanctions regulations, you must contact the relevant department.

- We expect firms to have established systems and controls to counter the risk that they might be used to further financial crime and this includes compliance with financial sanctions obligations. Where the FCA identifies failings in financial crime systems and controls we can impose restrictions and/or take enforcement action. Additionally, the Office of Financial Sanctions Implementation (OFSI) has the power to levy civil monetary penalties for breaches of financial sanctions and works with law enforcement for the most egregious cases where criminal prosecution may be considered.
- Firms should screen against the UK Sanctions List to meet these new sanctions measures and screen against the OFSI list of asset freeze targets for financial sanctions obligations. You are legally obliged to report to OFSI if you know or suspect that a breach of financial sanctions has occurred; if a person you are dealing with, directly or indirectly is a designated person; if you hold any frozen assets; if knowledge or suspicion of these come to you while conducting your business. You must contact OFSI at the earliest opportunity, and you should also notify the FCA.
- Our expectations of firms' systems and controls in relation to compliance with financial sanctions are set out in FCG 7 of our Financial Crime Guide including examples of good and poor practice in relation to firms' governance, risks assessment and approaches to screening in relation to financial sanctions. Where transactions give rise to concerns about sanctions evasion or money laundering you should also consider you obligations to report to the UK Financial Intelligence Unit (UKFIU) at the National Crime Agency (NCA) under the Proceeds of Crime Act 2002.
- For firms undertaking trade finance activities our Dear CEO letter from September 2021 provides some additional guidance on sanctions considerations.
- For further details on financial sanctions you should contact OFSI or, for trade and export sanctions, you should contact the Department for International Trade's

Economic Control Joint Unit. Applications must be made in advance of any business agreement or transaction taking place.

FCA: We are writing to you in light of the events in Ukraine and the UK's new and potential further sanctions in response to these events. The individuals and entities already designated under the 2019 Russia (Sanctions) (EU Exit) Regulations have been added to the UK's Sanctions List and are subject to an asset freeze. The full details of the new designations are available on the Foreign, Commonwealth & Development Office website, and the published financial sanctions notice.

- UK regulated firms are obliged to comply with the 2019 Russia (Sanctions) (EU Exit) Regulations and ensure that their financial sanctions systems and controls are robust to identify and prevent exposure to designated persons in compliance with the Russian sanctions regime. You are legally obliged to report to OFSI if you know or suspect that a breach of financial sanctions has occurred, that a person you are dealing with, directly or indirectly, is a designated person, if you hold any frozen assets and if knowledge or suspicion of these came to you while conducting your business. You must contact OFSI at the earliest opportunity, and you should also notify the FCA.
- The broadening of the Russia sanctions regime in the UK, and the changes to the criteria under which individuals and entities may be designated as introduced with the amended definition of 'involved person', give the UK the ability to impose financial sanctions to new targets at short notice. As such, your financial sanctions systems and controls should be capable of being adapted in line with the recent changes made to the Russian sanctions regime and should be appropriate to readily respond in the event of changes and/or new potential designations.
- Your firm's financial sanctions exposure should be assessed to ensure you understand the risks posed by your business model. You should be able to identify which business areas are most likely to be exposed to the Russian financial sanctions and ensure that your sanctions control framework applied to these business areas is appropriate at all times. You must also ensure that your due diligence is adequate and the information you hold on customers, including on directors and ultimate beneficial owners (UBOs), is up to date.
- You should screen new customers, payments and existing customers against the most recent UK Consolidated List to ensure you identify any sanctions exposure and that you comply with your legal obligations not to conduct any prohibited activities with designated persons. Your screening systems should be effective, up-to date and appropriate for the nature, size and risk of your business.
- Our expectations of firms' systems and controls in relation to compliance with financial sanctions are set out in FCG 7 of our Financial Crime Guide including examples of good and poor practice in relation to firms' governance, risk assessments and approaches to screening in relation to financial sanctions. Senior management must also ensure there is adequate oversight and testing of your relevant systems and controls to ensure they are appropriate at all times and that they are robust to ensure compliance with your legal obligations under the amended 2019 Russia (Sanctions) (EU Exit) Regulations. Where we identify failings or weaknesses in financial sanctions systems and controls we use regulatory tools and potential enforcement actions to address these failings or weaknesses.

- Should you have any queries or need to make contact with us on this matter, please speak to your usual supervisor or contact us via the Supervision Hub (0300 500 0597 or firm.queries@fca.org.uk).

New FCA webpage on financial sanctions measures in relation to Russia; *On 22 February 2022, the FCA published a new webpage concerning its expectations of firms in light of the UK's sanctions on Russia.*

- The key message from the FCA is that it expects firms to have established systems and controls to counter the risk that they might be used to further financial crime and this includes compliance with financial sanctions obligations. Firms should screen against the UK Sanctions List to meet these new sanctions measures and screen against the Office of Financial Sanctions Implementation (OFSI) list of asset freeze targets for financial sanctions obligations. Firms are legally obliged to report to OFSI if they know or suspect that a breach of financial sanctions has occurred; if a person they are dealing with, directly or indirectly is a designated person; if they hold any frozen assets; or if knowledge or suspicion of these come to the firm while conducting business.
- The FCA reminds firms that its expectations concerning systems and controls in relation to compliance with financial sanctions are set out in FCG 7 of the Financial Crime Guide which includes examples of good and poor practice regarding firms' governance, risks assessment and approaches to screening in relation to financial sanctions. Furthermore, firms are reminded that where transactions give rise to concerns about sanctions evasion or money laundering they should also consider their obligations to report to the UK Financial Intelligence Unit at the National Crime Agency under the Proceeds of Crime Act 2002. Firms undertaking trade finance activities are also referred to the FCA's Dear CEO letter from September 2021 which provides additional guidance on sanctions considerations.
- We have also published a short video in which Jonathan Herbst provides some high level thoughts on some of the systems and controls issues firms should be thinking about.

Significant upscaling of Russia targeted sanctions just announced by U.K. Prime Minister

1. Full and immediate asset freeze of VTB bank (U.S. to implement the same measure)
2. New powers to exclude Russian banks from the UK financial system – no access to sterling and clearing payments through the UK.
3. New legislation to stop major Russian companies and the state from raising finance or borrowing money on UK markets
4. Asset freezes will be put on 100 new individuals or entities
5. Russian airline – Aeroflot –will be banned from the UK
6. Suspension of dual use export licences of goods that can be used for military purposes
7. UK will take action to stop exports of hi-tech items and oil refinery equipment (expected within coming days)
8. Limit on deposits Russians can make to UK bank accounts
9. Financial sanctions will be extended to Belarus
10. New economic crime legislation to be introduced, including extended provisions to target corruption, sanctions evasion and wider

11. SWIFT remains an option on the table – but for now Russia remains connected.

A quick take on the US economic sanctions imposed Thursday 24th February

- While extensive, and coordinated with allies and partners, they are essentially a package of targeted steps. Related to the above, this is *not* a comprehensive embargo of Russia; yes, there are embargoes related to certain regions of Ukraine (Crimea, DNR, LNR)—but not a Russian embargo.
- These sanctions are very complex, and not necessarily as "immediate" as advertised … it will take some (valuable) time for their impact to develop—especially given the delayed effectiveness of some of them, and wind-down periods before others are fully in effect. - Implementation will be very challenging for everyone involved (the govt, banks, private entities)
- Sberbank is *not* blocked … its assets are not frozen like the other banks.
- There's no isolation or cut-off from SWIFT . . .
- All transactions "related to energy" that were otherwise prohibited are authorized by a general license; that license defines "related to energy" to include "the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas . . . ." (That's a pretty big cut-out., in a critical sector for the Russian economy.)
- Enforcement of U.S. sanctions very much relies on parties' diligence and best efforts at complying with the rules, and the deterrent impact of potential penalties; that is, there is a HUGE trust factor here, and there will likely be attempts at evasion or circumvention, or non-compliance out of ignorance.
- One needs a masters degree in "OFAC" to sift through the agency's FAQs! :)

Investors' ability to buy and sell Russians assets such as stocks and bonds has deteriorated sharply in a sign that western sanctions are eroding the country's links to foreign capital markets.*Clearstream, a group that plays a central role in the European financial system, has cut off settlement of trades in roubles as banks, fund managers and trading infrastructure operators begin to remove Russia from global markets because of sanctions on Russian banks such as VTB.*

- Luxembourg-based Clearstream told clients late on Thursday that settlement in transactions involving the Russian rouble, which covers assets such as stocks and bonds, would cease with immediate effect. At the start of trading on Friday, the London Stock Exchange also suspended VTB Capital, a unit of the Russian bank, from trading in the UK's stock market.
- Clearstream said its decision was because of "increasing demand from its customers", underscoring how sanctions are already beginning to affect brokers and asset managers. The US, EU and UK on Thursday announced tough sanctions on Russian financial institutions and individuals but stopped short of directly halting trading activity in existing Russian assets or cutting the country off from the Swift financial messaging system.
- Settlement houses play a lesser-known but vital role in the market by settling trades on behalf of investors. The two largest depositories, Belgium's Euroclear and Clearstream, together hold about €50tn of assets in custody for global investors. Deals are usually finalised by transferring balances between customer accounts held at the depository.
- The Clearstream prohibition also blocked its customers from conducting rouble-based deals with clients of Euroclear. The latter has not halted settlement of deals in roubles. It declined to indicate whether it planned to do so following its rival's move.
- Many of the Russia-related transactions between customers of Euroclear and Clearstream are facilitated by VTB, Russia's second-largest financial institution. The US said the sanction on the bank would "sever a critical artery of Russia's financial system".
- The Clearstream move comes as Swiss wealth management giants Credit Suisse and UBS have also slashed the amount they are willing to lend to private bank clients using Russian assets as collateral, according to people familiar with the decisions. Both have also assigned a "zero lending value" to many Russian bonds, such as those of sanctioned banks VTB and Sberbank, effectively rendering them unusable to raise debt
- Similarly, Credit Suisse and UBS had been forced to trigger margin calls after the value of Russian corporate and sovereign debt plunged on Wednesday, the people added. Clients have been required to add new cash or securities to their accounts to cover the shortfall. Bloomberg first reported the developments regarding the wealth managers.

UBS declined to comment. Credit Suisse said it "serves its clients while complying with all applicable laws and regulations, including any sanctions from relevant authorities".

- Traders said activity on Thursday — when the prices of many Russian assets swung sharply lower — was "chaotic" as banks began closing their doors to Russian names ahead of impending sanctions. Local brokers in Moscow, who act as intermediaries between big banks in London and the Moscow Exchange, struggled to keep up with demand, traders said. The situation was exacerbated by the Russian central bank's decision on Thursday to implement a temporary ban on short selling, a method of betting stock prices will fall.
- As Russian bond markets collapsed on Thursday, fund managers said it became almost impossible to trade the country's debt, with banks quoting huge differences in the prices buyers and sellers were offering for the assets. At one point, a leading bank was offering to buy Russian government bonds at less than half the price it was prepared to sell. "It's still possible to sell [rouble-denominated Russian bonds] but you would have to pay a lot for the bank to take the clearing risk," said one portfolio manager. Another investor at a big asset manager described trading in Russian sovereign dollar bonds as "by appointment only". "This is a completely dislocated market," said Kaan Nazli, an emerging markets portfolio manager at Neuberger Berman

The impact of throwing Russia out of Swift; The messaging network has become the embodiment of the "weaponisation of finance"; Claire Jones – FT; Vladimir Putin's declaration of war on Ukraine has revived calls to kick Russia out of Swift. The measure is seen as among the most severe that the US, EU and UK could take. Denying Russian banks access to Swift is far from a given. It would, for instance, undermine Europe's capacity to pay for Russian oil and gas, perhaps raising energy prices in the process. Imposing a ban would also require strong consensus. At present, it's only the UK that really wants it and some EU members remain set against it. /jlne.ws/3BTe9H2

Morgan Stanley Discloses U.S. Probe Into Its Block-Trading Business; Firm says it's received requests from prosecutors since August; That followed inquiries from the SEC dating back to mid-2019 Morgan Stanley said U.S. regulators and prosecutors are investigating various aspects of its block-trading business, acknowledging the firm itself is under scrutiny as authorities dig into how Wall Street bankers and money managers carry out stock transactions big enough to move prices. /jlne.ws/3ph9pWq

London Drops VTB Shares As Russian Banks Feel Sanctions; Shares of a Russian investment bank were suspended from trading on the London Stock Exchange on Friday, after the U.K. government moved to freeze out the country's lenders from the City's financial system in a new set of sanctions after the invasion of Ukraine.

US, EU and UK Impose Unprecedented Sanctions Against Russia

Key Takeaways

- The U.S., EU, the UK and other major economies have taken unprecedented actions to impose economic sanctions and export controls restrictions on Russia

- and various Russian entities in response to the further invasion of Ukraine by Russia.
- The new measures go well beyond prior restrictions and will require businesses to thoroughly vet their activities involving Russia and newly sanctioned entities, individuals and regions to determine what actions need to be taken.
- As the geopolitical situation in Ukraine evolves, it remains possible that further sanctions and export controls restrictions will be imposed by Western countries.

Background

As noted in our prior update, the United States, European Union and United Kingdom imposed a number of sanctions in connection with Russia's recognition of the Donetsk and Luhansk regions of Ukraine. Following Russia's invasion of Ukraine on February 24, 2022, unprecedented (since the fall of the Soviet Union) new sanctions and export controls have now been imposed against Russia and various Russian entities.

As the geopolitical crisis in Ukraine evolves, it remains possible that further sanctions and export controls restrictions will be imposed by Western governments.

I. New U.S./EU/UK Sanctions

The most impactful sanctions imposed by the United States, European Union and United Kingdom from February 24, 2022, are summarized below. As described in the U.S. Treasury Department's Office of Foreign Assets Control's ("OFAC") press release, the objective of the sanctions measures is to "significantly impair [Russia's] ability to use the Russian economy and financial system … to raise capital key to its acts of aggression."

U.S. Sanctions

- **Listings/asset freezes on certain Russian banks**: VTB Bank, Otkritie, Sovcombank, Novicombank and subsidiaries

    - OFAC added four Russian banks to the List of Specially Designated Nationals ("SDN List"), most notably VTB Bank. U.S. persons generally are prohibited from engaging in activities involving these banks and their property interests (including debt and equity instruments issued by these banks), subject to the general licenses noted below.

    - General License 8 permits U.S. persons to engage in transactions "related to energy" involving VEB, VTB Bank, Otkritie, Sovcombank, or Sberbank until **June 24, 2022**. "Related to energy" is defined to include a range of activities, including extraction and purchase of petroleum products, and the development or transmission of power through any means.

- General License 9 authorizes U.S. persons to continue to hold debt and equity securities of VEB (which was sanctioned on February 22), VTB Bank, Otkritie, Sovcombank, or Sberbank until **May 25, 2022**. U.S. persons are permitted (but not required) to divest any such holdings to non-U.S. persons during this time but are not permitted to increase their holdings of such securities. Absent further guidance from OFAC, any securities of these banks that are held past the authorized period likely will need to be blocked and reported to OFAC. Novicombank was not included in the scope of General License 9, and it is unclear why Sberbank was included in this general license as it is not subject to blocking measures and at present there are no restrictions on holding existing debt or equity securities of Sberbank.

- General License 10 permits U.S. persons to engage in activities to wind down derivative contracts linked to a debt or equity instrument of VEB, VTB Bank, Otkritie, Sovcombank and Sberbank until **May 25, 2022**.

- General License 11 authorizes U.S. persons to engage in all transactions necessary to wind down all other activities involving Otkritie, Sovcombank, or VTB until **March 26, 2022**.

- OFAC issued other general licenses related to these SDN listings, including authorizations related to official business of certain international organizations (General License 5), agricultural commodities, medicine and medical devices (General License 6), and overflight payments (General License 7).

- OFAC also issued guidance stating that non-U.S. persons are subject to potential secondary sanctions for engaging in activities involving these newly sanctioned entities.

* **Banking restrictions but not full blocking measures**: Sberbank and subsidiaries

  - OFAC issued Directive 2 under E.O. 14024 to impose banking restrictions on Sberbank and twenty-five subsidiaries. Within 30 days, OFAC is requiring all U.S. financial institutions to close any Sberbank correspondent or payable-through accounts and to reject any future transactions involving Sberbank or its foreign financial institution subsidiaries.

  - These sanctions are not full blocking sanctions – Sberbank remains subject to new debt or equity restrictions under Directive 1 of the Sectoral Sanctions Identification List ("SSI List") and the new debt and equity restrictions under Directive 3 of E.O. 14024 (discussed below). U.S. persons generally are permitted to continue to engage in activities involving Sberbank (and its debt or equity instruments issued prior to the SSI List sanctions), but U.S. financial institutions will not process transactions involving Sberbank unless the activity is covered by one of the general licenses issued by OFAC (as described above).

- **New debt and equity restrictions**: Alfa Bank, Alrosa, Credit Bank of Moscow, Gazprom, Gazprom Neft, Gazprombank, Rostelecom, RusHydro, Russian Agricultural Bank, Russian Railways, Sberbank, Sovcomflot, Transneft and subsidiaries

    - OFAC issued [Directive 3 under E.O. 14024] to prohibit U.S. persons from dealing in any new equity or new debt instruments with a maturity of more than 14 days issued by thirteen Russian entities. These measures are identical to restrictions set forth under Directive 1 of the SSI List.

    - A number of the entities listed in this directive already were subject to new debt and/or equity restrictions under Directive 1 of the SSI List.

- **Listings/asset freezes related to Belarus**: Belinvestbank, Bank Dabrabyt and various other Belarusian entities and individuals

    - OFAC also added numerous Belarusian entities and individuals to the SDN List due to Belarus's support for, and facilitation of, the invasion of Ukraine. These include two state-owned banks (Belinvestbank and Bank Dabrabyt), various entities in the Belarus defense and security industries, and various Belarusian individuals (including government officials) involved in security-related activities. OFAC did not issue any wind down licenses with respect to these new designations.

- **Listings/asset freezes against "elites"**: Seven individuals described as being members of "families close to Putin" and "financial elites"

    - Three of the individuals are sons of current SDNs; another individual is the wife of a new SDN.

UK Sanctions

- On February 24, 2022, the UK announced its second wave of sanctions, building on the sanctions announced earlier this week, and implementing asset freezes on five individuals and six entities. Significantly, the asset freezes apply with immediate effect to VTB Bank, Rostec, Russia's largest defense company, and several other prominent defense, aircraft and shipbuilding companies. The individuals sanctioned include the Chairman and Deputy President of the management board of VTB Bank and the Chairman/CEO of Promsvyazbank (which itself was subjected to a UK asset freeze on February 22, 2022).

- The Prime Minister also announced that the UK would, among other measures, freeze the assets of all major Russian banks (resulting in their exclusion from the UK financial system), introduce legislation to stop major Russian companies from raising finance on UK markets, ban Russia's national airline Aeroflot from operating flights to or from the UK (Russia immediately retaliated by banning British aviation companies from flying to and over Russian territory), as well as introduce further asset freezes on over 100 new entities and individuals and trade restrictions and export controls against Russia's hi-tech and strategic industries. The secondary legislation to introduce these far-reaching restrictions will be announced in the coming days. The Prime Minister also set out that there is the potential to exclude Russia from the Swift payments system and that "nothing is off the table."

EU Sanctions

- On February 24, 2022, EU leaders met at a special summit and agreed on further sanctions against Russia. The package of sanctions has five pillars covering:
    - Capital markets: Financial sanctions that cut Russia's access to capital markets, including targeting 70% of the Russian banking market and key state-owned companies.
    - Energy: An export ban that will hit the oil sector by making it difficult for Russia to upgrade its oil refineries.
    - Aircraft: A ban on the sale of all aircraft, spare parts and equipment to Russian airlines.
    - Technology: Restrictions on Russia's access to important technologies, including semiconductors and other cutting-edge technologies.
    - Visas: Diplomats and related groups, and businesspeople, will no longer have privileged access to the European Union.

II. Export Controls

In coordination with approximately 32 allies that have committed to imposing similar rules, BIS has implemented a range of new measures that will restrict Russia's access to Western-made products, including products made outside the United States on the basis of sensitive U.S. technology. As described above, the U.S. government is targeting the Russian aerospace, defense and maritime sectors. BIS' press release announcing the measures (available here) expresses an objective to "cut the Russian military off from the technologies and products it needs to sustain its… aggression." These export control measures became effective on February 24, 2022, the date they were published in the Federal Register (available here). BIS also published a fact sheet to summarize the new restrictions (available here).

A selected summary of the new measures is provided below:

- New License Requirements and Licensing Policy of Denial. BIS imposed new license requirements, and announced a licensing policy of denial, for all Export Control Classification Numbers in Categories 3-9 of the Commerce Control List, impacting a wide swath of items not previously subject to licensing requirements for export or reexport to Russia. This will restrict Russia's ability to obtain goods it cannot produce itself without BIS authorization, including, in particular, many sensitive items on which Russia's defense, maritime and aerospace industries rely.

- New Direct Product Rules. The implementation of two significant new Foreign Direct Product ("FDP") rules specific to Russia and Russian military end users ("MEU").

    - New FDP rule for all of Russia ("Russia FDP rule"). The Russia FDP rule restricts Russia's ability to acquire foreign-made items that are (i) direct products of certain U.S.-origin software or technology subject to the Export Administration Regulations ("EAR"), or (ii) produced by certain plants or machinery that are themselves the direct product of certain U.S.-origin software or technology subject to the EAR. Foreign-produced EAR99 items are not subject to this rule, so ordinary Russians will continue to be able to access many consumer items.

    - New FDP rule for Russian MEU ("Russia-MEU FDP rule"). The Russia-MEU FDP rule extends beyond the Russia FDP rule to cover foreign-made items that are (i) direct products of any software or technology subject to the EAR that is on the Commerce Control List ("CCL"), or (ii) produced by certain plants or machinery that are themselves the direct product of any U.S.-origin software or technology on the CCL. These restrictions apply to most items designated EAR99.

    - Exemptions for Partner Countries. Exports and reexports to certain allied countries that are adopting or have expressed an intent to adopt substantially similar measures to BIS are not and will not be subject to the Russia and Russia-MEU FDP rules.

- Entity List Additions. Approximately 50 Russian entities have been added to the Entity List, requiring a BIS license to export, reexport, or transfer (in-country) all items subject to the EAR (including foreign-produced items under the Russia-MEU FDP rule) to these entities, with limited exceptions. BIS indicated that additional entities may be added to the Entity List in the future.

- Narrowing of License Exceptions. Restricts the use of many license exceptions for Russia exports, reexports and transfers (in-country). While certain sections of existing license exceptions remain available for exports to Russia, a number of existing license exceptions were narrowed. License applications for exports, reexports and in-country transfers no longer covered by license exceptions now are subject to case-by-case review.

- Extends the scope of restrictions on Russian military end users and uses to almost all items subject to the EAR. This covers all items subject to the EAR except for (i) food and medicine designated as EAR99; and (ii) items classified as ECCN 5A992.c or 5D992.c (related to encryption), so long as they are not for Russian "government end users" or Russian state-owned enterprises.

The business landscape in Russia continues to change rapidly. Companies should continue to keep abreast of legal developments, including U.S., UK and EU sanctions and export control laws and how they impact their business. In particular, identifying the growing array of companies, entities and individuals captured by the new sanctions and export controls restrictions will require careful consideration. In addition, companies should remain alert to available carveouts or exemptions and wind-down periods in connection with recent sanctions measures. As always, Dechert is available to advise on compliance with sanctions and export controls measures.

Regulatory Outlook and Diary

Q1 2022	EU	The European Commission (EC) will adopt a Delegated Act (DA) on specifying fees and rules of procedure for measures applicable to the supervision by ESMA of certain benchmark administrators (i.e. supervisory fees, fines and penalties for administrators of critical and/or third country benchmarks).
2022/2023	EU	The European Commission (EC) has published the 3rd Capital Requirements Regulation (CRR III) proposal on 27 October 2021 which will implement the Basel 3.1 framework in Europe. The CRR III will transpose the market risk standards (FRTB) as a binding capital constraint, the output floor, the revised credit valuation adjustment framework, alongside operational and credit risk framework, amongst others. The proposal will also take into consideration the impact of the COVID-19 crisis on the EU banking sector. From the EC's original proposal, most of the requirements are set to apply from 1 January 2025. In terms of next steps, we expect now negotiations to take place among Member States and the European Parliament to work on the CRR 3 banking package in the coming months. As a result of these negotiations, the implementation date of 1 January 2025 will be subject to change.
Q1 2022	EU	The European Commission shall publish a report describing the provisions that would be required to extend the scope of the EU Taxonomy regulation beyond environmentally sustainable economic activities and describing the provisions that would be required to cover economic activities that do not have a significant impact on environmental sustainability and economic activities that significantly harm environmental sustainability ('Brown Taxonomy') and whether other sustainability objectives such as social objectives should be added to the framework.
Q1 2022	EU	The European Commission shall adopt Delegated Acts (DAs) to specify the technical screening criteria with respect to 'the sustainable use and protection of water and marine resources', 'the transition to a circular economy', 'pollution prevention and control' and 'the protection and restoration of biodiversity and ecosystem' (Article 9 (c) -(f)), with a view to ensuring its application from January 1, 2023.

2022	Australia	Expected finalization of APRA prudential standard for IRRBB (APS 117).
Q1 2022	Australia	Expected 2nd ASIC consultation on updating the Australian reporting regime.
March 1, 2022	EU Switzerland Japan Canada Singapore Hong Kong Australia South Africa US	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds relevant threshold for initial margin requirements as of September 1, 2022. In the US, this calculation period only applies under CFTC regulations.
March 3, 2022	Singapore	MAS Notice SFA 04-N16 on Execution of Customers' Orders and the related Guidelines to the Notice take effect.
March 21, 2022	US	Comments due on SEC Proposed Rule: Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions (See SEC Release No. 34-93784).
March 31, 2022	UK	Following the use a temporary transitional power (TTP) by the bank of England, UK firms can continue to follow, until March 31, 2022, the procedures and arrangements for risk management in non-cleared derivatives business that were required under EU EMIR.
March 31, 2022	Hong Kong	End of extended transition period for reporting of the Enhanced CNY Conversion Service transactions by HK settlement banks under the Northbound Bond Connect to the HKTR.
April 2, 2022	Australia	Expiry of ASIC Corporations (Amendment) Instrument 2020/149, providing relief from mandatory clearing requirements for AUD-denominated FRAs.
April 6, 2022	US	FINRA SBS as Securities rules compliance date for margin rules.
April 13, 2022	US	Compliance date: CFTC Bankruptcy Regulations (See 86 Fed. Reg.19324-19477 (April 13, 2021)).
April 14, 2022	US	SEC Compliance Date 3 of Regulation Security-Based Swap Reporting. Persons with a duty to report historical security-based swaps in an asset class must do so by Compliance Date 3, which is the date that is two months after Compliance Date 2.
June 1, 2022	US	Three-month calculation period begins under US prudential regulations to determine whether the material swaps exposure, or daily average aggregate notional amount, of swaps, security-based swaps, FX swaps and FX forwards for an entity and its affiliates that trade with a prudentially regulated swap dealer exceeds $8 billion for the application of initial margin requirements as of January 1, 2023.

June 1, 2022	EU	The European Supervisory Authorities (ESMA, EBA, EIOPA) shall submit draft Regulatory Technical Standard (RTS) on the presentation and content for the environmental objectives 'the sustainable use and protection of water and marine resources', 'the transition to a circular economy', 'pollution prevention and control' and 'the protection and restoration of biodiversity and ecosystem' under the EU Taxonomy Regulation.
June 30, 2022	EU	The temporary recognition of UK CCPs (LME, ICE and LCH) under the EMIR 2.2. framework expires. Unless further addressed, following this date, EU firms could not have access to the UK CCPs and would need to relocate their clearing activities to EU CCPs. Please note that under EMIR 2.2, ESMA has also performed its tiering assessment, with LME becoming a Tier 1 CCP whereas ICE and LCH are considered Tier 2 CCPs.
June 30, 2022	EU	Expiry of the derogation from collateralization of cross-border intragroup transactions under the EMIR Margin RTS. International groups wanting to avail of the intragroup exemption for cross-border intragroup trades involving a group entity under US PRU, Australian, Brazilian, Canadian, Hong Kong or Singaporean jurisdiction should obtain confirm permission to use the exemption from their NCAs by November 26, 2021, i.e. entry into force of the equivalence decisions taken under EMIR article 13 (July 26, 2021) + 4 months. See: US PRU equivalence; Singapore Equivalence; Brazil equivalence; Canada equivalence; Hong Kong equivalence; Australia equivalence.
June 30, 2022	Korea	Basel III: Expiry of FSS no-action relief for NSFR for special banks.
Q3 2022	Global	The Financial Stability Board (FSB) recommends that regulators implement the CPMI-IOSCO Unique Product Identifier (UPI) Technical Guidance to take effect no later than in the third quarter of 2022
Q3 2022	Australia	Expected publication of the updated ASIC reporting regime, with a 1-year implementation period.
Q2, Q3, Q4 2022	Hong Kong	Consultation of Hong Kong's reporting rules on adoption of UPI and CDE.
July 01, 2022	EU	Article 11 requirements with respect to periodic reports under the sustainability-related disclosures in financial sector regulation (SFDR) shall apply.
July 31, 2022	US	Expiration of an extension of relief to Shanghai Clearing House permitting it to clear swaps subject to mandatory clearing in the People's Republic of China for the proprietary trades of clearing members that are US persons or affiliates of US persons (CFTC Letter No. 20-46).
September 1, 2022	US EU	Initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding EUR 8 billion.

	Australia	Initial margin requirements apply to Phase 6 APRA covered entities with an aggregate notional amount exceeding AUD 12 billion.
	Canada	Initial margin requirements apply to Phase 6 covered entities with aggregate month-end average notional amount exceeding CAD 12 billion.
	Hong Kong	Initial margin and risk mitigation requirements apply to Phase 6 HKMA AIs and SFC LCs with an aggregate notional amount exceeding HKD 60 billion.
	Korea	Initial margin requirements apply to financial institutions with derivatives exceeding more than KRW 10 trillion.
	Switzerland	Initial margin requirements apply to counterparties whose aggregate month-end average position exceeds CHF 8 billion.
	Singapore	Initial margin requirements apply to Phase 6 MAS covered entities with an aggregate notional amount exceeding SGD 13 billion.
	Japan	Initial margin requirements apply to Phase 6 JFSA covered entities with an aggregate notional amount exceeding JPY 1.1 billion.
	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 15 trillion
September 1, 2022	US	Expiration date of No-Action relief issued by the Division of Trading and Markets at the US Securities and Exchange Commission in respect of Exchange Act Rule 19a-3. The relief provides that Staff will not recommend enforcement action if a nonbank Security Based Swap Dealer does not collect initial margin from a Phase 6+ Counterparty (those with CFTC AANA of USD 50 billion or less) before September 1, 2022, provided a record of such Phase 6+ Counterparties is preserved for at least three years
September 30, 2022	Australia	Expiry of ASIC Corporations (Amendment) Instrument 2020/242, providing relief from reporting certain unique transaction identifiers (UTIs) and from NZ banks reporting entity information. Expiry of ASIC Corporations (Amendment) Instrument 2020/827, providing relief from reporting exchange-traded derivatives, name information and FX securities conversion transactions.
October 9, 2022	Global	The Financial Stability Board (FSB) recommends that jurisdiction-level regulators implement the CPMI-IOSCO Unique Product Identifier (UPI) Technical Guidance to take effect no later than third quarter 2022.
October 9, 2022	Global	Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) recommend that jurisdiction-level regulators implement the CPMI-IOSCO Critical Data Elements (CDE) Technical Guidance to take effect no later than October 9, 2022.

End 2022	Singapore	Expected publication of the updated MAS reporting regime; delay from originally indicative Q2 2022 timeline.
December 30, 2022	EU	Requirements under EU Regulation 2019/2088 on sustainability-related disclosures in the financial sector (SFDR) with respect to the comply or explain product-level adverse impacts (Article 7) shall apply
December 31, 2022	EU	The European Commission shall review the minimum standards of carbon benchmarks (climatetransition and Paris-aligned benchmarks) in order to ensure that the selection of the underlying assets is coherent with environmentally sustainable investment as defined by the EU taxonomy.
December 31, 2022	EU	Before December 31, 2022, the European Commission shall present a report to the co-legislators on the impact of an 'ESG benchmark', taking into account the evolving nature of sustainability indicators and the methods used to measure them. The report shall be accompanied, where appropriate by a legislative proposal
December 31, 2022	EU	Before December 31, 2022, the European Commission shall propose minimum sustainability criteria, or a combination of criteria for financial products that fall under Art. 8 of the SFDR, in order to guarantee minimum sustainability performance of such products.
December 31, 2022	UK	As established by the Policy Statement PS14/21 published by the UK FCA and the UK PRA in June 2021 (https://www.bankofengland.co.uk/policy-statement/ps1421.pdf), UK firms are able to continue to use EEA UCITS as eligible collateral under the UK non-cleared margin rules.
January 2023	Australia	Expected effective date of APRA banking standards relating to the overall approach to capital requirements, SA-CCR and the internal ratings-based approach to credit risk.
2023	Australia	Expected finalization of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks
January 1, 2023	Global	FRTB: Banks are required to report under the new market risk standards by January 1, 2023.
January 1, 2023	Global	Leverage Ratio: Banks are required to calculate leverage using the revised exposure definitions, including the G-SIB buffer from January 2023
January 1, 2023	Global	CVA: Banks are required to implement the revised CVA framework from January 2023.
January 1, 2023	EU	New application date for the leverage ratio surcharge for G-SIIs in the EU as agreed in the CRR quick fix legislation finalised in June 2020.
January 1, 2023	EU	Application of the Regulatory Technical Standards (RTS) under the Sustainable Finance Disclosure Regulation including disclosures for use of ESG-linked derivatives (except from first detailed reporting on the principal adverse impact indicators due by June 30, 2023).
January 1, 2023	EU	From 2023, the disclosure requirement under Regulation EU 2020/852 on the establishment of a framework to facilitate sustainable investment ('EU Taxonomy') with respect to the environmental objectives 'the sustainable use and protection of water and marine resources', 'the transition to a circular economy', 'pollution prevention and control' and

		'the protection and restoration of biodiversity and ecosystem' (Article 9 (c) -(f)) have to be applied
January 1, 2023	US	Initial post phase-in compliance date for US prudential initial margin requirements for an entity that trades with a prudentially-regulated swap dealer and for which the material swaps exposure of the entity and its affiliates exceeds $8 billion.
January 1, 2023	US	CFTC Position Limits second compliance date for economically equivalent swaps / risk management exemption.
January 1, 2023	Australia	Basel III: Expected implementation of revised leverage ratio requirements, including revised treatment for client clearing.
January 1, 2023	Singapore	Basel III: Expected implementation of FRTB framework for supervisory reporting purposes.
January 1, 2023	Singapore	Basel III: Expected implementation of revised credit risk, operational risk, output floor and leverage ratio frameworks.
January 1, 2023	Malaysia	Discontinuation of publication of 2-month and 12-month KLIBOR by BNM.
January 2, 2023	EU	In the context of EMIR 2.2, the European Commission shall produce a report assessing the effectiveness of: • ESMA's tasks, in particular the CCP Supervisory Committee's, in fostering the convergence and coherence of the application of EMIR2.2 among the competent authorities; • the framework for the recognition and supervision of third-country CCPs; • the framework for guaranteeing a level playing field among CCPs authorized in the EU and third-country CCPs; and • the division of responsibilities between ESMA, the competent authorities and the central banks of issue (EMIR article 85 (7)).
February 12, 2023	EU	CCP R&R (Article 37 (4)): ESMA shall develop draft regulatory technical standards to specify further the minimum elements that should be included in a business reorganisation plan. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph.
February 12, 2023	EU	CCP R&R (Article 38 (4)): ESMA shall develop draft regulatory technical standards to specify further the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority.
March 31, 2023	Japan	Basel III: Expected implementation of revised credit risk, CVA, operational risk, leverage ratio and FRTB frameworks.

Q2 2023	Singapore	Expected go-live of the updated MAS reporting regime.
May 25, 2023	US	Swap data repositories (SDRs), swap execution facilities (SEFs), designated contract markets (DCMs), and reporting counterparties must comply with the amendments to the CFTC swap data reporting regulations §§43.4(h) and 43.6 by the compliance date of May 25, 2023.
June 15, 2023	EU	The European Commission shall adopt a Delegated Acts (DA) to designate exempted FX spot rates from the scope of the EU BMR.
June 15, 2023	EU	The European Commission (EC) shall submit a report to the European Parliament and to the Council on the scope of the BMR, in particular with respect to the use of third country benchmarks. If appropriate, the EC shall accompany the report with a legislative proposal.
June 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the calibration of the Standardised Approach for Counterparty Credit Risk (SA-CCR) which will potentially inform a future review by the European Commission.
June 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the treatment of repos and reverse repos as well as securities hedging in the context of the Net Stable Funding Ratio (NSFR).
July 1, 2023	Hong Kong	Basel III: Locally incorporated AIs required to report under revised FRTB and CVA frameworks.
July 1, 2023	Hong Kong	Basel III: Expected implementation of revised credit risk, operational risk, output floor, and leverage ratio frameworks
Q3/ Q4 2023	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
Q3 2023	Australia	Expected go-live of the updated ASIC reporting regime.
September 1, 2023	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion.
December 31, 2023	EU	The amended Benchmarks Regulation that entered into force on February 13, 2021 extends the BMR transition period for non-EU benchmark administrators until December 31, 2023 and empowers the European Commission (EC) to adopt a delegated act by June 15, 2023 to prolong this extension by maximum two years until December 31, 2025. It also enables the EC to adopt delegated acts by June 15, 2023 in order to create a list of spot foreign exchange benchmarks that will be excluded from the scope of Regulation (EU) 2016/1011. The transition period for benchmarks administered in non-EU jurisdictions ('3rd country benchmarks') expires. By June 15, 2023, the European Commission can adopt Delegated Acts to extend the transitional period for non-EU benchmarks until December 31, 2025.

End 2023	Singapore	Expected go-live of the updated MAS reporting regime; delay from originally indicative Q2 2023 timeline.
December 04, 2023	US	Swap data repositories (SDRs), swap execution facilities (SEFs), designated contract markets (DCMs), and reporting counterparties must comply with the amendments to the CFTC swap data reporting regulations found in Part 43, Part 45 and Part 49 by the compliance date of December 5, 2022; provided, however that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§43.4(h) and 43.6 by December 4, 2023.
January 1, 2024	Australia	Basel III: Expected implementation of FRTB framework.
January 2024	Australia	Expected effective date of APRA prudential standard for IRRBB (APS 117).
January 4, 2024	EU	The three-year derogation from margin rules in respect of non-centrally cleared over-the-counter derivatives, which are single-stock equity options or index option where no EMIR Article 13(2) equivalence determination is in place, was due to expire on January 4, 2021. The revised EMIR margin RTS, published in the official journal of the EU on February 17, 2021 and applicable since February 18, 2021, extended the period of availability of the equity options derogation to January 4, 2024.
January 4, 2024	Hong Kong	Expiry of the SFC exemption from margin requirements for non-centrally cleared single stock options, equity basket options and equity index options.
February 12, 2024	EU	CCP R&R (Article 96): ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.
September 1, 2024	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 100 billion.
January 1, 2025	EU	Expected implementation of FRTB and CVA risk under the CRR III proposal.
January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
February 12, 2026	EU	CCP R&R (Article 96): The European Commission (EC) shall review the implementation of this Regulation and shall assess at least the following: • the appropriateness and sufficiency of financial resources available to the resolution authority to cover losses arising from a non-default event • the amount of own resources of the CCP to be used in recovery and in resolution and the means for its use • whether the resolution tools available to the resolution authority are adequate.

		Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.
June 28, 2024	EU	As part of CRR II, the European Banking Authority is to monitor and report to the European Commission on Required Stable Funding (RSF) requirements for derivatives (including margin treatment and the 5% gross-derivative liabilities add-on).
June 28, 2024	EU	As part of the review clause inserted in CRR II, the European Commission taking into account the reports by the European Banking Authority is expected to review the treatment of repos and reverse repos as well as securities hedging transactions through a legislative proposal.
September 1, 2024	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 100 billion.
Q4 2024/Q1 2025	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
February 12, 2026	EU	CCP R&R (Article 96): The European Commission (EC) shall review the implementation of this Regulation and shall assess at least the following: • the appropriateness and sufficiency of financial resources available to the resolution authority to cover losses arising from a non-default event • the amount of own resources of the CCP to be used in recovery and in resolution and the means for its use • whether the resolution tools available to the resolution authority are adequate. Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.
June 2026	EU	Commodity dealers as defined under CCR, and which have been licensed as investment firms under MiFID 2/ MIFIR have to comply with real capital/large exposures/liquidity regime under Investment Firms Regulation (IFR) provisions on liquidity and IFR disclosure provisions.
August 12, 2027	EU	CCP R&R (Article 96): The Commission shall review this Regulation and its implementation and shall assess the effectiveness of the governance arrangements for the recovery and resolution of CCPs in the Union and submit a report thereon to the European Parliament and to the Council, accompanied where appropriate by proposals for revision of this Regulation.

Regulatory Activities and Initiatives Inventory

COVID-19

UK	BoE & PRA	Speech by Victoria Saporta, Executive Director for Prudential Policy, on emerging prudential lessons from COVID-19. ECB extends leverage ratio relief for banks until March 2022.
	FCA	Approach to regulating firms in relation to the UK Government's Recovery Loan Scheme (RLS) Finalised Guidance on helping consumers with rights and routes to refund in light of COVID-19 COVID-19 guidance for employers in relation to automatic enrolment and DC pension contributions.
	HMT	
EU	EBA	Supervisory statement on the ORSA in the context of COVID-19 Speech by José Manuel Campa, EBA Chairperson, on the measures taken by banks in relation to COVID-19. Thematic note comparing provisioning in the United States and the EU during the peak of COVID-19.
	ESMA	Autumn 2021 report on risks and vulnerabilities across the financial sector, including risks from COVID-19 Announcement stating that ESMA anticipates a prolonged period of risk from market corrections.
	ECB Central Bank	Speech by Fabio Panetta, Member of the Executive Board of ECB, on monetary-fiscal interactions on the way out of the crisis. Speech by Luis de Guindos, Vice President of the ECB, on euro area banks' pandemic recovery. Interview with Christine Lagarde, President of the ECB, on the recovery of the European economy from COVID-19.

		Publication on the suspension of redemptions during COVID-19, discussing the case for pre-emptive liquidity measures.
	ECB - SSM	Speech by Kerstin af Jochnick, Member of the Supervisory Board of the ECB, on how European banks have coped with the pandemic. ECB extends leverage ratio relief for banks until March 2022. Interviews with Andrea Enria, Chair of the Supervisory Board of the ECB, on topics including: the risks banks face in relation to asset quality and profitability as a result of COVID-19; rising NPLs; and climate risk. Annex 1 Annex 2
	SRB	Note on the financial stability implications of COVID-19 support measures. Speech by Elke König, SRB Chair, on the impact of COVID19 on digital banking, and relevant challenges and opportunities
	European Commission	Speech by Valdis Dombrovskis, Executive Vice-President of the European Commission, on EU economic recovery from COVID-19.
	EP - ECON	Papers on avoiding the risk of financial dominance and disorderly market reactions beyond COVID-19. European Council and Parliament agreement on Credit Servicers and Purchasers Directive for non-performing loans.
	ECOFIN	
	EIOPA	
International	BIS	Speech by Agustín Carstens, BIS General Manager, on the role of macroprudential policies during economic crises, including during COVID-19. Speech by Denis Beau, First Deputy Governor of the Bank of France, on bank capital regulation post-pandemic. Annual Economic Report on securing a durable recovery after COVID-19.

		Speech by Agustín Carstens, General Manager of the BIS, on challenges faced by central banks exiting the pandemic. Speech by Fernando Restoy, Chair of the BIS Financial Stability Institute, on potential changes to prudential policy post COVID-19 and key challenges for prudential authorities. Statement by Randal Quarles, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, on supervision and regulation through COVID-19. Speech by Klaas Knot, President of the Central Bank of the Netherlands, on rebuilding resilience in the financial system after COVID-19. Written brief on redefining insurance supervision in the 'new normal' era post COVID-19. Speech by Pablo Hernandez de Cos on the evaluation of the effectiveness of Basel III during COVID-19 and beyond. Link Speech by Pablo Hernández de Cos on how to help the recovery of viable firms affected by COVID-19
	FSB	Report on preliminary lessons for financial stability from the COVID19 experience.
	BCBS	Report on early lessons from the COVID-19 pandemic on the Basel reforms.
	IOSCO	
	IMF	
	IAIS	Press Release announcing the IAIS conclusion of mid-year committee and stakeholder meetings, noting solid progress in delivering on the IAIS Strategy 2020-2024 and sharing key learnings from COVID-19.
Brexit		
UK	HMT	Markets in Financial Instruments Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations 2021 laid before parliament, addressing deficiencies in retained EU law and making technical amendments to certain exemptions to the financial promotions regime laid before parliament.

		Annex
		Statutory Instrument amending retained EU law in relation to the non-discriminatory access regime for exchange traded derivatives, the low carbon benchmarks regime and the financial promotions regime for relevant markets to ensure that they apply to the UK following the UK's departure from the EU.
	Parliament	
	BOE	
	ECPB	Opinions on the Commission's draft UK data adequacy decisions published, including one opinion on adequacy under the GDPR, and another on adequacy under the Law Enforcement Directive. Annex
	FCA	
	PRA	Consultation on PRA's proposed updates to its approach to insurance business transfers following the UK's withdrawal from the EU. Update on the PRA's approach to firm authorisation under the Temporary Permissions Regime.
EU	EU	Adequacy decisions for the UK under the GDPR and Law Enforcement Directive adopted. The UK government issued a statement welcoming the decisions. Annex 1 Annex 2
	ECON	Report on the main differences in the supervision of large banks in the UK and euro area, and the risks of regulatory divergence.
	ECB	
	ESMA	

	EBA	
Banking Prudential		
UK	BOE	Dear CFO letter giving thematic feedback from the 2020/2021 round of written auditor reporting. Statistical releases on: i. claims on and liabilities to other countries by UK banks and building societies in Q2 2021; and ii. mortgage lending activities of 340 mortgage lenders and administrators in Q2 2021. Dear CEO Letter on thematic findings on the reliability of regulatory reporting Financial Policy Committee's July 2021 financial stability report CP on the BoE's review of its approach to MREL and operational guide on bail-in execution. annex Consultation paper on the fees regime for financial market infrastructure supervision 2021/22. Updates to the Bank of England's approach to assessing resolvability. Monetary Policy Report for May 2021, maintaining the Bank Rate at 0.1%. Speech by Sam Woods, CEO of the PRA, on the PRA's plans for the future regulation of building societies. Working paper on evidence on the relative performance of regulatory requirements for small and large banks.
	PRA	Policy statement on the application of existing consolidated prudential requirements to financial holding companies, and

statement of policy on supervisory measures and penalties in relation to financial holding companies

Annex 1

Annex 2

Consultation on changes to requirements on the identification of material risk takers for the PRA's remuneration regime.

Consultation on prudential liquidity requirements for Domestic Liquidity Sub-Groups.

PS on implementation of Basel standards.

PS on IRB UK mortgage risk weights and the management of deficiencies in model risk capture.

Statement on PRA’s updated approach to shareholder distributions by large UK banks.

PS on PRA's approach to the supervision of international bank branches and subsidiaries.

Policy statement on credit risk: approach to overseas IRB models.

PRA Annual Report 2021.

Consultation paper on proposed rules for the application of existing consolidated prudential requirements to financial holding companies and mixed financial holding companies.

CP14/21 - Consultations by the Financial Policy Committee (FPC) and PRA on changes to the UK leverage ratio framework.

2021/22 Business Plan, setting out the PRA’s strategy, workplan and budget for the year ahead.

Statement on the progress of the Working Group on Productive Finance, including the development of the Long-Term Asset Fund (LTAF) and the Group's next phase of work.

Statement on the 2022 and 2023 supervisory benchmarking exercise relating to capital internal models.

Approach to updating requirements on the identification of material risk takers.

Final policy on ensuring OCIR and updated supervisory statement on resolution assessment and public disclosure by firms.

Annex

HMT

FCA — Mortgage and re-mortgage product sales data from 1 January 2016 to 31 December 2020.

EU

EBA — Launch of 2021 EU-wide transparency exercise, based on supervisory reporting data.

Revised list of Implementing Technical Standards validation rules on supervisory reporting.

Final guidelines to assess breaches of large exposure limits

Revised guidelines on stress tests of deposit guarantee schemes.

Study showing that EU banks' funding plans are poised to return gradually to a pre-pandemic funding composition by 2023.

Revised Decision confirming the quality of unsolicited credit assessments by certain External Credit Assessment Institutions for calculating banks' capital requirements.

Final revised guidelines on sound remuneration policies taking into account the amendments introduced by CRD V.

Staff paper on a universal stress scenario approach for capitalising non-modellable risk factors under the FRTB.

Final guidelines for the use of data inputs in the expected shortfall risk measure under the Internal Model Approach for market risk.

Annual report on asset encumbrance.

DP on the EBA's proportionality assessment methodology.

Consultation on draft RTS on the criteria for the identification of shadow banking entities for the purposes of reporting large exposures.

Final guidelines on the monitoring of the threshold and other procedural aspects on the establishment of intermediate EU parent undertakings.

Results of the EBA's 2021 EU-wide stress test.

EBA's 2020 Annual Report.

Implementing technical standards on 2022 benchmarking of internal model approaches.

Study of cost of compliance of supervisory reporting requirements.

Updated EBA Methodological Guide, including an updated list of risk indicators and analysis tools.

Opinion on measures to address macroprudential risk in France, through large exposure limit for highly indebted Non-Financial Corporations.

Report on the treatment of incoming third-country branches under national law of EU Member States.

Consultation on amendments to reporting on securitisation, asset encumbrance and Global Systematically Important Institutions (GSIIs).

Consultation on review of guidelines on common procedures and methodologies for the SREP.

Statement on timing for publication of 2021 EU-wide stress test results.

Report on RegTech use in the EU, including recommendations for steps to be taken to support the adoption and scale-up of RegTech solutions.

Revised list of ITS validation rules.

Regulatory technical standards on risk retention requirements under the Securitisation Regulation.

Results of the EU-wide pilot exercise on climate risk.

Consultation on Pillar 3 disclosure of interest rate risk exposures.

Plans for the 2021 EU-wide transparency exercise and EBA risk assessment report.

Discussion paper on NPL data templates.

Updated data on deposit guarantee schemes across the EEA covering available financial means, and covered deposits.

Phase one of the EBA's 3.1 reporting framework published, including new reporting requirements for investment firms.

Report on convergence of supervisory practices in 2020.

Report on Member States' reliance on external credit ratings.

Report on the application of the BRRD early intervention framework.

Report on the reduction of MREL shortfall for the largest EU banks as of December 2019.

ESMA

ECB - SSM

Basel III developments, including:

ECB-EBA letter on EU implementation of outstanding Basel III reforms;

EBA regular monitoring report on Basel III full implementation in the EU; and

speech by Elizabeth McCaul, Member of the Supervisory Board of the ECB, on implementing the Basel III reforms in Europe.

Speech by Andrea Enria, Chair of the Supervisory Board of the ECB, on:

avenues to accelerate progress on the integration of the EU banking sector; and

the challenges facing euro area banks.

Andrea Enria, Chair of the Supervisory Board:

Letter on the ECB's general approach to assessing banks' management of non-performing loans.

Speech on the outlook for the eurozone economy and emerging risks in the banking union.

Q1 2021 supervisory banking statistics

Annual report on the outcome of the 2020 SREP IT Risk Questionnaire, including feedback to the industry.

Article by Elizabeth McCaul, Member of the Supervisory Board, on credit risk and how acting now paves the way for sound resilience later.

	Decision not to extend recommendation that all banks limit dividends beyond 30 September 2021. Statement on the ECB's decision to supervise securitisation requirements for significant banks. Supervisory newsletter published, covering topics including the impact of COVID-19 on banks' credit risk management and the new regulatory regime for large investment firms. Contribution to the European Commission's targeted consultation on the review of the crisis management and deposit insurance framework. Speech by Andrea Enria, Chair of the Supervisory Board of the ECB, on Basel III implementation in the EU. Interview with Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, on monitoring credit risks during COVID-19, addressing climate change risks and the diversity of banks' boards.
ECB Central Bank	Monetary policy decisions including interest rates, the asset purchase programme, the pandemic emergency purchase programme, and refinancing operations. Euro area bank interest rate statistics for July 2021 Interview with Christine Lagarde, ECB President, on topics including COVID-19, social and gender inequality, climate change and decentralised currencies Interview with Luis de Guindos, Vice-president of the ECB, including commentary on the use of macroprudential tools and the need for EU banking market consolidation. Research bulletins on: the role of macroprudential policies in avoiding a financial epidemic; and a novel risk management perspective for macroprudential policy

Isabel Vansteenkiste appointed Director General International and European Relations

Staff paper on the growth-at-risk perspective on the system-wide impact of Basel III finalisation in the euro area.

Survey on the Access to Finance of Enterprises in the euro area.

Changes to the Eurosystem's loan-level data requirements.

Macroprudential bulletin on the factors what make banks adjust dividend payouts.

Macroprudential bulletin evaluating the impact of dividend restrictions on euro area bank valuations.

Financial Stability Review - May 2021.

Updated treatment of leverage ratio in the Eurosystem monetary policy counterparty framework.

EU banking sector structural indicators for the end of 2020.

TARGET2 2020 annual report, providing information on TARGET2 traffic, performance, and developments in 2020.

Speech by Luis de Guindos, Vice-President of the ECB, on climate change and financial integration. Link

Euro area securities issues statistics for March 2021.

ECOFIN

ESRB

September 2021 risk dashboard.

Occasional papers on:

growth-at-risk and macroprudential policy design; and

the benefits of the LEI for monitoring systemic risk.

Report on macroprudential policy issues arising from the low interest rate environment.

	SRB	Statement on 2022 resolution reporting, highlighting the importance of high quality, complete and timely data submissions.
		Interview with Elke König, Chair, on the regulation of medium-sized banks.
		Blog by Jan Reinder de Carpentier, Vice Chair, urging the EU to complete the Banking Union.
		Update on the application of RTS provisions on prior permissions, complementing July 2021 guidance.
		Blueprint for the crisis management and deposit insurance framework review.
		Updated MREL policy and MREL dashboard for Q4 2020.
		Annex
International	BIS	Speech by Carolyn Rogers, Secretary General of the Basel Committee on Banking Supervision, on the Basel III framework.
		Speech by François Villeroy de Galhau, Governor of the Bank of France, on developing the EU banking Union.
		Speech by Joachim Wuermeling, Member of the Executive Board of Deutsche Bundesbank, on transformation finance and challenges for the banking system.
		Insight paper on institutional arrangements for bank resolution.
		Speech by Fernando Restoy, Chair of the BIS Financial Stability Institute, on the role of deposit insurance in improving funding of bank resolution in the banking union.
		Speech by Carolyn Rogers, Secretary General of the BCBS, on the outlook for banking, covering topics including COVID-19 risks and vulnerabilities in the banking system, Basel III and innovation.

	FSB	New financial stability surveillance framework
	BCBS	Finalised technical amendments for minimum haircut floors for securities financing transactions.
		Targeted consultation on an amendment to the process for reviewing the G-SIB assessment methodology
Conduct		
UK	HMT	
	FCA	Joint FCA-PRA Dear CEO letter on Trade Finance Activity.
		Dear CEO letter on expectations of firms in reporting BBLS fraudulent activity.
		Dear CEO Letter for retail banks regarding common control failings identified in AML frameworks.
		Access to cash:
		a) joint statement with the PSR on access to cash; and
		b) speech by Sheldon Mills, Executive Director of Consumers and Competition, on protecting access to cash and banking services.
	BOE	Working paper on gender, age, and nationality diversity in UK banks.
		Speech by Andy Haldane, Chief Economist at BoE "Thirty years of hurt, never stopped me dreaming", summarising his time at the BoE.
		Minutes of the Wholesale Distribution Steering Group 4th May 2021 meeting on access to cash.
	PRA	Letter from the PRA and FCA on 'Pre-settlement counterparty credit exposure management and controls for Delivery versus Payments (DvP) Clients'.
		Annex
		Results of annual firm feedback survey 2020.
	CMA	

EU	EBA	Final guidelines on internal governance under CRD.
		EBA and ESMA joint final guidance on fit and proper requirements following amendments to CRD V and IFD.
		Consultation to amend technical standards on credit risk adjustments.
		Report on mystery shopping activities of national authorities.
	ESMA	
	ECB as a Central Bank	
	ECB - SSM	ECB launches consultation on updates to options and discretions policies.
		Blog by Edouard Fernandez-Bollo, Member of the Supervisory Board at the ECB, on fostering a compliance culture in the European banking system.
		Speech by Andrea Enria, Chair of the Supervisory Board of the ECB, on the effectiveness of European banks' boards.
	SRB	Publication of approach to notifying impracticability to include bail-in recognition clauses in contracts.
	ECOFIN	NPLs: provisional agreement on selling credit to third parties
	European Commission	Consultation on improving transparency and efficiency in secondary markets for NPLs.
		Annex
	European Parliament	Briefing on the gender balance on the boards of significant banks in the banking union.
International	FSB	
	BIS	Working paper on limits of stress-test based bank regulation.
		Launch the Central Banks' and Supervisors' Climate Training Alliance ahead of COP26.
Capital Markets Prudential		
UK	PRA	Update on the remuneration benchmarking and high earners 2020 submissions.
		Minutes of the September 2021 Post-Trade Task Force meeting.

BOE	Discussion paper on supervisory stress testing of central counterparties (CCPs) Consultation on modifications to the derivatives clearing obligation to reflect interest rate benchmark reform. Policy statement on modifications to the derivatives clearing obligation to reflect interest rate benchmark reform. Approach to the monitoring of third country systems designated under the Settlement Finality Regulations. Martin Pluves appointed as external member of the Financial Market Infrastructure Board. LIBOR: a) speech by Andrew Bailey, Governor, on LIBOR transition; b) minutes of the Working Group on Sterling Risk-Free Reference Rates 30 March 2021 meeting (published May 2021); c) the Working Group on Sterling Risk-Free Reference Rates recommend the use of overnight SONIA, compounded in arrears, as the successor rate to GBP LIBOR for the operation of fallbacks in bond documentation that envisage the selection of a recommended successor rate; d) joint statement with the FCA encouraging market participants to switch to SONIA in the sterling exchange traded derivatives market from 17 June 2021; and e) speech by John C Williams, President and CEO of the Federal Reserve Bank of New York, on LIBOR transition
FCA	Further arrangements for the orderly wind-down of LIBOR at end-2021. Annex 1 Annex 2 Annex 3

		Joint letter with the PRA on pre-settlement counterparty credit exposure management and controls for delivery versus payment clients. Consultation on a policy framework for exercising the FCA's new powers under the BMR, relating to the use of critical benchmarks that are being wound down.
EU	ECOFIN	
	ECB Central Bank	Recommendations of the private sector working group on euro risk-free rates on EURIBOR fallbacks.
	EU	Report on improving securities settlement and CSDR Targeted consultation on the functioning of the EU securitisation framework.
	EBA	
	ESMA	2022 annual work programme. Final guidelines on settlement fails reporting under Article 7 of CSDR. Consultation on the review of the MiFID II best execution reporting regime. Consultation on the review of the short selling regulation Recommendation to European Commission to delay buy-in rules under the CSDR. Updated Q&As on: EMIR implementation; SFTR data reporting; and MIFID II & MiFIR transparency topics. MiFID II review report on algorithmic trading.

Letter from Chairman of the EUR Risk Free Rates Working Group to the European Commission on transition from EONIA to the Euro Short Term Rate.

Opinion on how access to and use of credit ratings can be improved in the EU.

National rules on notifications of major holdings under the Transparency Directive.

Methodology for assessing third country CCPs' systemic importance.

Consultation on EMIR reporting guidelines.

Public statement on the prospectus disclosure and investor protection issues raised by special purpose acquisition companies (SPAC).

CP on the review of guidelines on delayed disclosure of inside information under MAR, in relation to its intersection with prudential supervision

Annual review report on MiFID II/MiFIR and RTS 2.

ESMA's 2020 Annual Report.

Announcement of the appointment of James von Moltke as Chairman of the Euro Risk-Free Rates Working Group

Report on the implementation and functioning of the EU Securitisation Regulation.

Consultation on commodity derivatives technical standards as part of MiFID II Recovery Package.

Consultation on guidelines for disclosure requirements for initial reviews and preliminary ratings under the Credit Rating Agencies Regulation.

Consultation on guidelines for data transfer between trade repositories under EMIR and SFTR.

		Consultation on draft synthetic securitisations RTS and amendments to simple, transparent and standardised templates.
		Final guidelines on the calculation of positions under SFTR.
		Latest double volume cap data.
		Letter to the European Commission on the review of the Central Securities Depositories Regulation.
		Guidance to NCAs on supervising benchmark administrators to mitigate the risk of 'letter box' entities and ensure oversight of outsourcing.
International	FSB	Updated Global Transition Roadmap for LIBOR.
		Survey on the common template for collecting information on continuity of access to financial market infrastructures for firms in resolution.
		FAQs on Global Securities Financing Data Collection and Aggregation.
	BIS	
	IOSCO	IOSCO reiterates the importance of continued transition to risk-free rates.
		Thematic review on business continuity plans for trading venues and market intermediaries.
Conduct		
UK	BOE	Speech by Edwin Schooling Latter, Director of Markets and Wholesale Policy, on the remaining six months before the end of the sterling LIBOR panel.
		Statement on supervision of commodity position limits.
		CP on LIBOR transition and the derivatives trading obligation
		Statement from the FCA and the BoE encouraging market participants in a switch to risk-free-rates in the LIBOR crosscurrency swaps market from 21 September.

		PS on finalised changes to the Listing Rules to strengthen investor protections measures for special purpose acquisition companies.
	FCA	Updated Money Markets Code published. Policy statement on bilateral margin requirements for uncleared derivatives.
		Announcement that the FCA and BoE are encouraging market participants in their switch to the Secured Overnight Financing Rate (SOFR) in US dollar interest rate swap markets from 26 July.
		Speech by Nikhil Rathi, CEO, on topics including regulation and competition in UK markets, international cooperation and consistency, and the FCA's transformation.
		Speech by Mark Steward, Executive Director of Enforcement and Market Oversight, on the rise in investment scams.
	HMT	
	PRA	
EU	EC	Publication of a list of indicators to monitor progress towards the CMU objectives.
		Report on the settlement and CSDR.
		Study by the European Parliament on robo-advisors covering how they fit in the existing EU regulatory framework, in particular with regard to investor protection.
	ECOFIN	
	EBA & ESMA	CP on the clearing and derivative trading obligations in view of the benchmark transition.
		CP on the review of RTS 1 (equity) and RTS 2 (non-equity) transparency requirements under MiFIR.
		Public consultations on the implementation of ESMA's CCP recovery mandates.
		CSDR report on the provision of banking-type ancillary services by CSDs.

		First consolidated tape provider data made available.
		Final report on the MIFID II/MIFIR obligations on market data.
		Publication of framework for ESMA's fourth stress test for CCPs.
		The European Commission, ECB Banking Supervision, EBA and ESMA encourage market participants to cease all LIBOR settings.
		Annex 2
		Annex 3
		Annex 4
	ECB - SSM	Consultation paper on a revised Guide to fit and proper assessments.
		Annex
	ECB - CB	Results of the June 2021 survey on credit terms and conditions in euro-denominated securities financing and over-the-counter derivatives markets.
International	BIS	
	FSB	Progress report to the G20 on LIBOR transition issues including recent developments, supervisory issues, and next steps.
		FSB issues statements to support a smooth transition away from LIBOR by end-2021.
		FSB issues statements to support a smooth transition away from LIBOR by end-2021.
	IOSCO	

Investment Management Prudential

UK	HMT	Amendments to Financial Services Markets Act 2000
	BOE / PRA	Productive finance working group recommendations to address barriers to investment in less liquid assets.
		CP on designating investment firms.

		Speech by Andrew Bailey, Governor, on improving the resilience and functioning of money market funds to protect the stability of the financial system.
	FCA	Three-year consumer investments strategy and podcast transcript with Debbie Gupta, Director, Consumer Investments, on the FCA consumer investments strategy. Annex Dear CEO letter on the FCA's wealth management and stockbroking supervision strategy PS on the implementation of the IFPR. PS21/6: Policy Statement on implementation of Investment Firms Prudential Regime. Feedback to consultation on liquidity mismatch in authorised open-ended property funds and update on next steps. Consultation on proposals for a new authorised fund regime to support investment in long-term, illiquid assets.
EU	ECB Central Bank	Q1 2021 euro area investment fund statistics. Q1 2021 euro area financial vehicle corporation statistics.
	EBA	Consultation paper on RTS on the calculation of the EUR 30bn threshold for investment firms.
	ESMA	Proposal to lower the reporting threshold for net short positions to 0.1% on a permanent basis. Consultation on MiFID II/MiFIR RTS annual report, considering changes thresholds for the liquidity criterion 'average daily number of trades' for bonds as well as trade percentiles used to determine the size specific to the financial instruments for non-equity instruments. Updated opinion on reporting information under the AIFMD. Final report on guidelines on funds' marketing communications.

		New Q&As on a range of topics covering AIFMD, UCITs and EMIR implementation.
		Updated Q&As on the Prospectus Regulation.
		Natasha Cazenave appointed as Executive Director.
International	IOSCO	Guidance for market intermediaries and asset managers using AI and machine learning.
	BIS	Industry survey on exchange-traded funds.

Conduct

UK	BOE	BoE and FCA report on assessing the resilience of market-based finance, including a joint review of liquidity in open ended funds.
		DP on diversity and inclusion in the financial sector, in collaboration with the FCA.
	FCA	CP on reforms to improve the effectiveness of UK primary markets.
		Statement on its review of value assessments undertaken by authorised fund managers.
		Dear Chair letter containing guiding principles on the design, delivery, and disclosure of ESG and sustainable investment funds
		Consultation on proposals to change disclosure documents provided to retail investors under the PRIIPs regulation.
		Information for firms who use certain exemptions to the Financial Promotions Order.
		Dear CEO letter on the platform's portfolio strategy update
		CP on diversity and inclusion on company boards and executive committees

		FCA multi-firm review findings on 'host' AFM firms' governance and operations. Annex FCA urges victims to come forward after Court orders compensation for victims of illegal investment scheme
EU	EC	Launch of four AML/CFT legislative proposals: – a proposal for a new EU AML authority; – a new Regulation on AML/CFT; – sixth Directive on AML/CFT; and – a revision of the 2015 Regulation on information accompanying transfers of funds, including certain cryptoassets.
	ESMA	Report on national rules governing the marketing of investment funds under the Regulation on cross-border distribution of funds. Public statement warning firms and investors about risks arising from payment for order flow and from certain practices by zero commission brokers. CP on draft guidelines on the MiFID II remuneration requirements. Results of 2020 Common Supervisory Action on MiFID II suitability requirements. Data for the systematic internaliser calculations for equity, equity like instruments, bonds and for other non-equity instruments. Opinion on Product Intervention Measures on Turbos (high-risk, speculative leveraged products)

		ESMA recommends changes to supervisory fees for credit rating agencies (CRAs). Guidelines on stress test scenarios under the Money Market Funds (MMF) Regulation.
	ECB Central Bank	
	EBA	
	ESRB	
	ECON	
International	IOSCO	
	BIS	
	FSB	

Fintech & Cyber

UK	BOE	Speech by Charles Randell on the regulation of cryptoassets. 2021 annual report on the RTGS payments system and CHAPS Speech by Christina Segal-Knowles, Executive Director for Financial Markets Infrastructure, on how stable-coins could be regulated if they are used as a form of payment. Discussion paper on new forms of digital money, including systemic stablecoins and a UK central bank digital currency. BIS and BoE launch BIS Innovation Hub London centre. Annex Speech by Andrew Bailey, Governor, on how public interest must be at the heart of innovation in payments. Speech by Victoria Cleland, Executive Director for Banking, Payments and Innovation, on the evolution of UK payment systems, the role of the UK RTGS system and the vision for the future.
	HMT	UK National AI Strategy.

	DCMS	Updated UK digital identity and attributes trust framework
	FCA	Temporary Registration Regime extended for existing crypto-asset businesses from 9 July 2021 to 31 March 2022.
		Research shows increase in crypto-asset ownership.
		Dear CEO letter to e-money firms asking them to write to their customers to make it clear how their money is protected.
		Extension of deadline for implementing Strong Customer Authentication for e-commerce transactions to 14 March 2022
	PRA	
	TPR	
	PSR	Annual report and accounts 2020/21.
		PS and consultation on legal instrument to lower the risks to the delivery of the New Payments Architecture.
		Launch of Digital Payments initiative to understand potential barriers to the take-up of digital payments and identify potential solutions.
		Consultation on new five-year strategy.
		Consultation on next steps for all banks to deliver Confirmation of Payee.
	CMA	
EU	EC	
	ECB Central Bank	Speech by Fabio Panetta, Member of the Executive Board of the ECB, on digital finance and evolving cyber risks.
		Launch of digital euro project 24 months investigation phase.
		Report on initiatives to build payments and market infrastructure two decades after the start of the ECB.
		Speech by Fabio Panetta, Member of the Executive Board of the ECB, on innovation in retail payments.
		Interview with Fabio Panetta on topics including the ECB's work on a digital euro.

	ECB - SSM	Speech by Andrea Enria, Chair of the Supervisory Board of the ECB, on the pay-offs and perils of innovation in the banking sector.
	ESMA	Call for evidence on digital finance, gathering information on topics including value chains, platforms and groups providing financial and non-financial services.
	EBA	Report on the use of digital platforms in the EU's banking and payments sector. Consultation on draft guidelines on the application of limited network exclusion requirements under PSD2. Clarifications to the sixth set of issues raised by the industry working group on Application Programming Interfaces under PSD2. Final revised guidelines on major incident reporting under PSD2. Report on payment service providers' readiness to apply strong customer authentication for e-commerce card-based payments.
	EIOPA	Discussion paper on blockchain and smart contracts in insurance. Reminders to consumers about crypto-assets risks. Guidelines on information and communication technology security and governance, including cyber security capabilities.
	ECOFIN	Retail payments: Council supports action to promote instant payments and EU-wide payment solutions.
International	BIS	BIS Innovation Hub and central banks of Australia, Malaysia, Singapore and South Africa to test CBDCs for international settlements. Newsletter on cyber security. Speech by Joachim Wuermeling, Member of the Executive Board of the Deutsche Bundesbank, on the EU's Digital Operational Resilience Act and its impact on banks and their supervisors.

BIS Innovation Hub, Bank of Thailand, the Digital Currency Institute of the People's Bank of China and the Central Bank of the United Arab Emirates joint report on a multi-CBDC platform for international payments.

FSI Insights report on emerging developments in the regulation of BigTechs.

Speech by Benoît Cœuré, Head of the BIS Innovation Hub, on central bank digital currencies.

Speech by Jens Weidmann, President of the Deutsche Bundesbank, on considerations for developing a digital euro.

Report on regulating digital payment services and e-money.

Report to the G20 on the use of CBDCs for cross-border payments

Monthly Global FinTech regulatory updater

Working paper on minimally invasive technology in relation to central bank digital currencies.

Consultation on the prudential treatment of banks' crypto-asset exposures.

Speech by Hyun Song Shin, Head of Research of the BIS, on the opportunities central bank digital currencies offer for the monetary system.

Speech by Per Callesen, Governor of the National Bank of Denmark on whether the EU should launch a digital Euro.

Speech by Lael Brainard, Member of the Board of Governors of the Federal Reserve System, providing an update on CBDC work in the USA.

FSB
IMF
BdF

	SNB	

Sustainable Finance

UK	HMT	
	TPR	Consultation on the TPR's approach to new requirements for the governance and reporting of climate related risks and opportunities.
	PRA / BOE	The BoE's climate-related financial disclosure 2020/21. Speech by Andrew Bailey, Governor of BoE, on the role of central banks in tackling climate change. BoE publishes the key elements of the 2021 Climate Biennial Exploratory Scenario (CBES). Discussion paper on options for greening the Bank's corporate bond purchase scheme. Speech by Sarah Breeden, Executive Director of UK Deposit Takers Supervision, on climate change and the role of the financial sector in the move to net zero.
	FCA	Consultation paper on enhancing climate-related disclosures by standard listed companies. Annex TCFD consultation on enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers. Annex
EU	EBA	Joint ECB/ESRB report shows uneven impacts of climate change for the EU financial sector. Report on management and supervision of ESG risks for credit institutions and investment firms.
	ECB as a Central Bank	Opinion on a proposal for a Directive amending existing Directives as regards corporate sustainability reporting.

	Speech by Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, on integrating climate and environmental challenges into the missions of central banks and supervisors.
	Occasional paper on the ECB's economy-wide climate stress test.
	Speech by Christine Lagarde, President of the ECB, on financing a green and digital recovery.
	Speech by Christine Lagarde, President of the ECB, on the opportunity to build a green capital markets union for Europe.
ECOFIN	
ECB – SSM	
European Commission	Strategy to make the EU's financial system more sustainable, and the proposal for a new European Green Bond Standard.
	Platform on Sustainable Finance:
	– draft reports on a social taxonomy, and
	– public consultation on taxonomy extension options linked to environmental objectives.
	Letter from the EU Commission to EP and Council on information regarding the adoption of regulatory technical standards under SFDR.
ESMA	
EIOPA	Remarks by Petra Hielkema, EIOPA Chair, on climate change challenges for insurers.
	Article on climate change, catastrophes, and the macroeconomic benefits of insurance.
	Report on non-life underwriting and pricing in light of climate change.
	Methodological paper on potential inclusion of climate change in the Nat Cat standard formula.

		Opinion on the supervision of the use of climate change risk scenarios in ORSA. Consultation on Taxonomy-related product disclosures Annex 1 Annex 2 Technical advice on key performance indicators under Article 8 of the Taxonomy, to assist insurance and re-insurance firms with complying with the Non-Financial Reporting Directive (NFRD). Annex Announcement of a Sustainable Finance Roundtable on the 16th of December.
International	BIS	Speech by Sabine Mauderer, Member of the Executive Board of the Deutsche Bundesbank, on sustainable finance and the availability of good quality data. Speech by François Villeroy de Galhau, Governor of the Bank of France, on an approach to tackle challenges around climate-related data.
	FSB	
	IOSCO	FR04/2021 Report on Sustainability-related Issuer Disclosures. IOSCO consults on sustainability-related regulatory and supervisory expectations in asset management. Annex
	IMF	
Other / Resilience		
UK	FCA	Consultation on changes to the FCA Handbook and enforcement guide to provide guidance on the FCA's new

power to cancel or vary the statutory permissions of many FCA-authorised firms to carry on FCA-regulated activities.

Speech by Sheldon Mills, Executive Director of Consumers and Competition on measuring and assessing culture, the role of purpose and the importance of diversity and inclusion.

Speech by Nikhil Rathi, FCA CEO, on the challenges and priorities for the FCA.

Office for Professional Body Anti-Money Laundering Supervision report on progress made in tackling money laundering by professional body supervisors in 2020/21.

Consultation on the TPR's approach to the new powers introduced by the Pension Schemes Act 2021.

Business Plan 2021/22.

Annual report and accounts 2020/21 and final 2021/22 regulated fees and levies.

annex

CP on changes to streamline the FCA's decision-making and governance procedures.

Joint FCA and PSR:

– updated assessment of the UK's cash infrastructure and wider banking services

– commissioned consumer research exploring the needs and preferences of people that view themselves as reliant on cash.

Speech by Nikhil Rathi, FCA CEO, on building a regulatory environment for the future.

Consultation on plans for a new Consumer Duty

	Consultation on preventing individuals connected with a wound-up FS firm reappearing in connection with a claims management company ('claims management phoenixing').
	Market Watch newsletter, covering how the FCA uses orderbook data to help conduct surveillance to identify market manipulation.
	Speech by Charles Randell, FCA and PSR Chair, on the future of outcomes-focussed regulation.
	Finalised guidance for insolvency practitioners on how to approach regulated firms.
BOE/ PRA	Speech by Sam Woods, Deputy Governor for Prudential Regulation and CEO of the PRA, setting out the PRA's future work plans, including responding to climate change, reviewing Solvency II and ensuring a reliable and safe exit process for firms that become unviable.
	Annual reports for the Treasury Select Committee by:
	Dave Ramsden, Deputy Governor for Markets and Banking; and
	Silvana Tenreyro, external member of the MPC
	Policy statement on temporary, long-term absences for Senior Management Functions
	Third edition of regulatory initiatives grid published.
	Speeches by Lyndon Nelson, Deputy CEO, on:
	a) the PRA's recent final policy on operational resilience and the merits of outcome-based regulation of operational resilience; and
	b) steps to counter cyber risk, including simulation exercises, penetration testing and international collaboration.
HMT	Queen's speech, setting out the Government's programme for the upcoming parliamentary session.

	CMA	
EU	ECB as a Central Bank EC	
	ECOFIN	
	ECON	European Parliament briefing on strengthening the framework of the anti-money laundering package 2021.
	ESRB	
	EBA	Consultation on RTS on crowdfunding service providers offering individual portfolio management of loans. Consultation on proposals for a central database on anti-money laundering and countering the financing of terrorism (AML/CFT) in the EU. Consultation on new guidelines on cooperation and information exchange between supervisors in relation to AML and CFT.
	ESMA	
	EIOPA	Article by Ana Teresa Moutinho, Head of Supervisory Processes Department at EIOPA, on the importance of digital operational resilience.
International	BIS	Newsletter on cyber security. Speech by Joachim Wuermeling, Member of the Executive Board of the Deutsche Bundesbank, on the EU's Digital Operational Resilience Act and its impact on banks and their supervisors. FSI Brief on banking supervisors' oversight and accountability regimes.
	G7	
	FSB	Roadmap for addressing climate-related financial risks. Report on the use of overnight risk-free rates and term rates. Thematic peer review on corporate debt workouts. Annex

IMF
IOSCO Consultation on ESG Ratings and Data Providers.

The European Parliament, Council and Commission have just identified their key legislative priorities for 2022. *These include proposals supporting the European Green Deal, a Europe fit for the digital age, an economy that works for people and a new push for European democracy. Sustainability, digital and resilience initiatives will be fundamental to delivering on these objectives. The EBA has also published its latest risk dashboard which shows that asset quality has improved further but that cyber risk remains a source of concern for EU banks.*

- The European Commission is advancing its Capital Markets Union (CMU) action plan with reviews of major pieces of legislation such as MiFIR, AIFMD and the European Long-Term Investment Funds Regulation (ELTIF). The MiFIR review proposals focus on improving market transparency and structure and will have the greatest impact on firms and venues engaged in wholesale trading markets. Proposed changes to the UCITS Directive and AIFMD cover delegation, liquidity risk management, data reporting for market monitoring purposes and the rules for depositaries. The aim of the changes to the ELTIF regulation is to make the funds more attractive.
- Also of concern to wholesale markets is the critical role of Central Counterparty Clearing Houses (CCPs) post-Brexit. Despite confirmation that EU temporary equivalence will be extended, the European Commission is continuing its efforts to re-shore derivative positions with potential cost implications for industry.
- The regulatory landscape around digital finance continues to evolve. Noise around Central Bank Digital Currencies (CBDCs) has intensified and, while many jurisdictions are now considering the impacts and development of CBDCs, some are pushing ahead with greater enthusiasm than others. On the infrastructure side, the greatest benefit from crypto innovations for mainstream financial institutions may well prove to lie in the capabilities of the underlying distributed ledger technology rather than in the deployment of crypto-assets.
- ESG developments remain a key priority for regulators across the region with policymakers turning their attention to the regulation of sustainable finance in wholesale capital markets. Calls for ESG data and rating providers to be regulated have increased, standards for bond issuers are being debated and developments in carbon markets are being monitored closely.

Topics

- LIBOR: as we set-out in Going, going, gone before Christmas, 31 Dec saw LIBOR end except for USD; no new transactions in USD LIBOR in any asset class are permitted from **1 January 2022** except for derivatives for risk management of existing positions (see FCA prohibition statement), with USD LIBOR finally ceasing in June 2023; the FCA[4] announcement permitting tough legacy transactions in GBP & CHF LIBOR to reference synthetic LIBOR rates has provided a welcome safety net for any positions that didn't transition or fallback at year end, but it leaves a tail of trades still to deal with in 2022; EONIA[5] also ceased publication on 3 January (but EURIBOR[6] continues).

- **ESG:** climate-related and other ESG disclosures are going to become ever-more prevalent in the industry; the EU has led the charge with SFDR[7] and CSDR[8] (see our PIEs note), but the UK has recently made strong statements in their Green Finance Roadmap about their commitment to reporting under Sustainability Disclosure Requirements (SDR) and the UK Green Taxonomy; first up in **January 2022** the EU is mandating qualitative disclosures under EU Taxonomy Regulation for 'large undertakings' (> 500 employees), accompanied by a high level quantitative disclosure of 'taxonomy eligibility'. An interesting argument within the EU over Christmas around the inclusion of nuclear and gas within the EU taxonomy which underlines the challenges that will be faced globally as different jurisdictions start to implement their own taxonomies.
- **CSDR:** the Central Securities Depository Regulation goes live in the EU on **1 Feb 2022**, although there has been a delay to some of the requirements. The rules apply to firms that trade in-scope securities that settle on an EEA CSD – importantly the rules relating to mandatory buy-ins have been delayed (not yet decided until when), but various contractual agreements and operational processes do need to be in place for February; the UK did not onshore CSDR but there may be extra-territorial impacts for UK firms operating in the EU. For more information on CSDR see our website here.
- **FICC Research in UK:** the FCA has announced it will no longer be necessary for firms subject to UK MiFID2 obligations to pay separately for FICC[9] research ('unbundling') from **1 March 2022**, although the exemption does not extend to macro-economic research. Firms within the EU subject to the original EU MiFID2 rules will still be subject to the inducement regime; if you are unsure whether the exemption should apply to your relationship with NatWest, please speak to your usual bank contact.
- **WMR/MiFID2:** the Wholesale Markets Review (WMR) is the UK review of the MiFID2 regime it inherited from the EU; a consultation took place earlier in 2021, with further consultations expected in **Q1/Q2 2022**; though details and timing not yet clear, changes could have a significant impact in the area of transparency and the liquidity determination for fixed income / derivatives; meanwhile the EU is also revising MiFID2 with changes expected in **Q2** following multiple consultation papers over the last 2 years, though given EU trilogue process, likely a further year before implementation; expect more discussion from EU on establishing a consolidated tape for EU markets as well, in line with Capital Markets Union commitments.
- **Margin:**
    - Margin phase 5 came and went, with many relying on threshold monitoring rather than repapering (a risk that will become ever more acute with the higher volumes in phase 6). The possible divisions in regulatory approach created by Brexit have not really manifested yet, though we are seeing the first signs of things to come in the consultations on MiFID2[3] and positioning on EUR clearing.
    - Initial Margin Phase 6 goes live on **1 Sep 2022**; this pulls in a wide range of additional firms with AANA[10] above $/€8bn; as with Phase 5 (where repapering across the industry is still not complete with reliance on Threshold Monitoring to alert counterparties to when they are approaching levels where IM would be required), this will require a huge lift in legal docs and operational set up. Another change for the UK affecting both Margin and Clearing is the upcoming loss of intragroup exemption in June 2022, impacting firms with legal entities both inside and outside the EU.

- **Clearing:** the temporary equivalence decision by the EU, permitting EU firms to clear trades on UK based CCPs[11], was due to expire in June 2022, however in November 2021 the Commission agreed to extend the exemption (though as yet we don't know for how long); at the same time the UK has announced plans to consider relying on 'comparable compliance' from their home country for non-UK CCPs; on 17 Dec ESMA[12] released a statement that they would not derecognise UK CCPs "at this point in time", though they went on to list various measures they see as necessary to reduce systemic risk; a somewhat reluctant but ultimately welcome reprieve for EUR clearing for the time being.
- **PRIIPS:** the change to the PRIIPS[13] regulation is due to go live in EU on **1 July** (having been delayed from 1 January 2022); it revises the performance calculations for category 2 to 4 PRIIPS significantly, with only a minor modification to category 1 PRIIPS calculations; following agreement on a delay, the UK on-shored version of the revised regulation will be published in Q1 – it is not yet known what lead time there will be before implementation, but it is hoped it will not go live until Jan 2023.
- **EMIR Refit:** both EU and UK are reviewing their versions of EMIR[14] under the general heading of 'EMIR Refit'. In the EU the final results are expected to be published in an RTS[15] in **Q1 2022** which will give final detail for example on the Trade & Transaction Reporting changes that will be required, with go-live probably 18 months later. In the UK a consultation is underway with final rules published in **Q3 2022** for implementation the following year. In both cases quite substantial revisions are expected to T&TR; there are also changes in pipeline from CFTC[16] for Dodd Frank reporting, meaning the scale of impact to operations teams is likely to be substantial.
- **UK Ringfencing:** the independent Ring-fencing and Proprietary Trading (RFPT) Review is expected to publish a statement setting-out its initial findings and recommendations during the week commencing 17 January. These are likely to inform a detailed consultation by HM Treasury later in 2022. The UK currently has the most stringent post-crisis rules on structural separation of retail and wholesale activities, and the review has had a broad scope to consider whether these have met their original objectives of supporting financial stability, as well as their impacts on customers, competition and competitiveness.
- **Basel 3.1:** due to apply from **January 2023**, implementing remaining Basel 3[17] provisions; the EBA[18] has suggested that these rules will have an estimated increase of capital of 18.5% for EU banks; the PRA[19] has been given significant discretion of how Basel 3.1 will be implemented for UK banks and plans to issue a consultation paper in Q3 2022. Both the UK and EU are committed to full, timely and consistent implementation of the remaining Basel standards, but doubts persist as to whether either jurisdiction will meet the 1 January 2023 deadline. Given the specificities of their respective economies there is now greater potential for divergence on detail.
- **Crypto Assets:** the draft Markets in Crypto-Assets Regulation (MiCA) is scheduled to come into force at the end of 2022; MiCA will establish a fully harmonised EU-wide regulatory framework for crypto-assets which will include crypto-asset service providers (CASPs); the FCA published a consultation paper concerning cryptoassets in January 2021, which ended in March.
- **FCA Feedback Statement 22/1 'Accessing and using wholesale data'**
    - **Introduction;** On 11 January 2022, the Financial Conduct Authority (**FCA**) published a Feedback Statement in relation to accessing and using wholesale data to gather information. In response to a call for input in March 2020, the FCA received concerns that limited competition in the markets for benchmarks and

indices, credit ratings and trading data may increase costs for investors and affect investment choices.

- As set out in its 2021/22 Business Plan, the FCA wants wholesale markets that deliver a range of good value, high-quality products and services to market participants. The FCA believes that effective competition within the wholesale sector can lead to an increase in the efficiency of markets, lower prices and greater innovation. These markets are typically not directly accessed by retail consumers. But, if competition is working effectively in wholesale markets, the FCA also expects retail consumers to benefit through lower costs and improved quality of investment products.
- FCA concerns; In the Feedback Statement the FCA reports that it heard views from a range of market participants about the way competition is working for the supply of trading data, benchmarks and market data. Overall the FCA found that views were mixed, largely reflecting respondents' position in the market. Nevertheless, the FCA did hear about market features that it thinks warrant further investigation to ensure markets for the supply of data are working in the interests of users.
    - Reflecting on the feedback received, the FCA reports that it has concerns that trading venues' (including regulated markets, multilateral trading facilities (MTFs) and organised trading facilities) ownership of data may confer market power, resulting in:
    - Increasing data charges that may be increasing costs to end investors.
    - Data charges that may be affecting asset managers' investment decisions and so limiting competition between asset managers.
    - Data charges that may be limiting the efficiency of trading activity in a way that affects price formation.
    - Current regulatory provisions for free delayed data that may not be effective.
    - Based on the feedback it received, the FCA feels that the market for benchmark and indices provision may not be working well because:
    - Contracts may be unnecessarily complex and conditions not transparent.
    - There may be barriers to switching between benchmarks.
    - This is leading to an increase in prices that are not commensurate with increasing costs or improved services of quality
    - The FCA also reports that it heard concerns from users of CRAs and market data vendors. These included:
    - Vendors bundling core services with data services.
    - Vendors imposing restrictive terms around data usage.
    - High barriers to entry, making it difficult to enter the data vendor market.
    - High charges upon renewal of contracts as vendors are not subject to the reasonable commercial basis regulations which bite on trading venues.
    - A low level of meaningful innovation in the market.
- Information gathering and further market studies;
- The FCA will start an information gathering and analysis exercise in Spring 2022. This will focus on the pricing of trading data, underlying costs, and the terms and conditions of the sale of trading data. The regulator also plans to launch a

market study this summer where is will look at how competition is working between benchmarks.

- A further market study will be launched at the end of the year focussing on competition in the sale of credit rating data. The FCA will publish more details about the scope and timetable of the market studies nearer the time.

Categories of products	Key points	EU SFDR equivalent
[1] Sustainable *Divided into three types:*	*Products that pursue specific sustainability characteristics, themes or objectives alongside delivering a financial return.*	
(a) Impact (objective of delivering positive environmental or social impact)	Products with the objective of delivering net positive social and/or environmental impact alongside a financial return. **Minimum criteria:** Intentionality, theoretical ability to deliver and measure additionality through investment decision-making and investor stewardship, impact measurement and verification. Note: If additionality (whether financial or non-financial) were one of the necessary criteria for impact products, it is likely that fewer products would qualify for an 'Impact' label than those currently categorised as Article 9 funds under SFDR. This may well be a reason to argue for an additional category of 'Impact' products that would only contain a sub-set of the funds currently categorised as Article 9 under SFDR.	FCA considers this would overlap with a small sub-set of Article 9 SFDR products *In principle we agree, except that an Article 9 SFDR product must also meet the "do not significantly harm" (DNSH) requirement – this does not seem a factor in the FCA's category.* *So, in fact, we would "map" this category to either Article 8 or 9 SFDR depending on the circumstances.*
(b) Aligned (sustainable characteristics, themes or objectives; high allocation to UK taxonomy aligned sustainable activities)	Products with sustainability characteristics, themes or objectives and a high proportion of underlying assets (measured according to a minimum threshold) that meet the sustainability criteria set out in the UK taxonomy (or could otherwise be verifiably established to be sustainable, where a taxonomy is not yet available). **Minimum criteria:** Same as transitioning criteria below, plus minimum thresholds for asset allocation.	Article 8 SFDR
c)	Products with sustainability characteristics, themes or objectives that do not yet have a high	Article 8 SFDR

Transitioning (sustainable characteristics, themes or objectives; low allocation to UK taxonomy aligned sustainable activities)	proportion of underlying assets meeting the sustainability criteria set out in the UK taxonomy (or can otherwise be verifiably established to be sustainable, where a taxonomy is not yet available). These products pursue strategies that aim to influence underlying assets towards meeting sustainability criteria over time; e.g., via active and targeted investor stewardship. The expectation, therefore, is that this proportion will rise over time. Minimum criteria: Evidence of sustainability characteristics, themes or objectives reflected fairly and consistently in the investment policy or strategy and may include some combination of: – restrictions to the investible universe, including investment limits and thresholds apply – screening criteria (positive or negative) – the application of benchmarks or indices and expected or typical tracking error relative to the benchmark – the entity's stewardship approach as applied to the product	
(2) Responsible (may have some sustainable investments)	Impact of material sustainability factors on financial risk and return considered to better manage both risks and opportunities and deliver long-term, sustainable returns. No specific sustainability goals. Minimum criteria: *ESG integration, evidence of ESG analytical organisational capabilities and resources, demonstrable stewardship.* *Notes: The FCA notes that it expects managers to consider material sustainability risks as part of the risk management of an investment product. However, "the degree to which managers integrate ESG factors in how they manage their clients' investments varies".* *Responsible products may therefore have high, low or no allocation to sustainable investments. The*	Article 8 SFDR

	criteria applied would not impose any restriction on the investible universe of such funds; exclusions, tilting or allocation thresholds would therefore not be an expectation. However, the criteria could include demonstrable evidence of ESG analytical capabilities and effective stewardship at entity level, applied in the management of the product.	
(3) A product not promoted as sustainable	Sustainability risks have not been integrated into investment decisions. No specific sustainability goals. *Notes: The FCA notes that certain "investment products do not take sustainability considerations into account, even as a form of risk management". It also refers to the example of an index tracker with no sustainability-related criteria etc.*	Article 6 SFDR *Commentary: This may be a stronger view than we might hear from the EU – in particular, we believe the EU is likely to expect managers to take account of ESG risk in all investment decision making and monitoring subject to limited exceptions only based on the specific nature of the product or asset class* *– eg perhaps the manager of a FTSE tracker fund, a fund containing only G7 sovereign bonds etc.*

- New UK transition plan regime
  - HM Treasury (HMT) has said the UK will be the world's first "Net Zero-aligned Financial Centre" and UK financial institutions will have to have robust firm-level transition plans setting out how they will decarbonise.4 There is not a lot of detail yet but initially, this seems likely to be imposed on a "comply or explain" basis – ie either you publish a transition plan that aligns with the government's net zero commitment or (if not) explain why.
  - Initial scope is unclear, but possibly, at the outset, this will comprise asset managers, regulated asset owners and listed companies.
  - HMT has said the UK will move towards making the publication of transition plans mandatory in 2023.
  - This will be incorporated into the UK's regime on Sustainability Disclosure Requirements (SDR) – in particular, the UK government will *"strengthen requirements to encourage consistency in published plans and increased adoption by 2023. The Government intends to legislate to deliver this"*.5

- The government is also setting up a Transition Plan Taskforce to bring together industry, academia, regulators and others to develop a 'gold standard' for transition plans, metrics and reporting, by the end of 2022.6
- The FCA has added to this, saying it will engage with stakeholders in the first half of 2022, with a view to promoting credible and effective transition plans that consider the Government's net zero commitments. It will consider the governance of transition plans, including Board oversight, senior management responsibilities and objectives, and remuneration/incentive structures. It will also consider the content and disclosure of transition plans, building from TCFD guidance
- Timing:
  - Unclear, but as above, FCA stakeholder engagement will begin in H1 2022. [FCA, "*A strategy for positive change: our ESG priorities*" (November 2021)
  - NB: The UK government has also stated as follows, foreshadowing further policy initiatives next year for regulated firms: "*The government will... update the Green Finance Strategy in 2022. This will go beyond the timescales in this Roadmap and set out an indicative sectoral transition pathway out to 2050 to align the financial system with the UK's net zero commitment. The updated strategy will assess industry progress on Phases 1 [disclosures] and 2 [use of disclosures and stewardship]. It will also consider triggers*
  - *for stronger policy to facilitate Phase 3 [reorienting capital flows] and help ensure that the UK meets its climate and environmental objectives.*"

- New UK Sustainable Disclosure Requirements (SDR)
  - In its roadmap, the UK government has proposed Sustainability Disclosure Requirements (SDRs) to be implemented on an economy wide basis.
  - For FCA regulated firms, further detail has since been provided via a high level FCA discussion paper, however this is likely to develop significantly following market engagement
  - Any new proposed disclosures will be an "add on" to the TCFD10 based disclosure requirements already rolled out or proposed by the FCA (eg for listed companies and asset managers). But the core will be the global baseline sustainability reporting standards to be developed by the new International Sustainability Standards Board (ISSB) of the International Financial Reporting Standards Foundation.
- Timing:
  - 3 Nov 2021 FCA discussion paper published
  - 7 Jan 2022 Deadline for responses
  - Q2 2022 Proposed rules to be published for consultation
- Details
  - (a) Consumer facing disclosures – The retail facing layer of disclosure would be a subset of the overall disclosure. It should comprise key sustainability-related information to enable retail to make considered choices about their investments
    - e.g.: – investment product label; – objective of the product, including specific sustainability objectives; – investment strategy pursued to meet the objectives; – proportion of assets allocated to sustainable

investments (as per the UK taxonomy); – approach to investor stewardship; – wider sustainability performance metrics.

- On this, the FCA is likely to prescribe a baseline set of sustainability metrics to enable retail clients to understand the sustainability performance of a relevant product over time (e.g. carbon reduction metrics).
- This could include the core metrics required under TCFD disclosure rules, supplemented by other social (S) and governance (G) metrics.
- Quite rightly, the FCA recognises that technical language and metrics may not be easy for retail to follow – investor education will need to play a role. But it will also do consumer testing – and possibly propose an ESG factsheet. In any case, the challenges here should not be underestimated.
- The consumer-facing disclosure will be designed to be read alongside the Key Information Investor Document (KIID), providing additional colour on ESG matters while avoiding duplication of information.

- (b) Disclosures for sophisticated or institutional investors – This is intended to support decision-making about both the products they are investing in and their providers.
  - The regime would therefore require both product and entity level disclosures.
  - Points for possible inclusion:
  - – Information on the methodologies used to calculate metrics. *"While data gaps exist and methodologies have yet to converge, it is critical that firms are transparent about how they have calculated metrics."*11 Where proxies, assumptions etc are used to fill data gaps, these would need to be clearly explained.
  - – Information on data sources, limitations, data quality etc.
  - – Further supporting narrative, contextual and historical information.
  - – Further information about UK taxonomy alignment.
  - – Information about benchmarking and performance.
  - The FCA also suggests that the Principal Adverse Impact (PAI) indicators under the SFDR regime could be a starting point for environmental metrics beyond climate, as well as for a set of minimum safeguards for social indicators.
- (c) Entity level disclosures – This has not been fleshed out.
  - But the FCA notes how important such disclosures may be to clients/investors (retail and otherwise), both in terms of how firms manage sustainability risks, opportunities and impacts, and more broadly, the impact firms are having on the environment (E) and society (S). *"It also enables existing clients and consumers to hold their providers to account."* See DP21/4 referred to above.
  - Helpfully, the FCA also says it will propose *"flexibilities that would allow firms to make disclosures at the level of consolidation which they consider would be most decision useful for clients and consumers. This approach also recognises that many firms are already making TCFD-aligned disclosure rules voluntarily at a group level."*

- Also helpfully, the FCA has gone out of its way to ask for feedback on aspects of SFDR that may be useful to consider or build on, in constructing the stand-alone UK regime. It also wishes to take into account what disclosures firms/groups may prepare under the ISSB sustainability standards (i.e., corporate reporting).

- New product labelling and classification regime
- In its roadmap, the UK government has proposed for the FCA to develop a new product labelling and classification regime to make it easier for retail investors to consider and assess the various products available to them.
- Further detail has since been provided via a high level FCA discussion paper, but as with the SDRs, this regime remains subject to potentially much development following market engagement.
- The FCA notes that retail investors appear to be strongly influenced by what they consider objective and reliable product labels. It also considers that classifying and labelling investment products according to objective criteria, and using common terminology, could help to combat potential greenwashing and enhance trust.
- The FCA suggests two options: firstly, a regime that will only apply to products that make sustainability claims or are marketed as being sustainable; OR secondly, a regime that covers all investment products available to retail investors. For the second option, the FCA proposes five categories of product labelling:

Not Sustainable		Sustainable		
Not promoted as sustainable	*Responsible*	*Transitioning*	*Aligned*	*Impact*
	(may have some sustainable investments)	*(sustainable characteristics, themes or objectives; low allocation to Taxonomy – aligned sustainable activities)*	*(sustainable characteristics, themes or objectives; high allocation to Taxonomy – aligned sustainable activities)*	*(objectives of delivering positive environmental or social impact)*

- Importantly, the difference between 'Aligned' and 'Transitioning' is the portion of assets considered sustainable (based on the UK taxonomy or other criteria). That is, a product in the 'Transitioning' category would (at the time of the assessment) have a low allocation to sustainable activities, while 'Aligned' products would have a higher allocation, presumably above a specified threshold). On the other hand, this approach would recognise that investors can play an important role in facilitating the transition and avoid discouraging investment in economic activities and projects in the process of transitioning to a more sustainable profile.
- Entity level criteria may be added on top of product level criteria – i.e., to use a 'Sustainable' or 'Responsible' product label, the product provider must demonstrate key attributes such as: meeting existing governance, systems and controls requirements; identifying how ESG considerations are integrated into investment processes to minimise risks and take advantage of opportunities; stewardship; voting/ engagement etc.
- Timings:

- 3 Nov 2021 FCA discussion paper published
- 7 Jan 2022 Deadline for responses
- Q2 2022 Proposed rules to be published for consultation

- At minimum, this will apply to retail products but beyond that the scope is unclear – e.g., it is unclear whether the products covered will just be asset and fund management products or if PRIIPs, retail investment products, or pension products may be in-scope too.
- There are two reference points for consideration.
  - First, the ambitions of the product – e.g., its objectives, strategies, how it is pursuing them etc.
  - Secondly, the proportion of its investments currently allocated to sustainable projects or activities (possibly with the UK taxonomy as a reference point).
- The FCA wishes for its labelling and classification system to use objective criteria and descriptive labels; e.g., referencing the proportion of sustainable investments, or the nature of the product's strategy. Conversely, they wish to avoid a value judgement as to whether a product is 'good' or 'bad'. E.g., they have not suggested 'medals' or 'traffic lights'. They also consider this may be more difficult to supervise.
  - They wish for the system to be built on and mappable against existing standards. It should be simple and intuitive to understand. It should also be verifiable – and the system as a whole capable of being supervised effectively.
  - Helpfully, the FCA notes the desire to be consistent/ compatible with the current market and existing initiatives, flexible enough to cope with market developments, and broad enough to reflect the range of products in the market, ideally using terminology already familiar to investors/the industry.
  - These points are well made and welcome, although it is open to question as to whether what has been proposed meets all these tests.
  - It is likely that there would need to be a baseline level of prescription in the criteria that must be met for a 'Responsible' or 'Sustainable' label – presumably something quantifiable, with measurable thresholds. Possibly there would be higher threshold entity level standard for 'Sustainable' products, relative to 'Responsible' products.
- Other points to note in relation to both the SDR and labelling
  - *Third party verification, audit etc* – To build trust and support a robust approach, the FCA wishes to explore whether there could be a role for independent third-party verification of product level disclosures.
  - *Advisory group* – The FCA has created the delightfully named DLAG or Disclosures and Labels Advisory Group, including industry experts, trade bodies and consumer representatives, to provide the FCA with feedback, technical advice and constructive challenge. This is welcome.
  - *New UK overseas funds regime* – The FCA is considering how overseas funds marketed into the UK should be treated, including in respect of the new post Brexit UK overseas funds regime that will essentially allow EU UCITS to be sold/continue to be sold in the UK to retail.
  - *Derivatives and short selling* – With a nod to the debate within the EU on such matters, the FCA specifically requests feedback on derivatives and short selling issues – e.g., whether the use of derivatives in pursuing sustainability strategies should have a bearing on classification, as well as views on the use of short-selling strategies.

- *Securities lending* – Similarly, the FCA invites feedback on this in the context of sustainable investing; e.g., whether certain requirements should apply and whether sustainability should be taken into consideration in stock lending criteria.

- Financial advisers to consider ESG when providing advice
    - HMT and the FCA are exploring *"how best to introduce sustainability-related requirements for financial advisors"*. The FCA in particular considers it appropriate to confirm that *"advisers should consider sustainability matters in their investment advice and ensure their advice is suitable and reflects consumer sustainability-related needs and preferences. We acknowledge that the EU has taken this approach in introducing suitability requirements for different types of financial market participants. However, these were not onshored in the UK prior to the UK's withdrawal from the EU."*
    - It appears this is the subject of ongoing consideration, with a detailed consultation and cost benefit analysis to be prepared.
    - Timings: Unclear.
    - ESG ratings provides In its roadmap, the UK government explains how important ESG ratings are to the investment process, and how much differentiation exists in methodologies and scores. On this, the FCA has previously noted: *"One recent study… calculated an average overall correlation of 0.54 across the six rating providers in their sample – much lower than the 0.98 correlation observed between the largest three credit rating agencies"*.
    - The UK government also have concerns as to data gaps and assumptions. They are therefore considering bringing such firms into the scope of FCA regulation.
    - Timings: Unclear, but further announcements due in 2022.
- Digitisation of reported information
    - In its roadmap, the UK government expresses concerns as to the demand for sustainability disclosures to be easily read and analysed electronically and acknowledges calls from the industry as to enhanced digitisation and storage of sustainability information to support machine readability.
    - *"The government and regulators are considering how to deliver an approach to digitisation of sustainability data that builds on the UK's existing digital infrastructure for reporting.*
    - *This includes assessing the value of a centralised register for ESG data."*[18]
    - Timings: Unclear.
- Digitisation of reported information
    - In its roadmap, the UK government expresses concerns as to the demand for sustainability disclosures to be easily read and analysed electronically and acknowledges calls from the industry as to enhanced digitisation and storage of sustainability information to support machine readability.
    - *"The government and regulators are considering how to deliver an approach to digitisation of sustainability data that builds on the UK's existing digital infrastructure for reporting.*
    - *This includes assessing the value of a centralised register for ESG data."*[18]
    - Timings: Unclear.
- Asset managers and owners
    - In its roadmap, the UK government outlines how important stewardship is as "supporting a market-led transition to a more sustainable future."[19] It wants

asset managers and owners to actively monitor, encourage, and challenge investee companies, promoting long-term, sustainable value generation. It wants them to take account of the information generated by the UK's SDR regime when "allocating capital" and sign up to the revamped UK Stewardship Code. It wants them to show leadership; e.g., by joining net zero initiatives and publishing a high-quality transition plan by the end of 2022, including near-term science-based targets and a clear pathway for their organisations to become "net zero".

    - ***The government says it will assess progress on these matters at the end of 2023, with the suggestion that further regulatory initiatives will be considered if insufficient progress has been made.***
    - In fact, it seems almost certain that the results of this assessment will be mixed, especially given the limited take up of the Stewardship Code – such that more initiatives will be forthcoming.
- UK taxonomy
    - The UK government has clarified its position on this, promising to deliver a UK taxonomy, *"ensuring it has been road-tested in the market as a useful investment tool"*.
    - This will be based on the EU Taxonomy Regulation and will be intended to create a shared understanding as to what economic activities are "green" vs what are not for UK purposes.
    - As regards sequencing: *"Disclosure requirements for corporates will come into force prior to those for investment products, enabling the former to feed into the latter."* This will avoid some of the incredibly difficult timing issues asset managers have faced in the EU, with the roll out of the EU's Taxonomy Regulation.
    - Relevant firms will have to make disclosures against the taxonomy. This will be introduced via the new UK SDRs (see further detail below), presumably via new FCA rules – and will involve corporate or entity level disclosures. For firms with relevant products, product level disclosures will also be required.
    - Timing:
        - Q1 2022 First consultation on draft technical screening criteria (TSC) for climate change mitigation and climate change adaption objectives, which will be introduced via statutory instruments
        - Q2 2022 FCA will consult on initial SDR rules
        - By end 2022 Final rules on initial policy proposals
        - Q1 2023 Consultation on expansion of climate TSCs and standards for remaining four environmental objectives
    - As part of its Brexit work, the UK onshored aspects of the EU Taxonomy Regulation, but not the parts that said what firms actually had to do or by when. This gap has now been addressed.
        - The initiative has involved the creation of a Green Technical Advisory Group (GTAG), to provide the UK government with independent advice. It is made up of financial and business stakeholders, taxonomy and data experts, and subject matter experts. One strand of its work will involve considering international interoperability (including the potential for equivalence). Interestingly, it will also explore avenues for influencing

international taxonomy development in a "race to the top" and "*analyse the implications of and remedies for risks of international fragmentation*".
- The TSCs will be the subject of consultation and be introduced via statutory instruments. Criteria for the climate change mitigation and adaptation objectives will be based on the EU taxonomy – these are currently under review, with a consultation in Q1 2022. Legislation is expected by the end of 2022.
- Under the UK SDRs, certain companies will be required to disclose the percentage of their capital expenditure, operational expenditure and turnover that relates to taxonomy-aligned activities. Relevant product providers will have to disclose the extent to which relevant products are taxonomy-aligned.
- Taxonomy-alignment will focus on reported data, rather than projections.
- The UK government has said it plans to focus on delivering the UK taxonomy and ensuring that it has been road-tested by the market before changes or an expansion in scope is considered – e.g., identifying activities which cause significant harm, or adding further transitional activities. This is welcome.
- An Energy Working Group (EWG) has been established, alongside the GTAG, to advise the UK government on key energy issues such as hydrogen, carbon capture, utilisation and storage, and nuclear.

4. FCA climate adaptation report

- The FCA has issued a Climate Change Adaptation Report.
- This is an impressive, wide ranging and insightful report as to how the FCA and the firms it regulates are adapting to climate change, and what the FCA is planning in terms of further work and initiatives in the short to medium term. It also:
    - summarises the FCA's climate change and ESG strategy;
    - provides a timeline of its proposed major ESG publications for the next c.9 months
    - summarises what the FCA considers to be the main climate-related risks to which financial services firms are exposed;
    - summarises how it considers firms to be addressing adapting to climate-related risks and opportunities; and
    - discusses the role of capital mobilisation in financing climate change adaptation/mitigation
- The report includes interesting observations off the back of consumer testing, as well as observations on "Climate risk management & the role of derivatives". The FCA also notes it *"will continue to engage with issuers, advisors and investors to better understand whether the current framework for ESG bonds supports the work led by the Treasury on funding the transition to net zero"*.
- Regulatory objectives
    - The FCA is clear on the ESG outcomes it wants to achieve the points on governance, market pricing and ESG ratings below are noted in particular:

 - high-quality climate- and sustainability-related disclosures to support accurate market pricing, helping consumers choose sustainable investments and drive fair value;
 - promote trust and protect consumers from misleading marketing and disclosure around ESG-related products;
 - regulated firms have governance arrangements for more complete and careful consideration of material ESG risks and opportunities;
 - active investor stewardship that positively influences companies' sustainability strategies, supporting a market-led transition to a more sustainable future;
 - promote integrity in the market for ESG-labelled securities, supported by the growth of effective service providers – including providers of ESG data, ratings, assurance and verification services; and
 - innovation in sustainable finance, making use of technology to bring about change and overcome industry-wide challenges.
- What will the FCA look at re individual firms; *The FCA has foreshadowed what it will look at using its regulatory and supervisory tools to*:
 - oversee how firms design/deliver/disclose on ESG products – e.g., to challenge firms on how well the ESG characteristics of products align with their ESG claims and meet client needs/preferences (in other words, greenwashing risk);
 - oversee compliance with the new TCFD based disclosure regime – in particular, to help build confidence in the markets for ESG/sustainable products;
 - engage with firms to assess the extent to which they are effectively managing the risks and opportunities from climate change, and integrating these considerations within their culture and governance frameworks; and
 - engage with firms to assess the extent to which they are supporting the transition to a net zero economy
 - and where firms have set climate related targets or made net zero commitments, to consider their delivery plans to achieve them.
- Three further practical points we would draw out from its report:
 - *"Our main focus will be on larger firms in the sectors where there are more likely to be climate-related risks, such as asset management and insurance, and on firms that particularly hold themselves out as 'green'."*
 - *"We are considering new areas of focus for future policy work, including promoting well-designed, well governed, credible and effective transition plans that consider the Government's net zero commitments."*
 - *"We have begun integrating net zero across our other functions, including Supervision and Authorisations.*
 - *This may include setting net zero expectations at the Authorisations gateway and incorporating net zero themes and questions into our supervisory assessments.*
- Although not a consultation, the FCA states that it welcomes feedback.

* Other points firms may wish to note:

- ESG is now a formal priority for the FCA – e.g., the UK government has asked the FCA to have regard to its net zero commitment when discharging its functions.
  - The FCA has (in its latest business plan) noted ESG as a priority across the markets it regulates.
  - The CEO has committed it to taking a "lead policymaking role" on climate change, issues of sustainability and good governance, publicly emphasising its role in facilitating the transition to net zero.
  - ESG is also now an FCA Board priority and the FCA has appointed a Director of ESG to drive its ESG agenda forward.
- The FCA has issued a specific ESG strategy.26
  - This will include developing a policy approach to ESG governance, remuneration, incentives and training/certification in regulated firms.
  - Target milestone: Begin stakeholder engagement in Q2 2022.
- The FCA will begin to issue its own TCFD report – with the first due in the summer of 2022.
- The FCA has a focus on "***Greentech***" and "***RegTech***", conducting various initiatives in this regard, including a "***Sustainability TechSprint***" in 2021 and a Green Fintech Challenge.
  - The Green Fintech Challenge is being run to support the development and live market testing of new products and services that will aid the transition to a net zero economy.
  - The FCA is especially welcoming application from firms developing innovative green solutions that require regulatory support to bring their proposition to market, especially as regards innovations in the area of ESG data and disclosure.28 The FCA has also hosted two international regulatory roundtable sessions on ***GreenTech***, with 59 regulators from 36 jurisdictions discussing challenges and coming up with an innovation 'Wishlist'.
- Finally, the next cohort of the FCA Digital Sandbox Pilot will focus on sustainability and climate change, and it has begun work with the City of London Corporation and industry to help develop solutions to ESG data and disclosures issues via a digital testing environment.

- It remains early days for a number of the UK initiatives described above. *For firms with a pan European presence, relevant implementation work in relation to SFDR and the EU taxonomy will continue, but firms may otherwise wish to consider the following actions*:

Task	Context
Get organised	In various comments throughout its recent papers, the FCA has emphasised points around governance. In our view, it is looking to see that firms have organised themselves prudently, with sensible governance arrangements to deal with the impact of climate change on a firm's organisation, together with other ESG risks and opportunities. In our view, it is going to become increasingly important to ensure firms take a 360-degree approach – i.e. integrating climate change and ESG into all relevant functions within the firm, from product development to reporting to IT and to risk management.

Skills	In its recent papers, the FCA acknowledges that it is having to "skill up" on climate change and ESG – and in our view, it will recognise the same for most firms, as they need to develop the skills internally to identify, manage and report on climate change and ESG related matters.
Ensure you are aware of relevant regulatory priorities	The FCA papers referred to above include an excellent snapshot of the way they are looking at climate change and ESG, and what they will focus on in their regulatory work with firms – including day to day supervisory work. Firms may wish to ensure they understand this and are managing any new or emerging regulatory issues.
Plug into what the industry is doing	Trade bodies are doing a lot of work to get ahead of the regulatory developments discussed in this bulletin, as well as helping firms understand and adapt to the new world. Where you can, we recommend you get involved in this work and leverage it for your internal teams and projects – also to understand emerging best practice and industry views on interpretation issues.
Training	Focus on staff awareness building and training – some of this will likely need to be built over time. But in areas such as product development, this should reflect the current views and expectations of regulators – e.g., on greenwashing.
Regulatory developments	We expect the proposals set out in this paper to develop rapidly from this point – as a final but obvious point, we therefore recommend your internal team stay on top of regulatory developments and understand the "direction of travel".

Wholesale financial markets

This section contains 12 initiatives. They are aimed at improving the use of data and reducing the burden on firms whilst maintaining the highest standards of regulation and market efficiency, both with the ultimate aim of promoting competition.

Six of the initiatives in this Grid are new. This includes work to achieve the Chancellor's vision for financial services and wider Government priorities, such as changes to onshored EU legislation, the review of the UK Securitisation Regulation and work to introduce the FMI Sandbox. The FCA has also included proposals to require greater transparency on the diversity of public company boards. Note that there are also diversity and inclusion initiatives in the multi-sector and pensions sections of the Grid.

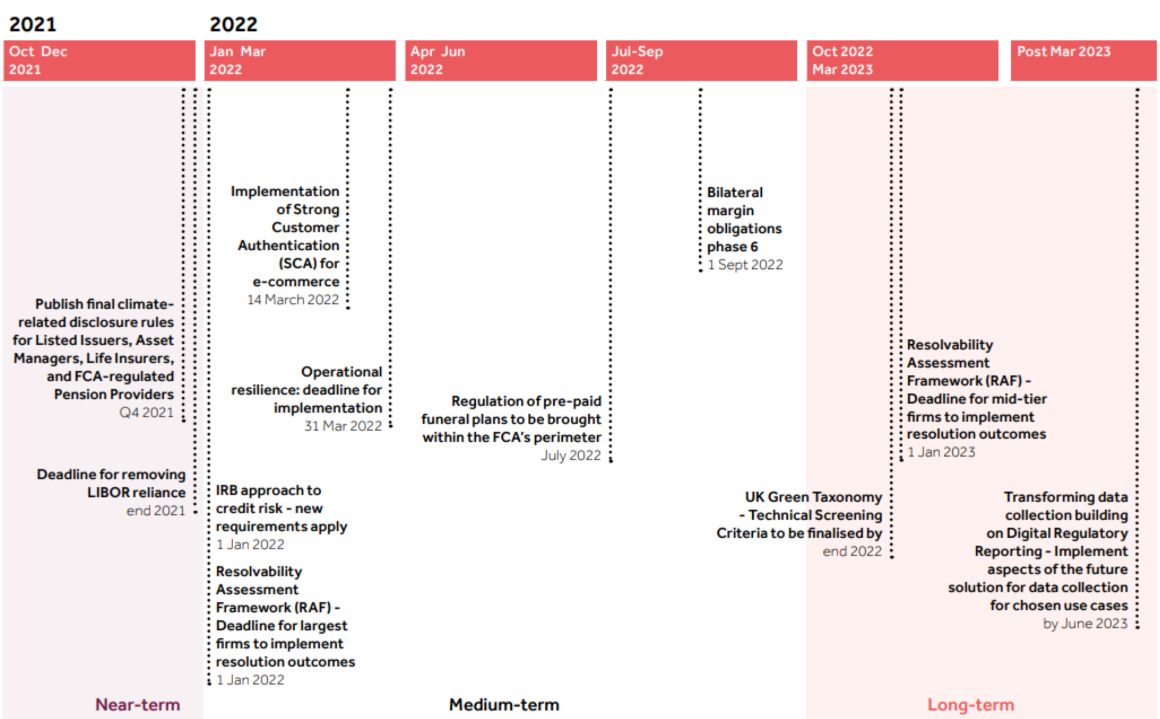
One initiative has been completed since the May 2021 Grid: amendments to the Market Abuse Regime (MAR) were introduced in the Financial Services Act 2021 and came into force 29 June 2021.

Lead	Initiative	Expected key milestones	Indicative impact on firms	Oct Dec 2021	Jan Mar 2022	Apr Jun 2022	Jul Sep 2022	Oct 2022 Mar 2023	Post-Mar 2023	Consumer interest	Timing updated	New
BoE	**Changes to the EMIR Derivatives Clearing Obligation** The BoE is modifying the scope of contracts which are subject to the derivatives clearing obligation to reflect the ongoing reforms to interest rate benchmarks, including Libor.	End-November 2021: Policy statement 6 December 2021: changes to JPY Libor implemented 15 December 2021: changes to GBP IRS implemented H1 2022: BoE will consult on changes to the USD IRS clearing obligation.	L			E						●
FCA	**Primary Markets Effectiveness - UK Listings Review response** The FCA has bought forward consultation and discussion items on reforms to improve the effectiveness of UK primary markets, which follows FCA policy review work and responds to Lord Hill's final UK Listings Review Report and recommendations published on 3 March 2021. **Joint objective initiatives:** **Primary Markets Reform - UK Listings Review response ➤**	Consultation Paper on special purpose acquisition companies (SPACs) - published 30 April 2021 (CP21/10), closed 28 May 2021. Policy Statement on SPACs - published 27 July 2021 (PS21/10). Consultation Paper on further Listing Rule changes- published 6 July 2021 (CP21/21), closed 14 September 2021. Policy Statement on Listing Rules changes - October-December 2021. Further engagement into 2022.	L									

FCA	**Scope of UK MiFIR Derivatives Trading Obligation** We consulted on proposed changes to the scope of the UK MiFIR derivatives trading obligation (DTO) in July 2021 as UK liquidity has changed since the last review was carried out in 2017 by ESMA, particularly in light of Brexit and the LIBOR transition. We plan on publishing a statement with our final changes in early Q4.	Consultation paper: published July 2021, consultation period closed 25 August 2021. Next steps TBC.	L
FCA	**Accessing and using wholesale data** Assessment of the use and value of data in wholesale financial markets, focusing on changes to business models, competitive dynamics, and how financial markets function.	Q4 2021: Publish Feedback Statement.	L
FCA	**Diversity and inclusion on public company boards and executive committees** We are consulting on proposals to require greater transparency on the diversity of public company boards and executive management teams, including comply or explain targets on gender and ethnic diversity and standardised data to be disclosed on an annual basis. Associated initiatives: **Future of Trusteeship: Diversity and Inclusion Working Group ➤** **Diversity in Financial Services ➤**	Consultation Paper published 28 July 2021 Policy Statement likely in early 2022.	L
HMT	**HMT consultation on power to block listings on national security grounds** This initial consultation asks for views on the scope of a proposed new targeted power to allow the Government to block a company's listings, if a listing presents a risk to national security. This power will reinforce that reputation and help us maintain the UK's status as a world-class destination for listings.	This consultation closed on 27 August 2021. The government will respond in due course.	L
HMT	**Review of the Securitisation Regulation** HMT is legally obliged to review the Securitisation Regulation and lay a report before Parliament by 1 January 2022. To support this review, HMT has published a Call for Evidence to gather views on what is and isn't working in the Securitisation Regulation.	Call for evidence closed 2nd September. Report to be laid in Parliament by 1 January 2022.	L
HMT	**Primary Markets Reform - UK Listings Review response** Consulting on changes to the UK prospectus regime, and establishing a group to consider what more can be done to improve the efficiency of further capital raising by listed companies. This is in response to the recommendations of Lord Hill's Listing Review. This initiative relates to the separate FCA initiative on primary markets effectiveness. Joint objective initiatives: **Primary Markets Effectiveness - UK Listings Review response ➤**	The consultation on the UK prospectus regime was published in July 2021 (closed in September). The government will respond in due course. The Secondary Capital Raising Review was established on 12 October 2021 and will report in Spring 2022.	L
FCA/ HMT	**UK MiFID conduct and organisational rules** Changes to rules governing research and data to support best execution	Policy statement: Q4 2021	L

Lead	Initiative	Expected key milestones	Indicative impact on firms	Oct Dec 2021	Jan Mar 2022	Apr Jun 2022	Jul Sep 2022	Oct 2022 Mar 2023	Post-Mar 2023	Consumer interest	Timing updated	New
FCA/ HMT	**Wholesale Market Review** Consulting on amendments to our regulatory regime that are aimed at reducing costs and burdens for firms while maintaining the highest standards of regulation and market efficiency.	FCA consultation on changes to UK MiFID conduct and organisational requirements published April 2021 and Policy Statement 2021 Q4. HMT consultation on Wholesale Markets Reform published July 2021 (closed in September). The government will respond in due course. Follow up FCA consultations published Q1 and Q2 2022 on changes that require amendments to FCA Handbook or Regulatory Technical Standards.	H								●	
BoE/ FCA/ HMT	**FMI Sandbox** The Financial Market Infrastructure (FMI) sandbox will support firms which want to use new technology, such as distributed ledger technology, to provide infrastructure services in financial markets. It will enable a more flexible and tailored approach to meeting requirements in current legislation, whilst appropriately balancing any risks to financial stability, market integrity and consumer protection. HM Treasury will work together with the Bank of England and the FCA to deliver this.	The government will provide further information in due course.	L									●
BoE/ FCA/ HMT	**EMIR REFIT** Complete the implementation of the European Market Infrastructure Regulation (REFIT) to improve trade repository data and ensure that firms are able to access clearing services on fair and reasonable terms. We plan to consult on changes to UK EMIR to harmonise the derivative reporting requirements with international derivative reporting standards.	Q4 2021: Consultation paper of requirements for Trade Repositories and review of the UK EMIR reporting standards. Policy Statement Summer 2022.	L	E							●	

The key initiatives in the regulatory landscape



LiBOR Transition

This month the FCA announced that the publication of 24 LIBOR settings has ended and that the six most widely used sterling and yen settings will be published using 'synthetic' rates. Although most firms have been preparing for this change for some time, it's worth some final checks to make sure your house is in order

LIBOR – the London Interbank Offered Rate – has been a key benchmark for more than 40 years. It has been used for setting the interest rates charged on adjustable-rate loans, mortgages and corporate debt.

Over the past year, the FCA and the ICE Benchmark Administration have issued a number of guidance notes and speeches, providing firms with more clarity on what the transition to the new reference rates looks like beyond 2021. These publications have reinforced the global impact of this transition and the complex inter-connections between the different oversight bodies involved.

Key changes

- 24 of the 35 LIBOR settings, which relate to specific currencies and time periods are no longer available from the start of this year.
- Five USD LIBOR settings will continue to be calculated using panel bank submissions until mid-2023. New use of the US dollar LIBOR has been restricted since 31 December 2021, with limited exceptions. The FCA's decision to put in place these restrictions is supported by the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO) and in line with the supervisory guidance issued by US authorities.
- Six sterling and yen LIBOR settings will continue for the duration of this year. However, the calculations will be based on the risk-free rates instead of submissions from panel-banks. The FCA decision to permit these synthetic rate LIBOR settings is limited to legacy contracts only. The synthetic rates cannot be used for new contracts or cleared derivatives.
- Synthetic LIBOR is made up of multiple components, two of which include Sterling Overnight Interbank Average Rate – or "SONIA" and International Swaps and Derivatives Association – or "ISDA" spreads. Synthetic LIBOR should be considered a bridge to risk free reference rates and not a permanent solution.

Timeline of the key FCA publications for LIBOR cessation

- March 2021 – The FCA's Dear CEO letter outlines the regulator's expectations for regulated firms to meet milestones and targets of relevant supervisory authorities. The FCA has encouraged firms to take note and act accordingly.
- September 2021 – FCA consulted on proposals for for allowing synthetic LIBOR and restricting new use of USD LIBOR. The FCA has published a technical notice to make sure that its decision to allow legacy use of the synthetic sterling and Japanese yen LIBOR settings, comes into effect at the same time as the overall ban on use.
- November 2021 – The FCA confirmed its final decision.

- December 2021 – The FCA published a Feedback Statement detailing its response to the comments received during the consultation period. The FCA has also updated its webpage, Benchmarks Regulation: our proposed new powers, policy and decision-making.
- January 2022 – The FCA published a notice requiring LIBOR's administrator to change the way the six sterling and yen LIBOR settings still in use for 2022 are calculated, and allowing their use in legacy contracts, in line with the draft notices the FCA published previously.

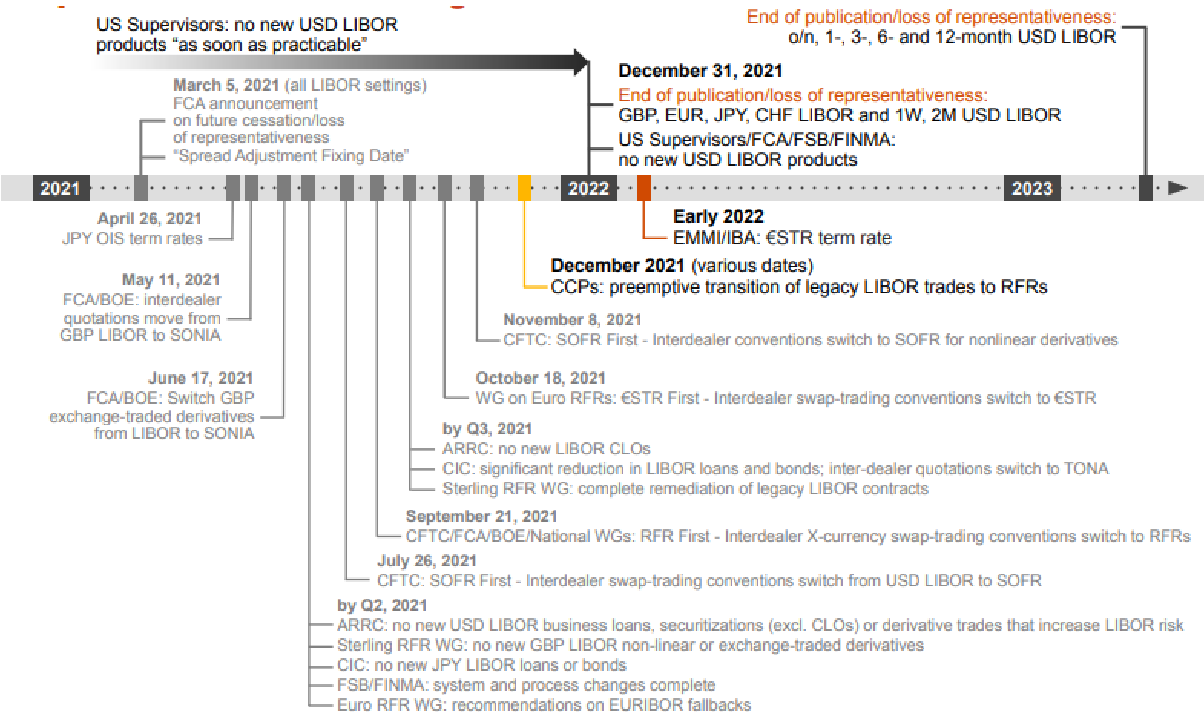
Five final checks for LIBOR transition

Most affected firms have already been preparing for these changes to LIBOR. At this point, we would recommend performing some final checks to make sure you remain compliant.

1. If you have any outstanding uncleared LIBOR swap contracts, ensure that the ISDA protocol is signed at the earliest so that these can be converted to the new market standards of overnight SONIA, SOFR etc.
2. Focus on converting any remaining LIBOR bonds/ legacy US dollar or Yen LIBOR contracts. The FCA have provided firms with some leeway on timings for this (the end of 2022 for sterling and yen, and mid 2023 for legacy US dollar contracts).
3. Create and/or update your compliance framework to ensure that you have:
    - adequate governance and oversight arrangements
    - documented policies and procedures
    - the relevant systems and controls
    - requisite training in place for your firm where required to reflect these changes.

4. Create and/or update your risk management framework and associated assessment and processes to ensure that all regulatory risks associated with benchmark firms are identified, articulated and appropriately mitigated.
5. Regularly monitor and assess the regulatory risks that impact your firm.

4 – Target dates



Currency overview | From LIBOR to risk-free reference rates

	SOFR	SONIA	€STR	SARON	TONA
Recommended alternative rate	SOFR (Secured Overnight Financing Rate)	SONIA (Reformed Sterling Overnight Index Average)	€STR[1] (Euro Short-Term Rate)	SARON (Swiss Average Rate Overnight)	TONA[1] (Tokyo Overnight Average rate)
Working group	Alternative Reference Rates Committee (ARRC)	Working Group on Sterling Risk-Free Rates (UK RFRWG)	Working Group on Euro Risk-Free Rates	National Working Group on Swiss Franc reference rates (NWG)	Cross-Industry Committee on JPY Interest Rate Benchmarks
Administrator	Federal Reserve Bank of NY	Bank of England	European Central Bank	SIX Swiss Exchange	Bank of Japan
Data source	Triparty repo from FICC, GCF from FICC bilateral	Form SMMD collected by BoE	MMSR	CHF interbank repo	Uncollateralised call money markets
Nature	Secured	Unsecured	Unsecured	Secured	Unsecured
Methodology	Fully transaction- based	Fully transaction- based	Fully transaction- based	Transaction and binding quotes-based	Fully transaction-based
Overnight vs. Term	Overnight	Overnight	Overnight	Overnight	Overnight
Go-live date	3 April 2018	23 April 2018 (originally introduced in March 1997)	2 October 2019	Published since 2009	Published since 1992
Term rate availability	Live since April 2021 (via CME). ARRC formally recommended CME's Term SOFR on 29 July 2021.	Live since January 2021 (via ICE BA, Refinitiv)	WG recommended OIS quotes based methodology for forward term rate. EMMI/IBA targeting publication of an €STR term rate early 2022.	Use of compounded SARON recommended – robust term rate seen as unlikely	Live since April 2021 ('TORF,' via Quick)

GBP | LIBOR vs alternative reference rates

	GBP LIBOR	SONIA O/N (Sterling Overnight Index Average)	SONIA (in Arrears)[3]	Term SONIA	Synthetic LIBOR	Bank of England Bank rate (Base rate)
Key attributes						
Method	Forward looking	Overnight	Backward looking	Forward looking	Forward looking	Forward looking
Published rate	O/N, 1W, 1M, 2M, 3M, 6M, 12M	O/N rate, based on transactions	Index rate for reference period calculation	1M, 3M, 6M, 12M Published term	1M, 3M, 6M	Published rate
Known at start/end of the interest period	Start (in advance)	After the period	End or shortly before (in arrears)	Start (in advance)	Start (in advance)	Start (may change during the interest period if longer than six weeks)
Credit component	Dynamic bank credit spread	No term credit spread	No term credit spread	No term credit spread	Term SONIA Reference Rate plus ISDA fixed spread adjustment	No credit spread
Publication	Daily in advance	Daily	Daily	Daily by e.g. ICE BA, Refinitiv	ICE BA	Set by the BoE's MPC every six weeks
Use cases[1]						
Derivatives	Will cease on 31 December 2021. No new transactions[2]	Input into SONIA compounded in arrears use cases shown to the right	Adopted as the main alternative reference rate to LIBOR for GBP linear derivatives and majority of non-linear derivatives	Careful assessment and robust rationale for use, e.g. potentially: • Derivatives used to hedge cash products or manage such hedges • Derivatives used to hedge tough legacy products referencing synthetic LIBOR or manage such hedges	The FCA has confirmed it will permit legacy use of synthetic sterling LIBOR in all tough legacy contracts, except cleared derivatives, at least for the duration of 2022.	Potential alternative
Bonds	As above	As above	Adopted as the main reference rate for GBP bonds	Careful assessment and robust rationale for use required	The FCA must review the use of its power to require publication of synthetic sterling LIBOR annually (up to a maximum period of 10 years).	–
Loans and other cash products	As above	As above	Examples where there is a robust rationale for using SONIA compounded in arrears include where: • The borrower may seek to hedge interest payments either at the time of borrowing or in the future • The interest rate is not used for discounting	Careful assessment and robust rationale for use, e.g. potentially: • Trade and working capital products requiring a forward-looking interest rate for discounting • Islamic finance products which can pay variable rates of return as long as the variable element is predetermined • Mid corporate/private banking and retail and export finance/emerging markets lending	The synthetic rates will not be available for use in any new contracts. This is prohibited under the UK Benchmarks Regulation. *See the footnote for more information.*	Potential alternative where simplicity or payment certainty is the key factor

USD | LIBOR vs alternative reference rates

	USD LIBOR	O/N SOFR	Average SOFR			Term SOFR	CSRs
			Daily Simple SOFR	Compound in Arrears	Compound in Advance		e.g. BSBY, CRITR, BYI, Ameribor, AXI
Key attributes							
Method	Forward looking	Backward looking	Backward looking	Backward looking	Backward looking	Forward looking	Forward looking
Published rate	O/N, 1W, 1M, 2M, 3M, 6M, 12M	O/N rate only	Calculated average term	Calculated average term, 30D, 90D, 180D	Calculated average term, 30D, 90D, 180D	1M, 3M, 6M Published term	Published term
Known at start/end of the interest period	Start (in advance)	After the period	End or shortly before	End or shortly before	Start (in advance)	Start (in advance)	Start (Term CSRs)
Credit component	Dynamic bank credit spread	No term credit spread	No term credit spread	No term credit spread	No term credit spread	No term credit spread	Dynamic credit spread
Publication	Daily in advance	Daily	n/a (calculated by bank)	Daily by FRBNY	Daily by FRBNY	Daily by CME	Depending on the rate
Use cases[1]							
Derivatives	No new use by banks after 31 December 2021[2]	Input into SOFR average use cases shown to the right	–	Recommended	–	Limited to end-user facing derivatives intended to hedge cash products that reference the SOFR Term Rate	Not endorsed by the ARRC or Financial Conduct Authority (FCA)
Bonds	As above	As above	–	Recommended	–	Fallbacks for legacy LIBOR	Not endorsed by the ARRC or FCA
Loans and other cash products	As above	As above	Recommended	Recommended	Recommended	• The use is supported where the use of term rate could be helpful in addressing difficulties to transition from LIBOR (e.g. multi-lender facilities, middle market loans, trade finance loans) • Certain securitisations that hold underlying business loans or other assets that reference the SOFR Term Rate	Not endorsed by the ARRC or FCA

USD | SOFR vs credit sensitive rates

Rate	Publisher	First published	Underlying market/Methodology	Tenors	Underlying volume	Volume threshold	Sources
SOFR							
Secured Overnight Financing Rate	FRB NY	3 April 2018	Trades in the Broad General Collateral Rate, plus bilateral Treasury repo transactions cleared through the FICC DVP service	Overnight	~$800 billion – $1 trillion/daily (Q2 2021)	N/A	FRB NY SOFR Landing Page
CME Term SOFR Reference Rates	CME	21 April 2021	Executed transactions and executable bids and offers in CME SOFR Futures SOFR OIS (depending on volume)	1M 3M 6M	Average daily volume in CME SOFR Futures in Q3 2021: ~160,000 contracts OI (as of Q3 2021): >1 million contracts	N/A	CME Term SOFR Reference Rates Benchmark Methodology CME SOFR Futures
Credit sensitive rates							
BSBY (Bloomberg Short-Term Bank Yield Index)	Bloomberg	20 January 2021	Transactions and executable offers in USD unsecured wholesale funding (CP, CD, ECP, ECD, YCD, bank deposits and short-term bank bonds)	Overnight	~$96 billion (transactions and offers, over a 3-day window)	$60 billion	Introducing the Bloomberg Short-Term Bank Yield Index (BSBY)
				1M	~$22 billion	$10 billion	
				3M	~$19 billion	$10 billion	
				6M	~$16 billion	$10 billion	
				12M	~$16 billion	$9 billion	
Bank Yield Index	ICE Benchmark Administration (IBA)	N/A – test rates available	USD unsecured wholesale funding (CP, CD, bank deposits, CDS and short-term bank bonds) (transactions only) from 14 panel banks	1M 3M 6M 12M	~20-35 billion (aggregate across all tenor buckets, over a 5-day window)	$15 billion (aggregate across all tenors, over a 5-day window) Minimum of 100 transactions in aggregate	USD ICE Bank Yield Index - Calculation Methodology – 2021 U.S. Dollar ICE Bank Yield Index Update – May 2020
AMERIBOR	American Financial Exchange (AFX)	11 December 2015 (o/n)	Overnight unsecured lending on the AFX (200+ members)	Overnight	$2 billion/daily outstanding	N/A	AMERIBOR® Methodology Presentation at FRB NY CSG Innovation Forum
			CP, CDS from US institutions (30-day/90-day term)	Term-30, Term-90	CP and CD issuances from US institutions, AFX unsecured lending data	$25 billion (aggregate over a 5-day window)	AMERIBOR® Term-30 White Paper – June 2021
			Implied rates from AMERIBOR futures contracts (term structure)	Term Structure (1W, 1M, 3M, 6M, 1Y, 2Y)	Average daily volume in CBOE AMERIBOR Futures in 1H 2021: ~19 contracts OI (as of June 22, 2021): 744 contracts	N/A	AMERIBOR Term Structure Press Release – June 2021
CRITR and **CRITS** (USD Credit Inclusive Term Rate, USD Credit Inclusive Term Spread)	IHS Markit	1 June 2021	CD, CP, corporate bonds transactions and indicative price quotes	1M 3M 6M 12M	~$10 billion (aggregate across all tenor buckets, over a 5-day window)	unknown	Presentation at FRB NY CSG Innovation Forum IHS Markit press release introducing CRITR and CRITS
Across-the-Curve Credit Spread Benchmarks	SOFR Academy	N/A	U.S. dollar wholesale unsecured debt funding for publicly listed U.S. BHCs and commercial banks	N/A – credit spread depends on maturity	$10-20 billion/month long end component (Bonds with maturities out to 5yrs) & ~$300-600 billion/month short end component (money market products)	N/A	Across-The-Curve Credit Spread Indexes (AXI) – Oct 2021 Letter to ARRC – June 2021 Original white paper (by Duffie et al.) – July 2020 SOFR Academy landing page

JPY | LIBOR vs alternative reference rates

	JPY LIBOR	JBA TIBOR (Tokyo InterBank Offered Rate)	Euroyen TIBOR	TONA O/N (Tokyo Overnight Average rate)	TONA (Compound in Arrears)	TORF (Tokyo Term Risk Free Rate)	Synthetic LIBOR
Key attributes							
Method	Forward looking	Forward looking	Forward looking	Backward looking	Backward looking	Forward looking	Forward looking
Published rate	S/N, 1W, 1M, 2M, 3M, 6M, 12M	1W, 1M, 3M, 6M, 12M	1W, 1M, 3M, 6M, 12M	O/N	Calculated average term 30D, 90D, 180D	1M, 3M, 6M published term	1M, 3M, 6M
Known at start/end of the interest period	Start (in advance)	Start (in advance)	Start (in advance)	End (in arrears)	End or shortly before (in arrears)	Start (in advance)	Start (in advance)
Credit component	Dynamic bank credit spread	Dynamic bank credit spread	Dynamic bank credit spread	No term credit spread	No term credit spread	No term credit spread	TORF *(360/365) plus ISDA fixed spread adjustment
Publication	Daily in advance	Daily in advance	Daily in advance	Daily in arrears	Daily in arrears by QUICK Calculated	Daily by QUICK in advance	ICE BA
Use cases[1]							
Derivatives	N/A, will cease December 31, 2021	An existing rate in a multi-rate environment	An existing rate in a multi-rate environment (may be discontinued in the future)	Input into TONA average use case shown to the right	The main alternative rate in a multi-rate environment	May be used, although primary rate for derivatives should be TONA	The FCA has confirmed to permit legacy use of synthetic yen LIBOR in all tough legacy contracts, except cleared derivatives, from 1 January 2022 until 31 December 2022. The FCA does not intend to renew the requirement to publish synthetic yen LIBOR, and publication will therefore cease at end of 2022. The synthetic rates will not be available for use in any new contracts. Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks is consulting on the treatment of tough legacy contracts in Japan. (link)
Bonds	As above	As above	As above	As above	Alternative rate in a multi-rate environment	Alternative rate in a multi-rate environment Primary rate for recommended fallbacks	
Loans and other cash products	As above	As above	As above	As above	As above	As above	

Links

- https://www.fca.org.uk/markets/libor

- https://www.bankofengland.co.uk/markets/transition-to-sterling-risk-free-rates-from-libor/working-group-on-sterling-risk-free-reference-rates
- https://www.newyorkfed.org/arrc
- https://www.ecb.europa.eu/paym/interest_rate_benchmarks/WG_euro_risk-free_rates/html/index.en.html
- https://www.snb.ch/en/ifor/finmkt/fnmkt_benchm/id/finmkt_reformrates
- https://www.boj.or.jp/en/paym/market/jpy_cmte/index.htm/
- https://www.isda.org/2020/05/11/benchmark-reform-and-transition-from-libor/
- https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/benchmark-reform/
- https://www.fsb.org/work-of-the-fsb/market-and-institutional-resilience/financial-benchmarks/

FCA recognises revised FX Global Code and Global Precious Metals Code; *The FCA has recognised the updated FX Global Code and Global Precious Metals Code and at the same time taken aim at the misuse of 'last look' and 'pre-hedging' practices by market participants. The FCA warns that:*

- last look practices incorporating 'additional hold time', i.e. a delay additional to what is required to complete price and validity checks, to, for example, see if future prices move in a market participant's favour in relation to a client's trade request are not consistent with the codes; and
- pre-hedging practices where market participants do not communicate these to clients in a way that allow the client to understand the potential impact on execution, including where appropriate controls to monitor conflicts of interest or to limit access to confidential information relating to anticipated orders are not in place, are also not consistent with the codes.

- In light of these warnings, we would suggest participants and individuals subject to the FCA's Senior Managers and Certification Regime review the codes carefully and consider if their behaviour is in line with the spirit and letter of code provisions. This exercise will ensure that Senior Managers meet their obligation to observe 'proper standards of market conduct', which extends to unregulated activities such as those to which the codes relate.
- Some trading venues have already adhered to the revised code. From late this month, they should be publishing more information on various practices, including the extent to which the venue is truly anonymous – the new FX code focuses on the practice of "tagging". Market participants who have not themselves adhered to the codes might become subject to their provisions as a result of venues adhering to the codes – Simmons' Trading Venue Reviewer interrogates venue rules on this point.

Proposed delay to the EU CSDR mandatory buy-in regime; *To an audible sigh of relief from the industry, a tweet from Commissioner Mairead McGuinness confirmed the much-anticipated agreement by the EU Parliament and EU Council to postpone the CSDR mandatory buy-in regime (*MBI regime*) implementation from its planned date of 01 February 2022. The delay has been welcomed by the industry as the MBI regime has been widely criticised as unworkable and market participants have faced serious difficulties regarding implementing its rules.*

- Details of the postponement, including how long the postponement will be, are still to be confirmed. The formal process will likely involve an official regulatory amendment, but this would not be possible before 01 February. ESMA has therefore issued a public statement asking national competent authorities to exercise regulatory forbearance and not to prioritise supervisory actions in respect of non-compliance with the MBI regime. Sensing the agitation of market participants, ESMA has also informally indicated that a 2 to 3-year delay is likely to be considered.
- Given the length of the likely delay and potential for amendments to the regime, we do not expect market participants to continue work on compliance with the MBI regime. Market participants can instead focus on Cash Penalties and Allocations, both of which will still come into effect on 1 February 2022. Read our note on what needs to be done here.

CSDR mandatory buy-ins; A delay is announced

On 17 December 2021, ESMA published a public statement expecting NCAs not to prioritise supervisory actions in relation to the application of the CSDR buy-in regime when it is due to come into effect on 1 February 2022. On 23 December 2021, EVIA was a co-signatory to a jointassociation statement clarifying their interpretation of ESMA's statement, which is that EU legislators do not expect market participants to take further action towards implementation of the mandatory buy-in requirements.

The ESMA statement follows agreement between co-legislators at the 24 November 2021 trilogue meeting for the DLT Pilot Regime Regulation that the mandatory buy-in (MBI) regime should be decoupled from the CSDR Settlement Discipline package in order to delay its implementation. This is in light of the ongoing European Commission review of CSDR, with amendments to the regime and implementation timeline expected in the first half of 2022.

The case against MBIs; ICMA is pleased that the MBI regime will not be going ahead in February 2022. ICMA has long opposed the implementation of MBIs in the EU non-cleared bond markets on the following grounds:

(i) It is expected to have a significant detrimental impact on bond market liquidity since it will be an effective deterrent to market makers taking short positions, as well as to lending securities. It is further likely to have a procyclical effect in times of market stress.
(ii) The cost of implementation, particularly from a contractual remediation perspective, noting that this will stretch beyond EU market participants, is likely to far outweigh the benefit of any incremental improvement in settlement efficiency rates.
(iii) Largely due to some impolitic drafting in the Level 1 provisions, there remains significant ambiguity around the scope and application of the MBI process, as well as concern that some elements of the regulatory technical standards (RTS) may not be implementable.

Industry first highlighted concerns about MBIs in the ERCC 2015 impact study which attempted to illustrate and quantify the anticipated effects for bond market pricing and liquidity. In 2017, ICMA was the first association to publish a position paper proposing that the MBI provisions should not be implemented, and that they be reviewed while the European Commission undertakes a rigorous impact assessment.

Since then, a widespread cross-section of industry has continued to bring attention to a number of implementation challenges, regulatory ambiguities, and potential defects of the MBI provisions, including the asymmetrical treatment of the buy-in and cash compensation payments, the impact on the MPT Bond Brokering efficacy, the methodology for determining the cash compensation reference price, the lack of a pass-on mechanism, and the requirement to appoint a buy-in agent.

In 2019, ICMA published a second impact study that not only sought to illustrate the anticipated outcomes for bond market pricing and liquidity, but also the indirect effects on repo and securities lending markets, as well as the expected consequences for investors. ICMA's buy-side constituents were now becoming more heavily engaged in the discussions around MBIs, with concerns not only about the cost and complexity of implementation, but a growing awareness that it is investors in European capital markets who would ultimately be disadvantaged by the regime.

The COVID-related market turmoil of March-April 2020 saw a significant spike in settlement fails as markets became more volatile, trading volumes increased, and as firms' operations teams adjusted to working remotely. This raised new concerns as to what could have been the impact had MBIs been in force at that time, something flagged in reviews of how the EU corporate bond markets performed during this period. Shortly after this, the UK announced that following its departure from the EU it would not be implementing the CSDR Settlement Discipline package.

It was perhaps these developments that led the European Commission to include MBIs in its Targeted Review of CSDR in late 2020. In its response to the Commission's public consultation, the industry, including EVIA, drew on its extensive body of work on MBIs to date, as well as providing analysis of how bond markets would have been impacted during the COVID turmoil had the regime already been in place.

As it became clearer in early 2021 that the MBI regime would almost certainly need to be revised, the wider industry called on the Commission to delay implementation of the current MBI provisions until the legislative process to amend MBIs had been completed, along with a suitable period for the industry to prepare for the new RTS. Essentially, this was to prevent the industry from having to undertake the extensive contractual and operational work necessary to support implementation twice.

As it came to light that there was growing agreement among the Commission, ESMA, and the Member States that a delay to MBIs was necessary, and that the focus was now on how to effect such a delay, several industry associations, intensified its engagement with regulators and policy makers to communicate the importance of announcing the intention to delay as soon as possible in order to spare the industry of more unnecessary cost and effort. In September 2021, ESMA wrote an open letter to the Commission supporting a delay to MBIs and requesting urgent action to provide a signal that a modification of the current implementation timeline is considered, ideally before the end of October 2021. That signal finally came in the form of a "tweet" on 24 November 2021, followed by a more official press statement on the Commission website the following day.

What next for MBIs?

We now expect the Commission to propose an amendment to CSDR, decoupling MBIs from Settlement Discipline. Once this has been passed into law, we would then expect ESMA to put forward a proposed amendment to the delegated act (the "Level 2") outlining a new date of application for MBIs. This postponement should be long enough for the Commission to put forward its proposed amendments to the MBI regime and for this to go through the usual legislative process involving the co-legislators. Once this is in law, new RTS will be required, which will also be subject to the usual legislative process before this is passed into law. Finally, the industry will require time to prepare for implementation.

Therefore, a delay of at least two years, and possibly longer, would seem reasonable. ICMA would also argue that sufficient time should be given to observe the impact of the CSDR penalty mechanism, and other initiatives to improve settlement efficiency in the EU, which could negate any argument for MBIs.

It will also be important to scrutinise the revised MBI proposal when this is published, expected to be in May 2022. Given the numerous design issues of the current framework, as well as significant ambiguity around scope and application, re-designing a regulatory model for buyins will not be straightforward. There have been some calls, perhaps as a well-intentioned gesture of compromise, that MBIs be retained in law, but as “optional buy-ins”. This is likely to be problematic. Firstly, this in itself would not address many of the implementation challenges and ambiguities related to the current framework.

Secondly, this would still likely require an extensive global contractual re-papering exercise, which also raises issues around extraterritorial enforceability. And thirdly, this could conflict with, and even undermine, existing, well-designed and appropriately calibrated contractual remedies.

This not only highlights the complexity of trying to introduce buy-ins through legislation, but also the near impossibility of doing so through post-trade regulation. As the industry has maintained since 2015, buy-ins are not a post-trade process: they are market transactions, with associated market risk. If the EU authorities are determined to introduce regulatory buy-ins, they should do so through market regulation. Or better still, not do it at all.

ICMA CSDR Penalty Workstream; *While the implementation of CSDR mandatory buy-ins is being delayed, the regime for cash penalties is set to go live on 1 February 2022. ICMA’s CSDR-Settlement Discipline Working Group has rolled out a Penalty Workstream focused on supporting implementation in the bond and repo markets.*

- The intended outputs of the Workstream can be categorised under: • General industry preparedness and any related issues or observations. • Article 6 compliance and measurement. • Penalties’ scope and claims process. • Settlement efficiency and fails prevention.
- Through engagement with its members, ICMA hopes to produce a Guide to Best Practice to support implementation of the penalty regime with respect to bond and repo markets, as well as a list of Frequently Asked Questions. It is expected that these will remain living documents and will be updated on a regular basis.
- The Workstream meets virtually on a regular basis and is chaired by Nicholas Hamilton of JP Morgan. The Workstream is working closely with AFME and ECSDA and its outputs are intended to complement the existing initiatives of these associations.

FCA warns firms on use of web-based trading platforms and MAR compliance; *In a quasi-statement of intent, the FCA set out in its Market Watch 68 its concerns about gaps in market participants’ surveillance of user activity on web-based platforms and strongly hinted at enhanced future regulatory scrutiny in this area.*

- The FCA’s concerns centre around the growing use of web-based platforms where a direct connection to users’ trading systems is not required and users have been unable to (or choose not to) establish one. Although trade details for trades executed on such systems are generally recorded in trade booking systems, this is not necessarily the case for related order messages that precede execution and those that do not result in a trade. The FCA is therefore concerned that this gap around capturing and monitoring orders means that the requirements for market abuse surveillance are not being met.
- The FCA acknowledged that the industry in general faces specific challenges with regard to these platforms but emphasised that it would not accept this as an excuse for failing to comply with MAR. The FCA emphasised that it market participants should consider its concerns and take steps to ensure they are monitoring all orders and transactions. To capture all unexecuted orders and relevant order-related messages, participants should consider the following steps:

- Compliance awareness – Review the number of web-based platforms used, the quantity of activity happening on such platforms, and the scope for capturing order and trade data.
- Overcoming the data challenge – Instead of settling for a data gap, use tactical solutions to get useable data on both orders and trades in a format suitable for surveillance. Consider offboarding platforms if it is not possible to get the necessary data.
- Market abuse risk assessments – Risk assessments of the market abuse risks facing the business should include business entered on web-based platforms and particularly on orders which are deleted or otherwise do not result in a trade.
- Onboarding governance – Establish formal procedures and governance procedures for onboarding new platforms. As part of these procedures, the ability to retrieve relevant trade and order data should be included as a prerequisite to onboarding platforms and market participants should consider how to meet market abuse surveillance and record keeping obligations.

The EU Capital Markets Union Package as per start of 2022

Introduction

On 25 November 2021, the European Commission (EC) published a Communication on the delivery of its 2020 Capital Markets Union (The "CMU Action Plan"). It was accompanied by a set of legislative proposals reviewing MiFID II/MiFIR, AIFMD and the European Long-Term Investment Fund (ELTIF) Regulation and creating a European Single Access Point (ESAP) (together, the CMU Package).

The wholesale markets welcomed the concrete steps that have been taken towards enhancing the EU's capital markets in the CMU Package. Resilient and well-functioning bond markets are critical to funding sustainable economic growth and development in the EU and beyond. In 2021, international primary bond markets provided around €1.6 trillion worth of financing in the EU. A well-functioning and transparent secondary bond market is crucial to support this financing of the real economy.

ICMA In particular, was pleased to see progress on some of the key points it raised previously that are crucial to supporting the further development of the cross-border bond market. ICMA's preliminary thoughts and feedback on the High-Level Forum's (HLF) Final Report and preliminary thoughts on the 2020 Capital Markets Union Action Plan.

This included:

- suggested amendments to MiFIR facilitating the emergence of one consolidated tape for each asset class, including bonds;
- amendments to the MiFIR bond transparency regime that mean liquidity and investment grade (IG) or high yield (HY) classification would be taken into account when deferrals are determined;
- the removal of the MiFID II Article 27(3) best execution reporting requirement;
- the ESAP proposal demonstrating progress towards a truly integrated EU platform for companies' public financial and non-financial documents; and
- the proposed review of the ELTIF Regulation to strengthen the role of securitisation.

Within these proposals, there are some points requiring further consideration by the EU, in particular the calibration of the MiFIR transparency regime. In relation to the AIFMD Review, concerns on certain aspects of the proposals and considers it to be important that improvements that may result from the ELTIF Regulation Review are not outweighed by changes that may be made under the AIFMD Review.

Key points

MiFID II/MiFIR: proposed amendments, one consolidated tape for each asset class, which is a positive development for bond markets. The EC has carefully considered the potential benefits of an EU post-trade consolidated tape as a tool for reliable access to consolidated data as set out in the recent FCA's Jan 2021 Report on access to Trading Venue data. A consolidated tape for bonds will strengthen EU capital markets by linking together the currently fragmented posttrade data ecosystem. Furthermore, this is an important development in encouraging retail investment in EU financial markets, which is a goal of the 2020 CMU Action Plan.

With regard to the amendments to the MiFIR bond transparency regime, the proposed inclusion of market liquidity and IG and HY instrument classification has flexibility for methodology variables in the future bond deferral regime. ESMA will develop implementing measures in due course, and industry concerns that the suggested maximum deferral for the reporting of a transaction price for large and illiquid trades will be capped as of the end-of-day. If this proposal is adopted, it will likely disadvantage EU fund managers, asset managers, pension funds and banks by compromising their market positions. For instance, ICMA recommends for large and illiquid bond trades a two-week price and size deferral. There should also be a published methodology for liquidity determination, for example using the amount outstanding.

In relation to best execution, the proposed deletion of MiFID II Article 27(3) is widely welcome and aligns with UK and US. The EC opened a feedback period on the MiFID II/MiFIR proposal with responses due by 7 March 2022.

The European Commission is using mandatory reviews of major pieces of capital markets legislation to move forward its Capital Market Union (CMU) action plan a year after it was launched. The MiFIR review proposals focus on improving market transparency and structure and will have the most impact on firms and venues engaged in the wholesale trading markets. A wider MiFID II review proposal is expected in 2022, and is likely to cover investor protection and corporate governance obligations.

The aim of the CMU is to strengthen and reduce fragmentation in the EU capital markets. The Commission's latest package of four legislative proposals aims to "improve the ability of companies to raise capital across the EU and ensure that Europeans get the best deals for their savings and investments" by:

- Amendments to MiFIR to stop "payment for order flows", remove the main obstacles to the creation of a consolidated tape and increase market transparency, alongside simplifying some of the transparency obligations and levelling the playing-field between the different venues and methods of trade execution.
- Targeted revisions to AIFMD and the UCITS Directive to harmonise the regulatory framework for AIFs that issue loans to companies, ensure that fund managers which delegate their functions to non-EEA parties adhere to the same high standards applicable across the EU, and encourage the proper use of harmonised liquidity-management tools in open-ended funds. There are also changes to the data reporting requirements and rules for depositaries.
- Changes to the European Long-term Investment Fund (ELTIF) Regulation to make the funds more attractive for fund managers and investors.
- Establishing a European Single Access Point (ESAP) to provide a common source of public, free information about EU companies and investment products aiming to be phased in from

2024. This may be similar to the US SEC EDGAR database. It is also proposed to become a database for ESG data on companies and financial products.

For further detail on the AIFMD, UCITs and ETLIF proposals – see below or look at this article here.

Details on the MiFIR proposal

The Commission's aim with the MiFIR proposal is to "improve transparency and availability of market data, improve the level-playing field between execution venues and ensure that EU market infrastructures can remain competitive at international level." Many of the proposals have been recommended in ESMA review reports over the last two years and generally aim to bring efficiencies and improvements to the existing regulation rather than wholesale change. The main proposals are:

- Various amendments to improve the conditions for **consolidated tapes** by mandating trading venues to contribute their data to a consolidated tape provider (CTP), harmonising data standards, requiring CTPs to share revenue with data contributors and introducing a selection procedure for the appointment of a CTP for each asset class (shares, ETFs, bonds and derivatives)
- Changing the **double volume cap** to a single volume cap which will rely only on an EU-wide threshold of 7% (the venue threshold will be removed)
- **Increasing Systematic Internalisers' (SIs) transparency obligations**, including aligning SI reporting formats and obligations with those applicable to exchanges, multi-lateral trading facilities (MTFs) and organised trading facilities (OTFs)
- Reducing the scope of non-equity trade reporting **deferrals** and harmonising the deferral regime, by instigating EU-wide, rather than national, thresholds
- Introducing the obligation that multilateral systems have to operate with a trading venue licence — to address the issue that software providers could be acting as trading venues
- Clarification that the **share trading obligation** (STO) applies only to shares with an EEA ISIN and establish an EU `official list' of shares subject to the STO
- Banning **payment for order flow** to try to improve best execution for investors
- Removing **`open access obligation'** for exchange-traded derivatives - already postponed several times
- Aligning the derivatives trading obligation (DTO) with the clearing obligation

A wider MiFID II review is expected in 2022, however the proposal includes related amendments to MiFID II to:

- Remove the licencing requirement for persons dealing on own account on a trading venue by means of direct electronic access (DEA), in line with ESMA recommendation on algorithmic trading
- Oblige investments firms, MTFs, OTFs and regulated markets to meet data standards enacted in the MiFIR proposals, to assist with consolidated tape
- Allow for sanctions for infringements of new provisions in MiFIR on data quality, mandatory data contributions and payment for order flow

Comparison with UK proposals

The UK Government launched its proposals to amend UK onshored MiFID II/MIFIR in July 2021. There is some consistency between the UK and EU proposals — alignment of the DTO with the clearing obligation and a focus on establishing a consolidated tape. But there is also divergence — the UK will completely revoke the double volume cap and the STO.

Next steps

The EU and UK proposals will both require legislative changes and amendments to technical standards/the rule book. The Commission's proposals will now be debated and negotiated by the European Parliament and the Council. HM Treasury is likely to present the UK legislative changes in early 2022. ESMA and the FCA will issue further consultations on the technical standards/rule book changes over the next few months. The timing of all these changes is likely to be spread over the next year.

The differences in the proposals may further complicate the operating environment for firms. To plan effectively for the probable change needed to systems (and possibly business models), firms working in these jurisdictions should keep track of the developments and finalisation of the proposals.

European Single Access Point (ESAP): ICMA has long recognised the advantages of an EU-wide digital access platform for companies' public financial and non-financial documents; and welcomes the EC's progress towards achieving this through its recent proposal. The EC's proposed approach of building the ESAP in a proportionate and gradual manner helps. In particular, as the ESAP project develops it will be important to avoid: (i) inappropriate standardisation requirements (which can restrict borrower flexibility to access capital market funding); and (ii) borrowers needing to have coding resources (which can significantly increase the cost and so reduce the attractiveness of borrowers accessing capital market funding). Related to this final point, the EC's proposed approach is effective, which requires initially information to be provided in machine readable format only where that format is already required by sectoral legislation.

The functionalities of the ESAP should include filtering of information (as well as search and other functions proposed in Article 7 of the EC's proposal).The EC opened a feedback period on the ESAP proposal with responses due by 7 March 2022.

ELTIF Regulation: In ICMA's view, the ELTIF Regulation review is going in the right direction. The EC's thorough efforts to boost long-term investments and enhance capital markets are to be applauded. In particular, a distinction exists between professional and retail investors, the broadening of eligible assets, and the simplification of retail distribution rules. The EC opened a feedback period on the ELTIF proposal with responses due by 7 March 2022.

AIFMD: There are concerns with certain aspects of the proposals, in particular the proposal to amend both the UCITS and AIFM Directives on areas such as delegation, the use of liquidity management tools and supervisory data reporting. The EC opened a feedback period on the AIFMD proposal with responses due by 7 March 2022.

Looking ahead

CSDR mandatory buy-ins: The political agreement reached on 24 November 2021 by the EU legislators to postpone CSDR mandatory buy-ins with a view to reviewing these provisions is very widely supported. The 17 December 2021 Public Statement from ESMA that it expects national competent authorities not to prioritise supervisory actions in relation to the application of the CSDR buy-in regime.

This regulatory initiative contained a number of critical design flaws as well as ambiguity around scope and process, not only from an implementation perspective, but also with respect to the potential implications for EU bond market liquidity and stability. ICMA looks forward to engaging further with the EC and ESMA as they review the role of regulatory buy-ins in EU bond markets, and how this sits with the objectives of CMU. Meanwhile, the widely utilised Buy-in Rules as part of the ICMA Secondary Market

Rules & Recommendations, will remain an effective and accessible contractual remedy for settlement fails in the international bond markets.

Cross-border provision of settlement services: From a repo and collateral management perspective, the fragmented post-trade environment in Europe has been a long-standing concern. While important steps have been taken, in particular with the launch of TARGET2-Securities and the associated harmonisation agenda driven by the European Central Bank, there are still frictions in place which prevent collateral from flowing freely across borders. The ERCC contributed to the 2017 Report by the European Post-Trade Forum (EPTF) established by the EC, which attempted to identify remaining barriers in this area and put forward suggested solutions towards a more integrated post-trade space in the EU. This encourages the EC to continue to take these into consideration as part of its CMU work, in particular under Action 13 of the Action Plan. In the meantime, the ERCC is actively working with members and other key stakeholders, including the relevant infrastructure providers, to identify remaining inefficiencies and bottlenecks in the settlement space.

EU Listing Act: the EC's targeted consultation on the EU Listing Act, including the proposed amendments to the EU Prospectus Regulation has been involved at all levels of the debate on the EU prospectus regime since its inception. Whilst the EU Prospectus Regulation currently works well from the perspective of the wholesale international bond markets, and there are limited areas that need fixing. Progress towards the overarching policy objectives of the EU Listing Act to cut red tape for companies that want to raise funds on EU public markets and to facilitate access to capital for SMEs are critical pillars of CMU.

Other CMU areas: Building retail investors' trust in capital markets following the public consultation on the retail investment strategy in August 2021.

The CMU Package contains some good proposals that could help to achieve the key objectives of the CMU Action Plan of (i) making financing more accessible to EU companies, (ii) making the EU an even safer place for individuals to save and invest long-term and (iii) integrating national capital markets into a genuine Single Market.

ICMA's proposal for a new post-trade transparency regime for the EU corporate bond market

- *ICMA fully supports the establishment of a single consolidated tape for EU bond markets. ICMA views this as being the necessary vehicle for providing comprehensive, meaningful market transparency. In April 2020, ICMA published a report with recommendations for the establishment of an optimal post-trade consolidated tape for EU bond markets.1 This report addressed a number of fundamental questions relating to the context, relevance, comparability, scope, design, and governance of a potential consolidated tape.*
- *In the summer of 2021 as an important follow-up to this work, ICMA, through its Transparency Taskforce, began extensive discussions and analysis to determine what should be the appropriate "transparency regime" to support the consolidated tape. That is, what information should be made available on the tape, and when? While in many, if not most cases, full and immediate disclosure of transactions can be considered desirable, there is also a broad recognition that there are instances where it would be beneficial to the overall integrity and efficiency of the market to delay the dissemination of certain details, and possibly of the transaction itself.*

On 25 November 2021, the European Commission (EC) published a Communication on the delivery of its 2020 Capital Markets Union (CMU) Action Plan. This package of announcements included proposals for amendments2 to the MiFID and MiFIR texts. Specifically, the EC proposes that "ESMA should specify the deferral buckets for which the deferral period shall apply across the Union by using the following criteria: a. liquidity determination, b. size of the transaction (in particular, transactions in illiquid markets or that are large in scale), and c. the classification of the bond (investment grade or high yield)." With regard to the EC's amendments to the MiFIR bond transparency regime, ICMA welcomed the proposed inclusion of market liquidity and IG and HY instrument classification as methodology variables in the future bond deferral regime. ICMA looks forward to engaging with ESMA on implementing measures. However, ICMA is concerned that the suggested maximum deferral for the reporting of a transaction price for large and illiquid trades is end of day. If this proposal is adopted, it will likely disadvantage EU fund managers, asset managers, pension funds and banks by compromising their market positions. ICMA recommends for large and illiquid bond trades a two-week price and size deferral. ICMA also notes that there was not a suggested methodology for liquidity determination, for example using the amount outstanding. The ICMA paper summarises the Taskforce's findings and sets out ICMA's position regarding a bond market transparency regime methodology for EU corporate bond markets: one that benefits large and small industry participants. Under the umbrella of ICMA's MiFID II/R Working Group, the ICMA Transparency Taskforce aims to provide a workable transparency methodology for ESMA, in its "implementing measures" capacity, to strongly consider.

Why is transparency important for bond markets?

The goal of the bond post-trade consolidated tape (CT), as perceived by Taskforce members, is to improve transparency, assist decision making, and provide market insights to end-investors, large or small. Adoption of the appropriate structure would benefit the whole market, by providing a centralised, high quality, affordable, trustworthy data source, offering a comprehensive market view. This would bring immediate benefits to professional bond markets and benefit the retail sector as well. Transparency is important to bond market participants because it assists decision making and provides market insights to end-investors. Transparency also promotes price competition as investors are able to demand more accountability from their liquidity providers. Additionally, transparency facilitates automation advancements. Finally, market participants can assess accurately current market and liquidity dynamics, increasing overall investor confidence, particularly during times of market volatility. Importantly, the establishment of a CT for bonds can be viewed as integral to the objectives of Capital Markets Union (CMU).3 A post-trade CT for bonds strengthens EU capital markets by linking together the disparate trading venues and Approved Publication Arrangements (APAs) across the EU, enhancing investor confidence due to increased transparency in the market. Stronger and more liquid EU capital markets promote capital formation, job creation, and economic growth.

Transparency vs liquidity

The Taskforce notes that, while regulatory frameworks should be calibrated in a way that achieves a high level of post-trade transparency, they should also take into account the potential impact that post-trade transparency may have on market liquidity. This is a recognition that, particularly in bond markets, too much information can be a bad thing. This is an acknowledgement of differing market structures and in particular a recognition of how bond market liquidity is created. In illiquid markets, especially those that rely on market makers as the principal source of liquidity, prices can be extremely sensitive to information dissemination, particularly in response to public knowledge that a trade is trying to be executed or has just been executed. Such information leakage creates risks for both the liquidity provider and the liquidity taker. In the case of the former, the liquidity provider will be taking a position onto their books that they will subsequently look to offlay. If during this period (which could range from hours to weeks) the details of the original transaction are publicly disseminated, the market will anticipate the offlaying trade and adjust the price of the securities accordingly, to the detriment of the liquidity provider. In the case of the liquidity taker, if it becomes market knowledge that somebody is looking to execute a particular trade, either before they are able to execute (pre-trade) or as they attempt to execute the transaction in increments (post-trade), the market will similarly adjust in response to this information. Here the liquidity dimension of depth (ie the ability for the market to absorb size) becomes a fundamental consideration.

Accordingly, too much transparency can have an adverse effect on market efficiency and liquidity, either forcing liquidity providers to adjust their pricing (assuming that they do not withdraw liquidity completely) or amplifying market moves in response to any request for quote or partial execution. In both cases it is the investor who ultimately suffers. In its response to the consultation document for the IOSCO transparency recommendations,4 ICMA stressed that efficient and liquid markets are the most important considerations for investors, and which are valued far more than transparency in itself, since inefficient markets fail to serve both investors and issuers. Thus, any public transparency framework needs to ride a fine line between improving market efficiency and undermining market liquidity. This is what the Taskforce proposal aims to achieve: balancing the benefits of improved overall market transparency while protecting not only market makers and liquidity providers, but also investors, particularly in the case of large transactions, or transactions in less liquid bonds. This is why it proposes longer deferral periods (up to two weeks) not only for the publication of certain transaction sizes, but also prices.

Simplicity vs complexity

Defining and measuring liquidity is not straightforward. In its 2016 report on the European corporate bond market, ICMA settled upon the following definition: the ability to execute buy or sell orders, when you want, in the size you want, without causing a significant impact on the market price.5 This essentially captures the three dimensions of liquidity outlined by Kyle (1985) and Harris (2003): cost, depth, and time. In recent years, a number of data providers have begun to produce "liquidity scoring" metrics for individual bonds. These generally take into account a range of dynamic and static variables, such as historical prints, observable quotes, price sensitivity, issue size, credit rating, maturity, age since issuance, index inclusion, and liquidity in similar bonds or related derivatives. Again, what these metrics attempt to map are the three dimensions of liquidity, estimating the time required to buy or sell a specified amount of bonds without a significant change in price, or the cost of executing the full size immediately. MiFID II and MiFIR introduced a pre- and post-trade transparency framework for EU bond markets which came into effect in January 2018. This follows a number of other jurisdictions, many with long-established transparency regimes for bonds, most notably the US.6 In its deliberations over the design of the EU framework, ESMA was clearly conscious of the interrelationship between bond market transparency and liquidity.

The ESMA model would decide if a trade should be reported close to real time or deferred to a later date based on a determination of whether the market for the underlying security is considered liquid. The resulting liquidity determination and trade size deferral framework is inherently complex, largely based on an ongoing assessment of transactions in individual ISINs. While the objectives of the MiFID II/R transparency regime are well intentioned, the considered view is that this has led to an overly complicated framework that has fallen short of its stated goal. What this highlights is that, when designing a transparency regime, balancing simplicity and complexity is also key for a workable solution. Overcomplicating the transparency regime can be counterproductive, while the same is true for oversimplifying it. The ICMA Taskforce therefore decided to focus on a limited number of easily discernible variables. Two are characteristics of the underlying bond: whether investment grade (IG) or high yield (HY);7 and the outstanding size of the issue.

Taskforce members agreed that there is a marked difference in the liquidity and tradeable sizes of EU corporate bonds, depending on whether they can be classified as investment grade or high yield.8 Furthermore, the size of the underlying issue (ie the amount of tradeable stock available) also plays a key factor in a bond's liquidity. The larger the issue, all things being equal, the easier it is to find secondary market liquidity. Both of these characteristics of individual ISINs are also widely and publicly available, and relatively static. After careful consideration and data analysis, the Taskforce felt that an outstanding corporate bond issuance size of €1 billion (or equivalent) was the appropriate cut-off point in the determination of "liquid" or "illiquid". The third variable is based on the actual trade size itself. Here it was felt that again there was merit in the simplicity of using static size thresholds to determine the appropriate deferrals.

The result is three trade size buckets: small, medium, and large. These were based on analysing historical trade data and the observations of average and median trade sizes for both IG and HY bonds. Plotting these three variables creates a three-dimensional lens that forms the basis of the proposal. The next step was for the Taskforce to determine the appropriate calibrations for trade information deferrals, to be applied along the three dimensions. Again, it was important to consider the benefits of not overcomplicating deferrals, while at the same time balancing this against the risks of an overly simplistic model: not least one that started from the perspective of real time reporting being optimal.

The Taskforce eventually concluded that both price and size dissemination could be bucketed in terms of: 15 minutes (within 15 minutes), end-of-day, and two weeks. One of the Taskforce members (a prominent trading venue and data vendor) undertook analysis of different calibrations of the proposed a model using historical trade data. This allowed the Taskforce members to understand better the degree of transparency that the proposal would provide (what information would be available and when), and therefore to refine it in an attempt to find the optimal calibration. This also highlights the importance of ongoing data analysis to evaluate the appropriateness and effectiveness of any transparency regime and to refine it continuously, as required. Importantly, the framework, including the application of deferrals, should be harmonised across all relevant reporting jurisdictions. Another case of simplifying the model.

Noise around central bank digital currencies (CBDCs) has intensified over the past few months. Despite universal progress, enthusiasm among regulators remains mixed - with some jurisdictions pushing ahead and others following more reluctantly.

In late September, the Bank of International Settlements (BIS), working with a group of seven central banks, published a new set of reports, with the Head of its Innovation Hub emphasising the ability of CBDCs to "foster innovation and preserve the best elements of the current system." The reports turn from foundational principles towards tackling practical implementation issues. The key finding is that for CBDCs to work effectively, public and private institutions need:

- to cooperate to ensure integration with existing payments systems,
- to anticipate customers' future needs, and
- to support innovation while preserving public trust, privacy, and stability in the broader financial system.

The G7 also released its Principles for Retail CBDCs (PDF 563 KB), setting out a common set of considerations for public policy implications.

- Although moving forward, both bodies have cautioned against too much speed. The BIS stresses that the financial system must be given sufficient time to adjust, while the G7 reiterates (PDF 163 KB) that no global CBDC should launch without the relevant regulatory and oversight requirements in place.
- The BIS also published supplementary research highlighting the sheer volume of questions that remain unanswered on the cross-border dimension, the interoperability between existing and new infrastructures, accessibility and the distinction between wholesale and retail CBDCs.

In the **UK**, the Bank of England (BoE) held its first CBDC Technology Forum in September, with the aim of helping the Bank to understand the technological challenges of designing, implementing and operating a CBDC.

- The Forum was technology-agnostic (i.e. not wedded to the use of distributed ledger technology) and championed simplicity of the core ledger infrastructure to enable better performance, security and extensibility with more complex functions being added as overlay. The group also expressed a preference for a platform model (while remaining open to alternatives), where the central bank's core ledger is made available to users via private sector payment interface providers.
- More recently, the BoE announced that it will issue a formal CBDC consultation in 2022. Deputy Governor Jon Cunliffe described this as a “crucial step in policy development”, the outcome of which will determine whether the BoE enters the next phase - the `development phase' - of a digital pound.

In **Europe**, individual central banks (most notably France and Sweden) are progressing pilot experiments with wholesale technological solutions. At the same time, the European Central Bank's (ECB's) 24 month `investigation phase' into a digital euro continues, with the recent appointment of its Market Advisory Group members.

- This phase involves experimenting with design features including whether the currency can be used offline via Bluetooth technology and how to incorporate limits to payment confidentiality. The task force has indicated that work on a prototype will begin in early 2023, with expectations for it to be developed and tested in 2024.
- ECB President Christine Lagarde has repeatedly reaffirmed her support for the digital euro project. She emphasises that “central banks have a responsibility to ensure citizens have access to the safest form of money - central bank money - in the digital age”. However, for now, she posits that any digital euro would be available as a complement to cash and commercial bank money, not as a replacement.
- Like many regulators, Lagarde does not believe that crypto technology should be left entirely in the hands of the private sector. She has noted (81.5 KB) that, unlike other crypto-assets (which are not fit alternatives in terms of basic monetary functions), a digital euro would offer the same confidence as cash. It would therefore preserve the central bank's role as “an anchor of stability for the financial system”.
- The ECB has also highlighted the international implications of CBDCs and the dangers of being left behind. Any country too slow to adopt its own digital currency could suffer from substitution effects (`dollarisation') and be left dependent on an alternative digital currency issued and controlled from abroad. Such an outcome could undermine domestic financial stability and monetary sovereignty. European regulators are already acutely aware that non-European payment providers currently handle around 70% of European card payment transactions.
- One particular concern is drawing attention across the board — the potential disintermediation of commercial banks. Regulators are trying to pin down how best to strike the balance of a CBDC being `successful enough' (so as to appeal sufficiently as a means of exchange), but not `too successful' (so as to be used as a form of investment and thus eliminate the role of commercial banks). Some are more optimistic than others, theorising that a solution can be achieved through limiting the retail holdings of CBDC, for example through a direct cap or less favourable interest rate.
- As regulators and central banks continue to develop CBDC initiatives, albeit at different paces, the advantages and disadvantages of being a `first mover' will no doubt become clearer. The future impacts on financial firms are uncertain and they should therefore ensure that they keep abreast of development and debate in this space.

For mainstream financial institutions, the true value of crypto innovations appears to lie in the underlying technology, rather than the crypto-assets themselves. More specifically, it is likely to be in permissioned chains which eliminate many of the inefficiencies presented by legacy settlement systems.

What is DLT? - Distributed ledger technology (DLT) – or blockchain, as it is more commonly known – was made famous by Satoshi Nakamoto's 2008 whitepaper describing a peer-to-peer version of electronic cash.

- It is a digital system for recording the transaction of assets that uses cryptography to store information securely and immutably in multiple places simultaneously. Unlike traditional databases, distributed ledgers have no central data store or administrative functionality. DLT is the technology that underpins all assets in the crypto-universe – unbacked crypto-assets, stablecoins and central bank digital currencies (CBDCs).
- DLT comes in two forms – either decentralised and permission-less (e.g. Ethereum, Bitcoin) or centralised and permissioned (e.g. JP Morgan's Onyx). Whereas permission-less DLT allows any user to add nodes to the network, a permissioned infrastructure has a 'gatekeeper' who limits access to pre-authorised users.

Regulatory Context; While global regulators have been highly vocal in their concerns around crypto-assets, they have shown encouragement and enthusiasm for the underlying DLT infrastructure. In fact, many regulators have been working with industry stakeholders to develop pilot projects and sandbox initiatives to test and trial the technology.

- UK regulators have been actively reviewing DLT for several years, seeing "regulation as an enabler of positive innovation as well as a means of containing undue risk". Feedback from the FCA's 2017 Discussion Paper culminated in HM Treasury's (HMT's) January 2021 call for evidence (CfE) on wholesale market uses of DLT. The CfE described how, as part of the FCA's Regulatory Sandbox programme, firms have successfully and compliantly issued equities, bonds and structured products on the Ethereum blockchain.
- In September 2021, SIX Digital Exchange (SDX) received regulatory approval from the Swiss Financial Market Supervisory Authority (FINMA) to operate a stock exchange and central securities depository for digital assets in Switzerland. This authorisation enabled SDX to go live with a fully regulated, integrated trading, settlement, and custody infrastructure based on DLT for digital securities. With these licenses, SDX can now offer the highest Swiss standards of oversight and regulation.
- In November 2021, the Bank for International Settlements (BIS) and Hong Kong Monetary Authority (HKMA) concluded Project Genesis which saw the building of prototype digital platforms enabling green bond issuance. The first prototype simulates the lifecycle of a typical bond on a permissioned DLT platform, including origination, subscription, settlement and secondary trading. The second prototype tests the same procedures using a public permission-less blockchain infrastructure. It also streamlines investor onboarding and facilitates the direct payment and settlement between the issuer and investor.
- In December 2021, European Union (EU) ambassadors endorsed the provisional political agreement between Council and Parliament on a DLT pilot regime (part of the 2020 Digital Finance Package). Similar to a sandbox approach, this pilot will allow for experimentation within a safe environment and will provide evidence for a potential subsequent permanent regime. The agreement proposes that existing Multilateral Trading Facilities (MTF) and Central Securities Depositories (CSD) be authorised as DLT equivalents.

What are the benefits? The representation of assets on distributed ledgers can deliver many benefits.

- DLT's smart contracts allow for the codification of stakeholders' rights, obligations and ownership and produce a single source of truth. As a result, the need for bilateral reconciliation is eliminated, along with many other inefficiencies encountered in legacy systems:
    - Near instant settlement eliminates data silos and the processing gap between front and back office functions, therefore increasing the speed of settlement, especially across borders
    - Near instant settlement also materially reduces settlement risk and the associated cash buffers firms are required to hold, freeing up capital to be used elsewhere
    - Having one immutable version of each client record reduces frictions experienced in client onboarding and creates the potential for vastly improved relationship management processes
- DLT could also enable an unprecedented level of transparency for both consumers and regulators. Retail investors would have the ability to continuously track coupon payments (as seen with Project Genesis), while regulators would have real-time access to ledgers, enabling them to monitor risks more effectively.

What are the challenges? - Despite the benefits, DLT simultaneously presents new challenges.

- Although it eliminates certain types of risks, it introduces a new risk based on counterparty issuance. This is because each trade relationship involving a new blockchain requires its own 'token', with its own bespoke credit risk.
- The creation of multiple alternative ledgers could also cause greater fragmentation within the existing ecosystem if there is insufficient interoperability. Based on their initial choices, users could find themselves locked into a specific infrastructure and unable to transact across competitors.
- Transitioning from complex and embedded legacy systems onto DLT infrastructure will be a delicate and complex process, involving increased effort and expense. Market participants would likely be required to complete their functions on legacy systems while simultaneously testing DLT, to avoid disrupting critical daily processes and to ensure that markets continue to operate seamlessly.
- And finally, some versions of the technology can be extremely energy-consumptive and may not sit comfortably alongside the ESG agenda.

To permission or not to permission; The benefits and challenges are exacerbated depending on whether DLT infrastructure is permissioned or permission-less.

- Permissioned structures can be faster and more scalable than their permission-less counterparts. This is because the latter's high level of decentralisation means only a limited number of transactions can be authenticated at a given time. Permissioned structures are also less energy-consumptive, as they are not consensus-based and operate more like traditional servers. Finally, permissioned structures allow gatekeepers to build in governance structures and dictate their preferred level of transparency and centralisation. This is a flexibility which is potentially better suited to the commercial and regulated landscape.
- However, permissioned structures pose a greater risk of market fragmentation if there is a proliferation of smaller closed ledgers that are not interoperable.

What does this mean for firms? - For mainstream financial services firms, the future is likely to involve a permissioned DLT network where all participants are known to one another.

- Evidence of this is already being seen among high-profile global banks – several of which are banding together to participate in private blockchain networks for the execution of activities such as foreign exchange settlement and trading repurchase agreements.
- However, not everyone will be a winner. Such moves would cut out the FMI entities that currently settle trillions of dollars' worth of global currency deals on behalf of banking clients. And the stock lending business could be mortally impacted by instant settlement.
- These developments show that, contrary to previous opinion, crypto technology does not look set to disintermediate **all** legacy institutions. There will be winners and losers based on the role that each plays in the ecosystem and how quickly they establish themselves on an interoperable structure. Therefore, in order to future-proof business models, firms should continue to experiment in the permissioned DLT space, taking advantage of regulatory initiatives and support such as the UK's FMI sandbox and the EU's Pilot DLT Regime.

Sustainable finance and the capital markets; *Policymakers are turning their attention to the regulation of players in the wholesale capital markets. Calls for ESG data and rating providers to be regulated have increased, standards for bond issuers are being debated and developments in the carbon market are being monitored closely.*

- Asset owners (including insurance companies, pension funds and collective investment funds) and asset managers have been grappling for some time with new ESG-related regulation on disclosures and company processes, the detail of which continues to grow. And banks and insurers have been embedding ESG factors (especially climate change) into their risk management frameworks and stress tests. Now the spotlight is turning on players in the wholesale capital markets. Regulation will inevitably follow.
- In addition to the three topics covered below, other areas are under review. For example, as well as increased reporting by listed companies, ESMA's annual work programme (PDF 589 KB) includes consideration of amendments that might be needed to the EU Securitisation Regulation, the UK Benchmarks Regulation is being revised (PDF 245 KB) to improve disclosures and refer to the Paris-aligned benchmarks, and an EU Social Bond Standard is expected.
- Wholesale firms need to respond to the demands of regulators and customers. They need to integrate ESG considerations into their business strategies, processes and product offerings, improve transparency and be prepared for greater regulatory scrutiny.

Calls for regulation of ESG ratings and data

- The variations observed in ESG[1] ratings of issuers by different credit rating agencies (CRAs) are much greater than the usual spreads in ratings. This has led to concerns among both issuers and users about the methodologies used by CRAs and data providers. Calls for them to be regulated - to address the conflicts of interest in them both collecting and selling data, and to improve transparency about their methodologies - have increased. A new report (PDF 609 KB) from IOSCO[2] has lent weight to these calls.
- IOSCO notes that the role and influence of ESG ratings and data products providers in financial markets, and in the sustainable finance ecosystem more specifically, have grown significantly. However, it found little clarity and alignment on definitions, lack of transparency about methodologies used, uneven coverage, concerns about the management of conflicts of interest and a need for improved communication with rated companies.
- The report, therefore, sets out a number of recommendations, starting with a proposal that regulators could consider focusing greater attention on the use and activities of ESG ratings and data products in their jurisdictions. Recommendations addressed to ESG ratings and data

products providers suggest that they consider a number of factors related to issuing high-quality ratings and data products. This includes publicly-disclosed data sources, defined methodologies, management of conflicts of interest, high levels of transparency and handling confidential information. IOSCO also suggests that users of ESG ratings and data products could consider conducting due diligence on the providers they use within their internal processes. The last set of recommendations focuses on improved information-gathering processes, disclosures and communication between providers and entities subject to assessment.

- In the EU, as part of its direct supervision of CRAs, ESMA will assess the way they incorporate ESG factors into their methodologies for credit ratings and outlooks, how they ensure the robustness of their methodologies and their disclosure of ESG factors in credit ratings.
- In the UK, the FCA has also noted similar emerging issues and potential harm from the increasingly prominent role of ESG ratings and data. The provision of ESG ratings and data is currently an unregulated activity in the UK, but the FCA is engaging (PDF 1.30 MB) with HM Treasury on potential regulation of this area.
- The challenges that regulators have identified in this area are similar to those that were found in the credit rating and benchmarks sectors. So, potential international principles and regulation could be modelled on the IOSCO Principles for Financial Benchmarks (PDF 388 KB) and EU Benchmarks and Credit Rating Agency Regulations.

An EU Green Bond Standard (GBS)

- The EU GBS Regulation proposed by the Commission, which is now being debated by the European Parliament and the Council, aims to address concerns about “greenwashing” and protect market integrity, to ensure that legitimate environmental projects are financed. It will be a voluntary standard available to all issuers, both private and sovereign, and to non-EU as well as EU issuers.

The four key requirements under the proposed framework are:

1. Funds raised by the bond must be allocated fully to projects aligned with the EU Taxonomy.
2. Full transparency on how bond proceeds are allocated, through detailed reporting requirements.
3. Checking by an external reviewer to ensure compliance with the Regulation and that funded projects are aligned with the EU Taxonomy (with specific, limited flexibility for sovereign issuers).
4. External reviewers must be registered with and supervised by ESMA, to ensure the quality and reliability of their services and reviews (again, with specific, limited flexibility for sovereign issuers).

- For those issuers that choose to (or for which market forces necessitate that they) follow the GBS, the mandatory requirement for external review is a new feature for ESG regulation in the financial markets. It may be a sign of things to come in the expected Social Bond Standard and EU Eco-label for retail investment products. If any such reviewers are part of groups that also provide ESG ratings or data, the question of management of conflicts of interest will likely be at the forefront of regulators' minds.

ESMA monitors the EU carbon market

- ESMA has published a preliminary report (PDF 1 MB) on the EU carbon market, in response to a request by the European Commission for an analysis of European emission allowances (EUAs) and derivatives on EUAs. The report notes that:

    - The number of counterparties holding a position on EUA futures has tended to increase since 2018 in all categories of counterparties, in line with the observed expansion of the EU Emissions Trading System market.
    - Open positions are to a large extent, and almost evenly, held by investment firms and credit institutions on the one hand and by non-financial counterparties on the other hand. The remaining percentage of open positions, held by investment funds and other financial counterparties, remains relatively low.
    - The breakdown of open positions between the various categories of counterparties does not appear to have significantly changed since 2018. It is broadly in line with the expected functioning of the market, where non-financial entities buy EUA futures to hedge their carbon price exposure, while financial counterparties act as intermediaries to facilitate trading and provide liquidity to the market.
- The report also provides an overview of the regulatory environment for the EU carbon market under financial regulations such as MiFID II/MiFIR, MAR[3] and EMIR[4], which covers over-the-counter derivatives. Since 2018, EUAs have been classified as financial instruments and have been subject to a series of requirements aimed at ensuring the transparency and the integrity of the market. In particular, entities trading in EUAs and their derivatives must provide data to their national regulators.
- ESMA will deliver its final report to the Commission in early 2022. The Commission will then assess whether there is a need for targeted actions in the EU carbon market. Meanwhile, the financial services industry is calling for scaling up of the carbon markets and emission trading schemes, and inter-operability between different types of markets and jurisdictions.

General Update

General Financial Policy

Schuman Fondation: The Challenges of the French Presidency of the Council :In its presidency programme, France identifies three main objectives: a more sovereign Europe, a new European model for growth, a humane Europe. View Article

Remarks by President Michel following his meeting with President Macron : I really want to praise the leadership of the French Presidency, and of President Macron in particular, for being the driving force, for quite some time now, behind the debate on the idea of European sovereignty or strategic autonomy as it is sometimes called... View Article

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Bruegel: A role for the Recovery and Resilience Facility in a new fiscal framework : Discussions on reforming European Union fiscal rules must consider a more permanent but targeted role for the Recovery and Resilience fund to meet climate ambitions. View Article

Bruegel: Policy coordination failures in the euro area: not just an outcome, but by design : Discussions on the fiscal framework should aim to correct its procyclical nature with a view to promoting more cooperative outcomes. View Article

ECB's Enria: Exchange of views with the European Affairs Committee and Finance State of play in the banking sector As we recently marked the start of a new year, I think this is an opportune moment to take stock of the current situation and consider the outlook for the European banking sector. Committee of the French Senate : View Article

Banking Union

Priorities for 2022 – the SRB's view :In these uncertain times, our focus remains constant: building resolvability in all banks under our remit, as set out in our 2022 work programme and our multi-annual programme for 2021-23 and reflected in the Expectations for Banks. View Article

EBA: Asset quality has further improved, but cyber risk remains a source of concern for EU banks : The NPL ratio declined to 2.1% and the stage 2 ratio contracted to 8.7%. Return on equity (RoE) was reported higher than pre-pandemic levels at 7.7%. View Article

EBA alerts on the detrimental impact of unwarranted de-risking and ineffective management of money laundering and terrorist financing risks : Providing access to at least basic financial products and services is a prerequisite for the participation in modern economic and social life and de-risking, when unwarranted, can cause the financial exclusion of legitimate customers. View Article

EBF feedback to the European Commission's proposed AML Package : The European Banking Federation (EBF) is fully supportive of the Commission's overarching objective to address the ineffectiveness of the current EU AML framework. Bearing in mind the necessary lead-time and efforts to get the AML Package adopted and implemented, this momentum is a unique opportunity to improve the framework. View Article

WSBI/ESBG:Daisy chain of internal MREL : The "daisy chain" deduction framework increases the necessity of legal certainty,predictability, and proportionality in the internal MREL (iMREL) regulation. Resolution groupswith entities in only one member state should be exempted from the "daisy chain" deductionframework. View Article

CEPS: Consumer Credit Directive review - Change needed : The existing CCD has introduced a number of benefits for consumers, however, it is now somewhat outdated due to various technological and market developments since its adoption. View Article

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ALFI responds to ESA call for evidence on PRIIPs : Their call for evidence was aimed at gathering feedback from industry players on those issues, which may result in a broader review of the PRIIPs Regulation. View Article

Insurance Europe: Major changes to EU product liability rules could undermine insurers' ability to cover certain risks : New rules should only be considered in the case of a clear protection gap, which currently does not exist. View Article

EIOPA publishes report on the application of the Insurance Distribution Directive : EIOPA has identified some difficulties in applying the demands-and-needs test, and continues to raise concerns related to the sale of unit-linked life insurance products and mortgage and consumer credit protection policies. View Article

IOSCO Investment Funds Statistics Report : It covers hedge funds and open-ended and closed-ended funds, is the first of its kind by IOSCO and is underpinned by a broad data survey to which 50 IOSCO members have contributed; representing almost $ US50 trillion, or 67% of total asset under management of the global investment funds universe. View Article

FSB publishes papers on funding and interconnectedness practices to aid resolution planning for insurers : The practices paper on Resolution Funding for Insurers discusses the different sources of resolution funding, including privately funded policyholder protection schemes and standalone resolution funds..The practices paper on Internal Interconnectedness in Resolution Planning for Insurers... View Article

AFME: Industry Approach to CSDR Settlement Discipline Regime : We support the political agreement by the EU legislators on changes to Regulation (EU) No 909/2014 ("CSDR") that allow for a delay to the implementation of mandatory buy-ins. View Article

ICMA Quarterly Report First Quarter 2022 : The Quarterly Assessment is on EU/UK capital market fragmentation in a global context View Article

Automation of debt issuance: ICMA references over 45 solutions : Digitisation of debt issuance continued apace in 2021. ICMA's latest review of its primary markets technology directory, conducted in Q4 of last year, saw the addition of more than 10 platforms or applications for the issuance of debt instruments. View Article

Better Finance: Shareholder Rights Directive II fails to deliver for European cross-border shareholders : Some of the main obstacles to shareholder engagement derive from the complex chains of intermediaries and the use of omnibus accounts – with intermediaries or nominees who hold shares for individual investors ... View Article

Environmental, Social, Governance (ESG)

EU Taxonomy: Commission begins expert consultations on Complementary Delegated Act covering certain nuclear and gas activities : To ensure transparency, the Commission will amend the Taxonomy Disclosure Delegated Act so that investors can identify if activities include gas or nuclear activities, and to what extent, so they can make an informed choice. View Article

PE comments on IFRS consultation on developing disclosure requirements and proposed amendments to IFRS 13 and IAS 19 : PensionsEurope believes that the note disclosures with regards to pension plans are already very comprehensive in current annual financial statements. Most of the information disclosed in the notes covers already the proposed disclosure objectives. View Article

EFRAG seeks comments on its Draft Endorsement Advice on Initial Application of IFRS 17 and IFRS 9 – Comparative Information (Amendment to IF : EFRAG is consulting on both its assessment of Initial Application of IFRS 17 and IFRS 9 – Comparative Information (Amendment to IFRS 17) ('the Amendment') against the technical criteria in the EU and on its assessment of whether the Amendments are conducive to the European public good. Comments are requested by 19 January 2022. View Article

GRI looks forward to working with new ISSB chair : Financial and sustainability standard setters need to work together...The announcement by the IFRS Foundation that Emmanuel Faber is to be the first chair of their newly established International Sustainability Standards Board (ISSB) has been welcomed by GRI. View Article

AFME publishes recommendations for a successful EU Green Bond Standard : AFME supports the proposals to provide investors with transparency, comparability and confidence in the credibility of the bond's environmental credentials. ... it is important that the new EU GBS label is seen as a credible standard and also attractive to issuers and investors. View Article

Protecting Customers

EBF response to ESMAs Call for Evidence on certain aspects relating to retail investor protection : In the context of the CMU action plan, it is essential to ease retail investors' access to financial markets while ensuring a high level of investor protection. View Article

BETTER FINANCE response to ESMA's Call for Evidence on Retail Investor Protection Topics : BETTER FINANCE welcomes this call for evidence from ESMA on retail investor protection topics but regrets that it is confined to securities markets (MiFID II) topics only as these financial instruments make up for only a third of the financial balance sheets of EU27 households View Article

Fin Tech Regulation

SUERF: The encrypted threat: Bitcoin's social cost and regulatory responses : While Bitcoin raised the attention for the potential of distributed ledger technology (DLT), it fails to deliver on its promises but comes at high costs. It is unfitted and inefficient as a means of payment but used extensively for illicit activities. It is unsuitable as an investment asset and neither empowers, nor relieves the sovereign individual from the state. View Article

CER: No pain, no gain? The Digital Markets Act : The Digital Markets Act (DMA) is a single set of rules for the largest digital platforms, intended to help improve competition in the EU. The rules will force big tech firms to change the way they operate, to promote more open markets. View Article

Economic Policies Impacting EU Finance

OECD: Global Anti-Base Erosion Model Rules (Pillar Two) : The Pillar Two Model Rules are part of the Two-Pillar Solution to address the tax challenges of the digitalisationof the economy that was agreed by 137 member jurisdictions of the OECD/G20 Inclusive Framework onBEPS and endorsed by the G20 Finance Ministers and Leaders in October. View Article

EURACTIV:Macron, Draghi call for reform of EU fiscal rules : French President Emmanuel Macron and Italian Prime Minister Mario Draghi called on Brussels to reform its fiscal rules to allow greater investment spending while acknowledging the necessity to reduce debt. View Article

Brexit and the City

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City AM: Brexit passporting: Little appetite among EU finance firms to stay in London as FCA applications disappoint : It appears that many European financial services firms are not interested in continuing to be authorised in the City, as only half of EU firms that were given a temporary license to operate in the UK – immediately after Brexit – have applied for full authorisation, a Freedom of Information request has revealed. View Article

LSE blog: Inside Britain's financial revolution : Since the 1970s, the world economy has been characterised by a process of financialisation. Britain has played a key role in this trend by helping to create a financialised global order and establishing the City of London as a central hub. But why did the UK choose to propel this process? View Article

FESE: Exchanges raise concerns over ESMA's Annual Statistical Report on 2020 data : In 2020, the UK was still part of the EU single market, accounting for 70% of turnover in EEA equity. By excluding the majority of trading in EEA instruments, the report portrays a misinterpreted picture of markets, says the Federation of European Securities Exchanges (FESE). View Article

EY Financial Services Brexit Tracker: Brexit activity muted over 2021, with total relocations revised down and few major operational announc : EU regulators show ongoing pragmatism in managing stability and other risks as they build greater financial strength, but maintain pressure on firms to complete headcount and operational moves that have been delayed by the pandemic View Article

Bloomberg: Morgan Stanley Boosts Paris as Trading Hub With Research Center : Bank could hire, relocate 50 staff, person familiar says; Paris becoming EU trading hub as banks, funds seek talent View Article

Bloomberg: JPMorgan's Paris Traders Are Only Part of the Threat to London : A year after Brexit, the EU's finance hubs are taking shape. Bloomberg reporters look at the merits of Paris, Frankfurt, Dublin, Amsterdam and Milan. View Article

Brexit

UKandEU's Faull: This England? Blessed plot? Conspiracy of cartographers? : The governance of the United Kingdom is complex (and even more so if one adds the Isle of Man and Channel Islands). Scotland has a devolved Parliament and government; so does Wales, albeit with fewer powers. View Article

CER:One year on, it's clear that Brexit has failed on its advocates' own terms : Now that the Brexit deal has been in force for a year, it's worth looking at initial claims from the politicians who forced through an exit from theEU's single market.David Davissaidthetrade dealwould deliver "the exact same benefits" as membership of the EU. View Article

Briefingsfor Britain: Brexiteers beware – David Frost's departure is disastrous : Lord Frost was not only an effective negotiator but also one of the few UK ministers to fully grasp the intellectual case for Brexit. His resignation looks to have resulted, at least in part, from the UK government backsliding on the Northern Ireland protocol and failing to take bold moves View Article

POLITICO: EU's Šefcovic warns of Brexit deal 'collapse' if UK exits Northern Ireland Protocol : Continuous British threats to exit post-Brexit trade rules for Northern Ireland are "enormously disruptive," European Commission Vice President Maroš Šefcovic said, warning the entire deal with the U.K. would collapse if such rules were canceled. View Article

FT: Brexit deadlock: Will the UK and EU agree a deal on Northern Ireland? : All sides face tough decisions as talks between Liz Truss and Maros Sefcovic get under way this week View Article

EPC's Duff: Dealing with the Neighbours: The case for an affiliate membership of the European Union and a new Security Council : Brexit is proving to be even more troublesome than expected, giving rise to a gradual softening of British public opinion towards the EU. Any future UK government is likely to want to renegotiate parts of the separation deal that Boris Johnson struck with the EU. View Article