EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

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

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Full Grid and Outlook Below

1. Regulatory Barometer
2. ESMA Business Plans: 2023 and for Five Years Out
3. Rulemaking Diary
4. Highlights from the Regulatory Environment
5. LiBOR Transition Update
6. Energy Market Reg developments, ESG, Conduct, Fines & Enforcements
7. Brexit; UK FSMB & FCA Empowerments & Regulations
8. ESG & Disclosures

Regulatory Barometer

The higher the score on the Barometer, the more oversight and resources firms need to devote to regulatory change, although this will depend to some extent on individual business models.

It is unsurprising that ESG and Sustainable Finance top the scores, due to the sheer volume of new and developing initiatives and the challenges of implementing detailed requirements very rapidly to support environmental policy targets. Next is Financial Resilience where there is significant long-term complexity in finalising Basel reforms, reviewing Solvency II and integrating climate risk.

<u>Delivering ESG and sustainable finance</u>

- *Have we considered the full range of new regulations or amendments that will impact us directly or indirectly, and are we on track to update our approach to meet clients' and supervisors' expectations?*
- *Do we understand the extent of our own and our clients' ESG exposures?*

- ESG (environmental, social and governance) concerns are the issues most discussed by regulators, industry and investors around the world. Commitments to reaching net zero, by governments and companies, are driving change across the economy in general and in financial services in particular. Stakeholders and investors are demanding greater transparency. And, in the global pursuit of a "just transition", focus is expanding to areas such as nature and biodiversity, the circular economy and broader social impacts.
- ESG considerations must be embedded across businesses and their value chain, with regulatory requirements a key driver of firms' ESG strategy. The scope of regulatory rules, frameworks, standards, taxonomies and other guidance is vast and increasing, covering initiatives from corporate reporting to prudential disclosures, transition plans, risk frameworks and stress testing, product labels, ESG data and ratings, the development of carbon markets, stewardship, corporate due diligence and more. In the UK, the PRA led the way on the measurement and management of climate-related financial risk for banks and insurers, with the EU forging ahead on taxonomies, labels and definitions. Both are now gaining pace across the piece, with the UK seeking to position itself as the first net zero economy. In the US, from a slow start, regulatory developments have accelerated significantly under the Biden administration.
- Climate-related financial risk; *Climate-related risks have the potential to undermine the safety and soundness of both firms and the wider economy. Banks and insurers are required to embed consideration of sustainability factors into their risk frameworks and stress testing. Banks and insurers should understand their own and their clients' exposures when determining their strategy and business model. Longer term changes to capital and solvency requirements are under consideration*.
    - The potential risks to financial stability from climate change are a key priority for prudential regulators. Guidance has been issued at a global level (BCBS principles for the effective management and supervision of climate-related financial risks and IAIS Application Paper on the Supervision of Climate-related risks in the Insurance Sector) and in the EU and UK (ECB Guidelines and PRA Supervisory Statement 3/19). In the UK, the PRA expects firms to "refine, innovate and integrate" climate-related financial risk management practices and all elements of the supervisory review cycle will include consideration of climate-related risks. The full range of supervisory powers will be exercised where firms are not deemed to have made sufficient progress, including risk management and governance-related capital scalars, capital add-ons or s166 'Skilled Person' reviews. Some firms will have to report on how they have embedded the

management of climate-related financial risks into their existing risk management frameworks alongside their 2021/22 ICAAP (deposit-takers) or ORSA (insurers). Insurers are encouraged to conduct further research on emerging climate-related risks such as the potential impact of litigation risk on their balance sheets and the impact of physical risks on assets and liabilities.

- In the EU, the ECB expects banks to proactively incorporate climate-related and environmental risks into their business strategies and governance and risk management frameworks. ESG risks will be integrated in the SREP together with thematic review of banks' strategies and risk management frameworks and on-site inspections. Again, action will be taken where banks are not deemed to have made adequate progress. CRD6 would introduce 10 year+ time horizons for business strategy, planning and scenario analyses, requirements for plans to be reviewed at least every 2 years and incentives for banks to align their strategies with initiatives such as the EU Green Deal and EU Sustainable Finance Strategy. Supervisors would have powers to intervene in the case of misalignment. CRR3 would introduce a harmonised definition of ESG risks, consistent with the EBA's June 2021 definition and reflecting environmental risks include factors explicitly related to the six objectives of the EU Taxonomy. ICLAAPs are to consider ESG risks for short, medium and long-term (greater than 10 years) horizons. The EBA will develop guidelines for banks to identify, measure, manage and report on ESG risks and develop quantifiable targets to monitor them. And the delivery date for the EBA's report on the classification and prudential treatment of assets from a sustainability perspective has been brought forward from 28 June 2025 to 28 June 2023.
- Following consultation and a pilot exercise, EIOPA has published its application guidance on how to reflect climate change in the ORSA, to support "forward-looking management" of climate change-related physical and transition risks. Under the Solvency II review, the European Commission proposed a mandate for EIOPA to consider whether a differentiated prudential treatment of exposures to assets and activities associated with environmental and/or social objectives would be justified, and to submit a report the Commission on its findings by end-June 2023. EIOPA is also required to review the scope and calibration of standard formula parameters with respect to natural catastrophe at least every three years, taking into account the latest available evidence on climate science.
- Results of the BoE CBES for the largest UK banks and insurers and the ECB stress test for banks have now been published. As lessons are learned and modelling techniques become more sophisticated, regulators will likely refine their requirements and the standard of submissions expected. Firms' results may also start to feed through more explicitly to capital calculations. The EBA will develop specific guidelines on climate related stress testing, update standards on supervisory reporting to include exposures to ESG risks and extend application of Pillar 3 disclosures to a significantly larger set of banks. For more on integrating climate-related financial risk into capital frameworks see Maintaining financial resilience.

- Reporting & disclosures; *Requirements for corporate reporting and other ESG disclosures continue to expand. Regulators and standard-setters seek comparability and consistency, to provide investors and other stakeholders with the transparency they require, to minimise the risks of greenwashing, and where possible to harmonise global standards.*

The scope of reporting and disclosures will grow to incorporate social and nature-related risks.

- Corporate reporting: The new International Sustainability Standards Board (ISSB) has published its first two exposure drafts, building on the TCFD recommendations and providing an IFRS-style framework. Further standards will follow. TCFD-aligned disclosures are now mandatory for the largest UK firms, for accounting periods beginning on or after 1 January 2022, and requirements will extend to smaller firms over time. The EU's proposed Corporate Sustainability Reporting Directive is being finalised – from 2024 it will apply to companies already subject to the Non-Financial Reporting Directive (NFRD). From 2025 it will then apply to large companies not subject to the NFRD, and from 2026 to certain additional companies. In May, the European Financial Reporting Advisory Group (EFRAG) delivered draft European Sustainability Reporting Standards (cross-cutting and topical) which will underpin the CSRD. And in the US, the SEC has published proposals to enhance and standardise climate-related disclosures for investors. Firms operating in multiple jurisdictions will need to assess the extent of convergence/divergence of reporting requirements – noting that there may be some provisions which enable compliance with one set of requirements to fulfil respective requirements in another jurisdiction. Common points of discussion are around whether to apply double or single materiality, thresholds and proportionality for reporting, and reporting on Scope 1, 2 and 3 emissions.
- Market and client disclosures: Following publication of the EBA's Final Draft Implementing Technical Standards for Pillar 3 ESG disclosures, EU banks will start to make quantitative and qualitative disclosures from June 2022, with scope expanding to 2024 when they will also have to report on their green asset ratio (GAR) and banking taxonomy alignment ratio (BTAR). Buy-side firms' implementation of EU SFDR continues, ahead of the Level 2 rules coming into force from January 2023. The FCA will consult further in the autumn on the new Sustainability Disclosure Requirements (SDR) for asset owners and asset managers. SDR will build on the FCA's application of the TCFD recommendations and incorporate ISSB standards, but the FCA also recognises that many UK firms' EU operations are impacted by EU SFDR.
- Transition planning: From 2023, the largest UK companies will be required to have a net zero transition plan. The Transition Planning Taskforce has a two year mandate to develop a gold standard for transition plans – the FCA will be actively involved. The Glasgow Financial Alliance for Net Zero (GFANZ) and the ISSB are also preparing guidance. The UK's expectations on transition plans are likely to drive similar requirements in other countries/regions.
- Expanding scope: The Task Force for Nature-related Disclosures (TNFD) has issued a beta framework and guidance which will be iterated several times until publication of the final framework in 2023. Reporting and disclosure requirements (e.g. EBA Pillar 3 disclosures, ISSB etc.) will expand over time to include the "S".

- Carbon markets; *With firms needing to deliver on their own or government net zero commitments, and present credible net zero transition plans, they are likely to turn to carbon markets as part of the solution. However, there is a patchwork of regulation and calls for greater consistency and transparency*.

- Regulators are monitoring EU carbon markets closely as firms try to meet net zero targets. ESMA published its final report in response to the European Commission's request for analysis of the trading of emission allowances and emission allowance derivatives. ESMA found no abnormality in the functioning of the EU carbon market from a financial supervisory perspective, but put forward a number of policy recommendations to improve market transparency and monitoring. It also identified two possible courses of actions for the European Commission to consider regarding the introduction of position limits on carbon derivatives – potentially through the legislative framework – and centralised market monitoring of the carbon market at EU level. The EU Commission will continue to work closely with national authorities to monitor developments. The UK's consultation on developing its ETS has closed – proposals included alignment of the UK ETS cap with the UK's net zero target, extending coverage to include the domestic maritime and waste sectors, bringing methane and other greenhouse gases within scope, and the introduction of a Carbon Border Adjustment Mechanism (CBAM). The EU CBAM is more advanced in its development, having been approved by the EU Commission in March 2022 for phasing-in from 2023 with charges applied from 2026.

<u>Maintaining financial resilience</u>

- *Have we clearly mapped and implemented the requirements for new or recalibrated prudential frameworks?*
- *Have we considered how to manage potentially divergent requirements across jurisdictions?*

- The development of new or recalibrated rules was put on hold because of the pandemic, but regulators have swung back into action.
- Prudential frameworks are being finalised, refined and expanded as regulators seek to maintain and build on the resilience built up since the Global Financial Crisis (GFC). The pandemic and geopolitical uncertainty as a result of Russia's invasion of Ukraine have reinforced the need to maintain robust levels of capital and liquidity. Supervisors are focused on credit exposures and provisions which may not yet fully reflect COVID-19 impacts and are now compounded by economic conditions.
- Financial firms were relatively resilient through the pandemic indicating that measures put in place after the GFC to boost financial resilience (together with decisive central bank and government actions) have been effective. However, the operating environment remains uncertain, and broad structural changes – such as an acceleration of digitalisation (see Regulating digital finance) could amplify challenges faced by individual firms as they recover from the impacts of COVID-19.
- Against this backdrop, supervisors are focused on maintaining robust levels of financial resilience. Implementation of remaining framework elements will be completed (e.g. Basel 4) and existing requirements are under review (Solvency II). New frameworks will be introduced (e.g. resolution for insurers). Regulators are also focused on emerging and escalating areas of risk such as climate and cryptoassets and are considering how best to reflect these in prudential frameworks. Stress testing will play a key role in monitoring banks' and insurers' vulnerabilities.

- Climate & capital frameworks; *Climate-related risks have the potential to undermine the safety and soundness of both firms and the wider economy. Regulators and standard setters are considering how best to integrate climate-related risk in capital frameworks for banks and insurers.*
  - The PRA is considering whether changes need to be made to the capital framework to more accurately reflect climate-related risk. Existing ICAAP and ORSA frameworks are only partially adequate in capturing the effects of climate risk for regulatory capital purposes and the PRA has set out possible solutions including further add-ons for firms with significant weaknesses, amendments to frameworks or calculations and a system-wide capital buffer. In 2022, the PRA will determine whether capital changes are best enforced through modifications to internationally-driven or domestic Pillar 2 requirements and will determine what changes are required to insurers' Solvency Capital Requirement (SCR) calculations. The EBA has issued a Discussion Paper on integrating environmental risks into the Pillar 1 capital framework. In future social risks may also be covered.
- Banks; *Banks must now focus on implementation of the final Basel reforms (Basel 4 or Basel 3.1) over a multi-year period. Calls for proportionality and consideration of local specificities may result in regional variations, adding to the complexity for banks operating across borders. Resolution and leverage ratio frameworks for banks are largely complete, but will be subject to ongoing review and refinement. A proportionate prudential regime for smaller firms is being developed in the UK, to reduce regulatory burden and encourage competition. And model risk management practices are under scrutiny.*
  - The EU Commission has published its CRR3/CRD6 proposals to implement the final Basel reforms, though these remain subject to negotiation and adoption, with concerns raised by, among others, the ECB. The PRA's consultation on UK implementation will be issued in Q4 2022 with final policy in 2023. The EU and UK are both expected to target implementation from 1 January 2025 with phasing in of the output floor to 2030. However, the prospect of differing requirements in different jurisdictions is a significant concern for globally active banks and could significantly increase the complexity of implementation.
  - Regulators in both the UK and EU are reviewing capital and liquidity buffers to understand better why banks were reluctant to use them during the pandemic and potentially make changes.
  - Recovery and Resolution frameworks are largely complete but continue to be refined and updated. The BoE's first public statement on the resolvability of major UK banks (in June 2022 following submission of self-assessments in October 2021) noted significant progress in enhancing and embedding preparations for resolution, with banks in a fundamentally better place than at the start of the GFC, however, there is still more to do. Revisions to OCIR policy will come into effect on 1 January 2023 and end-state MREL requirements are being phased in – they are now in force for larger firms and will apply for mid-tier firms from 2023 with a transitional approach for the smallest firms. UK banks and relevant third country branches with trading activity that could affect the financial stability of the UK must meet the expectations of the PRA's new policy on Trading activity wind-down (TWD) by 3 March 2025. The EU has reached provisional agreement on the "Daisy Chain" proposal (part of the 2021 Banking Package) to introduce targeted amendments to improve the

resolvability of banks. Subject to adoption this would amend the CRR and may result in changes to the BRRD pending the outcome of the European Commission's review, expected in 2022.

- A new "strong and simple" regime for banks and building societies that are neither systemic nor internationally active (i.e. limit activities to providing standard lending or deposit banking products to UK customers) will be introduced in the UK. The initial consultation considered the definition of in-scope firms, with further consultations to follow in 2023 and 2024 on non-capital and capital-related aspects.
- The PRA has identified weaknesses in model risk management (MRM) frameworks across development, testing, validation, change management, and governance. As a result, firms should expect increased focus on the effectiveness of their MRM practices and remediation actions. Work will continue with firms on their IRB model review processes and updating of IRB permissions. In response to increasing reliance on internal models and increasing sophistication of modelling techniques, the PRA is consulting on a new overarching supervisory framework setting out all its expectations, rules and requirements on model governance, model validation and general model risk management. The EU is more advanced in its work on internal models, with the ECB's targeted review (TRIM) programme completing in 2021.

Regulating Digital Finance;

- *Do we have a clear governance and control framework around the use of machine learning and AI?*
- *Have we considered potential future regulatory impacts of holding or operating with crypto-assets?*

- The pandemic has encouraged moves towards digital finance and the widening use of technology. However, regulators are attuned to the risks of new technologies and increased digitalisation as well as the benefits. They are considering how to adjust regulation for the digital world, including the trading and settlement of digital assets.
- The trend in digitalisation – doing more things in a digital way rather than on paper or face-to-face – has accelerated rapidly. There has been an increase in online investment tools, and communications are becoming more immediate. Online descriptions of services and products can be dynamic and customised, and therefore more engaging and educative, but also more persuasive.
- The digitalisation of client onboarding has increased, including digital know-your-customer (KYC) checks. The use of different forms of digital identity is spreading and regulators' interest is increasing.
- Fundamental building blocks underpinning all technologies and digitalisation are infrastructure and data. Firms need to ensure the integrity of databases, to have the expertise to store and analyse them, and to have in place good governance and controls. They also need to protect customers' and market confidential data and to share them, to be able to deliver services more efficiently and across borders. This raises legal challenges, which regulators continue to debate.

- New technologies bring new and emerging risks. Firms need to think innovatively about how to identify, measure and manage these risks, including the use of new techniques and tools.
- Crypto-assets & CBDCs; *The accelerating growth of crypto-assets and decentralised finance (DeFi) raises the concerns of financial regulators on issues of consumer protection, financial stability and monetary policy. However, regulators are encouraging innovation in the use of the underlying distributed ledger technology (DLT) in bring efficiencies to the infrastructure and operations of financial markets. Central banks are exploring the use of central bank digital currencies.*
  - Regulation is developing to bring crypto-assets within the regulatory perimeter. In the EU, the Markets In Crypto-assets (MICA) regulation will provide a regulatory and supervisory framework for stablecoins and unbacked cryptoassets. In the UK, HMT has confirmed that stablecoins will be regulated by amending e-money and payment services legislation. The FCA held an innovative 'Crypto-sprint' to gain industry input into crypto-asset regulation that will be consulted upon formally later in the year.
  - The second BCBS consultation on a prudential framework for crypto-assets continues to propose a conservative capital treatment. The PRA has already asked firms to consider how the existing prudential framework should be used to manage the risks associated with crypto-asset activity.
  - Regulators continue to warn consumers that these assets are not generally suitable as an investment or as a means of payment or exchange, and in the UK the financial promotions regime will be updated so that crypto-assets can only be promoted by authorised firm or after being approved by authorised firm.
  - However, firms are being encouraged to experiment using DLT in financial market infrastructure by a regulatory sandbox in the UK and the EU Pilot Regime.
  - The 2021 BIS survey showed most central banks are exploring CBDCs and that more than a half are developing or running concrete digital currency pilots. Many are exploring a CBDC ecosystem that involves private sector collaboration, particularly for customer facing activities, and interoperability with existing payment systems.
- Artificial intelligence and machine learning; *As more financial services are delivered digitally, more data is generated and artificial intelligence and machine learning techniques can be used to bring efficiency to firms' processes, analyse large amounts of data, for example, to help in modelling, and personalise the delivery of services to customers. Financial Regulators have issued guidelines on its use but actual regulation could come from other areas of government as concerns around the use of AI is not confined to financial services.*
  - Over the past year, a number of different regulators (IOSCO, EIOPA, BaFIN, BoE/FCA AI Public Private Forum) have issued guidelines and best practice on the use of AI in financial services. Common actions for firms fall into three main areas: data quality and governance – that data should be of sufficient quality to prevent biases and sufficiently broad to obtain logical results while still complying with data protection requirements; that models need to be designed so that they don't reinforce biases, firms need to strive to use explainable and transparent AI models and all new models should be reviewed and signed-off; and that firms need to have a governance framework that allows for senior

management oversight of the development, testing, deployment, monitoring and controls of AI and ML.
- The BoE and the FCA will publish a joint Discussion Paper later in the year considering the appropriate role of regulators in supervising potential data and systemic risks which stem from firms' use of AI or machine learning systems.
- The Artificial Intelligence Act proposed by the European Commission classifies AI activities into four tiers of risk with increasing levels of requirements, starting with transparency and voluntary codes of conducts, and escalating to ex-ante conformity assessments and ex-post quality and risk assessments and monitoring. Market participants' feedback is that that there needs to be clarity on how the Act interacts with other cross-sectoral legislation such as GDPR and that it needs to be principles-based to future-proof requirements as the technology develops.
- In the UK, the Office for AI (a collaboration between the DDCMS and BEIS), will set out a proposal for governing and regulating AI in a White Paper in 2022.

- "Platformisation", Big Tech in Finance; *In the last few years there has been a notable entrance of big tech players into finance, offering a variety of platform-based services directly to consumers as well as becoming critical third party providers to traditional financial services firms. Unlike traditional financial services firms, which are designed to operate exclusively within the financial services domain, some big tech firms are choosing to develop and distribute financial products as part of their wider portfolio of existing activities. Policy makers and regulators are having to examine whether the currently regulatory framework is fit for purpose*.
    - BigTech (technology conglomerates with extensive customer networks or platforms with core businesses in social media, telecommunications, internet search and e-commerce) can use the strong network effects and large amounts of consumer data they have to deliver tailored financial services and financial services to those underserved by traditional financial services. However, their expansion into financial services could happen very quickly and financial regulators are concerned this could cause risks to financial stability. This is compounded by the fact that although financial services offered by BigTechs may be subject to some activity-based regulations, BigTech firms themselves tend not be subject to comprehensive group regulations or oversight.
    - An area of particular concern to regulators is the provision of cloud services to financial services entities, where a strong dependence on only a few providers poses risks to the overall operational resilience of financial services – see more detail in Strengthening operational resilience.
    - Policy makers and regulators are considering how to manage these risks with a combination of entity- and activity-based regulation. The proposed EU Digital Services and Digital Market Acts contain targeted powers over platform providers and online gatekeepers. The draft UK Digital Markets, Competition and Consumer Bill would designate BigTech firms as having 'Strategic Market Status', obliging them to not abuse their dominant positions at the expense of consumers and other businesses.
    - The UK Financial Services & Markets Bill proposes to give rule-making and supervisory powers over critical third parties in the financial sector to the financial regulators.

- Data sharing and innovation; *Open Banking is seen as a successful driver of innovative products and services for consumer. Regulators and policy makers now embedding and refining the regime and they are considering whether the principles of data sharing contained with the open banking initiative can be widened further into the sector to build an 'Open Finance' framework*.
    - In the UK, HMT, the CMA and the FCA want to build on the initial success of Open Banking and ensure it continues to support innovation and greater competition for consumers and businesses. They have outlined plans for the regulatory oversight framework of a successor body to the Open Banking Implementation Entity (OBIE) that will develop existing standards and deliver new proposals beyond those required under current regulations.
    - The European Commission is consulting on small changes to its Open Banking framework that would be implemented in a wider legislative proposal revising PSD2.
    - Building on the Open Banking framework, regulators are keen to develop 'Open Finance' that would allow consumers and SMEs to access and share their data on a wider range of financial products with third party providers. In the UK, the proposed Data Reform Bill will create a clearer regulatory environment for personal data that could help drive the adoption of Open Finance.
    - In the EU, the European Commission is consulting on how to develop open finance while retaining customer protection. The consultation also seeks views on the sharing of supervisory data for research and innovation and the possibility for financial institutions to exchange information and data to improve risk monitoring or compliance, while protecting data confidentiality.
    - The UK Government is also considering a framework for pension dashboards to allow easier access to pension information.

<u>Strengthening operational resilience</u>

- *Do we have a clear view of the resilience of our end-to-end processes for important or critical services, including third party dependencies?*
- *Have we understood, documented and tested our tolerance for disruptions and our ability to recover?*

- Regulators have long expected firms to manage operational risks and have in place business continuity and disaster recovery plans. However, operational resilience is now much broader than this and is becoming a key driver of investment and business strategy. Financial regulators view operational resilience for firms on an equal footing with, and as a key driver of, financial resilience and recognise that poor resilience has the potential to impact not only individual firms and wider financial stability, but also to cause significant customer detriment.
- Regulators require firms to demonstrate end-to-end operational resilience (including cyber resilience) in their key business activities, to prevent severe disruption and maintain financial stability. Strong governance and accountability is expected, as is robust testing of disruption scenarios. Firms must consider the possibility of multiple concurrent disruptions and the emergence of new threats and vulnerabilities. Extreme events arising from climate change, from floods to wildfires to unexpected snowstorms, could impact physical operations and geopolitical events could challenge operating

models. Regulatory authorities have realised that a broader approach to operational resilience — incorporating equally important components such as people, processes, technology and information — is needed. Underpinning all the regulatory initiatives is the common desire to create a financial services sector that is more resilient to disruption, hence reducing the potential for wider contagion, financial instability and harm to end-customers.

- The EU and UK have set out clear expectations for regulated firms. However resilience expectations are now extending to a wider range of participants operating in the financial sector. For more on the operational resilience of FMIs see, Delivering Financial Infrastructure. Cloud service providers and critical third parties are under scrutiny.
- Critical/important business services and impact testing; *New rules highlight the importance of identifying severe but plausible tailored scenarios, and of performing stress-tests to reveal weaknesses in operating models. Firms are required to define the amount of disruption that they would be willing to tolerate and to monitor and measure their ability to remain within these tolerances*.
    - Regulators in both the UK and EU agree on the need for firms to prioritise the resilience of their most critical services and operations and to minimise the effects of disruption on customers. In the UK, the requirements set out by the PRA, BoE and FCA in 2021 will be implemented from March 2022 to March 2025. In-scope firms must identify and catalogue their important business services, define impact tolerances for disruption to these services and test whether they are able to remain within tolerance when under stress.
    - Strong governance and accountability, service mapping, definition of impact tolerances and scenario testing are required to maintain financial stability and minimise harm to customers. For banks, national/regional authorities will be responsible for creating their own frameworks to deliver against the expectations for banks set out in the high level BCBS Principles for Operational Resilience.
- Digital resilience; *Additional demands on systems, processes and data have increased regulators' focus on firms' technological resilience. The draft EU Digital Operational Resilience Regulation (DORA) proposes multiple measures to harmonise ICT resilience requirements, with consequential amendments to other legislation. Cyber security remains critical, particularly with accelerated adoption of technology and increasing sophistication of external bad actors.*
    - The final text of the EU's Digital Operational Resilience Act (DORA) is expected shortly and will attempt to streamline and harmonise the way financial entities and technology providers manage and mitigate technology risks. DORA will apply to a wide range of financial entities operating in the EU and interact with several existing regulations including CRD, MiFID II, Solvency II, UCITS and AIFMD. The legislative proposal was presented by the European Commission in September 2020, and a provisional agreement reached by the European Parliament and Council in May 2022, marking a major step in the journey to finalising the rules. Once the DORA proposal is formally adopted, it will be passed into law by each EU member state. Amendments are expected to increase alignment with industry considerations in ensuring that DORA is risk-based and proportionate. The implementation period has been extended from 12 to 24 months, and several Regulatory Technical Standards will need to be drafted to underpin

the legislation, meaning that completion of DORA will still take a number of years.

- Cyber events continue to present significant risk to service continuity. 79% of respondents to the Bank of England's 2022 H1 Systemic Risk Survey cited the threat of cyber-attacks in their top five risks. UK regulators will continue to conduct firm-specific CBEST penetration testing and will carry out a voluntary cyber stress test for systemic contributors in the end-to-end payments chain. They will also co-ordinate on longer term approaches to supervising cyber risk. In 2022, EIOPA will follow up on possible developments regarding a cyber-risk framework. In May 2022, political agreement was reached between the EU Parliament and Member States on measures for a high common level of cybersecurity across the Union (the NIS 2 Directive) proposed by the Commission in December 2020. The Commission has been consulting on its proposal for a Cyber Resilience Act. In the US, the SEC also released proposed rules for public company cybersecurity that would establish new requirements around cybersecurity risk management policies and procedures, incident reporting and disclosures.

- Third Party Risk; *Outsourcing policies have been in place for some time, but regulatory requirements are now expanding in the EU and the UK, reflecting the growing reliance on and stability risks posed by cloud and other Critical Third-Party Providers (CTPPs). New types of firms are likely to be brought within the regulatory perimeter in order to mitigate these risks*.
  - Regulatory Scrutiny of third-party relationships and risk management is increasing. The new PRA rules create a holistic framework for managing outsourcing and third-party risk with specific requirements around governance, materiality, risk assessment, data security, and business continuity and exit planning. In the EU, DORA will build on the outsourcing Guidelines already issued by the ESAs (EBA, ESMA and EIOPA) to strengthen oversight and monitoring of third-party ICT.
  - The regulatory perimeter is expanding, with non-financial firms increasingly providing essential services to the financial sector. Concern continues to grow around the reliance of financial firms on a small number of third-party providers. A joint BoE, PRA and FCA discussion paper proposes measures to enhance the oversight of systemic risks from Critical Third-Party Providers (CTPPs) and implements the regulatory framework proposed by HMT in the Financial Services & Markets Bill. Under DORA, critical third-country ICT service providers to financial entities in the EU will be required to establish a subsidiary within the EU so that oversight can be properly implemented.

Developing Financial infrastructure

  - *Is our organisation structured to deal with the increasing regulatory change and supervisory scrutiny in the FMI sector?*

- FMIs are going through a period of significant change as their importance across the financial services ecosystem grows. They have a critical role to play in making financial transactions more efficient and helping to manage risk in the system. Across the financial sector, the need for scale and efficiency has increased in FMIs and is likely to lead to opportunities for consolidation. Increasing use of technology assists with efficiency and scale but can increase cyber risk.

- However, against this backdrop of opportunities, regulatory and supervisory scrutiny of FMIs is increasing due to the developing complexity and interconnectedness of markets and FMIs critical role in the smooth and stable functioning of markets and delivery of financial services.
- A joint workstream of the BCBS, CPMI and IOSCO continues to consider whether market participants were fully prepared for the margin calls they experienced at the onset of the COVID pandemic, their ability to liquidate assets to meet margin calls under stressed conditions, and the role of margining practices in amplifying the 'dash for cash'. Volatility in the commodity markets following Russia's invasion of Ukraine prompted large margin calls and has further increased the regulatory focus on margin. ESMA is consulting on revision of the current calibration of the Anti-Procyclicality tools in the EMIR regulatory technical standards. CCPs and clearing members should expect greater supervisory scrutiny around their measures to limit pro-cyclicality and their operational management of margin and liquidity.
- Central clearing; *Clearing Houses or central counterparties (CCPs) are now seen as an essential part of financial market infrastructure and generally worked well during the market disruption caused by the onset of the COVID pandemic. However regulators are still exploring the role of margin in the 'dash for cash'. CCPs' growing importance is also reflected by developments in stress testing and recovery and resolution regulations*.
    - ESMA's fourth CCP stress test addresses credit and concentration risks and, for the first time, covers operational risk. ESMA has also called for evidence on climate stress testing for CCPs. The BoE will conclude its first supervisory stress test of UK CCPs in 2022 and use the results to further develop its CCP supervisory stress testing framework.
    - Given the importance and interconnectedness of CCPs to financial stability, the FSB, again in coordination with CPMI and IOSCO, continues to review the sufficiency of the existing toolkit for CCP resolution, in particular in non-default loss scenarios. HMT, through the Financial Services & Markets Bill, will expand the UK resolution regime for CCPs to align it with the latest FSB guidance. ESMA has published its final report of regulatory technical standards and guidelines for implementation of the EU CCP Recovery and Resolution regime.
    - Regulatory frameworks that have been implemented in more established sectors, such as banking and insurance, are now being implemented or considered for CCPs. The BoE will be reviewing CCPs' implementation of new UK operational resilience standards that came into force in April 2022. The BoE and HMT are considering how to implement the Senior Managers and Certification Regime for FMIs including CCPs.
    - Looking further ahead, CCPs are assessing the potential of new technologies, such as distributed ledger technology and cloud computing, to enhance the efficiency of IT processes and their integration into the wider market infrastructure. Regulators are likely to want CCPs to consider the operational and cyber resilience impacts of these new technologies, including oversight of critical third parties. They are also considering the role of CCPs in relation to crypto-assets.
    - Cross border access to CCPs is considered further in Redrawing the EU-UK border.

- Data regulation; *Market data (information on prices, bids, quotes, volumes of traded financial instruments and benchmarks and indices) is becoming increasingly important to financial market participants in informing trading and investment strategies and meeting regulatory and disclosure obligations. Many regulators are concerned about the cost, access and reliability of this data and are proposing amendments to existing regulation, considering new regulation and investigating competition issues. These changes could have impacts on the business models of both the data providers and consumers.*
  - The FCA is concerned that that competition issues in the provision of market data may be leading to high pricing. This cost is either passed on to the end investor or limits access to data leading to less informed investment decisions by firms and consumers. The FCA is investigating whether high trading data costs and complex licensing terms and conditions are creating harm to users, in order to decide whether further guidance or policy action is needed. It will also carry out market studies on benchmarks and credit ratings provisions.
  - MiFID II/MiFIR set up the regulatory framework for consolidated tape of prices and volumes of financial instruments in the EU and this framework was also onshored in the UK post-Brexit. However, a consolidated tape has not emerged in either jurisdiction. As part of its November 2021 package of measures to promote growing retail participation in capital markets, the European Commission proposed a number of amendments to the MiFID II/MiFIR framework to encourage the emergence of a consolidated tape in the EU. HMT is amending legislation in the UK so that the FCA will be responsible for setting the requirements for the multiple competitive consolidated tape providers that HMT believes will deliver the best solution. Regulatory changes in both these areas could impact the business models of both data providers and consumers and is also likely to lead to changes in pre-and post-trade data reporting formats and requirements.
  - For more information on ESG Data and Rating providers see Delivering sustainable finance.
- Payments; The payments infrastructure continues to evolve to keep pace with increasing digitalisation and the opportunities and risks this brings. In the UK, work continues on the delivery of a New Payments Architecture (NPA) and the renewal of the real time gross settlement (RTGS) service so that it remains fit for purpose in a digital age. Regulators and policymakers are examining ways to ensure that users are adequately protected when using payment systems and services. They are also keeping a keen eye on the continued need for access to cash.
  - There is continued activity in payments infrastructure, at both the low and high value ends of the spectrum. UK policymakers and regulators are seeking to establish a future-proofed payments infrastructure that is resilient, accessible, and functional with wide interoperability. The BoE continues its plans for the renewal of the RTGS service, moving to enhanced ISO 20022 for CHAPS payments (2023) with a new core settlement engine (2024). It is also proposing a new tariff framework for RTGS and CHAPS.
  - The PSR and Pay.UK continue work on transforming the retail interbank payments network into the New Payments Architecture (NPA) to deliver enhancements to payment services and increase choice. In December 2021, the PSR published an updated regulatory framework for the NPA, designed to minimise risks in the NPA

ecosystem (such as monopoly, horizontal competition and vertical competition risks), followed by new Directions which came into force in January 2022 imposing requirements on Pay.UK as the operator of Bacs and Faster Payments. The PSR is also continuing work to strengthen competition between providers of card-acquiring services as they compete more vigorously for merchant business.

- Whilst there is a strong focus on electronic payments, there is also continued recognition that access to cash is vital for many consumers and businesses, and regulators are committed to ensuring that cash and its supporting infrastructure is protected. In a joint statement, the BoE and FCA outlined the work that they are doing in this area, including continued monitoring and the exploration of sustainable and appropriate solutions. The FCA is also consulting on updates to strengthen its guidance on branch and ATM closures or conversions. Legislation to protect access to cash is included in the Financial Services and Markets Bill. And the PSR has issued a rule to the LINK ATM network operator requiring them to maintain the broad geographic spread of the UK's free-to-use cash machine network.
- In the EU, the ECB has published a new framework for overseeing electronic payment instruments, schemes and arrangements (PISA). This is designed to replace the Eurosystem's current oversight approach for payment instruments and complement its oversight of payment systems. PISA will also complement EU regulations on crypto-assets (including stablecoins) and international standards for global stablecoins.
- In response to market evolution, the European Commission has begun a comprehensive review, including a targeted consultation, of the application and impact of PSDII to assess whether legislation remains fit for purpose and is delivering on its main objectives.
- Fighting the rising incidence of fraud and scams is a key priority in the payments sector. The UK Financial Services and Markets Bill includes legislation enabling the PSR to require banks to reimburse authorised push payment scam losses. The PSR also considers the widespread adoption of confirmation of payee in UK payments to be a key priority to prevent certain types of scams and misdirected payments, and introduced new rules in February 2022 allowing more Payment Service Providers to work together to ensure customers are protected by the name-checking service.
- The Government and regulators are committed to maintaining the UK's leadership in the field of Open Banking. In a joint statement, the CMA, FCA and PSR set out their expectations of the entity replacing the Open Banking Implementation Entity (OBIE) and announced the creation of a Joint Regulatory Oversight Committee (JROC) to provide regulatory oversight of the OBIE successor, led by the FCA and PSR . The first meeting of JROC was held in June 2022. The PSR is also pursuing HMT designation of Open Banking payments as a payment system under the 2013 Financial Services (Banking Reform) Act (FSBRA).

Enhancing Customer Protection;

- *Can we evidence (through our culture, strategy, business model, product design and operating model) how we balance our own commercial interests with delivering appropriate outcomes for all our customers?*

- The nature of products and services, of how they are delivered, and of communications with customers is changing. The perennial question for regulators about the optimal level of customer protection is now set against challenging economic conditions impacting the cost of living, the need to encourage greater private investment to aid economic recovery, and the increased digitalisation. These factors are driving an upward trend in the level of consumer protection rules being developed by regulators.
- Consequently, regulators are increasingly interested in how firms ensure that they are appropriately balancing their own commercial and operational considerations with the needs of end-customers. This interest has a particular focus on it being embedded throughout the firm and at all stages of a product lifecycle and customer journey.
- Firms must be able to demonstrate how their culture, strategy, business model, product design and operating model deliver fair treatment to all their customers. We are increasingly seeing this take the form of emerging regulation relating to product governance, assessment of outcomes and value for money/fair value.
- New fund structures are being introduced or existing structures adjusted, as European jurisdictions compete for share of market growth and cater for private investment in long-term assets to aid economic recovery. The uncertain economic environment has also increased the number of vulnerable customers and focused the attention of regulators. Many customers will exhibit characteristics of vulnerability at specific points in their lives and they should be able to achieve outcomes that are as good as those of other customers.

Reviewing Capita Markets

  - Are our regulatory monitoring and change processes set up to deal with diverging UK and EU capital markets regulation?
  - Have we critically analysed our experience during the 2020 market stress and reassessed our liquidity risk management framework for each of the funds we manage?
- The capital markets in both the EU and the UK are undergoing a period of significant change. The UK leaving the EU has changed the structure and concentration of the market as firms have needed to move operations into the EU. The EU is now undertaking mandatory reviews of the mass of regulation that was implemented post-financial crisis, such as MiFID/MiFIR, and the UK is reviewing on-shored EU regulation to adapt it to the UK market. Both jurisdictions are looking to raise their attractiveness as destinations to raise capital for new and growing companies, by reviewing listings and prospectus regulation.
- Concerns linger from the market events of March 2020 and regulators are determined that lessons should be learned. Work to analyse vulnerabilities in non-banks continues, with a particular international focus on liquidity management in open-ended funds. At the same time, the implications of the war in Ukraine have posed new regulatory challenges for market participants.
- The first hurdle in the transition away from LIBOR to risk-free rates has been cleared, with a relatively smooth switch in the non-USD markets at the end of 2021, but there is still more to do. Wholesale market participants are also looking ahead to see how technology can help assist the markets in moving towards T+1 settlement, tokenisation, digitisation of data, and greater retail participation.

- MiFID II/MiFIR review; *When MiFID II/MIFIR came into force in 2018, it represented a comprehensive and profound reshaping of how EU financial markets, products and services were regulated and necessitated large regulatory change management projects within firms. The EU review of the legislation and the UK Wholesale Markets review are unlikely to initiate such large-scale changes but firms working in both jurisdictions will need to carefully manage the likely divergence.*
  - HMT, following consultation, will be taking forward reforms to UK MiFID II. It has prioritised two areas: easing restrictions on where market participants can trade, with removal of the share trading obligation and the double volume cap, and reducing and simplifying the regulatory burden of the regime. Changes to take this forward include recalibrating the pre-and post-trade reporting regimes, changing the Systematic Internaliser calculation from a complex quantitative to a qualitative one and simplifying the commodities derivatives regime. HMT is also committed to supporting the emergence of a consolidated tape of prices and volumes which is consistent with the EC's proposals for the MiFIR review (see more in the Data regulation section in Redrawing the EU:UK border).
  - The European Commission's MiFIR review proposals include changing the double volume cap to a single volume cap, banning payment for order flow to try to improve best execution for investors and similar changes to the pre-and post-trade reporting regimes.
  - The EU and UK proposals will both require legislative changes and amendments to technical standards/the rule book. The Commission's proposals are now being debated and negotiated by the European Parliament and the Council. HMT has included the UK legislative changes in the Financial Services and Markets Bill. 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.
  - A wider MiFID II review proposal is expected in the near future, and is likely to cover investor protection obligations.
  - 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 both jurisdictions will need to keep track of developments as the proposals are finalised.
- Fund liquidity management; *The repercussions of the March 2020 "dash for cash" for open-ended funds in general, and money market funds (MMFs) in particular, are still being considered by policymakers. In the meantime, the financial market implications of the war in Ukraine have underlined the need for fund managers to have sufficient expertise, resources and plans to respond quickly to unexpected developments and meet regulators' expectations in a robust manner.*
  - Liquidity management approaches and tools remain in the regulatory spotlight. MMF reform has progressed most quickly and following finalisation of the FSB's proposals last autumn, consultation and discussion papers have now been published in the EU, UK and US. Open-ended funds more broadly have been subject to a longer debate – reviews by the FSB and IOSCO are due to conclude this year but outcomes are less certain. The regulation of exchange-traded funds (ETFs) has also been revisited by IOSCO, but no fundamental changes have been proposed (only good practices to address differences across jurisdictions). As well as tracking longer term regulatory developments, fund managers need to

respond quickly to new and unexpected challenges. Russia's invasion of Ukraine impacted markets and funds with exposure to Russian, Belarussian and Ukrainian assets. UK and EU supervisors have therefore been reiterating their expectations and considering additional options and guidance in this context (for example, the use of side pockets).

- Primary Markets; Regulatory reforms in both the EU and the UK are looking to reduce the regulatory burden in the primary markets to encourage wider participation in the ownership of public companies as well and improve the quality of information investors receive.
    - The European Commission is consulting on a proposed Listing Act with the aim of simplifying listing requirements to make public capital markets more attractive for EU companies and facilitate access to capital for SMEs. The consultation also reviews the impact of other regulations such as MAR and MiFID II on the listing process and the appropriateness of the current listing regime when considering an IPO via a Special Purpose Acquisition Companies (SPACs). The Commission will also be undertaking post-implementation reviews of the Prospectus and Transparency Directives.
    - In the UK, HMT and the FCA are implementing the recommendations of Lord Hill's UK Listing Review and the Kalifa Review of UK Fintech.
    - The FCA has made changes to the listing regime to remove some of the barriers while still protecting market integrity. The FCA is still considering the feedback provided on the listing regime's purpose and structure and is expected to lay out next steps shortly. HMT will alter the UK Prospectus Regulation so that prospectuses are not always needed for securities to be admitted to trading on UK markets, for secondary listing and where they have been listed overseas. Once these reforms been implemented the UK prospectus and public offerings regime will significantly diverge from the current EU regime. The reforms should offer companies raising capital in the UK more flexibility. The results of the HMT commission Secondary Capital Raising Review are also likely to prompt further changes to the regulatory framework to make secondary capital raising easier, and more efficient and a Digitisation Taskforce has been established to drive forward the modernisation of the UK's shareholding framework.
- LIBOR Transition; *The majority of LIBOR settings ceased at the end of 2021. The FSB noted that the absence of any significant market disruption was a testament to the magnitude of market participants' efforts and the level of attention from the regulators and industry bodies to support the transition to risk-free-rates. However, firms still need to transition away from the widely used USD LIBOR by mid-2023 and phase out the use of synthetic LIBOR*.
    - From 1 January 2022, 24 of the 35 LIBOR settings, relating to specific currencies and time periods, are no longer available. Six sterling and yen LIBOR settings will continue for the duration of 2022 in a synthetic form based on risk free rates – the FCA is seeking market participants views on the timing of the winding down of GBP synthetic LIBOR. Regulators will continue to monitor firms wind-down of legacy LIBOR books, likely reviewing for unfair treatment of customers and impact on markets. Firms also need to be prepared to discuss with regulators their preparations for the end of the US LIBOR in June 2023 and evidence that they have ceased new use of US dollar LIBOR. Regulators expect firms to use the most robust alternative reference rates to LIBOR and expect any firm

considering the use of credit-sensitive rates to assess the risks carefully. In the US, a federal LIBOR law was enacted on 15 March 2022 providing a solution for legacy contracts that have no workable fallbacks and a safe harbour for lenders who choose SOFR in relevant contracts.

Redrawing the EU-UK border

- *Have we reviewed what "substance" we have in each jurisdiction and whether it is sufficient to meet evolving supervisory expectations?*
- *Are we monitoring regulatory developments regarding market access arrangements and their potential impact on our business?*

- Approaching two years since the end of the post-Brexit transition period, the commercial and operational implications of the new EU-UK border continue to evolve for financial services firms.
- Negative impacts to financial markets were avoided at the end of the transition period, in large part due to the preparations undertaken by regulators and market participants. However, regulatory developments since the UK left the EU underline that firms working in the EU, the UK and elsewhere need to continue to monitor regulatory change in both jurisdictions in order to pre-empt disruption to their business and remain compliant.
- Governments and regulators continue to work through the implications of the new arrangements, including adapting existing regulatory frameworks and responsibilities. Firms need to be aware of the potential for regulatory divergence and track developments, particularly across fast-growing areas such as sustainable finance.
- Outside the EU, the UK is negotiating a Mutual Recognition Agreement (MRA) for financial services with Switzerland to allow the UK and Switzerland to defer to each other in regulation and supervision of firms undertaking cross border financial services. The UK Financial Services & Markets Bill will legislate to allow an MRA framework, as the UK hopes, in the future, to enter into MRAs with other jurisdictions.
- Delegation of portfolio management; Following recommendations from ESMA, towards the end of 2021 the European Commission set out proposals to clarify the delegation rules within the AIFMD and the UCITS Directive. Asset managers should continue to factor the ongoing debate on delegation and 'substance' into their thinking.
    - Delegation by EU fund management companies to third countries continues to be considered by EU authorities. Since ESMA's opinion on 'substance' for EU entities, national EU regulators have clarified their expectations and undertaken supervisory reviews. The European Commission has set out proposals to clarify aspects of the current delegation regime under both the AIFMD and UCITS Directive. The Commission noted that the delegation regime allows for efficient portfolio management, access to expertise, and has contributed to the success of EU fund and manager labels. However, in order to address certain inconsistencies, the Commission has proposed various changes, including notifications regarding delegated activity, justifying delegation based on objective reasons, minimum substance requirements and regular ESMA peer reviews. Asset managers will need to continue to monitor developments.

- Fund marketing and distribution; *Amid a trend of jurisdictions introducing new or amended fund structures, questions remain around cross-border market access. While existing EU funds can continue to market in the UK if they are registered under the Temporary Marketing Permissions Regime, the final framework for the UK's Overseas Funds Regime is still to be operationalised. The details may determine how firms structure their operations.*
  - In the UK, the Overseas Fund Regime moves ever closer, but the regime is yet to be fully operationalised by HMT and the FCA. Following the conclusion of HMT's consultation and the subsequent finalisation of the 2021 Financial Services Act, in February 2022 relevant sections of the Act were brought into force. However, more work is needed to activate the regime and complete any equivalence determinations. In the meantime, EU funds already registered under the FCA's Temporary Marketing Permissions Regime can continue to access the UK market. The FCA has clarified that these funds will need to continue to produce disclosures for UK investors in the current format, even after the EU's disclosure requirements change in January 2023. In the EU, ESMA responded to the Commission regarding the use of cross-border reverse solicitation, noting that most regulators do not gather readily available information on the use of reverse solicitation.
- Regulated markets and clearing; *EU firms' ability to access services in third countries and the corresponding regulatory treatment continues to evolve. The Commission has extended equivalence for UK CCPs until June 2025, amended its 2021 equivalence decision for US CCPs and recognised exchanges supervised by the SEC as equivalent to EU regulated markets.*
  - In February 2022, the European Commission extended equivalence for UK central counterparties (CCPs) until June 2025, providing certainty to market participants. At the same time, the Commission launched a consultation and a call for evidence on ways to expand central clearing activities in the EU and improve the attractiveness of EU CCPs in order to reduce the EU's overreliance on systemic third country CCPs.
  - The BoE has confirmed its approach (under on-shored EMIR) to 'tiering' non-UK CCPs based on the level of risk they could pose to UK financial stability, with Tier 2 CCPs subject to direct UK supervision and regulation. However, even Tier 2 CCPs can apply for specific regulatory provisions to be granted 'comparable compliance', with the UK then deferring its supervision in these areas to the CCPs' home authorities.
  - In April 2022, the Commission adopted a decision to recognise a number of US exchanges supervised by the SEC as equivalent to EU regulated markets (allowing derivatives traded on these exchanges to be treated as exchange-traded under EU law).
  - The Commission also amended its previous equivalence decision for US CCPs to cover certain additional products. In the meantime, ESMA has continued to progress applications from US CCPs for recognition. In June 2022, it announced it had recognised two additional US CCPs as "Tier 1" CCPs under EMIR.
- Cross-border services; *In the absence of equivalence determinations, cross border access to professional clients remains largely the responsibility of national regulators. For the banking industry this may change under proposed amendments. More*

broadly, EU authorities continue to focus on reverse solicitation and 'substance' in EU entities. In the UK, regulators are working through applications from firms in the Temporary Permissions Regime (TPR). Looking ahead, the overseas market access framework in the UK is currently being reviewed by HMT.

- Proposals to reform the EU banking prudential framework (under CRR and CRD) could potentially impact non-EU firms doing business in the EU. More broadly, in the absence of equivalence, firms remain reliant on national regulators' individual cross border access regimes for professional clients.
- This requires firms having a detailed understanding of arrangements in specific member states. Authorities are looking to better understand the role of certain practices (such as reverse solicitation in the EU), and EU supervisors continue to review whether EU entities have sufficient 'substance'.

- Reinforcing governance expectations
  - *Are our existing governance arrangements keeping pace with regulators' evolving expectations and incoming requirements?*
- Supervisors continue to reinforce the need for good corporate governance. This is particularly heightened since the widespread move to hybrid and remote working which has changed firms' practices and introduced new challenges to both governance frameworks and operations.
- Good governance enables the clear identification of fit and proper senior managers, supports the performance of their roles and responsibilities and allows them to be held accountable. Regulators are therefore re-asserting the importance of robust governance arrangements in the interests of market stability and investor protection.
- Regulators are increasingly recognising that good diversity and inclusion (D&I) practices reduce risk for regulated firms by reducing "groupthink", and they are calling out pay gaps and lack of diversity among firms' boards and senior management.
- The significant volume of new ESG requirements and developments in digital finance will require boards to implement and oversee robust regulatory transformation programs with clear designation of accountability across all three lines of defence.
- Culture; *There is a growing recognition of the powerful roles that culture can play in a firm. Regulators are identifying that, in many instances of poor conduct, deep-set cultural issues have been present and that firms with healthy cultures are less prone to misconduct. An assessment of culture, coupled with other regulatory initiatives can give deeper insights into whether firms operate and are governed in line with regulatory and wider societal expectations*.
  - Although regulators don't prescribe what a firm's culture should be exactly, supervisors view poor culture as a driver of harm. In response, they are aiming to address poor conduct and culture through day to day supervision (as seen in some of the FCA's portfolio letters) as well as through newer, broader proposals. In the UK, the FCA's proposed Consumer Duty seeks to bring about a more consumer-focused approach with outcomes that set expectations for firms' cultures and behaviours.

    - Similarly, the proposed EU Corporate Sustainability Due Diligence Directive will establish a duty to identify, bring to an end, prevent, mitigate and account for negative human rights and environmental impacts in a company's own operations, its subsidiaries and its value chains.
    - It will also introduce duties for directors of in-scope EU companies, including setting up and overseeing the implementation of due diligence processes and integrating due diligence into corporate strategy.
- Accountability; I*nitially driven by a response to the GFC, a number of regulators implemented regimes, starting in the banking sector, that required firms to allocate accountability for senior management functions to specific individuals. The rationale was two-fold: to drive up standards within firms as individuals take greater ownership and to simplify supervisory/enforcement action by regulators where individuals are dishonest and/or negligent. These regimes are now expanding in scope across financial services and being introduced in more jurisdictions.*
    - The UK Government and regulators are expanding the scope of the UK Senior Management and Certification Regime to CCPs and CSDs and considering whether to expand it further to credit rating agencies and exchanges. The continued focus on full implementation and use of the regime is shown by the regulators consistently assigning relevant senior managers to be responsible for remediation work in their 'Dear CEO' letters.
    - In the EU, the ECB is showing an increased focus on 'fit and proper' assessments of 'senior managers' and the EBA and ESMA have updated their joint guidelines on the assessment of the suitability of members of the management body and key function holders.
    - Other jurisdictions are taking forward the implementation of their accountability regimes with developments in Ireland, Singapore, Hong Kong and Australia. Firms working across these jurisdictions face challenges in mapping the interaction and overlaps in their governance structures.
- Oversight; *Oversight of a firm's business and regulated activities by its Board remains a key regulatory theme, particularly since the widespread shift to hybrid and remote working. As noted in our chapter on Strengthening Operational Resilience, third party risk management remains important. In the WAM sector, supervisors are also scrutinising fund governance arrangements and associated oversight capabilities.*
    - The shift to remote and hybrid working has led to opportunities and challenges for all companies including regulated firms. Supervisors have also been considering their expectations in this context.
    - In addition to setting out specific expectations regarding market abuse controls, the FCA has published general expectations for how firms operate their business and engage with the FCA and for notification requirements in the context of hybrid working.
    - In the WAM sector, regulators continue to scrutinise fund governance and oversight. For example, in both the UK and the EU, regulators have reviewed the capabilities of third party fund management companies and investment managers. Depositary oversight is also a priority, most recently as set out in the FCA's March 2022 portfolio letter and in ESMA's planned 2022 discretionary peer review of depositary obligations, which was set out in ESMA's annual work programme.

- Diversity & Inclusion; *Regulators are increasingly recognising that good D&I practices reduce risk for regulated firms by reducing "groupthink". Following the lead of regulators such as the Central Bank of Ireland, the UK, the FCA, PRA and Bank of England are now seeking to accelerate the pace of meaningful change on diversity and inclusion across sectors*.
    - Having consulted on changing the listing rules for company boards and executive committees in 2021, the FCA issued a Policy Statement in April 2022 mandating targets and disclosures for standard and premium issuers. In July 2021, the FCA, PRA and Bank of England published a Discussion Paper on improving diversity and inclusion in regulated firms. More is expected on this topic including a consultation in autumn 2022 and final policy in 2023. The FCA has cautioned that firms that do not embrace diversity of thought will struggle to serve the needs of a diverse customer base and manage risks effectively.
    - In the EU, the ECB consulted on revising its guide to fit and proper assessments and published an updated document that includes taking gender diversity into account as an element of collective suitability. Separately, the EBA published its final guidance on benchmarking the gender pay gap (including data collection from 2022). More broadly, the European Commission put forward proposals in 2021 on pay transparency.

ESMA Business Plans: 2023 and for Five Years Out

ESAs Joint Committee publishes 2023 work programme; *The Joint Committee of the European Supervisory Authorities (ESAs) has published its work programme for 2023.*

- The Joint Committee intends to continue to focus on consumer and investor protection, retail financial services and investment products, sustainable finance, risks and vulnerabilities for financial stability, digital operational resilience, financial conglomerates and prudential consolidation, as well as accounting and auditing

ESMA Work Programme 2023: focus on sustainability, technological change and protection of retail investors

- 2023 Annual Work Programme https://www.esma.europa.eu/document/2023-annual-work-programme
- ESMA Work Programme 2023: focus on sustainability, technological change and protection of retail investors https://www.esma.europa.eu/document/esma-work-programme-2023-focus-sustainability-technological-change-and-protection-retail

- ESMA published its 2023 Annual Work Programme (AWP). It sets out ESMA's priority work areas for the next year to deliver on its mission to enhance investor protection and promote stable and orderly financial markets.

- Verena Ross, Chair, said:
    - *"The 2023 AWP is the first work programme developed under the ESMA Strategy for 2023-2028 and will see ESMA delivering amongst others on the priorities we set out in our sustainable finance roadmap, adapting to digitalisation in financial markets and enhancing the access to and quality of supervisory data. A core part of our mission is to further improve the protection of retail investors and we will do this by promoting the convergence of supervisory and regulatory practices across the EU.*
    - *"Considering the current challenging market conditions, ESMA will continue close monitoring of financial markets, including CCPs. In that context, and linked to measures for tackling the current energy crisis, we also expect to conduct work to review and clarify the existing rules for these markets.*
    - *"In 2023 ESMA will be taking on new responsibilities in regulating the impact of new technology on financial markets via mandates under DORA, MiCA and the DLT regime. ESMA will continue to supervise several key market infrastructures with a view to foster effective markets and financial stability in the EU."*
- 2.3 Markets and Infrastructures 19
- 2.3.1 Central Counterparties (Third countries) 19
- 2.3.2 Central Counterparties (EU) 20
- 2.3.3 Data Reporting Service Providers 21
- 2.3.4 Trading 23

- 2.3.5 Central Securities Depositories 26
- 2.3.6 Securitisation Repositories 27
- 2.3.7 Trade Repositories 28
- Key deliverables for 2023

1. Enabling sustainable finance – develop remaining technical standards under the Sustainable Finance Disclosure Regulation (SFDR) and work to better understand and fight against greenwashing.
2. Facilitating technological innovation and effective use of data – develop technical standards and guidelines in order to help the market prepare for the implementation of key new regulations in the area of digital finance: the Digital Operational Resilience Act (DORA), the Regulation on Markets in Crypto-Assets (MiCA) and the DLT Pilot Regime.
3. Investors and issuers – continue to report on the impact of costs and charges for retail investors and coordinate new workstreams on mystery shopping. Coordinate a Common Supervisory Action (CSA) in the area of sustainability, covering the risk of greenwashing in the fast-growing area of sustainable investment products. ESMA also expects to be mandated to support the regulatory framework for sustainable finance, under the Corporate Sustainable Reporting Directive, the proposed regulation for EU Green Bonds and the SFDR.
4. Markets and infrastructures – develop technical standards on authorisation and registration of benchmark providers. Deliver the final technical standards and guidelines mandated under the CCP Recovery and Resolution Regulation.
5. Risk assessment - continue to monitor market developments to assess risks, in particular the impact of commodity market developments, financial market impacts of inflation and rising interest rates.
6. Supervision and convergence – continue risk-based supervision of all EU CRAs, TRs and SRs as well as certain DRSPs, benchmark administrators and third-country CCPs, and work with national authorities to promote supervisory convergence and a common understanding of where major risks lie. Prepare for the supervision of Consolidated Tape Providers (CTPs), subject to ongoing legislative proceedings on MiFIR review and for the oversight of critical ICT third-party providers (CTPPs) with the other ESAs.

ESMA announces strategic priorities for the next five years

- ESMA published its Strategy for 2023-2028. In the Strategy, ESMA details its long-term priorities and how it will use its competences and toolbox to respond to future challenges and developments.
- ESMA will focus on strengthening supervision, enhancing the protection of retail investors, fostering effective markets and financial stability, enabling sustainable finance, as well as facilitating technological innovation and effective use of data.
- ESMA Strategy 2023-2028; https://www.esma.europa.eu/document/esma-strategy-2023-2028
- ESMA announces strategic priorities for the next five years
- https://www.esma.europa.eu/document/esma-announces-strategic-priorities-next-five-years

- Verena Ross, Chair, said:
    - *"I am happy to present an ambitious Strategy, which will steer ESMA's direction for the next five years."*
    - *"The ESMA Strategy takes into account the rapidly changing market and geopolitical developments. The established strategic goals are important to enable ESMA, the EU's financial markets regulator and supervisor, to continue to achieve its mission to enhance investor protection, promote orderly and stable financial markets."*
    - *"The 2023-2028 ESMA Strategy is centred around three priorities and two thematic drivers. Fostering effectiveness and stability of the EU markets and enhancing the protection of retail investors, and doing both through strengthened supervision, are at the core of what ESMA is all about. The key twin drivers of sustainability and technological and data innovation are also now embedded across all areas of the organisation."*
- Main elements of the Strategy
    - Fostering effective markets and financial stability – ESMA actively supports the deepening of European capital markets, ensuring their integrity and making them more effective. To this end, for the next five years, the Authority will focus on: ensuring fair, orderly and effective markets, increased transparency (e.g. through implementing the European Single Access Point) as well as enhancing financial stability. We will continue developing, maintaining and streamlining the Single Rulebook and supporting the common EU's voice in the international regulatory and supervisory discussions.
    - Strengthening supervision of EU financial markets – ESMA's and the national competent authorities' (NCAs) activities are complementary and work to strengthen supervision across the EU single market. In the Strategy, ESMA highlights the ambition to achieve a common EU supervisory culture, risk prioritisation, and the convergence of supervision approaches and outcomes.
    - Enhancing protection of retail investors – ESMA and the NCAs will do all they can to ensure that investors are effectively protected, with a particular focus on retail investors. In addition, in the Strategy, we put forward actions related to investor engagement and effective information and disclosure.
    - Enabling sustainable finance – By embedding sustainability in all its activities, ESMA will support the transition to a more sustainable economic and financial system. The priorities from the Sustainable Finance Roadmap go hand in hand with the paths mentioned in the Strategy, namely: effectiveness and integrity of ESG information, an improved ESG regulatory framework and supervision, and a recognition of the role of retail investors in financing the transition to a greener economy.
    - Facilitating technological innovation and effective use of data - ESMA will endeavour to ensure that financial regulation does not hinder innovation, while maintaining a level playing field between emerging players and products and more traditional ones. ESMA's focus will be on assessing the impact of technologies used in financial markets on the existing regulatory framework and implementation of the upcoming EU legislation in this space.
- ESMA will further strengthen its role as data and information hub in the EU and contribute to extending the effective use of data in financial market supervision.

ESMA's CCP Supervisory Committee releases strategic objectives for 2023-2025 to drive supervisory activities

- https://www.esma.europa.eu/press-news/esma-news/esma%E2%80%99s-ccp-supervisory-committee-releases-strategic-objectives-2023-2025-drive
- CCP Strategic Objectives 2023-2025 https://www.esma.europa.eu/document/ccp-strategic-objectives-2023-2025
- Three strategic objectives are identified for ESMA in relation to CCPs:
  - Strengthening EU CCP resilience;
  - Addressing third-country CCP cross-border risks; and
  - Deepening risk- and data-driven supervision
- The CCP strategic objectives build on ESMA's achievements following the establishment of the CCP SC and outline the most relevant areas of ESMA's work in relation to CCPs for the next three years.
- These objectives will contribute to achieving ESMA's strategic priorities of strengthening supervision and ensuring fair, orderly and effective markets, whilst promoting sustainability and technological and data innovation.

Regulatory Outlook and Diary

Q4 2022	Australia	Expected finalization of APRA prudential standard for IRRBB (APS 117).
Q4 2022	Australia	Expected publication of the updated ASIC over-the-counter (OTC) derivatives reporting final rules.
Q4 2022	Australia	Expected ASIC Schedule 1 Technical Guidance for public consultation..
Q4 2022	Australia	Expected third consultation paper on over-the-counter (OTC) derivatives reporting and technical guidance by ASIC. Expected publication of final OTC derivatives reporting rules by ASIC.
Q4 2022 / Q1 2023	Hong Kong	Consultation of Hong Kong's reporting rules on adoption of UPI and CDE.
Q4 2022	EU	Following the European Commission consultation on the review of the EU clearing framework, the Commission is expected to propose amendments to EMIR 2.2 to incentivise clearing on EU CCPs. This is expected to cover a number of aspects of EMIR, including the scope of the clearing obligation, intra-group transaction and supervisory framework for EU CCPs.
Q4 2022	UK	Expected consultation of the Basel 3.1 standards – see Sam Woods speech to the Lord Mayors Mansion House Dinner on 28 oct 2022

Q4 2022/Q1 2023	EU	The EC 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
Q4 2022	EU	The EC 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.
December 01, 2022	India	Variation margin requirements apply to domestic covered entities exceeding the AANA threshold of INR 250 billion (approximately USD 3.2 billion).
December 05, 2022	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
December 05, 2022	US	Expiration of an extension of CFTC no-action relief to entities submitting swaps for clearing by derivatives clearing organizations (DCOs) operating under CFTC exemptive orders or CFTC staff no-action relief (Relief DCOs) (CFTC Letter No. 22-05).
December 07, 2022	EU	Following the European Commission consultation on the review of the EU clearing framework, the Commission is expected to propose amendments to EMIR 2.2 to incentivize clearing on EU CCPs. This is expected to cover a number of aspects of EMIR, including the scope of the clearing obligation, intra-group transaction and supervisory framework for EU CCPs.
December 30, 2022	US	Comments Due: SEC Proposed Rule for US Treasuries Clearing (See 87 Fed. Reg. 64610- 64682 (October 25, 2022) available at: https://www.govinfo.gov/content/pkg/FR-2022-10-25/pdf/2022-20288.pdf).
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	US	Expiry of CFTC Letter No. 21-24, providing substituted compliance for the UK in connection with the withdrawal from the EU.
December 31, 2022	EU	The European Commission shall review the minimum standards of carbon benchmarks (climate transition 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	The FCA direction under the temporary transitional powers allowing UK firms to execute certain trades with EU clients on EU venues (even though there is no UK equivalence decision in respect of those venues) expires at the end of 2022. December 31, 2022 UK As established by the Policy Statement PS14/21 published by the UK FC
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.
December 31, 2022	UK	Deadline for Chief Risk Officers to respond to the PRA's Review of the use of the SIMM Model: Conclusions
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
H1 2023	Singapore	Expected publication of the updated MAS reporting regime; delay from originally indicative Q2 2022 timeline.
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	EU	The European Commission (EC) has published the 3rd Capital Requirements Regulation (CRR III) proposal on October 27, 2021 which will implement the Basel 3 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 January 1, 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, with an expectation they will secure their respective position in the second half of 2022 and a finalization of the package in trilogue in the first half of 2023. As a result of these negotiations, the implementation date of January 1, 2025 will be subject to change
January 1, 2023	US	Regulatory initial margin requirements apply under US prudential regulations for covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion) based on the calculation period which ended August 30, 2022.
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 01, 2023	US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds the lowest threshold for application or revocation of initial margin requirements as of the next relevant compliance date of either September 1, 2023 or January 1, 2024 (EU/UK/CHF/US Prudential). In the US, this calculation period only applies under CFTC regulations. For RSA, Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds either the ZAR 15 trillion or ZAR 8 trillion threshold for initial margin requirements as of September 1, 2023.
March 31, 2023	Japan	Basel III: Implementation of leverage buffer for G-SIBs (in connection with the implementation, JFSA will publish certain rules for extension of, and amendment to, certain transitional arrangement based on the public consultation which was closed on August 15, 2022)
April 24, 2023	UK	Removal of clearing obligation for swaps referencing SOFR.
May 1, 2022)	India	Variation margin requirements apply to domestic covered entities exceeding the AANA threshold of INR 250 billion (approximately USD 3.2 billion)
June 2023	UK	Deadline for ending reliance on US dollar LIBOR.
June 1, 2023	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, 2024
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 18, 2023	UK	End of the temporary exemption for pension scheme arrangements from clearing and margining under UK EMIR.
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	US	CFTC Effective Date for the Clearing Rules to Account for the Transition from LIBOR (See 87 Fed. Reg. 52182 (August 24, 2022)). The portion of the rule effective on this date removes the requirement to clear interest rate swaps referencing US dollar LIBOR and the Singapore Dollar Swap Offer Rate in each of the fixed-to-floating swap, basis swap and FRA classes, as applicable.
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
July 31, 2023	US	Expiration of a second 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. 22-07).
Q3/ Q4 2023	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
September 1, 2023	US EU Australia Canada Hong Kong	Under CFTC rules only, 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 Phase 6 APRA covered entities with an aggregate notional amount exceeding AUD 12 billion. Canada: Under both OSFI and AMF guidelines, initial margin requirements apply to Phase 6 covered entities with aggregate month-end average notional amount exceeding CAD 12 billion.

	Korea Switzerland Singapore Japan	Hong Kong: Initial margin and risk mitigation requirements apply to 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. Singapore: Initial margin requirements apply to MAS covered entities with an aggregate notional amount exceeding SGD 13 billion. Japan: Initial margin requirements apply to JFSA covered entities with an aggregate notional amount exceeding JPY 1.1 trillion. Brazil: Initial margin requirements apply to financial institutions and other entities authorized to operate by the Central Bank of Brazil which have an average aggregate notional amount exceeding BRL 25 billion.
September 1, 2023	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion. South Africa; Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding either ZAR 15 trillion or ZAR 8 trillion.
October 1, 2023	Australia	Repeal the ASIC Derivative Transaction Rules (Reporting) 2013 and make the ASIC Derivative Transaction Rules (Reporting) 2022 ('ASIC TRRs 2022') in the very same form.
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.
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.
January 1, 2024	US	Under US Prudential Regulations only, initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion).

	EU Switzerland UK	EU: Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding EUR 8 billion. Switzerland: Initial margin requirements apply to counterparties whose aggregate month-end average position exceeds CHF 8 billion. UK: Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding EUR 8 billion.
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.
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.
March 01, 2024	Australia US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan Brazil	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds the lowest threshold for application or revocation of initial margin requirements as of the next relevant compliance date of either September 1, 2024 or January 1, 2025 (EU/UK/CHF/US Prudential). In the US, this calculation period only applies under CFTC regulations.

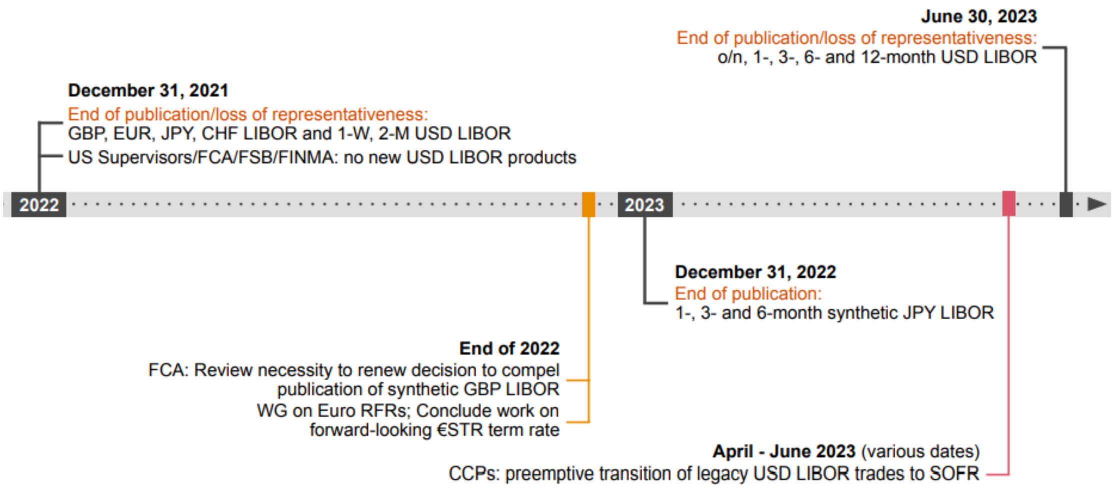
March 01, 2024	South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds ZAR 8 trillion threshold for initial margin requirements as of September 1, 2024 (per amended rule pending finalization)..
March 31, 2024	Japan	Basel III: Implementation of revised credit risk, CVA, market risk (FRTB) for international active banks and domestic banks using IMM.
April 01, 2024	Japan	Expected implementation of transaction reporting requirements updated based on the technical guidance published by CPMI and IOSCO in February 2017, September 2017 and April 2018, The public consultation closed on May 30, 2022, and JFSA will publish the final rules
April 28, 2024	EU	Go-live of EMIR Refit reporting rules
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.
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).
September 1, 2024	Australia US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan Brazil South Africa	Under CFTC rules only, initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). Australia: Initial margin requirements apply to Phase 6 APRA covered entities with an aggregate notional amount exceeding AUD 12 billion. Canada: Under both OSFI and AMF guidelines, 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 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. Singapore: Initial margin requirements apply to MAS covered entities with an aggregate notional amount exceeding SGD 13 billion. Japan: Initial margin requirements apply to JFSA covered entities with an aggregate notional amount exceeding JPY 1.1 trillion.

		Brazil: Initial margin requirements apply to financial institutions and other entities authorized to operate by the Central Bank of Brazil which have an average aggregate notional amount exceeding BRL 25 billion. SA: Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion (per amended rule pending finalization).
September 1, 2024	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion (per amended rule pending finalization).
Q4 2024	Australia	Expected implementation of ASIC Derivative Transaction Rules (Reporting) 2024.
Q4 2024	Singapore	Expected go-live of the updated MAS reporting regime.
October 1, 2024	US	Expiration of temporary CFTC relief regarding capital and financial reporting for certain non-US nonbank swap dealers (See CFTC Staff Letter No. 22-10 and CFTC Staff Letter No. 21-20) *relief would also expire upon the Commission's issuance of comparability determinations for the jurisdictions in question.
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.
March 1, 2025	South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds ZAR 100 billion threshold for initial margin requirements as of September 1, 2025 (per amended rule pending finalization)
March 31, 2025	Japan	Basel III: Expected implementation of revised credit risk, CVA, market risk (FRTB) for domestic banks not using IMM.
June 30, 2025	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. 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.
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.
January 1, 2025	UK	Expected implementation of the Basel 3.1 standards
March 31, 2025	Japan	Basel III: Expected implementation of revised credit risk, CVA, market risk (FRTB) for domestic banks not using IMM.

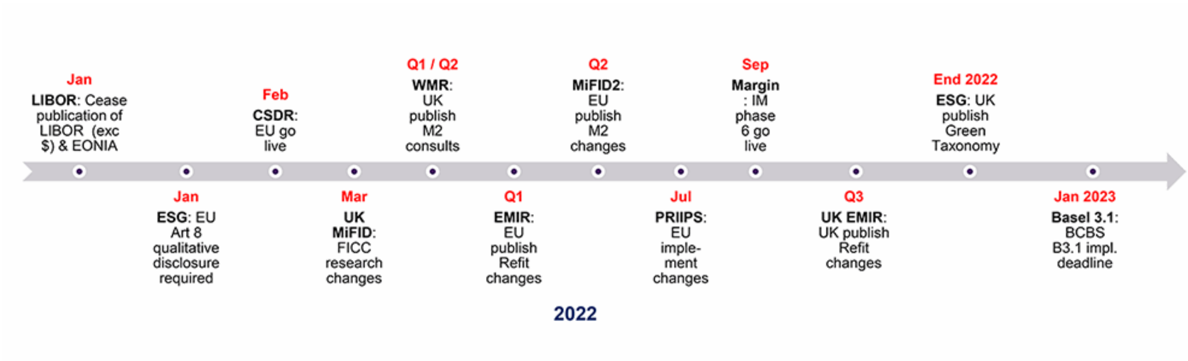
June 30, 2025	EU	The temporary recognition of UK CCPs (LME, ICE and LCH) under the EMIR 2.2 framework expires. Unless further addressed, following this date, EU firms could not have access to the UK CCPs and would need to relocate their clearing activities to EU CCPs. Under EMIR 2.2, ESMA has also performed its tiering assessment, with LME becoming a Tier 1 CCP whereas ICE and LCH are considered Tier 2 CCPs.
September 1, 2025	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 100 billion (per amended rule pending finalization).
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.

LiBOR Transition

LIBOR transition target dates



Timeline...



IBOR Currency	IBOR	IBOR Administrator	Alternative RFR	Alternative RFR Administrator	Public-/Private Sector Working Group	Fallback-related Announcements
🇦🇺	Bank Bill Swap Rate (BBSW)	Australian Securities Exchange (ASX)	Reserve Bank of Australia Interbank Overnight Cash Rate (AONIA)	Reserve Bank of Australia (RBA)	The IBOR Transformation Australia Working Group	
🇨🇦	Canadian Dollar Offered Rate (CDOR)	Refinitiv	Canadian Overnight Repo Rate Average (CORRA)	Bank of Canada	Canadian Alternative Reference Rate Working Group (CARR)	Refinitiv announcement regarding cessation of 6m and 12m CDOR Bloomberg announcement regarding fallback spread for 6m and 12m CDOR ISDA Tenor Cessation Guidance – 6m and 12m CDOR

	Copenhagen Interbank Offered Rate (CIBOR)	Danish Financial Benchmark Facility	DESTR (Denmark Short-Term Rate)	Danmarks Nationalbank	Working group on short term reference rate	Upcoming changes to the CIBOR and Tom/Next benchmarks
	LIBOR	IBA				
	Euro Interbank Offered Rate (EURIBOR)	European Money Markets Institute (EMMI)	Euro Short-term Rate (€STR)	European Central Bank (ECB)	Working Group on Euro Risk-free Rates	FCA Announcement on the Future of the LIBOR Benchmarks IBA Press Release ICE LIBOR Feedback Statement on Consultation on Potential Cessation Bloomberg Announcement on the Spread Adjustment Fixing ISDA Guidance
	Hong Kong Inter-bank Offered Rate (HIBOR)	Treasury Markets Associations (TMA)	Hong Kong Dollar Overnight Index Average (HONIA)	TMA	Working Group on Alternative Reference Rates (WGARR) under the Treasury Markets Association (TMA)	
	Mumbai Interbank Forward Outright Rate (MIFOR)	Financial Benchmark India Pvt. Ltd (FBIL)	FBIL Modified Mumbai Interbank Forward Outright Rate (Modified MIFOR)*	Financial Benchmark India Pvt. Ltd		
	LIBOR	IBA				
	Tokyo Interbank Offered Rate (TIBOR)	Japanese Bankers Association TIBOR Administrator (JBATA)				
	Euroyen TIBOR	JBATA	Tokyo Overnight Average Rate (TONA)	Bank of Japan	Cross-Industry Forum on Interest Rate Benchmarks	FCA Announcement on the Future of the LIBOR Benchmarks IBA Press Release ICE LIBOR Feedback Statement on Consultation on Potential Cessation Bloomberg Announcement on the Spread Adjustment Fixing ISDA Guidance
	Kuala Lumpur Interbank Offered Rate (KLIBOR)	Bank Negara Malaysia (BNM)	Malaysia Overnight Rate (MYOR)	Bank Negara Malaysia (BNM)	Financial Markets Committee (FMC)	BNM announcement on launch of MYOR
	Bank Bill Benchmark rate (BKBM)	New Zealand Financial Markets Association (NZFMA)	Official Cash Rate (OCR)	Reserve Bank of New Zealand		
	Norwegian Interbank Offered Rate (NIBOR)	Norske Finansielle Referanser AS (NoRe)	Norwegian Overnight Weighted Average (NOWA)	Norges Bank	Working Group On Alternative Reference Rates For The Norwegian Krone (ARR)	
	Philippine interbank reference rate (PHIREF)	Bankers Association of the Philippines (BAP)				BAP Announcement on PHIREF

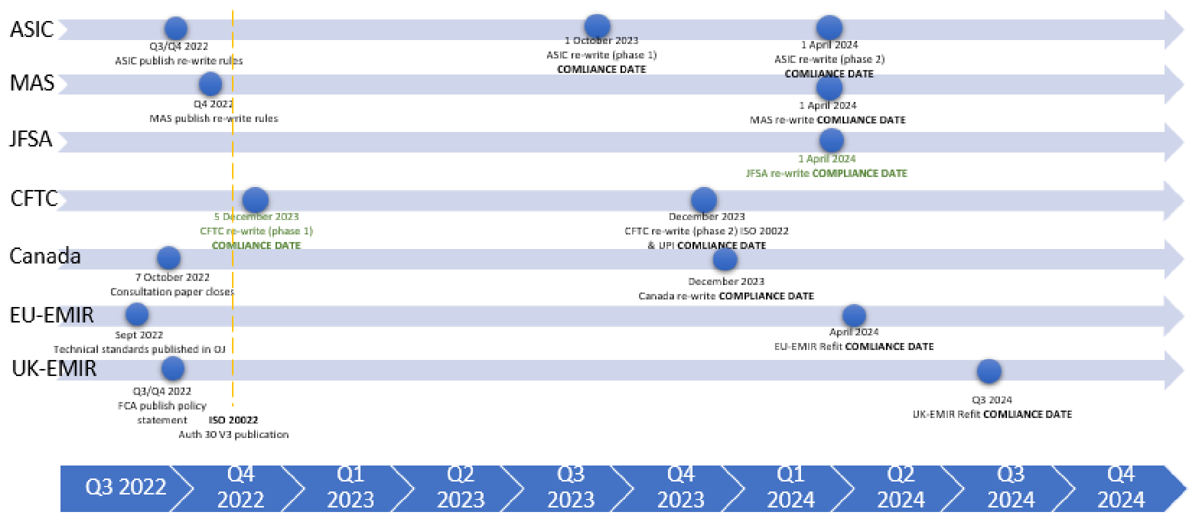
	Singapore Dollar Swap Offer Rate (SOR)	ABS Co	Singapore Overnight Rate Average (SORA)*	MAS	Steering Committee for SOR Transition to SORA	
	Stockholm Interbank Offered Rate (STIBOR)	Swedish Financial Benchmark Facility	SWESTR (Swedish krona Short Term Rate)	Riksbank		
	London Interbank Offered Rate (LIBOR)	ICE Benchmark Administration (IBA)	Swiss Average Rate Overnight (SARON)	SIX Swiss Exchange	National Working Group (NWG) on Swiss Franc Reference Rates	FCA Announcement on the Future of the LIBOR Benchmarks IBA Press Release ICE LIBOR Feedback Statement on Consultation on Potential Cessation Bloomberg Announcement on the Spread Adjustment Fixing ISDA Guidance
	Thai Baht Interest Rate Fixing (THBFIX)	Bank of Thailand	Thai Overnight Repurchase Rate (THOR)*	Bank of Thailand	Steering Committee on Commercial Banks' Preparedness on LIBOR Discontinuation	
	LIBOR	IBA	Sterling Overnight Index Average (SONIA)	Bank of England	Working Group on Sterling Risk-free Reference Rates	FCA Announcement on the Future of the LIBOR Benchmarks IBA Press Release ICE LIBOR Feedback Statement on Consultation on Potential Cessation Bloomberg Announcement on the Spread Adjustment Fixing ISDA Guidance
	LIBOR	IBA	Secured Overnight Financing Rate (SOFR)	Federal Reserve Bank of New York (NY Fed)	Alternative Reference Rates Committee (ARRC)	FCA Announcement on the Future of the LIBOR Benchmarks IBA Press Release ICE LIBOR Feedback Statement on Consultation on Potential Cessation Bloomberg Announcement on the Spread Adjustment Fixing ISDA Guidance

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

Markets Conduct Regulations

Regulatory Reporting Re-writes: reporting start dates



[Public Register for the Trading Obligation for derivatives under MiFIR]

[Public Register for the Clearing Obligation under EMIR]

2. Trading venues where the classes of derivatives subject to the trading obligation are traded

2.1. EU trading venues

The table below lists the EU trading venues where the classes of derivatives subject to the trading obligation are available for trading.

Table 3: EU trading venues relevant for the trading obligation

Trading venue full name	MIC Code Type (Segment or Operating)	MIC Code	Country of establishment	Competent Authority	Venue Type (RM, MTF, OTF)	Interest Rate[3]	Credit[4]	Last update
Aurel BGC OTF	Segment	AURO	France	ACPR / AMF	OTF	YES	NO	16/01/2018
HPC SA OTF	Segment	HPCV	France	ACPR / AMF	OTF	YES	NO	21/03/2019
Tullet Prebon EU OTF	Segment	TPEU	France	ACPR / AMF	OTF	YES	NO[5]	03/10/2019
ICAP EU OTF	Segment	ICOT	France	ACPR / AMF	OTF	YES	YES	23/07/2019

TP ICAP EU MTF	Segment	TPIR, TPIO	France	ACPR / AMF	MTF	YES	NO	23/07/2019
Trad-X	Segment	TRXE	France	ACPR / AMF	MTF	YES	NO	27/11/2020
TSAF OTC OTF	Operating	TSAF	France	ACPR / AMF	OTF	YES	NO	22/12/2020
CIMD OTF	Segment	CIMV	Spain	CNMV	OTF	YES	YES	16/01/2018
CAPI OTF	Operating	CAPI	Spain	CNMV	OTF	YES	NO	16/01/2018
Tradition España OTF	Operating	TEUR	Spain	CNMV	OTF	YES	YES	01/10/2021
Bloomberg Trading Facility B.V.	Operating	BTFE	Netherlands	AFM	MTF	YES	YES	21/03/2019
Tradeweb EU B.V.	Segment	TWEM	Netherlands	AFM	MTF	YES	YES	27/11/2020
EBS MTF (CME Amsterdam B.V.)	Operating	EBSN	Netherlands	AFM	MTF	YES	NO	27/11/2020
iSwap Euro B.V.	Operating	ISWP	Netherlands	AFM	MTF	YES	NO	04/04/2019

Table 4: Third-countries deemed equivalent for the purpose of the trading obligation

Country	Reference of the Equivalence Decision	Category of trading venues covered by the Equivalence Decision
United States of America	Commission Implementing Decision (EU) 2017/2238[6]	Designated contract markets (DCM) and Swap execution facilities (SEF) listed in the Annex to the Decision
Singapore	Commission Implementing Decision (EU) 2019/541[7] amended by Commission Implementing Decision (EU) 2020/2127[8]	Approved exchanges and Recognised Market Operators listed in the Annex to the Decision

Risk

Managing critical third parties in the financial sector; Developing regulatory frameworks to address systemic risks; *Financial services (FS) firms have become increasingly reliant on third party providers (TPP) to support their operations. The services offered by these providers (such as cloud computing and data analytics) provide many potential benefits and are enabling widespread digital transformation. However, this increasing reliance also poses growing risks — especially as the group of providers continues to become more concentrated.*

- Ultimately, firms themselves are accountable for their end-to-end operational resilience, regardless of whether or not they rely on providers. Firms can seek to exercise some control over their own arrangements with third parties, however, they are not able to address the systemic risks that the largest of these providers now pose. Therefore, regulators are stepping in with measures that target third party resilience more broadly.
- The EU approach
- In May, the European Council (EC) announced that provisional agreement had been reached on the Digital Operational Resilience Act (DORA).
- DORA was first proposed in September 2020 as part of the EU's larger digital finance package. It aims to create a harmonised regulatory framework for digital operational resilience across the EU and bring critical ICT third party providers (CTPPs), including

cloud service providers (CSPs), within the regulatory perimeter. It will require in-scope entities to ensure that they can withstand, respond to, and recover from all types of ICT-related disruptions and threats.

- The proposed legislation would enable the designation of a TPP as `critical', based on criteria such as the number and systemic character of financial entities that rely on it and the TPP's degree of substitutability.
- Once designated as a CTPP, oversight will be carried out by one of the European Supervisory Authorities (ESAs — the EBA, EIOPA or ESMA), which will be able to conduct on-site and off-site inspections, issue recommendations and even levy fines (of up to 1% of daily worldwide turnover) in case of non-compliance or require FS firms to terminate their arrangement with the CTPP.
- Additionally, under the provisional agreement:
    - Alignment is maintained with existing EU regulatory guidelines on ICT risks (e.g. EBA Guidelines on ICT and Security Risk Management, and Guidelines on Outsourcing Arrangements)
    - The implementation window for firms to comply with the requirements of DORA is extended from 12 to 24 months
    - Auditors are not subject to DORA in the first instance, but this will be reviewed in future and the rules may be revised
    - CTPPs are required to establish a subsidiary within the EU so that they can be effectively overseen
    - An additional joint oversight network strengthens coordination between the ESAs
    - Penetration tests will be carried out in functioning mode, and it will be possible to include several member states' authorities in the test procedures
    - Firms' intragroup ICT providers are differentiated from external providers through separate definitions, with controls suited to the risk profile of each
    - A new limitation to the automatic termination of contracts between firms and CTPPs is introduced, to ensure the safe and secure transition to alternative providers if required
- To note, the proposed oversight framework for CTPPs will not remove or reduce firms' own regulatory responsibilities in respect of ICT TPPs. DORA contains — in line with existing EBA and EIOPA guidelines — third party risk management requirements for firms that use CTPPs and TPPs, including provisions relating to auditing rights and mandatory contractual clauses.
- The provisional agreement on DORA is now subject to approval by the European Council and Parliament before going through the formal adoption procedure. Once formally adopted, DORA will be passed into law by each EU member state. The ESAs will then develop technical standards and the respective national competent authorities will be responsible for compliance oversight and enforcing the regulation as necessary. Requirements are expected to become operational some time in 2024.
- The UK approach
- The UK appears to be moving towards a similar approach to DORA in respect of critical third parties — although potential regulation is still in the consultation phase.
- In July, the UK financial authorities — the Bank of England (BoE), the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) — published a discussion paper (DP) setting out their plans to oversee the critical services provided by `big tech' firms to the financial sector. Specifically, they are seeking views on potential

measures to manage the systemic risks posed by TPPs designated as "critical" to the financial sector by HM Treasury under the newly introduced UK Financial Services and Markets Bill (FSMB).

- Under the provisions of the FSMB, HMT will — in consultation with the financial regulators and other bodies — be able to designate certain third parties as 'critical' (CTPs). This designation will be applied through secondary legislation, taking into account high-level criteria such as the number and type of services a third party provides to FS firms and the materiality of those services.
- Core to the regulators' proposed approach would be the provision of information by CTPs to the supervisory authorities to assess the resilience of material services and address relevant concerns.
- The potential measures in the DP are technology-neutral and focus on material services that CTPs provide to the financial sector only — they do not address wider application to other sectors. The regulators will be able to exercise a range of powers in respect of any material services that CTPs provide. These powers include the ability to set minimum resilience standards (including requirements to develop and test financial sector continuity playbooks) and enforce targeted forms of resilience testing.
- Regulators will also be empowered to assess whether the resilience standards are being met, including by:
    - Requesting information directly from CTPs on the resilience of their material services to firms, or their compliance with applicable requirements
    - Commissioning an independent `skilled person' to report on certain aspects of a CTP's services
    - Appointing an investigator to look into potential breaches of requirements under the legislation
    - Interviewing a representative of a CTP and require the production of documents
    - Entering a CTP's premises under warrant as part of an investigation
- As with DORA, these measures would seek to complement, but not replace, FS firms' and FMIs' own responsibilities to manage potential risks to their operational resilience, including as a result of the impact of the failure or disruption of a TPP. The supervisory authorities also recognise that there could be unintended consequences stemming from the designation of CTPs, for example on competition, and welcome industry feedback on ways to minimise these risks.
- *The consultation runs until 23 December.*
- Future harmonisation of regimes
- As more jurisdictions engage on the issue of critical third parties, the need for cross-consultation and some degree of harmonisation will also increase.
- During July's US-UK Financial Regulatory Working Group, regulatory approaches were discussed, with participants noting: "the value of developing shared, international approaches to identifying critical services and providers; expectations for their use in the financial sector; and collaborative methods of assurance, and the importance of promoting cooperation on a bilateral and multilateral basis between relevant authorities on this issue".
- What does this mean for firms?
- Most financial services firms will likely welcome the introduction of these oversight frameworks, as they provide greater clarity and certainty around their obligations and the obligations that lie with their third parties. All stakeholders should continue to watch the developments in this space as the final regimes are decided.

RegTech

Use of DLT in financial market infrastructure; Regulators are experimenting with options for harnessing the technology on a safe and secure way; *Institutional interest in distributed ledger technology (DLT) — particularly in the realm of financial market infrastructures (FMIs) — continues to deepen. International regulators continue to successfully trial various use cases and are also in the final stages of launching sandbox initiatives. Market participants should consider taking advantage of these opportunities in order to reap the benefits of potential front-to-back innovation in trading and post-trading processes.*

- DLT comes in two forms — permissionless or permissioned — based on the level of decentralisation. Our previous update described how, for mainstream institutions, the future likely lies in the latter. In the case of FMI players specifically, research by the IMF confirms that only permissioned networks are suitable.
- Within this context, FMIs across developed and developing markets, and along various parts of the value chain, have been actively investigating DLT opportunities for many years. The technology demonstrates potential for financial infrastructures to move toward real-time settlement, continuous operations, improved resilience and global reach. It could also fundamentally change the role of intermediaries operating within the securities trading, clearing and settlement cycle, particularly if activities currently performed by separate FMIs can all be performed on the same ledger.
- In order to experiment with harnessing these benefits in a safe and secure way, regulators in several jurisdictions are preparing to launch pilot projects and sandbox initiatives.
- EU; In this respect, the EU has been a first mover. Final regulation has been agreed for the pilot regime for market infrastructures based on DLT (which ESMA has now dubbed DLTR) — which sets out a legal framework for the trading and settlement of transactions in crypto-assets that qualify as financial instruments (under MiFID II). Similar to a sandbox approach, the pilot allows for `safe experimentation' and will provide evidence for a potential subsequent permanent regime.
- DLTR was introduced in September 2020 as part of the Digital Finance Package, alongside the Markets in Crypto Assets Regulation (MiCA) and the Digital Operational Resilience Act (DORA).
- Under the pilot:
    - Authorised financial institutions (including investment firms, market operators, central securities depositaries (CSDs)) will still require specific permission to participate. Access will not be limited to incumbent institutions but will also be open to new entrants
    - Permission is limited to a period of up to six years and will be periodically reviewed
    - Permission will be valid throughout the EU
    - Participating operators will be subject to various organisational requirements (robust IT and cyber arrangements, sufficient safeguarding arrangements, record-keeping obligations, investor protection arrangements, KYC/AML requirements, etc)

- Competent authorities may decide to require additional prudential safeguards from an individual operator
- There are limitations on the financial instruments that can be admitted. Only less-liquid bonds, share and fund units can participate and the aggregate market capitalisation or value cannot exceed €6Bn at the moment of admission to trading (or initial recording) of a new DLT instrument

- Once permission to operate in the pilot has been granted, DLT operators will then be able to request exemptions from current regulations including:
  - Intermediation — direct access for natural persons to deal on own account as DLT infrastructure participants is possible
  - Transaction reporting (under MiFIR)
  - Recording and settling DLT financial instruments with a CSD — operators will be allowed to combine the activities normally performed by both Multilateral Trading Facilities (MTFs) and CSDs
  - Settlement discipline requirements
  - CSDR settlement finality requirements
  - Rules on cash settlement — however, delivery versus payment (DvP) still has to be ensured

- Various actions now lie with ESMA. The securities regulator is currently consulting on draft guidelines to establish standard formats and templates for the submission of the required information by market participants to the competent authorities. It is looking to finalise this ahead of March 2023, when the DLTR provisions go live.
- ESMA is also required to assess MiFIR regulatory technical standards (RTSs) on trade and transaction reporting to see whether they need adapting to be effectively applied to DLT financial instruments.
- And finally, ESMA has been tasked with creating a report (by March 2026) on the success of the pilot and any recommended next steps.
- UK; The UK is set to follow the EU's lead, although with a slightly slower timeline.
- The responses received to HM Treasury's (HMT) 2021 Call for Evidence identified the need for a re-evaluation of the legislative framework to enable a successful application of DLT to FMIs. As such, in July, HMT introduced, via the new Financial Services and Markets Bill, the ability to establish FMI regulatory sandboxes.
- Within these sandboxes, HMT will be able to temporarily disapply or modify relevant legislation, to allow participating FMIs to "test and adopt new technologies and practices". This aligns with the EU's DLTR and is a step away from the FCA's original regulatory sandbox (launched in 2016). However, unlike the EU equivalent, the scope of these UK sandboxes is intentionally not limited to DLT, in order to maintain technology neutrality.
- HMT intends to consult industry on the proposed list of legislation in scope for modification and retains the ability to amend this list in the future. HMT will also be able to make permanent changes to legislation (via statutory instrument subject to the affirmative procedure) based on what is learned in each sandbox, having first reported back to Parliament.
- An FMI sandbox will be created by a statutory instrument, and a full impact assessment will be provided as and when that occurs. Each statutory instrument will set out:
  - The relevant legislation to be modified or disapplied

  - The activities that FMIs are permitted to undertake
  - Requirements and restrictions for participants (e.g. the types of securities to be traded and settled)
  - The role and enforcement powers of the regulators
  - The duration of the sandbox
  - The processes for winding down or transitioning activities at the end of a sandbox

- Examples of potential FMI entities include existing recognised CSDs and operators of MTFs, though the scope could be extended to include other categories in the future. These entities will be required to apply to the regulators in order to participate in the sandbox, and only a limited number will be selected.
- Despite policy work already being underway, the sandboxes will not formally launch until early 2023 (following formal assent of the Bill).
- Other jurisdictions; Further afield, wider DLT experimentation continues to progress.
- In September 2021, SIX Digital Exchange (SDX) in Switzerland received regulatory approval from FINMA to operate SDX, an end-to-end, fully regulated exchange and CSD for the listing, trading, settlement and custody of digital assets. It aims to allow financial institutions to trade digitised shares, bonds and other assets on DLT. Their first bond was issued in November.
- In January 2022, Phase II of Project Helvetia was completed. This was a multi-phase investigation by the BIS Innovation Hub, the Swiss National Bank and the financial infrastructure operator SIX, exploring how central banks could offer settlement in central bank money in a scenario involving tokenised assets based on DLT. Phase II specifically demonstrated that a wholesale CBDC can be integrated with existing core banking systems and processes of commercial and central banks.
- And, the Australian Securities Exchange is currently working to replace its legacy post-trade system (CHESS) with a DLT-based system. As a result, market participants will be able to communicate with the new DLT based service via SWIFT or by hosting a DLT node. (However, it's worth noting that, due to the complexity of the process, this roll-out has been delayed several times since it was first announced in 2016).

- Residual risks; Despite the progress of this experimentation, certain shortcomings and risks still persist, including:
  - The IMF has reported that most experiments to-date are still being completed "under controlled and technology-focused environments" with no "cost-benefit analysis". They also note that many reported DLT benefits (like parallel transaction databases secured by encryption and validators) can also be implemented by traditional payment systems
  - Moreover, 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
  - Further analysis is needed on the primary and secondary impacts of wide-spread adoption of DLT within payments, clearing and settlement arrangements.

Regulators and legislators should account for the market restructuring and elimination of participants that could come as a result
    - Use of DLT would also require the development of appropriate governance to ensure that responsibilities regarding data handling and cyber resilience are fully committed to by all network participants
    - Interoperability (between DLT and non-DLT solutions, and between different types of DLT solutions) must be ensured, so as to avoid fragmentation of the trade-settlement process
    - And finally, some versions of the technology can be extremely energy-consumptive and may not sit comfortably alongside efforts to tackle climate change and achieve net-zero
- Overall, the ECB notes that the ultimate aim should be to achieve industry-wide international agreement on the approach to DLT via the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO), as this would facilitate long-term interoperability and integration between securities markets globally.
- **What does this mean?** As applications open for these sandbox initiatives, market participants should make the most of the opportunities at hand. Having the ability to trial new DLT-based business models in an environment of suspended regulatory expectations will position them well for the ecosystem of the future. In particular, it will place them close to the action as the permanent regulatory regimes are determined.

Sanctions

EU's Eighth Sanctions Package, changes to EU fertiliser FAQs and U.S. guidance on G7 Price Cap; *On Thursday, 6 October 2022, the EU introduced further economic and individual sanctions against Russia in response to the escalating war against Ukraine and the purported annexation of Ukraine's Donetsk, Luhansk, Zaporizhzhia and Kherson regions (referred to as the "eighth EU sanctions package").*

- *This includes legislative mechanisms for the G7's proposed price cap restrictions on Russian oil (the "Price Cap"), although how these mechanisms will operate remains subject to agreement of the Price Cap. This follows U.S. guidance from early September on how the Price Cap is expected to operate, discussed below.*
- *On Friday 7 October 2022, the EU also published further updates to its somewhat troublesome FAQs dealing with restrictions on certain coal, fertilizer and other Russian-origin goods, discussed in our previous client alert of 20 September 2022*.
- The wide range of measures introduced as part of the EU's eighth sanctions package includes changes to Council Regulations (EU) 833/2014, 269/2014 and 2022/263, which deal with the sectoral sanctions against Russia, asset-freeze restrictions against certain Russian individuals and measures against the Russian-occupied invaded regions, respectively. We summarise these below:

A. Restrictions on Russian-origin goods and goods exported from Russia

- *Price Cap on crude oil and petroleum products (new Article 3n(4) onwards)*

- Subject to the EU Council unanimously agreeing a price cap (a "Price Cap Decision"), it shall be prohibited to transport, including through ship-to-ship transfers, to third countries crude oil (with CN code 2710) after 5 December 2022, or petroleum products (with CN code 2710) after 5 February 2023.
- The prohibition on transportation shall not apply if the price per barrel of the transported product is at or below the Price Cap. Associated insurance, technical assistance, brokering services or financial assistance will also be permitted in relation to Price Cap compliant voyages.
- Further, for a period of 90 days after each Price Cap Decision – indicating that the Price Cap may be amended from time to time – the restrictions on transportation will not apply provided that:

  - The transportation is based on a cargo purchase contract concluded before the Price Cap Decision.
  - The purchase price per barrel did not exceed the Price Cap on the date of conclusion of that contract.

- The EU Commission has said it will develop guidance for implementing the Price Cap mechanism, but, similar to the U.S. approach discussed below, it will rely on an attestation process to allow operators in the supply chain to demonstrate that the product was purchased at or below the Price Cap.
- Other amendments to Article 3n
- The wind-down period for insurance, financial assistance, brokering and technical assistance for maritime transportation of Russian-origin petroleum products, and petroleum products exported from Russia, with CN code 2710 has been extended until 5 February 2023. The wind-down date for crude oil falling under CN code 2709 00 remains 5 December 2022. This aligns Article 3n with the provisions in Article 3m relating to EU bound imports of such products.
- Article 3n(3) also clarifies that, provided that initial insurance coverage was permissible under Article 3n, insured parties are entitled to exercise their rights and make claims under their policies after the relevant wind-down dates.
- There is also a new exception on providing piloting services necessary for reasons of maritime safety.
- *Iron and steel products (Article 3g)*
- The EU Commission has extended the list of products restricted under Article 3g at Annex XVII, which are now contained in a new 'Part B' to Annex XVII. Article 3g imposes, inter alia, restrictions on the import or transfer of certain iron and steel products into the EU and to third countries, as well as associated services (including insurance). A wind down for contracts concluded before 7 October 2022 until 8 January 2023 is available for the newly listed products contained in 'Part B'. There are also import volume carve-outs for certain products as specified under new Article 3g(4).
- Further, from 30 September 2023 restrictions will be imposed on the import and purchase (but seemingly not transportation or transfer) restrictions on products processed in third countries which incorporate any restricted Russian-origin iron and steel products, as listed in Annex XVII. There are carve-outs on the above restrictions

until 1 October 2024 for products that fall under CN code 7207 1210 and 1 April 2024 for products that fall under CN code 7207 11.

- *Goods generating significant revenues for Russia (Article 3i)*
- The list of products restricted under Article 3i at Annex XXI has been extended to include an additional 100+ CN codes in a new 'Part B', with tweaks also made to products already restricted at 'Part A'. The newly restricted products at 'Part B' include a wide range of products including wood pulp and paper, precious metals, certain machinery, chemical items, cigarettes, plastics and cosmetic products. Article 3i prohibits, inter alia, the purchase, import and transfer of goods and technology that generate significant revenues for Russia. A wind-down period for Part B products is available until 8 January, 2023 for contracts concluded before 7 October 2022 until 8 January 2023.
- *Updated FAQS relevant to Article 3g, 3i and 3j*
- Further to our previous client alert of 20 September 2022, the EU has updated its FAQs dealing with restrictions on certain coal, fertilizer and other Russian-origin goods under Articles 3g, 3i and 3j of Council Regulation (EU) 833/2014. The updated FAQs can be found via the European Commission.
- Having reversed its position to allow the transportation of certain products to third countries, the EU has now further altered FAQ 2 of its 'Import, Purchase & Transfer of Listed Goods' FAQs to:

(1) Draw a distinction between: (i) wood/charcoal and coal products on the one hand; and (ii) fertiliser and animal feed products on the other. The transportation of to a third country is now only permitted provided that it does not involve transit through EU territory. However, the transportation of products under (ii) is permitted even when it involves transit through EU territory.
(2) Narrow the scope of permitted wood products, from all products with CN code 44 to fuel wood (4401) and charcoal (4402) only.
(3) Remove certain hydrocarbons falling under CN codes ex2901 and 2902 and cement products falling under CN codes 2523 and 6810 from the list of permitted products.

- Equivalent changes to FAQ 4 dealing with associated relevant services (such as financial assistance, brokering and insurance) have also been made.

B. Restrictions on exporting goods/services to Russia

- *Aviation (Article 3c)*
- The list of products restricted under Article 3c at Annex XXI has been extended to include an additional nine CN codes in a new 'Part B'. This includes hydraulic oils, tyres and various parts for aircraft/spacecraft. A short wind-down period until 6 November 2022 for contracts concluded before 7 October 2022 is available for such products.
- *Products enhancing Russian industrial capacities (Article 3k)*
- The list of products restricted under Article 3k at Annex XXIII has been extended to include coal (2701), lignite (2702), peat (2703) and coke/semi-coke of coal, lignite or peat (2704). There are wind-down periods until 8 January 2023 for contracts concluded before 7 October 2022
- *Export of services ban (Article 5n)*

- The existing restrictions under Article 5n have been extended to include architectural and engineering services, legal advisory services and IT consultancy services. There is a wind-down period for such services until January 8, 2023 in relation to contracts concluded before 7 October 2022 until 8 January 2023.
- There are a series of exceptions, including for Russian entities owned or jointly controlled by bodies incorporated in the EU, the EEA, Switzerland, the United States, Japan, the United Kingdom and/or South Korea.

C. Other restrictions

- *Asset freeze restrictions*: In addition to adding various individuals and entities to the asset freeze list (primarily politicians and individuals with links to the Russian military), Council Regulation (EU) 269/2014 has also been amended to add a further criterion for designation, targeting those found to be "facilitating infringements of the prohibition against circumvention" in relation to the key EU Russian sanctions legislation.

- *Russian Maritime Register of Shipping (Article 5aa):* The Russian Maritime Register of Shipping has, inter alia, been added to the list of entities subject to the restrictions under Article 5aa. It is therefore subject to a total transaction ban (subject to certain exceptions) and a wind-down period until 8 January 2023 for contracts concluded before 7 October 2022.

- In Q&A guidance accompanying the eighth EU sanctions package, it states the new criterion has been introduced to allow the EU "to sanction persons who facilitate the circumvention of sanctions. This includes circumvention by EU citizens."

- *Port ban (Article 3ea):* In addition to the existing restrictions on Russian flagged vessels, vessels certified by the Russian Maritime Register of Shipping now cannot call at EU ports after 8 April 2023.
- *EU nationals holding posts in the governing bodies of state-owned entities (Article 5aa):* It is prohibited from 22 October 2022 for EU nationals to hold any posts in the governing bodies of state-owned entities subject to Article 5aa restrictions.
- *Donetsk, Luhansk, Zaporizhzhia and Kherson regions:* The wide-ranging restrictions against the Donetsk and Luhansk regions under Regulation (EU) 2022/263 have been extended to include Kherson and Zaporizhzhia.

U.S. OFAC Price Cap guidance

- On 9 September 2022, the United States issued its preliminary guidance on the contemplated "Implementation of a Maritime Services Policy and Related Price Exception for Seaborne Russia Oil." While the formal, more detailed guidance is yet to follow, the preliminary document provides a solid background for the supply chain due diligence that will be expected once the Price Cap is in place.
- Similar to the EU, a Price Cap will be determined for the trade of Russian crude oil and petroleum products, and U.S. persons will be prohibited from providing services related to maritime transportation where the oil or petroleum product was bought at a price that exceeds the set cap. It is understood the restriction will cover not only the initial

purchase from Russia, but also trade through which the product is to be sold to other buyers down the chain. These restrictions also apply where there are U.S. dollars involved, even if no U.S. persons are involved.

- Practically, to ensure supply chain parties do not run into potential sanctions exposure or logistical issues (such as transportation problems arising due to maritime service providers' reluctance to perform), it will be important to follow the due diligence recommendations laid out in the guidance.
- The preliminary guidance notes that recordkeeping will be key for commodity brokers and traders, so it will be crucial that they document everything that evidences the price point of the trade (e.g., through invoices or certifications) – in order to prove that it was at or below the Price Cap. In addition, OFAC recommends parties to update the terms and conditions of contracts, including invoice structures to feature an itemized price for the purchase (excluding shipping, freight and customs costs). Finally, there are recommendations for others in the supply chain, such as financial institutions, shippers, insurance brokers, P&I clubs and the like. The preliminary guidance also recommends certain risk-based measures to ensure compliance with these new restrictions, such as providing guidance to staff, updating policies, sanctions questionnaire templates, and bill of lading templates to include attestations. OFAC expects all actors in the chain to retain relevant records for five years.
- As to the timeline, and in keeping with the EU's projections, the Price Cap restriction will enter into force on 5 December 2022 for crude oil, and 5 February 2023 for petroleum products. The United States will apparently be implementing this restriction through Executive Order 14071, which only concerns U.S. persons (and U.S. dollars). However, it will be crucial for parties to monitor whether there are U.S. persons involved in the supply chain, the involvement of U.S. dollars and the price at which the subject product is being traded vis-à-vis the Price Cap to ensure there are no U.S. persons providing prohibited services. Such a scenario could still create exposure to non-U.S. persons in the chain, as it is a separate violation to "cause" a U.S. person to violate U.S. sanctions.

The Financial Conduct Authority (FCA) has published additional guidance for firms on the consumer duty in the form of a new webpage. Following queries received from firms, the FCA has provided additional clarification on the:

- October deadline for implementation plans;
- role of the Board champion; and
- definition of closed products.
- The consumer duty comes into effect on:
  - 31 July 2023 for new and existing products or services that are open for sale or renewal; and
  - 31 July 2024 for closed products or services.

- The FCA intends to keep this webpage updated

UK developments	EU developments
On 9 August 2022 parts of the Sanctions (EU Exit) (Miscellaneous Amendments) (No 2) Regulations 2022, SI 2022/818 came into force. These provide that relevant public authorities may disclose information to the Treasury if the disclosure is made for the purpose of enabling or assisting the Treasury to discharge any of its functions in connection with sanctions.	On 10 August 2022, the EU updated its guidance (FAQs) on Import, purchase and transfer of listed goods.
On 9 August 2022 the Foreign, Commonwealth and Development Office updated the UK Sanctions List. 27 entries have been amended under the Russia financial sanctions regime and remain subject to an asset freeze. The notice is here. OFSI's consolidated list of asset freeze targets has been updated to reflect these changes.	On 4 August 2022, the EU added the pro-Russian former President of Ukraine Viktor Fedorovych Yanukovych and his son Oleksandr Viktorovych Yanukovych to the list of persons, entities and bodies subject to restrictive measures set out in the Annex to Decision 2014/145/CFSP. Press release.
On 5 August 2022, OFSI issued General Licence INT/2022/2055384 which, subject to certain conditions, allows a Person to make use of the retail banking services of a designated Credit or Financial Institution to make or receive payments that are exclusively for the purpose of winding down business operations in Russia. The licence took effect from 5 August 2022 and expires on 5 November 2022.	On 3 August 2022 the European Commission issued a Notice (2022/C 296/05) to operators concerning the import ban on Russian crude oil and petroleum products imposed by article 3m of Council Regulation 833/2014
On 5 August 2022 OFSI removed expired General Licence GL INT/2022/1976232 from its list of General Licences	
On 1 August 2022 the Department for International Trade updated general trade licence (Russia Sanctions–Vessels). The update allows insurance and reinsurance to be provided to a person connected with Russia in relation to certain items including vessels, aircraft and aero gas turbine engines, subject to the wider restrictions and conditions of the licence. The updated licence came into force on 1 August 2022.	

Sanctions Developments between 11th and 18 August 2022	
UK Developments	EU Developments
On **15 August 2022** OFSI issued General Licence INT/2022/2085212 under the Russia sanctions regulations allowing payments to sanctioned Russia banks for the purpose of making energy available for use in Mongolia. Under the Licence a Person may continue to make payments to certain Sanctioned Banks and Subsidiaries for the purpose of making energy available for use in Mongolia, and a Person, Relevant Institution, Sanctioned Bank or Subsidiary can carry out any activity reasonably necessary to effect this. **This licence takes effect from 15 August 2022 and expires on 14 August 2023.**	On **12 August 2022** the EU updated its guidance (FAQs) on Central securities

On **15 August 2022** OFSI published a recording of the financial sanctions reporting obligations webinar held on **11 August 2022**. The webinar, hosted by UK government officials, set out upcoming reporting obligations for cryptoasset exchange providers and custodian wallet providers. These changes follow the publication of The Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2022 and The Sanctions (EU Exit) (Miscellaneous Amendments) (No.2) Regulations 2022 on 19 July 2022. The webinar covers the following topics: • financial sanctions context • what reporting obligations are • who relevant firms are • what information should be reported • how to report to OFSI **The reporting obligations changes will take effect on 30 August 2022**. The recording of the webinar is available here.	
Developments identified between Wednesday 27 July & Wednesday 3 August 2022	
UK developments	EU developments
On 2 August 2022, the Foreign, Commonwealth and Development Office updated the UK Sanctions List. 2 entries have been added to the Russia financial sanctions regime and are now subject to an asset freeze. 1 entry has been removed from the Russia regime and is no longer subject to an asset freeze. The notice is here OFSI's consolidated list of asset freeze targets has been updated to reflect these changes.	
On 29 July 2022 OFSI extended general licence INT1202211968500 for a period of 2 months to 30 September 2022 allowing for the winding down of positions involving Rosbank.	On 29 July 2022, the EU updated its guidance (FAQs) on Medicines and medical devices.
On 28 July 2022, OFSI updated its General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018. The update makes clear that OFSI no longer aims to engage with licence applications within 4 weeks. It will prioritise cases at times of high demand, taking into account basic personal needs and/or wider humanitarian issues, or the trade deficit in France hit a new record, driven by energy costs which are deemed to be of particular strategic, economic or administrative importance. Parties making applications they believe to be urgent need to set out their reasons in their application.	
Developments identified between Wednesday 20 July & Wednesday 27 July 2022	

On 26 July 2022, the Foreign, Commonwealth and Development Office updated the UK Sanctions List. 42 entries have been added under the Russia financial sanctions regime and are now subject to an asset freeze. Further, 5 entries have been added under the Syria financial sanctions regime and are now subject to an asset freeze. The Russia notice can be found here The Syria notice can be found here. OFSI's consolidated list of asset freeze targets have been updated to reflect these changes.	On 27 July 2022 the EU updated its guidance (FAQS) on Gold imports and aviation. The EU has published an updated version of its best practices on Sanctions document. On 26 July 2022, the EU Council decided to prolong by six months, until 31 January 2023' the restrictive measures targeting specific sectors of the Russian economy. These sanctions, first introduced in 2014 in response to Russia's actions destabilising the situation in Ukraine, have been significantly expanded since February 2022. The sanctions were due to have expired on 31 July 2022. Press release
On 22 July 2022 OFSI issued General Licence INT1202212009156 – Payment to UK Insurance Companies for Building and Engineering Insurance. Under the licence, individuals or entities designated under the UK Sanctions Regimes are permitted to make payments to UK insurers for insurance premiums and broker commissions relating to the provision of building and engineering insurance cover provided to UK properties.	On 26 July 2022 the EU updated its guidance (FAQs) on Asset freezes and oil reporting obligation.

OFSI updated its general guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018 to make clear that it no longer aims to engage with licence applications within 4 weeks. OFSI has extended to 30 September 2022 the General Licence allowing for the winding down of positions involving Rosbank.

OFSI: 27 entries have been amended under the Russia financial sanctions regime.

- On 9 August 2022 the Foreign, Commonwealth and Development Office updated the UK Sanctions List on GOV.UK. This list provides details of those designated under regulations made under the Sanctions Act.
- 27 entries have been amended under the Russia financial sanctions regime and remain subject to an asset freeze.
- 1 entry has also been corrected under the Democratic Republic of Korea financial sanctions regime. The notice can be found here.
- OFSI's consolidated list of asset freeze targets have been updated to reflect these changes.

XTX Markets sues Mazars for discrimination over Russian founder; *Financial trading firm XTX Markets is suing accounting firm Mazars for racial discrimination over its refusal to work for the company because its owner is a Russian citizen. The London-based trading group is majority owned by billionaire Alexander Gerko, a dual Russian and British citizen, who has lived and worked in the UK since 2006 and is not the subject of any international sanctions, according to a copy of the legal claim seen by the Financial Times. XTX is seeking a declaration that the accounting firm breached the UK Equalities Act by discriminating on grounds of race when it declined to work for the company because its owner has Russian citizenship. It has not asked the court to award damages against Mazars or to force the firm to carry out work for it.*

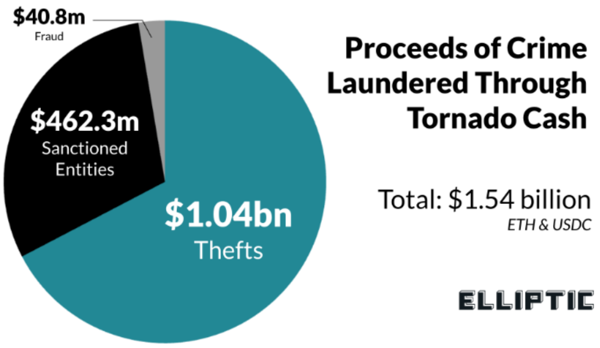
- A legal victory for XTX, which has grown into one has one of the world's leading market-makers, could force accountants, lawyers and public relations groups to review their approach after they rushed to jettison clients with connections to Russia following the country's invasion of Ukraine. Many Russians, including those who were not the subject of sanctions, struggled to find advisers in the UK and other jurisdictions as professional services groups faced pressure from employees and the public to refuse to work for Russian clients or companies with any perceived links to the country. XTX, which competes against the likes of Citadel Securities and Virtu Financial, uses algorithms to trade nearly $300bn a day in assets such as equities, fixed income and futures. It was founded by Gerko, a Russia-born mathematician who has a stake of at least 75 per cent and serves as joint chief executive. Gerko, who has been publicly critical of the invasion of Ukraine, was listed as the UK's 89th richest person by the Sunday Times this year, with an estimated wealth of £1.1bn.
- XTX said it had committed £40.6mn to charities providing humanitarian relief to Ukraine. In a March post on Twitter, Gerko said about Russia's foreign minister Sergei Lavrov: "Nuremberg is waiting for you." He had also called for the UK to expand its sanctions list. Gerko has been a British citizen since 2016, is a permanent resident of the UK and has "no links with, or wealth tied to, Russia", according to the claim filed in the Central London County Court last month. Neither Gerko nor XTX are included in any sanctions regime, nor are they connected to anybody targeted by economic sanctions, the claim adds. The case revolves around Mazars' refusal to provide payroll services to XTX Markets Technologies, part of the XTX Markets group, which reported net profits of more than £660mn in 2021 and employs about 180 people globally, mostly in London. XTX, which also has offices in New York, Singapore, Paris and Mumbai, alleges that Mazars stood by its decision even after being told that Gerko was not the subject of sanctions and that he had "lived in the UK for over 15 years; his source of wealth comes from the UK; and he has no assets in Russia".
- According to the claim, Mazars partner Erick Gillier wrote in an email to XTX's general counsel Sunil Samani in May: "I'm perfectly aware of the UK, EU and US sanctions programs, but Mazars as a group, took the decision not to accept any new clients with Russian ownership. This is a global decision and as partners we all need to follow these guidelines." XTX alleges that this position was contrary to Mazars' public policy that it would not serve any companies or individuals who were the subject of sanctions. It claims that Samani told Gillier that Mazars' stance was discriminatory and asked to speak with the person responsible for its policy but never received a response. Mazars declined to comment. It has until later this month to respond to the claim.

The sixth instalment of NRF "Beyond Sanctions" podcast series is now available to stream and download on [Apple Podcasts] and [Spotify]. *In this episode, David Harris, Co-Head of our Contentious Financial Services Group in London, discusses some recent developments in the sanctions landscape for regulated firms, including key points from the:*

- Red Alert on Financial Sanctions Evasion, published by OFSI and the NCA last month;
- Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2022 and Sanctions (EU Exit) (Miscellaneous Amendments) (No. 2) Regulations 2022, which come into force at the end of this month; and
- FCA's letter to the Treasury Select Committee on economic sanctions, also published last month.

Holders of Ukraine GDP warrants agree to changes The government of Ukraine said the holders of its $2.6 billion of warrants linked to the country's gross domestic product have approved revisions to the loan's terms. "Approximately 93% of Holders of the Notional Amount of Securities outstanding were represented for quorum purposes and approximately 91% of such Holders had voted in favour of the Extraordinary Resolution," the country's said in a statement Reuters

The United States Office of Foreign Asset Control (OFAC) has sanctioned Tornado Cash, a popular decentralized mixer active on numerous blockchains including Ethereum. Tornado is popular with cybercriminals and state-backed hacking groups, including North Korea's Lazarus Group, and has been used to launder over $1.3bn in illicit cryptoassets, including from major exploits such Ronin Bridge in March. https://hubs.la/Q01jtXy30



FCA publishes rules on appointed representatives; *FCA has published a policy statement setting out final rules aimed at improving the appointed representatives (ARs) regime (PS22/11).* PS22/11 sets out final rules and guidance requiring principal firms to:

- apply enhanced oversight of ARs;
- assess and monitor the risk their ARs pose to consumers and markets;
- annually review information on their ARs' activities, business and senior management;
- notify the FCA of future AR appointments 30 calendar days before it takes effect; and
- provide complaints and revenue information for each AR to the FCA on an annual basis.

- The rules take effect on 8 December 2022 following a four-month implementation period.
- The FCA also notes that it is working with HM Treasury on whether further legislative changes are required.

FCA publishes financial promotions rules and consults on LTAFs; *The FCA has published a policy statement on strengthening financial promotion rules for high-risk investments (HRIs) and firms approving financial promotions (PS22/10) and a consultation on broadening retail access to long-term asset funds (LTAFs) (CP22/14)*

- PS22/10 sets out the FCA's final policy position and handbook rules aimed at setting a minimum standard for promotions of HRIs, including:
  - rationalising and simplifying the categorisation of financial promotion marketing restrictions into realisable securities (RRS) not subject to marketing restrictions, restricted mass market investments (RMMI) subject to certain marketing restrictions and non-mass market investments (NMMI) which cannot be marketed to retail investors;
  - banning HRI promotions from containing incentives to invest;
  - standard risk warning wording for HRIs, including the option for firms to use alternative wording in certain circumstances;
  - personalised risk warning wording for first time investors;
  - introducing a minimum 24-hour cooling off period for first time investors;
  - amending and simplifying investor declaration forms;
  - enhancing appropriateness rules for HRIs;
  - requiring firms to collect data relating to client categorisation and appropriateness assessments; and
  - strengthening the role of authorised firms approving and communicating financial promotions.

- Rules related to the standard risk warning have effect from 1 December 2022. All other rules and non-handbook guidance have effect from 1 February 2023.
- The FCA intends to publish final rules for cryptoasset promotions once HM Treasury legislates to bring qualifying cryptoassets within the scope of the financial promotion regime.
- CP22/14 proposes to classify the LTAF as a RMMI based on the rules set out in PS22/10, with the aim of making LTAFs accessible to direct investment by a wider range of retail investors.
- Comments are due by 10 October 2022.

Cryptoasset providers: Impact of the amendments to the MLRs 2017; *In June, HM Treasury issued its response to its October 2021 consultation on amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (**MLRs 2017**).*

- The response contained a number of updates to the MLRs 2017 which, for the most part, come into force on 1 September 2022. The updates are being implemented via secondary legislation, The Money Laundering and Terrorist Financing (Amendment)

(No.2) Regulations 2022 (SI). A draft of the SI was published on the day after HM Treasury had issued its response and the SI was subsequently made on 21 July 2022.

- Among the various updates were those relating to cryptoassets which we discuss below.
- Travel Rule
- The Travel Rule requires the originators and beneficiaries of all transfers of digital funds to exchange certain identifying information. In the UK only one of the following pieces of information need to accompany a cross-border transfer that is above a de minimis threshold: originator's address, date and place of birth, or passport number.
- The *de minimis* threshold (the "Threshold") for the activation of the Travel Rule will no longer include both fiat currency and cryptoasset transfers in the calculation. This will be a welcome change by those firms that may have experienced technological difficulties in developing a system that could cover both types of transfer. Furthermore, the Threshold has been amended to EUR 1,000 from GBP 1,000, with the purpose of ensuring currency alignment with other thresholds within the MLRs 2017.
- In its response HM Treasury stated that the statutory instrument makes it clear that the Travel Rule will only apply to intermediaries that are cryptoasset exchange providers or custodian wallet providers and will not capture others, like software providers, to whom the Travel Rule is not intended to apply.
- HM Treasury also modified its proposals in its response with regard to unhosted wallets. Instead of requiring the collection of beneficiary and originator information for all unhosted wallet transfers, cryptoasset businesses will only be expected to collect this information for transactions identified as posing an elevated risk of illicit finance. The rationale behind this approach is that unhosted wallets do not automatically represent a higher risk, as many persons using them do so due to their customisability and potential security advantages.
- HM Treasury also decided to allow a 12-month grace period, to run from the point at which the amendments to the MLRs 2017 take effect until 1 September 2023, during which period cryptoasset businesses will be expected to implement solutions to enable compliance with the Travel Rule.
- Change in control
- The MLRs are being amended so that proposed acquirers of cryptoasset firms must notify the FCA (FCA) ahead of such acquisition. This will allow the FCA to undertake a 'fit and proper' assessment[1] of the acquirer, and provide the FCA with powers to object to any such acquisition before it takes place and cancel registration of the firm being acquired.
- Digital Art and Non-Fungible Tokens (NFTs)
- In its response HM Treasury decided at this time not to extend the definition of Art Market Participant to include Digital Art and/or NFTs. However, it will take these into consideration as it conducts further work to consider possible future changes to the definition.

- Key takeaways for firms; Firms should ensure that their systems and controls are updated to align with the amendments to the rules, such as those impacting unhosted wallets.
- Cryptoasset firms being acquired and those acquiring firms conducting cryptoasset activities should ensure they are ready to follow the upcoming amended change in control requirements to pass the "fit and proper" test.

- And iu lo[1] Cryptoassets: AML/CTF regime: Register with the FCA | FCA

On August 10th, the CFPB issued an interpretive rule clarifying that firms - including big tech companies - that provide digital marketing and advertising services to financial institutions can be held liable by the agency (or other federal and state regulators) for violating consumer protection laws such as by committing unfair, deceptive, or abusive acts or practices (UDAAP).

- The rule explains that while traditional platforms that provide "time and space" for advertisements such as television and radio are excluded from CFPB scrutiny, digital marketers go beyond these traditional functions by collecting data, identifying customers and personalizing content. In a speech, CFPB Director Rohit Chopra described this activity as "an amalgam of an ad, a private investigator, and a digital door-to-door sales force." He expressed concern that these practices have resulted in protected classes being excluded from the reach of certain financial services marketing efforts, resulting in violations of fair lending rules.
- In addition, on August 11th, the CFPB published a circular to notify financial institutions, including non-banks and fintechs, that failing to effectively safeguard consumer data could expose them to liability under the Consumer Financial Protection Act. The circular explains that "inadequate security for the sensitive consumer information collected, processed, maintained, or stored by the company can constitute an unfair practice" even in the absence of a breach or intrusion. It also highlights several widely used data security practices that are not required but could increase risk of triggering liability if not utilized, including multi-factor authentication, adequate password management and timely software updates.
- Director Chopra has made it a priority of his tenure to expand the CFPB's reach beyond traditional financial services firms and into tech companies, recently explaining his interpretation that the Dodd-Frank Act provides the agency with authority over certain nonbanks and ordering big tech companies to provide information around their data harvesting and monetization practices. Fair lending will receive significant scrutiny from this initiative, especially considering the recent launch of a joint DOJ and CFPB anti-redlining initiative, but it will apply to the marketing of both credit and non-credit products. We have seen firms respond to this scrutiny by (1) implementing "variance reduction systems" to ensure that protected classes receive financial advertisements in equal proportion to other customer segments and (2) restricting financial services firms from customizing customer segments. Digital marketers that provide personalized advertisements tailored to the recipient should be aware of the growing scope of UDAAP including recent updates on discriminatory practices and deceptive review policies, and carefully review whether such content does not violate these laws.
- The CFPB's notification on potential consumer financial protection liability is just the latest of a long list of consequences that could arise from ineffective consumer data protection, but it demonstrates that regulators will not necessarily wait fora breach to cite a firm for deficiencies in security practices. While Chopra's efforts to push the limits of CFPB oversight may receive legal challenges - and fiery hearings should the Republicans retake either house of Congress in November -the message is clear that the current Administration will not let any company engaging in financial services, including biotech firms, off the hook when it comes to discrimination and inadequate data security resulting in consumer harm.

- This proposal is just the latest step by the SEC to gain insight into the risks posed by the rapidly growing private fund industry. This industry has faced several other rulemaking proposals this year1and is likely to protest the extent of the new reporting requirements proposed this week. While this proposal would not make Form PF public, as some had feared from Gensler's past comments, it would require private funds and their advisers to source and validate considerably more data than they currently report on Form PF. Given the short comment period, hedge fund advisers should quickly collect their views on areas where the proposal requirements may not be practical or duplicative of existing reporting.

Brexit Regulations

The UK Financial Services and Markets Bill includes proposals to regulate cloud service providers and other designated 'critical third parties' supplying services to UK regulated firms and financial market infrastructures. *HM Treasury would have powers to designate service suppliers as 'critical' and the UK regulators would have new powers directly to oversee designated suppliers, which would be subject to new minimum resilience standards*.

HM Treasury would have powers to designate service suppliers as 'critical' and the UK regulators would have new powers directly to oversee designated suppliers, which would be subject to new minimum resilience standards. The proposals are similar to but different from the planned EU Digital Operational Resilience Act.

What is the expected timing for the new rules? *The Bill was introduced into Parliament in July 2022. If enacted, it would make wide ranging to the UK financial services regulatory framework (see briefing here), including the creation of a new regime for service suppliers designated by HM Treasury as 'critical third parties' (CTPs).*

- The legislative process will get under way in September and the Bill may be amended during the process. However, absent an intervening general election, the Bill should be passed and become law by the end of this Parliamentary session (expected to be in May 2023). Following this, HM Treasury would be able to bring its provisions into force on days to be appointed (to the extent not specified in the Bill) and the government and regulators could begin the process of adopting and implementing the regulations and rules contemplated by the new law.
- The Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Bank of England (the Bank) published a joint discussion paper in July 2022 setting out how they could use their proposed powers under the Bill. The deadline for responses to the discussion paper is Friday 23 December 2022. Subject to the outcome of Parliamentary debates on the Bill, the regulators expect to consult on their requirements for CTPs in 2023.

Why are new rules being introduced for CTPs? *There is increasing regulatory focus on enhancing the operational resilience of regulated firms and financial market infrastructures*

(FMIs) given their perceived growing dependence on a limited number of cloud service providers and other technology suppliers, including data analytics suppliers.

- This is underlined by the findings by the Bank that over 65% of UK firms used the same four cloud providers for cloud infrastructure services in 2020. Regulators are concerned about the risks arising from a concentration in the provision of critical services by one third party to multiple firms and FMIs, as a failure or disruption of such a service provider could adversely affect the stability or integrity of the financial system or financial markets and the resilience of firms and FMIs.

What will be the framework for designating CTPs? *Under the Bill, HM Treasury would be able to designate a third party as 'critical' only if a failure in, or disruption to, the provision of its services to regulated firms and FMIs could threaten the stability of, or confidence in, the UK financial system.*

- In making this assessment, HM Treasury would be required to have regard to the materiality of the services which the third party provides to the delivery of essential activities, services or operations and the number and type of firms and FMIs which use the third party.
- Before a third party is designated as 'critical', HM Treasury would be required to give notice to the third party, to provide a reasonable period within which the third party may make representations and to have regard to any such representations. HM Treasury would also have to consult with the FCA, the PRA, the Bank and other appropriate bodies.
- The July discussion paper sets out the UK regulators' initial thinking on the criteria they would take into account when considering whether to recommend designation of a service supplier. It also suggested that consultation and cooperation arrangements might involve a wide range of bodies including the Department of Digital, Culture, Media and Sport, the Information Commissioner's Office and the Competition and Markets Authority (CMA).

What powers will the UK regulators have over CTPs? *The Bill would give the UK regulators the power to make rules applying to CTPs when providing services to regulated firms and FMIs and to give directions to CTPs.*

- Regulators would have the power to request information directly from CTPs and third parties to commission an independent skilled person to report on CTPs' services, to appoint an investigator to review any potential breaches, to interview representatives of the CTPs and to enter the CTP's premises under warrant.
- They will also have powers to take disciplinary measures against CTPs if they contravene the requirements imposed on them, including powers to censure a CTP and to prohibit or restrict their services to regulated firms and FMIs.

What resilience standards will apply to CTPs? *The July discussion paper sets out the UK regulators' initial thinking on how they might use their new rule-making powers to set minimum resilience standards for CTPs. The paper envisages that a CTP should:*

- Identification and mapping: identify and document all material services it provides to firms and FMIs and map the resources needed to deliver them (including processes, technology, facilities and information);
- Risk management: identify risks to its material services across the supply chain and implement appropriate controls, including in relation to cyber risks, environmental risks and legal and reputational risks;
- Testing: regularly test the resilience of its material services by performing its own internal tests as well as participating in tests convened by its regulators;
- Engage with regulators: proactively and promptly disclose information to regulators, particularly on incidents or threats that could have a systemic impact;
- Financial sector continuity playbook: maintain and submit to regulators a playbook documenting measures that it would take to mitigate the potential systemic impact that could arise from its failure or a severe but plausible disruption to its material services;
- Post-incident communication: develop a tailored communication plan to engage with all relevant stakeholders in the event of disruption to its material services; and
- Learning and evolving: regularly share with stakeholders lessons learnt from any disruption in the sector and the outcome of resilience tests it participated in.

What resilience testing will be required of CTPs? *The July discussion paper also sets out the UK regulators' initial thinking on how they might use their new rule-making powers to set resilience testing requirements for CTP to allow the regulators to assess whether the resilience standards are met in practice.* The potential tools include the following:

- Scenario testing: CTPs would need to carry out regular scenario testing of their ability to continue providing material services in the event of their failure or severe but plausible disruption, and this scenario testing may need to take place in collaboration with firms, FMIs, industry groups and others.
- Sector-wide exercises: These tests would focus on the ability of the financial services sector as a whole to respond to operational incidents. They could be carried out on a cross-border basis, involving multiple firms and FMIs, and may require a significant level of coordination.
- Cyber resilience: At the end of each cyber resilience test, the CTP would agree a remediation plan with its supervisor to address any identified vulnerabilities.

How do the UK proposals compare to those in the EU? *In July 2020, the European Commission published its legislative proposal for an EU regulation - the Digital Operational Resilience Act (DORA).*

- The proposed regulation sets out requirements for the security of information and communication technology (ICT) systems of firms operating in the financial sector as well as critical third parties which provide ICT-related services to them, such as cloud platforms or data analytics services.
- It also proposes an EU oversight framework which would apply to all critical ICT third-party providers (CTPPs), including cloud computing service providers. The co-legislators have reached agreement on an amended text of DORA, pending sign-off by the European Parliament and the Council of the EU. The UK proposals under the

Bill are similar to but differ from those under the amended text of DORA in a number of respects, including as set out in the table below.

	UK: the Bill	EU: DORA
Application to foreign suppliers	Non-UK firms may be designated as a CTP. The discussion paper does not envisage requirements for a local presence.	A third-country entity may be designated as a CTPP. However, the entity must establish a subsidiary in the EU within 12 months.
Responsibility for designation	HM Treasury, after consulting UK regulators and others.	Joint Committee of the European Supervisory Authorities (ESAs), upon the recommendation of an Oversight Forum comprising representatives of EU bodies and national supervisors.
Criteria for designating a supplier as critical	HM Treasury may designate a third party as 'critical' if a failure in, or disruption to, the provision of its services could threaten the stability of, or confidence in, the UK financial system.	The criteria for designating an entity as a CTPP include: • the systemic impact on the stability, continuity, or quality of the provision of financial services in case the entity faces a large-scale operational failure to provide its services; • the systemic importance of the financial entities that rely on the entity; • the criticality of the functions of the financial entities which rely on the same entity; • the degree of substitutability of the entity.
Supervisory responsibility over critical suppliers	The UK regulators which must coordinate the exercise of their powers.	The Lead Overseer for a CTPP will be one of the ESAs (the EBA, EIPOA and/or ESMA) in conjunction with a Joint Oversight Network of the ESAs and supported by the Oversight Forum.
Powers of regulators	UK regulators will have powers to make rules, give direction, require information, investigate and impose disciplinary measures on CTPs.	Lead Overseer will assess whether CTPP's have comprehensive, sound and effective rules, procedures, mechanisms and arrangements to manage the ICT risks they present and will have powers to adopt an oversight plan for CTPPs to request information, conduct inspections and issue recommendations.
Standards and testing of CTPs/CTPPs	The UK regulators will be able to use their powers to introduce minimum resilience standards and resilience testing to CTPs (as outlined above).	The Lead Overseer will perform an annual, tailored assessment of each CTPP based on standards set out in DORA.
Non-compliance consequences	A UK regulator may censure a CTP or prohibit or restrict its services to regulated firms and FMIs.	The Lead Overseer may impose fines of up to 1% of daily worldwide turnover in the preceding year in case of non-compliance or ask financial services firms to terminate their arrangement with the CTPP.

Do the proposals have competition law implications? *As already noted, the UK regulators may consult and cooperate with other authorities such as the CMA in relation to the designation of a service supplier as a CTP under the new powers in the Bill. In addition, designation as a CTP could support an argument that a service supplier has a dominant position or, conversely, a finding of dominance by the CMA could support the designation of a third party as a CTP.*

- There may also be interplays with other recent competition law developments. Various competition authorities, including the Japanese Fair Trade Commission, the French Competition Authority and the Dutch Authority for Consumers and Markets, have launched market studies into cloud services. A finding in such a market study report that a company has market power in the cloud or IT services sector could support the designation of that company as a CTP.

- In addition, a new Digital Markets Unit in the UK may be able to designate a company as having 'strategic market status' (SMS) if the government's planned Digital Markets, Competition and Consumer Bill is introduced and enacted. It has been proposed that SMS designation will be applied to a limited number of firms which have a substantial and entrenched market power in at least one digital activity that provides them with a strategic position. Designation as having SMS may also be relevant to HM Treasury when considering designation of a service supplier as a CTP.

What is the impact on service users? The new regime may provide assurance to UK regulated firms and FMIs that CTPs are subject to appropriate resilience standards, which may help them with their own risk assessments on outsourcing to CTPs.

- However, the new regime might also increase 'CTPs' costs which they may seek to pass on to service users or even (depending on how the regime operates) cause some service providers to consider the extent to which they provide services in the UK.
- Regulated and firms and FMIs may also be asked to participate in the resilience testing programmes for CTPs and may need to adapt their contingency plans to address the risk of regulatory action prohibiting or restricting the provision of services by CTPs.

Prudential

The BoE has published details of the scenario for the 2022 Annual Cyclical Scenario (ACS) stress test, returning for the first time since 2019. The test will be used to assess bank balance sheets and the resilience of the UK banking system. Key elements of the scenario are:

- UK GDP falls by 5% over the first year of the scenario
- World GDP falls by 2.5% over the first year of the scenario
- UK unemployment more than doubles to a peak rate of 8.5%
- Residential property prices fall by 31% over the first year of the scenario
- UK commercial property prices fall in the scenario by 45% from start to trough
- Inflation peaks at 17% in 2023 and remains persistently high — averaging around 11% for the first three years of the scenario
- Bank Rate is assumed to rise rapidly to a peak of 6% in early 2023 before reducing gradually to under 3.5%
- Interest rates rise to 4.7% in the Euro-area and 6.5% in the United States by beginning of 2023

This is undoubtedly a more severe scenario than seen previously, reflecting very challenging economic conditions. The eight participating banks and building societies will again be Barclays, HSBC, Lloyds Banking Group, Nationwide, NatWest Group, Santander UK, Standard Chartered and Virgin Money UK. However, this is the first time that the ring-fenced subgroups of Barclays, HSBC, Lloyds Banking Group and NatWest Group will also be assessed on a standalone basis. ACS results will be published in summer 2023 and will inform banks' capital buffers.

The Chair of the UK Treasury Sub-Committee on Financial Services Regulation has written to the PRA concerning its proposed "strong and simple" prudential framework for smaller banks. The Sub-Committee has requested the PRA's views on increasing the proposed balance sheet ceiling from £15bn to £25bn. It has also drawn attention to the risk that thresholds and cliff-edges can create barriers to growth and has asked the PRA for its views on how firms would transition between layers within the Framework.

The PRA's Discussion Paper on its future approach to policy sets out how it intends to operate following the reforms proposed under the FSMB. The DP notes that the FSMB proposals signal a "move back to a more British style of regulation based on the Financial Services and Markets Act 2000 (FSMA), with most of the technical rules made by operationally independent regulators subject to a revised accountability framework". Wider rule-making responsibilities will enable:

- The PRA to be more responsive when making policy & adapt to changes in the external environment
- Policy-making to remain proportionate and suited to the circumstances.
- More flexibility to tailor regulation to the UK

However, these changes will require greater transparency and explanation of judgements, for example through stakeholder engagement and a new PRA Rulebook.

The PRA seeks feedback on the proposed approaches to its objectives and regulatory principles, international engagement and collaboration, the policy cycle and the PRA Rulebook by 8 December.

Referencing the FSMB's proposals to amend the Credit Unions Act 1979, the PRA is consulting until 21 December on proposed changes to its regulatory regime for Credit Unions. The changes relate largely to amending and strengthening the regulatory regime in order to address the risks posed by larger, more complex credit unions and would take effect once final policy is published, after the Bill has been passed.

ESG & Disclosures

ESG View - October 2022 ; *With COP27 fast approaching, things are also heating up on the ESG front. We are seeing a flurry of activity from regulators, industry bodies and activists who are keen to use the momentum to push ahead with their ESG agendas.*

- It comes as no surprise that the choice of host destination, Sharm El-Sheik has been met with some controversy. Rumours of climate and human right activist groups being barred from attending by the Egyptian Government have not gone unnoticed. Coupled with the global energy crisis, there are reports that enthusiasm to attend has waned. Whatever the outcome, we will be watching closely. Look out for a full COP27 download in our next ESG View.

- As promised in our September ESG View, this month we will deep-dive into the fractured landscape of ESG in the US. We will also cover recent GTAG and FCA publications, some surprising EU developments and a round-up of news from Asia and the Middle East.

1. Update on US ESG landscape (cross-sector)

- State-level: riding the Anti-ESG wave
- In the US, ESG has become the new battlefield on which the 'culture wars' are fought. Republican states have come out strongly against financial institutions using ESG to guide their investments portfolios, with 17 states introducing anti-ESG bills this year. The bills vary by state but generally target either investment exclusions for fossil fuels, firearms and/or ESG factors more broadly. Democrats have been vocal in responding, by publishing an open letter criticising Republicans for 'short term' and 'ideological' thinking, as well as by introducing pro-ESG legislation of their own across 14 states. For the time being it seems that investment managers are holding firm, whilst trying to stay out of the firing lines of bi-partisan debates.
- Federal-level: regulatory uncertainty
- Given the fractured politics of ESG, many are eagerly awaiting the final mandatory climate-disclosure rules to be released by the SEC, in the hope they will bring regulatory clarity. However, it's unclear whether the rules will be able to deliver and withstand the political climate. 24 Republican states attorney generals have already made clear that they will challenge the SEC for regulatory overreach, describing the proposal as "agency mission creep of the worst kind". The conservative-majority bench of the US Supreme Court also creates uncertainty because it has been willing to accept challenges to federal agency authority. If the court's decision in West Virginia v. EPA (2022) is anything to go by, it's likely legal challenges to the SEC rules may find their way into the courts.

- Climate Week: is enthusiasm on climate action slowing?
- New York Climate Week was an opportunity to cut through the political noise and build momentum in the lead up to COP27. However, it proved to be a mixed bag. The geopolitical landscape dampened the enthusiasm seen at COP26, as the global energy crisis, and the rise in right-wing politics raised fears of climate backsliding. The collaborative enthusiasm of the Glasgow Financial Alliance for Net Zero (GFANZ) also saw a marked shift to uncertainty and fracturing. Members contemplated the risks of remaining in the alliance following accusations of anti-trust law breaches, increasing litigation aiming to enforce climate change commitments and incoming mandatory SEC regulations.
- However, there were also positives to be drawn from Climate Week. For example, the growing competitiveness of renewable energy markets, alongside the promises of the US Inflation Reduction Act, show potential to revolutionise the global green energy market. There was also increased interest in nature-based solutions and the Taskforce on Nature-related Financial Disclosures (TNFD). This will likely continue to gain momentum with a new TNFD draft framework expected in November and the UN Biodiversity Conference (COP15) in December.

- **Keeping on top of the ESG Landscape with Simmons:** Simmons & Simmons will be co-hosting a half day **hybrid** event on the 5th December with New York law firm Kramer Levin titled: *Navigating the Rising Tide of ESG policy, regulation and litigation across the US, Europe and the UK*. Register your interest here.

2. Hot off the press - FCA consults on sustainability disclosure and investment labelling (UK regulated entities)

- **What:** The wait is over. This week the FCA finally published CP22/20 Sustainability Disclosure Requirements and investment labels. The FCA is seeking feedback on a package of measures that includes the introduction of investment product sustainability labels, consumer disclosures and restrictions on how terms like 'ESG', 'green' or 'sustainable' can be used. The paper is of interest to all UK financial institutions, not least because the proposed 'anti-greenwashing' rule will apply to all regulated firms. This general rule will come into effect immediately on the publication of the final policy statement. However, the core elements of the regime – labelling and classification, disclosure and naming and marketing rules – which will apply to asset managers initially will not come into effect until at least 30 June 2024. The FCA is also seeking views on expanding the regime to asset owners in respect of their investment products and proposing targeted rules for the distributors of investment products to retail investors. Expect further consultations to come.
- **Looking ahead:** If you want to respond to the consultation paper you have until the 25 January 2023. The FCA has indicated that it intends to set out final rules by the end of the first half of 2023.

3. GTAG advice on the UK Taxonomy (cross-sector)

- **What:** On 7 October 2022, GTAG published a report, "GTAG: Advice on the development of a UK Green Taxonomy". This first advisory report focuses on four key themes: how to approach onshoring the EU framework; optimising the Taxonomy's international interoperability; streamlining the provisions around "Do No Significant Harm" so they are usable and useful for reporting entities; and setting out a range of potential taxonomy use cases. For full details see our briefing note here.
- **Looking ahead:** The political upheaval within the UK Government is likely to delay progress on the Taxonomy. The Government had announced plans to finalise the first two Technical Screening Criteria (Climate Change Adaptation, Climate Change Mitigation) by the end of the year, however we anticipate the release of an amended timeline so keep watch for further updates.

4. What's been happening in the EU

- EU proposal to ban products tainted by forced labour (cross-sector)

- What: On 14 September, the European Commission shared a proposal to ban all products made with forced labour. The proposed ban would apply to all products imported and exported to and from the EU across the full length of the supply chain. The proposal outlines that when European authorities identify such products they must be removed or destroyed at the cost of the relevant businesses. Businesses which fail to comply will then face penalties under the relevant national law.
- Impact: The proposal will only come into force 24 months after it's discussed and agreed upon by the European Parliament and the Council of the European Union. Although any ban is unlikely to apply for some years, it is likely to have a significant effect on businesses' approach to supply chain management well before its full implementation. Given the significance of the EU market, the effect of this ban will be felt far beyond the borders of the EU. See our full article on the proposed ban and related reforms proposed in the EU, UK and US here.

- Legal challenges to the EU Taxonomy (cross-sector)
- What: The Taxonomy's Complementary Delegated Act (CDA), adopted on 9 March 2022, gave specific nuclear and gas energy activities a "sustainable" label, sparking widespread objection. The European Commission is facing a number of legal challenges as a result, which are largely been brought by environmental groups. Greenpeace have sent a formal request to the Commission for an internal review of the CDA, arguing that the inclusion of gas and nuclear violates the Taxonomy Regulation, the European Climate Law and the EU's obligations under the 2015 Paris Agreement. Austria has recently joined the fray, filing a lawsuit on 7 October which seeks to quash the classification under the Taxonomy and Luxembourg has confirmed it will also join the action, with other nations likely to follow.
- Next steps: The Commission has until February 2023 to review the submissions and reply. If it refuses to withdraw the CDA, the complainants will be able to ask the European Court of Justice to rule. The end result could be a judgment that forces the Commission to repeal the CDA. For further details, see our full article here.
- European Commission publishes further Q&A's on EU Taxonomy (cross-sector)
- The European Commission has published a notice setting out its interpretation of certain aspects of the Delegated Regulation made under Article 8 of the Taxonomy Regulation. The Delegated Regulation gave more detail to the provisions under Article 8 to specify the content, methodology and presentation of the KPIs that non-financial undertakings and asset managers must disclose. Learn more through our Taxonomy FAQ client note, accessible here.
- Sustainable securitisation – Article 46 report published (financial institutions)
- The European Commission published its long-awaited (and long overdue) report on the functioning of the EU securitisation framework. From an ESG perspective, the report is significant in two respects. First, the Commission decided against developing a dedicated sustainable securitisation framework at this stage, instead indicating its support for changes that bring securitisation within the scope of the draft EU Green Bond Regulation. And second, the Commission decided against extending the scope of the existing sustainability disclosures rules (which are very light touch) to non-STS transactions and/or a broader range of asset classes. The Commission appear to be lending support to the development of standard disclosure templates for a wider range of transaction types. For further details, see our client briefing here.

- **Update on Central Bank of Ireland's fast track filing process for level 2 SFDR compliance (CBI authorised fund managers)**
- As mentioned in our September ESG View, the CBI is operating a fast track process for CBI authorised funds needing to update and file documentation for SFDR Level 2 compliance. Updated prospectuses along with the pre-contractual disclosure annexes will need to be filed by with the CBI by 1 December. The CBI has since released further details on the filing process. See our briefing here for further details.
- **Can we help with your SFDR compliance? Get ready for 1 January 2023 with our new templates:** our RTS template guidance documents are available for both Article 8 and Article 9 products, containing guidance, interpretative views, framework language and template form disclosures. Contact Nick Colston or Lucian Firth for details.

5. Hong Kong Fund Manager Code of Conduct (asset managers)

- **What:** In August 2022, amendments to the Fund Manager Code of Conduct (FMCC) came into effect. Fund managers of collective investment schemes (CIS) are now required to consider climate-related risks in their governance, investment and risk management processes, and make appropriate disclosures. 'Large Fund Managers' must comply with certain baseline requirements from August 2022, and an additional set of enhanced standards from November 2022. Other fund managers must comply with baseline requirements from November 2022.
- The Securities and Futures Commission (SFC), Hong Kong's financial regulator, is one of the first in the region to adopt such mandatory approach for fund managers. These new regulatory requirements make reference to the widely-endorsed Task Force on Climate-Related Financial Disclosures recommendations, aligning Hong Kong with international standards and global regulatory trends.
- **Our view:** Whilst the SFC's effort to promote ESG leadership in Hong Kong is welcomed by the industry, fund managers are generally concerned about the limited availability of data and lack of common standards to effectively meet disclosure obligations. As this first phase of the new regulatory requirements comes into effect, with quantitative disclosures for Large Fund Managers expected in mid-2023, we will be watching this space closely to see how the SFC's compliance landscape and enforcement efforts will roll out.

6. Middle East ESG Round-up (cross-sector)

- **UAE launches independent climate group:** On 20 September 2022, the UAE announced the establishment of the region's first Independent Climate Change Accelerators (UICCA) during New York Climate Week. Against the backdrop of the UAE's commitment to being net zero by 2050, the UICCA will be an independent body which will provide recommendations to the public and private sectors on the transition to a green economy to strengthen the UAE's vision of being a global sustainability hub. Described as a non-partisan, climate action entity, the UICCA will also focus on facilitating international business, innovation and technology partnerships. Some of the main sectors will cover electric mobility, sustainable fuels, energy efficient buildings and cities, as well as Climate Tech.

- ESG assessment tool for companies: The Dubai Sustainable Finance Working Group (DSFWG) and the Dubai Financial Market (DFM) has introduced a self-assessment tool for companies to measure their ESG policies and practices. Developed in line with the principles of the UN Sustainable Development Goals and the standards of the Global Reporting Initiative, the tool will allow companies to assess their progress against international best practice.

The FCA reported on progress made on the requirements of PS20/17, under which premium listed companies must make TCFD-aligned disclosures on a comply or explain basis. The report should be read in conjunction with the FRC's analysis, which provides best practice examples. *Overall, the number of companies making disclosures that were either partially or mostly consistent with the TCFD framework increased significantly compared with 2020. The most common reporting gaps were in respect of the more quantitative elements of the TCFD's recommendations such as scenario analysis, and metrics and targets.*

- The FCA notes that further work is required to build on, and complement, the TCFD's recommendations by introducing a common international reporting standard. The FCA expects the UK Government to consult in due course on a mechanism to adopt the ISSB's standards in the UK. The FCA will consult separately on adapting the existing TCFD-aligned climate-related disclosure rules for listed companies to reference the final ISSB standards. It will also likely consult on moving from the current 'comply or explain' compliance basis to mandatory disclosure requirements for in-scope listed companies.
- Applications have now closed for external experts to join the FCA's new ESG Advisory Committee. The Committee will help to execute the FCA's ESG-related responsibilities, including meeting the Government's expectation that it "has regard' to the UK's commitment to achieving a net zero economy by 2050, when considering how to advance and achieve its objectives and functions. The Committee is expected to meet for the first time in Q4 2022, and quarterly thereafter.
- The Climate Financial Risk Forum (CFRF), has published minutes of its latest meeting. Members agreed the importance of ensuring inter-linkages between the Working Groups on scenario analysis, disclosure, data and metrics, and the transition to net zero. The Forum also discussed how it can support the industry through current external challenges and in both near- and longer-term planning around climate-related financial risk and greenhouse gas emission targets. The Forum supported the climate-related disclosure requirements proposed by the International Sustainability Standards Board (ISSB) but noted the importance of interoperability of baseline standards across jurisdictions.

Carbon Credits; *According to the latest State of the Voluntary Carbon Markets report from Ecosystem Marketplace (EM), the Voluntary Carbon Market (VCM) grew in value towards $2 Billion in 2021.*

- This quadrupling in market value from 2020 was driven by an acceleration of nature-based solutions trading volume and higher prices for these and other projects with non-carbon environmental and social benefits, such as clean cookstoves and water purification devices.
- The report offers a synthesis of EM’s wealth of all EM Respondent reported VCM carbon credit trade data for 2021 (and updates to 2020), a 6X increase in annual market data over 2019.
- The VCM grew in value towards $2 Billion in 2021. This quadrupling in market value from 2020, and doubling from our last market update during COP26, was driven by an acceleration of nature-based solutions trading volume and higher prices for these and other projects with non-carbon environmental and social benefits, such as clean cookstoves and water purification devices.
- From developers to investors and buyers, VCM data interests are becoming increasingly granular. Over the past several months, EM has been busy investing in upgrades to its data systems and analytical tools, applying new QAQC practices to the data, and updating its project typology and category classifications to capture the astonishing diversity of +170 project credit types from nearly 100 countries reported to us for transactions in 2020-2021.
- “Quality” and “integrity” are buzzwords in the voluntary carbon markets right now. EM’s position has always been that transparency is fundamental for high-quality, high-integrity markets. As the markets get larger and more complex, EM’s goal is to make sure that markets deliver real climate impact, that high-quality projects are priced and valued accordingly, and that corporate climate action actors understand their full range of options.

- EM’s work is accelerating, and collaboration is essential. With new initiatives, such as the ICVCM and VCMI offering integrity guidance and principles, and the overall bullish outlook of the VCM creating the wind at our backs, EM plays a role as a neutral and independent non-profit initiative driving end-to-end trade transparency in what is still a largely disaggregated, over the counter market.